

The Ontario Securities Commission

AMENDMENTS TO NATIONAL INSTRUMENT 45-106 PROSPECTUS AND REGISTRATION EXEMPTIONS

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AMENDMENTS TO NATIONAL INSTRUMENT 45-106 PROSPECTUS AND REGISTRATION EXEMPTIONS

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**NOTICE OF AMENDMENTS TO
NATIONAL INSTRUMENT 45-106
PROSPECTUS AND REGISTRATION EXEMPTIONS**

February 19, 2015

Introduction

We, the Ontario Securities Commission (OSC or we), are implementing rule amendments (the Rule Amendments) to

- National Instrument 45-106 *Prospectus and Registration Exemptions* (NI 45-106),
- National Instrument 45-102 *Resale of Securities* (NI 45-102), and
- OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions* (OSC Rule 45-501).

We are also implementing policy changes (the Policy Changes) to Companion Policy 45-106CP *Prospectus and Registration Exemptions* (45-106CP) and Companion Policy 45-501CP to OSC Rule 45-501 (45-501CP).

On March 20, 2014, the OSC published for comment proposed amendments (the Proposed Amendments) to NI 45-106, NI 45-102, OSC Rule 45-501, 45-106CP and 45-501CP related to the introduction of a prospectus exemption for distribution of securities to directors, executive officers, control persons or founders of an issuer as well as certain family members, close personal friends and close business associates of such persons (the FFBA Exemption or the Exemption) in Ontario. On January 27, 2015, the OSC:

- made the Rule Amendments pursuant to section 143 of the *Securities Act* (Ontario) (the Act), and
- adopted the Policy Changes pursuant to section 143.8 of the Act.

The Rule Amendments and the Policy Changes (collectively, the Final Amendments) were delivered to the Minister of Finance on February 17, 2015. The Minister of Finance may approve or reject the Rule Amendments or return them for further consideration. If the Minister approves the Rule Amendments or does not take any further action by April 20, 2015, the Final Amendments will come into force on May 5, 2015.

The amending instruments and the text of the Rule Amendments are set out at Appendix A. A blackline comparison reflecting the Policy Changes and certain companion policy guidance that is relevant to the FFBA Exemption are set out at Appendix B.

Substance and Purpose of the Final Amendments

The Final Amendments introduce the FFBA Exemption in Ontario, which will be available to issuers other than investment funds. The Exemption is substantially harmonized with the FFBA Exemption that is currently available in other Canadian Securities Administrators (CSA) jurisdictions. Subject to Ministerial approval, with the introduction of the FFBA Exemption, we are also repealing the existing founder, control person and family exemption in section 2.7 of NI 45-106 (the Founder, Control Person and Family Exemption) in Ontario.

We are introducing the FFBA Exemption because we think that early-stage issuers could benefit from greater access to capital from their network of family, close personal friends and close business associates than has been previously permitted under Ontario securities law. The FFBA Exemption is anticipated to be a cost-effective way for issuers to raise capital since there are no requirements to provide investors with information at the time of distribution and the Exemption can be used without intermediary involvement. In particular, the FFBA Exemption may benefit early-stage companies, as an issuer's network of family, close personal friends and close business associates is often the first funding source for many start-ups and small and medium-sized enterprises (SMEs).

Furthermore, the FFBA Exemption increases investment opportunities for investors that are closely related to the issuer but may not qualify under the accredited investor exemption in section 2.3 of NI 45-106, the private issuer exemption in section 2.4 of NI 45-106 or the Founder, Control Person and Family Exemption.

Background

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

In connection with the Exempt Market Review, on March 20, 2014, the OSC published for comment, proposals for four new capital raising prospectus exemptions in Ontario (the March 2014 Exemptions):

- an offering memorandum prospectus exemption,
- the FFBA Exemption,
- an existing security holder prospectus exemption (the ESH Exemption), and
- a crowdfunding prospectus exemption in addition to regulatory requirements applicable to a crowdfunding portal.

The OSC also published a proposal for two new reports of exempt distribution for use in Ontario and certain other jurisdictions (the Proposed Reports):

- Form 45-106F10 *Report of Exempt Distribution For Investment Fund Issuers (Alberta, New Brunswick, Ontario and Saskatchewan)*, and
- Form 45-106F11 *Report of Exempt Distribution For Issuers Other Than Investment Funds (Alberta, New Brunswick, Ontario and Saskatchewan)* (Form 45-106F11).

Additional background information on the March 2014 Exemptions and the Proposed Reports is available in the notice published on March 20, 2014. The comment period for these proposals expired on June 18, 2014. On November 27, 2014, the OSC published the ESH Exemption in final form and that exemption came into force on February 11, 2015. OSC staff are currently reviewing the comments related to the other March 2014 Exemptions and the Proposed Reports and have issued an update in connection with this publication.

In developing the Final Amendments (and in connection with the Exempt Market Review), we conducted consultations with various stakeholders including OSC advisory committees. To facilitate harmonization, we also consulted with other CSA members. As a result, the FFBA Exemption in Ontario is substantially harmonized with the Exemption that is available in other CSA jurisdictions.

Framework of the FFBA Exemption

The FFBA Exemption permits issuers to distribute securities to the issuer's directors, executive officers, control persons and founders as well as certain family members, close personal friends and close business associates of such persons, subject to a number of conditions. The key conditions are set out below:

Element of exemption	Details
Issuer restrictions	
Qualification criteria	<ul style="list-style-type: none"> • Available to both reporting issuers and non-reporting issuers • Not available to investment funds
Distribution details	
Types of securities	<ul style="list-style-type: none"> • Exemption applies to a distribution of any security by an issuer or a selling

Element of exemption	Details
	<p>security holder, subject to the conditions of the Exemption being met</p> <ul style="list-style-type: none"> • An amendment that short-term securitized products may not be distributed under the Exemption is being published concurrently under a separate CSA initiative
Offering parameters	<ul style="list-style-type: none"> • No limit on the size of offering made under the Exemption
Use of advertising, registrants and finders	<ul style="list-style-type: none"> • Guidance in 45-106CP explains that in Ontario, the use of registrants, finders or advertising, as well as payment of fees or commissions to any person to find purchasers is inconsistent with the FFBA Exemption
Investor protection measures	
Investor qualifications	<ul style="list-style-type: none"> • Exemption available for distributions to directors, executive officers, control persons and founders of the issuer as well as family members, close personal friends and close business associates of directors, executive officers, control persons or founders of the issuer, as set out in subsection 2.5(1) of NI 45-106 • Expanded guidance in 45-106CP on the meaning of close personal friend and close business associate including: <ul style="list-style-type: none"> ○ onus is on the issuer or selling security holder to establish whether a close personal relationship exists, various factors will be considered relevant in making this determination, and ○ we will not generally consider an individual with whom a friendship is primarily founded on participation in an internet forum or social media to be a close personal friend or close business associate
Investment limits	<ul style="list-style-type: none"> • No investment limits
Risk acknowledgement	<ul style="list-style-type: none"> • Risk acknowledgement form, Form 45-106F12 <i>Risk Acknowledgement Form for Family, Friend and Business Associate Investors</i> (Form 45-106F12), must be signed by (1) the investor, (2) the director, executive officer, control person or founder of the issuer with whom the investor has asserted the relationship (either directly or through the spouse of the director, executive officer, founder or control person), if applicable, and (3) the issuer • Investor must acknowledge certain risks associated with the investment • Investor must disclose, if applicable: <ul style="list-style-type: none"> ○ the identity of the director, executive officer, control person or founder of the issuer with whom they assert a relationship, ○ that person's position at or relationship with the issuer, ○ the category of the relationship asserted by the investor, and ○ how long the investor has known that person • Risk acknowledgement form must be retained by the person making the distribution for a period of eight years after the distribution
Point of sale disclosure	<ul style="list-style-type: none"> • No requirement for the issuer or the selling security holder to provide the investor with any disclosure at time of distribution
Statutory or contractual rights in the event of a misrepresentation	<ul style="list-style-type: none"> • If an issuer or selling security holder voluntarily provides a potential investor with an offering memorandum in connection with a distribution, investors have certain rights of action for damages or rescission in the event of a misrepresentation
Right of withdrawal	<ul style="list-style-type: none"> • No right of withdrawal available to investors

Element of exemption	Details
Resale restrictions	<ul style="list-style-type: none"> • Securities of a reporting issuer are subject to a four month hold period (subject to certain other conditions being met) • Securities of a non-reporting issuer are subject to an indefinite hold period and can only be resold under another prospectus exemption or under a prospectus
Ongoing disclosure	<ul style="list-style-type: none"> • No requirement for non-reporting issuers to provide any ongoing disclosure • Reporting issuers subject to continuous disclosure obligations under securities law
Reporting	
Reporting of distribution	<ul style="list-style-type: none"> • Report of exempt distribution on Form 45-106F1 <i>Report of Exempt Distribution</i> must be filed within 10 days of the distribution

Summary of Changes to the Proposed Amendments

After considering the comments received on the Proposed Amendments and the comments we received during our informal consultations, we have made some revisions to the Proposed Amendments. Those revisions are reflected in the Final Amendments that we are publishing concurrently with this notice. As these changes are not material, we are not republishing the Final Amendments for a further comment period.

A summary of notable changes between the Proposed Amendments and the Final Amendments is set out in Appendix C.

Summary of Written Comments Received by the OSC

The comment period for the Proposed Amendments ended on June 18, 2014. We received written submissions on the Proposed Amendments from 18 commenters. We have considered the comments received and thank all of the commenters for their comments. The names of the commenters are contained in Appendix D and a summary of their comments, together with our responses, is contained in Appendix E. The comment letters can be viewed on the OSC website at www.osc.gov.on.ca.

Application of the FFBA Exemption in Ontario and in Other CSA Jurisdictions

One difference between the FFBA Exemption as it applies in Ontario and as it applies in other CSA jurisdictions is that, unlike in Ontario, investment funds are able to rely upon the FFBA Exemption in other CSA jurisdictions. The exclusion of investment funds is consistent with the focus of the policy initiative of the Exempt Market Review to facilitate capital raising for start-ups and SMEs.

Further, as is currently required in Saskatchewan, the FFBA Exemption in Ontario requires purchasers to sign a risk acknowledgement form, though we are adopting a version of the form that is distinct from that of Saskatchewan. Ontario's Form 45-106F12 under the FFBA Exemption is modernized and aligned with the risk acknowledgement form for individual accredited investors that is being published concurrently as part of a separate CSA initiative. In addition to being signed by the purchaser and the issuer, the risk acknowledgment form in Ontario must, if applicable, be signed by the director, executive officer, control person or founder of the issuer with whom the investor has asserted the relationship (either directly or through the spouse of the director, executive officer, control person or founder).

Questions

Please refer your questions to any of:

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Attachments

Appendix A – Rule Amendments

Annex A-1 – Amending Instrument for National Instrument 45-106 *Prospectus and Registration Exemptions*

Annex A-2 – Amending Instrument for National Instrument 45-102 *Resale of Securities*

Annex A-3 – Amending Instrument for OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions*

Annex A-4 – Unofficial Consolidation of Select Provisions in National Instrument 45-106 *Prospectus and Registration Exemptions*

Annex A-5 – Unofficial Consolidation of Select Provisions in OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions*

Appendix B – Policy Changes

Annex B-1 – Changes to Companion Policy 45-106CP *Prospectus and Registration Exemptions*

Annex B-2 – Changes to Companion Policy 45-501CP to Rule 45-501 *Ontario Prospectus and Registration Exemptions*

Annex B-3 – Select Provisions of Companion Policy 45-106CP *Prospectus And Registration Exemptions* being Published Concurrently

Appendix C – Summary of Changes

Appendix D – List of Commenters

Appendix E – Summary of Comments and OSC Responses

APPENDIX A
RULE AMENDMENTS

Attached to this appendix are:

- Annex A-1 Amending Instrument for National Instrument 45-106 *Prospectus and Registration Exemptions*
- Annex A-2 Amending Instrument for National Instrument 45-102 *Resale of Securities*
- Annex A-3 Amending Instrument for OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions*
- Annex A-4 Unofficial Consolidation of Select Provisions in National Instrument 45-106 *Prospectus and Registration Exemptions*
- Annex A-5 Unofficial Consolidation of Select Provisions in OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions*

ANNEX A-1

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

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

1. National Instrument 45-106 *Prospectus and Registration Exemptions* (NI 45-106) is amended by this Instrument.

2. Subsection 2.5(1) is amended by replacing

“Except in Ontario and subject to section 2.6 [*Family, friends and business associates – Saskatchewan*],”

with

“Subject to section 2.6 [*Family, friends and business associates – Saskatchewan*] and section 2.6.1 [*Family, friends and business associates – Ontario*],”.

3. This Instrument is amended by adding the following section:

Family, friends and business associates – Ontario

2.6.1 (1) In Ontario, section 2.5 [*Family, friends and business associates*] does not apply to a distribution of a security of an issuer unless all of the following are satisfied:

- (a) the issuer is not an investment fund;
- (b) the person making the distribution obtains a risk acknowledgement signed by all of the following:
 - (i) the purchaser;
 - (ii) an executive officer of the issuer other than the purchaser;
 - (iii) if the purchaser is a person referred to under paragraph 2.5(1)(b), the director, executive officer or control person of the issuer or an affiliate of the issuer who has the specified relationship with the purchaser;
 - (iv) if the purchaser is a person referred to under paragraph 2.5(1)(c), the director, executive officer or control person of the issuer or an affiliate of the issuer whose spouse has the specified relationship with the purchaser;
 - (v) if the purchaser is a person referred to under paragraph 2.5(1)(d) or (e), the director, executive officer or control person of the issuer or an affiliate of the issuer who is a close personal friend or a close business associate of the purchaser; and

- (vi) the founder of the issuer, if the purchaser is a person referred to in paragraph 2.5(1)(f) or (g) other than the founder of the issuer.

(2) The person making the distribution must retain the required form referred to in subsection (1) for 8 years after the distribution..

4. **Section 2.7 is repealed.**
5. **Section 6.5 is amended by adding the following subsection:**

(3) In Ontario, the required form of risk acknowledgement under section 2.6.1 [*Family, friends and business associates – Ontario*] is Form 45-106F12..

6. **This Instrument is amended by adding the following form:**

**Form 45-106F12
Risk Acknowledgement Form for Family, Friend and
Business Associate Investors**

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

SECTION 1 TO BE COMPLETED BY THE ISSUER	
1. About your investment	
Type of securities: [<i>Instruction: Include a short description, e.g., common shares.</i>]	Issuer:
SECTIONS 2 TO 4 TO BE COMPLETED BY THE PURCHASER	
2. Risk acknowledgement	
This investment is risky. Initial that you understand that:	Your initials
Risk of loss – You could lose your entire investment of \$_____. [<i>Instruction: Insert the total dollar amount of the investment.</i>]	
Liquidity risk – You may not be able to sell your investment quickly – or at all.	
Lack of information – You may receive little or no information about your investment. The information you receive may be limited to the information provided to you by the family member, friend or close business associate specified in section 3 of this form.	

3. Family, friend or business associate status

You must meet one of the following criteria to be able to make this investment. Initial the statement that applies to you:	Your initials
<p>A) You are:</p> <p>1) <i>[check all applicable boxes]</i></p> <ul style="list-style-type: none"> <input type="checkbox"/> a director of the issuer or an affiliate of the issuer <input type="checkbox"/> an executive officer of the issuer or an affiliate of the issuer <input type="checkbox"/> a control person of the issuer or an affiliate of the issuer <input type="checkbox"/> a founder of the issuer <p>OR</p> <p>2) <i>[check all applicable boxes]</i></p> <ul style="list-style-type: none"> <input type="checkbox"/> a person of which a majority of the voting securities are beneficially owned by, or a majority of the directors are, (i) individuals listed in (1) above and/or (ii) family members, close personal friends or close business associates of individuals listed in (1) above <input type="checkbox"/> a trust or estate of which all of the beneficiaries or a majority of the trustees or executors are (i) individuals listed in (1) above and/or (ii) family members, close personal friends or close business associates of individuals listed in (1) above 	
<p>B) You are a family member of _____ <i>[Instruction: Insert the name of the person who is your relative either directly or through his or her spouse]</i>, who holds the following position at the issuer or an affiliate of the issuer: _____.</p> <p>You are the _____ of that person or that person's spouse. <i>[Instruction: To qualify for this investment, you must be (a) the spouse of the person listed above or (b) the parent, grandparent, brother, sister, child or grandchild of that person or that person's spouse.]</i></p>	
<p>C) You are a close personal friend of _____ <i>[Instruction: Insert the name of your close personal friend]</i>, who holds the following position at the issuer or an affiliate of the issuer: _____.</p> <p>You have known that person for _____ years.</p>	
<p>D) You are a close business associate of _____ <i>[Instruction: Insert the name of your close business associate]</i>, who holds the following position at the issuer or an affiliate of the issuer: _____.</p> <p>You have known that person for _____ years.</p>	

4. Your name and signature	
By signing this form, you confirm that you have read this form and you understand the risks of making this investment as identified in this form. You also confirm that you are eligible to make this investment because you are a family member, close personal friend or close business associate of the person identified in section 5 of this form.	
First and last name (please print):	
Signature:	Date:
SECTION 5 TO BE COMPLETED BY PERSON WHO CLAIMS THE CLOSE PERSONAL RELATIONSHIP, IF APPLICABLE	
5. Contact person at the issuer or an affiliate of the issuer	
<i>[Instruction: To be completed by the director, executive officer, control person or founder with whom the purchaser has a close personal relationship indicated under sections 3B, C or D of this form.]</i>	
By signing this form, you confirm that you have, or your spouse has, the following relationship with the purchaser: <i>[check the box that applies]</i>	
<input type="checkbox"/> family relationship as set out in section 3B of this form <input type="checkbox"/> close personal friendship as set out in section 3C of this form <input type="checkbox"/> close business associate relationship as set out in section 3D of this form	
First and last name of contact person <i>[please print]:</i>	
Position with the issuer or affiliate of the issuer (director, executive officer, control person or founder):	
Telephone:	Email:
Signature:	Date:
SECTION 6 TO BE COMPLETED BY THE ISSUER	
6. For more information about this investment	
<i>[Insert name of issuer]</i> <i>[Insert address of issuer]</i> <i>[Insert contact person name]</i> <i>[Insert telephone number]</i> <i>[Insert email address]</i> <i>[Insert website address, if applicable]</i>	
For more information about prospectus exemptions, contact your local securities regulator. You can find contact information at www.securities-administrators.ca.	
Signature of executive officer of the issuer (other than the purchaser):	Date:

Form instructions:

1. *This form does not mandate the use of a specific font size or style but the font must be legible.*
2. *The information in sections 1, 5 and 6 must be completed before the purchaser completes and signs the form.*
3. *The purchaser, an executive officer who is not the purchaser and, if applicable, the person who claims the close personal relationship to the purchaser must sign this form. Each of the purchaser, contact person at the issuer and the issuer must receive a copy of this form signed by the purchaser. The issuer is required to keep a copy of this form for 8 years after the distribution.*
4. *The detailed relationships required to purchase securities under this exemption are set out in section 2.5 of National Instrument 45-106 Prospectus and Registration Exemptions. For guidance on the meaning of “close personal friend” and “close business associate”, please refer to sections 2.7 and 2.8, respectively, of Companion Policy 45-106CP Prospectus and Registration Exemptions.*
7. This Instrument comes into force on May 5, 2015.

ANNEX A-2

AMENDING INSTRUMENT FOR NATIONAL INSTRUMENT 45-102 *RESALE OF SECURITIES*

AMENDING INSTRUMENT FOR NATIONAL INSTRUMENT 45-102 *RESALE OF SECURITIES*

1. National Instrument 45-102 *Resale of Securities* is amended by this Instrument.

2. APPENDIX D is amended

(a) in the list preceding section "1. General", by replacing

- section 2.5 [*Family, friends and business associates*] (except in Ontario);
- section 2.7 [*Founder, control person and family*] (Ontario);

with

- section 2.5 [*Family, friends and business associates*];, **and**

(b) in section "3. Ontario Provisions" by

(i) replacing the definition of "2009 OSC Rule 45-501" with the following:

"2009 OSC Rule 45-501" means the Ontario Securities Commission Rule 45-501 *Ontario Prospectus and Registration Exemption* that came into force on the later of (a) September 28, 2009 and (b) the day on which sections 5 and 11, subsection 12(1) and section 13 of Schedule 26 of the *Budget Measures Act, 2009* were proclaimed into force,;

(ii) adding the following definitions:

"2005 NI 45-106" means the National Instrument 45-106 *Prospectus and Registration Exemptions* that came into effect on September 14, 2005;

"2009 NI 45-106" means the National Instrument 45-106 *Prospectus and Registration Exemptions* that came into effect on September 28, 2009;,, **and**

(iii) adding the following paragraph:

(a.1) – 2005 NI 45-106 and 2009 NI 45-106
Section 2.7 of the 2005 NI 45-106 and the 2009 NI 45-106..

3. This Instrument comes into force on May 5, 2015.

ANNEX A-3

AMENDING INSTRUMENT FOR OSC RULE 45-501 *ONTARIO PROSPECTUS AND REGISTRATION EXEMPTIONS*

**AMENDING INSTRUMENT FOR OSC RULE 45-501
*ONTARIO PROSPECTUS AND REGISTRATION EXEMPTIONS***

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

(b.1) section 2.5 of NI 45-106 [*Family, friends and business associates*], **and**
 - (b) by repealing paragraph (c).**
3. This Instrument comes into force on May 5, 2015.

ANNEX A-4

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

The following is an unofficial consolidation of select provisions of NI 45-106 relating to the FFBA Exemption.

Family, friends and business associates

2.5 (1) Subject to section 2.6 [*Family, friends and business associates — Saskatchewan*] and section 2.6.1 [*Family, friends and business associates – Ontario*], the prospectus requirement does not apply to a distribution of a security to a person who purchases the security as principal and is

- (a) a director, executive officer or control person of the issuer, or of an affiliate of the issuer,
- (b) a spouse, parent, grandparent, brother, sister, child or grandchild of a director, executive officer or control person of the issuer, or of an affiliate of the issuer,
- (c) a parent, grandparent, brother, sister, child or grandchild of the spouse of a director, executive officer or control person of the issuer or of an affiliate of the issuer,
- (d) a close personal friend of a director, executive officer or control person of the issuer, or of an affiliate of the issuer,
- (e) a close business associate of a director, executive officer or control person of the issuer, or of an affiliate of the issuer,
- (f) a founder of the issuer or a spouse, parent, grandparent, brother, sister, child, grandchild, close personal friend or close business associate of a founder of the issuer,
- (g) a parent, grandparent, brother, sister, child or grandchild of a spouse of a founder of the issuer,
- (h) a person of which a majority of the voting securities are beneficially owned by, or a majority of the directors are, persons described in paragraphs (a) to (g), or
- (i) a trust or estate of which all of the beneficiaries or a majority of the trustees or executors are persons described in paragraphs (a) to (g).

(2) No commission or finder's fee may be paid to any director, officer, founder, or control person of an issuer or an affiliate of the issuer in connection with a distribution under subsection (1).

(3) Subsection (1) does not apply to a distribution of a short-term securitized product.¹

¹ This subsection is not yet in force but is being published in final form on February 19, 2015 as part of a separate CSA initiative.

Family, friends and business associates – Ontario

2.6.1 (1) In Ontario, section 2.5 [*Family, friends and business associates*] does not apply to a distribution of a security of an issuer unless all of the following are satisfied:

- (a) the issuer is not an investment fund;
- (b) the person making the distribution obtains a risk acknowledgement signed by all of the following:
 - (i) the purchaser;
 - (ii) an executive officer of the issuer other than the purchaser;
 - (iii) if the purchaser is a person referred to under paragraph 2.5(1)(b), the director, executive officer or control person of the issuer or an affiliate of the issuer who has the specified relationship with the purchaser;
 - (iv) if the purchaser is a person referred to under paragraph 2.5(1)(c), the director, executive officer or control person of the issuer or an affiliate of the issuer whose spouse has the specified relationship with the purchaser;
 - (v) if the purchaser is a person referred to under paragraph 2.5(1)(d) or (e), the director, executive officer or control person of the issuer or an affiliate of the issuer who is a close personal friend or a close business associate of the purchaser; and
 - (vi) the founder of the issuer, if the purchaser is a person referred to in paragraph 2.5(1)(f) or (g) other than the founder of the issuer.

(2) The person making the distribution must retain the required form referred to in subsection (1) for 8 years after the distribution.

Required form of risk acknowledgement

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

(2) In Saskatchewan, the required form of risk acknowledgement under section 2.6 or section 3.6 [*Family, friends and business associates*] is Form 45-106F5.

(3) In Ontario, the required form of risk acknowledgement under section 2.6.1 [*Family, friends and business associates*] is Form 45-106F12.

ANNEX A-5

UNOFFICIAL CONSOLIDATION OF SELECT PROVISIONS IN OSC RULE 45-501 *ONTARIO PROSPECTUS AND REGISTRATION EXEMPTIONS*

The following is an unofficial consolidation of section 5.1 [Application] of OSC Rule 45-501.

5.1 Application – This Part only applies to a distribution made in reliance on an exemption from the prospectus requirement in

- (a) section 2.3 of NI 45-106 [*Accredited investor*],
- (b) section 2.4 of NI 45-106 [*Private issuer*],
- (b.1) section 2.5 of NI 45-106 [*Family, friends and business associates*],
- (c) [Repealed]
- (d) section 2.8 of NI 45-106 [*Affiliates*],
- (e) section 2.10 of NI 45-106 [*Minimum amount investment*],
- (f) section 2.19 of NI 45-106 [*Additional investment in investment funds*], and
- (g) section 2.1 [*Government incentive security*].

APPENDIX B
POLICY CHANGES

Attached to this appendix are:

- Annex B-1 Changes to Companion Policy 45-106CP *Prospectus and Registration Exemptions*
- Annex B-2 Changes to Companion Policy 45-501CP to OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions*
- Annex B-3 Select Provisions of Companion Policy 45-106CP *Prospectus and Registration Exemptions* Being Published Concurrently

ANNEX B-1

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

This Annex reflects changes to 45-106CP that will take effect upon the coming into force of the Rule Amendments set out in Appendix A. Additions are represented in underlined text.

3.1 Soliciting purchasers

(1) Soliciting purchasers - Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Québec, Saskatchewan and Yukon

Part 2, Division 1 (capital raising exemptions) in NI 45-106 does not prohibit the use of registrants, finders, or advertising in any form (for example, Internet, e-mail, direct mail, newspaper or magazine) to solicit purchasers under any of the exemptions. However, use of any of these means to find purchasers under the private issuer exemption in section 2.4 of NI 45-106 or under the family, friends and business associates exemption in section 2.5 of NI 45-106, may give rise to a presumption that the relationship required for use of these exemptions is not present. If, for example, an issuer advertises or pays a commission or finder's fee to a third party to find purchasers under the family, friends and business associates exemption, it suggests that the precondition of a close relationship between the purchaser and the issuer may not exist and therefore the issuer cannot rely on this exemption.

Use of a finder by a private issuer to find an accredited investor, however, would not preclude the private issuer from relying upon the private issuer exemption, provided that all of the other conditions to that exemption are met.

Any solicitation activities that aim to identify a particular category of investor should clearly state the kind of investor being sought and the criteria that investors will be required to meet. Any print materials used to find accredited investors, for example, should clearly and prominently state that only accredited investors should respond to the solicitation.

(2) Soliciting purchasers – Ontario

Part 2, Division 1 (capital raising exemptions) in NI 45-106 does not prohibit the use of registrants, finders, or advertising in any form (for example, Internet, e-mail, direct mail, newspaper or magazine) to solicit purchasers under any of the exemptions.

Any solicitation activities that aim to identify a particular category of investor should clearly state the kind of investor being sought and the criteria that investors will be required to meet. Any print materials used to find accredited investors, for example, should clearly and prominently state that only accredited investors should respond to the solicitation.

The Ontario Securities Commission considers the use of registrants, finders or advertising to find or attract purchasers to be inconsistent with the use of the family, friends and business associates exemption in section 2.5 of NI 45-106 and the private issuer exemption in section 2.4 of NI 45-106 for distributions to family members, close personal friends or close business associates. Since advertising should not be required to find a family member, close personal friend or close business associate, the Ontario Securities Commission does not expect that advertising would be used to find or attract purchasers for distributions made solely under section 2.5 of NI 45-106 or to identify purchasers for distributions made in reliance on that exemption. The Ontario Securities Commission also does not expect that advertising would be used for distributions made solely to family members, close

personal friends or close business associates under section 2.4 of NI 45-106 or to identify those types of purchasers for distributions made in reliance on that exemption.

If a distribution is being made in reliance on one or more other prospectus exemptions, advertising in connection with those other exemptions does not prevent concurrent reliance on the family, friends and business associates exemption in section 2.5 or the private issuer exemption in section 2.4 of NI 45-106. Similarly, use of a finder by a private issuer to find an accredited investor would not preclude the private issuer from relying upon the private issuer exemption under section 2.4 of NI 45-106 provided that all of the other conditions to that exemption are met.

3.4.01 Payment of Finder's Fees or Commissions to Any Person

Subsection 2.5(2) of NI 45-106 prohibits the payment of commissions or finder's fees to any director, officer, founder or control person of an issuer or an affiliate of an issuer in connection with a distribution under the family, friends and business associates exemption.

The Ontario Securities Commission considers the payment of fees or commissions to any person, including registrants or finders, to identify, find or introduce one's family members, close personal friends or close business associates to be inconsistent with the family, friends and business associates exemption. However, the Ontario Securities Commission recognizes that fees may be paid to a person in connection with a distribution under the family, friends and business associates exemption in certain circumstances.

For example:

- Documentation and certain other activities – Fees may be paid for the documentation and other activities relating to the closing of the distribution.

- Concurrent reliance on other prospectus exemptions – If distributing securities on the same terms concurrently under one or more other prospectus exemptions in respect of which fees or commissions are being paid, then such fees and commissions may also be paid in respect of securities distributed under the family, friends and business associates exemption.

ANNEX B-2

CHANGES TO COMPANION POLICY 45-501CP TO OSC RULE 45-501 ONTARIO PROSPECTUS AND REGISTRATION EXEMPTIONS

This Annex reflects changes to 45-501CP that will take effect upon the coming into force of the Rule Amendments set out in Appendix A. Additions are represented in underlined text and deletions are in stricken text.

5.2 Mandatory and voluntary use of offering memorandum— (1) An issuer must prepare an offering memorandum for use in connection with a distribution made in reliance on the prospectus exemption in section 2.1 of the Rule [*Government incentive security*].

(2) There is no obligation to prepare an offering memorandum for use in connection with a distribution made in reliance on a prospectus exemption in:

(a) section 2.3 of NI 45-106 [*Accredited investor*],

(b) section 2.4 of NI 45-106 [*Private issuer*],

~~(c)~~ ~~(b.1)~~ section ~~2.7~~2.5 of NI 45-106 [*Family, founder and control person—Ontario*friends and business associates],

(c) [Repealed]

(d) section 2.8 of NI 45-106 [*Affiliates*],

(e) section 2.10 of NI 45-106 [*Minimum amount investment*], or

(f) section 2.19 of NI 45-106 [*Additional investment in investment funds*].

Business practice may dictate the preparation of offering material that is delivered voluntarily to a prospective purchaser in connection with a distribution made in reliance on a prospectus exemption in section 2.3, 2.4, ~~2.7~~2.5, 2.8, 2.10 or 2.19 of NI 45-106. This offering material may constitute an “offering memorandum” as defined in Ontario Securities Commission Rule 14-501 Definitions.

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

(a) section 2.3 of NI 45-106 (subject to the provisions of subsection 6.2(2) of the Rule) [*Accredited investor*],

(b) section 2.4 of NI 45-106 [*Private issuer*],

~~(c)~~ ~~(b.1)~~ section ~~2.7~~2.5 of NI 45-106 [*Family, founder and control person—Ontario*friends and business associates],

(c) [Repealed]

(d) section 2.8 of NI 45-106 [*Affiliates*],

(e) section 2.10 of NI 45-106 [*Minimum amount investment*],

(f) section 2.19 of NI 45-106 [*Additional investment in investment funds*], or

(g) section 2.1 [*Government incentive security*].

The rights apply when the offering memorandum is delivered mandatorily in connection with a distribution made in reliance on the exemption in section 2.1 of the Rule, or voluntarily in connection with a distribution made in reliance on a prospectus exemption in section 2.3, 2.4, ~~2.7, 2.5~~, 2.8, 2.10 or 2.19 of NI 45-106.

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

5.5 Failure to disclose material information in ~~Review of~~ offering memorandum –

~~(1) An offering memorandum or any amendment to a previously delivered offering memorandum delivered to the Commission under section 5.4 of the Rule is not generally reviewed or commented on by Commission staff.~~

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

ANNEX B-3

SELECT PROVISIONS OF COMPANION POLICY 45-106CP PROSPECTUS AND REGISTRATION EXEMPTIONS BEING PUBLISHED CONCURRENTLY

This Annex reflects changes to 45-106CP that will take effect upon the coming into force of amendments to the accredited investor and minimum amount prospectus exemptions that are being published concurrently as part of a separate CSA initiative. This guidance is relevant to the FFBA Exemption.

1.9 Responsibility for compliance and verifying purchaser status

(1) Determining whether an exemption is available

The prospectus exemptions in NI 45-106 set out specific terms and conditions that must be satisfied in order for the person relying on the exemption to distribute securities. The person relying on a prospectus exemption is responsible for determining whether the terms and conditions of the prospectus exemption are met. That person should retain all necessary documents to demonstrate that they properly relied on the exemption.

Some of the prospectus exemptions in NI 45-106 are available to both issuers and selling security holders. For purposes of this section, the term “seller” refers to the person relying on a prospectus exemption, whether an issuer or a selling security holder.

(2) Registration related requirements

Registered dealers and representatives have specific obligations under NI 31-103, including the “know your client,” “know your product” and suitability obligations. These obligations apply to securities traded on a marketplace, distributed under a prospectus or distributed under a prospectus exemption.

Registered dealers or representatives may be involved in distributions under prospectus exemptions in different ways. The registered dealer or representative may be acting on behalf of a seller in connection with a distribution using a prospectus exemption.

In both cases, the registered dealer or representative must not only establish that a prospectus exemption is available, it must also comply with its registration obligations. For example, even if a registered dealer or representative has determined that a purchaser qualifies as an accredited investor or eligible investor, the registered dealer or representative must still assess whether the investment is suitable for the purchaser.

(3) Exemptions based on purchaser characteristics

Some of the prospectus exemptions in NI 45-106 require the purchaser of the securities to meet certain characteristics or have certain relationships with a director, executive officer, founder or control person of the issuer. These exemptions include:

- Exemptions based on income or asset tests - The accredited investor exemption and the “eligible investor” test in the offering memorandum exemption in some jurisdictions require a purchaser to meet certain income or asset tests in order for securities to be sold in reliance on the exemption.
- Exemptions based on relationships - The private issuer exemption, the family, friends and business associates exemption and the “eligible investor” test in the offering memorandum exemption in some

jurisdictions require a relationship between the purchaser and a director, executive officer, founder or control person of the issuer, such as that of a family member, close personal friend, or close business associate.

When distributing securities under these exemptions, the seller will have to obtain information from the purchaser in order to determine whether the purchaser has the requisite income, assets or relationship to meet the terms of the exemption.

It will not be sufficient for the seller to accept standard representations in a subscription agreement or an initial beside a category on Form 45-106F9 *Form for Individual Accredited Investors* unless the seller has taken reasonable steps to verify the representations made by the purchaser.

(4) Reasonable steps

Described below are procedures that a seller could implement in order to reasonably confirm that the purchaser meets the conditions for a particular exemption. Whether the types of steps are reasonable will depend on the particular facts and circumstances of the purchaser, the offering and the exemption being relied on, including:

- how the seller identified or located the potential purchaser
- what category of accredited investor or eligible investor the purchaser claims to meet
- what type of relationship the purchaser claims to have and with which director, executive officer, founder or control person of the issuer
- how much and what type of background information is known about the purchaser
- whether the person who meets with, or provides information to, the purchaser is registered

We expect a seller to be in a position to explain why certain steps were not taken or to be able to explain how alternative steps were reasonable in the circumstances. It is the seller that is relying on the prospectus exemption and it is the seller that is responsible to ensure the terms of the exemption are met. If the seller has any reservations about whether the purchaser qualifies under the exemption, the seller should not sell securities to the purchaser in reliance on that exemption.

(a) Understand the terms and conditions of the exemption

The seller should fully understand the terms and conditions of the exemption being relied on. “Understanding” includes being able to:

- Explain the terms and conditions – The seller must be able to explain to a purchaser the meaning of the terms and conditions of the particular exemption, including the difference between alternative qualification criteria for the same exemption.

For example, the accredited investor definition uses the terms “financial assets” and “net assets”. In some jurisdictions, the offering memorandum exemption also uses the term “net assets” as part of the eligible investor definition. A seller should be capable of explaining the meaning and differences between the two terms, including describing the specific assets and liabilities that form part of each calculation.

- Apply the specific facts of the purchaser to the terms and conditions – The terms “close personal friend” and “close business associate” used in some exemptions are difficult to define and can mean different things to different people. Sections 2.7 and 2.8 of this Companion Policy provide guidance on the key elements necessary to establish these types of relationships. We have not provided a “bright line” test for these relationships. A seller should understand the key elements of these relationships and be able to evaluate whether the relationship claimed by the purchaser meets those key elements.

(b) Establish appropriate policies and procedures

The seller is also responsible for confirming that all parties acting on behalf of the seller in a distribution understand the conditions that must be satisfied to rely on the exemption. This includes any employee, officer, director, agent, finder or other intermediary (whether registered or not) involved in the transaction.

We expect a seller to have policies and procedures in place to confirm that these other parties understand the exemption being relied on, are able to describe the terms of the exemption to purchasers and know what information and documentation must be obtained from purchasers to confirm the conditions of the exemption have been satisfied.

(c) Verify the purchaser meets the criteria set out in the exemption

Before discussing the details of an investment with a prospective purchaser, we expect the seller to obtain information that confirms the purchaser meets the criteria set out in the exemption. It would not be sufficient for a seller to rely solely on a form of subscription agreement or other document that only states: "I am an accredited investor" or "I am a friend of a director".

We would also have concerns if a seller only accepted detailed representations or an initial beside a category on the Form 45-106F9 *Form for Individual Accredited Investors* from the purchaser. In both cases, we expect the seller to take additional steps to confirm that the purchaser understood the meaning of what the purchaser was signing or initialing and that the purchaser was truthful in making the representation or initialing the category.

For example:

- Exemptions based on income or asset tests - To assess whether a purchaser is an accredited investor or eligible investor, we expect the seller to ask questions about the purchaser's net income, financial assets or net assets, or to ask other questions designed to elicit details about the purchaser's financial circumstances.

If the seller has concerns about the purchaser's responses, the seller should make further inquiries about the purchaser's financial circumstances. If the seller still questions the purchaser's eligibility, the seller could ask to see documentation that independently confirms the purchaser's claims.

- Exemptions based on relationships - If an exemption is based on the existence of a specific relationship between the purchaser and a principal of the issuer (such as that of a family member, "close personal friend" or "close business associate"), we expect the seller to ask questions designed to confirm the nature and length of the relationship. The seller should also confirm the nature and length of the relationship with the director, executive officer, founder or control person identified by the purchaser.

For example, if the purchaser claims to be a close personal friend of a director of an issuer, the seller could ask the purchaser for the name of the director and a description of the nature and length of the purchaser's relationship with the director. The seller could verify with the director that the information is accurate. Based on that factual information, the seller could determine whether the purchaser is a close personal friend of the director for the purposes of the family, friends and business associates exemption.

(d) Keep relevant and detailed documentation

The seller should consider what documentation it needs to retain or collect from a purchaser to evidence the steps the seller followed to establish the purchaser met the conditions of the exemption.

The seller should consider whether it is necessary to have the purchaser sign that documentation before distributing securities to that purchaser. For example, if the purchaser claims to be a close personal friend of a

director of the issuer, the seller could ask the purchaser to sign a statement giving the name of the director and describing the nature and length of the purchaser's relationship with the director. The seller could also ask the director to sign the statement confirming the relationship. In other cases, the seller may determine it is not necessary for the purchaser to sign the documentation, for example, if the seller is using meeting notes and email communications to demonstrate its verification efforts.

The seller should retain this documentation to evidence the steps the seller has taken to verify the availability of the exemption. Certain exemptions require the seller to obtain a signed risk acknowledgement form from the purchaser and to retain that risk acknowledgement for 8 years after the distribution. The 8-year period reflects the longest limitation period under securities legislation in Canada. The seller should consider local legislation concerning limitation periods when deciding how long to retain other documentation it considers necessary to demonstrate that it complied with the exemption.

The seller should also consider and comply with the requirements under provincial or federal legislation concerning the protection of personal information when collecting and retaining purchaser information.

2.7 Close personal friend

For purposes of both the private issuer exemption in section 2.4 of NI 45-106 and the family, friends and business associates exemption in section 2.5 of NI 45-106, a "close personal friend" of a director, executive officer, founder or control person of an issuer is an individual who knows the director, executive officer, founder or control person well enough and has known them for a sufficient period of time to be in a position to assess their capabilities and trustworthiness and to obtain information from them with respect to the investment. The term "close personal friend" can include a family member who is not already specifically identified in the exemptions if the family member satisfies the criteria described above.

We consider the following factors as relevant to this determination:

- (a) the length of time the individual has known the director, executive officer, founder or control person,
- (b) the nature of the relationship between the individual and the director, executive officer, founder or control person including such matters as the frequency of contacts between them and the level of trust and reliance in the other circumstances, and
- (c) the number of "close personal friends" of the director, executive officer, founder or control person to whom securities have been distributed in reliance on the private issuer exemption or the family, friends and business associates exemption.

An individual is not a close personal friend solely because the individual is:

- (a) a relative,
- (b) a member of the same club, organization, association or religious group,
- (c) a co-worker, colleague or associate at the same workplace,
- (d) a client, customer, former client or former customer,
- (e) a mere acquaintance, or
- (f) connected through some form of social media, such as Facebook, Twitter or LinkedIn.

The relationship between the individual and the director, executive officer, founder or control person must be direct. For example, the exemption is not available to a close personal friend of a close personal friend of a director of the issuer.

We would not consider a relationship that is primarily founded on participation in an Internet forum to be that of a close personal friend.

The person relying on the exemption is responsible for determining that the purchaser meets the characteristics required under the exemption. See section 1.9 of this Companion Policy for guidance on how to verify and document purchaser status.

2.8 Close business associate

For the purposes of both the private issuer exemption in section 2.4 of NI 45-106 and the family, friends and business associates exemption in section 2.5 of NI 45-106, a “close business associate” is an individual who has had sufficient prior business dealings with a director, executive officer, founder or control person of the issuer to be in a position to assess their capabilities and trustworthiness and to obtain information from them with respect to the investment.

We consider the following factors as relevant to this determination:

- (a) the length of time the individual has known the director, executive officer, founder or control person,
- (b) the nature of any specific business relationships between the individual and the director, executive officer, founder or control person, including, for each relationship, when it began, the frequency of contact between them and when it terminated if it is not ongoing, and the level of trust and reliance in the other circumstances,
- (c) the nature and number of any business dealings between the individual and the director, executive officer, founder or control person, the length of the period during which they occurred, and the nature and date of the most recent business dealing, and
- (d) the number of “close business associates” of the director, executive officer, founder or control person to whom securities have been distributed in reliance on the private issuer exemption or the family, friends and business associates exemption.

An individual is not a close business associate solely because the individual is:

- (a) a member of the same club, organization, association or religious group,
- (b) a co-worker, colleague or associate at the same workplace
- (c) a client, customer, former client or former customer,
- (d) a mere acquaintance, or
- (e) connected through some form of social media, such as Facebook, Twitter or LinkedIn.

The relationship between the individual and the director, executive officer, founder or control person must be direct. For example, the exemptions are not available for a close business associate of a close business associate of a director of the issuer.

We would not consider a relationship that is primarily founded on participation in an Internet forum to be that of a close business associate.

The person relying on the exemption is responsible for determining that the purchaser meets the characteristics required under the exemption. See section 1.9 of this Companion Policy for guidance on how to verify and document purchaser status.

APPENDIX C

SUMMARY OF CHANGES

In order to facilitate harmonization, we have removed the Ontario-specific carve-out from the existing FFBA Exemption in subsection 2.5(1) of NI 45-106, which has been and continues to apply in other CSA jurisdictions. Section 2.6.1 of NI 45-106 introduces requirements that are specific to the FFBA Exemption in Ontario.

The following is a summary of notable changes between the Proposed Amendments and the Final Amendments.

A. Restriction on the Types of Securities and Exclusion of Complex or Novel Securities

The Proposed Amendments contemplated the exclusion of novel or complex products and provided a list of specified securities that could be distributed under the FFBA Exemption. In an effort to harmonize with the FFBA Exemption that is currently available in other CSA jurisdictions, we have removed the above exclusion and list of specified securities that may be distributed under the FFBA Exemption. Instead, due to amendments that are being concurrently published under a separate CSA initiative, short-term securitized products will be unavailable for distribution under the FFBA Exemption. These amendments are intended to address certain investor protection and systemic risk concerns raised by certain types of complex asset-backed commercial paper and will be harmonized across the CSA.

We plan to review the types of securities being distributed under the FFBA Exemption after it has been in place in Ontario for one year and, if determined appropriate, we will reconsider restrictions on the types of securities at that time.

B. Prohibition on the Use of Registrants, Finders or Advertising to Find or Attract Investors

The Proposed Amendments contemplated a prohibition on advertising to solicit purchasers in connection with a distribution under the FFBA Exemption. In the interest of harmonization, the Final Amendments do not impose this prohibition. Instead, we have added companion policy guidance that reflects our expectation that advertising would not be used to find or attract purchasers for distributions made solely under the FFBA Exemption or to identify purchasers for distributions made in reliance on this Exemption. We have also added guidance that clarifies that when a distribution is being made in reliance on one or more prospectus exemptions, advertising in connection with other exemptions does not prevent concurrent reliance on the FFBA Exemption.

In addition, the guidance clarifies that the use of registrants or finders to find or attract purchasers is inconsistent with the FFBA Exemption.

C. Prohibition on Payment of Commission, Finder's Fee, Referral Fee or Similar Payments

The Proposed Amendments included a prohibition on the payment of commissions, finder's fees, referral fees and similar payments to any person in connection with a distribution under the FFBA Exemption. Consistent with the removal of the proposed prohibition on advertising, the Final Amendments do not impose a prohibition on the payment of commissions, finder's fees, referral fees or similar payment to any person in connection with a distribution under the FFBA Exemption. Instead, the narrower prohibition on the payment of fees to any director, officer, founder or control person of an issuer or an affiliate of an issuer that is currently in place in other CSA jurisdictions will apply under the Exemption in Ontario.

In addition, we are adopting expanded companion policy guidance that clarifies that we believe the payment of

fees or commissions to any person, including registrants or finders to identify, find or introduce one's family members, close personal friends or close business associates to be inconsistent with the FFBA Exemption. We do recognize that fees may be paid to a person in connection with a distribution under the Exemption in certain circumstances such as for documentation and activities related to the closing of the distribution as well as when there is concurrent reliance on other prospectus exemptions. The foregoing leaves issuers with the option of engaging the services of a registrant to perform other functions, and to pay registrants for such services, in relation to the FFBA Exemption.

This additional guidance has not been adopted by the CSA.

D. Risk Acknowledgement Form

The Proposed Amendments contemplated that Form 45-106F12 would be required only for distributions to purchasers that are individuals. However, the Final Amendments have been revised to require the completion of Form 45-106F12 for all purchasers under the FFBA Exemption. We see the risk acknowledgement form as a key investor protection mechanism under this Exemption, which will be useful for individual as well as non-individual purchasers.

In addition, we have made changes to the format and presentation of Form 45-106F12. This form corresponds to the extent practicable with the risk acknowledgement form that has been developed under a separate CSA initiative for the use of the accredited investor and minimum amount investment prospectus exemptions. We have also amended the form instructions in Form 45-106F12 to address administrative challenges identified during the comment process.

E. Expanded Guidance on Meaning of "Close Personal Friend" and "Close Business Associate"

The Proposed Amendments included expanded companion policy guidance on the meaning of "close personal friend" and "close business associate". This expanded guidance is being adopted as part of a separate CSA initiative that is being concurrently published in connection with amendments to the accredited investor and minimum amount investment prospectus exemptions without notable changes.

F. Form 45-106F11 Report of Exempt Distribution for Issuers Other than Investment Funds

In conjunction with Alberta, New Brunswick and Saskatchewan, OSC staff proposed Form 45-106F11. It was proposed that an issuer relying on the FFBA Exemption would file Form 45-106F11. However, the Proposed Reports continue to be considered as part of a separate CSA initiative. Since the Proposed Reports are not in place, we will require that an issuer making a distribution under the FFBA Exemption file a Form 45-106F1 *Report of Exempt Distribution*, as is currently required for distributions in other CSA jurisdictions except British Columbia. In British Columbia, issuers are generally required to file Form 45-106F6 *British Columbia Report of Exempt Distribution*.

APPENDIX D

LIST OF COMMENTERS

1. Advocis
2. AUM Law Professional Corporation
3. Canadian Advocacy Council for Canadian CFA Institute Societies
4. Canadian Foundation for Advancement of Investor Rights
5. Canadian Securities Exchange
6. Chase Alternatives
7. Davies Ward Phillips & Vineberg LLP
8. Equity Crowdfunding Alliance of Canada
9. Investment Industry Association of Canada
10. National Crowdfunding Association of Canada
11. NorthCrest Partners Inc.
12. Private Capital Markets Association of Canada
13. Prospectors & Developers Association of Canada
14. Raintree Financial Solutions (Yvonne Martin-Morrison)
15. RBC Dominion Securities Inc.; RBC Phillips Hager & North Investment Counsel Inc.; and RBC Global Asset Management Inc.
16. Siskinds LLP
17. Stikeman Elliott LLP
18. TMX Group Limited

APPENDIX E

SUMMARY OF COMMENTS AND OSC RESPONSES

No.	Topic	Comments	Responses
General			
1.	Overall support for the Exemption	<p>Ten commenters expressed general support for the introduction of an FFBA Exemption in Ontario.</p> <p>One such commenter was of the view that family members and close personal friends are an important financing source for many small businesses.</p> <p>Another commenter believed that the FFBA Exemption is a welcome initiative and would benefit the Canadian mineral exploration and development sector. This commenter noted that filing prospectuses for junior mining companies is an expensive regulatory cost, particularly now that the industry is facing financing difficulties.</p>	<p>We acknowledge these comments of support.</p>
2.	Overall opposition to the Exemption	<p>One commenter did not support the introduction of the FFBA Exemption for the following reasons:</p> <ul style="list-style-type: none"> Existing exemptions, namely, the private issuer exemption and the Founder, Control Person and Family Exemption are sufficient to capture all individuals who would perhaps have the requisite nexus to a start-up or SME to potentially mitigate the risks of the investment through the knowledge of the issuer's principals (and their capabilities and level of trustworthiness) as well as those individuals who possibly have access to 	<p>We have consulted with our CSA colleagues regarding the use of the FFBA Exemption in their jurisdictions and we believe that the FFBA Exemption can be an important source of capital-raising for start-ups as well as SMEs.</p> <p>We note that the Exemption is subject to a number of investor protection measures including:</p> <ul style="list-style-type: none"> companion policy guidance that clarifies our expectation that the FFBA Exemption is available for distributions to close personal friends and close business associates only

No.	Topic	Comments	Responses
		<p>information about the issuer in order to make an informed decision.</p> <ul style="list-style-type: none"> <li data-bbox="326 653 505 1283">• The difficulty of determining who constitutes a “close personal friend” or “close business associate” makes oversight of the Exemption unworkable and difficult to police. There are likely many abuses of the Exemption, which are not sufficiently addressed by the proposed modifications to the FFBA Exemption. <li data-bbox="521 653 699 1283">• There is a lack of data provided regarding the use of the Exemption by issuers. This commenter requested that data on the experience of other CSA jurisdictions with respect to the Exemption should be made public so that it can be considered and commented upon by stakeholders before the OSC introduces the Exemption in Ontario. <li data-bbox="716 653 992 1283">• Many investment frauds involve an element of affinity fraud in which the victims are discovered to be close to the perpetrator. Securities regulators should determine and publish how prevalent fraud is under the FFBA Exemption. Given that the Exemption is premised on the theory that those close to the promoter can gauge that person’s trustworthiness, if many cases that involve serious investor harm also involve perpetrators who target friends and family, the rationale for the Exemption merits closer review and it should not be introduced until such a review has been completed and published and stakeholder feedback has been solicited. 	<p>if the investor has a relationship with a director, executive officer, control person or founder of the issuer that permits the investor to assess their capabilities and trustworthiness,</p> <ul style="list-style-type: none"> <li data-bbox="391 1283 472 1837">• expanded companion policy guidance regarding the meaning of “close personal friend” and “close business associate”, <li data-bbox="488 1283 667 1837">• a requirement that the following persons sign a Form 45-106F12: (1) the investor, (2) the director, executive officer, founder or control person of the issuer with whom the investor has asserted the relationship (either directly or through the spouse of the director, executive officer, founder or control person), if applicable and (3) the issuer, and <li data-bbox="683 1283 829 1837">• a statutory right of action for damages or rescission if there is a misrepresentation in an offering memorandum that is voluntarily provided under the FFBA Exemption. <p>We are, furthermore, planning to introduce an enhanced exempt market compliance program that has a particular focus on the use of the FFBA Exemption. From the outset, this compliance program will be supported by data collected through a reporting requirement to file a Form 45-106F1 that will apply to persons making distributions under the Exemption. This compliance program will inform our assessment of any further data collection needs.</p>
3.	Further CSA harmonization is needed	<p>Six commenters were generally of the view that additional steps should be taken to make the Proposed Amendments consistent with the FFBA Exemption currently available in the majority of other Canadian jurisdictions.</p> <p>One such commenter expressed that the failure to fully harmonize with the FFBA Exemption available in other CSA</p>	<p>The Final Amendments are substantially harmonized with the FFBA Exemption that is currently available in other CSA jurisdictions. In the interest of harmonization, we have removed from the Exemption:</p> <ul style="list-style-type: none"> <li data-bbox="1317 1283 1421 1837">• the proposed prohibition on payment of finder’s fees or similar payments to any person in connection with a distribution under the Exemption in reliance on

No.	Topic	Comments	Responses
		<p>jurisdictions serves to diminish the potential capital-raising benefits of these proposed exempt distribution channels.</p>	<p>expanded companion policy guidance and the current narrower prohibition against commissions or finder’s fees being paid to directors, officers, founders or control person of an issuer or its affiliates,</p> <ul style="list-style-type: none"> • the prohibition against advertising to solicit investors in connection with a distribution in reliance on expanded companion policy guidance, • worked with the CSA in order to provide consistent modernized companion policy guidance regarding the meaning of “close personal friend” and “close business associate”, which is being published concurrently as part of a separate CSA initiative, and • the restriction on the types of securities that can be distributed under the FFBA Exemption in light of an amendment to prohibit short-term securitized products from being distributed under the FFBA Exemption, which is being published concurrently under a separate CSA initiative. <p>Investment funds remain excluded as discussed below in item 4.</p>
Qualification criteria			
4.	Exclusion of investment funds	<p>One commenter thought that the exclusion served as a limitation on investor risk.</p> <p>Three commenters did not understand the policy rationale for excluding investment funds from using the FFBA Exemption.</p>	<p>We acknowledge this comment.</p> <p>Investment funds sold to retail investors are subject to significant and robust product regulation in national rules such as National Instrument 81-102 <i>Investment Funds</i> and National Instrument 81-107 <i>Independent Review Committee for Investment Funds</i>, including custodial requirements, voting requirements, conflict of interest provisions and investment restrictions. Mutual funds sold to retail investors are also required to provide investors with summary</p>

No.	Topic	Comments	Responses
			<p>disclosure in a Fund Facts document. Additionally, the CSA is currently examining the fee structures of mutual funds sold to retail investors which may result in rulemaking initiatives. To permit investment funds to sell to retail investors under the FFBA Exemption without the benefit of the disclosure and product regulation that applies to retail investment funds would be inconsistent with the principles underlying these existing rules and with three ongoing investment fund policy initiatives: modernization of investment fund regulation; point of sale disclosure for mutual funds; and the review of the cost of ownership of mutual funds.</p> <p>Further, the exclusion of investment funds is consistent with the objective of this policy project to introduce new prospectus exemptions that would facilitate capital raising for business enterprises, particularly start-ups and SMEs.</p>
		<p>One commenter said that excluding investment funds would limit access to capital for SMEs. This comment related to venture capital issuers.</p>	<p>Certain issuers such as pools of loans created as an extension of a lending business (such as a mortgage investment corporation or “MIC”) or venture capital issuers would generally not meet the definition of “investment fund” under securities legislation. As a result, these types of issuers would not be excluded from and could use the FFBA Exemption. Guidance and discussion on the definition of “investment fund” may be found in section 1.2 of Companion Policy 81-106CP to National Instrument 81-106 <i>Investment Fund Continuous Disclosure</i>, OSC Staff Notice 81-722 <i>Mortgage Investment Entities and Investment Funds</i> published September 12, 2013 and the November 2012 edition of <i>The Investment Funds Practitioner</i> under the heading “The Definition of an ‘Investment Fund’”.</p>
		<p>One commenter said that it is less risky for investors to invest in an investment fund that includes SMEs than to</p>	<p>As noted above, to permit investment funds to sell to retail investors under the FFBA Exemption without the benefit of</p>

No.	Topic	Comments	Responses
		invest directly in SMEs.	the disclosure and product regulation that applies to retail investment funds would be inconsistent with the principles underlying existing rules and with three ongoing investment fund policy initiatives: modernization of investment fund regulation; point of sale disclosure for mutual funds; and the review of the cost of ownership of mutual funds.
		One commenter stated that the exclusion of investment funds continues to put small and medium-size investment fund managers at a significant disadvantage in the Ontario market.	We do not believe that the size of an investment fund manager should determine whether retail investors benefit from the disclosure and product regulation that applies to retail investment funds.
Types of securities that can be offered			
5.	Support for the list of specified securities that can be distributed and the exclusion of complex or novel securities	<p>Four commenters agreed with the list of the types of securities that can be distributed under the Exemption or with the exclusion of complex or novel securities.</p> <p>Of the commenters that supported the exclusion of complex or novel securities, one commenter was of the view that it was appropriate that investors be provided with a proper suitability assessment when investing in a complex security rather than being advised by a close friend.</p> <p>Another commenter stated that the proposed pool of permitted securities is sufficiently broad for the purpose of investors and issuers. This commenter believed that until the FFBA Exemption is shown to be effective at raising capital without undue risks to investor safety, complex or novel securities should not be permitted, unless the investor has had advice from a professional registrant regarding the proposed transaction and has executed a risk disclosure document which clearly sets out the risks associated with novel or complex securities. In addition, the registrant providing the advice should have to affirm that he or she has</p>	<p>We acknowledge these comments.</p> <p>However, in the interest of harmonization, we have removed the list of specified securities that may be distributed under the FFBA Exemption.</p> <p>Instead, amendments being published concurrently as a separate CSA initiative will prohibit the distribution of short-term securitized products under the FFBA Exemption. These amendments are intended to address certain investor protection and systemic risk concerns raised by certain types of complex asset-backed commercial paper and will be harmonized across the CSA.</p>

No.	Topic	Comments	Responses
6.	<p>Opposition to the list of specified securities that can be distributed and the exclusion of complex or novel securities</p>	<p>experience in dealing with such securities. This commenter believed that the foregoing requirements should make for sufficient investor protection in the form of competent professional advice, while still providing issuers with the ability to access trusted sources of capital by issuing securities with features expressly designed to suit the unique needs of their enterprise.</p> <p>Still, another commenter that supported the exclusion of complex or novel securities noted the importance of the FFBA Exemption permitting the distribution of flow through shares under the <i>Income Tax Act</i> because this type of security is an important part of raising capital for the exploration issuers.</p>	<p>As noted in item 5 above, we have removed the list of specified securities that may be distributed under the FFBA Exemption.</p>
	<p>Six commenters disagreed with or were concerned about the exclusion of all or certain types of complex or novel securities.</p> <p>Two commenters thought that the exclusion of complex or novel securities was unnecessary. One of these commenters believed that the rationale underlying the adoption of the FFBA Exemption – that is, that the investor has a relationship with an insider of the issuer that enables the investor to obtain sufficient information about the securities being offered to make informed decisions – is equally applicable to all types of securities. The other commenter believed that most private offerings would not include complex or novel securities and the offerings that do include such securities would be developed with support from qualified securities counsel.</p> <p>Suggested alternatives to restricting the classes of securities that can be distributed under the FFBA Exemption included:</p> <ul style="list-style-type: none"> the introduction of more guidance, if required in a 		

No.	Topic	Comments	Responses
		<p>subsequent review phase, and</p> <ul style="list-style-type: none"> • a disclosure requirement relating to the nature of the risks in respect of complex or novel securities. <p>Three commenters expressed the importance of not restricting certain convertible securities such as convertible debentures, conventional warrants and special warrants. These commenters were of the view that such securities are used extensively by SMEs raising capital and relying on existing prospectus exemptions. In start-up and early stage financing, convertible securities and warrants are commonly used to defer complex valuation issues (e.g., during seed stage or angel-led financings, bridge financings, etc.) or to “sweeten” the opportunity for early-stage investors that participate in higher risk financing rounds. Two of these commenters also expressed concerns about the exclusion of limited partnership units.</p>	
7.	Concern regarding CSA disharmonization	Two commenters expressed concern that the exclusion of complex and novel products would lead to disharmony amongst CSA jurisdictions.	The Final Amendments are now harmonized with the FFBA Exemption that is currently available in other CSA jurisdictions in this respect.
Offering parameters			
8.	Support for no limit on offering size	<p>Nine commenters agreed that there should be no limit on offering size.</p> <p>Examples of reasons offered by commenters for not limiting offering size include:</p> <ul style="list-style-type: none"> • harmonization with other CSA jurisdictions, • the application of other investor protection measures such as the proposed prohibitions on providing compensation to “finders” and on advertising in order to solicit investors, and 	<p>We acknowledge these comments and have not imposed a limit on offering size. We note that while the FFBA Exemption does not prescribe specific disclosure requirements. As explained in the expanded companion policy guidance at section 2.7 and 2.8 of 45-106CP, the Exemption is premised on the investor having a relationship of sufficient closeness with a director, executive officer, control person or founder of the issuer that they will be able to obtain information with respect to their investment.</p>

No.	Topic	Comments	Responses
		<ul style="list-style-type: none"> for issuers that are well connected and capable of raising the majority their of financing based on relationships, limiting access to the FFBA Exemption could jeopardize investors due to potential inability to raise funds within an efficient period of time. <p>Furthermore, one commenter suggested certain disclosure requirements in light of there being no investment limits, such as:</p> <ul style="list-style-type: none"> the provision of annual statements and annual corporate filings to investors when available, and the production of personal income tax returns, in cases where there is no prior corporate, partnership or other business documentation to be disclosed. <p>This commenter believed that in order to raise an unlimited amount of funds under the Exemption, issuers should be obligated to provide at least the same level of disclosure to friends, family or business associates that they would be required to provide to a financial institution in order to access capital.</p> <p>Another commenter, though not supportive of a limit on the amount of capital that can be raised under the FFBA Exemption, thought that if a limit is applied, it should be adjusted annually for inflation.</p>	
9.	Opposition to no limit on offering size	One commenter expressed concern that without a limit on offering size, investors who make large investments may be putting themselves in a position of greater risk.	Capital raising prospectus exemptions in Canada are not generally subject to a maximum offering size. The FFBA Exemption, in particular, is not subject to limit on the size of offerings because the family and friends of directors, executive officers, control persons or founders of an issuer can be a critical source of capital for start-ups and SMEs.

No.	Topic	Comments	Responses
Restrictions on solicitation, use of registrants and fees			
10.	Opposition to the prohibition on advertising to solicit investors	<p>Two commenters disagreed with the prohibition on advertising.</p> <p>These commenters suggested that the prohibition would not be appropriate in the cases of distributions under the FFBA Exemption that are concurrent with the use of other exemptions for which advertising is permitted. One of these commenters was of the view that it is common for an offering to be made under several prospectus exemptions and anticipated that financings under the FFBA Exemption would be routinely undertaken concurrently with other exemptions where advertising is permitted (such as the accredited investor exemption). This commenter thought that the prohibition on advertising in connection with the use of the Exemption will result in an unnecessary limitation on the circumstances where the Exemption could be otherwise used. Another commenter was of the view that there are many scenarios where an issuer is publicly marketing a private offering under the offering memorandum exemption and due to investment limits, an investor may prefer to subscribe for shares under the FFBA Exemption in the same financing. This commenter believed that issuers will want to afford investors under the FFBA Exemption the same disclosure provided to qualified investors under the offering memorandum exemption.</p> <p>One of these commenters, furthermore, believed that consistency across jurisdictions is more important than the Commission's reasonable position that advertising is not needed to reach potential investors for distributions under the FFBA Exemption.</p>	<p>In the interest of harmonization, the Final Amendments do not impose a prohibition on advertising to solicit investors. Instead, we have added companion policy guidance that reflects our expectation that advertising would not be used to find or attract purchasers for distributions made solely under the FFBA Exemption or to identify purchasers for distributions made in reliance on that Exemption. We have also added guidance that clarifies that when a distribution is being made in reliance on one or more prospectus exemptions, advertising in connection with other exemptions does not prevent concurrent reliance on the FFBA Exemption.</p> <p>As is currently the case in CSA jurisdictions that have the FFBA Exemption, we expect that solicitation activities related to other prospectus exemptions that aim to identify a particular category of investor should clearly state the kind of investor being sought and the criteria that investors will be required to meet.</p>

No.	Topic	Comments	Responses
11.	Opposition to the prohibition on use of registrants or finders	<p>One commenter disagreed with the prohibition on the use of registrants or finders in connection with a distribution under the FFBA Exemption.</p> <p>This commenter was of the view that within the personal networks of the directors, executive officers, control persons or founders of the issuer, there may be quite a number and variety of potential investors. Before those potential investors make a decision to invest or not, there is a lot of work to be done, which can be shared with a registrant or finder. This commenter noted that an issuer considering reliance on the FFBA Exemption will want to ensure that the distribution is fully compliant with the regulatory requirements while desiring to provide a positive investment experience for everyone involved. Because there is the potential for an issuer to have no meaningful experience in exempt market product distribution and/or investor education, qualified support from a registrant or finder may be very appropriate. Furthermore, time constraints may demand that additional people are required to help meet project deadlines. As a result, it may be appropriate to compensate the registrant or finder for providing assistance with the distribution.</p> <p>This commenter was of the view that a registrant or finder may have a role to play in distributions under the Exemption in relation to finalizing the terms, comparing opportunities, assessing the cost/benefit of relying on different exemptions, identifying qualifying investors, contacting potential investors and providing the necessary information and following up as required by potential investors.</p>	<p>The Final Amendments do not impose a prohibition on the use of registrants or finders in connection with a distribution under the FFBA Exemption.</p> <p>We are, however, publishing companion policy guidance that clarifies that the use of registrants or finders to find or attract purchasers is inconsistent with the FFBA Exemption. The foregoing leaves issuers with the option of engaging the services of a registrant to perform certain other functions in relation to a distribution under the FFBA Exemption.</p>

No.	Topic	Comments	Responses
12.	Prohibition on payment of any commission, finder's fee, referral fee or similar payment to any person in connection with a distribution	<p>One commenter agreed with the prohibition on payment of finder's fees in connection with a distribution under the FFBA Exemption, while another commenter disagreed with the prohibition of commissions or similar payments.</p> <p>The commenter that disagreed with the prohibition on payment of commissions in connection with a distribution under the FFBA Exemption noted that raising capital from friends, family and business associates is not simple and depending on the needs of the issuer, there are many areas where a registrant or finder could be of service and expect to be compensated for that service.</p> <p>Examples of circumstances where payment of fees or commission may be permissible include payments for documentation or completion of the distribution or in the context of contemporaneous reliance on other prospectus exemption in respect of which fees or commissions are being paid.</p>	<p>The Final Amendments do not impose a prohibition on the payment of fees and commissions to registrants or finders in connection with a distribution under the FFBA Exemption. Instead, the narrower prohibition on the payment of fees to any director, officer, founder or control person of an issuer or an affiliate of an issuer that is currently in place in other CSA jurisdictions will apply under the Exemption in Ontario. In addition, we are adopting expanded companion policy guidance that clarifies that we believe the payment of fees or commissions to any person, including registrants or finders to identify, find or introduce one's family members, close personal friends or close business associates to be inconsistent with the FFBA Exemption.</p> <p>We do recognize that fees may be paid to a person in connection with a distribution under the Exemption in certain circumstances. The companion policy guidance provides examples of these circumstances.</p>
Investor qualifications			
13.	Expanded guidance in 45-106CP on meaning of "close personal friend" and "close business associate"	<p>Nine commenters generally agreed with expanded guidance in 45-106CP, while one commenter was of the view that no change was necessary due to the proposal of a risk acknowledgement form and restrictions on payable commissions.</p> <p>One commenter appreciated the expanded guidance because the lack of defined factors or criteria as to who constitutes a "close personal friend" or "close business associate" is problematic and increases the risk of non-compliance with the proposed Exemption.</p> <p>Four other commenters that agreed with the expanded</p>	<p>We acknowledge these comments. As the CSA has also decided to adopt the expanded guidance, the guidance in 45-106CP on the meaning of "close personal friend" and "close business associate" will be harmonized across the CSA.</p> <p>We note that while the Final Amendments require the completion of Form 45-106F12 for all purchasers, the Final Amendments do not impose a prohibition on the payment of commission or fees to registrants or finders as explained in our response to item 12.</p>

No.	Topic	Comments	Responses
		<p>guidance were concerned about disharmony with the CSA. Two such commenters suggested that if the OSC adopts the proposed guidance, it should clarify whether there is anything in the guidance that another CSA member may not necessarily agree with. These commenters were of the view that it would not be in the public interest for an issuer to rely on and satisfy the definition of a “close personal friend” and “close business associate” in one jurisdiction and to find out afterwards that another CSA member has a different interpretation. Two other such commenters encouraged adoption by or coordination with other CSA jurisdictions to ensure consistent interpretation.</p>	
14.	<p>Other guidance regarding the meaning of these terms is not necessary at this time</p>	<p>Five commenters were of the view that further guidance regarding the meaning of “close personal friend” and “close business associate” beyond what is reflected in the Proposed Amendments was not necessary at this time.</p> <p>One commenter believed, for example, that definitions outlining the specific number of years a person has had contact with the investor would be unfair. This commenter believed that the terms can be subjective, subject to interpretation and depend on the type of personalities and nature of the business.</p> <p>Two other commenters were of the view that these are subjective tests and there is a concern that the OSC or another CSA member could impose its interpretation on an issuer or investor. These commenters suggested it would be helpful for the OSC and other CSA members to clarify when enforcement action would be taken against an issuer and a registrant in the event that they got it wrong.</p> <p>Additionally, two commenters were of the view that further guidance was not necessary due to investor protection</p>	<p>We acknowledge these comments. We are not publishing any further guidance in 45-106CP on the meaning of “close personal friend” and “close business associate” at this time.</p>

No.	Topic	Comments	Responses
		<p>mechanisms contemplated in the Proposed Amendments. Examples of investor protection mechanisms cited include:</p> <ul style="list-style-type: none"> • a risk acknowledgement, • restrictions on payable commissions, • the onus being on issuers to establish that a potential investor does meet such criteria, • a report of trade will have to be filed in connection with a distribution under the exemption, and • a statutory right of action for misrepresentation for offering memoranda that are provided voluntarily. <p>One commenter suggested that rather than providing additional guidance at this time, the OSC should monitor the roll-out of the FFBA Exemption and position itself for a point 24 to 36 months in the future when it can better determine what additional guidance, if any, is needed. Perhaps a confidential online board could permit issuers to submit questions about who qualifies under the FFBA Exemption without revealing the particulars of their identities. From this list of questions, the OSC could develop additional guidance.</p>	
Investment limits			
15.	Support for no investment limits	<p>Ten commenters were of the view that there should not be any investment limits.</p> <p>One commenter expressed that no limits should be imposed unless limits are imposed by other Canadian jurisdictions as well.</p> <p>Another commenter was of the view that since the Proposed Amendments contemplated no commissions would be payable under the FFBA Exemption, there would be no reason to cap the limit. In fact, capital raised by the fund under the Exemption would greatly decrease the expected</p>	<p>We do not think that it is necessary to impose an investment limit on the FFBA Exemption because the Exemption is based on investors having relationships of sufficient closeness with the directors, executive officers, control persons or founders of the issuer such that the investor may:</p> <ul style="list-style-type: none"> • have sufficient knowledge of the directors, executive officers, control persons or founders of the issuer in order to assess their capabilities and trustworthiness, • be able to avail themselves of certain protections, most notably access to information about their investment, and • in some cases, be motivated by a desire to support the

No.	Topic	Comments	Responses
		<p>cost of capital (less commissions payable), and also in ensuring the fund has the capital requirements in the time frame required per its directives. This commenter was of the view that limiting the amount of capital raised per investor would increase the number of investors involved (thus increasing the cost of capital), and would not fit well with the mandate of creating an efficient capital market. This commenter also believed that some issuers will be exceedingly well connected and could very well raise the majority of financing required based on relationships. To limit such access could, in fact, jeopardize the investors brought in under this exemption due to a potential inability to raise funds within an efficient period of time of the fund's objectives.</p> <p>Another commenter believed that setting investment limits would undermine the spirit of the FFBA Exemption. The broader criteria set out in section 2.7 [<i>Close personal friend</i>], and 2.8 [<i>Close business associate</i>] of 45-106CP should provide sufficient information and clarity between the parties (issuer and investor) so that an investment decision is made with good judgement and with good intention. This commenter believed that FFBA Exemption would be of less use if limits on amounts or other limitations are introduced.</p> <p>Another commenter was of the view that no specific limit should apply if the investor receives advice from a registrant with "know your client" obligations.</p>	<p>business venture of a family member, close personal friend, or close business associate.</p> <p>Furthermore, the FFBA Exemption does not impose a limit on the amount that issuers can raise from family members, close personal friends and close business associates due to (a) an expectation that the close personal networks of an issuer's directors, executive officers, control persons or founders can be an important source of capital for issuers and (b) a presumption that there is generally a limited number of people within such close personal networks as supported by sections 2.7 [<i>Close personal friend</i>], 2.8 [<i>Close business associate</i>] and 3.7 [<i>Family, friends and business associates</i>] of the 45-106CP.</p> <p>We note that the FFBA Exemption is not available to investment funds as discussed in item 4 above.</p>
Risk acknowledgement form			
16.	Support for the proposed risk acknowledgement form (Form 45-	<p>Seven commenters generally agreed with the proposed risk acknowledgement form.</p> <p>Four commenters believed that the proposed risk</p>	We acknowledge these comments of support.

No.	Topic	Comments	Responses
	<p>106F12) to be signed both by investor and person at issuer with whom investor has asserted relationship</p>	<p>acknowledgement form would mitigate against potential risks associated with improper reliance on the FFBA Exemption.</p> <p>Another commenter was of the view that mandating an increased use of this document within the private markets would allow more accountability on behalf of investors before undertaking this type of investment.</p> <p>Another commenter believed that given the lack of a disclosure document, and possible abuse of the Exemption, the risk acknowledgement form may be a useful investor protection tool.</p>	
17.	<p>Opposition to the proposed risk acknowledgement form (Form 45-106F12)</p>	<p>Three commenters generally disagreed with the proposed form. Examples of concerns raised by commenters include the following:</p> <ul style="list-style-type: none"> • Imposing the risk acknowledgement form requirement might be seen as undermining the validity of representations made in subscription agreements and/or offering documents and as calling into question the ability to rely on them. The risk acknowledgement form requirement amounts to requiring due diligence regarding the basis of counterparty representations in agreements where, typically, a party is entitled to rely on the representation without further investigation unless the party is aware of a reason to question a particular representation. • It would be burdensome for small issuers to take responsibility for verifying information provided by the investor and it should be up to the investor to ensure they acknowledge taking on the risk since they have the most to lose. • It should be sufficient for an issuer to retain a copy but 	<p>We believe that the risk acknowledgement form is an important investor protection mechanism because it alerts investors of key risks that may be associated with securities purchased under the FFBA Exemption, namely:</p> <ul style="list-style-type: none"> • risk of loss, • liquidity risk, and • lack of information. <p>We do not agree that Form 45-106F12 undermines the validity of representations made in subscription agreements. Rather, we think it is helpful to investors to receive Form 45-106F12 as a separate document written using plain language.</p> <p>We believe that it is appropriate to require issuers to complete and sign Form 45-106F12 because it is the issuer that is required to determine if the prospectus exemption is available for purposes of the distribution. In the context of the FFBA Exemption, in particular, we expect the issuer to determine what reasonable steps it should take to verify that the relationship that forms the basis of the Exemption</p>

No.	Topic	Comments	Responses
		<p>not sign the document.</p> <ul style="list-style-type: none"> Reliance should be placed on “know your client”, “know your product” and suitability obligations of the dealer to address any concerns regarding investments in inappropriate products or products that the investor does not understand. If an investor is purchasing securities directly from the issuer, investor protection concerns can be addressed by requiring the issuer to disclose to the investor that the issuer is not a registrant and therefore is not subject to the same obligations vis-à-vis the investor as a dealer. <p>Another commenter was sceptical that the proposed risk acknowledgement form would have any material impact on an investor’s decision as to whether to invest in a particular security. This commenter was of the view that based on its inquiries, there appears to be little to no empirical research into the efficacy of risk acknowledgement forms in protecting investors and recommended that adequate research be performed in that area.</p>	<p>exists based on the particular facts and circumstances. The issuer may also be required to explain why he or she determined that certain steps were not necessary in the circumstances.</p> <p>Form 45-106F12 performs an important investor protection function in the context of the FFBA Exemption. In many cases, distributions under the FFBA Exemption may take place without the involvement of a registrant, as we consider the use of registrants to find or attract purchasers to be inconsistent with the use of the FFBA Exemption. While expanded companion policy guidance clarifies functions that registrants may play in distributions under the FFBA Exemption, we believe the option of making the distribution without registrant involvement provides issuers with a cost-effective way to raise capital.</p>
18.	Concerns regarding presentation of the risk acknowledgement form	<p>Two commenters were concerned about the requirement to present purchasers with the form on one double-sided page that must be physically signed in duplicate presents administrative challenges, particularly in light of the developing practice of executing transactions in electronic format.</p> <p>It was suggested that accommodation should be expressly made for electronic transmission, execution and retention of the form.</p> <p>One commenter also suggested that if the OSC is concerned that potential investors are not reading the entire risk acknowledgement form, that the form be modified to</p>	<p>We have amended the form instructions in Form 45-106F12 to address administrative challenges identified by commenters. In particular, while the person making the distribution must ensure compliance with other applicable laws related to the electronic transmission and retention of documents, the Final Amendments do not require presentation on a double-sided page nor retention of the original signed form. In particular, as the Final Amendments do not specify how the form is retained, electronic retention is acceptable.</p>

No.	Topic	Comments	Responses
19.	Concern regarding length of retention period of the risk acknowledgement form	<p>One commenter expressed concern that the requirement that the issuer keep a copy of the risk acknowledgement form for eight (8) years following the distribution was an unnecessarily lengthy period of time that did not reflect the applicable retention or limitation periods under the <i>Securities Act</i> (Ontario) or IROC requirements.</p>	<p>We require the person relying on the FFBA Exemption to retain the completed and signed Form 45-106F12 for 8 years because this represents the length of the longest limitation period under Canadian securities legislation. In particular, the retention period is harmonized with the retention period that applies to Saskatchewan's form of risk acknowledgment under subsection 2.6(2) [<i>Family, friends and business associates – Saskatchewan</i>] of NI 45-106.</p>
20.	Additional information to include on the risk acknowledgement form	<p>One commenter was of the view that the proposed risk acknowledgement form should also itemize the main concerns for investors which are unique to the FFBA Exemption, and include summary guidance on the approved meanings of "close personal friend" and "close business associate" and links to further information on the same.</p>	<p>We acknowledge this comment. Form 45-106F12 has been tailored to the FFBA Exemption and requires prospective investors to turn their minds to and disclose information about the relationship that is the basis for the Exemption. Form 45-106F12, furthermore, refers users to companion policy guidance regarding the meaning of "close personal friend" and "close business associate", at sections 2.7 and 2.8, respectively, of 45-106CP.</p>
21.	CSA harmonization	<p>Two commenters were of the view that the form should be harmonized among jurisdictions. Another commenter suggested that the risk acknowledgement form should be based on the Saskatchewan model (Form 45-106F5 <i>Risk Acknowledgement</i>).</p>	<p>We considered Form 45-106F5 when developing Form 45-106F12. Form 45-106F12 has been drafted to accord with evolving best practices in risk disclosure and to include investor protection mechanisms that we believe are important in the context of the FFBA Exemption such as the requirement for the contact person at the issuer and an executive officer at the issuer to sign the form.</p> <p>Furthermore, the format and presentation of Form 45-106F12 corresponds, to the extent practicable, with the risk acknowledgement form that has been developed under a separate CSA initiative for use under the accredited investor and minimum amount investment prospectus exemptions.</p>

No.	Topic	Comments	Responses
Reporting of distribution			
22.	<p>Support for the collection of additional information – Requirement to disclose person at issuer with whom investor has a relationship (additional information in schedule to Form 45-106F11)</p>	<p>Seven commenters generally supported collection of additional information to assist in monitoring compliance with and use of the FFBA Exemption.</p> <p>One commenter was of the view that collecting this information would be useful if it can assist in the evaluation of the efficacy of the Exemption's operations and administration and, in the event of legitimate complaints of investor losses or abuse, help determine what sort of additional guidance might be needed to ensure the suitability of investments purchased under the Exemption, or possible restrictions on which persons may qualify as a friend or business associate.</p> <p>Another commenter believed that the proposed additional information to be included in the exempt trade report will be useful information for the regulators and should not be burdensome for issuers to provide.</p> <p>Another commenter believed that the private markets are in need of more information to better calculate trends and market conditions and suggested the publication of a summary of the information (keeping specific details in confidence as proposed) in the OSC Bulletin.</p>	<p>We acknowledge these comments of support. We continue to believe that the collection of information through reports of exempt distribution are crucial to our oversight of the exempt market. As explained in OSC Staff Notice 45-713 <i>Reports of Exempt Distribution Compliance with Filing Requirements</i>, the information collected through these reports provides us with a more comprehensive understanding of activity in the exempt market, helps us to effectively oversee the market and informs any future changes we may recommend to the exempt market regulatory regime.</p> <p>Consideration of the reports of exempt distribution is a separate CSA initiative. Since Form 45-106F11 is not yet in place, we will require that a Form 45-106F1 be used to report a distribution under the FFBA Exemption until a new report of exempt distribution is finalized.</p>
23.	Additional suggested disclosure	<p>Commenters made the following suggestions for additional disclosure items:</p> <ul style="list-style-type: none"> • a check box for investors to identify whether or not the registrants, if any, involved in the trade recommended that the investor borrow money for purposes of making the investment, and • a check box to identify angel investors. 	<p>We continue to consider our data collection needs in order to enhance our understanding of exempt market activity and reflect emerging best practices in data collection.</p>

No.	Topic	Comments	Responses
24.	CSA disharmony	<p>One commenter noted that the additional information proposed to be required in Form 45-106F1, as it relates to the FFBA Exemption, is not being requested by other CSA jurisdictions and encouraged harmonization to optimize capital formation and reduce differentiated regulatory burden.</p> <p>Another commenter suggested using the BCSC's version of such forms.</p>	<p>We continue to work with other members of the CSA in order to harmonize reporting obligations to the extent possible.</p>
Investor rights			
25.	<p>If issuer or selling security holder voluntarily provides potential investor with an offering memorandum in connection with a distribution, investors have certain statutory or contractual rights in the event of a misrepresentation</p>	<p>One commenter was of the view that requiring the provision of a right of action may have the unintended effect of reducing the amount of information provided to investors. This commenter was concerned that issuers might be incentivized to not provide an offering memorandum where they otherwise would have in order to avoid triggering the requirement to provide a private right of action. This commenter believed that, in the context of the FFBA Exemption, it is unlikely that the investors would have sufficient leverage to demand written disclosure.</p>	<p>We believe it is critical to ensure that statutory rights apply to any offering memorandum voluntarily provided to a prospective purchaser under the FFBA Exemption as a key investor protection measure. We understand that offering memoranda are routinely provided to prospective investors that acquire securities under a variety of prospectus exemptions and believe that issuers should be accountable to investors for the truth of the disclosure that they provide.</p> <p>Furthermore, we note that we see the ability of investors to access information with respect to their investment as part of the basis for the FFBA Exemption.</p>

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**CSA Notice of
Amendments to
National Instrument 45-106 *Prospectus and Registration Exemptions*
Relating to the Accredited Investor and
Minimum Amount Investment Prospectus Exemptions**

February 19, 2015

Introduction

The Canadian Securities Administrators (**CSA** or **we**) are adopting amendments to National Instrument 45-106 *Prospectus and Registration Exemptions* (NI 45-106) relating to the accredited investor and minimum amount investment prospectus exemptions (the Rule Amendments). We are modifying and replacing Companion Policy 45-106CP *Prospectus and Registration Exemptions* with Companion Policy 45-106CP *Prospectus Exemptions* (the modified Companion Policy) to provide more guidance on how to verify whether potential purchasers satisfy the conditions of particular prospectus exemptions and to reflect the repeal of Part 3 of NI 45-106.

We are making consequential amendments to a number of instruments to reflect the repeal of Part 3 of NI 45-106 and the change in the title of NI 45-106 from *Prospectus and Registration Exemptions* to *Prospectus Exemptions* (the Consequential Amendments). We are also making consequential changes (the Consequential Changes) to a number of policies to reflect the change in title.

We refer to the Rule Amendments, Consequential Amendments, modified Companion Policy and Consequential Changes collectively as the Amendments.

Provided all necessary ministerial approvals are obtained, the Amendments will come into force on **May 5, 2015**. In Ontario, the Amendments will come into force on the later of May 5, 2015 and the day on which subsection 12(2) of Schedule 26 of the *Budget Measures Act, 2009* is proclaimed in force.

Substance and Purpose

The Rule Amendments and modified Companion Policy are intended to address concerns that:

- some individual investors may not understand the risks of investing under the accredited investor prospectus exemption (the AI exemption) or may not in fact qualify as accredited investors
- the threshold of \$150,000 in the minimum amount investment prospectus exemption (the MA exemption) may not be a proxy for sophistication or ability to withstand financial loss for individual investors and may encourage over-concentration in one investment for an investor who is an individual.

The Rule Amendments also amend the definition of accredited investor in Ontario to allow fully managed accounts to purchase investment fund securities under the managed account category of the AI exemption, as is already permitted in other Canadian jurisdictions.

Background

The AI exemption and the MA exemption have historically been premised on the investor having one or more of

- a certain level of sophistication
- the ability to withstand financial loss
- the financial resources to obtain expert advice
- the incentive to carefully evaluate the investment given its size.

The AI exemption and the MA exemption provide cost-effective objective measures for issuers to distribute securities to raise capital or for other purposes. However, the thresholds for individuals to qualify as accredited investors have not been changed or adjusted for inflation since they were originally set¹.

The CSA conducted a broad review of the AI exemption and the MA exemption because of investor protection concerns highlighted by the financial crisis in 2007-2008. As part of our broad review, CSA staff reviewed and considered the following information:

- 110 comment letters received on CSA Staff Consultation Note 45-401 *Review of Minimum Amount and Accredited Investor Exemptions*
- feedback received during consultation sessions held across Canada
- data relating to the exempt market and the use of the capital raising prospectus exemptions gathered from reports of exempt distribution filed in the participating jurisdictions for distributions in 2011
- data compiled from Statistics Canada on Canadian income levels
- input from compliance and enforcement staff about complaints and investigations involving the use of these exemptions
- decisions resulting from enforcement proceedings of securities regulatory authorities involving the exemptions
- guidance issued by CSA members on establishing accredited investor status.

Following our broad review, on February 27, 2014 the CSA published for comment the following proposed amendments to NI 45-106 (the Proposed Amendments):

- The MA exemption would be available only for distributions to non-individuals,
- The AI exemption would be amended to:
 - require individual accredited investors, except those who meet the permitted client test under National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103), to complete and sign a new risk acknowledgement form,
 - require any salesperson or finder to complete and sign the new risk acknowledgement form,
 - include family trusts established by an accredited investor for his or her family in the definition of accredited investor, and
 - in Ontario, allow fully managed accounts to purchase investment fund securities under the managed account category of the AI exemption, harmonizing with the rest of the CSA.
- The Companion Policy 45-106CP would be modified to provide additional guidance on steps persons relying on the AI exemption should take to verify accredited investor status.
- The report of exempt distribution (Form 45-106F1 and, in BC, Form 45-106F6) would be amended to require additional information from issuers, including identifying the category of accredited investor of each purchaser and providing more information on any person being compensated in connection with the distribution.
- Housekeeping amendments resulting from the removal of the dealer registration exemptions in Part 3 of NI 45-106 effective March 27, 2010.

Summary of Written Comments Received by the CSA

During the comment period, we received submissions from 28 commenters. We have considered the comments received and thank all of the commenters for their input. The names of commenters are contained in Annex A of this notice and a summary of their comments, together with our responses, are contained in Annex B of this notice.

¹ The Securities and Exchange Commission originally set the thresholds for individuals to qualify as accredited investors in 1982; the CSA adopted similar thresholds in the early 2000s. The current threshold of \$150,000 for the MA exemption was originally set in 1987.

Summary of Changes to the Proposed Amendments

After considering the comments received, we have made some revisions to the Proposed Amendments that were published for comment. Those revisions are reflected in the Amendments we are publishing concurrently with this notice. As these changes are not material, we are not republishing the Amendments for a further comment period.

The key changes from the Proposed Amendments are as follows:

- We have clarified that the categories of individual accredited investor who must sign the risk acknowledgement form are those individuals set out in paragraphs (j), (k) and (l) of the definition of “accredited investor”.
- We have revised Form 45-106F9 *Form for Individual Accredited Investors* to make it easier for persons using the AI exemption to complete and for investors to understand.
- We have removed the requirement for salespersons and finders to sign Form 45-106F9.
- We have clarified and reorganized the guidance in the modified Companion Policy on practices for verifying whether purchasers meet the conditions of certain exemptions, including not only the AI exemption, but also the private issuer prospectus exemption, the family, friends and business associates prospectus exemption and, in some jurisdictions, the eligible investor definition under the offering memorandum prospectus exemption.
- We have provided additional guidance in the modified Companion Policy on the meaning of close personal friend and close business associate.
- We have deferred making amendments to the report of exempt distribution. We will address changes to the report of exempt distribution as a separate CSA project.

Consequential Amendments

National Amendments

We are making consequential amendments to the following instruments to reflect the repeal of Part 3 of NI 45-106 on March 27, 2010 and the change in the title of NI 45-106 from *Prospectus and Registration Exemptions* to *Prospectus Exemptions*:

- Multilateral Instrument 11-102 *Passport System*
- Multilateral Instrument 13-102 *System Fees for SEDAR and NRD*
- National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*
- Multilateral Instrument 32-102 *Registration Exemptions for Non-Resident Investment Fund Managers*
- National Instrument 33-105 *Underwriting Conflicts*
- National Instrument 41-101 *General Prospectus Requirements*
- National Instrument 45-102 *Resale of Securities*
- National Instrument 51-102 *Continuous Disclosure Obligations*
- National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*
- National Instrument 62-103 *The Early Warning System and Related Take-Over and Insider Reporting Issues*
- Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids*

We are also making consequential changes to the following policies to reflect the change in title of NI 45-106 from *Prospectus and Registration Exemptions* to *Prospectus Exemptions*:

- Companion Policy 11-102CP *Passport System*
- National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions*
- Companion Policy 23-103 *Electronic Trading and Direct Electronic Access to Marketplaces*
- Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations*
- Companion Policy 45-102CP *Resale of Securities*
- Companion Policy 51-105CP *Issuers Quoted in the U.S. Over-the-Counter Markets*

Local Matters

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

The Ontario Securities Commission (OSC) will amend NI 45-106, National Instrument 45-102 *Resale of Securities* and OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions* (OSC Rule 45-501) to reflect the anticipated coming into force of certain amendments to the *Securities Act* (Ontario). A more detailed explanation of these proposed local amendments is available on the OSC website (www.osc.gov.on.ca). The OSC's local amendments to NI 45-106 are reflected in the amending instrument and blacklined version of NI 45-106 in Annex C2.

Contents of Annexes

The following annexes form part of this CSA Notice:

Annex A	List of Commenters
Annex B	Summary of Comments and CSA Responses
Annex C1	Amendments to National Instrument 45-106 <i>Prospectus and Registration Exemptions</i>
Annex C2	Blackline of amended National Instrument 45-106 <i>Prospectus Exemptions</i>
Annex C3	Form 45-106F9 <i>Form for Individual Accredited Investors</i>
Annex D1	Companion Policy 45-106CP <i>Prospectus Exemptions</i>
Annex D2	Blackline of changes to Companion Policy 45-106CP <i>Prospectus and Registration Exemptions</i>
Annex E1	Amendments to National Instrument 51-102 <i>Continuous Disclosure Obligations</i>
Annex E2	Amendments to Specified Instruments
Annex E3	Changes to Specified Policies
Annex F	Local Matters

Annex C2 reflects the Rule Amendments described in this Notice, the local amendments being made in Ontario as described in "Local Matters" above and the amendments being made to NI 45-106 relating to the short-term debt prospectus exemption and introducing a short-term securitized products prospectus exemption, published today in a separate notice. Annexes D1 and D2 also reflect changes made to the Companion Policy in connection with the introduction of a short-term securitized products prospectus exemption.

Questions

Please refer your questions to any of the following:

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**ANNEX A
LIST OF COMMENTERS**

Accredited Access
Advocis
Alternative Investment Management Association (AIMA)
Blake, Cassels & Graydon LLP
The Canadian Advocacy Council for Canadian CFA Institutes Societies (CFA)
Canadian Foundation for Advancement of Investor Rights (FAIR)
Cawkell Brodie LLP
Cowan Asset Management
Darrin Hopkins
Davies Ward Phillips & Vineberg LLP
Dentons Canada LLP
Fasken Martineau DuMoulin LLP
Fiore Management & Advisory Corp.
Haywood Securities Inc.
Investment Industry Association of Canada (IIAC)
National Exempt Market Association (NEMA)
Osler, Hoskin & Harcourt LLP
Portfolio Management Association of Canada (PMAC)
Private Capital Markets Association of Canada (PCMA)
Prospectors & Developers Association of Canada (PDAC)
Rae & Lipskie Investment Counsel Inc.
RBC Dominion Securities Inc., RBC Direct Investing Inc., RBC PH&N Investment Counsel Inc. and
RBC Global Asset Management Inc.
Reed Pope Law Corporation
The Securities Industry and Financial Markets Association (SIFMA)
Siskinds LLP
Stikeman Elliott LLP
TMX Group
Walton International Group Inc.

ANNEX B
SUMMARY OF COMMENTS ON CSA NOTICE AND REQUEST FOR COMMENT
PROPOSED AMENDMENTS TO NATIONAL INSTRUMENT 45-106
PROSPECTUS AND REGISTRATION EXEMPTIONS
RELATING TO THE ACCREDITED INVESTOR AND
MINIMUM AMOUNT INVESTMENT PROSPECTUS EXEMPTIONS

Item	Topic/Theme	Summarized comment	CSA Response
A.	Comments on proposed amendment to restrict minimum amount investment prospectus exemption (MA exemption) to non-individual purchasers		
1.	Support for amendment	<p>Many commenters supported the proposal to restrict the MA exemption to non-individuals, for the following reasons:</p> <ul style="list-style-type: none"> • in many cases, such a high investment amount in one product would be unsuitable for an individual who is not already an accredited investor • alternative exemptions, such as the accredited investor exemption (AI exemption), would be available for individual investors • the reduced risk of investors over-concentrating their investment portfolio is well worth the minor reduction in access to capital raising 	The CSA thank the commenters for their support. We have decided to proceed with the proposed amendment as published for comment.
2.	Remove exemption entirely or further restrict it	<p>Some commenters suggested that the CSA should repeal the exemption altogether or that the CSA should replace the current exemption with a test that is not tied to an investment amount.</p> <p>One commenter suggested that an investment of \$150,000 is a poor proxy for sophistication and ability to withstand financial loss. The commenter therefore recommended further amendments to restrict the use of the MA exemption by small companies or family trusts.</p>	The CSA has determined to proceed with the proposed amendment as published. There are certain transactions between non-individual investors where the MA exemption is useful because of its simplicity. The types of problems we have seen with the MA exemption only arise with individual investors – we have not seen the same problems in circumstances where the investor is not an individual, including where the investor is a small company or family trust. For this reason, we do not propose to add further restrictions at this time.
3.	Maintain for investment funds and lower-risk products	Two commenters suggested that the MA exemption should continue to be available to distribute investment funds and lower-risk products to individuals.	The CSA has determined to proceed with the proposed amendment to the MA exemption as published, to apply to all securities. We do not agree that some products are always lower risk than other products.
4.	Comments against amendment	<p>Some commenters disagreed with the proposal to restrict the MA exemption to non-individual investors for the following reasons:</p> <ul style="list-style-type: none"> • there is not a demonstrable reason to restrict it • for many investors, \$150,000 is a significant amount and, in the commenter's experience, these investors take due care when choosing 	The CSA has seen instances where individuals have invested more than is suitable for them under the MA exemption solely because the investor is required to invest a minimum amount of \$150,000 to satisfy the requirements of the exemption. We see less of this concern with other exemptions because the investor may choose the amount they want to

Item	Topic/Theme	Summarized comment	CSA Response
		<p>to invest that amount in a single investment</p> <ul style="list-style-type: none"> • the amount demonstrates that the investor has sufficient resources to conduct due diligence when making the investment decision • investors are not forced to invest under this exemption 	invest. Given the relatively small amount of capital raised under this exemption from individuals and the devastating loss suffered by some investors because of this exemption, the CSA has determined to proceed with this amendment.
5.	Holding companies	One commenter asked if the restriction to non-individuals would also apply to holding companies of individuals. The same commenter suggested that the prohibition in section 2.10(2) of NI 45-106 may be unduly restrictive where an investor wants to invest through a holding company.	The proposed amendment will restrict the MA exemption to non-individuals. It will remain available to holding companies, subject to the existing prohibition in subsection 2.10(2). Under subsection 2.10(2), the MA exemption is not available for distributions to an entity if that entity was created or used <i>solely</i> to purchase or hold securities under the MA exemption. We do not agree that the provision in subsection 2.10(2) is unduly restrictive. If the investor has created the holding company for tax and estate planning purposes or to ensure limited liability, then the holding company would not generally be considered to have been created solely for the purpose of relying on this exemption.
B.	Comments on amendments to definition of accredited investor		
1.	Support for amendment to add family trusts as a category of accredited investor	Many commenters supported the proposed amendment to include trusts established by accredited investors for their family members as a category of accredited investor. A few commenters suggested we include former spouses and family members of former spouses in the group.	The CSA thanks the commenters for their support. We have revised the family trust category to include former spouses and family members of former spouses.
2.	Support for amendment to allow fully managed accounts to purchase investment funds in Ontario under the managed account category of the AI exemption	Many commenters supported the proposed amendment in Ontario.	The OSC thanks the commenters for their support. The OSC has determined to proceed with this amendment.
3.	Registered individuals	One commenter suggested we revise paragraph (e) of the definition of accredited investor to clarify when a former registrant is excluded from the definition of accredited investor.	We have made the suggested clarification.
4.	Support for no changes to income and asset thresholds for individual accredited investors	Some commenters supported the decision to keep the current income and asset thresholds set out in the definition of accredited investor because of the possible negative impact on capital raising in Canada.	The CSA thanks the commenters for their support.

Item	Topic/Theme	Summarized comment	CSA Response
5.	Review income and asset thresholds periodically	Some commenters suggested that the CSA periodically review the income and asset thresholds for individual investors under the accredited investor definition.	CSA staff will periodically monitor relevant data and developments in other jurisdictions. If circumstances warrant it, the CSA will assess whether to consider changes to the current income and asset thresholds under the AI exemption.
6.	Criticism that income and asset thresholds were not increased	Some commenters stated that the current income and asset thresholds are not a good proxy for an individual investor's capacity to appreciate the risks, costs and potential consequences of a particular investment. One commenter suggested the CSA develop a "sophistication test" similar to that used in the United Kingdom and European Union with requirements for independent verification and educational courses. Another commenter suggested that additional protections should be built into the exemption.	<p>The CSA has determined to retain the current income and asset thresholds for individuals because they provide a cost-effective, objective measure for issuers to distribute securities. During our review of comment letters received on CSA Staff Consultation Note 45-401 <i>Review of Minimum Amount and Accredited Investor Exemptions</i>, we considered alternative approaches to the income and asset thresholds. We were not able to identify an appropriate measure that issuers could use to assess an individual's sophistication based on education, work or investment experience. We had concerns that possible alternative approaches were not objective measures and would be difficult to consistently apply.</p> <p>The CSA will continue to monitor developments in other jurisdictions and if an alternative measure is introduced elsewhere, the CSA will assess whether to consider a similar test for the Canadian exempt market.</p>
C.	Comments on proposed amendment to accredited investor prospectus exemption (AI exemption) to require individual accredited investors who are not permitted clients to sign Form 45-106F9 <i>Form for Individual Accredited Investors</i> (Form 45-106F9)		
1.	Support for amendment to require individual accredited investors to sign Form 45-106F9	Some commenters supported the proposed amendment to require individual accredited investors to sign Form 45-106F9 because it would add protection for investors with little additional work for issuers. Some of these commenters suggested revisions to clarify which individual accredited investors are required to sign Form 45-106F9. Some commenters also identified procedural difficulties with the proposed Form 45-106F9.	The CSA thanks the commenters for their support. The CSA has determined to proceed with this proposed amendment. We have clarified that the requirement only applies to individuals described in paragraphs (j), (k) and (l) of the definition of accredited investor. We have amended the instructions in Form 45-106F9 to address some of the procedural difficulties identified by commenters.
2.	Comments against amendment	<p>Several commenters were critical of the proposed amendment.</p> <p>Some of these commenters thought the proposed amendments were not necessary because they had not seen problems in connection with the AI exemption. These commenters thought the proposed amendments would increase the time and</p>	The CSA has determined to proceed with the proposed amendment in order to address the problem that some individual accredited investors do not understand the risks of investing under the AI exemption or may not in fact qualify as accredited investors. We think Form 45-106F9 will improve investor protection by itemizing the

Item	Topic/Theme	Summarized comment	CSA Response
		<p>cost of raising capital.</p> <p>Others of these commenters thought the addition of a risk acknowledgement form would not address the problems associated with the AI exemption, such as investors buying products that are not suitable for them or that they do not understand. Others questioned whether Form 45-106F9 would have any effect on investor behavior.</p>	<p>risks associated with products sold under prospectus exemptions (risk of loss, limited liquidity, lack of information and advice) and requiring individual accredited investors to initial beside each risk, increasing the likelihood that investors are aware of the risks. Form 45-106F9 describes, in plain language, the criteria that must be met for an investor to qualify as an accredited investor and requires the investor to initial beside the criteria that applies to him or her.</p> <p>Form 45-106F9 is not intended to replace any existing obligations under securities legislation, including the suitability, know-your-client and know-your-product obligations of registered dealers and advisers when facilitating distributions of securities under prospectus exemptions.</p>
3.	Excluding permitted clients from signing Form 45-106F9	<p>Some commenters expressed support for the CSA's proposal to exclude individuals that satisfy the permitted client test from the requirement to sign Form 45-106F9 because these individual are able to waive suitability advice under National Instrument 31-103 <i>Registration Requirements, Exemptions and Ongoing Registrant Obligations</i> (NI 31-103) and this would lessen the burden on issuers.</p> <p>A couple of commenters disagreed with the proposal to exclude permitted clients either because of difficulties in determining who is a permitted client or because permitted clients should be afforded similar protection to other investors.</p>	The CSA has determined to proceed with the proposal to exclude individual permitted clients from the requirement to sign the Form 45-106F9. We think this is an appropriate balance because permitted clients are able to waive suitability advice under NI 31-103.
4.	Information already in subscription agreements	<p>Several commenters expressed the view that Form 45-106F9 was not necessary because most issuers already include a description of the risks and accredited investor categories in their subscription agreements. These commenters thought Form 45-106F9 was redundant and would add unnecessary duplication and burden.</p> <p>Other commenters suggested that the CSA require the content of Form 45-106F9 be included in subscription agreements or that Form 45-106F9 itself be a required schedule to subscription agreements.</p>	We do not agree that it is sufficient for this information to be included in a subscription agreement. One of the problems we see with the use of the AI exemption is that information relating to the accredited investor categories is often set out in lengthy subscription agreements and is written using the legal definition rather than in accessible language. We think it is necessary that investors receive Form 45-106F9 as a separate document written using plain language.
5.	Which form is required if an accredited investor AI purchases under the OM exemption?	One commenter questioned whether an investor who satisfied the requirements under both the AI exemption and the offering memorandum exemption would be required to complete and sign both Form 45-106F4 and Form 45-106F6.	The issuer is only required to comply with the conditions of one prospectus exemption. If the issuer is relying on the AI exemption, then it must obtain a signed Form 45-106F9 from every individual investor. If the issuer is

Item	Topic/Theme	Summarized comment	CSA Response
			relying on a different exemption, then the issuer must comply with the conditions under that exemption. Issuers should take care when preparing their exempt distribution reports that they properly identify which prospectus exemption they are using for the distribution to each investor.
D.	Comments on Form 45-106F9 <i>Form for Individual Accredited Investors</i>		
1.	Requiring salespersons/finders to sign Form 45-106F9	Several commenters identified concerns with the proposed requirement for salespersons and finders to sign Form 45-106F9. Some of these commenters questioned the instruction that anyone “involved in the sale” complete and sign Form 45-106F9. Others identified that this requirement would add significant burden on issuers when raising capital. Some of these commenters suggested that the requirement only apply when a registered dealer or adviser is not facilitating the distribution. One commenter suggested that only salespersons, not issuers, should be required to complete the Form 45-106F9.	We have revised Form 45-106F9 so that persons who meet with or provide information to the purchaser are no longer required to sign it. We have clarified that Form 45-106F9 must contain the following information about the person who meets with, or provides information to, the purchaser in connection with the transaction: their name, telephone number, email address and the name of their firm, if registered. We think this is useful information for investors, especially if they have questions after having made the investment. We disagree that issuers (or selling security holders) should not be required to complete Form 45-106F9 because it is the issuer (or selling security holder) that is required to determine if the prospectus exemption is available for purposes of the distribution.
2.	Form 45-106F9 must be uniform across all Canadian jurisdictions	A few commenters requested that the CSA adopt one harmonized form because otherwise it would be inefficient and confusing for inter-jurisdictional financings.	The CSA is adopting one harmonized form.
3.	Additional information should be required in Form 45-106F9	Some commenters suggested that Form 45-106F9 include additional information, including: <ul style="list-style-type: none"> • the specific protections an investor is foregoing because the securities are not being qualified by a prospectus; • whether referral fees were paid • disclosure of any conflicts of interest between issuers and dealers • the percentage that the investment represents of the investor’s entire portfolio • disclosure of additional risks if the investor borrowed to make the investment • information about the nature of the issuer, dealer and security 	CSA staff carefully considered the content of Form 45-106F9 when revising it to ensure that it plainly describes the risks associated with investing under the AI exemption regardless of the type of security being distributed under the exemption, the nature of the issuer or the type of salesperson involved in the transaction. CSA staff considered whether disclosure of certain information is already required by registered dealers and advisers and attempted not to duplicate this information in the form.
4.	Statements in Form 45-106F9 do not apply to certain securities or issuers,	Some commenters suggested that some of the statements in Form 45-106F9 do not apply to certain securities or issuers, in	We have revised Form 45-106F9 to reflect the risks of investing under prospectus exemptions generally,

Item	Topic/Theme	Summarized comment	CSA Response
	such as investment funds	particular, statements that the investment is risky or that the investor may never be able to sell the securities being purchased. These commenters thought that these statements overstate the risks associated with investment funds.	regardless of the product or issuer or whether a dealer is facilitating the distribution. We do not agree that all investment funds are less risky or that their securities are necessarily more easily liquidated. Some investment funds are not redeemable on demand and there have been recent cases where funds have had to suspend redemptions indefinitely.
5.	Timing and method of delivery	A few commenters asked that we clarify when and how Form 45-106F9 must be delivered to purchasers, pointing out that it might be more efficient to have the purchaser sign the form <i>after</i> the issuer has accepted the subscription. One commenter noted that, for securities of investment funds sold through FundSERV, there may be no interface between the issuer and the purchaser.	<p>We require the issuer to obtain Form 45-106F9 completed and signed by the investor at the same time or before the individual signs the subscription agreement. We think it is important for investors to know the risks of an investment before making their investment decision and before signing the subscription agreement. In cases where an investor has not completed the documentation properly or at all, then the issuer or dealer should return the entire subscription package to the investor for re-signature.</p> <p>We think investment funds can continue to use FundSERV in the same way they do now because they are already required to ensure that investors meet the terms of the exemption, i.e., are accredited investors.</p>
6.	Retaining Form 45-106F9 for 8 years	Several commenters expressed concern about the requirement to retain a signed copy of Form 45-106F9 for 8 years. Some commenters asked for clarification on whether the form could be retained as an electronic copy.	The CSA requires the person relying on the AI exemption to retain the completed and signed Form 45-106F9 for 8 years because this represents the length of the longest limitation period under Canadian securities legislation. The rule does not specify how the form is retained; electronic retention is acceptable.
7.	Accept digital signatures	Several commenters questioned the requirement that the purchaser sign two copies of Form 45-106F9. These commenters suggested that we allow for digital, pdf or electronic signatures.	We have amended Form 45-106F9 to remove the requirement for “original” signatures. The purchaser must sign the form, but how the form is signed and delivered is left to the person relying on the exemption, subject to any legislation that may apply to electronic signatures.
8.	Application to “suitability-exempt” firms?	One commenter asked how Form 45-106F9 would apply to clients who transact through suitability-exempt firms, for example order-execution only.	If a person is distributing securities under the AI exemption through an execution-only dealer or firm, that person still needs to ensure that the purchaser of the security meets the terms and conditions of the AI exemption. The person relying on the AI exemption will need to ensure the

Item	Topic/Theme	Summarized comment	CSA Response
			dealer or firm obtains a completed and signed Form 45-106F9 from any purchasers in addition to ensuring it has properly verified that the purchaser is an accredited investor and is purchasing as principal.
E.	Comments on Companion Policy Guidance on verifying accredited investor status (section 1.9)		
1.	Concerns about verifying whether purchasers are accredited investors	Several commenters expressed concern about the guidance in the Companion Policy requiring persons relying on the AI exemption to verify whether the purchaser is an accredited investor. Some of these commenters stated that these were new procedural obligations that would increase costs associated with capital raising. A few of these commenters suggested it should be sufficient for the person relying on the exemption to obtain a signed Form 45-106F9 or a subscription agreement – that no further steps should be necessary to verify that the purchaser meets the conditions of the exemption. Some of the commenters stated that it is current industry practice to solely rely on the representations in subscription agreements.	<p>The person relying on the exemption needs to demonstrate that the conditions of the exemption are met. We have clarified that it is up to that person to determine what reasonable steps it should take to verify the purchaser's status, based on the particular facts and circumstances. That person may also be required to explain why he or she determined that certain steps were not necessary in the circumstances.</p> <p>Decisions from various Canadian securities regulatory authorities confirm that the person relying on the prospectus exemption has the onus of establishing, and must take reasonable steps to ensure, that the purchaser does in fact meet the terms and conditions of the exemption. The guidance in the Companion Policy reflects these recent decisions.</p>
2.	Investor privacy and personal information	Several commenters expressed concern about the guidance that suggested issuers should gather third party financial information from purchasers to verify that the purchaser is an accredited investor. These commenters stated that this type of financial information is highly sensitive and that purchasers may be reluctant to give it, especially when dealing directly with the issuer, for privacy reasons. Some commenters suggested that asking for third party financial information should only be necessary if the person relying on the exemption questions the truthfulness of the purchaser's responses.	We have revised the guidance to clarify that third party financial information may only be necessary in certain circumstances.
3.	Timing of verification	One commenter suggested that purchasers may want information about the offering before they are willing to confirm they meet the terms of the exemption. This commenter suggested we revise the guidance to require verification "before the distribution".	Issuers or selling security holders offering securities under prospectus exemptions that are based on the purchaser meeting certain conditions must take reasonable steps to ensure the offer is made only to persons that qualify under the exemption.
4.	Do both dealer and issuer have to verify investor status?	Several commenters asked for guidance on whether issuers have to do their own verification if a registered dealer is facilitating the distribution. Some of these commenters suggested that if a dealer, with	The person relying on the prospectus exemption, such as the issuer or selling security holder, is required to ensure the terms and conditions of the exemption are met. We have clarified

Item	Topic/Theme	Summarized comment	CSA Response
		its higher suitability obligation, has determined the purchaser is qualified, then the seller should not have to do anything further.	in the guidance that it is up to the person relying on the exemption to determine what steps are reasonable in the circumstances, having considered such factors as how the purchaser was located, how much background information is known about the purchaser and whether the person who meets with, or provides information to, the purchaser is registered.
5.	Support for requiring documentary due diligence and mandating independent verification services	One commenter suggested that the CSA should always require issuers to obtain documentation to verify the purchaser's eligibility under the exemption. This commenter also suggested that the CSA should require, or at least expressly permit, issuers to use third party verification services to ensure purchasers are eligible.	We disagree. We think we have struck an appropriate balance in the guidance by leaving it to the person relying on the exemption to take reasonable steps to verify purchaser eligibility based on the particular circumstances.
6.	Application of guidance to self-directed brokerages	One commenter asked how the guidance applies if investors invest through a self-directed brokerage.	Issuers accepting subscriptions from self-directed brokerage accounts still need to ensure that the investor meets the conditions of the exemption.
F.	Comments on Reports of Exempt Distribution (Form 45-106F1 and Form 45-106F6)		
1.	Prioritize harmonizing reporting obligations across Canada	Several commenters expressed concern that Canada has two separate forms for reporting exempt distributions: the Form 45-106F6 in BC and the Form 45-106F1 in all other jurisdictions. These commenters expressed frustration that the CSA did not harmonize the forms and that issuers are required to file reports in multiple jurisdictions about the same transaction. These commenters asked the CSA make it a priority to harmonize the forms and the filing requirements.	<p>The CSA has decided to defer the proposed amendments to the forms of exempt distribution reports.</p> <p>The CSA will address changes to the report of exempt distribution as a separate CSA project. The CSA recognizes the importance of having harmonized forms.</p>
2.	Additional information requirements	<p>Several commenters questioned whether it was necessary to require additional information in the report of exempt distribution, including:</p> <ul style="list-style-type: none"> • Naming each person being compensated for the distribution • Identifying whether the person being compensated is a registrant or an insider of the issuer • identifying all applicable categories of accredited investor that the purchaser qualifies under • Identifying whether the purchaser is a registrant or an insider of the issuer • Naming the beneficial owners of fully managed accounts • Disclosing each Canadian and foreign jurisdiction where purchasers reside <p>These commenters expressed concern that requiring this additional information would</p>	<p>The CSA has decided to defer the proposed amendments to the forms of exempt distribution reports. The CSA will address changes to the report of exempt distribution as a separate CSA project. We will take these comments into account as part of that project.</p>

Item	Topic/Theme	Summarized comment	CSA Response
		increase the costs and time involved in capital raising. Some of these commenters identified that foreign issuers in particular may decide to exclude Canadian purchasers from their offerings because of these additional requirements. Other commenters were concerned that investors may refuse to provide the additional information due to privacy concerns.	
G.	Other comments		
1.	Removal of guidance on isolated trade exemption (section 4.6 of CP)	One commenter identified that the Notice did not highlight the proposed removal of the second paragraph of section 4.6 in the Companion Policy, dealing with the isolated trade exemption. This commenter expressed the view that the CSA should not make this change.	The CSA Notice identified that we were making housekeeping changes resulting from the removal of the dealer registration exemptions (formerly Part 3 of NI 45-106) effective March 27, 2010 to reflect the adoption of NI 31-103 and the business trigger for registration. The change to section 4.6 of the CP reflects the repeal of section 3.30 of NI 45-106.
H.	General comments		
1.	Importance of harmonization	Several commenters stated it is important that the CSA harmonize the prospectus exemptions across Canada as much as possible. These commenters expressed disappointment that further steps were not taken to harmonize NI 45-106 at this time.	We recognize the desirability of harmonizing the prospectus exemptions as much as possible. However, this CSA project focused on only two of the prospectus exemptions in NI 45-106: the AI exemption and the MA exemption, both of which are largely harmonized.
2.	Expand remedies available to investors	A couple of commenters suggested that the CSA should expand the remedies available to investors under prospectus exemptions to include secondary market liability.	We thank the commenters for this suggestion. This is outside the scope of the current project.
3.	Impose a fiduciary standard on registrants	A couple of commenters suggested that the CSA should impose a fiduciary standard on registrants.	We thank the commenters for this suggestion. This is outside the scope of the current project. The CSA is considering whether such a standard should be imposed as a separate policy project.
4.	Provide more data and transparency about the exempt market and compliance issues in the exempt market	Two commenters suggested that the CSA should make data about the use of prospectus exemptions available to the public. These commenters also suggested that the CSA should be more transparent about compliance issues in the exempt market.	We thank the commenters for this suggestion. The CSA is considering the need to obtain further information about the exempt market as a separate policy project.

**ANNEX C1
AMENDMENTS TO
NATIONAL INSTRUMENT 45-106 PROSPECTUS AND REGISTRATION EXEMPTIONS**

1. ***National Instrument 45-106 Prospectus and Registration Exemptions is amended by this Instrument.***
2. ***The title of the Instrument is amended by replacing “Prospectus and Registration Exemptions” with “Prospectus Exemptions”.***
3. ***The definition of “accredited investor” in Section 1.1 is amended***
 - (a) ***by replacing paragraphs (a) to (i) with the following:***
 - (a) except in Ontario, a Canadian financial institution, or a Schedule III bank,
 - (b) except in Ontario, the Business Development Bank of Canada incorporated under the *Business Development Bank of Canada Act* (Canada),
 - (c) except in Ontario, a subsidiary of any person referred to in paragraphs (a) or (b), if the person owns all of the voting securities of the subsidiary, except the voting securities required by law to be owned by directors of that subsidiary,
 - (d) except in Ontario, a person registered under the securities legislation of a jurisdiction of Canada as an adviser or dealer,
 - (e) an individual registered under the securities legislation of a jurisdiction of Canada as a representative of a person referred to in paragraph (d),
 - (e.1) an individual formerly registered under the securities legislation of a jurisdiction of Canada, other than an individual formerly registered solely as a representative of a limited market dealer under one or both of the *Securities Act* (Ontario) or the *Securities Act* (Newfoundland and Labrador),
 - (f) except in Ontario, the Government of Canada or a jurisdiction of Canada, or any crown corporation, agency or wholly owned entity of the Government of Canada or a jurisdiction of Canada,
 - (g) except in Ontario, a municipality, public board or commission in Canada and a metropolitan community, school board, the Comité de gestion de la taxe scolaire de l’île de Montréal or an intermunicipal management board in Québec,
 - (h) except in Ontario, any national, federal, state, provincial, territorial or municipal government of or in any foreign jurisdiction, or any agency of that government,
 - (i) except in Ontario, a pension fund that is regulated by the Office of the Superintendent of Financial Institutions (Canada), a pension commission or similar regulatory authority of a jurisdiction of Canada,,
 - (b) ***in paragraph (j), by replacing “that before taxes,” with “that, before taxes”,***
 - (c) ***by adding the following paragraph:***
 - (j.1) an individual who beneficially owns financial assets having an aggregate realizable value that, before taxes but net of any related liabilities, exceeds \$5 000 000,,
 - (d) ***by replacing paragraph (q) with the following:***
 - (q) a person acting on behalf of a fully managed account managed by that person, if that person is registered or authorized to carry on business as an adviser or the equivalent under the securities legislation of a jurisdiction of Canada or a foreign jurisdiction,, ***and***

(e) **by deleting “or” at the end of paragraph (u), by adding “or” at the end of paragraph (v) and by adding the following paragraph:**

- (w) a trust established by an accredited investor for the benefit of the accredited investor’s family members of which a majority of the trustees are accredited investors and all of the beneficiaries are the accredited investor’s spouse, a former spouse of the accredited investor or a parent, grandparent, brother, sister, child or grandchild of that accredited investor, of that accredited investor’s spouse or of that accredited investor’s former spouse;.

4. Section 1.5 is amended

(a) **in subsection (1), by deleting “from the dealer registration requirement, or from the prospectus requirement,” and**

(b) **by repealing subsection (2).**

5. Subsection 2.2(5) is amended by replacing “Subject to section 8.3.1, if” with “if”.

6. Section 2.3 is amended

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

(0.1) In this section, “accredited investor exemption” means

- (a) in a jurisdiction other than Ontario, the prospectus exemption under subsection (1), and
- (b) in Ontario, the prospectus exemption under subsection 73.3(2) of the *Securities Act* (Ontario).,

(b) **in each of subsections (2) and (4), by replacing “this section” with “the accredited investor exemption”,**

(c) **in subsection (5), by replacing “This section” with “The accredited investor exemption”, and**

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

- (6) The accredited investor exemption does not apply to a distribution of a security to an individual described in paragraphs (j), (k) or (l) of the definition of “accredited investor” in section 1.1 [Definitions] unless the person distributing the security obtains from the individual a signed risk acknowledgement in the required form at the same time or before that individual signs the agreement to purchase the security.
- (7) A person relying on the accredited investor exemption to distribute a security to an individual described in paragraphs (j), (k) or (l) of the definition of “accredited investor” in section 1.1 [Definitions] must retain the signed risk acknowledgement required in subsection (6) of this section for 8 years after the distribution.
- (8) Subsection (1) does not apply in Ontario..

7. Section 2.4 is amended

(a) **by inserting the following subsection:**

(2.1) The following persons are prescribed for purposes of subsection 73.4(2) of the *Securities Act* (Ontario):

- (a) a director, officer, employee, founder or control person of the issuer,
- (b) a director, officer or employee of an affiliate of the issuer,
- (c) a spouse, parent, grandparent, brother, sister, child or grandchild of a director, executive officer, founder or control person of the issuer,
- (d) a parent, grandparent, brother, sister, child or grandchild of the spouse of a director, executive officer, founder or control person of the issuer,

- (e) a close personal friend of a director, executive officer, founder or control person of the issuer,
 - (f) a close business associate of a director, executive officer, founder or control person of the issuer,
 - (g) a spouse, parent, grandparent, brother, sister, child or grandchild of the selling security holder or of the selling security holder's spouse,
 - (h) a security holder of the issuer,
 - (i) an accredited investor,
 - (j) a person of which a majority of the voting securities are beneficially owned by, or a majority of the directors are, persons described in paragraphs (a) to (i),
 - (k) a trust or estate of which all of the beneficiaries or a majority of the trustees or executors are persons described in paragraphs (a) to (i), or
 - (l) a person that is not the public.,
- (b) **in subsection (3), by adding** “or, in Ontario, a distribution under subsection 73.4(2) of the *Securities Act* (Ontario)” **after** “a distribution under subsection (2)”, **and**
- (c) **by adding the following subsection:**
- (5) Subsection (2) does not apply in Ontario..

8. Subsection 2.10(1) is replaced with the following:

2.10 (1) The prospectus requirement does not apply to a distribution of a security to a person if all of the following apply:

- (a) that person is not an individual;
- (b) that person purchases as principal;
- (c) the security has an acquisition cost to that person of not less than \$150 000 paid in cash at the time of the distribution;
- (d) the distribution is of a security of a single issuer..

9. Section 2.22 is amended by deleting “and in Division 4 of Part 3 of this Instrument”, **after** “In this Division”.

10. Part 3 is repealed.

11. Paragraph 6.1(1)(a) is amended by adding “or, in Ontario, section 73.3 of the *Securities Act* (Ontario) [Accredited investor]” **after** “section 2.3 [Accredited Investor]”.

12. Subsection 6.2(2) is amended by replacing “section 2.10 [Minimum amount] or section 2.19 [Additional investment in investment funds]” **with** “section 2.10 [Minimum amount investment] or section 2.19 [Additional investment in investment funds], or section 73.3 of the *Securities Act* (Ontario) [Accredited investor],”.

13. Subsection 6.4(1) is amended by deleting “or section 3.9”.

14. Section 6.5 is amended

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

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

- (b) *in subsection (2), by replacing “or section 3.6 [Family, friends and business associates]” with “[Family, friends and business associates – Saskatchewan]”.*
15. *The title of section 6.6 is replaced with “Use of information in Form 45-106F6 Schedule I – British Columbia”.*
16. *Section 8.1.1 is repealed.*
17. *Section 8.3.1 is repealed.*
18. *Section 8.4 is amended by deleting “or 3.2(5)”.*
19. *Section 8.5 is repealed.*
20. *The title to Appendix A is amended by deleting “and Registration”.*
21. *The title to Appendix B is amended by deleting “and Registration”.*
22. *The Instrument is amended by adding the following form after Form 45-106F6:*

Form 45-106F9
Form for Individual Accredited Investors

WARNING!

This investment is risky. Don't invest unless you can afford to lose all the money you pay for this investment.

SECTION 1 TO BE COMPLETED BY THE ISSUER OR SELLING SECURITY HOLDER	
1. About your investment	
Type of securities: <i>[Instruction: Include a short description, e.g., common shares.]</i>	Issuer:
Purchased from: <i>[Instruction: Indicate whether securities are purchased from the issuer or a selling security holder.]</i>	
SECTIONS 2 TO 4 TO BE COMPLETED BY THE PURCHASER	
2. Risk acknowledgement	
This investment is risky. Initial that you understand that:	Your initials
Risk of loss – You could lose your entire investment of \$_____. <i>[Instruction: Insert the total dollar amount of the investment.]</i>	
Liquidity risk – You may not be able to sell your investment quickly – or at all.	
Lack of information – You may receive little or no information about your investment.	
Lack of advice – You will not receive advice from the salesperson about whether this investment is suitable for you unless the salesperson is registered. The salesperson is the person who meets with, or provides information to, you about making this investment. To check whether the salesperson is registered, go to www.aretheyregistered.ca .	

3. Accredited investor status	
You must meet at least one of the following criteria to be able to make this investment. Initial the statement that applies to you. (You may initial more than one statement.) The person identified in section 6 is responsible for ensuring that you meet the definition of accredited investor. That person, or the salesperson identified in section 5, can help you if you have questions about whether you meet these criteria.	Your initials
<ul style="list-style-type: none"> Your net income before taxes was more than \$200,000 in each of the 2 most recent calendar years, and you expect it to be more than \$200,000 in the current calendar year. (You can find your net income before taxes on your personal income tax return.) 	
<ul style="list-style-type: none"> Your net income before taxes combined with your spouse's was more than \$300,000 in each of the 2 most recent calendar years, and you expect your combined net income before taxes to be more than \$300,000 in the current calendar year. 	
<ul style="list-style-type: none"> Either alone or with your spouse, you own more than \$1 million in cash and securities, after subtracting any debt related to the cash and securities. 	
<ul style="list-style-type: none"> Either alone or with your spouse, you have net assets worth more than \$5 million. (Your net assets are your total assets (including real estate) minus your total debt.) 	
4. Your name and signature	
By signing this form, you confirm that you have read this form and you understand the risks of making this investment as identified in this form.	
First and last name (please print):	
Signature:	Date:
SECTION 5 TO BE COMPLETED BY THE SALESPERSON	
5. Salesperson information	
<i>[Instruction: The salesperson is the person who meets with, or provides information to, the purchaser with respect to making this investment. That could include a representative of the issuer or selling security holder, a registrant or a person who is exempt from the registration requirement.]</i>	
First and last name of salesperson (please print):	
Telephone:	Email:
Name of firm (if registered):	
SECTION 6 TO BE COMPLETED BY THE ISSUER OR SELLING SECURITY HOLDER	
6. For more information about this investment	
<p>For investment in a non-investment fund <i>[Insert name of issuer/selling security holder]</i> <i>[Insert address of issuer/selling security holder]</i> <i>[Insert contact person name, if applicable]</i> <i>[Insert telephone number]</i> <i>[Insert email address]</i> <i>[Insert website address, if applicable]</i></p> <p>For investment in an investment fund <i>[Insert name of investment fund]</i> <i>[Insert name of investment fund manager]</i> <i>[Insert address of investment fund manager]</i> <i>[Insert telephone number of investment fund manager]</i> <i>[Insert email address of investment fund manager]</i> <i>[If investment is purchased from a selling security holder, also insert name, address, telephone number and email address of selling security holder here]</i></p>	
<p>For more information about prospectus exemptions, contact your local securities regulator. You can find contact information at www.securities-administrators.ca.</p>	

Form instructions:

1. *This form does not mandate the use of a specific font size or style but the font must be legible.*
2. *The information in sections 1, 5 and 6 must be completed before the purchaser completes and signs the form.*
3. *The purchaser must sign this form. Each of the purchaser and the issuer or selling security holder must receive a copy of this form signed by the purchaser. The issuer or selling security holder is required to keep a copy of this form for 8 years after the distribution.*
23. Except in Ontario, this Instrument comes into force on May 5, 2015. In Ontario, this Instrument comes into force on the later of the following:
 - (a) May 5, 2015 and
 - (b) the day on which subsection 12(2) of Schedule 26 of the *Budget Measures Act, 2009* is proclaimed in force.

**ANNEX C2
BLACKLINE OF AMENDED
NATIONAL INSTRUMENT 45-106
~~PROSPECTUS AND REGISTRATION EXEMPTIONS~~**

*Text boxes in this Instrument located **above** sections 2.1 to 2.5, 2.7 to 2.21, 2.24, 2.26, 2.27, and 2.30 to 2.43 refer to National Instrument 45-102 Resale of Securities. These text boxes do not form part of this Instrument.*

*Text boxes in this Instrument located **below the definition of “accredited investor” in section 1.1, and below sections 2.3, 2.4, 2.34, 3.34, 2.36, 3.36, 2.37, 3.37, 2.41, 2.37 and 3.41, 2.41** refer to the Securities Act (Ontario). These text boxes do not form part of this Instrument.*

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NATIONAL INSTRUMENT 45-106
PROSPECTUS AND REGISTRATION EXEMPTIONS

PART 1: DEFINITIONS AND INTERPRETATION

Definitions

1.1 In this Instrument

“**accredited investor**” means

- (a) except in Ontario, a Canadian financial institution, or a Schedule III bank,
- (b) except in Ontario, the Business Development Bank of Canada incorporated under the *Business Development Bank of Canada Act* (Canada),
- (c) except in Ontario, a subsidiary of any person referred to in paragraphs (a) or (b), if the person owns all of the voting securities of the subsidiary, except the voting securities required by law to be owned by directors of that subsidiary,
- (d) except in Ontario, a person registered under the securities legislation of a jurisdiction of Canada as an adviser or dealer, ~~other than a person registered solely as a limited market dealer under one or both of the *Securities Act* (Ontario) or the *Securities Act* (Newfoundland and Labrador),~~
- (e) an individual registered ~~or formerly registered~~ under the securities legislation of a jurisdiction of Canada as a representative of a person referred to in paragraph (d),
- ~~(e.1) an individual formerly registered under the securities legislation of a jurisdiction of Canada, other than an individual formerly registered solely as a representative of a limited market dealer under one or both of the *Securities Act* (Ontario) or the *Securities Act* (Newfoundland and Labrador),~~
- (f) except in Ontario, the Government of Canada or a jurisdiction of Canada, or any crown corporation, agency or wholly owned entity of the Government of Canada or a jurisdiction of Canada,
- (g) except in Ontario, a municipality, public board or commission in Canada and a metropolitan community, school board, the Comité de gestion de la taxe scolaire de l’île de Montréal or an intermunicipal management board in Québec,
- (h) except in Ontario, any national, federal, state, provincial, territorial or municipal government of or in any foreign jurisdiction, or any agency of that government,
- (i) except in Ontario, a pension fund that is regulated by the Office of the Superintendent of Financial Institutions (Canada), a pension commission or similar regulatory authority of a jurisdiction of Canada,
- (j) an individual who, either alone or with a spouse, beneficially owns financial assets having an aggregate realizable value that, before taxes, but net of any related liabilities, exceeds \$1 000 000,
- ~~(j.1) an individual who beneficially owns financial assets having an aggregate realizable value that, before taxes but net of any related liabilities, exceeds \$5 000 000.~~
- (k) an individual whose net income before taxes exceeded \$200 000 in each of the 2 most recent calendar years or whose net income before taxes combined with that of a spouse exceeded \$300 000 in each of the 2 most recent calendar years and who, in either case, reasonably expects to exceed that net income level in the current calendar year,
- (l) an individual who, either alone or with a spouse, has net assets of at least \$5 000 000,
- (m) a person, other than an individual or investment fund, that has net assets of at least \$5 000 000 as shown on its most recently prepared financial statements,

- (n) an investment fund that distributes or has distributed its securities only to
 - (i) a person that is or was an accredited investor at the time of the distribution,
 - (ii) a person that acquires or acquired securities in the circumstances referred to in sections 2.10 [*Minimum amount investment*], or 2.19 [*Additional investment in investment funds*], or
 - (iii) a person described in paragraph (i) or (ii) that acquires or acquired securities under section 2.18 [*Investment fund reinvestment*],
- (o) an investment fund that distributes or has distributed securities under a prospectus in a jurisdiction of Canada for which the regulator or, in Québec, the securities regulatory authority, has issued a receipt,
- (p) a trust company or trust corporation registered or authorized to carry on business under the *Trust and Loan Companies Act* (Canada) or under comparable legislation in a jurisdiction of Canada or a foreign jurisdiction, acting on behalf of a fully managed account managed by the trust company or trust corporation, as the case may be,
- (q) a person acting on behalf of a fully managed account managed by that person, if that person⁽ⁱ⁾ is registered or authorized to carry on business as an adviser or the equivalent under the securities legislation of a jurisdiction of Canada or a foreign jurisdiction, ~~and~~
 - (ii) ~~in Ontario, is purchasing a security that is not a security of an investment fund,~~
- (r) a registered charity under the *Income Tax Act* (Canada) that, in regard to the trade, has obtained advice from an eligibility adviser or an adviser registered under the securities legislation of the jurisdiction of the registered charity to give advice on the securities being traded,
- (s) an entity organized in a foreign jurisdiction that is analogous to any of the entities referred to in paragraphs (a) to (d) or paragraph (i) in form and function,
- (t) a person in respect of which all of the owners of interests, direct, indirect or beneficial, except the voting securities required by law to be owned by directors, are persons that are accredited investors,
- (u) an investment fund that is advised by a person registered as an adviser or a person that is exempt from registration as an adviser, ~~or~~
- (v) a person that is recognized or designated by the securities regulatory authority or, except in Ontario and Québec, the regulator as an accredited investor; ~~or~~
- ~~(w) a trust established by an accredited investor for the benefit of the accredited investor's family members of which a majority of the trustees are accredited investors and all of the beneficiaries are the accredited investor's spouse, a former spouse of the accredited investor or a parent, grandparent, brother, sister, child or grandchild of that accredited investor, of that accredited investor's spouse or of that accredited investor's former spouse;~~

In Ontario, paragraphs (a) to (h) of subsection 73.3(1) of the *Securities Act* (Ontario) correspond to paragraphs (a) to (d) and paragraphs (f) to (i) of the definition of "accredited investor" in section 1.1 of this Instrument.

"acquisition date" has the same meaning as in the issuer's GAAP;

"AIF" means

- (a) an AIF as defined in National Instrument 51-102 *Continuous Disclosure Obligations* ,
- (b) a prospectus filed in a jurisdiction, other than a prospectus filed under a CPC instrument, if the issuer has not filed or been required to file an AIF or annual financial statements under National Instrument 51-102 *Continuous Disclosure Obligations*, or

- (c) a QT circular if the issuer has not filed or been required to file annual financial statements under National Instrument 51-102 *Continuous Disclosure Obligations* subsequent to filing a QT circular;

“asset pool” means a pool of cash-flow generating assets in which an issuer of a securitized product has a direct or indirect ownership or security interest;

“asset transaction” means a transaction or series of transactions in which a conduit acquires a direct or indirect ownership or security interest in an asset pool in connection with issuing a short-term securitized product;

“bank” means a bank named in Schedule I or II of the *Bank Act* (Canada);

“Canadian financial institution” means

- (a) an association governed by the *Cooperative Credit Associations Act* (Canada) or a central cooperative credit society for which an order has been made under section 473(1) of that Act, or
- (b) a bank, loan corporation, trust company, trust corporation, insurance company, treasury branch, credit union, caisse populaire, financial services cooperative, or league that, in each case, is authorized by an enactment of Canada or a jurisdiction of Canada to carry on business in Canada or a jurisdiction of Canada;

“conduit” means an issuer of a short-term securitized product

- (a) created to conduct one or more asset transactions, and
- (b) in respect of which it is reasonable for the issuer to expect that, in the event of a bankruptcy or insolvency proceeding under the *Bankruptcy and Insolvency Act* (Canada), the *Companies Creditors’ Arrangement Act* (Canada) or a proceeding under similar legislation in Canada, a jurisdiction of Canada or a foreign jurisdiction,
- (i) none of the assets in an asset pool of the issuer in which the issuer has an ownership interest will be consolidated with the assets of a third party that transferred or participated in the transfer of assets to the issuer prior to satisfaction in full of all securitized products that are backed in whole or in part by the assets transferred by the third party, or
- (ii) for the assets in an asset pool of the issuer in which the issuer has a security interest, the issuer will realize against the assets in that asset pool in priority to the claims of other persons;

“CPC instrument” means a rule, regulation or policy of the TSX Venture Exchange Inc. that applies only to capital pool companies, and, in Quebec, includes Policy Statement 41-601Q, Capital Pool Companies;

“credit enhancement” means a method used to reduce the credit risk of a series or class of securitized product;

“debt security” means any bond, debenture, note or similar instrument representing indebtedness, whether secured or unsecured;

“designated rating” has the same meaning as in National Instrument 81-102 *Investment Funds*;

“designated rating organization” has the same meaning as in National Instrument 81-102 *Investment Funds*;

“director” means

- (a) a member of the board of directors of a company or an individual who performs similar functions for a company, and
- (b) with respect to a person that is not a company, an individual who performs functions similar to those of a director of a company;

“DRO affiliate” has the same meaning as in section 1 of National Instrument 25-101 *Designated Rating Organizations*;

“eligibility adviser” means

- (a) a person that is registered as an investment dealer and authorized to give advice with respect to the type of security being distributed, and

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

“eligible investor” means

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

“executive officer” means, for an issuer, an individual who is

- (a) a chair, vice-chair or president,
- (b) a vice-president in charge of a principal business unit, division or function including sales, finance or production, or
- (c) performing a policy-making function in respect of the issuer;

“financial assets” means

- (a) cash,
- (b) securities, or
- (c) a contract of insurance, a deposit or an evidence of a deposit that is not a security for the purposes of securities legislation;

“financial statements” includes interim financial reports;

“**founder**” means, in respect of an issuer, a person who,

- (a) acting alone, in conjunction, or in concert with one or more persons, directly or indirectly, takes the initiative in founding, organizing or substantially reorganizing the business of the issuer, and
- (b) at the time of the distribution or trade is actively involved in the business of the issuer;

“**fully managed account**” means an account of a client for which a person makes the investment decisions if that person has full discretion to trade in securities for the account without requiring the client’s express consent to a transaction;

“**investment fund**” has the same meaning as in National Instrument 81-106 *Investment Fund Continuous Disclosure*;

“**issuer’s GAAP**” has the same meaning as in National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*;

“**liquidity provider**” means a person that is obligated to provide funds to a conduit to enable the conduit to pay principal or interest in respect of a maturing securitized product;

“**marketplace**” has the same meaning as in National Instrument 21-101 *Marketplace Operation*;

“**MD&A**” has the same meaning as in National Instrument 51-102 *Continuous Disclosure Obligations*

“**non-redeemable investment fund**” has the same meaning as in National Instrument 81-106 *Investment Fund Continuous Disclosure*;

“**person**” includes

- (a) an individual,
- (b) a corporation,
- (c) a partnership, trust, fund and an association, syndicate, organization or other organized group of persons, whether incorporated or not, and
- (d) an individual or other person in that person’s capacity as a trustee, executor, administrator or personal or other legal representative;

“**private enterprise**” has the same meaning as in Part 3 of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*;

“**publicly accountable enterprise**” has the same meaning as in Part 3 of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*;

“**QT circular**” means an information circular or filing statement in respect of a qualifying transaction for a capital pool company filed under a CPC instrument;

“**qualifying issuer**” means a reporting issuer in a jurisdiction of Canada that

- (a) is a SEDAR filer,
- (b) has filed all documents required to be filed under the securities legislation of that jurisdiction, and
- (c) if not required to file an AIF, has filed in the jurisdiction,
 - (i) an AIF for its most recently completed financial year for which annual statements are required to be filed, and
 - (ii) copies of all material incorporated by reference in the AIF not previously filed;

“related liabilities” means

- (a) liabilities incurred or assumed for the purpose of financing the acquisition or ownership of financial assets, or
- (b) liabilities that are secured by financial assets;

“retrospective” has the same meaning as in Canadian GAAP applicable to publicly accountable enterprises;

“retrospectively” has the same meaning as in Canadian GAAP applicable to publicly accountable enterprises;

“RRIF” means a registered retirement income fund as defined in the *Income Tax Act* (Canada);

“RRSP” means a registered retirement savings plan as defined in the *Income Tax Act* (Canada);

“Schedule III bank” means an authorized foreign bank named in Schedule III of the *Bank Act* (Canada);

“securitized product” means a security that

- (a) is governed by a trust indenture or similar agreement setting out the rights and protections applicable to a holder of the security,
- (b) provides a holder with a direct or indirect ownership or security interest in one or more asset pools, and
- (c) entitles a holder to one or more payments of principal or interest primarily obtained from one or more of the following:
 - (i) the proceeds from the distribution of securitized products;
 - (ii) the cash flows generated by one or more asset pools;
 - (iii) the proceeds obtained on the liquidation of one or more assets in one or more asset pools;

“SEDAR filer” means an issuer that is an electronic filer under National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)*;

“self-directed RESP” means an educational savings plan registered under the *Income Tax Act* (Canada)

- (a) that is structured so that a contribution by a subscriber to the plan is deposited directly into an account in the name of the subscriber, and
- (b) under which the subscriber maintains control and direction over the plan to direct how the assets of the plan are to be held, invested or reinvested subject to compliance with the *Income Tax Act* (Canada).

“short-term securitized product” means a securitized product that is a negotiable promissory note or commercial paper that matures not more than one year from the date of issue;

“spouse” means, an individual who,

- (a) is married to another individual and is not living separate and apart within the meaning of the *Divorce Act* (Canada), from the other individual,
- (b) is living with another individual in a marriage-like relationship, including a marriage-like relationship between individuals of the same gender, or
- (c) in Alberta, is an individual referred to in paragraph (a) or (b), or is an adult interdependent partner within the meaning of the *Adult Interdependent Relationships Act* (Alberta);

“subsidiary” means an issuer that is controlled directly or indirectly by another issuer and includes a subsidiary of that subsidiary;

“TFSA” means a tax-free savings account as described in the *Income Tax Act* (Canada).

Interpretation of indirect interest

1.2 For the purposes of paragraph (t) of the definition of “accredited investor” in section 1.1, in British Columbia, an indirect interest means an economic interest in the person referred to in that paragraph.

Affiliate

1.3 For the purpose of this Instrument, an issuer is an affiliate of another issuer if

- (a) one of them is the subsidiary of the other, or
- (b) each of them is controlled by the same person.

Control

1.4 Except in Part 2, Division 4, for the purpose of this Instrument, a person (first person) is considered to control another person (second person) if

- (a) the first person beneficially owns or directly or indirectly exercises control or direction over securities of the second person carrying votes which, if exercised, would entitle the first person to elect a majority of the directors of the second person, unless that first person holds the voting securities only to secure an obligation,
- (b) the second person is a partnership, other than a limited partnership, and the first person holds more than 50% of the interests of the partnership, or
- (c) the second person is a limited partnership and the general partner of the limited partnership is the first person.

Registration requirement

1.5 (1) ~~An exemption in this Instrument from the dealer registration requirement, or from the prospectus requirement, that refers to a registered dealer is only available for a trade in a security if the dealer is registered in a category that permits the trade described in the exemption.~~

(2) ~~In this Instrument, an exemption from the dealer registration requirement is an exemption from the underwriter registration requirement.~~ Repealed.

Definition of distribution – Manitoba

1.6 For the purpose of this Instrument, in Manitoba, “**distribution**” means a primary distribution to the public.

Definition of trade – Québec

1.7 For the purpose of this Instrument, in Québec, “trade” refers to any of the following activities:

- (a) the activities described in the definition of “dealer” in section 5 of the Securities Act (R.S.Q., c. V-1.1), including the following activities:
 - (i) the sale or disposition of a security by onerous title, whether the terms of payment be on margin, installment or otherwise, but does not include a transfer or the giving in guarantee of securities in connection with a debt or the purchase of a security, except as provided in paragraph (b);
 - (ii) participation as a trader in any transaction in a security through the facilities of an exchange or a quotation and trade reporting system;
 - (iii) the receipt by a registrant of an order to buy or sell a security;
- (b) a transfer or the giving in guarantee of securities of an issuer from the holdings of a control person in connection with a debt.

PART 2: PROSPECTUS EXEMPTIONS

Division 1: Capital Raising Exemptions

Rights offering

Refer to Appendix E of National Instrument 45-102 *Resale of Securities*. First trades are subject to a seasoning period on resale.

2.1 The prospectus requirement does not apply to a distribution by an issuer of a right granted by the issuer to purchase a security of its own issue to a security holder of the issuer if

- (a) the issuer has given the regulator or, in Québec, the securities regulatory authority, prior written notice stating the date, amount, nature and conditions of the distribution, including the approximate net proceeds to be derived by the issuer on the basis of the additional securities being fully taken up,
- (b) the regulator or, in Québec, the securities regulatory authority, has not objected in writing to the distribution within 10 days of receipt of the notice referred to in paragraph (a) or, if the regulator or securities regulatory authority objects to the distribution, the issuer has delivered to the regulator or securities regulatory authority information relating to the securities that is satisfactory to and accepted by the regulator or securities regulatory authority, and
- (c) the issuer has complied with the applicable requirements of National Instrument 45-101 *Rights Offerings*.

Reinvestment plan

Refer to Appendix E of National Instrument 45-102 *Resale of Securities*. First trades are subject to a seasoning period on resale.

2.2 (1) Subject to subsections (3), (4) and (5), the prospectus requirement does not apply to the following distributions by an issuer, or by a trustee, custodian or administrator acting for or on behalf of the issuer, to a security holder of the issuer if the distributions are permitted by a plan of the issuer:

- (a) a distribution of a security of the issuer's own issue if a dividend or distribution out of earnings, surplus, capital or other sources payable in respect of the issuer's securities is applied to the purchase of the security, and
- (b) subject to subsection (2), a distribution of a security of the issuer's own issue if the security holder makes an optional cash payment to purchase the security of the issuer that trades on a marketplace.

(2) Subsection (1) does not apply unless the aggregate number of securities issued under the optional cash payment referred to in subsection (1)(b) does not exceed, in the financial year of the issuer during which the distribution takes place, 2% of the issued and outstanding securities of the class to which the plan relates as at the beginning of the financial year.

(3) A plan that permits a distribution described in subsection (1)(a) or (b) must be available to every security holder in Canada to which the dividend or distribution out of earnings, surplus, capital or other sources is available.

(4) Subsection (1) does not apply to a distribution of a security of an investment fund.

(5) ~~Subject to section 8.3.1, if~~ the security distributed under a plan described in subsection (1) is of a different class or series than the class or series of the security to which the dividend or distribution is attributable, the issuer or the trustee, custodian or administrator must have provided to each participant that is eligible to receive a security under the plan either a description of the material attributes and characteristics of the security distributed under the plan or notice of a source from which the participant can obtain the information without charge.

Accredited investor

Refer to Appendix D of National Instrument 45-102 *Resale of Securities*. First trades are subject to a restricted period on resale.

2.3 (0.1) In this section, “accredited investor exemption” means

- (a) in a jurisdiction other than Ontario, the prospectus exemption under subsection (1), and
- (b) in Ontario, the prospectus exemption under subsection 73.3(2) of the *Securities Act* (Ontario).

(1) The prospectus requirement does not apply to a distribution of a security if the purchaser purchases the security as principal and is an accredited investor.

(2) Subject to subsection (3), for the purpose of ~~this section~~ the accredited investor exemption, a trust company or trust corporation described in paragraph (p) of the definition of “accredited investor” in section 1.1 [*Definitions*] is deemed to be purchasing as principal.

(3) Subsection (2) does not apply to a trust company or trust corporation registered under the laws of Prince Edward Island that is not registered or authorized under the *Trust and Loan Companies Act* (Canada) or under comparable legislation in another jurisdiction of Canada.

(4) For the purpose of ~~this section~~ the accredited investor exemption, a person described in paragraph (q) of the definition of “accredited investor” in section 1.1 [*Definitions*] is deemed to be purchasing as principal.

(5) ~~This section~~ The accredited investor exemption does not apply to a distribution of a security to a person if the person was created, or is used, solely to purchase or hold securities as an accredited investor described in paragraph (m) of the definition of “accredited investor” in section 1.1 [*Definitions*].

(6) The accredited investor exemption does not apply to a distribution of a security to an individual described in paragraphs (j), (k) or (l) of the definition of “accredited investor” in section 1.1 [*Definitions*] unless the person distributing the security obtains from the individual a signed risk acknowledgement in the required form at the same time or before that individual signs the agreement to purchase the security.

(7) A person relying on the accredited investor exemption to distribute a security to an individual described in paragraphs (j), (k) or (l) of the definition of “accredited investor” in section 1.1 [*Definitions*] must retain the signed risk acknowledgement required in subsection (6) of this section for 8 years after the distribution.

(8) Subsection (1) does not apply in Ontario.

In Ontario, subsection 73.3(2) of the *Securities Act* (Ontario) provides a similar exemption to the exemption in subsection 2.3(1) of this Instrument.

Private issuer

Refer to Appendix E of National Instrument 45-102 *Resale of Securities*. First trades are subject to a seasoning period on resale.

2.4 (1) In this section,

“private issuer” means an issuer

- (a) that is not a reporting issuer or an investment fund,
- (b) the securities of which, other than non-convertible debt securities,

- (i) are subject to restrictions on transfer that are contained in the issuer's constating documents or security holders' agreements, and
 - (ii) are beneficially owned by not more than 50 persons, not including employees and former employees of the issuer or its affiliates, provided that each person is counted as one beneficial owner unless the person is created or used solely to purchase or hold securities of the issuer in which case each beneficial owner or each beneficiary of the person, as the case may be, must be counted as a separate beneficial owner, and
- (c) that
- (i) has distributed its securities only to persons described in subsection (2), or
 - (ii) has completed a transaction and immediately following the completion of the transaction, its securities were beneficially owned only by persons described in subsection (2) and since the completion of the transaction has distributed its securities only to persons described in subsection (2).

(2) The prospectus requirement does not apply to a distribution of a security of a private issuer to a person who purchases the security as principal and is

- (a) a director, officer, employee, founder or control person of the issuer,
- (b) a director, officer or employee of an affiliate of the issuer,
- (c) a spouse, parent, grandparent, brother, sister, child or grandchild of a director, executive officer, founder or control person of the issuer,
- (d) a parent, grandparent, brother, sister, child or grandchild of the spouse of a director, executive officer, founder or control person of the issuer,
- (e) a close personal friend of a director, executive officer, founder or control person of the issuer,
- (f) a close business associate of a director, executive officer, founder or control person of the issuer,
- (g) a spouse, parent, grandparent, brother, sister, child or grandchild of the selling security holder or of the selling security holder's spouse,
- (h) a security holder of the issuer,
- (i) an accredited investor,
- (j) a person of which a majority of the voting securities are beneficially owned by, or a majority of the directors are, persons described in paragraphs (a) to (i),
- (k) a trust or estate of which all of the beneficiaries or a majority of the trustees or executors are persons described in paragraphs (a) to (i), or
- (l) a person that is not the public.

(2.1) The following persons are prescribed for purposes of subsection 73.4(2) of the *Securities Act* (Ontario):

- (a) a director, officer, employee, founder or control person of the issuer,
- (b) a director, officer or employee of an affiliate of the issuer,
- (c) a spouse, parent, grandparent, brother, sister, child or grandchild of a director, executive officer, founder or control person of the issuer,
- (d) a parent, grandparent, brother, sister, child or grandchild of the spouse of a director, executive officer, founder or control person of the issuer,
- (e) a close personal friend of a director, executive officer, founder or control person of the issuer,

- (f) a close business associate of a director, executive officer, founder or control person of the issuer,
- (g) a spouse, parent, grandparent, brother, sister, child or grandchild of the selling security holder or of the selling security holder's spouse,
- (h) a security holder of the issuer,
- (i) an accredited investor,
- (j) a person of which a majority of the voting securities are beneficially owned by, or a majority of the directors are, persons described in paragraphs (a) to (i),
- (k) a trust or estate of which all of the beneficiaries or a majority of the trustees or executors are persons described in paragraphs (a) to (i), or
- (l) a person that is not the public.

(3) Except for a distribution to an accredited investor, no commission or finder's fee may be paid to any director, officer, founder or control person of an issuer in connection with a distribution under subsection (2) or, in Ontario, a distribution under subsection 73.4(2) of the Securities Act (Ontario).

(4) Subsection (2) does not apply to a distribution of a short-term securitized product.

(5) Subsection (2) does not apply in Ontario.

In Ontario, subsection 73.4(2) of the Securities Act (Ontario) provides a similar exemption to the exemption in subsection 2.4(2) of this Instrument.

Family, friends and business associates

Refer to Appendix D of National Instrument 45-102 Resale of Securities. First trades are subject to a restricted period on resale.

2.5 (1) Except in Ontario and subject to section 2.6 [*Family, friends and business associates -- Saskatchewan*], the prospectus requirement does not apply to a distribution of a security to a person who purchases the security as principal and is

- (a) a director, executive officer or control person of the issuer, or of an affiliate of the issuer,
- (b) a spouse, parent, grandparent, brother, sister, child or grandchild of a director, executive officer or control person of the issuer, or of an affiliate of the issuer,
- (c) a parent, grandparent, brother, sister, child or grandchild of the spouse of a director, executive officer or control person of the issuer or of an affiliate of the issuer,
- (d) a close personal friend of a director, executive officer or control person of the issuer, or of an affiliate of the issuer,
- (e) a close business associate of a director, executive officer or control person of the issuer, or of an affiliate of the issuer,
- (f) a founder of the issuer or a spouse, parent, grandparent, brother, sister, child, grandchild, close personal friend or close business associate of a founder of the issuer,
- (g) a parent, grandparent, brother, sister, child or grandchild of a spouse of a founder of the issuer,
- (h) a person of which a majority of the voting securities are beneficially owned by, or a majority of the directors are, persons described in paragraphs (a) to (g), or
- (i) a trust or estate of which all of the beneficiaries or a majority of the trustees or executors are persons described in paragraphs (a) to (g).

(2) No commission or finder's fee may be paid to any director, officer, founder, or control person of an issuer or an affiliate of the issuer in connection with a distribution under subsection (1).

(3) Subsection (1) does not apply to a distribution of a short-term securitized product or, in Ontario, a distribution under subsection 73.4(2) of the Securities Act (Ontario).

Family, friends and business associates – Saskatchewan

2.6 (1) In Saskatchewan, section 2.5 [*Family, friends and business associates*] does not apply unless the person making the distribution obtains a signed risk acknowledgement from the purchaser in the required form for a distribution to

- (a) a person described in section 2.5(1) (d) or (e) [*Family, friends and business associates*],
- (b) a close personal friend or close business associate of a founder of the issuer, or
- (c) a person described in section 2.5(1)(h) or (i) [*Family, friends and business associates*] if the distribution is based in whole or in part on a close personal friendship or close business association.

(2) The person making the distribution must retain the required form referred to in subsection (1) for 8 years after the distribution.

(3) Subsection (1) does not apply to a distribution of a short-term securitized product.

Founder, control person and family – Ontario

Refer to Appendix D of National Instrument 45-102 *Resale of Securities*. First trades are subject to a restricted period on resale.

In Ontario, the Founder, Control Person and Family exemption is intended to be repealed upon the coming into force of a proposed Family, Friends and Business Associates exemption. Please refer to the separate OSC publication dated February 19, 2015 for further details regarding the introduction of a Family, Friends and Business Associates exemption in Ontario.

2.7 (1) In Ontario, the prospectus requirement does not apply to a distribution to a person who purchases the security as principal and is one of the following:

- (a) a founder of the issuer;²
- (b) an affiliate of a founder of the issuer;²
- (c) a spouse, parent, grandparent, brother, sister, grandparent, child or grandchild ~~or child~~ of an executive officer, director or founder of the issuer; ~~or~~²
- (d) a person that is a control person of the issuer.

(2) Subsection (1) does not apply to a distribution of a short-term securitized product.

Affiliates

Refer to Appendix D of National Instrument 45-102 *Resale of Securities*. First trades are subject to a restricted period on resale.

2.8 The prospectus requirement does not apply to a distribution by an issuer of a security of its own issue to an affiliate of the issuer that is purchasing as principal.

Offering memorandum

Refer to Appendix D of National Instrument 45-102 *Resale of Securities*. First trades are subject to a restricted period on resale.

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

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

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

- (a) the purchaser purchases the security as principal,
- (b) the purchaser is an eligible investor or the acquisition cost to the purchaser does not exceed \$10 000,
- (c) at the same time or before the purchaser signs the agreement to purchase the security, the issuer
 - (i) delivers an offering memorandum to the purchaser in compliance with subsections (5) to (13), and
 - (ii) obtains a signed risk acknowledgement from the purchaser in compliance with subsection (15), and
- (d) if the issuer is an investment fund, the investment fund is
 - (i) a non-redeemable investment fund, or
 - (ii) a mutual fund that is a reporting issuer.

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

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

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

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

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

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

- (a) is available to the purchaser if the offering memorandum, or any information or documents incorporated or deemed to be incorporated by reference into the offering memorandum, contains a misrepresentation, without regard to whether the purchaser relied on the misrepresentation,
- (b) is enforceable by the purchaser delivering a notice to the issuer

- (i) in the case of an action for rescission, within 180 days after the purchaser signs the agreement to purchase the security, or
- (ii) in the case of an action for damages, before the earlier of
 - A) 180 days after the purchaser first has knowledge of the facts giving rise to the cause of action, or
 - B) 3 years after the date the purchaser signs the agreement to purchase the security,
- (c) is subject to the defence that the purchaser had knowledge of the misrepresentation,
- (d) in the case of an action for damages, provides that the amount recoverable
 - (i) must not exceed the price at which the security was offered, and
 - (ii) does not include all or any part of the damages that the issuer proves does not represent the depreciation in value of the security resulting from the misrepresentation, and
- (e) is in addition to, and does not detract from, any other right of the purchaser.

(8) An offering memorandum delivered under this section must contain a certificate that states the following:

“This offering memorandum does not contain a misrepresentation.”

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

- (a) by the issuer’s chief executive officer and chief financial officer or, if the issuer does not have a chief executive officer or chief financial officer, an individual acting in that capacity,
- (b) on behalf of the directors of the issuer, by
 - (i) any 2 directors who are authorized to sign, other than the persons referred to in paragraph (a), or
 - (ii) all the directors of the issuer, and
- (c) by each promoter of the issuer.

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

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

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

- (a) an individual, the individual must sign the certificate,
- (b) a company, the certificate must be signed
 - (i) by the chief executive officer and the chief financial officer of the trustee or the manager, and
 - (ii) on behalf of the board of directors of the trustee or the manager, by
 - (A) any two directors of the trustee or the manager, other than the persons referred to in subparagraph (i), or
 - (B) all of the directors of the trustee or the manager,
- (c) a limited partnership, the certificate must be signed by each general partner of the limited partnership as described in subsection (11.1) in relation to an issuer that is a limited partnership, or

- (d) not referred to in paragraphs (a), (b) or (c), the certificate may be signed by any person or company with authority to act on behalf of the trustee or the manager.

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

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

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

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

(11.1) If a general partner of the issuer is

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

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

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

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

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

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

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

(16) The issuer must

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

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

(18) If a qualifying issuer uses a form of offering memorandum that allows the qualifying issuer to incorporate previously filed information into the offering memorandum by reference, the qualifying issuer is exempt from the requirement under National Instrument 43-101 *Standards of Disclosure for Mineral Projects* to file a technical report to support scientific or technical information about the qualifying issuer's mineral project in the offering memorandum or incorporated by reference into the offering memorandum if the information about the mineral project is contained in a previously filed technical report under National Instrument 43-101 *Standards of Disclosure for Mineral Projects*.

Minimum amount investment

Refer to Appendix D of National Instrument 45-102 *Resale of Securities*. First trades are subject to a restricted period on resale.

2.10 (1) The prospectus requirement does not apply to a distribution of a security to a person if all of the following apply:

- (e) that person is not an individual;
- (f) ~~(a)~~ —that person purchases as principal;
- (~~b~~c) the security has an acquisition cost to ~~the purchaser~~ that person of not less than \$150 000 paid in cash at the time of the distribution, ~~and~~;
- (~~d~~) ~~(c)~~ —the distribution is of a security of a single issuer.

(2) Subsection (1) does not apply to a distribution of a security to a person if the person was created, or is used, solely to purchase or hold securities in reliance on the exemption from the prospectus requirement set out in subsection (1).

Division 2: Transaction Exemptions

Business combination and reorganization

Refer to Appendix E of National Instrument 45-102 *Resale of Securities*. First trades are subject to a seasoning period on resale.

2.11 The prospectus requirement does not apply to a distribution of a security in connection with

- (a) an amalgamation, merger, reorganization or arrangement that is under a statutory procedure,
- (b) an amalgamation, merger, reorganization or arrangement that
 - (i) is described in an information circular made pursuant to National Instrument 51-102 *Continuous Disclosure Obligations* or in a similar disclosure record and the information circular or similar disclosure record is delivered to each security holder whose approval of the amalgamation, merger, reorganization or arrangement is required before it can proceed, and

- (ii) is approved by the security holders referred to in subparagraph (i), or
- (c) a dissolution or winding-up of the issuer.

Asset acquisition

Refer to Appendix D of National Instrument 45-102 *Resale of Securities*. First trades are subject to a restricted period on resale.

2.12 The prospectus requirement does not apply to a distribution by an issuer of a security of its own issue to a person as consideration for the acquisition, directly or indirectly, of the assets of the person, if those assets have a fair value of not less than \$150 000.

Petroleum, natural gas and mining properties

Refer to Appendix D of National Instrument 45-102 *Resale of Securities*. First trades are subject to a restricted period on resale.

2.13 The prospectus requirement does not apply to a distribution by an issuer of a security of its own issue as consideration for the acquisition, directly or indirectly, of petroleum, natural gas or mining properties or any interest in them.

Securities for debt

Refer to Appendix D of National Instrument 45-102 *Resale of Securities*. First trades are subject to a restricted period on resale.

2.14 The prospectus requirement does not apply to a distribution by a reporting issuer of a security of its own issue to a creditor to settle a bona fide debt of that reporting issuer.

Issuer acquisition or redemption

This provision is not cited in any Appendix of National Instrument 45-102 *Resale of Securities*.

2.15 The prospectus requirement does not apply to a distribution of a security to the issuer of the security.

Take-over bid and issuer bid

Refer to section 2.11 or Appendix E of National Instrument 45-102 *Resale of Securities*. First trades are subject to a seasoning period on resale unless the requirements of section 2.11 of National Instrument 45-102 are met.

2.16 The prospectus requirement does not apply to a distribution of a security in connection with a take-over bid in a jurisdiction of Canada or an issuer bid in a jurisdiction of Canada.

Offer to acquire to security holder outside local jurisdiction

Refer to Appendix E of National Instrument 45-102 *Resale of Securities*. First trades are subject to a seasoning period on resale.

2.17 The prospectus requirement does not apply to a distribution by a security holder outside the local jurisdiction to a person in the local jurisdiction if the distribution would have been in connection with a take-over bid or issuer bid made by that person were it not for the fact that the security holder is outside of the local jurisdiction.

Division 3: Investment Fund Exemptions

Investment fund reinvestment

Refer to Appendix E of National Instrument 45-102 *Resale of Securities*. First trades are subject to a seasoning period on resale.

2.18 (1) Subject to subsections (3), (4), (5) and (6), the prospectus requirement does not apply to the following distributions by an investment fund, and the investment fund manager of the fund, to a security holder of the investment fund if the distributions are permitted by a plan of the investment fund:

- (a) a distribution of a security of the investment fund's own issue if a dividend or distribution out of earnings, surplus, capital or other sources payable in respect of the investment fund's securities is applied to the purchase of the security that is of the same class or series as the securities to which the dividend or distribution out of earnings, surplus, capital or other sources is attributable, and
- (b) subject to subsection (2), a distribution of a security of the investment fund's own issue if the security holder makes an optional cash payment to purchase the security of the investment fund that is of the same class or series of securities described in paragraph (a) that trade on a marketplace.

(2) The aggregate number of securities issued under the optional cash payment referred to in subsection (1) (b) must not exceed, in any financial year of the investment fund during which the distribution takes place, 2% of the issued and outstanding securities of the class to which the plan relates as at the beginning of the financial year.

(3) A plan that permits the distributions described in subsection (1) must be available to every security holder in Canada to which the dividend or distribution out of earnings, surplus, capital or other sources is available.

(4) A person must not charge a fee for a distribution described in subsection (1).

(5) An investment fund that is a reporting issuer and in continuous distribution must set out in its current prospectus:

- (a) details of any deferred or contingent sales charge or redemption fee that is payable at the time of the redemption of the security,
- (b) any right that the security holder has to make an election to receive cash instead of securities on the payment of a dividend or making of a distribution by the investment fund, and
- (c) instructions on how the right referred to in paragraph (b) can be exercised.

(6) An investment fund that is a reporting issuer and is not in continuous distribution must provide the information required by subsection (5) in its prospectus, annual information form or a material change report.

Additional investment in investment funds

Refer to Appendix D of National Instrument 45-102 *Resale of Securities*. First trades are subject to a restricted period on resale.

2.19 The prospectus requirement does not apply to a distribution by an investment fund, or the investment fund manager of the fund, of a security of the investment fund's own issue to a security holder of the investment fund if

- (a) the security holder initially acquired securities of the investment fund as principal for an acquisition cost of not less than \$150 000 paid in cash at the time of the distribution,
- (b) the distribution is of a security of the same class or series as the securities initially acquired, as described in paragraph (a), and
- (c) the security holder, as at the date of the distribution, holds securities of the investment fund that have
 - (i) an acquisition cost of not less than \$150 000, or

- (ii) a net asset value of not less than \$150 000.

Private investment club

Refer to Appendix E of National Instrument 45-102 *Resale of Securities*. First trades are subject to a seasoning period on resale.

2.20 The prospectus requirement does not apply to a distribution of a security of an investment fund if the investment fund

- (a) has no more than 50 beneficial security holders,
- (b) does not seek and has never sought to borrow money from the public,
- (c) does not distribute and has never distributed its securities to the public,
- (d) does not pay or give any remuneration for investment management or administration advice in respect of trades in securities, except normal brokerage fees, and
- (e) for the purpose of financing the operations of the investment fund, requires security holders to make contributions in proportion to the value of the securities held by them.

Private investment fund – loan and trust pools

Refer to Appendix E of National Instrument 45-102 *Resale of Securities*. First trades are subject to a seasoning period on resale.

2.21 (1) Subject to subsection (2), the prospectus requirement does not apply to a distribution of a security of an investment fund if the investment fund

- (a) is administered by a trust company or trust corporation that is registered or authorized by an enactment of Canada or a jurisdiction of Canada to carry on business in Canada or a jurisdiction of Canada,
- (b) has no promoter or investment fund manager other than the trust company or trust corporation referred to in paragraph (a), and
- (c) co-mingles the money of different estates and trusts for the purpose of facilitating investment.

(2) A trust company or trust corporation registered under the laws of Prince Edward Island that is not registered under the *Trust and Loan Companies Act* (Canada) or under comparable legislation in another jurisdiction of Canada is not a trust company or trust corporation for the purpose of subparagraph (1)(a).

Division 4: Employee, Executive Officer, Director and Consultant Exemptions

Definitions

2.22 In this Division ~~and in Division 4 of Part 3 of this Instrument~~

“**associate**”, when used to indicate a relationship with a person, means

- (a) an issuer of which the person beneficially owns or controls, directly or indirectly, voting securities entitling the person to more than 10% of the voting rights attached to outstanding voting securities of the issuer,
- (b) any partner of the person,
- (c) any trust or estate in which the person has a substantial beneficial interest or in respect of which the person serves as trustee or executor or in a similar capacity, or
- (d) in the case of an individual, a relative of that individual, including
 - (i) a spouse of that individual, or

(ii) a relative of that individual's spouse

if the relative has the same home as that individual;

“associated consultant” means, for an issuer, a consultant of the issuer or of a related entity of the issuer if

- (a) the consultant is an associate of the issuer or of a related entity of the issuer, or
- (b) the issuer or a related entity of the issuer is an associate of the consultant;

“compensation” means an issuance of securities in exchange for services provided or to be provided and includes an issuance of securities for the purpose of providing an incentive;

“consultant” means, for an issuer, a person, other than an employee, executive officer, or director of the issuer or of a related entity of the issuer, that

- (a) is engaged to provide services to the issuer or a related entity of the issuer, other than services provided in relation to a distribution,
- (b) provides the services under a written contract with the issuer or a related entity of the issuer, and
- (c) spends or will spend a significant amount of time and attention on the affairs and business of the issuer or a related entity of the issuer

and includes

- (d) for an individual consultant, a corporation of which the individual consultant is an employee or shareholder, and a partnership of which the individual consultant is an employee or partner, and
- (e) for a consultant that is not an individual, an employee, executive officer, or director of the consultant, provided that the individual employee, executive officer, or director spends or will spend a significant amount of time and attention on the affairs and business of the issuer or a related entity of the issuer.

“holding entity” means a person that is controlled by an individual;

“investor relations activities” means activities or communications, by or on behalf of an issuer or a security holder of the issuer, that promote or could reasonably be expected to promote the purchase or sale of securities of the issuer, but does not include

- (a) the dissemination of information or preparation of records in the ordinary course of the business of the issuer
 - (i) to promote the sale of products or services of the issuer, or
 - (ii) to raise public awareness of the issuer

that cannot reasonably be considered to promote the purchase or sale of securities of the issuer,

- (b) activities or communications necessary to comply with the requirements of
 - (i) securities legislation of any jurisdiction of Canada,
 - (ii) the securities laws of any foreign jurisdiction governing the issuer, or
 - (iii) any exchange or market on which the issuer's securities trade, or
- (c) activities or communications necessary to follow securities directions of any jurisdiction of Canada;

“investor relations person” means a person that is a registrant or that provides services that include investor relations activities;

“issuer bid requirements” means the requirements under securities legislation that apply to an issuer bid;

“**listed issuer**” means an issuer, any of the securities of which

- (a) are listed and not suspended, or the equivalent, from trading on
 - (i) TSX Inc.,
 - (ii) TSX Venture Exchange Inc.,
 - (iii) NYSE Amex Equities,
 - (iv) The New York Stock Exchange,
 - (v) the London Stock Exchange, or
- (b) are quoted on the Nasdaq Stock Market;

“**permitted assign**” means, for a person that is an employee, executive officer, director or consultant of an issuer or of a related entity of the issuer,

- (a) a trustee, custodian, or administrator acting on behalf of, or for the benefit of the person,
- (b) a holding entity of the person,
- (c) a RRSP, RRIF, or TFSA of the person,
- (d) the spouse of the person,
- (e) a trustee, custodian, or administrator acting on behalf of, or for the benefit of the spouse of the person,
- (f) a holding entity of the spouse of the person, or
- (g) a RRSP, RRIF, or TFSA of the spouse of the person;

“**plan**” means a plan or program established or maintained by an issuer providing for the acquisition of securities of the issuer by persons described in section 2.24(1) [*Employee, executive officer, director and consultant*] as compensation;

“**related entity**” means, for an issuer, a person that controls or is controlled by the issuer or that is controlled by the same person that controls the issuer;

“**related person**” means, for an issuer,

- (a) a director or executive officer of the issuer or of a related entity of the issuer,
- (b) an associate of a director or executive officer of the issuer or of a related entity of the issuer, or
- (c) a permitted assign of a director or executive officer of the issuer or of a related entity of the issuer;

“**security holder approval**” means an approval for the issuance of securities of an issuer as compensation or under a plan

- (a) given by a majority of the votes cast at a meeting of security holders of the issuer other than votes attaching to securities beneficially owned by related persons to whom securities may be issued as compensation or under that plan, or
- (b) evidenced by a resolution signed by all the security holders entitled to vote at a meeting, if the issuer is not required to hold a meeting; and

“**support agreement**” includes an agreement to provide assistance in the maintenance or servicing of indebtedness of the borrower and an agreement to provide consideration for the purpose of maintaining or servicing indebtedness of the borrower.

Interpretation

2.23 (1) In this Division, a person (first person) is considered to control another person (second person) if the first person, directly or indirectly, has the power to direct the management and policies of the second person by virtue of

- (a) ownership of or direction over voting securities in the second person,
- (b) a written agreement or indenture,
- (c) being the general partner or controlling the general partner of the second person, or
- (d) being a trustee of the second person.

(2) In this Division, participation in a distribution is considered voluntary if

- (a) in the case of an employee or the employee's permitted assign, the employee or the employee's permitted assign is not induced to participate in the distribution by expectation of employment or continued employment of the employee with the issuer or a related entity of the issuer,
- (b) in the case of an executive officer or the executive officer's permitted assign, the executive officer or the executive officer's permitted assign is not induced to participate in the distribution by expectation of appointment, employment, continued appointment or continued employment of the executive officer with the issuer or a related entity of the issuer,
- (c) in the case of a consultant or the consultant's permitted assign, the consultant or the consultant's permitted assign is not induced to participate in the distribution by expectation of engagement of the consultant to provide services or continued engagement of the consultant to provide services to the issuer or a related entity of the issuer, and
- (d) in the case of an employee of a consultant, the individual is not induced by the issuer, a related entity of the issuer, or the consultant to participate in the distribution by expectation of employment or continued employment with the consultant.

Employee, executive officer, director and consultant

Refer to Appendix E of National Instrument 45-102 *Resale of Securities*. First trades are subject to a seasoning period on resale.

2.24 (1) Subject to section 2.25 [*Unlisted reporting issuer exception*], the prospectus requirement does not apply to a distribution

- (a) by an issuer in a security of its own issue, or
- (b) by a control person of an issuer of a security of the issuer or of an option to acquire a security of the issuer,
with
- (c) an employee, executive officer, director or consultant of the issuer,
- (d) an employee, executive officer, director or consultant of a related entity of the issuer, or
- (e) a permitted assign of a person referred to in paragraphs (c) or (d)

if participation in the distribution is voluntary.

(2) For the purposes of subsection (1), a person referred to in paragraph (c), (d) or (e) includes a trustee, custodian or administrator acting as agent for that person for the purpose of facilitating a trade.

Unlisted reporting issuer exception

2.25 (1) For the purpose of this section, “**unlisted reporting issuer**” means a reporting issuer in a jurisdiction of Canada that is not a listed issuer.

(2) Subject to subsection (3), section 2.24 [*Employee, executive officer, director and consultant*] does not apply to a distribution to an employee or consultant of the unlisted reporting issuer who is an investor relations person of the issuer, an associated consultant of the issuer, an executive officer of the issuer, a director of the issuer, or a permitted assign of those persons if, after the distribution,

- (a) the number of securities, calculated on a fully diluted basis, reserved for issuance under options granted to
 - (i) related persons, exceeds 10% of the outstanding securities of the issuer, or
 - (ii) a related person, exceeds 5% of the outstanding securities of the issuer, or
- (b) the number of securities, calculated on a fully diluted basis, issued within 12 months to
 - (i) related persons, exceeds 10% of the outstanding securities of the issuer, or
 - (ii) a related person and the associates of the related person, exceeds 5% of the outstanding securities of the issuer.

(3) Subsection (2) does not apply to a distribution if the unlisted reporting issuer

- (a) obtains security holder approval, and
- (b) before obtaining security holder approval, provides security holders with the following information in sufficient detail to permit security holders to form a reasoned judgment concerning the matter:
 - (i) the eligibility of employees, executive officers, directors, and consultants to be issued or granted securities as compensation or under a plan;
 - (ii) the maximum number of securities that may be issued, or in the case of options, the number of securities that may be issued on exercise of the options, as compensation or under a plan;
 - (iii) particulars relating to any financial assistance or support agreement to be provided to participants by the issuer or any related entity of the issuer to facilitate the purchase of securities as compensation or under a plan, including whether the assistance or support is to be provided on a full-, part-, or non-recourse basis;
 - (iv) in the case of options, the maximum term and the basis for the determination of the exercise price;
 - (v) particulars relating to the options or other entitlements to be granted as compensation or under a plan, including transferability; and
 - (vi) the number of votes attaching to securities that, to the issuer's knowledge at the time the information is provided, will not be included for the purpose of determining whether security holder approval has been obtained.

Distributions among current or former employees, executive officers, directors, or consultants of non-reporting issuer

Refer to Appendix E of National Instrument 45-102 *Resale of Securities*. First trades are subject to a seasoning period on resale.

2.26 (1) Subject to subsection (2), the prospectus requirement does not apply to a distribution of a security of an issuer by

- (a) a current or former employee, executive officer, director, or consultant of the issuer or related entity of the issuer, or
- (b) a permitted assign of a person referred to in paragraph (a),

to

- (c) an employee, executive officer, director, or consultant of the issuer or a related entity of the issuer, or
- (d) a permitted assign of the employee, executive officer, director, or consultant.

(2) The exemption in subsection (1) is only available if

- (a) participation in the distribution is voluntary,

- (b) the issuer of the security is not a reporting issuer in any jurisdiction of Canada, and
- (c) the price of the security being distributed is established by a generally applicable formula contained in a written agreement among some or all of the security holders of the issuer to which the transferee is or will become a party.

Permitted transferees

Refer to Appendix E of National Instrument 45-102 *Resale of Securities*. First trades are subject to a seasoning period on resale.

2.27 (1) Subject to section 2.28, the prospectus requirement does not apply to a distribution of a security of an issuer acquired by a person described in section 2.24(1) [*Employee, executive officer, director and consultant*] under a plan of the issuer if the distribution

- (a) is between
 - (i) a person who is an employee, executive officer, director or consultant of the issuer or a related entity of the issuer, and
 - (ii) the permitted assign of that person,
- or
- (b) is between permitted assigns of that person.

(2) Subject to section 2.28, the prospectus requirement does not apply to a distribution of a security of an issuer by a trustee, custodian or administrator acting on behalf, or for the benefit, of employees, executive officers, directors or consultants of the issuer or a related entity of the issuer, to

- (a) an employee, executive officer, director or consultant of the issuer or a related entity of the issuer, or
- (b) a permitted assign of a person referred to in paragraph (a),

if the security was acquired from

- (c) an employee, executive officer, director or consultant of the issuer or a related entity of the issuer, or
- (d) the permitted assign of a person referred to in paragraph (c).

(3) For the purposes of the exemptions in subsection (1) and paragraphs (2) (c) and (d), all references to employee, executive officer, director, or consultant include a former employee, executive officer, director, or consultant.

Limitation re: permitted transferees

2.28 The exemption from the prospectus requirement under subsection 2.27(1) or (2) is only available if the security was acquired

- (a) by a person described in section 2.24(1) [*Employee, executive officer, director, and consultant*] under any exemption that makes the resale of the security subject to section 2.6 of National Instrument 45-102 *Resale of Securities*, or
- (b) in Manitoba, by a person described in section 2.24(1) [*Employee, executive officer, director, and consultant*].

Issuer bid

2.29 The issuer bid requirements do not apply to the acquisition by an issuer of a security of its own issue that was acquired by a person described in section 2.24(1) [*Employee, executive officer, director, and consultant*] if

- (a) the purpose of the acquisition by the issuer is to
 - (i) fulfill withholding tax obligations, or

- (ii) provide payment of the exercise price of a stock option,
- (b) the acquisition by the issuer is made in accordance with the terms of a plan that specifies how the value of the securities acquired by the issuer is determined,
- (c) in the case of securities acquired as payment of the exercise price of a stock option, the date of exercise of the option is chosen by the option holder, and
- (d) the aggregate number of securities acquired by the issuer within a 12 month period under this section does not exceed 5% of the outstanding securities of the class or series at the beginning of the period.

Division 5: Miscellaneous Exemptions

Isolated distribution by issuer

Refer to Appendix D of National Instrument 45-102 *Resale of Securities*. First trades are subject to a restricted period.

2.30 The prospectus requirement does not apply to a distribution by an issuer of a security of its own issue if the distribution is an isolated distribution and is not made

- (a) in the course of continued and successive transactions of a like nature, and
- (b) by a person whose usual business is trading in securities.

Dividends and distributions

Subsection (1) is cited in Appendix E of National Instrument 45-102 *Resale of Securities*. First trades are subject to a seasoning period on resale.

Subsection (2) is cited in Appendix D and Appendix E of National Instrument 45-102. Resale restriction is determined by the exemption under which the previously issued security was first acquired.

2.31 (1) The prospectus requirement does not apply to a distribution by an issuer of a security of its own issue to a security holder of the issuer as a dividend or distribution out of earnings, surplus, capital or other sources.

(2) The prospectus requirement does not apply to a distribution by an issuer to a security holder of the issuer of a security of a reporting issuer as an in specie dividend or distribution out of earnings or surplus.

Distribution to lender by control person for collateral

This provision is not cited in any Appendix of National Instrument 45-102 *Resale of Securities*. Trades by a lender, pledgee, mortgagee or other encumbrancer to realize on a debt are regulated by section 2.8 of National Instrument 45-102.

2.32 The prospectus requirement does not apply to a distribution of a security of an issuer to a lender, pledgee, mortgagee or other encumbrancer from the holdings of a control person of the issuer for the purpose of giving collateral for a bona fide debt of the control person.

Acting as underwriter

Refer to Appendix F of National Instrument 45-102 *Resale of Securities*. First trades are a distribution.

2.33 The prospectus requirement does not apply to a distribution of a security between a person and a purchaser acting as an underwriter or between or among persons acting as underwriters.

Specified debt

This provision is not cited in any Appendix of National Instrument 45-102 *Resale of Securities*. These securities are free trading.

2.34 (1) In this section, “permitted supranational agency” means

- (a) the African Development Bank, established by the Agreement Establishing the African Development Bank which came into force on September 10, 1964, that Canada became a member of on December 30, 1982;
- (b) the Asian Development Bank, established under a resolution adopted by the United Nations Economic and Social Commission for Asia and the Pacific in 1965;
- (c) the Caribbean Development Bank, established by the Agreement Establishing the Caribbean Development Bank which came into force on January 26, 1970, as amended, that Canada is a founding member of;
- (d) the European Bank for Reconstruction and Development, established by the Agreement Establishing the European Bank for Reconstruction and Development and approved by the *European Bank for Reconstruction and Development Agreement Act* (Canada), that Canada is a founding member of;
- (e) the Inter-American Development Bank, established by the Agreement establishing the Inter-American Development Bank which became effective December 30, 1959, as amended from time to time, that Canada is a member of;
- (f) the International Bank for Reconstruction and Development, established by the Agreement for an International Bank for Reconstruction and Development approved by the *Bretton Woods and Related Agreements Act* (Canada); and
- (g) the International Finance Corporation, established by Articles of Agreement approved by the *Bretton Woods and Related Agreements Act* (Canada).

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

- (a) a debt security issued by or guaranteed by the Government of Canada or the government of a jurisdiction of Canada,
- (b) a debt security issued by or guaranteed by a government of a foreign jurisdiction if the debt security has a designated rating from a designated rating organization or its DRO affiliate,
- (c) a debt security issued by or guaranteed by a municipal corporation in Canada, or secured by or payable out of rates or taxes levied under the law of a jurisdiction of Canada on property in the jurisdiction and collectable by or through the municipality in which the property is situated,
- (d) a debt security issued by or guaranteed by a Canadian financial institution or a Schedule III bank, other than debt securities that are subordinate in right of payment to deposits held by the issuer or guarantor of those debt securities,
- (d.1) in Ontario, a debt security issued by or guaranteed by a loan corporation, trust company, trust corporation, insurance company, treasury branch, credit union, caisse populaire, financial services cooperative, or league that, in each case, is authorized by an enactment of a jurisdiction of Canada other than Ontario to carry on business in a jurisdiction of Canada, other than debt securities that are subordinate in right of payment to deposits held by the issuer or guarantor of those debt securities,
- (e) a debt security issued by the Comité de gestion de la taxe scolaire de l’île de Montréal, or
- (f) a debt security issued by or guaranteed by a permitted supranational agency if the debt securities are payable in the currency of Canada or the United States of America.

(3) Paragraphs (2)(a), (c) and (d) do not apply in Ontario.

In Ontario, ~~paragraphs subsections 73(1)(a) and (b2) of the Securities Act (Ontario) provide similar exemptions to the exemptions in paragraphs (2)(a), and (c) and (d) of this Instrument.~~

In Ontario, subsections 73.1(1) and (2) of the Securities Act (Ontario), read together, provide a similar exemption to the exemption in paragraph 2(d) of this Instrument.

Short-term debt

This provision is not cited in any Appendix of National Instrument 45-102 *Resale of Securities*. These securities are free trading.

2.35 (1) The prospectus requirement does not apply to a distribution of a negotiable promissory note or commercial paper maturing if all of the following apply:

- ~~(a) the note or commercial paper matures not more than one year from the date of issue, if the note or commercial paper distributed;~~
- ~~(a) is not convertible or exchangeable into or accompanied by a right to purchase another security other than a security described in this section, and~~
- ~~(b) the note or commercial paper has a designated credit rating from a designated rating organization, or its DRO affiliate, that is at or above one of the following rating categories or that is at or above a rating category that replaces one of the following rating categories:~~
 - ~~(i) R-1(low) if issued by DBRS Limited;~~
 - ~~(ii) F1 if issued by Fitch, Inc.;~~
 - ~~(iii) P-1 if issued by Moody's Canada Inc.;~~
 - ~~(iv) A-1(Low) (Canada national scale) if issued by Standard & Poor's Ratings Services (Canada);~~
- ~~(c) the note or commercial paper has no credit rating from a designated rating organization, or its DRO affiliate, that is below one of the following rating categories or that is below a rating category that replaces one of the following rating categories:~~
 - ~~(i) R-1(low) if issued by DBRS Limited;~~
 - ~~(ii) F2 if issued by Fitch, Inc.;~~
 - ~~(iii) P-2 if issued by Moody's Canada Inc.;~~
 - ~~(iv) A-1(Low) (Canada national scale) or A-2 (global scale) if issued by Standard & Poor's Ratings Services (Canada).~~

(2) Subsection (1) does not apply to a distribution of a negotiable promissory note or commercial paper if either of the following applies:

- ~~(a) the note or commercial paper is a securitized product;~~
- ~~(b) the note or commercial paper is convertible or exchangeable into or accompanied by a right to purchase another security other than a security described in subsection (1).~~

Short-term securitized products

2.35.1 The prospectus requirement does not apply to a distribution of a short-term securitized product if all of the following apply:

- ~~(a) the short-term securitized product is a security described in section 2.35.2;~~

- (b) the conduit issuing the short-term securitized product complies with section 2.35.4;
- (c) the short-term securitized product is not convertible or exchangeable into or accompanied by a right to purchase another security other than a security described in paragraph (a) and for which disclosure is provided pursuant to paragraph (b).

Limitations on short-term securitized product exemption

2.35.2 All of the following must apply to a short-term securitized product distributed under section 2.35.1:

- (a) the short-term securitized product is of a series or class of securitized product to which all of the following apply:
- (i) it has a credit rating from not less than two designated rating organizations, or their respective DRO affiliate, and at least one of the credit ratings is at or above one of the following rating categories or is at or above a rating category that replaces one of the following rating categories:
- (A) R-1(high)(sf) if issued by DBRS Limited;
- (B) F1+sf if issued by Fitch, Inc.;
- (C) P-1(sf) if issued by Moody's Canada Inc.;
- (D) A-1(High)(sf) (Canada national scale) or A-1+(sf) (global scale) if issued by Standard & Poor's Ratings Services (Canada);
- (ii) it has no credit rating from a designated rating organization, or its DRO affiliate, that is below one of the following rating categories or that is below a rating category that replaces one of the following rating categories:
- (A) R-1(low)(sf) if issued by DBRS Limited;
- (B) F2sf if issued by Fitch, Inc.;
- (C) P-2(sf) if issued by Moody's Canada Inc.;
- (D) A-1(Low)(sf) (Canada national scale) or A-2(sf) (global scale) if issued by Standard & Poor's Ratings Services (Canada);
- (iii) the conduit has entered into one or more agreements that, subject to section 2.35.3, obligate one or more liquidity providers to provide funds to the conduit to enable the conduit to satisfy all of its obligations to pay principal or interest as that series or class of short-term securitized product matures;
- (iv) all of the following apply to each liquidity provider:
- (A) the liquidity provider is a deposit-taking institution;
- (B) the liquidity provider is regulated or approved to carry on business in Canada by one or both of the following:
1. the Office of the Superintendent of Financial Institutions (Canada);
 2. a government department or regulatory authority of Canada, or of a jurisdiction of Canada responsible for regulating deposit-taking institutions;
- (C) the liquidity provider has a rating from each of the designated rating organizations providing a rating on the short-term securitized product under subparagraph 2.35.2(a)(i), or their respective DRO affiliate, for its senior, unsecured short-term debt, none of which is dependent upon a guarantee by a third party, and each rating from such designated rating organizations, or their respective DRO affiliate, is at or above the following rating categories or is at or above a rating category that replaces one of the following rating categories:

1. _____ R-1(low) if issued by DBRS Limited;
 2. _____ F2 if issued by Fitch, Inc.;
 3. _____ P-2 if issued by Moody's Canada Inc.;
 4. _____ A-1(Low) (Canada national scale) or A-2 (global scale) if issued by Standard & Poor's Ratings Services (Canada);
- (b) _____ if the conduit has issued more than one series or class of short-term securitized product, the short-term securitized product to be distributed under section 2.35.1, when issued, will not in the event of bankruptcy, insolvency or winding-up of the conduit be subordinate in priority of claim to any other outstanding series or class of short-term securitized product issued by the conduit in respect of any asset pool backing the short-term securitized product to be distributed under section 2.35.1;
- (c) _____ the conduit has provided an undertaking to or has agreed in writing with the purchaser of the short-term securitized product or an agent, custodian or trustee appointed to act on behalf of purchasers of that series or class of short-term securitized product, that any asset pool of the conduit will consist only of one or more of the following:
- (i) _____ a bond;
 - (ii) _____ a mortgage;
 - (iii) _____ a lease;
 - (iv) _____ a loan;
 - (v) _____ a receivable;
 - (vi) _____ a royalty;
 - (vii) _____ any real or personal property securing or forming part of that asset pool.

Exceptions relating to liquidity agreements

2.35.3(1) Despite subparagraph 2.35.2(a)(iii), an agreement with a liquidity provider may provide that a liquidity provider is not obligated to advance funds in respect of a series or class of short-term securitized product distributed under section 2.35.1 if the conduit is subject to any of the following:

- (a) _____ bankruptcy, or insolvency proceedings under the *Bankruptcy and Insolvency Act* (Canada);
- (b) _____ an arrangement under the *Companies Creditors' Arrangement Act* (Canada);
- (c) _____ proceedings similar to those referred to in paragraph (a) or (b) under the laws of Canada or a jurisdiction of Canada or a foreign jurisdiction.

(2) Despite subparagraph 2.35.2(a)(iii), an agreement with a liquidity provider may provide that a liquidity provider is not obligated to advance funds in respect of a series or class of short-term securitized product distributed under section 2.35.1 that exceed the sum of the following:

- (a) _____ the aggregate value of the non-defaulted assets in the asset pool to which the agreement relates;
- (b) _____ the amount of credit enhancement applicable to the asset pool to which the agreement relates.

Disclosure requirements

2.35.4(1) A conduit that distributes a short-term securitized product under section 2.35.1 must, on or before the date a purchaser purchases the short-term securitized product, do all of the following:

- (a) _____ provide to or make reasonably available to the purchaser an information memorandum prepared in accordance with Form 45-106F7 *Information Memorandum for Short-term Securitized Products Distributed under Section 2.35.1*;

- (b) provide an undertaking to or agree in writing with the purchaser, or with an agent, custodian or trustee appointed to act on behalf of purchasers of that series or class of securitized product, to
 - (i) for so long as a short-term securitized product of that class remains outstanding, prepare the documents specified in subsections (5) and (6) within the time periods specified in those subsections, and
 - (ii) provide to or make reasonably available to each holder of a short-term securitized product of that series or class, the documents specified in subsections (5) and (6).

(2) Subsection (1) does not apply to a conduit distributing a short-term securitized product under section 2.35.1 if

- (a) the conduit has previously distributed a short-term securitized product of the same series or class as the short-term securitized product to be distributed,
- (b) in connection with that previous distribution the conduit prepared an information memorandum that complied with paragraph (1)(a), and
- (c) the conduit, on or before the time each purchaser in the current distribution purchases a short-term securitized product, does each of the following:
 - (i) provides to or makes reasonably available to the purchaser the information memorandum prepared in connection with the previous distribution;
 - (ii) provides to or makes reasonably available to the purchaser all documents specified in subsections (5) and (6) that have been prepared in respect of that series or class of short-term securitized product.

(3) A conduit must, on or before the 10th day following a distribution of a short-term securitized product under section 2.35.1, do each of the following:

- (a) provide to or make reasonably available to the securities regulator either of the following:
 - (i) the information memorandum required under paragraph (1)(a);
 - (ii) if the conduit is relying on subsection (2), the documents referred to in paragraph (c) of subsection (2);
- (b) subject to subsection (4), deliver to the securities regulator an undertaking that it will, in respect of that series or class of short-term securitized product,
 - (i) provide to or make reasonably available to the securities regulator the documents specified in subsections (5) and (6), and
 - (ii) promptly deliver to the securities regulator each document specified in subsections (5) and (6) that is requested by the securities regulator.

(4) Paragraph (3)(b) does not apply if

- (a) the conduit has delivered an undertaking to the securities regulator under paragraph (3)(b) in respect of a previous distribution of a securitized product that is of the same series or class as the short-term securitized product currently being distributed, and
- (b) the undertaking referred to in paragraph (a) applies in respect of the current distribution.

(5) For the purpose of subsection 2.35.4(1), the undertaking or agreement must require the conduit to prepare a monthly disclosure report relating to the series or class of short-term securitized product that is

- (a) prepared in accordance with Form 45-106F8 *Monthly Disclosure Report for Short-term Securitized Products Distributed under Section 2.35.1*,
- (b) current as at the last business day of each month, and

- (c) no later than 50 days from the end of the most recent month to which it relates, made reasonably available to each holder of that series or class of the conduit's short-term securitized product.

(6) For the purpose of subsection 2.35.4(1), the undertaking or agreement must require the conduit to prepare a timely disclosure report, providing the information specified in subsection (7), in each of the following circumstances:

- (a) a downgrade in one or more of the conduit's credit ratings;
- (b) failure by the conduit to make any required payment of principal or interest on the series or class of short-term securitized product;
- (c) the occurrence of a change or event that the conduit would reasonably expect to have a significant adverse effect on the payment of principal or interest on the series or class of short-term securitized product.

(7) The timely disclosure report referred to in subsection (6) must

- (a) describe the nature and substance of the change or event and the actual or potential effect on any payment of principal or interest to a holder of that series or class of short-term securitized product, and
- (b) be provided to or made reasonably available to holders of that series or class of short-term securitized product no later than the second business day after the conduit becomes aware of the change or event.

Mortgages

This provision is not cited in any Appendix of National Instrument 45-102 *Resale of Securities*. These securities are free trading.

2.36 (1) In this section, “**syndicated mortgage**” means a mortgage in which 2 or more persons participate, directly or indirectly, as a lender in a debt obligation that is secured by the mortgage.

(2) Except in Ontario, and subject to subsection (3), the prospectus requirement does not apply to a distribution of a mortgage on real property in a jurisdiction of Canada by a person who is registered or licensed, or exempted from registration or licensing, under mortgage brokerage or mortgage dealer legislation of that jurisdiction.

(3) In Alberta, British Columbia, Manitoba, Québec and Saskatchewan, subsection (2) does not apply to a distribution of a syndicated mortgage.

In Ontario, ~~paragraph 73(1)~~ subsection 73.2(3) of the *Securities Act* (Ontario) provides a similar exemption to the exemption in subsection (2).

Personal property security legislation

This provision is not cited in any Appendix of National Instrument 45-102 *Resale of Securities*. These securities are free trading.

2.37 Except in Ontario, the prospectus requirement does not apply to a distribution to a person, other than an individual, in a security evidencing indebtedness secured by or under a security agreement, secured in accordance with personal property security legislation of a jurisdiction of Canada that provides for the granting of security in personal property.

In Ontario, ~~paragraph 73~~ subsection 73.2(1)(a) of the *Securities Act* (Ontario) provides a similar exemption to the exemption in section 2.37.

Not for profit issuer

This provision is not cited in any Appendix of National Instrument 45-102 *Resale of Securities*. These securities are free trading.

2.38 The prospectus requirement does not apply to a distribution by an issuer that is organized exclusively for educational, benevolent, fraternal, charitable, religious or recreational purposes and not for profit in a security of its own issue if

- (a) no part of the net earnings benefit any security holder of the issuer, and
- (b) no commission or other remuneration is paid in connection with the sale of the security.

Variable insurance contract

This provision is not cited in any Appendix of National Instrument 45-102 *Resale of Securities*. These securities are free trading.

2.39 (1) In this section,

- (a) “**contract**” “**group insurance**”, “**insurance company**”, “**life insurance**” and “**policy**” have the respective meanings assigned to them in the legislation for a jurisdiction referenced in Appendix A.
- (b) “**variable insurance contract**” means a contract of life insurance under which the interest of the purchaser is valued for purposes of conversion or surrender by reference to the value of a proportionate interest in a specified portfolio of assets.

(2) The prospectus requirement does not apply to a distribution of a variable insurance contract by an insurance company if the variable insurance contract is

- (a) a contract of group insurance,
- (b) a whole life insurance contract providing for the payment at maturity of an amount not less than 75% of the premium paid up to age 75 years for a benefit payable at maturity,
- (c) an arrangement for the investment of policy dividends and policy proceeds in a separate and distinct fund to which contributions are made only from policy dividends and policy proceeds, or
- (d) a variable life annuity.

RRSP/RRIF/TFSA

Refer to Appendix D and Appendix E of National Instrument 45-102 *Resale of Securities*. The resale restriction is determined by the exemption under which the security was first acquired.

2.40 The prospectus requirement does not apply to a distribution of a security between

- (a) an individual or an associate of the individual, and
- (b) a RRSP, RRIF, or TFSA
 - (i) established for or by the individual, or
 - (ii) under which the individual is a beneficiary.

Schedule III banks and cooperative associations – evidence of deposit

This provision is not cited in any Appendix of National Instrument 45-102 *Resale of Securities*. These securities are free trading.

2.41 Except in Ontario, the prospectus requirement does not apply to a distribution of an evidence of deposit issued by a Schedule III bank or an association governed by the *Cooperative Credit Associations Act* (Canada).

In Ontario, clause (e) of the definition of “security” in subsection 1(1) of the *Securities Act* (Ontario) excludes these evidences of deposit from the definition of “security”.

Conversion, exchange, or exercise

Subsection (1)(a) is cited in Appendix D and Appendix E of National Instrument 45-102 *Resale of Securities*. Resale restriction is determined by the exemption under which the previously issued security was first acquired.

Subsection (1)(b) is cited in Appendix E of National Instrument 45-102 *Resale of Securities*. First trades are subject to a seasoning period on resale, unless the requirements of section 2.10 of NI 45-102 are met.

2.42 (1) The prospectus requirement does not apply to a distribution by an issuer if

- (a) the issuer distributes a security of its own issue to a security holder of the issuer in accordance with the terms and conditions of a security previously issued by that issuer, or
- (b) subject to subsection (2), the issuer distributes a security of a reporting issuer held by it to a security holder of the issuer in accordance with the terms and conditions of a security previously issued by that issuer.

(2) Subsection (1)(b) does not apply unless

- (a) the issuer has given the regulator or, in Québec, the securities regulatory authority, prior written notice stating the date, amount, nature and conditions of the distribution, and
- (b) the regulator or, in Québec, the securities regulatory authority, has not objected in writing to the distribution within 10 days of receipt of the notice referred to in paragraph (a) or, if the regulator or securities regulatory authority objects to the distribution, the issuer must deliver to the regulator or securities regulatory authority information relating to the securities that is satisfactory to and accepted by the regulator or securities regulatory authority.

Self-directed registered educational savings plans

This provision is not cited in any Appendix of National Instrument 45-102 *Resale of Securities*. These securities are free trading.

2.43 The prospectus requirement does not apply to a distribution of a self-directed RESP to a subscriber if

- (a) the distribution is conducted by
 - (i) a dealing representative of a mutual fund dealer who is acting on behalf of the mutual fund dealer,
 - (ii) a Canadian financial institution, or,
 - (iii) in Ontario, a financial intermediary, and
- (b) the self-directed RESP restricts its investments in securities to securities in which the person who distributes the self-directed RESP is permitted to distribute.

PART 3: REPEALED [~~B.C. REG. 227/2009~~]

Under section 8.5 of this Instrument, Part 3 was no longer available in any jurisdiction. In British Columbia, Part 3 was repealed by B.C. Reg. 227/2009. All other jurisdictions will repeal Part 3 in these amendments.

PART 4: CONTROL BLOCK DISTRIBUTIONS**Control block distributions**

4.1 (1) In this Part,

“**control block distribution**” means a trade to which the provisions of securities legislation listed in Appendix B apply.

(2) Terms defined or interpreted in National Instrument 62-103 *The Early Warning System and Related Take-over Bid and Insider Reporting Issues* and used in this Part have the same meaning as is assigned to them in that Instrument.

(3) The prospectus requirement does not apply to a control block distribution by an eligible institutional investor of a reporting issuer’s securities if

- (a) the eligible institutional investor
 - (i) has filed the reports required under the early warning requirements or files the reports required under Part 4 of National Instrument 62-103 *The Early Warning System and Related Take-over Bid and Insider Reporting Issues*,
 - (ii) does not have knowledge of any material fact or material change with respect to the reporting issuer that has not been generally disclosed,
 - (iii) does not receive in the ordinary course of its business and investment activities knowledge of any material fact or material change with respect to the reporting issuer that has not been generally disclosed, and
 - (iv) either alone or together with any joint actors, does not possess effective control of the reporting issuer,
- (b) there are no directors or officers of the reporting issuer who were, or could reasonably be seen to have been, selected, nominated or designated by the eligible institutional investor or any joint actor,
- (c) the control block distribution is made in the ordinary course of business or investment activity of the eligible institutional investor,
- (d) securities legislation would not require the securities to be held for a specified period of time if the trade were not a control block distribution,
- (e) no unusual effort is made to prepare the market or to create a demand for the securities, and
- (f) no extraordinary commission or consideration is paid in respect of the control block distribution.

(4) An eligible institutional investor that makes a distribution in reliance on subsection (3) must file a letter within 10 days after the distribution that describes the date and size of the distribution, the market on which it was made and the price at which the securities being distributed were sold.

Distributions by a control person after a take-over bid

4.2 (1) Subject to subsection (2), the prospectus requirement does not apply to a distribution in a security from the holdings of a control person acquired under a take-over bid for which a take-over bid circular was issued and filed if

- (a) the issuer whose securities are being acquired under the take-over bid has been a reporting issuer for at least 4 months at the date of the take-over bid,

- (b) the intention to make the distribution is disclosed in the take-over bid circular issued in respect of the take-over bid,
- (c) the distribution is made within the period beginning on the date of the expiry of the bid and ending 20 days after that date,
- (d) a notice of intention to distribute securities in Form 45-102F1 *Notice of Intention to Distribute Securities under Section 2.8 of NI 45-102 Resale of Securities* under National Instrument 45-102 *Resale of Securities* is filed before the distribution,
- (e) an insider report of the distribution in Form 55-102F2 *Insider Report* or Form 55-102F6 *Insider Report*, as applicable, under National Instrument 55-102 *System for Electronic Disclosure by Insiders (SEDI)* is filed within 3 days after the completion of the distribution,
- (f) no unusual effort is made to prepare the market or to create a demand for the security, and
- (g) no extraordinary commission or consideration is paid in respect of the distribution.

(2) A control person referred to in subsection (1) is not required to comply with subsection (1) (b) if

- (a) another person makes a competing take-over bid for securities of the issuer for which the take-over bid circular is issued, and
- (b) the control person sells those securities to that other person for a consideration that is not greater than the consideration offered by that other person under its take-over bid.

PART 5: OFFERINGS BY TSX VENTURE EXCHANGE OFFERING DOCUMENT

Application and interpretation

5.1 (1) This Part does not apply in Ontario.

(2) In this Part

“**exchange policy**” means Exchange Policy 4.6 – *Public Offering by Short Form Offering Document* and Exchange Form 4H – *Short Form Offering Document*, of the TSX Venture Exchange as amended from time to time;

“**gross proceeds**” means the gross proceeds that are required to be paid to the issuer for listed securities distributed under a TSX Venture exchange offering document;

“**listed security**” means a security of a class listed on the TSX Venture Exchange;

“**prior exchange offering**” means a distribution of securities by an issuer under a TSX Venture exchange offering document that was completed during the 12-month period immediately preceding the date of the TSX Venture exchange offering document;

“**subsequently triggered report**” means a material change report that must be filed no later than 10 days after a material change under securities legislation as a result of a material change that occurs after the date the TSX Venture exchange offering document is certified but before a purchaser enters into an agreement of purchase and sale;

“**TSX Venture Exchange**” means the TSX Venture Exchange Inc.;

“**TSX Venture exchange offering document**” means an offering document that complies with the exchange policy;

“**warrant**” means a warrant of an issuer distributed under a TSX Venture exchange offering document that entitles the holder to acquire a listed security or a portion of a listed security of the same issuer.

TSX Venture Exchange offering

Refer to Appendix D of National Instrument 45-102 *Resale of Securities*. These securities are free trading unless the security is acquired by

- (i) a purchaser that, at the time the security was acquired, was an insider or promoter of the issuer of the security, an underwriter of the issuer, or a member of the underwriter's professional group, or**
- (ii) any other purchaser in excess of \$40 000 for the portion of the securities in excess of \$40 000.**

The first trade by purchasers under (i) and (ii) are subject to a restricted period.

5.2 The prospectus requirement does not apply to a distribution by an issuer in a security of its own issue if

- (a) the issuer has filed an AIF in a jurisdiction of Canada,
- (b) the issuer is a SEDAR filer,
- (c) the issuer is a reporting issuer in a jurisdiction of Canada and has filed in a jurisdiction of Canada
 - (i) a TSX Venture exchange offering document,
 - (ii) all documents required to be filed under the securities legislation of that jurisdiction, and
 - (iii) any subsequently triggered report,
- (d) the distribution is of listed securities or units consisting of listed securities and warrants,
- (e) the issuer has filed with the TSX Venture Exchange a TSX Venture exchange offering document in respect of the distribution, that
 - (i) incorporates by reference the following documents of the issuer filed with the securities regulatory authority in any jurisdiction of Canada:
 - A) the AIF;
 - B) the most recent annual financial statements and the MD&A relating to those financial statements;
 - C) all unaudited interim financial reports and the MD&A relating to those financial reports, filed after the date of the AIF but before or on the date of the TSX Venture exchange offering document;
 - D) all material change reports filed after the date of the AIF but before or on the date of the TSX Venture exchange offering document; and
 - E) all documents required under National Instrument 43-101 *Standards of Disclosure for Mineral Projects* and National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* filed on or after the date of the AIF but before or on the date of the TSX Venture exchange offering document,
 - (ii) deems any subsequently triggered report required to be delivered to a purchaser under this Part to be incorporated by reference,
 - (iii) grants to purchasers contractual rights of action in the event of a misrepresentation, as required by the exchange policy,
 - (iv) grants to purchasers contractual rights of withdrawal, as required by the exchange policy, and
 - (v) contains all the certificates required by the exchange policy,
- (f) the distribution is conducted in accordance with the exchange policy,

- (g) the issuer or the underwriter delivers the TSX Venture exchange offering document and any subsequently triggered report to each purchaser
 - (i) before the issuer or the underwriter enters into the written confirmation of purchase and sale resulting from an order or subscription for securities being distributed under the TSX Venture exchange offering document, or
 - (ii) not later than midnight on the 2nd business day after the agreement of purchase and sale is entered into,
- (h) the listed securities issued under the TSX Venture exchange offering document, when added to the listed securities of the same class issued under prior exchange offerings, do not exceed
 - (i) the number of securities of the same class outstanding immediately before the issuer distributes securities of the same class under the TSX Venture exchange offering document, or
 - (ii) the number of securities of the same class outstanding immediately before a prior exchange offering,
- (i) the gross proceeds under the TSX Venture exchange offering document, when added to the gross proceeds from prior exchange offerings do not exceed \$2 million,
- (j) no purchaser acquires more than 20% of the securities distributed under the TSX Venture exchange offering document, and
- (k) no more than 50% of the securities distributed under the TSX Venture exchange offering document are subject to section 2.5 of National Instrument 45-102 *Resale of Securities*.

Underwriter obligations

5.3 An underwriter that qualifies as a “sponsor” under TSX Venture Exchange Policy 2.2 – *Sponsorship and Sponsorship Requirements* as amended from time to time must sign the TSX Venture exchange offering document and comply with TSX Venture Exchange Appendix 4A – *Due Diligence Report* in connection with the distribution.

PART 6: REPORTING REQUIREMENTS

Report of exempt distribution

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

- (a) section 2.3 [*Accredited investor*] or, in Ontario, section 73.3 of the *Securities Act (Ontario)* [*Accredited investor*];
- (b) section 2.5 [*Family, friends and business associates*];
- (c) subsection 2.9 (1) or (2) [*Offering memorandum for Alberta, B.C., Manitoba, New Brunswick, Nova Scotia, Newfoundland and Labrador, Northwest Territories, Nunavut, Prince Edward Island, Québec, Saskatchewan and Yukon*];
- (d) section 2.10 [*Minimum amount investment*];
- (e) section 2.12 [*Asset acquisition*];
- (f) section 2.13 [*Petroleum, natural gas and mining properties*];
- (g) section 2.14 [*Securities for debt*];
- (h) section 2.19 [*Additional investment in investment funds*];
- (i) section 2.30 [*Isolated distribution by issuer*];
- (j) section 5.2 [*TSX Venture Exchange offering*].

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

When report not required

6.2 (1) An issuer is not required to file a report under section 6.1(1)(a) [*Report of exempt distribution*] for a distribution of a debt security of its own issue or, concurrently with the distribution of the debt security, an equity security of its own issue, to a Canadian financial institution or a Schedule III bank.

(2) An investment fund is not required to file a report under section 6.1 [*Report of exempt distribution*] for a distribution under section 2.3 [*Accredited investor*], section 2.10 [*Minimum amount investment*] or section 2.19 [*Additional investment in investment funds*], or section 73.3 of the *Securities Act (Ontario)* [*Accredited investor*], if the investment fund files the report not later than 30 days after the financial year-end of the investment fund.

Required form of report of exempt distribution

6.3 (1) The required form of report under section 6.1 [*Report of exempt distribution*] is:

- (a) Form 45-106F1 in all jurisdictions except British Columbia; and
- (b) Form 45-106F6 in British Columbia.

(2) Except in Manitoba, an issuer that makes a distribution under an exemption from a prospectus requirement not provided for in this Instrument is exempt from the requirements in securities legislation to file a report of exempt trade or exempt distribution in the required form if the issuer files a report of exempt distribution in accordance with Form 45-106F1 or, in British Columbia, Form 45-106F6.

Required form of offering memorandum

6.4 (1) The required form of offering memorandum under section 2.9 ~~or section 3.9~~ [*Offering memorandum*] is Form 45-106F2.

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

Required form of risk acknowledgement

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

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

(2) In Saskatchewan, the required form of risk acknowledgement under section 2.6 ~~or section 3.6~~ [*Family, friends and business associates – Saskatchewan*] is Form 45-106F5.

Use of information in Form 45-106F6 Schedule I – British Columbia

6.6 A person must not, directly or indirectly, use the information in Schedule I of a completed Form 45-106F6, in whole or in part, for any purpose other than research concerning the issuer for the person's own investment purpose.

PART 7: EXEMPTION

Exemption

7.1 (1) Subject to subsection (2), the regulator or the securities regulatory authority may grant an exemption to this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

(2) In Ontario, only the regulator may grant an exemption and only from Part 6, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

(3) Except in Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction.

PART 8: TRANSITIONAL, COMING INTO FORCE

Additional investment – investment funds – exemption from prospectus requirement

8.1 The prospectus requirement does not apply to a distribution by an investment fund in a security of its own issue to a purchaser that initially acquired the security as principal before this Instrument came into force if

- (a) the security was initially acquired under any of the following provisions:
 - (i) in Alberta, sections 86(e) and 131(1)(d) of the *Securities Act* (Alberta) as they existed prior to their repeal by sections 9(a) and 13 of the *Securities Amendment Act* (Alberta), 2003 SA c.32 and sections 66.2 and 122.2 of the *Alberta Securities Commission Rules (General)*;
 - (ii) in British Columbia, sections 45(2) (5) and (22), and 74(2) (4) and (19) of the *Securities Act* (British Columbia),
 - (iii) in Manitoba, sections 19(3) and 58(1)(a) of the *Securities Act* (Manitoba) and section 90 of the *Securities Regulation MR 491/88R*;
 - (iv) in New Brunswick, section 2.8 of Local Rule 45-501 *Prospectus and Registration Exemptions*;
 - (v) in Newfoundland and Labrador, sections 36(1)(e) and 73(1)(d) of the *Securities Act* (Newfoundland and Labrador);
 - (vi) in Nova Scotia, sections 41(1)(e) and 77(1)(d) of the *Securities Act* (Nova Scotia);
 - (vii) in Northwest Territories, section 3(c) and (z) of Blanket Order No. 1;
 - (viii) in Nunavut, section 3(c) and (z) of Blanket Order No. 1;
 - (ix) in Ontario, sections 35(1)5 and 72(1)(d) of the *Securities Act* (Ontario) and section 2.12 of Ontario Securities Commission Rule 45-501 *Exempt Distributions* that came into force on January 12, 2004;
 - (x) in Prince Edward Island, section 2(3)(d) of the *Securities Act* (Prince Edward Island) and Prince Edward Island Local Rule 45-512 -Exempt Distributions – Exemption for Purchase of Mutual Fund Securities;
 - (xi) in Québec, section 51 and 155.1(2) of the *Securities Act* (Québec);
 - (xii) in Saskatchewan, sections 39(1)(e) and 81(1)(d) of the *The Securities Act, 1988* (Saskatchewan).
- (b) the distribution is of a security of the same class or series as the initial distribution, and
- (c) the security holder, as at the date of the distribution, holds securities of the investment fund that have
 - (i) an acquisition cost of not less than the minimum amount prescribed by securities legislation referred to in paragraph (a) under which the initial distribution was conducted, or
 - (ii) a net asset value of not less than the minimum amount prescribed by securities legislation referred to in paragraph (a) under which the initial distribution was conducted.

Repealed

8.1.1 Repealed. ~~[B.C. Reg. 227/2009]~~

In British Columbia section 8.1.1 was repealed by B.C. Reg. 227/2009. All other jurisdictions will repeal section 8.1.1 in these amendments.

Definition of “accredited investor” – investment fund

8.2 An investment fund that distributed its securities to persons pursuant to any of the following provisions is an investment fund under paragraph (n)(ii) of the definition of “accredited investor”:

- (a) in Alberta, sections 86(e) and 131(1)(d) of the *Securities Act* (Alberta) as they existed prior to their repeal by sections 9(a) and 13 of the *Securities Amendment Act* (Alberta), 2003 SA c.32 and sections 66.2 and 122.2 of the *Alberta Securities Commission Rules (General)*;
- (b) in British Columbia, sections 45(2) (5) and (22), and 74(2) (4) and (19) of the *Securities Act* (British Columbia),
- (c) in Manitoba, sections 19(3) and 58(1)(a) of the *Securities Act* (Manitoba) and section 90 of the *Securities Regulation* MR 491/88R;
- (d) in New Brunswick, section 2.8 of Local Rule 45-501 *Prospectus and Registration Exemptions*;
- (e) in Newfoundland and Labrador, sections 36(1)(e) and 73(1)(d) of the *Securities Act* (Newfoundland and Labrador);
- (f) in Nova Scotia, sections 41(1)(e) and 77(1)(d) of the *Securities Act* (Nova Scotia);
- (g) in Northwest Territories, section 3(c) and (z) of Blanket Order No. 2;
- (h) in Nunavut, section 3(c) and (z) of Blanket Order No. 3;
- (i) in Ontario, sections 35(1)5 and 72(1)(d) of the *Securities Act* (Ontario) and section 2.12 of Ontario Securities Commission Rule 45-501 *Exempt Distributions* that came into force on January 12, 2004 ;
- (j) in Prince Edward Island, section 2(3)(d) of the *Securities Act* (Prince Edward Island) and Prince Edward Island Local Rule 45-512 *-Exempt Distributions – Exemption for Purchase of Mutual Fund Securities*;
- (k) in Québec, section 51 and 155.1(2) of the *Securities Act* (Québec);
- (l) in Saskatchewan, sections 39(1)(e) and 81(1)(d) of the *The Securities Act, 1988* (Saskatchewan).

Transition – Closely-held issuer – exemption from prospectus requirement

8.3 (1) In this section,

“2001 OSC Rule 45-501” means the Ontario Securities Commission Rule 45-501 *Exempt Distributions* that came into force on November 30, 2001;

“2004 OSC Rule 45-501” means the Ontario Securities Commission Rule 45-501 *Exempt Distributions* that came into force on January 12, 2004;

“closely-held issuer” has the same meaning as in 2004 OSC Rule 45-501;

(2) The prospectus requirement does not apply to a distribution of a security that was previously distributed by a closely-held issuer under section 2.1 of 2001 OSC Rule 45-501, or under section 2.1 of 2004 OSC Rule 45-501, to a person who purchases the security as principal and is

- (a) a director, officer, employee, founder or control person of the issuer,
- (b) a spouse, parent, grandparent, brother, sister or child of a director, executive officer, founder or control person of the issuer,
- (c) a parent, grandparent, brother, sister or child of the spouse of a director, executive officer, founder or control person of the issuer,
- (d) a close personal friend of a director, executive officer, founder or control person of the issuer,
- (e) a close business associate of a director, executive officer, founder or control person of the issuer,

- (f) a spouse, parent, grandparent, brother, sister or child of the selling security holder or of the selling security holder's spouse,
- (g) a security holder of the issuer,
- (h) an accredited investor,
- (i) a person of which a majority of the voting securities are beneficially owned by, or a majority of the directors are, persons described in paragraphs (a) to (h),
- (j) a trust or estate of which all of the beneficiaries or a majority of the trustees or executors are persons described in paragraphs (a) to (h), or
- (k) a person that is not the public.

Repealed

8.3.1 Repealed. [~~B.C. Reg. 227/2009~~]

In British Columbia section 8.3.1 was repealed by B.C. Reg. 227/2009. All other jurisdictions will repeal section 8.3.1 in these amendments.

Transition – reinvestment plan

8.4 Despite subsection 2.2(5) ~~or 3.2(5)~~, if an issuer's reinvestment plan was established before September 28, 2009, and provides for the distribution of a security that is of a different class or series than the class or series of the security to which the dividend or distribution is attributable, the issuer or the trustee, custodian or administrator of the plan must provide to each person who is already a participant the description of the material attributes and characteristics of the securities traded under the plan or notice of a source from which the participant can obtain the information not later than 140 days after the next financial year end of the issuer ending on or after September 28, 2009.

Application of Part 3 of this instrument

8.5 ~~On March 27, 2010, Part 3 does not apply in any jurisdiction.~~ Repealed.

In British Columbia section 8.5 was repealed by B.C. Reg. 227/2009. All other jurisdictions will repeal section 8.5 in these amendments.

Repeal of former instrument

8.6 National Instrument 45-106 *Prospectus and Registration Exemptions* which came into force on September 14, 2005 is repealed on September 28, 2009.

Effective date

8.7(1) Except in Ontario, this Instrument comes into force on September 28, 2009.

(2) In Ontario, this Instrument comes into force on the later of the following:

- (a) September 28, 2009;
- (b) the day on which sections 5 and 11, subsection 12(1) and section 13 of Schedule 26 of the *Budget Measures Act, 2009* are proclaimed in force.

Appendix A
to
National Instrument 45-106 ~~Prospectus and Registration Exemptions~~
Variable insurance contract exemption
(section 2.39)

JURISDICTION	LEGISLATION REFERENCE
ALBERTA	<p>“contract of insurance”, “group insurance”, “life insurance”, and “policy” have the respective meanings assigned to them under the <i>Insurance Act</i> (Alberta) and the regulations under that Act.</p> <p>“insurance company” means an insurer as defined in the <i>Insurance Act</i> (Alberta) that is licensed under that Act.</p>
BRITISH COLUMBIA	<p>“contract”, “group insurance”, and “policy” have the respective meanings assigned to them under the <i>Insurance Act</i> (British Columbia) and the regulations under that Act.</p> <p>“life insurance” has the respective meaning assigned to it under the <i>Financial Institutions Act</i> (British Columbia) and the regulations under that Act.</p> <p>“insurance company” means an insurance company, or an extraprovincial insurance corporation, authorized to carry on insurance business under the <i>Financial Institutions Act</i> (British Columbia).</p>
MANITOBA	<p>“contract of insurance”, “group insurance”, “life insurance”, and “policy” have the respective meanings assigned to them under the <i>Insurance Act</i> (Manitoba) and the regulations under that Act.</p> <p>“insurance company” means an insurer as defined in the <i>Insurance Act</i> (Manitoba) that is licensed under that Act.</p>
NEW BRUNSWICK	<p>“contract of insurance”, “group insurance”, “life insurance”, and “policy” have the respective meanings assigned to them under the <i>Insurance Act</i> (New Brunswick) and the regulations under that Act.</p> <p>“insurance company” means an insurer as defined in the <i>Insurance Act</i> (New Brunswick) that is licensed under that Act.</p>
NORTHWEST TERRITORIES	<p>“contract”, “group insurance”, “life insurance”, and “policy” have the respective meanings assigned to them under the <i>Insurance Act</i> (Northwest Territories).</p> <p>“insurance company” means an insurer as defined in the <i>Insurance Act</i> (Northwest Territories) that is licensed under that Act.</p>
NOVA SCOTIA	<p>“contract”, “group insurance”, “life insurance”, and “policy” have the respective meanings assigned to them under the <i>Insurance Act</i> (Nova Scotia) and the regulations under that Act.</p> <p>“insurance company” has the same meaning as in section 3(1)(a) of the <i>General Securities Rules</i> (Nova Scotia).</p>
ONTARIO	<p>“contract”, “group insurance”, and “policy” have the respective meanings assigned to them in section 1 and 171 of the <i>Insurance Act</i> (Ontario).</p> <p>“life insurance” has the respective meaning assigned to it in Schedule 1 by Order of the Superintendent of Financial Services.</p> <p>“insurance company” has the same meaning as in section 1(2) of the <i>General Regulation</i> (Ont. Reg. 1015).</p>

QUÉBEC	<p>“contract of insurance”, “group insurance”, “life insurance”, and “policy” have the respective meanings assigned to them under the Civil Code of Québec.</p> <p>“insurance company” means an insurer holding a license under the Act respecting insurance (R.S.Q., c. A-32).</p>
PRINCE EDWARD ISLAND	<p>“contract”, “group insurance”, “insurer”, “life insurance and “policy” have the respective meanings assigned to them in sections 1 and 174 of the <i>Insurance Act</i> (Prince Edward Island).</p> <p>“insurance company” means an insurance company licensed under the <i>Insurance Act</i> (R.S.P.E.I. 1988, Cap. I-4),</p>
SASKATCHEWAN	<p>“contract”, “life insurance” and “policy” have the respective meanings assigned to them in section 2 of <i>The Saskatchewan Insurance Act</i> (Saskatchewan).</p> <p>“group insurance” has the respective meaning assigned to it in section 133 of <i>The Saskatchewan Insurance Act</i> (Saskatchewan).</p> <p>“insurance company” means an issuer licensed under <i>The Saskatchewan Insurance Act</i> (Saskatchewan).</p>
YUKON	<p>“contract”, “group”, “life insurance” and “policy” have the respective meanings assigned to them under the <i>Insurance Act</i> (Yukon) and the regulations made under that Act.</p> <p>“insurance company” means an insurer as defined in the <i>Insurance Act</i> (Yukon) that is licensed under that Act.</p>

Appendix B
to
National Instrument 45-106 *Prospectus and Registration Exemptions*

Control Block Distributions
(PART 4)

JURISDICTION	SECURITIES LEGISLATION REFERENCE
ALBERTA	Section 1(p)(iii) of the <i>Securities Act</i> (Alberta)
BRITISH COLUMBIA	Paragraph (c) of the definition of “distribution” contained in section 1 of the <i>Securities Act</i> (British Columbia)
MANITOBA	Section 1(b) of the definition of “primary distribution to the public” contained in subsection 1(1) of the <i>Securities Act</i> (Manitoba)
NEW BRUNSWICK	Paragraph (c) of the definition of “distribution” contained in section 1(1) of the <i>Securities Act</i> (New Brunswick)
NEWFOUNDLAND AND LABRADOR	Section 2(1)(1)(iii) of the <i>Securities Act</i> (Newfoundland and Labrador)
NORTHWEST TERRITORIES	Paragraph (c) of the definition of “distribution” in subsection 1(1) of the <i>Securities Act</i> (Northwest Territories)
NOVA SCOTIA	Section 2(1)(1)(iii) of the <i>Securities Act</i> (Nova Scotia)
ONTARIO	Paragraph (c) of the definition of “distribution” contained in subsection 1(1) of the <i>Securities Act</i> (Ontario)
PRINCE EDWARD ISLAND	Section 1(f)(iii) of the <i>Securities Act</i> (Prince Edward Island)
QUÉBEC	Paragraph 9 of the definition of “distribution” contained section 5 of the <i>Securities Act</i> (Québec)
SASKATCHEWAN	Section 2(1)(r)(iii) of <i>The Securities Act, 1988</i> (Saskatchewan)
YUKON	Paragraph (c) of the definition of “distribution” in subsection 1(1) of the <i>Securities Act</i> (Yukon)

[Amended ~~September 22, 2014~~ May 5, 2015]

**ANNEX C3
FORM 45-106F9
FORM FOR INDIVIDUAL ACCREDITED INVESTORS**

WARNING!

This investment is risky. Don't invest unless you can afford to lose all the money you pay for this investment.

SECTION 1 TO BE COMPLETED BY THE ISSUER OR SELLING SECURITY HOLDER	
1. About your investment	
Type of securities: <i>[Instruction: Include a short description, e.g., common shares.]</i>	Issuer:
Purchased from: <i>[Instruction: Indicate whether securities are purchased from the issuer or a selling security holder.]</i>	
SECTIONS 2 TO 4 TO BE COMPLETED BY THE PURCHASER	
2. Risk acknowledgement	
This investment is risky. Initial that you understand that:	Your initials
Risk of loss – You could lose your entire investment of \$ _____. <i>[Instruction: Insert the total dollar amount of the investment.]</i>	
Liquidity risk – You may not be able to sell your investment quickly – or at all.	
Lack of information – You may receive little or no information about your investment.	
Lack of advice – You will not receive advice from the salesperson about whether this investment is suitable for you unless the salesperson is registered. The salesperson is the person who meets with, or provides information to, you about making this investment. To check whether the salesperson is registered, go to www.aretheyregistered.ca .	
3. Accredited investor status	
You must meet at least one of the following criteria to be able to make this investment. Initial the statement that applies to you. (You may initial more than one statement.) The person identified in section 6 is responsible for ensuring that you meet the definition of accredited investor. That person, or the salesperson identified in section 5, can help you if you have questions about whether you meet these criteria.	Your initials
• Your net income before taxes was more than \$200,000 in each of the 2 most recent calendar years, and you expect it to be more than \$200,000 in the current calendar year. (You can find your net income before taxes on your personal income tax return.)	
• Your net income before taxes combined with your spouse's was more than \$300,000 in each of the 2 most recent calendar years, and you expect your combined net income before taxes to be more than \$300,000 in the current calendar year.	
• Either alone or with your spouse, you own more than \$1 million in cash and securities, after subtracting any debt related to the cash and securities.	
• Either alone or with your spouse, you have net assets worth more than \$5 million. (Your net assets are your total assets (including real estate) minus your total debt.)	

4. Your name and signature	
By signing this form, you confirm that you have read this form and you understand the risks of making this investment as identified in this form.	
First and last name (please print):	
Signature:	Date:
SECTION 5 TO BE COMPLETED BY THE SALESPERSON	
5. Salesperson information	
<i>[Instruction: The salesperson is the person who meets with, or provides information to, the purchaser with respect to making this investment. That could include a representative of the issuer or selling security holder, a registrant or a person who is exempt from the registration requirement.]</i>	
First and last name of salesperson (please print):	
Telephone:	Email:
Name of firm (if registered):	
SECTION 6 TO BE COMPLETED BY THE ISSUER OR SELLING SECURITY HOLDER	
6. For more information about this investment	
<p>For investment in a non-investment fund <i>[Insert name of issuer/selling security holder]</i> <i>[Insert address of issuer/selling security holder]</i> <i>[Insert contact person name, if applicable]</i> <i>[Insert telephone number]</i> <i>[Insert email address]</i> <i>[Insert website address, if applicable]</i></p> <p>For investment in an investment fund <i>[Insert name of investment fund]</i> <i>[Insert name of investment fund manager]</i> <i>[Insert address of investment fund manager]</i> <i>[Insert telephone number of investment fund manager]</i> <i>[Insert email address of investment fund manager]</i> <i>[If investment is purchased from a selling security holder, also insert name, address, telephone number and email address of selling security holder here]</i></p> <p>For more information about prospectus exemptions, contact your local securities regulator. You can find contact information at www.securities-administrators.ca.</p>	

Form instructions:

1. This form does not mandate the use of a specific font size or style but the font must be legible.
2. The information in sections 1, 5 and 6 must be completed before the purchaser completes and signs the form.
3. The purchaser must sign this form. Each of the purchaser and the issuer or selling security holder must receive a copy of this form signed by the purchaser. The issuer or selling security holder is required to keep a copy of this form for 8 years after the distribution.

**ANNEX D1
COMPANION POLICY 45-106CP
PROSPECTUS EXEMPTIONS**

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COMPANION POLICY 45-106CP
PROSPECTUS EXEMPTIONS

PART 1 – INTRODUCTION

National Instrument 45-106 *Prospectus Exemptions* (NI 45-106) provides: (i) exemptions from the prospectus requirement and (ii) one exemption from the issuer bid requirements. It does not provide exemptions from the requirement to be registered as a dealer, adviser or investment fund manager. National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103) contains some exemptions from the registration requirement.

1.1 Purpose

The purpose of this Companion Policy is to help users understand how the provincial and territorial securities regulatory authorities and regulators interpret or apply certain provisions of NI 45-106. This Companion Policy includes explanations, discussion and examples of the application of various parts of NI 45-106.

1.2 All distributions and other trades are subject to securities legislation

The securities legislation of a local jurisdiction applies to any trade in, or distribution of, a security in the local jurisdiction, whether or not the issuer of the security is a reporting issuer in that jurisdiction. Likewise, the definition of “trade” in securities legislation includes any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of a trade. A person who engages in these activities, or other trading activities, must comply with the securities legislation of each jurisdiction in which the trade or distribution occurs.

1.3 Multi-jurisdictional distributions

A distribution can occur in more than one jurisdiction. If it does, the person conducting the distribution must comply with the securities legislation of each jurisdiction in which the distribution occurs. For example, a distribution from a person in Alberta to a purchaser in British Columbia may be considered a distribution in both jurisdictions.

1.4 Other exemptions

In addition to the exemptions in NI 45-106, exemptions may also be available to persons under securities legislation of each local jurisdiction.

1.5 Discretionary relief

In addition to the exemptions contained in NI 45-106 and those available under securities legislation of a local jurisdiction, the securities regulatory authority or regulator in each jurisdiction has the discretion to grant exemptions from the prospectus requirement.

1.6 Registration business trigger for trading and advising

Securities legislation requires certain persons to be registered if they are any of the following:

- in the business of trading
- in the business of advising
- holding themselves out as being in the business of trading or advising
- acting as an underwriter
- acting as an investment fund manager

NI 31-103 sets out the requirements for registration as well as certain exemptions from these registration requirements.

Issuers relying on prospectus exemptions to distribute securities, or any selling agents they use, may be required to be registered. Companion Policy 31-103CP gives guidance to issuers on how to apply the registration business trigger.

1.7 Underwriters

Underwriters should not sell securities to the public without providing a prospectus. If an underwriter purchases securities with a view to distribution, the underwriter should purchase the securities under the prospectus exemption in section 2.33 of NI 45-106. If the underwriter purchases securities under this exemption, the first trade in the securities will be a distribution. As a result, the underwriter will only be able to resell the securities if it can rely on another exemption from the prospectus requirement, or if a prospectus is delivered to the purchasers of the securities.

There may be legitimate transactions where a dealer purchases securities under a prospectus exemption other than the exemption in section 2.33 of NI 45-106; however, these transactions are only appropriate when the dealer purchases the securities with investment intent and not with a view to distribution.

If a dealer purchases securities through a series of exempt transactions in order to avoid the obligation to deliver a prospectus, the transactions will be viewed as a whole to determine if they constitute a distribution. If a transaction is in effect an indirect distribution, a prospectus will be required to qualify the sale of the securities despite the fact that each interim step in the transaction could otherwise be completed under a prospectus exemption. Such indirect distributions cannot be legitimately structured under NI 45-106.

1.8 Persons created to use exemptions (“syndication”)

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

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

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

1.9 Responsibility for compliance and verifying purchaser status

(1) Determining whether an exemption is available

The prospectus exemptions in NI 45-106 set out specific terms and conditions that must be satisfied in order for the person relying on the exemption to distribute securities. The person relying on a prospectus exemption is responsible for determining whether the terms and conditions of the prospectus exemption are met. That person should retain all necessary documents to demonstrate that they properly relied on the exemption.

Some of the prospectus exemptions in NI 45-106 are available to both issuers and selling security holders. For purposes of this section, the term “seller” refers to the person relying on a prospectus exemption, whether an issuer or a selling security holder.

(2) Registration related requirements

Registered dealers and representatives have specific obligations under NI 31-103, including the “know your client,” “know your product” and suitability obligations. These obligations apply to securities traded on a marketplace, distributed under a prospectus or distributed under a prospectus exemption.

Registered dealers or representatives may be involved in distributions under prospectus exemptions in different ways. The registered dealer or representative may be acting on behalf of a seller in connection with a distribution using a prospectus exemption.

In both cases, the registered dealer or representative must not only establish that a prospectus exemption is available, it must also comply with its registration obligations. For example, even if a registered dealer or representative has determined that a purchaser qualifies as an accredited investor or eligible investor, the registered dealer or representative must still assess whether the investment is suitable for the purchaser.

(3) Exemptions based on purchaser characteristics

Some of the prospectus exemptions in NI 45-106 require the purchaser of the securities to meet certain characteristics or have certain relationships with a director, executive officer, founder or control person of the issuer. These exemptions include:

- Exemptions based on income or asset tests – The accredited investor exemption and the “eligible investor” test in the offering memorandum exemption in some jurisdictions require a purchaser to meet certain income or asset tests in order for securities to be sold in reliance on the exemption.
- Exemptions based on relationships – The private issuer exemption, the family, friends and business associates exemption and the “eligible investor” test in the offering memorandum exemption in some jurisdictions require a relationship between the purchaser and a director, executive officer, founder or control person of the issuer, such as that of a family member, close personal friend, or close business associate.

When distributing securities under these exemptions, the seller will have to obtain information from the purchaser in order to determine whether the purchaser has the requisite income, assets or relationship to meet the terms of the exemption.

It will not be sufficient for the seller to accept standard representations in a subscription agreement or an initial beside a category on Form 45-106F9 *Form for Individual Accredited Investors* unless the seller has taken reasonable steps to verify the representations made by the purchaser.

(4) Reasonable steps

Described below are procedures that a seller could implement in order to reasonably confirm that the purchaser meets the conditions for a particular exemption. Whether the types of steps are reasonable will depend on the particular facts and circumstances of the purchaser, the offering and the exemption being relied on, including:

- how the seller identified or located the potential purchaser
- what category of accredited investor or eligible investor the purchaser claims to meet
- what type of relationship the purchaser claims to have and with which director, executive officer, founder or control person of the issuer
- how much and what type of background information is known about the purchaser
- whether the person who meets with, or provides information to, the purchaser is registered

We expect a seller to be in a position to explain why certain steps were not taken or to be able to explain how alternative steps were reasonable in the circumstances. It is the seller that is relying on the prospectus exemption and it is the seller that is responsible to ensure the terms of the exemption are met. If the seller has any reservations about whether the purchaser qualifies under the exemption, the seller should not sell securities to the purchaser in reliance on that exemption.

(a) Understand the terms and conditions of the exemption

The seller should fully understand the terms and conditions of the exemption being relied on. “Understanding” includes being able to:

- Explain the terms and conditions – The seller must be able to explain to a purchaser the meaning of the terms and conditions of the particular exemption, including the difference between alternative qualification criteria for the same exemption.

For example, the accredited investor definition uses the terms “financial assets” and “net assets”. In some jurisdictions, the offering memorandum exemption also uses the term “net assets” as part of the eligible investor definition. A seller should be capable of explaining the meaning and differences between the two terms, including describing the specific assets and liabilities that form part of each calculation.

- Apply the specific facts of the purchaser to the terms and conditions – The terms “close personal friend” and “close business associate” used in some exemptions are difficult to define and can mean different things to different people. Sections 2.7 and 2.8 of this Companion Policy provide guidance on the key elements necessary to establish these types of relationships. We have not provided a “bright line” test for these relationships. A seller should understand the key elements of these relationships and be able to evaluate whether the relationship claimed by the purchaser meets those key elements.

(b) Establish appropriate policies and procedures

The seller is also responsible for confirming that all parties acting on behalf of the seller in a distribution understand the conditions that must be satisfied to rely on the exemption. This includes any employee, officer, director, agent, finder or other intermediary (whether registered or not) involved in the transaction.

We expect a seller to have policies and procedures in place to confirm that these other parties understand the exemption being relied on, are able to describe the terms of the exemption to purchasers and know what information and documentation must be obtained from purchasers to confirm the conditions of the exemption have been satisfied.

(c) Verify the purchaser meets the criteria set out in the exemption

Before discussing the details of an investment with a prospective purchaser, we expect the seller to obtain information that confirms the purchaser meets the criteria set out in the exemption. It would not be sufficient for a seller to rely solely on a form of subscription agreement or other document that only states: "I am an accredited investor" or "I am a friend of a director".

We would also have concerns if a seller only accepted detailed representations or an initial beside a category on the Form 45-106F9 *Form for Individual Accredited Investors* from the purchaser. In both cases, we expect the seller to take additional steps to confirm that the purchaser understood the meaning of what the purchaser was signing or initialing and that the purchaser was truthful in making the representation or initialing the category.

For example:

- Exemptions based on income or asset tests – To assess whether a purchaser is an accredited investor or eligible investor, we expect the seller to ask questions about the purchaser's net income, financial assets or net assets, or to ask other questions designed to elicit details about the purchaser's financial circumstances.

If the seller has concerns about the purchaser's responses, the seller should make further inquiries about the purchaser's financial circumstances. If the seller still questions the purchaser's eligibility, the seller could ask to see documentation that independently confirms the purchaser's claims.

- Exemptions based on relationships – If an exemption is based on the existence of a specific relationship between the purchaser and a principal of the issuer (such as that of a family member, "close personal friend" or "close business associate"), we expect the seller to ask questions designed to confirm the nature and length of the relationship. The seller should also confirm the nature and length of the relationship with the director, executive officer, founder or control person identified by the purchaser.

For example, if the purchaser claims to be a close personal friend of a director of an issuer, the seller could ask the purchaser for the name of the director and a description of the nature and length of the purchaser's relationship with the director. The seller could verify with the director that the information is accurate. Based on that factual information, the seller could determine whether the purchaser is a close personal friend of the director for the purposes of the family, friends and business associates exemption.

(d) Keep relevant and detailed documentation

The seller should consider what documentation it needs to retain or collect from a purchaser to evidence the steps the seller followed to establish the purchaser met the conditions of the exemption.

The seller should consider whether it is necessary to have the purchaser sign that documentation before distributing securities to that purchaser. For example, if the purchaser claims to be a close personal friend of a director of the issuer, the seller could ask the purchaser to sign a statement giving the name of the director and describing the nature and length of the purchaser's relationship with the director. The seller could also ask the director to sign the statement confirming the relationship. In other cases, the seller may determine it is not necessary for the purchaser to sign the documentation, for example, if the seller is using meeting notes and email communications to demonstrate its verification efforts.

The seller should retain this documentation to evidence the steps the seller has taken to verify the availability of the exemption. Certain exemptions require the seller to obtain a signed risk acknowledgement form from the purchaser and to retain that risk acknowledgement for 8 years after the distribution. The 8-year period reflects the longest limitation period under securities legislation in Canada. The seller should consider local legislation concerning limitation periods when deciding how long to retain other documentation it considers necessary to demonstrate that it complied with the exemption.

The seller should also consider and comply with the requirements under provincial or federal legislation concerning the protection of personal information when collecting and retaining purchaser information.

1.10 Prohibited activities

Securities legislation in certain jurisdictions prohibits any person from making certain representations to a purchaser of securities, including an undertaking about the future value or price of the securities. In certain jurisdictions, these provisions also prohibit a person from making any statement that the person knows or ought reasonably to know is a misrepresentation. These prohibitions apply whether or not a trade or distribution is made under an exemption.

Misrepresentation is defined in securities legislation. The use of exaggeration, innuendo or ambiguity in an oral or written representation about a material fact, or other deceptive behaviour relating to a material fact, might be a misrepresentation.

PART 2 – INTERPRETATION

2.1 Definitions

Unless defined in NI 45-106, terms used in NI 45-106 have the meaning given to them in local securities legislation or in National Instrument 14-101 *Definitions*.

The term “contract of insurance” in the definition of “financial assets” has the meaning assigned to it in the legislation for the jurisdiction referenced in Appendix A of NI 45-106.

2.2 Executive officer (“policy making function”)

The definition of “executive officer” in NI 45-106 is based on the definition of the same term contained in National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102).

Paragraph (c) of the definition “executive officer” includes individuals that are not employed by the issuer or any of its subsidiaries, but who perform a policy-making function in respect of the issuer.

The definition includes someone who “performs a policy-making function” in respect of the issuer. The CSA is of the view that an individual who “performs a policy-making function” in respect of an issuer is someone who is responsible, solely or jointly with others, for setting the direction of the issuer and is sufficiently knowledgeable of the business and affairs of the issuer so as to be able to respond meaningfully to inquiries from investors about the issuer.

2.3 Directors, executive officers and officers of non-corporate issuers

The term “director” is defined in NI 45-106 and it includes, for non-corporate issuers, individuals who perform functions similar to those of a director of a company.

When the term “officer” is used in NI 45-106, or any of the NI 45-106 forms, a non-corporate issuer should refer to the definitions in securities legislation. Securities legislation in most jurisdictions defines “officer” to include any individual acting in a capacity similar to that of an officer of a company. Therefore, in most jurisdictions, non-corporate issuers must determine which individuals are acting in capacities similar to that of directors and officers of corporate issuers, for the purposes of complying with NI 45-106 and its forms.

For example, the determination of who is acting in the capacity of a director or executive officer may be important where a person intends to distribute securities of a limited partnership under an exemption that is conditional on a relationship with a director or executive officer. The person must conclude that the purchaser has the necessary relationship with an individual who is acting in a capacity with the limited partnership that is similar to that of a director or executive officer of a company.

2.4 Founder

The definition of “founder” includes a requirement that, at the time of the distribution of a security the person be actively involved in the business of the issuer. Accordingly, a person who takes the initiative in founding, organizing or substantially reorganizing the business of the issuer within the meaning of the definition but subsequently ceases to be actively engaged in the day to day operations of the business of the issuer would no longer be a “founder” for the purposes of NI 45-106, regardless of the person’s degree of prior involvement with the issuer or the extent of the person’s continued ownership interest in the issuer.

2.5 Investment fund

Generally, the definition of “investment fund” would not include a trust or other entity that issues securities that entitle the holder to net cash flows generated by: (i) an underlying business owned by the trust or other entity, or (ii) the income-producing properties owned by the trust or other entity. Examples of trusts or other entities that are not included in the definition are business income trusts, real estate investment trusts and royalty trusts.

2.6 Affiliate, control and related entity

(1) Affiliate

Section 1.3 of NI 45-106 contains rules for determining whether persons are affiliates for the purposes of NI 45-106, which may be different than those contained in other securities legislation.

(2) Control

The concept of control has two different interpretations in NI 45-106. For the purposes of Division 4 of Part 2 (employee, executive officer, director and consultant exemptions), the interpretation of control is contained in section 2.23(1). For the purposes of the rest of NI 45-106, the interpretation of control is found in section 1.4 of NI 45-106. The reason for having two different interpretations of control is that the exemptions for distributions of securities to employees, executive officers, directors and consultants require a broader concept of control than is considered necessary for the rest of NI 45-106 to accommodate the issuance of compensation securities in a wide variety of business structures.

2.7 Close personal friend

For purposes of both the private issuer exemption in section 2.4 of NI 45-106 and the family, friends and business associates exemption in section 2.5 of NI 45-106, a “close personal friend” of a director, executive officer, founder or control person of an issuer is an individual who knows the director, executive officer, founder or control person well enough and has known them for a sufficient period of time to be in a position to assess their capabilities and trustworthiness and to obtain information from them with respect to the investment. The term “close personal friend” can include a family member who is not already specifically identified in the exemptions if the family member satisfies the criteria described above.

We consider the following factors as relevant to this determination:

- (a) the length of time the individual has known the director, executive officer, founder or control person,
- (b) the nature of the relationship between the individual and the director, executive officer, founder or control person including such matters as the frequency of contacts between them and the level of trust and reliance in the other circumstances, and
- (c) the number of “close personal friends” of the director, executive officer, founder or control person to whom securities have been distributed in reliance on the private issuer exemption or the family, friends and business associates exemption.

An individual is not a close personal friend solely because the individual is:

- (a) a relative,
- (b) a member of the same club, organization, association or religious group,
- (c) a co-worker, colleague or associate at the same workplace,
- (d) a client, customer, former client or former customer,
- (e) a mere acquaintance, or
- (f) connected through some form of social media, such as Facebook, Twitter or LinkedIn.

The relationship between the individual and the director, executive officer, founder or control person must be direct. For example, the exemption is not available to a close personal friend of a close personal friend of a director of the issuer.

We would not consider a relationship that is primarily founded on participation in an Internet forum to be that of a close personal friend.

The person relying on the exemption is responsible for determining that the purchaser meets the characteristics required under the exemption. See section 1.9 of this Companion Policy for guidance on how to verify and document purchaser status.

2.8 Close business associate

For the purposes of both the private issuer exemption in section 2.4 of NI 45-106 and the family, friends and business associates exemption in section 2.5 of NI 45-106, a “close business associate” is an individual who has had sufficient prior business dealings with a director, executive officer, founder or control person of the issuer to be in a position to assess their capabilities and trustworthiness and to obtain information from them with respect to the investment.

We consider the following factors as relevant to this determination:

- (a) the length of time the individual has known the director, executive officer, founder or control person,
- (b) the nature of any specific business relationships between the individual and the director, executive officer, founder or control person, including, for each relationship, when it began, the frequency of contact between them and when it terminated if it is not ongoing, and the level of trust and reliance in the other circumstances,
- (c) the nature and number of any business dealings between the individual and the director, executive officer, founder or control person, the length of the period during which they occurred, and the nature and date of the most recent business dealing, and
- (d) the number of “close business associates” of the director, executive officer, founder or control person to whom securities have been distributed in reliance on the private issuer exemption or the family, friends and business associates exemption.

An individual is not a close business associate solely because the individual is:

- (a) a member of the same club, organization, association or religious group,
- (b) a co-worker, colleague or associate at the same workplace,
- (c) a client, customer, former client or former customer,
- (d) a mere acquaintance, or
- (e) connected through some form of social media, such as Facebook, Twitter or LinkedIn.

The relationship between the individual and the director, executive officer, founder or control person must be direct. For example, the exemptions are not available for a close business associate of a close business associate of a director of the issuer.

We would not consider a relationship that is primarily founded on participation in an internet forum to be that of a close business associate.

The person relying on the exemption is responsible for determining that the purchaser meets the characteristics required under the exemption. See section 1.9 of this Companion Policy for guidance on how to verify and document purchaser status.

2.9 Indirect interest

Under paragraph (t) of the definition of “accredited investor” in section 1.1 of NI 45-106, an “accredited investor” includes a person in respect of which all of the owners of interests in that person, direct, indirect or beneficial, are accredited investors. The interpretive provision in section 1.2 of NI 45-106 is needed to confirm the meaning of indirect interest in British Columbia.

PART 3 – CAPITAL RAISING EXEMPTIONS

3.1 Soliciting purchasers

Part 2, Division 1 (capital raising exemptions) in NI 45-106 does not prohibit the use of registrants, finders, or advertising in any form (for example, Internet, e-mail, direct mail, newspaper or magazine) to solicit purchasers under any of the exemptions. However, use of any of these means to find purchasers under the private issuer exemption in section 2.4 of NI 45-106 or under the family, friends and business associates exemption in section 2.5 of NI 45-106, may give rise to a presumption that the relationship required for use of these exemptions is not present. If, for example, an issuer advertises or pays a commission or finder’s fee to a third party to find purchasers under the family, friends and business associates exemption, it suggests that the precondition of a close relationship between the purchaser and the issuer may not exist and therefore the issuer cannot rely on this exemption.

Use of a finder by a private issuer to find an accredited investor, however, would not preclude the private issuer from relying upon the private issuer exemption, provided that all of the other conditions to that exemption are met.

Any solicitation activities that aim to identify a particular category of investor should clearly state the kind of investor being sought and the criteria that investors will be required to meet. Any print materials used to find accredited investors, for example, should clearly and prominently state that only accredited investors should respond to the solicitation.

3.2 Soliciting purchasers – Ontario

The Ontario Securities Commission takes the position that if an issuer retains an employee whose primary job function is to actively solicit members of the public for the purposes of selling the issuer's securities, the issuer and its employee are in the business of selling securities. Further, if an issuer and its employees are deemed to be in the business of selling securities, the Ontario Securities Commission considers both the issuer and its employees to be market intermediaries. This applies whether the issuer and its employees are located in Ontario and solicit members of the public outside of Ontario or whether the issuer and its employees are located outside of Ontario and solicit members of the public in Ontario. Accordingly, in order to be in compliance with securities legislation, these issuers and their employees should be registered under the appropriate category of registration in Ontario.

3.3 Advertising

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

3.4 Restrictions on finder's fees or commissions

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

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

3.4.1 Reinvestment plans

- (1) When is a plan administrator acting "for or on behalf of the issuer"?

Section 2.2 of NI 45-106 contains a prospectus exemption for distributions of securities by a trustee, custodian or administrator acting for or on behalf of the issuer. If the trustee, custodian or administrator is engaged by the issuer, the plan administrator acts "for or on behalf of the issuer" and therefore falls within the language contained in section 2.2(1). The fact that the plan administrator may act on or in accordance with instructions of a plan participant, under the plan, does not preclude the administrator from relying on the exemption contained in section 2.2 of NI 45-106.

- (2) Providing a description of material attributes and characteristics of securities

The reinvestment plan exemption in section 2.2(5) of NI 45-106 includes a requirement, effective September 28, 2009, that if the securities distributed under a reinvestment plan are of a different class or series than the securities to which the dividend or distribution is attributable, the issuer or plan agent must have provided the plan participants with a description of the material attributes and characteristics of the securities being distributed. An issuer or plan agent with an existing reinvestment plan can satisfy this requirement in a number of ways. If plan participants have previously signed a plan agreement or received a copy of a reinvestment plan that included this information, the issuer or plan agent does not need to take any further action for current plan participants. (Future participants should receive the same type of information before their first trade of a security under the plan.)

If plan participants have not received this information in the past, the issuer or plan agent can provide the required information or a reference to a website where the information is available with other materials sent to holders of that class of securities, for example with proxy materials.

(3) Interest payments

The exemption in section 2.2 of NI 45-106 may be available where a person invests interest payable on debentures or other similar securities into other securities of the issuer. The words “distributions out of earnings...or other sources” cover interest payable on debentures.

3.5 Accredited investor

(1) Individual qualification – financial tests

An individual is an “accredited investor” for the purposes of NI 45-106 if the individual satisfies one of four tests set out in the “accredited investor” definition in section 1.1 of NI 45-106:

- the \$1 000 000 financial asset test in paragraph (j)
- the \$5 000 000 financial asset test in paragraph (j.1)
- the net income test in paragraph (k)
- the net asset test in paragraph (l)

Three branches of the definition (in paragraphs (j), (k) and (l)) are designed to treat spouses as a single investing unit, so that either spouse qualifies as an “accredited investor” if the combined financial assets of both spouses exceed \$1 000 000, the combined net income of both spouses exceeds \$300 000, or the combined net assets of both spouses exceeds \$5 000 000.

The fourth branch, the \$5 000 000 financial asset test, does not treat spouses as a single investing unit. If an individual meets the \$5 000 000 financial asset test, they also meet the test to be a “permitted client” under NI 31-103. Permitted clients are entitled to waive the “know your client” and suitability obligations of registered dealers and advisers under NI 31-103. Under subsection 2.3(7) of NI 45-106, an issuer distributing securities under the accredited investor exemption to an individual who meets the \$5 000 000 financial asset test in paragraph (j.1) under the definition of “accredited investor” is not required to obtain a signed risk acknowledgement in Form 45-106F9 *Form for Individual Accredited Investors* from that individual.

For the purposes of the financial asset tests in paragraphs (j) and (j.1), “financial assets” are defined in NI 45-106 to mean cash, securities, or a contract of insurance, a deposit or an evidence of a deposit that is not a security for the purposes of securities legislation. These financial assets are generally liquid or relatively easy to liquidate. The value of a purchaser’s personal residence is not included in a calculation of financial assets.

By comparison, the net asset test under paragraph (l) means all of the purchaser’s total assets minus all of the purchaser’s total liabilities. Accordingly, for the purposes of the net asset test, the calculation of total assets would include the value of a purchaser’s personal residence and the calculation of total liabilities would include the amount of any liability (such as a mortgage) in respect of the purchaser’s personal residence.

If the combined net income of both spouses does not exceed \$300 000, but the net income of one of the spouses exceeds \$200 000, only the spouse whose net income exceeds \$200 000 qualifies as an accredited investor.

(2) Bright-line standards – individuals

The monetary thresholds in the “accredited investor” definition are intended to create “bright-line” standards. Investors who do not satisfy these monetary thresholds do not qualify as accredited investors under the applicable paragraph.

(3) Beneficial ownership of financial assets

Paragraphs (j) and (j.1) of the “accredited investor” definition refer to the beneficial ownership of financial assets. As a general matter, it should not be difficult to determine whether financial assets are beneficially owned by an individual, an individual’s spouse, or both, in any particular instance. However, in the case where financial assets are held in a trust or in another type of investment vehicle for the benefit of an individual there may be questions as to whether the individual beneficially owns the financial assets. The following factors are indicative of beneficial ownership of financial assets:

- (a) physical or constructive possession of evidence of ownership of the financial asset;
- (b) entitlement to receipt of any income generated by the financial asset;
- (c) risk of loss of the value of the financial asset; and

- (d) the ability to dispose of the financial asset or otherwise deal with it as the individual sees fit.

For example, securities held in a self-directed RRSP, for the sole benefit of an individual, are beneficially owned by that individual. In general, financial assets in a spousal RRSP would also be included for the purposes of the \$1 000 000 financial asset test in paragraph (j) because it takes into account financial assets owned beneficially by a spouse. However, financial assets in a spousal RRSP would not be included for purposes of the \$5 000 000 financial asset test in paragraph (j.1). Financial assets held in a group RRSP under which the individual does not have the ability to acquire the financial assets and deal with them directly would not meet the beneficial ownership requirements in either paragraph (j) or paragraph (j.1).

- (4) Calculation of an individual purchaser's net assets

To calculate a purchaser's net assets under the net asset test in paragraph (l) of the "accredited investor" definition, subtract the purchaser's total liabilities from the purchaser's total assets. The value attributed to assets should reasonably reflect their estimated fair value. Income tax should be considered a liability if the obligation to pay it is outstanding at the time of the distribution of the security.

- (4.1) Risk acknowledgement from individual investors

Persons relying on the accredited investor exemption in section 2.3 of NI 45-106 and section 73.3 of the *Securities Act* (Ontario) to distribute securities to individual accredited investors described in paragraphs (j), (k) and (l) of the "accredited investor" definition must obtain a completed and signed risk acknowledgement from that individual accredited investor.

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

- (5) Financial statements

The minimum net asset threshold of \$5 000 000 specified in paragraph (m) of the "accredited investor" definition must, in the case of a non-individual entity, be shown on the entity's "most recently prepared financial statements". The financial statements must be prepared in accordance with applicable generally accepted accounting principles.

- (6) Time for assessing qualification

The financial tests prescribed in the accredited investor definition are to be applied only at the time of the distribution of the security. The person is not required to monitor the purchaser's continuing qualification as an accredited investor after the distribution of the security is completed.

- (7) Recognition or designation as an "accredited investor"

Paragraph (v) of the "accredited investor" definition in NI 45-106 contemplates that a person may apply to be recognized or designated as an accredited investor by the securities regulatory authorities or, except in Ontario and Québec, the regulators. The securities regulatory authorities or regulators have not adopted any specific criteria for granting accredited investor recognition or designation to applicants, as the securities regulatory authorities or regulators believe that the "accredited investor" definition generally covers all types of persons that do not require the protection of the prospectus requirement. Accordingly, the securities regulatory authorities or regulators expect that applications for accredited investor recognition or designation will be utilized on a very limited basis. If a securities regulatory authority or regulator considers it appropriate in the circumstances, it may grant accredited investor recognition or designation to a person on terms and conditions, including a requirement that the person apply annually for renewal of accredited investor recognition or designation.

- (8) Verifying accredited investor status

Persons relying on the accredited investor exemption are responsible for determining whether a purchaser meets the definition of "accredited investor". See section 1.9 of this Companion Policy for guidance on how to verify and document purchaser status.

3.6 Private issuer

- (1) Meaning of "the public"

Whether or not a person is a member of the public must be determined on the facts of each particular case. The courts have interpreted "the public" very broadly in the context of securities trading. Whether a person is a part of the public will be determined on the particular facts of each case, based on the tests that have developed under the relevant case law. A person

who intends to distribute securities in reliance upon the private issuer prospectus exemption in section 2.4(2) of NI 45-106 to a person not listed in paragraphs (a) through (j) of that section will have to satisfy itself that the distribution of the security is not to the public.

(2) Meaning of “close personal friend” and “close business associate”

See sections 2.7 and 2.8 of this Companion Policy for a discussion of the meaning of “close personal friend” and “close business associate”.

(2.1) Meaning of “non-convertible debt securities”

Paragraph (b) of the definition of private issuer has a number of restrictions that apply to the securities, other than non-convertible debt securities, of a private issuer. Non-convertible debt securities are debt securities that do not have a right or obligation to exchange or convert into another security of the issuer.

(3) Business combination of private issuers

A distribution of securities in connection with an amalgamation, merger, reorganization, arrangement or other statutory procedure involving two private issuers to holders of securities of those issuers is not a distribution of a security to the public, provided that the resulting issuer is a private issuer.

Similarly, a distribution of securities by a private issuer in connection with a share exchange take-over bid for another private issuer is not a distribution of securities to the public, provided the offeror remains a private issuer after completion of the bid.

(4) Acquisition of a private issuer

Persons relying on a private issuer exemption in NI 45-106 must be satisfied that the purchaser is not a member of the public. Generally, however, if the owner of a private issuer sells the business of the private issuer by way of a sale of securities, rather than assets, to another party who acquires all of the securities, the sale will not be considered to have been to the public.

(5) Ceasing to be a private issuer

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

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

An issuer that completes a going private transaction (for example, by way of an amalgamation, squeeze out or a takeover bid with a subsequent statutory compulsory acquisition) can use the private issuer exemption after a going private transaction.

3.7 Family, friends and business associates

(1) Number of purchasers

There is no restriction on the number of persons that the issuer may sell securities to under the family, friends and business associates exemption in section 2.5 of NI 45-106. However, an issuer selling securities to a large number of persons under this exemption may give rise to a presumption that not all of the purchasers are family, close personal friends or close business associates and that the exemption may not be available.

(2) Meaning of “close personal friend” and “close business associate”

See sections 2.7 and 2.8 of this Companion Policy for a discussion of the meaning of “close personal friend” and “close business associate”.

(3) Risk acknowledgement – Saskatchewan

Under section 2.6 of NI 45-106, the family, friends and business associates exemption in section 2.5 of NI 45-106 cannot be relied upon in Saskatchewan for a distribution of securities based on a close personal friendship or close business association unless the person obtains a signed “risk acknowledgement” in the required form from the purchaser and retains the form for eight years after the distribution of securities.

3.8 Offering memorandum

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

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

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

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

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

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

A registered investment dealer providing advice to a purchaser in these circumstances is expected to comply with the “know your client” and suitability requirements under applicable securities legislation and SRO rules and policies. Some dealers have obtained exemptions from the “know your client” and suitability requirements because they do not provide advice. An assessment of suitability by these dealers is not sufficient to qualify a purchaser as an eligible investor.

(2) Form of offering memorandum

There are two forms of offering memorandum: Form 45-106F3, which may be used by qualifying issuers, and Form 45-106F2, which must be used by all other issuers. Form 45-106F3 requires qualifying issuers to incorporate by reference their annual information form (AIF), management’s discussion and analysis (MD&A), annual financial statements and subsequent specified continuous disclosure documents required under NI 51-102.

A qualifying issuer is a reporting issuer that has filed an AIF under NI 51-102 and has met all of its other continuous disclosure obligations, including those in NI 51-102, National Instrument 43-101 *Standards of Disclosure for Mineral Projects*, and National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*. Under NI 51-102, venture issuers are not required to file AIFs. However, if a venture issuer wants to use Form 45-106F3, the venture issuer must voluntarily file an AIF under NI 51-102 in order to incorporate that AIF into its offering memorandum.

(3) Date of certificate and required signatories

The issuer must ensure that the information provided to the purchaser is current and does not contain a misrepresentation. For example, if a material change occurs in the business of the issuer after delivery of an offering memorandum to a potential purchaser, the issuer must give the potential purchaser an update to the offering memorandum before the issuer accepts the agreement to purchase the securities. The update to the offering memorandum may take the form of an amendment describing the material change, a new offering memorandum containing up-to-date disclosure or a material change report, whichever the issuer decides will most effectively inform purchasers.

Whatever form of update the issuer uses, it must include a newly signed and dated certificate as required in the applicable subsection 2.9(9), (10), (10.1), (10.2), (10.3), (11), (11.1), or (12) of NI 45-106.

“Promoter” is defined differently in provincial and territorial securities legislation across CSA jurisdictions. It is generally defined as meaning a person who has taken the initiative in founding, organizing or substantially reorganizing the business of the issuer or who has received consideration over a prescribed amount for services or property or both in connection with founding, organizing or substantially reorganizing the issuer. “Promoter” has not been defined in the *Securities Act* (Québec) and a broad interpretation is taken in Québec in determining who would be considered a promoter.

Under securities legislation, persons who receive consideration solely as underwriting commissions or in consideration of property and who do not otherwise take part in the founding, organizing or substantially reorganizing the issuer are not promoters. Simply selling securities, or in some way facilitating sales in securities, does not make a person a promoter under the offering memorandum exemption.

(4) Consideration to be held in trust

The purchaser has, or must be given, the right to cancel the agreement to purchase the securities until midnight on the 2nd business day after signing the agreement. During this period, the issuer must arrange for the consideration to be held in trust on behalf of the purchaser.

It is up to the issuer to decide what arrangements are necessary to preserve the consideration received from the purchaser. The requirement to hold the consideration in trust may be satisfied if, for example, the issuer keeps the purchaser’s cheque, without cashing or depositing it, until the expiration of the two business day cancellation period.

It is also the issuer’s responsibility to ensure that whoever is holding the consideration promptly returns it to the purchaser if the purchaser cancels the agreement to purchase the securities.

(5) Filing of offering memorandum

The issuer is required to file the offering memorandum with the securities regulatory authority or regulator in each of the jurisdictions in which the issuer distributes securities under an offering memorandum exemption. The issuer must file the offering memorandum on or before the 10th day after the distribution.

If the issuer is conducting multiple closings, the offering memorandum must be filed on or before the 10th day after the first closing. Once the offering memorandum has been filed, there is no need to file it again after subsequent closings, unless it has been updated.

(6) Purchasers’ rights

Unless securities legislation in a purchaser’s jurisdiction provides a purchaser with a comparable right of cancellation or revocation, an issuer must give each purchaser under an offering memorandum a contractual right to cancel the agreement to purchase the securities by delivering a notice to the issuer not later than midnight on the 2nd business day after the purchaser signs the agreement.

Unless securities legislation in a purchaser’s jurisdiction provides purchasers with comparable statutory rights, the issuer must also give the purchaser a contractual right of action against the issuer in the event the offering memorandum contains a misrepresentation. This contractual right of action must be available to the purchaser regardless of whether the purchaser relied on the misrepresentation when deciding to purchase the securities. This right is similar to that given to a purchaser under a prospectus. The purchaser may claim damages or ask that the agreement be cancelled. If the purchaser wants to cancel the agreement, the purchaser must commence the action within 180 days after signing the agreement to purchase the securities. If the purchaser is seeking damages, the purchaser must commence the action within the earlier of 180 days after learning of the misrepresentation or 3 years after signing the agreement to purchase the securities.

The issuer is required to describe in the offering memorandum any rights available to the purchaser, whether they are provided by the issuer contractually as a condition to the use of the exemption or provided under securities legislation.

3.9 Minimum amount investment

(1) Baskets of securities

An issuer may wish to distribute more than one kind of security of its own issue, such as shares and debt, in a single transaction under the minimum investment amount exemption. Provided that the shares and debt are sold in units that have a total acquisition cost of not less than \$150 000 paid in cash at the time of the distribution of a security, the exemption can, if

otherwise available, be used, notwithstanding that the acquisition cost of the shares and the acquisition cost of the debt, taken separately, are both less than \$150 000.

(2) Not available for distributions to individuals or syndicates

The minimum amount investment exemption in section 2.10 of NI 45-106 is not available for distributions to individuals. “Individual” is defined in the securities legislation of certain jurisdictions to mean a natural person. The definition specifically excludes partnerships, unincorporated associations, unincorporated syndicates, unincorporated organizations and trusts. It also specifically excludes a natural person acting in the capacity of trustee, executor, administrator or personal or other legal representative.

Subsection 2.10(2) of NI 45-106 specifically prohibits using the minimum amount investment exemption to distribute to persons created or used solely to rely on this exemption. See section 1.8 of this Companion Policy for a discussion of the “anti-syndication” provisions in NI 45-106.

PART 4 – OTHER EXEMPTIONS

4.1 Employee, executive officer, director and consultant exemptions

Trustees, custodians or administrators who engage in activities, contemplated in the prospectus exemption in section 2.27 of NI 45-106, that bring together purchasers and sellers of securities should have regard to the provisions of National Instrument 21-101 *Marketplace Operation* respecting “marketplaces” and “alternative trading systems”.

The employee, executive officer, director and consultant exemptions are based on the alignment of economic interests between an issuer and its employees. They may, where available, be used to provide employees and other similar persons with an opportunity to participate in the growth of the employer’s business and to compensate persons for the services they provide to an issuer. The securities regulatory authorities or regulators will generally not grant exemptive relief analogous to these exemptions except in very limited circumstances.

4.2 Business combination and reorganization

(1) Statutory procedure

The securities regulatory authorities and regulators interpret the phrase “statutory procedure” broadly and are of the view that the prospectus exemption contained in section 2.11 of NI 45-106 applies to all distributions of securities of an issuer that are both part of the procedure and necessary to complete the transaction, regardless of when the distribution of a security occurs.

The prospectus exemption contained in section 2.11 of NI 45-106 exempts distributions of securities in connection with an amalgamation, merger, reorganization or arrangement if the same is done “under a statutory procedure”. The securities regulatory authorities or regulators are of the view that the references to statutory procedure in sections 2.11 are to any statute of a jurisdiction or foreign jurisdiction under which the entities involved have been incorporated or created and exist or under which the transaction is taking place. This would include, for example, an arrangement under the *Companies’ Creditors Arrangement Act* (Canada).

(2) Three-cornered amalgamations

Certain corporate statutes permit a so-called “three-cornered merger or amalgamation” under which two companies will amalgamate or merge and security holders of the amalgamating or merging entities will receive securities of a third party affiliate of one amalgamating or merging entity. The prospectus exemption contained in section 2.11 of NI 45-106 refers to these distributions of a security when they refer to a distribution of a security made in connection with an amalgamation or merger done under a statutory procedure.

(3) Exchangeable shares

A transaction involving a procedure described in the prospectus exemption contained in section 2.11 of NI 45-106 may include an exchangeable share structure to achieve certain tax-planning objectives. For example, where a non-Canadian company seeks to acquire a Canadian company under a plan of arrangement, an exchangeable share structure may be used to allow the Canadian shareholders of the company to be acquired to receive, in substance, shares of the non-Canadian company while avoiding the adverse tax consequences associated with exchanging shares of a Canadian company for shares of a non-Canadian company. Instead of receiving shares of the non-Canadian company directly, the Canadian shareholders receive shares of a Canadian company which, through various contractual arrangements, have economic terms and voting rights that are essentially identical to the shares of the non-Canadian company and permit the holder to exchange such shares, at a time of the holder’s choosing, for shares of the non-Canadian company.

Historically, the use of an exchangeable share structure in connection with a statutory procedure has raised a question as to whether the exemption now contained in section 2.11 of NI 45-106 was available for all distributions necessary to complete the transaction. For example, in the case of the acquisition under a plan of arrangement noted above, the use of an exchangeable share structure may result in a delay of several months or even years between the date of the arrangement and the date the shares of the non-Canadian company are distributed to the former shareholders of the acquired company. As a result of this delay, some filers have questioned whether the distribution of the non-Canadian company's shares upon the exercise of the exchangeable shares may still be viewed as being "in connection with" the statutory transaction, and have made application for exemptive relief to address this uncertainty.

The securities regulatory authorities or regulators take the position that the statutory procedure exemption contained in section 2.11 of NI 45-106 refers to all distributions of securities that are necessary to complete an exchangeable share transaction involving a procedure described in section 2.11, even where such distributions occur several months or years after the transaction. In the case of the acquisition noted above, the investment decision of the shareholders of the acquired company at the time of the arrangement represented a decision to, ultimately, exchange their shares for shares of the non-Canadian company. The distribution of such shares upon the exercise of the exchangeable shares does not represent a new investment decision, but merely represents the completion of that original investment decision. Accordingly, additional exemptive relief is not warranted in circumstances where the original transaction was completed in reliance on this exemption.

4.3 Asset acquisition – character of assets to be acquired

When issuing securities, issuers must comply with the requirements under applicable corporate or other governing legislation that the securities be issued for fair value. Where securities are issued for non-cash consideration such as assets or resource properties, it is the responsibility of the issuer and its board of directors to determine the fair market value of the assets or resource properties and to retain records to demonstrate how that fair market value was determined. In some situations, cash assets that make up working capital could also be considered in the total calculation of the fair market value.

4.4 Securities for debt – *bona fide debt*

A bona fide debt is one that was incurred for value, on commercially reasonable terms and that on the date the debt was incurred the parties believed would be repaid in cash.

A reporting issuer may distribute securities to settle a debt only after the debt becomes due, as evidenced by the creditor issuing an invoice, demand letter or other written statement to the issuer indicating that the debt is due. The securities for debt exemption may not be relied on for the issuance of securities by an issuer to secure a debt that will remain outstanding after the issuance.

4.5 Take-over bid and issuer bid

(1) Exempt bids

The terms "take-over bid" and "issuer bid", for the purposes of section 2.16 of NI 45-106, include an exempt take-over bid and exempt issuer bid.

(2) Bids involving exchangeable shares

The take-over bid and issuer bid exemptions refer to all distributions necessary to complete a take-over bid or an issuer bid that involves an exchangeable share structure (as described under section 4.2 of this Companion Policy), even where such distributions may occur several months or even years after the bid is completed.

4.6 Isolated distribution

The exemption contained in section 2.30 of NI 45-106 is limited to a distribution of a security made by an issuer in a security of its own issue. It is intended that this exemption will only be used rarely and not to distribute securities to multiple purchasers.

4.6.1 Short-term securitized products

(1) Types of short-term securitized products

Section 2.35.1 is a prospectus exemption for the distribution of short-term securitized products. Short-term securitized products distributed in Canada are generally asset-backed commercial paper.

(2) Definition of “asset pool”

The term “cash-flow generating assets” in the definition of “asset pool” refers to the bonds, mortgages, leases, loans, receivables, or royalties in which a conduit has a direct or indirect ownership or security interest. It does not refer to a security or other instrument through which a conduit obtains an indirect ownership or security interest in underlying cash-flow generating assets. For example, a conduit may enter into an asset transaction whereby it purchases a note from a trust that owns a pool of mortgages, thereby acquiring an indirect ownership or security interest in that pool of mortgages. In this scenario, the “cash-flow generating assets” are the mortgages, not the note.

(3) Interaction of conditions with credit ratings

In order for the short-term securitized products prospectus exemption to be available, the short-term securitized product must satisfy certain conditions relating to credit ratings as set out in subparagraphs 2.35.2(a)(i) and (ii). The short-term securitized product and issuing conduit must also satisfy other conditions regarding liquidity support, series or class seniority and asset pool composition as set out in subparagraphs 2.35.2(a)(iii) and (iv) and paragraphs 2.35.2(b) and (c).

Short-term securitized products that satisfy the conditions in the prospectus exemption relating to liquidity support, series or class seniority and asset pool composition may not necessarily satisfy the credit-rating conditions; particularly the requirement in subparagraph 2.35.2(a)(i) that one of the two credit ratings must be at the highest rating category. Designated rating organizations each have their own rating methodologies and may require features that go beyond those specified in the prospectus exemption in order for a short-term securitized product to obtain a credit rating in the highest category.

(4) Liquidity provider

Clause 2.35.2(a)(iv)(B) requires a liquidity provider to be a deposit-taking institution regulated or approved to carry on business in Canada by the Office of the Superintendent of Financial Institutions (OSFI) or a Canadian federal or provincial government department or regulatory authority. This provision allows a foreign bank to be a liquidity provider if it is a Schedule II or Schedule III bank that is regulated by OSFI or approved by OSFI to carry on business in Canada.

(5) Exceptions relating to liquidity agreements

The intention of subsection 2.35.3(2) is to permit a liquidity agreement to provide that a liquidity provider need not advance funds in respect of assets that have defaulted and that are not covered by any applicable credit enhancement. For purposes of paragraph 2.35.3(2)(a), we expect that the aggregate value of the non-defaulted assets would be the book value, unless some other method of determining the value is specified by the provisions of the applicable liquidity agreement, e.g. discounted value or market value.

(6) Disclosure – meaning of “make reasonably available”

Section 2.35.4 requires that each information memorandum and reports on Form 45-106F7 and Form 45-106F8 be made reasonably available both to securities regulators and purchasers of a short-term securitized product.

This requirement could generally be satisfied by a conduit posting the document on a website maintained by it or on its behalf. If a password is used to limit access to the website, we would expect that the password would be promptly provided upon application. We generally would not object if a prospective purchaser, before being provided access to a website on which the documents are posted, would have to agree to keep the information on the website confidential or that it would not provide others with access to the website or the documents available on it.

4.7 Mortgages

In British Columbia, Alberta, Manitoba, Québec and Saskatchewan, NI 45-106 specifically excludes syndicated mortgages from the mortgage prospectus exemption in section 2.36. In determining what constitutes a syndicated mortgage, issuers will need to refer to the corresponding definition provided in section 2.36(1) of NI 45-106.

The mortgage prospectus exemption does not apply to distributions in securities that secure mortgages by bond, debenture, trust deed or similar obligation. The mortgage prospectus exemption also does not apply to a distribution of a security that represents an undivided co-ownership interest in a pool of mortgages, such as a pass-through certificate issued by an issuer of asset-backed securities.

4.8 Not for profit issuer

(1) Eligibility to use this exemption

This exemption applies to distributions of securities of an issuer that is organized exclusively for educational, benevolent, fraternal, charitable, religious or recreational purposes and not for profit (“not for profit issuer”). To use this exemption, an issuer must be organized exclusively for one or more of the listed purposes and use the funds raised for those purposes.

If an issuer is organized exclusively for one of the listed purposes, but its mandate changes so that it is no longer primarily engaged in the purpose it was organized for, the issuer may no longer be able to rely on this exemption. For example, if an issuer organized exclusively for educational purposes over time devotes more and more of its efforts to lending money, even if it is only to other educational entities, the lending issuer may be unable to rely on these exemptions. The same would also be true if one of an issuer’s mandates was to provide an investment vehicle for its members. An issuer that issues securities that pay dividends would also not be able to use these exemptions, because no part of the issuer’s net earnings can go to any security holder. However, if the securities are debt securities and the issuer agrees to repay the principal amount with or without interest, the security holders are not considered to be receiving part of the net earnings of the issuer. The debt securities may be secured or unsecured.

If investors could receive any special treatment as a result of purchasing securities, the security holders are not typically receiving part of the net earnings of the issuer and the sale may still fit within these exemptions. For example, if the not for profit issuer runs a golf course and offers security holders a waiver of greens fees for three years, it could still rely on this exemption, provided all other conditions are met (and the exemption remains available in the relevant jurisdiction(s)).

If, at the time of the distribution of the security, the purchaser has an entitlement to the assets of the issuer on the basis that they would be getting part of the net earnings of the issuer, then the sale would not fit within this exemption.

In Québec, not for profit issuers may still rely on the broad exemption available for not for profit issuers under section 3 of the *Securities Act* (Québec).

(2) Meaning of “no commission or other remuneration”

Section 2.38(b) provides that “no commission or other remuneration is paid in connection with the sale of the security”. This is intended to ensure that no one is paid to find purchasers of the securities. However, the issuer may pay its legal and accounting advisers for their legal or accounting services in connection with the sale.

PART 5 – FORMS

5.1 Report of exempt distribution

(1) Requirement to file

An issuer that has distributed a security of its own issue under any of the prospectus exemptions listed in section 6.1 of NI 45-106 is required to file a report of exempt distribution, on or before the 10th day after the distribution. Alternatively, if an underwriter distributes securities acquired under section 2.33 of NI 45-106, either the issuer or the underwriter may complete and file the form. If there is a syndicate of underwriters, the lead underwriter may file the form on behalf of the syndicate or each underwriter may file a form relating to the portion of the distribution it was responsible for.

The required form of report is Form 45-106F1 *Report of Exempt Distribution* in all jurisdictions except British Columbia. In British Columbia, the required form of report is Form 45-106F6 *British Columbia Report of Exempt Distribution*.

In determining if it is required to file a report in a particular jurisdiction, the issuer or underwriter should consider the following questions:

- (a) Is there a distribution in the jurisdiction? (Please refer to the securities legislation of the jurisdiction for guidance, if any, on when a distribution occurs in the jurisdiction.)
- (b) If there is a distribution in the jurisdiction, what exemption from the prospectus requirement is the issuer relying on for the distribution of the security?
- (c) Does the exemption referred to in paragraph (b) trigger a reporting requirement? (Reports of exempt distribution are required for distributions made in reliance on the prospectus exemptions listed in section 6.1 of NI 45-106.)

A distribution may occur in more than one jurisdiction. In this case, the issuer is required to file a single report in each Canadian jurisdiction where the distribution has occurred, except British Columbia. The report will set out all distributions in each Canadian jurisdiction.

If the distribution occurs in British Columbia and one or more other jurisdictions, the issuer is required to file Form 45-106F6 with the British Columbia Securities Commission and file Form 45-106F1 in the other applicable jurisdictions.

(2) Access to information in jurisdictions other than British Columbia

The securities legislation of several provinces requires that information filed with the securities regulatory authority or, where applicable, the regulator under such securities legislation, be made available for public inspection during normal business hours except for information that the securities regulatory authority, or where applicable, the regulator,

- (a) believes to be personal or other information of such a nature that the desirability of avoiding disclosure thereof in the interest of any affected individual outweighs the desirability of adhering to the principle that information filed with the securities regulatory authority or the regulator, as applicable, be available to the public for inspection,
- (b) in Alberta, considers that it would not be prejudicial to the public interest to hold the information in confidence, and
- (c) in Québec, considers that access to the information could result in serious prejudice.

Based on the above mentioned provisions of securities legislation, the securities regulatory authorities or regulators, as applicable, have determined that the information listed in Form 45-106F1 *Report of Exempt Distribution*, Schedule I (“Schedule I”) discloses personal or other information of such a nature that the desirability of avoiding disclosure of this personal information outweighs the desirability of making the information available to the public for inspection. In addition, in Alberta, the regulator considers that it would not be prejudicial to the public interest to hold the information listed in Schedule I in confidence. In Québec, the securities regulatory authority considers that access to Schedule I by the public in general could result in serious prejudice and consequently, the information listed in Schedule I will not be made publicly available.

(3) Filings in British Columbia

For filings made in British Columbia, issuers are required to file Form 45-106F6 and pay the fees associated with that filing electronically using BCSC e-services. This requirement only applies to filings that are required to be made within 10 days of the distribution. It does not apply to filings made annually by investment funds under section 6.2(2) of NI 45-106. Please refer to BC Instrument 13-502 *Electronic Filing of Reports of Exempt Distribution* for further information.

5.2 Forms required under the offering memorandum exemption

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

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

5.3 Real estate securities

Certain jurisdictions impose alternative or additional disclosure requirements in relation to the distribution of real estate securities by offering memorandum. Refer to securities legislation in the jurisdictions where securities are being distributed.

5.4 Risk acknowledgement form for distributions to close personal friends and close business associates in Saskatchewan

In Saskatchewan, a risk acknowledgment is also required under section 2.6(1) of NI 45-106 if the person intends to rely upon the “family, friends and business associates exemption” in section 2.5 of NI 45-106, which is based on a relationship of close personal friendship or close business association. The form of risk acknowledgment required in these circumstances is Form 45-106F5.

5.5 Risk acknowledgement form for distributions to individual accredited investors

A person relying on the accredited investor exemption in section 2.3 of NI 45-106 and section 73.3 of the *Securities Act* (Ontario) to distribute securities to an individual must obtain a signed risk acknowledgment from that individual accredited investor. Under subsection 2.3(7) of NI 45-106, this requirement does not apply if the individual accredited investor meets the

highest threshold to be an individual accredited investor, that is, the individual owns \$5 000 000 of financial assets as set out in paragraph (j.1) of the definition of “accredited investor” in section 1.1 of NI 45-106. The required form of risk acknowledgement for the accredited investor exemption is Form 45-106F9 *Form for Individual Accredited Investors*.

PART 6 – RESALE OF SECURITIES ACQUIRED UNDER AN EXEMPTION

6.1 Resale restrictions

In most jurisdictions, securities distributed under a prospectus exemption may be subject to restrictions on their resale. The particular resale, or “first trade”, restrictions depend on the parties to the distribution and the particular exemption that was relied upon to distribute the securities. In certain circumstances, no resale restrictions will apply and the securities acquired under an exempt distribution will be freely tradable.

Resale restrictions are imposed under National Instrument 45-102 *Resale of Securities* (NI 45-102). While NI 45-106 contains text boxes providing commentary on resale, these text boxes are intended as guidance only and are not a substitute for reviewing the applicable provisions in NI 45-102 to determine what resale restrictions, if any, apply to the securities in question.

The resale restrictions operate by the resale transaction triggering the prospectus requirement unless certain conditions are satisfied. Securities that are subject to such restrictions in circumstances where the conditions cannot be satisfied may nevertheless be distributed under an exemption from the prospectus requirement, whether under NI 45-106 or other securities legislation.

PART 7 – TRANSITION

7.1 Transition – Application of IFRS amendments

The amendments to NI 45-106 and this Companion Policy which came into effect on January 1, 2011 only apply in respect of an offering memorandum or an amendment to an offering memorandum of an issuer which includes or incorporates by reference financial statements of the issuer in respect of periods relating to financial years beginning on or after January 1, 2011.

Modified: Except in Ontario, this Companion Policy takes effect on May 5, 2015. In Ontario, this Companion Policy will take effect on the later of the following:

- (a) May 5, 2015 and
- (b) the day on which subsection 12(2) of Schedule 26 of the *Budget Measures Act, 2009* is proclaimed in force.

ANNEX D2
BLACKLINE OF CHANGES TO
~~AMENDED AND RESTATED~~
COMPANION POLICY 45-106CP
PROSPECTUS AND REGISTRATION EXEMPTIONS

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PART 6 – RESALE OF SECURITIES ACQUIRED UNDER AN EXEMPTION

6.1 Resale restrictions

PART 7 – TRANSITION

7.1 Transition – Application of IFRS amendments

COMPANION POLICY 45-106CP
~~PROSPECTUS AND REGISTRATION EXEMPTIONS~~

PART 1 – INTRODUCTION

National Instrument 45-106 ~~Prospectus and Registration Exemptions~~ (“NI 45-106”) provides: (i) exemptions from the prospectus requirement; and (ii) ~~exemptions from registration requirements;~~ and (iii) ~~one exemption from the issuer bid requirements.~~ The registration exemptions in Part 3 of NI 45-106 will not apply in any jurisdiction ~~six months after~~ it does not provide exemptions from the requirement to be registered as a dealer, adviser or investment fund manager. National Instrument 31-103 ~~Registration Requirements and Exemptions and Ongoing Registrant Obligations~~ (“NI 31-103”) ~~comes into force. A subset of registration exemptions will continue to apply after the six month transition period and will be located in NI 31-103.~~ contains some exemptions from the registration requirement.

1.1 Purpose

The purpose of this Companion Policy is to help users understand how the provincial and territorial securities regulatory authorities and regulators interpret or apply certain provisions of NI 45-106. This Companion Policy includes explanations, discussion and examples of the application of various parts of NI 45-106.

1.2 All distributions and other trades are subject to securities legislation

The securities legislation of a local jurisdiction applies to any trade in, or distribution of, a security in the local jurisdiction, whether or not the issuer of the security is a reporting issuer in that jurisdiction. Likewise, the definition of “trade” in securities legislation includes any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of a trade. A person who engages in these activities, or other trading activities, must comply with the securities legislation of each jurisdiction in which the trade or distribution occurs.

1.3 Multi-jurisdictional distributions

A distribution can occur in more than one jurisdiction. If it does, the person conducting the distribution must comply with the securities legislation of each jurisdiction in which the distribution occurs. For example, a distribution from a person in Alberta to a purchaser in British Columbia may be considered a distribution in both jurisdictions.

1.4 Other exemptions

In addition to the exemptions in NI 45-106, exemptions may also be available to persons under securities legislation of each local jurisdiction. ~~The CSA has issued CSA Staff Notice 45-304 that lists other exemptions available under securities legislation.~~

1.5 Discretionary relief

In addition to the exemptions contained in NI 45-106 and those available under securities legislation of a local jurisdiction, the securities regulatory authority or regulator in each jurisdiction has the discretion to grant exemptions from the prospectus requirement ~~and the registration requirements.~~

1.6 Advisers Registration business trigger for trading and advising

Securities legislation requires certain persons to be registered if they are any of the following:

- in the business of trading
- in the business of advising
- ~~Subsection 1.5(2) of NI 45-106 provides that an exemption from the dealer registration requirement in NI 45-106 is deemed to be an exemption from the underwriter registration requirement. However, it is not deemed to be an exemption from the adviser registration requirement. The adviser registration requirement is distinct from the dealer registration requirement. In general terms, persons engaged in the business of, or holding themselves out as being in the business of, providing investment advice are required to be registered, or exempted from registration, under applicable securities legislation. Accordingly, only advisers registered or exempted from registration as advisers may act as advisers in connection with a trade made under NI 45-106.~~ holding themselves out as being in the business of trading or advising
- acting as an underwriter
- acting as an investment fund manager

NI 31-103 sets out the requirements for registration as well as certain exemptions from these registration requirements.

Issuers relying on prospectus exemptions to distribute securities, or any selling agents they use, may be required to be registered. Companion Policy 31-103CP gives guidance to issuers on how to apply the registration business trigger.

1.7 Underwriters

Underwriters should not sell securities to the public without providing a prospectus. If an underwriter purchases securities with a view to distribution, the underwriter should purchase the securities under the prospectus exemption in section 2.33 of NI 45-106. If the underwriter purchases securities under this exemption, the first trade in the securities will be a distribution. As a result, the underwriter will only be able to resell the securities if it can rely on another exemption from the prospectus requirement, or if a prospectus is delivered to the purchasers of the securities.

There may be legitimate transactions where a dealer purchases securities under a prospectus exemption other than the exemption in section 2.33 of NI 45-106; however, these transactions are only appropriate when the dealer purchases the securities with investment intent and not with a view to distribution.

If a dealer purchases securities through a series of exempt transactions in order to avoid the obligation to deliver a prospectus, the transactions will be viewed as a whole to determine if they constitute a distribution. If a transaction is in effect an indirect distribution, a prospectus will be required to qualify the sale of the securities despite the fact that each interim step in the transaction could otherwise be completed under a prospectus exemption. Such indirect distributions cannot be legitimately structured under NI 45-106.

1.8 Persons created to use exemptions (“syndication”)

Sections 2.3(5), ~~3.3(5)~~, 2.4(1), ~~3.4(1)~~, 2.9(3), ~~3.9(3)~~, and 2.10(2) and ~~3.10(2)~~ of NI 45-106 specifically prohibit syndications. A distribution ~~or a trade~~ of securities to a person that had no pre-existing purpose and is created or used solely to purchase or hold securities under exemptions (a “syndicate”) may be considered a distribution of, ~~or trade in~~, securities to the persons beneficially owning or controlling the syndicate.

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

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

1.9 Responsibility for compliance and verifying purchaser status

(1) Determining whether an exemption is available

The prospectus exemptions in NI 45-106 set out specific terms and conditions that must be satisfied in order for the person relying on the exemption to distribute securities. The person relying on a prospectus exemption is responsible for determining whether the terms and conditions of the prospectus exemption are met. That person should retain all necessary documents to demonstrate that they properly relied on the exemption.

Some of the prospectus exemptions in NI 45-106 are available to both issuers and selling security holders. For purposes of this section, the term “seller” refers to the person relying on a prospectus exemption, whether an issuer or a selling security holder.

(2) Registration related requirements

Registered dealers and representatives have specific obligations under NI 31-103, including the “know your client,” “know your product” and suitability obligations. These obligations apply to securities traded on a marketplace, distributed under a prospectus or distributed under a prospectus exemption.

Registered dealers or representatives may be involved in distributions under prospectus exemptions in different ways. The registered dealer or representative may be acting on behalf of a seller in connection with a distribution using a prospectus exemption.

In both cases, the registered dealer or representative must not only establish that a prospectus exemption is available, it must also comply with its registration obligations. For example, even if a registered dealer or representative has determined that a purchaser qualifies as an accredited investor or eligible investor, the registered dealer or representative must still assess whether the investment is suitable for the purchaser.

(3) Exemptions based on purchaser characteristics

Some of the prospectus exemptions in NI 45-106 require the purchaser of the securities to meet certain characteristics or have certain relationships with a director, executive officer, founder or control person of the issuer. These exemptions include:

- Exemptions based on income or asset tests – The accredited investor exemption and the “eligible investor” test in the offering memorandum exemption in some jurisdictions require a purchaser to meet certain income or asset tests in order for securities to be sold in reliance on the exemption.
- Exemptions based on relationships – The private issuer exemption, the family, friends and business associates exemption and the “eligible investor” test in the offering memorandum exemption in some jurisdictions require a relationship between the purchaser and a director, executive officer, founder or control person of the issuer, such as that of a family member, close personal friend, or close business associate.

When distributing securities under these exemptions, the seller will have to obtain information from the purchaser in order to determine whether the purchaser has the requisite income, assets or relationship to meet the terms of the exemption.

It will not be sufficient for the seller to accept standard representations in a subscription agreement or an initial beside a category on Form 45-106F9 Form for Individual Accredited Investors unless the seller has taken reasonable steps to verify the representations made by the purchaser.

(4) Reasonable steps

Described below are procedures that a seller could implement in order to reasonably confirm that the purchaser meets the conditions for a particular exemption. Whether the types of steps are reasonable will depend on the particular facts and circumstances of the purchaser, the offering and the exemption being relied on, including:

- how the seller identified or located the potential purchaser
- what category of accredited investor or eligible investor the purchaser claims to meet
- what type of relationship the purchaser claims to have and with which director, executive officer, founder or control person of the issuer
- how much and what type of background information is known about the purchaser
- whether the person who meets with, or provides information to, the purchaser is registered

We expect a seller to be in a position to explain why certain steps were not taken or to be able to explain how alternative steps were reasonable in the circumstances. It is the seller that is relying on the prospectus exemption and it is the seller that is responsible to ensure the terms of the exemption are met. If the seller has any reservations about whether the purchaser qualifies under the exemption, the seller should not sell securities to the purchaser in reliance on that exemption.

(a) Understand the terms and conditions of the exemption

The seller should fully understand the terms and conditions of the exemption being relied on. “Understanding” includes being able to:

- Explain the terms and conditions – The seller must be able to explain to a purchaser the meaning of the terms and conditions of the particular exemption, including the difference between alternative qualification criteria for the same exemption.

For example, the accredited investor definition uses the terms “financial assets” and “net assets”. In some jurisdictions, the offering memorandum exemption also uses the term “net assets” as part of the eligible investor definition. A seller should be capable of explaining the meaning and differences between the two terms, including describing the specific assets and liabilities that form part of each calculation.

- Apply the specific facts of the purchaser to the terms and conditions – The terms “close personal friend” and “close business associate” used in some exemptions are difficult to define and can mean different things to different people. Sections 2.7 and 2.8 of this Companion Policy provide guidance on the key elements necessary to establish these types of relationships. We have not provided a “bright line” test for these relationships. A seller should understand the key elements of these relationships and be able to evaluate whether the relationship claimed by the purchaser meets those key elements.

(b) Establish appropriate policies and procedures

The seller is also responsible for confirming that all parties acting on behalf of the seller in a distribution understand the conditions that must be satisfied to rely on the exemption. This includes any employee, officer, director, agent, finder or other intermediary (whether registered or not) involved in the transaction.

We expect a seller to have policies and procedures in place to confirm that these other parties understand the exemption being relied on, are able to describe the terms of the exemption to purchasers and know what information and documentation must be obtained from purchasers to confirm the conditions of the exemption have been satisfied.

(c) Verify the purchaser meets the criteria set out in the exemption

Before discussing the details of an investment with a prospective purchaser, we expect the seller to obtain information that confirms the purchaser meets the criteria set out in the exemption. It would not be sufficient for a seller to rely solely on a form of subscription agreement or other document that only states: “I am an accredited investor” or “I am a friend of a director”.

A person distributing or trading securities is responsible for determining when an exemption is available. In determining whether an exemption is available, a person may rely on factual representations by a purchaser, provided that the person has no reasonable grounds to believe that those representations are false. However, the person distributing or trading securities is responsible for determining whether, given the facts available, the exemption is available. Generally, a person distributing or trading securities under an exemption should retain all necessary documents that show the person properly relied upon the exemption.

We would also have concerns if a seller only accepted detailed representations or an initial beside a category on the Form 45-106F9 Form for Individual Accredited Investors from the purchaser. In both cases, we expect the seller to take additional steps to confirm that the purchaser understood the meaning of what the purchaser was signing or initialing and that the purchaser was truthful in making the representation or initialing the category.

For example, an issuer distributing securities to a close personal friend of a director could require that the purchaser provide a signed statement describing the purchaser’s relationship with the director. On the basis of that factual information, the issuer could determine whether the purchaser is a close personal friend of the director for the purposes of a family, friends and business associates exemption. The issuer should not rely merely on a representation: “I am a close personal friend of a director”. Likewise, under the accredited investor exemptions, the seller must have a reasonable belief that the purchaser understands the meaning of the definition of “accredited investor”. Prior to discussing the particulars of the investment with the purchaser, the seller should discuss with the purchaser the various criteria for qualifying as an accredited investor and whether the purchaser meets any of the criteria.

- It is not appropriate for a person to assume an exemption is available. For instance a seller should not accept a form of subscription agreement that only states that the purchaser is an accredited investor. Rather the seller should request that the purchaser provide the details on how they fit within the accredited investor definition. Exemptions based on income or asset tests – To assess whether a purchaser is an accredited investor, or eligible investor, we expect the seller to ask questions about the purchaser’s net income, financial assets or net assets, or to ask other questions designed to elicit details about the purchaser’s financial circumstances.

If the seller has concerns about the purchaser’s responses, the seller should make further inquiries about the purchaser’s financial circumstances. If the seller still questions the purchaser’s eligibility, the seller could ask to see documentation that independently confirms the purchaser’s claims.

- Exemptions based on relationships – If an exemption is based on the existence of a specific relationship between the purchaser and a principal of the issuer (such as that of a family member, “close personal friend” or “close business associate”), we expect the seller to ask questions designed to confirm the nature and length of the relationship. The seller should also confirm the nature and length of the relationship with the director, executive officer, founder or control person identified by the purchaser.

For example, if the purchaser claims to be a close personal friend of a director of an issuer, the seller could ask the purchaser for the name of the director and a description of the nature and length of the purchaser’s relationship with the director. The seller could verify with the director that the information is accurate. Based on that factual information,

the seller could determine whether the purchaser is a close personal friend of the director for the purposes of the family, friends and business associates exemption.

(d) Keep relevant and detailed documentation

The seller should consider what documentation it needs to retain or collect from a purchaser to evidence the steps the seller followed to establish the purchaser met the conditions of the exemption.

The seller should consider whether it is necessary to have the purchaser sign that documentation before distributing securities to that purchaser. For example, if the purchaser claims to be a close personal friend of a director of the issuer, the seller could ask the purchaser to sign a statement giving the name of the director and describing the nature and length of the purchaser's relationship with the director. The seller could also ask the director to sign the statement confirming the relationship. In other cases, the seller may determine it is not necessary for the purchaser to sign the documentation, for example, if the seller is using meeting notes and email communications to demonstrate its verification efforts.

The seller should retain this documentation to evidence the steps the seller has taken to verify the availability of the exemption. Certain exemptions require the seller to obtain a signed risk acknowledgement form from the purchaser and to retain that risk acknowledgement for 8 years after the distribution. The 8-year period reflects the longest limitation period under securities legislation in Canada. The seller should consider local legislation concerning limitation periods when deciding how long to retain other documentation it considers necessary to demonstrate that it complied with the exemption.

The seller should also consider and comply with the requirements under provincial or federal legislation concerning the protection of personal information when collecting and retaining purchaser information.

1.10 Prohibited activities

Securities legislation in certain jurisdictions prohibits any person from making certain representations to a purchaser of securities, including an undertaking about the future value or price of the securities. In certain jurisdictions, these provisions also prohibit a person from making any statement that the person knows or ought reasonably to know is a misrepresentation. These prohibitions apply whether or not a trade or distribution is made under an exemption.

Misrepresentation is defined in securities legislation. The use of exaggeration, innuendo or ambiguity in an oral or written representation about a material fact, or other deceptive behaviour relating to a material fact, might be a misrepresentation.

PART 2 – INTERPRETATION

2.1 Definitions

Unless defined in NI 45-106, terms used in NI 45-106 have the meaning given to them in local securities legislation or in National Instrument 14-101 *Definitions*.

The term “contract of insurance” in the definition of “financial assets” has the meaning assigned to it in the legislation for the jurisdiction referenced in Appendix A of NI 45-106.

2.2 Executive officer (“policy making function”)

The definition of “executive officer” in NI 45-106 is based on the definition of the same term contained in National Instrument 51-102 *Continuous Disclosure Obligations* (“NI 51-102”).

Paragraph (c) of the definition “executive officer” includes individuals that are not employed by the issuer or any of its subsidiaries, but who perform a policy-making function in respect of the issuer.

The definition includes someone who “performs a policy-making function” in respect of the issuer. The CSA is of the view that an individual who “performs a policy-making function” in respect of an issuer is someone who is responsible, solely or jointly with others, for setting the direction of the issuer and is sufficiently knowledgeable of the business and affairs of the issuer so as to be able to respond meaningfully to inquiries from investors about the issuer.

2.3 Directors, executive officers and officers of non-corporate issuers

The term “director” is defined in NI 45-106 and it includes, for non-corporate issuers, individuals who perform functions similar to those of a director of a company.

When the term “officer” is used in NI 45-106, or any of the NI 45-106 forms, a non-corporate issuer should refer to the definitions in securities legislation. Securities legislation in most jurisdictions defines “officer” to include any individual acting in a capacity similar to that of an officer of a company. Therefore, in most jurisdictions, non-corporate issuers must determine which individuals are acting in capacities similar to that of directors and officers of corporate issuers, for the purposes of complying with NI 45-106 and its forms.

For example, the determination of who is acting in the capacity of a director or executive officer may be important where a person intends to distribute ~~or trade~~ securities of a limited partnership under an exemption that is conditional on a relationship with a director or executive officer. The person must conclude that the purchaser has the necessary relationship with an individual who is acting in a capacity with the limited partnership that is similar to that of a director or executive officer of a company.

2.4 Founder

The definition of “founder” includes a requirement that, at the time of the distribution of ~~or trade in~~, a security the person be actively involved in the business of the issuer. Accordingly, a person who takes the initiative in founding, organizing or substantially reorganizing the business of the issuer within the meaning of the definition but subsequently ceases to be actively engaged in the day to day operations of the business of the issuer would no longer be a “founder” for the purposes of NI 45-106, regardless of the person’s degree of prior involvement with the issuer or the extent of the person’s continued ownership interest in the issuer.

2.5 Investment fund

Generally, the definition of “investment fund” would not include a trust or other entity that issues securities that entitle the holder to net cash flows generated by: (i) an underlying business owned by the trust or other entity, or (ii) the income-producing properties owned by the trust or other entity. Examples of trusts or other entities that are not included in the definition are business income trusts, real estate investment trusts and royalty trusts.

2.6 Affiliate, control and related entity

(1) Affiliate

Section 1.3 of NI 45-106 contains rules for determining whether persons are affiliates for the purposes of NI 45-106, which may be different than those contained in other securities legislation.

(2) Control

The concept of control has two different interpretations in NI 45-106. For the purposes of Division 4 of Part 2 ~~and Division 4 of Part 3 (trades to employees (employee, executive officers, directors and consultants) (officer, director and consultant exemptions))~~, the interpretation of control is contained in section 2.23(1) ~~and section 3.23(1), respectively~~. For the purposes of the rest of NI 45-106, the interpretation of control is found in section 1.4 of NI 45-106. The reason for having two different interpretations of control is that the exemptions for distributions of ~~and trades in~~ securities to employees, executive officers, directors and consultants require a broader concept of control than is considered necessary for the rest of NI 45-106 to accommodate the issuance of compensation securities in a wide variety of business structures.

2.7 Close personal friend

For ~~the~~ purposes of both the private issuer ~~exemption~~ exemption in section 2.4 of NI 45-106 and the family, friends and business associates ~~exemptions, exemption in section 2.5 of NI 45-106~~, a “close personal friend” of a director, executive officer, founder or control person of an issuer is an individual who knows the director, executive officer, founder or control person well enough and has known them for a sufficient period of time to be in a position to assess their capabilities and trustworthiness and to obtain information from them with respect to the investment. The term “close personal friend” can include a family member who is not already specifically identified in the exemptions if the family member satisfies the criteria described above.

We consider the following factors as relevant to this determination:

- (a) the length of time the individual has known the director, executive officer, founder or control person,
- (b) the nature of the relationship between the individual and the director, executive officer, founder or control person including such matters as the frequency of contacts between them and the level of trust and reliance in the other circumstances, and

- (c) the number of “close personal friends” of the director, executive officer, founder or control person to whom securities have been distributed in reliance on the private issuer exemption or the family, friends and business associates exemption.

An individual is not a close personal friend solely because the individual is:

- (a) a relative,
 (b) a member of the same club, organization, association or religious group,
 (c) a co-worker, colleague or associate at the same workplace,
 (d) a client, customer, former client or former customer,
 (e) a mere acquaintance, or
 (f) connected through some form of social media, such as Facebook, Twitter or LinkedIn.

The relationship between the individual and the director, executive officer, founder or control person must be direct. For example, the exemption is not available to a close personal friend of a close personal friend of a director of the issuer.

An individual is not a close personal friend solely because the individual is:

- (a) a relative,
 (b) a member of the same organization, association or religious group, or

We would not consider a relationship that is primarily founded on participation in an Internet forum to be that of a close personal friend.

- (c) a client, customer, former client or former customer.

The person relying on the exemption is responsible for determining that the purchaser meets the characteristics required under the exemption. See section 1.9 of this Companion Policy for guidance on how to verify and document purchaser status.

2.8 Close business associate

For the purposes of both the private issuer ~~exemptions~~exemption in section 2.4 of NI 45-106 and the family, friends and business associates ~~exemptions~~exemption in section 2.5 of NI 45-106, a “close business associate” is an individual who has had sufficient prior business dealings with a director, executive officer, founder or control person of the issuer to be in a position to assess their capabilities and trustworthiness and to obtain information from them with respect to the investment.

We consider the following factors as relevant to this determination:

- (a) the length of time the individual has known the director, executive officer, founder or control person,
 (b) the nature of any specific business relationships between the individual and the director, executive officer, founder or control person, including, for each relationship, when it began, the frequency of contact between them and when it terminated if it is not ongoing, and the level of trust and reliance in the other circumstances,
 (c) the nature and number of any business dealings between the individual and the director, executive officer, founder or control person, the length of the period during which they occurred, and the nature and date of the most recent business dealing, and
 (d) the number of “close business associates” of the director, executive officer, founder or control person to whom securities have been distributed in reliance on the private issuer exemption or the family, friends and business associates exemption.

An individual is not a close business associate solely because the individual is:

- (a) a member of the same club, organization, association or religious group, or
 (b) a co-worker, colleague or associate at the same workplace,
 (c) a client, customer, former client or former customer,

(d) a mere acquaintance, or

(e) connected through some form of social media, such as Facebook, Twitter or LinkedIn.

The relationship between the individual and the director, executive officer, founder or control person must be direct. For example, the exemptions are not available for a close business associate of a close business associate of a director of the issuer.

We would not consider a relationship that is primarily founded on participation in an internet forum to be that of a close business associate.

The person relying on the exemption is responsible for determining that the purchaser meets the characteristics required under the exemption. See section 1.9 of this Companion Policy for guidance on how to verify and document purchaser status.

2.9 Indirect interest

Under paragraph (t) of the definition of “accredited investor” in section 1.1 of NI 45-106, an “accredited investor” includes a person in respect of which all of the owners of interests in that person, direct, indirect or beneficial, are accredited investors. The interpretive provision in section 1.2 of NI 45-106 is needed to confirm the meaning of indirect interest in British Columbia.

PART 3 – CAPITAL RAISING EXEMPTIONS

3.1 Soliciting purchasers

Part 2, ~~Division 1, and Part 3, Division 1~~ (capital raising exemptions) in NI 45-106 ~~does~~ not prohibit the use of registrants, finders, or advertising in any form (for example, ~~internet~~Internet, e-mail, direct mail, newspaper or magazine) to solicit purchasers under any of the exemptions. However, use of any of these means to find purchasers under the private issuer ~~exemption~~exemption in ~~sections~~section 2.4 and 3.4 of NI 45-106,106 or under the family, friends and business associates ~~exemption~~exemption in ~~sections~~section 2.5 and 3.5 of NI 45-106, may give rise to a presumption that the relationship required for use of these exemptions is not present. If, for example, an issuer advertises or pays a commission or finder’s fee to a third party to find purchasers under the family, friends and business associates ~~exemption~~exemption, it suggests that the precondition of a close relationship between the purchaser and the issuer may not exist and therefore the issuer cannot rely on ~~these exemptions~~this exemption.

Use of a finder by a private issuer to find an accredited investor, however, would not preclude the private issuer from relying upon the private issuer ~~exemption~~exemption, provided that all of the other conditions to ~~these exemptions~~that exemption are met.

Any solicitation activities that aim to identify a particular category of investor should clearly state the kind of investor being sought and the criteria that investors will be required to meet. Any print materials used to find accredited investors, for example, should clearly and prominently state that only accredited investors should respond to the solicitation.

3.2 Soliciting purchasers – Newfoundland and Labrador and Ontario

~~In Newfoundland and Labrador and Ontario, the exemptions from the dealer registration requirement identified in section 3.01 of NI 45-106 are not available to a “market intermediary”, except as therein provided (or as otherwise provided in local securities legislation – see, for instance, in the case of Ontario, OSC Rule 45-501 Ontario Prospectus and Registration Exemptions). Generally, a person is a market intermediary if the person is in the business of trading in securities as principal or agent. In Ontario, the term “market intermediary” is defined in Ontario Securities Commission Rule 14-501 Definitions.~~

The Ontario Securities Commission takes the position that if an issuer retains an employee whose primary job function is to actively solicit members of the public for the purposes of selling the issuer’s securities, the issuer and its employee are in the business of selling securities. Further, if an issuer and its employees are deemed to be in the business of selling securities, the Ontario Securities Commission considers both the issuer and its employees to be market intermediaries. This applies whether the issuer and its employees are located in Ontario and solicit members of the public outside of Ontario or whether the issuer and its employees are located outside of Ontario and solicit members of the public in Ontario. Accordingly, in order to be in compliance with securities legislation, these issuers and their employees should be registered under the appropriate category of registration in Ontario.

3.3 Advertising

NI 45-106 does not restrict the use of advertising to solicit or find purchasers. However, issuers and selling security holders should review other securities legislation and securities directions for guidelines, limitations and prohibitions on advertising

intended to promote interest in an issuer or its securities. For example, any advertising or marketing communications must not contain a misrepresentation and should be consistent with the issuer's public disclosure record.

3.4 Restrictions on finder's fees or commissions

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

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

3.4.1 Reinvestment plans

- (1) When is a plan administrator acting "for or on behalf of the issuer"?

~~Sections~~Section 2.2 and 3.2 of NI 45-106 ~~contains~~contains a prospectus and dealer registration ~~exemption~~exemption for distributions of, ~~and trades in~~, securities by a trustee, custodian or administrator acting for or on behalf of the issuer. If the trustee, custodian or administrator is engaged by the issuer, the plan administrator acts "for or on behalf of the issuer" and therefore falls within the language contained in ~~sections~~section 2.2(1) and 3.2(1) of NI 45-106. The fact that the plan administrator may act on or in accordance with instructions of a plan participant, under the plan, does not preclude the administrator from relying on the ~~exemption~~exemption contained in ~~sections~~section 2.2 ~~or 3.2~~ of NI 45-106.

- (2) Providing a description of material attributes and characteristics of securities

The ~~prospectus and dealer registration~~ reinvestment plan ~~exemption~~exemption in ~~sections~~section 2.2(5) and 3.2(5) of NI 45-106 ~~add~~includes a requirement, effective September 28, 2009, that if the securities distributed ~~or traded~~ under a reinvestment plan, ~~in reliance upon a reinvestment plan exemption~~, are of a different class or series than the securities to which the dividend or distribution is attributable, the issuer or plan agent must have provided the plan participants with a description of the material attributes and characteristics of the securities being distributed ~~or traded~~. An issuer or plan agent with an existing reinvestment plan can satisfy this requirement in a number of ways. If plan participants have previously signed a plan agreement or received a copy of a reinvestment plan that included this information, the issuer or plan agent does not need to take any further action for current plan participants. (Future participants should receive the same type of information before their first trade of a security under the plan.)

If plan participants have not received this information in the past, the issuer or plan agent can provide the required information or a reference to a website where the information is available with other materials sent to holders of that class of securities, for example with proxy materials. ~~Section 8.3.1 of NI 45-106 provides a transition period, allowing the issuer or plan agent to meet this requirement not later than 140 days after the next financial year end of the issuer ending on or after September 28, 2009.~~

- (3) Interest payments

The ~~exemption~~exemption in ~~sections~~section 2.2 and 3.2 of NI 45-106 may be available where a person invests interest payable on debentures or other similar securities into other securities of the issuer. The words "distributions out of earnings...or other sources" cover interest payable on debentures.

3.5 Accredited investor

- (1) Individual qualification – financial tests

An individual is an "accredited investor" for the purposes of NI 45-106 if ~~he or she satisfies, either alone or with a spouse, any of the financial asset test in paragraph (j), the net income test in paragraph (k) or the net asset test in paragraph (l) of the individual~~ satisfies one of four tests set out in the "accredited investor" definition in section 1.1 of NI 45-106-106:

- the \$1 000 000 financial asset test in paragraph (j)
- the \$5 000 000 financial asset test in paragraph (j.1)
- the net income test in paragraph (k)
- the net asset test in paragraph (l)

~~These Three~~ branches of the definition (in paragraphs (j), (k) and (l)) are designed to treat spouses as a single investing unit, so that either spouse qualifies as an “accredited investor” if the combined financial assets, ~~net income, or net assets~~ of both spouses exceed ~~the~~ \$1 000 000, the combined net income of both spouses exceeds \$300 000, or \$5 000 000 thresholds, ~~respectively the combined net assets of both spouses exceeds \$5 000 000.~~

The fourth branch, the \$5 000 000 financial asset test, does not treat spouses as a single investing unit. If an individual meets the \$5 000 000 financial asset test, they also meet the test to be a “permitted client” under NI 31-103. Permitted clients are entitled to waive the “know your client” and suitability obligations of registered dealers and advisers under NI 31-103. Under subsection 2.3(7) of NI 45-106, an issuer distributing securities under the accredited investor exemption to an individual who meets the \$5 000 000 financial asset test in paragraph (j.1) under the definition of “accredited investor” is not required to obtain a signed risk acknowledgement in Form 45-106F9 Form for Individual Accredited Investors from that individual.

For the purposes of the financial asset ~~test~~tests in ~~paragraph~~paragraphs (j) and (j.1), “financial assets” are defined in NI 45-106 to mean cash, securities, or a contract of insurance, a deposit or an evidence of a deposit that is not a security for the purposes of securities legislation. These financial assets are generally liquid or relatively easy to liquidate. The value of a purchaser’s personal residence ~~would~~is not be included in a calculation of financial assets.

By comparison, the net asset test under paragraph (l) ~~involves a consideration of means~~ all of the purchaser’s total assets minus all of the purchaser’s total liabilities. Accordingly, for the purposes of the net asset test, the calculation of total assets would include the value of a purchaser’s personal residence and the calculation of total liabilities would include the amount of any liability (such as a mortgage) in respect of the purchaser’s personal residence.

If the combined net income of both spouses does not exceed \$300 000, but the net income of one of the spouses exceeds \$200 000, only the spouse whose net income exceeds \$200 000 qualifies as an accredited investor.

(2) Bright-line standards – individuals

The monetary thresholds in the “accredited investor” definition are intended to create “bright-line” standards. Investors who do not satisfy these monetary thresholds do not qualify as accredited investors under the applicable paragraph.

(3) Beneficial ownership of financial assets

~~Paragraph~~Paragraphs (j) and (j.1) of the “accredited investor” definition ~~refers to an individual who, either alone or with a spouse, beneficially owns financial assets having an aggregate realizable value that, before taxes but net of any related liabilities, exceeds \$1 000 000.~~refer to the beneficial ownership of financial assets. As a general matter, it should not be difficult to determine whether financial assets are beneficially owned by an individual, an individual’s spouse, or both, in any particular instance. However, in the case where financial assets are held in a trust or in other types another type of investment vehicles vehicle for the benefit of an individual there may raisebe questions as to whether the individual beneficially owns the financial assets ~~in the circumstances~~. The following factors are indicative of beneficial ownership of financial assets:

- (a) physical or constructive possession of evidence of ownership of the financial asset;
- (b) entitlement to receipt of any income generated by the financial asset;
- (c) risk of loss of the value of the financial asset; and
- (d) the ability to dispose of the financial asset or otherwise deal with it as the individual sees fit.

For example, securities held in a self-directed RRSP, for the sole benefit of an individual, are beneficially owned by that individual. In general, financial assets in a spousal RRSP would also be included for the purposes of the ~~threshold~~\$1 000 000 financial asset test ~~because in~~ paragraph (j) because it takes into account financial assets owned beneficially by a spouse. However, financial assets in a spousal RRSP would not be included for purposes of the \$5 000 000 financial asset test in paragraph (j.1). Financial assets held in a group RRSP under which the individual ~~would~~does not have the ability to acquire the financial assets and deal with them directly would not meet ~~these~~the beneficial ownership requirements in either paragraph (j) or paragraph (j.1).

(4) Calculation of an individual purchaser’s net assets

To calculate a purchaser’s net assets under the net asset test in paragraph (l) of the “accredited investor” definition, subtract the purchaser’s total liabilities from the purchaser’s total assets. The value attributed to assets should reasonably reflect their estimated fair value. Income tax should be considered a liability if the obligation to pay it is outstanding at the time of the distribution of, ~~or trade in,~~ the security.

(4.1) Risk acknowledgement from individual investors

Persons relying on the accredited investor exemption in section 2.3 of NI 45-106 and section 73.3 of the *Securities Act* (Ontario) to distribute securities to individual accredited investors described in paragraphs (j), (k) and (l) of the “accredited investor” definition must obtain a completed and signed risk acknowledgement from that individual accredited investor.

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

(5) Financial statements

The minimum net asset threshold of \$5 000 000 specified in paragraph (m) of the “accredited investor” definition must, in the case of a non-individual entity, be shown on the entity’s “most recently prepared financial statements”. The financial statements must be prepared in accordance with applicable generally accepted accounting principles.

(6) Time for assessing qualification

The financial tests prescribed in the accredited investor definition are to be applied only at the time of the distribution of, ~~or trade in,~~ the security. The person is not required to monitor the purchaser’s continuing qualification as an accredited investor after the distribution of, ~~or trade in,~~ the security is completed.

(7) Recognition or ~~Designation~~designation as an ~~Accredited Investor~~“accredited investor”

Paragraph (v) of the “accredited investor” definition in NI 45-106 contemplates that a person may apply to be recognized or designated as an accredited investor by the securities regulatory authorities or ~~regulators~~, except in Ontario and Québec, the regulators. The securities regulatory authorities or regulators have not adopted any specific criteria for granting accredited investor recognition or designation to applicants, as the securities regulatory authorities or regulators believe that the “accredited investor” definition generally covers all types of persons that do not require the protection of the prospectus requirement ~~or the dealer registration requirement~~. Accordingly, the securities regulatory authorities or regulators expect that applications for accredited investor recognition or designation will be utilized on a very limited basis. If a securities regulatory authority or regulator considers it appropriate in the circumstances, it may grant accredited investor recognition or designation to a person on terms and conditions, including a requirement that the person apply annually for renewal of accredited investor recognition or designation.

(8) Verifying accredited investor status

Persons relying on the accredited investor exemption are responsible for determining whether a purchaser meets the definition of “accredited investor”. See section 1.9 of this Companion Policy for guidance on how to verify and document purchaser status.

3.6 Private issuer

(1) Meaning of “the public”

Whether or not a person is a member of the public must be determined on the facts of each particular case. The courts have interpreted “the public” very broadly in the context of securities trading. Whether a person is a part of the public will be determined on the particular facts of each case, based on the tests that have developed under the relevant case law. A person who intends to distribute ~~or trade~~ securities, in reliance upon the private issuer prospectus exemption in section 2.4(2) ~~or the private issuer dealer registration exemption in section 3.4(2) of NI 45-106, 106~~ to a person not listed in paragraphs (a) through (j) of that section will have to satisfy itself that the distribution of, ~~or trade in,~~ the security is not to the public.

(2) Meaning of “close personal ~~friends~~friend” and “close business ~~associates~~associate”

See sections 2.7 and 2.8 of this Companion Policy for a discussion of the meaning of “close personal friend” and “close business associate”.

(2.1) Meaning of “non-convertible debt securities”

Paragraph (b) of the definition of private issuer has a number of restrictions that apply to the securities, other than non-convertible debt securities, of a private issuer. Non-convertible debt securities are debt securities that do not have a right or obligation to exchange or convert into another security of the issuer.

(3) Business combination of private issuers

A distribution of, ~~or trade in,~~ securities in connection with an amalgamation, merger, reorganization, arrangement or other statutory procedure involving two private issuers, to holders of securities of those issuers is not a distribution of, ~~or trade in,~~ a security to the public, provided that the resulting issuer is a private issuer.

Similarly, a distribution of, ~~or trade in,~~ securities by a private issuer in connection with a share exchange take-over bid for another private issuer is not a distribution of, ~~or trade in,~~ securities to the public, provided the offeror remains a private issuer after completion of the bid.

(4) Acquisition of a private issuer

Persons relying on a private issuer exemption in NI 45-106 must be satisfied that the purchaser is not a member of the public. Generally, however, if the owner of a private issuer sells the business of the private issuer by way of a sale of securities, rather than assets, to another party who acquires all of the securities, the sale will not be considered to have been to the public.

(5) Ceasing to be a private issuer

The term “private issuer” is defined in section 2.4(1) ~~(with the same definition repeated in section 3.4(1) of NI 45-106).~~ A private issuer can distribute securities only to the persons listed in section 2.4(2) of NI 45-106. If a private issuer distributes securities to a person not listed in section 2.4(2), even under another exemption, it will no longer be a private issuer and will not be able to continue to use the private issuer prospectus exemption in section 2.4(2) ~~(or the private issuer dealer registration exemption in section 3.4(2)).~~ For example, if a private issuer distributes securities under the offering memorandum exemption, it will no longer be a private issuer.

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

An issuer that completes a going private transaction (for example, by way of an amalgamation, squeeze out or a takeover bid with a subsequent statutory compulsory acquisition) can ~~however~~ use the private issuer exemption after a going private transaction.

3.7 Family, friends and business associates

(1) Number of purchasers

There is no restriction on the number of persons that the issuer may sell securities to under the family, friends and business associates ~~exemption~~ exemption in section 2.5 and 3.5 of NI 45-106. However, an issuer selling securities to a large number of persons under this exemption may give rise to a presumption that not all of the purchasers are family, close personal friends or close business associates and that the exemption may not be available.

(2) Meaning of “close personal ~~friends~~ friend” and “close business ~~associates~~ associate”

See sections 2.7 and 2.8 of this Companion Policy for a discussion of the meaning of “close personal friend” and “close business associate”.

(3) Risk acknowledgement – Saskatchewan

Under ~~sections section 2.6 and 3.6~~ of NI 45-106, the ~~corresponding~~ family, friends and business associates exemption in section 2.5 ~~or 3.5~~ of NI 45-106 cannot be relied upon in Saskatchewan for a distribution of, ~~or trade in,~~ securities based on a close personal friendship or close business association unless the person obtains a signed “risk acknowledgement” in the required form from the purchaser and retains the form for eight years after the distribution of, ~~or trade in,~~ securities.

3.8 Offering memorandum

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

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

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

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

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

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

A registered investment dealer providing advice to a purchaser in these circumstances is expected to comply with the "know your client" and suitability requirements under applicable securities legislation and SRO rules and policies. Some dealers have obtained exemptions from the "know your client" and suitability requirements because they do not provide advice. An assessment of suitability by these dealers is not sufficient to qualify a purchaser as an eligible investor.

- (2) Form of offering memorandum

There are two forms of offering memorandum: Form 45-106F3, which may be used by qualifying issuers, and Form 45-106F2, which must be used by all other issuers. Form 45-106F3 requires qualifying issuers to incorporate by reference their annual information form (AIF), management's discussion and analysis (MD&A), annual financial statements and subsequent specified continuous disclosure documents required under NI 51-102.

A qualifying issuer is a reporting issuer that has filed an AIF under NI 51-102 and has met all of its other continuous disclosure obligations, including those in NI 51-102, National Instrument 43-101 *Standards of Disclosure for Mineral Projects*, and National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*. Under NI 51-102, venture issuers are not required to file AIFs. However, if a venture issuer wants to use Form 45-106F3, the venture issuer must voluntarily file an AIF under NI 51-102 in order to incorporate that AIF into its offering memorandum.

- (3) Date of certificate and required signatories

The issuer must ensure that the information provided to the purchaser is current and does not contain a misrepresentation. For example, if a material change occurs in the business of the issuer after delivery of an offering memorandum to a potential purchaser, the issuer must give the potential purchaser an update to the offering memorandum before the issuer accepts the agreement to purchase the securities. The update to the offering memorandum may take the form of an amendment describing the material change, a new offering memorandum containing up-to-date disclosure or a material change report, whichever the issuer decides will most effectively inform purchasers.

Whatever form of update the issuer uses, it must include a newly signed and dated certificate as required in the applicable subsection 2.9(9), ~~(10), (10.1), (10.2), (10.3), (11), (11.1), or (12) or 3.9(9), (10), (10.1), (10.2), (10.3), (11), (11.1), or (12)~~ of NI 45-106.

“Promoter” is defined differently in provincial and territorial securities legislation across CSA jurisdictions. It is generally defined as meaning a person who has taken the initiative in founding, organizing or substantially reorganizing the business of the issuer or who has received consideration over a prescribed amount for services or property or both in connection with founding, organizing or substantially reorganizing the issuer. “Promoter” has not been defined in the *Securities Act* (Québec) and a broad interpretation is taken in Québec in determining who would be considered a promoter.

Under securities legislation, persons who receive consideration solely as underwriting commissions or in consideration of property and who do not otherwise take part in the founding, organizing or substantially reorganizing the issuer are not promoters. Simply selling securities, or in some way facilitating sales in securities, does not make a person a promoter under the offering memorandum ~~exemption~~exemption.

(4) Consideration to be held in trust

The purchaser has, or must be given, the right to cancel the agreement to purchase the securities until midnight on the 2nd business day after signing the agreement. During this period, the issuer must arrange for the consideration to be held in trust on behalf of the purchaser.

It is up to the issuer to decide what arrangements are necessary to preserve the consideration received from the purchaser. The requirement to hold the consideration in trust may be satisfied if, for example, the issuer keeps the purchaser’s cheque, without cashing or depositing it, until the expiration of the two business day cancellation period.

It is also the issuer’s responsibility to ensure that whoever is holding the consideration promptly returns it to the purchaser if the purchaser cancels the agreement to purchase the securities.

(5) Filing of offering memorandum

The issuer is required to file the offering memorandum with the securities regulatory authority or regulator in each of the jurisdictions in which the issuer distributes ~~or trades~~ securities under an offering memorandum exemption. The issuer must file the offering memorandum on or before the 10th day after the distribution.

If the issuer is conducting multiple closings, the offering memorandum must be filed on or before the 10th day after the first closing. Once the offering memorandum has been filed, there is no need to file it again after subsequent closings, unless it has been updated.

(6) Purchasers’ rights

Unless securities legislation in a purchaser’s jurisdiction provides a purchaser with a comparable right of cancellation or revocation, an issuer must give each purchaser under an offering memorandum a contractual right to cancel the agreement to purchase the securities by delivering a notice to the issuer not later than midnight on the 2nd business day after the purchaser signs the agreement.

Unless securities legislation in a purchaser’s jurisdiction provides purchasers with comparable statutory rights, the issuer must also give the purchaser a contractual right of action against the issuer in the event the offering memorandum contains a misrepresentation. This contractual right of action must be available to the purchaser regardless of whether the purchaser relied on the misrepresentation when deciding to purchase the securities. This right is similar to that given to a purchaser under a prospectus. The purchaser may claim damages or ask that the agreement be cancelled. If the purchaser wants to cancel the agreement, the purchaser must commence the action within 180 days after signing the agreement to purchase the securities. If the purchaser is seeking damages, the purchaser must commence the action within the earlier of 180 days after learning of the misrepresentation or 3 years after signing the agreement to purchase the securities.

The issuer is required to describe in the offering memorandum any rights available to the purchaser, whether they are provided by the issuer contractually as a condition to the use of the exemption or provided under securities legislation.

3.9 Minimum amount investment

(1) Baskets of securities

An issuer may wish to distribute ~~or trade~~ more than one kind of security of its own issue, such as shares and debt, in a single transaction under the minimum investment amount exemption. Provided that the shares and debt are sold in units that have a total acquisition cost of not less than \$150 000 paid in cash at the time of the distribution of, ~~or trade in,~~ a security, the ~~exemption~~exemption can, if otherwise available, be used, notwithstanding that the acquisition cost of the shares and the acquisition cost of the debt, taken separately, are both less than \$150 000.

(2) Not available for distributions to individuals or syndicates

The minimum amount investment exemption in section 2.10 of NI 45-106 is not available for distributions to individuals. “Individual” is defined in the securities legislation of certain jurisdictions to mean a natural person. The definition specifically excludes partnerships, unincorporated associations, unincorporated syndicates, unincorporated organizations and trusts. It also specifically excludes a natural person acting in the capacity of trustee, executor, administrator or personal or other legal representative.

Subsection 2.10(2) of NI 45-106 specifically prohibits using the minimum amount investment exemption to distribute to persons created or used solely to rely on this exemption. See section 1.8 of this Companion Policy for a discussion of the “anti-syndication” provisions in NI 45-106.

PART 4 – OTHER EXEMPTIONS**4.1 Employee, executive officer, director and consultant exemptions**

Trustees, custodians or administrators who engage in activities, contemplated in the prospectus ~~and dealer registration exemptions in sections~~exemption in section 2.27 and 3.27 of NI 45-106, that bring together purchasers and sellers of securities should have regard to the provisions of National Instrument 21-101 *Marketplace Operation* respecting “marketplaces” and “alternative trading systems”.

The employee, executive officer, director and consultant exemptions are based on the alignment of economic interests between an issuer and its employees. They may, where available, be used to provide employees and other similar persons with an opportunity to participate in the growth of the employer’s business and to compensate persons for the services they provide to an issuer. The securities regulatory authorities or regulators will generally not grant exemptive relief analogous to these exemptions except in very limited circumstances.

4.2 Business combination and reorganization(1) Statutory procedure

The securities regulatory authorities ~~and regulators~~ interpret the phrase “statutory procedure” broadly and are of the view that the prospectus ~~and dealer registration exemptions~~exemption contained in ~~sections~~section 2.11 and 3.11 of NI 45-106 ~~apply~~applies to all distributions of, ~~and trades in,~~ securities of an issuer that are both part of the procedure and necessary to complete the transaction, regardless of when the distribution of, ~~or trade in,~~ a security occurs.

The prospectus ~~and dealer registration exemptions~~exemption contained in ~~sections~~section 2.11 and 3.11 of NI 45-106 ~~exempt~~exempts distributions of, ~~and trades in,~~ securities in connection with an amalgamation, merger, reorganization or arrangement if the same is done “under a statutory procedure”. The securities regulatory authorities or regulators are of the view that the references to statutory procedure in sections 2.11 ~~and 3.11~~ of NI 45-106 are to any statute of a jurisdiction or foreign jurisdiction under which the entities involved have been incorporated or created and exist or under which the transaction is taking place. This would include, for example, an arrangement under the *Companies’ Creditors Arrangement Act* (Canada).

(2) Three-cornered amalgamations

Certain corporate statutes permit a so-called “three-cornered merger or amalgamation” under which two companies will amalgamate or merge and security holders of the amalgamating or merging entities will receive securities of a third party affiliate of one amalgamating or merging entity. The prospectus ~~and dealer registration exemptions~~exemption contained in ~~sections~~section 2.11 and 3.11 of NI 45-106 ~~refer~~refers to these distributions of, ~~or trades in,~~ a security when they refer to a distribution of, ~~or a trade in,~~ a security made in connection with an amalgamation or merger done under a statutory procedure.

(3) Exchangeable shares

A transaction involving a procedure described in the prospectus ~~and dealer registration exemptions~~exemption contained in ~~sections~~section 2.11 and 3.11 of NI 45-106 may include an exchangeable share structure to achieve certain tax-planning objectives. For example, where a non-Canadian company seeks to acquire a Canadian company under a plan of arrangement, an exchangeable share structure may be used to allow the Canadian shareholders of the company to be acquired to receive, in substance, shares of the non-Canadian company while avoiding the adverse tax consequences associated with exchanging shares of a Canadian company for shares of a non-Canadian company. Instead of receiving shares of the non-Canadian company directly, the Canadian shareholders receive shares of a Canadian company which, through various contractual arrangements, have economic terms and voting rights that are essentially identical to the shares of the non-Canadian company and permit the holder to exchange such shares, at a time of the holder’s choosing, for shares of the non-Canadian company.

Historically, the use of an exchangeable share structure in connection with a statutory procedure has raised a question as to whether the ~~exemption~~exemption now contained in ~~sections~~section 2.11 and ~~3.11~~ of NI 45-106 ~~were~~was available for all distributions ~~or trades~~ necessary to complete the transaction. For example, in the case of the acquisition under a plan of arrangement noted above, the use of an exchangeable share structure may result in a delay of several months or even years between the date of the arrangement and the date the shares of the non-Canadian company are distributed to the former shareholders of the acquired company. As a result of this delay, some filers have questioned whether the distribution of the non-Canadian company's shares upon the exercise of the exchangeable shares may still be viewed as being "in connection with" the statutory transaction, and have made application for exemptive relief to address this uncertainty.

The securities regulatory authorities or regulators take the position that the statutory procedure ~~exemption~~exemption contained in section 2.11 and ~~section 3.11~~ of NI 45-106 ~~refer~~refers to all distributions ~~or trades~~ of securities that are necessary to complete an exchangeable share transaction involving a procedure described in ~~section 2.11 or section 3.11, 2.11~~, even where such distributions ~~or trades~~ occur several months or years after the transaction. In the case of the acquisition noted above, the investment decision of the shareholders of the acquired company at the time of the arrangement represented a decision to, ultimately, exchange their shares for shares of the non-Canadian company. The distribution of such shares upon the exercise of the exchangeable shares does not represent a new investment decision, but merely represents the completion of that original investment decision. Accordingly, additional exemptive relief is not warranted in circumstances where the original transaction was completed in reliance on ~~these exemptions~~this exemption.

4.3 Asset acquisition – character of assets to be acquired

When issuing securities, issuers must comply with the requirements under applicable corporate or other governing legislation that the securities be issued for fair value. Where securities are issued for non-cash consideration such as assets or resource properties, it is the responsibility of the issuer and its board of directors to determine the fair market value of the assets or resource properties and to retain records to demonstrate how that fair market value was determined. In some situations, cash assets that make up working capital could also be considered in the total calculation of the fair market value.

4.4 Securities for debt – bona fide debt

A bona fide debt is one that was incurred for value, on commercially reasonable terms and that on the date the debt was incurred the parties believed would be repaid in cash.

A reporting issuer may distribute ~~or trade~~ securities to settle a debt only after the debt becomes due, as evidenced by the creditor issuing an invoice, demand letter or other written statement to the issuer indicating that the debt is due. The securities for debt ~~exemption~~exemption may not be relied on for the issuance of securities by an issuer to secure a debt that will remain outstanding after the issuance.

4.5 Take-over bid and issuer bid

(1) Exempt bids

The terms "take-over bid" and "issuer bid", for the purposes of ~~sections~~section 2.16 and ~~3.16~~ of NI 45-106, include an exempt take-over bid and exempt issuer bid.

(2) Bids involving exchangeable shares

The take-over bid and issuer bid exemptions refer to all distributions ~~or trades~~ necessary to complete a take-over bid or an issuer bid that involves an exchangeable share structure (as described under section 4.2 of this Companion Policy), even where such distributions ~~or trades~~ may occur several months or even years after the bid is completed.

4.6 Isolated distribution ~~or trade~~

The ~~exemption~~exemption contained in section 2.30 and ~~3.30~~ of NI 45-106 ~~are~~is limited to distributions ~~of, or trades in, a distribution of~~ a security made by an issuer in a security of its own issue. ~~There is also an additional isolated trade dealer registration exemption contained in section 3.29 of NI 45-106. While the latter exemption refers to trades in any security, it does not apply to any trades by an issuer in a security that is issued by the issuer. It is intended that these exemptions~~this exemption will only be used rarely and are not available for registrants or others whose business is trading ~~in~~not to distribute securities ~~to multiple purchasers~~.

4.6.1 Short-term securitized products

(1) Types of short-term securitized products

Section 2.35.1 is a prospectus exemption for the distribution of short-term securitized products. Short-term securitized products distributed in Canada are generally asset-backed commercial paper.

(2) Definition of “asset pool”

The term “cash-flow generating assets” in the definition of “asset pool” refers to the bonds, mortgages, leases, loans, receivables, or royalties in which a conduit has a direct or indirect ownership or security interest. It does not refer to a security or other instrument through which a conduit obtains an indirect ownership or security interest in underlying cash-flow generating assets. For example, a conduit may enter into an asset transaction whereby it purchases a note from a trust that owns a pool of mortgages, thereby acquiring an indirect ownership or security interest in that pool of mortgages. In this scenario, the “cash-flow generating assets” are the mortgages, not the note.

(3) Interaction of conditions with credit ratings

In order for the short-term securitized products prospectus exemption to be available, the short-term securitized product must satisfy certain conditions relating to credit ratings as set out in subparagraphs 2.35.2(a)(i) and (ii). The short-term securitized product and issuing conduit must also satisfy other conditions regarding liquidity support, series or class seniority and asset pool composition as set out in subparagraphs 2.35.2(a)(iii) and (iv) and paragraphs 2.35.2(b) and (c).

Short-term securitized products that satisfy the conditions in the prospectus exemption relating to liquidity support, series or class seniority and asset pool composition may not necessarily satisfy the credit-rating conditions; particularly the requirement in subparagraph 2.35.2(a)(i) that one of the two credit ratings must be at the highest rating category. Designated rating organizations each have their own rating methodologies and may require features that go beyond those specified in the prospectus exemption in order for a short-term securitized product to obtain a credit rating in the highest category.

(4) Liquidity provider

Clause 2.35.2(a)(iv)(B) requires a liquidity provider to be a deposit-taking institution regulated or approved to carry on business in Canada by the Office of the Superintendent of Financial Institutions (OSFI) or a Canadian federal or provincial government department or regulatory authority. This provision allows a foreign bank to be a liquidity provider if it is a Schedule II or Schedule III bank that is regulated by OSFI or approved by OSFI to carry on business in Canada.

(5) Exceptions relating to liquidity agreements

The intention of subsection 2.35.3(2) is to permit a liquidity agreement to provide that a liquidity provider need not advance funds in respect of assets that have defaulted and that are not covered by any applicable credit enhancement. For purposes of paragraph 2.35.3(2)(a), we expect that the aggregate value of the non-defaulted assets would be the book value, unless some other method of determining the value is specified by the provisions of the applicable liquidity agreement, e.g. discounted value or market value.

(6) Disclosure – meaning of “make reasonably available”

Section 2.35.4 requires that each information memorandum and reports on Form 45-106F7 and Form 45-106F8 be made reasonably available both to securities regulators and purchasers of a short-term securitized product.

Reliance upon the isolated trade exemption might, for example, be appropriate when a person who is not involved in the business of trading securities wishes to make a single trade of a security that the person owns to another person. The exemption would not be available to a person for any subsequent trades for a period of time adequate to ensure that each transaction was truly isolated and unconnected.

This requirement could generally be satisfied by a conduit posting the document on a website maintained by it or on its behalf. If a password is used to limit access to the website, we would expect that the password would be promptly provided upon application. We generally would not object if a prospective purchaser, before being provided access to a website on which the documents are posted, would have to agree to keep the information on the website confidential or that it would not provide others with access to the website or the documents available on it.

4.7 Mortgages

In British Columbia, Alberta, Manitoba, Québec and Saskatchewan, NI 45-106 specifically excludes syndicated mortgages from the mortgage prospectus and dealer registration exemptions in sections 2.36 and 3.36 exemption in section 2.36. In determining what constitutes a syndicated mortgage, issuers will need to refer to the corresponding definition provided in section 2.36(4) or 3.36(1) of NI 45-106.

The mortgage ~~exemptions~~ prospectus exemption ~~does~~ not apply to distributions ~~or trades~~ in securities that secure mortgages by bond, debenture, trust deed or similar obligation. The mortgage ~~exemptions~~ prospectus exemption ~~also does~~ not apply to a distribution of, ~~or a trade in~~, a security that represents an undivided co-ownership interest in a pool of mortgages, such as a pass-through certificate issued by an issuer of asset-backed securities.

4.8 Not for profit issuer

(1) Eligibility to use ~~these exemptions~~ this exemption

~~These exemptions apply~~ This exemption applies to distributions of, ~~and trades in~~, securities of an issuer that is organized exclusively for educational, benevolent, fraternal, charitable, religious or recreational purposes and not for profit (“not for profit issuer”). To use ~~these exemptions~~ this exemption, an issuer must be organized exclusively for one or more of the listed purposes and use the funds raised for those purposes.

If an issuer is organized exclusively for one of the listed purposes, but its mandate changes so that it is no longer primarily engaged in the purpose it was organized for, the issuer may no longer be able to rely on ~~these exemptions~~ this exemption. For example, if an issuer organized exclusively for educational purposes over time devotes more and more of its efforts to lending money, even if it is only to other educational entities, the lending issuer may be unable to rely on these exemptions. The same would also be true if one of an issuer’s mandates was to provide an investment vehicle for its members. An issuer that issues securities that pay dividends would also not be able to use these exemptions, because no part of the issuer’s net earnings can go to any security holder. However, if the securities are debt securities and the issuer agrees to repay the principal amount with or without interest, the security holders are not considered to be receiving part of the net earnings of the issuer. The debt securities may be secured or unsecured.

If investors could receive any special treatment as a result of purchasing securities, the security holders are not typically receiving part of the net earnings of the issuer and the sale may still fit within these exemptions. For example, if the not for profit issuer runs a golf course and offers security holders a waiver of greens fees for three years, it could still rely on ~~these exemptions~~ this exemption, provided all other conditions are met (and the exemption remains available in the relevant jurisdiction(s)).

If, at the time of the distribution of, ~~or trade in~~, the security, the purchaser has an entitlement to the assets of the issuer on the basis that they would be getting part of the net earnings of the issuer, then the sale would not fit within ~~these exemptions~~ this exemption.

In Québec, not for profit issuers may still rely on the broad exemption available for not for profit issuers under section 3 of the *Securities Act* (Québec).

(2) Meaning of “no commission or other remuneration”

~~Sections~~ Section 2.38(b) ~~and 3.38(b) provide~~ provides that “no commission or other remuneration is paid in connection with the sale of the security”. This is intended to ensure that no one is paid to find purchasers of the securities. However, the issuer may pay its legal and accounting advisers for their legal or accounting services in connection with the sale.

4.9 ~~Exchange contracts~~

~~The dealer registration exemption for exchange contracts contained in section 3.45 of NI 45-106 (and as limited by section 3.0 of NI 45-106) is only available in Alberta, British Columbia, Québec and Saskatchewan. In Manitoba and Ontario, exchange contracts are governed by commodity futures legislation.~~

~~Except in Saskatchewan, the dealer registration exemption for exchange contracts contained in section 3.45(1)(b) (and as limited by section 3.0) of NI 45-106 provides for trades resulting from unsolicited orders placed with an individual resident outside the jurisdiction. However, if the individual conducts further trades in the future, that individual will be deemed to be carrying on business in the jurisdiction and will not be able to rely on this exemption.~~

PART 5 – FORMS

5.1 Report of ~~Exempt Distribution~~ exempt distribution

(1) Requirement to file

An issuer that has distributed a security of its own issue under any of the prospectus exemptions listed in section 6.1 of NI 45-106 is required to file a report of exempt distribution, on or before the 10th day after the distribution. Alternatively, if an underwriter distributes securities acquired under section 2.33 of NI 45-106, either the issuer or the underwriter may complete

and file the form. If there is a syndicate of underwriters, the lead underwriter may file the form on behalf of the syndicate or each underwriter may file a form relating to the portion of the distribution it was responsible for.

The required form of report is Form 45-106F1 *Report of Exempt Distribution* in all jurisdictions except British Columbia. In British Columbia, the required form of report is Form 45-106F6 *British Columbia Report of Exempt Distribution*.

In determining if it is required to file a report in a particular jurisdiction, the issuer or underwriter should consider the following questions:

- (a) Is there a distribution in the jurisdiction? (Please refer to the securities legislation of the jurisdiction for guidance, if any, on when a distribution occurs in the jurisdiction.)
- (b) If there is a distribution in the jurisdiction, what exemption from the prospectus requirement is the issuer relying on for the distribution of the security?
- (c) Does the exemption referred to in paragraph (b) trigger a reporting requirement? (Reports of exempt distribution are required for distributions made in reliance on the prospectus exemptions listed in section 6.1 of NI 45-106.)

A distribution may occur in more than one jurisdiction. In this case, the issuer is required to file a single report in each Canadian jurisdiction where the distribution has occurred, except British Columbia. The report will set out all distributions in each Canadian jurisdiction.

If the distribution occurs in British Columbia and one or more other jurisdictions, the issuer is required to file Form 45-106F6 with the British Columbia Securities Commission and file Form 45-106F1 in the other applicable jurisdictions.

(2) Access to information in jurisdictions other than British Columbia

The securities legislation of several provinces requires that information filed with the securities regulatory authority or, where applicable, the regulator under such securities legislation, be made available for public inspection during normal business hours except for information that the securities regulatory authority, or where applicable, the regulator,

- (a) believes to be personal or other information of such a nature that the desirability of avoiding disclosure thereof in the interest of any affected individual outweighs the desirability of adhering to the principle that information filed with the securities regulatory authority or the regulator, as applicable, be available to the public for inspection,
- (b) in Alberta, considers that it would not be prejudicial to the public interest to hold the information in confidence, and
- (c) in Québec, considers that access to the information could result in serious prejudice.

Based on the above mentioned provisions of securities legislation, the securities regulatory authorities or regulators, as applicable, have determined that the information listed in Form 45-106F1 *Report of Exempt Distribution*, Schedule I (“Schedule I”) discloses personal or other information of such a nature that the desirability of avoiding disclosure of this personal information outweighs the desirability of making the information available to the public for inspection. In addition, in Alberta, the regulator considers that it would not be prejudicial to the public interest to hold the information listed in Schedule I in confidence. In Québec, the securities regulatory authority considers that access to Schedule I by the public in general could result in serious prejudice and consequently, the information listed in Schedule I will not be made publicly available.

(3) Filings in British Columbia

For filings made in British Columbia, issuers are required to file Form 45-106F6 and pay the fees associated with that filing electronically using BCSC e-services. This requirement only applies to filings that are required to be made within 10 days of the distribution. It does not apply to filings made annually by investment funds under section 6.2(2) of NI 45-106. Please refer to BC Instrument 13-502 *Electronic Filing of Reports of Exempt Distribution* for further information.

5.2 Forms required under the offering memorandum exemption

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

The required form of risk acknowledgment under sections 2.9(1), ~~3.9(1)~~, ~~2.9(2)~~ and ~~3.9(2)~~ of NI 45-106 is Form 45-106F4.

5.3 Real estate securities

Certain jurisdictions impose alternative or additional disclosure requirements in relation to the distribution of real estate securities by offering memorandum. Refer to securities legislation in the jurisdictions where securities are being distributed.

5.4 ~~Risk Acknowledgement Form Respecting Close Personal Friends and Close Business Associates – acknowledgement form for distributions to close personal friends and close business associates in Saskatchewan~~

In Saskatchewan, a risk acknowledgment is also required under section 2.6(1) of NI 45-106 ~~(and under section 3.6(1))~~ if the person intends to rely upon the “family, friends and business associates exemption” in section 2.5 ~~(or in section 3.5)~~ of NI 45-106, which is based on a relationship of close personal friendship or close business association. The form of risk acknowledgment required in these circumstances is Form 45-106F5.

5.5 ~~Risk acknowledgement form for distributions to individual accredited investors~~

~~A person relying on the accredited investor exemption in section 2.3 of NI 45-106 and section 73.3 of the Securities Act (Ontario) to distribute securities to an individual must obtain a signed risk acknowledgement from that individual accredited investor. Under subsection 2.3(7) of NI 45-106, this requirement does not apply if the individual accredited investor meets the highest threshold to be an individual accredited investor, that is, the individual owns \$5 000 000 of financial assets as set out in paragraph (j.1) of the definition of “accredited investor” in section 1.1 of NI 45-106. The required form of risk acknowledgement for the accredited investor exemption is Form 45-106F9 Form for Individual Accredited Investors.~~

PART 6 – RESALE OF SECURITIES ACQUIRED UNDER AN EXEMPTION

6.1 Resale restrictions

In most jurisdictions, securities distributed under a prospectus exemption may be subject to restrictions on their resale. The particular resale, or “first trade”, restrictions depend on the parties to the distribution and the particular exemption that was relied upon to distribute the securities. In certain circumstances, no resale restrictions will apply and the securities acquired under an exempt distribution will be freely tradable.

Resale restrictions are imposed under National Instrument 45-102 *Resale of Securities* (“NI 45-102”). While NI 45-106 contains text boxes providing commentary on resale, these text boxes are intended as guidance only and are not a substitute for reviewing the applicable provisions in NI 45-102 to determine what resale restrictions, if any, apply to the securities in question.

The resale restrictions operate by the resale transaction triggering the prospectus requirement unless certain conditions are satisfied. Securities that are subject to such restrictions in circumstances where the conditions cannot be satisfied may nevertheless be distributed under an exemption from the prospectus requirement, whether under NI 45-106 or other securities legislation.

~~Amended and Restated September 28, 2009 except in Ontario.~~

~~In Ontario, Amended and Restated on the later of the following:~~

- ~~(a) September 28, 2009;~~
- ~~(b) the day on which sections 5 and 11, subsection 12(1) and section 13 of Schedule 26 of the Budget Measures Act, 2009 are proclaimed in force.~~

PART 7 – TRANSITION

7.1 Transition – Application of Amendments – IFRS amendments

The amendments to NI 45-106 and this Companion Policy which came into effect on January 1, 2011 only apply in respect of an offering memorandum or an amendment to an offering memorandum of an issuer which includes or incorporates by reference financial statements of the issuer in respect of periods relating to financial years beginning on or after January 1, 2011.

[Amended October 3, 2011]

Modified: Except in Ontario, this Companion Policy takes effect on May 5, 2015. In Ontario, this Companion Policy will take effect on the later of the following:

(a) May 5, 2015 and

(b) the day on which subsection 12(2) of Schedule 26 of the *Budget Measures Act, 2009* is proclaimed in force.

**ANNEX E1
AMENDMENTS TO
NATIONAL INSTRUMENT 51-102 CONTINUOUS DISCLOSURE OBLIGATIONS**

1. ***National Instrument 51-102 Continuous Disclosure Obligations is amended by this Instrument.***
2. ***Paragraphs 13.3(2)(c)(iv), 13.3(3)(e)(iv) and 13.4(2)(c)(iv) are amended by replacing “exemptions from the prospectus requirement in section 2.35 and registration requirement in section 3.35 of National Instrument 45-106 Prospectus and Registration Exemptions” with “exemption from the prospectus requirement in section 2.35 of National Instrument 45-106 Prospectus Exemptions”.***
3. Except in Ontario, this Instrument comes into force on May 5, 2015. In Ontario, this Instrument comes into force on the later of the following:
 - (a) May 5, 2015 and
 - (b) the day on which subsection 12(2) of Schedule 26 of the *Budget Measures Act, 2009* is proclaimed in force.

**ANNEX E2
AMENDMENTS TO SPECIFIED INSTRUMENTS**

1. ***Multilateral Instrument 11-102 Passport System, Multilateral Instrument 13-102 System Fees for SEDAR and NRD, National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, Multilateral Instrument 32-102 Registration Exemptions for Non-Resident Investment Fund Managers, National Instrument 33-105 Underwriting Conflicts, National Instrument 41-101 General Prospectus Requirements, National Instrument 45-102 Resale of Securities, National Instrument 51-102 Continuous Disclosure Obligations, National Instrument 52-107 Acceptable Accounting Principles and Auditing Standards, National Instrument 62-103 The Early Warning System and Related Take-Over Bid and Insider Reporting Issues, and Multilateral Instrument 62-104 Take-Over Bids and Issuer Bids are amended by this Instrument.***
2. ***The Instruments named in section 1 are amended***
 - (a) ***by replacing*** “National Instrument 45-106 Prospectus and Registration Exemptions” ***with*** “National Instrument 45-106 *Prospectus Exemptions*” ***wherever the expression occurs,***
 - (b) ***by replacing*** “National Instrument 45-106 – *Prospectus and Registration Exemptions*” ***with*** “National Instrument 45-106 *Prospectus Exemptions*” ***wherever the expression occurs, and***
 - (c) ***by replacing*** “National Instrument 45-106 *Prospectus and Registration Exemptions*” ***with*** “National Instrument 45-106 *Prospectus Exemptions*” ***wherever the expression occurs.***
3. Except in Ontario, this Instrument comes into force on May 5, 2015. In Ontario, this Instrument comes into force on the later of the following:
 - (a) May 5, 2015 and
 - (b) the day on which subsection 12(2) of Schedule 26 of the *Budget Measures Act, 2009* is proclaimed in force.

ANNEX E3
CHANGES TO SPECIFIED POLICIES

1. ***Companion Policy 11-102CP to Multilateral Instrument 11-102 Passport System, National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions, Companion Policy 23-103CP Electronic Trading and Direct Electronic Access to Marketplaces, Companion Policy 31-103CP to National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, Companion Policy 45-102CP to National Instrument 45-102 Resale of Securities, Companion Policy 51-105CP to Multilateral Instrument 51-105 Issuers Quoted in the U.S. Over-the-Counter Markets are changed by this Instrument.***
2. ***The Policies named in section 1 are changed***
 - (a) ***by replacing “National Instrument 45-106 Registration and Prospectus Exemptions” with “National Instrument 45-106 Prospectus Exemptions” wherever it occurs, and***
 - (b) ***by replacing “National Instrument 45-106 Prospectus and Registration Exemptions” with “National Instrument 45-106 Prospectus Exemptions” wherever it occurs.***
3. Except in Ontario, the changes to these policies take effect on May 5, 2015. In Ontario, the changes to these policies will take effect on the later of the following:
 - (a) May 5, 2015 and
 - (b) the day on which subsection 12(2) of Schedule 26 of the *Budget Measures Act, 2009* is proclaimed in force.

ANNEX F LOCAL MATTERS

1. Introduction

The Canadian Securities Administrators (CSA) have made amendments to:

- National Instrument 45-106 *Prospectus and Registration Exemptions* (NI 45-106), and
- Related consequential amendments.

The CSA have also made modifications to Companion Policy 45-106CP *Prospectus and Registration Exemptions* and consequential changes to certain other policies. Together, these amendments and modifications are collectively referred to as the CSA Amendments.

Please refer to the CSA notice (the CSA Notice) for a discussion of the substance and purpose of the CSA Amendments.

2. Ontario-only amendments

The Ontario Securities Commission (OSC) has made the following amendments (the Ontario Amendments):

- Ontario-specific amendments to NI 45-106
- Ontario-specific amendments to National Instrument 45-102 *Resale of Securities* (NI 45-102)
- Certain amendments to OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions* (OSC Rule 45-501)
- Consequential amendments to Companion Policy 45-501CP – to Ontario Securities Commission Rule 45-501 *Ontario Prospectus and Registration Exemptions* (45-501CP), and
- Consequential amendments to certain Ontario rules.

The Ontario Amendments affect certain prospectus exemptions and resale provisions for securities distributed under prospectus exemptions. The Ontario Amendments primarily involve the replacement of existing prospectus exemptions in the *Securities Act* (Ontario) (the Act) or NI 45-106 and OSC Rule 45-501, with new exemptions in the Act that address the same substantive issues.

As a result of the Ontario Amendments, a limited number of prospectus exemptions will be moved to the Act and will supersede the corresponding prospectus exemptions, or elements of those exemptions, that are currently found in NI 45-106 or OSC Rule 45-501. References to resale provisions in Appendix D and Appendix E of NI 45-102 are being modified in Ontario as a consequence of these changes.

Certain consequential amendments to 45-501 CP and specified Ontario rules are also being made to reflect the CSA Amendments, including, among other things, the change in title of NI 45-106 from *Prospectus and Registration Exemptions* to *Prospectus Exemptions*.

A more detailed explanation of the Ontario Amendments can be found in Annex C – *Ontario Securities Commission Notice Regarding Local Matters* (the Original Ontario Notice) published with the CSA Notice and Request for Comment on February 27, 2014.

The Ontario-specific amendments to NI 45-106 are included in the CSA Amendments at Annex C1.

The Ontario-specific amendments to NI 45-102, OSC Rule 45-501, Rule 45-501CP and other Ontario rules are attached to this Annex F.

3. Implementation of the CSA Amendments and Ontario Amendments

On January 27, 2015, the OSC made the CSA Amendments and the Ontario Amendments.

The CSA Amendments, the Ontario Amendments and other required materials were delivered to the Ontario Minister of Finance on February 17, 2015. The Minister may approve or reject the CSA Amendments and Ontario Amendments or return them for

further consideration. If the Minister approves the CSA Amendments and Ontario Amendments or does not take any further action by April 20, 2015, the CSA Amendments and Ontario Amendments will come into force on the later of May 5, 2015 and the day on which subsection 12(2) of Schedule 26 of the *Budget Measures Act, 2009* is proclaimed in force.

4. Additional comments received in Ontario

In addition to the comments received on the CSA Amendments, as described in more detail in Annex B, the OSC received a comment questioning why certain exemptions were being moved from NI 45-106 to the Act and urging the CSA to continue to strive for greater harmonization.

As explained in the Original Ontario Notice, the Ontario-specific amendments are being made to reflect the proclamation of certain amendments to prospectus exemptions that were included in the *Budget Measures Act, 2009*. The substance of the affected prospectus exemptions has not changed and, as a result, the existing level of harmonization of prospectus exemptions available across the CSA has not been impacted by the Ontario Amendments. As a result of certain other amendments to NI 45-106, including the amendment to the definition of accredited investor in Ontario to allow fully managed accounts to purchase investment fund securities under the managed account category of the accredited investor exemption, Ontario will become more harmonized with the other CSA jurisdictions.

5. Questions

Please refer any questions regarding this notice to:

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Manager, Corporate Finance
Ontario Securities Commission
(416) 593-2323
jmatear@osc.gov.on.ca

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**AMENDMENTS TO
OSC RULE 45-501 ONTARIO PROSPECTUS AND REGISTRATION EXEMPTIONS**

1. **OSC Rule 45-501 Ontario Prospectus and Registration Exemptions is amended by this Instrument.**
2. **Section 1.1 is amended**
 - (a) **by deleting the definition of “government incentive security”, and**
 - (b) **by deleting “and Registration” from the definition of “NI 45-106”.**
3. **The instrument is amended by adding the following section:**
 - 2.0 **Government incentive security**

The following are prescribed as government incentive securities under subsection 73.5(1) of the Act:

 1. a security, or unit or interest in a partnership that invests in a security, that is issued by a company and for which the company has agreed to renounce in favour of the holder of the security, unit or interest, amounts that will constitute Canadian exploration expense, as defined in subsection 66.1(6) of the ITA, Canadian development expense, as defined in subsection 66.2(5) of the ITA, or Canadian oil and gas property expense, as defined in subsection 66.4(5) of the ITA, or
 2. a unit or interest in a partnership or joint venture that is issued in order to fund Canadian exploration expense, as defined in subsection 66.1(6) of the ITA, Canadian development expense, as defined in subsection 66.2(5) of the ITA, or Canadian oil and gas property expense, as defined in subsection 66.4(5) of the ITA;.
4. **Subsection 2.1(1) is amended by replacing the words before paragraph (a) with the following:**
 - (1) For the purpose of section 73.5 of the Act, the prospectus requirement does not apply to a distribution of a government incentive security by an issuer or a promoter of an issuer of a security of the issuer, if all of the following apply:.
5. **Section 2.2 is amended by replacing “section 2.1” with “section 73.5 of the Act” wherever it occurs.**
6. **Section 2.4 is repealed.**
7. **Section 2.5 is repealed.**
8. **Section 2.6 is repealed.**
9. **Section 3.0 is replaced with the following:**
 - 3.0 **Application** – Part 3, except for sections 3.3 and 3.4, does not apply.
10. **Part 4 is repealed.**
11. **Section 5.1 is amended**
 - (a) **in paragraph (a), by replacing “section 2.3 of NI-45-106” with “section 73.3 of the Act or a predecessor exemption to section 73.3 of the Act”,**
 - (b) **in paragraph (b), by replacing “section 2.4 of NI-45-106” with “section 73.4 of the Act or a predecessor exemption to section 73.4 of the Act”, and**
 - (c) **in paragraph (g), by replacing “section 2.1” with “section 73.5 of the Act or a predecessor exemption to section 73.5 of the Act”.**
12. **Section 5.2(2) is amended by replacing “section 2.3 of NI 45-106” with “section 73.3 of the Act or a predecessor exemption to section 73.3 of the Act”.**
13. **Section 6.1 is amended by replacing “section 2.1” with “section 73.5 of the Act or a predecessor exemption to section 73.5 of the Act”.**

14. **Section 7.1 is amended by replacing “Part 7” with “Part 6”.**
15. **Section 8.1 is repealed.**
16. This Instrument comes into force on the later of the following:
 - (a) May 5, 2015 and
 - (b) the day on which subsection 12(2) of Schedule 26 of the *Budget Measures Act, 2009* is proclaimed in force.

**AMENDMENTS TO NATIONAL INSTRUMENT 45-102
RESALE OF SECURITIES**

1. **National Instrument 45-102 Resale of Securities is amended by this Instrument.**
2. **Appendix D is amended**
 - (a) **in the list preceding “Transitional and Other Provisions”,**
 - (i) **by replacing** “section 2.3 [Accredited investor];” **with** “section 2.3 [Accredited investor] (except in Ontario);”, **and**
 - (ii) **by adding** “section 73.3 of the *Securities Act* (Ontario) [Accredited Investor];” **after** “clauses 77(1)(u) and (w) and subclauses 77(1)(ab)(ii) and (iii) of the *Securities Act* (Nova Scotia);”,
 - (b) **in section “3. Ontario Provisions”**
 - (i) **by amending the definition of “Type 1 trade”**
 - A. **by replacing** “from the prospectus requirement in:” **immediately before paragraph (a) with** “from the prospectus requirement in any of the following:”
 - B. **by deleting** “or” **at the end of paragraph (c),**
 - C. **by deleting** “and” **at the end of paragraph (d), and by adding the following paragraph:**
 - (e) section 2.1 and section 2.2 of the 2009 OSC Rule 45-501, and,
 - (ii) **by adding the following paragraphs after “section 2.5 of MI 45-102” in paragraph (a) – Securities Act Ontario**
 - Section 73.5 of the *Securities Act* (Ontario) [Government incentive security],
 - (a.1) **National Instrument 45-106**
 - Section 2.3 of National Instrument 45-106 *Prospectus and Registration Exemptions* prior to subsection 12(2) of Schedule 26 of the *Budget Measures Act*, 2009 being proclaimed in force.”,
 - (iii) **by replacing paragraph (b) with the following:**
 - 2005 OSC Rule 45-501 and 2009 OSC Rule 45-501
 - Section 2.1 of the 2005 OSC Rule 45-501 and sections 2.1 and 2.2 of the 2009 OSC Rule 45-501.
3. **Appendix E is amended**
 - (a) **in the list preceding “Transitional and Other Provisions”**
 - (i) **by replacing** “section 2.4 [Private issuer];” **with** “section 2.4 [Private issuer], except in Ontario;”, **and**
 - (ii) **by adding** “Section 73.4 of the *Securities Act* (Ontario) [Private issuer];” **before** “Prince Edward Island Local Rule 45-510 – *Exempt Distributions – Exemption for Trades Pursuant to Take Over Bids and Issuer Bids*;”, **and**
 - (b) **by adding the following paragraph to section “3. Ontario provisions”**
 - (a.1) **National Instrument 45-106**

Section 2.4 of National Instrument 45-106 *Prospectus and Registration Exemptions* prior to subsection 12(2) of Schedule 26 of the *Budget Measures Act*, 2009 being proclaimed in force.

4. ***Form 45-102F1 is amended by replacing the contact information for the Ontario Securities Commission with the following:***

Ontario Securities Commission

20 Queen Street West

22nd Floor

Toronto, Ontario M5H 3S8

Telephone: (416) 593-8314

Toll free in Canada: 1-877-785-1555

Facsimile: (416) 593-8122

Public official contact regarding collection of personal information:
Inquiries Officer

5. This Instrument comes into force on the later of the following:
- (a) May 5, 2015 and
 - (b) the day on which subsection 12(2) of Schedule 26 of the *Budget Measures Act, 2009* is proclaimed in force.

AMENDMENTS TO OSC RULE 91-502
TRADES IN RECOGNIZED OPTIONS – RULE UNDER THE SECURITIES ACT

1. **OSC Rule 91-502 Trades in Recognized Options – Rule Under the Securities Act is amended by this Instrument.**
2. **Subsection 2.2(1) is amended by deleting** “section 3.1 of NI 45-106 *Prospectus and Registration Exemptions* and”.
3. This Instrument comes into force on the later of the following:
 - (a) May 5, 2015 and
 - (b) the day on which subsection 12(2) of Schedule 26 of the *Budget Measures Act, 2009* is proclaimed in force.

AMENDMENTS TO SPECIFIED OSC RULES

1. ***OSC Rule 11-501 – Electronic Delivery of Documents to the Ontario Securities Commission, OSC Rule 13-502 – Fees, OSC Rule 91-501 – Strip Bonds, and OSC Rule 48-501 – Trading during Distributions, Formal Bids and Share Exchange Transactions are amended by this Instrument.***
2. ***The OSC Rules named in section 1 are amended***
 - (a) ***by replacing “NI 45-106 Prospectus and Registration Exemptions” with “NI 45-106 Prospectus Exemptions” wherever the expression occurs, and***
 - (b) ***by replacing “National Instrument 45-106 Prospectus and Registration Exemptions” with “National Instrument 45-106 Prospectus Exemptions” wherever the expression occurs.***
3. This Instrument comes into force on the later of the following:
 - (a) May 5, 2015 and
 - (b) the day on which subsection 12(2) of Schedule 26 of the *Budget Measures Act, 2009* is proclaimed in force.

**CHANGES TO COMPANION POLICY 45-501CP – TO ONTARIO SECURITIES COMMISSION
RULE 45-501 ONTARIO PROSPECTUS AND REGISTRATION EXEMPTIONS**

This document reflects changes to Companion Policy 45-501CP – to Ontario Securities Commission Rule 45-501 *Ontario Prospectus and Registration Exemptions*.

2.1 Other exemptions – In addition to the exemptions in the Rule, exemptions may also be available to persons under National Instrument 45-106 *Prospectus and Registration Exemptions* (NI 45-106) and other provisions of Ontario securities legislation, including exemptions from the registration requirement under National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103).

3.0 Availability of Registration Exemptions – With the exception of the dealer registration exemptions set out in sections 3.3 [*Commodity futures option or contract*] and 3.4 [*Security of a co-operative*], section 3.0 of the Rule withdraws the availability of all of the dealer registration exemptions set out in Part 3 of the Rule after the coming into force of NI 31-103 (and the transition period provided for in section 3.0). The withdrawal of the availability of these registration exemptions reflects the anticipated adoption of a “business trigger” for the dealer registration requirement, as a precondition to the coming into force of NI 31-103.

Under the business trigger, persons who are not in the business of trading in securities will not be subject to the dealer registration requirement and will not require an exemption from the dealer registration requirement for their trading activities. Persons who are in the business of trading securities will generally be required to register as a dealer. The exemption from the dealer registration requirement set out in section 3.3 and 3.4 and Part 4 of the Rule relate to circumstances where the trading activity or person involved in the trading activity is subject to another regulatory regime.

3.6 Soliciting purchasers – (1) The exemptions from the dealer registration requirement identified in section 3.01 of the Rule are not available to a “market intermediary”, except as therein provided (or as otherwise provided in local securities legislation). Generally, a person is a market intermediary if the person is in the business of trading in securities as principal or agent. The term “market intermediary” is defined in Ontario Securities Commission Rule 14-501 *Definitions*.

5.2 Mandatory and voluntary use of offering memorandum – (1) An issuer must prepare an offering memorandum for use in connection with a distribution made in reliance on the prospectus exemption in section 2.1 of the Rule 73.5 of the Act [*Government Incentive Security*].

(2) There is no obligation to prepare an offering memorandum for use in connection with a distribution made in reliance on a prospectus exemption in:

- (a) ~~section 2.3 of NI 45-106~~ section 73.3 of the Act [*Accredited Investor*],
- (b) ~~section 2.4 of NI 45-106~~ section 73.4 of the Act [*Private issuer*],
- (c) section 2.7 of NI 45-106 [*Family, founder and control person – Ontario*]
- (d) section 2.8 of NI 45-106 [*Affiliates*]
- (e) section 2.10 of NI 45-106 [*Minimum amount investment*], or
- (f) section 2.19 of NI 45-106 [*Additional investment in investment funds*].

Business practice may dictate the preparation of offering material that is delivered voluntarily to a prospective purchaser in connection with a distribution made in reliance on a prospectus exemption in sections ~~2.3~~ 73.3 of the Act, ~~2.4~~ 73.4 of the Act, 2.7, 2.8, 2.10 or 2.19 of NI 45-106. This offering material may constitute an “offering memorandum” as defined in Ontario Securities Commission Rule 14-501 *Definitions*.

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

- (a) ~~section 2.3 of NI 45-106~~ section 73.3 of the Act or a predecessor exemption to section 73.3 of the Act (subject to the provisions of subsection 6.2(2) of the Rule) [*Accredited Investor*],
- (b) ~~section 2.4 of NI 45-106~~ section 73.4 of the Act or a predecessor exemption to section 73.4 of the Act [*Private issuer*],
- (c) section 2.7 of NI 45-106 [*Family, founder and control person – Ontario*],

- (d) section 2.8 of NI 45-106 [*Affiliates*]
- (e) section 2.10 of NI 45-106 [*Minimum amount investment*]
- (f) section 2.19 of NI 45-106 [*Additional investment in investment funds*], or
- (g) ~~section 2.4~~ section 73.5 of the Act or a predecessor exemption to section 73.5 of the Act [*Government incentive security*].

The rights apply when the offering memorandum is delivered mandatorily in connection with a distribution made in reliance on the exemptions in ~~section 2.4 of the Rule~~ section 73.5 of the Act or a predecessor exemption to section 73.5 of the Act, or voluntarily in connection with a distribution made in reliance on a prospectus exemption in ~~section 2.3~~ section 73.3 of the Act or a predecessor exemption to section 73.3 of the Act, ~~section 2.4~~ section 73.4 of the Act or a predecessor exemption to section 73.4 of the Act, 2.7, 2.8, 2.10 or 2.19 of NI 45-106.

5.4 Content of offering memorandum – (1) Other than in the case of an offering memorandum delivered in connection with a distribution made in reliance on the exemption in ~~section 2.4 of the Rule~~ section 73.5 of the Act or a predecessor exemption to section 73.5 of the Act and subject to subsection (2), Ontario securities legislation generally does not prescribe the content of an offering memorandum. The decision relating to the appropriate disclosure in an offering memorandum generally rests with the issuer, the selling security holder and their advisors.

6.1 Report of exempt distribution – (1) Section 6.1 of the Rule requires an issuer that has distributed a security of its own issue under ~~section 2.4 of the Rule~~ section 73.5 of the Act or a predecessor exemption to section 73.5 of the Act [*Government incentive security*] to file Form 45-501F1 *Report of Exempt Distribution*, on or before the 10th day after the distribution.

These changes will take effect on the later of May 5, 2015 and the day on which subsection 12(2) of Schedule 26 of the *Budget Measures Act, 2009* is proclaimed in force.



Canadian Securities
Administrators

Autorités canadiennes
en valeurs mobilières

**CSA Notice of Amendments to
National Instrument 45-106 *Prospectus and Registration Exemptions*
Relating to the Short-term Debt Prospectus Exemption and
Short-term Securitized Products**

February 19, 2015

A. Introduction

The Canadian Securities Administrators (**CSA** or **we**) are making amendments to National Instrument 45-106 *Prospectus and Registration Exemptions* (**NI 45-106**) to, among other things:

- change the requirements that short-term debt securities must satisfy in order to be distributed under the short-term debt prospectus exemption in section 2.35 of NI 45-106 (the **Short-term Debt Prospectus Exemption**);
- make the Short-term Debt Prospectus Exemption unavailable for securitized products such as asset-backed commercial paper (**ABCP**); and
- introduce a new short-term securitized products prospectus exemption in section 2.35.1 of NI 45-106 (as qualified by sections 2.35.2 to 2.35.4) (the **Short-term Securitized Products Prospectus Exemption**), that will only be available for short-term securitized products that satisfy certain conditions.

We are also making changes to Companion Policy 45-106 *Prospectus and Registration Exemptions* (**45-106CP**) and we are making consequential amendments to National Instrument 25-101 *Designated Rating Organizations* (**NI 25-101** or the **DRO Rule**).

Provided all necessary ministerial approvals are obtained, the amendments to NI 45-106 and the consequential amendments to NI 25-101 will come into force on May 5, 2015, subject to certain transitional provisions described more fully below.

The changes to 45-106 CP will also come into force on May 5, 2015.

B. The Short-term Debt Amendments

1. Substance and Purpose

We are amending section 2.35 of NI 45-106 (the **Short-term Debt Amendments**) to modify the credit ratings required to distribute short-term debt, which is primarily commercial paper (**CP**), under the Short-term Debt Prospectus Exemption.

Under the current Short-term Debt Prospectus Exemption, short-term debt must satisfy the following conditions:

Type of condition	Terms
Rating Threshold Condition	The short-term debt has at least one credit rating at or above: <ul style="list-style-type: none"> • DBRS Limited (DBRS) – R-1(Low); • Fitch, Inc. (Fitch) – F1; • Moody’s Canada Inc. (Moody’s Canada) – P-1; or • Standard & Poor’s Ratings Services (Canada) (S&P Canada) – A-1(Low).
Split Rating Condition	The short-term debt has no rating below the ratings in the Rating Threshold Condition.

The Short-term Debt Amendments will modify the Split Rating Condition. The net effect is that short-term debt will have to satisfy the following conditions:

Type of condition	Terms
Rating Threshold Condition (unchanged)	The short-term debt has at least one rating at or above: <ul style="list-style-type: none"> • DBRS – R-1(low); • S&P Canada – A-1(Low) (Canada national scale); • Moody’s Canada – P-1; or • Fitch – F1.
Modified Split Rating Condition	The short-term debt has no rating below: <ul style="list-style-type: none"> • DBRS – R-1(low); • Fitch – F2; • Moody’s Canada – P-2; or • S&P Canada – A-1(Low) (Canada national scale) or A-2 (global scale).

The Short-term Debt Amendments are intended to:

- remove the regulatory disincentive for some CP issuers to obtain an additional credit rating;
- provide consistent treatment of CP issuers with similar credit risk; and
- maintain the current credit quality of CP distributed under the Short-term Debt Prospectus Exemption.

2. **Background**

We published the Short-term Debt Amendments for a 90-day comment period on January 23, 2014.

3. **Summary of Written Comments Received by the CSA**

During the comment period, we received submissions from six commenters on the Short-term Debt Amendments. We have considered the comments received and thank all of the commenters for their input. The names of commenters are contained in Annex D of this notice, as well as a summary of their comments together with our responses.

4. **Summary of Changes since Publication for Comment**

We have made only one change to the version of the Short-term Debt Amendments that was published for comment. The change relates to the prescribed credit ratings for S&P Canada.

S&P Canada issues credit ratings using either its Canada national scale or its global scale. The proposed Modified Split Rating Condition did not specify whether the S&P Canada A-2 rating was in respect of the Canada national scale or the global scale. We now specify that the relevant ratings are A-1(Low) for the Canada national scale and A-2 for the global scale.¹

As this change is not material, we are not re-publishing the Short-term Debt Amendments for a further comment period.

5. **Coming into Force**

Subject to the necessary approvals, the Short-term Debt Amendments will come into force on May 5, 2015.

C. **The Short-term Securitized Products Amendments**

1. **Substance and Purpose**

We are making several amendments to NI 45-106 related to the prospectus-exempt distribution of short-term securitized products (the **Short-term Securitized Products Amendments**). The Short-term Securitized Products Amendments are intended to:

¹ For more information on the equivalency between ratings under the Canada national scale and the global scale, see *Standard and Poor’s Rating Definitions* (November 20, 2014). Available at https://www.globalcreditportal.com/ratingsdirect/renderArticle.do?articleId=1221284&SctArtId=198387&from=CM&nsI_code=LIME.

- address investor protection and systemic risk concerns raised by certain types of complex short-term securitized products that were issued in Canada pre-financial crisis, i.e. non-bank sponsored ABCP; and
- allow us to collect information on distributions of securitized products made under prospectus exemptions such as the accredited investor prospectus exemption (section 2.3 of NI 45-106) and the minimum amount investment prospectus exemption (section 2.10 of NI 45-106).

The amendments to NI 45-106 relating to securitized products are as follows:

- The following prospectus exemptions will be unavailable for the distribution of short-term securitized products:
 - the Short-term Debt Prospectus Exemption;
 - the private issuer prospectus exemption in section 2.4 (the **Private Issuer Prospectus Exemption**);
 - the friends, family, and business associates prospectus exemptions in sections 2.5 and 2.6 (the **Friends and Family Prospectus Exemption**);
 - the founder, control person and family prospectus exemption in section 2.7 (the **Founder Prospectus Exemption**); and
 - the offering memorandum prospectus exemption in section 2.9 (the **OM Prospectus Exemption**).
- A new Short-term Securitized Products Prospectus Exemption will be created in section 2.35.1, as qualified by sections 2.35.2 to 2.35.4.
- Issuers (i.e. conduits) who distribute securities under the Short-term Securitized Products Exemption must disclose the following:
 - information about the conduit, including its structure, business and operations, in Form 45-106F7 *Information Memorandum for Short-term Securitized Products Distributed under Section 2.35.1* (the **Information Memorandum**) on or before the date that a purchaser purchases a short-term securitized product;
 - monthly information about the conduit, including asset transactions, asset pools and their performance, in Form 45-106F8 *Monthly Disclosure Report for Short-term Securitized Products Distributed under Section 2.35.1* (the **Monthly Disclosure Report**) no later than 50 days from the end of the most recent month; and
 - timely information about certain significant events relating to the conduit's credit rating and the payment of principal or interest no later than the second business day after the conduit becomes aware of the change or event.
- Form 45-106F1 *Report of Exempt Distribution* and Form 45-106F6 *British Columbia Report of Exempt Distribution* (each an **Exempt Distribution Report**) will have a new industry classification for a securitized products issuer so that we can collect data regarding the distribution of securitized products under other prospectus exemptions.²

We are also making changes to 45-106CP to provide guidance on certain aspects of the Short-term Securitized Products Prospectus Exemption.

2. Background

We published on April 1, 2011 a comprehensive set of proposed new rules and amendments (the **2011 Proposals**) relating to securitized products that would have:

- introduced additional disclosure requirements for prospectus offerings of securitized products;
- introduced additional continuous disclosure and certification requirements for reporting issuers that had

² The Exempt Distribution Report is required to be filed under section 6.1 of NI 45-106 to report distributions made under certain prospectus exemptions.

distributed securitized products; and

- restricted the prospectus-exempt distribution of securitized products to a class of highly sophisticated investors through a new prospectus exemption (the **Eligible Securitized Products Investor Exemption**), as well as mandated offering and continuous disclosure even if the issuer of the securitized product was not a reporting issuer.

After considering the comments and additional review and analysis, we decided not to proceed with the aspects of the 2011 Proposals relating to prospectus and continuous disclosure requirements. We also decided not to proceed with those aspects of the 2011 Proposals regarding the Eligible Securitized Products Investor Exemption and the prospectus-exempt distribution of term securitized products, i.e. securitized products with a maturity of one year or more. We determined that the comprehensive reform of securitized products securities regulation contemplated by the 2011 Proposals was unnecessary at this time.

We published for comment a more targeted set of Securitized Products Amendments for a 90-day comment period on January 23, 2014 (the **2014 Proposals**). The 2014 Proposals focused on short-term securitized products, which are primarily ABCP. The 2014 Proposals were as follows:

- exclude short-term securitized products from being distributed under the Short-term Debt Prospectus Exemption, the Private Issuer Prospectus Exemption, the Friends and Family Prospectus Exemption, the Founder Prospectus Exemption and the OM Prospectus Exemption;
- create a Short-term Securitized Products Prospectus Exemption in new section 2.35.1 of NI 45-106, as qualified by sections 2.35.2 to 2.35.4, that requires the short-term securitized product to satisfy a number of conditions; and
- prescribe an Information Memorandum, Monthly Disclosure Reports and timely disclosure reports.

3. Summary of Written Comments Received by the CSA

During the comment period, we received submissions from 14 commenters. We have considered the comments received and thank all of the commenters for their input. The names of commenters are contained in Annex D of this notice, as well as a summary of their comments together with our responses.

4. Summary of Changes since Publication for Comment

In response to comments, the Short-term Securitized Products Prospectus Exemption, the related forms and 45-106CP changes we are adopting reflect a number of changes from the 2014 Proposals. As these changes are not material, we are not re-publishing the Short-term Securitized Products Amendments for a further comment period.

There are no changes to the amendments we proposed to the DRO Rule in the 2014 Proposals.

(a) Short-term Securitized Products Prospectus Exemption

The main conditions of the Short-term Securitized Products Prospectus Exemption are:

- the conduit has a “global-style” liquidity agreement with an appropriate financial institution;
- there are no synthetic assets in any of the conduit’s asset pools; and
- there is disclosure about:
 - the conduit’s structure, business and operations;
 - the performance of the assets in the conduit’s asset pool(s); and
 - events that impact the payment of interest or principal.

We have refined aspects of these conditions in order to better align them with market practice while still maintaining the core elements of the Short-term Securitized Products Prospectus Exemption. We describe some of the changes below.

(i) Modified credit ratings requirements for short-term securitized products

We originally proposed that short-term securitized products issued under the Short-term Securitized Products Prospectus Exemption must have at least two credit ratings, both at the highest rating categories of:

- R-1(high)(sf) if issued by DBRS;
- F1+sf if issued by Fitch;
- P-1(sf) if issued by Moody's Canada;
- A-1(High)(sf) if issued by S&P Canada.

We have modified this condition. Short-term securitized products will still need to have two credit ratings, but only one will need to be at the highest rating category. The second and any additional credit rating cannot be lower than:

- R-1(low)(sf) if issued by DBRS;
- F-2sf if issued by Fitch;
- P-2(sf) if issued by Moody's Canada;
- A-1(Low)(sf) (Canada national scale) or A-2(sf) (global scale) if issued by S&P Canada.

We have also included the relevant S&P Canada ratings for both the Canada national scale and the global scale.

In our view, this modification achieves our intent of only allowing ABCP of high credit quality to be issued through the prospectus exemption, while significantly reducing the risk of disruption to the ABCP market if bank sponsors and liquidity providers experience credit rating downgrades due to the introduction of the bail-in regime applicable to Canada's domestic systemically important banks, as proposed by the Department of Finance Canada on August 1, 2014.³

Certain designated rating organizations have changed their outlook for the six major Canadian banks to "Negative" from "Stable" as a result of the proposed bail-in regime. We understand that the long-term credit ratings of these banks will likely be lowered by one to two notches upon introduction of the bail-in regime. This is expected to result in a lowering of the short-term credit ratings of some of the banks. These changes are not being driven by a reduction in the credit quality of the banks but by the reduced likelihood of government support.

Any downgrades in the short-term credit ratings of banks due to the bail-in regime could also result in downgrades in the credit ratings of the ABCP for which they are sponsors and liquidity providers below the ratings categories we originally proposed. These downgrades would not be driven by a reduction in their ability to provide liquidity support. We therefore think it is appropriate to provide more flexibility in the credit ratings required by the Short-term Securitized Products Prospectus Exemption.

(ii) Removal of requirement regarding no expected credit rating downgrades

We originally proposed that the Short-term Securitized Products Prospectus Exemption would be unavailable for a short-term securitized product if:

- any of its credit ratings were under review by the relevant designated rating organization; and
- it would be reasonable for the conduit to expect that the review would result in the credit rating being withdrawn or downgraded below the prescribed minimum level.

We also proposed a similar condition regarding credit ratings of a liquidity provider.

³ The *Taxpayer Protection and Bank Recapitalization Regime: Consultation Paper* outlines the proposed bail-in regime applicable to Canada's domestic systemically important banks and is a follow-up to the announcement in the 2013 federal budget that such a regime would be forthcoming in Canada. The proposed bail-in regime reduces the likelihood of government support and clarifies that the banks' shareholders and creditors are responsible for bearing losses.

We have removed these conditions as we recognize that a conduit is not necessarily in a position to make this type of determination.

(iii) Liquidity agreement requirements

We have made the following changes:

- modified the credit rating requirements for liquidity providers so that they are short-term, rather than long term; and
- removed the provision that would have required, in a situation where a conduit had more than one liquidity provider, that there needed to be another liquidity provider that would guarantee or otherwise commit to providing support in the event of non-payment by a liquidity provider.

These changes are intended to better align the requirements with the operation of liquidity arrangements in the Canadian market.

We have changed the conditions so that a deposit-taking institution can be a liquidity provider if it is regulated by or has been approved to carry on business in Canada by OSFI or a provincial regulator. The effect of this change is that a foreign bank that is a Schedule III bank can be a liquidity provider. We think that a foreign deposit-taking institution that OSFI or a provincial regulator regulates or has approved to carry on business (i.e. a Schedule II or Schedule III bank) should be allowed to be a liquidity provider, provided it satisfies all the other conditions relating to liquidity support.

(iv) Modified timing for availability of Monthly Disclosure Report

We originally proposed that a conduit be required to make each Monthly Disclosure Report reasonably available to a holder of securitized products within 30 days from the end of the most recent month to which it relates. We have modified this condition so that the report must be reasonably available within 50 days.

(v) Triggers for and timing of timely disclosure report

We originally proposed that a conduit prepare a timely disclosure report if there was

- a change to the information required to be provided in the most recent monthly disclosure report; or
- an event that the conduit would reasonably expect to materially affect payment on a short-term securitized product or the performance of the assets in the asset pool.

We have narrowed the list of events that trigger a timely disclosure report to focus on events that affect the payment of interest or principal on the short-term securitized product. We also require the conduit to prepare a timely disclosure report in the event of a downgrade in one or more of the conduit's credit ratings.

We also have changed the timing requirement. The timely disclosure report is now required to be provided to or made reasonably available no later than two business days, rather than calendar days, after the conduit becomes aware of the change or event.

(vi) Other drafting changes

We have made several drafting changes to the definitions to make them more consistent with short-term securitization (i.e. ABCP) structures in the Canadian market.

(b) Information Memorandum

We have made several revisions to the Information Memorandum as follows:

- focused the disclosure so that it is in respect of the conduit's structure and operations;
- moved disclosure about specific asset transactions and asset pools to the Monthly Disclosure Report;
- clarified certain requirements; and
- eliminated duplicative disclosure.

The requirement to disclose information regarding interest alignment and risk retention has been moved from the Monthly Disclosure Report to the Information Memorandum.

We also are no longer requiring that the identities of principal obligors and originators be provided. Currently, principal obligors and originators have an expectation that their identities are kept confidential. Furthermore, in our view, this information is not necessary for investors to understand the credit quality and performance of a conduit's asset transactions and asset pools. The requirements have been modified to focus on disclosure of parties responsible for a significant role in the conduit's structure or operations.

(c) Monthly Disclosure Report

We have made several revisions to the Monthly Disclosure Report. We have:

- focused the disclosure so that it is in respect of specific asset transactions and asset pools and moved disclosure about the conduit's structure and operations to the Information Memorandum;
- eliminated duplicative disclosure; and
- eliminated disclosure which in our view is not necessary for investors to understand the credit quality and performance of a conduit's asset transactions, where such disclosure
 - could raise confidentiality or competitive concerns (e.g. the specific credit ratings of sellers, fees and expenses); or
 - would require conduits to take additional steps to collect or present information that go beyond current market practice (e.g. average term of assets, performance ratios other than default or loss ratios).

(d) Exempt Distribution Reports

We originally proposed to add "securitization conduits" as a new industry classification. We have modified our proposal to change the new industry classification to "securitized product issuers" as the term "securitization conduit" now refers to issuers of short-term securitized products rather than issuers of securitized products generally.

(e) 45-106CP

We have provided additional guidance on the following:

- the definition of "asset pool";
- the interaction of the conditions of the Short-Term Securitized Products Prospectus Exemption with credit ratings; and
- liquidity agreements and on who can act as a liquidity provider.

5. Coming into Force

Subject to the necessary approvals, the Short-term Securitized Products Amendments will come into force on May 5, 2015. There are several transition provisions as follows:

- an Information Memorandum that is provided to or made reasonably available to a purchaser need only be prepared in accordance with Form 45-106F7 for a distribution of a short-term securitized product that takes place on or after November 5, 2015;
- a Monthly Disclosure Report that is provided to or made reasonably available to a holder of a short-term securitized product pursuant to an undertaking or agreement in writing need not be prepared in accordance with Form 45-106F8 in respect of any asset transaction that a conduit entered into on or before November 5, 2015.

D. Local Matters

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

E. Annexes

- Annex A Amendments to National Instrument 45-106 *Prospectus and Registration Exemptions*
- Annex B Amendments to National Instrument 25-101 *Designated Rating Organizations*
- Annex C Changes to Companion Policy 45-106 *Prospectus and Registration Exemptions*
- Annex D Summary of Comments
- Annex E Local Matters

F. Questions

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ANNEX A**AMENDMENTS TO
NATIONAL INSTRUMENT 45-106 PROSPECTUS AND REGISTRATION EXEMPTIONS**

1. *National Instrument 45-106 Prospectus and Registration Exemptions is amended by this Instrument.*
2. *Section 1 is amended by adding the following definitions:*

“**asset pool**” means a pool of cash-flow generating assets in which an issuer of a securitized product has a direct or indirect ownership or security interest;

“**asset transaction**” means a transaction or series of transactions in which a conduit acquires a direct or indirect ownership or security interest in an asset pool in connection with issuing a short-term securitized product;

“**conduit**” means an issuer of a short-term securitized product

- (a) created to conduct one or more asset transactions, and
- (b) in respect of which it is reasonable for the issuer to expect that, in the event of a bankruptcy or insolvency proceeding under the *Bankruptcy and Insolvency Act (Canada)*, the *Companies Creditors’ Arrangement Act (Canada)* or a proceeding under similar legislation in Canada, a jurisdiction of Canada or a foreign jurisdiction,
 - (i) none of the assets in an asset pool of the issuer in which the issuer has an ownership interest will be consolidated with the assets of a third party that transferred or participated in the transfer of assets to the issuer prior to satisfaction in full of all securitized products that are backed in whole or in part by the assets transferred by the third party, or
 - (ii) for the assets in an asset pool of the issuer in which the issuer has a security interest, the issuer will realize against the assets in that asset pool in priority to the claims of other persons;

“**credit enhancement**” means a method used to reduce the credit risk of a series or class of securitized product;

“**liquidity provider**” means a person that is obligated to provide funds to a conduit to enable the conduit to pay principal or interest in respect of a maturing securitized product;

“**securitized product**” means a security that

- (a) is governed by a trust indenture or similar agreement setting out the rights and protections applicable to a holder of the security,
- (b) provides a holder with a direct or indirect ownership or security interest in one or more asset pools, and
- (c) entitles a holder to one or more payments of principal or interest primarily obtained from one or more of the following:
 - (i) the proceeds from the distribution of securitized products;
 - (ii) the cash flows generated by one or more asset pools;
 - (iii) the proceeds obtained on the liquidation of one or more assets in one or more asset pools;

“**short-term securitized product**” means a securitized product that is a negotiable promissory note or commercial paper that matures not more than one year from the date of issue;.

3. Section 2.4 is amended by adding the following subsection:

(4) Subsection (2) does not apply to a distribution of a short-term securitized product..

4. Section 2.5 is amended by adding the following subsection:

(3) Subsection (1) does not apply to a distribution of a short-term securitized product or, in Ontario, a distribution under subsection 73.4(2) of the *Securities Act* (Ontario)..

5. Section 2.6 is amended by adding the following subsection:

(3) Subsection (1) does not apply to a distribution of a short-term securitized product..

6. Section 2.7 is replaced with the following:

Founder, control person and family - Ontario

(1) In Ontario, the prospectus requirement does not apply to a distribution to a person who purchases the security as principal and is one of the following:

- (a) a founder of the issuer;
- (b) an affiliate of a founder of the issuer;
- (c) a spouse, parent, grandparent, brother, sister, child or grandchild of an executive officer, director or founder of the issuer;
- (d) a person that is a control person of the issuer.

(2) Subsection (1) does not apply to a distribution of a short-term securitized product..

7. Section 2.9 is amended by adding the following subsection:

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

8. Section 2.35 is replaced with the following:

Short-term debt

2.35 (1) The prospectus requirement does not apply to a distribution of a negotiable promissory note or commercial paper if all of the following apply:

- (a) the note or commercial paper matures not more than one year from the date of issue;
- (b) the note or commercial paper has a credit rating from a designated rating organization, or its DRO affiliate, that is at or above one of the following rating categories or that is at or above a rating category that replaces one of the following rating categories:
 - (i) R-1(low) if issued by DBRS Limited;
 - (ii) F1 if issued by Fitch, Inc.;
 - (iii) P-1 if issued by Moody's Canada Inc.;
 - (iv) A-1(Low) (Canada national scale) if issued by Standard & Poor's Ratings Services (Canada);
- (c) the note or commercial paper has no credit rating from a designated rating organization, or its DRO affiliate, that is below one of the following rating categories or that is below a rating category that replaces one of the following rating categories:

- (i) R-1(low) if issued by DBRS Limited;
- (ii) F2 if issued by Fitch, Inc.;
- (iii) P-2 if issued by Moody's Canada Inc.;
- (iv) A-1(Low) (Canada national scale) or A-2 (global scale) if issued by Standard & Poor's Ratings Services (Canada).

(2) Subsection (1) does not apply to a distribution of a negotiable promissory note or commercial paper if either of the following applies:

- (a) the note or commercial paper is a securitized product;
- (b) the note or commercial paper is convertible or exchangeable into or accompanied by a right to purchase another security other than a security described in subsection (1)..

9. National Instrument 45-106 Prospectus and Registration Exemptions is amended by adding the following sections:

Short-term securitized products

2.35.1 The prospectus requirement does not apply to a distribution of a short-term securitized product if all of the following apply:

- (a) the short-term securitized product is a security described in section 2.35.2;
- (b) the conduit issuing the short-term securitized product complies with section 2.35.4;
- (c) the short-term securitized product is not convertible or exchangeable into or accompanied by a right to purchase another security other than a security described in paragraph (a) and for which disclosure is provided pursuant to paragraph (b).

Limitations on short-term securitized product exemption

2.35.2 All of the following must apply to a short-term securitized product distributed under section 2.35.1:

- (a) the short-term securitized product is of a series or class of securitized product to which all of the following apply:
 - (i) it has a credit rating from not less than two designated rating organizations, or their respective DRO affiliate, and at least one of the credit ratings is at or above one of the following rating categories or is at or above a rating category that replaces one of the following rating categories:
 - (A) R-1(high)(sf) if issued by DBRS Limited;
 - (B) F1+sf if issued by Fitch, Inc.;
 - (C) P-1(sf) if issued by Moody's Canada Inc.;
 - (D) A-1(High)(sf) (Canada national scale) or A-1+(sf) (global scale) if issued by Standard & Poor's Ratings Services (Canada);
 - (ii) it has no credit rating from a designated rating organization, or its DRO affiliate, that is below one of the following rating categories or that is below a rating category that replaces one of the following rating categories:
 - (A) R-1(low)(sf) if issued by DBRS Limited;

- (B) F2sf if issued by Fitch, Inc.;
 - (C) P-2(sf) if issued by Moody's Canada Inc.;
 - (D) A-1(Low)(sf) (Canada national scale) or A-2(sf) (global scale) if issued by Standard & Poor's Ratings Services (Canada);
- (iii) the conduit has entered into one or more agreements that, subject to section 2.35.3, obligate one or more liquidity providers to provide funds to the conduit to enable the conduit to satisfy all of its obligations to pay principal or interest as that series or class of short-term securitized product matures;
- (iv) all of the following apply to each liquidity provider:
- (A) the liquidity provider is a deposit-taking institution;
 - (B) the liquidity provider is regulated or approved to carry on business in Canada by one or both of the following:
 1. the Office of the Superintendent of Financial Institutions (Canada);
 2. a government department or regulatory authority of Canada, or of a jurisdiction of Canada responsible for regulating deposit-taking institutions;
 - (C) the liquidity provider has a rating from each of the designated rating organizations providing a rating on the short-term securitized product under subparagraph 2.35.2(a)(i), or their respective DRO affiliate, for its senior, unsecured short-term debt, none of which is dependent upon a guarantee by a third party, and each rating from such designated rating organizations, or their respective DRO affiliate, is at or above the following rating categories or is at or above a rating category that replaces one of the following rating categories:
 1. R-1(low) if issued by DBRS Limited;
 2. F2 if issued by Fitch, Inc.;
 3. P-2 if issued by Moody's Canada Inc.;
 4. A-1(Low) (Canada national scale) or A-2 (global scale) if issued by Standard & Poor's Ratings Services (Canada);
- (b) if the conduit has issued more than one series or class of short-term securitized product, the short-term securitized product to be distributed under section 2.35.1, when issued, will not in the event of bankruptcy, insolvency or winding-up of the conduit be subordinate in priority of claim to any other outstanding series or class of short-term securitized product issued by the conduit in respect of any asset pool backing the short-term securitized product to be distributed under section 2.35.1;
- (c) the conduit has provided an undertaking to or has agreed in writing with the purchaser of the short-term securitized product or an agent, custodian or trustee appointed to act on behalf of purchasers of that series or class of short-term securitized product, that any asset pool of the conduit will consist only of one or more of the following:
- (i) a bond;
 - (ii) a mortgage;
 - (iii) a lease;
 - (iv) a loan;
 - (v) a receivable;

- (vi) a royalty;
- (vii) any real or personal property securing or forming part of that asset pool.

Exceptions relating to liquidity agreements

2.35.3(1) Despite subparagraph 2.35.2(a)(iii), an agreement with a liquidity provider may provide that a liquidity provider is not obligated to advance funds in respect of a series or class of short-term securitized product distributed under section 2.35.1 if the conduit is subject to any of the following:

- (a) bankruptcy, or insolvency proceedings under the *Bankruptcy and Insolvency Act* (Canada);
- (b) an arrangement under the *Companies Creditors' Arrangement Act* (Canada);
- (c) proceedings similar to those referred to in paragraph (a) or (b) under the laws of Canada or a jurisdiction of Canada or a foreign jurisdiction.

(2) Despite subparagraph 2.35.2(a)(iii), an agreement with a liquidity provider may provide that a liquidity provider is not obligated to advance funds in respect of a series or class of short-term securitized product distributed under section 2.35.1 that exceed the sum of the following:

- (a) the aggregate value of the non-defaulted assets in the asset pool to which the agreement relates;
- (b) the amount of credit enhancement applicable to the asset pool to which the agreement relates.

Disclosure requirements

2.35.4(1) A conduit that distributes a short-term securitized product under section 2.35.1 must, on or before the date a purchaser purchases the short-term securitized product, do all of the following:

- (a) provide to or make reasonably available to the purchaser an information memorandum prepared in accordance with Form 45-106F7 *Information Memorandum for Short-term Securitized Products Distributed under Section 2.35.1*;
 - (b) provide an undertaking to or agree in writing with the purchaser, or with an agent, custodian or trustee appointed to act on behalf of purchasers of that series or class of securitized product, to
 - (i) for so long as a short-term securitized product of that class remains outstanding, prepare the documents specified in subsections (5) and (6) within the time periods specified in those subsections, and
 - (ii) provide to or make reasonably available to each holder of a short-term securitized product of that series or class, the documents specified in subsections (5) and (6).
- (2)** Subsection (1) does not apply to a conduit distributing a short-term securitized product under section 2.35.1 if
- (a) the conduit has previously distributed a short-term securitized product of the same series or class as the short-term securitized product to be distributed,
 - (b) in connection with that previous distribution the conduit prepared an information memorandum that complied with paragraph (1)(a), and
 - (c) the conduit, on or before the time each purchaser in the current distribution purchases a short-term securitized product, does each of the following:
 - (i) provides to or makes reasonably available to the purchaser the information memorandum prepared in connection with the previous distribution;
 - (ii) provides to or makes reasonably available to the purchaser all documents specified in subsections (5) and (6) that have been prepared in respect of that series or class of short-term securitized product.

- (3) A conduit must, on or before the 10th day following a distribution of a short-term securitized product under section 2.35.1, do each of the following:
- (a) provide to or make reasonably available to the securities regulator either of the following:
 - (i) the information memorandum required under paragraph (1)(a);
 - (ii) if the conduit is relying on subsection (2), the documents referred to in paragraph (c) of subsection (2);
 - (b) subject to subsection (4), deliver to the securities regulator an undertaking that it will, in respect of that series or class of short-term securitized product,
 - (i) provide to or make reasonably available to the securities regulator the documents specified in subsections (5) and (6), and
 - (ii) promptly deliver to the securities regulator each document specified in subsections (5) and (6) that is requested by the securities regulator.
- (4) Paragraph (3)(b) does not apply if
- (a) the conduit has delivered an undertaking to the securities regulator under paragraph (3)(b) in respect of a previous distribution of a securitized product that is of the same series or class as the short-term securitized product currently being distributed, and
 - (b) the undertaking referred to in paragraph (a) applies in respect of the current distribution.
- (5) For the purpose of subsection 2.35.4(1), the undertaking or agreement must require the conduit to prepare a monthly disclosure report relating to the series or class of short-term securitized product that is
- (a) prepared in accordance with Form 45-106F8 *Monthly Disclosure Report for Short-term Securitized Products Distributed under Section 2.35.1*,
 - (b) current as at the last business day of each month, and
 - (c) no later than 50 days from the end of the most recent month to which it relates, made reasonably available to each holder of that series or class of the conduit's short-term securitized product.
- (6) For the purpose of subsection 2.35.4(1), the undertaking or agreement must require the conduit to prepare a timely disclosure report, providing the information specified in subsection (7), in each of the following circumstances:
- (a) a downgrade in one or more of the conduit's credit ratings;
 - (b) failure by the conduit to make any required payment of principal or interest on the series or class of short-term securitized product;
 - (c) the occurrence of a change or event that the conduit would reasonably expect to have a significant adverse effect on the payment of principal or interest on the series or class of short-term securitized product.
- (7) The timely disclosure report referred to in subsection (6) must
- (a) describe the nature and substance of the change or event and the actual or potential effect on any payment of principal or interest to a holder of that series or class of short-term securitized product, and
 - (b) be provided to or made reasonably available to holders of that series or class of short-term securitized product no later than the second business day after the conduit becomes aware of the change or event..

10. Item 3 of Form 45-106F1 Report of Exempt Distribution is amended by adding

“□ securitized products issuers” **after** “□ mortgage investment companies”.

11. In British Columbia, item 3 of Form 45-106F6 British Columbia Report of Exempt Distribution is amended by adding

“□ securitized products issuers” **after** “□ mortgage investment companies”.

12. National Instrument 45-106 Prospectus and Registration Exemptions is amended by adding the following form:

Form 45-106F7
Information Memorandum for Short-term Securitized Products
Distributed under Section 2.35.1

Instructions:

- (1) Using language that is plain and easy to understand by the type of purchaser to whom the issuer's short-term securitized products are offered, provide the information required by this form. No reference need be made to inapplicable items and, unless otherwise required by this form, negative answers may be omitted.
- (2) An information memorandum may be used to disclose information about more than one series or class of short-term securitized product. If so, the disclosure required by this form must be provided for each series or class of short-term securitized product distributed under the information memorandum.
- (3) This form requires disclosure of certain items, matters or other information referred to as “material”. Information is “material” if knowledge of it could reasonably be expected to affect a reasonable investor's decision whether to buy, sell or hold a short-term securitized product.
- (4) Include a glossary that defines all technical terms, and includes the following definition:

“**sponsor**” means a person or group of affiliated persons that organizes or initiates the formation of a conduit.

Item 1: Significant Parties

- 1.1 Provide the conduit's legal name.
- 1.2 Disclose the conduit's jurisdiction and form of organization.
- 1.3 Identify each sponsor of the conduit and disclose
 - (a) whether or not it is a Canadian bank, Schedule II foreign bank subsidiary or Schedule III bank, and
 - (b) if it is not a financial institution referred to in paragraph (a), whether there is a government department or regulatory authority responsible for overseeing it and, if applicable, the name of the government department or regulatory authority.
- 1.4 Briefly describe the conduit's structure, business and operations and the key documents that establish the conduit and govern its business and operations.
- 1.5 Identify each other party, excluding any liquidity provider or any credit enhancement provider for whom disclosure is not required under item 4, that is primarily responsible under the terms of the key documents referred to in section 1.4 for a significant role in the conduit's structure or operations and briefly describe that party's role.

Item 2: Structure

Include one or more diagrams or descriptions that provide the following information in summary form:

- (a) how the conduit acquires assets and issues securitized product;
- (b) liquidity facilities available to the conduit as disclosed in item 4;

- (c) credit enhancements available to the conduit as disclosed in item 4;
- (d) material agreements as disclosed in item 9;
- (e) the structure of one or more common types of asset transactions into which the conduit may enter.

Item 3: Eligible assets and asset transactions

- 3.1 Briefly describe the types of asset transactions into which the conduit expects to enter. If applicable, state that the conduit expects to finance the acquisition, origination or refinancing of asset pools from the proceeds of issuing short-term securitized products. Describe any other methods the conduit expects to employ to finance the acquisition, origination or refinancing of asset pools.
- 3.2 Briefly describe the types of asset eligibility criteria the conduit applies or anticipates applying when entering into asset transactions.
- 3.3 Briefly describe the types of due diligence or verification procedures that the conduit applies or anticipates applying to asset transactions and asset pools.
- 3.4 Briefly describe the conduit's approach to concentration limits, liquidity support and credit enhancement in respect of its asset transactions and asset pools.
- 3.5 Disclose the types of assets that the conduit is permitted to hold in its asset pools.
- 3.6 Briefly describe how the conduit uses or anticipates using derivatives for the purpose of hedging.

Item 4: Interest alignment, program-wide liquidity support and program-wide credit enhancement

- 4.1 Briefly describe how the interests of investors are aligned with the interests of the conduit, the sponsor and the parties to asset transactions entered into by the conduit, including any requirement of law that the conduit or the sponsor retain an interest in one or more of the conduit's asset pools or be exposed to the credit risk of assets in one or more of the conduit's asset pools.
- 4.2 Briefly describe any standard liquidity support arrangements the conduit has entered into or anticipates entering into, excluding liquidity support arrangements that are particular to an asset transaction or asset pool. Include the following information in the description:
 - (a) the name of each existing liquidity provider;
 - (b) any minimum credit rating a liquidity provider must have under the terms of the key documents referred to in section 1.4;
 - (c) the nature of the liquidity support;
 - (d) a summary of the material terms of each liquidity agreement, including all material conditions to or limitations on the obligation of a liquidity provider to provide liquidity support;
 - (e) any limitations on the obligation of a liquidity provider to provide same-day funding.
- 4.3 Briefly describe any standard credit enhancement arrangements that the conduit has entered into or anticipates entering into, excluding credit enhancement arrangements that are particular to an asset transaction or asset pool. Include the following information in the description:
 - (a) the name of each existing credit enhancement provider;
 - (b) any minimum credit rating a credit enhancement provider must have under the terms of the key documents referred to in section 1.4;
 - (c) the form of the credit enhancement;
 - (d) a summary of the material terms of each credit enhancement agreement, including all material conditions to or limitations on the obligation of a credit enhancement provider to provide credit support.

Item 5: Ownership or security interests in asset pool and priority of payments

- 5.1 Disclose the ownership or security interest a holder of a short-term securitized product will have in the conduit's asset pools.
- 5.2 If any other party other than the conduit has or is anticipated to have an ownership or security interest in one or more of the conduit's asset pools, briefly describe the following:
- (a) the party's role in the conduit's structure or operations;
 - (b) the nature of its interest in the asset pool;
 - (c) the priority of its claims in the event of the conduit's insolvency.

Item 6: Compliance or termination events

- 6.1 Briefly describe any events or circumstances that would, pursuant to the terms of the conduit's governing documents or material agreements in item 9, constitute an event of default or require the conduit to cease issuing short-term securitized products.
- 6.2 Briefly describe the types of methods the conduit will use to monitor the performance of or identify adverse changes to an asset pool, such as portfolio performance tests.
- 6.3 Briefly describe any other structural features that are intended to reduce the risk of loss for a holder of the series or class of short-term securitized products or to protect the holder from material deterioration in respect of either or both of the following:
- (a) the credit quality or performance of assets in an asset pool;
 - (b) the ability of a party in Item 4 to perform its obligations to the conduit.

Item 7: Description of short-term securitized product and offering

Describe the short-term securitized products to be distributed and the distribution procedure and include the following information:

- (a) whether short-term securitized products will be issued in certificated (registered or bearer) form or book-entry form and the delivery procedures;
- (b) whether short-term securitized products will be sold on a discount basis or on an interest-bearing basis;
- (c) the denominations in which short-term securitized products may be issued;
- (d) the permitted maturity period for the short-term securitized products, and the ability of the conduit to extend maturity;
- (e) the ability of either an investor to redeem prior to maturity or of the conduit to repay prior to maturity;
- (f) the maximum aggregate principal amount of short-term securitized products permitted to be outstanding at any one time, or a statement that there is no limit on the maximum aggregate principal amount of short-term securitized products outstanding at any one time;
- (g) the key risks related to the conduit that could cause a delay in or non-payment of principal or interest on the short-term securitized product.

Item 8: Additional information about the conduit

- 8.1 Disclose if the conduit has issued and outstanding, or anticipates issuing, any securities other than the series or class of short-term securitized product to which the information memorandum relates. If the conduit has issued and outstanding, or anticipates issuing, any security other than the series or class of short-term securitized product to which the information memorandum relates, describe that other security, its credit rating, if applicable, and how it will rank, in the event of insolvency of the conduit, relative to the series or class

of the conduit's short-term securitized product to which the information memorandum relates.

- 8.2 Disclose how a potential purchaser can obtain access to disclosure that the conduit is required to provide or make reasonably available in connection with a purchase of a short-term securitized product of the conduit.
- 8.3 Disclose how a holder of a short-term securitized product of the conduit can obtain access to the disclosure the conduit is required to provide or make reasonably available to a holder of a short-term securitized product of the conduit.

Item 9: Material agreements

- 9.1 If not disclosed elsewhere in the information memorandum, identify and summarize each agreement to which the conduit is a party and that is material to the conduit's business and operations, excluding agreements that are particular to an asset transaction or asset pool.
- 9.2 If material and not disclosed elsewhere in the information memorandum, describe the ability of a person to waive or modify the requirements, activities or standards that would apply under an agreement referred to in section 9.1.

Item 10: Date of information memorandum

State the date of the information memorandum.

Item 11: Representation that no misrepresentation

State the following in the information memorandum:

“This information memorandum does not contain a misrepresentation regarding the conduit, its structure, or operations.”.

13. ***National Instrument 45-106 Prospectus and Registration Exemptions is amended by adding the following form:***

**Form 45-106F8
Monthly Disclosure Report for Short-term Securitized Products
Distributed under Section 2.35.1**

Instructions:

- (1) Using language that is plain and easy to understand by the type of purchaser to whom the issuer's short-term securitized products are offered, provide the information required by this form. No reference need be made to inapplicable items and, unless otherwise required by this form, negative answers may be omitted.
- (2) A monthly disclosure report may be used to disclose information about more than one series or class of short-term securitized product. If so, the disclosure required by this form must be provided for each series or class of short-term securitized product to which the monthly disclosure report relates.
- (3) This form requires disclosure of certain items, matters or other information referred to as “material”. Information is “material” if knowledge of it could reasonably be expected to affect a reasonable investor's decision whether to buy, sell or hold a short-term securitized product.
- (4) Include or incorporate by reference a glossary that defines all technical terms, and includes each of the following definitions:

“seller” means, in connection with an asset transaction, a person or group of affiliated persons that originates or acquires cash-flow generating assets and sells or otherwise transfers, either directly or indirectly, an ownership or security interest in such assets to a conduit, which assets form one or more asset pools of the conduit.

“sponsor” means a person or group of affiliated persons that organizes or initiates the formation of a conduit;

Item 1: Summary of conduit operations and asset pools

Provide a summary of the conduit's operations and asset pools as at the last day of the month for which the monthly disclosure report applies that includes the following:

- (a) the total face value of securitized product outstanding;
- (b) the aggregate outstanding asset balance of the asset pools;
- (c) the number of asset pools in which the conduit has an ownership or security interest;
- (d) the number and dollar amount of new asset pools added during the month or other information that in conjunction with information in the report for the prior monthly period will permit an investor to easily calculate such amounts;
- (e) the number and dollar amount of asset pools repaid during the month or other information that in conjunction with information in the report for the prior monthly period will permit an investor to easily calculate such amounts;
- (f) each type of asset in the conduit's asset pools, expressed as a percentage of the total assets of the conduit's asset pools.

Item 2: Asset transaction information

Provide the following information regarding each of the conduit's asset pools in one or more tables or diagrams as at the last day of the month to which the monthly disclosure report applies:

- (a) the type of assets in the asset pool, including whether the assets are revolving or amortizing;
- (b) an identifier such as an asset pool, asset transaction or seller number;
- (c) the industry of the person or group of affiliated persons that originated the assets;
- (d) whether each seller or applicable performance guarantor has an investment grade rating;
- (e) the amount of any conduit commitment to acquire assets from a seller for the asset pool;
- (f) the balance outstanding on the asset pool;
- (g) if available, the number of assets or obligors in the asset pool.

Item 3: Asset transaction credit enhancement

Provide the following information regarding each of the conduit's asset transactions in one or more tables as at the last day of the month to which the monthly disclosure report applies:

- (a) the form of each credit enhancement;
- (b) the amount of credit enhancement expressed in either of the following forms:
 - (i) a dollar amount;
 - (ii) a percentage, including the basis of presentation.

Item 4: Asset transaction performance

Provide the following information regarding each of the conduit's asset transactions in one or more tables as at the last day of the month to which the monthly disclosure report applies:

- (a) the default or loss ratio for the month, including the basis of presentation;

- (b) information with respect to default experience both for the most recent period and over an extended period of time in the form of ratios or otherwise, provided on a consistent basis for that asset transaction in each monthly disclosure report;
- (c) defaults for the month relative to available credit enhancement.

Item 5: Compliance and termination events

Disclose the occurrence of any events or circumstances that the conduit would reasonably expect to have a significant adverse effect on the payment of principal or interest on the series or class of short-term securitized product or require the conduit to cease issuing short-term securitized products.

Item 6: Report Information

State each of the following:

- (a) date of the report;
- (b) period covered by the report;
- (c) contact information, including name, phone number and email address of a contact person for the conduit..

Transitional provisions

14. (1) An information memorandum that is provided to or made reasonably available to a purchaser pursuant to paragraph 2.35.4(1)(a), as enacted by section 9 of this Instrument, need only be prepared in accordance with Form 45-106F7 Information Memorandum for Short-term Securitized Products Distributed under Section 2.35.1 for a distribution of a short term securitized product that takes place on or after November 5, 2015.

(2) A monthly disclosure report that is provided to or made reasonably available to a holder of a short-term securitized product pursuant to an undertaking or agreement in writing required by paragraph 2.35.4(1)(b), as enacted by section 9 of this Instrument, need not be prepared in accordance with Form 45-106F8 Monthly Disclosure Report for Short-term Securitized Products Distributed under Section 2.35.1 for an asset transaction that a conduit entered into on or before November 5, 2015.

15. This Instrument comes into force on May 5, 2015.

ANNEX B**AMENDMENTS TO
NATIONAL INSTRUMENT 25-101 DESIGNATED RATING ORGANIZATIONS**

1. ***National Instrument 25-101 Designated Rating Organizations is amended by this Instrument.***
2. ***Section 1 is amended,***
 - (a) ***in the definition of “related entity”, by striking out “securitized product” and substituting “structured finance product”, in both instances, and***
 - (b) ***by striking out the defined term “securitized product” and substituting “structured finance product”.***
3. ***The following provisions of Appendix A are amended by striking out “securitized product” and substituting “structured finance product”:***
 - (a) ***section 2.9, in both instances;***
 - (b) ***section 2.19;***
 - (c) ***section 2.22, in both instances.***
4. ***Appendix A is amended in section 4.5 by striking out “securitized product” and substituting “structured finance product” and by,***
 - (a) ***in paragraph (a), striking out “securitized product” and substituting “structured finance product”, in both instances, and***
 - (b) ***in paragraph (b), striking out “securitized products” and substituting “structured finance products”.***
5. ***Appendix A is amended in sections 4.7 and 4.9 by striking out “securitized products” and substituting “structured finance products”.***
6. This Instrument comes into force on May 5, 2015.

ANNEX C**CHANGES TO
COMPANION POLICY 45-106 PROSPECTUS AND REGISTRATION EXEMPTIONS**

1. *Companion Policy 45-106 Prospectus and Registration Exemptions is changed by this Instrument.*
2. *Companion Policy 45-106 Prospectus and Registration Exemptions is changed by adding the following section:*

4.6.1 Short-term securitized products

- (1) Types of short-term securitized products

Section 2.35.1 is a prospectus exemption for the distribution of short-term securitized products. Short-term securitized products distributed in Canada are generally asset-backed commercial paper.

- (2) Definition of “asset pool”

The term “cash-flow generating assets” in the definition of “asset pool” refers to the bonds, mortgages, leases, loans, receivables, or royalties in which a conduit has a direct or indirect ownership or security interest. It does not refer to a security or other instrument through which a conduit obtains an indirect ownership or security interest in underlying cash-flow generating assets. For example, a conduit may enter into an asset transaction whereby it purchases a note from a trust that owns a pool of mortgages, thereby acquiring an indirect ownership or security interest in that pool of mortgages. In this scenario, the “cash-flow generating assets” are the mortgages, not the note.

- (3) Interaction of conditions with credit ratings

In order for the short-term securitized products prospectus exemption to be available, the short-term securitized product must satisfy certain conditions relating to credit ratings as set out in subparagraphs 2.35.2(a)(i) and (ii). The short-term securitized product and issuing conduit must also satisfy other conditions regarding liquidity support, series or class seniority and asset pool composition as set out in subparagraphs 2.35.2(a)(iii) and (iv) and paragraphs 2.35.2(b) and (c).

Short-term securitized products that satisfy the conditions in the prospectus exemption relating to liquidity support, series or class seniority and asset pool composition may not necessarily satisfy the credit-rating conditions; particularly the requirement in subparagraph 2.35.2(a)(i) that one of the two credit ratings must be at the highest rating category. Designated rating organizations each have their own rating methodologies and may require features that go beyond those specified in the prospectus exemption in order for a short-term securitized product to obtain a credit rating in the highest category.

- (4) Liquidity provider

Clause 2.35.2(a)(iv)(B) requires a liquidity provider to be a deposit-taking institution regulated or approved to carry on business in Canada by the Office of the Superintendent of Financial Institutions (OSFI) or a Canadian federal or provincial government department or regulatory authority. This provision allows a foreign bank to be a liquidity provider if it is a Schedule II or Schedule III bank that is regulated by OSFI or approved by OSFI to carry on business in Canada.

- (5) Exceptions relating to liquidity agreements

The intention of subsection 2.35.3(2) is to permit a liquidity agreement to provide that a liquidity provider need not advance funds in respect of assets that have defaulted and that are not covered by any applicable credit enhancement. For purposes of paragraph 2.35.3(2)(a), we expect that the aggregate value of the non-defaulted assets would be the book value, unless some other method of determining the value is specified by the provisions of the applicable liquidity agreement, e.g. discounted value or market value.

(6) Disclosure – meaning of “make reasonably available”

Section 2.35.4 requires that each information memorandum and reports on Form 45-106F7 and Form 45-106F8 be made reasonably available both to securities regulators and purchasers of a short-term securitized product.

This requirement could generally be satisfied by a conduit posting the document on a website maintained by it or on its behalf. If a password is used to limit access to the website, we would expect that the password would be promptly provided upon application. We generally would not object if a prospective purchaser, before being provided access to a website on which the documents are posted, would have to agree to keep the information on the website confidential or that it would not provide others with access to the website or the documents available on it..

3. These changes become effective on May 5, 2015.

ANNEX D

SUMMARY OF COMMENTS

List of Commenters

BMO Capital Markets
 The Canadian Advocacy Council for Canadian CFA Institute Societies
 Canadian Foundation for Advancement of Investor Rights
 CIBC
 Canadian Tire Corporation, Limited
 DBRS
 First National LP
 Investment Industry Association of Canada
 Moody's Investors Service
 RBC Capital Markets
 Scotia Capital Inc.
 Stikeman Elliott
 Structured Finance Industry Group
 TD Securities

A. GENERAL COMMENTS ON THE USE OF CREDIT RATINGS

Issue	Comment	Response
Continued Use of Credit Ratings as a Condition in the Proposals	<p>Two commenters raised similar concerns with credit ratings being the primary conditions for the exemptions. They were concerned that having credit ratings in legislation lends an air of legitimacy to credit raters' opinions and could mislead investors into thinking that a security with those ratings is an appropriate investment.</p> <p>One commenter thought that the use of credit ratings in the proposals is inconsistent with the objective of reducing mechanistic use of credit ratings in regulation. It recommended that the CSA eliminate rating-based eligibility criteria in line with the Financial Stability Board's (FSB) <i>Principles to Reduce Reliance on Credit Ratings</i>. It raised concerns that:</p> <ul style="list-style-type: none"> • the credit rating requirements and the credit ratings provided thereunder could create the inappropriate impression that they act as a substitute for transparency; • the widespread incorporation of credit ratings into regulation could give rise to the commoditization of credit ratings; and • credit ratings are current opinions of relative credit risk and do not measure other risk, and should not be used as a proxy for liquidity risk, price volatility or marketability. <p>One commenter said use of third party credit ratings strikes the right balance between appropriate investor protection and market efficiency functions, and that at this time, credit ratings are the best readily available metric for determining credit quality standards for CP.</p> <p>One commenter acknowledged the formal regulatory framework for credit rating agencies in Canada that is also recognized internationally, and believed it is not inappropriate for ratings to continue to serve as a condition for the relevant exemptions. It did not think such use is counter to the G20 and FSB's commitment to</p>	<p>We have considered the use of credit ratings in the Short-term Debt Prospectus Exemption and the Short-term Securitized Products Prospectus Exemption and determined that they serve an appropriate policy purpose.</p> <p>In the case of the Short-term Debt Prospectus Exemption, we continue to take the view that that it is appropriate to use the Rating Threshold Condition and the Modified Split Rating Condition to establish parameters for the credit quality of short-term debt such as CP that can be issued on a prospectus-exempt basis. We have not identified specific alternatives or additional conditions to credit ratings that would materially enhance investor protection or financial stability in the CP market. Nor have we identified undue or inappropriate reliance on credit ratings in the CP market.</p> <p>In the case of the Short-term Securitized Products Prospectus Exemption, there are a number of conditions regarding liquidity support, restrictions on underlying assets and disclosure in addition to credit ratings requirements.</p> <p>We also note that NI 25-101 contains a framework for regulation of designated rating organizations (DROs) that wish to have their credit ratings referred to within securities legislation. All the DROs whose ratings are included in the exemption are designated and regulated in Canada under this framework.</p> <p>Whether a statutory best interest standard should be imposed on registrants is beyond</p>

Issue	Comment	Response
	<p>reduce the mechanistic reliance on ratings. At present, there are no viable tested alternatives to credit ratings, and they are but one risk management tool available to investors in their decision-making.</p> <p>One commenter was concerned about legislating reliance on DROs and thought investors might be better served by increased disclosure about liquidity arrangements.</p> <p>In respect of additional factors that could reduce reliance on credit ratings, one commenter supported initiatives to potentially impose fiduciary duty on registrants. Two commenters strongly supported imposing a statutory best interest standard on registered dealers providing advice to clients.</p>	<p>the scope of this project. We note that in October 2012, the CSA published Consultation Paper 33-403 – <i>The Standard of Conduct for Advisers and Dealers: Exploring the Appropriateness of Introducing a Statutory Best Interest Duty When Advice is Provided to Retail Clients</i>. This is a separate initiative of the CSA.</p>

B. COMMENTS ON THE SHORT-TERM SECURITIZED PRODUCTS PROSPECTUS EXEMPTION

1. General Comments

Issue	Comment	Response
Perceived Risk of Short-term Securitized Products	<p>Several commenters expressed concerns that the proposed amendments single out ABCP as being riskier than CP. They stated that this unwarranted because credit enhancements make the potential for actual loss remote and liquidity is guaranteed by an OFSI-regulated bank. One commenter was concerned that the higher credit ratings in the exemption could unfairly stigmatize ABCP relative to other forms of short-term debt.</p> <p>One commenter expressed concerns that certain requirements (including ratings, liquidity and disclosures) in the exemption would be inconsistent with market practice and international developments.</p>	<p>We have modified the credit rating requirements so that only one of the two credit ratings for ABCP must be at the highest short-term rating category of a DRO. The second required credit rating has been revised to be in line with the ratings used for the Short-term Debt Prospectus Exemption. The requirements are also in line with current Canadian market practices. They do not preclude further improvements in market practice or alignment with international developments.</p> <p>We also have added guidance in CP 45-106 that short-term securitized products that satisfy the conditions in the exemption relating to liquidity support, series or class seniority and asset pool composition may not necessarily satisfy the credit rating conditions; particularly the requirement that one of the two credit ratings be at the highest rating category.</p>
Risk Retention	<p>One commenter recommended that the CSA adopt Recommendation 1 of the International Organization of Securities Commissions' (IOSCO) final report on <i>Global Developments in Securitisation Regulation</i> (the IOSCO Risk Retention Report) and mandate risk retention for securitized products because the measures that originators have in place to retain risk are not mandatory (e.g. over-collateralization and excess spread allocation to investors).</p>	<p>The IOSCO Risk Retention Report did not mandate any particular approach to credit risk retention but recommended that all jurisdictions evaluate and formulate their approach to aligning incentives of originators and investors, including through mandating credit risk retention where appropriate.</p> <p>We have completed our evaluation of incentive alignment. As noted in the January 23, 2014 Notice of Publication and Request for Comment, the Canadian securitization market is by-and-large free</p>

Issue	Comment	Response
		<p>from the types of incentive misalignment that raised major investor protection and systemic risk concerns during the financial crisis of 2007-2008. We are enhancing transparency with respect to incentive alignment by requiring disclosure in the Information Memorandum of a conduit's approach to interest alignment and credit risk retention. Other requirements relating to liquidity support, permitted assets and disclosure address the features of non-bank ABCP that reflected misaligned incentives and caused problems during the financial crisis.</p>
Innovation	<p>One commenter was concerned about the risk associated with prescriptive regulations which would not allow for innovation or structural differences.</p> <p>One commenter recommended that a regulatory regime that anticipates future market developments should be put in place.</p> <p>One commenter expressed concern that innovation would be limited by making the exemption unavailable for transactions involving <i>pari passu</i> or subordinate short-term securitized products and asset classes not listed in the proposed exemption.</p>	<p>We are not prohibiting the issuance of innovative or differently-structured short-term securitized products. However, we think that certain minimum conditions must be met in order for short-term securitized products to be issued in the same manner as CP is issued under the Short-term Debt Prospectus Exemption.</p> <p>We have made the exemption available for conduits to distribute more than one series or class of short-term securitized products if the series or classes are <i>pari passu</i> in respect of any underlying asset pool.</p>
Regulation Based on ABCP Type	<p>One commenter cautioned that the CSA must be careful not to regulate based on classifications of the type of ABCP (e.g. bank-sponsored or non-bank-sponsored) as a clear distinction may not be able to be made.</p>	<p>The exemption does not distinguish between bank or non-bank sponsored ABCP or short-term securitized products. It sets out minimum conditions for credit ratings, liquidity support, permitted assets and disclosure.</p>
Implementation/ Grandfathering	<p>One commenter recommended that amendments only be applied prospectively so existing transactions would not be penalized.</p>	<p>We have added transitional provisions to address this concern.</p>
Market has Self-Corrected	<p>One commenter noted that many of the issues with the ABCP market have been self-corrected. For example, currently there are no non-bank sponsored conduits and "market disruption liquidity" has been replaced with global-style liquidity support.</p>	<p>We recognize that a number of improved practices have been adopted in the market. The requirements in the exemption are intended to ensure that those improved practices are consistently maintained.</p>
Limited Retail Investor Participation/Suggestion to Create a New Prospectus Exemption for Sophisticated Investors	<p>Two commenters thought that the proposed amendments are largely targeted towards protecting retail investors whose participation in the ABCP market is limited.</p> <p>Two commenters proposed the creation of an alternative exemption for sophisticated investors. They suggested that the following conditions be met under such an exemption:</p> <ul style="list-style-type: none"> (i) a minimum cash purchase price of \$150,000 by the purchaser (who is not an individual); (ii) the securitized product has two prescribed minimum short-term ratings; and (iii) the securitized product is backed by a global style liquidity provider, having at least two 	<p>We recognize that the ABCP market is predominantly an institutional investor market. However, one of the objectives of the exemption is to address systemic risk concerns, which are present (and may be even greater) in predominantly institutional markets.</p> <p>For example, one of the key elements of the new exemption is the disclosure requirement. An important rationale for mandating disclosure is to increase market transparency, which in turn can mitigate systemic risk.</p>

Issue	Comment	Response
	<p>prescribed minimum short-term ratings. They recommended that only the conduit sponsor be required to file quarterly exempt distribution reports, and reports of each distribution of ABCP under such an exemption not be required. They also proposed no resale restrictions be applied to ABCP distributed under this exemption.</p>	<p>At this time, we do not propose to introduce other prospectus exemptions that may be used to distribute short-term securitized products.</p>

2. Specific Questions in the CSA Notice

Question	Comment	Response
<p>1.(a) Should certain short-term securitized products not be allowed to be sold on a prospectus- exempt basis?</p>	<p>Three commenters recommended that all types of short-term securitized products be permitted to be sold under other prospectus exemptions (such as the accredited investor and minimum investment amount exemptions).</p>	<p>The accredited investor and minimum amount prospectus exemptions will continue to be available for short-term securitized products.</p>
<p>1.(b) Is it likely that short-term securitized products would be sold under other prospectus exemptions?</p>	<p>Three commenters believed that it is unlikely that short-term securitized products would be sold under other prospectus exemptions because of the administrative burden of filing exempt distribution reports and associated fees. They recommended modifying the fee structure and reporting requirements of these other prospectus exemptions to accommodate the short-term nature of the product.</p> <p>One commenter expressed concern that because certain transactions currently funded by ABCP conduits would not be able to use the Short-term Securitized Products Prospectus Exemption due to the list of permitted assets, conduits would have to use different prospectus exemptions, increasing the administrative burden for conduits and the cost of funding for originators.</p>	<p>We have made a number of changes to the Short-term Securitized Products Prospectus Exemption to better align the exemption with current market practices. We therefore do not think it is necessary at this time to modify the fee structure and reporting requirements of other prospectus exemptions to facilitate the issuance of short-term securitized products under other prospectus exemptions.</p> <p>We have modified the list of permitted assets to include any real or personal property securing or forming part of an asset pool to address situations where assets go into default. We believe the list of permitted assets and the above modification address current transactions funded by ABCP conduits.</p>
<p>1.(c) Are there other types of relevant products that would not be covered by the definition of "securitized product"?</p>	<p>Three commenters think the definition of "securitized product" is broad enough to capture all structured products in the current marketplace. One commenter, however, recommends the inclusion of a basket provision to allow for exemptive relief of novel products that may be introduced in the future.</p>	<p>We have not made any significant changes to the definition of "securitized product". Securities legislation contains provisions that allow for issuers to apply for discretionary exemptive relief.</p>
<p>2. Are the credit rating requirements for short-term securitized products appropriate?</p>	<p>There was broad support for the introduction of the requirement of two credit ratings. However, many commenters felt the prescribed minimum ratings were prohibitive because they are set at the highest short-term rating of each rating agency. One commenter supported the two-rating requirement, but questioned whether there is a need to prescribe such a standard as market participants can better address this.</p> <p>Although the two-rating requirement is part of the eligibility criteria for the Bank of Canada's Standing Liquidity Facility, one commenter suggested that this</p>	<p>The proposal for two credit ratings has been maintained. However, we now require that only one of the two credit ratings be at the highest short-term rating of a DRO. Please also refer to our response to the issue of using credit ratings as a condition of the Short-term Debt Prospectus Exemption and Short-term Securitized Products Prospectus Exemption.</p> <p>We agree that some of the complexities associated with securitization structures</p>

Question	Comment	Response
	<p>criteria was originally developed under unique circumstances to address a particular issue, and furthermore could be amended at any time (unlike a condition to a prospectus exemption).</p> <p>Several commenters recommended that the credit rating requirements for ABCP be consistent with those applicable to CP or with the minimum ratings of liquidity providers as the methodology used by many DROs does not allow ABCP to have a higher credit rating than that of the liquidity provider.</p> <p>One commenter noted that ABCP investors are in a much better position to limit their risk exposure to the operating entities that are related to the conduit because, as a SPE, each conduit has a prescribed purpose, is authorised to carry on a very limited scope of activities and is bankruptcy remote from its sponsor and originators. Moreover, there is a true sale of assets to the conduit in the case of ABCP, which puts the conduits and investors in a better position from an enforcement perspective than if they merely had an ownership interest in collateral.</p> <p>One commenter noted that many of the complexities in ABCP structures stem from mechanisms put in place to reduce risk, while concerns about liquidity mismatch will be addressed by the requirement for global-style liquidity.</p>	<p>stem from mechanisms put in place to reduce risk. However, some of the complex features of pre-financial crisis non-bank ABCP structures increased risk and were difficult to assess from a credit rating perspective. For that reason, it is appropriate to have a more stringent set of credit rating requirements in the Short-term Securitized Products Prospectus Exemption along with specific conditions relating to liquidity, permitted assets and disclosure.</p>
Other Comments on Rating Thresholds	<p>One commenter was concerned that the proposed credit rating thresholds for DBRS credit ratings were R-1(high), while other DROs had lower ratings. It suggested that the credit rating thresholds should be:</p> <ul style="list-style-type: none"> • DBRS Limited – R-1(low)(sf) • Standard & Poor’s Ratings Services (Canada) – A-1(Low)(sf) • Moody’s Canada Inc. – P-1(sf) • Fitch, Inc. – F1sf 	<p>The ratings of the various DROs do not exactly correspond or correlate. We have set the ratings at what we consider to be appropriate levels for ABCP to be issued under the Short-term Securitized Products Prospectus Exemption.</p>
3. Liquidity Support Requirements - General Comments	<p>One commenter thought that the granular and prescriptive nature of the proposed liquidity requirements would compromise the ability of DROs to maintain their criteria as they deem appropriate on a going-forward basis. It suggested that meaningful disclosure to investors, as opposed to prescriptive liquidity requirements, would better equip investors to carry out any due diligence they may deem necessary.</p> <p>One commenter generally thought the level of specificity in the liquidity support requirements was inappropriate and overly prescriptive, and the minimum rating requirements would ensure appropriate liquidity arrangements are in place.</p>	<p>Global-style liquidity is the appropriate standard for liquidity support. However, issuers and investors should not assume that global-style liquidity will be sufficient for a DRO to rate short-term securitized products at the highest credit rating levels. Credit ratings are based on a DRO’s specific rating methodology. Depending on that methodology, global-style liquidity may not be sufficient to obtain the highest credit rating. Greater liquidity support or credit protection (e.g. program-wide credit enhancement) may be necessary. The Information Memorandum requires disclosure of the standard liquidity support arrangements the conduit has entered or anticipates entering into.</p>

Question	Comment	Response
<p>3.(a) In addition to the credit rating requirements for liquidity providers, should there be similar requirements for sponsors?</p> <p>3.(b) How common is it for the sponsor to also be the liquidity provider?</p>	<p>Two commenters thought that the credit rating requirements for liquidity providers provide adequate protection to investors (provided the liquidity provider is regulated by OFSI or provincially regulated). They also stated that a corresponding credit rating requirement for conduit sponsors is unnecessary.</p> <p>Several commenters noted that the conduit sponsor is usually also the liquidity provider. Only one Canadian ABCP issuer was identified where the sponsor does not provide a liquidity line.</p>	<p>We have maintained the credit rating requirement for the liquidity provider and have not added a credit rating requirement for a conduit sponsor.</p>
<p>3.(c) Do you agree with the two credit rating approach for the liquidity provider?</p>	<p>Three commenters supported this requirement.</p> <p>One commenter did not agree with legislating reliance on DROs and thought investors might be better served by increased disclosure about liquidity arrangements. It is redundant to have a minimum credit rating for both the ABCP and the liquidity provider because the credit rating for the liquidity provider is considered in rating ABCP. The commenter also noted that the requirement that <u>each</u> liquidity provider meet the proposed minimum credit ratings is problematic in the context of a syndicated liquidity line. It recommended that where a liquidity provider suffers, or is at risk of suffering, a credit rating downgrade below the prescribed minimum level, there should be a reasonable grace period to allow the liquidity commitment to be prefunded, assigned or restructured to comply with the Short-term Securitized Products Prospectus Exemption.</p>	<p>We have maintained the requirement for two credit ratings.</p> <p>The conditions are in line with current market practice. If further accommodations are required, an application for discretionary exemptive relief may be made to the securities regulatory authorities.</p>
<p>3.(d) Are the proposed minimum credit rating levels for the liquidity provider in 2.35.2(a)(iv)(C) of the proposed rules appropriate?</p>	<p>Two commenters believed that the proposed minimum long-term credit rating levels for liquidity providers are appropriate, while one commenter thought they were too stringent. Three commenters recommend the inclusion of short-term equivalents.</p>	<p>We have changed the type of ratings required from long-term ratings to short-term ratings.</p>
<p>3.(e) Would requiring liquidity providers to be regulated by OFSI or provincially cause any issues?</p>	<p>Two commenters did not have any issues with liquidity providers being prudentially regulated by OFSI or provincial regulators and are unaware of any foreign banks, not regulated by OFSI, that act as liquidity providers to Canadian conduits.</p> <p>One commenter did not have any concerns, but thought that this requirement would limit the ability to restructure liquidity provisions during an extreme market condition where numerous Canadian banks' ratings are downgraded.</p>	<p>We have changed the conditions so that a deposit-taking institution can be a liquidity provider if it is regulated by or has been approved to carry on business in Canada by OSFI or a provincial regulator. The effect of this change is that a Schedule III bank can be a liquidity provider. We think that a foreign deposit-taking institution that OSFI or a provincial regulator regulates or has approved to carry on business should be allowed to be a liquidity provider, provided it satisfies all the other conditions relating to liquidity support.</p>
<p>3.(f) Is it appropriate to allow foreign banks (not regulated</p>	<p>Three commenters do not think foreign banks should be permitted to act as liquidity providers because they are not subject to the same oversight and regulatory regime.</p>	<p>Please see above.</p>

Question	Comment	Response
by OFSI) to act as liquidity providers? What if they are subject to Basel III?	Even if foreign banks are subject to Basel III, there may be differences in how Basel III is applied by other regulators.	
3.(g) Are the proposed circumstances when a liquidity provider is permitted not to advance funds appropriate?	Three commenters support the exceptions to the liquidity provider's obligation to advance funds in the case of bankruptcy of insolvency of the conduit. Two commenters note that certain conduits have liquidity arrangements which are transaction-specific.	We have revised the drafting to accommodate transaction-specific liquidity arrangements.
4. Is it appropriate to extend the Short-term Securitized Products Prospectus Exemption to short-term securitized products that are convertible or exchangeable into, or accompanied by a right to purchase, another qualifying short-term securitized product?	Two commenters agreed that the exemption should be available for short-term securitized products that are convertible or exchangeable into, or accompanied by a right to purchase, another short-term securitized product that would qualify for the exemption.	The exemption will continue to be available for short-term securitized products that are convertible or exchangeable into, or accompanied by a right to purchase, another qualifying short-term securitized product.
5. Are there assets in addition to those listed in 2.35.2(c) that the conduit should be allowed to hold? Are they currently in the Canadian ABCP market?	Several commenters expressed concern about prescribing a list of eligible assets and proposed alternatives such as a negative pledge not to fund "non-traditional assets", a list of ineligible assets or the addition of a catch-all phrase at the end of the eligible asset list, which would permit funding of assets that are substantively similar to those enumerated (while still excluding non-traditional assets).	We have maintained a prescribed list of assets. The list has been modified to include any property securing or forming part of the asset pool. We believe the list captures all relevant traditional assets.
6. Do the proposed triggers for timely disclosure reports cover all relevant material events?	<p>Several commenters had concerns that the triggers were overly broad.</p> <p>Requiring disclosure of changes in the information required in the most recent Monthly Disclosure Report would be overly burdensome, as transactions within a conduit program change almost on a daily basis. Disclosure should not be required where deal-level structural protections are triggered and investors get the full benefits of those structural protections.</p> <p>The commenters recommended requiring timely disclosure only when there is a "material change", such as a liquidity event, a significant default or a change reasonably expected to impact these events.</p>	<p>We have modified the triggers for timely disclosure to be one of the following events:</p> <ul style="list-style-type: none"> • a downgrade in one or more of the conduit's credit ratings; • a default on the payment obligations of the conduit; or • a change or event that the conduit would reasonably expect to have a significant adverse effect on such obligations
7. Should the Short-Term Securitized Products Prospectus Exemption and the new forms be in a stand-alone rule?	One commenter thought the new exemption should remain part of NI 45-106.	The exemption will be part of NI 45-106.

Question	Comment	Response
8. What information should be available to regulators to monitor market trends and the build-up of risk? And by what means and how frequently should it be reported?	Three commenters believe monthly rating agency reports and monthly investor reports should provide the CSA with sufficient information for monitoring purposes.	We thank the commenters for their responses.

3. Specific Conditions of the Exemption

Section	Comment	Response
2.35.2(a)(ii) and 2.35.2(a)(iv)(D) – Reasonable Expectation of Results of Ratings Review	Three commenters recommended removal of requirements that the issuer determine whether it reasonably expects that an announced ratings review of the ABCP will result in a rating being withdrawn or downgraded below the threshold requirements or that an announced ratings review of a liquidity provider will result in a rating being withdrawn or downgraded below the threshold requirements. These requirements place an unfair onus on issuers and are excessively punitive.	We have revised the exemption to remove the requirement for a conduit to make this assessment.
2.35.2(b) – Unavailability of Exemption for <i>pari passu</i> or Subordinate Short-term Securitized Products	Several commenters believed that so long as investors are provided with adequate disclosure (on seniority, among other things), they should be permitted to make an informed decision on whether to invest in such products. One commenter gave as an example of where this restriction would be inappropriate a trust or SPE that issues different series of notes and the assets of each are firewalled under the indenture.	We continue to take the view that the exemption should only be available for the highest ranked series. We have made the exemption available for <i>pari passu</i> short-term securitized products if each series satisfies all other conditions of the exemption.
2.35.3 – Exceptions Relating to Liquidity Providers/Agreements	Two commenters sought clarification on how to determine the “aggregate value” of assets under 2.35.3(2). One commenter suggested modifying 2.35.3(2)(a) by adding the term “non-defaulted” so it reads “aggregate value of the <u>non-defaulted</u> assets in the asset pool”. It also questioned whether this level of detail was needed, in light of the protection provided by the rating requirements for ABCP and liquidity providers. One commenter recommended modifying the language of 2.35.3(2) to speak to obligations to fund that do not exceed the aggregate value of the particular assets that are the subject of the related liquidity arrangements, rather than the entire asset pool. One commenter suggested that 2.35.3 be deleted or simplified as the investor protection function that is targeted here will be achieved by the rating and liquidity requirements. One commenter believed that it was unnecessary to codify liquidity arrangements as rating agencies	Our intention was that non-defaulted assets be excluded under 2.35.3(2). We have clarified the drafting in this respect. Please also see our response above regarding the interaction of the liquidity requirements with the rating methodologies of DROs.

	publish detailed criteria outlining the rating principles they apply to all issuers and trying summarize these requirements into a couple of paragraphs could result in unnecessarily restrictive rules that do not reflect current standards.	
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4. Disclosure

(a) General

Issue	Comment	Response
Disclosure in the Information Memorandum vs. the Monthly Disclosure Report	Several commenters were concerned that many of the requirements in the Information Memorandum were too transaction-specific and would require issuers to update the disclosure on an on-going basis. They believed that the Information Memorandum should be a relatively static document and focus on program-level disclosure, whereas the Monthly Disclosure Report should capture any material updates and provide transaction-specific disclosure, without repeating disclosure that would already be in the Information Memorandum.	<p>We have made several revisions to the Information Memorandum as follows:</p> <ul style="list-style-type: none"> • focused the disclosure so that it is in respect of the conduit's structure and operations; • moved disclosure about specific asset transactions and asset pools to the Monthly Disclosure Report; • clarified certain requirements; and • eliminated duplicative disclosure. <p>The requirement to disclose information regarding interest alignment and risk retention has been moved from the Monthly Disclosure Report to the Information Memorandum.</p>
Identification of Parties	<p>Several commenters noted that to the extent the proposed disclosure required identification of principal obligors, originators, sellers and servicers, these would raise confidentiality and competitive concerns while being of limited value to investors.</p> <ul style="list-style-type: none"> • One commenter noted that financial institutions that are reporting issuers are not required to disclose the names of borrowers. • One commenter noted that to date investors have not been requiring such disclosure as a pre-condition to purchasing ABCP and it is not required in other markets. • One commenter recommended that only the identities of parties relevant to the structure of the conduit be required <p>One commenter believed that the identity of originators should be fully disclosed and that the disclosure in Recommendation 5 of the IOSCO Risk Retention Report should be required so that investors have the necessary information to make an informed investment decision.</p>	<p>We have modified the disclosure to focus on disclosure of parties responsible for a significant role in the conduit's structure and operations. We have limited the disclosure requirements in respect of the seller to its industry and whether or not the seller's credit rating is investment grade.</p> <p>Consistent with Recommendation 5 of the IOSCO Risk Retention Report, we have:</p> <ul style="list-style-type: none"> • considered how issuers who distribute short-term securitized products under the exemption should be required to provide investors with information necessary to make an informed investment decision; and • formulated an approach for point of sale and ongoing disclosure that is consistent with the disclosure framework under securities legislation.
Making Disclosure Available	<p>A commenter sought clarification on the meaning of "make reasonably available" in connection with required disclosure.</p> <p>Several commenters suggested that the Monthly Disclosure Report should be made reasonably available 30 days rather than 45-60 days from the end of the month to which it relates. This longer time is necessary for the conduit to receive the information needed to prepare the form.</p>	<p>Posting materials to the conduit's website would be sufficient to meet this requirement.</p> <p>We have modified this condition so that the Monthly Disclosure Report must be made reasonably available within 50 days.</p>

Issue	Comment	Response
	Two commenters recommended that the time frame for providing timely disclosure be two business days, subject to certain modifications to the required disclosure. One commenter suggested making the time frame consistent with the timing of a material change report.	The time frame for timely disclosure has been revised to two business days.
Negative Answers or Inapplicable items	Two commenters recommended that an instruction be added clarifying that negative answers to prescribed items or inapplicable items need not be included in the Information Memorandum or the Monthly Disclosure Report.	We have revised the instructions in the Information Memorandum and the Monthly Disclosure Report to clarify that negative answers are not required unless specifically stated otherwise.
Amount and Cost of Disclosure	Two commenters were generally concerned that too much disclosure is required. Two other commenters were concerned with the increased administrative burden and costs that will be borne by conduit sponsors in complying with the proposed disclosure requirements.	We have revised the disclosure requirements to address the various comments. We think the revised disclosure requirements achieve an appropriate balance between the administrative burden and costs borne by conduits and the need for information to support investor protection and market transparency.

(b) Information Memorandum

Item	Comment	Response
1.2 – Reporting of Originator and Principal Obligor Past Defaults	Three commenters recommended this item be deleted. Reasons given were: <ul style="list-style-type: none"> it is too broad and is not relevant; it places an inappropriate duty on conduits as there is no practical way for conduits to ensure compliance of originators and principal obligors; and past default reporting by the sponsor and liquidity provider based solely upon their identity may be misleading, and such reporting should only be required where the default was caused by their actions or inactions. 	We have eliminated this requirement.
1.5 – Performance Inspections or Verifications	One commenter recommended this item be clarified to specify that it requires a general description of the issuer/servicer.	We have made this clarification.
3.1 – Material Investment Criteria and Underwriting Guidelines	Several commenters recommended more general disclosure and noted that there are generally no concentration limits at the conduit level.	We have changed the requirement to make it more general in nature.
3.3 – Asset Acquisition Methods and Nature of Property Interests	One commenter did not believe this item is necessary given the required disclosure in item 3.1	This item has been revised to more clearly delineate the disclosure requirements for eligible assets and asset transactions.
3.5 – Exposure to Credit Derivatives or Highly Structured or Leveraged Credit Products	One commenter recommended that the language used by the Bank of Canada in its eligible collateral guidelines for its Standing Liquidity Facility be adopted.	This requirement has been revised to only require a brief description of how derivatives will be used for hedging. Bold text is not required.

Item	Comment	Response
	One commenter was concerned that standard hedging arrangements could fall within the meaning of “credit derivatives” and it would not be appropriate to present them in bold text. It recommended “(other than standard interest rate and currency hedges)” be added after “credit derivatives” in this item.	
5.1 – Property Interest of Holders of Short-term Securitized Products.	One commenter requested clarification on whether “risk factor” disclosure (similar to a prospectus) is necessary.	That type of risk factor disclosure is not required for this item.
5.3, 5.4 and 5.5 – Priority of Claims	Two commenters recommended items 5.4 and 5.5 be removed because the disclosure required thereunder is captured in item 5.3.	We have revised this item and removed the text in items 5.4 and 5.5.
6 – Compliance or Termination Events	One commenter suggested item 6.1 be revised to focus on events that will impact investors. Three commenters recommended issuers only be required to provide a general description rather than transaction-specific details.	We have revised item 6.1 to more specifically address what would constitute an event of default or require the conduit to stop issuing short-term securitized products. Items 6.2 and 6.3 have been revised to clarify that only general descriptions are required.
7 – Description of Product and Offering	<p>One commenter believed the disclosure of denominations in which short-term securitized products certificates will be issued under item 7(d) is unnecessary and should be removed. One commenter sought to clarify that disclosing minimum denominations and integral multiples (as it currently does) will be sufficient to meet the disclosure obligations in item 7(d).</p> <p>One commenter recommended revising item 7(g) to contemplate an uncapped maximum amount of outstanding short-term securitized products by adding “or a statement that the maximum aggregate principal amount of short-term securitized products to be outstanding at any one time is unlimited.”</p>	<p>Disclosure of minimum denominations and integral multiples would be sufficient for this requirement.</p> <p>We have incorporated the suggested drafting.</p>
8 – Additional Information on Conduit	<p>One commenter thought disclosure of whether the use of financial leverage is anticipated under item 8.1 is unnecessary. One commenter sought clarification on the meaning of “financial leverage” in item 3.5, particularly because it could be interpreted to include CP.</p> <p>One commenter sought clarification on whether disclosure of the issuance of, or anticipated issuance of, other securities in item 8.2 included other firewalled series of securities such as medium-term notes and subordinated ABCP.</p>	<p>Item 8.1 has been deleted.</p> <p>Disclosure required by this item (now item 8.1) includes disclosure of such securities.</p>
9 – Material Agreements	Three commenters thought that the disclosure required under this item would result in disclosure of too many agreements (many of which would be of little or no value to investors) because the definition of “significant parties” is too broad. Further, this requirement should be limited to	<p>We have revised the requirement to only require agreements material to the conduit’s structure and operations to be disclosed. For example, the following agreements would have to be disclosed:</p> <ul style="list-style-type: none"> • declaration of trust; • financial services agreements;

Item	Comment	Response
	program-level disclosure of material program agreements for the conduit. One commenter also recommended revising this item to require only disclosure of the principal ABCP conduit agreements (e.g. declaration of trust, financial services agreement, trust indenture, liquidity agreement and agency/distribution agreement).	<ul style="list-style-type: none"> • trust indenture; • liquidity agreements; and • agency/distribution agreements.

(c) Monthly Disclosure Report

Item	Comment	Response
1.2 – Structural Diagram	One commenter suggested that no updates to the Information Memorandum disclosure should be made in the Monthly Disclosure Report unless there is a material change to the structure of the conduit.	The Monthly Disclosure Report has been revised to require disclosure only about asset transactions and asset pools, rather than the conduit's structure and operations as a whole.
2 – Program Information	<p>Two commenters recommended that item 2(a) be revised to remove the requirement that interest payable at maturity be disclosed. One commenter noted that such disclosure would be impractical because the interest payable at maturity changes daily, resulting in continual updating, and a monthly snapshot would not be useful to investors and could be misleading. Another commenter noted that disclosure of the face amount and interest payable should also not be required under item 2(a), as it is the total amount of short-term securitized products outstanding that is relevant to investors.</p> <p>One commenter proposed that item 2(b)(ii) only require disclosure of the amounts or percentages of liquidity available, rather than both.</p> <p>Three commenters recommended that the requirement to disclose average maturity in days in item 2(d) be deleted because it can change on a daily basis and is not pertinent to investors.</p>	<p>This item has been revised to require only the total face value of the securitized product outstanding to be disclosed.</p> <p>Disclosure of standard liquidity arrangements is now found in the Information Memorandum.</p> <p>We have deleted this requirement.</p>
4 – Asset Pool	One commenter recommended that item 4.2(c), which requires disclosure of the amount of assets obtained from each issuer, be removed because the information can otherwise be calculated and it is unnecessary for issuers to summarize the calculations. One commenter suggested that this item be revised to also allow for disclosure in tabular form.	This requirement has been revised.
5 – Second-Level Assets	Two commenters recommended removal of this requirement because such information would be disclosed in item 4.	We have removed this requirement.
6 – Asset Pool Changes	Three commenters did not believe disclosure of new asset interests required in item 6(a) is necessary because any new assets would be reported under item 8 and a comparison against the previous month's Monthly Disclosure Report can be done. They also think disclosure on assets that are no longer part of the pool, as required by item 6(b), is irrelevant to	These requirements have been removed.

Item	Comment	Response
	<p>investors.</p> <p>One commenter recommended not requiring disclosure of the reasons certain assets are added or removed from the asset pool in item 6(c) because this information is not relevant to investors. One commenter was concerned such disclosure could reveal business-sensitive or confidential information with respect to originators, sellers and principal obligors.</p> <p>Two commenters also recommended item 6(d) be deleted because changes in commitment amounts can be obtained by doing a comparison against the previous month's Monthly Disclosure Report and commitment levels can fluctuate on a daily basis.</p>	
<p>7 – Program Compliance and Termination Events</p>	<p>Two commenters suggested that the required disclosure of events in items 7(a)(ii) and (iv) be limited to circumstances where it could be reasonably expected to adversely impact the repayment of the ABCP. One commenter requested clarification regarding whether it would be sufficient to report the Required Credit Enhancement and Available Credit Enhancement under item 8 to satisfy the requirement under item 7(c).</p> <p>One commenter noted that disclosure of program-wide credit enhancements under item 7(a)(iii) would be important to investors.</p>	<p>We have replaced the detailed disclosure required under of this item with a more general disclosure requirement (in item 5) that requires any events or circumstances that the conduit would reasonably expect to have a significant adverse effect on distributions of, or require the conduit to cease issuing, short-term-securitized products.</p> <p>Some of the disclosure requirements under this item (e.g. items 7(e) and (g)) have been moved to the Information Memorandum.</p> <p>Disclosure of program-wide credit enhancements has been maintained but is now required to be disclosed in the Information Memorandum.</p>
<p>8.2 – Securitization Transaction Summary</p>	<p>One commenter recommended amending item 8.2 to allow for disclosure by diagram or table.</p> <p>Two commenters suggested that item 8.2(b)(i), which requires disclosure of the average remaining term of assets (if material), be removed because it may not be possible for conduit administrators to disclose this information. Two commenters requested that item 8.2(d) (the number of obligors) be removed because this information changes frequently and may not be meaningful to investors.</p> <p>Two commenters questioned the relevance of disclosing the credit rating of the originators under item 8.2(f) and were concerned that such disclosure could reveal their identities.</p> <p>One commenter recommended simplifying disclosure of the performance of the assets in item 8.2(g) because different asset classes can have different performance metrics.</p>	<p>The disclosure required in item 8.2 (now item 2) may be made by diagram or table, except for asset transaction performance (now item 4) which must be provided in tabular format.</p> <p>The disclosure requirement in item 8.2(b)(i) has been removed. The number of assets or obligors in the asset pool is only required to be disclosed if this information is available.</p> <p>The disclosure requirement in item 8.2(f) (now item 2.1(d)) has been revised to indicate whether or not the credit rating is investment grade.</p> <p>This disclosure has been streamlined and simplified.</p>

Item	Comment	Response
8.3 – Securitization Transaction Credit Enhancement Provider	<p>One commenter requested that the disclosure in item 8.3 be limited to the credit enhancement available to the transaction, as it is not clear what entities are to be captured under “transaction credit enhancement provider”.</p> <p>One commenter thought that unless there is a material change to conduit-level credit enhancements, there should be no such disclosure in the Monthly Disclosure Report. The nature and amount of additional transaction-specific credit enhancement is determined on a deal-by-deal basis. The commenter recommended requiring deal-specific credit enhancements to be reported on a percentage basis in item 8.3(a). The commenter believed item 8.3(b) is misleading because any transaction-level credit enhancement would not be available generally to the entire class of short-term securitized products, so it should be revised to refer only to conduit structure credit enhancement.</p> <p>Three commenters questioned the relevance of the disclosure required in items 8.3(c) and 8.3(d) and suggested that such disclosure only be provided on a program-wide basis in the Information Memorandum.</p>	<p>We have revised the disclosure to clarify our intention to only require disclosure of credit enhancement available at the transaction level. We have also clarified that our expectation is that this would be disclosed as either a dollar amount or a percentage.</p> <p>These disclosure requirements have been modified and moved to the Information Memorandum.</p>
8.4 – Financial Leverage	<p>One commenter recommended item 8.4 be removed as it would only relate to structured finance or structured products, which are not permitted to be included in the asset pool. Similarly, one commenter sought clarity on what is meant by “financial leverage” and was concerned that it could be interpreted to include CP.</p>	<p>These disclosure requirements have been modified and moved to the Information Memorandum.</p>
11 – Conflicts of Interest	<p>One commenter stated that such disclosure is not required in a prospectus with respect to asset-backed securities, and there are no special considerations in this context that would warrant it.</p>	<p>These disclosure requirements have been deleted.</p>

C. COMMENTS ON THE SHORT-TERM DEBT PROSPECTUS EXEMPTION

1. Specific Questions in the CSA Notice

Question	Comment	Response
1. We are proposing a Modified Split Rating Condition as part of the Proposed Short-term Debt Amendments in order to maintain minimum credit quality standards for CP that is issued through the Short-term Debt Prospectus	<p>Two commenters did not agree that the Modified Split Rating Condition is necessary to maintain minimum credit quality and suggest a prescribed credit rating from one DRO should be sufficient.</p> <p>One commenter thought that the pool of DROs is small and consists of well-known firms with global track records, which are subject to CSA regulation. This commenter added that if the CSA thinks a minimum floor is required, then the ratings proposed in the Modified Split Rating Condition are inappropriate and could cause investor confusion. This commenter noted that as proposed, the Modified Split Rating Condition would differ from equivalent</p>	<p>We continue to think minimum credit quality standards for CP are important and have maintained the Modified Split Rating Condition in the revised amendments. We think the Modified Split Rating Condition addresses the regulatory disincentive to obtain additional ratings while providing consistent treatment of CP issuers with similar credit risk and ensuring minimum credit quality standards for CP issued without a prospectus.</p> <p>With respect to appropriate thresholds in the Modified Split Rating Condition, we have clarified the minimum Standard & Poor’s credit</p>

Question	Comment	Response
<p>Exemption. Do you agree that some type of Split Rating Condition is necessary to achieve this objective, and if so, is the Modified Split Rating Condition we propose appropriate?</p>	<p>ratings thresholds established by other regulators, such as OSFI. This commenter therefore thought that the appropriate credit rating for DBRS in the Modified Split Rating Condition should be R-2(high).</p> <p>Another commenter thought the ratings required in existing CP exemptive relief should satisfy the objective of maintaining minimum credit quality standards for CP issued through the short-term debt exemption. This commenter thought the Modified Split Rating Condition would create a regulatory disincentive for CP issuers to obtain additional credit ratings, in case any additional credit rating would not meet the minimum standards. This commenter also did not see why issuers who currently have exemptive relief, but would not meet the requirements in the proposed credit rating conditions, should be forced to apply for relief.</p> <p>One commenter supported the proposed criteria and noted that the proposed Rating Threshold Condition and Modified Split Rating Condition will capture all of the currently active programs in the Canadian market. The commenter thought introducing the Modified Split Rating Condition as a secondary measure would remove a regulatory disincentive to seek additional ratings while ensuring minimum credit quality standards are maintained. As for appropriate thresholds, this commenter recommended that the A-1(low) Canadian scale of Standard & Poor's should be the minimum credit rating that satisfies the Modified Split Rating Condition. This commenter also thought that there should be a grandfathering provision for the small subset of issuers who previously received exemptive relief and would not satisfy the Modified Split Rating Condition.</p> <p>One commenter thought the CSA should clearly state which Standard & Poor's scale the requirements refer to, and that the Standard & Poor's scale should be the Canadian scale. The commenter also thought the requirements should be set with reference to investment grade long-term ratings, and on this basis, suggested that the thresholds in the Modified Split Rating Condition for DBRS should be R-2(high) and for Standard & Poor's should be A-1(low) (Canadian scale).</p>	<p>rating in the Modified Split Rating Condition on both the Canada national scale and the global scale.</p> <p>At this time, we are not revising the DBRS rating in the Modified Split Rating Condition. We think the credit ratings proposed in both the Modified Split Rating Condition and the Rating Threshold Condition reflect the current Canadian market for CP, capture most active CP programs and maintain the current credit quality of CP being actively issued into the market.</p> <p>With respect to inconsistency with credit ratings thresholds established by other regulators, including OSFI, it should be noted that securities regulators and prudential regulators use credit ratings for different purposes. The credit ratings in the Short-term Debt Prospectus Exemption serve an investor protection and gate-keeping function by permitting the issuance of high-quality CP without a prospectus. Issuers that do not meet the credit rating thresholds would only be able to issue CP under a prospectus or under another prospectus exemption that may have reporting requirements and resale restrictions. On the other hand, prudential or solvency regulators rely on credit ratings for capital adequacy calculations, liquidity or other prudential measures for financial institutions that they regulate. The rationale underlying the use of credit ratings differs for investor protection purposes as compared to prudential or solvency purposes and accounts for the different thresholds in prudential regulation.</p> <p>We are aware that some issuers who currently have exemptive relief would not meet the revised criteria in the exemption given their current credit ratings. We will review these instances on a case-by-case basis. We will also continue to consider applications for exemptive relief in appropriate circumstances.</p>
<p>2. Is the Rating Threshold Condition in the Proposed Short-term Debt Amendments appropriate? Should the Short-term Debt Prospectus Exemption have a higher or lower rating threshold?</p>	<p>Three commenters agreed with the Rating Threshold Condition; however, one commenter suggested that the scale for Standard & Poor's should be the Canadian scale.</p> <p>One commenter thought the credit ratings required in existing CP exemptive relief are very high, and that issuers receiving these credit ratings are recognized as being of strong creditworthiness, which should satisfy the objective of maintaining minimum credit quality standards for CP issued through the exemption. The commenter felt it would be more expedient and equitable to codify the credit ratings</p>	<p>We think requiring at least one credit rating at or above the thresholds in the Rating Threshold Condition will maintain high credit quality standards for CP issued without a prospectus.</p> <p>With respect to appropriate thresholds in the Rating Threshold Condition, we agree with comments suggesting clarification of the Standard & Poor's scales. We have revised the thresholds to clarify that the minimum Standard & Poor's credit rating in the Rating Threshold Condition is the Canada national</p>

Question	Comment	Response
<p>If a lower threshold were adopted, would it raise investor protection concerns that lower-rated CP would be sold to less sophisticated or knowledgeable investors? If so, how could these concerns be addressed?</p>	<p>required in existing CP exemptive relief and treat relief applications on a much more stringent basis.</p> <p>One commenter generally disagrees with using credit ratings, but supports requiring a minimum of two credit ratings, if minimum credit ratings must continue to be a condition to the exemption.</p>	<p>scale.</p> <p>The majority of issuers who currently have exemptive relief would be able to issue CP under the revised rating thresholds. As mentioned, we are aware that some issuers who currently have exemptive relief would not meet the revised criteria in the exemption given their current credit ratings. We will review these instances on a case-by-case basis.</p>
<p>3. The Short-term Debt Prospectus Exemption's primary condition relates to credit ratings. Do credit ratings in this context serve appropriate investor protection and market efficiency functions? Are there alternative or additional conditions that would materially enhance investor protection or financial stability?</p>	<p>See A. General Comments on the Use of Credit Ratings.</p>	<p>See A. General Comments on the Use of Credit Ratings.</p>
<p>4. Should the Short-term Debt Prospectus Exemption be unavailable if:</p> <ul style="list-style-type: none"> • a DRO has announced that a credit rating it has issued for the CP is under review and may be downgraded; and • that downgrade would result in the CP no longer satisfying both the Rating Threshold 	<p>One commenter thought the exemption should be unavailable if a DRO has announced a credit rating is under review and may be downgraded so that the CP would no longer satisfy both the Rating Threshold Condition and the Modified Split Rating Condition.</p> <p>Other commenters did not think the exemption should be unavailable if a DRO has announced a credit rating is under review and may be downgraded so that the CP would no longer satisfy both the Rating Threshold Condition and the Modified Split Rating Condition. One commenter added that these announcements often result in no action being taken. The commenter thought the potential negative consequences to an issuer far outweigh the investor protection this provision would potentially provide.</p>	<p>We have not included a "no announcement" condition in the Short-term Debt Prospectus Exemption.</p>

Question	Comment	Response
Condition and the Modified Split Rating Condition?		

ANNEX E**LOCAL MATTERS**

The Ontario Securities Commission made the Rule Amendments on January 27, 2015.

The Rule Amendments and other required materials were delivered to the Minister of Finance on February 17, 2015. The Minister may approve or reject the Instrument or return it for further consideration. If the Minister approves the Instrument or does not take any further action by April 20, 2015, the Instrument will come into force on May 5, 2015, subject to the following transitional provisions:

- an Information Memorandum that is provided to or made reasonably available to a purchaser need only be prepared in accordance with Form 45-106F7 for a distribution of a short-term securitized product that takes place on or after November 5, 2015.
- a Monthly Disclosure Report that is provided to or made reasonably available to a holder of a short-term securitized product pursuant to an undertaking or agreement in writing need not be prepared in accordance with Form 45-106F8 in respect of any asset transaction that a conduit entered into on or before November 5, 2015.

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