

This document contains Ontario Securities Commission Rule 45-501 *Ontario Prospectus and Registration Exemptions* and its Companion Policy and applies from **September 28, 2009**.

The text of the Rule and Companion Policy were published in the Supp-3 of the July 17, 2009 Ontario Securities Commission Bulletin.

**ONTARIO SECURITIES COMMISSION RULE 45-501
ONTARIO PROSPECTUS AND REGISTRATION EXEMPTIONS**

Text boxes in this Rule refer to National Instrument 45-102 *Resale of Securities*. These text boxes are located above sections 2.1 to 2.8. These text boxes do not form part of this Rule.

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Form 45-501F1 - Report of exempt distribution

PART 1: DEFINITIONS AND INTERPRETATION

1.1 Definitions - In this Rule

“**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;

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

“**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;

“**entity**” means a company, syndicate, partnership, trust or unincorporated organization;

“**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;

“**government incentive security**” means

- (a) 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
- (b) 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;

“**NI 45-106**” means National Instrument 45-106 *Prospectus and Registration Exemptions*;

“**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;

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

“**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, or
- (b) is living with another individual in a marriage-like relationship, including a marriage-like relationship between individuals of the same gender;

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

1.2 **Affiliate** – For the purpose of this Rule, 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.

1.3 **Control** – For the purpose of this Rule, 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.

1.4 **Registration requirement** –

- (1) An exemption in this Rule 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 Rule, an exemption from the dealer registration requirement is deemed to be an exemption from the underwriter registration requirement.
- (3) In this Rule, an exemption from the dealer registration requirement or from the prospectus requirement that refers to a registered adviser is only available for a trade in a security if the adviser is registered in a category that permits the adviser to act as an adviser in the circumstances described in the exemption.

PART 2: PROSPECTUS EXEMPTIONS

2.1 **Government incentive security** –

Refer to Appendix D of National Instrument 45-102 <i>Resale of Securities</i>. First trades are subject to a restricted period on resale.
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- (1) The prospectus requirement does not apply to a distribution by an issuer or a promoter of an issuer of a security of the issuer that is a government incentive security, if
 - (a) in the aggregate in all jurisdictions in Canada, not more than 75 prospective purchasers are solicited resulting in sales to not more than 50 purchasers,
 - (b) before entering into an agreement of purchase and sale, the prospective purchaser has been supplied with an offering memorandum that includes information
 - (i) identifying every officer and director of the issuer,
 - (ii) identifying every promoter of the issuer,
 - (iii) giving the particulars of the professional qualifications and associations during the five years before the date of the offering memorandum of each officer, director and promoter of the issuer that are relevant to the offering,

- (iv) indicating each of the directors that will be devoting his or her full time to the affairs of the issuer, and
 - (v) describing the right of action referred to in section 130.1 of the Act that is applicable in respect of the offering memorandum,
- (c) the prospectus purchaser has access to substantially the same information concerning the issuer that a prospectus filed under the Act would provide and,
- (i) because of net worth and investment experience or because of consultation with or advice from a person that is not a promoter of the issuer and that is a registered dealer or registered adviser under the Act, is able to evaluate the prospective investment on the basis of information about the investment presented to the prospective purchaser by the issuer or selling security holder, or
 - (ii) is an executive officer or director of the issuer or of an affiliate of the issuer or a spouse or child of a director or executive officer of the issuer or of an affiliate of the issuer,
- (d) the offer and sale of the security is not accompanied by an advertisement and no selling or promotional expenses have been paid or incurred for the offer and sale except for professional services or for services performed by a registered dealer under the Act, and
- (e) the promoter, if any, has not acted as a promoter of any other issue of securities under this exemption within the calendar year.
- (2) For the purpose of determining the number of purchasers or prospective purchasers under paragraph (1)(a), a corporation, partnership, trust or other entity is counted as one purchaser or prospective purchaser unless the entity has been created, or is being used, primarily for the purpose of purchasing a security of the issuer, in which event each beneficial owner of an equity security of the entity or each beneficiary of the entity, as the case may be, is counted as a separate purchaser or prospective purchaser.

2.2 Government incentive security distributed under section 2.1 –

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

The prospectus requirement does not apply to a distribution of a security that was previously distributed under the exemption in section 2.1, or a predecessor exemption to section 2.1, if each of the parties to the trade is one of the not more than 50 purchasers referred to in the exemption or predecessor exemption.

2.3 Commodity futures option or contract –

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

- (1) The prospectus requirement does not apply to a distribution of a commodity futures option or commodity futures contract by a hedger through a dealer.
- (2) For the purposes of subsection (1), the terms “commodity futures option”, “dealer”, “commodity futures contract”, and “hedger” have the same meaning as in the CFA.

2.4 Security of a co-operative –

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

The prospectus requirement does not apply to a distribution of a security issued by a corporation to which the *Co-operative Corporations Act* applies.

2.5 Membership share of a credit union –

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

The prospectus requirement does not apply to a distribution of a membership share of a credit union within the meaning of the *Credit Unions and Caisses Populaires Act, 1994*.

2.6 Security of a credit union –

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

- (1) The prospectus requirement does not apply to a distribution of a security issued to its members by a credit union to which the *Credit Unions and Caisses Populaires Act, 1994* applies.
- (2) The prospectus requirement does not apply to a distribution of a security issued to its members or the members of its member credit unions by a league to which the *Credit Unions and Caisses Populaires Act, 1994* applies.

2.7 Execution Act –

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

- (1) The prospectus requirement does not apply to a distribution of a security by a sheriff under the *Execution Act* if
 - (a) there is no published market in respect of the security,
 - (b) the aggregate acquisition cost to the purchaser is not more than \$25,000, and
 - (c) each written notice to the public soliciting offers for the security, or giving notice of the intended auction of the security, is accompanied by a statement substantially as follows:

These securities are speculative. No representations are made concerning the securities, or the issuer of the securities. No prospectus is available and the protections, rights and remedies arising out of the prospectus provisions of the Securities Act (Ontario) including statutory rights of rescission and damages, will not be available to the purchaser of these securities.
- (2) For the purposes of subsection (1), “published market” means, for a security, any market on which the security is traded if the prices at which it has been traded on the market are regularly published in a newspaper or a business or financial publication of general and regular circulation.

2.8 Distributions in mutual fund securities to corporate sponsored plans –

This provision will not be cited in any Appendix of National Instruments 45-102 Resale of Securities. These securities are free trading.

The prospectus requirement does not apply to a distribution by a person of

- (a) a security of a mutual fund, if the security is sold to a pension plan, deferred profit sharing plan, retirement savings plan or other similar capital accumulation plan maintained by the sponsor of the plan for its employees, and
 - (i) the employees deal only with the sponsor in respect of their participation in the plan and the purchase of the security by the plan, or
 - (ii) the decision to purchase the security is not made by or at the direction of the employee; or
- (b) a security of a mutual fund that

- (i) is administered by a trust corporation registered under the *Loan and Trust Corporations Act*,
- (ii) consists of a pool of funds that
 - (A) results from, and is limited to, the combination or commingling of funds of pension or other superannuation plans registered under the ITA, and
 - (B) is established by or related to persons that are associates or affiliates of or that otherwise do not deal at arm's length with the promoters of the mutual fund except the trust corporation that administers the fund, and
- (iii) is managed, in whole or in part, by a person who is registered or who is exempt from registration under the Act.

PART 3: REGISTRATION EXEMPTIONS

3.0 **Application** – On March 27, 2010, Part 3, except for section 3.3, does not apply.

3.01 Removal of registration exemptions - market intermediaries –

- (1) Subject to subsection (2), the exemptions from the dealer registration requirement under the following sections are not available for a market intermediary except for a trade in a security with a registered dealer that is an affiliate of the market intermediary:
 - (a) section 3.1 [*Government incentive security*],
 - (b) section 3.2 [*Government incentive security traded under section 3.1*]
 - (c) section 3.4 [*Security of a co-operative*],
 - (d) section 3.5 [*Membership share of a credit union*], and
 - (e) section 3.6 [*Security of a credit union*].
- (2) Subsection (1) does not apply to a trade in a security by a lawyer or accountant if the trade is incidental to the principal business of that lawyer or accountant.

3.1 Government incentive security –

- (1) The dealer registration requirement does not apply to a trade by an issuer or a promoter of an issuer in a security of the issuer that is a government incentive security, if
 - (a) in the aggregate in all jurisdictions in Canada, not more than 75 prospective purchasers are solicited resulting in sales to not more than 50 purchasers,
 - (b) before entering into an agreement of purchase and sale, the prospective purchaser has been supplied with an offering memorandum that includes information
 - (i) identifying every officer and director of the issuer,
 - (ii) identifying every promoter of the issuer,
 - (iii) giving the particulars of the professional qualifications and associations during the five years before the date of the offering memorandum of each officer, director and promoter of the issuer that are relevant to the offering,

- (iv) indicating each of the directors that will be devoting his or her full time to the affairs of the issuer, and
 - (v) describing the right of action referred to in section 130.1 of the Act that is applicable in respect of the offering memorandum,
- (c) the prospective purchaser has access to substantially the same information concerning the issuer that a prospectus filed under the Act would provide and,
- (i) because of net worth and investment experience or because of consultation with or advice from a person that is not a promoter of the issuer and that is a registered dealer or registered adviser under the Act, is able to evaluate the prospective investment on the basis of information about the investment presented to the prospective purchaser by the issuer or selling security holder, or
 - (ii) is an executive officer or director of the issuer or of an affiliate of the issuer or a spouse or child of a director or executive officer of the issuer or of an affiliate of the issuer,
- (d) the offer and sale of the security is not accompanied by an advertisement and no selling or promotional expenses have been paid or incurred for the offer and sale except for professional services or for services performed by a registered dealer under the Act, and
- (e) the promoter, if any, has not acted as a promoter of any other issue of securities under this exemption within the calendar year.
- (2) For the purpose of determining the number of purchasers or prospective purchasers under paragraph (1)(a), a corporation, partnership, trust or other entity is counted as one purchaser or prospective purchaser unless the entity has been created, or is being used, primarily for the purpose of purchasing a security of the issuer, in which event each beneficial owner of an equity security of the entity or each beneficiary of the entity, as the case may be, is counted as a separate purchaser or prospective purchaser.

3.2 **Government incentive security traded under section 3.1 –**

The dealer registration requirement does not apply to a trade in a security that was previously traded under the exemption in section 3.1, or a predecessor exemption to section 3.1, if each of the parties to the trade is one of the not more than 50 purchasers referred to in the exemption or predecessor exemption.

3.3 **Commodity futures option or contract –**

- (1) The dealer registration requirement does not apply to a trade in a commodity futures option or commodity futures contract by a hedger through a dealer.
- (2) For the purposes of subsection (1), the terms “commodity futures option”, “dealer”, “commodity futures contract”, and “hedger” have the same meaning as in the CFA.

3.4 **Security of a co-operative –**

The dealer registration requirement does not apply to a trade in a security issued by a corporation to which the *Co-operative Corporations Act* applies.

3.5 **Membership share of a credit union –**

The dealer registration requirement does not apply to a trade in a membership share of a credit union within the meaning of the *Credit Unions and Caisses Populaires Act, 1994*.

3.6 **Security of a credit union –**

- (1) The dealer registration requirement does not apply to a trade in a security issued to its members by a credit union to which the *Credit Unions and Caisses Populaires Act, 1994* applies.
- (2) The dealer registration requirement does not apply to a security issued to its members or the members of its member credit unions by a league to which the *Credit Unions and Caisses Populaires Act, 1994* applies.

PART 4: REGISTRATION EXEMPTIONS FOR FINANCIAL INTERMEDIARIES AND SCHEDULE III BANKS

4.1 Certain trades by financial intermediaries and Schedule III banks –

- (1) Subject to subsections (2), (3) and (4), the registration requirement does not apply to a trade by a financial intermediary or a Schedule III bank
- (a) of a type described in any section of Part 3 of NI 45-106 [*Prospectus and Registration Exemptions*] except the following:
- (i) section 3.5 [*Family, friends and business associates*],
 - (ii) section 3.6 [*Family, friends and business associates – Saskatchewan*],
 - (iii) section 3.9 [*Offering memorandum*],
 - (iv) section 3.14 [*Securities for debt*],
 - (v) section 3.17 [*Offer to acquire to security holder outside local jurisdiction*],
 - (vi) section 3.18 [*Investment fund reinvestment*],
 - (vii) section 3.19 [*Additional investment in investment funds*],
 - (viii) section 3.40 [*RRSP/RRIF/TFSA*],
 - (ix) section 3.45 [*Exchange contract*],
 - (x) section 3.48 [*Small security holder selling and purchase arrangements*],
 - (xi) section 3.49 [*Adviser*], or
 - (xii) section 3.50 [*Investment dealer acting as portfolio manager*];
- (b) of a type described in the following sections:
- (i) section 3.3 [*Commodity futures option or contract*],
 - (ii) section 3.4 [*Security of a co-operative*],
 - (iii) section 3.5 [*Membership share of a credit union*], and
 - (iv) section 3.6 [*Security of a credit union*];
- (c) in a security of a mutual fund, if the security is sold to a pension plan, deferred profit sharing plan, retirement savings plan or other similar capital accumulation plan maintained by the sponsor of the plan for its employees, and
- (i) the employees deal only with the sponsor in respect of their participation in the plan and the purchase of the security by the plan, or
 - (ii) the decision to purchase the security is not made by or at the direction of the employee; or
- (d) in a security of a mutual fund that
- (i) is administered by a trust corporation registered under the *Loan and Trust Corporations Act*,
 - (ii) consists of a pool of funds that,
 - (A) results from, and is limited to, the combination or commingling of funds of pension or other superannuation plans registered under the ITA, and
 - (B) is established by or related to persons that are associates or affiliates of or that otherwise do not deal at arm's length with the promoters of the mutual fund except the trust corporation that administers the fund, and
 - (iii) is managed, in whole or in part, by a person who is registered or who is exempt from registration under the Act.

- (2) The exemptions contained in paragraphs (1)(a) and (b) do not apply to a trade in a security of a mutual fund.
- (3) The exemptions from registration requirements set out in paragraphs (1)(a) and (b) are unaffected by the removal of the exemptions from the dealer registration requirement resulting from the application of either section 3.0 of NI 45-106 or section 3.01.
- (4) Subsection 4.1(1) does not apply to a trade by a financial institution referred to in subsection 35.1(1) of the Act in the circumstances to which that subsection applies.

PART 5: OFFERING MEMORANDUM

- 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*],
 - (c) section 2.7 of NI 45-106 [*Founder, control person and family - 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*], and
 - (g) section 2.1 [*Government incentive security*].
- 5.2 **Right of action for damages and right of rescission** –
- (1) The rights referred to in section 130.1 of the Act apply in respect of an offering memorandum delivered to a prospective purchaser.
 - (2) Despite subsection (1), the rights referred to in section 130.1 of the Act do not apply in respect of an offering memorandum delivered to a prospective purchaser in connection with a distribution made in reliance on the exemption from the prospectus requirement in section 2.3 of NI 45-106 [*Accredited investor*] if the prospective purchaser is
 - (a) a Canadian financial institution or a Schedule III bank,
 - (b) the Business Development Bank of Canada incorporated under the *Business Development Bank of Canada Act* (Canada), or
 - (c) a subsidiary of any person referred to in paragraphs (a) and (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.
- 5.3 **Description of rights in offering memorandum** – If a seller delivers an offering memorandum to a prospective purchaser in connection with a distribution to which the rights referred to in section 130.1 of the Act apply, the rights must be described in the offering memorandum.
- 5.4 **Delivery of offering memorandum** – If an offering memorandum is provided to a prospective purchaser, the seller must deliver to the Commission a copy of the offering memorandum or any amendment to a previously delivered offering memorandum within 10 days of the date of the distribution.

PART 6: REPORTING REQUIREMENTS

- 6.1 **Report of exempt distribution** – If an issuer distributes a security of its own issue under section 2.1 [*Government incentive security*], the issuer must file a report on or before the 10th day after the distribution.
- 6.2 **Required form of report of exempt distribution** – The required form of report under section 6.1 [*Report of exempt distribution*] is Form 45-501F1.

PART 7: EXEMPTION

- 7.1 **Exemption** – The Director may grant an exemption to Part 7, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

PART 8: TRANSITION AND EFFECTIVE DATE

- 8.1 **Revocation of former rule** – Ontario Securities Commission Rule 45-501 *Exempt Distributions* that came into force on September 14, 2005 is revoked.
- 8.2 **Effective date** – This Rule 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.

SCHEDULE 3

**AMENDED AND RESTATED
FORM 45-501F1
REPORT OF EXEMPT DISTRIBUTION**

This is the form required under section 6.1 of Ontario Securities Commission Rule 45-501 for a report of exempt distribution.

Issuer information

Item 1: State the full name of the issuer of the security distributed and the address and telephone number of its head office. If the issuer of the security distributed is an investment fund, state the name of the fund as the issuer, and provide the full name of the manager of the investment fund and the address and telephone number of the head office of the manager. Include the former name of the issuer if its name has changed since last report.

Item 2: State whether the issuer is or is not a reporting issuer and, if reporting, each of the jurisdictions in which it is reporting.

Item 3: Indicate the industry of the issuer by checking the appropriate box next to one of the industries listed below.

- | | |
|---|--|
| <input type="checkbox"/> Bio-tech | <input type="checkbox"/> Mining |
| <input type="checkbox"/> Financial Services | <input type="checkbox"/> exploration/development |
| <input type="checkbox"/> investment companies and funds | <input type="checkbox"/> production |
| <input type="checkbox"/> mortgage investment companies | <input type="checkbox"/> Oil and gas |
| <input type="checkbox"/> Forestry | <input type="checkbox"/> Real estate |
| <input type="checkbox"/> Hi-tech | <input type="checkbox"/> Utilities |
| <input type="checkbox"/> Industrial | <input type="checkbox"/> Other (describe) |

Details of distribution

Item 4: Complete Schedule I to this report. Schedule I is designed to assist in completing the remainder of this report.

Item 5: State the distribution date. If the report is being filed for securities distributed on more than one distribution date, state all distribution dates.

Item 6: For each security distributed:

- (a) describe the type of security,
- (b) state the total number of securities distributed. If the security is convertible or exchangeable, describe the type of underlying security, the terms of exercise or conversion and any expiry date; and
- (c) state the exemption(s) relied on.

Item 7: Complete the following table for each Canadian and foreign jurisdiction where purchasers of the securities reside. Do not include in this table, securities issued as payment for commissions or finder's fees disclosed under item 8, below.

Each jurisdiction where purchasers reside	Number of purchasers	Price per security (Canadian \$) ¹	Total dollar value raised from purchasers in the jurisdiction (Canadian \$)
Total number of Purchasers			
Total dollar value of distribution in all jurisdictions (Canadian \$)			

Note 1: If securities are issued at different prices list the highest and lowest price the securities were sold for.

Commissions and finder's fees

Item 8: Complete the following table by providing information for each person who has received or will receive compensation in connection with the distribution(s). Compensation includes commissions, discounts or other fees or payments of a similar nature. Do not include payments for services incidental to the distribution, such as clerical, printing, legal or accounting services.

If the securities being issued as compensation are or include convertible securities, such as warrants or options, please add a footnote describing the terms of the convertible securities, including the term and exercise price. Do not include the exercise price of any convertible security in the total dollar value of the compensation unless the securities have been converted.

Full name and address of the person being compensated	Compensation paid or to be paid (cash and/or securities)				
	Cash (Canadian \$)	Securities			Total dollar value of compensation (Canadian \$)
		Number and type of securities issued	Price per security	Exemption relied on and date of distribution	

Item 9: Please include the attached “Authorization of Indirect Collection of Personal Information for Distributions in Ontario”.

Certificate

On behalf of the issuer, I certify that the statements made in this report are true.

Date: _____

Name of issuer (please print)

Print name, title and telephone number of person signing

Signature

Item 10: State the name, title and telephone number of the person who may be contacted with respect to any questions regarding the contents of this report, if different than the person signing the certificate.

IT IS AN OFFENCE TO MAKE A MISREPRESENTATION IN THIS REPORT.

Notice - Collection and use of personal information

The personal information required under this form is collected on behalf of and used by the Ontario Securities Commission under the authority granted in securities legislation for the purposes of the administration and enforcement of the securities legislation.

If you have any questions about the collection and use of this information, contact the Ontario Securities Commission at the following address:

Ontario Securities Commission
Suite 1903, Box 55, 20 Queen Street West
Toronto, Ontario M5H 3S8
Public official contact regarding indirect collection of information:
Administrative Support Clerk
Telephone (416) 593-3684

Authorization of Indirect Collection of Personal Information for Distributions in Ontario

The attached Schedule I contains personal information of purchasers and details of the distribution(s). The issuer hereby confirms that each purchaser listed in Schedule I of this report

- (a) has been notified by the issuer
 - (i) of the delivery to the Ontario Securities Commission of the information pertaining to the person as set out in Schedule I,
 - (ii) that this information is being collected indirectly by the Ontario Securities Commission under the authority granted to it in securities legislation,
 - (iii) that this information is being collected for the purposes of the administration and enforcement of Ontario securities legislation, and
 - (iv) of the title, business address and business telephone number of the public official in Ontario, as set out in this report, who can answer questions about the Ontario Securities Commission's indirect collection of the information, and
- (b) has authorized the indirect collection of the information by the Ontario Securities Commission.

Schedule I

Complete the following table.

Do not include in this table, securities issued as payment of commissions or finder's fees disclosed under item 8 of this report.

The information in this schedule will not be placed on the public file of the Ontario Securities Commission. However, freedom of information legislation in Ontario may require the Ontario Securities Commission to make this information available if requested.

Full name, residential address and telephone number of purchaser	Number and type of securities purchased	Total purchase price (Canadian \$)	Exemption relied on	Date of distribution

Instructions:

1. File this report and the applicable fee at the following address:

Ontario Securities Commission

Suite 1900, Box 55, 20 Queen Street West

Toronto, Ontario M5H 3S8

Telephone: (416) 593-3682

Facsimile: (416) 593-8252

Public official contact regarding indirect collection of information:

Administrative Support Clerk

Telephone (416) 593-3684

2. References to a purchaser in this report are to the beneficial owner of the securities.
3. If the space provided for any answer is insufficient, additional sheets may be used and must be cross-referenced to the relevant part and properly identified and signed by the person whose signature appears on the report.
4. One report may be used for multiple distributions occurring within 10 days of each other provided that the report is filed on or before the 10th day following the first of such distributions.
5. The information in items 5, 6 and 7 must reconcile with the information in Schedule I of Form 45-501F1. All dollar amounts must be in Canadian dollars.
6. In order to determine the applicable fee, consult Ontario securities legislation.

SCHEDULE 3

AMENDED AND RESTATED COMPANION POLICY 45-501CP TO ONTARIO SECURITIES COMMISSION RULE 45-501 ONTARIO PROSPECTUS AND REGISTRATION EXEMPTIONS

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PART 7: RESALE OF SECURITIES ACQUIRED UNDER AN EXEMPTION

- 7.1 Resale restrictions

PART 1: APPLICATION

- 1.1 **Introduction** – Ontario Securities Commission Rule 45-501 *Ontario Registration and Prospectus Exemptions* (the Rule) concerns exemptions from the registration requirement and from the prospectus requirement.
- 1.2 **Purpose** – The purpose of this companion policy (the Policy) is to help users understand how the Commission interprets or applies certain provisions of the Rule. The Policy includes explanations, discussion and examples of various parts of the Rule.

PART 2: OTHER EXEMPTIONS AND DISCRETIONARY RELIEF

- 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 and Exemptions* (NI 31-103) (upon NI 31-103 coming into force).
- 2.2 **Discretionary relief** – In addition to the exemptions contained in the Rule and those available under other provisions of Ontario securities legislation, the Commission has the discretion to grant exemptions from the prospectus requirement and from the registration requirement.

PART 3: GENERAL

- 3.0 **Availability of Registration Exemptions** – With the exception of the dealer registration exemption set out in section 3.3 [Commodity futures option or contract], 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 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 exemptions from the dealer registration requirement set out in section 3.3 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.

- 3.1 **All distributions are subject to securities legislation** –
- (1) Ontario securities legislation applies to any trade in a security in Ontario, whether or not the issuer of the security is a reporting issuer in Ontario.
- (2) The definition of “trade” 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, in Ontario must comply with Ontario securities legislation.
- 3.2 **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.
- 3.3 **Responsibility for compliance** – 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. A person distributing or trading securities under an exemption should retain all necessary documents that show that the person properly relied on the exemption. It is not appropriate for a person to assume an exemption is available.
- 3.4 **Advisers** – Subsection 1.4(2) of the Rule provides that an exemption from the dealer registration requirement is an exemption from the underwriter registration requirement. However, it is not an

exemption from the adviser registration requirement. The adviser registration requirement is distinct from the dealer registration requirement. Under Ontario securities legislation, persons engaged in the business of, or holding themselves out as being in the business of, advising others as to the investing in or buying or selling of securities are required to be registered as an adviser or have an exemption from this registration requirement. Accordingly, only persons that are registered advisers or exempt from the requirement to be registered as advisers may act as advisers in connection with a trade made under the Rule.

3.5 Underwriters –

- (1) 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 exemption from the prospectus requirement 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.
- (2) There may be legitimate transactions where a dealer purchases securities under an exemption from the prospectus requirement 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.
- (3) 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 an exemption from the prospectus requirement. Such indirect distributions cannot be legitimately structured under NI 45-106 or the Rule.

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*.
- (2) The 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 employees 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 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 Ontario securities legislation, these issuers and their employees should be registered under the appropriate category of registration in Ontario.

PART 4: INTERPRETATION

4.1 **Definitions** – Unless defined in the Rule, terms used in the Rule have the meaning given to them in Ontario securities legislation, including National Instrument 14-101 *Definitions*.

4.2 Executive officer –

- (1) The definition of “executive officer” in the Rule is based on the definition of the same term in National Instrument 51-102 *Continuous Disclosure Obligations*.
- (2) The definition includes someone who “performs a policy-making function” in respect of an issuer. The Commission 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.

- (3) Paragraph (c) of the definition of “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.

4.3 **Directors, executive officers and officers of non-corporate issuers –**

- (1) Non-corporate issuers must determine which individuals are acting in capacities similar to that of directors and officers of corporate issuers for the purpose of complying with the Rule.
- (2) The term “director” is defined in the Rule and it includes, for non-corporate issuers, individuals who perform functions similar to those of a director of a company.
- (3) When the term “officer” is used in the Rule, a non-corporate issuer should refer to the definition in the Act, which defines the term to include any individual acting in a capacity similar to that of an officer of a company.

PART 5: OFFERING MEMORANDUM

5.1 **Definition of offering memorandum –**

- (1) “Offering memorandum” is defined in Ontario Securities Commission Rule 14-501 *Definitions*.
- (2) The Commission is of the view that the phrase “prepared primarily for delivery to and review by a prospective purchaser” in the definition of offering memorandum means the document is prepared in contemplation of soliciting an investment from the prospective purchaser.

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) 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 section 2.3, 2.4, 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 (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) 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 2.1 [*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, 2.8, 2.10 or 2.19 of NI 45-106.

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

5.4 **Content of offering memorandum –**

- (1) Other than in the case of an offering memorandum delivered in connection with a distribution made in reliance on the exemption in section 2.1 of the Rule and subject to subsection (2), Ontario securities legislation generally does not prescribe the content of an offering memorandum. The decision relating to the appropriate disclosure in an offering memorandum generally rests with the issuer, the selling security holder and their advisors.
- (2) Under section 5.3 of the Rule, the rights referred to in section 130.1 of the Act must be described in an offering memorandum delivered in connection with a distribution to which the rights apply.

5.5 **Review of offering memorandum –**

- (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 fails to disclose material information relating to a security that is the subject of a distribution, staff may seek to effect remedial action.

5.6 **Preliminary offering material –**

- (1) The Commission cautions against the practice of providing preliminary offering material to a prospective purchaser before furnishing a “final” offering memorandum unless the offering material contains a description of the rights referred to in section 130.1 of the Act in situations when the rights apply.
- (2) The only material delivered to a prospective purchaser in connection with a distribution made in reliance on a prospectus exemption referred to in section 5.1 of the Rule should be:
 - (a) a “term sheet” (representing a skeletal outline of the features of a distribution without dealing extensively with the business or affairs of the issuer of the securities being distributed), and
 - (b) an offering memorandum describing the rights referred to in section 130.1 of the Act available to purchasers and complying in all other respects with Ontario securities legislation.

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

PART 6: REPORTING REQUIREMENTS

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 2.1 of the Rule [*Government incentive security*] to file Form 45-501F1 *Report of Exempt Distribution*, on or before the 10th day after the distribution.
- (2) In determining if it is required to file a report in Ontario, an issuer should consider the following questions:
- (a) Is there a distribution in Ontario?
- Please refer to Ontario securities legislation for guidance on when a distribution occurs in Ontario.
- (b) If there is a distribution in Ontario, 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 exemptions listed in section 6.1 of NI 45-106 and section 6.1 of the Rule.
- (3) Section 140 of the Act requires that information filed with the Commission be made available for public inspection during normal business hours except for information that the Commission 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 Commission be available to the public for inspection.

Based on these provisions of Ontario securities legislation, the Commission has determined that the information listed in Form 45-501F1 *Report of Exempt Distribution*, 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.

PART 7: RESALE OF SECURITIES ACQUIRED UNDER AN EXEMPTION

7.1 Resale restrictions –

- (1) A security distributed under a prospectus exemption may be subject to restrictions on its resale. The particular resale – or “first trade” – restrictions depend on the parties to the trade and the particular exemption from the prospectus requirement that was relied on to distribute the security. In certain circumstances, no resale restrictions will apply and the security acquired under an exempt distribution will be freely tradable.
- (2) Resale restrictions are imposed under National Instrument 45-102 *Resale of Securities*. While the Rule 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 National Instrument 45-102 *Resale of Securities* to determine what resale restrictions, if any, apply to the security in question.
- (3) The resale restrictions operate by triggering the prospectus requirement unless certain conditions are satisfied. A security that is subject to such restrictions in circumstances where the conditions cannot be satisfied may nevertheless be distributed in reliance on an exemption from the prospectus requirement in the Rule, NI 45-106 or another provision in Ontario securities legislation.

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.**