

5.1.18 Changes to Companion Policy 45-501CP to OSC Rule 45-501 Ontario Prospectus and Registration Exemptions Relating to the Family, Friends and Business Associates Exemption

**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 2.72.5 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- (c) ~~_____ [Repealed]~~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 2.72.5 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- (c) ~~_____ [Repealed]~~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.~~