

**5.1.15 Changes to Companion Policy 45-501CP to OSC Rule 45-501 Ontario Prospectus and Registration Exemptions Relating to the Accredited Investor and Minimum Amount Investment Prospectus Exemptions**

**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 10<sup>th</sup> 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.