

5.1.11 Changes to Companion Policy 45-501CP to Ontario Securities Commission Rule 45-501 Ontario Prospectus and Registration Exemptions

**CHANGES TO COMPANION POLICY 45-501CP – TO ONTARIO SECURITIES COMMISSION RULE 45-501
ONTARIO PROSPECTUS AND REGISTRATION EXEMPTIONS**

The following reflects changes to Companion Policy 45-501CP – *To Ontario Securities Commission Rule 45-501 Ontario Prospectus and Registration Exemptions* that will take effect upon the coming into force of the amendments to National Instrument 45-106 *Prospectus Exemptions* related to the offering memorandum prospectus exemption. Additions are represented with underlined text and deletions are represented with strikethrough text.

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 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 73.4 of the Act or a predecessor exemption to section 73.4 of the Act [*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- (c) [Repealed.]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*],
- (d.1) section 2.9 of NI 45-106 [*Offering memorandum*],
- (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 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 exemption in section 73.5 of the Act or a predecessor exemption to section 73.5 of the Act, in accordance with the requirements of section 2.9 of NI 45-106 [*Offering memorandum*], or voluntarily in connection with a distribution made in reliance on a prospectus exemption in section 73.3 of the Act or a predecessor exemption to section 73.3 of the Act, section 73.4 of the Act or a predecessor exemption to section 73.4 of the Act, 2.5, ~~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 73.5 of the Act or a predecessor exemption to section 73.5 of the Act and section 2.9 of NI 45-106 [*Offering memorandum*], 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 ~~Failure to disclose material information in offering memorandum~~ – (1) Staff may review the form and content of an offering memorandum filed in connection with a distribution made in reliance on the exemption in section 2.9 of NI 45-106 [*Offering memorandum*], or delivered in connection with a distribution made in reliance on another exemption referred to in Part 5 of the Rule, for the purpose of determining whether the issuer has complied with the requirements, conditions and restrictions of the exemption relied on for the distribution.

(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 recommend remedial action or, in appropriate circumstances, enforcement 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) or in the case of a distribution made in reliance on the exemption in section 2.9 of NI 45-106 [Offering memorandum] an “OM standard term sheet”, as that term is defined in NI 45-106, 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, and
- (c) in the case of an offering memorandum prepared in accordance with section 2.9 of NI 45-106, OM marketing materials, as that term is defined in NI 45-106.

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.