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Chapter 1

Notices

1.1 Notices

1.1.1 OSC Staff Notice 33-751 Summary Report for Dealers, Advisers and Investment Fund Managers

OSC Staff Notice 33-751 *Summary Report for Dealers, Advisers and Investment Fund Managers* is reproduced on the following separately numbered pages. Bulletin pagination resumes at the end of the Report.

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OSC ONTARIO SECURITIES COMMISSION

Summary Report for Dealers, Advisers and Investment Fund Managers

Compliance and Registrant Regulation

OSC Staff Notice 33-751

September 14, 2020

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Director’s message

We are pleased to continue our important outreach to you through this year’s Summary Report for Dealers, Advisers and Investment Fund Managers (**Summary Report**). It provides an overview of our work during the 2019-2020 fiscal year.

As a result of the COVID-19 pandemic, and in order to protect the safety of our employees and the public, staff of the Compliance and Registrant Regulation Branch (**CRR**) and from across the Ontario Securities Commission (**OSC**, the **Commission**) have been working from home since mid-March. Just like the rest of the financial industry, we have adjusted to new ways of doing our work. Our compliance reviews are being conducted remotely through telephone or video conferencing and documents are being sent to us through our secure file transfer system. The Registration Team continues to process all registration applications and filings, albeit with delays in some instances, and the Registrant Conduct Team has transitioned to telephone and video conferencing for its work.

We appreciate that there may be ongoing challenges during this difficult time. We will continue to be flexible in our oversight of registered firms and individuals (collectively, **registrants**) compliance with their important regulatory obligations. Information on regulatory relief measures to assist registrants in response to the effects of the pandemic, can be found on the OSC COVID-19 Update webpage.

In addition to our operational work this year, we made significant progress on the CRR-specific Regulatory Burden Reduction initiatives. Section 3.1 of this Summary Report provides an update on our progress to date. Reducing regulatory burden is a continued priority for the OSC and we are doing our part to support this initiative.

Our Registrant Outreach program remains a priority. We engaged with our Registrant Advisory Committee and other stakeholders during the initial stages of the pandemic to gain an understanding of how registrants were managing as they transitioned to work from home. While in-person sessions have been postponed for the foreseeable future, we are offering educational webinars. Upcoming sessions are posted in the calendar of events on the OSC website. The Topical Guide for Registrants and a listing of Director’s Decisions remains fully operational and available on our Registrant Outreach webpage.

One other change to highlight at the OSC is the establishment of the Office of Economic Growth and Innovation (**OEGI**). This new office includes the OSC LaunchPad team which has moved from CRR. This is the last year OSC LaunchPad information will be included in this Summary Report. CRR will continue to work very closely with the OEGI to foster innovation and economic growth for registrants.

Looking forward to the 2020-2021 fiscal year, we anticipate our compliance review activity will prioritize the following:

- COVID-19 impact on registrants
- complaint handling processes
- marketing practices, including environmental, social and governance (**ESG**) offerings
- suitability assessments, including concentration
- review of some firms to confirm their level of operational activities.

Finally, we have provided our team structure and staff directory again this year. If you have a question, comment, or would like to discuss regulatory matters, please feel free to reach out to us. As always, we look forward to engaging with our registrants.

Debra Foubert
Director, Compliance and
Registrant Regulation

Introduction

Who we are

The CRR Branch of the OSC is responsible for the registration and ongoing regulation of firms and individuals who are in the business of trading in, or advising on, securities or commodity futures and firms that manage investment funds in Ontario. The OSC's mandate is to:

- provide protection to investors from unfair, improper or fraudulent practices,
- foster fair and efficient capital markets, and
- contribute to the stability of the financial system and the reduction of systemic risk.

CRR's activities are integral to the OSC's vision of being an effective and responsive securities regulator, fostering a culture of integrity and compliance and instilling investor confidence in the capital markets.

The purpose of this report

This Summary Report prepared by staff of the CRR Branch is designed to assist registrants with information on the following:

- **Education and outreach**
  Part 1 of this report provides links and information to the registration and ongoing educational resources and outreach opportunities available to current and prospective registrants.

- **Regulatory oversight activities and guidance**
  Part 2 of this report can be used by registrants as a self-assessment tool to strengthen compliance with Ontario securities law and, as appropriate, to make changes to enhance their systems of compliance, internal controls and supervision.

- **Impact of upcoming initiatives**
  Part 3 of this report provides insights into some of the new and proposed rules and other regulatory initiatives that may impact a registrant's operations.

- **Registrant conduct activities**
  Part 4 of this report is intended to enhance a registrant's understanding of our expectations and our interpretation of regulatory requirements. This section also provides insight into the types of regulatory actions the CRR Branch may take to address non-compliance.

Organizational structure

The following page sets out the organizational structure of the CRR Branch. We encourage registrants to reach out to staff with any inquiries they may have. Contact information for directors, managers and staff within the branch can also be found in the staff directory presented at the end of this report.

DEBRA FOUBERT
DIRECTOR

416-593-8101

FELICIA TEDESCO
DEPUTY DIRECTOR
OPERATIONS

416-593-8273

ELIZABETH TOPP
MANAGER
PORTFOLIO MANAGER TEAM

416-593-2377

VERA NUNES
MANAGER
INVESTMENT FUND MANAGER TEAM

416-593-2311

DENA STAIKOS
MANAGER
DEALER TEAM

416-593-8058

The Operations Unit is comprised of three teams of lawyers and accountants and is responsible for conducting compliance field reviews, reviewing applications for exemptive relief and working on policy initiatives.

The members of this unit also act as subject matter experts in support of registration files.

If you have compliance questions, please contact the managers, based on your registration category, as follows:

- Portfolio Managers - Elizabeth
- Investment Fund Managers - Vera
- Exempt Market or Scholarship Plan Dealers - Dena

ELIZABETH KING
DEPUTY DIRECTOR
REGISTRANT CONDUCT

416-204-8951

MICHAEL DENYSZYN
MANAGER
REGISTRANT CONDUCT

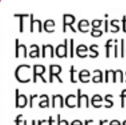
416-595-8775

The Registrant Conduct Team handles files referred from other CRR teams and other OSC branches for matters that require further regulatory action to remediate registrant misconduct.

Registrant misconduct may be addressed by applying terms and conditions to registration, suspension of registration, or being referred to the Enforcement branch.

This team is also responsible for working on policy initiatives.

If you have conduct matter questions, please contact Mike.



JEFF SCANLON
MANAGER
REGISTRATION

416-597-7239

The Registration Team focuses on the initial registration of firms and individuals, subsequent changes to registration, including the surrender of registration, and ongoing maintenance of registration information.

This team is also responsible for processing registration-related applications for exemptive relief and working on registration-related policy initiatives.

If you have registration-related questions, please contact Jeff.

LOUISE BRINKMANN
MANAGER
DATA STRATEGY & RISK

416-596-4263

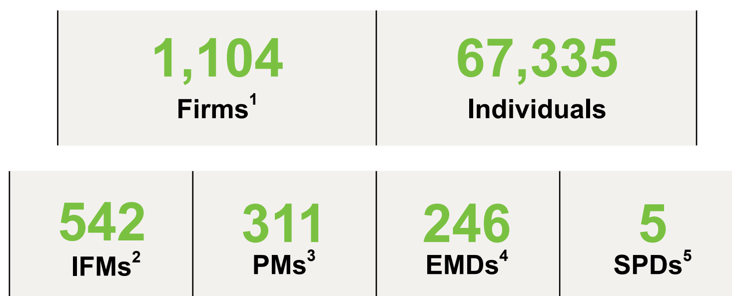
The Data Strategy & Risk Team is responsible for:

- supporting the branch's data requirements and conducting data analytics
- leading the business planning and financial reporting processes
- performing financial analysis of registrants' interim and annual financial statements and capital calculations
- leading the Capital Markets Participation Fee process and overseeing all fee matters
- working on policy initiatives
- maintaining CRR's risk register and conducting risk analysis
- coordinating all branch reporting.

If you have questions about CRR's data, reporting, fees or risk operations, please contact Louise.

Who this report is relevant to

This Summary Report provides information for registrants that are directly regulated by the OSC. These registrants primarily include investment fund managers (**IFMs**), portfolio managers (**PMs**), exempt market dealers (**EMDs**) and scholarship plan dealers (**SPDs**). At present, registrants overseen by the OSC include:



In general, firms must register with the OSC if they conduct any of the following activities in Ontario:

- are in the business of trading in, or advising on, securities (this is referred to as the "business trigger" for registration),
- act as an underwriter or as an IFM, or
- conduct trading and advising activities involving commodity futures contracts or commodity futures options.

Individuals must register if they trade, advise or underwrite on behalf of a registered dealer or adviser, or act as the Ultimate Designated Person (**UDP**) or Chief Compliance Officer (**CCO**) of a registered firm.

There are seven dealer and adviser categories for firms trading in or advising on securities, or acting as an underwriter, as applicable:

- EMD
- SPD
- restricted dealer
- PM
- restricted portfolio manager
- investment dealer (**ID**), who must be members of the Investment Industry Regulatory Organization of Canada (**IIROC**)
- mutual fund dealer (**MFD**), who must, except in Quebec, be members of the Mutual Fund Dealers Association of Canada (**MFDA**).

There are four dealer and adviser categories for firms trading in or advising on commodity futures:

- commodity trading adviser
- commodity trading counsel
- commodity trading manager
- futures commission merchant.

There is a separate category for firms that direct the business, operations, or affairs of investment funds:

- IFM.

---

[1] This number excludes firms registered solely in the category of: MFD, ID, commodity trading adviser, commodity trading counsel, commodity trading manager, futures commission merchant, restricted portfolio manager or restricted dealer.

[2] This number includes firms registered as sole IFMs and IFMs also registered in other registration categories (with the exception of SPD).

[3] This number includes firms registered as sole PMs and PMs also registered in other registration categories (with the exception of IFM).

[4] This number includes firms registered as sole EMDs and EMDs also registered in other registration categories (with the exception of IFM or PM).

[5] This number includes firms registered as sole SPDs and SPDs also registered in other registration categories.

Although firms registered in the category of MFD or ID, and their registered individuals, are directly overseen by the self-regulatory organizations (**SROs**) (the MFDA and IIROC), the OSC approves the registration of:

- firms in the category of MFD
- individuals sponsored by a MFD
- firms in the category of ID.

While this report focuses primarily on registered firms and individuals directly overseen by the OSC, firms directly overseen by the SROs are encouraged to review Part 2 and Part 4 of the Summary Report as certain information is applicable to them as well.

Applications for firm registration are reviewed by CRR staff; but we remind firms seeking registration in the category of ID, MFD or futures commission merchant to also apply separately for membership with the relevant SRO.

Service standards

The CRR Branch is committed to accountability and transparency and to ensuring services are delivered in the most efficient and effective ways possible. For information about CRR's service standards and timelines, refer to the **OSC Service Commitment** webpage.

Part 1 OUTREACH

1.1 Outreach program and resources

1.2 Registration

1.3 OSC LaunchPad

1.4 Branch advisory committees

1.1 Outreach program and resources

Registrant Outreach since inception

66
In-person and webinar seminars held

6,080
Web replays viewed

13,350
Individuals that have attended outreach seminars

>12,000
Topical Guide for Registrants - page views annually

We continue to interact with our stakeholders through our Registrant Outreach program, which was launched in 2013. The objectives of our Registrant Outreach program are to strengthen communication with Ontario registrants that we directly regulate and with other industry participants (such as lawyers and compliance consultants), to promote strong compliance practices and to enhance investor protection.

Interested in attending an upcoming Registrant Outreach seminar?
Click here for our calendar of upcoming events.

Looking for information about regulation matters?
Take a look at our Registrant Outreach webpage or our Topical Guide for Registrants for help with key compliance issues and policy initiatives.

Want to be informed about newly released guidance?
Register to receive our e-mail blasts here.

Looking for a listing of recent e-mail blasts and links to each?
Refer to the OSC Compliance Reports, Staff Notices & E-mail blasts webpage.

Interested in reading previously published Director's Decisions?
Refer to the Director's Decisions webpage.

If you have questions related to the Registrant Outreach program or have suggestions for seminar topics, please send an e-mail to RegistrantOutreach@osc.gov.on.ca.

1.2 Registration

Registration Outreach Roadshow

The Registration Team completed another successful round of the Registration Outreach Roadshow (the **Roadshow**) that began in the fall of 2019. As in previous years, the Roadshow was made available to participating firms as a means for the OSC to build working relationships with the registration staff of the firms we have the most interaction with.

The Roadshow is an initiative that was first introduced in 2016. The Roadshow allows us to get to know each other, share registration challenges and experiences, and provides the OSC an opportunity to impart useful information about trends, expectations and tips.

The seven firms that participated in the Roadshow this year were positive about the experience. They appreciated the opportunity to have informal sessions with the regulator to clarify what is required of them, discuss trends, and discuss how best to couple registration processes with business requirements.

We introduced several new elements to the Roadshow this year, including:

- **Scorecards:** Participating firms were provided an individualized summary scorecard setting out various registration-related metrics, which allowed for a data-driven discussion about trends and best practices.

- **Registration-conduct continuum process chart:** We provided a process chart that describes, in detail, how and when a file transitions from the Registration Team to the Registrant Conduct Team.

- **Post-meeting surveys:** We introduced a short five question post-meeting survey for participating firms to share their feedback and offer suggestions for future Roadshows.

We continue to see the significant value of the Roadshow and gained valuable feedback from our survey to the firms, which will be taken into consideration for future Roadshows.

1.3 OSC LaunchPad

Modernizing regulation to support fintech innovation

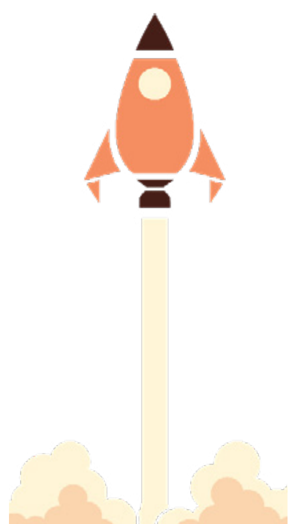
OSC LaunchPad seeks to support the development of innovative financial business models by deepening engagement with these businesses and creating flexible, timely and proportionate regulatory approaches. As of April 6, 2020, OSC LaunchPad is part of the newly created OEGI. The OEGI will support innovation leading to economic growth in the capital markets; and support the OSC in fulfilling its mandate on Burden Reduction, Outreach and Engagement, and OSC LaunchPad.

OSC LaunchPad is comprised of a core team and an extended team with members from the various branches at the OSC. Drawing on the expertise across the OSC, we bring together specialized working groups to respond quickly to emerging developments. The work of the OSC LaunchPad team focuses on three main areas:

Engaging with the fintech community	Providing direct support to eligible fintech businesses in navigating regulatory requirements	Taking learnings and applying them to similar businesses going forward

OSC LaunchPad's Direct Support Process

Our direct support process provides an opportunity for firms to discuss their business and proposed approaches as well as raise questions. We are interested in hearing from businesses that meet the following criteria:



- ✔ You are a fintech business that has not yet started operations or is in the process of applying to the OSC for registration or exemptive relief.
- ✔ You have a new innovation or significantly different product, service or application from those currently available.
- ✔ Your innovation will likely provide identifiable benefits to investors.
- ✔ You understand the necessity of investor protections and will invest time and energy in understanding and addressing them.
- ✔ You acknowledge the application of securities laws and have considered how it applies to your business.

For more information on how to apply for direct support, please visit the OSC LaunchPad's webpage.

OSC LAUNCHPAD

Key accomplishments of OSC LaunchPad to date	
554	Meetings held with fintech businesses and stakeholders
276	Requests for support received and direct support provided to fintech businesses
168	Events that OSC LaunchPad has participated in or hosted
31	Collaborative reviews with the **CSA Regulatory Sandbox** of novel businesses that want to operate across Canada

Emerging trends

The industry focus has continued to be on crypto-asset related businesses, including crypto-asset investment funds, initial coin/token offerings, stablecoins and crypto-asset trading platforms.

In respect of crypto-asset trading platforms, we have provided direct support to businesses seeking additional guidance in this area and have continued to work with stakeholders in developing an appropriate framework for this novel business.

Other emerging industry trends include cross-border testing of financial products and services (e.g., the Global Financial Innovation Network cross-border trials), RegTech services (technology-facilitated regulatory compliance services), SupTech services (technology-facilitated regulatory supervision services), artificial intelligence, machine learning and open data.

For a complete list of **novel product offerings and services** that we have supported, please visit the OSC LaunchPad webpage.

Publications and resources

In January 2020, we published **CSA Staff Notice 21-327 *Guidance on the Application of Securities Legislation to Entities Facilitating the Trading of Crypto Assets***, which provides guidance on when securities legislation applies to entities facilitating transactions relating to crypto assets. The staff notice highlights situations where securities legislation does not apply and situations where it does.

In March 2019, we published **Joint CSA/IIROC Consultation Paper 21-402 *Proposed Framework for Crypto-Asset Trading Platforms***. We received varied responses from the fintech community, market participants, investors and other stakeholders. We are using the feedback provided and working with the Canadian Securities Administrators (**CSA**) and IIROC to develop a regulatory approach for crypto-asset trading platforms that provides regulatory clarity, supports innovation and addresses risks to investors.

While innovation can offer great investment opportunities, it also comes with risks. OSC LaunchPad continues to support the Investor Office in the publication of fintech-related **guidance and research** that can assist Canadians in making informed decisions. For a complete list of **publications and resources**, please visit the OSC LaunchPad webpage.

OSC LaunchPad Survey

OSC LaunchPad sponsored two students from the Master of Financial Risk Management program at the University of Toronto's Rotman School of Management for a nine-week project that started November 24, 2019. A survey was issued in December 2019 to solicit feedback from industry on the regulatory and capital raising challenges faced by innovative businesses at various stages of development. We received over 70 survey responses from industry participants and are currently reviewing findings to inform our future work.

Co-operation with International Regulators

The OSC continues to play an active role in the **Global Financial Innovation Network** (**GFIN**). GFIN is a global network of financial regulators and organizations aiming to provide a more efficient way for innovative firms to interact with regulators. We participated in the first round GFIN cross-border testing pilot that allowed innovative firms to simultaneously trial and scale new technologies in multiple jurisdictions. On January 16, 2020, GFIN published ***Cross Border Testing: Lessons Learned***, summarizing the lessons learned from the cross-border testing pilot.

In December 2019, the OSC with other CSA members entered into a co-operation agreement with the Monetary Authority of Singapore that will enable innovative fintech businesses in Canada and Singapore to seek support from their regulators as they look to operate in the other's market.

More information about OSC LaunchPad's **international regulatory partnerships**, including how to participate in future GFIN cross-border trials, can be found on the OSC LaunchPad webpage.

1.4 Branch advisory committees

The CRR Branch consults with its advisory committees to advise staff on matters related to a range of projects, policy initiatives and emerging trends and issues. CRR seeks applicants for its advisory committees in a news release approximately one to two months prior to the start of the next term.

Registrant Advisory Committee

Established in January 2013, the Registrant Advisory Committee (**RAC**) is in its fourth term. It is comprised of 11 external members and is chaired by the Director of CRR, Debra Foubert. The RAC meets quarterly, with members serving a minimum two-year term. We will be seeking new members for the RAC later this year.

The RAC's objectives include:

- advising on issues and challenges faced by registrants in interpreting and complying with Ontario securities law, including matters related to registration and compliance
- providing feedback on the development and implementation of policy and rule-making initiatives that promote investor protection, fair and efficient capital markets, and contribute to the stability of the financial system.

Topics of discussion over the past fiscal year included:

- various discussions on CRR's initiatives related to the OSC's Regulatory Burden initiative
- Client Focused Reforms
- approaches to ESG investing.

Fintech Advisory Committee

Established in 2017, the Fintech Advisory Committee (**FAC**) is comprised of 15 external members and is chaired by the Director of the OEGI, Pat Chaukos. The current FAC includes key players from a broad spectrum of the fintech community, ranging from start-ups, auditors, lawyers and representatives from regulated entities and industry organizations. The FAC meets quarterly, with members serving a minimum one-year term.

The objective of the FAC is to advise OSC staff on developments in the fintech space as well as the unique challenges encountered by innovative businesses in the securities industry.

Topics of discussion over the past fiscal year included:

- regulatory and capital raising challenges in Ontario
- crypto-asset trading platforms and custody of client assets
- resale of coins/tokens
- regulatory technology applications (RegTech)
- artificial intelligence in financial services.

Part 2

INFORMATION FOR DEALERS, ADVISERS AND INVESTMENT FUND MANAGERS

2.1 Annual highlights

2.2 Registration and compliance deficiencies

How to navigate Part 2 of the Summary Report

Part 2 of the Summary Report provides an overview of the key findings and outcomes from compliance reviews conducted during the 2019-2020 fiscal year.

The highlights in section 2.1 provide readers with a direct link between the key compliance reviews conducted, the guidance issued as a result of our findings and a list of the registration categories that the guidance applies to. Section 2.2 discusses key or novel issues, suggests best practices and specifies applicable legislation and relevant guidance to assist firms in addressing each of the topic areas. For ease of reference, registration categories are listed beside each deficiency heading to indicate that the information is relevant to firms registered in those categories.

We encourage registrants to review all the information set out in Part 2 of this report as the guidance presented may be helpful to registration categories other than those listed.

2.1 Annual highlights

a) Suitability sweep

b) High-impact firms

c) High-risk firms

d) High-risk firms identified through “Registration as the First Compliance Review” program

e) Reliance on international exemptions

f) Firms with financial statement losses

g) IFMs that are SRO members

h) IFMs that completed acquisitions

WHAT WE DID	REFERENCE	REGISTRANTS

a) SUITABILITY SWEEP

Know-your-client (**KYC**) and suitability obligations are among the most fundamental obligations owed by registrants to their clients and are the cornerstone of the investor protection regime. As part of our compliance reviews, we continue to assess registrants' compliance with these important regulatory requirements. In 2019, we conducted a sweep (the **suitability sweep**) of 44 firms registered as PMs and/or EMDs focusing on their KYC and suitability obligations.

The purpose of the suitability sweep was to:
- review and assess compliance with KYC and suitability obligations
- gather data on industry practices to inform us on how firms are complying with their KYC and suitability obligations
- assess the use and understanding of prospectus exemptions by registrants
- gather information to assess the need for further registrant outreach and what it could entail
- understand current practices to inform the ongoing Client Focused Reforms implementation efforts.

Reference:

- section 2.2.4 (page 34-37)

Registrants:
- ✔ PM
- ✔ EMD
- ✔ SPD

b) HIGH-IMPACT FIRMS

As part of our risk-based approach to selecting firms for review, we include firms that, given the size of their assets under management (**AUM**), could have a significant impact on the capital markets if there were a breakdown in their compliance structure or key operations (**high-impact firms**).

In 2020, we commenced compliance reviews of six high-impact firms with a combined AUM of approximately $1.062 trillion as at December 31, 2019.

This year we revised our approach to reviewing high-impact firms as part of our continued efforts to assess the most effective way to oversee our registrant population. Specifically, our reviews focused on assessing each firm's ability to identify and effectively manage its regulatory and compliance risks by reviewing the firm's:
- governance structure
- risk framework, including the risk identification and risk management process
- identified compliance issues during the review period, including how any non-compliance was remediated and what steps were put in place to prevent reoccurrence.

Reference:

- section 2.2.2 (page 28-30)

Registrants:
- ✔ IFM
- ✔ PM

WHAT WE DID	REFERENCE	REGISTRANTS

c) HIGH-RISK FIRMS

In 2019, we continued the compliance reviews of firms that were risk-ranked as high based on information collected from the 2018 risk assessment questionnaire (the **RAQ**).

The information collected from the 2018 RAQ was analyzed using a risk assessment model. The analysis results in each firm's response being risk-ranked and assigned a risk score. A firm may be risk-ranked as high based on a variety of factors, including: the broad nature of the firm's business activities, a large amount of client AUM, the size of the firm, and the number of clients and/or the type of clients serviced by the firm.

Reviews of 30 firms were completed and as a result of our review findings, further regulatory action to remediate identified deficiencies was taken against two firms.

Reference:

- section 2.2.1 (page 25)
- section 2.2.2 (page 28-30)
- section 2.2.3 (page 31-33)
- section 2.2.4 (page 34-38)
- section 2.2.5 (page 39-44)
- section 2.2.6 (page 45)

Registrants:

- ✔ IFM
- ✔ PM
- ✔ EMD
- ✔ SPD

d) HIGH-RISK FIRMS FIRST IDENTIFIED THROUGH "REGISTRATION AS THE FIRST COMPLIANCE REVIEW" PROGRAM

As part of our "Registration as the First Compliance Review" program, certain firms may be categorized as high-risk firms. Through the program, we gather information on the firms' proposed business operations, compliance systems and proficiency of the firms' individuals. As a result, targeted reviews of these firms may be scheduled to occur after 12 months of the firm commencing operations.

During the year, we conducted targeted compliance reviews of seven firms to assess their compliance with Ontario securities law.

For more information on the "Registration as the First Compliance Review" program, please refer to section 3.1 a) of OSC Staff Notice 33-745 *2014 Annual Summary Report for Dealers, Advisers and Investment Fund Managers* (**OSC Staff Notice 33-745**).

Reference:

- section 2.2.4 (page 34-37)
- section 2.2.5 (page 39-41)
- OSC Staff Notice 33-745

Registrants:

- ✔ IFM
- ✔ PM
- ✔ EMD
- ✔ SPD

WHAT WE DID	REFERENCE	REGISTRANTS

e) RELIANCE ON INTERNATIONAL EXEMPTIONS

We conducted a desk review (the **international exemptions review**) of foreign firms relying on certain exemptions from the registration requirement found in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**).

Specifically, the international exemptions review focused on firms relying on the following exemptions from the registration requirement (collectively, the **international exemptions**):

- international dealer - section 8.18 of NI 31-103
- international adviser - section 8.26 of NI 31-103
- non-resident investment fund manager - section 4 of Multilateral Instrument 32-102 *Registration Exemptions for Non-Resident Investment Fund Managers* (**MI 32-102**).

The purpose of the desk review was to gain a better understanding of the firms' reliance on the international exemptions and to confirm that all of the conditions associated with a particular international exemption were being satisfied.

We selected 60 firms based in the United States to participate in the international exemptions review (20 firms in each of the IFM, PM and EMD registration categories). The firms selected in our sample were sent a short questionnaire along with a request to provide details of their Canadian activity for the review period.

Reference:

- section 2.2.1 (page 26-27)

Registrants:

✔ IFM

✔ PM

✔ EMD

f) FIRMS WITH FINANCIAL STATEMENT LOSSES

We conducted a desk review of 60 firms that reported financial losses on their 2017 and 2018 annual audited financial statements.

The purpose of these reviews was to:

- obtain an understanding of the factors contributing to the firms' financial losses
- determine how the firms were addressing those factors
- assess the impact the continued losses had on the firms' ability to meet their solvency requirements for ongoing registration.

Registrants:

✔ IFM

✔ PM

✔ EMD

✔ SPD

WHAT WE DID	REFERENCE	REGISTRANTS

g) IFMs THAT ARE SRO MEMBERS

We conducted compliance reviews of IFMs that are also registered as members of an SRO (either the MFDA or IIROC) in the category of MFD or ID. The purpose of these reviews was to assess the adequacy of the firms' compliance systems with respect to the firms' IFM-related business activities. A sample of seven firms was selected for review.	• section 2.2.3 (page 31)	IFM

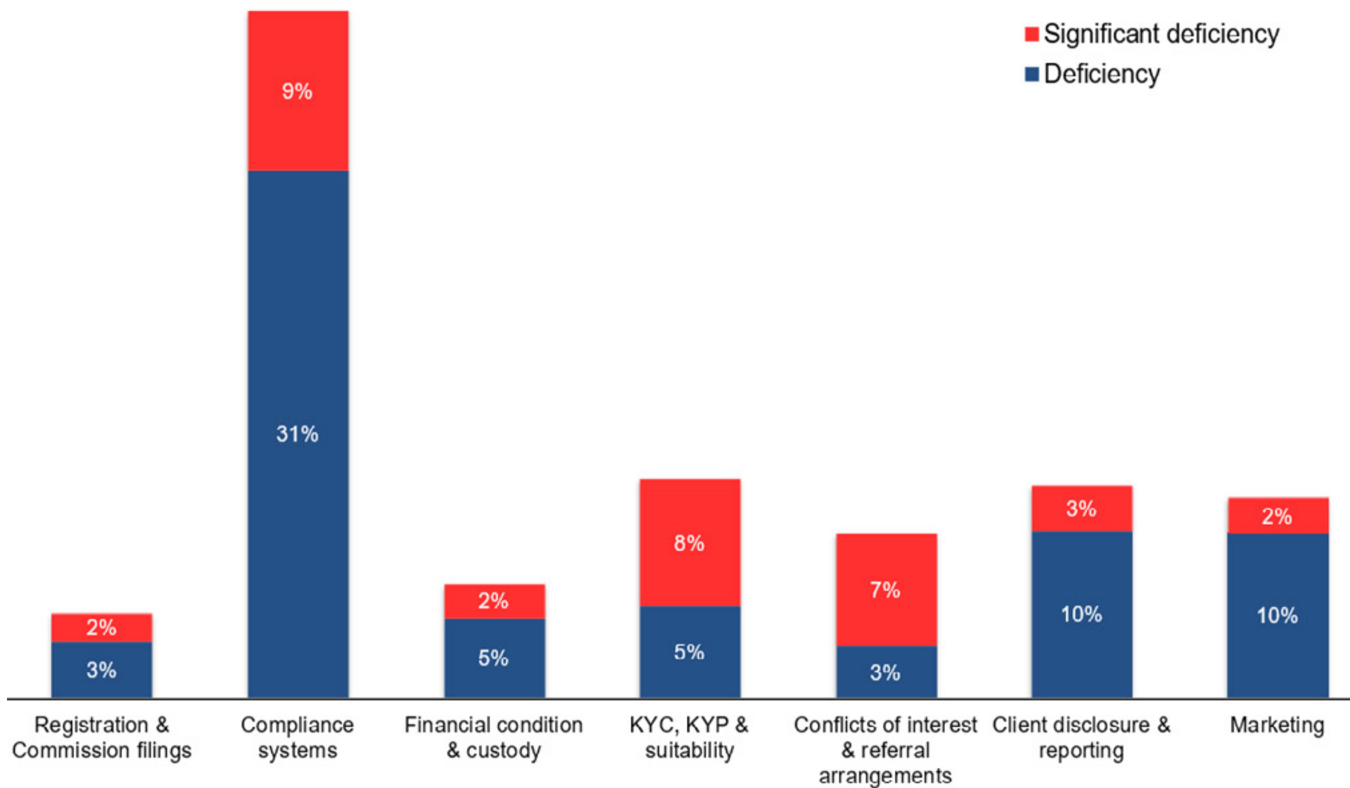
h) IFMs THAT COMPLETED ACQUISITIONS

In 2019, we conducted compliance reviews of IFMs that had recently either acquired, or purchased the assets of, another IFM. The purpose of these reviews was to understand how the acquiring firm had integrated the acquired firm or acquired assets into its existing business. For IFMs that acquired another IFM, we focused our reviews on: • how the two firms integrated their staff, technology, internal controls and processes to perform day-to-day operations • identifying any post-acquisition issues that may have occurred as a result of the integration, and if any, how they were addressed. For IFMs that acquired assets (specifically fund management contracts) of another IFM, we focused on how management of the funds was transitioned over to the new IFM. Areas reviewed included: • changes in service providers for the acquired funds • tailoring of procedures and controls to include the acquired funds • changes in branding of the acquired funds • identifying any post-acquisition issues that may have occurred as a result of the integration, and if any, how they were addressed.	• section 2.2.3 (page 29-30)	IFM

2.1.1 Summary of deficiencies identified

The following chart summarizes our findings from reviews set out in the annual highlights section. Deficiencies we identify during the fiscal year are impacted by various factors including:

- CRR's planned reviews of specific aspects of a firm's operational activities
- the nature and complexity of the firms reviewed
- firms' compliance with securities law.



2.2 Registration and compliance deficiencies

2.2.1 Registration & Commission filings

- Notice of termination required for internal firm suspensions
- Servicing non-Ontario clients without required registration
- Reliance on international exemptions
- Novel exemptive relief from dealer and adviser registration requirements

2.2.2 Compliance systems

- Inadequate or no annual compliance report
- Inadequate oversight of service providers

2.2.3 Financial condition & custody

- No written custodial agreement with funds
- Inadequate insurance coverage
- Impact of IFRS 16 *Leases* on excess working capital calculation

2.2.4 Know your client (KYC), know your product (KYP) & suitability

- Non-compliance with KYC and suitability obligations
- Inappropriate reliance on prospectus exemptions
- Contracting out KYC obligation
- Distribution of registered firm's shares and EMD obligations

2.2.5 Conflicts of interest & referral arrangements

- Financial conflicts of interest
- Captive dealers
- Personal trading
- Distribution of registered firm's shares and related conflicts of interest
- Prohibited security transactions

2.2.6 Client disclosure & reporting

- Inappropriate reliance on custodian to satisfy account statement delivery obligations
- Issuance of trade confirmations in connection with managed accounts

2.2.1 Registration & Commission filings

a) Notice of termination required for internal firm suspensions (All)

If an individual is suspended internally by his or her sponsoring firm, we expect that the firm submit a notice of termination (**NOT**) for that individual. NI 33-109 states that an NOT is required to notify us "that a registered individual or permitted individual has left their sponsoring firm or has ceased to act in a registerable capacity or as a permitted individual".

If an NOT is not filed in these circumstances, the National Registration Database (**NRD**) reflects to the public that this individual is allowed to conduct registerable activities on behalf of the firm. Further, firms run the risk of being responsible for any registerable activity the individual conducts, even while under a firm-imposed suspension.

Firms have, in the past, been reluctant to submit NOTs for individuals they have internally suspended out of concern that the process to get the individual re-registered following the suspension is too time-consuming. To be responsive to that concern, and to encourage firms to file the NOT as required, we are committed to a streamlined review process for the purpose of assessing an individual's suitability for registration after a firm-imposed suspension.

While we typically expect a Reactivation of Registration submission Form 33-109F4 *Registration of Individuals and Review of Permitted Individuals* (**Form 33-109F4**) to be made in the event of a registration request after internal suspension, we will allow a Reinstatement of Registration submission Form 33-109F7 *Reinstatement of Registered Individuals and Permitted Individuals* to be filed, and no new fee collected, if the following conditions are met:

- The firm notifies us ahead of time of the issue that led to the suspension and we are satisfied with the remedial actions that the firm has informed us it will take.
- The firm files an NOT in a timely manner to reflect that the individual has ceased to act in a registerable capacity for the firm.
- The firm notifies us at least five business days in advance of the intention to reinstate the individual.
- There is no new detrimental information from the time the NOT was submitted.
- There are no changes to information previously submitted in items 13 through 16 of Form 33-109F4.

Legislative reference and guidance

- National Instrument 33-109 *Registration Information* (**NI 33-109**)
- Companion Policy **33-109CP** *Registration Information*

b) Servicing non-Ontario clients without required registration (PM / EMD)

We continued to see firms and their representatives not maintaining registration when trading in, or advising on, securities. When servicing clients in non-Ontario jurisdictions, we noted that firms and/or their representatives did not have an adequate basis to support their exemption from the registration requirements in the non-Ontario jurisdictions including the steps that were taken to ascertain if registration was required or not.

Staff also continued to see instances where firms and/or their representatives appeared to be relying on the client mobility exemption for Canadian clients outside of Ontario without taking all of the required steps to rely on the client mobility exemption for individuals in section 2.2 of NI 31-103, and for firms in section 8.30 of NI 31-103.

If the firm and/or its representatives are not in compliance with registration requirements in other jurisdictions, this may raise concerns regarding the adequacy of the firm's compliance system and may reflect poorly on the firm's continued fitness for registration. This may also raise concerns that the firm is not adequately supervising its advising and/or dealing representatives. Registered firms are responsible for the conduct of individuals acting on behalf of the firm.

If we find that a firm and/or the individuals acting on its behalf are trading in, or advising on, securities in another jurisdiction, without appropriate registration or the use of a valid registration exemption, we will provide this information to the applicable securities regulatory authority in the other jurisdiction, which may lead to further regulatory action by that authority.

PMs and EMDs should:

- take adequate steps to understand and comply with the registration requirements of other jurisdictions by consulting compliance and/or legal advisors before commencing registerable activity in the other jurisdictions
- take an inventory of the residency of the firm's existing clients, and if clients are located in jurisdictions where the firm and/or its registered individuals are not registered or do not have a valid registration exemption to rely upon, take immediate steps to come into compliance by registering in the applicable jurisdictions or discontinuing the offering of any advisory/dealing services to the applicable clients
- provide adequate training to employees on the limitations of conducting dealing/advising activities in other jurisdictions before servicing a client
- take adequate steps to confirm that all the requirements of the client mobility exemption are adhered to, including verifying that the individual and the firm do not exceed the allowable number of eligible clients in each jurisdiction, and submitting a completed Form 31-103F3 *Use of Mobility Exemption* to the local jurisdiction.

Legislative reference and guidance

- Section 25 *Registration* of the *Securities Act* (Ontario) (the Act)
- Subsection 32(2) *Duty to establish controls, etc.* of the Act
- Section 11.1 *Compliance system* of NI 31-103 and related Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103CP)
- Section 2.2 *Client mobility exemption - individuals* of NI 31-103 and related NI 31-103CP
- Section 8.30 *Client mobility exemption - firms* of NI 31-103 and related NI 31-103CP

c) Reliance on international exemptions (IFM / PM / EMD)

We conducted a desk review of 60 firms based in the United States that were relying on certain exemptions from the registration requirement.

The international exemptions review found that certain firms relying on an international exemption:

- did not file up to date forms with the Commission to properly rely on the exemption, and
- did not always provide clients with the required disclosure (or maintain evidence that the disclosure had been provided).

We wish to remind international firms and legal counsel acting on their behalf, of the requirements found in sections 8.18, 8.26 and 8.26.1 of NI 31-103 or section 4 of MI 32-102 when relying on an international exemption.

International adviser / Sub-adviser and incidental advice

As part of our desk review, we noted instances where certain international firms did not meet the criteria to use the international adviser exemption in section 8.26 of NI 31-103. Specifically, we noted international firms that provided advisory services to permitted clients that were registered as advisers in one or more Canadian jurisdictions. When an international firm acts as a sub-adviser, it must comply with section 8.26.1 of NI 31-103, which has different criteria than the international adviser exemption in section 8.26 of NI 31-103.

Another condition to reliance on the international adviser exemption is that any advice provided to Canadian clients on securities of Canadian issuers must be incidental to the advice on foreign securities. We remind international firms advising on Canadian securities that they must maintain evidence to demonstrate how they are meeting the "incidental" advice condition.

International dealers, advisers, sub-advisers and IFMs should:

- establish policies and procedures to verify that, on a regular basis, the firm continues to properly rely on an international exemption
- file a replacement Form 31-103F2 *Submission to Jurisdiction and Appointment of Agent for Service* or Form 32-102F1 *Submission to Jurisdiction and Appointment of Agent for Service for International Investment Fund Manager* as soon as possible through the OSC's filing portal if there is any change to the information in the firm's previously filed forms (including a change in CCO or Agent for Service)
- develop policies and procedures that the required written disclosure be provided to Canadian clients
- file an annual notice with the regulator in the local jurisdiction for as long as the firm continues to rely on the exemption
- confirm in writing if the firm is no longer relying on the registration exemption and has no intention of utilizing the exemption in the future, in order for the firm's reliance to be removed from NRD.

Legislative reference and guidance

- Sections 8.18 *International dealer*, 8.26 *International adviser* and 8.26.1 *International sub-adviser* of NI 31-103 and related NI 31-103CP
- Section 4 *Permitted clients* of MI 32-102 and related Companion Policy 32-102CP *Registration Exemptions for Non-Resident Investment Fund Managers*

d) Novel exemptive relief from dealer and adviser registration requirements (PM / EMD)

In November 2019, CRR staff finalized a novel application by a United States broker-dealer (the **Filer**) that was seeking relief to conduct trading and advising activities with “Additional Category Permitted Clients” on an exempt basis as if the Filer had relied on the international dealer and international adviser exemptions in NI 31-103. The requested relief has the effect of narrowly expanding the class of clients the Filer may deal with on an exempt basis to include spouses of individual permitted clients and certain family trusts and allows the Filer to deal with individual permitted clients and their immediate family members collectively as a family unit.

Staff would be willing to recommend similar relief for other international dealers and advisers that wish to apply. We would also be willing to consider applications by registered firms that wish to treat “Additional Category Permitted Clients” as equivalent to “permitted clients” when complying with their registrant obligations.

For more information, see **Re J.P. Morgan Securities LLC** dated November 18, 2019.

Before making a formal application for exemptive relief, firms may wish to first submit a pre-filing. The purpose of a pre-filing is to enable a firm to consult with staff on a specific issue to understand how securities legislation will be interpreted by the OSC. Staff will work with the firm and their counsel to assess whether exemptive relief is required in order to help the firm determine its next steps.

Legislative reference and guidance

- **National Policy 11-203** *Process for Exemptive Relief Applications in Multiple Jurisdictions*
- Section 1.1 *Definitions of terms used throughout this Instrument* of **NI 31-103**
- Sections 8.18 *International dealer* and 8.26 *International adviser* of **NI 31-103** and related **NI 31-103CP**

2.2.2 Compliance systems

a) Inadequate or no annual compliance report (All)

During the course of our reviews, we identified several instances where the CCO either did not prepare an annual compliance report for the firm's Board of Directors (or individuals acting in a similar capacity for the firm), or prepared a cursory report which lacked sufficient detail in support of the CCO's assessment of the firm's compliance function and individuals acting on its behalf with securities legislation.

Failure to submit an adequate annual compliance report to the firm's governance entity for the purpose of assessing compliance by the firm and its employees with securities legislation raises questions about the CCO's proficiency, and about the operating effectiveness of the firm's compliance function.

A reminder that the requirement to submit an annual compliance report to the firm's Board of Directors (or individuals acting in a similar capacity for the firm) applies to all registered firms. One-person firms and firms where the CCO is the sole member of the registered firm's Board of Directors should also document their assessment of their compliance function.

The CCO of a registered firm should:

- assess the overall compliance structure and internal controls of the firm at least annually
- conduct sufficient analysis to support their assessment of the firm's internal controls, including:
    - a description of the steps taken to perform the assessment
    - the result of the assessment, identifying any deficiencies and documenting what will be done to correct the deficiencies noted
    - maintaining adequate documentation to support that the assessment was made by the CCO
- prepare and submit the annual compliance report in a timely manner
- consider whether the report should be prepared more frequently than annually, depending on the size of the firm or the number of compliance issues identified during the year.

Legislative reference and guidance

- Section 5.2 *Responsibilities of the chief compliance officer* of **NI 31-103** and related **NI 31-103CP**
- **CSA Staff Notice 31-350** *Guidance on Small Firms Compliance and Regulatory Obligations*
- OSC Staff Notice 33-738 *2012 Annual Summary Report for Dealers, Advisers and Investment Fund Managers,* page 46 (**OSC Staff Notice 33-738**)
- **Registrant Outreach seminar (June 2015)** - *Elements of an effective compliance system*

b) Inadequate oversight of service providers (IFM)

We continue to identify situations where IFMs perform no or limited oversight of their outsourced fund administration and portfolio management functions, or their custodian (collectively, the **service providers**).

Common deficiencies raised highlight that IFMs did not:
- obtain and review a Service Organization Controls (**SOC**) report, when one was available from the service provider
- appropriately evaluate the SOC report
- document and maintain evidence of the specific monitoring activities performed
- periodically validate the accuracy of prices used by the service provider in portfolio valuation
- review material and complex corporate actions to confirm they were accurately processed and recorded by the service provider.

Registered firms are responsible and accountable for all functions outsourced to service providers, this includes ensuring that controls at the outsourced operations are appropriately designed and operating effectively, as required by section 11.1 of NI 31-103. Further, registered firms are required to maintain records to accurately record their business activities, and to demonstrate compliance with applicable requirements of securities legislation, in accordance with subsection 11.5(1) of NI 31-103.

IFMs should:

- establish written policies and procedures for monitoring each outsourcing arrangement that:
  - describe the nature of each oversight control (e.g., objective, process, service provider reports used, escalation criteria)
  - specify the frequency of the oversight control performed
  - identify the control owners
- conduct oversight procedures on a frequent and as appropriate basis, taking into account the firm's business operations, including a review of operational reports prepared by the service providers. For example, reports received from:
  - Transfer agents: unitholder transaction reports, short-term trading and excessive trading reports, unitholders' account statements
  - Trust accountants: trust account reconciliations, trust account interest allocation reports
  - Fund accountants: cash reconciliations, security reconciliations, expense accrual reports, income accrual reports, corporate action reports, portfolio valuation reports (including pricing exception reports), distribution calculations, net asset value calculation reports
  - External PMs: reports on portfolios' compliance with their investment mandates and other regulatory requirements (e.g., NI 81-102, section 111 of the Act), portfolio risk monitoring reports, portfolio performance monitoring reports)
  - Custodians: if applicable, reports on compliance with a fund's security lending program requirements
- follow-up on any exceptions/variances identified when reviewing reports received from the service providers

b) Inadequate oversight of service providers (cont'd)

IFMs should:

- on a periodic basis, evaluate the service providers' controls to monitor enterprise-level risks in the following areas:
  - Controls environment: if available, review SOC reports to evaluate the design and operating effectiveness of controls at the service provider. If there is no third-party assurance over controls in place, firms should perform enhanced due diligence to obtain an understanding of the key controls in place at the service provider, and perform more extensive reviews of the service provider's operational reports.
  - Business resiliency: review the results of any Business Continuity Plan and/or Disaster Recovery Plan testing performed.
  - Data security: if available, review IT SOC reports, and Cyber Security Policy.
  - Data confidentiality: review Privacy Policy.
- maintain evidence to support the monitoring activities were performed.

Legislative reference and guidance

- Part 11, Division 1 - *Compliance* of **NI 31-103** and related **NI 31-103CP**
- OSC Staff Notice 33-749 *2018 Annual Summary Report for Dealers, Advisers and Investment Fund Managers, page 41* (**OSC Staff Notice 33-749**)
- OSC Staff Notice 33-742 *2013 Annual Summary Report for Dealers, Advisers and Investment Fund Managers, pages 58-61* (**OSC Staff Notice 33-742**)
- **OSC Staff Notice 33-738** *pages 70-71*
- **Registrant Outreach seminar (June 2017)** - *Effective Oversight of Service Providers and Modernization of Investment Fund Product Regulation - Alternative Funds*

2.2.3 Financial condition & custody

a) No written custodial agreement with funds (IFM)

During our compliance reviews, we noted several instances where IFMs did not have a written custodial or prime brokerage agreement in place between the custodian or prime broker and the prospectus-exempt fund(s) managed by them.

We expect IFMs to put in place a written custodial or prime brokerage agreement with the custodian or prime broker on behalf of the investment fund(s) managed by them. Written custodial or prime brokerage agreements are expected to provide for key matters such as the location of portfolio assets, any appointment of a sub-custodian, the method of holding portfolio assets, the standard of care of the custodian and the responsibility for loss.

The same deficiency was also noted when reviewing IFMs also registered as IDs. Specifically, many of the firms reviewed used the Type 2 Introducer/Carrier Broker agreement (**Type 2 agreement**) required under IIROC rules to cover the custody of the fund's cash and securities. However, the Type 2 agreement did not always include all expected content as outlined in section 14.5.2 of NI 31-103CP.

IFMs should:

- have written custodial or prime brokerage agreements in place between the custodian or prime broker and the prospectus-exempt fund(s) managed by the firm
- if also registered as IDs and using the Type 2 agreement, verify that it includes key matters such as the location of the portfolio assets, any appointment of a sub-custodian, the method of holding portfolio assets, the standard of care of the custodian and the responsibility for loss. If these key matters are not included, we expect IFMs to work with their custodian or prime broker to update the agreement, create an addendum to the agreement, or enter a stand-alone agreement to incorporate these details.

Legislative reference and guidance

- Subsection 19(1) *Record-keeping* of **the Act**
- Section 11.5 *General requirements for records* of **NI 31-103** and related **NI 31-103CP**
- Section 14.5.2 *Restriction on self-custody and qualified custodian requirement* of **NI 31-103** and related **NI 31-103CP**
- OSC Staff Notice 33-750 *2019 Summary Report for Dealers, Advisers and Investment Fund Managers, page 33* (**OSC Staff Notice 33-750**)

b) Inadequate insurance coverage (All)

We continued to identify firms whose insurance bonding policies were not compliant with the prescribed insurance requirements. Specifically, during our reviews we noted a number of deficiencies as a result of:

- insufficient coverage amounts maintained by the firm
- insurance bonding policies that did not provide for a double aggregate limit or full reinstatement of coverage
- claims of other entities covered under a global policy reducing the limits or coverage available to the registered firm
- firms not having the right to claim directly against the insurer in respect of losses under a global policy.

We would like to remind firms to review their fidelity and insurance bonding policies in detail for compliance with the insurance requirements under Part 12, Division 2 of NI 31-103.

Registered firms should:

- review the adequacy of coverage limits regularly, and at a minimum at the time of policy renewal
- assess the impact on their insurance coverage when their clients' or investment funds' AUM increase during the year if they hold or have access to client assets
- if relying on global insurance and bonding policies:
  - review the language of their policies to confirm that they comply with the global bonding or insurance requirements (this includes the requirement that the firm can claim directly against the insurer, and that the individual or aggregate limits can only be affected by the registered firm or its subsidiaries)
  - carefully examine their policies to ensure that they do not contain contradictory language limiting their right to claim directly or otherwise affecting their limits inappropriately
- verify that their policies contain a provision for a double aggregate limit or full reinstatement of coverage.

Legislative reference and guidance

- Part 12, Division 2 - *Insurance* of **NI 31-103** and related **NI 31-103CP**
- **OSC Staff Notice 33-748** *2017 Annual Summary Report for Dealers, Advisers and Investment Fund Managers, page 21*
- **OSC Staff Notice 33-745**, *page 44*
- OSC Staff Notice 33-736 *2011 Annual Summary Report for Dealers, Advisers and Investment Fund Managers, page 37* (**OSC Staff Notice 33-736**)

c) Impact of IFRS 16 *Leases* on excess working capital calculation (All)

Effective for financial years beginning on or after January 1, 2019, International Financial Reporting Standards 16 *Leases* (**IFRS 16**) became the applicable lease accounting standard for those firms reporting under International Financial Reporting Standards (**IFRS**). The most significant change introduced by IFRS 16 is the requirement for lessees to recognize all leases (except leases of low-value assets and short-term leases) on their balance sheet. Under the new standard, the lessee will recognize a right-of-use (**ROU**) asset at cost and an associated lease liability. Leases will be accounted for as if the company had borrowed funds to purchase a leased asset. As a result, many firms are expected to see a reduction in their excess working capital as a greater proportion of leases and current lease liabilities are recognized.

During our ongoing compliance and financial desk reviews, staff noted that some firms had not adopted IFRS 16 correctly, or at all, in preparing their interim financial statements. Observed deficiencies included:

- ROU asset was inappropriately classified as a current asset
- lease liability was not classified into its current and non-current portions
- operating leases not being capitalized despite meeting the IFRS 16 criteria requiring it.

These deficiencies lead to incorrect calculations of a firm's excess working capital balance. In some cases, the deficiencies resulted in the registered firm being capital deficient.

Registered firms are reminded they must continue to meet their capital requirements to maintain their registration in good standing.

Further, firms are reminded that under subsection 3.2(1) of NI 52-107, all financial statements and interim financial information delivered by registered firms under NI 31-103 are required to be prepared in accordance with IFRS. All effective IFRS standards should be applied when preparing financial statements, subject to any specific exceptions allowed under section 3.2 of NI 52-107.

Registered firms should:

- prepare interim and annual financial statements and excess working capital calculations in accordance with all IFRS standards in effect during the reporting period, including IFRS 16
- consult with their auditors or financial reporting experts for guidance about correctly applying IFRS 16.

Legislative reference and guidance

- Section 3.2 *Acceptable Accounting Principles - General Requirements* of **National Instrument 52-107** *Acceptable Accounting Principles and Auditing Standards*
- Part 12, Division 1 - *Working Capital* of **NI 31-103** and related **NI 31-103CP**

2.2.4 Know your client (KYC), know your product (KYP) & suitability

a) Non-compliance with KYC and suitability obligations (PM / EMD / SPD)

While we generally noted improvement in firms' KYC and suitability processes as compared to prior suitability sweeps conducted, we continued to raise deficiencies in the following areas:

- inadequate collection and documentation of up-to-date KYC information
- failure to consider all components of the client profile when assessing the suitability of investments
- inadequate assessment of the concentration risk in client portfolios
- inappropriate use of client-directed trade instructions.

KYC information

We continued to see instances where the documentation of KYC information for clients was incomplete. In addition, many firms reviewed in the suitability sweep did not have up-to-date KYC information documented in their client files. Advisers and dealers are required to make reasonable efforts to have current KYC documentation when they are assessing client investments for suitability. An adviser or dealer requires a complete client profile to make a suitability assessment, including financial circumstances, investment time horizon, investment knowledge and experience, investment objectives and risk tolerance.

Advisers and dealers that have an ongoing relationship (e.g., a PM that has discretion over a client's managed account) should update KYC documentation at least annually, or at the time the client experiences a material life change (e.g., marriage, divorce, birth of a child, loss or change in employment, etc.). Dealers that do not have regular contact with clients must have up-to-date KYC information at the time of each new trade.

Suitability assessment

While many firms had a process for assessing suitability, we continued to note inadequate documentation maintained by firms to support their suitability assessment. Specifically, we noted instances where dealers were distributing a product with an investment objective that did not align with the investment objective stated in the client's profile, and did not maintain adequate documentation to support why the product was suitable. While the proposed trade taken in combination with all other components of the client's profile appeared suitable, the documentation failed to adequately demonstrate this. We appreciate that investments can meet more than one investment objective, however, where the investment objective of the product being distributed does not align with the client's investment objective, it is especially important to maintain adequate documentation to support how the firm determined the investment was suitable.

We also noted several managed accounts where the holdings in the clients' investment portfolios were not in compliance with the clients' target asset mix detailed in their KYC documentation. For example, we noted situations where clients' stated investment objectives were for an income portfolio with some growth, however, we found that the majority of the clients' investment portfolio was comprised of equity securities. A PM should have procedures in place to regularly review the suitability of their client's portfolio holdings and document their ongoing suitability assessment.

Concentration

While we continued to see issues with clients being concentrated in a single issuer/issuer group or industry/asset class, we were most concerned with findings of advisers and dealers that did not consider the clients' concentration in illiquid securities.

a) Non-compliance with KYC and suitability obligations (cont'd)

Concentration risk should be assessed using the client's total holdings in illiquid securities and not solely on the products distributed by the dealer. This will help dealers arrive at a suitable percentage of the clients' total financial assets that may be invested in illiquid securities or securities that have redemption restrictions.

Misuse of client-directed trade instructions

We continued to see client-directed trade instructions used inappropriately. In certain cases, firms were not conducting a suitability assessment on a particular investment decision but rather requesting that the client provide a signed client-directed trade instruction. We remind firms that each investment decision requires a suitability assessment to determine whether the particular investment product is suitable given the client's KYC information.

After performing a suitability assessment, if the adviser or dealer informs the client of its opinion that the proposed trade would not be suitable given their KYC information, the client may instruct the firm to proceed with the trade nonetheless. In this situation, the firm should obtain a signed client-directed trade instruction. However, in cases where the firm determines that the proposed trade would be suitable, the firm should not attempt to document the trade as a client-directed trade.

PMs, EMDs and SPDs should:

- maintain current and complete KYC information in client files
- assess the suitability of investments based on the complete profile of the client, including the client's investment needs and objectives
- have a meaningful discussion with the client to:
    - obtain a solid understanding of the client's KYC information, and
    - explain how a proposed investment strategy is suitable for the client given the client's KYC information
- maintain detailed and adequate documentation to support the suitability assessment for each trade
- establish and document reasonable concentration thresholds by issuer, industry, asset class and product type
- if a transaction is deemed to be unsuitable but the client wishes to proceed with the transaction, the firm should:
    - document the discussion with the client regarding the unsuitability of the transaction, and
    - obtain a signed client-directed trade instruction, which includes a specific explanation of the unsuitability of the transaction
- establish clear policies and procedures for all of the above.

Legislative reference and guidance

- Sections 13.2 *Know your client* and 13.3 *Suitability* of **NI 31-103** and related **NI 31-103CP**
- **OSC Staff Notice 33-750**, *page 34*
- CSA Staff Notice 31-336 *Guidance for Portfolio Managers, Exempt Market Dealers and Other Registrants on the Know-Your-Client, Know-Your-Product and Suitability Obligations* (**CSA Staff Notice 31-336**)
- **OSC Staff Notice 33-740** *Report on the Results of the 2012 Targeted Review of Portfolio Managers and Exempt Market Dealers to Assess Compliance with the Know-Your-Client, Know-Your-Product and Suitability Obligations*

b) Inappropriate reliance on prospectus exemptions (EMD)

Non-compliance with investment limits under the offering memorandum prospectus exemption

During our compliance reviews, we identified several instances of firms inappropriately relying on the offering memorandum prospectus exemption (the **OM exemption**) by failing to comply with the $30,000 prescribed investment limit for eligible investors. Some firms did not adequately document their suitability analysis, so it was unclear whether the client received advice that the investment was suitable. In other cases, some firms assessed a proposed transaction as unsuitable, but nevertheless, proceeded with the transaction that exceeded the $30,000 investment limit after obtaining a client-directed trade instruction from the eligible investor. We remind registered firms that eligible investors must first receive advice that the investment is suitable in order to exceed the $30,000 investment limit. For eligible investors who receive advice from a PM, ID, or EMD, that an investment above the $30,000 investment limit is suitable, the total cost of all securities purchased by the eligible investor under the OM exemption in the 12 months before the purchase cannot exceed $100,000.

Insufficient documentation to rely on prospectus exemptions

We noted that some firms were not gathering sufficient information from investors during the KYC process to determine whether they could appropriately rely on prospectus exemptions such as the accredited investor prospectus exemption (the **AI exemption**).

Some firms relying on the AI exemption failed to collect information regarding the client's financial circumstances to ensure that the client qualified as an accredited investor (**AI**). In these cases, firms' KYC forms did not identify either the investor's total net worth or total net financial asset position based on financial information collected. Information regarding the investor's net worth and net financial asset position is required in assessing if an investor qualifies for the AI exemption under one of the AI definitions specified in section 1.1 of NI 45-106.

In other cases, we noted that KYC forms used by some firms included broad monetary ranges which did not allow the firms to collect sufficient financial information as part of the KYC process to determine the availability of a prospectus exemption. For example, using a range of "more than $1,000,000" to determine a client's net assets is ineffective in assessing whether the client would meet the net asset test to be considered an AI. Similarly, using a range of "less than $1,000,000" would be ineffective in assessing whether the client qualifies as an eligible investor based on the net asset test.

EMDs should:

- through the suitability analysis conducted, make a clear determination of whether an investor can invest greater than the $30,000 investment limit for eligible investors under the OM exemption
- have measures in place to routinely monitor purchases for clients relying on the OM exemption to confirm investment limits are not exceeded
- collect complete KYC information, including detailed financial information, to assist in determining whether an investor qualifies for a prospectus exemption.

Legislative reference and guidance

- Section 1.1 *Definitions* of National Instrument 45-106 *Prospectus Exemptions* (**NI 45-106**)
- Subsection 2.3(1) *Accredited investor* of **NI 45-106**
- Subsection 73.3(2) *Exemption, accredited investor* of **the Act**
- Subsection 2.9(2.1) *Offering memorandum* of **NI 45-106**
- Subsection 3.8(1.1) *Eligibility criteria and investment limits* of Companion Policy **45-106CP** *Prospectus Exemptions*

c) Contracting out KYC obligation (PM / EMD / SPD)

We noted instances where PMs or EMDs relied on third parties to collect KYC information for some clients without an advising representative or dealing representative of the registered firm meeting or speaking to these clients directly.

In these instances, the registrants relied on third parties to perform the following functions:

- meet with clients to understand their investment needs and objectives, financial circumstances and risk tolerance
- assist clients with the completion of documents, including investment management agreements (**IMAs**), subscription agreements and KYC forms
- explain the registrant's investment strategies and the features, risks and investment objectives of products offered by the registrant
- communicate any changes to the clients' KYC information
- maintain direct contact with the registrant on the clients' behalf.

PMs and dealers are required by section 13.2 of NI 31-103 to ensure they have sufficient and current KYC information for each client including the client's investment needs and objectives, financial circumstances and risk tolerance. By contracting out a registrant's KYC obligation to third parties, a registrant's ability to fully understand a client's investment needs and objectives, financial circumstances and risk tolerance is reduced, and can impact the registrant's ability to make an appropriate suitability assessment. KYC and suitability obligations are fundamental obligations owed by registrants to their clients.

PMs, EMDs and SPDs should:

- have a meaningful discussion with each client to obtain a complete understanding of their KYC information to enable an informed suitability assessment
- assist clients with completing documents such as IMAs, subscription agreements and KYC forms
- explain the registrant's investment process and strategies and/or investment products offered by the registrant
- maintain direct contact with clients
- verify that any agreements with third parties clearly define the roles and responsibilities of each party to the arrangement.

Legislative reference and guidance

- Section 13.2 *Know your client* of **NI 31-103** and related **NI 31-103CP**
- **OSC Staff Notice 33-742**, *page 51*
- **OSC Staff Notice 33-736**, *page 43*
- **CSA Staff Notice 31-336**

d) Distribution of a registered firm’s shares and EMD obligations (EMD)

We noted registered firms that raised capital by issuing shares of themselves (i.e., the registered firm) to investors. In some instances, some of these firms are registered in multiple categories, including the EMD registration category. Most often, reliance was placed on the private issuer exemption from the prospectus requirement in section 2.4 of NI 45-106 when issuing these shares. As a result, some firms incorrectly assumed they were not engaging in registerable activity (i.e., activity for which registration or an exemption from registration is required) when distributing these shares to investors.

We remind EMDs that their registrant obligations, including KYC and suitability, apply in relation to any distribution of a security even when the registrant is relying on an exemption from the prospectus requirement.

EMDs should:

- establish policies and procedures to meet all registrant obligations, including KYC and suitability, in relation to the distribution of a security under an exemption from the prospectus requirement, including when distributing securities of the registered firm.

Legislative reference and guidance

- Section 2.4 *Private issuer* of **NI 45-106**
- Sections 13.2 *Know your client* and 13.3 *Suitability* of **NI 31-103** and related **NI 31-103CP**

2.2.5 Conflicts of interest & referral arrangements

a) Financial conflicts of interest (All)

Financial conflicts of interest refer to circumstances where financial benefits received by a registered firm are divergent from, or inconsistent with, its clients' interests. A registered firm that receives compensation in connection with an investment it recommends faces a conflict of interest as the firm has a financial incentive to recommend that security.

During our reviews we identified financial conflicts of interest such as the payment of consulting fees or placement fees to registered firms by companies their investment funds and/or managed accounts invested in. In these cases, conflicts of interest disclosure:

- was not provided to clients
- used standard boilerplate language that was vague
- lacked sufficient information to allow an investor to fully understand the existing conflicts of interest.

Where a conflict of interest is so contrary to clients' interests that it cannot be reasonably managed through implementation of internal controls or by disclosure, the registered firm should avoid the conflict of interest by ceasing the service or terminating the client relationship. If a registered firm does not avoid a conflict of interest (e.g., the financial arrangement is not material enough or there is a strong countervailing benefit to clients), it should take steps to control and/or disclose the conflict.

Registered firms should:

- establish written policies and procedures to identify each financial conflict of interest and describe how it will be mitigated
- establish effective internal controls to minimize the effects of financial conflicts of interest. For example, if a registered firm is paid by issuers of securities that it recommends to its clients, it should:
  - structurally segregate the corporate finance business (with the issuer relationships) from the advisory business (with the client relationships), and implement internal information barriers
  - enhance monitoring controls over clients' investment suitability assessments
  - provide full disclosure of the issuer relationships and compensation arrangements in offering documents and account opening documents
- disclose all conflicts of interest in the relationship disclosure information (**RDI**) as required by section 14.2 of NI 31-103
  - The disclosure should use plain language and should be clear and meaningful such that potential clients understand the nature and impact of each conflict and can make an informed decision about whether or not to purchase the product or service.
- obtain written acknowledgement from the client that they understand the nature and impact of each disclosed financial conflict of interest before selling the product or service to them.

Legislative reference and guidance

- Section 13.4 *Identifying and responding to conflicts of interest* of NI 31-103 and related NI 31-103CP
- Section 14.2 *Relationship disclosure information* of NI 31-103 and related NI 31-103CP

b) Captive dealers (EMD)

Firms registered solely as EMDs who distribute securities of a related or connected issuer with common mind and management (**captive dealers**) are required to manage or avoid material conflicts of interest. Registrants must comply with Part 13, Division 2 of NI 31-103, which requires them to take reasonable steps to:

- identify existing material conflicts of interest and those that the firm reasonably expects to arise between the firm and a client, and
- respond appropriately to existing or potential conflicts of interest.

The captive dealer business model creates a material conflict of interest between the EMD's financial incentive to sell its related or connected issuer's securities, and its regulatory obligations, including suitability and its fair dealing duty. During compliance reviews, we identified instances of captive dealers not adequately managing material conflicts of interest including:

- having conflict of interest policies and procedures that were general in nature and did not describe the conflicts of interest that existed or how the firm would respond to them
- believing that no conflict of interest existed because they did not earn fees for distributing related or connected issuers; however, management (comprised of the same individuals as management of the issuer) earned fees and other income from the issuer
- inadequate disclosure of conflicts of interest provided to clients, including the disclosure required under subsection 2.1(1) of NI 33-105. This section requires specific disclosure where there is a direct or indirect relationship between the issuer or selling securityholder and the underwriter. We noted instances of EMDs not being aware of these requirements or not providing disclosure that contained all the required information. An offering document must contain the information summarized in Appendix C of NI 33-105, which includes a statement on the front page of the offering document that summarizes the basis on which the issuer is a related and connected issuer of the EMD, as well as a cross reference to the applicable section in the body of the offering document where further information concerning this relationship is provided.

EMDs should:

- avoid, control and/or disclose (as appropriate) conflicts of interest that are contrary to the interests of investors
- develop policies and procedures that describe how conflicts of interest will be identified and responded to
- document an independent KYP assessment (e.g., by keeping a due diligence checklist demonstrating a review of key documents such as offering documents, business plans and financial statements)
- provide clients with meaningful disclosure such as:
    - the issuer's annual audited financial statements
    - a simplified document, with appropriate highlights and risk disclosure about the investment, including clear disclosure of the conflicts of interest and the concerns they raise
    - other material, in plain language

b) Captive dealers (cont'd)

EMDs should:

- where possible, assign a responsible individual (such as the CCO or UDP), who has not been directly involved in any way with the trade in question, to confirm that investors understand:
    - the relationship between the captive dealer and the related or connected issuer
    - the key features of the investment (e.g., that the security is sold under a prospectus exemption and therefore may be illiquid, the risks of the investment and the compensation received by the captive dealer for the trade)
    - the concentration risks associated with investing in a limited number of related or connected issuers
- provide training to registered individuals and other relevant staff in order to:
    - explain the nature of the material conflicts of interest inherent in the business model and the importance of avoiding, managing and/or disclosing them
    - outline their responsibility to meet their KYC, KYP and suitability obligations.

Legislative reference and guidance

- Section 13.4 *Identifying and responding to conflicts of interest* of **NI 31-103** and related **NI 31-103CP**
- Part 2 – *Restrictions on Underwriting* of National Instrument 33-105 *Underwriting Conflicts* (**NI 33-105**) and related Companion Policy NI 33-105CP *Underwriting Conflicts* (**NI 33-105CP**)
- **CSA Staff Notice 31-343** *Conflicts of interest in distributing securities of related or connected issuers*
- **CSA Staff Notice 31-336**

c) Personal trading (All)

There is an inherent risk of investor harm when an "Access Person" places a trade in their personal account since they may put their personal interest above those of their clients. Individuals at a registered firm who have access to their clients' trading and investment information, are involved in the investment decision making process or may have access to non-public information should be considered Access Persons. A registered firm should have clear policies outlining which employees are considered Access Persons and therefore subject to the firm's personal trading policy. The firm's policy should set out details of repercussions for non-compliance and outline procedures for escalation and reporting to senior management.

During our compliance reviews, we continued to raise a number of deficiencies as a result of registered firms not:

- maintaining personal trading policies and procedures
- enforcing the firm's personal trading policy
- requiring written pre-approval for personal trades of Access Persons
- having complete information on the personal trading account(s) of all Access Persons (e.g., not requiring direct receipt of Access Persons' personal trading records such as account statements and trade confirmations).

Registered firms should:

- clearly define who is an Access Person
- establish, maintain and apply written personal trading policies and procedures for their Access Persons
- appoint a qualified person, such as the CCO, to be responsible for monitoring the firm's personal trading policy
- have complete information on the personal trading accounts of all Access Persons
- maintain records of personal trade pre-approvals and personal trading records of Access Persons
- receive Access Persons' personal trading records (such as account statements and trade confirmations) from the Access Persons' brokers
- review and reconcile Access Persons' pre-approved trades to their personal trading records in a timely manner
- require that all Access Persons, at least annually, provide written acknowledgement to certify they understand and will comply with the firm's personal trading policy
- assess compliance with the personal trading policy as part of the CCO's annual compliance report to the Board of Directors.

Legislative reference and guidance

- Section 11.1 *Compliance system* of **NI 31-103** and related **NI 31-103CP**
- **OSC Staff Notice 33-742**, *page 46*

d) Distribution of a registered firm's shares and related conflicts of interest (PM / EMD)

Registered firms that raise capital by issuing shares of themselves to their prospective and existing clients face inherent conflicts of interest as the activity combines the client relationship with the firm's own business arrangements. As noted in section 2.1 of NI 33-105CP, in staff's view, a situation where a registered firm is the issuer or selling securityholder "represents the relationship with the highest degree of conflict [of interest] recognized by [NI 33-105]".

The conflicts of interest arising from this business model include but are not limited to:

- when a registered firm issues shares of itself to its existing clients, it is unclear if the firm is acting in the capacity of an issuer or, as a registered firm, by advising or recommending an investment in the firm's shares to its existing clients (either as a PM through a managed account or as an EMD)
- as shareholders, some investors that are also clients of the registered firm may be provided with certain rights that are not available to other clients that are not investors. This may create the perception that investors who are also clients could be favoured over clients that are not investors (e.g., in relation to the allocation of investment opportunities or access to firm proprietary information).

PMs and EMDs should:

- disclose and explain the conflicts of interest to potential investors and obtain an appropriate acknowledgement from them
- provide disclosure regarding all risk factors related to the investment in the firm
- advise investors to seek independent advice in relation to the investment, and provide all necessary information to allow for this to occur
- develop and implement policies and procedures to:
    - identify and address all related conflicts of interest
    - address the fair allocation of investment opportunities amongst all clients
    - prohibit sharing of the registered firm's business information with shareholders of the firm that are also clients, in a manner that may prejudice other clients.

Legislative reference and guidance

- Section 13.4 *Identifying and responding to conflicts of interest* of **NI 31-103** and related **NI 31-103CP**
- Section 11.1 *Compliance system* of **NI 31-103** and related **NI 31-103CP**
- Subsection 2.1(1) *Relationships of Concern* of **NI 33-105CP**

e) Prohibited security transactions (IFM / PM)

During our compliance reviews, we identified instances where a registered adviser sold a security owned by the registered adviser's firm to an investment fund managed by the adviser.

Paragraph 13.5(2)(b) of NI 31-103 prohibits an adviser from knowingly causing an investment fund that it manages to purchase a security from a responsible person. "Responsible Person" is defined in subsection 13.5(1) of NI 31-103 as including the adviser.

IFMs and PMs should:

- establish policies and procedures to identify prohibited investment transactions, including the buying of a security from, or the selling of a security to:
    - a Responsible Person
    - an "Associate" of the Responsible Person
    - another investment fund managed by the adviser (i.e., an inter-fund transaction)
- put in place adequate pre-trade controls to identify and prevent prohibited trades from occurring.

Legislative reference and guidance

- Paragraph 13.5(2)(b) *Restrictions on certain managed account transactions* of **NI 31-103** and related **NI 31-103CP**

2.2.6 Client disclosure & reporting

a) Inappropriate reliance on custodian to satisfy account statement delivery obligations (PM)

We continued to identify PMs that had not delivered the required account statements to their clients. A number of PMs believed that they had met their statement delivery obligation (and therefore did not see a need to deliver statements) because their clients' custodian sent a statement with the required investment position and transactional information to each client quarterly (or monthly if requested by the client). PMs do not meet their statement delivery obligation by solely relying on the fact that their clients' custodians deliver account statements to them.

Many PMs enter into service arrangements with IIROC dealer members (**DMs**). As noted in CSA Staff Notice 31-347, under these Portfolio Manager – Dealer Member Service Arrangements (**PMDSAs**), a DM typically holds an investor's cash and securities in an account over which a PM has discretionary trading authority, and executes and settles the investor's trades in the account based on instructions from the PM. It is imperative that both a PM and DM participating in a PMDSA understand that each have a regulatory obligation to deliver statements to the shared client, in addition to maintaining their own records of each client's investment positions and trades.

A PM with a PMDSA can satisfy its own obligation to a client when that client's DM acting as custodian sends a DM statement to the client (for each of the client's accounts at the DM), provided that the PM:

- does not hold any of the investments it manages for the client, and verifies that the client's investments it manages are held at the DM on a fully-disclosed basis (i.e., in a separate account for the client where the DM knows the name and address of the client)
- confirms that, for each of the client's accounts at the DM, a DM statement is delivered to the client by the DM at the required frequency, and with the required content
- takes reasonable steps to verify that the content (transaction and investment position information including cost and market values) of the DM statements issued to its client is complete and accurate
- provides written disclosure to the client on the PMDSA consistent with the disclosure outlined in section 3 of CSA Staff Notice 31-347
- complies with client requests or agreements to receive PM statements from the PM, supplemental to a DM statement from the DM
- verifies that the market value data it uses in the preparation of the client's annual investment performance report is consistent with the data in the relevant DM statement delivered to the client.

PMs should:

- maintain their own record of clients' investment positions and trades, including maintaining evidence to support reconciliations between its own records and those of the custodian
- establish policies and procedures to verify that a DM statement is complete, accurate and delivered on a timely basis

a) Inappropriate reliance on custodian to satisfy account statement delivery obligations (cont'd)

PMs should:

- provide written disclosure to its clients on the PMDSA
- have a written agreement on the PMDSA in place which includes the key terms and the roles and responsibilities of the PM and DM.

Legislative reference and guidance

- Sections 14.14 *Account statements*, 14.14.1 *Additional statements* and 14.14.2 *Security position cost information* of **NI 31-103** and related **NI 31-103CP**
- **CSA Staff Notice 31-347** *Guidance for Portfolio Managers for Service Arrangements with IIROC Dealer Members*
- **CSA Staff Notice 31-345** *Cost Disclosure, Performance Reporting and Client Statements – Frequently Asked Questions and Additional Guidance*
- **OSC Staff Notice 33-749**, *page 64-65*
- **Registrant Outreach seminar (February 2017)** - *CRM2 Reporting to Clients and Portfolio Manager - IIROC Dealer Member Service Arrangements (PMDSAs)*

b) Issuance of trade confirmations in connection with managed accounts (PM / EMD)

While staff have not identified deficiencies in this area, based on inquiries received from firms registered in the categories of IFM, PM and EMD, there is a perceived concern that the firm will be required to send trade confirmations to its managed account clients for each purchase and sale of a security of a proprietary fund made on behalf of the managed account clients when the firm has also acted as the registered dealer for the same trades.

In response to these inquiries, staff have generally advised that we do not interpret the trade confirmation requirement in section 14.12 of NI 31-103 as requiring this. As the firm is already subject to registrant obligations as a PM when it purchases on behalf of the managed account, staff do not see any additional obligations applying to the firm if it conducts the trades through its dealer registration. Staff note that section 14.12 of NI 31-103 provides that, if the client consents in writing, the registered dealer that has acted on behalf of a client in connection with the purchase or sale of a security, may deliver the trade confirmation to a registered adviser acting for the client.

Accordingly, as long as the firm is in compliance with its client reporting obligations as a PM to its managed account client, and the managed account client has consented to not receive trade confirmations for each trade made by the firm in the client's managed account, staff would not expect the firm to provide such real-time trade confirmations to the client.

Part 3

INITIATIVES IMPACTING REGISTRANTS

3.1 Burden reduction

3.2 Client Focused Reforms

3.3 Crowdfunding

3.4 Syndicated mortgages

3.1 Burden reduction

CRR staff participated in the Burden Reduction Task Force announced in **OSC Staff Notice 11-784 *Burden Reduction*** to identify ways to enhance competitiveness and to save time and money for registrants and other market participants, while protecting investors. Through the stakeholder consultations, the OSC received 69 comment letters and 199 suggestions on how the OSC could reduce regulatory burden. The OSC is taking action to address 34 concerns identified through the process by committing to 107 initiatives as outlined in the report on ***Reducing Regulatory Burden in Ontario's Capital Markets*** published on November 19, 2019 (the **Regulatory Burden Report**).

As highlighted in section 6.4 *Concerns, Decisions and Recommendations Affecting Registrants,* of the Regulatory Burden Report, CRR staff specifically identified 44 suggestions through the consultations about how to change requirements and processes, reflecting nine underlying concerns involving our registrants.

To address the nine concerns, CRR staff has committed to completing 30 initiatives (identified as **R-1** to **R-30** in the Regulatory Burden Report and within the remainder of this section). On May 27, 2020, the OSC provided a **Status Update** on its burden reduction initiatives. As noted in the update, to date, CRR staff have completed projects related to 21 of the 30 initiatives, while work and planning continues on the remaining nine. With respect to the outstanding initiatives, six are on track for completion within the timelines established and three have been delayed.

Information pertaining to each of the nine concerns and related projects based on comments received from interested stakeholders is discussed throughout this section and can be accessed using the links below. Initiatives marked with an asterisk (*) indicate that CSA participation is required.

1. **Registration information requirements**
2. **Compliance reviews**
3. **Risk Assessment Questionnaire (RAQ)**
4. **Registration of fintech firms**
5. **Client Relationship Managers (CRMs)**
6. **Chief Compliance Officers (CCOs)**
7. **Dual requirements and oversight of SRO members**
8. **Overlapping domestic and international requirements for registrants**
9. **General registrant obligations**

CONCERN 1: REGISTRATION INFORMATION REQUIREMENTS

Several requirements in NI 33-109 are unclear or complex, which increases the time required to complete the registration process. Other requirements impose burden that is disproportionate to, or does not achieve, the intended regulatory objective. Timelines to file amendments to registration information are too stringent.

DECISIONS AND RECOMMENDATIONS

#	Description	Start	Target Date	Status	Benefits
R-1	**Develop and implement an expedited rule amendment to establish a moratorium on outside business activity (OBA) late fees**	Complete	Complete	Complete	Reduced red tape
R-2	**NI 31-103, s.13.4 - reassess OBA conflicts of interest and reporting obligations**	Fall 2019	Fall 2021	In progress - on target	Reduced red tape
R-3	**Modernize the registration information required by NI 33-109 and associated forms***	Fall 2019	Fall 2021	In progress - on target	More tailored and flexible regulation

Outside Business Activities - Fee Moratorium

On May 15, 2019, the OSC announced that it will not require registrants to pay fees for disclosing outside business activities (**OBAs**) past the required filing deadline during a time-limited moratorium.

The moratorium is time-limited because the OSC plans to clarify the current regulatory requirements while the moratorium is in place. However, registrants are reminded that they are still required to disclose OBA information in accordance with NI 33-109.

The moratorium began on January 1, 2019 and ends on December 31, 2021, at the latest. As a result, if your OBA began after January 1, 2019 and you submit a delayed filing, you will not incur a fee during the moratorium. If your OBA began before January 1, 2019 and you submit a delayed filing, you will only be charged a fee for the period that falls outside the moratorium.

Under NI 33-109, individual registrants are required to file OBA disclosure within 10 days of a new OBA or a change to an existing OBA. The OSC currently charges fees of $100 per business day for filings received after that deadline, subject to applicable yearly caps. Based on fees charged in the last fiscal year, we anticipate this change will result in over $830,000 in savings for Ontario registrants.

CONCERN 2: COMPLIANCE REVIEWS

Compliance reviews lack service standards and timelines, take too long to complete, and are insufficiently coordinated within the OSC and across the CSA.

DECISIONS AND RECOMMENDATIONS

#	Description	Start	Target Date	Status	Benefits
R-4	**Review and revise documents used to communicate compliance review findings to registrants**	Complete	Complete	Complete	Better and more accessible information
R-5	**Commence communication with the industry on how guidance issued to the industry is used during our compliance reviews**	Summer 2019	Summer 2020	Complete	Better and more accessible information
R-6	**Enhance communications with registrants throughout the compliance review process to increase transparency**	Fall 2019	Spring 2020	Complete	Better and more accessible information
R-7	**Review and streamline compliance review books and records requests**	Fall 2019	Spring 2020	Complete	More timely and focused reviews
R-8	**Organize and provide a Registrant Outreach presentation explaining our oversight review processes and the elements of an effective compliance system, and make the presentation available as an ongoing resource for registrants' reference**	Fall 2019	Spring 2020	Complete	Better and more accessible information
R-9	**Reassess the classification of significant vs. non-significant deficiencies and communicate criteria to enhance transparency**	Fall 2019	Spring 2020	Complete	Better and more accessible information
R-10	**Improve coordination of compliance/ desk reviews and other compliance related initiatives with other regulators (CSA and Non-principal regulators (NPRs), SROs)**	January - March 2020	March 2020	Complete	More timely and focused reviews

CONCERN 2: COMPLIANCE REVIEWS (cont'd)

#	Description	Start	Target Date	Status	Benefits
R-11	**Implement the use of a secure file transfer process used to collect registration information on a confidential basis during compliance reviews**	Complete	Complete	Complete	More timely and focused reviews
R-12	**Develop and implement a process for timely oversight of new rules and related compliance issues and a method to communicate related compliance review results in a clear and transparent manner to industry to enhance understanding and communication of compliance issues***	January - March 2020	March 2020	Complete	Better and more accessible information

Compliance review process

We routinely review and update our compliance review process to ensure our approach to compliance reviews remains effective and consistent between the registration categories. As part of our most recent update, and in conjunction with our Registrant Outreach program, all of the initiatives related to compliance reviews (R-4 to R-12) were completed.

In order to provide additional transparency on the compliance review process, in November 2019, we recorded a Registrant Outreach webinar on the **"OSC Compliance Review Process and Effective Compliance Systems"**.

This Registrant Outreach webinar explains:

- the changes made to the compliance review process to enhance the efficiency of the process and reduce the time spent by registrants addressing staff requests, including the request for books and records and the secure file transfer process used to collect requested documents
- the criteria used to assess the categorization of deficiencies as significant versus non-significant
- the format of the compliance review report and other documents used to communicate compliance review findings to registrants
- the enhancements made to our communication with registrants during compliance reviews, such as holding exit meetings in-person, unless the registrant prefers otherwise (e.g., by conference call)
- the inclusion of specific language, differentiating rule requirements from our use of guidance during compliance reviews, in the cover letter to the compliance review report.

CRR's coordination of compliance review initiatives with other regulators has been addressed by enhancing the existing process in place with the CSA and communicating this to various industry stakeholders through our advisory committees and other standing committee meetings.

To address comments on the timely oversight of rules, our usual practice is to, after implementation of a new rule and after allowing our registrants a reasonable amount of time to adopt the requirements, execute compliance reviews through a focused sweep on the topic (for example, as was done for the Client Relationship Model Phase 2). The focused sweeps give us the opportunity to assess how firms are complying with the new requirements. The process is already in place and will continue to be followed as new rules and regulations are created and implemented.

CONCERN 3: RISK ASSESSMENT QUESTIONNAIRE (RAQ)

Responding to and filing the RAQ consumes too much time and resources.

DECISIONS AND RECOMMENDATIONS

#	Description	Start	Target Date	Status	Benefits
R-13	**Review the RAQ to determine if any questions can be removed based on information already received through other OSC filings and revise the RAQ accordingly**	Summer 2019	Summer 2020	Complete	More timely and focused reviews
R-14	**Evaluate the OSC's ability to pre-populate certain fields in the RAQ to reduce the number of times information is required to be submitted**	Summer 2019	Winter 2020 (originally Summer 2020)	Complete	More timely and focused reviews
R-15	**Enhance the existing support tools to assist firms with completing the RAQ, including FAQs and continuing to have staff available to respond to questions**	Summer 2019	Winter 2020 (originally Summer 2020)	Complete	Better and more accessible information
R-16	**Organize and provide a Registrant Outreach session on the RAQ after issuance of a revised Form**	Summer 2019	Winter 2020 (originally Summer 2020)	Complete	Better and more accessible information

Modernizing the RAQ

In order to streamline the RAQ and reduce burden, we removed eight questions from the RAQ.

To further streamline the RAQ, we evaluated our ability to pre-populate certain fields in the RAQ to reduce the number of times information is required to be entered into the form. As a result, responses from a firm's 2018 RAQ submission were carried forward and pre-populated in the firm's 2020 RAQ. Pre-populated responses were only provided to questions that did not change, or did not change materially from the 2018 RAQ.

Enhancements were made to the support tools available, including the FAQs, User Guide and the Help Pages. The tools were readily available to the person completing the RAQ as they were accessible by clicking the corresponding icon located on each page of the RAQ.

Lastly, as in prior years, a Registrant Outreach webinar was held to respond to any questions pertaining to the completion of the RAQ. The Registrant Outreach webinar, "Completing the 2020 Risk Assessment Questionnaire" was available as a resource for registrants' reference. In addition, a team of dedicated staff was made available to respond to questions received throughout the submission period.

CONCERN 4: REGISTRATION OF FINTECH FIRMS

Fintech firms find the initial and ongoing registration requirements confusing and potentially inapplicable to their novel business models or the novel products or services they offer. They also do not understand how OSC staff assess compliance with any terms and conditions imposed on the registration.

DECISIONS AND RECOMMENDATIONS

#	Description	Start	Target Date	Status	Benefits
R-17	**Through OSC LaunchPad, evaluate what additional tools may be developed to assist fintech firms**	Summer 2019	Summer 2020	In progress - on target	More tailored and flexible regulation

Assisting fintech firms

OSC LaunchPad has undertaken several initiatives to better understand and support novel fintech businesses navigate securities regulation. In addition to directly assisting businesses through our direct support process, other efforts have included:

- revamping our website to include additional guidance for firms and how registration and securities regulation applies to their business
- joining the GFIN and actively participating in the GFIN cross-border pilot tests (for fintechs that have engaged LaunchPad and tested through our Sandbox, GFIN is an available avenue to test their innovation across borders)
- entering into additional international co-operation agreements with other regulators to share information and facilitate the expansion of businesses in those jurisdictions.

CONCERN 5: CLIENT RELATIONSHIP MANAGERS (CRMs)

The current experience requirements applicable to Advising and Associate Advising Representatives are outdated and restrict registration of otherwise qualified individuals to act as CRMs in large portfolio management firms.

DECISIONS AND RECOMMENDATIONS

#	Description	Start	Target Date	Status	Benefits
R-18	**Develop a process to permit the registration of Advising and Associate Advising Representatives as CRMs through terms and conditions***	Summer 2019	Summer 2020	Complete	More tailored and flexible regulation

Registration of CRMs

Many PMs have adopted an operating model that divides responsibilities for registerable advising activities between:

- specialized client relationship managers (**CRMs**) who work directly with clients and develop the overall framework for their investments, and
- teams that select securities for clients' accounts (**stock-picking**).

To keep pace with this development, the CSA has updated its expectations for the assessment of Relevant Investment Management Experience (**RIME**) for advising representatives (**ARs**) wishing to act as CRMs. If an applicant for registration as an AR will be exclusively specializing as a CRM and will not select securities for clients, they will have to demonstrate CRM-related experience but we will not require them to demonstrate stock-picking experience when we assess whether they have sufficient RIME to satisfy the proficiency requirements for an AR.

Firms seeking CRM AR registration on behalf of individual applicants should include a statement in the "Current Employment" entry for the sponsoring firm, stating "Individual is seeking registration as CRM AR". This will facilitate efficiency in the review of the application.

We will impose standard terms and conditions on CRM specialist ARs in order to make clear the scope of registerable activities that they can undertake and ensure a level playing field. The terms and conditions:

- prohibit the CRM specialist AR from stock-picking for clients
- specify that they can determine asset allocations, select model portfolios etc. for clients
- specify that they can undertake certain activities involving individual securities under the supervision of an unrestricted AR
- specify that they can approve the CRM advice of associate advising representatives (**AARs**)
- impose title and RDI requirements designed to avoid client confusion.

For additional information refer to the OSC website.

We note that stock-picking experience is not part of the RIME required to become registered as an AAR. It is required if an AAR wishes to become an AR, unless their intention is to specialize as a CRM AR.

CONCERN 6: CHIEF COMPLIANCE OFFICERS (CCOs)

The registration requirements relating to CCOs do not sufficiently take into account different business models:

- The current requirement for one registered CCO per legal entity may not support the operating needs of businesses with multiple divisions.
- Current business experience requirements may limit the pool of qualified individuals who can register as a CCO for fintech firms.
- Certain business models may not transact often enough to support a full-time CCO.

DECISIONS AND RECOMMENDATIONS

#	Description	Start	Target Date	Status	Benefits
R-19	**Facilitate multiple CCOs to be registered for a single legal entity where a business need is demonstrated***	Fall 2019	Fall 2021	Complete	More tailored and flexible regulation
R-20	**For fintech firms in Ontario, accept broader business experience when assessing the sufficiency of a CCO applicant's qualifications***	Fall 2019	Ongoing	Complete	More tailored and flexible regulation
R-21	**Permit Ontario registrants in the appropriate circumstances to have a CCO who also is CCO for other unaffiliated registrants***	Fall 2019	Ongoing	Complete	More tailored and flexible regulation

Guidance on registration requirements for CCOs

On July 2, 2020, the CSA published CSA Staff Notice 31-358 *Guidance on Registration Requirements for Chief Compliance Officers and Request for Comments* (**CSA Staff Notice 31-358**) concerning regulatory expectations regarding the registration requirements of CCOs under NI 31-103 for certain types of CCO arrangements.

Our aim was to make it easier for registrants to implement the CCO responsibilities in a manner that aligns with their operational needs and business models and does not detract from investor protection.

In CSA Staff Notice 31-358, guidance was provided on the following CCO arrangements:

(i) an individual applying to be the CCO for more than one firm (the **shared CCO model**),
(ii) a firm applying to have multiple CCOs, each responsible for one or more business lines and/or different registration categories within the firm (the **multiple CCO model**), and
(iii) an individual applying to be the CCO of a non-traditional or specialized firm, such as a fintech firm, where industry-specific experience may be considered as relevant experience for the purposes of assessing the individual's proficiency (the **specialized CCO model**).

CONCERN 6: CHIEF COMPLIANCE OFFICERS (cont'd)

Shared CCO model

Under this model, an individual can act as the CCO for more than one firm. Currently, some affiliated firms have been approved to use a shared CCO model. The notice states that staff is open to the possibility of unaffiliated firms using a shared CCO model as well.

This model does not contemplate a registered firm outsourcing its CCO to a third-party service provider. An individual acting as CCO of a registered firm must be an officer, partner or sole proprietor of the registered firm.

An individual acting as CCO for more than one firm must have the same authority that a traditional CCO would have to establish and maintain policies and procedures for the firm, including the authority to monitor and assess compliance by the firm and individuals acting on its behalf. At the firm's discretion, the CCO may also have authority to take action to resolve compliance issues.

Where an individual wants to act as the CCO for more than one firm, staff will review their application to determine if it is appropriate that they act as CCO for more than one registered firm.

Multiple CCO model

Under this model, a firm can designate multiple CCOs with each CCO responsible for one or more business lines and/or different registration categories within the firm. For example, a firm that is registered as an IFM, PM and EMD may apply to have three CCOs, one for each of the firm's three registration categories.

Any firm that believes the multiple CCO model is more appropriate for their compliance system is encouraged to apply for this exemptive relief.

In considering the appropriateness of granting the requested relief, staff may ask a variety of questions. Firms seeking this relief must demonstrate that the CCOs each have their own separate responsibilities and that no CCO delegates or transfers to another their responsibilities under section 5.2 of NI 31-103.

Specialized CCO model

Under this model, where an individual applies to be the CCO of a non-traditional or specialized firm, staff may consider the individual's business experience when assessing proficiency and experience requirements.

The experience demonstrated by the individual being considered for the CCO position should be relevant for both the category of registration and the business of the firm sponsoring the individual. Other business experience may be considered relevant for the purposes of assessing whether the individual meets the experience requirements set out for a CCO in NI 31-103 when a firm applying for registration demonstrates that it is engaged in a non-traditional or specialized business.

Request for comments

CSA Staff Notice 31-358 invites registrants to provide comments on how each of these models addresses their needs and how they may use these models in their operations. Comments should be sent to 31-358@acvm-csa.ca. The comment period ends on September 30, 2020.

CONCERN 7: DUAL REQUIREMENTS AND OVERSIGHT FOR SRO MEMBERS

In some circumstances, registrants are subject to dual requirements and oversight under Ontario securities law and SRO member rules that are cumbersome and duplicative.

DECISIONS AND RECOMMENDATIONS

#	Description	Start	Target Date	Status	Benefits
R-22	**Develop expedited rule amendments to OSC Rule 13-502 to allow additional senior officers of a registrant firm to certify the annual participation fee calculation form**	Complete	Complete	Complete	Reduced red tape; Harmonization
R-23	**With the MFDA, clarify and streamline the application process to reactivate registration for MFDA member firms and their dealing representatives after conclusion of MFDA disciplinary proceedings**	Fall 2019	Fall 2020	Complete	Better and more accessible information
R-24	**Evaluate options to reduce duplication in the registration and membership processes for IIROC member firms**	January - March 2020	Winter 2021 (originally Spring 2021)	Delayed	Reduced red tape; Harmonization
R-25	**Evaluate options to reduce duplication in the review of notices required by sections 11.9 and 11.10 of NI 31-103 for IIROC member firms**	January - March 2020	Winter 2021 (originally Spring 2021)	Delayed	Reduced red tape; Harmonization

Additional senior officers can certify participation fee calculation form

Currently under OSC Rule 13-502 *Fees* and OSC Rule 13-503 (*Commodity Futures Act*) *Fees* (the **Fee Rules**), firms registered under the Ontario Securities Act, the Commodity Futures Act, and unregistered capital markets participants are required, each year, to pay a participation fee to the Commission (by no later than December 31).

The fee amount is calculated by the firm in accordance with a Fee Form[6] (the **Fee Form**) that must be certified for completeness and accuracy, and submitted to the Commission by no later than December 1 each year.

In prior years, the Fee Form was required to be certified only by the CCO of the firm (or, in the case of an unregistered capital markets participant without a CCO, an individual acting in a similar capacity).

[6] *Form 13-502F4 Capital Markets Participation Fee Calculation, under OSC Rule 13-502; and Form 13-502F1 Capital Markets Participation Fee Calculation, under OSC Rule 13-503.*

Additional senior officers can certify participation fee calculation form (cont'd)

On October 18, 2019, amendments to the Fee Rules came into force. The amendments changed the Fee Rules to allow additional individuals identified in the amendments to certify in place of the CCO. The changes mean that a director or specified officer (such as the chief executive officer, chief financial officer, or chief operating officer (or an individual acting in a similar capacity) who might typically be responsible at the firm for preparing the fee calculation would be allowed to submit the Fee Form directly to the Commission, without requiring additional review by the CCO[7] to certify the Fee Form. This flexibility will result in time savings for the submitting firm. Firms could have exercised this flexibility for the December 1, 2019 capital markets participation fee calculation deadline.

Firms that wish to continue their existing processes for Fee Form certification by their CCO[7] will still be permitted to do so.

Reactivation of registration by individuals following MFDA discipline

On April 15, 2020, we issued an e-mail blast to UDPs, CCOs and those on the Registrant Outreach subscriber list that CRR staff formalized its process for reviewing applications to reactivate registration by individuals who are coming off a suspension by the MFDA as outlined in the Regulatory Burden Report. Generally, when staff receives applications such as these, provided certain criteria are met, staff will apply an expedited review process that does not re-examine the facts giving rise to the MFDA's disciplinary action, and that seeks to have the application processed within normal service standards for dealing representative applications being five business days of it being received by staff.

For further information, please see procedural guidance **here**.

[7] *Or, in the case of an unregistered capital markets participant without a CCO, an individual acting in a similar capacity.*

CONCERN 8: OVERLAPPING DOMESTIC AND INTERNATIONAL REQUIREMENTS FOR REGISTRANTS

Registrants are subject to a broad spectrum of Canadian and international regulatory obligations, that can result in duplicative regulation or create inefficiencies and unnecessary costs:

- Registrants and exempt international firms have UN Suppression of Terrorism and Canadian Sanctions reporting obligations with FINTRAC, CSIS and the RCMP as well as the OSC.
- The *Commodity Futures Act* (CFA) is outdated and not harmonized with Ontario securities law.

DECISIONS AND RECOMMENDATIONS

#	Description	Start	Target Date	Status	Benefits
R-26	**With appropriate departments of the Federal Government (Canada), eliminate the requirement for registrants and exempt international firms to submit duplicative information to securities regulators**	Spring 2018	To be determined	In progress	Reduced red tape
R-27	**Develop a rule that exempts international dealers, advisers and sub-advisers from registration under the CFA**	Fall 2019	Winter 2020 (originally Fall 2020)	Delayed	Reduced red tape; More tailored and flexible regulation

Eliminating the requirement to submit duplicative information

After submitting a letter to the Department of Finance (Canada) requesting that registered firms and exempt international firms be removed from the reporting obligations under UN Suppression of Terrorism and Canadian Sanctions legislation (monthly reporting), amendments resulted in the elimination of five of the seven requirements. To build on these efforts, in March 2020, the OSC submitted letters to four departments of the Federal Government (Canada) requesting that monthly reporting to securities regulators be removed and we have received written acknowledgment of these requests. We will continue to advocate with the appropriate departments of the Federal Government for the requisite amendments.

CONCERN 9: GENERAL REGISTRANT OBLIGATIONS

Several ongoing registrant obligations in NI 31-103 and related regulatory processes should be evaluated for opportunities to reduce burden, such as:

- The current regulatory requirements and related process to file and execute the notices under sections 11.9 and 11.10 of NI 31-103, which are onerous, time consuming and inefficient.
- The process followed to lift close supervision terms and conditions once the terms and conditions have been satisfied, which lacks clarity.

DECISIONS AND RECOMMENDATIONS

#	Description	Start	Target Date	Status	Benefits
R-28	**Evaluate changes to the percentage thresholds that trigger an 11.9 or 11.10 notice under NI 31-103***	January - March 2020	Spring 2022	In progress - on target	Reduced red tape
R-29	**Improve processing of 11.9 and 11.10 notices under NI 31-103**	January - March 2020	Spring 2021	In progress - on target	Reduced red tape
R-30	**Review and enhance the current process followed to remove close supervision terms and conditions**	Summer 2019	Winter 2020	Complete	Reduced red tape

Terms and conditions removal process

On April 15, 2020, we issued an e-mail blast to UDPs, CCOs and those on the Registrant Outreach subscriber list providing procedural guidance on the process for requesting the removal of close or strict supervision terms and conditions previously imposed on an individual's registration. The publication aimed at providing transparency and clarity around the process.

The published process sets out a five business day service standard for CRR staff to acknowledge receipt of the removal request. Firms are asked to submit requests for removal of terms and conditions through the OSC online portal.

The general evaluation criteria that, if attached to the initial submission, helps expedite the review, include:

- the firm's assessment of the registrant's compliance over the supervision period
- the volume of trades, including the number of leveraged trades, made by the registrant during the supervision period and the number of clients involved in the trading
- the firm's report on issues or client complaints identified and addressed over the course of supervision
- in cases where supervision terms and conditions were imposed as a result of solvency concerns:
  - a written explanation from the registrant on how the solvency matter arose, how it was discharged or satisfied, how the registrant's financial circumstances have improved and steps taken to ensure that issues won't reoccur
  - documents demonstrating that the solvency matter has been discharged
  - evidence of the registrant's current solvency status, such as a current credit report.

3.2 Client Focused Reforms

On October 3, 2019, the CSA published significant amendments to NI 31-103 and the accompanying companion policy. These amendments are known as the Client Focused Reforms (**CFRs**) and have been adopted in all CSA jurisdictions. The CFRs are relevant to all categories of registered dealer and registered adviser, with some application to IFMs.

The CFRs demonstrate a shared commitment by the CSA as well as the SROs, to changes that will require registrants to promote the best interests of clients and put clients' interests first. The CFRs are based on the fundamental concept that, in the relationship between registrants and their clients, the clients' interests must come first.

There are two fundamental changes:

- material conflicts of interest, including those resulting from compensation arrangements and incentive practices, will have to be addressed in the best interest of the client, and
- when making investment suitability determinations, registrants will have to put the client's interest first.

The rest of the CFRs support and build on that core. We have introduced among other things:

- steps to improve the KYC and KYP information gathering processes that underpin registrants' services; this includes explicitly requiring registrants to consider certain factors, including costs and their impact, and to make these determinations on a portfolio basis, and
- additional amendments to conflicts of interest that include stronger prohibitions on misleading marketing and advertising.

We also made corresponding changes to requirements and guidance concerning the training of representatives and maintenance of policies, procedures, controls and documentation to support the important role of registrants' internal compliance systems.

Firms will have to review their policies, procedures and controls and implement any changes necessary to reflect the requirements in the CFRs, including changes to their training programs for staff. In particular, we expect firms will need to implement a more rigorous process for testing for and addressing material conflicts of interest that arise at both firm and individual registrant levels to make sure that material conflicts of interest are being addressed in the best interests of their clients. We also expect firms will establish a framework to ensure that clients' interests are put first when making suitability determinations.

Firms may also have to make operational changes in the areas of KYC and KYP to support the enhanced suitability determination requirements, to ensure that complete and sufficient information is collected about a client, and that products and services made available to clients are assessed, approved and monitored for significant changes.

Operational changes may also be necessary to enable firms to assess the other factors set out in the suitability determination requirement, including:

- the impact of the action on the account, including its concentration and liquidity,
- the actual and potential impact of costs on the client's returns, and
- a reasonable range of alternatives available through the firm at the time the determination is made.

The CFRs Implementation Committee

To support the transition process, the CSA and the SROs have established the CFRs Implementation Committee that will consider operational challenges industry stakeholders are facing and how to respond to them to ensure implementation per the phased transition periods, including in due course communication with industry at large. For further information, please refer to the CFRs Implementation Committee webpage.

Client Focused Reforms (cont'd)

Transition

Some of the CFRs impose new conduct requirements on registrants, while others codify best practices set out in existing CSA and SRO guidance. Therefore, we expect that registrants that already follow best practices will be relatively less affected than others. The same is true for registrants such as PMs that conduct themselves as fiduciaries.

At the time the CSA published the CFRs, we provided for a phased transition period, with the reforms relating to conflicts of interest and the RDI provisions taking effect on December 31, 2020, and the remaining changes taking effect on December 31, 2021.

The CSA recognizes the significant work many registrants need to undertake to implement the CFRs. We also recognize that the effects of the COVID-19 pandemic will include disruptions to registrants' access to office facilities, personnel and other key resources, presenting them with serious challenges to their ability to implement the conflicts of interest CFRs by December 31, 2020. Under these circumstances, the CSA has decided to grant **relief** to postpone the effective date by which registrants will have to comply with the conflicts of interest CFRs by six months to June 30, 2021.

Since announcing the reforms last year, the CSA has been working with industry stakeholders through its CFRs Implementation Committee. Through these discussions, industry stakeholders have informed the CSA of operational challenges associated with changes that registrants will be required to make to their RDI pursuant to the CFRs. Accordingly, the CSA has decided to also grant **relief** to extend the time which registrants will have to comply with the RDI CFRs. The implementation of the RDI CFRs will be postponed until December 31, 2021, so that they will come into effect at the same time as the remaining reforms under the CFRs.

We note that when the conflicts of interest CFRs come into effect on June 30, 2021, registrants will be required to disclose material conflicts of interest to clients before opening an account or in a timely manner after they are identified. Registrants may provide this disclosure separately from any other disclosure using stand-alone documents in any form, be it electronic or paper, that meet the plain language requirements in the conflicts of interest CFRs.

All remaining CFRs will take effect on December 31, 2021, consistent with the notice published on October 3, 2019. The SROs will harmonize their implementation timelines for conforming changes to their member rules, policies and guidance with the timeline adopted by the CSA.

All registrants will have to comply with the CFRs after the expiration of the transition periods. No grandfathering provisions have been adopted by the CSA.

Next steps

The CSA is committed to ensuring these reforms are effective. Compliance review programs and processes in the CSA jurisdictions will reflect the new requirements for registrants as soon as the CFRs come into effect. Staff will test for compliance with these new requirements by the registrants and identify where processes need improvement. As with all registrant conduct requirements, the compliance review process will be supported by the appropriate actions along the compliance-enforcement continuum.

The CSA is working closely with the SROs to ensure that the CFRs are incorporated into SRO member rules and guidance, as well as in SRO compliance review programs and processes.

3.3 Crowdfunding

On February 27, 2020, the CSA published for comment a proposed national crowdfunding rule, **Proposed National Instrument 45-110 *Start-up Crowdfunding Registration and Prospectus Exemptions*** (Proposed **NI 45-110**). The original 90-day comment period was set to expire on May 27, 2020 but was extended 45 days to July 13, 2020 in light of the COVID-19 pandemic.

Proposed NI 45-110 would, if adopted, introduce a single, harmonized set of rules for crowdfunding across Canada and would increase the thresholds for capital-raising and investing over the existing thresholds in Multilateral Instrument 45-108 *Crowdfunding* (**MI 45-108**) and certain blanket orders in other jurisdictions.

Funding portals that are registered as IDs or EMDs in Ontario may also benefit from Proposed NI 45-110. Currently, 22 funding portals are registered under the EMD or restricted dealer categories in Canada. Of these, 15 funding portals are registered as EMDs in Ontario and two are registered as restricted dealers. These funding portals generally facilitate offerings made under the AI exemption (in section 73.3 of the Act and section 2.3 of NI 45-106) or the OM exemption (in section 2.9 of NI 45-106). CRR staff are also in discussions with a number of funding portals that are considering offering under the MI 45-108 regime.

CRR staff will consider the comments and perspective of Ontario registered dealers, including restricted dealers and dealers considering offering under the MI 45-108 regime, as part of our broader consideration of comments on Proposed NI 45-110.

3.4 Syndicated mortgages

On August 6, 2020, the CSA published **final amendments** to NI 45-106, NI 31-103 and the accompanying companion policies that substantially harmonize the regulatory framework for syndicated mortgages in Canada. Subject to receipt of necessary Ministerial approvals, these amendments will:

- remove the prospectus and registration exemptions that currently apply to certain syndicated mortgages in certain jurisdictions to substantially harmonize the regulatory framework for distributions of syndicated mortgages in Canada
- enhance investor disclosure through revisions to the OM exemption for offerings of syndicated mortgages under that exemption
- exclude syndicated mortgages from the private issuer exemption, ensuring they are offered under an exemption more appropriate for this type of security.

In conjunction with the CSA final amendments, the OSC published, for a 45-day comment period, **proposed local amendments** to its prospectus and registration rule, OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions* (**OSC Rule 45-501**), regarding syndicated mortgages. The proposed local amendments clarify the definition of qualified syndicated mortgage and include prospectus and dealer registration exemptions for distributions of syndicated mortgages to a permitted client by a person or company licensed under the *Mortgage Brokerages, Lenders and Administrators Act, 200*6.

The effective date of the CSA final amendments and the proposed local amendments is March 1, 2021. The amendments will result in certain firms requiring registration. Firms distributing syndicated mortgages are encouraged to e-mail **registrations@osc.gov.on.ca** with any registration-related questions. CRR staff will also be engaging in a series of outreach initiatives to help market participants during the transfer of regulatory oversight of certain syndicated mortgages to the OSC.

Part 4

ACTING ON REGISTRANT MISCONDUCT

4.1 Annual highlights and trends

4.2 Conduct concerns during the registration process

4.3 Guidance when engaging compliance consultants

4.4 Director’s decisions and settlements

4.1 Annual highlights and trends

The Registrant Conduct Team is responsible for investigating conduct issues involving individual and firm registrants, recommending regulatory action where appropriate, and conducting Opportunity to be Heard (**OTBH**) proceedings before the Director.

Before a Director of the OSC imposes terms and conditions on registration, refuses an application for registration, or suspends a registration, an applicant or registrant has the right under section 31 of the Act to request an OTBH before the Director. A registrant or applicant may also request a hearing and review by the Commission of a Director's decision under section 8 of the Act.

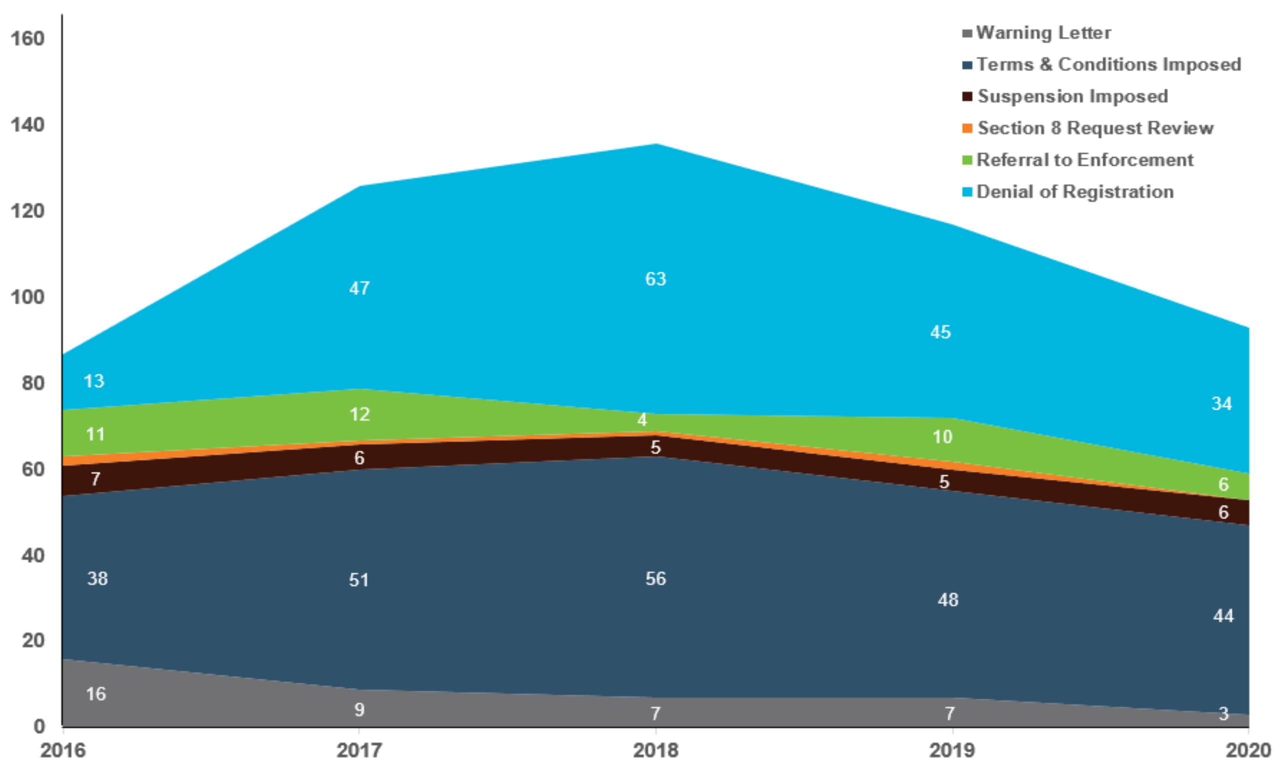
Identifying and acting on registrant misconduct

Potential registrant misconduct is identified through compliance reviews, applications for registration, disclosures on NRD, and by other means such as complaints, inquiries or tips. CRR staff also identifies registrant misconduct through background and solvency checks on individual registrants or individual applicants, responses to the RAQ, and referrals from SROs and other organizations.

Acting on registrant misconduct matters is central to effective compliance oversight. It also promotes confidence in Ontario's capital markets, both among the investing public and among the registrants who make best efforts to comply with Ontario securities law. Registrants must remain alert and monitor for potential misconduct by enacting and implementing appropriate policies and procedures, and ensuring that controls are in place to detect and address instances of misconduct.

The following chart summarizes the regulatory actions taken by CRR staff against firms or individuals engaged in registrant misconduct or serious non-compliance with Ontario securities law.

CRR Regulatory Actions FYE 2016 - 2020



The chart illustrates that CRR makes use of regulatory actions along the compliance-enforcement continuum, the action being commensurate with the magnitude of misconduct or non-compliance in a given situation. Terms and conditions, denials of registration and suspensions of registration are all tools available to CRR staff to address serious non-compliance.

As the chart demonstrates, while some categories of CRR regulatory actions have remained relatively constant, denials of registration have declined in the two most recent fiscal years. However, this does not reflect any reduced vigilance in CRR's exercise of its gatekeeper responsibilities when reviewing registration applications. We believe that the publication of **CSA Staff Notice 33-320 *The Requirement for True and Complete Applications for Registration*** has provided valuable guidance to registered firms performing due diligence on their individual applicants, and has been effective in deterring some non-disclosure by applicants for registration. In addition, Staff has been conducting early-stage conference calls with firms' CCOs (or their delegates) where material non-disclosure or other concerns have been identified, which has led to firms reviewing and, in 17 cases this year, withdrawing a number of applications that might otherwise have resulted in denial of registration. Notwithstanding the success of these measures, CRR continues to identify material non-disclosure of regulatory, criminal and/or financial information in registration applications, and this concern still comprises a substantial number of the cases reviewed by CRR where registration is ultimately denied.

Referrals are made to the Enforcement Branch in cases where the appropriate tool is a power that can only be exercised by the Commission. In fiscal 2019-2020 there were six referrals to the Enforcement Branch.

One example of a previous referral made by CRR that was concluded in fiscal 2019-2020 was in the matter of **Caldwell Investment Management Ltd.** (**CIM**) in which the Commission issued an order on July 19, 2019 approving a settlement agreement with this firm. In the settlement agreement, CIM admitted that over a period of four years, during which time it executed equity and bond trades for its clients using the firm's related ID, the firm had inadequate policies and procedures in place to ensure that it sought best execution of these trades. CIM agreed to pay a $1.8 million administrative penalty, $250,000 in costs, and to have terms and conditions imposed on its registration requiring that it retain a compliance consultant to work with the firm in relation to its best execution obligation.

When approving the settlement agreement, Commissioner Moseley emphasized that best execution is an important obligation that protects investors and fosters confidence in our capital markets. He added that firms must give this obligation the necessary attention and ensure that they prefer their clients' interests over their own interests. Commissioner Moseley made clear that not meeting this obligation is viewed as a serious breach of trust and a serious violation of Ontario securities law.[8]

[8] *Caldwell Investment Management Ltd. (Re)*, 2019 ONSEC 25, para. 5.

4.2 Conduct concerns during the registration process

When the Registration Team receives an application for registration by an individual or a firm, we endeavor to complete our review of it within our usual service standards. If, however, there appears to be issues with an application that could bear on the applicant's suitability for registration, such as past misconduct or untrue or misleading information given in the application itself, the file may be referred to the Registrant Conduct Team for further investigation, requiring a longer review time.

Each phase in the registration process when applications transition from the Registration Team to the Registrant Conduct Team are illustrated in the process chart below:

REFERRAL

After accepting a referral, the Manager of the Registrant Conduct Team and a Supervisor of the Registration Team contact the sponsoring firm's CCO to inform them that the application has been referred to the Registrant Conduct Team, and that as a result, the normal service standard will not apply. Where possible, the Manager and Supervisor share their initial regulatory concerns with the CCO.

INVESTIGATION

The Registrant Conduct Team will review the application and will often take investigative steps including collecting and reviewing documents, interviewing third parties who may have relevant information, and interviewing the applicant themselves.

RECOMMENDATION

The Registrant Conduct Team could recommend that: (1) the registration application be granted, (2) the application be granted but terms and conditions be applied to the registration, or (3) the registration be refused. If the Registrant Conduct Team recommends that an application be granted subject to terms and conditions, or that it be refused, the applicant is entitled to an OTBH. In rare occasions, the Registrant Conduct Team may determine that an applicant has engaged in conduct that warrants a referral to the Enforcement Branch, and such a referral is not subject to an OTBH.

OUTCOME

Prior to the commencement of a requested OTBH, the applicant can decline to exercise its OTBH and instead accept the terms and conditions proposed by the Registrant Conduct Team, provided that the applicant's sponsoring firm agrees. In cases where an OTBH is held, the Director will make a decision on the application, and will give written reasons for their decision. If the Director refuses the application, or grants the application subject to terms and conditions, the applicant can ask an OSC panel to review the Director's decision.

4.3 Guidance when engaging compliance consultants

In August 2019, the CSA published **CSA Staff Notice 31-356 *Guidance on Compliance Consultants Engaged by Firms Following a Regulatory Decision*** to provide guidance for registered firms when they are required by a regulatory decision (such as terms and conditions on their registration or a Commission Order) to hire an independent compliance consultant to help remediate the firm's significant compliance deficiencies identified from a compliance review or investigation. The purpose of the notice is to:

- help firms identify, evaluate and engage appropriate consultants to assist them in effectively addressing their compliance deficiencies
- provide transparency on our process and criteria for approving consultants (when required by the regulatory decision)
- outline our expectations for a consultant's engagement, including their role, and the format and content for reporting
- improve the oversight and remediation processes of firms subject to a regulatory decision.

The notice may also be useful for any registered firms that want to voluntarily engage a compliance consultant to help them improve or assess their compliance systems, including guidance on a firm's due diligence for hiring a consultant.

4.4 Director's decisions and settlements

Director's decisions on OTBH proceedings are published in the OSC Bulletin and on the OSC website at **Director's Decisions**, where they are presented by topic and by year. Director's decisions can be used as an important resource for registrants, as they highlight matters of concern to the OSC, as well as the regulatory action that may be taken as a result of misconduct and non-compliance. The publication of Director's decisions also ensures that CRR's response to serious misconduct is visible to market participants and investors.

Eight Director's decisions were published in the fiscal year 2019-2020 on registrant conduct issues. Two decisions followed contested OTBHs, three decisions were issued in cases where the registrant did not request an OTBH, and three decisions approved settlement agreements between staff and the registrant. A settlement agreement typically contains an agreed statement of facts in addition to a joint recommendation to the Director. Therefore, proceeding by way of a settlement agreement with staff allows the registrant to participate in setting out the factual narrative that becomes the basis for the Director's decision.

In three of the decisions from fiscal 2019-2020, staff took regulatory action against a registrant based in another province to reciprocate substantially identical action taken by the registrant's principal regulator. This cooperative approach with our CSA partners reflects staff's view that a registrant's compliance with its local securities laws should generally inform our assessment of whether it is suitable for ongoing registration, and whether its registration would be otherwise objectionable.

A summary of all Director's decisions and settlements by topic for fiscal 2019-2020 follows.

RWS Capital Services Inc. (Mar 10, 2020)

Topics: Late delivery of financial statements; Financial condition - Firm (including requirement to report capital deficiencies)

The firm was an EMD. Despite repeated requests by staff for the firm's annual audited financial statements and Form 31-103F1 *Calculation of Excess Working Capital* (**Form 31-103F1**) for the years ending December 31, 2017 and December 31, 2018, the firm did not deliver those materials until December 9, 2019. The documents showed that although the firm appeared to have sufficient working capital, they incorrectly included an amount among the firm's current assets which should have been excluded. When the firm's working capital was recalculated without this amount, it was less than zero.

In a settlement agreement approved by the Director, the firm admitted that: (i) it failed to deliver its annual audited financial statements and Form 31-103F1 within 90 days of the end of the financial year, contrary to section 12.12 of NI 31-103, (ii) it failed to notify staff that its working capital was less than zero, contrary to subsection 12.1(1) of NI 31-103, (iii) its working capital was less than zero for two consecutive days, contrary to subsection 12.1(2) of NI 31-103, and (iv) because its working capital was less than zero, it did not have the requisite solvency for ongoing registration. The firm agreed to a suspension of its registration.

Arie Papernick (February 24, 2020)

Topics: Commissions and fees (including churning); Misleading staff or sponsor firm

Mr. Papernick was an investment dealing representative. From late 2015 until February 2017, Mr. Papernick acted as dealing representative on several corporate finance transactions in which his firm acted as a broker in placements by issuers in the resource sector, and where investment funds managed by another firm (**Firm M**) invested in these issuers. In some cases, prospectuses of funds managed by Firm M restricted Firm M or any of its affiliates or associates from accepting commissions or finder's fees. Nevertheless, in those cases, Mr. Papernick worked with an individual formerly registered with Firm M to pay 80% of the revenue to Firm M, without disclosing these fees to the public. Instead, Mr. Papernick arranged with this individual to create "strategic advisory" invoices that Mr. Papernick's firm paid in order to capture this improper fee revenue.

Eventually, Firm M and Mr. Papernick's firm stopped facilitating payments of these misleading "strategic advisory" invoices. When interviewed by staff, Mr. Papernick denied knowing about the restriction set out in prospectuses of funds managed by Firm M, but staff later reviewed e-mails that showed that Mr. Papernick was aware of the restriction and was assisting in arranging these improper payments. Mr. Papernick settled with staff on the basis of:

- a revocation of his registration
- a prohibition on reapplying for registration until two years have elapsed
- a requirement to re-take the Conduct and Practices Handbook Course and the Applied Investment Dealer Compliance Course
- an agreement to cooperate with securities regulatory authorities and SROs as they further investigate this matter.

Jonathan Covello (February 7, 2020)

Topic: Financial condition - Individual

Mr. Covello, a registered mutual fund dealing representative, was the subject of a staff investigation. In February 2019, staff received information suggesting that Mr. Covello may have outstanding financial obligations which could impugn his suitability for registration. While staff was investigating the matter, Mr. Covello's sponsoring firm reported that he was the subject of a Requirement to Pay issued by the Canada Revenue Agency (**CRA**), in an amount over $10,000. Staff's investigation confirmed that Mr. Covello did in fact have a number of significant financial obligations, all in excess of $10,000, not all of which had been disclosed in accordance with Ontario securities law. These debts related to two awards issued against him by the Landlord and Tenant Board, and two default judgments. Mr. Covello consented to terms and conditions being imposed on his registration, which required him to complete the Ethics and Professional Conduct Course, and to be strictly supervised.

Merit Valor Capital Asset Management Corporation (January 27, 2020)

Topics: Late delivery of financial statements; Financial condition - Firm (including requirement to report capital deficiencies)

This EMD failed to deliver annual audited financial statements and Form 31-103F1 for its year ended September 30, 2018 within the required timeframe. Staff made repeated requests to the firm to establish a date when the missing annual audited financial statements and Form 31-103F1 would be filed, but the firm failed to honour any of the response dates to which it had committed. As a result, staff recommended that the firm's registration be suspended, and the firm requested an OTBH to dispute staff's recommendation.

The Director held that the requirements to file annual audited financial statements and the Form 31-103F1 are serious regulatory obligations, and that by failing to meet those obligations, the firm did not comply with Ontario securities law. The Director also held that the firm's submission that it was not able to get the appropriate response from its accountant, or find a new accountant to complete the annual audited financial statements on account of the firm's small size, did not rise to the level of an extremely rare circumstance warranting additional time to meet its regulatory obligations. Therefore, the Director suspended the firm's registration, stating that should the firm reapply for registration it must remedy its non-compliance and have the 2018 and 2019 annual audited financial statements and corresponding Form 31-103F1s available for staff's review, and that the firm should expect that terms and conditions to monitor the firm's financial situation will be recommended.

Ontario Wealth Management Corporation (December 20, 2019)

Topics: Compliance system and culture of compliance; KYC, KYP and suitability; Reliance on prospectus exemptions

This EMD sought to surrender its registration in order to resolve an outstanding OTBH. The firm had voluntarily ceased operations due to staff's ongoing concerns respecting the firm's compliance with certain of its registrant obligations, including KYC, suitability, and reliance on prospectus exemptions. While the firm did not agree with some of staff's concerns, the firm recognized that it was in the interest of its clients that it no longer operate as an EMD. Therefore, the firm entered into an agreement with staff to resolve the outstanding OTBH where staff and the firm agreed that the commencement of the surrender process would be an appropriate way to address staff's compliance concerns. This agreement was subsequently approved by the Director.

Paul Wenden (October 4, 2019)

Topic: Compliance with securities laws of foreign jurisdictions

Mr. Wenden is a mutual fund dealing representative based in Alberta. The Alberta Securities Commission, which is his principal regulator, imposed strict supervision terms and conditions on Mr. Wenden's registration after he became the subject of a significant Requirement to Pay issued by the CRA. Staff recommended to the Director that the same terms and conditions be imposed in Ontario, and Mr. Wenden consented.

Wells Asset Management Inc. (May 3, 2019)

Topic: Compliance with securities laws of foreign jurisdictions

The Alberta Securities Commission is the principal regulator of this IFM, PM and EMD. Due to serious compliance issues with the firm, the Alberta Securities Commission entered into an agreement with the firm and its principal, Dale Wells, which resulted in both registrations being suspended as of January 30, 2019.

Subsequently, staff recommended to the Director that the firm and Mr. Wells should also be suspended in Ontario due to the regulatory action against them by their principal regulator. Mr. Wells and the firm requested an OTBH to contest staff's recommendation. The Director suspended both the firm and Mr. Wells, finding that it was otherwise objectionable for them to be registered in Ontario when they had been suspended in their principal jurisdiction.

Sterling Bridge Mortgage Corporation (April 24, 2019)

Topic: Compliance with securities laws of foreign jurisdictions

The Alberta Securities Commission, the principal regulator of this EMD, suspended the firm's registration following a compliance review.

Subsequently, staff recommended to the Director that the firm should be suspended in Ontario due to the regulatory action against it by its principal regulator. The firm did not oppose staff's recommendation and the Director suspended the firm's registration, stating that it would be inconsistent with the OSC's mandate and objectionable if the firm remained registered in Ontario after being suspended in its principal jurisdiction and all other Canadian jurisdictions.

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ONTARIO SECURITIES COMMISSION

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1.1.2 CSA Notice of Amendments to National Instrument 81-105 Mutual Fund Sales Practices and Related Consequential Amendments Prohibition of Mutual Fund Trailing Commissions Where No Suitability Determination Was Required

CSA Notice of Amendments to
National Instrument 81-105 *Mutual Fund Sales Practices*

and

Related Consequential Amendments

Prohibition of Mutual Fund Trailing Commissions
Where No Suitability Determination Was Required

September 17, 2020

Introduction

The Canadian Securities Administrators (the **CSA** or **we**) are adopting amendments to National Instrument 81-105 *Mutual Fund Sales Practices* (**NI 81-105**), changes to Companion Policy 81-105CP *Mutual Fund Sales Practices* (**81-105CP**) and related consequential amendments to National Instrument 41-101 *General Prospectus Requirements* (**NI 41-101**) and National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (**NI 81-101**) (collectively, the **Amendments**).

The Amendments

- prohibit the payment of trailing commissions by members of the organization of publicly-offered mutual funds (**fund organizations**) to participating dealers who were not required to make a suitability determination in connection with a client's purchase and ongoing ownership of prospectus qualified mutual fund securities, and

- prohibit the solicitation or acceptance of trailing commissions by participating dealers from fund organizations, in connection with securities of the mutual fund held in an account of a client of the participating dealer if the participating dealer was not required to make a suitability determination in respect of the client in connection with those securities.

The Amendments will effectively prohibit the payment of mutual fund trailing commissions to dealers who are not subject to the obligation to make a suitability determination under section 13.3 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) or under the corresponding rules and policies of the Investment Industry Regulatory Organization of Canada (**IIROC**) and the Mutual Fund Dealers Association of Canada (**MFDA**) (together, the **SROs**). Such dealers would include, among others, order-execution only (**OEO**) dealers and dealers acting on behalf of a "permitted client"[1] that has waived the suitability requirements.

In some jurisdictions, ministerial approvals are required for the implementation of the Amendments. Provided all ministerial approvals are obtained, the Amendments to NI 81-101 and NI 41-101, which provide certain exemptions from the delivery requirements for fund facts documents (**Fund Facts**) and ETF facts documents (**ETF Facts**), respectively, for all switches from a trailing commission paying series or class of a mutual fund to a no trailing commission series or class of the same mutual fund, will come into force on December 31, 2020, and the Amendments to NI 81-105 will come into force on June 1, 2022.[2]

The text of the Amendments is contained in Annexes B through E of this notice and will also be available on websites of the following jurisdictions:

www.bcsc.bc.ca
www.asc.ca
www.fcaa.gov.sk.ca
www.mbsecurities.ca
www.osc.gov.on.ca

[1] "Permitted client" as defined in section 1.1 of NI 31-103.
[2] The Amendments to NI 81-105 will take effect on June 1, 2022 with the exception of the "suitability determination" definition, which will take effect on December 31, 2020. Please see the explanation provided under "Effective Date".

www.lautorite.qc.ca
www.fcnb.ca
nssc.novascotia.ca

Substance and Purpose

The Amendments, together with the enhanced conflict of interest mitigation framework for dealers and representatives under detailed reforms to NI 31-103 (the **Client Focused Reforms**) published on October 3, 2019, comprise the CSA's policy response to the investor protection and market efficiency issues we have identified with the payment and acceptance of trailing commissions where no suitability determination was required. The Amendments restrict the compensation that fund organizations may pay to participating dealers who were not required to make a suitability determination in connection with a client's purchase and ongoing ownership of prospectus qualified mutual fund securities.

Background

The Amendments were developed over the course of an extensive consultation process.

CSA Consultation Paper 81-408

On January 10, 2017, the CSA published for comment CSA Consultation Paper 81-408 *Consultation on the Option of Discontinuing Embedded Commissions* (the **Consultation Paper**), which identified and discussed key investor protection and market efficiency issues arising from mutual fund embedded commissions.[3] The Consultation Paper sought specific feedback, including evidence-based and data-driven analysis and perspectives, on the option of discontinuing embedded commissions as a regulatory response to the identified issues and on the potential impacts to both market participants and investors of such a change, to enable the CSA to make an informed policy decision on whether to pursue this option or consider alternative policy changes.

CSA Staff Notice 81-330

On June 21, 2018, the CSA published CSA Staff Notice 81-330 *Status Report on Consultation on Embedded Commissions and Next Steps* (**CSN 81-330**) which proposed the following policy changes:

(a) implement enhanced conflict of interest mitigation rules and guidance for dealers and representatives requiring that all existing and reasonably foreseeable conflicts of interest, including conflicts arising from the payment of embedded commissions, be addressed in the best interests of clients or avoided,

(b) prohibit all forms of the DSC option (as defined below) and their associated upfront commissions in respect of the purchase of securities of a prospectus qualified mutual fund, and

(c) prohibit the payment of trailing commissions to, and the solicitation and acceptance of trailing commissions by, dealers who were not required to make a suitability determination in connection with the distribution of securities of a prospectus qualified mutual fund.

In addition to announcing the CSA's policy decision and providing a summary of the consultation process and the feedback received, CSN 81-330 provided an overview of the regulatory concerns that the proposed policy changes aimed to address, and also discussed why CSA members were not proposing to ban all forms of embedded commissions.

The Proposed Amendments

On September 13, 2018, the CSA published proposed amendments (the **Proposed Amendments**) to

(a) prohibit fund organizations from paying upfront commissions to dealers, which will result in the discontinuation of all forms of the deferred sales charge option[4] including low-load options[5] (collectively, the **DSC option**), and

[3] The Consultation Paper followed the CSA's initial consultation on mutual fund fees under CSA Discussion Paper and Request for Comment 81-407 *Mutual Fund Fees* published on December 13, 2012, which was followed by in-person consultations in several CSA jurisdictions in 2013. The CSA published an overview of the key themes that emerged from this consultation process in CSA Staff Notice 81-323 *Status Report on Consultation under CSA Discussion Paper and Request for Comment 81-407 Mutual Fund fees*.

[4] Under the traditional deferred sales charge option, the investor does not pay an initial sales charge for fund securities purchased but may have to pay a redemption fee to the investment fund manager (i.e., a deferred sales charge) if the securities are sold before a predetermined period of typically 5 to 7 years from the date of purchase. Redemption fees decline according to a redemption fee schedule that is based on the length of time the investor holds the securities. While the investor does not pay a sales charge to the dealer, the investment fund manager pays the dealer an upfront commission (typically equivalent to 5% of the purchase amount). The investment fund manager may finance the payment of the upfront commission and accordingly incur financing costs that are included in the ongoing management fees charged to the fund.

[5] The low-load purchase option is a type of deferred sales charge option but has a shorter redemption fee schedule (usually 2 to 4 years). The upfront commission paid by the investment fund manager and redemption fees paid by investors are correspondingly lower than the traditional deferred sales charge option.

(b) prohibit the payment of trailing commissions to dealers who were not subject to a suitability requirement, such as dealers who were not required to provide investment recommendations in connection with the distribution of prospectus qualified mutual fund securities.

The 90-day comment period ended on December 13, 2018.

CSA Staff Notice 81-332

On December 19, 2019, the CSA published CSA Staff Notice 81-332 *Next Steps on Proposals to Prohibit Certain Investment Fund Embedded Commissions* (**CSN 81-332**) to announce that the CSA, with the exception of the Ontario Securities Commission,[6] would publish for adoption final amendments in early 2020 to prohibit the DSC option (the **DSC Ban**).[7]

CSN 81-332 also announced that all members of the CSA would publish for adoption final amendments later in 2020 to prohibit payments of trailing commissions to, and the solicitation and acceptance of trailing commissions by, dealers who are not required to make a suitability determination.

Summary of Written Comments Received by the CSA

The CSA received 55 comment letters on the Proposed Amendments. We thank everyone who provided comments. A summary of the comments together with our responses are set out in Annex A. The names of the commenters are also set out in Annex A.

Copies of the comment letters are posted on the websites of the Alberta Securities Commission at www.asc.ca, the Ontario Securities Commission at www.osc.gov.on.ca, and the Autorité des marchés financiers at www.lautorite.qc.ca.

Summary of Changes to the Proposed Amendments

After considering the comments received, we have made some non-material changes to the Proposed Amendments. These changes are reflected in the Amendments that we are publishing as Annexes to this notice. As these changes are not material, we are not republishing the Amendments for a further comment period.

The following is a summary of the key changes made to the Proposed Amendments:

(a) Definition of "suitability determination" in section 1.1 of NI 81-105

We added a definition of "suitability determination" in section 1.1 of NI 81-105 to specify where a suitability determination is required under securities legislation and SRO rules and policies. The definition of suitability determination references section 13.3 of NI 31-103 and the corresponding rules and policies of IIROC and MFDA named in Appendix G and Appendix H, respectively, of NI 31-103, as applicable.

(b) Clarification of the prohibition on participating dealers in subsection 2.2(3) of NI 81-105

We added subsection 2.2(3) to NI 81-105 to provide clarification that a participating dealer may not solicit or accept a payment of a trailing commission from a member of a fund organization in connection with mutual fund securities held in a client account if the participating dealer was not required to make a suitability determination under securities legislation or SRO rules and policies.

(c) Knowledge qualifier in subsection 3.2(4) of NI 81-105

We received comments from fund organizations indicating that they may not know whether a suitability determination was required to be made in connection with a mutual fund purchase. For example, some participating dealers use separate dealer codes for their full-service dealer and their OEO dealer, and in those circumstances, fund organizations should be able to determine whether mutual fund purchase orders are from the OEO dealer, who was not required to make a suitability determination. However, other participating dealers use a single dealer code for multiple affiliated dealers, including their full-service dealer and their OEO dealer and, as a result, the mutual fund purchase orders for their full-service dealer and their OEO dealer are aggregated with the same dealer code. In those circumstances, fund organizations may not be able to distinguish whether the mutual fund purchase orders are from the full-service dealer, who was required to make a suitability determination, or from the OEO dealer, who was not required to make a suitability determination.

[6] Ontario Securities Commission Notice and Request for Comment – Proposed Ontario Securities Commission Rule 81-502 *Restrictions on the Use of the Deferred Sales Charge Option for Mutual Funds* and Proposed Companion Policy 81-502 to Ontario Securities Commission Rule 81-502 Restrictions on the Use of the Deferred Sales Charge Option for Mutual Funds and Related Consequential Amendments was published on February 20, 2020 by the Ontario Securities Commission.

[7] Multilateral CSA Notice of Amendments to National Instrument 81-105 *Mutual Fund Sales Practices*, Changes to Companion Policy 81-105CP to National Instrument 81-105 *Mutual Fund Sales Practices* and Changes to Companion Policy 81-101CP to National Instrument 81-101 *Mutual Fund Prospectus Disclosure* relating to Prohibition of Deferred Sales Charges for Investment Funds was published on February 20, 2020 by the CSA, except the Ontario Securities Commission.

For circumstances where fund organizations do not know, or would not reasonably be expected to know, whether a suitability determination was required to be made in connection with a mutual fund purchase, we added a knowledge qualifier to clarify that subsection 3.2(4) applies only if the fund organization knows, or ought reasonably to know, that the participating dealer was not required to make a suitability determination.

We added corresponding guidance in section 5.4 of 81-105CP, as discussed in (e) below.

(d) Exemptions from the Fund Facts and ETF Facts Delivery Requirements in section 3.2.04.1 of NI 81-101 and section 3C.2.1 of NI 41-101, respectively

We added section 3.2.04.1 to NI 81-101 and section 3C.2.1 to NI 41-101 to provide exemptions from the Fund Facts delivery requirement[8] and the ETF Facts delivery requirement,[9] respectively, for all switches from a trailing commission paying series or class of a mutual fund to a no-trailing commission series or class of the same mutual fund in client accounts administered by dealers who are not required to make a suitability determination. The exemptions can be relied upon for switches of existing mutual fund holdings, transfers and pre-authorized purchase plans.

(e) Changes to section 5.4 of 81-105CP

We revised section 5.4 of 81-105CP to reference section 2.2(3) of NI 81-105 which sets out the restriction on the payment and acceptance of trailing commissions where no suitability determination was required to be made.

Section 5.4 was also revised to remind members of the organization of a mutual fund and participating dealers of their duty under section 11.1 of NI 31-103 to establish, maintain and apply policies and procedures that establish a system of controls and supervision sufficient to provide reasonable assurance that the firm and each individual acting on its behalf complies with securities legislation, including the prohibitions in subsections 2.2(3) and 3.2(4) of NI 81-105.

We also revised section 5.4 to indicate that we expect members of the organization of a mutual fund and participating dealers to be diligent in complying with subsections 2.2(3) and 3.2(4) of NI 81-105. Participating dealers should be operating in a manner that enables members of the organization of a mutual fund to ascertain whether a suitability determination was required to be made in connection with the securities of the mutual fund held in an account of the dealers' clients and members of the organization of a mutual fund should be aware of the information that a participating dealer makes available to them regarding whether a suitability determination was required to be made.

Effective Date

With the exception of the "suitability determination" definition, the Amendments to NI 81-105 will take effect on June 1, 2022 (the **Effective Date**). Compliance with the Amendments to NI 81-105 will therefore be required approximately 20 months after the publication of this notice.

The "suitability determination" definition is cross-referenced in the Fund Facts and ETF Facts delivery exemptions set out in the NI 81-101 and NI 41-101 Amendments and will therefore come into effect on December 31, 2020 in order to match up with the effective dates of those amendments.

The CSA anticipate that the extended period between the publication of this notice and the Effective Date will provide sufficient time for participating dealer firms and representatives who currently are not required to make a suitability determination in connection with mutual fund purchases and holdings to transition their practices, operational systems and processes to comply with the Amendments to NI 81-105. For some dealer firms, this may also require a reassessment of their internal compensation arrangements and implementation of new direct-fee charging systems and processes to enable them to collect fees for their services directly from mutual fund investors as of the Effective Date.

Fund organizations who wish to offer their mutual fund securities to investors with OEO accounts after the Effective Date should make available a no-trailing commission series or class of their mutual funds to participating dealers. The extended period should also provide fund organizations with sufficient time to amend their prospectuses, Fund Facts and ETF Facts, if necessary.

Transition

As of the Effective Date, mutual funds securities that are subject to a trailing commission will no longer be permitted to be held in the account of a client for whom a dealer was not required to make a suitability determination. This will have the following transitional impacts:

8 Section 3.2.01 of NI 81-101.
9 Section 3C.2 of NI 41-101.

(a) Existing holdings of trailing commission paying mutual funds securities, except those purchased under the DSC option

As of the Effective Date, mutual fund securities not purchased under the DSC option and subject to a trailing commission must be switched to a no-trailing commission series or class of the same mutual fund if the dealer who administers the client account was not required to make a suitability determination. However, if a no-trailing commission series or class of the same mutual fund does not exist, those holdings may be subject to other alternatives, such as being transferred to a dealer who is required to make a suitability determination.

(b) Mutual fund securities purchased under the DSC option

As of the Effective Date, dealers who are not required to make a suitability determination will no longer be allowed to accept trailing commissions in respect of mutual fund securities purchased under the DSC option (**DSC holdings**).[10]

For current DSC holdings in accounts administered by dealers who were not required to make a suitability determination, we expect fund organizations and dealers to comply with the Amendments using a range of options available that will ensure the best outcome for investors with DSC holdings. Specifically, our expectation is that fund organizations and dealers will take any necessary measures to ensure that investors with DSC holdings will not be required to pay redemption fees as a result of the implementation of the Amendments by a fund organization or a dealer.

One option would be to allow investors to continue holding their DSC holdings after the Effective Date. In respect of these DSC holdings, fund organizations would suspend the payment of trailing commissions to dealers and dealers would not solicit or accept the payment of trailing commissions in respect of such holdings in compliance with the Amendments.

Another option would be for fund organizations to waive the redemption fees payable by investors for switches or redemptions of their DSC holdings, if applicable, in situations where such fee is triggered as a result of an action taken to comply with the Amendments.

We expect fund organizations and dealers to clearly communicate their implementation plans and expected outcomes to investors with DSC holdings in accounts administered by dealers who are not required to make a suitability determination. We also expect fund organizations and dealers to collaborate and facilitate client communications, as necessary.

For investors who would prefer to transfer their DSC holdings to a dealer who is required to make a suitability determination, we expect that dealers will help facilitate such transfers.

We also remind dealers of their obligation to deal fairly, honestly, and in good faith with their clients, in accordance with applicable securities legislation.

(c) Pre-authorized purchase plans

Prior to the Effective Date, fund organizations and dealers should give consideration of how to deal with pre-authorized purchase plans that provide for the periodic purchase of mutual fund securities that are subject to a trailing commission. In order to comply with the Amendments, these plans will need to be amended to switch over to the purchase of a no-trailing commission series or class of the same mutual fund if the dealer was not required to make a suitability determination. Alternatively, if a no-trailing commission series or class of the same mutual fund does not exist, the pre-authorized purchase plan would need to be terminated or potentially amended in consultation with the client to allow for periodic purchases of another mutual fund that is available on a no-trailing commission basis.

(d) Transfers from full-service accounts to OEO accounts

Similar to existing holdings of trailer commission paying mutual fund securities, as of the Effective Date, when investors transfer their accounts from a full-service dealer to an OEO dealer, any mutual funds that are subject to a trailing commission must be switched to a no-trailing commission series or class of the same mutual fund at or before the time of transfer.

We expect that OEO dealers will inform investors at, or before, the time of a proposed transfer of accounts that they are unable to accept transfers of trailing commission paying mutual fund securities, including DSC holdings, into OEO accounts.

[10] See footnote 7. Following the effective date of the DSC Ban on June 1, 2022, dealers will not be allowed to sell mutual funds with the DSC option. However, the redemption fee schedules on existing DSC holdings will be allowed to run their course.

Given that DSC holdings pay trailing commissions and trigger a redemption fee upon early redemption, DSC holdings should not be transferred to OEO dealers after the Effective Date.

(e) Exemptions from the Fund Facts Delivery Requirement and ETF Facts Delivery Requirement

The Amendments to NI 81-101 and NI 41-101 provide exemptions from the Fund Facts delivery requirement and the ETF Facts delivery requirement, respectively, for all switches from a trailing commission series or class of a mutual fund to a no-trailing commission series or class of the same mutual fund for existing holdings, transfers and pre-authorized purchase plans.

The exemptions from the Fund Facts and ETF Facts delivery requirements have an effective date of December 31, 2020, which is 17 months prior to the Effective Date. This 17-month period provides considerable time for fund organizations and dealers to facilitate switches of trailing commission paying mutual fund securities to no-trailing commission series or class of the same mutual fund held in client accounts administered by dealers who are not required to make a suitability determination, on or before the Effective Date.

Contents of Annexes

The text of the Amendments is contained in the following annexes to this notice and is available on the websites of members of the CSA:

Annex A: Summary of Comments on the Proposed Amendments and Responses

Annex B: Amendments to National Instrument 81-105 *Mutual Fund Sales Practices*

Annex C: Changes to Companion Policy 81-105CP *Mutual Fund Sales Practices*

Annex D: Amendments to National Instrument 41-101 *General Prospectus Requirements*

Annex E: Amendments to National Instrument 81-101 *Mutual Fund Prospectus Disclosure*

Questions

Please refer your questions to any of the following:

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ANNEX A
SUMMARY OF COMMENTS ON THE PROPOSED AMENDMENTS AND RESPONSES

Table of Contents

PART	TITLE
Part 1	Background
Part 2	General Comments
Part 3	Comments on Amendments of Section 3.2 of NI 81-105
Part 4	Comments on Transition Period
Part 5	List of Commenters

Part 1 – Background

Summary of Comments

On September 13, 2018, the Canadian Securities Administrators (the **CSA**) published for comment (the **2018 Consultation**) proposed amendments to National Instrument 81-105 *Mutual Fund Sales Practices* (**NI 81-105**) and Companion Policy 81-105CP to National Instrument 81-105 *Mutual Fund Sales Practices* (**81-105CP**) and proposed consequential amendments to National Instrument 81-*101 Mutual Fund Prospectus Disclosure* (**NI 81-101**), including Form 81-101F1 *Contents of Simplified Prospectus* (**Form 81-101F1**) and Form 81-101F3 *Contents of Fund Facts Document* (**Form 81-101F3**), and National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**), (collectively, the **Proposed Amendments**). The purpose of the Proposed Amendments is to implement the CSA's policy response to the investor protection and market efficiency issues arising from the prevailing practice of investment fund managers remunerating dealers and their representatives for mutual fund sales through commissions, including sales and trailing commissions (embedded commissions). The Proposed Amendments:

- prohibit investment fund managers from paying upfront commissions to dealers, which results in the discontinuation of the DSC option (the **DSC ban**), and

- prohibit the payment of trailing commissions to dealers who are not subject to a suitability requirement, such as dealers who do not provide investment recommendations, in connection with the distribution of prospectus qualified mutual fund securities (the **OEO trailing commission ban**).

On December 19, 2019, the CSA published CSA Staff Notice 81-332 *Next Steps on Proposals to Prohibit Certain Investment Fund Embedded Commissions* (**CSN 81-332**) to provide an update on next steps on the 2018 Consultation. In that publication, the Ontario Securities Commission (**OSC**) stated that, while it will participate in the OEO trailing commission ban, it will not be implementing the DSC ban. Also, on December 19, 2019, the OSC published OSC Staff Notice 81-730 *Consideration of Alternative Approaches to Address Concerns Related to Deferred Sales Charges* indicating that the OSC is considering restrictions on the use of the DSC option to mitigate negative investor outcomes (**DSC restrictions**).

We received 55 comment letters and the commenters are listed in Part 5. We thank everyone who took the time to prepare and submit comment letters. This document contains a summary of the comments we received relating to the Proposed Amendments for an OEO trailing commission ban and our responses to those comments. We have considered the comments received and in response to the comments, we have made some amendments (the **Amendments**) to the Proposed Amendments.

With respect to the Proposed Amendments for a DSC ban, a summary of the comments we received and the responses to those comments were provided in the February 20, 2020 publication, *Multilateral CSA Notice of Amendments to National Instrument 81-105 Mutual Fund Sales Practices, Changes to Companion Policy 81-105CP to National Instrument 81-105 Mutual Fund Sales Practices and Changes to Companion Policy 81-101CP to National Instrument 81-101Mutual Fund Prospectus Disclosure relating to Prohibition of Deferred Sales Charges for Investment Funds.*

Part 2 – General Comments		
Issue	**Comments**	**Responses**
OEO trailing commission ban	**Investors and Investor Advocates** The majority of investors and investor advocates support the immediate implementation of the OEO trailing commission ban. Key comments provided are: • ***Mutual fund investors on OEO platforms are being overcharged:*** Investors/investor advocates submit that DIY mutual fund investors are being overcharged for the limited services provided in the OEO channel and that these costs, compounded over time, erode client returns, and accordingly impair investor outcomes. They submit that trailing commissions to OEO dealers should be eliminated immediately with full redress to clients; • ***Only "F" mutual fund series should be offered in the OEO channel:*** Investors/investor advocates submit that all OEO dealers offering a particular mutual fund should be required to offer the "F" series (no trailing commission) version of the fund on their platform and adopt a transaction-based fee model on mutual fund trades. They question the reasonableness of any embedded commissions, even if reduced (such as Series D) and request that the CSA critically assess whether the investor actually receives any services to justify the ongoing trailing commission; • ***No rule changes may be required – CSA should use existing tools:*** Some investors and investor advocates submit that the collection of trailing commissions by OEO dealers for advice they do not provide should be considered a breach of a dealer's requirement to deal fairly, honestly and in good faith with clients. There is clear overcharging, misrepresentation and conflict of interest. The CSA should act to protect investors without time-consuming consultation and simply take enforcement action to stop the overcharging of fees by OEO dealers.	We appreciate the support from the commenters. The Amendments prohibit the payment by fund organizations (as defined below) from paying trailing commissions where the participating dealer is not required to make a suitability determination in connection with a client's purchase and ongoing ownership of prospectus qualified mutual fund securities. The Amendments also prohibit the solicitation or acceptance of trailing commissions by participating dealers from a member of the organization of the mutual fund, in connection with securities of the mutual fund held in an account of a client of the participating dealer if the participating dealer is not required to make a suitability determination in respect of the client in connection with those securities. This will effectively prohibit the payment of mutual fund trailing commissions to dealers who are not subject to the obligation to make a suitability determination under section 13.3 of National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations or under the corresponding by-laws, rules, regulations or policies of the self-regulatory organizations (**SROs**). Such dealers would include, among others, order-execution only (**OEO**) dealers and dealers acting on behalf of a "permitted client" that has waived the suitability requirements.
	Industry Stakeholders While many industry stakeholders agree that full trailing commission-paying mutual fund series, such as Series A, should be limited to	We continue to be of the view that dealers must provide investors with advice arising from the suitability

Part 2 – General Comments		
Issue	**Comments**	**Responses**
	channels that permit advice, they oppose the complete ban of trailing commissions in the OEO channel for the following reasons: • ***Discounted embedded commissions are appropriate in the OEO channel:*** Several industry stakeholders submit that appropriately priced trailing commissions tailored to the direct investing channel are an efficient mode of dealer compensation that may be beneficial to mutual fund clients of OEO dealers. Lower-cost mutual fund series, such as Series D, allow an OEO dealer to properly align the related costs of offering mutual funds on its platform with the services that are provided to investors by providing a lower, channel-appropriate pricing structure. They submit that Series D should be preserved, and its availability increased to help mitigate the unintended consequences to investors, as discussed further below; • ***Other proposed regulatory changes may address conflicts in the OEO channel:*** Some industry stakeholders submit that the enhanced conflict of interest mitigation requirements proposed under the Client Focused Reforms will, if implemented, apply to OEO and other suitability exempt dealers, and that this should be sufficient to address the CSA's conflict of interest concerns regarding the payment of trailing commissions to these dealers; • ***OEO trailing commission ban would give rise to inconsistent policy approach to the regulation of embedded commissions:*** Some industry stakeholders submit that since the CSA has not proposed to prohibit the payment of trailing commissions on mutual funds generally within the securities industry, to do so on the OEO platform alone would represent an inconsistent approach to the application of the CSA's rules in this regard. They also submit that OEO dealers, notwithstanding the fact they don't make a suitability determination, are providing their clients a range of ongoing services (e.g. call centers, technological platforms, disclosure documents);	requirements in order to qualify for the receipt of trailing commission payments. Dealers who are not required to make suitability determinations should charge investors directly for the services they provide.

Part 2 – General Comments		
Issue	**Comments**	**Responses**
	• ***OEO trailing commission ban would give rise to unintended consequences:*** ○ ***Increased costs for smaller investors:*** Several integrated firms (i.e. banks) submit that OEO dealers will incur significant upfront and ongoing costs to develop and operationalize direct fee compensation models for mutual fund trades, which may be passed on to the client through fees that are charged. Furthermore, these direct fee arrangements may be cost-prohibitive for small accounts because, to the extent a transaction-based compensation model is implemented, these transaction fees would have to be higher than the standard trading fee applied to other types of securities (i.e. equities, ETFs) to account for the lower trading volume and smaller trades in mutual fund securities relative to other types of securities. These transaction costs would reduce the purchasing power of mutual fund investors in the OEO channel and disproportionately affect investors with smaller portfolios; ○ ***Reduced investor choice/product range:*** Several integrated firms submit that the increased costs of operation associated with direct-fee arrangements may lead OEO dealers to reconsider the suite of mutual fund products that are available on their platform (e.g. limit shelf to proprietary mutual funds) or even remove mutual funds altogether from their product shelf. This may result in a more limited range of products offered by OEO dealers; ○ ***Complexity in paying for services through direct fees:*** Several integrated firms submit that collecting fees at the time a transaction is processed is problematic for smaller accounts and/or accounts that do not hold cash. They advise that many clients who hold mutual funds on the OEO platform do not carry a cash balance sufficient to cover an	

Part 2 – General Comments		
Issue	**Comments**	**Responses**
	annual fee or transaction fees. The result may be that redemptions will be required in order to cover fees, which would result in a negative client experience and likely attract tax consequences in the case of registered accounts. Or clients may need to leave a certain amount of cash in their account, which would create a cash drag. This would eliminate the more frictionless experience that mutual fund investors on the OEO channel are accustomed to under the current embedded commission model; • ***Investment fund managers should not be required to police OEO dealers' compliance with the OEO trailing commission ban:*** Several investment fund managers and other industry stakeholders submit that the proposed prohibition on investment fund managers paying trailing commissions to dealers who do not provide suitability assessments is incapable of being reasonably implemented because investment fund managers are unable to determine whether advice is attached to an order. Accordingly, if the ban is implemented, investment fund managers should not be required to police which series dealers are making available to clients. Instead, responsibility for compliance with the OEO trailing commission ban should be squarely on the OEO dealer.	

Part 3 – Comments on Amendments of Section 3.2 of NI 81-105		
Issue	**Comments**	**Responses**
5. We expect that fund organizations will make available a trailing commission-free class or series of securities of a mutual fund to participating dealers who do not make suitability determinations. Would fund organizations have any issues with making available a class or series of securities of a mutual fund without trailing commissions to such dealers?	***Trailing Commission-Free Class or Series of Mutual Fund Securities*** A few commenters expressed that many (if not all) investment fund managers offer Series F, which contains no embedded compensation. It is not clear why the creation of additional funds is required. Discount brokerage firms have the sole discretion to offer Series F to their clients. Another industry commenter wrote that offering "D" Series with trailing commissions is a practical solution for distributing mutual funds through	It is up to fund organizations to make available a trailing commission-free class or series of securities of a mutual fund to participating dealers who do not make suitability determinations. Fund organizations are not required to do so under the Amendments.

Part 3 – Comments on Amendments of Section 3.2 of NI 81-105		
Issue	**Comments**	**Responses**
	discount brokers and should be maintained. In many cases, "D" Series would be more economical for the client than "F" Series with separate brokerage commissions. One commenter who was in support of the amendment suggested that all firms offering a particular mutual fund should be required to offer the "F" class version of the fund at discount brokerages rather than urged to offer trailing commission free versions. If a "F" class exists, it should be required to be offered through the OEO firm for those investors who want to invest without advice. One commenter expressed that it would not be difficult to make a trailing commission free class or series available, however, in some instances revisions to prospectus disclosure would be necessary and could, subject to the specific facts, be completed at the next prospectus renewal. ***Rebating***	
	Another commenter suggested that where no trailing commission-free version is available, OEO dealers should be permitted to sell the fund class that includes trailing commissions, subject to the following conditions: (a) The dealer must rebate to their client all trailing commissions paid to the dealer in respect of the client's fund units (less a small, reasonable fee to cover the cost of administering the rebate program); and (b) When a trailing commission-free version of the fund becomes available, the dealer must arrange for conversion of their client's unit holdings to the trailing commission-free version at no cost to the client.	The Amendments do not permit OEO dealers to rebate trailing commissions to their clients.
6. Would fund organizations encounter any issues, including any operational challenges, in confirming whether a participating dealer has made a suitability determination, and is thus eligible to be paid a trailing	Several industry commenters pointed out that investment fund managers currently have no way of tracking whether trades are being placed by dealers that do not make a suitability determination. Since suitability determination is a dealer obligation,	For circumstances where a fund organization does not know, or would not reasonably be expected to know, whether a suitability determination has been made in connection with a mutual fund purchase, the Amendments include a knowledge

Part 3 – Comments on Amendments of Section 3.2 of NI 81-105		
Issue	**Comments**	**Responses**
commission in compliance with subsection 3.2(4) of NI 81-105? If so, please explain.	investment fund managers should not be obligated to police which series dealers are making available to their clients. The CSA should make it clear in the Proposed Amendments that investment fund managers do not have an obligation to confirm whether a participating dealer or principal distributor has made a suitability determination and thus, is or is not eligible to be paid a trailing commission. One industry commenter indicated that investment fund managers cannot determine if the prohibition applies when they receive a purchase order as some participating dealers use a separate code for an OEO dealer whereas others use a single dealer code for multiple affiliated dealers. This results in aggregating mutual fund orders for full service dealers with orders for OEO dealers. Another industry commenter wrote that the assignment of dealer codes for discount brokerage accounts is inconsistent, and therefore system edits would only be effective in certain cases and would be difficult to maintain. Two industry commenters noted that there is no way for the fund company on its own to know, absent disclosure from the dealer or the client, that the client is a permitted client and that suitability has been waived. Clients who have waived suitability may be further complicated where the client relationship is with a registrant such as a portfolio manager, who executes transactions through a participating dealer. Placing a prohibition on investment fund managers would introduce an unnecessary regulatory burden on investment fund managers. Another commenter noted that as OEO firms are not permitted to provide suitability recommendations, there should be no need to confirm to the members of the organization of the mutual fund as to whether it has made a suitability recommendation.	qualifier to clarify that subsection 3.2(4) applies only if the fund organization knows or ought reasonably to know that the participating dealer is not required to make a suitability determination.

Part 4 – Comments on Transition Period			
Issue	**Sub-Issue**	**Comments**	**Responses**
7. A transition period of 1 year from the date of publication of the final amendments is sufficient time for registrants to operationalize the Proposed Amendments. **Are there any transitional issues for fund organizations and participating dealers with implementing the Proposed Amendments within the proposed 1-year transition period?** **If so, please provide details of the relevant operational, technological, systems, compensation arrangements or other significant business changes required, and the minimum amount of time reasonably required to operationalize those changes and comply with the Proposed Amendments.**		Several industry stakeholders submit that the design and implementation of the systems necessary to charge direct fees to mutual fund clients on OEO platforms and implement associated compliance procedures will be a multi-year process that would extend beyond the proposed 1-year transition period. Some stakeholders suggest a 2-year transition period if lower-cost series (i.e. Series D) are preserved in the OEO channel, but a longer 3-year transition period if OEO firms are expected to build a direct-fee system.	The effective date of the Amendments is June 1, 2022. This date coincides with the effective date of the DSC ban[1] in all CSA jurisdictions, except for Ontario, and the proposed effective date of the DSC restrictions in Ontario. [2]
9. By the effective date of the Proposed Amendments, the CSA expect that those dealers who do not make suitability determinations in respect of a client will have switched any existing mutual fund holdings of such client to a trailing commission-free class or series of the relevant mutual fund.	**(a) Switching a client from a class or series of securities of a mutual fund that pays a trailing commission to one that does not pay a trailing commission would trigger the delivery requirement for the fund facts document. As a transitional measure, should there be an exemption from the fund facts document delivery requirement for such switches? Such an**	Many stakeholders submit that if the proposal is implemented, the regulators should provide blanket exemptive relief to OEO dealers to facilitate switches of mutual fund client holdings from a trailing commission-paying series to a no-trailing commission series without having to comply with fund facts document (the Fund Facts) delivery requirements and trade confirmation requirements. Such exemptive relief should cover switches from series that	The Amendments provide an exemption from the Fund Facts and ETF Facts delivery requirements for switches of a trailing commission series or class of mutual fund securities, or ETF securities, respectively, to a no-trailing commission paying series or class of mutual fund securities. These exemptions have an effective date of December 31, 2020, which is 17 months prior to the effective date of the Amendments. This 17-month period provides considerable

[1] Multilateral CSA Notice of Amendments to National Instrument 81-105 *Mutual Fund Sales Practices*, Changes to Companion Policy 81-105CP to National Instrument 81-105 *Mutual Fund Sales Practices* and Changes to Companion Policy 81-101CP to National Instrument 81-101 *Mutual Fund Prospectus Disclosure* relating to Prohibition of Deferred Sales Charges for Investment Funds was published on February 20, 2020 by the CSA, except the Ontario Securities Commission.

[2] Ontario Securities Commission Notice and Request for Comment – Proposed Ontario Securities Commission Rule 81-502 *Restrictions on the Use of the Deferred Sales Charge Option for Mutual Funds* and Proposed Companion Policy 81-502 to Ontario Securities Commission Rule 81-502 Restrictions on the Use of the Deferred Sales Charge Option for Mutual Funds and Related Consequential Amendments was published on February 20, 2020 by the Ontario Securities Commission.

Part 4 – Comments on Transition Period			
Issue	**Sub-Issue**	**Comments**	**Responses**
	exemption would mean that the investor would not have the right of withdrawal from the purchase, however, the investor would continue to have a right of action for rescission or for damages if there is a misrepresentation in the prospectus of the mutual fund, including any documents incorporated by reference into the prospectus, such as the fund facts document. In some jurisdictions, investors have a right of rescission with delivery of the trade confirmation for the purchase of mutual fund securities and this right would remain unchanged with such an exemption.	include trailing commissions to series that do not include trailing commissions before the effective date of the Proposed Amendments, as well as switches of series thereafter for clients that transfer their assets from a full-service dealer to an OEO dealer.	time for fund organizations and dealers to facilitate switches of trailing commission paying mutual fund securities to no-trailing commission series or class of the same mutual fund held in client accounts administered by dealers who are not required to make suitability determinations, on or before the effective date of the Amendments. OEO dealers must comply with the trade confirmation delivery requirements or exemptions in accordance with the Investment Industry Regulation Organization of Canada (**IIROC**) rules.
	(b) Are there any other types of exemptions from CSA or SRO rules that we should consider to facilitate switches to trailing commission-free classes or series of mutual funds? If so, please describe.	Some commenters suggested that there should be an exemption to authorize OEO dealers to be able to effect this switch, given that they do not have discretionary authority over their clients' accounts. However, the ability to effect a switch between series is not a "one time" issue since clients may choose to transfer from the "advice" channel to an OEO dealer at any time.	OEO dealers should refer to IIROC rules with respect to client consent matters relating to switches from a trailing commission series or class of mutual fund securities to a no-trailing commission series or class of mutual fund securities.

Part 5 – List of Commenters

Commenters

- Advocis, The Financial Advisors Association of Canada
- AGF Investments Inc.
- Alternative Management Association
- Blanes, Alan
- Boom, Mary
- Borden Ladner Gervais LLP
- CARP
- Clark, Keir
- Durnin, James S.
- Dusmet, Tom
- Elford, Larry
- Elliot, Ruth
- FAIR Canada
- Federation of Mutual Fund Dealers
- Fidelity Investment Canada
- Fieldstone, David
- Financial Planning Standards Council
- Finandicap Inc.
- Franklin Templeton Investments Corp.
- Glick, Isaac
- Gosselin, Eric F.
- Group Cloutier Investissements
- HighView Asset Management Ltd.
- Independent Financial Brokers of Canada
- Invesco Canada Ltd.
- Investment Industry Association of Canada
- Jagdeo, Millie
- Kenmar Associates
- Kivenko, Ken
- L'Association Professionnelle des Conseillers en Services Financiers
- Le Group financier PEAK
- Loeppky, Bruce
- MacDonald, James Richard
- Mackenzie Financial Corporation
- McFadden, D.
- Merici Services Financiers Inc.
- MICA Capital Inc.
- Mouvement Desjardins
- Naglie, Harvey
- National Bank of Canada
- OSC Investor Advisory Panel
- Portelance, Eric
- Portfolio Strategies Corporation
- Pozgaj, Steve
- Primerica Financial Services (Canada) Ltd.
- RBC Entities
- Rosen, Yegal
- Ross, Art
- Stenzler, Gary
- TD Wealth
- The Canadian Advocacy Council for Canadian CFA Institute Societies
- The Investment Fund Institute of Canada
- The Portfolio Management Association of Canada
- The Small Investor Protection Association
- Whitehouse, Peter

ANNEX B

AMENDMENTS TO
NATIONAL INSTRUMENT 81-105 *MUTUAL FUND SALES PRACTICES*

1. National Instrument 81-105 Mutual Fund Sales Practices is amended by this Instrument.

2. Section 1.1 is amended by adding the following definition:

"**suitability determination**" means a determination or other assessment required to be made under any of the following:

(a) section 13.3 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;

(b) the rules of the Investment Industry Regulatory Organization of Canada named in Appendix G of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* that are in effect, as amended from time to time, and that correspond to section 13.3 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;

(c) a rule or policy of the Mutual Fund Dealers Association of Canada named in Appendix H of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* that are in effect, as amended from time to time, and that correspond to section 13.3 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*.***.***

3. Section 2.2 is amended by adding the following subsection:

(3) Despite subsection (2), a participating dealer may not solicit or accept a payment of a trailing commission from a member of the organization of the mutual fund, in connection with securities of the mutual fund held in an account of a client of the participating dealer, if the participating dealer was not required to make a suitability determination in respect of the client in connection with those securities.***.***

4. Section 3.2 is amended

(a) in subsection (1) by deleting "in money that is based upon the aggregate value of securities of the mutual fund held in accounts of clients of the participating dealer as at a particular time or during a particular period,***",***

(b) in paragraph 3.2(1)(a) by replacing "the trade***" with "***a trade in securities of the mutual fund by a client of the participating dealer***",***

(c) by adding the following paragraph to subsection (1):

(a.1) the amount of the trailing commission is based on the value of securities of the mutual fund held in an account of the client as at a particular time or during a particular period;***, and***

(d) by adding the following subsection:

(4) Despite subsection (1), no member of the organization of a mutual fund may pay a trailing commission to a participating dealer in connection with securities of the mutual fund held in an account of a client of the participating dealer if the member knows or ought reasonably to know that the participating dealer was not required to make a suitability determination in respect of the client in connection with those securities.***.***

Effective dates

5. (1) The provisions of this Instrument listed in column 1 of the following table come into force on the date set out in column 2 of the table:

Column 1 Provision of this Instrument	Column 2 Date
1, 2	December 31, 2020
3, 4	June 1, 2022

(2) In Saskatchewan, despite subsection (1), if these regulations are filed with the Registrar of Regulations after the effective dates indicated in column 2, these regulations come into force on the day on which they are filed with the Registrar of Regulations.

ANNEX C

CHANGES TO
COMPANION POLICY 81-105CP *MUTUAL FUND SALES PRACTICES*

1. Companion Policy 81-105CP Mutual Fund Sales Practices is changed by this Document.

2. Part 5 of the Companion Policy is changed by adding the following section:

5.4 Restriction on payment and acceptance of trailing commissions where no suitability determination made – Subsection 3.2(4) of the Instrument prohibits members of the organization of a mutual fund from paying trailing commissions to participating dealers who were not required to make a suitability determination for a client in connection with securities of the mutual fund held in an account of the client. Correspondingly, subsection 2.2(3) of the Instrument prohibits participating dealers from soliciting or accepting payment of trailing commissions from a member of the organization of the mutual fund when they were not required to make a suitability determination for a client in connection with securities of a mutual fund held in an account of the client. Consequently, participating dealers who are not subject to the obligation to make a suitability determination under National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* or corresponding SRO rules may not solicit or accept such payments. In addition, members of the organization of a mutual fund should make available to participating dealers who are not required to make a suitability determination in respect of a client, a class or series of securities of a mutual fund that does not pay trailing commissions, which the dealer should offer to the client.

We remind members of the organization of a mutual fund and participating dealers of their duty under section 11.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* to establish, maintain and apply policies and procedures that establish a system of controls and supervision sufficient to provide reasonable assurance that the firm and each individual acting on its behalf complies with securities legislation, including the prohibitions in subsections 2.2(3) and 3.2(4).

We expect members of the organization of a mutual fund and participating dealers to be diligent in complying with subsections 2.2(3) and 3.2(4). Participating dealers should be operating in a manner that enables members of the organization of a mutual fund to ascertain whether a suitability determination was required to be made in connection with the securities of the mutual fund held in an account of the dealers' clients and members of the organization of a mutual fund should be aware of the information that a participating dealer makes available to them regarding whether a suitability determination was required to be made.*.*

3. These changes come into effect on June 1, 2022.

ANNEX D

AMENDMENTS TO
NATIONAL INSTRUMENT 41-101 *GENERAL PROSPECTUS REQUIREMENTS*

1. National Instrument 41-101 General Prospectus Requirements is amended by this Instrument.

2. Part 3C is amended by adding the following section:

3C.2.1 Delivery of ETF facts documents for no-trailing-commission ETF switches

(1) In this section,

"no-trailing-commission ETF switch" means, in respect of a client of a participating dealer, a purchase of securities of a class or series of an ETF in respect of which an investment fund manager does not pay the participating dealer a trailing commission immediately following a redemption of securities of another class or series of the ETF in respect of which the investment fund manager pays the participating dealer a trailing commission, if all of the following apply:

(a) the aggregate value of the securities purchased is the same as the aggregate value of the securities redeemed;

(b) there are no material differences between the class or series of securities purchased and the class or series of securities redeemed other than the rate of management fees charged in respect of the two classes or series;

(c) the participating dealer, who executed the purchase and redemption of the securities, was not required by securities legislation or the rules of an SRO applicable to the dealer to make a suitability determination in respect of the client in connection with those securities;

"suitability determination" has the same meaning as in section 1.1 of National Instrument 81-105 *Mutual Fund Sales Practices*.

(2) Despite subsection 3C.2(2), a dealer is not required to deliver or send to the purchaser of a security of an ETF the most recently filed ETF facts document for the applicable class or series of securities of the ETF in connection with a no-trailing-commission ETF switch.*.*

Effective date

3. (1) This Instrument comes into force on December 31, 2020.

(2) In Saskatchewan, despite subsection (1), if these regulations are filed with the Registrar of Regulations after December 31, 2020, these regulations come into force on the day on which they are filed with the Registrar of Regulations.

ANNEX E

AMENDMENTS TO
NATIONAL INSTRUMENT 81-101 *MUTUAL FUND PROSPECTUS DISCLOSURE*

1. National Instrument 81-101 Mutual Fund Prospectus Disclosure is amended by this Instrument.

2. Section 3.2.01 is amended

(a) by deleting "or***" in subparagraph (4)(a)(ii),***

(b) by replacing "." with ", or***" in paragraph (4)(b), and***

(c) by adding the following after paragraph (4)(b):

(c) section 3.2.04.1 applies.***.***

3. The following section is added:

3.2.04.1 Delivery of Fund Facts Documents for No-Trailing-Commission Switches

(1) In this section,

"no-trailing-commission switch" means, in respect of a client of a participating dealer, a purchase of securities of a class or series of a mutual fund in respect of which an investment fund manager does not pay the participating dealer a trailing commission immediately following a redemption of securities of another class or series of the mutual fund in respect of which the investment fund manager pays the participating dealer a trailing commission, if all of the following apply:

(a) the aggregate value of the securities purchased is the same as the aggregate value of the securities redeemed;

(b) there are no material differences between the class or series of securities purchased and the class or series of securities redeemed other than the rate of management fees charged in respect of the two classes or series;

(c) the participating dealer, who executed the purchase and redemption of the securities, was not required by securities legislation or the rules of an SRO applicable to the dealer to make a suitability determination in respect of the client in connection with those securities;

"suitability determination" has the same meaning as in section 1.1 of National Instrument 81-105 *Mutual Fund Sales Practices*.

(2) Despite subsection 3.2.01(1), a dealer is not required to deliver to the purchaser of a security of a mutual fund the most recently filed fund facts document for the applicable class or series of securities of the mutual fund in connection with a no-trailing-commission switch.***.***

Effective date

4. (1) This Instrument comes into force on December 31, 2020.

(2) In Saskatchewan, despite subsection (1), if these regulations are filed with the Registrar of Regulations after December 31, 2020, these regulations come into force on the day on which they are filed with the Registrar of Regulations.

1.1.3 Notice of Ministerial Approval of Memorandum of Understanding for Oversight of CNSX Markets Inc. Between the Ontario Securities Commission and the British Columbia Securities Commission

NOTICE OF MINISTERIAL APPROVAL OF MEMORANDUM OF UNDERSTANDING FOR OVERSIGHT OF CNSX MARKETS INC. BETWEEN THE ONTARIO SECURITIES COMMISSION AND THE BRITISH COLUMBIA SECURITIES COMMISSION

On September 8, 2020, the Minister of Finance approved, pursuant to section 143.10 of the *Securities Act* (Ontario), the Memorandum of Understanding (**MoU**) between the Ontario Securities Commission (**OSC**) and the British Columbia Securities Commission (**BCSC**) concerning supervision of CNSX Markets Inc (**CSE**).

The MoU outlines the manner in which the OSC and the BCSC will cooperate and coordinate their efforts in respect of the oversight of the CSE.

The MoU was published in the Bulletin on July 16, 2020 at (2020), 43 OSCB 5747 and became effective in Ontario on September 8, 2020.

Questions may be referred to:

Alex Petro
Market Regulation
apetro@osc.gov.on.ca

Ruxandra Smith
Market Regulation
ruxsmith@osc.gov.on.ca

1.4 Notices from the Office of the Secretary

1.4.1 First Global Data Ltd. et al.

FOR IMMEDIATE RELEASE
September 14, 2020

FIRST GLOBAL DATA LTD.,
GLOBAL BIOENERGY RESOURCES INC.,
NAYEEM ALLI,
MAURICE AZIZ,
HARISH BAJAJ, and
ANDRE ITWARU,
File No. 2019-22

TORONTO – The Commission issued its Reasons for Decision in the above named matter.

A copy of the Reasons for Decision dated September 11, 2020 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For Media Inquiries:

media_inquiries@osc.gov.on.ca

For General Inquiries:

1-877-785-1555 (Toll Free)
inquiries@osc.gov.on.ca

1.4.2 Paramount Equity Financial Corporation et al.

FOR IMMEDIATE RELEASE
September 11, 2020

PARAMOUNT EQUITY FINANCIAL CORPORATION,
SILVERFERN SECURED MORTGAGE FUND,
SILVERFERN SECURED MORTGAGE LIMITED PARTNERSHIP,
GTA PRIVATE CAPITAL INCOME FUND,
GTA PRIVATE CAPITAL INCOME LIMITED PARTNERSHIP,
SILVERFERN GP INC.,
TRILOGY MORTGAGE GROUP INC.,
MARC RUTTENBERG,
RONALD BRADLEY BURDON and
MATTHEW LAVERTY,
File No. 2019-12

TORONTO – The Commission issued an Order in the above named matter.

A copy of the Order dated September 11, 2020 is available at www.osc.gov.on.ca

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For Media Inquiries:

media_inquiries@osc.gov.on.ca

For General Inquiries:

1-877-785-1555 (Toll Free)
inquiries@osc.gov.on.ca

1.4.3 Canada Cannabis Corporation et al.

FOR IMMEDIATE RELEASE
September 14, 2020

CANADA CANNABIS CORPORATION,
CANADIAN CANNABIS CORPORATION,
BENJAMIN WARD,
SILVIO SERRANO, and
PETER STRANG,
File Nos. 2019-34 and 2020-13

TORONTO – Take notice that the hearing of the Confidential Phase of the Motion and the Application scheduled for September 16, 2020 is vacated and will be heard on future dates to be scheduled and set with the Office of the Secretary.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For Media Inquiries:

media_inquiries@osc.gov.on.ca

For General Inquiries:

1-877-785-1555 (Toll Free)
inquiries@osc.gov.on.ca

1.4.4 Sean Daley et al.

FOR IMMEDIATE RELEASE
September 14, 2020

SEAN DALEY; and
SEAN DALEY carrying on business as
the ASCENSION FOUNDATION,
OTO.Money,
SilentVault, and
CryptoWealth;
WEALTH DISTRIBUTED CORP.;
CYBERVISION MMX INC.;
KEVIN WILKERSON; and
AUG ENTERPRISES INC.,
File No. 2019-28

TORONTO – The Commission issued an Order in the above named matter.

A copy of the Order dated September 14, 2020 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For Media Inquiries:

media_inquiries@osc.gov.on.ca

For General Inquiries:

1-877-785-1555 (Toll Free)
inquiries@osc.gov.on.ca

1.4.5 Sean Daley and Kevin Wilkerson

FOR IMMEDIATE RELEASE
September 14, 2020

SEAN DALEY and
KEVIN WILKERSON,
File No. 2019-39

TORONTO – The Commission issued an Order in the above named matter.

A copy of the Order dated September 14, 2020 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For Media Inquiries:

media_inquiries@osc.gov.on.ca

For General Inquiries:

1-877-785-1555 (Toll Free)
inquiries@osc.gov.on.ca

1.4.6 ESW Capital, LLC and Optiva Inc.

FOR IMMEDIATE RELEASE
September 14, 2020

ESW CAPITAL, LLC and
OPTIVA INC.,
File No. 2020-26

TORONTO – The Commission issued an Order in the above named matter.

A copy of the Order dated September 14, 2020 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For Media Inquiries:

media_inquiries@osc.gov.on.ca

For General Inquiries:

1-877-785-1555 (Toll Free)
inquiries@osc.gov.on.ca

1.4.7 VRK Forex & Investments Inc. and Radhakrishna Namburi

FOR IMMEDIATE RELEASE
September 15, 2020

VRK FOREX & INVESTMENTS INC. and RADHAKRISHNA NAMBURI,
File No. 2019-40

TORONTO – Take notice an attendance in the above named matter is scheduled to be heard on September 16, 2020 at 3:00 p.m.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For Media Inquiries:

media_inquiries@osc.gov.on.ca

For General Inquiries:

1-877-785-1555 (Toll Free)
inquiries@osc.gov.on.ca

Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Manulife Investment Management Limited and Manulife Floating Rate Income Fund

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – approval of investment fund merger – approval required because the merger does not meet all the pre-approval criteria in National Instrument 81-102 Investment Funds – existing fund and terminating fund do not have substantially similar investment objectives – merger is not a "qualifying exchange" – securityholders of the terminating fund provided timely and adequate disclosure regarding the merger.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 5.5(1)(b), 5.6(1), 5.7(1)(b) and 19.1(2).

September 9, 2020

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(the Jurisdiction)

AND

IN THE MATTER OF
THE PROCESS FOR EXEMPTIVE RELIEF APPLICATIONS
IN MULTIPLE JURISDICTIONS

AND

IN THE MATTER OF
MANULIFE INVESTMENT MANAGEMENT LIMITED
(the Filer)

AND

MANULIFE FLOATING RATE INCOME FUND
(the Terminating Fund)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer and the Terminating Fund for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for approval of the proposed merger (the **Merger**) of the Terminating Fund into Manulife U.S. Unconstrained Bond Fund (the **Continuing Fund** and together with the Terminating Fund, the **Funds**, and each a **Fund**) under paragraph 5.5(1)(b) of National Instrument 81-102 – *Investment Funds* (**NI 81-102**) (the **Approval Sought**).

Under the process for Exemptive Relief Applications in Multiple Jurisdictions (for a passport application):

(a) the Ontario Securities Commission is the principal regulator for this application; and

(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 – *Passport System* (**MI 11-102**) is intended to be relied upon in each of the other provinces and territories of Canada (together with the Jurisdiction, **the Canadian Jurisdictions**).

Interpretation

Terms defined in National Instrument 14-101 – *Definitions* and MI 11-102 have the same meaning if used in this decision, unless otherwise defined.

Representations

This decision is based on the following facts represented by the Filer:

The Filer

1. The Filer is a corporation amalgamated under the *Canada Business Corporations Act* with its head office located in Toronto, Ontario.

2. The Filer is registered in the following categories: portfolio manager in all Canadian Jurisdictions; investment fund manager in Ontario, Newfoundland and Labrador, and Quebec; commodity trading manager in Ontario; and derivatives portfolio manager in Quebec.

3. The Filer is the manager and trustee of the Funds.

4. The Filer is not in default of any of the requirements of the securities legislation of any of the Canadian Jurisdictions.

The Funds

5. The Terminating Fund is an open-ended mutual fund trust and is governed by the provisions of NI 81-102.

6. The Filer is proposing to merge the Terminating Fund into the Continuing Fund, which is also a mutual fund trust and is governed by the provisions of NI 81-102.

7. The Funds were each established under the laws of Ontario by a declaration of trust and separate regulations (together with the declaration of trust, the **Declarations of Trust**).

8. Securities of the Funds are currently qualified for sale in each of the Canadian Jurisdictions pursuant to a simplified prospectus, annual information form and fund facts documents (**Fund Facts**), each dated August 4, 2020.

9. Series I, Series G and Series M of the Terminating Fund (the **Exempt Terminating Fund Series**) and Series I, Series X, Series G and Series M of the Continuing Fund (the **Exempt Continuing Fund Series**) have only been offered by way of a prospectus exemption pursuant to National Instrument 45-106 – *Prospectus Exemptions* (**NI 45-106**). The Exempt Terminating Fund Series and the Exempt Continuing Fund Series are therefore not required to distribute Fund Facts to their securityholders.

10. The Funds are reporting issuers as defined under the applicable securities legislation of each province and territory of Canada and are not in default of any of the requirements of the securities legislation of any of the Canadian Jurisdictions.

11. The net asset value for each of the Funds is calculated on a daily basis at the end of each day the Toronto Stock Exchange is open for trading.

12. Other than under circumstances in which the securities regulatory authority or securities regulator of the Canadian Jurisdictions has expressly exempted a Fund therefrom, each of the Funds is governed and follows the standard investment restrictions and practices established by NI 81-102.

Reason for Approval Sought

13. The Approval Sought is required because the Merger does not satisfy all of the criteria for pre-approved reorganizations and transfers set out in section 5.6 of NI 81-102. The pre-approval criteria are not satisfied in the following ways:

    (i) a reasonable person may not consider the fundamental investment objectives of the Terminating Fund and its Continuing Fund to be “substantially similar” as required by subsections 5.6(1)(a)(ii) of NI 81-102; and

    (ii) contrary to clause 5.6(1)(b) of NI 81-102, the Merger will not be effected in reliance on the “qualifying exchange” or tax-deferred transaction provisions of the *Income Tax Act* (Canada) (the **Tax Act**).

14. Except as noted herein, the Merger will otherwise comply with all other criteria for pre-approved reorganizations and transfers set out in section 5.6 of NI 81-102.

The Proposed Merger

15. Subject to receipt of all necessary approvals, the Merger is anticipated to be effective on or about October 23, 2020 (the **Effective Date**).

16. Pursuant to subsection 5.1(f) of NI 81-102, the Terminating Fund will seek approval of the securityholders for the Merger at a special meeting to be held virtually on or about October 1, 2020.

17. Pursuant to National Instrument 81-107 - *Independent Review Committee for Investment Fund*, the independent review committee of the Funds (the **IRC**) has reviewed the proposed Merger and the process to be followed in connection with the Merger, and has advised the Filer that, in the opinion of the IRC, having reviewed the Merger as a potential "conflict of interest matter", the Merger achieves a fair and reasonable result for the Funds. Such opinion of the IRC was disclosed in the Circular (as defined below).

18. The Filer intends to reorganize by merging the Terminating Fund into the Continuing Fund such that securityholders of the Terminating Fund will become securityholders of the Continuing Fund.

19. No costs or expenses will be payable in connection with the acquisition by the Continuing Fund of the investment portfolio of the Terminating Fund.

20. The investment objectives of the Funds are not substantially similar as the Terminating Fund focuses on floating rate fixed income securities while the Continuing Fund focuses on investment grade and high yield fixed income securities. Although they both focus on fixed income securities, the nature of the securities and asset allocation varies between the Funds, not without some overlap.

21. The portfolio and other assets of the Terminating Fund to be acquired by the Continuing Fund as a result of the Merger will be acceptable to the portfolio advisor of the Continuing Fund prior to the merger and consistent with the investment objective of the Continuing Fund.

22. The Filer will pay for the costs of the Merger. These costs consist mainly of legal, proxy solicitation, printing, mailing, brokerage costs and regulatory fees.

23. The board of directors of the Filer has approved the Merger.

24. Although the Merger is being conducted on a taxable basis, in view of the Filer, it is in the best interest of the securityholders of the Funds to complete the Merger on a taxable basis given the Continuing Fund losses will be preserved by completing the Merger in this manner.

Securityholder Disclosure

25. A press release was issued and filed on the System for Electronic Document Analysis and Retrieval (**SEDAR**) on July 28, 2020, and a material change report was filed on SEDAR on August 4, 2020, with respect to the proposed Merger. The simplified prospectus and Fund Facts for the Funds include disclosure with respect to the Merger in accordance with applicable securities law.

26. A notice of meeting, a management information circular (**Circular**) and a form of proxy (together, the **Meeting Materials**) in connection with the special meeting of securityholders of the Fund being held on or about October 1, 2020, were mailed to investors of record as at August 21, 2020 of the Terminating Fund and filed on SEDAR in accordance with applicable securities law.

27. The Circular provided securityholders of the Terminating Fund with sufficient information to permit them to make an informed decision as to whether to approve the Merger or not, including a discussion regarding the tax implications of the Merger and the potential benefits of the Merger.

28. The Circular also contained certain prospectus-level disclosure concerning the Continuing Fund, including information in respect of its: investment objective; investment structure; registered plan eligibility; portfolio management responsibility; net asset value; fees and expenses; annual returns; valuation procedures; and distribution policy. In addition, the Circular highlighted the similarities and differences between the Terminating Fund and the Continuing Fund with respect to such matters.

29. The Circular also disclosed that securityholders could obtain the simplified prospectus, annual information form, Fund Facts, the most recent financial statements and the most recent management report of fund performance for the Continuing Fund from the Filer upon request or on SEDAR at www.sedar.com. Also accompanying the Circular delivered to securityholders of the Terminating Fund were copies of the Fund Facts, as applicable, for the Continuing

Fund. Accordingly, investors of the Terminating Fund will have an opportunity to consider this information prior to voting on the Merger at the special meetings.

Merger Steps

30. The Merger will be structured substantially as follows:

(i) The value of the Terminating Fund's portfolio and other assets will be determined at the close of business on the Effective Date.

(ii) The Declarations of Trust governing the Funds will be amended to permit such actions as are necessary to complete the Merger.

(iii) Immediately following the close of business on the Effective Date, the Terminating Fund will transfer all of its assets and liabilities to the Continuing Fund.

(iv) In exchange, the Terminating Fund will receive securities of the relevant series of the Continuing Fund, the aggregate value of which is equal to the aggregate net asset value (the **NAV**) of the assets of the Terminating Fund transferred to the Continuing Fund, in each case calculated as of the close of business on the Effective Date.

(v) Immediately thereafter, the Terminating Fund will cause all of its securities to be redeemed and pay the redemption price by distributing securities of the Continuing Fund. This will result in each securityholder of the Terminating Fund receiving securities of the applicable series of the Continuing Fund with a NAV equal to the NAV of the securities of the relevant series of the Terminating Fund that were held by such securityholder.

(vi) As required, the Terminating Fund will declare, pay and automatically reinvest a distribution to its unitholders of net income, if any, to ensure that it will not be subject to tax for its current tax year.

(vii) Securityholders of the Terminating Fund will receive securities of the corresponding Continuing Fund as follows:

Terminating Fund	*Continuing Fund*
Manulife Floating Rate Income Fund	*Manulife U.S. Unconstrained Bond Fund*
Advisor Series securities	Advisor Series securities
Series F securities	Series F securities
Series FT securities	Series FT securities
Series T securities	Series T securities
Series D securities	Series D securities
Series I securities	Series I securities
Series G securities	Series G securities
Series M securities	Series M securities

31. As soon as reasonably practicable after the distribution of securities of the Continuing Fund to the Terminating Fund's securityholders, the Terminating Fund will be terminated.

32. Securityholders of the Exempt Terminating Fund Series (the **Exempt Terminating Fund Securityholders**), will receive corresponding Exempt Continuing Fund Series upon completion of the Merger. The resultant distribution of securities to Exempt Terminating Fund Securityholders will be completed in reliance on the prospectus exemption contained in section 2.11 of NI 45-106. As no Fund Facts are required in connection with the distribution of the Exempt Continuing Fund Series on a prospectus exempt basis, no Fund Facts will be provided to the Exempt Terminating Fund Securityholders in connection with the Merger.

33. With respect to the Merger as it pertains to Exempt Terminating Fund Securityholders, the Filer included prospectus level disclosure in the Circular describing the applicable securities and Merger in sufficient detail to enable the Exempt Terminating Fund Securityholders to form a reasoned judgement concerning the Merger. In particular, the Circular disclosed information regarding fees, expenses, investment objectives, risk ratings, valuation procedures, the manager, the portfolio advisor, sub-advisor, income tax considerations and net asset value of the Terminating Fund and Continuing Fund.

34. Securityholders of the Terminating Fund will continue to have the right to redeem securities of such Terminating Fund for cash at any time up to the close of business on the Effective Date. The Circular disclosed that, upon acquisition of securities of the Continuing Fund, Terminating Fund securityholders will be subject to the same redemption charges to which their securities of the Terminating Fund were subject to prior to the Merger occurring.

35. The Terminating Fund will be capped to switches and transfers out over Fundserv after 4:00pm (Toronto time) on the day before the Effective Date, expected to be October 22, 2020. Securityholders will have the right to redeem the securities of the Terminating Fund up to 4:00pm (Toronto time) on the Effective Date for direct orders and as of 4:00pm (Toronto time) two days before the Effective Date, expected to be October 21, 2020 for wire orders over Fundserv.

Benefits of Merger

36. The Filer believes that the Merger will benefit securityholders of the Fund because:

    (i) The Terminating Fund has a similar investment mandate as the Continuing Fund and would generally attract the same type of investor with a similar risk-return profile. As a result, the Merger will contribute towards reducing duplication and redundancy across the Manulife fund line-up and may potentially reduce the administrative and regulatory operating costs and expenses associated with the Terminating Fund.

    (ii) The Terminating Fund has shown an increased liquidity risk profile for its fixed income portfolio. The Merger would result in a reduction of the liquidity risk for the Terminating Fund securityholders while allowing an exposure to floating rate loans and other floating rate debt securities in a diversified fixed income portfolio.

    (iii) The Merger has the potential to lower costs for securityholders. If the Merger is completed, expenses for which the Continuing Fund is responsible will be spread over a greater pool of assets, potentially resulting in a lower management expense ratio for the Continuing Fund than may not occur otherwise. No securityholder of the Terminating Fund will be subject to an increase in management fees as a result of the Terminating Fund merging into the Continuing Fund (and many will experience a decrease in management fees). The fixed administration fee chargeable to both Funds is also the same, other than the fixed administration fee of Series M of the Continuing Fund which is 1 bps lower than the fixed administration fee of the corresponding series of the Terminating Fund.

    (iv) The Continuing Fund will have an asset base of greater size, potentially allowing for increased portfolio diversification opportunities and a smaller proportion of assets set aside to fund redemptions. The ability to improve diversification may lead to increased returns and a reduction of risk, while at the same time creating a higher profile that may attract more investors.

    (v) The Continuing Fund is expected to attract more assets as marketing efforts will be concentrated on fewer Funds, rather than two Funds with similar investment mandates. The ability to attract assets to the Continuing Fund will benefit investors by ensuring that the Continuing Fund remains viable, long-term, attractive investment vehicles for existing and potential investors.

Decision

The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator under the Legislation is that the Approval Sought is granted with respect to the Merger, provided that the Filer obtains the prior approval of the securityholders of the Terminating Fund for the Merger at a special meeting held for that purpose.

"Darren McKall"
Manager
Investment Fund & Structured Products Branch
Ontario Securities Commission

2.1.2 CI Investments Inc. and CI First Asset U.S. Trendleaders Index ETF

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted from sections 2.3(e), 2.3(f), 2.5(2)(a) and 2.5(2)(c) of National Instrument 81-102 Investment Funds to permit an index mutual funds to invest in a gold ETF traded on a U.S. stock exchange in accordance with the index methodology of the index being tracked.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 2.3(e), 2.3(f), 2.5(2)(a) and 2.5(2)(c) and 19.1.

September 2, 2020

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(the Jurisdiction)

AND

IN THE MATTER OF
THE PROCESS FOR EXEMPTIVE RELIEF APPLICATIONS
IN MULTIPLE JURISDICTIONS

AND

IN THE MATTER OF
CI INVESTMENTS INC.
(the Filer)

AND

IN THE MATTER OF
CI FIRST ASSET U.S. TRENDLEADERS INDEX ETF
(the Fund)

DECISION

Background

The principal regulator in the Jurisdiction has received an application (the **Application**) from the Filer on behalf of the Fund, an exchange-traded investment fund managed by CI to which National Instrument 81-102 *Investment Funds* (**NI 81-102**) applies, a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) pursuant to section 19.1 of NI 81-102:

(a) exempting the Fund from sub-sections 2.3(e) and (f) of NI 81-102 to permit the Fund to invest indirectly in gold through investments in shares of the SPDR Gold Trust which, immediately after the purchase thereof, would constitute up to 33 1/3 percent of the net asset value (**NAV**) of the Fund (the **Commodity ETF Relief**) to track the performance of the performance of the CIBC U.S. Trendleaders Index (the "**Index**"); and

(b) exempting the Fund from sub-sections 2.5(2)(a) and 2.5(2)(c) of NI 81-102 to permit the Fund to invest in the shares of the SPDR Gold Trust to track the performance of the Index notwithstanding that such shares do not qualify as "index participation units" (**IPUs)** (as defined in NI 81-102) and that SPDR Gold Trust is not an investment fund subject to NI 81-102 (the **FOF Relief** and, together with the Commodity ETF Relief, the **Relief Sought**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a passport application):

(A) the Ontario Securities Commission is the principal regulator for the Application;

and

(B) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in each of the provinces and territories of Canada other than Ontario (together with the Jurisdiction, the **Jurisdictions**).

Interpretation

Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this decision, unless otherwise defined.

Representations

The decision is based on the following facts represented by CI:

CI and the Fund

1. The Filer is a corporation amalgamated under the laws of the Province of Ontario with its head office located in Toronto, Ontario.

2. The Filer is registered under the securities legislation in:

   (a) as an investment fund manager in Ontario, Québec and Newfoundland and Labrador,

   (b) as a portfolio manager and exempt market dealer in each of the Jurisdictions, and

   (c) as a commodity trading counsel and commodity trading manager under the *Commodity Futures Act* in Ontario.

3. The Filer is the manager of the Fund.

4. The Filer is not in default of securities legislation in any of the Jurisdictions.

5. The Fund is an investment fund to which NI 81-102 applies, subject to any exemptions therefrom that have been, or may be, granted by the applicable securities regulatory authorities.

6. The Fund is a reporting issuer under the securities legislation of all the Jurisdictions.

7. The Fund is not in default of securities legislation in any of the Jurisdictions, other than in respect of the matters addressed in this Application.

The Fund and the Index

8. The Fund's investment objective is to replicate the Index, net of expenses. CIBC World Markets Inc. is the Index sponsor and Solactive AG, a Germany-based index provider operating globally that develops tailor-made and multi-asset class index solutions for exchange-traded funds and other index-linked investment products with the leading global investment banks and asset managers as clients, is the Index calculator. The Index is composed primarily of equity securities included in the Solactive U.S. Large and Midcap Index, a separate index published by Solactive AG. The Fund seeks to meet its investment objective by holding certain securities in the Solactive U.S. Large and Midcap Index in the same proportions as such securities appear in the Index from time to time.

9. The Index is comprised of a portfolio of equity securities of U.S. companies. The Index employs a proprietary rules-based model developed by CIBC World Markets (the "**Index Construction Rules**") which systematically and objectively selects and ranks securities based on the duration and longevity of certain underlying strengths and incorporates an objective quantitative filter for technical factors. The Index was developed based on the empirical evidence that shows that equity securities with the highest trend scores will continue to generate better absolute and relative returns on a more frequent basis and will undergo different cycles of mean-reversion, mostly tied to the duration of the period during which the trend factors are expanding or contracting. The Index Construction Rules are available on the Fund's CI Website, which is publicly available.

10. To qualify for inclusion in the Index, an equity security must: (i) be a constituent of the Solactive U.S. Large and MidCap Index, and (ii) meet a minimum average daily traded dollar value volume threshold. The Index is reconstituted and rebalanced monthly in order to remove constituents with weakening or stagnating trend scores and replace them with a new set of higher trend-scoring constituents.

11. The Index Construction Rules governing the Index provide that, in the event that the filtering of the eligible equity securities result in numbers of eligible securities falling below the required minimum of 30 from the Solactive US Large Cap Index and 20 from the Solactive US Mid Cap Subgroup, the Index in the following month will be linked to the performance of an equally weighted basket of SPDR S&P 500 Trust ETF securities, iShares iBoxx $ Investment Grade Corporate Bond ETF securities and SPDR Gold Shares (the "**Fallback Portfolio**").

12. The Index is reconstituted and rebalanced on the 2nd business day of each month. If the Index in the prior month comprises the Fallback Portfolio but the filtering of the eligible equity securities provided by the Index Construction Rules for the following month results in the numbers of eligible securities being above the required minimum of 30 from the Solactive US Large Cap Index and 20 from the Solactive US Mid Cap Subgroup, the Index will revert back to a broad selection of such equity securities.

13. On March 2, 2020, the Filer was notified by Solactive AG, as index calculation agent on behalf of CIBC World Markets that, with effect from March 4, 2020, the Index would be linked to the Fallback Portfolio. In lieu of securities in iShares iBoxx $ Investment Grade Corporate Bond ETF, the notice from Solactive AG advised that the Fallback Portfolio would comprise securities in the iShares Broad USD Investment Grade Corporate Bond ETF, an ETF similar to the iShares iBoxx $ Investment Grade Corporate Bond ETF. In accordance with its usual practice, the Fund followed the Index by disposing of the equity securities that had previously been in the Index and investing in the securities comprising the Fallback Portfolio.

14. The securities of the SPDR S&P 500 Trust, the iShares iBoxx Investment Grade Corporate Bond ETF and the iShares Broad USD Investment Grade Corporate Bond ETF qualify as IPUs because they are securities traded on a stock exchange in the United States and are issued by an issuer, the only purpose of which is to hold the securities that are included in a specified widely-quoted market index in substantially the same proportion as those securities are reflected in that index. The SPDR S&P 500 Trust tracks the S&P 500 index, the iShares iBoxx Investment Grade Trust tracks the iBoxx Investment Grade Corporate Bond index and the iShares Broad USD Investment Grade Corporate Bond ETF tracks the ICE BofAML US Corporate Index.

15. Unlike the securities of the SPDR S&P 500 Trust, the iShares iBoxx Investment Grade Corporate Bond ETF and the iShares Broad USD Investment Grade Corporate Bond ETF, the securities of the SPDR Gold Trust do not qualify as IPUs because they track the value of gold bullion rather than the securities in a “specified widely quoted market index”.

The Relief Sought

16. Under sub-section 2.1(5) of NI 81-102, an index mutual fund, the name of which includes the word "index", may, in order to satisfy its fundamental investment objectives, purchase a security, enter into a specified derivatives transaction or purchase index participation units if its prospectus contains the disclosure referred to in subsection (5) of Item 6 and subsection (5) of Item 9 of Part B of Form 81-101F1 *Contents of Simplified Prospectus*. This includes disclosure that, as an index fund, the Fund may, in basing its investment decisions on a permitted index, have more of its net asset value invested in one or more issuers than is usually permitted for investment funds.

17. The Fund qualifies as an index mutual fund under sub-section 2.1(5) of NI 81-102 because its name includes “index” and its prospectus includes the disclosure required by sub-section 2.1(5) of NI 81-102.

18. However, because the securities of the SPDX Gold Trust do not qualify as IPUs, they might be characterized as specified derivatives, the underlying interest of which is gold, and the Fund would therefore be restricted by sub-sections 2.3(e) and (f) of NI 81-102 from purchasing such securities if, following such purchase, more than 10 percent of its NAV is invested in such securities.

19. In addition, given the securities of SPDR Gold Trust do not qualify as IPUs, the Fund is not permitted by sub-sections 2.5(2)(a) and 2.5(2)(c) of NI 81-102 to purchase such securities due to the fact that the SPDR Gold Trust is not an investment fund subject to NI 81-102 and is not a reporting issuer in one of the Jurisdictions.

20. The Relief Sought is requested in order to permit the Fund to continue to meet its fundamental investment objectives, in compliance with the exception to the concentration limit in sub-section 2.1(5) of NI 81-102, and in accordance with the expectation of investors in the Fund. It is anticipated that the Relief Sought would only need to be relied on in exceptional market circumstances such as those in February and March 2020.

21. Any regulatory concerns, such as undue risk, liquidity concerns or lack of transparency, in connection with investing in the SPDR Gold Trust ETFs are mitigated by the following:

    (a) The SPDR Gold Trust is the largest physically-backed gold ETF in the world and is liquid. It trades on the New York Stock Exchange and the Singapore, Tokyo, Hong Kong and Mexico stock exchanges;

    (b) The SPDR Gold Trust is a “registered” investment company in the United States, which means that there will be clear disclosure about the SPDR Gold Trust readily available in the marketplace;

    (c) The amount of loss that can result from an investment by the Fund in the SPDR Gold Trust will be limited to the amount invested by the Fund in securities of the SPDR Gold Trust;

    (d) The prospectus of the Fund on its renewal will disclose:

(i) in the investment strategy section: (I) that the Fund has obtained relief to invest in securities of the SPDR Gold Trust; (II) an explanation of what the SPDR Gold Trust is; (III) that the Fund may indirectly invest in gold; and

(ii) the risks associated with investment in gold through the SPDR Gold Trust.

Decision

The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision. The decision of the principal regulator under the Legislation is that the Requested Relief is granted, provided that:

(a) the investment by a Fund in securities of the SPDR Gold Trust is in accordance with the fundamental investment objectives of the Fund and solely to track the Index;

(b) the securities of the SPDR Gold Trust are traded on a stock exchange in the United States;

(c) apart from investment in the securities of SPDR Gold Trust, the Fund does not incur any other direct or indirect exposure to physical commodities;

(d) the prospectus of the Fund discloses on its renewal:

(i) in the investment strategy section:

(A) that the Fund has obtained relief to invest in securities of the SPDR Gold Trust;

(B) an explanation of what the SPDR Gold Trust is; and

(C) that the Fund may indirectly invest in gold; and

(ii) the risks associated with such investments and strategies.

“Darren McKall”
Manager, Investment Funds and Structured Products Branch
Ontario Securities Commission

2.1.3 Shandong Gold Mining (HongKong) Co., Limited and Cardinal Resources

Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Section 6.1 of NI 62-104 – take-over bid – relief from requirements applicable to take-over bids in Part 2 and Part 3 of NI 62-104 – take-over bid for issuer not resident in Canada that is a reporting issuer in Canada and publicly listed in Australia and Ontario – offeror to acquire all outstanding ordinary shares of target issuer that it does not already own – would be eligible for foreign take-over bid exemption but for the fact that ownership by security holders resident in Canada exceeds 10% – bid subject to laws of Australia – competing take-over bid outstanding for target issuer's ordinary shares – published market on which the greatest volume of trading in securities of target issuer occurred during the 12 months immediately preceding the commencement of the bid was not in Canada – security holders in Canada entitled to participate on terms at least as favourable as the terms that apply to all other holders of target securities – offer is exempt from requirements applicable to take-over bids in Part 2 and Part 3 of NI 62-104, subject to conditions, including that the offeror satisfy the conditions set out in subsections 4.4(e), (f) and (g) of NI 62-104.

Applicable Legislative Provisions

National Instrument 62-104 Take-Over Bids and Issuer Bids, s. 6.1, Parts 2 and 3.

September 3, 2020

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(the Jurisdiction)

AND

IN THE MATTER OF
THE PROCESS FOR EXEMPTIVE RELIEF APPLICATIONS
IN MULTIPLE JURISDICTIONS

AND

IN THE MATTER OF
SHANDONG GOLD MINING (HONGKONG) CO., LIMITED
(the Filer)

AND

CARDINAL RESOURCES LIMITED
(the Issuer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application (the **Application**) from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) pursuant to section 6.1 of National Instrument 62-104 *Take-Over Bids and Issuer Bids* (**NI 62-104**), exempting the all-cash off-market take-over bid commenced by the Filer to purchase all of the issued and outstanding ordinary shares (the **Issuer Shares**) of the Issuer, as such bid may be amended, supplemented or replaced (the **Foreign Off-Market Bid**) from the requirements applicable to take-over bids in Part 2 and Part 3 of NI 62-104 (the **Take-Over Bid Requirements**) (the **Exemption Sought**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a passport application):

(a) the Ontario Securities Commission is the principal regulator for this Application; and

(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 Passport System (MI 11-102) is intended to be relied upon by the Filer in British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Yukon, the Northwest Territories and Nunavut.

Interpretation

Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this decision, unless otherwise defined.

Representations

This decision is based on the following facts represented by the Filer:

Shandong Gold Mining (HongKong) Co., Limited

1. The Filer is an entity incorporated in Hong Kong as a limited liability company, and is a wholly-owned subsidiary of Shandong Gold Mining Co., Ltd. (the **Parent**).

2. The Parent is a leading Chinese gold mining company with a complete industry chain integrating exploration, mining, beneficiation and smelting of ores and deep processing and sales of gold products, as well as gold mining and processing related research and development. The Parent is listed on the main board of both the Shanghai and the Hong Kong Stock Exchanges.

3. As at the date of the bidder's statement (the **Bidder's Statement**) which describes the details of the Foreign Off-Market Bid, the Filer held 4.94% of the Issuer Shares. The Filer's interest in the Issuer was acquired on July 7, 2020, by way of an interim funding transaction in which the Filer subscribed for 26 million Issuer Shares at a price of AUD$0.46 per Issuer Share. The funds raised through this interim funding transaction were to be used by the Issuer to continue advancing the Issuer's Namdini Gold Project towards development and as working capital prior to the closing of the Foreign Off-Market Bid.

4. The Filer is not a reporting issuer in, and is not in default of any requirement of the securities legislation of, any jurisdiction in Canada.

Cardinal Resources Limited

5. The Issuer is an Australian Corporation registered under the Australian *Corporations Act 2001* (Cth).

6. The Issuer's registered office is at Suite 1, 28 Ord Street, West Perth, WA 6005.

7. The Issuer is a reporting issuer in all of the provinces of Canada, excluding Québec, and, to the knowledge of the Filer, is not in default of any requirement of the securities legislation of any of the jurisdictions in Canada in which it is a reporting issuer.

8. The principal activity of the Issuer is gold exploration and mine development in Ghana. The Issuer holds tenements prospective for gold mineralisation in Ghana in relation to two projects located in northeast Ghana and one project located in southwest Ghana.

9. The Issuer Shares are posted and listed for trading on the Australian Securities Exchange (the **ASX**) and on the Toronto Stock Exchange (the **TSX**) under the symbol "CDV".

10. In the 12 months ending August 10, 2020, based on public trading reports, approximately 78% and 22% of trading in the Issuer Shares occurred on the ASX and the TSX, respectively.

11. As of August 14, 2020 (according to the registered list provided by Computershare Investor Services), 526,024,522 Issuer Shares were issued and outstanding, of which 12.1% are held by The Canadian Depositary for Securities Limited (**CDS**). As of the same date, the CDS List prepared by Computershare Investor Services, indicated CDS Participants in Ontario held 11.18% of the Issuer Shares.

12. The Issuer has also provided to the Filer a report from Broadridge dated July 27,2020 indicating beneficial holders of Issuer Shares in Canada held approximately 1.74% of the Issuer Shares.

13. An alternatively monthly report filed by MM Asset Management Inc. on August 10, 2020 indicated that it exercises control or direction over 9.68% of the issued Issuer Shares.

14. To the knowledge of the Filer, after reasonable inquiry and based on publicly filed reports, only Nord Gold S.E. (**Nordgold**) holds more than 10% of the outstanding Issuer Shares.

15. On July 30, 2020, Nordgold commenced a "market bid" under the Australian *Corporations Act 2001* (Cth) for all of the issued Issuer Shares.

The Foreign Off-Market Bid

16. On June 18, 2020, Shandong Gold Mining Co., Ltd., the Filer and the Issuer entered into a Bid Implementation Agreement, which was amended by a letter deed dated July 29, 2020, in connection with the Foreign Off-Market Bid.

17. The Foreign Off-Market Bid was commenced by the Filer on August 11, 2020 and will expire at 7:00 p.m. Sydney, Australia time (5:00 a.m. Toronto, Canada time) on October 13, 2020, unless extended or withdrawn in accordance with the Australian *Corporations Act, 2001* (Cth).

18. Under the terms of the Foreign Off-Market Bid, Shareholders will receive AUD$0.70 in cash for each Issuer Share that they deposit to the Foreign Off-Market Bid.

19. The Foreign Off-Market Bid is an "off-market bid" for the purposes of the *Australian Corporations Act 2001* (Cth).

20. The Foreign Off-Market Bid has been made by the Filer in compliance with the requirements of the Australian *Corporations Act 2001* (Cth), the operating rules of the ASX, and the applicable requirements of the Australian Securities and Investments Commission.

21. The Foreign Off-Market Bid constitutes a "take-over bid" for the purposes of NI 62-104. The Foreign Off-Market Bid is therefore subject to the formal bid requirements set out in the Take-Over Bid Requirements, unless otherwise exempted.

22. The Foreign Off-Market Bid is currently structured such that it is substantially compliant with the Take-Over Bid Requirements.

23. Section 4.4 of NI 62-104 provides an exemption (the **Foreign Take-Over Bid Exemption**) from the Take-Over Bid Requirements where, among other things, the following conditions are satisfied:

    a. security holders whose last address as shown on the books of the offeree issuer is in Canada hold less than 10% of the outstanding securities of the class subject to the bid at the commencement of the bid; and

    b. the offeror reasonably believes that security holders in Canada beneficially own less than 10% of the outstanding securities of the class subject to the bid at the commencement of the bid.

24. The Filer determined that the Foreign Off-Market Bid could not be made in reliance upon the Foreign Take-Over Bid Exemption because Canadian beneficial and registered Shareholder ownership was not less than 10% of the issued and outstanding Issuer Shares at the commencement of the Foreign Off-Market Bid.

25. The published market on which the greatest volume of trading in Issuer Shares occurred during the 12 months immediately preceding the commencement of the Foreign Off-Market Bid was not in Canada.

26. The Foreign Off-Market Bid is capable of being accepted by Shareholders resident in Canada who hold their Issuer Shares on the Canadian branch register (through CDS) where such Shareholders deposit their Issuer Shares to the Foreign Off-Market Bid using the CDSX system. As such, Shareholders in Canada are entitled to participate in the Foreign Off-Market Bid on terms at least as favourable as the terms that apply to the general body of Shareholders.

27. The Filer has filed the Bidder's Statement, which describes the details of the Foreign Off-Market Bid, under the profile of the Issuer on SEDAR. The Filer has mailed the Bidder's Statement and intends to mail any other material relating to the Foreign Off-Market Bid to Shareholders, including those whose last address as shown on the books of the Issuer is in Canada, in compliance with applicable Australian law.

28. The Bidder's Statement contains information advising Shareholders resident in Canada as to how they may participate in the Foreign Off-Market Bid.

Decision

The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted provided that the Filer satisfies the conditions set out in subsections 4.4(e), (f), and (g), as may be applicable, of NI 62-104.

"Jason Koskela"
Manager, Office of Mergers & Acquisitions
Ontario Securities Commission

2.1.4 WPT Industrial Real Estate Investment Trust

Headnote

Application for a decision under section 5.1 of OSC Rule 48-501 exempting the applicant from trading restrictions under subsection 2.2(a) of OSC Rule 48-501 for at-the-market distribution of securities. Decision granted.

Applicable Legislative Provisions

Ontario Securities Commission Rule 48-501 – Trading During Distributions, Formal Bids and Share Exchange Transactions, ss. 2.2, 5.1.

August 13, 2020

**IN THE MATTER OF
THE *SECURITIES ACT*,
R.S.O. 1990, CHAPTER S.5, AS AMENDED
(the Act)**

AND

**IN THE MATTER OF
ONTARIO SECURITIES COMMISSION RULE 48-501
TRADING DURING DISTRIBUTIONS, FORMAL BIDS AND SHARE EXCHANGE TRANSACTIONS
(the Rule)**

AND

**IN THE MATTER OF
WPT INDUSTRIAL REAL ESTATE INVESTMENT TRUST
(the Filer)**

DECISION

Background

The securities regulator in the Jurisdiction (the **Decision Maker**) has received an application (the **Application**) from the Filer pursuant to the procedures set forth in OSC Policy 2.1 – *Applications to the Ontario Securities Commission* for a decision under the securities legislation of the Jurisdiction (the **Legislation**) that the requirement in section 2.2(a) of the Rule do not apply to insiders of the Filer (the **Insiders**) in connection with any ATM Distributions made by the Filer under an Equity Distribution Agreement (the **Exemptive Relief Sought**).

The Decision Maker has also received a request from the Filer for a decision that the Application and this decision (together, the **Confidential Material**) be kept confidential and not be made public until the earliest of: (i) the date on which the Filer publicly announces an ATM distribution; (ii) the date on which the Filer first enters into an Equity Distribution Agreement as described below, (iii) the date on which the Filer advises the Decision Maker that there is no longer any need for the Confidential Material to remain confidential, and (iv) 90 days after the issue of the decision with respect to the Exemptive Relief Sought (together, the **Confidentiality Relief**).

Interpretation

Terms defined in National Instrument 14-101 – *Definitions*, MI 11-102, National Instrument 21-101 – *Marketplace Operation* and National Instrument 13-101 – *System for Electronic Document Analysis and Retrieval (SEDAR)* have the same meaning if used in this decision, unless otherwise defined herein. All dollar figures in this decision refer to Canadian dollars.

Representations

This decision is based on the following facts represented by the Filer:

The Filer

1. The Filer is an unincorporated, open-ended real estate investment trust governed by the laws of the Province of Ontario. The head office of the Filer is located in Toronto, Ontario.

2. The Filer is a reporting issuer in each province and territory of Canada and to its knowledge is not in default of securities legislation in any jurisdiction of Canada.

3. The Filer's trust units (the **Units**) are listed on the Toronto Stock Exchange (the **TSX**) in U.S. dollars under the trading symbol "WIR.U" and in Canadian dollars under the symbol "WIR.UN".

4. The Units meet the requirements in the Rule to be considered a "highly-liquid security".

Proposed ATM Distribution

5. The Filer has filed a short form base shelf prospectus dated December 5, 2019 (the **Shelf Prospectus**).

6. The Filer has applied to the Ontario Securities Commission for exemptive relief pursuant to National Policy 11-203 – *Process for Exemptive Relief Applications in Multiple Jurisdictions* (the **Passport Application**) for exemptive relief from certain prospectus delivery and form requirements in order to facilitate the "at-the-market distributions" of Units by the Filer in Canada (**ATM Distributions**) within the meaning of, and pursuant to the shelf prospectus procedures prescribed in, Part 9 of National Instrument 44-102 – *Shelf Distributions* (**NI 44-102**), to be made pursuant to the terms and conditions of one or more substantially identical equity distribution agreements (each, an **Equity Distribution Agreement**) to be entered into between the Filer and certain agents (the **Agents**). The Filer has also applied to the Autorité des marches financiers for relief from the French translation requirements in respect of any ATM Distribution (the **AMF Application**).

7. Subject to mutual agreement on terms and conditions, and to receipt of the exemptions sought under the Passport Application and the AMF Application, the Filer is proposing to enter into one or more Equity Distribution Agreements with the Agents, providing for the periodic sale of Units by the Filer through the Agents, pursuant to an ATM Distribution under the base shelf prospectus procedures prescribed by Part 9 of NI 44-102 (an **ATM Program**), after the filing of a prospectus supplement (together with the Shelf Prospectus, the **Prospectus**).

8. The Equity Distribution Agreement will provide that, at the time of each sale of Units pursuant to an ATM Distribution, the Filer will represent to the Agents that the Prospectus contains full, true and plain disclosure of all material facts relating to the Filer and the Units being distributed. It is therefore likely that the bulk of the sales activity under the ATM Program will occur during periods commencing on the second business day after the public announcement of the Filer's quarterly or annual earnings and continuing until the end of each fiscal quarter thereafter.

Equity Ownership

9. Under the Filer's equity ownership guidelines (the **Ownership Guidelines**), each of the independent trustees (independent for the purposes of National Instrument 58-101 - *Disclosure of Corporate Governance Practices*) (an "**Independent Trustee**") of the Filer is required to acquire (and thereafter maintain ownership of) a number of Units or equity equivalents with a fair market value equal to a minimum of three times the annual base cash retainer (currently $40,000) in place for Independent Trustees. Each Independent Trustee has three years from the later of April 26, 2013 (the closing date for the Filer's initial public offering of Units) and the date of his or her appointment to the meet the requirement of the Ownership Guidelines. In addition, the Filer's named executive officers (**NEOs**), including the Chief Executive Officer, Chief Financial Officer and Chief Operating Officer, General Counsel and Secretary are required to hold Units, deferred trust units, deferred limited partnership units of WPT Industrial LP, the Filer's operating subsidiary, or other equity securities that own underlying Units with a value equal to six times the base salary for the Chief Executive Officer and three times base salary for the Chief Financial Officer and the Chief Operating Officer, General Counsel and Secretary, based on the market value of the securities held, and which must be attained within five years of being subject to the guidelines. NEOs must retain 100% of equity granted (less taxes) until guidelines are met after the five-year grace period.

10. The Filer believes that the Ownership Guidelines are in-line with best corporate governance practices and that it is in the Filer's best interest to avoid imposing any unnecessary restrictions on the ability of Insiders to increase their equity stake in the Filer.

11. Under the terms of the Filer's insider trading policy for all members of the board of trustees, directors, managers, officers, and employees of the Filer and its subsidiaries and their respective associates (the **Insider Trading Policy**), trustees and NEOs of the Filer, as well as certain other individuals, are limited in trading Units and other securities of the Filer while the Filer is not in blackout (a **Trading Window**). Blackout periods commence at the end of each fiscal quarter until 48 hours after the general release of the financial results for the quarter, and at the end of each fiscal year until 48 hours after the general release of the financial results for the year. If the Filer intends to commence an ATM Distribution, any such ATM Distributions by the Filer may occur during a Trading Window.

12. Pursuant to section 2.2(a) of the Rule, an insider of a reporting issuer is prohibited from bidding on or purchasing securities of that reporting issuer during the period commencing on the date that is two trading days prior to the day the offering price is determined for a prospectus offering of that reporting issuer, and ending on the date the selling process ends and all stabilization arrangements relating to the offered security are terminated (the **Insider Purchasing Restriction**).

13. These restrictions in the Rule were not designed in contemplation of ATM Distributions. Section 1.2(5)(a)(i) of the Rule provides the following interpretative guidance:

    the selling process shall be considered to end, in the case of a prospectus distribution, if a receipt has been issued for the final prospectus, the dealer has allocated all of its portion of the securities to be distributed under the prospectus and all selling efforts have ceased

    however such guidance does not apply in the context of an ATM Distribution, where the receipt is obtained before the distribution begins, the dealers do not allocate a position (but rather simply trade on a "marketplace", within the meaning of National Instrument 21-101 – *Marketplace Operation*) and no selling efforts are made (only ordinary trading activity).

14. Similarly, the exemption in section 3.2(e) of the Rule, in respect of "a subscription for or purchase of an offered security pursuant to a prospectus distribution", is not possible to apply in the context of an ATM Distribution, given that insiders purchasing on a marketplace during an ATM Distribution would have no knowledge as to whether they are purchasing under the ATM Distribution or otherwise from a counterparty unrelated to the Filer.

15. The stated policy rationale for the Rule is to prohibit "purchases of or bids for restricted securities in circumstances where there is heightened concern over the possibility of manipulation by those with an interest in the outcome of the distribution or transaction".[1]

16. In the case of the Filer, given that:

    (a) the Units constitute a "highly-liquid security" and are liquid to such a degree that it would be virtually impossible for an Insider to manipulate the trading price of the Units through purchases;

    (b) most Insiders will, in any event, be unaware of when each ATM Distribution begins and ends and discrete sales of Units thereunder occur; and

    (c) any Insider that is purchasing Units on the market during an ATM Distribution will not know whether it is purchasing under the ATM Distribution or from another counterparty unrelated to the Filer;

    there is no policy rationale for applying the Insider Purchasing Restriction to Insiders in the context of an ATM Distribution.

17. In the absence of an exemption from the Insider Purchasing Restriction, Insiders would be restricted from bidding on and purchasing Units during a period of time prior to and during each ATM Distribution by the Filer, which could overlap with the Trading Windows and unduly and unnecessarily impede trustees of the Filer from making purchases of Units, including for the purposes of complying with the Ownership Guidelines.

Confidentiality

18. The Filer submits that the Confidentiality Relief is warranted in the circumstances as there is otherwise a risk of the public being misled into believing, on the basis of the Confidential Material being available to the public before the earliest of the proposed expiration dates, that implementation of the contemplated ATM Distribution arrangement by the Filer is imminent when in fact the parties have not yet come to a definitive agreement and the Filer may decide not to proceed with an ATM Distribution in the near term, or at all, depending on market conditions and other factors outside of the Filer's control. Such premature disclosure could cause confusion and uncertainty in the market and would be contrary to the public interest.

19. In recognition of the general principles of access under the Act, however, the Filer proposes that the Confidentiality Relief be limited to a maximum duration of 90 days from the date of this decision. This period is believed to provide the Filer with sufficient time within which to negotiate a definitive Equity Distribution Agreement or otherwise make a final determination on the matter, and strikes an appropriate balance between the Filer's legitimate concerns about premature disclosure and principles of public access to filed materials.

20. Upon a definitive Equity Distribution Agreement being settled between the Filer and the Agents, the Filer's ordinary disclosure obligations will apply and news of the proposed ATM Distribution arrangement would be disseminated in the ordinary course.

[1] OSC Request for Comment on Changes to Proposed OSC Rule 48-501 - Trading During Distributions, Formal Bids and Share Exchange Transactions (2nd Publication) and Proposed Companion Policy 48-501CP to OSC Rule 48-501 and Proposed Rescission of OSC Policy 5.1, Paragraph 26 and OSC Policy 62-601 – Securities Exchange Take-Over Bids – Trades in the Offeror's Securities (September 10, 2004).

Decision

The Decision Maker is satisfied that the decision meets the test set out in the Legislation.

The decision of the Decision Maker under the Legislation is that the Exemptive Relief Sought is granted.

DATED this 13th day of August 2020.

"Tracey Stern"
Manager, Market Regulation
Ontario Securities Commission

2.1.5 BMO Asset Management Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief in Multiple Jurisdictions – relief granted to permit private funds and managed accounts to engage in principal trading in debt securities with certain related parties that are principal dealers in the Canadian debt securities market – relief subject to terms and conditions.

Applicable Legislative Provisions

National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 13.5(2)(b)(i), 13.5(2)(b)(ii) and 15.1.

September 11, 2020

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(the Jurisdiction)

AND

IN THE MATTER OF
THE PROCESS FOR EXEMPTIVE RELIEF
APPLICATIONS IN MULTIPLE JURISDICTIONS

AND

IN THE MATTER OF
BMO ASSET MANAGEMENT INC.
(the Filer)

AND

IN THE MATTER OF
THE PRIVATE FUNDS AND MANAGED ACCOUNTS
(as defined below)

DECISION

Background

The principal regulator in the Jurisdiction has received an application (the **Application**) from the Filer for a decision under the securities legislation of the Jurisdiction granting exemptive relief from the self-dealing restriction in clauses 13.5(2)(b)(i) and (ii) of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) (the **Principal Trade Prohibition**), which prohibits a registered adviser from knowingly causing an investment portfolio managed by it, including an investment fund for which it acts as an adviser, to purchase or sell a security of any issuer from or to the investment portfolio of a responsible person (as defined in section 13.5 of NI 31-103) or an associate (as defined in securities legislation) of a responsible person, in order to permit the Filer, or an affiliate of the Filer, on behalf of:

(i) the existing investment funds and any future investment funds to which National Instrument 81-102 *Investment Funds* (**NI 81-102**) does not apply (each, a **Private Fund** and collectively, the **Private Funds**) for which the Filer, or an affiliate of the Filer, acts as the portfolio adviser; and

(ii) the discretionary managed accounts of clients (each, a **Managed Account** and collectively, the **Managed Accounts**) for which the Filer, or an affiliate of the Filer, acts as the portfolio adviser,

to purchase debt securities issued or fully and unconditionally guaranteed by the federal or a provincial government of Canada (collectively, **Government Debt Securities**) or of an issuer other than the federal or a provincial government of Canada (collectively, **Non-Government Debt Securities** and with Government Debt Securities, **Debt Securities**) from, or sell Debt Securities to, a responsible person or an associate of a responsible person that is a principal dealer (or the equivalent) in the Canadian debt securities market in the secondary market (the **Exemption Sought**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a passport application):

(a) the Ontario Securities Commission is the principal regulator for this application; and

(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in each of Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Québec, Saskatchewan and Yukon (collectively with Ontario, the **Jurisdictions**).

Representations

This decision is based on the following facts represented by the Filer:

1. The Filer and each affiliate of the Filer is an indirect wholly-owned subsidiary of Bank of Montreal (**BMO**), a Schedule 1 Canadian chartered bank. The head office of the Filer is located in Toronto, Ontario.

2. The Filer is registered as an adviser in the category of portfolio manager and as a dealer in the category of exempt market dealer in each of the Jurisdictions, as an investment fund manager in Ontario, Quebec and Newfoundland and Labrador, and as a commodity trading manager in Ontario.

3. Each of the Private Funds is, or will be, an investment fund established under the laws of the Province of Ontario or another Jurisdiction.

4. Each of the Private Funds distributes, or will distribute, its securities in one or more of the Jurisdictions pursuant to available exemptions from the prospectus requirements under

applicable securities legislation. None of the Private Funds is, or will be, a reporting issuer in the Jurisdictions.

5. The Filer and each existing Private Fund is not in default of securities legislation in any of the Jurisdictions (the **Legislation**).

6. The Filer, or an affiliate of the Filer, provides discretionary investment management services to the Managed Accounts of private clients and institutions such as pension plans, foundations and endowments (each, a **Client** and collectively, the **Clients**). Each of these Clients enters into a discretionary investment management agreement (**Discretionary Management Agreement**) with the Filer, or an affiliate of the Filer, which sets out the investment objectives, strategies and restrictions applicable to the Managed Account.

7. The Filer, or an affiliate of the Filer, is, or will be, the investment fund manager and/or the portfolio manager of each of the Private Funds and the portfolio manager of the Managed Accounts.

8. "Responsible persons" or "associates" of responsible persons of the Filer, or an affiliate of the Filer, are principal dealers (or the equivalent) (**Principal Dealers**) in the Canadian debt securities market, both primary and secondary.

9. BMO and each Principal Dealer may each be a "responsible person" of the Filer and each affiliate of the Filer that is a registered adviser, as they may have access to the investment decisions of the Filer and each affiliate of the Filer that is a registered adviser before they are implemented (e.g., if the Filer or an affiliate of the Filer that is a registered adviser submits trade orders to a Principal Dealer for execution on behalf of a Private Fund and/or a Managed Account).

10. Since BMO beneficially owns more than 10% of the voting shares of the Principal Dealers (other than itself), the Filer and each affiliate of the Filer that is a registered adviser will be deemed, pursuant to the Legislation, to beneficially own the securities owned by BMO, including the voting securities of the Principal Dealers (other than BMO). As a result, each Principal Dealer (other than BMO) may be considered to be an "associate" of the Filer and of each affiliate of the Filer that is a registered adviser under the Legislation.

11. An independent review committee (**IRC**) has been, or will be, established for the Private Funds that is composed in accordance with the requirements of section 3.7 of National Instrument 81-107 *Independent Review Committee* (**NI 81-107**) and has complied, or will comply, with the standard of care set out in section 3.9 of NI 81-107, as if NI 81-107 applied to the Private Funds. The mandate of the IRC established, or to be established, for the Private Funds will include reviewing and approving purchases and sales of Debt Securities by the Private Funds with responsible persons or associates of responsible persons.

12. The Filer has informed the IRC of the existing Private Funds of the Filer's intention to make this application and the IRC supports the making of this application and the Filer's request for the Exemption Sought.

13. The purchase or sale of Debt Securities by a Private Fund or a Managed Account from or to the account of a responsible person or an associate of a responsible person in the secondary market is subject to the Principal Trade Prohibition.

14. The Filer and affiliates of the Filer that are registered advisers are permitted to purchase Debt Securities from, or sell Debt Securities to, a Principal Dealer in the Canadian debt securities market in the secondary market, on behalf of investment funds to which NI 81-102 applies, pursuant to decisions dated October 31, 2007, November 1, 2007 and April 25, 2008.

15. Absent the Exemption Sought, the Private Funds and the Managed Accounts cannot, in the secondary market, purchase Debt Securities from, or sell Debt Securities to, a responsible person or an associate of a responsible person that is a Principal Dealer in the Canadian debt securities market.

16. There is a limited supply of Debt Securities available to the Private Funds and the Managed Accounts in the Canadian debt securities market, and frequently the only source of Debt Securities for a Private Fund or a Managed Account is a responsible person or an associate of a responsible person.

17. The Private Funds and the Managed Accounts require the Exemption Sought in order to pursue their investment objectives and strategies effectively.

18. The investment strategies of each Private Fund and Managed Account that relies on the Exemption Sought will permit it to invest in Debt Securities purchased from responsible persons or associates of responsible persons, either as a principal strategy in achieving its investment objectives or as a temporary strategy, pending the purchase of other securities.

19. Granting the Exemption Sought is not prejudicial to the public interest, given that the decision to purchase or sell Debt Securities with a responsible person or an associate of a responsible person that is a Principal Dealer in the Canadian debt securities market in the secondary market will be made in the best interests of the Private Funds or the Managed Accounts, and free from the

influence of that responsible person or that associate of a responsible person.

20. Limiting the debt supply available to the Private Funds and Managed Accounts by restricting their ability to trade Debt Securities in the secondary market from or to responsible persons or associates of responsible persons that are Principal Dealers in the Canadian debt securities market puts the Private Funds and Managed Accounts at a competitive disadvantage and may increase the cost a Private Fund or a Managed Account pays for available Debt Securities or otherwise negatively affect the terms upon which they may trade in Debt Securities.

21. Responsible persons and/or associates of responsible persons that are Principal Dealers in the Canadian debt securities markets do not influence the business judgement of the Filer, or its affiliate that is a registered adviser, in connection with the determination of the suitability of investments and information, and influence barriers are in place. Decisions made by the Filer or its affiliate as to which investments a Private Fund or Managed Account should hold are based on the best interest of such Private Fund or Managed Account, without consideration given to the interest of the party with whom a purchase or sale is transacted.

22. The IRC of the Private Funds will not approve the Filer or its affiliate proceeding with purchases and sales of Debt Securities from or to a responsible person or associate of a responsible person that is a Principal Dealer in the Canadian debt securities market in the secondary market, unless the IRC has made the determination set out in subsection 5.2(2) of NI 81-107, as if NI 81-107 applied to the Private Funds.

Decision

The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted provided that:

(a) the purchase or sale is consistent with, or is necessary to meet, the investment objectives of each Private Fund and Managed Account;

(b) if the transaction is by a Private Fund, the IRC of the Private Fund has approved the transaction in accordance with subsection 5.2(2) of NI 81-107 as if NI 81-107 applied to the Private Fund;

(c) if the transaction is by a Private Fund, the manager of the Private Fund complies with the conflict of interest matter requirements of section 5.1 of NI 81-107 as if NI 81-107 applied to the Private Fund;

(d) if the transaction is by a Private Fund, the manager and the IRC of the Private Fund complies with section 5.4 of NI 81-107 as if NI 81-107 applied to the Private Fund for any standing instructions the IRC provides in connection with the transactions;

(e) a purchase is not executed at a price which is higher than the available ask price of the security and a sale is not executed at a price which is lower than the available bid price of the security;

(f) the bid and ask price of the Debt Security is readily available, as provided in Commentary 7 to section 6.1 of NI 81-107;

(g) the purchase or sale is subject to “market integrity requirements” as defined in clause 6.1(1)(b) of NI 81-107;

(h) the Private Funds keep the written records required by clause 6.1(2)(g) of NI 81-107 as if NI 81-107 applied to the Private Funds; and

(i) if the transaction is by a Managed Account, the Discretionary Management Agreement or other documentation in respect of the Managed Account authorizes the transaction.

“Darren McKall”
Manager, Investment Funds & Structured Products Branch
Ontario Securities Commission

2.1.6 Sustainable Innovation & Health Dividend Fund

Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Closed-end investment fund exempt from prospectus requirements in connection with the sale of units repurchased from existing security holders pursuant to market purchase programs and by way of redemption of units by security holders subject to conditions.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 53(1) and 74(1).

Citation: *Re Sustainable Innovation & Health Dividend Fund*, 2020 ABASC 149

September 14, 2020

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ALBERTA AND ONTARIO
(the Jurisdictions)

AND

IN THE MATTER OF
THE PROCESS FOR EXEMPTIVE RELIEF
APPLICATIONS IN MULTIPLE JURISDICTIONS

AND

IN THE MATTER OF
SUSTAINABLE INNOVATION &
HEALTH DIVIDEND FUND
(the Filer)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (each a **Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) exempting the Filer from the requirement to file a prospectus (the **Prospectus Requirement**) in connection with the distribution of units of the Filer (the **Units**) that have been repurchased by the Filer pursuant to the Purchase Programs (as defined below) or redeemed by the Filer pursuant to the Redemption Programs (as defined below) in the period prior to a Conversion (as defined below) (the **Exemption Sought**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a dual application):

(a) the Alberta Securities Commission is the principal regulator for this application;

(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in British Columbia, Saskatchewan, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Prince Edward Island, Northwest Territories, Nunavut and Yukon; and

(c) this decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)* or MI 11-102 have the same meaning if used in this decision, unless otherwise defined herein.

Representations

This decision is based on the following facts represented by the Filer:

1. The Filer is an unincorporated closed-end investment trust established under the laws of Alberta.

2. The Filer is not considered to be a "mutual fund" as defined in the Legislation because the holders of Units are not entitled to receive on demand an amount computed by reference to the value of a proportionate interest in the whole or in part of the net assets of the Filer.

3. The Filer is a reporting issuer in each of the provinces of Canada and is not in default of securities legislation in any jurisdiction of Canada.

4. The Units are listed and posted for trading on the Toronto Stock Exchange (the **TSX**). As of August 14, 2020 the Filer had 8,500,000 Units issued and outstanding.

5. Middlefield Limited (the **Manager**), which is incorporated under the *Business Corporations Act* (Alberta), is the manager and the trustee of the Filer.

6. Subject to applicable law, which may require approval from the holders of the Units (the **Unitholders**) or regulatory approval, the Manager may (a) merge or otherwise combine or consolidate the Filer with any one or more other funds managed by the Manager or an affiliate thereof, or (b) where it determines that to do so would be in the best interest of Unitholders, merge or convert the Filer into a listed exchange-traded mutual fund, an open-end mutual fund, a split trust fund, an alternative mutual fund, or another type of non-redeemable investment fund (each a **Conversion**).

Mandatory Purchase Program

7. The constating document of the Filer provides that the Filer, subject to certain exceptions and compliance with any applicable regulatory requirements, is obligated to purchase (the **Mandatory Purchase Program**) any Units offered on the TSX or such other exchange or market on which the Units are then listed and primarily traded (the **Exchange**) if, at any time after the closing of the Filer's initial public offering, the price at which Units are then offered for sale on the Exchange is less than 95% of the net asset value of the Filer per Unit, provided that the maximum number of Units that the Filer is required to purchase pursuant to the Mandatory Purchase Program in any calendar quarter is 1.25% of the number of Units outstanding at the beginning of each such period.

Discretionary Purchase Program

8. The constating document of the Filer also provides that the Filer, subject to applicable regulatory requirements and limitations, has the right, but not the obligation, exercisable in its sole discretion at any time, to purchase outstanding Units in the market at prevailing market prices (the **Discretionary Purchase Program**, and together with the Mandatory Purchase Program, the **Purchase Programs**).

Monthly Redemptions

9. Subject to the Filer's right to suspend redemptions, Units may be surrendered for redemption (the **Monthly Redemption Program**) on the second last business day of each month in order to be redeemed at a redemption price per Unit equal to the Monthly Redemption Price per Unit (as defined in the Filer's long form prospectus dated July 23, 2020 (the **Prospectus**)).

Annual Redemption

10. Subject to the Filer's right to suspend redemptions, Units may be surrendered for redemption (the **Annual Redemption Program**) on the second last business day of August in each year commencing in 2022 at a redemption price per Unit equal to the Redemption Price per Unit (as defined in the Prospectus).

Additional Redemptions

11. At the sole discretion of the Manager and subject to the receipt of any necessary regulatory approvals, the Manager may from time to time allow additional redemptions of Units (**Additional Redemptions**, and collectively with the Monthly Redemption Program and the Annual Redemption Program, the **Redemption Programs**), provided that the holder thereof shall be required to use the full amount received on such redemption to purchase treasury securities of a new or existing fund promoted by the Manager or an affiliate thereof then being offered to the public by prospectus.

Resale of Repurchased Units or Redeemed Units

12. Purchases of Units made by the Filer under the Purchase Programs or Redemption Programs will be made pursuant to exemptions from the issuer bid requirements of applicable securities legislation.

13. The Filer wishes to resell, in its sole discretion and at its option, through one or more securities dealers and through the facilities of the Exchange, the Units repurchased by the Filer pursuant to the Purchase Programs (**Repurchased Units**), or redeemed pursuant to the Redemption Programs (**Redeemed Units**).

14. All Repurchased Units and Redeemed Units will be held by the Filer for a period of four months after the repurchase or redemption thereof by the Filer (the **Holding Period**) prior to any resale.

15. The resale of Repurchased Units and Redeemed Units will be effected in such a manner as not to have a significant impact on the market price of the Units.

16. Repurchased Units and Redeemed Units that the Filer does not resell within 12 months after the Holding Period (that is, within 16 months after the date of repurchase or redemption, as applicable) will be cancelled by the Filer.

17. During any calendar year, the Filer will not resell an aggregate number of Repurchased Units and Redeemed Units that is greater than 5% of the number of Units outstanding at the beginning of such calendar year.

18. Prospective purchasers of Repurchased Units or Redeemed Units will have access to the Filer's continuous disclosure, which will be filed on SEDAR.

19. The Legislation provides that a trade by or on behalf of an issuer in previously issued securities of that issuer that have been purchased by that issuer is a distribution and, as such, is subject to the Prospectus Requirement. In the absence of the Exemption Sought, any sale by the Filer of Repurchased Units or Redeemed Units would be a distribution that is subject to the Prospectus Requirement.

Decision

Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision.

The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted provided that:

(a) the Repurchased Units and Redeemed Units are otherwise sold by the Filer in compliance with applicable securities legislation, and through the facilities of and in accordance with the regulations and policies of the Exchange;

(b) the Filer complies with paragraphs 1 through 5 of section 2.8(2) of National Instrument 45-102 *Resale of Securities* as if it were a selling security holder thereunder; and

(c) the Filer complies with the representations made in paragraphs 15, 16 and 17 above.

For the Alberta Securities Commission:

"Tom Cotter"
Vice-Chair

"Kari Horn"
Vice-Chair

2.2 Orders

2.2.1 Paramount Equity Financial Corporation et al.

IN THE MATTER OF
PARAMOUNT EQUITY FINANCIAL CORPORATION,
SILVERFERN SECURED MORTGAGE FUND,
SILVERFERN SECURED MORTGAGE LIMITED PARTNERSHIP,
GTA PRIVATE CAPITAL INCOME FUND,
GTA PRIVATE CAPITAL INCOME LIMITED PARTNERSHIP,
SILVERFERN GP INC.,
TRILOGY MORTGAGE GROUP INC.,
MARC RUTTENBERG,
RONALD BRADLEY BURDON and
MATTHEW LAVERTY

File No. 2019-12

September 11, 2020

Timothy Moseley, Vice-Chair and Chair of the Panel

ORDER

WHEREAS the Ontario Securities Commission held a hearing by teleconference;

ON HEARING the submissions of Staff of the Commission, and of Matthew Laverty, appearing on his own behalf;

IT IS ORDERED THAT:

1. Matthew Laverty shall serve and file written submissions regarding the hearing on the merits on or before October 30, 2020; and

2. Staff shall serve and file its reply submissions, if any, on or before November 13, 2020.

"Timothy Moseley"

2.2.2 Sean Daley et al. – ss. 127(8), 127(1)

IN THE MATTER OF
SEAN DALEY; and
SEAN DALEY carrying on business as
the ASCENSION FOUNDATION,
OTO.Money,
SilentVault, and
CryptoWealth;
WEALTH DISTRIBUTED CORP.;
CYBERVISION MMX INC.;
KEVIN WILKERSON; and
AUG ENTERPRISES INC.

File No. 2019-28

September 14, 2020

Lawrence P. Haber, Commissioner and Chair of the Panel

ORDER
(Subsection 127(8) and 127(1) of
Securities Act, RSO 1990 c S.5)

WHEREAS on September 14, 2020, the Ontario Securities Commission (**Commission**) held a hearing by teleconference to consider Staff's request to further extend a temporary order dated August 6, 2019 (the **Extension Request**);

ON HEARING the submissions for Staff of the Commission and Sean Daley, appearing on his own behalf, and no one appearing on behalf of the remaining respondents;

IT IS ORDERED THAT the temporary order is extended until the Panel issues its decision on this Extension Request or until further order of the Commission.

"Lawrence P. Haber"

2.2.3 Sean Daley and Kevin Wilkerson

IN THE MATTER OF
SEAN DALEY AND
KEVIN WILKERSON

File No. 2019-39

September 14, 2020

Lawrence P. Haber, Commissioner and Chair of the Panel

ORDER

WHEREAS on September 14, 2020, the Ontario Securities Commission (the **Commission**) held a hearing by teleconference;

ON HEARING the submissions of the representatives for Staff of the Commission and Sean Daley, and no one appearing on behalf of Kevin Wilkerson;

IT IS ORDERED THAT:

1. Mr. Daley shall adhere to the following timeline for the delivery of his witness list and summary of anticipated evidence:

    a. Mr. Daley shall serve and file a witness list and serve a summary of each witness's anticipated evidence on every other Party by no later than September 22, 2020;

    b. Mr. Daley shall serve and file any amendments to his witness list and shall serve on every other Party any additions or amendments to his summaries of anticipated evidence, by no later than 2 weeks following the issuance of the disclosure motion heard on August 27, 2020;

2. each Party shall serve every other Party with a hearing brief containing copies of the documents, and identifying the other things, that the Party intends to produce or enter as evidence at the merits hearing, by no later than March 2, 2021;

3. each Party shall provide to the Registrar a completed copy of the *E-Hearing Checklist for the Video-hearings* by no later than March 8, 2021;

4. the Final Interlocutory Attendance in this proceeding is scheduled for March 12, 2021 at 9:00 a.m., by teleconference, or on such other date and time as may be agreed to by the Parties and set by the Office of the Secretary; and

5. the merits hearings shall take place by videoconference and commence on April 12, 2021 at 10:00 a.m. and continue on April 14, 15, 16 and 19, 2021 at 10:00 a.m. on each day, or on such other dates and times as may be agreed to by the Parties and set by the Office of the Secretary.

"Lawrence P. Haber"

2.2.4 ESW Capital, LLC and Optiva Inc. – s. 104

**IN THE MATTER OF
ESW CAPITAL, LLC**

AND

**IN THE MATTER
OF OPTIVA INC.**

File No. 2020-26

September 14, 2020

Timothy Moseley, Vice-Chair and Chair of the Panel
Wendy Berman, Vice-Chair
Frances Kordyback, Commissioner

ORDER
(Section 104 of the *Securities Act,* RSO 1990, c S.5)

WHEREAS on September 10 and 11, 2020, the Ontario Securities Commission held a hearing by videoconference to consider the application brought by ESW Capital, LLC (**ESW**) for an exemption from the minimum tender requirement set out in s. 2.29.1(c) of National Instrument 62-104 *Take-Over Bids and Issuer Bids* with respect to ESW's proposed all-cash offer to acquire any and all subordinate voting shares of Optiva Inc., other than those owned by ESW or its affiliates (the **Application**);

ON READING the motion records and submissions filed and on hearing the submissions of the representatives for ESW, Optiva Inc., EdgePoint Investment Group Inc., Maple Rock Capital Partners and Staff of the Commission;

IT IS ORDERED, for reasons to follow, that the Application is dismissed.

"Timothy Moseley"

"Wendy Berman"

"Frances Kordyback"

Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions

3.1.1 First Global Data Ltd. et al.

Citation: *First Global Data Ltd (Re)*, 2020 ONSEC 23

September 11, 2020

File No. 2019-22

**IN THE MATTER OF
FIRST GLOBAL DATA LTD.,
GLOBAL BIOENERGY RESOURCES INC.,
NAYEEM ALLI,
MAURICE AZIZ,
HARISH BAJAJ, AND
ANDRE ITWARU**

REASONS FOR DECISION

Hearing:	September 2, 2020	
Decision:	September 11, 2020	
Panel:	Timothy Moseley	Vice-Chair and Chair of the Panel
Appearances:	Rebecca Shoom	For Global Bioenergy Resources Inc.
	Alysha Shore	For Nayeem Alli
	Robert Stellick	For Maurice Aziz
	Harish Bajaj	Self-represented
	Kevin Richard	For Andre Itwaru
	Mark Bailey Charlie Pettypiece	For Staff of the Ontario Securities Commission
	No one appearing for First Global Data Ltd.	

REASONS FOR DECISION

I. OVERVIEW

[1] The merits hearing in this enforcement proceeding is set to begin on October 5, 2020. Due to the COVID-19 pandemic, the Ontario Securities Commission is not currently holding in-person hearings. The Commission's standard practice at this time is to proceed with electronic hearings (by videoconference or teleconference), although any decision as to whether to do so is made on a case-by-case basis, depending on the particular circumstances of the case.

[2] The respondents in this case (other than First Global Data Ltd., which has not participated in the proceeding in recent months) object to the Commission's intention to conduct the merits hearing by videoconference. They argue that doing so would be unfair to the respondents for various reasons, including that it would be slower and more expensive, and that it would not permit an adequate assessment of credibility, which is in issue in this proceeding.

[3] After hearing submissions about this issue on September 2, 2020, I advised the parties that, for reasons to follow, the merits hearing will proceed as scheduled by videoconference. I issued an order to that effect.[1] These are the reasons for my decision.

[1] (2020) 43 OSCB 6902

[4] Proceeding by videoconference under the current circumstances is consistent with the important goal, set out in Rule 1 of the *Ontario Securities Commission Rules of Procedure and Forms* (**Rules**),[2] of conducting Commission proceedings in a just, expeditious and cost-effective manner. The respondents have failed to establish that a videoconference will cause them to suffer significant prejudice or that it will deprive them of their right to a fair hearing.

II. BACKGROUND

[5] Staff of the Commission alleges that all of the respondents, or some of them, directly or indirectly defrauded investors, distributed securities without a prospectus or an exemption, engaged in the business of trading in securities without being registered or being exempt from registration, made prohibited representations, and filed misleading and improper financial statements.

[6] This proceeding was commenced by Staff filing its statement of allegations, and the Secretary issuing a notice of hearing, on May 31, 2019. The parties originally estimated that the merits hearing, which will involve approximately 25 witnesses, will require about 40 hearing days. The hearing is scheduled to begin on October 5, 2020, and conclude in mid-January 2021.

[7] On March 19, 2020, the Commission's Office of the Secretary published an advisory, indicating that the Commission would not be holding in-person hearings until at least April 30, 2020. On April 27, 2020, the Office of the Secretary published a second notice, indicating that the Commission would not be holding in-person hearings until further notice. On July 31, 2020, the Office of the Secretary published a third advisory, to the same effect. That advisory indicated that the Office of the Secretary would contact parties with hearings scheduled up to and including November 30, 2020, "to determine if a hearing may proceed via videoconference, teleconference or in writing should an in-person hearing still not be possible."

[8] At the request of the parties, a brief teleconference hearing took place on August 13, 2020. At that attendance, the parties advised that there was disagreement between Staff and the respondents about whether the merits hearing should proceed by videoconference. I invited the parties to make written submissions in advance of the final interlocutory attendance, already scheduled for September 2, 2020. I indicated that I would hear oral submissions at that time.

III. ANALYSIS

A. Introduction

[9] This hearing presented one principal issue: should the merits hearing proceed by videoconference, or would doing so cause any party significant prejudice?

[10] I begin my analysis by setting out the legal framework relevant to this decision, and the need to balance the respondents' interests against the desirability of conducting Commission proceedings efficiently and expeditiously. I then discuss the parties' disagreement as to whether I was hearing a request by the respondents to adjourn the merits hearing. Finally, I review each of the concerns raised by the respondents about a videoconference merits hearing.

[11] For convenience in these reasons, I describe submissions made by one or more respondents as having been made by "the respondents". While there were some subtle differences between submissions made on behalf of Mr. Itwaru and Mr. Aziz, these differences were not material. The other respondents (other than First Global Data Ltd., which did not appear) adopted the submissions of Messrs. Itwaru and Aziz.

B. Legal framework

[12] The *Statutory Powers Procedure Act*[3] (**SPPA**) governs proceedings before the Commission. Several provisions of the SPPA are relevant to the disposition of this matter.

[13] The definitions set out in s. 1(1) contemplate three types of hearing:

a. an "oral hearing", which means "a hearing at which the parties or their representatives attend before the tribunal in person" (for clarity in these reasons I refer to these hearings as "in-person hearings");

b. an "electronic hearing", which means "a hearing held by… [a] form of electronic technology allowing persons to hear one another", and which includes a videoconference hearing (for clarity in these reasons I often refer to videoconference hearings); and

c. a "written hearing", which is not relevant here.

[14] The Commission is authorized to hold videoconference hearings, by virtue of s. 5.2(1) of the SPPA and the fact that the

[2] (2019) 42 OSCB 9714
[3] RSO 1990, c S.22

Commission's rules deal with electronic hearings.[4] It is for the Commission to determine its own practices[5] and to decide whether or not to hold an electronic hearing in a proceeding; however, the SPPA provides that a tribunal "shall not hold an electronic hearing if a party satisfies the tribunal that holding an electronic rather than an oral hearing is *likely to cause the party significant prejudice*" [emphasis added].[6] The emphasized words define the test I must apply here.

[15] I note, for completeness, that I asked the parties to address the effect, if any, of the *Hearings in Tribunal Proceedings (Temporary Measures) Act, 2020*,[7] which came into force on March 25, 2020, and which gives some tribunals additional powers to control their processes. The parties submitted, and I agree, that the statute is of little or no consequence here, given authority the Commission already has that derives from the SPPA. No part of my decision or my reasons relies on the *Hearings in Tribunal Proceedings (Temporary Measures) Act, 2020*.

[16] Finally, I refer to Rule 23(1) of the Commission's Rules, which states that unless otherwise provided in the Rules or ordered by a panel, all Commission hearings shall be "oral hearings, which term includes hearings by telephone, videoconference and other electronic means."

C. Balancing the respondents' interests against the desirability of conducting Commission proceedings efficiently and expeditiously

[17] The respondents start with two main propositions:

a. hearings involving witness testimony ought to be in person where possible; and

b. there would be no harm in delaying the merits hearing until it could be conducted in person.

[18] I reject both of these propositions, when put as categorically as they are.

[19] With respect to the first, the respondents provided no persuasive authority in support. They cited a labour arbitration award written by a single arbitrator who described in-person hearings as "the gold standard" that ought to be followed where possible.[8] The award is dated April 20, 2020. More than four months have elapsed since the date of the award, during which time many courts and tribunals, including this Commission, have had considerable experience conducting hearings by videoconference. As discussed below, videoconference hearings (or parts of hearings) may have cost and other advantages over in-person hearings.

[20] The respondents say that they would prefer an in-person hearing. I have no reason to doubt that. However, the Commission's decision depends on the appropriate legal tests, and not on the parties' preferences.

[21] With respect to the second proposition (*i.e.*, that there would be no harm in delaying the merits hearing) I disagree, for the following reasons.

[22] The objective set out in the Rules, of conducting Commission proceedings expeditiously and cost-effectively, is consistent with the Commission's statutory mandate to protect investors from unfair, improper or fraudulent practices, and to foster fair and efficient capital markets and confidence in capital markets.[9] A delayed merits hearing would, by definition, be less expeditious. Delayed hearings are likely to be more expensive, because of the additional time required to refresh memories of those involved. Finally, delayed hearings exacerbate the problem of witnesses' fading memories.

[23] In this case, it is unknown how long the merits hearing would have to be postponed if it must await an in-person hearing. The Commission has suspended in-person hearings until further notice. The delay could be lengthy.

[24] The respondents submit that expediency and cost-effectiveness cannot override a respondent's right to a fair and just hearing. I agree, but while these objectives may at times be competing, they are not mutually exclusive, and the concepts of expediency, cost-effectiveness, fairness and justice are not absolute. They must be balanced against each other.

[25] In balancing these factors in this case, I do not accept the respondents' submission that the parties are being "rushed" to a merits hearing. The merits hearing is scheduled to begin about eighteen months after the statement of allegations was filed and the notice of hearing was issued. That eighteen-month period is longer than in most other cases that come before the Commission. While the nature of this case, including the number of respondents and the high number of documents involved, may justify that longer period, this case is by no measure being "rushed".

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[4] Rules, r 23(1)
[5] SPPA, s 25.0.1
[6] SPPA, s 5.2(2)
[7] SO 2020, c 5, Sch 3
[8] *Toronto Transit Commission v Amalgamated Transit Union, Local 113*, 2020 CanLII 28646 (ON LA) at para 15
[9] *Securities Act*, RSO 1990, c S.5, s 1.1

D. This decision does not arise from an adjournment request by the respondents

[26] Staff argues that in essence, the respondents seek an adjournment of the merits hearing for an indeterminate time. Accordingly, Staff submits, the onus is on the respondents to satisfy the test for an adjournment, set out in Rule 29(1) of the Rules, *i.e.*, that every "merits… hearing in an enforcement proceeding… shall proceed on the scheduled date unless a Party satisfies the Panel that there are exceptional circumstances requiring an adjournment."

[27] The respondents submit that this is not a motion requesting an adjournment, but rather a determination by the Commission as to whether it is fair and just for the merits hearing to proceed via videoconference.

[28] I agree with the respondents' submission. While the merits hearing would undoubtedly be delayed if the respondents were to be successful in objecting to a videoconference hearing, I consider that simply to be an unavoidable consequence of the Commission's decision not to provide in-person hearings at this time.

E. Respondents' concerns

1. Introduction

[29] The respondents cite a number of concerns that they say compel a conclusion that the merits hearing should not proceed by videoconference.

[30] These submissions must be considered against a backdrop of developments during the pandemic, including decisions of Ontario courts that offer important guidance.

[31] In *Association of Professional Engineers v Rew*, the Divisional Court held that "[t]he court is faced with an unprecedented challenge maintaining the institutions essential for the continuation of the Rule of Law in the face of the COVID-19 crisis, and recourse to electronic hearings is a key aspect of the court's response."[10] I respectfully adopt those words to apply to Commission proceedings.

[32] In *Arconti v Smith*, the Superior Court of Justice held that "use of readily available technology is part of the basic skillset required of civil litigators and courts… [T]he need for the court to operate during the pandemic has brought to the fore the availability of alternative processes and the imperative of technological competency."[11] Again, I respectfully adopt those words to apply to Commission proceedings.

[33] The respondents correctly point out that neither of the above two cases involved in-court testimony by witnesses. I address the implications of that distinction below.

[34] An additional and important element of the backdrop is the experience to date of the Commission in conducting videoconference hearings, including with witnesses and unrepresented parties. At the hearing of this issue, the respondents agreed that I may take notice of that experience (an approach supported by s. 16of the SPPA). While that experience has not been without some challenges, those challenges have been isolated and relatively minor, and have diminished over the past six months.

[35] I turn now to the specific concerns raised by the respondents.

2. Does the seriousness of the allegations require an in-person hearing?

[36] The respondents submit that the merits hearing will be very significant and that it may have serious consequences, including the potential loss of a respondent's livelihood. This is a relevant consideration, since the importance of the decision to those affected is a significant factor in determining the content of the duty of fairness owed to the parties.[12] In this case, therefore, the duty of fairness is toward the higher end of the spectrum.

[37] However, it does not follow that only an in-person hearing would suffice. The respondents must still demonstrate that a videoconference hearing would deprive them of the fair hearing to which they are entitled.

3. Do the complexity and length of this proceeding and of the merits hearing require an in-person hearing?

[38] The respondents argue that hearings that deal with complex issues and that are expected to be lengthy are unsuitable for videoconferences. Once again, the respondents provided no persuasive authority to that effect. The respondent Mr. Itwaru submitted that an April 7, 2020, decision of the Ontario Labour Relations Board[13] supports the proposition. However, that decision:

a. discusses the merits of Skype, a video platform that is different from the platform used by the Commission;

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[10] 2020 ONSC 2589 at para 7
[11] 2020 ONSC 2782 at para 33
[12] *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817 at para 25
[13] *Gail Paterson v Her Majesty the Queen in Right of Ontario*, 2020 CanLII 28031 (ON LRB) at para 6

b. expresses its finding on this point as a conclusory statement, without any analysis in support; and

c. relies on a 2018 decision of the Ontario Labour Relations Board,[14] which in turn cites an earlier decision that notes that the Board's use of Skype was in its infancy at the time.

[39] With respect, I do not find any of those decisions as being helpful, let alone binding or persuasive.

[40] As Staff notes, even prior to the pandemic the Commission conducted electronic hearings (part or all of which were by videoconference), including in complex matters with serious allegations.[15]

[41] When pressed, the respondents were unable to identify anything about a long or complex hearing that would make it less suitable for a videoconference hearing than a shorter or less complex hearing. When compared to a shorter hearing, a longer hearing is simply more of the same, whether in person or by videoconference. As for complexity, the respondents asserted that complex issues should be addressed in an in-person hearing, but they provided no reason why that should be so.

[42] Indeed, as the Superior Court of Justice held in *Miller v FSD Pharma, Inc.*, "[t]here is nothing about a remote procedure, whether large, complex, and potentially final, or small, straightforward, and interim, that is inherently unfair to either side. This is particularly so now that the legal community has had time to digest the use of virtual hearing technology."[16]

4. Where credibility is an issue, is an in-person hearing required?

[43] The respondents assert, and I accept, that credibility of witnesses will be an issue in the merits hearing.

[44] The respondents submit that a witness's demeanour is the most valuable way of determining that witness's credibility, and that an assessment of credibility is therefore more reliable in person.

[45] I emphatically reject that submission. It is precisely contrary to established authority on the point.

[46] In an oft-quoted Superior Court of Justice decision, Newbould J. cited with approval the following from a British Columbia Court of Appeal decision:

> The judge is not given a divine insight into the hearts and minds of the witnesses appearing before him. Justice does not descend automatically upon the best actor in the witness-box. The most satisfactory judicial test of truth lies in its harmony or lack of harmony with the preponderance of probabilities disclosed by the facts and circumstances in the conditions of the particular case.[17]

[47] Further, the Court of Appeal for Ontario has referred to "a growing understanding of the fallibility of evaluating credibility based on… demeanour", and noted that:

> It is now acknowledged that demeanour is of limited value because it can be affected by many factors including the culture of the witness, stereotypical attitudes, and the artificiality of and pressures associated with a courtroom.[18]

[48] This Commission has applied these principles in numerous cases.[19]

[49] As for the impact of proceeding by videoconference, the Superior Court of Justice has specifically rejected the submission that hearing testimony by videoconference would affect the court's ability to make findings about the credibility of a witness.[20]

[50] I reject the related submission that allowing a witness to testify remotely, instead of in a hearing room, brings an informality that makes the testimony less reliable. I am not persuaded by the one labour arbitration procedural award cited by the respondents, in which the arbitrator makes a statement to that effect.[21] The arbitrator's statement is unsupported by any evidence or by any reasoning that would justify the taking of "administrative notice" without evidence. In my respectful view, it is contrary to the authorities cited above.

[51] Finally, the respondents argue that a videoconference hearing will be prone to interruptions, and that those interruptions may unfairly cause a witness to appear less credible than is deserved. I cannot accept that baseless

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[14] *Velimir Raskovic v Bend All Automotive Inc.*, 2018 CanLII 107003 (ON LRB) at para 4

[15] For example, *Natural Bee Works Apiaries Inc (Re)*, 2019 ONSEC 23; *Sino-Forest Corporation (Re)*, 2017 ONSEC 27

[16] 2020 ONSC 3291 at para 10

[17] *Springer v Aird & Berlis LLP*, 2009 CanLII 15661 at para 14, citing *R v Pressley*, 1948 CanLII 353 at para 12

[18] *R v Rhayel*, 2015 ONCA 377 at para 85

[19] See, *e.g.*, *Money Gate Mortgage Investment Corporation (Re)*, 2019 ONSEC 40 at para 78; *Hutchinson (Re)*, 2019 ONSEC 36 at para 77; *Meharchand (Re)*, 2018 ONSEC 51 at para 60; *Innovative Gifting Inc. (Re)*, 2013 ONSEC 30 at para 209

[20] *Davies v The Corporation of the Municipality of Clarington*, 2015 ONSC 7353 at para 35; *Chandra v CBC*, 2015 ONSC 5385 at paras 20-25

[21] *Sunnybrook Health Sciences Centre v Ontario Nurses' Association*, 2018 CanLII 39866 (ON LA) at para 26

submission. Interruptions are not unique to videoconference hearings. They can and do occur during in-person trials and hearings. An adjudicator can and should ignore those interruptions when assessing credibility or submissions.

5. Will a videoconference hearing be too slow, lengthy, inefficient or costly?

[52] The respondents submit that the large number of participants in this merits hearing (panel members, Registrar, court reporter, parties, counsel, witnesses, and possibly an interpreter) makes a videoconference impractical. The respondents do not persuasively explain why this would be so.

[53] The respondents point out that each witness will need to learn how to use the Commission's remote hearing software. This may be true. However, the Commission provides no-cost training sessions in advance of videoconference hearings, and dedicates qualified staff to ensure that participants have the necessary technology and that they are comfortable using the platform.

[54] Signing on to the platform requires no special skill or software – it is as simple as following a link using any standard browser. It requires a device with a camera and a microphone, common to almost every modern device. These are not onerous requirements.

[55] The training sessions are not time-consuming. They are similar to the training sessions that the Commission has offered for years to help parties, counsel and witnesses comply with the Commission's *Practice Guideline*,[22] which provides that all enforcement merits hearings shall use the tribunal's electronic document management system.

[56] There is no basis to conclude that the additional time required to complete a training session for a videoconference hearing would be any greater than the cumulative time required for parties, counsel and witnesses to travel to and from the Commission's hearing room every day. Indeed, the opposite is almost certainly true, especially for a longer hearing.

[57] The respondents also submit that a videoconference hearing will inevitably be slower (and therefore more costly). Once again, the respondents offer no reliable basis for this assertion. The respondents speculate that technological glitches may interfere with the smooth conduct of the hearing, and that this risk is magnified given the large number of participants. As a result, say the respondents, the hearing could "balloon far beyond" its scheduled time.[23]

[58] As noted above in paragraph [34], this speculation is inconsistent with the Commission's actual experience. In addition, the Commission has published a *Guide to Virtual Hearings Before the OSC Tribunal*, which addresses many of the concerns identified.

[59] Finally, the respondents submit that whereas one counsel could manage all the necessary tasks in a hearing room (including the management of documents), those tasks in a videoconference hearing would in most cases require a second counsel, thereby increasing the cost to the party. I heard no clear explanation of why this would be so. I cannot accept the submission.

6. Is a videoconference hearing inconsistent with trial practices before the Courts or the practices of other regulatory bodies?

[60] The respondents argue that a merits hearing is akin to a trial and that few Canadian courts are conducting trials by videoconference.

[61] The respondents offered no evidence to show how prevalent (or rare) videoconference trials are, or how many trials are being deferred because in-person facilities are not currently available.

[62] Even if such evidence had been adduced, it is unclear how it would be persuasive. Under current circumstances in light of the COVID-19 pandemic, the assessment of how safe it is for a number of people to be in a courtroom for a prolonged period of time is highly fact-specific. What are the dimensions of the room? How does the ventilation work; *i.e.*, what airflow does it generate? Will plexiglass meaningfully reduce the risk of transmission, and does the answer to that question depend on whether the plexiglass is floor-to-ceiling? What is the incidence of COVID-19 in the geographic area in which the courtroom is situated? How available, timely and effective are tests for COVID-19 in that jurisdiction?

[63] In my view, these and other questions preclude an "apples to apples" comparison between a courtroom and the Commission's hearing rooms, without comprehensive studies that are not available, cannot practically be done, and would quickly be stale-dated or obsolete even if they could be done. As a result, no relevant conclusion can be drawn from the number of trials being conducted in Canada.

[64] Similarly, and contrary to the respondents' submission, no relevant conclusion can be drawn from the fact that the British Columbia Securities Commission and the Alberta Securities Commission have recently announced that some in-person hearings will resume. The same impediments to a proper comparison are present.

[22] (2019) 42 OSCB 9736
[23] *Written submissions of Maurice Aziz*, para 11

[65] I therefore attach no weight to the fact that some courts and some tribunals are offering in-person hearings. What is important is that the Commission is not doing so at this time.

7. Is a videoconference hearing inconsistent with past Commission practices?

[66] The respondents argue that the Commission has, in the past, always required merits hearings to be in-person. Nothing, they submit, should change as a result of the pandemic.

[67] The respondents are incorrect. As noted above, the Commission has on numerous occasions over the past several years conducted portions of merits hearings by videoconference. Even if that were not the case, I was not directed to any principle or authority that would prevent the Commission from adapting its process to suit today's technology and today's environment.

[68] While the respondents do correctly note that the Commission has never conducted an entire merits hearing of this length by videoconference, they did not explain why that should preclude this merits hearing from proceeding in that manner. As discussed above, it should not be presumed, without a persuasive basis for the presumption, that a videoconference hearing cannot be successfully concluded or that it will be unfair. The respondents offered no such basis.

8. Is a videoconference hearing appropriate for a self-represented respondent?

[69] Respondents other than Mr. Bajaj, who is self-represented, argued that the fact that he is self-represented makes a videoconference hearing inappropriate. Mr. Bajaj did not himself identify any reason why that would be so, and the respondents who made that argument did not have any persuasive basis for the concern. Instead, they made the unsupported and arguably demeaning assertion that it is inappropriate to assume that a self-represented litigant has the necessary technical equipment and skill to participate.

[70] I reject the submission. To the contrary, the Commission has successfully conducted videoconference merits hearings with self-represented parties.[24] Mr. Bajaj did not identify any impediment, let alone one that could not be satisfactorily addressed prior to the hearing.

9. Is a videoconference hearing appropriate where translation services may be required?

[71] Finally, the respondents point to the fact that an interpreter may be required for one or more witnesses. They assert that the presence of an interpreter would make a videoconference hearing inappropriate.

[72] Once again, this assertion is baseless. The respondents offered no evidence in support. I strongly suspect that the evidence on this point would run counter to the respondents' assertion. There is no reason to believe that the presence of an interpreter would be any more complicated in a videoconference hearing than it is in an in-person hearing. I reject the submission.

IV. CONCLUSION

[73] In summary, the respondents have failed to show that it is likely that proceeding by way of videoconference would cause any of them any appreciable prejudice, let alone "significant prejudice" (to quote the test specified in s. 5.2(2) of the SPPA).

[74] The respondents' speculation about difficulties that may arise is not consistent with the Commission's recent experience. I attach more weight to that real-life experience than I do to the speculation. Should any issues arise during the videoconference merits hearing in this proceeding, the panel can address those issues at the time. The panel would be facing real, rather than imagined, concerns, and would make the appropriate decision based on real, rather than imagined, circumstances.

[75] For these reasons, I ordered that the merits hearing proceed as scheduled, by videoconference.

Dated at Toronto this 11th day of September, 2020.

"Timothy Moseley"

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[24] *Natural Bee Works Apiaries Inc. (Re)*, 2019 ONSEC 23 at paras 2 and 34; *Paramount (Re)*, 2020 ONSEC 12 at para 22 [the evidence portion of the merits hearing in that proceeding has since concluded]

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Chapter 4

Cease Trading Orders

4.1.1 Temporary, Permanent & Rescinding Issuer Cease Trading Orders

Company Name	Date of Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/Revoke
THERE IS NOTHING TO REPORT THIS WEEK.				

Failure to File Cease Trade Orders

Company Name	Date of Order	Date of Revocation
Braingrid Limited	July 22, 2020	September 9, 2020

4.2.1 Temporary, Permanent & Rescinding Management Cease Trading Orders

Company Name	Date of Order	Date of Lapse
THERE IS NOTHING TO REPORT THIS WEEK.		

4.2.2 Outstanding Management & Insider Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/ Expire	Date of Issuer Temporary Order
Performance Sports Group Ltd.	19 October 2016	31 October 2016	31 October 2016		

Company Name	Date of Order	Date of Lapse
THERE IS NOTHING TO REPORT THIS WEEK.		

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6.1.1 Proposed Amendments to National Instrument 45-106 Prospectus Exemptions and Proposed Changes to Companion Policy 45-106CP Prospectus Exemptions Relating to the Offering Memorandum Prospectus Exemption

CSA Notice and Request for Comment

Proposed Amendments to National Instrument 45-106 *Prospectus Exemptions*

and

Proposed Changes to Companion Policy 45-106CP *Prospectus Exemptions*

Relating to the Offering Memorandum Prospectus Exemption

September 17, 2020

Introduction

The Canadian Securities Administrators (the **CSA** or **we**) are publishing for a 90-day comment period proposed amendments (the **Proposed Amendments**) to National Instrument 45-106 *Prospectus Exemptions* (**NI 45-106**).

The Proposed Amendments are set out in Annex A of this notice. Related proposed changes (the **Proposed Changes**) to Companion Policy 45-106CP *Prospectus Exemptions* (**45-106CP**) are set out in Annex B. This notice will be available on the websites of CSA jurisdictions including:

www.bcsc.bc.ca
www.albertasecurities.com
www.fcaa.gov.sk.ca
www.mbsecurities.ca
www.osc.gov.on.ca
www.lautorite.qc.ca
www.fcnb.ca
nssc.novascotia.ca.

Substance and Purpose

The Proposed Amendments set out new disclosure requirements for issuers that are engaged in "real estate activities" and those issuers that are "collective investment vehicles". Both terms are new definitions in NI 45-106. As further discussed below, many issuers utilizing the OM Exemption (as defined below) are issuers that meet these definitions. The new requirements are intended to set out a clear disclosure framework for these issuers, giving them greater certainty as to what they must disclose, and resulting in better information for investors.

In addition, the Proposed Amendments include a number of proposed general amendments (the **General Amendments**), which are meant to clarify or streamline parts of NI 45-106 or improve disclosure for investors.

Where the Proposed Amendments are to a form for an offering memorandum, they are to Form 45-106F2 *Offering Memorandum for Non-Qualifying Issuers* (**Form 45-106F2**).

Background

The offering memorandum prospectus exemption found in section 2.9 of NI 45-106 (the **OM Exemption**) was originally designed as a small business financing tool to help early stage and small businesses raise capital from a large pool of investors without having to comply with the more costly prospectus regime. It was expected to be used by relatively simple issuers for relatively small amounts of capital, prior to issuers becoming reporting issuers.

In practice, the use of the OM Exemption has evolved differently. To a significant extent, larger and more complex issuers than those originally envisioned are using it. In addition, issuers using the OM Exemption are often engaged in specific activities, such as real estate ownership or development, or acting as a type of collective investment vehicle carrying out mortgage lending or making other investments.

Based on an analysis by CSA staff of Canada-wide data from reports of exempt distribution for issuers using the OM Exemption in 2017, approximately 40% of the issuers had total assets of $100 million or more. In addition, 17% of issuers reported their industry as real estate, and approximately 43% were issuers that might, depending on their purpose and investment objectives, be collective investment vehicles under the Proposed Amendments.

Compliance reviews have also indicated that under the current OM Exemption requirements, it can be unclear to issuers what disclosure is required in order to provide investors with sufficient information. By tailoring the disclosure to the issuer's industry, and clarifying other requirements, issuers should be able to more easily determine what is required to be included in their offering memorandum.

Summary of the Proposed Amendments

Issuers Engaged in Real Estate Activities

The Proposed Amendments include the new defined term "real estate activities". Issuers engaged in real estate activities would be subject to new requirements, including:

- Providing an independent appraisal of an interest in real property to the purchaser if
  - the issuer has acquired or proposes to acquire an interest in real property from a related party (**Related Party**), as that term is defined in NI 45-106,
  - a value for an interest in real property is disclosed in the offering memorandum, or
  - the issuer intends to spend a material amount of the proceeds of the offering on an interest in real property.
- Completing new Schedule 1 *Additional Disclosure Requirements for an Issuer Engaged in Real Estate Activities* (**Schedule 1**) to Form 45-106F2, which includes:
  - Disclosure relevant to issuers that are developing real property, such as a description of the approvals or permissions required, and milestones of the project.
  - Disclosure relevant to issuers that own and operate developed real property, such as the age, condition and occupancy level of the real property.
  - Disclosure of penalties, sanctions, bankruptcy, insolvency and criminal or quasi-criminal convictions for parties other than the issuer, such as a party acting as developer.
  - Disclosure of any purchase and sale history of the issuer's real property with a Related Party, so investors can better evaluate transactions involving Related Parties.

We note that Schedule 1 would not apply to real property that when taken together would not be significant to a reasonable investor. This exception is intended to ensure that issuers are not subject to an undue disclosure burden.

We think the Proposed Amendments as they relate to issuers engaged in real estate activities are necessary because as noted, research indicates that a significant proportion of issuers utilizing the OM Exemption are engaged in real estate activities. We think more specific disclosure about the real property or development plans for the real property is needed for investors, and we also think that these issuers will benefit from the greater certainty provided by a disclosure framework tailored for them.

Issuers that are Collective Investment Vehicles

The Proposed Amendments also include the new defined term "collective investment vehicle". A collective investment vehicle is defined as an issuer whose primary purpose is to invest money provided by its security holders in a portfolio of securities. This definition would include issuers that hold portfolios of mortgages, other loans, or receivables. To the extent they are permitted to use the OM Exemption, the definition would also include investment funds.

Issuers that are collective investment vehicles would be required to complete new Schedule 2 *Additional Disclosure Requirements for an Issuer* That is a Collective Investment Vehicle to Form 45-106F2, which includes:

- A description of the issuer's investment objectives.

- Disclosure of penalties, sanctions, bankruptcy, insolvency and criminal or quasi- criminal convictions for persons involved in the selection and management of the investments.
- Disclosure of information regarding the portfolio.
- Disclosure regarding the performance of the portfolio.

We think the Proposed Amendments as they relate to issuers that are collective investment vehicles are necessary because as noted, research indicates that a large proportion of issuers utilizing the OM Exemption could under the Proposed Amendments be collective investment vehicles. We think investors need more information, including about the party making the investment decisions, how the investments are chosen and the composition and performance of the portfolio. As with issuers engaged in real estate activities, we think issuers that would be collective investment vehicles will also benefit from the greater certainty provided by a disclosure framework tailored for them.

General Amendments

The General Amendments include:

- Making the provisions in the OM Exemption that deal with the standard of disclosure for an offering memorandum and amending an offering memorandum clearer and more user-friendly for issuers and investors.
- Requiring that the filed copy of an offering memorandum allow for the searching of words electronically. This change is intended to make reading and reviewing offering memorandums more efficient for all recipients.
- With respect to Form 45-106F2:
  - The addition of several more disclosure items to the cover page to highlight those matters for investors.
  - Enhanced disclosure where a material amount of the proceeds of the offering will be transferred to another issuer that is not the issuer's subsidiary, or a material amount of the issuer's business is carried out by another issuer that is not the issuer's subsidiary. This is intended to give investors better disclosure as to arrangements of this nature and the ultimate use of the offering proceeds.
  - Disclosure of any purchase or sale history of any business or asset of the issuer's (excluding real property) with a Related Party, so investors can better evaluate transactions involving Related Parties.
  - The addition of Related Parties that receive compensation to the compensation disclosure and securities ownership table.
  - For item 3.3, adding disclosure of criminal or quasi-criminal convictions. This is consistent with disclosure requirements for more recently developed prospectus exemptions.
  - The addition of disclosure regarding fees or limitations with respect to redemption or retraction rights.
  - Further disclosure regarding redemption or retraction, including requests made to the issuer, requests fulfilled by the issuer including the price paid and the source of the funds, and outstanding requests.
  - A new requirement to disclose the source of funds for dividends or distributions paid that exceeded cash flow from operations.
  - Reference to the requirements of National Instrument 33-105 *Underwriting Conflicts*.
  - New cautionary disclosure for instances where expert reports, statements or opinions are included in an offering memorandum and there is no statutory liability against the expert.
  - A new requirement to amend an offering memorandum to include an interim financial report for the most recently completed 6 month interim period when a distribution of securities under an offering memorandum is ongoing.
- Other amendments intended to clarify or streamline existing provisions or provide improved disclosure.

The General Amendments are closely related to issues that we have seen in our ongoing review and compliance work regarding offering memorandums.

Other matters included in or related to the Proposed Amendments

In addition, the Proposed Amendments also include changes to Form 45-106F4 *Risk Acknowledgement*, which is the required form of risk acknowledgement for investors purchasing a security under the OM Exemption. These changes are to make the form more understandable and useful to investors, and are consistent with recent amendments to risk acknowledgement forms required in connection with other prospectus exemptions.

We note that if the Proposed Amendments are enacted in the future, some of the guidance in Multilateral CSA Staff Notice 45-309 *Guidance for Preparing and Filing an Offering Memorandum under National Instrument 45-106 Prospectus and Registration Exemptions* (**SN 45-309**) may no longer apply or may need to be revised. Consequently, we expect that if in the future the Proposed Amendments or some version of them is enacted, we would publish a revised SN 45-309 in conjunction with the effective date of those amendments.

Impact on Investors

The Proposed Amendments would give investors enhanced disclosure, and where the issuer is engaged in real estate activities, or is a collective investment vehicle, the investor would receive disclosure that is more tailored to that kind of issuer. We anticipate that this enhanced and tailored disclosure would provide investors with better information, enabling them to make more informed investment decisions.

Local Matters

Annex E is being published in any local jurisdiction that is proposing related changes to local securities laws, including local notices or other policy instruments in that jurisdictions. It may also include additional information that is relevant to that jurisdiction only.

Request for Comments

We welcome your comments on the Proposed Amendments and the Proposed Changes.

Please submit your comments in writing on or before December 16, 2020. If you are not sending your comments by email, please send a CD containing the submissions (in Microsoft Word format).

Address your submission to all of the CSA as follows:

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Office of the Superintendent of Securities, Service NL
Financial and Consumer Services Commission, New Brunswick
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Office of the Yukon Superintendent of Securities
Northwest Territories Office of the Superintendent of Securities
Nunavut Securities Office

Deliver your comments only to the addresses below. Your comments will be distributed to the other CSA jurisdictions.

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British Columbia Securities Commission
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The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8
Fax: 416-593-2318
comments@osc.gov.on.ca

Me Philippe Lebel
Corporate Secretary and Executive Director, Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour Cominar
2640, boulevard Laurier, bureau 400
Québec (Québec) G1V 5C1
Fax : 514 864-8381
consultation-en-cours@lautorite.qc.ca

We cannot keep submissions confidential because securities legislation in certain provinces requires publication of the written comments received during the comment period. All comments received will be posted on the websites of each of the Alberta Securities Commission at www.albertasecurities.com, the Autorité des marchés financiers at www.lautorite.qc.ca and the Ontario Securities Commission at www.osc.gov.on.ca. Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

Contents of Annexes

Annex A – Proposed Amendments to NI 45-106

Annex B – Proposed Changes to 45-106CP

Annex C – Main body of NI 45-106 reflecting the Proposed Amendments, compared by way of blackline to that material as currently in-force

Annex D – Form 45-106F2 reflecting the Proposed Amendments, compared by way of blackline to that material as currently in-force

Annex E – Local Matters

Questions

Please refer your questions to any of the following:

British Columbia Securities Commission
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Alberta Securities Commission
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ANNEX A

PROPOSED AMENDMENTS
TO NATIONAL INSTRUMENT 45-106 *PROSPECTUS EXEMPTIONS*

1. National Instrument 45-106 Prospectus Exemptions is amended by this Instrument.

2. Section 1.1 is amended in paragraph (b) of the definition of "eligibility advisor***" by replacing "***an institute or association of chartered accountants, certified general accountants or certified management accountants in a jurisdiction of Canada***" with "***the Chartered Professional Accountants of Canada***".***

3. Section 1.1 is amended by adding the following definitions:

"collective investment vehicle" means an issuer whose primary purpose is to invest money provided by its security holders in a portfolio of securities;

"material contract" means any contract that an issuer or any of its subsidiaries is a party to, that is material to the issuer;

"net asset value" has the same meaning with respect to a collective investment vehicle as it does with respect to an investment fund in National Instrument 81-106 *Investment Fund Continuous Disclosure*;

"real estate activities" means an undertaking, the purpose of which is primarily to generate for security holders income or gain from the lease, sale or other disposition of real property, but does not include any of the following:

(a) activities in respect of a mineral project, as defined in National Instrument 43-101 *Standards of Disclosure for Mineral Projects*;

(b) oil and gas activities as defined in National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*;

(c) in Québec, in addition to paragraphs (a) and (b), the distribution of either of the following:

(i) an investment contract that includes a real right of ownership in an immovable and a rental management agreement;

(ii) a security of an issuer that owns an immovable giving the holder a right of exclusive use of a residential unit and a space in such immovable;

"related party" means any of the following:

(a) a director, officer, promoter or control person of the issuer;

(b) in regard to any individual referred to in paragraph (a), a child, parent, grandparent or sibling, or other relative living in the same residence;

(c) in regard to any individual referred to in paragraph (a) or (b), his or her spouse;

(d) an insider of the issuer;

(e) a person controlled by a person referred to in any of paragraph (a) to (d), or controlled by a person referred to in any of paragraph (a) to (d) acting jointly or in concert with another person;

(f) in the case of a person referred to in any of paragraph (a) to (d) that is not an individual, any person that controls that person, or that controls that person by acting jointly or in concert with another person;.

4. Subparagraphs 2.9(1)(b)(i), (2)(c)(i) and (2.1)(c)(i) are amended by replacing "(13)***" with "***(14.1)***".***

5. Paragraph 2.9(2.2)(a) is amended by adding ",***" after "***non-redeemable investment fund***".***

6. Subsection 2.9(5.2) is amended by replacing "A***" with "***In Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan, a***".***

7. Subsection 2.9(13) is repealed.

8. Section 2.9 is amended by adding the following subsections:

(13.1) An offering memorandum must not contain a misrepresentation on the date the certificate under subsection (8) or (14.1) is signed.

(13.2) If a material change with respect to the issuer occurs after the certificate under subsection (8) or (14.1) is signed, and before the issuer accepts an agreement to purchase the security from the purchaser, the issuer must amend the offering memorandum to reflect the material change, and deliver the amended offering memorandum to the purchaser.

(13.3) An offering memorandum delivered under this section must provide a reasonable purchaser with sufficient information to make an informed investment decision.*.*

9. Subsection 2.9(14) is repealed.

10. Section 2.9 is amended by adding the following subsection:

(14.1) An issuer that amends an offering memorandum must replace the certificate in the offering memorandum with a newly dated certificate signed in compliance with subsections (9), (10), (10.1), (10.2), (10.3), (11), (11.1) and (12), as applicable.*.*

11. Subsection 2.9(17) is replaced with the following:

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

12. Section 2.9 is amended by adding the following subsection:

(17.0.1) Each copy of an offering memorandum that is filed must be in a format that allows for the searching of words electronically using reasonably available technology.*.*

13. Subsection 2.9(19) is amended by replacing "subsections (19.1) and (19.3), a qualified appraiser is independent of an issuer of a syndicated mortgage***" with "***subsections (19.1), (19.3), (19.6) and (19.7), a qualified appraiser is independent of an issuer***".***[1]

14. Section 2.9 is amended by adding the following after subsection (19.4):

(19.5) An issuer relying on an exemption set out in subsection (1), (2) or (2.1) that is engaged in real estate activities must comply with subsection (19.6) if any of the following apply:

(a) the issuer proposes to acquire, or has acquired, an interest in real property from a related party;

(b) except for in its financial statements, the issuer discloses in the offering memorandum a value for an interest in real property;

(c) the issuer proposes to use a material amount of the proceeds of the offering to acquire an interest in real property.

(19.6) An issuer to which any of paragraphs (19.5)(a), (b) or (c) applies must, at the same time or before the issuer delivers an offering memorandum to the purchaser in accordance with subsections (1), (2) or (2.1), deliver to the purchaser an appraisal of the interest in real property referred to in subsection (19.5) that satisfies all of the following: [2]

(a) it is prepared by a qualified appraiser that is independent of the issuer;

(b) it includes a certificate signed by the qualified appraiser stating that the appraisal is prepared in accordance with the standards and the code of ethics established or endorsed by the professional association of which the qualified appraiser is a member;

(c) it provides the appraised fair market value of the interest in real property, without considering any proposed improvements or proposed development;

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[1] Amending instructions 13 and 14 take into account the amendments to this instrument published in Annex B of the CSA Notice dated August 6, 2020 announcing amendments to NI 45-106 Prospectus Exemptions and National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (the **August 6 CSA Notice**).

[2] The definitions of "qualified appraiser" and "professional association" were published in Annex B of the August 6 CSA Notice.

(d) it provides the appraised fair market value of the interest in real property as at a date that is within 6 months preceding the date that the appraisal is delivered to the purchaser.

(19.7) If an issuer relying on an exemption set out in subsection (1), (2) or (2.1) is engaged in real estate activities, and discloses in any communication related to the distribution under the exemption a representation of, or opinion as to, a value for an interest in real property referred to in subsection (19.5), other than the appraised fair market value disclosed in the appraisal referred to in subsection (19.6), the issuer must have a reasonable basis for that value, and must disclose all of the following in that communication:

(a) with equal or greater prominence as the representation or opinion, the appraised fair market value referred to in subsection (19.6);

(b) the material factors or assumptions used to determine the representation or opinion;

(c) whether or not the representation or opinion was determined by a qualified appraiser who is independent of the issuer.

(19.8) An issuer must file a copy of any appraisal delivered under subsection (19.6) with the securities regulatory authority concurrently with the filing of the offering memorandum.**.**

15. Section 6.4 is amended by adding the following after subsection (3) [3]***:***

(4) An issuer preparing an offering memorandum in accordance with Form 45-106F2 that is engaged in real estate activities must supplement the offering memorandum with Schedule 1 of that form.

(5) An issuer preparing an offering memorandum in accordance with Form 45-106F2 that is a collective investment vehicle must supplement the offering memorandum with Schedule 2 of that form.**.**

16. Section 8.4 is repealed.

17. Section 8.4.1 is repealed.

18. Section 8.4.2 is repealed.

19. Section 8.4.3 is repealed.

20. Form 45-106F2 Offering Memorandum for Non-Qualifying Issuers is repealed and replaced with the material in Schedule A-1.

21. Form 45-106F4 Risk Acknowledgement is amended

(a) by repealing and replacing all content prior to Schedule 1 with the material in Schedule A-2,

(b) in B. of Schedule 1, by replacing "subsection 7.3(3) of the *Securities Act* (Ontario)***" with "***subsection 73.3 of the *Securities Act* (Ontario)***" , and***

(c) in B. of Schedule 2, by replacing "subsection 7.3(3) of the *Securities Act* (Ontario)***" with "***subsection 73.3 of the *Securities Act* (Ontario)***" .***

22. This Instrument comes into force on ●.

[3] Amending instruction 15 takes into account the amendments to this instrument published in Annex B of the August 6 CSA Notice.

Schedule A-1

FORM 45-106F2
OFFERING MEMORANDUM FOR NON-QUALIFYING ISSUERS

Date: [Insert the date from the certificate page.]

The Issuer

Name:

Head office: Address:
Phone #:
Website address:
E-mail address:

Currently listed or quoted? [If no, state in bold type: "**These securities do not trade on any exchange or market.**". If yes, identify the exchange or market.]

Reporting issuer? [Yes/No. If yes, state where.]

The Offering

Securities offered:

Price per security:

Minimum/Maximum offering: [If there is no minimum, state in bold type: "**There is no minimum.**" and also state in bold type: "**You may be the only purchaser.**"]

Minimum subscription amount: [State the minimum amount each investor must invest, or state "There is no minimum subscription amount an investor must invest."]

Payment terms:

Proposed closing date(s):

Income tax consequences: There are important tax consequences to these securities. See item 6. [If income tax consequences are not material, delete this item.]

Insufficient Funds

If item 2.6 applies, state in bold type: "**Funds available under the offering may not be sufficient to accomplish the proposed objectives. See item 2.6.**".

Compensation Paid to Sellers and Finders

If item 7 applies, state the following: "A person has received or will receive compensation for the sale of securities under this offering. See item 7.".

Underwriter(s)

State the name of any underwriter.

Guidance: The requirements of National Instrument 33-105 *Underwriting Conflicts* may be applicable.

Resale Restrictions

State: "You will be restricted from selling your securities for [4 months and a day/an indefinite period]. See item 10."

Working Capital Deficiency

If the issuer is disclosing a working capital deficiency under item 1.1, state the following, with the bracketed information completed: "[name of issuer] has a working capital deficiency. See item 1.1.".

Payments to Related Party

If the issuer is disclosing payment to a related party under item 1.2, state the following, with the bracketed information completed as applicable: "[All of][Some of] your investment will be paid to a related party of the issuer. See item 1.2.".

Certain Related Party Transactions

If the issuer is making disclosure under item 2.8(b), or subsection 7(2) of Schedule 1, state the following with the bracketed information completed as applicable: "This offering memorandum contains disclosure with respect to one or more transactions between [name of issuer] and a related party, where [name of issuer] [paid more to a related party than the related party paid for a business, asset or real property] [and] [was paid less by a related party for a business, asset or real property than [name of issuer] paid for it]. See [item 2.8(b)] [and] [subsection 7(2) of Schedule 1].".

Certain Dividends or Distributions

If the issuer is making disclosure under item 5B, state the following with the bracketed information completed: "[name of issuer] has paid dividends or distributions that exceeded cash flow from operations. See item 5B.".

Redemption or Retraction Right

If the purchaser will have a right to require the issuer to repurchase its securities and there is any restriction, fee or price associated with this right, state in bold type with the bracketed information completed, as applicable: "**You will have a right to require the issuer to repurchase its securities from you, but this right is qualified by [a specified price] [and] [restrictions] [and] [fees]. As a result, you might not receive the amount of proceeds that you want. See item 5.1.**"

Purchaser's Rights

State: "You have 2 business days to cancel your agreement to purchase these securities. If there is a misrepresentation in this offering memorandum, you have a right to damages or to cancel the agreement. See item 11."

State in bold type:

"**No securities regulatory authority or regulator has assessed the merits of these securities or reviewed this offering memorandum. Any representation to the contrary is an offence. This is a risky investment. See item 8.**"

Instructions

1. Include all of the above information at the beginning of the offering memorandum.

2. After the above information, include a table of contents for the rest of the information in the offering memorandum.

Item 1: Use of Available Funds

1.1 ***Funds*** - Using the following table, disclose the funds available as a result of the offering. If the issuer plans to combine additional sources of funding with the available funds from the offering to achieve its principal capital-raising purpose, provide details about each additional source of funding. If there is no minimum offering, state "$0" as the minimum. Disclose any working capital deficiency of the issuer as at a date not more than 30 days before the date of the offering memorandum. If the working capital deficiency will not be eliminated by the use of available funds, state how the issuer intends to eliminate or manage the deficiency.

		Assuming minimum offering	Assuming maximum offering
A.	Amount to be raised by this offering	$	$
B.	Selling commissions and fees	$	$
C.	Estimated offering costs (including legal, accounting and audit)	$	$
D.	Available funds: D = A - (B+C)	$	$
E.	Additional sources of funding required	$	$
F.	Working capital deficiency	$	$
G.	Total: G = (D+E) - F	$	$

1.2 ***Use of Available Funds*** - Using the following table, provide a detailed breakdown of how the issuer will use the available funds. If any of the available funds will be paid to a related party, disclose in a note to the table the name of the related party, the relationship to the issuer, and the amount. If more than 10% of the available funds will be used by the issuer to pay debt and the issuer incurred the debt within the two preceding financial years, describe why the debt was incurred.

Description of intended use of available funds listed in order of priority	Assuming minimum offering	Assuming maximum offering
	$	$
	$	$
Total: Equal to G in the Funds table above	$	$

1.2.1 *Proceeds Transferred to Other Issuers* - If a significant amount of the proceeds of the offering will be invested in, loaned to, or otherwise transferred to another issuer that is not a subsidiary controlled by the issuer, or a significant amount of the issuer's business is carried out by another issuer that is not a subsidiary controlled by the issuer, provide the disclosure specified by items 2, 3, 4.1, 4.2, 8 and 12 and, as applicable, Schedule 1 of this form if the other issuer is engaged in real estate activities, and Schedule 2 of this form if the other issuer is a collective investment vehicle, as if each of those other issuers were the issuer preparing the offering memorandum. In addition, describe the relationship between the issuer and each of those other issuers, and supplement the description with a diagram.

1.3 [Repealed]

Item 2: Business of the Issuer and Other Information and Transactions

2.1 *Structure* - State whether the issuer is a partnership, corporation or trust, or if the issuer is not a corporation, partnership or trust then state what type of business association the issuer is. State any statute under which the issuer is incorporated, continued or organized, and the date of incorporation, continuance or organization.

2.2 *The Business* - Describe the issuer's business.

(a) For a non-resource issuer include in the description the following:

(i) principal products or services;

(ii) operations;

(iii) market, marketing plans and strategies;

(iv) a discussion of the issuer's current and prospective competitors.

(b) For a resource issuer include in the description the following:

(i) a description of principal properties (including interest held);

(ii) a summary of material information including, as applicable, the stage of development, reserves, geology, operations, production and mineral reserves or mineral resources being explored or developed.

Guidance

1. For a resource issuer disclosing scientific or technical information for a mineral project, see General Instruction A.8 of this Form.

2. For a resource issuer disclosing information about its oil and gas activities, see General Instruction A.9 of this Form.

2.3 *Development of Business* - Describe the general development of the issuer's business over at least its two most recently completed financial years and any subsequent period. Include any major events that have occurred or conditions that have influenced (favourably or unfavourably) the development or financial condition of the issuer.

2.4 *Long Term Objectives* – With respect to the issuer's objectives subsequent to the next 12 months after the date of the offering memorandum, describe each significant event associated with those objectives, state the specific time period in which each event is expected to occur, and the costs related to each event.

2.5 *Short Term Objectives*

(a) Disclose the issuer's objectives for the next 12 months after the date of the offering memorandum.

(b) Using the following table, disclose how the issuer intends to meet those objectives.

Actions to be taken	Target completion date or, if not known, number of months to complete	Cost to complete
		$
		$

2.6 ***Insufficient Funds***

If applicable, disclose that the funds available as a result of the offering either may not or will not be sufficient to accomplish all of the issuer's proposed objectives and there is no assurance that alternative financing will be available. With respect to any alternative financing that has been arranged, disclose the amount, source and all outstanding conditions.

2.6.1: ***Additional Disclosure for Issuers Without Significant Revenue***

(1) If the issuer has not had significant revenue from operations in either of its two most recently completed financial years, or has not had significant revenue from operations since inception, provide, for each period referred to in subsection (2), a breakdown of the material components of the following:

(a) exploration and evaluation assets or expenditures and, if the issuer's business primarily involves mining exploration and development, provide the breakdown on a property-by-property basis;

(b) expensed research and development costs;

(c) intangible assets arising from development;

(d) general and administration expenses;

(e) any material costs, whether expensed or recognized as assets, not referred to in paragraphs (a) through (d).

(2) Include the disclosure in subsection (1) with respect to each period for which financial statements are included in the offering memorandum.

(3) Subsection (1) does not apply to any period for which the information specified under subsection (1) has been disclosed in the financial statements that are included in the offering memorandum.

2.7 ***Material Contracts*** - Disclose the key terms of all material contracts to which the issuer is currently a party including, for certainty, the following:

(a) if the contract is with a related party, the name of the related party and the relationship to the issuer;

(b) a description of any asset, property or interest acquired, disposed of, leased or under option;

(c) a description of any service provided;

(d) purchase price and payment terms (including payment by instalments, cash, securities or work commitments);

(e) the principal amount of any debenture or loan, the repayment terms, security, due date and interest rate;

(f) the date of the contract;

(g) the amount of any finder's fee or commission paid or payable to a related party in connection with the contract;

(h) any material outstanding obligations under the contract.

2.8 ***Related Party Transactions***

With respect to any purchase and sale transaction between the issuer and a related party that does not relate to real property,

(a) using the following table and starting with the most recent transaction, provide the specified information, and

Description of business or asset	Date of transfer	Legal name of seller	Legal name of buyer	Amount and form of consideration exchanged in connection with transfer

(b) explain the reason for any material difference between the amount of consideration paid by the issuer and the amount of consideration paid by a related party for the business or asset.

Item 3: Compensation and Security Holdings of Certain Parties

3.1 *Compensation and Securities Held*

Using the following table, provide the specified information for the following:

(a) each director, officer and promoter of the issuer;

(b) each person that has beneficial ownership of, or direct or indirect control over, or a combination of beneficial ownership and direct or indirect control over, 10% or more of any class of voting securities of the issuer;

(c) any related party not specified in paragraph (a) or (b) that received compensation in the most recently completed financial year, or is expected by the issuer to receive compensation in the current financial year.

Full legal name and place of residence or, if not an individual, jurisdiction of organization	If paragraph (a) or (b) applies, specify whether the person is a director, officer, promoter or person referred to in paragraph (b); if paragraph (c) applies, specify the person's relationship to the issuer; in all cases, specify the date that the person became a person identified in paragraph (a), (b) or (c)	Compensation paid by issuer or related party in the most recently completed financial year and the compensation expected to be paid in the current financial year	Number, type and percentage of securities of the issuer held after completion of minimum offering	Number, type and percentage of securities of the issuer held after completion of maximum offering

Instructions

1. If the issuer has not completed its first financial year, disclose for the period from the date of the issuer's inception to the date of the offering memorandum.

2. Compensation includes any form of remuneration including, for certainty, cash, shares and options.

3. If a person identified in paragraph (a), (b) or (c) is not an individual, state in a note to the table the full legal name of any person that has beneficial ownership of, or direct or indirect control over, or a combination of beneficial ownership and direct or indirect control over, more than 50% of the voting rights of the person.

3.2 *Management Experience* - Using the following table, provide the specified information for the directors and executive officers of the issuer for the 5 years preceding the date of the offering memorandum.

Full Legal Name	Principal occupation and description of experience associated with the occupation

3.3 *Penalties, Sanctions, Bankruptcy, Insolvency and Criminal or Quasi-Criminal Matters*

(a) If the following have occurred during the 10 years preceding the date of the offering memorandum with respect to a director, executive officer or control person of the issuer, or an issuer of which any of those persons was a director, executive officer or control person at the time, describe the penalty, other sanction or order, including the reason for it and whether it is currently in effect:

(i) a penalty or other sanction imposed by a court relating to a contravention of securities legislation;

(ii) a penalty or other sanction imposed by a regulatory body relating to a contravention of securities legislation;

(iii) an order restricting trading in securities, not including an order that was in effect for less than 30 consecutive days.

(b) If the following have occurred during the 10 years preceding the date of the offering memorandum with respect to a director, executive officer or control person of the issuer, or an issuer of which any of those persons was a director, executive officer or control person at the time, state that it has occurred:

(i) a declaration of bankruptcy;

(ii) a voluntary assignment in bankruptcy;

(iii) a proposal under bankruptcy or insolvency legislation;

(iv) a proceeding, arrangement or compromise with creditors or appointment of a receiver, receiver manager or trustee to hold assets.

(c) Disclose and describe the following, if the issuer or a director, executive officer or control person of the issuer has ever pled guilty to or been found guilty of:

(i) a summary conviction or indictable offence under the *Criminal Code* (Canada);

(ii) a quasi-criminal offence in any jurisdiction of Canada or a foreign jurisdiction;

(iii) a misdemeanour or felony under the criminal legislation of the United States of America, or any state or territory of the United States of America;

(iv) an offence under the criminal legislation of any other foreign jurisdiction.

3.4 *Certain Loans*

For any debenture, bond or loan agreement between the issuer and a related party, disclose the following:

(a) as at a date not more than 30 days before the date of the offering memorandum, the parties to the agreement, including which party is lender and which party is borrower, the principal amount, the repayment terms, any security, due date and interest rate;

(b) during the two most recently completed financial years and up to a date not more than 30 days before the date of the offering memorandum, any material amendment to the agreement, or any release, cancellation or forgiveness.

Item 4: Capital Structure

4.1 *Securities Except for Debt Securities* - Using the following table, provide the specified information about outstanding securities of the issuer, not including debt securities. Add notes to the table to describe the material terms of the securities, including, for certainty, voting rights or restrictions on voting, exercise price and date of expiry, rights of redemption or retraction, including redemption or retraction price and any fee or restriction, and any interest rate or dividend or distribution policy.

Description of security	Number authorized to be issued	Price per security	Number outstanding as at a date not more than 30 days before the date of the offering memorandum	Number outstanding after minimum offering	Number outstanding after maximum offering

4.2 *Long Term Debt Securities* - Using the following table, provide the specified information about outstanding debt of the issuer for which all or a portion is due, or may be outstanding, more than 12 months from the date of the offering memorandum. Add notes to the table to disclose any amounts of the debt that are due within 12 months of the date of the offering memorandum. In addition, add notes to the table to describe any conversion terms. If the securities being offered are debt securities, complete the applicable parts of the table for the debt, and add columns to the table disclosing the amount of the debt that will be outstanding after both the minimum and maximum offering.

Description of debt (including whether secured)	Interest rate	Repayment terms	Amount outstanding at a date not more than 30 days before the date of the offering memorandum
			$
			$

4.3 *Prior Sales* - If the issuer has issued any securities of the class being offered under the offering memorandum (or convertible or exchangeable into the class being offered under the offering memorandum) within the 12 months before the date

of the offering memorandum, use the following table to provide the information specified. If securities were issued in exchange for assets or services, describe in a note to the table the assets or services that were provided.

Date of issuance	Type of security issued	Number of securities issued	Price per security	Total funds received

Item 5: Securities Offered

5.1 *Terms of Securities*

(a) Describe the material terms of the securities being offered, including, for certainty, the following:

(i) voting rights or restrictions on voting;

(ii) conversion or exercise price and date of expiry;

(iii) right of redemption or retraction, including redemption or retraction price and any fee or restriction;

(iv) interest rate, and dividend or distribution policy.

(b) Provide a sample calculation in relation to any redemption or retraction right included in the terms of the securities being offered.

5.2 *Subscription Procedure*

(a) Describe how a purchaser can subscribe for the securities and the method of payment.

(b) State that the consideration will be held in trust and the period that it will be held (refer at least to the mandatory two day period).

(c) Disclose any conditions to closing, including any receipt of additional funds from other sources. If there is a minimum offering, disclose when consideration will be returned to purchasers if the minimum is not met, and whether the issuer will pay the purchasers interest on consideration.

Item 5A: Redemption and Retraction History

(1) With respect to any securities of the issuer for which investors have a right of redemption or retraction, disclose the following:

(a) for each of the two most recently completed financial years, the information specified by the following table;

Description of security	Date of end of financial year	Number of securities with outstanding redemption or retraction requests on the first day of the year	Number of securities for which investors made redemption or retraction requests during the year	Number of securities redeemed or retracted during the year	Average price paid for the securities redeemed or retracted	Source of funds used to complete the redemptions or retractions	Number of securities with outstanding redemption or retraction requests on the last day of the year

(b) for the period after the end of the issuer's most recently completed financial year and up to a date not more than 30 days before the date of the offering memorandum, the information specified by the following table;

Description of security	Date of beginning of period and date of end of period	Number of securities with outstanding redemption or retraction requests on the first day of the period	Number of securities for which investors made redemption or retraction requests during the period	Number of securities redeemed or retracted during the period	Average price paid for the securities redeemed or retracted	Source of funds used to complete the redemptions or retractions	Number of securities with outstanding redemption or retraction requests on the last day of the period

(c) with respect to the periods specified in (a) and (b), the reason for any non-fulfillment of investor requests for redemption or retraction, unless the non-fulfillment was in accordance with terms governing the redemption or retraction right.

Item 5B: Certain Dividends or Distributions

If in the two most recently completed financial years, or any subsequent interim period, the issuer paid dividends or distributions that exceeded cash flow from operations, disclose the source of those payments.

Item 6: Income Tax Consequences and RRSP Eligibility

6.1 State: "You should consult your own professional advisers to obtain advice on the income tax consequences that apply to you."

6.2 If income tax consequences are a material aspect of the securities being offered, provide

(a) a summary of the significant income tax consequences to Canadian residents, and

(b) the name of the person providing the income tax disclosure in (a).

6.3 Provide advice regarding the RRSP eligibility of the securities and the name of the person providing the advice or state "Not all securities are eligible for investment in a registered retirement savings plan (RRSP). You should consult your own professional advisers to obtain advice on the RRSP eligibility of these securities."

Item 7: Compensation Paid to Sellers and Finders

If any person has or will receive any commission, corporate finance fee or finder's fee or any other compensation in connection with the offering, provide the following information:

(a) a description of each type of compensation and the estimated amount to be paid for each type;

(b) if a commission is being paid, the percentage that the commission will represent of the gross proceeds of the offering (assuming both the minimum and maximum offering);

(c) details of any broker's warrants or agent's option (including number of securities under option, exercise price and expiry date);

(d) if any portion of the compensation will be paid in securities, details of the securities (including number, type and, if options or warrants, the exercise price and expiry date).

Item 8: Risk Factors

Describe in order of importance, starting with the most important, the risk factors material to the issuer that a reasonable investor would consider important in deciding whether to buy the issuer's securities.

Guidance: Risk factors will generally fall into the following three categories:

(a) Investment Risk - risks that are specific to the securities being offered. Some examples include

- arbitrary determination of price,
- no market or an illiquid market for the securities,
- resale restrictions, and

- subordination of debt securities.

(b) Issuer Risk - risks that are specific to the issuer. Some examples include

- insufficient funds to accomplish the issuer's business objectives,
- no history or a limited history of revenue or profits,
- lack of specific management or technical expertise,
- management's regulatory and business track record,
- dependence on key employees, suppliers or agreements,
- dependence on financial viability of guarantor,
- pending and outstanding litigation, and
- political risk factors.

(c) Industry Risk - risks faced by the issuer because of the industry in which it operates. Some examples include

- environmental and industry regulation,
- product obsolescence, and
- competition.

Item 9: Reporting Obligations

9.1 Disclose the documents, including any financial information required by the issuer's corporate legislation, constating documents, or other documents under which the issuer is organized, that will be sent to purchasers on an annual or on-going basis. If the issuer is not required to send any documents to the purchasers on an annual or on-going basis, state in bold type: "**We are not required to send you any documents on an annual or ongoing basis.**"

9.2 If corporate or securities information about the issuer is available from a government, securities regulatory authority or regulator, SRO or quotation and trade reporting system, disclose where that information can be located (including website address).

Item 10: Resale Restrictions

10.1 [Repealed]

10.2 Restricted Period - For trades in Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island, Québec, Saskatchewan and Yukon state one of the following, as applicable:

(a) If the issuer is not a reporting issuer in a jurisdiction at the distribution date state:

"Unless permitted under securities legislation, you cannot trade the securities before the date that is 4 months and a day after the date [insert name of issuer] became a reporting issuer in any province or territory of Canada."

(b) If the issuer is a reporting issuer in a jurisdiction at the distribution date state:

"Unless permitted under securities legislation, you cannot trade the securities, before the date that is 4 months and a day after the distribution date."

10.3 Manitoba Resale Restrictions - For trades in Manitoba, if the issuer will not be a reporting issuer in a jurisdiction at the time the security is acquired by the purchaser state:

"Unless permitted under securities legislation, you must not trade the securities without the prior written consent of the regulator in Manitoba unless

(a) [name of issuer] has filed a prospectus with the regulator in Manitoba with respect to the securities you have purchased and the regulator in Manitoba has issued a receipt for that prospectus, or

(b) you have held the securities for at least 12 months.

The regulator in Manitoba will consent to your trade if the regulator is of the opinion that to do so is not prejudicial to the public interest."

Item 11: Purchasers' Rights

11.1 Statements Regarding Purchasers' Rights - State the following:

"If you purchase these securities you will have certain rights, some of which are described below. For information about your rights you should consult a lawyer.

(1) Two Day Cancellation Right - You can cancel your agreement to purchase these securities. To do so, you must send a notice to us by midnight on the 2nd business day after you sign the agreement to buy the securities.

(2) Statutory Rights of Action in the Event of a Misrepresentation [Insert this section only if the securities legislation of the jurisdiction in which the trade occurs provides purchasers with statutory rights in the event of a misrepresentation in an offering memorandum. Modify the language, if necessary, to conform to the statutory rights.] If there is a misrepresentation in this offering memorandum, you have a statutory right to sue:

(a) [name of issuer] to cancel your agreement to buy these securities, or

(b) for damages against [state the name of issuer and the title of any other person against whom the rights are available].

This statutory right to sue is available to you whether or not you relied on the misrepresentation. However, there are various defences available to the persons or companies that you have a right to sue. In particular, they have a defence if you knew of the misrepresentation when you purchased the securities.

If you intend to rely on the rights described in (a) or (b) above, you must do so within strict time limitations. You must commence your action to cancel the agreement within [state time period provided by the securities legislation]. You must commence your action for damages within [state time period provided by the securities legislation.]

(3) Contractual Rights of Action in the Event of a Misrepresentation - [Insert this section only if the securities legislation of the jurisdiction in which the purchaser is resident does not provide purchasers with statutory rights in the event of a misrepresentation in an offering memorandum.] If there is a misrepresentation in this offering memorandum, you have a contractual right to sue [name of issuer]:

(a) to cancel your agreement to buy these securities, or

(b) for damages.

This contractual right to sue is available to you whether or not you relied on the misrepresentation. However, in an action for damages, the amount you may recover will not exceed the price that you paid for your securities and will not include any part of the damages that [name of issuer] proves does not represent the depreciation in value of the securities resulting from the misrepresentation. [Name of issuer] has a defence if it proves that you knew of the misrepresentation when you purchased the securities.

If you intend to rely on the rights described in (a) or (b) above, you must do so within strict time limitations. You must commence your action to cancel the agreement within 180 days after you signed the agreement to purchase the securities. You must commence your action for damages within the earlier of 180 days after learning of the misrepresentation and 3 years after you signed the agreement to purchase the securities."

11.2 Cautionary Statement Regarding Report, Statement or Opinion by Expert - If a report, statement or opinion by a solicitor, auditor, accountant, engineer, appraiser, notary in Québec or other person or company whose profession or business could, to a reasonable person, be viewed as giving authority to a statement made by that person or company, is included or referenced in the offering memorandum, and purchasers do not have a statutory right of action in the local jurisdiction against that person or company for a misrepresentation in the offering memorandum, state the following, with the bracketed information completed, as applicable:

"This offering memorandum [includes][references] [describe any report, statement or opinion, the party that gave it, and the effective date of the document]. You do not have a statutory right of action against [this party][these parties] for a misrepresentation in the offering memorandum. You should consult with a legal adviser for further information."

Item 12: Financial Statements

Include in the offering memorandum immediately before the certificate page of the offering memorandum all financial statements specified in the Instructions.

Item 13: Date and Certificate

State the following on the certificate page of the offering memorandum:

"Dated [insert the date the certificate page of the offering memorandum is signed].

This offering memorandum does not contain a misrepresentation."

Instructions for Completing

Form 45-106F2
Offering Memorandum for Non-Qualifying Issuers

A. General Instructions

0.1 Refer to subsections 2.9(13.1) and (13.3) of the Instrument, which set out the standard of disclosure for an offering memorandum.

1. Draft the offering memorandum so that it is easy to read and understand. Be concise and use clear, plain language. Avoid technical terms. If technical terms are necessary, provide definitions.

2. Address the items required by the form in the order set out in the form. However, it is not necessary to provide disclosure in response to a requirement or part of a requirement that does not apply.

3. The issuer may include additional information in the offering memorandum other than that specifically required by the form.

4. The issuer may wrap the offering memorandum around a prospectus or similar document. However, all matters required to be disclosed by the offering memorandum must be addressed and the offering memorandum must provide a cross-reference to the page number or heading in the wrapped document where the relevant information is contained. The certificate to the offering memorandum must be modified to indicate that the offering memorandum, including the document around which it is wrapped, does not contain a misrepresentation.

5. It is an offence to make a misrepresentation in the offering memorandum. This applies to both information that is required by the form and additional information that is provided. Include particulars of any material facts, which have not been disclosed under any of the Item numbers and for which failure to disclose would constitute a misrepresentation in the offering memorandum. Refer also to section 3.8(3) of Companion Policy 45-106CP for additional information.

5.1 Do not disclose a maximum offering amount unless the issuer reasonably expects, as at the date of the offering memorandum, to distribute that amount under the offering memorandum.

6. [Repealed]

7. [Repealed]

8. Refer to National Instrument 43-101 *Standards of Disclosure for Mineral Projects* (NI 43-101) when disclosing scientific or technical information for a mineral project of the issuer.

9. If an oil and gas issuer is disclosing information about its oil and gas activities, it must ensure that the information is disclosed in accordance with Part 4 and Part 5 of National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* (NI 51-101). Under section 5.3 of NI 51-101, disclosure of reserves or resources must be consistent with the reserves and resources terminology and categories set out in the Canadian Oil and Gas Evaluation Handbook. For the purposes of this instruction, references to reporting issuer in Part 4 and Part 5 of NI 51-101 will be deemed to include all issuers.

10. Securities legislation restricts what can be told to investors about the issuer's intent to list or quote securities on an exchange or market. Refer to applicable securities legislation before making any such statements.

11. If an issuer uses this form in connection with a distribution under an exemption other than section 2.9 (*offering memorandum*) of the Instrument, the issuer must modify the disclosure in item 11 to correctly describe the purchaser's rights. If a purchaser does not have statutory or contractual rights of action in the event of a misrepresentation in the offering memorandum, that fact must be stated in bold on the face page.

12. During the course of a distribution of securities, any material forward-looking information disseminated must only be that which is set out in the offering memorandum. If an extract of FOFI, as defined in National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102), is disseminated, the extract or summary must be reasonably balanced and have a cautionary note in boldface stating that the information presented is not complete and that complete FOFI is included in the offering memorandum.

13. The term quasi-criminal offence includes offences under tax, immigration or money laundering legislation.

B. Financial Statements - General

1. All financial statements, operating statements for an oil and gas property that is an acquired business or a business to be acquired, and summarized financial information as to the aggregated amounts of assets, liabilities, revenue and

profit or loss of an acquired business or business to be acquired that is, or will be, an investment accounted for by the issuer using the equity method included in the offering memorandum must comply with National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*, regardless of whether the issuer is a reporting issuer or not.

Under National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*, financial statements are generally required to be prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises. An issuer using this form cannot use Canadian GAAP applicable to private enterprises, except, subject to the requirements of NI 52-107, certain issuers may use Canadian GAAP applicable to private enterprises for financial statements for a business referred to in C.1. An issuer that is not a reporting issuer may prepare acquisition statements in accordance with the requirements of NI 52-107 as if the issuer were a venture issuer as defined in NI 51-102. For the purposes of Form 45-106F2, the "applicable time" in the definition of a venture issuer is the acquisition date.

2. Include all financial statements required by these instructions in the offering memorandum immediately before the certificate page of the offering memorandum.

3. If the issuer has not completed one financial year or its first financial year end is less than 120 days from the date of the offering memorandum, include in the offering memorandum financial statements of the issuer consisting of:

(a) a statement of comprehensive income, a statement of changes in equity and a statement of cash flows for the period from inception to a date not more than 90 days before the date of the offering memorandum,

(b) a statement of financial position as at the end of the period referred to in paragraph (a), and

(c) notes to the financial statements.

4. If the issuer has completed one or more financial years, include in the offering memorandum annual financial statements of the issuer consisting of:

(a) a statement of comprehensive income, a statement of changes in equity and a statement of cash flows for

(i) the most recently completed financial year that ended more than 120 days before the date of the offering memorandum, and

(ii) the financial year immediately preceding the financial year in clause (i), if any,

(b) a statement of financial position as at the end of each of the periods referred to in paragraph (a),

(c) a statement of financial position as at the beginning of the earliest comparative period for which financial statements that are included in the offering memorandum comply with IFRS in the case of an issuer that

(i) discloses in its annual financial statements an unreserved statement of compliance with IFRS, and

(ii) does any of the following:

(A) applies an accounting policy retrospectively in its annual financial statements;

(B) makes a retrospective restatement of items in its annual financial statements;

(C) reclassifies items in its annual financial statements,

(d) in the case of an issuer's first IFRS financial statements as defined in NI 51-102, the opening IFRS statement of financial position at the date of transition to IFRS as defined in NI 51-102, and

(e) notes to the financial statements.

4.1 If an issuer presents the components of profit or loss in a separate income statement, the separate income statement must be displayed immediately before the statement of comprehensive income filed under Item 4 above.

5. If the issuer has completed one or more financial years, include in the offering memorandum an interim financial report of the issuer comprised of:

(a) a statement of comprehensive income, a statement of changes in equity and a statement of cash flows for the most recently completed interim period that ended

(i) more than 60 days before the date of the offering memorandum, and

(ii) after the year-end date of the financial statements required under B.4(a)(i),

(b) a statement of comprehensive income, a statement of changes in equity and a statement of cash flows for the

corresponding period in the immediately preceding financial year, if any,

(c) a statement of financial position as at the end of the period required by paragraph (a) and the end of the immediately preceding financial year,

(d) a statement of financial position as at the beginning of the earliest comparative period for which financial statements that are included in the offering memorandum comply with IFRS in the case of an issuer that

(i) discloses in its interim financial report an unreserved statement of compliance with International Accounting Standard 34 *Interim Financial Reporting*, and

(ii) does any of the following:

(A) applies an accounting policy retrospectively in its interim financial report;

(B) makes a retrospective restatement of items in its interim financial report;

(C) reclassifies items in its interim financial report,

(e) in the case of the first interim financial report in the year of adopting IFRS, the opening IFRS statement of financial position at the date of transition to IFRS,

(f) for an issuer that is not a reporting issuer in at least one jurisdiction of Canada immediately before filing the offering memorandum, if the issuer is including an interim financial report of the issuer for the second or third interim period in the year of adopting IFRS include

(i) the issuer's first interim financial report in the year of adopting IFRS, or

(ii) both

(A) the opening IFRS statement of financial position at the date of transition to IFRS, and

(B) the annual and date of transition to IFRS reconciliations required by IFRS 1 *First-time Adoption of International Financial Reporting Standards* to explain how the transition from previous GAAP to IFRS affected the issuer's reported financial position, financial performance and cash flows, and

(g) notes to the financial statements.

5.1 If an issuer presents the components of profit or loss in a separate income statement, the separate income statement must be displayed immediately before the statement of comprehensive income filed under item 5 above.

6. An issuer is not required to include the comparative financial information for the period in B.4.(a)(ii) in an offering memorandum if the issuer includes financial statements for a financial year ended less than 120 days before the date of the offering memorandum.

7. For an issuer that is not an investment fund, the term "interim period" has the meaning set out in NI 51-102. In most cases, an interim period is a period ending 9, 6, or 3 months before the end of a financial year. For an issuer that is an investment fund, the term "interim period" has the meaning set out in National Instrument 81-106 *Investment Fund Continuous Disclosure* (NI 81-106).

8. The comparative financial information required under B.5(b) and (c) may be omitted if the issuer has not previously prepared financial statements in accordance with its current or, if applicable, its previous GAAP.

9. The financial statements required by B.3, B.4 and B.12.1(a) must be audited. The financial statements required by B.5, B.6, B.12.1(b) and the comparative financial information required by B.4 may be unaudited; however, if any of those financial statements have been audited, the auditor's report must be included in the offering memorandum.

10. Refer to National Instrument 52-108 *Auditor Oversight* for requirements relating to reporting issuers and public accounting firms.

11. All unaudited financial statements and unaudited comparatives must be clearly labelled as unaudited.

12. [Repealed]

12.1 If the distribution is ongoing, the issuer must do the following:

(a) if the offering memorandum does not contain audited annual financial statements for the issuer's most recently completed financial year, the issuer must do the following:

(i) amend the offering memorandum to include the audited annual financial statements and the accompanying auditor's report as soon as the issuer has approved the audited financial statements, but in any event no later than the 120th day following the financial year end;

(ii) present the offering memorandum and the audited annual financial statements in accordance with the instructions in A, B and C and, for that purpose, the reference to the financial year in B.4(a)(i) shall mean the issuer's most recently completed financial year;

(b) if the offering memorandum does not contain an interim financial report for the issuer's most recently completed 6-month period, the issuer must do the following:

(i) amend the offering memorandum to include the interim financial report no later than the 60th day following the end of the period;

(ii) present the offering memorandum and the interim financial report in accordance with the instructions in A, B and C and, for that purpose, the reference to the interim period in B.5(a) shall mean the issuer's most recently completed 6-month period.

12.2 If the issuer has included in its offering memorandum an interim financial report for its most recently completed 9-month period, B. 12.1(b) does not apply.

13. [Repealed]

14. Forward looking information, as defined in NI 51-102, included in an offering memorandum must comply with section 4A.2 of NI 51-102 and must include the disclosure described in section 4A.3 of NI 51-102. In addition to the foregoing, FOFI or a financial outlook, each as defined in NI 51-102, included in an offering memorandum must comply with Part 4B of NI 51-102. For an issuer that is not a reporting issuer, references to "reporting issuer" in section 4A.2, section 4A.3 and Part 4B of NI 51-102 must be read as references to an "issuer". Additional guidance may be found in the companion policy to NI 51-102.

15. [Repealed]

16. [Repealed]

C. Financial Statements - Business Acquisitions

1. If the issuer

(a) has acquired a business during the past two years and the audited financial statements of the issuer included in the offering memorandum do not include the results of the acquired business for 9 consecutive months, or

(b) is proposing to acquire a business and the acquisition has progressed to a state where a reasonable person would believe that the likelihood of the acquisition being completed is high,

include the financial statements specified in C.4 for the business if either of the tests in C.2 is met, irrespective of how the issuer accounts, or will account, for the acquisition.

2. Include the financial statements specified in C.4 for a business referred to in C.1 if either:

(a) the issuer's proportionate share of the consolidated assets of the business exceeds 100% of the consolidated assets of the issuer calculated using the annual financial statements of each of the issuer and the business for the most recently completed financial year of each that ended before the acquisition date or, for a proposed acquisition, the date of the offering memorandum or

(b) the issuer's consolidated investments in and advances to the business as at the acquisition date or the proposed date of acquisition exceeds 100% of the consolidated assets of the issuer, excluding any investments in or advances to the business, as at the last day of the issuer's most recently completed financial year that ended before the date of acquisition or the date of the offering memorandum for a proposed acquisition. For information about how to perform the investment test in this paragraph, please refer to subsections 8.3(4.1) and (4.2) of NI 51-102. Additional guidance may be found in the companion policy to NI 51-102.

2. 1 [Repealed]

3. If an issuer or a business has not yet completed a financial year, or its first financial year ended within 120 days of the offering memorandum date, use the financial statements referred to in B.3 to make the calculations in C.2.

4. If under C.2 you must include in an offering memorandum financial statements for a business, the financial statements must include:

   (a) If the business has not completed one financial year or its first financial year end is less than 120 days from the date of the offering memorandum

      (i) a statement of comprehensive income, a statement of changes in equity and a statement of cash flows

         (A) for the period from inception to a date not more than 90 days before the date of the offering memorandum, or

         (B) if the date of acquisition precedes the ending date of the period referred to in (A), for the period from inception to the acquisition date or a date not more than 45 days before the acquisition date,

      (ii) a statement of financial position dated as at the end of the period referred to in clause (i), and

      (iii) notes to the financial statements.

   (b) If the business has completed one or more financial years include

      (i) annual financial statements comprised of:

         (A) a statement of comprehensive income, a statement of changes in equity and a statement of cash flows for the following annual periods:

            i. the most recently completed financial year that ended before the acquisition date and more than 120 days before the date of the offering memorandum, and

            ii. the financial year immediately preceding the most recently completed financial year specified in clause i, if any,

         (B) a statement of financial position as at the end of each of the periods specified in (A),

         (C) notes to the financial statements, and

      (ii) an interim financial report comprised of

         (A) either

            i. a statement of comprehensive income, a statement of changes in equity and a statement of cash flows for the most recently completed year-to-date interim period ending on the last date of the interim period that ended before the acquisition date and more than 60 days before the date of the offering memorandum and ended after the date of the financial statements required under subclause (b)(i)(A)(i), and a statement of comprehensive income and a statement of changes in equity for the 3-month period ending on the last date of the interim period that ended before the acquisition date and more than 60 days before the date of the offering memorandum and ended after the date of the financial statements required under subclause (b)(i)(A)(i), or

            ii. a statement of comprehensive income, a statement of changes in equity and a statement of cash flows for the period from the first day after the financial year referred to in subparagraph (b)(i) to a date before the acquisition date and after the period end in subclause (b)(ii)(A)(i),

         (B) a statement of comprehensive income, a statement of changes in equity and a statement of cash flows for the corresponding period in the immediately preceding financial year, if any,

         (C) a statement of financial position as at the end of the period required by clause (A) and the end of the immediately preceding financial year, and

         (D) notes to the financial statements.

   Refer to Instruction B.7 for the meaning of “interim period”.

5. The information for the most recently completed financial period referred to in C.4(b)(i) must be audited and accompanied by an auditor's report. The financial statements required under C.4(a), C.4(b)(ii) and the comparative financial information required by C.4(b)(i) may be unaudited; however, if those financial statements or comparative financial information have been audited, the auditor's report must be included in the offering memorandum.

6. If the offering memorandum does not contain audited financial statements for a business referred to in C.1 for the business's most recently completed financial year that ended before the acquisition date and the distribution is ongoing, update the offering memorandum to include those financial statements accompanied by an auditor's report when they are available, but in any event no later than the date 120 days following the year-end.

7. The term "business" should be evaluated in light of the facts and circumstances involved. Generally, a separate entity or a subsidiary or division of an entity is a business and, in certain circumstances, a lesser component of an entity may also constitute a business, whether or not the subject of the acquisition previously prepared financial statements. The subject of an acquisition should be considered a business where there is, or the issuer expects there will be, continuity of operations. The issuer should consider:

   (a) whether the nature of the revenue producing activity or potential revenue producing activity will remain generally the same after the acquisition, and

   (b) whether any of the physical facilities, employees, marketing systems, sales forces, customers, operating rights, production techniques or trade names are acquired by the issuer instead of remaining with the vendor after the acquisition.

8. If a transaction or a proposed transaction for which the likelihood of the transaction being completed is high has been or will be a reverse take-over as defined in NI 51-102, include financial statements for the legal subsidiary in the offering memorandum in accordance with Part A. The legal parent is considered to be the business acquired. C.1 may also require financial statements of the legal parent.

9. An issuer satisfies the requirements in C.4 if the issuer includes in the offering memorandum the financial statements required in a business acquisition report under NI 51-102.

D. Financial Statement - Exemptions

1. [Repealed]

2. Notwithstanding the requirements in section 3.3(1)(a)(i) of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*, an auditor's report that accompanies financial statements of an issuer or a business contained in an offering memorandum of a non-reporting issuer may express a qualification of opinion relating to inventory if

   (a) the issuer includes in the offering memorandum a statement of financial position that is for a date that is after the date to which the qualification relates,

   (b) the statement of financial position referred to in paragraph (a) is accompanied by an auditor's report that does not express a qualification of opinion relating to closing inventory, and

   (c) the issuer has not previously filed financial statements for the same entity accompanied by an auditor's report for a prior year that expressed a qualification of opinion relating to inventory.

3. If an issuer has, or will account for a business referred to in C.1 using the equity method, then financial statements for a business required by Part C are not required to be included if:

   (a) the offering memorandum includes disclosure for the periods for which financial statements are otherwise required under Part C that:

      (i) summarizes information as to the aggregated amounts of assets, liabilities, revenue and profit or loss of the business, and

      (ii) describes the issuer's proportionate interest in the business and any contingent issuance of securities by the business that might significantly affect the issuer's share of profit or loss;

   (b) the financial information provided under D.3(a) for the most recently completed financial year has been audited, or has been derived from audited financial statements of the business; and

   (c) the offering memorandum discloses that:

(i) the financial information provided under D.3(a) for any completed financial year has been audited, or identifies the audited financial statements from which the financial information provided under D.3(a) has been derived; and

(ii) the audit opinion with respect to the financial information or financial statements referred to in D.3(c)(i) was an unmodified opinion.

4. Financial statements relating to the acquisition or proposed acquisition of a business that is an interest in an oil and gas property are not required to be included in an offering memorandum if either of the following apply:

(a) the acquisition is significant based only on the asset test;

(b) the issuer is unable to provide the financial statements in respect of the significant acquisition otherwise required because those financial statements do not exist or the issuer does not have access to those financial statements, and the following apply:

(i) the acquisition was not or will not be a reverse take-over, as defined in NI 51-102;

(ii) the following apply:

(A) the offering memorandum includes an operating statement for the business or related businesses for each of the financial periods for which financial statements would, but for this section, be required under C.4 prepared in accordance with subsection 3.11(5) of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*;

(B) the operating statement for the most recently completed financial period referred to in C.4(b)(i) is audited;

(C) the offering memorandum includes a description of the property or properties and the interest acquired by the issuer;

(D) the offering memorandum includes information with respect to the estimated reserves and related future net revenue attributable to the business, the material assumptions used in preparing the estimates and the identity and relationship to the issuer or to the seller of the person who prepared the estimates;

(E) the offering memorandum includes actual production volumes of the property for the most recently completed year;

(F) the offering memorandum includes estimated production volumes of the property for the first year reflected in the estimate disclosed under D.4(d)(iv).

5. Financial statements for a business that is an interest in an oil and gas property, or for the acquisition or proposed acquisition by an issuer of an oil and gas property, are not required to be audited if, during the 12 months preceding the acquisition date or the proposed acquisition date, the average daily production of the property is less than 20% of the average daily production of the seller for the same or similar periods and:

(i) despite reasonable efforts during the purchase negotiations, the issuer was prohibited from including in the purchase agreement the rights to obtain an audited operating statement of the property,

(ii) the purchase agreement includes representations and warranties by the seller that the amounts presented in the operating statement agree to the seller's books and records, and

(iii) the offering memorandum discloses

1. that the issuer was unable to obtain an audited operating statement,

2. the reasons for that inability,

3. the fact that the purchase agreement includes the representations and warranties referred to in D.5(ii), and

4. that the results presented in the operating statements may have been materially different if the statements had been audited.

Schedule 1- Additional Disclosure Requirements for an Issuer Engaged in Real Estate Activities

Guidance

For an issuer engaged in real estate activities, see subsection 6.4(4) of the Instrument with respect to the completion of this schedule.

General Instructions

1. Despite General Instruction A. 2, an issuer may choose where to integrate the disclosure specified by this schedule within the offering memorandum.

2. Information specified by this schedule that is disclosed in the offering memorandum in response to another provision of this form need not be repeated.

1. Definitions

In this schedule

"rental management agreement" means an agreement, other than a rental pool agreement, under which a person manages the generation of revenue from real property for another person;

"rental pool agreement" means an agreement creating a rental pool;

"rental pool" means an arrangement under which revenues derived from, or expenses relating to, two or more properties are pooled and shared among the owners of the properties in accordance with their proportionate interests in the pool.

2. Application

(1) This schedule applies to the following:

(a) each interest in real property held by the issuer;

(b) each interest in real property proposed to be acquired by the issuer, if the proposed acquisition has progressed to a state where a reasonable person would believe that the likelihood of the issuer completing the acquisition is high.

(2) Despite subsection (1), and except in the circumstances described in section 4, 5, 10 and 11, this schedule does not apply in respect of an interest in real property, or more than one interest in real property taken together, that when considered in relation to all interests in real property held by the issuer, is not significant enough to influence a decision by a reasonable investor to buy, hold or sell a security of the issuer.

3. Description of Real Property

(1) Describe the following with respect to each interest in real property:

(a) the real property's location, both legal and descriptive;

(b) the nature of the interest;

(c) any encumbrances;

(d) any restriction on sale or disposition;

(e) any environmental liabilities, hazards or contamination;

(f) any tax arrears;

(g) who provides any utilities and other services or, if utilities and other services are not currently being provided, describe how they will be provided and who will provide them;

(h) the current use;

(i) the proposed use and why the issuer considers the real property to be suitable for its plans;

(j) with respect to any buildings affixed to the real property, the type of construction, age and condition, and a description of any units for sale or rental;

(k) for real property that the issuer leases to others, the occupancy level as at a date not more that 60 days before the date of the offering memorandum.

(2) If the issuer is providing disclosure on 20 or more interests in real property, it may for the purposes of subsection (1) disclose the information on a summarized basis with respect to either of the following:

(a) the portfolio of real property interests as a whole;

(b) the portfolio of real property interests broken into subgroups.

(3) Describe any current legal proceedings, or legal proceedings that the issuer knows to be contemplated, relating to each interest in real property, including, for each proceeding, the name of the court, the date instituted, the parties to the proceeding, the nature of the claim, any amount claimed, whether the proceeding is being contested, and the present status of the proceeding.

Instruction to Section 3

With respect to a proposed acquisition of one or more interests in real property, disclose the issuer's expectations regarding the matters set out in paragraphs (1)(b), (c) and (d) for the event that the acquisition is completed.

4. Appraisal

(1) If subsection 2.9(19.6) of the Instrument applies, disclose the following for any appraisal:

(a) the appraised fair market value of the interest in real property that is the subject of the appraisal;

(b) the effective date of the appraisal;

(c) that the appraisal is required to be delivered to the purchaser at the same time or before the offering memorandum is delivered to the purchaser.

(2) For each interest in real property to which subsection (1) applies, provide the most recent assessment by any assessing authority.

5. Purchaser's Interest in Real Property

If the purchaser will acquire an interest in real property, disclose the following:

(a) a description of the interest;

(b) how the interest will be evidenced in a public registry;

(c) any existing or anticipated encumbrances on the interest.

6. Developer, or Manager under a Rental Pool Agreement or Rental Management Agreement, Organization, Occupation and Experience, and Penalties, Sanctions, Bankruptcy, Insolvency and Criminal or Quasi-Criminal Matters

(1) Subsection (2) applies for the following persons:

(a) a person other than the issuer that is or will be acting in the role of developer in respect of an interest in real property;

(b) in respect of real property in which the purchaser will acquire an interest, a person other than the issuer that will be acting in the role of manager under a rental management agreement, or manager for a rental pool.

(2) For each person described in subsection (1),

(a) state the legal name of the person, describe the business of the person and any experience that the person has in similar projects or a similar business, and, if the person is not an individual, the laws under which the person is organized or incorporated and the date that the person was organized or incorporated,

(b) if the person is not an individual, in the form of the following table, provide the specified information for any directors and executive officers of the person for the 5 years preceding the date of the offering memorandum,

Full legal name	Principal occupation and description of experience associated with the occupation

(c) if the following have occurred during the 10 years preceding the date of the offering memorandum with respect to the person, a director, executive officer or control person of the person, or an issuer of which any of those persons was a director, executive officer or control person at the time, describe the penalty, sanction or order, including the reason for it and whether it is currently in effect:

(i) a penalty or other sanction imposed by a court relating to a contravention of securities legislation;

(ii) a penalty or other sanction imposed by a regulatory body relating to a contravention of securities legislation;

(iii) an order restricting trading in securities, not including an order that was in effect for less than 30 consecutive days,

(d) if the following have occurred during the 10 years preceding the date of the offering memorandum with respect to the person, a director, executive officer or control person of the person, or an issuer of which any of those persons was a director, executive officer or control person at the time, state that it has occurred:

(i) a declaration of bankruptcy;

(ii) a voluntary assignment in bankruptcy;

(iii) a proposal under bankruptcy or insolvency legislation;

(iv) a proceeding, arrangement or compromise with creditors or appointment of a receiver, receiver manager or trustee to hold assets, and

(e) disclose and describe the following, if the person, or a director, executive officer or control person of the person has ever pled guilty to or been found guilty of:

(i) a summary conviction or indictable offence under the *Criminal Code* (Canada);

(ii) a quasi-criminal offence in any jurisdiction of Canada or a foreign jurisdiction;

(iii) a misdemeanour or felony under the criminal legislation of the United States of America, or any state or territory of the United States of America;

(iv) an offence under the criminal legislation of any other foreign jurisdiction.

7. Transfers

(1) For each interest in real property, for any transaction that a related party was party to, using the following table, starting with the most recent transaction and specifying which party was the related party, disclose the following.

Date of transfer	Legal name of seller	Legal name of buyer	Amount and form of consideration

(2) Explain the reason for any material difference between the amount of consideration paid by the issuer and the amount of consideration paid by a related party for the interest in real property.

8. Approvals

For each interest in real property, if that real property is being developed, disclose the following:

(a) any approval required from a regulatory body or any level of government;

(b) the anticipated cost and timing of the approval;

(c) any reports required as part of the approval process, including the anticipated cost and timing of producing or procuring those reports;

(d) what will happen if the approvals are not obtained, including the effect on the following:

(i) the project;

(i) the purchaser's investment;

(ii) if applicable, the purchaser's interest in the real property.

9. Costs and Objectives

For each interest in real property, if that real property is being developed, disclose the following:

(a) estimated costs to complete the development;

(b) any significant assumptions that underlie the cost estimates;

(c) when significant costs will be incurred;

(d) the objectives of the project that are expected to be met within the 24 months following the date of the offering memorandum, including the following:

(i) the expected timeline for meeting the objectives;

(ii) how the issuer will meet the objectives;

(iii) the estimated costs of meeting each objective;

(iv) how the issuer will fund the cost of meeting each objective;

(e) the objectives for the project that are expected to be met after the 24-month period following the date of the offering memorandum, including the following:

(i) the expected timeline for meeting the objectives;

(ii) how the issuer will meet the objectives;

(iii) if the objectives are to be completed in phases, details about each phase;

(iv) the estimated cost of meeting each objective;

(v) how the issuer will fund the cost of meeting each objective;

(f) what reasonably might happen if any of the stated objectives are not met, including the effect of not meeting on objective on the following:

(i) the project;

(ii) the purchaser's investment;

(iii) if applicable, the purchaser's interest in the real property.

10. Future Cash Calls

If the purchaser is required to contribute additional funds in the future, disclose the following:

(a) the amount the purchaser is required to contribute;

(b) when the purchaser will be required to contribute;

(c) the effect on the purchaser's investment and, if applicable, the purchaser's interest in the real property, if the purchaser fails to contribute;

(d) the effect on the purchaser's investment and, if applicable, the purchaser's interest in the real property, if the purchaser contributes, but other purchasers fail to contribute.

11. Rental Pool Agreement or Rental Management Agreement

If the purchaser will acquire an interest in real property, and that interest will be or could be subject to a rental pool agreement or a rental management agreement, disclose the following:

(a) the key terms of the agreement, including, for certainty, those provisions dealing with whether the agreement is mandatory or optional, the duration of the agreement, opting out of the agreement, termination of the agreement, the sharing of revenues and losses, the payment of expenses, and any fees payable under the agreement;

(b) whether financial or other information about the rental pool or the results arising from the rental management agreement will be made available to purchasers, and if so, include the following:

(i) a description of the information;

(ii) if the information will include financial information, whether that financial information will be audited or subject to an independent review;

(iii) the frequency with which the information will be made available;

(iv) whether the information will be delivered to purchasers or whether access will be provided to it;

(v) if purchasers are to be provided access to the information, a description of the means of gaining access to it;

(c) the following statement, with the bracketed information completed as applicable:

"The success or failure of the [rental pool][arrangement resulting from the rental management agreement] will depend in part on the abilities of the manager";

(d) if the purchaser will be responsible for paying any loss arising pursuant to the rental pool agreement or rental management agreement, the following statement, with the bracketed information completed as applicable:

"If the [rental pool][rental management agreement] generates a loss, the purchaser must contribute further funds in addition to the purchaser's initial investment.".

12. Information Statements

If the purchaser will acquire an interest in real property, state the following in bold type:

"**Your rights relating to your interest in real property will be those provided under the laws of the jurisdiction in which the real property is located. Therefore, it is prudent to consult a lawyer who is familiar with the laws of that jurisdiction before making an investment.**

All real estate investments are subject to significant risk arising from changing market conditions.".

13. Risk Factors Relating to Real Property

With respect to the issuer's interests in real property, and any interest in real property to be acquired by the purchaser, describe the risk factors that would influence a reasonable investor's decision whether to invest, including, if applicable:

(a) risks associated with the following:

(i) the development of undivided real property into subdivisions;

(ii) the leasing of real property;

(iii) the holding of real property for sale or development;

(b) risks associated with encumbrances, conditions, or covenants on the real property that could affect the following:

(i) the purchaser's interest in the real property, if applicable;

(ii) the completion of the development of real property;

(c) risks pertaining to the development of real property, including the following:

(i) a right or lack of right of the purchaser with respect to the management and control of the real property;

(ii) a right or lack of right of the purchaser to change the developer of the property;

(d) risks pertaining to potential liability for the following:

(i) environmental damage;

(ii) unpaid obligations to builders, contractors and tradespersons;

(e) risks associated with litigation that relates to the real property.

Schedule 2 – Additional Disclosure Requirements for an Issuer That is a Collective Investment Vehicle

Guidance

For an issuer that is a collective investment vehicle, see subsection 6.4(5) of the Instrument with respect to the completion of this schedule.

General Instructions

1. Despite General Instruction A. 2, an issuer may choose where to integrate the disclosure specified by this schedule within the offering memorandum.

2. Information specified by this schedule that is disclosed in the offering memorandum in response to another provision of this form need not be repeated.

1. Investment Objectives and Strategy

(1) Except with respect to mortgage lending, describe the following:

(a) the issuer's investment objectives, investment strategy and investment criteria;

(b) any limitations or restrictions on investments, including concentration limits and use of leverage;

(c) how securities are identified, selected and approved for purchase or sale.

(2) For any mortgage lending by the issuer, describe the following:

(a) the issuer's investment objectives with respect to the following:

(i) the type of properties for which the issuer lends money;

(ii) the issuer's geographical focus;

(iii) the material mortgage terms, including range of interest rates and length of term;

(iv) the priority ranking of mortgages, in terms of first priority, second priority and third or lower priority;

(b) any policies or practices of the issuer with respect to the following:

(i) after initial funding of a mortgage, conducting any subsequent valuation of a property;

(ii) loaning money to a related party;

(iii) renewals;

(iv) concentrating funds in a single mortgage or lending funds to a single borrower or group of affiliated borrowers;

(v) determining that a borrower has the ability to repay a mortgage.

2. Portfolio Management and Penalties, Sanctions, Bankruptcy, Insolvency and Criminal or Quasi-Criminal Matters

(1) Identify the person responsible for the following:

(a) establishing and implementing the issuer's investment objectives and investment strategy;

(b) setting any limitations or restrictions on investments;

(c) monitoring the performance of the portfolio;

(d) making any adjustments to the issuer's portfolio.

(2) For each person described in subsection (1) that is not registered under the securities legislation of a jurisdiction of Canada,

(a) in the form of the following table, provide the specified information for the person and any directors and executive officers of the person for the 5 years preceding the date of the offering memorandum,

Full legal name	Principal occupation and description of experience associated with the occupation

(b) if the following have occurred during the 10 years preceding the date of the offering memorandum with respect to the person, or an issuer of which the person was a director, executive officer or control person at the time, describe the penalty, sanction or order, including the reason for it and whether it is currently in effect:

(i) a penalty or other sanction imposed by a court relating to a contravention of securities legislation;

(ii) a penalty or other sanction imposed by a regulatory body relating to a contravention of securities legislation;

(iii) an order restricting trading in securities, not including an order that was in effect for less than 30 consecutive days,

(c) if the following have occurred during the 10 years preceding the date of the offering memorandum with respect to the person, or an issuer of which the person was a director, executive officer or control person at the time, state that is has occurred:

(i) a declaration of bankruptcy;

(ii) a voluntary assignment in bankruptcy;

(iii) a proposal under bankruptcy or insolvency legislation;

(iv) a proceeding, arrangement or compromise with creditors or appointment of a receiver, receiver manager or trustee to hold assets,

(d) disclose and describe the following, if the person has ever pled guilty to or been found guilty of:

(i) a summary conviction or indictable offence under the *Criminal Code* (Canada);

(ii) a quasi-criminal offence in any jurisdiction of Canada or a foreign jurisdiction;

(iii) a misdemeanour or felony under the criminal legislation of the United States of America, or any state or territory of the United States of America;

(iv) an offence under the criminal legislation of any other foreign jurisdiction, and

(e) disclose any exemption relied on by the person from the requirement to be registered under the securities legislation of a jurisdiction of Canada.

(3) For any person identified in subsection (1) that is not an employee of the issuer, disclose any remuneration paid to the person, and how the remuneration is calculated.

(4) Identify any person that is not an employee of the issuer, other than a person identified under subsection (1), that performs a significant role or provides a significant service for the issuer with respect to the securities in the issuer's portfolio, and describe the following:

(a) the role performed or service provided;

(b) the remuneration paid to the person and how that remuneration is calculated.

3. Portfolio Summary

(1) Except with respect to mortgage lending, as at a date not more than 60 days before the date of the offering memorandum, disclose the following:

(a) a description of the portfolio, or a description of the portfolio divided into subgroups including the percentage of the net asset value in each subgroup;

(b) the percentage of the net asset value that is impaired;

(c) the total number of positions held in securities.

(2) Except with respect to mortgage lending, if a security comprises 10% or more of the issuer's net asset value, disclose the following with respect to the security:

(a) the percentage of net asset value represented;

(b) a description of the security;

(c) any security interest held against the security;

(d) the amount of any impairment assigned to the security.

(3) For any mortgage lending by the issuer, disclose the following:

(a) the average of the interest rates payable under the mortgages, weighted by the principal amount of the mortgages;

(b) the average of the terms to maturity of the mortgages, weighted by the principal amount of the mortgages;

(c) the average loan-to-value ratio of the mortgages, calculated for each mortgage by dividing the total principal amount of the issuer's mortgage and all other loans ranking in equal or greater priority to the issuer's mortgage by the fair market value of the property, weighted by the principal amount of each mortgage;

(d) the principal amount, and the percentage of the total principal amount of the mortgages, that rank in the following:

(i) first priority;

(ii) second priority;

(iii) third or lower priority;

(e) the principal amount, and the percentage of the total principal amount of the mortgages, that is attributable to each jurisdiction of Canada, each state or territory of the United States of America and each other foreign jurisdiction;

(f) a breakdown by property type, and the principal amount, and the percentage of the total principal amount of the mortgages, that is attributable to each property type;

(g) with respect to mortgages that will mature in less than one year of the date of the summary provided in subsection (1), the percentage that those mortgages represent of the total principal amount of the mortgages;

(h) with respect to mortgages with payments more than 90 days overdue, the number of those mortgages, the principal amount of those mortgages, and the percentage that those mortgages represent of the total principal amount of the mortgages;

(i) with respect to mortgages that have an impaired value, the principal amount, and the percentage that those mortgages represent of the total principal amount of the mortgages;

(j) if known by the issuer, or if reasonably available to the issuer, the average credit score of the borrowers, weighted by the principal amount of the mortgages;

(k) if a mortgage comprises 10% or more of the total principal amount of the mortgages, disclose the following with respect to the mortgage:

(i) the principal amount, and the percentage of the total principal amount of the mortgages;

(ii) the interest rate payable;

(iii) the term to maturity;

(iv) the loan-to-value ratio, calculated by dividing the total principal amount of the issuer's mortgage and all other loans ranking in equal or greater priority to the issuer's mortgage by the fair market value of the property;

(v) whether the mortgage ranks in first, second, or third or lower priority;

(vi) the property type;

(vii) where the property is located;

(viii) any payment that is more than 90 days overdue;

(ix) any impairment of the mortgage;

(x) if known by the issuer, or if reasonably available to the issuer, the credit score of each borrower.

(4) If the issuer's portfolio includes self-liquidating financial assets other than mortgages, with respect to those assets, and for any subgroups identified in paragraph (1)(a), disclose the following:

(a) the collection rate for each of the issuer's two most recently completed financial years that ended more than 120 days before the date of the offering memorandum;

(b) the issuer's reasonably anticipated loss and collection rate for the current financial year.

Instruction to Section 3

Calculate impairment in accordance with the accounting standards applicable to the issuer, and in a manner that is consistent with the disclosure in the issuer's financial statements.

4. Portfolio Performance

(1) For the 10 most recently completed financial years of the issuer ended more than 120 days before the date of the offering memorandum, provide performance data for the issuer's portfolio.

(2) Describe the methodology used with respect to the following:

(a) determining the value of the securities in the portfolio for the purposes of calculating the performance data;

(b) calculating the performance data of the portfolio.

Instruction to Section 4

The methodology described in paragraph (2)(a) must be the same as the methodology used in the issuer's financial statements.

5. Ongoing Disclosure

Describe any information that purchasers will receive on an ongoing basis about the issuer's portfolio. If none, state that fact.

6. Conflicts of Interest

Describe any conflicts of interest, including, for certainty, with respect to related parties, that a reasonable purchaser would need to be made aware of to make an informed investment decision.

Schedule A-2

FORM 45-106F4
Risk Acknowledgement

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

1. Risks and other information The issuer must delete any rows required to be deleted The purchaser must initial each statement to confirm understanding	**Your Initials**
Risk of loss – You could lose your entire investment of $ ______. [*Instruction: Insert the total dollar amount of the investment.]*	
No approval – No securities regulatory authority or regulator has evaluated or approved the merits of these securities or the disclosure in the offering memorandum.	
No registration – The person selling me these securities is not registered with a securities regulatory authority or regulator and has no duty to tell you whether this investment is suitable for you. *[Instruction: Delete if sold by registrant]*	
Liquidity risk – You will not be able to sell these securities except in very limited circumstances. You may never be able to sell these securities. *[Instruction: Delete if issuer is reporting]*	
Redemption – The securities are redeemable, but you may only be able to redeem them in limited circumstances. *[Instruction: Delete if securities are not redeemable]*	
Four month hold – You will not be able to sell these securities for 4 months. *[Instruction: Delete if issuer is not reporting or if the purchaser is a Manitoba resident]*	
You will not receive advice – *[Instruction: Delete if sold by registrant]* You will not get professional advice about whether the investment is suitable for you. But you can still seek that advice from a registered adviser or registered dealer. In Manitoba, Northwest Territories, Nunavut, Prince Edward Island and Yukon to qualify as an eligible investor, you may be required to obtain that advice.	
The securities you are buying are not listed *[Instruction: Delete if securities are listed or quoted]* The securities you are buying are not listed on any stock exchange, and they may never be listed.	
The issuer of your securities is a non-reporting issuer *[Instruction: Delete if issuer is reporting]* A *non-reporting issuer* does not have to publish financial information or notify the public of changes in its business. You may not receive ongoing information about this issuer. For more information on the exempt market, contact your local securities regulator. You can find contact information at www.securities-administrators.ca.	

Total investment – You are investing $ _____ [*Instruction: total consideration*] in total; this includes any amount you are obliged to pay in future. _______ [*Instruction: name of issuer*] will pay $________ [*Instruction: amount of fee or commission*] of this to _________ [*Instruction: name of person selling the securities*] as a fee or commission.	
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 (print)**:**	
Signature:	Date:
[Instruction: Sign 2 copies of this document. Keep one copy for your records.]	

2. Salesperson information Below information must be completed by the salesperson	
[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, a registrant or a person who is exempt from the registration requirement.]	
First and last name of salesperson (print):	
Telephone:	Email:
Name of firm:	

3. **Additional information** The issuer must complete the required information in this section before giving the form to the purchaser
You have 2 business days to cancel your purchase To do so, send a notice to [name of issuer] stating that you want to cancel your purchase. You must send the notice before midnight on the 2nd business day after you sign the agreement to purchase the securities. You can send the notice by fax or email or deliver it in person to [name of issuer] at its business address. Keep a copy of the notice for your records. Issuer Name and Address: Fax: E-mail:
You will receive an offering memorandum Read the offering memorandum carefully because it has important information about the issuer and its securities. Keep the offering memorandum because you have rights based on it. Talk to a lawyer for details about these rights.

ANNEX B

PROPOSED CHANGES TO COMPANION POLICY 45-106CP *PROSPECTUS EXEMPTIONS*

1. Companion Policy 45-106CP Prospectus Exemptions is changed by this Document.

2. The following sections are added after section 2.9:

2.10 Real estate activities

We consider the following non-exhaustive list to be examples of instances in which an issuer is engaged in "real estate activities" as defined in section 1.1 of NI 45-106:

- An issuer that is developing or redeveloping real property for sale as commercial or industrial space, residential building lots or homes, or condominiums;
- An issuer that is developing or redeveloping real property for lease;
- An issuer that owns real property for lease;
- An issuer that buys, holds or sells real property, with a view to making a gain or income;
- An issuer of an interest in real property that is a security.

If an issuer (the first issuer) is engaged in real estate activities through one or more of its subsidiaries, we consider the first issuer to be engaged in real estate activities.

2.11 Collective investment vehicle

We view investment funds, in the jurisdictions in which they are permitted to use the offering memorandum exemption, as being included in the definition of "collective investment vehicle". We are also of the view that the definition applies to mortgage investment entities, issuers that act as lender for a portfolio of non-mortgage loans, and in certain circumstances, issuers that invest in receivables.

If an issuer (the first issuer) satisfies the definition of "collective investment vehicle" through the actions of one or more its subsidiaries, we consider the first issuer to be a collective investment vehicle.*.*

3. Subsection 3.8(3) is replaced with the following:

(3) Standard of disclosure for an offering memorandum, amending an offering memorandum and related matters

(a) Standard of disclosure for an offering memorandum

There are two standards that make up the standard of disclosure for an offering memorandum. First, under subsection 2.9(13.1) of the Instrument, an offering memorandum must not contain a misrepresentation on the date its certificate is signed. Second, under subsection 2.9(13.3) of the Instrument, an offering memorandum delivered under the section must provide a reasonable purchaser with sufficient information to make an informed investment decision.

(b) Amending an offering memorandum

The requirements of Instruction B.12.1 of Form 45-106F2 include that if a distribution is ongoing, an issuer must, after a certain period, amend its offering memorandum to include financial statements for its most recently completed financial year, or an interim financial report for its most recently completed 6 month interim period, as the case may be.

There are a number of requirements in Form 45-106F2 that refer to a completed financial year or years, or a completed interim period. As a result, each time an issuer includes in its offering memorandum financial statements for a financial year or an interim financial report for an interim period, it is required to ensure that any disclosure that is in response to a requirement that references a financial year or interim period is amended if necessary.

It is not necessary for an offering memorandum to contain annual financial statements or an interim financial report for more financial years or interim periods than are required by B. of the instructions to Form 45-106F2. Accordingly, an issuer amending its offering memorandum to include more recent annual financial statements or a more recent interim financial report may exclude, in its amended offering memorandum, any annual financial statements or interim financial report for a financial year

or interim period that is no longer required.

An issuer is also required to amend its offering memorandum if a material change occurs after the certificate is signed, and before the issuer accepts an agreement to purchase the security from the purchaser. See subsection 2.9(13.2) of the Instrument. Material change is defined in provincial and territorial securities legislation.

In addition, if a distribution is ongoing and an issuer becomes subject to instruction C.1 of Form 45-106F2 with respect to the acquisition or proposed acquisition of a business, and the financial statements required by that instruction are not contained in the offering memorandum, the issuer must amend its offering memorandum to include them.

We also note that an issuer may voluntarily amend its offering memorandum.

(c) New certificate

Each time an issuer amends its offering memorandum, it is required under subsection 2.9(14.1) of the Instrument to replace the certificate in the offering memorandum with a new certificate. We also note that Form 45-106F2 provides that the date of the offering memorandum is the date of the certificate.

There are certain requirements in Form 45-106F2 that refer to the date of the offering memorandum. As a result, each time an issuer includes a new certificate in its offering memorandum, it is required to ensure that any disclosure in response to a requirement that references the date of the offering memorandum is amended if necessary.***.***

4. Section 3.8 is changed by adding the following after subsection 3.8(3):

(3.1) Certificate of promoter

"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.***.***

5. Subsection 3.8(13) is changed[1]

(a) by deleting "for syndicated mortgages***", and***

(b) by replacing "the issuer of a syndicated mortgage***" with "***an issuer***".***

6. Subsection 3.8(14) is changed by adding "of property subject to a syndicated mortgage***" after "***Appraisals***".***

7. Section 3.8 is changed by adding the following after subsection 3.8(14):

(15) Collective investment vehicles - disclosure

An issuer that is a collective investment vehicle should consider the complexity of its offering and determine whether appropriate and sufficient information can be provided under its offering memorandum, as these distributions can be made to less sophisticated investors. Disclosure should be clear and described in plain language, avoiding technical terms as much as possible. If the disclosure will be complex or contains technical terms that are difficult to easily describe, the issuer should consider whether a distribution under the offering memorandum exemption is appropriate.***.***

8. Section 5.3 is deleted.

9. These changes become effective on ●.

[1] Instructions 5, 6 and 7 take into account the changes to this policy published in Annex C of the August 6 CSA Notice.

ANNEX C

Blackline

Main body of NI 45-106 reflecting the Proposed Amendments, compared by way of blackline to that material as currently in-force

NATIONAL INSTRUMENT 45-106
PROSPECTUS 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 sections 2.34, 2.36, 2.37, and 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 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,

(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,

(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 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,

(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,

(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;

"**collective investment vehicle**" means an issuer whose primary purpose is to invest money provided by its security holders in a portfolio of securities;

"**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 Québec, 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 paragraph (b) of the definition of "designated rating" in National Instrument 81-102 *Investment Funds*;

"designated rating organization" has the same meaning as in National Instrument 44-101 *Short Form Prospectus Distributions*;

"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 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~~the Chartered Professional Accountants 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) in Manitoba, Northwest Territories, Nunavut, Prince Edward Island and Yukon, 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*;

"**material contract**" means any contract that an issuer or any of its subsidiaries is a party to, that is material to the issuer;

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

"**net asset value"** has the same meaning with respect to a collective investment vehicle as it does with respect to an investment fund in National Instrument 81-106 *Investment Fund Continuous Disclosure*;

"**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;

"**real estate activities**" means an undertaking, the purpose of which is primarily to generate for security holders income or gain from the lease, sale or other disposition of real property, but does not include any of the following:

(a) activities in respect of a mineral project, as defined in National Instrument 43-101 *Standards of Disclosure for Mineral Projects*;

(b) oil and gas activities as defined in National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*;

(c) in Québec, in addition to paragraphs (a) and (b), the distribution of either of the following:

(i) an investment contract that includes a real right of ownership in an immovable and a rental management agreement;

(ii) a security of an issuer that owns an immovable giving the holder a right of exclusive use of a residential unit and a space in such immovable;

"**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;

"related party" means any of the following:

(a) a director, officer, promoter or control person of the issuer;

(b) in regard to any individual referred to in paragraph (a), a child, parent, grandparent or sibling, or other relative living in the same residence;

(c) in regard to any individual referred to in paragraph (a) or (b), his or her spouse;

(d) an insider of the issuer;

(e) a person controlled by a person referred to in any of paragraph (a) to (d), or controlled by a person referred to in any of paragraph (a) to (d) acting jointly or in concert with another person;

(f) in the case of a person referred to in any of paragraph (a) to (d) that is not an individual, any person that controls that person, or that controls that person by acting jointly or in concert with another person;

"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;

"**successor credit rating organization**" has the same meaning as in National Instrument 44-101 *Short Form Prospectus Distributions*;

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

1.1.1 In this Instrument, in Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan

"**date of transition to IFRS**" has the same meaning as in National Instrument 51-102 *Continuous Disclosure Obligations*;

"**exempt market dealer**" has the same meaning as in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;

"**first IFRS financial statements**" has the same meaning as in National Instrument 51-102 *Continuous Disclosure Obligations*;

"**investment dealer**" has the same meaning as in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;

"**new financial year**" means the financial year of an issuer that immediately follows a transition year;

"**old financial year**" means the financial year of an issuer that immediately precedes a transition year;

"**OM marketing materials**" means a written communication, other than an OM standard term sheet, intended for prospective purchasers regarding a distribution of securities under an offering memorandum delivered under section 2.9 [*Offering memorandum*] that contains material facts relating to an issuer, securities or an offering;

"**OM standard term sheet**" means a written communication intended for prospective purchasers regarding a distribution of securities under an offering memorandum delivered under section 2.9 [*Offering memorandum*] that

(a) is dated,

(b) includes the following legend, or words to the same effect, on the first page:

"This document does not provide disclosure of all information required for an investor to make an informed investment decision. Investors should read the offering memorandum, especially the risk factors relating to the securities offered, before making an investment decision.",

(c) contains only the following information in respect of the issuer, the securities or the offering:

(i) the name of the issuer;

(ii) the jurisdiction or foreign jurisdiction in which the issuer's head office is located;

(iii) the statute under which the issuer is incorporated, continued or organized or, if the issuer is an unincorporated entity, the laws of the jurisdiction or foreign jurisdiction under which it is established and exists;

(iv) a brief description of the business of the issuer;

(v) a brief description of the securities;

(vi) the price or price range of the securities;

(vii) the total number or dollar amount of the securities, or range of the total number or dollar amount of the securities;

(viii) the names of any agent, finder or other intermediary, whether registered or not, involved with the offering and the amount of any commission, fee or discount payable to them;

(ix) the proposed or expected closing date of the offering;

(x) a brief description of the use of proceeds;

(xi) the exchange on which the securities are proposed to be listed, if any, provided that the OM standard term sheet complies with the requirements of securities legislation for listing representations;

(xii) in the case of debt securities, the maturity date of the debt securities and a brief description of any interest payable on the debt securities;

(xiii) in the case of preferred shares, a brief description of any dividends payable on the securities;

(xiv) in the case of convertible securities, a brief description of the underlying securities into which the convertible securities are convertible;

(xv) in the case of exchangeable securities, a brief description of the underlying securities into which the exchangeable securities are exchangeable;

(xvi) in the case of restricted securities, a brief description of the restriction;

(xvii) in the case of securities for which a credit supporter has provided a guarantee or alternative credit support, a brief description of the credit supporter and the guarantee or alternative credit support provided;

(xviii) whether the securities are redeemable or retractable;

(xix) a statement that the securities are eligible, or are expected to be eligible, for investment in registered retirement savings plans, tax-free savings accounts or other registered plans, if the issuer has received, or reasonably expects to receive, a legal opinion that the securities are so eligible;

(xx) contact information for the issuer or any registrant involved, and

(d) for the purposes of paragraph (c), "brief description" means a description consisting of no more than three lines of text in type that is at least as large as that used generally in the body of the OM standard term sheet;

"**portfolio manager**" has the same meaning as in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;

"**SEC issuer**" has the same meaning as in National Instrument 51-102 *Continuous Disclosure Obligations;*

"**specified derivative**" has the same meaning as in National Instrument 44-102 *Shelf Distributions*;

"**structured finance product**" has the same meaning as in National Instrument 25-101 *Designated Rating Organizations*;

"**transition year**" means the financial year of an issuer in which the issuer has changed its financial year end;

"**U.S. laws**" has the same meaning as in National Instrument 51-102 *Continuous Disclosure Obligations.*

Interpretation of indirect interest

1.2 For the purposes of paragraph 1.1(t), 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 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) [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.

Designation of insider

1.8 For the purpose of this Instrument, in Ontario, the following classes of persons are designated as insiders:

(a) a director or an officer of an issuer;

(b) a director or an officer of a person that is an insider or a subsidiary of an issuer;

(c) a person that has

(i) beneficial ownership of, or control or direction over, directly or indirectly, securities of an issuer carrying more than 10% of the voting rights attached to all the issuer's outstanding voting securities, excluding, for the purpose of the calculation of the percentage held, any securities held by the person as underwriter in the course of a distribution, or

(ii) a combination of beneficial ownership of, and control or direction over, directly or indirectly, securities of an issuer carrying more than 10% of the voting rights attached to all the issuer's outstanding voting securities, excluding, for the purpose of the calculation of the percentage held, any securities held by the person as underwriter in the course of a distribution;

(d) an issuer that has purchased, redeemed or otherwise acquired a security of its own issue, for so long as it continues to hold that security.

PART 2 PROSPECTUS EXEMPTIONS

Division 1: Capital Raising Exemptions

Rights offering – reporting issuer

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

2.1 (1) In this section and sections 2.1.1, 2.1.2, 2.1.3 and 2.1.4,

"additional subscription privilege" means a privilege, granted to a holder of a right, to subscribe for a security not subscribed for by any holder under a basic subscription privilege;

"basic subscription privilege" means a privilege to subscribe for the number or amount of securities set out in a rights certificate held by the holder of the rights certificate;

"closing date" means the date of completion of the distribution of the securities issued upon exercise of the rights issued under this section;

"listing representation" means a representation that a security will be listed or quoted, or that an application has been or will be made to list or quote the security, either on an exchange or on a quotation and trade reporting system, in a foreign jurisdiction;

"listing representation prohibition" means the provisions of securities legislation set out in Appendix C;

"managing dealer" means a person that has entered into an agreement with an issuer under which the person has agreed to organize and participate in the solicitation of the exercise of the rights issued by the issuer;

"market price" means, for securities of a class for which there is a published market,

(a) except as provided in paragraph (b),

(i) if the published market provides a closing price, the simple average of the closing price of securities of that class on the published market for each of the trading days on which there was a closing price falling not more than 20 trading days immediately before the day as of which the market price is being determined, or

(ii) if the published market does not provide a closing price, but provides only the highest and lowest prices of securities of the class traded, the average of the simple averages of the highest and lowest prices of securities of the class on the published market for each of the trading days on which there were highest and lowest prices falling not more than 20 trading days immediately before the day as of which the market price is being determined, or

(b) if trading of securities of the class on the published market has occurred on fewer than 10 of the immediately preceding 20 trading days, the average of the following amounts established for each of the 20 trading days immediately before the day as of which the market price is being determined:

(i) the average of the closing bid and closing ask prices for each day on which there was no trading;

(ii) if the published market

(A) provides a closing price of securities of the class for each day that there was trading, the closing price, or

(B) provides only the highest and lowest prices, the average of the highest and lowest prices of securities of that class for each day that there was trading;

"published market" means, for a class of securities, a marketplace on which the securities are traded, if the prices at which they have been traded on that marketplace are regularly

(a) disseminated electronically, or

(b) published in a newspaper or business or financial publication of general and regular paid circulation;

"rights offering circular" means a completed Form 45-106F15 *Rights Offering Circular for Reporting Issuers*;

"rights offering notice" means a completed Form 45-106F14 *Rights Offering Notice for Reporting Issuers*;

"secondary market liability provisions" means the provisions of securities legislation set out in Appendix D opposite the name of the local jurisdiction;

"soliciting dealer" means a person whose interest in a distribution of rights is limited to soliciting the exercise of the rights by holders of those rights;

"stand-by commitment" means an agreement by a person to acquire the securities of an issuer not subscribed for under the basic subscription privilege or the additional subscription privilege;

"stand-by guarantor" means a person who agrees to provide the stand-by commitment.

(2) For the purpose of the definition of "market price", if there is more than one published market for a security and

(a) only one of the published markets is in Canada, the market price is determined solely by reference to that market,

(b) more than one of the published markets is in Canada, the market price is determined solely by reference to the published market in Canada on which the greatest volume of trading in the particular class of securities occurred during the 20 trading days immediately before the date as of which the market price is being determined, and

(c) none of the published markets are in Canada, the market price is determined solely by reference to the published market on which the greatest volume of trading in the particular class of securities occurred during the 20 trading days immediately before the date as of which the market price is being determined.

(3) The prospectus requirement does not apply to a distribution by an issuer, of a right to purchase a security of the issuer's own issue, to a security holder of the issuer if all of the following apply:

(a) the issuer is a reporting issuer in at least one jurisdiction of Canada;

(b) if the issuer is a reporting issuer in the local jurisdiction, the issuer has filed all periodic and timely disclosure documents that it is required to have filed in that jurisdiction as required by each of the following:

(i) applicable securities legislation;

(ii) an order issued by the regulator or, in Québec, the securities regulatory authority;

(iii) an undertaking to the regulator or, in Québec, the securities regulatory authority;

(c) before the commencement of the exercise period for the rights, the issuer files and sends the rights offering notice to all security holders, resident in Canada, of the class of securities to be issued upon exercise of the rights;

(d) concurrently with filing the rights offering notice, the issuer files a rights offering circular;

(e) the basic subscription privilege is available on a pro rata basis to the security holders, resident in Canada, of the class of securities to be distributed upon the exercise of the rights;

(f) in Québec, the documents filed under paragraphs (c) and (d) are prepared in French or in French and English;

(g) the subscription price for a security to be issued upon the exercise of a right is:

(i) if there is a published market for the security, lower than the market price of the security on the day the rights offering notice is filed, or

(ii) if there is no published market for the security, lower than the fair value of the security on the day the rights offering notice is filed unless the issuer restricts all of its insiders from increasing their proportionate interest in the issuer through the exercise of the rights distributed or through a stand-by commitment;

(h) if the distribution includes an additional subscription privilege, all of the following apply:

(i) the issuer grants the additional subscription privilege to all holders of the rights;

(ii) each holder of a right is entitled to receive, upon the exercise of the additional subscription privilege, the number or amount of securities equal to the lesser of

(A) the number or amount of securities subscribed for by the holder under the additional subscription privilege, and

(B) the number or amount calculated in accordance with the following formula:

x(y/z) where

x = the aggregate number or amount of securities available through unexercised rights after giving effect to the basic subscription privilege;

y = the number of rights exercised by the holder under the basic subscription privilege;

z = the aggregate number of rights exercised under the basic subscription privilege by holders of the rights that have subscribed for securities under the additional subscription privilege;

(iii) all unexercised rights have been allocated on a pro rata basis to holders who subscribed for additional securities under the additional subscription privilege;

(iv) the subscription price for the additional subscription privilege is the same as the subscription price for the basic subscription privilege;

(i) if the issuer enters into a stand-by commitment, all of the following apply:

(i) the issuer has granted an additional subscription privilege to all holders of the rights;

(ii) the issuer has included a statement in the rights offering circular that the issuer has confirmed that the stand-by guarantor has the financial ability to carry out its stand-by commitment;

(iii) the subscription price under the stand-by commitment is the same as the subscription price under the basic subscription privilege;

(j) if the issuer has stated in its rights offering circular that no security will be issued upon the exercise of a right unless a stand-by commitment is provided, or unless proceeds of no less than the stated minimum amount are received by the issuer, all of the following apply:

(i) the issuer has appointed a depository to hold all money received upon the exercise of the rights until either the stand-by commitment is provided or the stated minimum amount is received and the depository is one of the following:

(A) a Canadian financial institution;

(B) a registrant in the jurisdiction in which the funds are proposed to be held that is acting as managing dealer for the distribution of the rights or, if there is no managing dealer for the distribution of the rights, that is acting as a soliciting dealer;

(ii) the issuer and the depository have entered into an agreement, the terms of which require the depository to return the money referred to in subparagraph (i) in full to the holders of rights that have subscribed for securities under the distribution of the rights if the stand-by commitment is not provided or if the stated minimum amount is not received by the depository during the exercise period for the rights;

(k) the rights offering circular contains the following statement:

"There is no material fact or material change about [name of issuer] that has not been generally disclosed".

(4) An issuer must not file an amendment to a rights offering circular filed under paragraph (3)(d) unless

(a) the amendment amends and restates the rights offering circular,

(b) the issuer files the amended rights offering circular before the earlier of

(i) the listing date of the rights, if the issuer lists the rights for trading, and

(ii) the date the exercise period for the rights commences, and

(c) the issuer issues and files a news release explaining the reason for the amendment concurrently with the filing of the amended rights offering circular.

(5) On the closing date or as soon as practicable following the closing date, the issuer must issue and file a news release containing all of the following information:

(a) the aggregate gross proceeds of the distribution;

(b) the number or amount of securities distributed under the basic subscription privilege to

(i) all persons who were insiders before the distribution or became insiders as a result of the distribution, as a group, to the knowledge of the issuer after reasonable inquiry, and

(ii) all other persons, as a group;

(c) the number or amount of securities distributed under the additional subscription privilege to

(i) all persons who were insiders before the distribution or became insiders as a result of the distribution, as a group, to the knowledge of the issuer after reasonable inquiry, and

(ii) all other persons, as a group;

(d) the number or amount of securities distributed under any stand-by commitment;

(e) the number or amount of securities of the class issued and outstanding as of the closing date;

(f) the amount of any fees or commissions paid in connection with the distribution.

(6) Subsection (3) does not apply to a distribution of rights if any of the following apply:

(a) there would be an increase of more than 100% in the number, or, in the case of debt, the principal amount, of the outstanding securities of the class to be issued upon the exercise of the rights, assuming the exercise of all rights issued under a distribution of rights by the issuer during the 12 months immediately before the date of the rights offering circular;

(b) the exercise period for the rights is less than 21 days, or more than 90 days, and commences after the day the rights offering notice is sent to security holders;

(c) the issuer has entered into an agreement that provides for the payment of a fee to a person for soliciting the exercise of rights by holders of rights that were not security holders of the issuer immediately before the distribution under subsection (3) and that fee is higher than the fee payable for soliciting the exercise of rights by holders of rights that were security holders at that time.

Rights Offering – stand-by commitment

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

2.1.1 The prospectus requirement does not apply to the distribution of a security by an issuer to a stand-by guarantor as part of a distribution under section 2.1 if the stand-by guarantor acquires the security as principal.

Rights offering – issuer with a minimal connection to Canada

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

2.1.2 (1) The prospectus requirement does not apply to a distribution by an issuer, of a right to purchase a security of the issuer's own issue, to a security holder of the issuer if all of the following apply:

(a) to the knowledge of the issuer after reasonable inquiry,

(i) the number of beneficial holders of the class for which the rights are issued that are resident in Canada does not constitute 10% or more of all holders of that class, and

(ii) the number or amount of securities of the issuer of the class for which the rights are issued that are beneficially held by security holders that are resident in Canada does not constitute, in the aggregate, 10% or more of the outstanding securities of that class;

(b) all materials sent to any other security holders for the distribution of the rights are concurrently filed and sent to each security holder of the issuer that is resident in Canada;

(c) the issuer files a written notice that it is relying on this exemption and a certificate that states that, to the knowledge of the person signing the certificate after reasonable inquiry,

(i) the number of beneficial holders of the class for which the rights are issued that are resident in Canada does not constitute 10% or more of all holders of that class, and

(ii) the number or amount of securities of the issuer of the class for which the rights are issued that are beneficially held by security holders that are resident in Canada does not constitute, in the aggregate, 10% or more of the outstanding securities of that class.

(2) For the purposes of paragraph (1)(c), a certificate of an issuer must be signed,

(a) if the issuer is a limited partnership, by an officer or director of the general partner of the issuer,

(b) if the issuer is a trust, by a trustee or officer or director of a trustee of the issuer, or

(c) in any other case, by an officer or director of the issuer.

Rights offering – listing representation exemption

2.1.3 The listing representation prohibition does not apply to a listing representation made in a rights offering circular for a distribution of rights conducted under section 2.1.2 if the listing representation is not a misrepresentation.

Rights offering – civil liability for secondary market disclosure

2.1.4 (1) The secondary market liability provisions apply to

(a) the acquisition of an issuer's security pursuant to the exemption from the prospectus requirement set out in section 2.1, and

(b) the acquisition of an issuer's security pursuant to the exemption from the prospectus requirement set out in section 2.42 if the security previously issued by the issuer was acquired pursuant to the exemption set out in section 2.1.

(2) For greater certainty, in British Columbia, the classes of acquisitions referred to in subsection (1) are prescribed classes of acquisitions under paragraph 140.2(b) of the *Securities Act* (British Columbia).

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) 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 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 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) 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) 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 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.

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.

2.7 [Repealed]

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 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~~14.1), and

(ii) obtains a signed risk acknowledgement from the purchaser in compliance with subsection (15).

(2) In Manitoba, Northwest Territories, Nunavut, Prince Edward Island 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~~14.1), 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.

(2.1) In Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan, 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 acquisition cost of all securities acquired by a purchaser who is an individual under this section in the preceding 12 months does not exceed the following amounts:

(i) in the case of a purchaser that is not an eligible investor, $10 000;

(ii) in the case of a purchaser that is an eligible investor, $30 000;

(iii) in the case of a purchaser that is an eligible investor and that received advice from a portfolio manager, investment dealer or exempt market dealer that the investment is suitable, $100 000,

(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~~14.1), and

(ii) obtains a signed risk acknowledgement from the purchaser in compliance with subsection (15), and

(d) the security distributed by the issuer is not either of the following:

(i) a specified derivative;

(ii) a structured finance product.

(2.2) The prospectus exemption described in subsection (2.1) is not available

(a) in Alberta, Nova Scotia and Saskatchewan, to an issuer that is an investment fund, unless the issuer is a non-redeemable investment fund, or a mutual fund that is a reporting issuer, or

(b) in New Brunswick, Ontario and Québec, to an issuer that is an investment fund.

(2.3) The investment limits described in subparagraphs (2.1)(b)(ii) and (iii) do not apply if the purchaser is

(a) an accredited investor, or

(b) a person described in subsection 2.5(1) [*Family, friends and business associates*].

(3) In Manitoba, Northwest Territories, Nunavut, Prince Edward Island 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).

(3.0.1) In Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan, this section does not apply to a distribution of a security to a person that was created, or is used, solely to purchase or hold securities in reliance on the exemption from the prospectus requirement set out in subsection (2.1).

(3.1) Subsections (1), (2) and (2.1) 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 and Yukon under subsection (2).

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

(5.1) **I**n Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan, an offering memorandum delivered under subsection (2.1)

(a) must incorporate by reference, by way of a statement in the offering memorandum, OM marketing materials related to each distribution under the offering memorandum and delivered or made reasonably available to a prospective purchaser before the termination of the distribution, and

(b) is deemed to incorporate by reference OM marketing materials related to each distribution under the offering memorandum and delivered or made reasonably available to a prospective purchaser before the termination of the distribution.

(5.2) ~~A~~In Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan, a portfolio manager, investment dealer or exempt market dealer must not distribute OM marketing materials unless the OM marketing materials have been approved in writing by the issuer.

(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) [Repealed]

(13.1) ~~**(13)** A~~An offering memorandum must not contain a misrepresentation on the date the certificate under subsection (8) ~~must be true~~

~~(a) at the date the certificate~~or (14.1) is signed~~, and(b) at the date the offering memorandum is delivered to the purchaser~~.

(13.2) ~~**(14)**~~ If a material change with respect to the issuer occurs after the certificate under subsection (8) ~~ceases to be true after it is delivered to the purchaser, the issuer cannot accept~~or (14.1) is signed, and before the issuer accepts an agreement to purchase the security from the purchaser~~unless(a) the purchaser receives an update of~~, the issuer must amend the offering memorandum~~,~~ to reflect the material change, and deliver the amended offering memorandum to the purchaser.

(13.3) An offering memorandum delivered under this section must provide a reasonable purchaser with sufficient information to make an informed investment decision.

(14) [Repealed]

(14.1) ~~(b) the update of the~~An issuer that amends an offering memorandum ~~contains~~must replace the certificate in the offering memorandum with a newly dated certificate signed in compliance with ~~subsection~~subsections (9), (10), (10.1), (10.2), (10.3), (11)~~ or~~, (11.1) and~~(c) the purchaser re-signs the agreement to purchase the security~~ (12), as applicable.

(15) A risk acknowledgement under subsection (1), (2) or (2.1) must be in the required form and an issuer relying on subsection (1), (2) or (2.1) 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), (2) or (2.1) 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~~amended offering memorandum with the securities regulatory authority on or before the 10th day after the distribution under the offering memorandum or ~~update of~~ the amended offering memorandum.

(17.0.1) Each copy of an offering memorandum that is filed must be in a format that allows for the searching of words electronically using reasonably available technology.

(17.1) In Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan, the issuer must file with the securities regulatory authority a copy of all OM marketing materials required or deemed to be incorporated by reference into an offering memorandum delivered under this section,

(a) if the OM marketing materials are prepared on or before the filing of the offering memorandum, concurrently with the filing of the offering memorandum, or

(b) if the OM marketing materials are prepared after the filing of the offering memorandum, within 10 days of the OM marketing materials being delivered or made reasonably available to a prospective purchaser.

(17.2) OM marketing materials filed under subsection (17.1) must include a cover page clearly identifying the offering memorandum to which they relate.

(17.3) Subsections (17.4) to (17.21) apply to issuers that rely on subsection (2.1) and that are not reporting issuers in any jurisdiction of Canada.

(17.4) In Alberta, an issuer must, within 120 days after the end of each of its financial years, file with the securities regulatory authority annual financial statements and make them reasonably available to each holder of a security acquired under subsection (2.1).

(17.5) In New Brunswick, Ontario, Québec and Saskatchewan, an issuer must, within 120 days after the end of each of its financial years, deliver annual financial statements to the securities regulatory authority and make them reasonably available to each holder of a security acquired under subsection (2.1).

(17.6) In Nova Scotia, an issuer must, within 120 days after the end of each of its financial years, make reasonably available annual financial statements to each holder of a security acquired under subsection (2.1).

(17.7) Despite subsections (17.4), (17.5) and (17.6), as applicable, if an issuer is required to file, deliver or make reasonably available annual financial statements for a financial year that ended before the issuer distributed securities under subsection (2.1) for the first time, those annual financial statements must be filed in Alberta, delivered in New Brunswick, Ontario, Québec and Saskatchewan or made reasonably available in Nova Scotia, as applicable, on or before the later of

(a) the 60th day after the issuer first distributes securities under subsection (2.1), and

(b) the deadline in subsection (17.4), (17.5) or (17.6), as applicable, to file, deliver or make reasonably available the annual financial statements.

(17.8) The annual financial statements of an issuer referred to in subsections (17.4), (17.5) and (17.6) must include

(a) a statement of comprehensive income, a statement of changes in equity, and a statement of cash flows for

(i) the most recently completed financial year, and

(ii) the financial year immediately preceding the most recently completed financial year, if any,

(b) a statement of financial position as at the end of each of the periods referred to in paragraph (a),

(c) in the following circumstances, a statement of financial position as at the beginning of the financial year immediately preceding the most recently completed financial year:

(i) the issuer discloses in its annual financial statements an unreserved statement of compliance with IFRS, and

(ii) the issuer

(A) applies an accounting policy retrospectively in its annual financial statements,

(B) makes a retrospective restatement of items in its annual financial statements, or

(C) reclassifies items in its annual financial statements,

(d) in the case of the issuer's first IFRS financial statements, the opening IFRS statement of financial position at the date of transition to IFRS, and

(e) notes to the annual financial statements.

(17.9) If the annual financial statements referred to in subsection (17.8) present the components of profit or loss in a separate income statement, the separate income statement must be displayed immediately before the statement of comprehensive income referred to in subsection (17.8).

(17.10) The annual financial statements referred to in subsection (17.8) must be audited.

(17.11) Despite subsection (17.10), for the first annual financial statements of an issuer referred to in subsections (17.4), (17.5) and (17.6), comparative information relating to the preceding financial year is not required to be audited if it has not been previously audited.

(17.12) Any period referred to in subsection (17.8) that has not been audited must be clearly labelled as unaudited.

(17.13) In Alberta, New Brunswick, Ontario, Québec and Saskatchewan, if an issuer decides to change its financial year end by more than 14 days, it must deliver to the securities regulatory authority and make reasonably available to each holder of a security acquired under subsection (2.1) a notice containing the information set out in subsection (17.15) as soon as practicable and, in any event, no later than the earlier of

(a) the deadline, based on the issuer's old financial year end, for the next annual financial statements referred to in subsections (17.4) and (17.5), and

(b) the deadline, based on the issuer's new financial year end, for the next annual financial statements referred to in subsections (17.4) and (17.5).

(17.14) In Nova Scotia, if an issuer decides to change its financial year end by more than 14 days, it must make reasonably available to each holder of a security acquired under subsection (2.1) a notice containing the information set out in subsection (17.15) as soon as practicable and, in any event, no later than the earlier of

(a) the deadline, based on the issuer's old financial year end, for the next annual financial statements referred to in subsection (17.6), and

(b) the deadline, based on the issuer's new financial year end, for the next annual financial statements referred to in subsection (17.6).

(17.15) The notice referred to in subsections (17.13) and (17.14) must state

(a) that the issuer has decided to change its financial year end,

(b) the reason for the change,

(c) the issuer's old financial year end,

(d) the issuer's new financial year end,

(e) the length and ending date of the periods, including the comparative periods, of the annual financial statements referred to in subsections (17.4), (17.5) and (17.6) for the issuer's transition year and its new financial year, and

(f) the filing deadline for the annual financial statements for the issuer's transition year.

(17.16) If a transition year is less than 9 months in length, the issuer must include as comparative financial information to its annual financial statements for its new financial year

(a) a statement of financial position, a statement of comprehensive income, a statement of changes in equity, a statement of cash flows, and notes to the financial statements for its transition year,

(b) a statement of financial position, a statement of comprehensive income, a statement of changes in equity, a statement of cash flows, and notes to the financial statements for its old financial year,

(c) in the following circumstances, a statement of financial position as at the beginning of the old financial year:

(i) the issuer discloses in its annual financial statements an unreserved statement of compliance with IFRS, and

(ii) the issuer

(A) applies an accounting policy retrospectively in its annual financial statements,

(B) makes a retrospective restatement of items in its annual financial statements, or

(C) reclassifies items in its annual financial statements, and

(d) in the case of the issuer's first IFRS financial statements, the opening IFRS statement of financial position at the date of transition to IFRS.

(17.17) A transition year must not exceed 15 months.

(17.18) An SEC issuer satisfies subsections (17.13), (17.14) and (17.16) if

(a) it complies with the requirements of U.S. laws relating to a change of fiscal year, and

(b) it delivers a copy of all materials required by U.S. laws relating to a change in fiscal year to the securities regulatory authority at the same time as, or as soon as practicable after, they are filed with or furnished to the SEC and, in any event, no later than 120 days after the end of its most recently completed financial year.

(17.19) The financial statements of an issuer referred to in subsections (17.4), (17.5) and (17.6) must be accompanied by a notice of the issuer disclosing in reasonable detail the use of the aggregate gross proceeds raised by the issuer under section 2.9 in accordance with Form 45-106F16, unless the issuer has previously disclosed the use of the aggregate gross proceeds in accordance with Form 45-106F16.

(17.20) In New Brunswick, Nova Scotia and Ontario, an issuer must make reasonably available to each holder of a security acquired under subsection (2.1) a notice of each of the following events in accordance with Form 45-106F17, within 10 days of the occurrence of the event:

(a) a discontinuation of the issuer's business;

(b) a change in the issuer's industry;

(c) a change of control of the issuer.

(17.21) An issuer is required to make the disclosure required respectively by subsections (17.4), (17.5), (17.6), (17.19) and (17.20) until the earliest of

(a) the date the issuer becomes a reporting issuer in any jurisdiction of Canada, and

(b) the date the issuer ceases to carry on business.

(17.22) In Ontario, an issuer that is not a reporting issuer in Ontario that distributes securities in reliance on the exemption in subsection (2.1) is designated a market participant under the *Securities Act* (Ontario).

(17.23) In New Brunswick, an issuer that is not a reporting issuer in New Brunswick that distributes securities in reliance on the exemption in subsection (2.1) is designated a market participant under the *Securities Act* (New Brunswick).

(18) [Repealed]

(19) Explanatory note: with respect to this subsection, the proposed amendments of this project shown in Annex A, would amend the amendments published in Annex B of the CSA Notice dated August 6, 2020 announcing amendments to NI 45-106

Prospectus Exemptions and National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (the **August 6 CSA Notice**) that are not in force yet. See Annex B of the August 6 CSA Notice, and Annex A of this notice, to assess the combined effect of both amendments to this subsection.

(19.5) [1]An issuer relying on an exemption set out in subsection (1), (2) or (2.1) that is engaged in real estate activities must comply with subsection (19.6) if any of the following apply:

(a) the issuer proposes to acquire, or has acquired, an interest in real property from a related party;

(b) except for in its financial statements, the issuer discloses in the offering memorandum a value for an interest in real property;

(c) the issuer proposes to use a material amount of the proceeds of the offering to acquire an interest in real property.

(19.6) An issuer to which any of paragraphs (19.5)(a), (b) or (c) applies must, at the same time or before the issuer delivers an offering memorandum to the purchaser in accordance with subsections (1), (2) or (2.1), deliver to the purchaser an appraisal of the interest in real property referred to in subsection (19.5) that satisfies all of the following:

(a) it is prepared by a qualified appraiser that is independent of the issuer;

(b) it includes a certificate signed by the qualified appraiser stating that the appraisal is prepared in accordance with the standards and the code of ethics established or endorsed by the professional association of which the qualified appraiser is a member;

(c) it provides the appraised fair market value of the interest in real property, without considering any proposed improvements or proposed development;

(d) it provides the appraised fair market value of the interest in real property as at a date that is within 6 months preceding the date that the appraisal is delivered to the purchaser.

(19.7) If an issuer relying on an exemption set out in subsection (1), (2) or (2.1) is engaged in real estate activities, and discloses in any communication related to the distribution under the exemption a representation of, or opinion as to, a value for an interest in real property referred to in subsection (19.5), other than the appraised fair market value disclosed in the appraisal referred to in subsection (19.6), the issuer must have a reasonable basis for that value, and must disclose all of the following in that communication:

(a) with equal or greater prominence as the representation or opinion, the appraised fair market value referred to in subsection (19.6);

(b) the material factors or assumptions used to determine the representation or opinion;

(c) whether or not the representation or opinion was determined by a qualified appraiser who is independent of the issuer.

(19.8) An issuer must file a copy of any appraisal delivered under subsection (19.6) with the securities regulatory authority concurrently with the filing of the offering memorandum.

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:

(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.

[1] The numbering of subsections (19.5) to (19.8) takes into account the amendments to this section published in Annex B of the August 6 CSA Notice.

(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 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

"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

(a) 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

(b) 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.,

(ii.1) Aequitas NEO 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) a 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

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

In Ontario, subsections 73.1(1) and (2) of the *Securities Act* (Ontario), read together, provide a similar exemption to the exemptions 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 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 listed below, from a DRO affiliate of an organization listed below, from a designated rating organization that is a successor credit rating organization of an organization listed below or from a DRO affiliate of such successor credit rating organization, that is at or above one of the following corresponding rating categories or that is at or above a category that replaces one of the following corresponding rating categories:

(i) R-1(low) - DBRS Limited;

(ii) F1 - Fitch Ratings, Inc.;

(iii) P-1 - Moody's Canada Inc.;

(iv) A-1(Low) (Canada national scale) – S&P Global Ratings Canada;

(c) the note or commercial paper has no credit rating from a designated rating organization listed below, from a DRO affiliate of an organization listed below, from a designated rating organization that is a successor credit rating organization of an organization listed below or from a DRO affiliate of such successor credit rating organization, that is below one of the following corresponding rating categories or that is below a category that replaces one of the following corresponding rating categories:

(i) R-1(low) - DBRS Limited;

(ii) F2 - Fitch Ratings, Inc.;

(iii) P-2 - Moody's Canada Inc.;

(iv) A-1(Low) (Canada national scale) or A-2 (global scale) - S&P Global Ratings 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).

Definition applicable to section 2.35.2

2.35.1.1 For the purposes of paragraph 2.35.2(a), a reference to "designated rating organization" includes the DRO affiliates of the organization, a designated rating organization that is a successor credit rating organization of the designated rating organization and the DRO affiliates of such successor credit rating organization.

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) it has 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 listed below and at least one of the credit ratings is at or above one of the following corresponding rating categories or is at or above a category that replaces one of the following corresponding rating categories:

(A) R-1(high)(sf) - DBRS Limited;

(B) F1+sf - Fitch Ratings, Inc.;

(C) P-1(sf) - Moody's Canada Inc.;

(D) A-1(High)(sf) (Canada national scale) or A-1+(sf) (global scale) - S&P Global Ratings Canada;

(ii) it has no credit rating from a designated rating organization listed below that is below one of the following corresponding rating categories or that is below a category that replaces one of the following corresponding rating categories:

(A) R-1(low)(sf) - DBRS Limited;

(B) F2sf - Fitch Ratings, Inc.;

(C) P-2(sf) - Moody's Canada Inc.;

(D) A-1(Low)(sf) (Canada national scale) or A-2(sf) (global scale) - S&P Global Ratings 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 credit rating from each of the designated rating organizations providing a credit rating on the short-term securitized product referred to in subparagraph 2.35.2(a)(i), for its senior, unsecured short-term debt, none of which is dependent upon a guarantee by a third party, and each credit rating from those designated rating organizations is at or above the following corresponding rating categories or is at or above a category that replaces one of the following corresponding rating categories:

1. R-1(low) - DBRS Limited;

2. F2 - Fitch Ratings, Inc.;

3. P-2 - Moody's Canada Inc.;

4. A-1(Low) (Canada national scale) or A-2 (global scale) - S&P Global Ratings 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, New Brunswick, Québec and Saskatchewan, subsection (2) does not apply to a distribution of a syndicated mortgage.

In Ontario, 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, 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]

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 completed 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), (2) or (2.1) [*Offering memorandum*];

(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 end of the calendar year.

(3) An issuer or underwriter is not required to file a report under section 6.1 for a distribution of a security if a report has been filed by another issuer or underwriter for the distribution of the same security.

Required form of report of exempt distribution

6.3 (1) The required form of report under section 6.1 [*Report of exempt distribution*] is Form 45-106F1.

(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.

Required form of offering memorandum

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

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

(4) [2]An issuer preparing an offering memorandum in accordance with Form 45-106F2 that is engaged in real estate activities must supplement the offering memorandum with Schedule 1 of that form.

(5) An issuer preparing an offering memorandum in accordance with Form 45-106F2 that is a collective investment vehicle must supplement the offering memorandum with Schedule 2 of that form.

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.

(1.1) In Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan, the required form of risk acknowledgement for individual investors includes Schedule 1 *Classification of Investors Under the Offering Memorandum Exemption* and Schedule 2 *Investment Limits for Investors Under the Offering Memorandum Exemption* to Form 45-106F4.

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

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

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 Alberta and 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.

[2] The numbering of subsections (4) and (5) take into account the amendments to this section published in Annex B of the August 6 CSA Notice.

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.

8.1.1 [Repealed]

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.

8.3.1 [Repealed]

~~**Transition – reinvestment plan**~~

8.4 ~~Despite subsection 2.2(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.~~[Repealed]

~~**Transition – offering memorandum exemption – update of offering memorandum**~~

8.4.1 ~~Despite subsection 2.9(5.1), in Alberta, New Brunswick, Nova Scotia, Québec and Saskatchewan, an issuer is not required to update an offering memorandum that was filed in the local jurisdiction before April 30, 2016, solely to incorporate the statement required under paragraph 2.9(5.1)(a), unless the offering memorandum would otherwise be required to be updated pursuant to subsection 2.9(14) or Instruction B.12 of Form 45-106F2 *Offering Memorandum for Non-Qualifying Issuers*.~~[Repealed]

~~**Transition – offering memorandum exemption – marketing materials**~~

8.4.2 ~~Despite paragraph 2.9(17.1)(a), in Alberta, New Brunswick, Nova Scotia, Québec and Saskatchewan, OM marketing materials that relate to an offering memorandum that was filed in the local jurisdiction before April 30, 2016 and that are delivered or made reasonably available after April 30, 2016 must be filed within 10 days from the earlier of delivery to, or being made reasonably available to, a prospective purchaser.~~[Repealed]

~~**Transition – investment funds – required form of report**~~

8.4.3 ~~Despite section 6.3, an investment fund that files a report on or before the date required by subsection 6.2(2) for a distribution that occurred before January 1, 2017 may file a report prepared in accordance with the version of Form 45-106F1 in force on June 29, 2016.~~[Repealed]

8.5 [Repealed]

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.

[as amended on January 1, 2011, June 30, 2011, May 31, 2013, September 22, 2014, May 5, 2015, November 17, 2015, December 8, 2015, April 30, 2016, June 30, 2016, June 12, 2018, local amendments in Ontario as described in CSA Notice 11-330, October 5, 2018, local amendments in New Brunswick as described in CSA Notice 11-334 and local amendments in Nunavut and New Brunswick as described in CSA Staff Notice 11-335]

Appendix A
to

National Instrument 45-106 *Prospectus Exemptions*
Variable insurance contract exemption
(section 2.39)

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

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

Appendix B
to
National Instrument 45-106 *Prospectus Exemptions*
Control Block Distributions
(PART 4)

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

Appendix C
to
National Instrument 45-106 *Prospectus Exemptions*
Listing Representation Prohibitions

JURISDICTION	SECURITIES LEGISLATION REFERENCE
ALBERTA	Subsection 92(3) of the *Securities Act* (Alberta)
MANITOBA	Subsection 69(3) of *The Securities Act* (Manitoba)
NEW BRUNSWICK	Subsection 58(3) of the *Securities Act* (New Brunswick)
NEWFOUNDLAND AND LABRADOR	Subsection 39(3) of the *Securities Act* (Newfoundland and Labrador)
NORTHWEST TERRITORIES	Subsection 147(1) of the *Securities Act* (Northwest Territories)
NOVA SCOTIA	Subsection 44(3) of the *Securities Act* (Nova Scotia)
NUNAVUT	Subsection 147(1) of the *Securities Act* (Nunavut)
ONTARIO	Subsection 38(3) of the *Securities Act* (Ontario)
PRINCE EDWARD ISLAND	Subsection 147(1) of the *Securities Act* (Prince Edward Island)
QUÉBEC	Subsection 199(4) of the *Securities Act* (Québec)
SASKATCHEWAN	Subsection 44(3) of *The Securities Act, 1988* (Saskatchewan)
YUKON	Subsection 147(1) of the *Securities Act* (Yukon)

Appendix D
to
National Instrument 45-106 *Prospectus Exemptions*
Secondary Market Liability Provisions

JURISDICTION	SECURITIES LEGISLATION REFERENCE
ALBERTA	Part 17.01 of the *Securities Act* (Alberta)
BRITISH COLUMBIA	Part 16.1 of the *Securities Act* (British Columbia)
MANITOBA	Part XVIII of *The Securities Act* (Manitoba)
NEW BRUNSWICK	Part 11.1 of the *Securities Act* (New Brunswick)
NEWFOUNDLAND AND LABRADOR	Part XXII.1 of the *Securities Act* (Newfoundland and Labrador)
NORTHWEST TERRITORIES	Part 14 of the *Securities Act* (Northwest Territories)
NOVA SCOTIA	Sections 146A to 146N of the *Securities Act* (Nova Scotia)
NUNAVUT	Part 14 of the *Securities Act* (Nunavut)
ONTARIO	Part XXIII.1 of the *Securities Act* (Ontario)
PRINCE EDWARD ISLAND	Part 14 of the *Securities Act* (Prince Edward Island)
QUÉBEC	Division II of Chapter II of Title VIII of the *Securities Act* (Québec)
SASKATCHEWAN	Part XVIII.1 of *The Securities Act, 1988* (Saskatchewan)
YUKON	Part 14 of the *Securities Act* (Yukon)

ANNEX D

Blackline

Form 45-106F2 reflecting the Proposed Amendments, compared by way of blackline to that material as currently in-force

FORM 45-106F2
OFFERING MEMORANDUM FOR NON-QUALIFYING ISSUERS

Date: [Insert the date from the certificate page.]

The Issuer

Name:

Head office: Address:
Phone #:
Website address:
E-mail address:
Fax #:

Currently listed or quoted? [If no, state in bold type: "**These securities do not trade on any exchange or market.**". If yes, state where, e.g., TSX/TSX Venture Exchangeidentify the exchange or market.]

Reporting issuer? [Yes/No. If yes, state where.]

SEDAR filer? [Yes/No]

The Offering

Securities offered:

Price per security:

Minimum/Maximum offering: [If there is no minimum, state in bold type: "**There is no minimum.**" and also state in bold type: "**You may be the only purchaser.**"]

State in bold type: **Funds available under the offering may not be sufficient to accomplish our proposed objectives.**

Minimum subscription amount: [State the minimum amount each investor must invest, or state "There is no minimum subscription amount an investor must invest."]

Payment terms:

Proposed closing date(s):

Income tax consequences: There are important tax consequences to these securities. See item 6. [If income tax consequences are not material, delete this item.]

Selling agent? [Yes/No. If yes, state "See item 7". The name of the selling agent may also be stated.]

Insufficient Funds

If item 2.6 applies, state in bold type: "**Funds available under the offering may not be sufficient to accomplish the proposed objectives. See item 2.6.**".

Compensation Paid to Sellers and Finders

If item 7 applies, state the following: "A person has received or will receive compensation for the sale of securities under this offering. See item 7.".

Underwriter(s)

State the name of any underwriter.

Guidance: The requirements of National Instrument 33-105 *Underwriting Conflicts* may be applicable.

Resale ~~restrictions~~Restrictions

State: "You will be restricted from selling your securities for [4 months and a day/an indefinite period]. See item 10."

Working Capital Deficiency

If the issuer is disclosing a working capital deficiency under item 1.1, state the following, with the bracketed information completed: "[name of issuer] has a working capital deficiency. See item 1.1.".

Payments to Related Party

If the issuer is disclosing payment to a related party under item 1.2, state the following, with the bracketed information completed as applicable: "[All of][Some of] your investment will be paid to a related party of the issuer. See item 1.2.".

Certain Related Party Transactions

If the issuer is making disclosure under item 2.8(b), or subsection 7(2) of Schedule 1, state the following with the bracketed information completed as applicable: "This offering memorandum contains disclosure with respect to one or more transactions between [name of issuer] and a related party, where [name of issuer] [paid more to a related party than the related party paid for a business, asset or real property] [and] [was paid less by a related party for a business, asset or real property than [name of issuer] paid for it]. See [item 2.8(b)] [and] [subsection 7(2) of Schedule 1].".

Certain Dividends or Distributions

If the issuer is making disclosure under item 5B, state the following with the bracketed information completed: "[name of issuer] has paid dividends or distributions that exceeded cash flow from operations. See item 5B.".

Redemption or Retraction Right

If the purchaser will have a right to require the issuer to repurchase its securities and there is any restriction, fee or price associated with this right, state in bold type with the bracketed information completed, as applicable: "**You will have a right to require the issuer to repurchase its securities from you, but this right is qualified by [a specified price] [and] [restrictions] [and] [fees]. As a result, you might not receive the amount of proceeds that you want. See item 5.1.**"

Purchaser's ~~rights~~Rights

State: "You have 2 business days to cancel your agreement to purchase these securities. If there is a misrepresentation in this offering memorandum, you have ~~the~~a right to ~~sue either for~~ damages or to cancel the agreement. See item 11."

State in bold type:

"**No securities regulatory authority or regulator has assessed the merits of these securities or reviewed this offering memorandum. Any representation to the contrary is an offence. This is a risky investment. See item 8.**"

Instructions

1. ~~[All~~Include all of the above information ~~must appear on a single cover page.]~~at the beginning of the offering memorandum.

2. After the above information, include a table of contents for the rest of the information in the offering memorandum.

Item 1:

Item 1: Use of Available Funds

1.1 1.1 ***Funds*** - Using the following table, disclose the funds available as a result of the offering. If the issuer plans to combine additional sources of funding with the available funds from the offering to achieve its principal capital-raising purpose, please provide details about each additional source of funding. If there is no minimum offering, state "$0" as the minimum. Disclose also the amount of any working capital deficiency, if any, of the issuer as at a date not more than 30 days prior tobefore the date of the offering memorandum. If the working capital deficiency will not be eliminated by the use of available funds, state how the issuer intends to eliminate or manage the deficiency.

		Assuming min.minimum offering	Assuming max.maximum offering
A.	Amount to be raised by this offering	$	$
B.	Selling commissions and fees	$	$
C.	Estimated offering costs (e.g.,including legal, accounting, and audit.)	$	$
D.	Available funds: D = A - (B+C)	$	$
E.	Additional sources of funding required	$	$
F.	Working capital deficiency	$	$
G.	Total: G = (D+E) - F	$	$

1.2 1.2 ***Use of Available Funds*** - Using the following table, provide a detailed breakdown of how the issuer will use the available funds. If any of the available funds will be paid to a related party, disclose in a note to the table the name of the related party, the relationship to the issuer, and the amount. If the issuer has a working capital deficiency, disclose the portion, if any, of the available funds to be applied against the working capital deficiency. If more than 10% of the available funds will be used by the issuer to pay debt and the issuer incurred the debt within the two preceding financial years, describe why the debt was incurred.

Description of intended use of available funds listed in order of priority	Assuming min.minimum offering	Assuming max.maximum offering
	$	$
	$	$
Total: Equal to G in the Funds table above	$	$

1.3 ***Reallocation*** - The available funds must be used for the purposes disclosed in the offering memorandum. The board of directors can reallocate the proceeds to other uses only for sound business reasons. If the available funds may be reallocated, include the following statement:

"We intend to spend the available funds as stated. We will reallocate funds only for sound business reasons."

1.2.1 ***Proceeds Transferred to Other Issuers*** **-** If a significant amount of the proceeds of the offering will be invested in, loaned to, or otherwise transferred to another issuer that is not a subsidiary controlled by the issuer, or a significant amount of the issuer's business is carried out by another issuer that is not a subsidiary controlled by the issuer, provide the disclosure specified by items 2, 3, 4.1, 4.2, 8 and 12 and, as applicable, Schedule 1 of this form if the other issuer is engaged in real estate activities, and Schedule 2 of this form if the other issuer is a collective investment vehicle, as if each of those other issuers were the issuer preparing the offering memorandum. In addition, describe the relationship between the issuer and each of those other issuers, and supplement the description with a diagram.

1.3 [Repealed]

Item 2: Business of [name of issuer or other term used to refer to issuer] Item 2: Business of the Issuer and Other Information and Transactions

~~2.1~~ 2.1 ***Structure*** - State ~~the business structure (e.g.,~~whether the issuer is a partnership, corporation or trust~~), the statute and the province, state or other jurisdiction~~, or if the issuer is not a corporation, partnership or trust then state what type of business association the issuer is. State any statute under which the issuer is incorporated, continued or organized, and the date of incorporation, continuance or organization.

~~2.2 *Our*~~ *2.2 The* ***Business*** - Describe the issuer's business. ~~The disclosure must provide sufficient information to enable a prospective purchaser to make an informed investment decision.~~

(a) For a non-resource issuer ~~this disclosure may~~ include in the description the following:

(i) principal products or services~~,~~;

(ii) operations~~,~~;

(iii) market, marketing plans and strategies ~~and~~;

(iv) a discussion of the issuer's current and prospective competitors.

(b) For a resource issuer ~~this will require~~ include in the description the following:

(i) a description of principal properties (including interest held) ~~and~~ ;

(ii) a summary of material information including, ~~if~~as applicable~~:~~, the stage of development, reserves, geology, operations, production and mineral reserves or mineral resources being explored or developed. ~~A~~

Guidance

1. For a resource issuer disclosing scientific or technical information for a mineral project ~~must follow~~, see General Instruction A.8 of this Form. ~~A~~

2. For a resource issuer disclosing information about its oil and gas activities ~~must follow~~, see General Instruction A.9 of this Form.

~~2.3~~ 2.3 ***Development of Business*** - Describe ~~(generally, in one or two paragraphs)~~ the general development of the issuer's business over at least its two most recently completed financial years and any subsequent period. Include ~~the~~any major events that have occurred or conditions that have influenced (favourably or unfavourably) the development or financial condition of the issuer.

~~2.4~~ 2.4 ***Long Term Objectives*** ~~– Describe~~ – With respect to the issuer's objectives subsequent to the next 12 months after the date of the offering memorandum, describe each significant event ~~that must occur to accomplish the issuer's long term~~associated with those objectives, state the specific time period in which each event is expected to occur, and the costs related to each event.

~~2.5~~ 2.5 ***Short Term Objectives*** ~~***and How We Intend to Achieve Them***~~

(a) Disclose the issuer's objectives for the next 12 months after the date of the offering memorandum.

(b) Using the following table, disclose how the issuer intends to meet those objectives ~~for the next 12 months~~.

~~What we must do and how we will do it~~Actions to be taken	Target completion date or, if not known, number of months to complete	~~Our cost~~Cost to complete
		$
		$

~~2.6~~ 2.6 ***Insufficient Funds***

If applicable, disclose that the funds available as a result of the offering either may not or will not be sufficient to accomplish all of the issuer's proposed objectives and there is no assurance that alternative financing will be available. ~~If~~With respect to any alternative financing that has been arranged, disclose the amount, source and all outstanding conditions ~~that must be satisfied~~.

2.6.1: *Additional Disclosure for Issuers Without Significant Revenue*

(1) If the issuer has not had significant revenue from operations in either of its two most recently completed financial years, or has not had significant revenue from operations since inception, provide, for each period referred to in subsection (2), a breakdown of the material components of the following:

(a) exploration and evaluation assets or expenditures and, if the issuer's business primarily involves mining exploration and development, provide the breakdown on a property-by-property basis;

(b) expensed research and development costs;

(c) intangible assets arising from development;

(d) general and administration expenses;

(e) any material costs, whether expensed or recognized as assets, not referred to in paragraphs (a) through (d).

(2) Include the disclosure in subsection (1) with respect to each period for which financial statements are included in the offering memorandum.

(3) Subsection (1) does not apply to any period for which the information specified under subsection (1) has been disclosed in the financial statements that are included in the offering memorandum.

~~**2.7**~~ **2.7 *Material*** ~~***Agreements***~~***Contracts*** - Disclose the key terms of all material ~~agreements(a)~~ contracts to which the issuer is currently a party~~, or~~

~~(b) with a related party~~ including, for certainty, the following ~~information~~:

(a) ~~(i)~~ if the ~~agreement~~contract is with a related party, the name of the related party and the relationship~~,~~ to the issuer;

(b) ~~(ii)~~ a description of any asset, property or interest acquired, disposed of, leased~~,~~ or under option~~, etc.,~~;

(c) ~~(iii)~~ a description of any service provided~~,~~;

(d) ~~(iv)~~ purchase price and payment terms (~~e.g., paid in~~including payment by instalments, cash, securities or work commitments)~~,~~;

(e) ~~(v)~~ the principal amount of any debenture or loan, the repayment terms, security, due date and interest rate~~,~~;

(f) ~~(vi)~~ the date of the ~~agreement,~~contract;

(g) ~~(vii)~~ the amount of any finder's fee or commission paid or payable to a related party in connection with the ~~agreement,~~contract;

(h) ~~(viii)~~ any material outstanding obligations under the ~~agreement, and~~contract.

2.8 *Related Party Transactions*

With respect to any purchase and sale transaction between the issuer and a related party that does not relate to real property,

(a) using the following table and starting with the most recent transaction, provide the specified information, and

Description of business or asset	Date of transfer	Legal name of seller	Legal name of buyer	Amount and form of consideration exchanged in connection with transfer

(b) ~~(ix) for any transaction involving the purchase of assets by or sale of assets to the issuer from a related party, state the cost of the assets to the related party, and the cost of the assets to the issuer.~~explain the reason for

any material difference between the amount of consideration paid by the issuer and the amount of consideration paid by a related party for the business or asset.

~~**Item 3: Interests of Directors, Management, Promoters and Principal Holders**~~

Item 3: Compensation and Security Holdings of Certain Parties

~~3.1~~ 3.1 ***Compensation and Securities Held*** ~~–~~

Using the following table, provide the specified information ~~about~~ for the following:

(a) each director, officer and promoter of the issuer ~~and each person who, directly or indirectly, beneficially owns or controls~~;

(b) each person that has beneficial ownership of, or direct or indirect control over, or a combination of beneficial ownership and direct or indirect control over, 10% or more of any class of voting securities of the issuer ~~(a "principal holder"). If the principal holder is not an individual, state in a note to the table the name of any person that, directly or indirectly, beneficially owns or controls more than 50% of the voting rights of the principal holder. If the issuer has not completed its first financial year, then include compensation paid since inception. Compensation includes any form of remuneration including cash, shares and options.~~;

(c) any related party not specified in paragraph (a) or (b) that received compensation in the most recently completed financial year, or is expected by the issuer to receive compensation in the current financial year.

~~Name~~Full legal name and ~~municipality~~place of ~~principal~~ residence or, if not an individual, jurisdiction of organization	~~Positions held (e.g.,~~If paragraph (a) or (b) applies, specify whether the person is a director, officer, promoter ~~and/or principal holder) and the date of obtaining~~or person referred to in paragraph (b); if paragraph (c) applies, specify the person's relationship to the issuer; in all cases, specify the date that ~~position~~the person became a person identified in paragraph (a), (b) or (c)	Compensation paid by issuer or related party in the most recently completed financial year and the compensation ~~anticipated~~expected to be paid in the current financial year	Number, type and percentage of securities of the issuer held after completion of ~~min.~~minimum offering	Number, type and percentage of securities of the issuer held after completion of ~~max.~~maximum offering

Instructions

1. If the issuer has not completed its first financial year, disclose for the period from the date of the issuer's inception to the date of the offering memorandum.

2. Compensation includes any form of remuneration including, for certainty, cash, shares and options.

3. If a person identified in paragraph (a), (b) or (c) is not an individual, state in a note to the table the full legal name of any person that has beneficial ownership of, or direct or indirect control over, or a combination of beneficial ownership and direct or indirect control over, more than 50% of the voting rights of the person.

~~3.2~~ 3.2 ***Management Experience*** - Using the following table, ~~disclose the principal occupations of~~ provide the specified information for the directors and executive officers ~~over~~of the issuer for the ~~past five~~5 years preceding the date of the offering memorandum. ~~In addition, for each individual, describe any relevant experience in a business similar to the issuer's.~~

Full Legal Name	Principal occupation and ~~related~~description of experience associated with the occupation

~~3.3~~ 3.3 *Penalties, Sanctions ~~and~~, Bankruptcy, Insolvency and Criminal or Quasi-Criminal Matters*

(a) ~~Disclose any penalty or~~If the following have occurred during the 10 years preceding the date of the offering memorandum with respect to a director, executive officer or control person of the issuer, or an issuer of which any of those persons was a director, executive officer or control person at the time, describe the penalty, other sanction ~~(~~or order, including the reason for it and whether it is currently in effect~~) that has been in effect during the last 10 years, or any cease trade order that has been in effect for a period of more than 30 consecutive days during the past 10 years against~~:

(i) a penalty or other sanction imposed by a court relating to a contravention of securities legislation;

(ii) a penalty or other sanction imposed by a regulatory body relating to a contravention of securities legislation;

(iii) an order restricting trading in securities, not including an order that was in effect for less than 30 consecutive days.

(b) If the following have occurred during the 10 years preceding the date of the offering memorandum with respect to a director, executive officer or control person of the issuer, or an issuer of which any of those persons was a director, executive officer or control person at the time, state that it has occurred:

(i) a declaration of bankruptcy;

(ii) a voluntary assignment in bankruptcy;

(iii) a proposal under bankruptcy or insolvency legislation;

(iv) a proceeding, arrangement or compromise with creditors or appointment of a receiver, receiver manager or trustee to hold assets.

(c) Disclose and describe the following, if the issuer or a director, executive officer or control person of the issuer has ever pled guilty to or been found guilty of:

(i) a ~~director, executive officer or control person of the issuer, or~~summary conviction or indictable offence under the *Criminal Code* (Canada);

(ii) a quasi-criminal offence in any jurisdiction of Canada or a foreign jurisdiction;

(iii) a misdemeanour or felony under the criminal legislation of the United States of America, or any state or territory of the United States of America;

(iv) ~~(ii)~~ an ~~issuer of which a person referred to in (i) above was a director, executive officer or control person at the time.~~offence under the criminal legislation of any other foreign jurisdiction.

~~(b) Disclose any declaration of bankruptcy, voluntary assignment in bankruptcy, proposal under any bankruptcy or insolvency legislation, proceedings, arrangement or compromise with creditors or appointment of a receiver, receiver manager or trustee to hold assets, that has been in effect during the last 10 years with regard to any~~

~~(i) director, executive officer or control person of the issuer, or~~

~~(ii) issuer of which a person referred to in (i) above was a director, executive officer or control person at that time.~~

~~3.4~~ 3.4 *Certain Loans* ~~- Disclose the principal amount of any debenture or loan~~

For any debenture, bond or loan agreement between the issuer and a related party, disclose the following:

(a) as at a date not more than 30 days before the date of the offering memorandum, the parties to the agreement, including which party is lender and which party is borrower, the principal amount, the repayment terms, any security, due date and interest rate ~~due to or from the directors, management, promoters and principal holders as at~~;

(b) during the two most recently completed financial years and up to a date not more than 30 days ~~prior to~~before the date of the offering memorandum, any material amendment to the agreement, or any release, cancellation or forgiveness.

~~Item 4:~~ Item 4: Capital Structure

~~4.1 Share Capital~~4.1 Securities Except for Debt Securities - Using the following table, provide the ~~required~~specified information about outstanding securities of the issuer ~~(~~, not including ~~options, warrants and other~~debt securities ~~convertible into shares). If necessary,~~. Add notes to the table ~~may be added~~ to describe the material terms of the securities~~.~~, including, for certainty, voting rights or restrictions on voting, exercise price and date of expiry, rights of redemption or retraction, including redemption or retraction price and any fee or restriction, and any interest rate or dividend or distribution policy.

Description of security	Number authorized to be issued	Price per security	Number outstanding as at ~~[~~a date not more than 30 days ~~prior to~~before the date of the offering memorandum ~~date]~~	Number outstanding after ~~min.~~minimum offering	Number outstanding after ~~max.~~maximum offering

~~4.2~~ 4.2 Long Term Debt Securities - Using the following table, provide the ~~required~~specified information about outstanding ~~long term debt of the issuer. Disclose the portion of the debt~~debt of the issuer for which all or a portion is due, or may be outstanding, more than 12 months from the date of the offering memorandum. Add notes to the table to disclose any amounts of the debt that are due within 12 months of the date of the offering memorandum. In addition, add notes to the table to describe any conversion terms. If the securities being offered are debt securities, ~~add a column~~complete the applicable parts of the table for the debt, and add columns to the table disclosing the amount of the debt that will be outstanding after both the minimum and maximum offering. ~~If the debt is owed to a related party, indicate that in a note to the table and identify the related party.~~

Description of ~~long term~~ debt (including whether secured)	Interest rate	Repayment terms	Amount outstanding at ~~[~~a date not more than 30 days ~~prior to~~before the date of the offering memorandum ~~date]~~
			$
			$

~~4.3~~ 4.3 Prior Sales - If the issuer has issued any securities of the class being offered under the offering memorandum (or convertible or exchangeable into the class being offered under the offering memorandum) within the ~~last~~ 12 months before the date of the offering memorandum, use the following table to provide the information specified. If securities were issued in exchange for assets or services, describe in a note to the table the assets or services that were provided.

Date of issuance	Type of security issued	Number of securities issued	Price per security	Total funds received

~~Item 5:~~ Item 5: Securities Offered

~~5.1~~ 5.1 Terms of Securities~~-~~

(a) Describe the material terms of the securities being offered, including, for certainty, the following:

(i) ~~(a)~~ voting rights or restrictions on voting~~,~~;

(ii) ~~(b)~~ conversion or exercise price and date of expiry~~,~~;

(iii) ~~(c) rights~~ right of redemption or retraction, ~~and~~including redemption or retraction price and any fee or restriction;

(iv) ~~(d)~~ interest ~~rates or~~rate, and dividend ~~rates~~or distribution policy.

(b) Provide a sample calculation in relation to any redemption or retraction right included in the terms of the securities being offered.

~~5.2~~ 5.2 *Subscription Procedure*

(a) Describe how a purchaser can subscribe for the securities and the method of payment.

(b) State that the consideration will be held in trust and the period that it will be held (refer at least to the mandatory two day period).

(c) Disclose any conditions to closing, ~~e.g.,~~including any receipt of additional funds from other sources. If there is a minimum offering, disclose when consideration will be returned to purchasers if the minimum is not met, and whether the issuer will pay the purchasers interest on consideration.

Item 5A: Redemption and Retraction History

(1) With respect to any securities of the issuer for which investors have a right of redemption or retraction, disclose the following:

(a) for each of the two most recently completed financial years, the information specified by the following table;

Description of security	Date of end of financial year	Number of securities with outstanding redemption or retraction requests on the first day of the year	Number of securities for which investors made redemption or retraction requests during the year	Number of securities redeemed or retracted during the year	Average price paid for the securities redeemed or retracted	Source of funds used to complete the redemptions or retractions	Number of securities with outstanding redemption or retraction requests on the last day of the year

(b) for the period after the end of the issuer's most recently completed financial year and up to a date not more than 30 days before the date of the offering memorandum, the information specified by the following table;

Description of security	Date of beginning of period and date of end of period	Number of securities with outstanding redemption or retraction requests on the first day of the period	Number of securities for which investors made redemption or retraction requests during the period	Number of securities redeemed or retracted during the period	Average price paid for the securities redeemed or retracted	Source of funds used to complete the redemptions or retractions	Number of securities with outstanding redemption or retraction requests on the last day of the period

(c) with respect to the periods specified in (a) and (b), the reason for any non-fulfillment of investor

requests for redemption or retraction, unless the non-fulfillment was in accordance with terms governing the redemption or retraction right.

Item 5B: Certain Dividends or Distributions

If in the two most recently completed financial years, or any subsequent interim period, the issuer paid dividends or distributions that exceeded cash flow from operations, disclose the source of those payments.

~~Item 6:~~ Item 6: Income Tax Consequences and RRSP Eligibility

~~6.1~~ 6.1 State: "You should consult your own professional advisers to obtain advice on the income tax consequences that apply to you."

~~6.2~~ 6.2 If income tax consequences are a material aspect of the securities being offered ~~(e.g., flow-through shares)~~, provide

(a) a summary of the significant income tax consequences to Canadian residents, and

(b) the name of the person providing the income tax disclosure in (a).

~~6.3~~ 6.3 Provide advice regarding the RRSP eligibility of the securities and the name of the person providing the advice or state "Not all securities are eligible for investment in a registered retirement savings plan (RRSP). You should consult your own professional advisers to obtain advice on the RRSP eligibility of these securities."

~~Item 7:~~ Item 7: Compensation Paid to Sellers and Finders

If any person has or will receive any ~~compensation (e.g.,~~ commission, corporate finance fee or finder's fee~~)~~ or any other compensation in connection with the offering, provide the following information ~~to the extent applicable~~:

(a) a description of each type of compensation and the estimated amount to be paid for each type~~,~~;

(b) if a commission is being paid, the percentage that the commission will represent of the gross proceeds of the offering (assuming both the minimum and maximum offering)~~,~~;

(c) details of any broker's warrants or agent's option (including number of securities under option, exercise price and expiry date)~~, and~~;

(d) if any portion of the compensation will be paid in securities, details of the securities (including number, type and, if options or warrants, the exercise price and expiry date).

~~Item 8:~~ Item 8: Risk Factors

Describe in order of importance, starting with the most important, the risk factors material to the issuer that a reasonable investor would consider important in deciding whether to buy the issuer's securities.

Guidance: Risk factors will generally fall into the following three categories:

(a) Investment Risk – risks that are specific to the securities being offered. Some examples include

- arbitrary determination of price,
- no market or an illiquid market for the securities,
- resale restrictions, and
- subordination of debt securities.

(b) Issuer Risk – risks that are specific to the issuer. Some examples include

- insufficient funds to accomplish the issuer's business objectives,
- no history or a limited history of revenue or profits,
- lack of specific management or technical expertise,

- management's regulatory and business track record,
- dependence on key employees, suppliers or agreements,
- dependence on financial viability of guarantor,
- pending and outstanding litigation, and
- political risk factors.

(c) Industry Risk - risks faced by the issuer because of the industry in which it operates. Some examples include

- environmental and industry regulation,
- product obsolescence, and
- competition.

~~Item 9:~~ Item 9: Reporting Obligations

~~9.1~~ 9.1 Disclose the documents, including any financial information required by the issuer's corporate legislation, constating documents, or other documents under which the issuer is organized, that will be sent to purchasers on an annual or on-going basis. If the issuer is not required to send any documents to the purchasers on an annual or on-going basis, state in bold type: "**We are not required to send you any documents on an annual or ongoing basis.**"

~~9.2~~ 9.2 If corporate or securities information about the issuer is available from a government, securities regulatory authority or regulator, SRO or quotation and trade reporting system, disclose where that information can be located (including website address).

~~Item 10:~~ Item 10: Resale Restrictions

~~**10.1** General Statement - For trades in Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island, Québec, Saskatchewan and Yukon, state:~~

> ~~"These securities will be subject to a number of resale restrictions, including a restriction on trading. Until the restriction on trading expires, you will not be able to trade the securities unless you comply with an exemption from the prospectus and registration requirements under securities legislation."~~

10.1 [Repealed]

~~10.2~~ 10.2 Restricted Period - For trades in Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island, Québec, Saskatchewan and Yukon state one of the following, as applicable:

(a) If the issuer is not a reporting issuer in a jurisdiction at the distribution date state:

> "Unless permitted under securities legislation, you cannot trade the securities before the date that is 4 months and a day after the date [insert name of issuer ~~or other term used to refer to the issuer] becomes~~] became a reporting issuer in any province or territory of Canada."

(b) If the issuer is a reporting issuer in a jurisdiction at the distribution date state:

> "Unless permitted under securities legislation, you cannot trade the securities, before the date that is 4 months and a day after the distribution date."

~~10.3~~ 10.3 Manitoba Resale Restrictions - For trades in Manitoba, if the issuer will not be a reporting issuer in a jurisdiction at the time the security is acquired by the purchaser state:

> "Unless permitted under securities legislation, you must not trade the securities without the prior written consent of the regulator in Manitoba unless

(a) [name of issuer~~ or other term used to refer to issuer~~] has filed a prospectus with the regulator in Manitoba with respect to the securities you have purchased and the regulator in Manitoba has issued a receipt for that prospectus, or

(b) you have held the securities for at least 12 months.

The regulator in Manitoba will consent to your trade if the regulator is of the opinion that to do so is not prejudicial to the public interest."

~~Item 11:~~ Item 11: Purchasers' Rights

11.1 Statements Regarding Purchasers' Rights - State the following:

"If you purchase these securities you will have certain rights, some of which are described below. For information about your rights you should consult a lawyer.

(1) Two Day Cancellation Right - You can cancel your agreement to purchase these securities. To do so, you must send a notice to us by midnight on the 2nd business day after you sign the agreement to buy the securities.

(2) Statutory Rights of Action in the Event of a Misrepresentation [Insert this section only if the securities legislation of the jurisdiction in which the trade occurs provides purchasers with statutory rights in the event of a misrepresentation in an offering memorandum. Modify the language, if necessary, to conform to the statutory rights.] If there is a misrepresentation in this offering memorandum, you have a statutory right to sue:

(a) [name of~~ issuer or other term used to refer to~~ issuer] to cancel your agreement to buy these securities, or

(b) for damages against [state the name of issuer~~ or other term used to refer to issuer~~ and the title of any other person against whom the rights are available].

This statutory right to sue is available to you whether or not you relied on the misrepresentation. However, there are various defences available to the persons or companies that you have a right to sue. In particular, they have a defence if you knew of the misrepresentation when you purchased the securities.

If you intend to rely on the rights described in (a) or (b) above, you must do so within strict time limitations. You must commence your action to cancel the agreement within [state time period provided by the securities legislation]. You must commence your action for damages within [state time period provided by the securities legislation.]

(3) Contractual Rights of Action in the Event of a Misrepresentation - [Insert this section only if the securities legislation of the jurisdiction in which the purchaser is resident does not provide purchasers with statutory rights in the event of a misrepresentation in an offering memorandum.] If there is a misrepresentation in this offering memorandum, you have a contractual right to sue [name of issuer~~ or other term used to refer to issuer~~]:

(a) to cancel your agreement to buy these securities, or

(b) for damages.

This contractual right to sue is available to you whether or not you relied on the misrepresentation. However, in an action for damages, the amount you may recover will not exceed the price that you paid for your securities and will not include any part of the damages that [name of issuer~~ or other term used to refer to issuer~~] proves does not represent the depreciation in value of the securities resulting from the misrepresentation. [Name of issuer~~ or other term used to refer to issuer~~] has a defence if it proves that you knew of the misrepresentation when you purchased the securities.

If you intend to rely on the rights described in (a) or (b) above, you must do so within strict time limitations. You must commence your action to cancel the agreement within 180 days after you signed the agreement to purchase the securities. You must commence your action for damages within the earlier of 180 days after learning of the misrepresentation and 3 years after you signed the agreement to purchase the securities."

11.2 Cautionary Statement Regarding Report, Statement or Opinion by Expert - If a report, statement or opinion by a solicitor, auditor, accountant, engineer, appraiser, notary in Québec or other person or company whose profession or business could, to a reasonable person, be viewed as giving authority to a statement made by that person or company, is included or referenced in the offering memorandum, and purchasers do not have a statutory right of action in the local jurisdiction against that person or company for a misrepresentation in the offering memorandum, state the following, with the bracketed information completed, as applicable:

"This offering memorandum [includes][references] [describe any report, statement or opinion, the party that gave it, and the effective date of the document]. You do not have a statutory right of action against [this party][these parties] for a misrepresentation in the offering memorandum. You should consult with a legal adviser for further information."

~~Item 12:~~ Item 12: Financial Statements

Include in the offering memorandum immediately before the certificate page of the offering memorandum all ~~required~~ financial statements ~~as set out~~specified in the Instructions.

~~Item 13:~~ Item 13: Date and Certificate

State the following on the certificate page of the offering memorandum:

"Dated [insert the date the certificate page of the offering memorandum is signed].

This offering memorandum does not contain a misrepresentation."

Instructions for Completing
Form 45-106F2
Offering Memorandum for Non-Qualifying Issuers

A. General Instructions

0.1 Refer to subsections 2.9(13.1) and (13.3) of the Instrument, which set out the standard of disclosure for an offering memorandum.

1. Draft the offering memorandum so that it is easy to read and understand. Be concise and use clear, plain language. Avoid technical terms. If technical terms are necessary, provide definitions.

2. Address the items required by the form in the order set out in the form. However, it is not necessary to provide disclosure ~~about an item~~in response to a requirement or part of a requirement that does not apply.

3. The issuer may include additional information in the offering memorandum other than that specifically required by the form. ~~An offering memorandum is generally not required to contain the level of detail and extent of disclosure required by a prospectus. Generally, this description should not exceed 2 pages. However, an offering memorandum must provide a prospective purchaser with sufficient information to make an informed investment decision.~~

4. The issuer may wrap the offering memorandum around a prospectus or similar document. However, all matters required to be disclosed by the offering memorandum must be addressed and the offering memorandum must provide a cross-reference to the page number or heading in the wrapped document where the relevant information is contained. The certificate to the offering memorandum must be modified to indicate that the offering memorandum, including the document around which it is wrapped, does not contain a misrepresentation.

5. It is an offence to make a misrepresentation in the offering memorandum. This applies to both ~~to~~ information that is required by the form and ~~to~~ additional information that is provided. Include particulars of any material facts, which have not been disclosed under any of the Item numbers and for which failure to disclose would constitute a misrepresentation in the offering memorandum. Refer also to section 3.8(3) of Companion Policy 45-106CP for additional information.

5.1 Do not disclose a maximum offering amount unless the issuer reasonably expects, as at the date of the offering memorandum, to distribute that amount under the offering memorandum.

6. ~~When the term "related party" is used in this form, it refers to:~~[Repealed]

~~(a) a director, officer, promoter or control person of the issuer,~~

~~(b) in regard to a person referred to in (a), a child, parent, grandparent or sibling, or other relative living in the same residence,~~

~~(c) in regard to a person referred to in (a) or (b), his or her spouse or a person with whom he or she is living in a marriage-like relationship,~~

~~(d) an insider of the issuer,~~

~~(e) a company controlled by one or more individuals referred to in (a) to (d), and~~

~~(f) in the case of an insider, promoter or control person that is not an individual, any person that controls that insider, promoter or control person.~~

~~(If the issuer is not a reporting issuer, the reference to "insider" includes persons or companies who would be insiders of the issuer if that issuer were a reporting issuer.)~~

7. ~~Disclosure is required in item 3.1 of compensation paid directly or indirectly by the issuer or a related party to a director, officer, promoter and/or principal holder if the issuer receives a direct benefit from such compensation paid.~~[Repealed]

8. Refer to National Instrument 43-101 *Standards of Disclosure for Mineral Projects* (NI 43-101) when disclosing scientific or technical information for a mineral project of the issuer.

9. If an oil and gas issuer is disclosing information about its oil and gas activities, it must ensure that the information is disclosed in accordance with Part 4 and Part 5 of National Instrument 51-101 *Standards of Disclosure for Oil and Gas*

Activities (NI 51-101). Under section 5.3 of NI 51-101, disclosure of reserves or resources must be consistent with the reserves and resources terminology and categories set out in the Canadian Oil and Gas Evaluation Handbook. For the purposes of this instruction, references to reporting issuer in Part 4 and Part 5 of NI 51-101 will be deemed to include all issuers.

10. Securities legislation restricts what can be told to investors about the issuer's intent to list or quote securities on an exchange or market. Refer to applicable securities legislation before making any such statements.

11. If an issuer uses this form in connection with a distribution under an exemption other than section 2.9 (*offering memorandum*) of ~~National~~the Instrument~~ 45-106 *Prospectus and Registration Exemptions*~~, the issuer must modify the disclosure in item 11 to correctly describe the purchaser's rights. If a purchaser does not have statutory or contractual rights of action in the event of a misrepresentation in the offering memorandum, that fact must be stated in bold on the face page.

12. During the course of a distribution of securities, any material forward-looking information disseminated must only be that which is set out in the offering memorandum. If an extract of FOFI, as defined in National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102), is disseminated, the extract or summary must be reasonably balanced and have a cautionary note in boldface stating that the information presented is not complete and that complete FOFI is included in the offering memorandum.

13. The term quasi-criminal offence includes offences under tax, immigration or money laundering legislation.

B. Financial Statements – General

1. All financial statements, operating statements for an oil and gas property that is an acquired business or a business to be acquired, and summarized financial information as to the aggregated amounts of assets, liabilities, revenue and profit or loss of an acquired business or business to be acquired that is, or will be, an investment accounted for by the issuer using the equity method included in the offering memorandum must comply with National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*, regardless of whether the issuer is a reporting issuer or not.

   Under National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*, financial statements are generally required to be prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises. An issuer using this form cannot use Canadian GAAP applicable to private enterprises, except, subject to the requirements of NI 52-107, certain issuers may use Canadian GAAP applicable to private enterprises for financial statements for a business referred to in C.1. An issuer that is not a reporting issuer may prepare acquisition statements in accordance with the requirements of NI 52-107 as if the issuer were a venture issuer as defined in NI 51-102. For the purposes of Form 45-106F2, the "applicable time" in the definition of a venture issuer is the acquisition date.

2. Include all financial statements required by these instructions in the offering memorandum immediately before the certificate page of the offering memorandum.

3. If the issuer has not completed one financial year or its first financial year end is less than 120 days from the date of the offering memorandum, include in the offering memorandum financial statements of the issuer consisting of:

   (a) a statement of comprehensive income, a statement of changes in equity and a statement of cash flows for the period from inception to a date not more than 90 days before the date of the offering memorandum,

   (b) a statement of financial position as at the end of the period referred to in paragraph (a), and

   (c) notes to the financial statements.

4. If the issuer has completed one or more financial years, include in the offering memorandum annual financial statements of the issuer consisting of:

   (a) a statement of comprehensive income, a statement of changes in equity and a statement of cash flows for

      (i) the most recently completed financial year that ended more than 120 days before the date of the offering memorandum, and

      (ii) the financial year immediately preceding the financial year in clause (i), if any,

   (b) a statement of financial position as at the end of each of the periods referred to in paragraph (a),

(c) a statement of financial position as at the beginning of the earliest comparative period for which financial statements that are included in the offering memorandum comply with IFRS in the case of an issuer that

(i) discloses in its annual financial statements an unreserved statement of compliance with IFRS, and

(ii) does any of the following:

(A) applies an accounting policy retrospectively in its annual financial statements;

(B) makes a retrospective restatement of items in its annual financial statements;

(C) reclassifies items in its annual financial statements,

(d) in the case of an issuer's first IFRS financial statements as defined in NI 51-102, the opening IFRS statement of financial position at the date of transition to IFRS as defined in NI 51-102, and

(e) notes to the financial statements.

4.1 If an issuer presents the components of profit or loss in a separate income statement, the separate income statement must be displayed immediately before the statement of comprehensive income filed under Item 4 above.

5. If the issuer has completed one or more financial years, include in the offering memorandum an interim financial report of the issuer comprised of:

(a) a statement of comprehensive income, a statement of changes in equity and a statement of cash flows for the most recently completed interim period that ended

(i) more than 60 days before the date of the offering memorandum, and

(ii) after the year-end date of the financial statements required under B.4(a)(i),

(b) a statement of comprehensive income, a statement of changes in equity and a statement of cash flows for the corresponding period in the immediately preceding financial year, if any,

(c) a statement of financial position as at the end of the period required by paragraph (a) and the end of the immediately preceding financial year,

(d) a statement of financial position as at the beginning of the earliest comparative period for which financial statements that are included in the offering memorandum comply with IFRS in the case of an issuer that

(i) discloses in its interim financial report an unreserved statement of compliance with International Accounting Standard 34 *Interim Financial Reporting*, and

(ii) does any of the following:

(A) applies an accounting policy retrospectively in its interim financial report;

(B) makes a retrospective restatement of items in its interim financial report;

(C) reclassifies items in its interim financial report,

(e) in the case of the first interim financial report in the year of adopting IFRS, the opening IFRS statement of financial position at the date of transition to IFRS,

(f) for an issuer that is not a reporting issuer in at least one jurisdiction of Canada immediately before filing the offering memorandum, if the issuer is including an interim financial report of the issuer for the second or third interim period in the year of adopting IFRS include

(i) the issuer's first interim financial report in the year of adopting IFRS, or

(ii) both

(A) the opening IFRS statement of financial position at the date of transition to IFRS, and

(B) the annual and date of transition to IFRS reconciliations required by IFRS 1 *First-time Adoption of International Financial Reporting Standards* to explain how the transition from previous GAAP to IFRS affected the issuer's reported financial position, financial performance and cash flows, and

(g) notes to the financial statements.

5.1 If an issuer presents the components of profit or loss in a separate income statement, the separate income statement must be displayed immediately before the statement of comprehensive income filed under item 5 above.

6. An issuer is not required to include the comparative financial information for the period in B.4.(a)(ii) in an offering memorandum if the issuer includes financial statements for a financial year ended less than 120 days before the date of the offering memorandum.

7. For an issuer that is not an investment fund, the term "interim period" has the meaning set out in NI 51-102. In most cases, an interim period is a period ending ~~nine, six,~~9, 6, or ~~three~~3 months before the end of a financial year. For an issuer that is an investment fund, the term "interim period" has the meaning set out in National Instrument 81-106 *Investment Fund Continuous Disclosure* (NI 81-106).

8. The comparative financial information required under B.5(b) and (c) may be omitted if the issuer has not previously prepared financial statements in accordance with its current or, if applicable, its previous GAAP.

9. The financial statements required by B.~~3 and the financial statements of the most recently completed financial period referred to in B.4~~3, B.4 and B.12.1(a) must be audited. The financial statements required ~~under~~by B.5, B.~~6~~6, B.12.1(b) and the comparative financial information required by B.4 may be unaudited; however, if any of those financial statements have been audited, the auditor's report must be included in the offering memorandum.

10. Refer to National Instrument 52-108 *Auditor Oversight* for requirements relating to reporting issuers and public accounting firms.

11. All unaudited financial statements and unaudited comparatives must be clearly labelled as unaudited.

12. [Repealed]

~~12. If~~12.1 If the distribution is ongoing, the issuer must do the following:

(a) if the offering memorandum does not contain audited annual financial statements for the issuer's most recently completed financial year, ~~and if the distribution is ongoing, update~~the issuer must do the following:

(i) amend the offering memorandum to include the ~~annual~~ audited annual financial statements and the accompanying auditor's report as soon as the issuer has approved the audited financial statements, but in any event no later than the 120th day following the financial year end~~.~~;

(ii) present the offering memorandum and the audited annual financial statements in accordance with the instructions in A, B and C and, for that purpose, the reference to the financial year in B.4(a)(i) shall mean the issuer's most recently completed financial year;

(b) ~~13. The~~if the offering memorandum does not ~~have to be updated~~contain an interim financial report for the issuer's most recently completed 6-month period, the issuer must do the following:

(i) amend the offering memorandum to include the interim financial ~~reports for periods completed after the date that is 60 days before~~report no later than the 60th day following the ~~date of the offering memorandum unless it is necessary to prevent the offering memorandum from containing a misrepresentation.~~end of the period;

(ii) present the offering memorandum and the interim financial report in accordance with the instructions in A, B and C and, for that purpose, the reference to the interim period in B.5(a) shall mean the issuer's most recently completed 6-month period.

12.2 If the issuer has included in its offering memorandum an interim financial report for its most recently completed 9-month period, B. 12.1(b) does not apply.

13. [Repealed]

14. Forward looking information, as defined in NI 51-102, included in an offering memorandum must comply with section 4A.2 of NI 51-102 and must include the disclosure described in section 4A.3 of NI 51-102. In addition to the foregoing, FOFI or a financial outlook, each as defined in NI 51-102, included in an offering memorandum must comply with Part 4B of NI 51-102. For an issuer that is not a reporting issuer, references to "reporting issuer" in section 4A.2, section 4A.3 and Part 4B of NI 51-102 ~~should~~must be read as references to an "issuer". Additional guidance may be found in the companion policy to NI 51-102.

15. ~~If the issuer is a limited partnership, in addition to the financial statements required for the issuer, include in the offering memorandum the financial statements in accordance with Part B for the general partner and, if the limited partnership has active operations, for the limited partnership.~~[Repealed]

16. ~~Despite section B.5, an issuer may include a comparative interim financial report of the issuer for the most recent interim period, if any, ended~~ [Repealed]

    ~~(a) subsequent to the most recent financial year in respect of which annual financial statements of the issuer are included in the offering memorandum, and~~

    ~~(b) more than 90 days before the date of the offering memorandum.~~

    ~~This section does not apply unless~~

    ~~(a) the comparative interim financial report is the first interim financial report required to be filed in the year of adopting IFRS, and the issuer is disclosing, for the first time, a statement of compliance with International Accounting Standard 34 *Interim Financial Reporting*,~~

    ~~(b) the issuer is a reporting issuer in the local jurisdiction immediately before the date of the offering memorandum, and~~

    ~~(c) the offering memorandum is dated before June 29, 2012.~~

C. Financial Statements - Business Acquisitions

1. If the issuer

    (a) has acquired a business during the past two years and the audited financial statements of the issuer included in the offering memorandum do not include the results of the acquired business for 9 consecutive months, or

    (b) is proposing to acquire a business and the acquisition has progressed to a state where a reasonable person would believe that the likelihood of the acquisition being completed is high,

    include the financial statements specified in C.4 for the business if either of the tests in C.2 is met, irrespective of how the issuer accounts, or will account, for the acquisition.

2. Include the financial statements specified in C.4 for a business referred to in C.1 if either:

    (a) the issuer's proportionate share of the consolidated assets of the business exceeds ~~40~~100% of the consolidated assets of the issuer calculated using the annual financial statements of each of the issuer and the business for the most recently completed financial year of each that ended before the acquisition date or, for a proposed acquisition, the date of the offering memorandum or

    (b) the issuer's consolidated investments in and advances to the business as at the acquisition date or the proposed date of acquisition exceeds ~~40~~100% of the consolidated assets of the issuer, excluding any investments in or advances to the business, as at the last day of the issuer's most recently completed financial year that ended before the date of acquisition or the date of the offering memorandum for a proposed acquisition. For information about how to perform the investment test in this paragraph, please refer to subsections 8.3(4.1) and (4.2) of NI 51-102. Additional guidance may be found in the companion policy to NI 51-102.

2.1 [Repealed]

3. If an issuer or a business has not yet completed a financial year, or its first financial year ended within 120 days of the offering memorandum date, use the financial statements referred to in B.3 to make the calculations in C.2.

4. If under C.2 you must include in an offering memorandum financial statements for a business, the financial statements must include:

(a) If the business has not completed one financial year or its first financial year end is less than 120 days from the date of the offering memorandum

(i) a statement of comprehensive income, a statement of changes in equity and a statement of cash flows

(A) for the period from inception to a date not more than 90 days before the date of the offering memorandum, or

(B) if the date of acquisition precedes the ending date of the period referred to in (A), for the period from inception to the acquisition date or a date not more than 45 days before the acquisition date,

(ii) a statement of financial position dated as at the end of the period referred to in clause (i), and

(iii) notes to the financial statements.

(b) If the business has completed one or more financial years include

(i) annual financial statements comprised of:

(A) a statement of comprehensive income, a statement of changes in equity and a statement of cash flows for the following annual periods:

i. the most recently completed financial year that ended before the acquisition date and more than 120 days before the date of the offering memorandum, and

ii. the financial year immediately preceding the most recently completed financial year specified in clause i, if any,

(B) a statement of financial position as at the end of each of the periods specified in (A),

(C) notes to the financial statements, and

(ii) an interim financial report comprised of

(A) either

i. a statement of comprehensive income, a statement of changes in equity and a statement of cash flows for the most recently completed year-to-date interim period ending on the last date of the interim period that ended before the acquisition date and more than 60 days before the date of the offering memorandum and ended after the date of the financial statements required under subclause (b)(i)(A)(i), and a statement of comprehensive income and a statement of changes in equity for the ~~three~~ 3-month period ending on the last date of the interim period that ended before the acquisition date and more than 60 days before the date of the offering memorandum and ended after the date of the financial statements required under subclause (b)(i)(A)(i), or

ii. a statement of comprehensive income, a statement of changes in equity and a statement of cash flows for the period from the first day after the financial year referred to in subparagraph (b)(i) to a date before the acquisition date and after the period end in subclause (b)(ii)(A)(i),

(B) a statement of comprehensive income, a statement of changes in equity and a statement of cash flows for the corresponding period in the immediately preceding financial year, if any,

(C) a statement of financial position as at the end of the period required by clause (A) and the end of the immediately preceding financial year, and

(D) notes to the financial statements.

Refer to Instruction B.7 for the meaning of "interim period".

5. The information for the most recently completed financial period referred to in C.4(b)(i) must be audited and accompanied by an auditor's report. The financial statements required under C.4(a), C.4(b)(ii) and the comparative financial information required by C.4(b)(i) may be unaudited; however, if those financial statements or comparative financial information have been audited, the auditor's report must be included in the offering memorandum.

6. If the offering memorandum does not contain audited financial statements for a business referred to in C.1 for the business's most recently completed financial year that ended before the acquisition date and the distribution is ongoing, update the offering memorandum to include those financial statements accompanied by an auditor's report when they are available, but in any event no later than the date 120 days following the year-end.

7. The term "business" should be evaluated in light of the facts and circumstances involved. Generally, a separate entity or a subsidiary or division of an entity is a business and, in certain circumstances, a lesser component of an entity may also constitute a business, whether or not the subject of the acquisition previously prepared financial statements. The subject of an acquisition should be considered a business where there is, or the issuer expects there will be, continuity of operations. The issuer should consider:

   (a) whether the nature of the revenue producing activity or potential revenue producing activity will remain generally the same after the acquisition, and

   (b) whether any of the physical facilities, employees, marketing systems, sales forces, customers, operating rights, production techniques or trade names are acquired by the issuer instead of remaining with the vendor after the acquisition.

8. If a transaction or a proposed transaction for which the likelihood of the transaction being completed is high has been or will be a reverse take-over as defined in NI 51-102, include financial statements for the legal subsidiary in the offering memorandum in accordance with Part A. The legal parent is considered to be the business acquired. C.1 may also require financial statements of the legal parent.

9. An issuer satisfies the requirements in C.4 if the issuer includes in the offering memorandum the financial statements required in a business acquisition report under NI 51-102.

D. Financial Statement - Exemptions

1. ~~An issuer will satisfy the financial statement requirements of this form if it includes the financial statements required by securities legislation for a prospectus.~~[Repealed]

2. Notwithstanding the requirements in section 3.3(1)(a)(i) of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*, an auditor's report that accompanies financial statements of an issuer or a business contained in an offering memorandum of a non-reporting issuer may express a qualification of opinion relating to inventory if

   (a) the issuer includes in the offering memorandum a statement of financial position that is for a date that is ~~subsequent to~~after the date to which the qualification relates, ~~and~~

   (b) the statement of financial position referred to in paragraph (a) is accompanied by an auditor's report that does not express a qualification of opinion relating to closing inventory, and

   (c) the issuer has not previously filed financial statements for the same entity accompanied by an auditor's report for a prior year that expressed a qualification of opinion relating to inventory.

3. If an issuer has, or will account for a business referred to in C.1 using the equity method, then financial statements for a business required by Part C are not required to be included if:

   (a) the offering memorandum includes disclosure for the periods for which financial statements are otherwise required under Part C that:

      (i) summarizes information as to the aggregated amounts of assets, liabilities, revenue and profit or loss of the business, and

(ii) describes the issuer's proportionate interest in the business and any contingent issuance of securities by the business that might significantly affect the issuer's share of profit or loss;

(b) the financial information provided under D.3(a) for the most recently completed financial year has been audited, or has been derived from audited financial statements of the business; and

(c) the offering memorandum discloses that:

(i) the financial information provided under D.3(a) for any completed financial year has been audited, or identifies the audited financial statements from which the financial information provided under D.3(a) has been derived; and

(ii) the audit opinion with respect to the financial information or financial statements referred to in D.3(c)(i) was an unmodified opinion.

4. Financial statements relating to the acquisition or proposed acquisition of a business that is an interest in an oil and gas property are not required to be included in an offering memorandum if either of the following apply:

(a) the acquisition is significant based only on the asset test~~ or:~~;

(b) ~~(a) ~~the issuer is unable to provide the financial statements in respect of the significant acquisition otherwise required because those financial statements do not exist or the issuer does not have access to those financial statements, and the following apply:

(i) ~~(b) ~~the acquisition was not or will not be a reverse take-over, as defined in NI 51-~~102, and~~102;

~~(c) [Repealed]~~

(ii) the following apply:

(A) ~~(d) ~~the offering memorandum ~~contains alternative disclosure for the business which includes:(i)~~ an operating statement for the business or related businesses for each of the financial periods for which financial statements would, but for this section, be required under C.4 prepared in accordance with subsection 3.11(5) of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*~~. The~~;

(B) the operating statement for the most recently completed financial period referred to in C.4(b)(i) ~~must be~~is audited~~.~~;

(C) ~~(ii) ~~the offering memorandum includes a description of the property or properties and the interest acquired by the issuer~~,~~;

(D) ~~(iii) ~~the offering memorandum includes information with respect to the estimated reserves and related future net revenue attributable to the business, the material assumptions used in preparing the estimates and the identity and relationship to the issuer or to the seller of the person who prepared the estimates~~,~~;

(E) ~~(iv) ~~the offering memorandum includes actual production volumes of the property for the most recently completed year~~, and~~;

(F) ~~(v) ~~the offering memorandum includes estimated production volumes of the property for the first year reflected in the estimate disclosed under D.4(d)(iv).

5. Financial statements for a business that is an interest in an oil and gas property, or for the acquisition or proposed acquisition by an issuer of ~~a~~an oil and gas property, are not required to be audited if, during the 12 months preceding the acquisition date or the proposed acquisition date, the ~~daily ~~average daily production of the property ~~on a barrel of oil equivalent basis (with gas converted to oil in the ratio of six thousand cubic feet of gas being the equivalent of one barrel of oil) is less than 20 per cent~~is less than 20% of the ~~total daily ~~average daily production of the seller for the same or similar periods and:

(i) despite reasonable efforts during the purchase negotiations, the issuer was prohibited from including in the purchase agreement the rights to obtain an audited operating statement of the property,

(ii) the purchase agreement includes representations and warranties by the seller that the amounts presented in the operating statement agree to the seller's books and records, and

(iii) the offering memorandum discloses

1. that the issuer was unable to obtain an audited operating statement,

2. the reasons for that inability,

3. the fact that the purchase agreement includes the representations and warranties referred to in D.5(ii), and

4. that the results presented in the operating statements may have been materially different if the statements had been audited.

Schedule 1- Additional Disclosure Requirements for an Issuer Engaged in Real Estate Activities

Guidance

For an issuer engaged in real estate activities, see subsection 6.4(4) of the Instrument with respect to the completion of this schedule.

General Instructions

1. Despite General Instruction A. 2, an issuer may choose where to integrate the disclosure specified by this schedule within the offering memorandum.

2. Information specified by this schedule that is disclosed in the offering memorandum in response to another provision of this form need not be repeated.

1. Definitions

In this schedule

"rental management agreement" means an agreement, other than a rental pool agreement, under which a person manages the generation of revenue from real property for another person;

"rental pool agreement" means an agreement creating a rental pool;

"rental pool" means an arrangement under which revenues derived from, or expenses relating to, two or more properties are pooled and shared among the owners of the properties in accordance with their proportionate interests in the pool.

2. Application

(1) This schedule applies to the following:

(a) each interest in real property held by the issuer;

(b) each interest in real property proposed to be acquired by the issuer, if the proposed acquisition has progressed to a state where a reasonable person would believe that the likelihood of the issuer completing the acquisition is high.

(2) Despite subsection (1), and except in the circumstances described in section 4, 5, 10 and 11, this schedule does not apply in respect of an interest in real property, or more than one interest in real property taken together, that when considered in relation to all interests in real property held by the issuer, is not significant enough to influence a decision by a reasonable investor to buy, hold or sell a security of the issuer.

3. Description of Real Property

(1) Describe the following with respect to each interest in real property:

(a) the real property's location, both legal and descriptive;

(b) the nature of the interest;

(c) any encumbrances;

(d) any restriction on sale or disposition;

(e) any environmental liabilities, hazards or contamination;

(f) any tax arrears;

(g) who provides any utilities and other services or, if utilities and other services are not currently being provided, describe how they will be provided and who will provide them;

(h) the current use;

(i) the proposed use and why the issuer considers the real property to be suitable for its plans;

(j) with respect to any buildings affixed to the real property, the type of construction, age and condition, and a description of any units for sale or rental;

(k) for real property that the issuer leases to others, the occupancy level as at a date not more that 60 days before the date of the offering memorandum.

(2) If the issuer is providing disclosure on 20 or more interests in real property, it may for the purposes of subsection (1) disclose the information on a summarized basis with respect to either of the following:

(a) the portfolio of real property interests as a whole;

(b) the portfolio of real property interests broken into subgroups.

(3) Describe any current legal proceedings, or legal proceedings that the issuer knows to be contemplated, relating to each interest in real property, including, for each proceeding, the name of the court, the date instituted, the parties to the proceeding, the nature of the claim, any amount claimed, whether the proceeding is being contested, and the present status of the proceeding.

Instruction to Section 3

With respect to a proposed acquisition of one or more interests in real property, disclose the issuer's expectations regarding the matters set out in paragraphs (1)(b), (c) and (d) for the event that the acquisition is completed.

4. Appraisal

(1) If subsection 2.9(19.6) of the Instrument applies, disclose the following for any appraisal:

(a) the appraised fair market value of the interest in real property that is the subject of the appraisal;

(b) the effective date of the appraisal;

(c) that the appraisal is required to be delivered to the purchaser at the same time or before the offering memorandum is delivered to the purchaser.

(2) For each interest in real property to which subsection (1) applies, provide the most recent assessment by any assessing authority.

5. Purchaser's Interest in Real Property

If the purchaser will acquire an interest in real property, disclose the following:

(a) a description of the interest;

(b) how the interest will be evidenced in a public registry;

(c) any existing or anticipated encumbrances on the interest.

6. Developer, or Manager under a Rental Pool Agreement or Rental Management Agreement, Organization, Occupation and Experience, and Penalties, Sanctions, Bankruptcy, Insolvency and Criminal or Quasi-Criminal Matters

(1) Subsection (2) applies for the following persons:

(a) a person other than the issuer that is or will be acting in the role of developer in respect of an interest in real property;

(b) in respect of real property in which the purchaser will acquire an interest, a person other than the issuer that will be acting in the role of manager under a rental management agreement, or manager for a rental pool.

(2) For each person described in subsection (1),

(a) state the legal name of the person, describe the business of the person and any experience that the person has in similar projects or a similar business, and, if the person is not an individual, the laws under which the person is organized or incorporated and the date that the person was organized or incorporated,

(b) if the person is not an individual, in the form of the following table, provide the specified information for any directors and executive officers of the person for the 5 years preceding the date of the offering memorandum,

Full legal name	Principal occupation and description of experience associated with the occupation

(c) if the following have occurred during the 10 years preceding the date of the offering memorandum with respect to the person, a director, executive officer or control person of the person, or an issuer of which any of those persons was a director, executive officer or control person at the time, describe the penalty, sanction or order, including the reason for it and whether it is currently in effect:

(i) a penalty or other sanction imposed by a court relating to a contravention of securities legislation;

(ii) a penalty or other sanction imposed by a regulatory body relating to a contravention of securities legislation;

(iii) an order restricting trading in securities, not including an order that was in effect for less than 30 consecutive days,

(d) if the following have occurred during the 10 years preceding the date of the offering memorandum with respect to the person, a director, executive officer or control person of the person, or an issuer of which any of those persons was a director, executive officer or control person at the time, state that it has occurred:

(i) a declaration of bankruptcy;

(ii) a voluntary assignment in bankruptcy;

(iii) a proposal under bankruptcy or insolvency legislation;

(iv) a proceeding, arrangement or compromise with creditors or appointment of a receiver, receiver manager or trustee to hold assets, and

(e) disclose and describe the following, if the person, or a director, executive officer or control person of the person has ever pled guilty to or been found guilty of:

(i) a summary conviction or indictable offence under the *Criminal Code* (Canada);

(ii) a quasi-criminal offence in any jurisdiction of Canada or a foreign jurisdiction;

(iii) a misdemeanour or felony under the criminal legislation of the United States of America, or any state or territory of the United States of America;

(iv) an offence under the criminal legislation of any other foreign jurisdiction.

7. Transfers

(1) For each interest in real property, for any transaction that a related party was party to, using the following table, starting with the most recent transaction and specifying which party was the related party, disclose the following.

Date of transfer	Legal name of seller	Legal name of buyer	Amount and form of consideration

(2) Explain the reason for any material difference between the amount of consideration paid by the issuer and the amount of consideration paid by a related party for the interest in real property.

8. Approvals

For each interest in real property, if that real property is being developed, disclose the following:

(a) any approval required from a regulatory body or any level of government;

(b) the anticipated cost and timing of the approval;

(c) any reports required as part of the approval process, including the anticipated cost and timing of producing or procuring those reports;

(d) what will happen if the approvals are not obtained, including the effect on the following:

(i) the project;

(i) the purchaser's investment;

(ii) if applicable, the purchaser's interest in the real property.

9. Costs and Objectives

For each interest in real property, if that real property is being developed, disclose the following:

(a) estimated costs to complete the development;

(b) any significant assumptions that underlie the cost estimates;

(c) when significant costs will be incurred;

(d) the objectives of the project that are expected to be met within the 24 months following the date of the offering memorandum, including the following:

(i) the expected timeline for meeting the objectives;

(ii) how the issuer will meet the objectives;

(iii) the estimated costs of meeting each objective;

(iv) how the issuer will fund the cost of meeting each objective;

(e) the objectives for the project that are expected to be met after the 24-month period following the date of the offering memorandum, including the following:

(i) the expected timeline for meeting the objectives;

(ii) how the issuer will meet the objectives;

(iii) if the objectives are to be completed in phases, details about each phase;

(iv) the estimated cost of meeting each objective;

(v) how the issuer will fund the cost of meeting each objective;

(f) what reasonably might happen if any of the stated objectives are not met, including the effect of not meeting on objective on the following:

(i) the project;

(ii) the purchaser's investment;

(iii) if applicable, the purchaser's interest in the real property.

10. Future Cash Calls

If the purchaser is required to contribute additional funds in the future, disclose the following:

(a) the amount the purchaser is required to contribute;

(b) when the purchaser will be required to contribute;

(c) the effect on the purchaser's investment and, if applicable, the purchaser's interest in the real property, if the purchaser fails to contribute;

(d) the effect on the purchaser's investment and, if applicable, the purchaser's interest in the real property, if the purchaser contributes, but other purchasers fail to contribute.

11. Rental Pool Agreement or Rental Management Agreement

If the purchaser will acquire an interest in real property, and that interest will be or could be subject to a rental pool agreement or a rental management agreement, disclose the following:

(a) the key terms of the agreement, including, for certainty, those provisions dealing with whether the agreement is mandatory or optional, the duration of the agreement, opting out of the agreement, termination of the agreement, the sharing of revenues and losses, the payment of expenses, and any fees payable under the agreement;

(b) whether financial or other information about the rental pool or the results arising from the rental management agreement will be made available to purchasers, and if so, include the following:

(i) a description of the information;

(ii) if the information will include financial information, whether that financial information will be audited or subject to an independent review;

(iii) the frequency with which the information will be made available;

(iv) whether the information will be delivered to purchasers or whether access will be provided to it;

(v) if purchasers are to be provided access to the information, a description of the means of gaining access to it;

(c) the following statement, with the bracketed information completed as applicable:

"The success or failure of the [rental pool][arrangement resulting from the rental management agreement] will depend in part on the abilities of the manager";

(d) if the purchaser will be responsible for paying any loss arising pursuant to the rental pool agreement or rental management agreement, the following statement, with the bracketed information completed as applicable:

"If the [rental pool][rental management agreement] generates a loss, the purchaser must contribute further funds in addition to the purchaser's initial investment.".

12. Information Statements

If the purchaser will acquire an interest in real property, state the following in bold type:

"Your rights relating to your interest in real property will be those provided under the laws of the jurisdiction in which the real property is located. Therefore, it is prudent to consult a lawyer who is familiar with the laws of that jurisdiction before making an investment.

All real estate investments are subject to significant risk arising from changing market conditions.".

13. Risk Factors Relating to Real Property

With respect to the issuer's interests in real property, and any interest in real property to be acquired by the purchaser, describe the risk factors that would influence a reasonable investor's decision whether to invest, including, if applicable:

(a) risks associated with the following:

(i) the development of undivided real property into subdivisions;

(ii) the leasing of real property;

(iii) the holding of real property for sale or development;

(b) risks associated with encumbrances, conditions, or covenants on the real property that could affect the following:

(i) the purchaser's interest in the real property, if applicable;

(ii) the completion of the development of real property;

(c) risks pertaining to the development of real property, including the following:

(i) a right or lack of right of the purchaser with respect to the management and control of the real property;

(ii) a right or lack of right of the purchaser to change the developer of the property;

(d) risks pertaining to potential liability for the following:

(i) environmental damage;

(ii) unpaid obligations to builders, contractors and tradespersons;

(e) risks associated with litigation that relates to the real property.

Schedule 2 – Additional Disclosure Requirements for an Issuer That is a Collective Investment Vehicle

Guidance

For an issuer that is a collective investment vehicle, see subsection 6.4(5) of the Instrument with respect to the completion of this schedule.

General Instructions

1. Despite General Instruction A. 2, an issuer may choose where to integrate the disclosure specified by this schedule within the offering memorandum.

2. Information specified by this schedule that is disclosed in the offering memorandum in response to another provision of this form need not be repeated.

1. Investment Objectives and Strategy

(1) Except with respect to mortgage lending, describe the following:

(a) the issuer's investment objectives, investment strategy and investment criteria;

(b) any limitations or restrictions on investments, including concentration limits and use of leverage;

(c) how securities are identified, selected and approved for purchase or sale.

(2) For any mortgage lending by the issuer, describe the following:

(a) the issuer's investment objectives with respect to the following:

(i) the type of properties for which the issuer lends money;

(ii) the issuer's geographical focus;

(iii) the material mortgage terms, including range of interest rates and length of term;

(iv) the priority ranking of mortgages, in terms of first priority, second priority and third or lower priority;

(b) any policies or practices of the issuer with respect to the following:

(i) after initial funding of a mortgage, conducting any subsequent valuation of a property;

(ii) loaning money to a related party;

(iii) renewals;

(iv) concentrating funds in a single mortgage or lending funds to a single borrower or group of affiliated borrowers;

(v) determining that a borrower has the ability to repay a mortgage.

2. Portfolio Management and Penalties, Sanctions, Bankruptcy, Insolvency and Criminal or Quasi-Criminal Matters

(1) Identify the person responsible for the following:

(a) establishing and implementing the issuer's investment objectives and investment strategy;

(b) setting any limitations or restrictions on investments;

(c) monitoring the performance of the portfolio;

(d) making any adjustments to the issuer's portfolio.

(2) For each person described in subsection (1) that is not registered under the securities legislation of a jurisdiction of Canada,

(a) in the form of the following table, provide the specified information for the person and any directors and executive officers of the person for the 5 years preceding the date of the offering memorandum,

Full legal name	Principal occupation and description of experience associated with the occupation

(b) if the following have occurred during the 10 years preceding the date of the offering memorandum with respect to the person, or an issuer of which the person was a director, executive officer or control person at the time, describe the penalty, sanction or order, including the reason for it and whether it is currently in effect:

(i) a penalty or other sanction imposed by a court relating to a contravention of securities legislation;

(ii) a penalty or other sanction imposed by a regulatory body relating to a contravention of securities legislation;

(iii) an order restricting trading in securities, not including an order that was in effect for less than 30 consecutive days,

(c) if the following have occurred during the 10 years preceding the date of the offering memorandum with respect to the person, or an issuer of which the person was a director, executive officer or control person at the time, state that is has occurred:

(i) a declaration of bankruptcy;

(ii) a voluntary assignment in bankruptcy;

(iii) a proposal under bankruptcy or insolvency legislation;

(iv) a proceeding, arrangement or compromise with creditors or appointment of a receiver, receiver manager or trustee to hold assets,

(d) disclose and describe the following, if the person has ever pled guilty to or been found guilty of:

(i) a summary conviction or indictable offence under the *Criminal Code* (Canada);

(ii) a quasi-criminal offence in any jurisdiction of Canada or a foreign jurisdiction;

(iii) a misdemeanour or felony under the criminal legislation of the United States of America, or any state or territory of the United States of America;

(iv) an offence under the criminal legislation of any other foreign jurisdiction, and

(e) disclose any exemption relied on by the person from the requirement to be registered under the securities legislation of a jurisdiction of Canada.

(3) For any person identified in subsection (1) that is not an employee of the issuer, disclose any remuneration paid to the person, and how the remuneration is calculated.

(4) Identify any person that is not an employee of the issuer, other than a person identified under subsection (1), that performs a significant role or provides a significant service for the issuer with respect to the securities in the issuer's portfolio, and describe the following:

(a) the role performed or service provided;

(b) the remuneration paid to the person and how that remuneration is calculated.

3. Portfolio Summary

(1) Except with respect to mortgage lending, as at a date not more than 60 days before the date of the offering memorandum, disclose the following:

(a) a description of the portfolio, or a description of the portfolio divided into subgroups including the percentage of the net asset value in each subgroup;

(b) the percentage of the net asset value that is impaired;

(c) the total number of positions held in securities.

(2) Except with respect to mortgage lending, if a security comprises 10% or more of the issuer's net asset value, disclose the following with respect to the security:

(a) the percentage of net asset value represented;

(b) a description of the security;

(c) any security interest held against the security;

(d) the amount of any impairment assigned to the security.

(3) For any mortgage lending by the issuer, disclose the following:

(a) the average of the interest rates payable under the mortgages, weighted by the principal amount of the mortgages;

(b) the average of the terms to maturity of the mortgages, weighted by the principal amount of the mortgages;

(c) the average loan-to-value ratio of the mortgages, calculated for each mortgage by dividing the total principal amount of the issuer's mortgage and all other loans ranking in equal or greater priority to the issuer's mortgage by the fair market value of the property, weighted by the principal amount of each mortgage;

(d) the principal amount, and the percentage of the total principal amount of the mortgages, that rank in the following:

(i) first priority;

(ii) second priority;

(iii) third or lower priority;

(e) the principal amount, and the percentage of the total principal amount of the mortgages, that is attributable to each jurisdiction of Canada, each state or territory of the United States of America and each other foreign jurisdiction;

(f) a breakdown by property type, and the principal amount, and the percentage of the total principal amount of the mortgages, that is attributable to each property type;

(g) with respect to mortgages that will mature in less than one year of the date of the summary provided in subsection (1), the percentage that those mortgages represent of the total principal amount of the mortgages;

(h) with respect to mortgages with payments more than 90 days overdue, the number of those mortgages, the principal amount of those mortgages, and the percentage that those mortgages represent of the total principal amount of the mortgages;

(i) with respect to mortgages that have an impaired value, the principal amount, and the percentage that those mortgages represent of the total principal amount of the mortgages;

(j) if known by the issuer, or if reasonably available to the issuer, the average credit score of the borrowers, weighted by the principal amount of the mortgages;

(k) if a mortgage comprises 10% or more of the total principal amount of the mortgages, disclose the following with respect to the mortgage:

(i) the principal amount, and the percentage of the total principal amount of the mortgages;

(ii) the interest rate payable;

(iii) the term to maturity;

(iv) the loan-to-value ratio, calculated by dividing the total principal amount of the issuer's mortgage and all other loans ranking in equal or greater priority to the issuer's mortgage by the fair market value of the property;

(v) whether the mortgage ranks in first, second, or third or lower priority;

(vi) the property type;

(vii) where the property is located;

(viii) any payment that is more than 90 days overdue;

(ix) any impairment of the mortgage;

(x) if known by the issuer, or if reasonably available to the issuer, the credit score of each borrower.

(4) If the issuer's portfolio includes self-liquidating financial assets other than mortgages, with respect to those assets, and for any subgroups identified in paragraph (1)(a), disclose the following:

(a) the collection rate for each of the issuer's two most recently completed financial years that ended more than 120 days before the date of the offering memorandum;

(b) the issuer's reasonably anticipated loss and collection rate for the current financial year.

Instruction to Section 3

Calculate impairment in accordance with the accounting standards applicable to the issuer, and in a manner that is consistent with the disclosure in the issuer's financial statements.

4. Portfolio Performance

(1) For the 10 most recently completed financial years of the issuer ended more than 120 days before the date of the offering memorandum, provide performance data for the issuer's portfolio.

(2) Describe the methodology used with respect to the following:

(a) determining the value of the securities in the portfolio for the purposes of calculating the performance data;

(b) calculating the performance data of the portfolio.

Instruction to Section 4

The methodology described in paragraph (2)(a) must be the same as the methodology used in the issuer's financial statements.

5. Ongoing Disclosure

Describe any information that purchasers will receive on an ongoing basis about the issuer's portfolio. If none, state that fact.

6. Conflicts of Interest

Describe any conflicts of interest, including, for certainty, with respect to related parties, that a reasonable purchaser would need to be made aware of to make an informed investment decision.

ANNEX E

LOCAL MATTERS (ONTARIO)

Overview

The Proposed Amendments and Proposed Changes have been informed by the types of issuers that use the OM Exemption. The OM Exemption was designed to be used by relatively simple operating businesses. However, in Ontario, the primary users of the OM Exemption have been mortgage investment entities and issuers engaged in real estate activities.

Affected Stakeholders

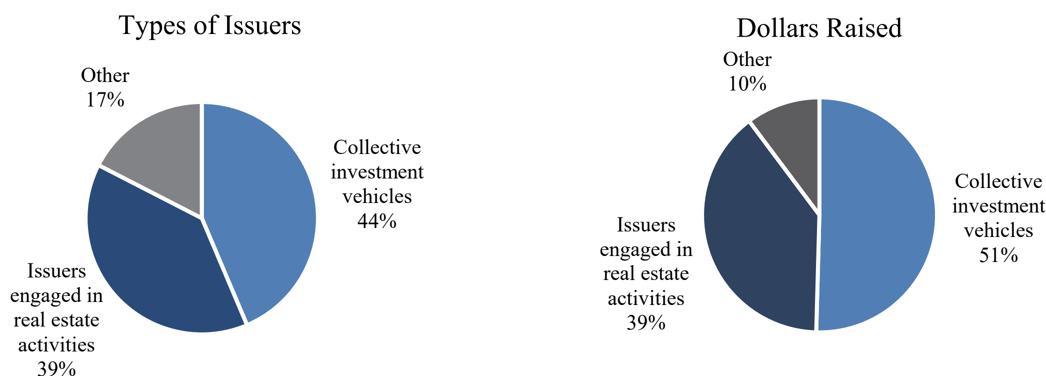
Issuers

All issuers that distribute securities under the OM Exemption (**OM Issuers**) will be affected by the Proposed Amendments. The OM Exemption is a very small portion of the exempt market. In Ontario, annually the OM Exemption only represents less than 1% of the dollars raised and less than 10% of Canadian issuers that raise capital from Ontario investors in the exempt market.[1]

The extent to which an issuer will be affected will depend on whether the issuer is engaged in real estate activities, is a collective investment vehicle or is engaged in ongoing distributions of its securities under the same offering memorandum.

In Ontario, an estimated 149 unique issuers rely on the OM Exemption each year to raise an estimated $180 million.[2] As illustrated in Figure 1, the majority of these issuers would be, under the Proposed Amendments, collective investment vehicles or issuers engaged in real estate activities.

Figure 1 - Issuers Relying on the OM Exemption



Investors

Investors that purchase securities under the OM Exemption will also be affected by the Proposed Amendments.

Based on our estimates, the OM Exemption affects approximately 8,600 Ontario investors representing approximately $180 million in gross proceeds annually.[3] Approximately 95% of these investors are individuals who represent approximately 90% of the gross proceeds and approximately 80% of these investors are small investors who invested $30,000 or less.

Anticipated Benefits of the Proposed Amendments

Investors under the OM Exemption are predominantly the most vulnerable segment of the retail market: small individual investors. The Proposed Amendments will benefit investors by providing them with enhanced disclosure, including more tailored disclosure where an issuer is engaged in real estate activities or is a collective investment vehicle. For issuers engaged in

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1 Estimates based on data from Forms 45-106F1 *Report of Exempt Distribution* filed with the OSC (**F1 filings**) and represent the median annual figures of issuers with a head office in Canada in respect of distributions to investors resident in Ontario from January 2017 to August 2019. The annual number for 2019 was extrapolated based on a pro-rated estimate of issuer activity over the first 8 months.

2 Based on data from F1 filings in Ontario. Estimate calculated from the sum of the median annual number of three groups of OM Issuers (collective investment vehicles, issuers engaged in real estate activities and others) with a head office in Canada and in respect of distributions to investors resident in Ontario from January 2017 to August 2019. The annual number for 2019 was extrapolated based on a pro-rated estimate of issuer activity over the first 8 months.

3 Estimates based on data from F1 filings and represent the median annual number of Ontario investors and amount invested under the OM Exemption from January 2017 to August 2019. The annual number for 2019 was extrapolated based on a pro-rated estimate of issuer activity over the first 8 months. Approximately half of these investors are investors in a single peer-to-peer lending platform.

ongoing distributions under the same offering memorandum, investors will also be provided with more current information because the issuer will be required to amend its offering memorandum under certain circumstances and include a 6-month interim financial report. We anticipate that this tailored and more current disclosure will allow investors to make more informed investment decisions.

The benefit of the Proposed Amendments to issuers is that they will clarify the disclosure requirements and, in many instances, will codify the comments that have been routinely raised by staff in certain CSA jurisdictions during compliance reviews. In addition, the Proposed Changes will provide additional guidance for issuers, which will assist them when preparing an offering memorandum. The Proposed Amendments also include new requirements that are based on issues that were present in failed OM Issuers that resulted in significant investors losses, including the requirement for issuers engaged in real estate activities to provide an independent property appraisal when real estate is acquired from a related party and portfolio disclosure for collective investment vehicles. Therefore, not only will the Proposed Amendments provide investors with more tailored disclosure, they will also increase market confidence, which will assist OM Issuers in raising capital.

Where securities of OM Issuers are distributed through a registered dealer, we anticipate the Proposed Amendments will benefit the dealer in that the enhanced disclosure will assist the dealer in performing its know-your-product and suitability obligations.

Anticipated Costs of the Proposed Amendments

The General Amendments and Schedule 1 are not expected to result in any significant additional costs for issuers other than a one-time cost to review and familiarize themselves with the new requirements. The General Amendments are intended to clarify or streamline parts of the instrument or improve disclosure for investors. Schedule 1 includes information about properties that is generally provided by issuers engaged in real estate activities under the current requirements of the F2. Accordingly, the General Amendments and Schedule 1 are only expected to require a one-time cost for issuers to review and become familiar with them.

We expect the following requirements in the Proposed Amendments will potentially impose costs in addition to one-time costs to review and become familiar with the new requirements:

- **Property appraisals for certain issuers engaged in real estate activities –** There is currently no requirement to provide a property appraisal under the OM Exemption. The Proposed Amendments will require an independent property appraisal where the issuer:
    - proposes to acquire or has acquired an interest in real property from a related party;
    - except for in its financial statements, discloses a value for an interest in real property in its offering memorandum, or
    - proposes to use a material amount of the proceeds of the offering to acquire an interest in real property.
- **Schedule 2 for collective investment vehicles –** Issuers are currently required to provide sufficient information for an investor to make an informed investment decision. However, there is no specific requirement for portfolio disclosure by issuers that would, under the Proposed Amendments, be collective investment vehicles and such disclosure is frequently not provided. The Proposed Amendments include specific portfolio disclosure requirements.
- **Amending offering memoranda –** Currently issuers that are in continuous distribution generally amend their offering memorandum on an annual basis. The Proposed Amendments will require an amendment to include unaudited semi-annual financial statements as well as other amendments, in certain circumstances. There will be a cost associated with amending the offering memorandum disclosure, including Schedule 2.

The tables below set out the estimated quantitative costs (subject to the assumptions below) that may arise as a result of the Proposed Amendments. The estimated costs fall broadly into the following categories:

(1) estimated one-time administrative cost for all issuers associated with reviewing and familiarizing themselves with the new requirements (see **Table 1**);

(2) estimated cost for issuers engaged in real estate activities to obtain a property appraisal (see **Table 2**);

(3) estimated cost for collective investment vehicles to verify Schedule 2 disclosure (see **Table 3**);

(4) estimated cost for all issuers engaged in ongoing distributions to include 6-month interim financial report and amend disclosure to date of new offering memorandum (see **Table 4**).

One-time Administrative Cost

With respect to the one-time administrative costs for an OM Issuer to become familiar with the new requirements, we have estimated the costs in two scenarios: (A) where the OM Issuer does not use the assistance of external legal counsel and (B) where the OM Issuer does use the assistance of external legal counsel (see **Table 1**).

Table 1 – Estimated One-Time Administrative Cost per Issuer

	Min. Estimated Time[1] (hrs)	Max. Estimated Time[1] (hrs)	Average Hourly Wage [2]	Min. Estimated Cost	Max. Estimated Cost
A. Issuer's Internal Review					
Junior In-house Counsel	5	10	$58	$292	$585
Senior In-house Counsel	2	4	$86	$172	$344
General Counsel/Executive	1	2	$111	$111	$222
Estimated cost for Internal Review	**8 hrs**	**16 hrs**		**$575**	**$1,151**
B. External Assistance					
Senior Counsel (6-10 yr experience)	4	8	$328	$1,310	$2,620
Issuer's General Counsel/Executive	1	2	$111	$111	$222
Estimated cost for External Assitance	**5 hrs**	**10 hrs**		**$1,421**	**$2,842**

[1] OSC estimated minimum and maximum hours.
[2] Average Hourly Wage includes overhead cost (25%) and based on Base Salary for Ontario in-house legal counsels and average work week statistics from **Counsel Network In-House Counsel Compensation & Career Survey Report 2018.**

Estimated Cost for Issuers Engaged in Real Estate Activities

The primary costs associated with the Proposed Amendments for issuers engaged in real estate activities will be the costs of required property appraisals. The number of appraisals that will be required, if any, depends on the activities of the issuer and the disclosure included in its offering memorandum. The estimates below assume that an issuer will be required to prepare one property appraisal.

The estimated cost of commercial real estate appraisals will vary depending on multiple factors including not only those specific to the property, but also the firm providing the appraisal. We estimated appraisal costs to range from approximately $2,500 from a small appraisal firm to approximately $12,500 for appraisals of larger developments from a larger firm.

Table 2 – Estimated Cost for Property Appraisals

Property Appraisal	Min. Estimated Cost	Max. Estimated Cost
Commercial Real Estate Appraisals (small firm)	$2,499	$7,496
Commercial Real Estate Appraisals (large firm)	$4,165	$12,494

[1] OSC appraisal estimates based on average commercial real estate appraiser salary in Canada from Payscale.com and the following assumptions: i) 40 hour work week; ii) appraiser(s) cost represents 1/3rd of small appraisal firms' fees and 1/5th of large appraisal firms' fees; iii) minimum estimate based on 30 hours of appraiser's time and maximum estimate based on 90 hours of appraiser's time.

Estimated Cost for Collective Investment Vehicles

The primary requirements under the Proposed Amendments is complying with the disclosure requirements under Schedule 2. This disclosure requires updated portfolio-level disclosure. We understand that the information required for Schedule 2 would be readily available to the issuer. Accordingly, the costs will be primarily related to preparing the disclosure in the prescribed form and internal compliance costs to verify the disclosure.

Similar to our estimates for the one-time administrative cost, we expect firms to either internally review and verify Schedule 2 compliance or to seek external counsel. **Table 2** provides an estimate of the cost per issuer of these two options.

Table 3 – Estimated Cost to Verify Schedule 2 Disclosure Per Issuer

	Min. Estimated Time[1] (hrs)	Max. Estimated Time[1] (hrs)	Average Hourly Wage [2]	Min. Estimated Cost	Max. Estimated Cost
A. Issuer's Internal Review					
Junior In-house Counsel	3	6	$58	$175	$351
Senior In-house Counsel	1	3	$86	$86	$258
Issuer's General Counsel/Executive	1	1	$111	$111	$111
Estimated cost for Internal Review	**5 hrs**	**10 hrs**		**$373**	**$720**
B. External Assistance					
Junior Counsel (2-5 years experience)	3	6	$268	$803	$1,606
Senior Counsel (6-10 years experience)	1	3	$328	$328	$983
Issuer's General Counsel/Executive	1	1	$111	$111	$111
Estimated cost for External Assitance	**5 hrs**	**10 hrs**		**$1,242**	**$2,700**

[1] OSC estimated minimum and maximum hours.

[2] Average Hourly Wage based on Base Salary for Ontario in-house legal counsels and average work week statistics from **Counsel Network In-House Counsel Compensation & Career Survey Report 2018.**

Estimated Cost for Issuers with On-Going Distributions

Under the Proposed Amendments, issuers in continuous distribution would be required to amend their offering memorandum at least every 6 months.

Based on a sampling of historical offering memorandum filings, about half of the issuers disclosed total offering costs of $60,000 or less and an average offering cost of $133,400 (**Table 4**).[4]

Table 4 - Estimated Cost of Amending an Offering Memorandum

	Reported Offering Cost [1]	Min - OM update cost	Max - OM update cost
Median Estimate	$60,000.00	$15,000	$30,000
Average Estimate	$133,401.99	$33,350	$66,701

[1] Based on a random sample of offering cost from 84 issuers that relied on the OM Exemption to raise capital from January 2017 to August 2019.

[2] OSC estimates that at a minimum 25% of the initial offering memorandum cost up to a maximum of 50% of the initial offering memorandum cost will be incurred by the issuer to amend an offering memorandum.

Estimated Total Costs

The estimated total one-time administrative cost for an OM Issuer to familiarize itself with the new requirements is $575 to $2,842 (see **Table 5**). As detailed in **Table 1**, this cost will be on the higher-end of this range if the issuer uses the assistance of external legal counsel.

[4] Based on random sample of offering cost reported by 84 issuers that relied on the OM Exemption to raise capital from January 2017 to August 2019.

Table 5 - Estimated Total One-Time Administrative Cost

Type of Issuer	Estimated annual issuers[1]	One-time admin. cost per issuer		Total one-time cost for all issuers	
		Minimum	Maximum	Minimum	Maximum
Collective investment vehicles	65	$575	$2,842	$37,401	$184,758
Issuers engaged in real estate activities	58	$575	$2,842	$33,373	$164,861
Other issuers	26	$575	$2,842	$14,960	$73,903
Total	**149**			**$85,735**	**$423,523**

[1] Estimate based on the median annual number of issuers that raised capital under the OM Exemption for distributions to Ontario residents from January 2017 to August 2019. The annual number for 2019 was extrapolated based on a pro-rated estimate of issuer activity over the first 8 months.

The estimated annual cost of the additional issuer specific requirements is $373 to $2,700 for each issuer that would, under the Proposed Amendments, be a collective investment vehicle, and $2,499 to $12,494 for each issuer that would be engaged in real estate activities (see **Table 6**). For issuers engaged in real estate activities, this assumes every such issuer will incur the cost of one property appraisal (see **Table 2**). Issuers engaged in real estate activities are only required to provide a property appraisal in specific circumstances (*e.g.*, the interest in real property was acquired from a related party), so the assumption that each issuer will be required to provide an appraisal will overestimate the total costs to issuers engaged in real estate activities. For collective investment vehicles, the primary on-going cost is the cost of reviewing and verifying the Schedule 2 disclosure (see **Table 3**).

Table 6 - Estimated Total Cost of Issuer Specific Requirements

Type of Issuer	Estimated annual issuers[1]	Issuer Specific costs per issuer OM		Estimated Total Cost of Issuer Specific Req. (all issuers)	
		Minimum	Maximum	Minimum	Maximum
Collective investment vehicles	65	$373	$2,700	$24,215	$175,510
Issuers engaged in real estate activities	58	$2,499	$12,494	$144,925	$724,626
Other issuers	26	$0	$0	$0	$0
Total	**149**			**$169,140**	**$900,137**

[1] Estimate based on the median annual number of issuers that raised capital under the OM Exemption for distributions to Ontario residents from January 2017 to August 2019. The annual number for 2019 was extrapolated based on a pro-rated estimate of issuer activity over the first 8 months.

Assuming the issuer has ongoing distributions throughout the year, they will be required to provide an amended offering memorandum and may also incur additional issuer specific cost outlined above. The estimated annual cost of the amended offering memorandum and additional issuer specific requirements is $15,373 to $69,401 for each issuer that would, under the Proposed Amendments, be a collective investment vehicle; $17,499 to $79,195 for each issuer that would be engaged in real estate activities; and $15,000 to $66,701 for all other types of issuers (see **Table 7**). For issuers that would, under the Proposed Amendments, be engaged in real estate activities, this assumes issuers will incur the cost of preparing its 6-month interim financial report and amending its offering memorandum disclosure generally (see **Table 4**) and the cost of one property appraisal (see **Table 2**). As noted with respect to **Table 6**, the assumption that each issuer that would be engaged in real estate activities will be required to provide an appraisal will overestimate the total costs to these issuers because an appraisal is only required in certain circumstances. For collective investment vehicles, this assumes the issuer will incur the cost of preparing its 6-month interim financial report and amending its offering memorandum disclosure generally (see **Table 4**) and verifying Schedule 2 (see **Table 3**). For all other issuers, the costs are just those to prepare its 6-month interim financial report and amending its offering memorandum disclosure generally (see **Table 4**).

Table 7 - Estimated Total Cost of 6-month Amendment of Offering Memorandum

		Estimated issuers in continuous distribution[2]		Per Issuer Cost: 6-month updated OM[3]		Estimated Annual Total Cost	
Type of Issuer	**Estimated annual issuers[1]**	**Percent**	**Issuers affected**	**Minimum**	**Maximum**	**Minimum**	**Maximum**
Collective investment vehicles	65	74%	48	$15,373	$69,401	$738,057	$3,332,044
Issuers engaged in real estate activities	58	34%	20	$17,499	$79,195	$343,765	$1,555,790
Other issuers	26	27%	7	$15,000	$66,701	$105,000	$466,907
Total	**149**		**75**			**$1,186,822**	**$5,354,741**

[1] Estimate based on the median annual number of issuers that raised capital under the OM Exemption for distributions to Ontario residents from January 2017 to August 2019. The annual number for 2019 was extrapolated based on a pro-rated estimate of issuer activity over the first 8 months.

[2] Estimated based on historical filings of issuers in continuous distribution over multiple 6-month periods from January 2017 to August 2019 based on reported F1 filings.

[3] Estimate includes issuer specific cost in addition to the estimated cost of updating an offering memorandum.

As detailed in **Table 8**, we estimate an issuer's total costs in the first year after the Proposed Amendments are adopted to be the sum of the one-time administrative costs (see **Table 1**), issuer-specific costs (see **Table 6**) and cost of preparing a 6-month amendment of its offering memorandum (see **Table 7**), as applicable depending on the type of issuer and whether it is ongoing distribution.

Table 8 - Estimated Cost of Proposed Amendments Per Issuer

		Estimated Total 1st-Year Cost		Estimated Total Annual Ongoing Cost	
Type of Issuer	**Continuous Distribution?**	**Minimum**	**Maximum**	**Minimum**	**Maximum**
Collective investment vehicles	No	$948	$5,543	$373	$2,700
	Yes	$16,320	$74,944	$15,745	$72,101
Issuers engaged in real estate activities	No	$3,074	$15,336	$2,499	$12,494
	Yes	$20,573	$94,531	$19,997	$91,688
Other issuers	No	$575	$2,842	$0	$0
	Yes	$15,575	$69,543	$15,000	$66,701

Based on historical data, we estimate that approximately 149 issuers will rely on the OM Exemption in Ontario on an annual basis. Additionally, we expect approximately 75 or approximately half of those issuers to be in continuous distribution throughout the year and hence would incur additional cost as indicated in **Table 7**

In aggregate, the total expected cost of the Proposed Amendments in the first year after their adoption would be approximately $1.44 million to $6.68 million and would be approximately $1.36 million to $6.25 million each year thereafter (**Table 9**). The expected ongoing annual cost of the Proposed Amendments represents approximately 0.8% to 3.5% of the total capital raised under the OM Exemption by Canadian issuers from Ontario investors. In fact, the expected cost for issuers would represent a much smaller proportion of the total capital raised from all investors, not just those resident in Ontario. It is also important to note that the estimated costs are the lowest for issuers that, under the Proposed Amendments, would not be engaged in real estate activities or a collective investment vehicle. We believe that this small cost as a portion of capital raised by OM Issuers is appropriate considering the benefit it will provide to investors of providing them with more tailored and timely disclosure with which to make an investment decision.

Table 9 - Estimated Total Cost of Proposed Amendments

Type of Issuer	Estimated annual issuers[1]	Estimated Total 1st-Year Cost		Estimated Total Annual On-going Cost	
		Minimum	Maximum	Minimum	Maximum
Collective investment vehicles	65	$0.80M	$3.69M	$0.76M	$3.51M
Issuers engaged in real estate activities	58	$0.52M	$2.45M	$0.49M	$2.28M
Other issuers	26	$0.12M	$0.54M	$0.11M	$0.47M
Total	**149**	**$1.44M**	**$6.68M**	**$1.36M**	**$6.25M**

Estimated Cost as % Annual Gross Proceeds[2]	Estimated Total 1st-Year Cost (%)		Estimated Total Annual On-going Cost (%)	
	Minimum	Maximum	Minimum	Maximum
All Issuers	**0.8%**	**3.7%**	**0.8%**	**3.5%**
Collective investment vehicles	0.9%	4.1%	0.8%	3.9%
Issuers engaged in real estate activities	0.7%	3.5%	0.7%	3.2%
Other issuers	0.7%	3.0%	0.6%	2.5%

[1] Estimate based on the median annual number of issuers that raised capital under the OM Exemption for distributions to Ontario residents from January 2017 to August 2019. The annual number for 2019 was extrapolated based on a pro-rated estimate of issuer activity

[2] Estimate based on the median annual gross proceeds raised under the offering memorandum exemption for distributions to Ontario residents from January 2017 to August 2019. The annual number for 2019 was extrapolated based on a pro-rated estimate of issuer activity

Alternatives Considered

No alternatives to rule-making were considered.

Reliance on Unpublished Studies

In developing the Proposed Amendments and Proposed Changes, we did not rely on any significant unpublished study, report or other written material.

Authority for Proposed Amendments

In Ontario, the rule-making authority for the Proposed Amendments is paragraph 20 of subsection 143(1) of the *Securities Act* (Ontario).

Questions

Please refer your questions on this Annex to either of the following:

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Chapter 7

Insider Reporting

This chapter is available in the print version of the OSC Bulletin, as well as as in Carswell's internet service SecuritiesSource (see www.carswell.com).

This chapter contains a weekly summary of insider transactions of Ontario reporting issuers in the System for Electronic Disclosure by Insiders (SEDI). The weekly summary contains insider transactions reported during the seven days ending Sunday at 11:59 pm.

To obtain Insider Reporting information, please visit the SEDI website (www.sedi.ca).

Chapter 11

IPOs, New Issues and Secondary Financings

INVESTMENT FUNDS

Issuer Name:
Ninepoint 2020 Short Duration Flow-Through Limited Partnership
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated September 14, 2020
NP 11-202 Receipt dated September 14, 2020
Offering Price and Description:
Limited Partnership
Class A Units
Class F Units
$25,000,000 (maximum offering)
1,000,000 Limited Partnership Units
Price per Unit: $25
Minimum Subscription: $2,500 (100 Units)
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
CIBC World Markets Inc.
TD Securities Inc.
National Bank Financial Inc.
Scotia Capital Inc.
BMO Nesbitt Burns Inc.
Richardson GMP Limited
Industrial Alliance Securities Inc.
Manulife Securities Incorporated
Raymond James Ltd.
Canaccord Genuity Corp.
Desjardins Securities Inc.
Promoter(s):
Ninepoint 2019 Corporation
Project #3100317

Issuer Name:
Desjardins Low Volatility Global Equity Fund (formerly Desjardins IBrix Low Volatility Global Equity Fund)
Principal Regulator – Quebec
Type and Date:
Amendment #3 to Final Simplified Prospectus dated September 2, 2020
NP 11-202 Final Receipt dated Sep 11, 2020
Offering Price and Description:
A-Class Units, I-Class Units, C-Class Units, F-Class Units and D-Class Units
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2979122

NON-INVESTMENT FUNDS

Issuer Name:
CloudMD Software & Services Inc. (formerly Premier Health Group Inc.)
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated September 8, 2020
NP 11-202 Preliminary Receipt dated September 8, 2020
Offering Price and Description:
$18,078,000.00
13,100,000 Common Shares
Price: $1.38 per Common Share
Underwriter(s) or Distributor(s):
Canaccord Genuity Corp.
Promoter(s):
-
Project #3110767

Issuer Name:
CU Inc.
Principal Regulator - Alberta
Type and Date:
Preliminary Shelf Prospectus dated September 9, 2020
NP 11-202 Preliminary Receipt dated September 9, 2020
Offering Price and Description:
$1,200,000,000.00
Debentures (Unsecured)
Underwriter(s) or Distributor(s):
RBC DOMINION SECURITIES INC
BMO NESBITT BURNS INC.
TD SECURITIES INC.
SCOTIA CAPITAL INC.
CIBC WORLD MARKETS INC.
MUFG SECURITIES (CANADA), LTD.
Promoter(s):
-
Project #3111607

Issuer Name:
Galaxy Digital Holdings Ltd.
Principal Regulator - Ontario
Type and Date:
Preliminary Shelf Prospectus dated September 9, 2020
NP 11-202 Preliminary Receipt dated September 9, 2020
Offering Price and Description:
US$100,000,000
Ordinary Shares
Warrants
Subscription Receipts
Units
Debt Securities
Share Purchase Contracts
Rights
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3111537

Issuer Name:
GoGold Resources Inc.
Principal Regulator - Nova Scotia
Type and Date:
Preliminary Short Form Prospectus dated September 8, 2020
NP 11-202 Preliminary Receipt dated September 8, 2020
Offering Price and Description:
C$30,000,000.00
20,000,000 Common Shares
Price: C$1.50 per Offered Share
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3110292

Issuer Name:
Gold Standard Ventures Corp.
Principal Regulator - British Columbia
Type and Date:
Preliminary Shelf Prospectus dated September 8, 2020
NP 11-202 Preliminary Receipt dated September 9, 2020
Offering Price and Description:
$400,000,000.00
Common Shares
Debt Securities
Subscription Receipts
Warrants
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3111271

Issuer Name:
Nuvei Corporation
Principal Regulator - Quebec
Type and Date:
Amendment dated September 4, 2020 to Preliminary Long Form Prospectus dated September 1, 2020
NP 11-202 Preliminary Receipt dated September 8, 2020
Offering Price and Description:
US$600,000,000.00
Subordinate Voting Shares
Underwriter(s) or Distributor(s):
GOLDMAN SACHS CANADA INC.
CREDIT SUISSE SECURITIES (CANADA), INC.
BMO Nesbitt Burns Inc.
RBC DOMINION SECURITIES INC.
CITIGROUP GLOBAL MARKETS CANADA INC.
MERRILL LYNCH CANADA INC.
NATIONAL BANK FINANCIAL INC.
SCOTIA CAPITAL INC.
TD SECURITIES INC.
CIBC WORLD MARKETS INC.
RAYMOND JAMES LTD.
STIFEL NICOLAUS CANADA INC.
Promoter(s):
-
Project #3109725

Issuer Name:
Lightspeed POS Inc.
Principal Regulator - Quebec
Type and Date:
Amendment dated September 2, 2020 to Final Shelf Prospectus dated February 6, 2020
NP 11-202 Receipt dated September 9, 2020
Offering Price and Description:
C$2,000,000,000.00
Subordinate Voting Shares
Preferred Shares
Debt Securities
Warrants
Subscription Receipts
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2944228

Issuer Name:
Prismo Metals Inc.
Principal Regulator - British Columbia
Type and Date:
Final Long Form Prospectus dated September 8, 2020
NP 11-202 Receipt dated September 8, 2020
Offering Price and Description:
Common Shares 4,000,000 $0.125
Underwriter(s) or Distributor(s):
HAYWOOD SECURITIES INC.
Promoter(s):
Craig Gibson
Project #3027865

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Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Voluntary Surrender	Mellon Investments Corporation	Portfolio Manager Commodity Trading Manager	August 31, 2020 September 4, 2020
Consent to Suspension (Pending Surrender)	Takota Asset Management Inc.	Portfolio Manager & Exempt Market Dealer	September 10, 2020
Change in Registration Category	Saguenay Strathmore Capital Inc.	From: Portfolio Manager and Exempt Market Dealer To: Investment Fund Manager, Portfolio Manager and Exempt Market Dealer	September 10, 2020

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