

This is an unofficial consolidation of National Instrument 45-106 *Prospectus Exemptions*, its forms and companion policy current to April 30, 2016. This document is for reference purposes only and is not an official statement of law.

The text boxes in this document are for explanatory purposes only and are not part of National Instrument 45-106.

National Instrument 45-106 ***Prospectus Exemptions***

*Text boxes in this Instrument located **above** sections 2.1 to 2.5, 2.8 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** the definition of “accredited investor” in section 1.1. and below sections 2.3, 2.4, 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;

“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 Quebec, 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 National Instrument 81-102 *Investment Funds*;

“designated rating organization” has the same meaning as in National Instrument 81-102 *Investment Funds*;

“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 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*;

“MD&A” has the same meaning as in National Instrument 51-102 *Continuous Disclosure Obligations*

“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;

“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;

“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;

“**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 (t) of the definition of “accredited investor” in section 1.1, 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.

PART 1: 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

<p>Refer to Appendix E of National Instrument 45-102 <i>Resale of Securities</i>. First trades are subject to a seasoning period on resale.</p>
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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 <i>Resale of Securities</i>. First trades are subject to a restricted period on resale.
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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.

Founder, control person and family – Ontario

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), 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), 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), 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) In 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 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) A certificate under subsection (8) must be true

- (a) at the date the certificate is signed, and
- (b) at the date the offering memorandum is delivered to the purchaser.

(14) If a certificate under subsection (8) ceases to be true after it is delivered to the purchaser, the issuer cannot accept an agreement to purchase the security from the purchaser unless

- (a) the purchaser receives an update of the offering memorandum,
- (b) the update of the offering memorandum contains a newly dated certificate signed in compliance with subsection (9), (10), (10.1), (10.2), (10.3), (11) or (11.1) and
- (c) the purchaser re-signs the agreement to purchase the security.

(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 offering memorandum with the securities regulatory authority on or before the 10th day after the distribution under the offering memorandum or update of the offering memorandum.

(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].

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.

(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

<p>Refer to Appendix D of National Instrument 45-102 <i>Resale of Securities</i>. First trades are subject to a restricted period on resale.</p>

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 distribute 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 spouseif 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

- (d) 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
- (e) 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.,
 - (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) the 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 4: 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

This 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 exemption 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, or its DRO affiliate, that is at or above one of the following rating categories or that is at or above a rating category that replaces one of the following rating categories:

- (i) R-1(low) if issued by DBRS Limited;
 - (ii) F1 if issued by Fitch, Inc.;
 - (iii) P-1 if issued by Moody's Canada Inc.;
 - (iv) A-1(Low) (Canada national scale) if issued by Standard & Poor's Ratings Services (Canada);
- (c) the note or commercial paper has no credit rating from a designated rating organization, or its DRO affiliate, that is below one of the following rating categories or that is below a rating category that replaces one of the following rating categories:
- (i) R-1(low) if issued by DBRS Limited;
 - (ii) F2 if issued by Fitch, Inc.;
 - (iii) P-2 if issued by Moody's Canada Inc.;
 - (iv) A-1(Low) (Canada national scale) or A-2 (global scale) if issued by Standard & Poor's Ratings Services (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).

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) the 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, or their respective DRO affiliate, and at least one of the credit ratings is at or above one of the following rating categories or is at or above a rating category that replaces one of the following rating categories:
 - (A) R-1(high)(sf) if issued by DBRS Limited;
 - (B) F1+sf if issued by Fitch, Inc.;
 - (C) P-1(sf) if issued by Moody's Canada Inc.;
 - (D) A-1(High)(sf) (Canada national scale) or A-1+(sf) (global scale) if issued by Standard & Poor's Ratings Services (Canada);
 - (ii) it has no credit rating from a designated rating organization, or its DRO affiliate, that is below one of the following rating categories or that is below a rating category that replaces one of the following rating categories:
 - (A) R-1(low)(sf) if issued by DBRS Limited;
 - (B) F2sf if issued by Fitch, Inc.;
 - (C) P-2(sf) if issued by Moody's Canada Inc.;
 - (D) A-1(Low)(sf) (Canada national scale) or A-2(sf) (global scale) if issued by Standard & Poor's Ratings Services (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 rating from each of the designated rating organizations providing a rating on the short-term securitized product under subparagraph 2.35.2(a)(i), or their respective DRO affiliate, for its senior, unsecured short-term debt, none of which is dependent upon a guarantee by a third party, and each rating from such designated rating organizations, or their respective DRO affiliate, is at or above the following rating categories or is at or above a rating category that replaces one of the following rating categories:
 - 1. R-1(low) if issued by DBRS Limited;
 - 2. F2 if issued by Fitch, Inc.;
 - 3. P-2 if issued by Moody's Canada Inc.;
 - 4. A-1(Low) (Canada national scale) or A-2 (global scale) if issued by Standard & Poor's Ratings Services (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, 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) 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

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

[Under section 8.5 of this Instrument, Part 3 was no longer available in any jurisdiction. In British Columbia, Part 3 was repealed by B.C. Reg. 227/2009. All other jurisdictions will repeal Part 3 in these amendments.]

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 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 financial year-end of the investment fund.

Required form of report of exempt distribution

6.3 (1) The required form of report under section 6.1 [*Report of exempt distribution*] is:

- (a) Form 45-106F1 in all jurisdictions except British Columbia; and
- (b) Form 45-106F6 in British Columbia.

(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 or, in British Columbia, Form 45-106F6.

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.

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*] is Form 45-106F12.

Use of information in Form 45-106F6 Schedule I – British Columbia

6.6 A person must not, directly or indirectly, use the information in Schedule I of a completed Form 45-106F6, in whole or in part, for any purpose other than research concerning the issuer for the person's own investment purpose.

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 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.

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.

Repealed

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.

Repealed

8.3.1 Repealed.

8.4 Transition – reinvestment plan – 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.

8.4.1 Transition – offering memorandum exemption – update of offering memorandum – 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*.

8.4.2 Transition – offering memorandum exemption – marketing materials – 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.

8.5 Repealed.

8.6 Repeal of former instrument – 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.

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	<p>“contract”, “group insurance”, “life insurance”, and “policy” have the respective meanings assigned to them under the <i>Insurance Act</i> (Northwest Territories).</p> <p>“insurance company” means an insurer as defined in the <i>Insurance Act</i> (Northwest Territories) that is licensed under that Act.</p>
NOVA SCOTIA	<p>“contract”, “group insurance”, “life insurance”, and “policy” have the respective meanings assigned to them under the <i>Insurance Act</i> (Nova Scotia) and the regulations under that Act.</p> <p>“insurance company” has the same meaning as in section 3(1)(a) of the <i>General Securities Rules</i> (Nova Scotia).</p>
ONTARIO	<p>“contract”, “group insurance”, and “policy” have the respective meanings assigned to them in section 1 and 171 of the <i>Insurance Act</i> (Ontario).</p> <p>“life insurance” has the respective meaning assigned to it in Schedule 1 by Order of the Superintendent of Financial Services.</p> <p>“insurance company” has the same meaning as in section 1(2) of the <i>General Regulation</i> (Ont. Reg. 1015).</p>
QUÉBEC	<p>“contract of insurance”, “group insurance”, “life insurance”, and “policy” have the respective meanings assigned to them under the Civil Code of Québec.</p> <p>“insurance company” means an insurer holding a license under the Act respecting insurance (R.S.Q., c. A-32).</p>
PRINCE EDWARD ISLAND	<p>“contract”, “group insurance”, “insurer”, “life insurance and “policy” have the respective meanings assigned to them in sections 1 and 174 of the <i>Insurance Act</i> (Prince Edward Island).</p> <p>“insurance company” means an insurance company licensed under the <i>Insurance Act</i> (R.S.P.E.I. 1988, Cap. I-4),</p>

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 <i>Securities Act</i> (Alberta)
BRITISH COLUMBIA	Paragraph (c) of the definition of “distribution” contained in section 1 of the <i>Securities Act</i> (British Columbia)
MANITOBA	Section 1(b) of the definition of “primary distribution to the public” contained in subsection 1(1) of the <i>Securities Act</i> (Manitoba)
NEW BRUNSWICK	Paragraph (c) of the definition of “distribution” contained in section 1(1) of the <i>Securities Act</i> (New Brunswick)
NEWFOUNDLAND AND LABRADOR	Section 2(1)(1)(iii) of the <i>Securities Act</i> (Newfoundland and Labrador)
NORTHWEST TERRITORIES	Paragraph (c) of the definition of “distribution” in subsection 1(1) of the <i>Securities Act</i> (Northwest Territories)
NOVA SCOTIA	Section 2(1)(1)(iii) of the <i>Securities Act</i> (Nova Scotia)
ONTARIO	Paragraph (c) of the definition of “distribution” contained in subsection 1(1) of the <i>Securities Act</i> (Ontario)
PRINCE EDWARD ISLAND	Section 1(f)(iii) of the <i>Securities Act</i> (Prince Edward Island)
QUÉBEC	Paragraph 9 of the definition of “distribution” contained section 5 of the <i>Securities Act</i> (Québec)
SASKATCHEWAN	Section 2(1)(r)(iii) of <i>The Securities Act, 1988</i> (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 <i>Securities Act</i> (Alberta)
MANITOBA	Subsection 69(3) of <i>The Securities Act</i> (Manitoba)
NEW BRUNSWICK	Subsection 58(3) of the <i>Securities Act</i> (New Brunswick)
NEWFOUNDLAND AND LABRADOR	Subsection 39(3) of the <i>Securities Act</i> (Newfoundland and Labrador)
NORTHWEST TERRITORIES	Subsection 147(1) of the <i>Securities Act</i> (Northwest Territories)
NOVA SCOTIA	Subsection 44(3) of the <i>Securities Act</i> (Nova Scotia)
NUNAVUT	Subsection 147(1) of the <i>Securities Act</i> (Nunavut)
ONTARIO	Subsection 38(3) of the <i>Securities Act</i> (Ontario)
PRINCE EDWARD ISLAND	Subsection 147(1) of the <i>Securities Act</i> (Prince Edward Island)
QUÉBEC	Subsection 199(4) of the <i>Securities Act</i> (Québec)
SASKATCHEWAN	Subsection 44(3) of <i>The Securities Act, 1988</i> (Saskatchewan)
YUKON	Subsection 147(1) of the <i>Securities Act</i> (Yukon).

Appendix D
to
National Instrument 45-106 Prospectus Exemptions
Secondary Market Liability Provisions

JURISDICTION	SECURITIES LEGISLATION REFERENCE
ALBERTA	Part 17.01 of the <i>Securities Act</i> (Alberta)
BRITISH COLUMBIA Columbia)	Part 16.1 of the <i>Securities Act</i> (British
MANITOBA	Part XVIII of <i>The Securities Act</i> (Manitoba)
NEW BRUNSWICK	Part 11.1 of the <i>Securities Act</i> (New Brunswick)
NEWFOUNDLAND AND LABRADOR	Part XXII.1 of the <i>Securities Act</i> (Newfoundland and Labrador)
NORTHWEST TERRITORIES Territories)	Part 14 of the <i>Securities Act</i> (Northwest
NOVA SCOTIA	Sections 146A to 146N of the <i>Securities Act</i> (Nova Scotia)
NUNAVUT	Part 14 of the <i>Securities Act</i> (Nunavut)
ONTARIO	Part XXIII.1 of the <i>Securities Act</i> (Ontario)
PRINCE EDWARD ISLAND Island)	Part 14 of the <i>Securities Act</i> (Prince Edward
QUÉBEC	Division II of Chapter II of Title VIII of the <i>Securities Act</i> (Québec)
SASKATCHEWAN	Part XVIII.1 of <i>The Securities Act, 1988</i> (Saskatchewan)
YUKON	Part 14 of the <i>Securities Act</i> (Yukon).

Form 45-106F1
Report of Exempt Distribution

Except in British Columbia, this is the form required under section 6.1 of National Instrument 45-106 for a report of exempt distribution. In British Columbia, the required form is Form 45-106F6.

Issuer/underwriter information

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

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

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

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

Details of distribution

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

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

Item 6: For each security distributed:

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

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

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

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

Commissions and finder’s fees

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

If the securities being issued as compensation are or include convertible securities, such as warrants or options, please add a footnote describing the terms of the convertible securities,

including the term and exercise price. Do not include the exercise price of any convertible security in the total dollar value of the compensation unless the securities have been converted.

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

Item 9: If a distribution is made to one or more individuals in Ontario, include the attached “Authorization of Indirect Collection of Personal Information for Distributions in Ontario”. The “Authorization of Indirect Collection of Personal Information for Distributions in Ontario” is only required to be filed with the Ontario Securities Commission.

Certificate

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

Date: _____

Name of [issuer/underwriter] (please print)

Print name, title and telephone number of person signing

Signature

Instruction

The person filing the form must complete the bracketed information by deleting the inappropriate word.

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

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

Notice - Collection and use of personal information

The personal information required under this form is collected on behalf of and used by the securities regulatory authorities or, where applicable, the regulators under the authority granted in securities legislation for the purposes of the administration and enforcement of the securities legislation.

If you have any questions about the collection and use of this information, contact the securities regulatory authority or, where applicable, the regulator in the jurisdiction(s) where the form is filed, at the address(es) listed at the end of this report.

Authorization of Indirect Collection of Personal Information for Distributions in Ontario

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

(a) has been notified by the issuer/underwriter

(i) of the delivery to the Ontario Securities Commission of the information pertaining to the person as set out in Schedule I,

(ii) that this information is being collected indirectly by the Ontario Securities Commission under the authority granted to it in securities legislation,

(iii) that this information is being collected for the purposes of the administration and enforcement of the securities legislation of Ontario, and

(iv) of the title, business address and business telephone number of the public official in Ontario, as set out in this report, who can answer questions about the Ontario Securities Commission's indirect collection of the information, and

(b) has authorized the indirect collection of the information by the Ontario Securities Commission.

Schedule I

Complete the following table.

For reports filed under sub-section 6.1(1)(j) (TSX Venture Exchange offering) of National Instrument 45-106 the following table only needs to list the total number of purchasers by jurisdiction instead of including the name, residential address and telephone number of each purchaser.

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

The information in this schedule will not be placed on the public file of any securities regulatory authority or, where applicable, regulator. However, freedom of information legislation in certain jurisdictions may require the securities regulatory authority or, where applicable, regulator to make this information available if requested.

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

Instructions:

1. References to a purchaser in this report are to the beneficial owner of the securities.
2. Except in British Columbia, file this report and the applicable fee in each jurisdiction in which a distribution is made at the addresses listed at the end of this report. If the distribution is made in more than one jurisdiction, the issuer/underwriter must complete a single report identifying all purchasers and file that report in each of the jurisdictions in which the distribution is made. Filing fees associated with the filing of the report are not affected by identifying all purchasers in a single report.
 - 2.1 In British Columbia, file Form 45-106F6 and pay the applicable fee. If the distribution is made in British Columbia and one or more other jurisdictions, file Form 45-106F6 in British Columbia and file this form, following instruction 2, in the other applicable jurisdictions.
3. If the space provided for any answer is insufficient, additional sheets may be used and must be cross-referenced to the relevant part and properly identified and signed by the person whose signature appears on the report.
4. One report may be used for multiple distributions occurring within 10 days of each other provided that the report is filed on or before the 10th day following the first of such distributions.
5. The information in items 5, 6, and 7 must reconcile with the information in Schedule I of Form 45-106F1. All dollar amounts must be in Canadian dollars.
6. In order to determine the applicable fee, consult the securities legislation of each jurisdiction in which a distribution is made.
7. This report must be filed in English or in French. In Québec, the issuer/underwriter must comply with linguistic obligations and rights prescribed by Québec law.

Securities Regulatory Authorities and Regulators

Alberta Securities Commission

Suite 600, 250–5th St. SW
Calgary, Alberta T2P 0R4
Telephone: (403) 297-6454
Facsimile: (403) 297-6156

Saskatchewan Financial Services Commission

Suite 601 - 1919 Saskatchewan Drive
Regina, Saskatchewan S4P 4H2
Telephone: (306) 787-5879
Facsimile: (306) 787-5899

The Manitoba Securities Commission

500 – 400 St Mary Avenue
Winnipeg, Manitoba R3C 4K5
Telephone: (204) 945-2548
Toll free in Manitoba 1-800-655-5244
Facsimile: (204) 945-0330

Ontario Securities Commission

Suite 1903, Box 55
20 Queen Street West
Toronto, Ontario M5H 3S8
Telephone: (416) 593- 8314
Toll free in Canada: 1-877-785-1555
Facsimile: (416) 593-8122
Public official contact regarding indirect collection of information:
Administrative Support Clerk
Telephone (416) 593-3684

Autorité des marchés financiers

800, Square Victoria, 22e étage
C.P. 246, Tour de la Bourse
Montréal, Québec H4Z 1G3
Telephone: (514) 395-0337
Or 1-877-525-0337
Facsimile: (514) 873-6155 (For filing purposes only)
Facsimile: (514) 864-6381 (For privacy requests only)

New Brunswick Securities Commission

85 Charlotte Street, Suite 300
Saint John, New Brunswick E2L 2J2
Telephone: (506) 658-3060
Toll Free in New Brunswick 1-866-933-2222
Facsimile: (506) 658-3059

Nova Scotia Securities Commission

2nd Floor, Joseph Howe Building
1690 Hollis Street
Halifax, Nova Scotia B3J 3J9
Telephone: (902) 424-7768
Facsimile: (902) 424-4625

Prince Edward Island Securities Office

95 Rochford Street, 4th Floor Shaw Building
P.O. Box 2000
Charlottetown, Prince Edward Island C1A 7N8
Telephone: (902) 368-4569
Facsimile: (902) 368-5283

Government of Newfoundland and Labrador

Financial Services Regulation Division
P.O. Box 8700
Confederation Building
2nd Floor, West Block
Prince Philip Drive
St. John's, NFLD A1B 4J6
Attention: Director of Securities
Telephone: (709) 729-4189
Facsimile: (709) 729-6187

Government of Yukon

Department of Community Services
Law Centre, 3rd Floor
2130 Second Avenue
Whitehorse, YT Y1A 5H6
Telephone: (867) 667-5314
Facsimile: (867) 393-6251

Government of Northwest Territories

Government of the Northwest Territories
Office of the Superintendent of Securities

P.O. Box 1320

Yellowknife, NT X1A 2L9

Attention: Deputy Superintendent, Legal & Enforcement

Telephone: (867) 920-8984

Facsimile: (867) 873-0243

Government of Nunavut

Department of Justice

Legal Registries Division

P.O. Box 1000, Station 570

1st Floor, Brown Building

Iqaluit, Nunavut X0A 0H0

Telephone: (867) 975-6590

Facsimile: (867) 975-6594

Form 45-106F2
Offering Memorandum for Non-Qualifying Issuers

Date: [Insert the date from the certificate page.]

The Issuer

Name:

Head office:

Address:

Phone #:

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 Exchange.]

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.]

Resale restrictions

State: “You will be restricted from selling your securities for [4 months and a day/an indefinite period]. See item 10.”

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 the 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.”

[All of the above information must appear on a single cover page.]

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, 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 to 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. offering	Assuming max. offering
A.	Amount to be raised by this offering	\$	\$
B.	Selling commissions and fees	\$	\$
C.	Estimated offering costs (e.g., legal, accounting, 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 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. offering	Assuming max. 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.

Item 2 – Business of [name of issuer or other term used to refer to issuer]

2.1 Structure - State the business structure (e.g., partnership, corporation or trust), the statute and the province, state or other jurisdiction under which the issuer is incorporated, continued or organized, and the date of incorporation, continuance or organization.

2.2 Our Business - Describe the issuer’s business. The disclosure must provide sufficient information to enable a prospective purchaser to make an informed investment decision. For a non-resource issuer this disclosure may include principal products or services, operations, market, marketing plans and strategies and a discussion of the issuer’s current and prospective competitors. For a resource issuer this will require a description of principal properties (including interest held) and a summary of material information including, if applicable: the stage of development, reserves, geology, operations, production and mineral reserves or mineral resources being explored or developed. A resource issuer disclosing scientific or technical information for a mineral project must follow General Instruction A.8 of this Form. A resource issuer disclosing information about its oil and gas activities must follow General Instruction A.9 of this Form.

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 major events that have occurred or conditions that have influenced (favourably or unfavourably) the development of the issuer.

2.4 Long Term Objectives - Describe each significant event that must occur to accomplish the issuer’s long term 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 and How We Intend to Achieve Them

(a) Disclose the issuer’s objectives for the next 12 months.

(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	Target completion date or, if not known, number of months to complete	Our 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. If alternative financing has been arranged, disclose the amount, source and all outstanding conditions that must be satisfied.

2.7 Material Agreements - Disclose the key terms of all material agreements

(a) to which the issuer is currently a party, or

(b) with a related party including the following information:

- (i) if the agreement is with a related party, the name of the related party and the relationship,
- (ii) a description of any asset, property or interest acquired, disposed of, leased, under option, etc.,
- (iii) a description of any service provided,
- (iv) purchase price and payment terms (e.g., paid in instalments, cash, securities or work commitments),
- (v) the principal amount of any debenture or loan, the repayment terms, security, due date and interest rate,
- (vi) the date of the agreement,
- (vii) the amount of any finder's fee or commission paid or payable to a related party in connection with the agreement,
- (viii) any material outstanding obligations under the agreement, and
- (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.

Item 3 – Interests of Directors, Management, Promoters and Principal Holders

3.1 Compensation and Securities Held - Using the following table, provide the specified information about each director, officer and promoter of the issuer and each person who, directly or indirectly, beneficially owns or controls 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.

Name and municipality of principal residence	Positions held (e.g., director, officer, promoter and/or principal holder) and the date of obtaining that position	Compensation paid by issuer or related party in the most recently completed financial year and the compensation anticipated to be paid in the current financial year	Number, type and percentage of securities of the issuer held after completion of min. offering	Number, type and percentage of securities of the issuer held after completion of max. offering

3.2 Management Experience - Using the following table, disclose the principal occupations of the directors and executive officers over the past five years. In addition, for each individual, describe any relevant experience in a business similar to the issuer's.

Name	Principal occupation and related experience

3.3 Penalties, Sanctions and Bankruptcy

(a) Disclose any penalty or sanction (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 director, executive officer or control person of the issuer, or
- (ii) an issuer of which a person referred to in (i) above was a director, executive officer or control person at the time.

(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 Loans - Disclose the principal amount of any debenture or loan, the repayment terms, security, due date and interest rate due to or from the directors, management, promoters and principal holders as at a date not more than 30 days prior to the date of the offering memorandum.

Item 4 – Capital Structure

4.1 Share Capital - Using the following table, provide the required information about outstanding securities of the issuer (including options, warrants and other securities convertible into shares). If necessary, notes to the table may be added to describe the material terms of the securities.

Description of security	Number authorized to be issued	Price per security	Number outstanding as at [a date not more than 30 days prior to the offering memorandum date]	Number outstanding after min. offering	Number outstanding after max. offering

4.2 Long Term Debt Securities - Using the following table, provide the required information about outstanding long term debt of the issuer. Disclose the portion of the debt due within 12 months of the date of the offering memorandum. If the securities being offered are debt securities, add a column to the table disclosing the amount of 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 the offering memorandum date]
			\$
			\$

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, 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 - Describe the material terms of the securities being offered, including:

- (a) voting rights or restrictions on voting,
- (b) conversion or exercise price and date of expiry,
- (c) rights of redemption or retraction, and
- (d) interest rates or dividend rates.

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., 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 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 (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 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 compensation (e.g., commission, corporate finance fee or finder’s fee) 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: 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.

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 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.”

10.2 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:

- 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 a reporting issuer in any province or territory of Canada.”
- 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 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 – 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.”

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 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

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 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 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.
6. When the term “related party” is used in this form, it refers to:
 - (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.
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 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.

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, or three 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 must be audited. The financial statements required under B.5, B.6 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. If the offering memorandum does not contain audited financial statements for the issuer’s most recently completed financial year, and if the distribution is ongoing, update the offering memorandum to include the annual audited 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.

13. The offering memorandum does not have to be updated to include interim financial reports for periods completed after the date that is 60 days before the date of the offering memorandum unless it is necessary to prevent the offering memorandum from containing a misrepresentation.
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 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.
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
 - (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% 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% 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) 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 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.
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 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 the acquisition is significant based only on the asset test or:
- (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,
 - (b) the acquisition was not or will not be a reverse take-over, as defined in NI 51-102, and
 - (c) [Repealed]
 - (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 operating statement for the most recently completed financial period referred to in C.4(b)(i) must be audited.

- (ii) a description of the property or properties and the interest acquired by the issuer,
- (iii) 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,
- (iv) actual production volumes of the property for the most recently completed year, and
- (v) 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 property, are not required to be audited if during the 12 months preceding the acquisition date or the proposed acquisition date, the daily average 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 of the total daily average 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.

Form 45-106F3
Offering Memorandum for Qualifying Issuers

Date: [Insert the date from the certificate page.]

The Issuer

Name:

Head office:

Address:

Phone #:

E-mail address:

Fax #:

Where currently listed or quoted? [e.g., TSX/TSX Venture Exchange]

Jurisdictions in which the issuer is a reporting issuer:

The Offering

Securities offered:

Price per security:

Minimum/Maximum offering: [If there is no minimum state in bold: “**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.]

Resale restrictions

State: “You will be restricted from selling your securities for 4 months and a day. See item 10”.

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 the 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.”

[All of the above information must appear on a single cover page.]

Item 1 – Use of Available Funds

1.1 Available 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 to 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. offering	Assuming max. offering
A.	Amount to be raised by this offering	\$	\$
B.	Selling commissions and fees	\$	\$
C.	Estimated offering costs (e.g., legal, accounting, 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 an insider, associate or affiliate of the issuer, disclose in a note to the table the name of the insider, associate or affiliate, 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. offering	Assuming max. 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.”

1.4 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

that there is no assurance that alternative financing will be available. If alternative financing has been arranged, disclose the amount, source and any outstanding conditions that must be satisfied.

Item 2 - Information About [name of issuer or other term used to refer to issuer]

2.1 Business Summary – Briefly (in one or two paragraphs) describe the business intended to be carried on by the issuer over the next 12 months. State whether this represents a change of business. The disclosure must provide sufficient information to enable a prospective purchaser to make an informed investment decision. If the issuer is a non-resource issuer, describe the products that the issuer is or will be developing or producing and the stage of development of each of the products. If the issuer is a resource issuer, state: whether the issuer’s principal properties are primarily in the exploration or in the development or production stage; what resources the issuer is engaged in exploring, developing or producing; and the locations of the issuer’s principal properties. A resource issuer who discloses information about its oil and gas activities must follow General Instruction A-9 of this Form.

2.2 Existing Documents Incorporated by Reference – State:

“Information has been incorporated by reference into this offering memorandum from documents listed in the table below, which have been filed with securities regulatory authorities or regulators in Canada. The documents incorporated by reference are available for viewing on the SEDAR website at www.sedar.com. In addition, copies of the documents may be obtained on request without charge from [insert complete address and telephone and the name of a contact person].

Documents listed in the table and information provided in those documents are not incorporated by reference to the extent that their contents are modified or superseded by a statement in this offering memorandum or in any other subsequently filed document that is also incorporated by reference in this offering memorandum.”

Using the following table, list all of the documents incorporated by reference (as required by Instruction D.1):

Description of document (In the case of material change reports, provide a brief description of the nature of the material change)	Date of document

2.3 Existing Documents Not Incorporated by Reference – State:

“Other documents available on the SEDAR website (for example, most press releases, take-over bid circulars, prospectuses and rights offering circulars) are not incorporated by reference into this offering memorandum unless they are specifically referenced in the table above. Your rights as described in item 11 of this offering memorandum apply only in respect of information contained in this offering memorandum and documents or information incorporated by reference.”

2.4 Existing Information Not Incorporated by Reference – Certain specified information (as outlined in Instruction D.2) contained in the documents incorporated by reference may be, but is

not required to be, incorporated by reference into the offering memorandum. If the issuer does not wish to incorporate that information into the offering memorandum, the issuer must state that and include a statement in the offering memorandum identifying:

- (a) the information that is not being incorporated by reference, and
- (b) the document in which the information is contained.

2.5 Future Documents Not Incorporated by Reference – State:

“Documents filed after the date of this offering memorandum are not deemed to be incorporated into this offering memorandum. However, if you subscribe for securities and an event occurs, or there is a change in our business or affairs, that makes the certificate to this offering memorandum no longer true, we will provide you with an update of this offering memorandum, including a newly dated and signed certificate, and will not accept your subscription until you have re-signed the agreement to purchase the securities.”

Item 3 – Interests of Directors, Executive Officers, Promoters and Principal Holders

3.1 Using the following table, provide information about each director, executive officer, promoter and each person who, directly or indirectly, beneficially owns or controls 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 or company that, directly or indirectly, beneficially owns or controls more than 50% of the voting rights of the principal holder.

Name and municipality of principal residence	Position(s) with the issuer

3.2 State: “You can obtain further information about directors and executive officers from [insert the name and date of the document(s) with the most current information, e.g., management information circular, annual information form or material change report].”

3.3 State: “Current information regarding the securities held by directors, executive officers and principal holders can be obtained from [refer to the SEDI website at www.sedi.ca or, if information cannot be obtained from the SEDI website, refer to the securities regulatory authority(ies) or regulator(s) from which the information can be obtained, including any website(s)]. [Name of issuer or other term used to refer to issuer] cannot guarantee the accuracy of this information.”

3.4 Loans – Disclose the principal amount of any debenture or loan, the repayment terms, security, due date and interest rate due to or from the directors, management, promoters and principal holders as at a date not more than 30 days prior to the date of the offering memorandum.

Item 4 – Capital Structure

Using the following table, provide the required information about outstanding securities of the issuer (including options, warrants and other securities convertible into shares). If necessary, notes to the table may be added to describe the material terms of the securities.

Description of security	Number authorized to be issued	Price per security	Number outstanding as at [a date not more than 30 days prior to the offering memorandum date]	Number outstanding after min. offering	Number outstanding after max. offering

Item 5 – Securities Offered

5.1 Terms of Securities – Describe the material terms of the securities being offered, including:

- (a) voting rights or restrictions on voting,
- (b) conversion or exercise price and date of expiry,
- (c) rights of redemption or retraction, and
- (d) interest rates or dividend rates.

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., 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.

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 (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 or company providing the income tax disclosure in (a).

6.3 Provide advice regarding the RRSP eligibility of the securities and the name of the person or company 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 or company has or will receive any compensation (e.g., commission, corporate finance fee or finder's fee) 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 – 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.

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 that will be sent to purchasers on an annual or on-going 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

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.

Unless permitted under securities legislation, you cannot trade the securities before the date that is 4 months and a day after the distribution date.”

Item 11 – 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 or company 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.”

Item 12 – 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 45-106F3
*Offering Memorandum for Qualifying Issuers***

A – General Instructions

1. Only a “qualifying issuer” may use this form.
2. An issuer using this form to draft an offering memorandum must incorporate by reference certain parts of its existing continuous disclosure base. An issuer that does not want to do this must use Form 45-106F2 *Offering Memorandum for Non-Qualifying Issuers*.
3. 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.
4. 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 that does not apply.
5. The issuer may include additional information in the offering memorandum other than that specifically required by the form. The offering memorandum is generally not required to contain the level of detail and extent of disclosure required by a prospectus. However, an offering memorandum must provide a prospective purchaser with sufficient information to make an informed investment decision.
6. 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.
7. It is an offence to make a misrepresentation in the offering memorandum. This applies 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.
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 Instrument 45-106 *Prospectus and Registration Exemptions*, the issuer must modify the disclosure in item 12 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 NI 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.

B – Financial Statements

1. All financial statements incorporated by reference into the offering memorandum must comply with NI 51-102 and National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*.
2. Forward-looking information 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. Additional guidance may be found in the companion policy to NI 51-102.

C – Required Updates to the Offering Memorandum

1. If the offering memorandum does not incorporate by reference the issuer's AIF, and audited financial statements for its most recently completed financial year, update the offering memorandum for any financial statements that are required to be filed prior to the distribution to incorporate by reference the documents as soon as the documents are filed on SEDAR.
2. Except for documents referred to in C.1, the offering memorandum does not have to be updated to incorporate by reference interim financial reports or other documents referred to in D.1 unless it is necessary to do so to prevent the offering memorandum from containing a misrepresentation.

D – Information about the Issuer

1. *Existing Documents Incorporated by Reference* – In addition to any other document that an issuer may choose to incorporate by reference, the issuer must incorporate the following documents:
 - (a) the issuer's AIF for the issuer's most recently completed financial year for which annual financial statements are either required to be filed or have been filed,
 - (b) material change reports, except confidential material change reports, filed since the end of the financial year in respect of which the issuer's AIF is filed,
 - (c) the interim financial report for the issuer's most recently completed interim period for which the issuer prepares an interim financial report that is required to be filed or have been filed and which ends after the most recently completed financial year referred to in (d),
 - (d) the comparative financial statements, together with the accompanying auditor's report, for the issuer's most recently completed financial year for which annual financial statements are required to be filed or have been filed,
 - (e) if, before the offering memorandum is filed, financial information about the issuer for a financial period more recent than the period for which financial statements are required under D.1(c) and (d) is publicly disseminated by, or on behalf of, the issuer through news release or otherwise, the content of the news release or public communication,
 - (f) management's discussion and analysis (MD&A) as required under NI 51-102 for the period specified in D.1(c) and D.1(d),
 - (g) each business acquisition report required to be filed under NI 51-102 for acquisitions completed since the beginning of the financial year in respect of which the issuer's AIF is filed, unless the issuer incorporated the business acquisition report by reference into its AIF for its most recently completed financial year for which annual financial statements are either

required to be filed or have been filed, or incorporated at least 9 months of the acquired business or related businesses operations into the issuer's most recent audited financial statements,

- (h) any information circular filed by the issuer since the beginning of the financial year in respect of which the issuer's most recent AIF is filed, other than an information circular prepared in connection with an annual general meeting if the issuer has filed and incorporated by reference an information circular for a subsequent annual general meeting,
- (i) if the issuer has oil and gas activities, as defined in National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*, the most recent Form 51-101F1, Form 51-101F2 and Form 51-101F3, filed by an SEC issuer, unless
 - (i) the issuer's current AIF is in the form of Form 51-102F2; or
 - (ii) the issuer is otherwise exempted from the requirements of NI 51-101,
- (j) any other disclosure document which the issuer has filed pursuant to an undertaking to a provincial and territorial securities regulatory authority or regulator since the beginning of the financial year in respect of which the issuer's most recent AIF is filed, and
- (k) any other disclosure document of the type listed above that the issuer has filed pursuant to an exemption from any requirement under securities legislation since the beginning of the financial year in respect of which the issuer's most recent AIF is filed.

2. *Mineral Property* – If a material part of the funds available as a result of the distribution is to be expended on a particular mineral property and if the issuer's most recent AIF does not contain the disclosure required under section 5.4 of Form 51-102F2 for the property or that disclosure is inadequate or incorrect due to changes, disclose the information required under section 5.4 of Form 51-102F2.

An issuer may incorporate any additional document provided that the document is available for viewing on the SEDAR website and that, on request by a purchaser, the issuer provides a copy of the document to the purchaser, without charge.

FORM 45-106F4 – Risk Acknowledgment

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Risk Acknowledgement

- I acknowledge that this is a risky investment.
- I am investing entirely at my own risk.
- No securities regulatory authority or regulator has evaluated or endorsed the merits of these securities or the disclosure in the offering memorandum.
- The person selling me these securities is not registered with a securities regulatory authority or regulator and has no duty to tell me whether this investment is suitable for me. *[Instruction: Delete if sold by registrant]*
- I will not be able to sell these securities except in very limited circumstances. I may never be able to sell these securities. *[Instruction: Delete if issuer is reporting]*
- The securities are redeemable, but I may only be able to redeem them in limited circumstances. *[Instruction: Delete if securities are not redeemable]*
- I 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]*
- I could lose all the money I invest.

I am investing \$ _____ [total consideration] in total; this includes any amount I am obliged to pay in future. _____ [name of issuer] will pay \$ _____ [amount of fee or commission] of this to _____ [name of person selling the securities] as a fee or commission.

I acknowledge that this is a risky investment and that I could lose all the money I invest.

Date

Signature of Purchaser

Print name of Purchaser

Sign 2 copies of this document. Keep one copy for your records.

You have 2 business days to cancel your purchase *[Instruction: The issuer must complete this section before giving the form to the purchaser.]*

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 are buying Exempt Market Securities

They are called *exempt market securities* because two parts of securities law do not apply to them. If an issuer wants to sell *exempt market securities* to you:

- the issuer does not have to give you a prospectus (a document that describes the investment in detail and gives you some legal protections), and
- the securities do not have to be sold by an investment dealer registered with a securities regulatory authority or regulator.

There are restrictions on your ability to resell *exempt market securities*. *Exempt market securities* are more risky than other securities.

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.

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. You may never be able to sell these securities.

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, call your local securities regulatory authority or regulator.

[Instruction: Insert the name, telephone number and website address of the securities regulatory authority or regulator in the jurisdiction in which you are selling these securities.]

[Instruction: The purchaser must sign 2 copies of this form. The purchaser and the issuer must each receive a signed copy.]

Schedule 1
Classification of Investors Under the Offering Memorandum Exemption

Instructions: This schedule must be completed together with the Risk Acknowledgement Form and Schedule 2 by individuals purchasing securities under the exemption (the offering memorandum exemption) in subsection 2.9(2.1) of National Instrument 45-106 *Prospectus Exemptions* (NI 45-106) in Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan.

How you qualify to buy securities under the offering memorandum exemption
Initial the statement under A, B, C or D containing the criteria that applies to you. (You may initial more than one statement.) If you initial a statement under B or C, you are not required to complete A.

A. You are an eligible investor because:		Your initials
ELIGIBLE INVESTOR	Your net income before taxes was more than \$75,000 in each of the 2 most recent calendar years, and you expect it to be more than \$75,000 in this calendar year. (You can find your net income before taxes on your personal income tax return.)	
	Your net income before taxes combined with your spouse's was more than \$125,000 in each of the 2 most recent calendar years, and you expect your combined net income to be more than \$125,000 in this calendar year. (You can find your net income before taxes on your personal income tax return.)	
	Either alone or with your spouse, you have net assets worth more than \$400,000. (Your net assets are your total assets, including real estate, minus your total debt including any mortgage on your property.)	
B. You are an eligible investor, as a person described in section 2.3 [<i>Accredited investor</i>] of NI 45-106 or, as applicable in Ontario, subsection 73.3 of the <i>Securities Act</i> (Ontario), because:		Your initials
ACCREDITED INVESTOR	Your net income before taxes was more than \$200,000 in each of the 2 most recent calendar years, and you expect it to be more than \$200,000 in this calendar year. (You can find your net income before taxes on your personal income tax return.)	
	Your net income before taxes combined with your spouse's was more than \$300,000 in each of the 2 most recent calendar years, and you expect your combined net income before taxes to be more than \$300,000 in the current calendar year.	
	Either alone or with your spouse, you own more than \$1 million in cash and securities, after subtracting any debt related to the cash and securities.	
	Either alone or with your spouse, you have net assets worth more than \$5 million. (Your net assets are your total assets (including real estate) minus your total debt.)	

C. You are an eligible investor, as a person described in section 2.5 [Family, friends and business associates] of NI 45-106, because:		Your initials
FAMILY, FRIENDS AND BUSINESS ASSOCIATES	<p>You are:</p> <p>1) [check all applicable boxes]</p> <p><input type="checkbox"/> a director of the issuer or an affiliate of the issuer</p> <p><input type="checkbox"/> an executive officer of the issuer or an affiliate of the issuer</p> <p><input type="checkbox"/> a control person of the issuer or an affiliate of the issuer</p> <p><input type="checkbox"/> a founder of the issuer</p> <p>OR</p> <p>2) [check all applicable boxes]</p> <p><input type="checkbox"/> a person of which a majority of the voting securities are beneficially owned by, or a majority of the directors are, (i) individuals listed in (1) above and/or (ii) family members, close personal friends or close business associates of individuals listed in (1) above</p> <p><input type="checkbox"/> a trust or estate of which all of the beneficiaries or a majority of the trustees or executors are (i) individuals listed in (1) above and/or (ii) family members, close personal friends or close business associates of individuals listed in (1) above</p>	
	<p>You are a family member of _____ [Instruction: Insert the name of the person who is your relative either directly or through his or her spouse], who holds the following position at the issuer or an affiliate of the issuer: _____.</p> <p>You are the _____ of that person or that person's spouse. [Instruction: To qualify for this investment, you must be (a) the spouse of the person listed above or (b) the parent, grandparent, brother, sister, child or grandchild of that person or that person's spouse.]</p>	
	<p>You are a close personal friend of _____ [Instruction: Insert the name of your close personal friend], who holds the following position at the issuer or an affiliate of the issuer: _____.</p> <p>You have known that person for _____ years.</p>	
	<p>You are a close business associate of _____ [Instruction: Insert the name of your close business associate], who holds the following position at the issuer or an affiliate of the issuer: _____.</p> <p>You have known that person for _____ years.</p>	

D. You are not an eligible investor.		Your initials
NOT AN ELIGIBLE INVESTOR	You acknowledge that you are not an eligible investor.	

Schedule 2
Investment Limits for Investors Under the Offering Memorandum Exemption

Instructions: This schedule must be completed together with the Risk Acknowledgement Form and Schedule 1 by individuals purchasing securities under the exemption (the offering memorandum exemption) in subsection 2.9(2.1) of National Instrument 45-106 *Prospectus Exemptions* (NI 45-106) in Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan.

SECTION 1 TO BE COMPLETED BY THE PURCHASER

1. Investment limits you are subject to when purchasing securities under the offering memorandum exemption

You may be subject to annual investment limits that apply to all securities acquired under the offering memorandum exemption in a 12 month period, depending on the criteria under which you qualify as identified in Schedule 1. Initial the statement that applies to you.

A. You are an eligible investor.		Your initials
ELIGIBLE INVESTOR	As an eligible investor that is an individual, you cannot invest more than \$30,000 in all offering memorandum exemption investments made in the previous 12 months, unless you have received advice from a portfolio manager, investment dealer or exempt market dealer, as identified in section 2 of this schedule, that your investment is suitable. Initial one of the following statements:	
	You confirm that, after taking into account your investment of \$_____ today in this issuer, you have not exceeded your investment limit of \$30,000 in all offering memorandum exemption investments made in the previous 12 months.	
	You confirm that you received advice from a portfolio manager, investment dealer or exempt market dealer, as identified in section 2 of this schedule that the following investment is suitable. You confirm that, after taking into account your investment of \$_____ today in this issuer, you have not exceeded your investment limit in all offering memorandum exemption investments made in the previous 12 months of \$100,000.	

B. You are an eligible investor, as a person described in section 2.3 [<i>Accredited investor</i>] of NI 45-106 or, as applicable in Ontario, subsection 73.3 of the <i>Securities Act</i> (Ontario).		Your initials
ACCREDITED INVESTOR	You acknowledge that, by qualifying as an eligible investor as a person described in section 2.3 [<i>Accredited investor</i>], you are not subject to investment limits.	

C. You are an eligible investor, as a person described in section 2.5 [<i>Family, friends and business associates</i>] of NI 45-106.		Your initials
FAMILY, FRIENDS AND BUSINESS ASSOCIATES	You acknowledge that, by qualifying as an eligible investor as a person described in section 2.5 [<i>Family, friends and business associates</i>], you are not subject to investment limits.	

D. You are not an eligible investor.		Your initials
NOT AN ELIGIBLE INVESTOR	<p>You acknowledge that you cannot invest more than \$10,000 in all offering memorandum exemption investments made in the previous 12 months.</p> <p>You confirm that, after taking into account your investment of \$_____ today in this issuer, you have not exceeded your investment limit of \$10,000 in all offering memorandum exemption investments made in the previous 12 months.</p>	

SECTION 2 TO BE COMPLETED BY THE REGISTRANT

2. Registrant information

[*Instruction: this section must only be completed if an investor has received advice from a portfolio manager, investment dealer or exempt market dealer concerning his or her investment.*]

First and last name of registrant (please print):

Registered as:

[*Instruction: indicate whether registered as a dealing representative or advising representative*]

Telephone:

Email:

Name of firm:

[*Instruction: indicate whether registered as an exempt market dealer, investment dealer or portfolio manager.*]

Date:

Form 45-106F5
Risk Acknowledgement
Saskatchewan Close Personal Friends and Close Business Associates

I acknowledge that this is a risky investment:

- I am investing entirely at my own risk.
- No securities regulatory authority or regulator has evaluated or endorsed the merits of these securities.
- The person selling me these securities is not registered with a securities regulatory authority or regulator and has no duty to tell me whether this investment is suitable for me. *[Instruction: Delete if sold by registrant]*
- I will not be able to sell these securities except in very limited circumstances. I may never be able to sell these securities. *[Instruction: Delete if issuer is reporting]*
- The securities are redeemable, but I may only be able to redeem them in limited circumstances. *[Instruction: Delete if securities are not redeemable]*
- I will not be able to sell these securities for 4 months. *[Instruction: Delete if issuer is not reporting]*
- I could lose all the money I invest.
- I do not have a 2-day right to cancel my purchase of these securities or the statutory rights of action for misrepresentation I would have if I were purchasing the securities under a prospectus. I do have a 2-day right to cancel my purchase of these securities if I receive an amended offering document.

I am investing \$_____ [total consideration] in total; this includes any amount I am obliged to pay in future.

I am a **close** personal friend or **close** business associate of _____ [state name], who is a _____ [state title - founder, director, executive officer or control person] of _____ [state name of issuer or its affiliate – if an affiliate state “an affiliate of the issuer” and give the issuer’s name].

I acknowledge that I am purchasing based on my close relationship with _____ [state name of founder, director, executive officer or control person] whom I know well enough and for a sufficient period of time to be able to assess her/his capabilities and trustworthiness.

I acknowledge that this is a risky investment and that I could lose all the money I invest.

Date

Signature of Purchaser

Print name of Purchaser

Sign 2 copies of this document. Keep one copy for your records.

WARNING

You are buying Exempt Market Securities

They are called *exempt market securities* because two parts of securities law do not apply to them. If an issuer wants to sell *exempt market securities* to you:

- the issuer does not have to give you a prospectus (a document that describes the investment in detail and gives you some legal protections), and
- the securities do not have to be sold by an investment dealer registered with a securities regulatory authority or regulator.

There are restrictions on your ability to resell *exempt market securities*. Exempt market securities are more risky than other securities.

You may not receive any written information about the issuer or its business

If you have any questions about the issuer or its business, ask for written clarification before you purchase the securities. You should consult your own professional advisers before investing in the securities.

You will not receive advice [*Instruction: Delete if sold by registrant*]

Unless you consult your own professional advisers, you will not get professional advice about whether the investment is suitable for you.

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. You can only sell the securities of a non-reporting issuer in very limited circumstances. You may never be able to sell these securities.

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. There may be no market for these securities. You may never be able to sell these securities.

For more information on the exempt market, refer to the Saskatchewan Financial Services Commission's website at <http://www.sfsc.gov.sk.ca>.

[*Instruction: The purchaser must sign 2 copies of this form. The purchaser and the issuer must each receive a signed copy.*]

Form 45-106F6

British Columbia Report of Exempt Distribution

This is the form required under section 6.1 of National Instrument 45-106 for a report of exempt distribution in British Columbia.

Issuer/underwriter information

Item 1: Issuer/underwriter name and contact information

A. State the following:

- the full name of the issuer of the security distributed. Include the former name of the issuer if its name has changed since this report was last filed;
- the issuer’s website address; and
- the address, telephone number and email address of the issuer’s head office.

B. If an underwriter is completing this report, state the following:

- the full name of the underwriter;
- the underwriter’s website address; and
- the address, telephone number and email address of the underwriter’s head office.

Item 2: Reporting issuer status

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

B. If the issuer is an investment fund managed by an investment fund manager registered in a jurisdiction of Canada, name the investment fund manager and state the jurisdiction(s) where it is registered.

Item 3: Issuer’s industry

Indicate the industry of the issuer by checking the appropriate box below.

- | | |
|---|--------------------------------------|
| <input type="checkbox"/> Bio-tech | <input type="checkbox"/> Mining |
| <input type="checkbox"/> Financial Services | <input type="checkbox"/> |
| <input type="checkbox"/> exploration/development | <input type="checkbox"/> production |
| <input type="checkbox"/> investment companies and funds | <input type="checkbox"/> Oil and gas |
| <input type="checkbox"/> mortgage investment companies | <input type="checkbox"/> Real estate |
| <input type="checkbox"/> securitized products issuers | <input type="checkbox"/> Utilities |
| <input type="checkbox"/> Forestry | |

Hi-tech

Other (describe)

Industrial

Item 4: Insiders and promoters of non-reporting issuers

If the issuer is an investment fund managed by an investment fund manager registered in a jurisdiction of Canada, do not complete this table.

If the issuer is not a reporting issuer in any jurisdiction of Canada, complete the following table by providing information about each insider and promoter of the issuer. If the insider or promoter is not an individual, complete the table for directors and officers of the insider or promoter.

Information about insiders and promoters			
Full name, municipality and country of principal residence	All positions held (e.g., director, officer, promoter and/or holder of more than 10% of voting securities)	Number and type of securities of the issuer beneficially owned or, directly or indirectly controlled, on the distribution date, including any securities purchased under the distribution	Total price paid for all securities beneficially owned or, directly or indirectly controlled, on the distribution date, including any securities purchased under the distribution (Canadian \$)

Details of distribution

Item 5: Distribution date

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

Item 6: Number and type of securities

For each security distributed:

- describe the type of security;
- state the total number of securities distributed. If the security is convertible or exchangeable, describe the type of underlying security, the terms of exercise or conversion and any expiry date; and

- if the issuer is an investment fund managed by an investment fund manager registered in a jurisdiction of Canada, state the exemption(s) relied on. If more than one exemption is relied on, state the amount raised using each exemption.

Item 7: Geographical information about purchasers

Complete the following table for each Canadian and foreign jurisdiction where purchasers of the securities reside. Do not include in this table information about securities issued as payment of commissions or finder’s fees disclosed under item 9 of this report. The information provided in this table must reconcile with the information provided in item 8 and Schedules I and II.

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

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

Item 8: Information about purchasers

Instructions

A. If the issuer is an investment fund managed by an investment fund manager registered in a jurisdiction of Canada, do not complete this table.

B. Information about the purchasers of securities under the distribution is required to be disclosed in different tables in this report. Complete

- the following table for each purchaser that is not an individual, and
- the tables in Schedules I and II of this report for each purchaser who is an individual.

Do not include in the tables information about securities issued as payment of commissions or finder’s fees disclosed under item 9 of this report.

C. An issuer or underwriter completing this table in connection with a distribution using the exemption in subparagraph 6.1(1)(j) [*TSX Venture Exchange offering*] of National Instrument 45-106 *Prospectus Exemptions* may choose to replace the information in the first column with the total number of purchasers, whether individuals or not, by jurisdiction. If the issuer or underwriter chooses to do so, then the issuer or underwriter is not required to complete the second column or the tables in Schedules I and II.

Information about non-individual purchasers					
Full name and address of purchaser and name and telephone number of a contact person	Indicate if the purchaser is an insider (I) of the issuer or a registrant (R)	Number and type of securities purchased	Total purchase price (Canadian \$)	Exemption relied on	Date of distribution (yyyy-mm-dd)

Commissions and finder's fees

Item 9: Commissions and finder's fees

Instructions

A. Complete the following table by providing information for each person who has received or will receive compensation in connection with the distribution(s).

Compensation includes commissions, discounts or other fees or payments of a similar nature. Do not include information about payments for services incidental to the distribution, such as clerical, printing, legal or accounting services.

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

Full name and address of the person being compensated	Indicate if the person being compensated is an insider (I) of the issuer or a registrant (R)	Compensation paid or to be paid (cash and/or securities)				
		Cash (Canadian \$)	Securities			Total dollar value of compensation (Canadian \$)
			Number and type of securities issued	Price per security (Canadian \$)	Exemption relied on and date of distribution (yyyy-mm-dd)	

Certificate

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

Date: _____

Name of [issuer/underwriter] (please print)

Print name, title and telephone number of person signing

Signature

Instruction

The person certifying this report must complete the information in the square brackets by deleting the inapplicable word. For electronic filings, substitute a typewritten signature for a manual signature.

Item 10: Contact information

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

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

Notice - Collection and use of personal information

The British Columbia Securities Commission collects and uses the personal information required to be included in this report for the administration and enforcement of the *Securities Act*. If you have any questions about the collection and use of this information, contact the British Columbia Securities Commission at the following address:

British Columbia Securities Commission

P.O. Box 10142, Pacific Centre
701 West Georgia Street
Vancouver, British Columbia V7Y 1L2

Telephone: (604) 899-6500
Toll free across Canada: 1-800-373-6393
Facsimile: (604) 899-6581

Schedule I
Public information about purchasers who are individuals

A. If the issuer is an investment fund managed by an investment fund manager registered in a jurisdiction of Canada, do not complete the following table or the table in Schedule II.

B. Information about the purchasers of securities under the distribution is required to be disclosed in different tables in this report. Complete

- the following table and the table in Schedule II for each purchaser who is an individual, and
- the table in item 8 for each purchaser that is not an individual.

Do not include in the tables information about securities issued as payment of commissions or finder's fees disclosed under item 9 of this report.

C. An issuer or underwriter filing this report in connection with a distribution using the exemption in subparagraph 6.1(1)(j) [*TSX Venture Exchange offering*] of National Instrument 45-106 *Prospectus Exemptions* may choose to replace the information in the first column of the table in item 8 with the total number of purchasers, whether individuals or not, by jurisdiction. If the issuer or underwriter chooses to do so, then the issuer or underwriter is not required to complete the following table or the table in Schedule II.

D. The information in the following table is available for public inspection at the British Columbia Securities Commission during normal business hours.

Public information about purchasers who are individuals

Unless exempted by the British Columbia Securities Commission, a person must not, directly or indirectly, use the information in this table, in whole or in part, for any purpose other than research concerning the issuer for the person's own investment purpose.

Full name of purchaser	Indicate if the purchaser is an insider (I) of the issuer or a registrant (R)	Number and type of securities purchased	Total purchase price (Canadian \$)	Date of distribution (yyyy-mm-dd)

Schedule II

Confidential information about purchasers who are individuals

A. Complete the following table for each purchaser who is an individual. The information in this table must reconcile with the table in Schedule I.

B. The information in the following table will not be placed on the public file of the British Columbia Securities Commission.

Confidential information about purchasers who are individuals	
Full name, residential address and telephone number of purchaser	Exemption relied on

Guidance for completing and filing Form 45-106F6

- 1. Required form in British Columbia** - *In British Columbia, file this report and the applicable fee using BCSC e-services in accordance with British Columbia Instrument 13-502 Electronic filing of reports of exempt distribution. If the distribution occurs in British Columbia and one or more other jurisdictions, the issuer is required to file this report in British Columbia and file Form 45-106F1 in the other applicable jurisdictions.*
- 2. What is a distribution?** - *In British Columbia, “distribution” includes distributions made from British Columbia to purchasers resident in other Canadian or foreign jurisdictions if the issuer has a significant connection to British Columbia. If the issuer has a significant connection to British Columbia, complete the tables in item 8 and Schedules I and II for all purchasers.*

In British Columbia, “distribution” also includes distributions made from another Canadian or foreign jurisdiction to purchasers resident in British Columbia. If the issuer is from another Canadian or foreign jurisdiction, complete the tables in item 8 and Schedules I and II only for purchasers resident in British Columbia.
- 3. What is a purchaser?** - *References to a purchaser in this report are to the beneficial owner of the securities.*
- 4. What is an individual?** - *An individual is a natural person. A corporation, partnership, party, trust, fund, association, and any other organized group of persons is not an individual.*
- 5. Space in tables** - *If the space provided in any table in this Form is insufficient, please adjust the table to include additional space.*
- 6. Multiple distributions** - *One report may be used for multiple distributions occurring within 10 days of each other if the report is filed on or before the 10th day following the first of such distributions.*

7. **Fees** - *In order to determine the applicable fee, consult Fee Checklist British Columbia Form 11-901F (item # 16).*

Form 45-106F7
Information Memorandum for Short-term Securitized Products
Distributed under Section 2.35.1

Instructions:

- (1) Using language that is plain and easy to understand by the type of purchaser to whom the issuer's short-term securitized products are offered, provide the information required by this form. No reference need be made to inapplicable items and, unless otherwise required by this form, negative answers may be omitted.
- (2) An information memorandum may be used to disclose information about more than one series or class of short-term securitized product. If so, the disclosure required by this form must be provided for each series or class of short-term securitized product distributed under the information memorandum.
- (3) This form requires disclosure of certain items, matters or other information referred to as "material". Information is "material" if knowledge of it could reasonably be expected to affect a reasonable investor's decision whether to buy, sell or hold a short-term securitized product.
- (4) Include a glossary that defines all technical terms, and includes the following definition:

"sponsor" means a person or group of affiliated persons that organizes or initiates the formation of a conduit.

Item 1: Significant Parties

- 1.1 Provide the conduit's legal name.
- 1.2 Disclose the conduit's jurisdiction and form of organization.
- 1.3 Identify each sponsor of the conduit and disclose
 - (a) whether or not it is a Canadian bank, Schedule II foreign bank subsidiary or Schedule III bank, and
 - (b) if it is not a financial institution referred to in paragraph (a), whether there is a government department or regulatory authority

responsible for overseeing it and, if applicable, the name of the government department or regulatory authority.

- 1.4 Briefly describe the conduit's structure, business and operations and the key documents that establish the conduit and govern its business and operations.
- 1.5 Identify each other party, excluding any liquidity provider or any credit enhancement provider for whom disclosure is not required under item 4, that is primarily responsible under the terms of the key documents referred to in section 1.4 for a significant role in the conduit's structure or operations and briefly describe that party's role.

Item 2: Structure

Include one or more diagrams or descriptions that provide the following information in summary form:

- (a) how the conduit acquires assets and issues securitized product;
- (b) liquidity facilities available to the conduit as disclosed in item 4;
- (c) credit enhancements available to the conduit as disclosed in item 4;
- (d) material agreements as disclosed in item 9;
- (e) the structure of one or more common types of asset transactions into which the conduit may enter.

Item 3: Eligible assets and asset transactions

- 3.1 Briefly describe the types of asset transactions into which the conduit expects to enter. If applicable, state that the conduit expects to finance the acquisition, origination or refinancing of asset pools from the proceeds of issuing short-term securitized products. Describe any other methods the conduit expects to employ to finance the acquisition, origination or refinancing of asset pools.
- 3.2 Briefly describe the types of asset eligibility criteria the conduit applies or anticipates applying when entering into asset transactions.
- 3.3 Briefly describe the types of due diligence or verification procedures that the conduit applies or anticipates applying to asset transactions and asset pools.

- 3.4 Briefly describe the conduit's approach to concentration limits, liquidity support and credit enhancement in respect of its asset transactions and asset pools.
- 3.5 Disclose the types of assets that the conduit is permitted to hold in its asset pools.
- 3.6 Briefly describe how the conduit uses or anticipates using derivatives for the purpose of hedging.

Item 4: Interest alignment, program-wide liquidity support and program-wide credit enhancement

- 4.1 Briefly describe how the interests of investors are aligned with the interests of the conduit, the sponsor and the parties to asset transactions entered into by the conduit, including any requirement of law that the conduit or the sponsor retain an interest in one or more of the conduit's asset pools or be exposed to the credit risk of assets in one or more of the conduit's asset pools.
- 4.2 Briefly describe any standard liquidity support arrangements the conduit has entered into or anticipates entering into, excluding liquidity support arrangements that are particular to an asset transaction or asset pool. Include the following information in the description:
 - (a) the name of each existing liquidity provider;
 - (b) any minimum credit rating a liquidity provider must have under the terms of the key documents referred to in section 1.4;
 - (c) the nature of the liquidity support;
 - (d) a summary of the material terms of each liquidity agreement, including all material conditions to or limitations on the obligation of a liquidity provider to provide liquidity support;
 - (e) any limitations on the obligation of a liquidity provider to provide same-day funding.
- 4.3 Briefly describe any standard credit enhancement arrangements that the conduit has entered into or anticipates entering into, excluding credit enhancement arrangements that are particular to an asset transaction or asset pool. Include the following information in the description:
 - (a) the name of each existing credit enhancement provider;

- (b) any minimum credit rating a credit enhancement provider must have under the terms of the key documents referred to in section 1.4;
- (c) the form of the credit enhancement;
- (d) a summary of the material terms of each credit enhancement agreement, including all material conditions to or limitations on the obligation of a credit enhancement provider to provide credit support.

Item 5: Ownership or security interests in asset pool and priority of payments

- 5.1 Disclose the ownership or security interest a holder of a short-term securitized product will have in the conduit's asset pools.
- 5.2 If any other party other than the conduit has or is anticipated to have an ownership or security interest in one or more of the conduit's asset pools, briefly describe the following:
 - (a) the party's role in the conduit's structure or operations;
 - (b) the nature of its interest in the asset pool;
 - (c) the priority of its claims in the event of the conduit's insolvency.

Item 6: Compliance or termination events

- 6.1 Briefly describe any events or circumstances that would, pursuant to the terms of the conduit's governing documents or material agreements in item 9, constitute an event of default or require the conduit to cease issuing short-term securitized products.
- 6.2 Briefly describe the types of methods the conduit will use to monitor the performance of or identify adverse changes to an asset pool, such as portfolio performance tests.
- 6.3 Briefly describe any other structural features that are intended to reduce the risk of loss for a holder of the series or class of short-term securitized products or to protect the holder from material deterioration in respect of either or both of the following:

- (a) the credit quality or performance of assets in an asset pool;
- (b) the ability of a party in Item 4 to perform its obligations to the conduit.

Item 7: Description of short-term securitized product and offering

Describe the short-term securitized products to be distributed and the distribution procedure and include the following information:

- (a) whether short-term securitized products will be issued in certificated (registered or bearer) form or book-entry form and the delivery procedures;
- (b) whether short-term securitized products will be sold on a discount basis or on an interest-bearing basis;
- (c) the denominations in which short-term securitized products may be issued;
- (d) the permitted maturity period for the short-term securitized products, and the ability of the conduit to extend maturity;
- (e) the ability of either an investor to redeem prior to maturity or of the conduit to repay prior to maturity;
- (f) the maximum aggregate principal amount of short-term securitized products permitted to be outstanding at any one time, or a statement that there is no limit on the maximum aggregate principal amount of short-term securitized products outstanding at any one time;
- (g) the key risks related to the conduit that could cause a delay in or non-payment of principal or interest on the short-term securitized product.

Item 8: Additional information about the conduit

- 8.1 Disclose if the conduit has issued and outstanding, or anticipates issuing, any securities other than the series or class of short-term securitized product to which the information memorandum relates. If the conduit has issued and outstanding, or anticipates issuing, any security other than the series or class of short-term securitized product to which the information memorandum relates, describe that other security, its credit rating, if applicable, and how it will rank, in the event of insolvency of the conduit, relative to the series or class of the conduit's short-term securitized product to which the information memorandum relates.
- 8.2 Disclose how a potential purchaser can obtain access to disclosure that the conduit is required to provide or make reasonably available in connection with a purchase of a short-term securitized product of the conduit.
- 8.3 Disclose how a holder of a short-term securitized product of the conduit can obtain access to the disclosure the conduit is required to provide or make reasonably available to a holder of a short-term securitized product of the conduit.

Item 9: Material agreements

- 9.1 If not disclosed elsewhere in the information memorandum, identify and summarize each agreement to which the conduit is a party and that is material to the conduit's business and operations, excluding agreements that are particular to an asset transaction or asset pool.
- 9.2 If material and not disclosed elsewhere in the information memorandum, describe the ability of a person to waive or modify the requirements, activities or standards that would apply under an agreement referred to in section 9.1.

Item 10: Date of information memorandum

State the date of the information memorandum.

Item 11: Representation that no misrepresentation

State the following in the information memorandum:

“This information memorandum does not contain a misrepresentation regarding the conduit, its structure, or operations.”

Form 45-106F8
Monthly Disclosure Report for Short-term Securitized Products
Distributed under Section 2.35.1

Instructions:

- (1) Using language that is plain and easy to understand by the type of purchaser to whom the issuer's short-term securitized products are offered, provide the information required by this form. No reference need be made to inapplicable items and, unless otherwise required by this form, negative answers may be omitted.
- (2) A monthly disclosure report may be used to disclose information about more than one series or class of short-term securitized product. If so, the disclosure required by this form must be provided for each series or class of short-term securitized product to which the monthly disclosure report relates.
- (3) This form requires disclosure of certain items, matters or other information referred to as "material". Information is "material" if knowledge of it could reasonably be expected to affect a reasonable investor's decision whether to buy, sell or hold a short-term securitized product.
- (4) Include or incorporate by reference a glossary that defines all technical terms, and includes each of the following definitions:

“**seller**” means, in connection with an asset transaction, a person or group of affiliated persons that originates or acquires cash-flow generating assets and sells or otherwise transfers, either directly or indirectly, an ownership or security interest in such assets to a conduit, which assets form one or more asset pools of the conduit.

“**sponsor**” means a person or group of affiliated persons that organizes or initiates the formation of a conduit;

Item 1: Summary of conduit operations and asset pools

Provide a summary of the conduit's operations and asset pools as at the last day of the month for which the monthly disclosure report applies that includes the following:

- (a) the total face value of securitized product outstanding;
- (b) the aggregate outstanding asset balance of the asset pools;

- (c) the number of asset pools in which the conduit has an ownership or security interest;
- (d) the number and dollar amount of new asset pools added during the month or other information that in conjunction with information in the report for the prior monthly period will permit an investor to easily calculate such amounts;
- (e) the number and dollar amount of asset pools repaid during the month or other information that in conjunction with information in the report for the prior monthly period will permit an investor to easily calculate such amounts;
- (f) each type of asset in the conduit's asset pools, expressed as a percentage of the total assets of the conduit's asset pools.

Item 2: Asset transaction information

Provide the following information regarding each of the conduit's asset pools in one or more tables or diagrams as at the last day of the month to which the monthly disclosure report applies:

- (a) the type of assets in the asset pool, including whether the assets are revolving or amortizing;
- (b) an identifier such as an asset pool, asset transaction or seller number;
- (c) the industry of the person or group of affiliated persons that originated the assets;
- (d) whether each seller or applicable performance guarantor has an investment grade rating;
- (e) the amount of any conduit commitment to acquire assets from a seller for the asset pool;
- (f) the balance outstanding on the asset pool;
- (g) if available, the number of assets or obligors in the asset pool.

Item 3: Asset transaction credit enhancement

Provide the following information regarding each of the conduit's asset transactions in one or more tables as at the last day of the month to which the monthly disclosure report applies:

- (a) the form of each credit enhancement;
- (b) the amount of credit enhancement expressed in either of the following forms:
 - (i) a dollar amount;
 - (ii) a percentage, including the basis of presentation.

Item 4: Asset transaction performance

Provide the following information regarding each of the conduit's asset transactions in one or more tables as at the last day of the month to which the monthly disclosure report applies:

- (a) the default or loss ratio for the month, including the basis of presentation;
- (b) information with respect to default experience both for the most recent period and over an extended period of time in the form of ratios or otherwise, provided on a consistent basis for that asset transaction in each monthly disclosure report;
- (c) defaults for the month relative to available credit enhancement.

Item 5: Compliance and termination events

Disclose the occurrence of any events or circumstances 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 or require the conduit to cease issuing short-term securitized products.

Item 6: Report Information

State each of the following:

- (a) date of the report;
- (b) period covered by the report;

- (c) contact information, including name, phone number and email address of a contact person for the conduit.

Form 45-106F9
Form for Individual Accredited Investors

WARNING!
This investment is risky. Don't invest unless you can afford to lose all the money you pay for this investment.

SECTION 1 TO BE COMPLETED BY THE ISSUER OR SELLING SECURITY HOLDER

1. About your investment

Type of securities: <i>[Instruction: Include a short description, e.g., common shares.]</i>	Issuer:
---	---------

Purchased from: *[Instruction: Indicate whether securities are purchased from the issuer or a selling security holder.]*

SECTIONS 2 TO 4 TO BE COMPLETED BY THE PURCHASER

2. Risk acknowledgement

This investment is risky. Initial that you understand that:	Your initials
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Risk of loss – You could lose your entire investment of \$ _____. <i>[Instruction: Insert the total dollar amount of the investment.]</i>	
--	--

Liquidity risk – You may not be able to sell your investment quickly – or at all.	
--	--

Lack of information – You may receive little or no information about your investment.	
--	--

Lack of advice – You will not receive advice from the salesperson about whether this investment is suitable for you unless the salesperson is registered. The salesperson is the person who meets with, or provides information to, you about making this investment. To check whether the salesperson is registered, go to www.aretheyregistered.ca .	
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3. Accredited investor status

You must meet at least one of the following criteria to be able to make this investment. Initial the statement that applies to you. (You may initial more than one statement.) The person identified in section 6 is responsible for ensuring that you meet the definition of accredited investor. That person, or the salesperson identified in section 5, can help you if you have questions about whether you meet these criteria.	Your initials
--	----------------------

<ul style="list-style-type: none"> • Your net income before taxes was more than \$200,000 in each of the 2 most recent calendar years, and you expect it to be more than \$200,000 in the current calendar year. (You can find your net income before taxes on your personal income tax return.) 	
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<ul style="list-style-type: none"> • Your net income before taxes combined with your spouse's was more than \$300,000 in each of the 2 most recent calendar years, and you expect your combined net income before taxes to be more than \$300,000 in the current calendar year. 	
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<ul style="list-style-type: none"> • Either alone or with your spouse, you own more than \$1 million in cash and securities, after subtracting any debt related to the cash and securities. 	
--	--

<ul style="list-style-type: none"> • Either alone or with your spouse, you have net assets worth more than \$5 million. (Your net assets are your total 	
--	--

assets (including real estate) minus your total debt.)

4. 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 (please print):

Signature:

Date:

SECTION 5 TO BE COMPLETED BY THE SALESPERSON

5. Salesperson information

[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 or selling security holder, a registrant or a person who is exempt from the registration requirement.]

First and last name of salesperson (please print):

Telephone:

Email:

Name of firm (if registered):

SECTION 6 TO BE COMPLETED BY THE ISSUER OR SELLING SECURITY HOLDER

6. For more information about this investment

For investment in a non-investment fund
[Insert name of issuer/selling security holder]
[Insert address of issuer/selling security holder]
[Insert contact person name, if applicable]
[Insert telephone number]
[Insert email address]
[Insert website address, if applicable]

For investment in an investment fund
[Insert name of investment fund]
[Insert name of investment fund manager]
[Insert address of investment fund manager]
[Insert telephone number of investment fund manager]
[Insert email address of investment fund manager]
[If investment is purchased from a selling security holder, also insert name, address, telephone number and email address of selling security holder here]

For more information about prospectus exemptions, contact your local securities regulator. You can find contact information at www.securities-administrators.ca.

Form instructions:

1. This form does not mandate the use of a specific font size or style but the font must be legible.
2. The information in sections 1, 5 and 6 must be completed before the purchaser completes and signs the form.
3. The purchaser must sign this form. Each of the purchaser and the issuer or selling security holder must receive a copy of this form signed by the purchaser. The issuer or selling security holder is required to keep a copy of this form for 8 years after the distribution.

**Form 45-106F12
Risk Acknowledgement Form for Family, Friend and
Business Associate Investors**

WARNING!
This investment is risky. Don't invest unless you can afford to lose all the money you pay for this investment.

SECTION 1 TO BE COMPLETED BY THE ISSUER	
1. About your investment	
Type of securities: <i>[Instruction: Include a short description, e.g., common shares.]</i>	Issuer:
SECTIONS 2 TO 4 TO BE COMPLETED BY THE PURCHASER	
2. Risk acknowledgement	
This investment is risky. Initial that you understand that:	Your initials
Risk of loss – You could lose your entire investment of \$_____. <i>[Instruction: Insert the total dollar amount of the investment.]</i>	
Liquidity risk – You may not be able to sell your investment quickly – or at all.	
Lack of information – You may receive little or no information about your investment. The information you receive may be limited to the information provided to you by the family member, friend or close business associate specified in section 3 of this form.	
3. Family, friend or business associate status	
You must meet one of the following criteria to be able to make this investment. Initial the statement that applies to you:	Your initials
<p>A) You are:</p> <p>1) <i>[check all applicable boxes]</i></p> <ul style="list-style-type: none"> <input type="checkbox"/> a director of the issuer or an affiliate of the issuer <input type="checkbox"/> an executive officer of the issuer or an affiliate of the issuer <input type="checkbox"/> a control person of the issuer or an affiliate of the issuer <input type="checkbox"/> a founder of the issuer <p>OR</p> <p>2) <i>[check all applicable boxes]</i></p> <ul style="list-style-type: none"> <input type="checkbox"/> a person of which a majority of the voting securities are beneficially owned by, or a majority of the directors are, (i) individuals listed in (1) above and/or (ii) family members, close personal friends or close business associates of individuals listed in (1) above <input type="checkbox"/> a trust or estate of which all of the beneficiaries or a majority of the trustees or executors are (i) individuals 	

<p>listed in (1) above and/or (ii) family members, close personal friends or close business associates of individuals listed in (1) above</p>	
<p>B) You are a family member of _____ [Instruction: Insert the name of the person who is your relative either directly or through his or her spouse], who holds the following position at the issuer or an affiliate of the issuer: _____.</p> <p>You are the _____ of that person or that person's spouse. [Instruction: To qualify for this investment, you must be (a) the spouse of the person listed above or (b) the parent, grandparent, brother, sister, child or grandchild of that person or that person's spouse.]</p>	
<p>C) You are a close personal friend of _____ [Instruction: Insert the name of your close personal friend], who holds the following position at the issuer or an affiliate of the issuer: _____.</p> <p>You have known that person for _____ years.</p>	
<p>D) You are a close business associate of _____ [Instruction: Insert the name of your close business associate], who holds the following position at the issuer or an affiliate of the issuer: _____.</p> <p>You have known that person for _____ years.</p>	
<p>4. Your name and signature</p> <p>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. You also confirm that you are eligible to make this investment because you are a family member, close personal friend or close business associate of the person identified in section 5 of this form.</p> <p>First and last name (please print): _____</p> <p>Signature: _____ Date: _____</p>	
<p>SECTION 5 TO BE COMPLETED BY PERSON WHO CLAIMS THE CLOSE PERSONAL RELATIONSHIP, IF APPLICABLE</p>	
<p>5. Contact person at the issuer or an affiliate of the issuer</p> <p>[Instruction: To be completed by the director, executive officer, control person or founder with whom the purchaser has a close personal relationship indicated under sections 3B, C or D of this form.]</p> <p>By signing this form, you confirm that you have, or your spouse has, the following relationship with the purchaser: [check the box that applies]</p> <p><input type="checkbox"/> family relationship as set out in section 3B of this form</p> <p><input type="checkbox"/> close personal friendship as set out in section 3C of this form</p> <p><input type="checkbox"/> close business associate relationship as set out in section 3D of this form</p>	

First and last name of contact person <i>[please print]</i> :	
Position with the issuer or affiliate of the issuer (director, executive officer, control person or founder):	
Telephone:	Email:
Signature:	Date:
SECTION 6 TO BE COMPLETED BY THE ISSUER	
6. For more information about this investment	
<p><i>[Insert name of issuer]</i> <i>[Insert address of issuer]</i> <i>[Insert contact person name]</i> <i>[Insert telephone number]</i> <i>[Insert email address]</i> <i>[Insert website address, if applicable]</i></p> <p>For more information about prospectus exemptions, contact your local securities regulator. You can find contact information at www.securities-administrators.ca.</p>	
Signature of executive officer of the issuer (other than the purchaser):	Date:

Form instructions:

1. This form does not mandate the use of a specific font size or style but the font must be legible.
2. The information in sections 1, 5 and 6 must be completed before the purchaser completes and signs the form.
3. The purchaser, an executive officer who is not the purchaser and, if applicable, the person who claims the close personal relationship to the purchaser must sign this form. Each of the purchaser, contact person at the issuer and the issuer must receive a copy of this form signed by the purchaser. The issuer is required to keep a copy of this form for 8 years after the distribution.
4. The detailed relationships required to purchase securities under this exemption are set out in section 2.5 of National Instrument 45-106 Prospectus and Registration Exemptions. For guidance on the meaning of “close personal friend” and “close business associate”, please refer to sections 2.7 and 2.8, respectively, of Companion Policy 45-106CP Prospectus and Registration Exemptions.

Form 45-106F14
Rights Offering Notice for Reporting Issuers

This is the form of notice you must use for a distribution of rights under section 2.1 of National Instrument 45-106 *Prospectus Exemptions*. In this form, a distribution of rights is sometimes referred to as a “rights offering”.

PART 1 GENERAL INSTRUCTIONS

Deliver this rights offering notice to each security holder eligible to receive rights under the rights offering. Using plain language, prepare the rights offering notice using a question-and-answer format.

Guidance

We do not expect the rights offering notice to be longer than two pages in length.

PART 2 THE RIGHTS OFFERING NOTICE

1. Basic information

State the following with the bracketed information completed:

“[Name of issuer]
Notice to security holders – [Date]”

If you have less than 12 months of working capital and are aware of material uncertainties that may cast significant doubt upon your ability to continue as a going concern, include the following language in bold immediately below the date of the rights offering notice:

“We currently have sufficient working capital to last [insert the number of months of working capital as at the date of the rights offering circular] months. We require [insert the percentage of the rights offering required to be taken up]% of the offering to last 12 months.”

2. Who can participate in the rights offering?

State the record date and identify which class of securities is subject to the offering.

3. Who is eligible to receive rights?

List the jurisdictions in which the issuer is offering rights.

Explain how a security holder in a foreign jurisdiction can acquire the rights and the securities issuable upon the exercise of the rights.

4. How many rights are we offering?

State the total number of rights offered.

5. How many rights will you receive?

State the number of rights a security holder on the record date will receive for every security held as of the record date.

6. What does one right entitle you to receive?

State the number of rights required to acquire a security upon the exercise of the rights. Also state the subscription price.

7. How will you receive your rights?

Include a rights certificate with the rights offering notice if the rights offering notice is being delivered to a registered security holder and direct the security holder's attention to this certificate.

If you are delivering the rights offering notice to a security holder in a foreign jurisdiction, provide instructions on how that security holder can receive its rights certificate.

8. When and how can you exercise your rights?

State when the exercise period ends for security holders who have their rights certificate.

Also, provide instructions on how to exercise the rights to security holders whose securities are held in a brokerage account.

9. What are the next steps?

Include the following statement, using wording substantially similar to the following:

“This document contains key information you should know about [insert name of issuer]. You can find more details in the issuer’s rights offering circular. To obtain a copy, visit [insert name of issuer]’s profile on the SEDAR website, visit [insert the website of the issuer], ask your dealer representative for a copy or contact [insert name of contact person of the issuer] at [insert the phone number or email of the contact person of the issuer]. You should read the rights offering circular, along with [insert name of issuer]’s continuous disclosure record, to make an informed decision.”

10. Signature

Sign the rights offering notice. State the name and title of the person signing the rights offering notice.

Form 45-106F15
Rights Offering Circular for Reporting Issuers

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PART 1 INSTRUCTIONS

1. Overview of the rights offering circular

This is the form of circular you must use for a distribution of rights under section 2.1 of National Instrument 45-106 *Prospectus Exemptions*. In this form, a distribution of rights is sometimes referred to as a “rights offering”.

The objective of the rights offering circular is to provide information about the rights offering and details on how an existing security holder can exercise the rights.

Prepare the rights offering circular using a question-and-answer format.

Guidance

We do not expect the rights offering circular to be longer than 10 pages.

2. Incorporating information by reference

You must not incorporate information into the rights offering circular by reference.

3. Plain language

Use plain, easy to understand language in preparing the rights offering circular. Avoid technical terms but if they are necessary, explain them in a clear and concise manner.

4. Format

Except as otherwise stated, use the questions presented in this form as headings in the rights offering circular. To make the rights offering circular easier to understand, present information in tables.

5. Omitting information

Unless this form indicates otherwise, you are not required to complete an item in this form if it does not apply.

6. Date of information

Unless this form indicates otherwise, present the information in this form as of the date of the rights offering circular.

7. Forward-looking information

If you disclose forward-looking information in the rights offering circular, you must comply with Part 4A.3 of National Instrument 51-102 *Continuous Disclosure Obligations*.

PART 2 SUMMARY OF OFFERING

8. Required statement

State in italics, at the top of the cover page, the following:

“This rights offering circular is prepared by management. No securities regulatory authority or regulator has assessed the merits of these securities or reviewed this circular. Any representation to the contrary is an offence.

This is the circular we referred to in the [insert date of the rights offering notice] rights offering notice, which you should have already received. Your rights certificate and relevant forms were enclosed with the rights offering notice. This circular should be read in conjunction with the rights offering notice and our continuous disclosure prior to making an investment decision.”

Guidance

We remind issuers and their executives that they are liable under secondary market liability provisions for the disclosure in this rights offering circular.

9. Basic disclosure about the distribution

Immediately below the statement referred to in item 8, state the following with the bracketed information completed:

“Rights offering circular
[Date]

[Name of Issuer]”

If you have less than 12 months of working capital and are aware of material uncertainties that may cast significant doubt upon your ability to continue as a going concern, state the following in bold immediately below the name of the issuer:

“We currently have sufficient working capital to last [insert the number of months of working capital as at the date of the rights offering circular] months. We require [insert the percentage of the rights offering required to be taken up]% of the offering to last 12 months.”

10. Purpose of the rights offering circular

State the following in bold:

“Why are you reading this circular?”

Explain the purpose of the rights offering circular. State that the rights offering circular provides details about the rights offering and refer to the rights offering notice that you sent to security holders.

11. Securities offered

State the following in bold:

“What is being offered?”

Provide the number of rights you are offering to each security holder under the rights offering. If your outstanding share capital includes more than one class or type of security, identify which security holders are eligible to receive rights. Include the record date the issuer will use to determine which security holders are eligible to receive rights.

12. Right entitlement

State the following in bold:

“What do[es] [insert number of rights] right[s] entitle you to receive?”

Explain what the security holder will receive upon the exercise of the rights. Also include the number of rights needed to acquire the underlying security.

13. Subscription price

State the following in bold:

“What is the subscription price?”

Provide the price a security holder must pay to exercise the rights. If there is no published market for the securities, either explain how you determined the fair value of the securities or explain that no insider will be able to increase their proportionate interest through the rights offering.

Guidance

Refer to paragraph 2.1(3)(g) of NI 45-106 which provides that the subscription price must be lower than the market price if there is a published market for the securities. If there is no published market, either the subscription price must be lower than the fair value of the securities or insiders are not permitted to increase their proportionate interest

14. Expiry of offer

State the following in bold:

“When does the offer expire?”

Provide the date and time that the offer expires.

Guidance

Refer to paragraph 2.1(6)(b) of NI 45-106 which provides that the prospectus exemption is not available where the exercise period for the rights is less than 21 days or more than

15. Description of the securities

State the following in bold:

“What are the significant attributes of the rights issued under the rights offering and the securities to be issued upon the exercise of the rights?”

Describe the significant attributes of the rights and securities to be issued upon exercise of the rights. Include in the description the number of outstanding securities of the class of securities issuable upon exercise of the rights, as of the date of the rights offering circular.

16. Securities issuable under the rights offering

State the following in bold:

“What are the minimum and maximum number or amount of [insert type of security issuable upon the exercise of the rights] that may be issued under the rights offering?”

Provide the minimum, if any, and maximum number or amount of securities that may be issuable upon the exercise of the rights.

17. Listing of securities

State the following in bold:

“Where will the rights and the securities issuable upon the exercise of the rights be listed for trading?”

Identify the exchange(s) and quotation system(s), if any, on which the rights and underlying securities are listed, traded or quoted. If no market exists, or is expected to exist, state the following in bold:

“There is no market through which these [rights and/or underlying securities] may be sold.”

PART 3 USE OF AVAILABLE FUNDS

18. Available funds

State the following in bold:

“What will our available funds be upon the closing of the rights offering?”

Using the following table, disclose the available funds after the rights offering. If you plan to combine additional sources of funding with the offering proceeds to achieve your principal capital-raising purpose, provide details about each additional source of funding.

If there is no minimum offering or stand-by commitment, or if the minimum offering or stand-by commitment represents less than 75% of the rights offering, include threshold disclosure if only 15%, 50% or 75% of the entire offering is taken up.

Disclose the amount of working capital deficiency, if any, of the issuer as of the most recent month end. If the available funds will not eliminate the working capital deficiency, state how you intend to eliminate or manage the deficiency. If there has been a significant change in the working capital since the most recently audited annual financial statements, explain those changes.

Guidance

We would consider a significant change to include a change in the working capital that results in material uncertainty regarding the issuer’s going concern assumption, or a change in the working capital balance from positive to deficiency or vice versa.

		Assuming minimum offering or stand-by commitment only	Assuming 15% of offering	Assuming 50% of offering	Assuming 75% of offering	Assuming 100% of offering
A	Amount to be raised by this offering	\$	\$	\$	\$	\$
B	Selling commissions and fees	\$	\$	\$	\$	\$
C	Estimated offering costs (e.g., legal, accounting, audit)	\$	\$	\$	\$	\$
D	Available funds: $D = A - (B+C)$	\$	\$	\$	\$	\$
E	Additional sources of funding required	\$	\$	\$	\$	\$
F	Working capital deficiency	\$	\$	\$	\$	\$
G	Total: $G = (D+E) - F$	\$	\$	\$	\$	\$

19. Use of available funds

State the following in bold:

“How will we use the available funds?”

Using the following table, provide a detailed breakdown of how you will use the available funds. Describe in reasonable detail each of the principal purposes, with approximate amounts.

Description of intended use of available funds listed in order of priority.	Assuming minimum offering or stand-by commitment only	Assuming 15% of offering	Assuming 50% of offering	Assuming 75% of offering	Assuming 100% of offering
	\$	\$	\$	\$	\$
	\$	\$	\$	\$	\$
Total: Equal to G in the available funds in item 18	\$	\$	\$	\$	\$

If there is no minimum offering or stand-by commitment, or if the minimum offering or stand-by commitment represents less than 75% of the rights offering, include threshold disclosure if only 15%, 50% or 75% of the entire offering is taken up.

Instructions:

- If the issuer has significant short-term liquidity requirements, discuss, for each threshold amount (i.e., 15%, 50% and 75%), the impact, if any, of raising that amount on its liquidity, operations, capital resources and solvency. Short-term liquidity requirements include non-discretionary expenditures for general corporate purposes and overhead expenses, significant short-term capital or contractual commitments, and expenditures required to achieve stated business objectives.*

When discussing the impact of raising each threshold amount on your liquidity, operations, capital resources and solvency, include all of the following in the discussion:

- which expenditures will take priority at each threshold, and what effect this allocation would have on your operations and business objectives and milestones;*
- the risks of defaulting on payments as they become due, and what effect the defaults would have on your operations;*

- *an analysis of your ability to generate sufficient amounts of cash and cash equivalents from other sources, the circumstances that could affect those sources and management's assumptions in conducting this analysis.*

State the minimum amount required to meet the short-term liquidity requirements. In the event that the available funds could be less than the amount required to meet the short-term liquidity requirements, describe how management plans to discharge its liabilities as they become due. Include the assumptions management used in its plans.

If the available funds could be insufficient to cover the issuer's short-term liquidity requirements and overhead expenses for the next 12 months, include management's assessment of the issuer's ability to continue as a going concern. If there are material uncertainties that cast significant doubt upon the issuer's ability to continue as a going concern, state this fact in bold.

- 2. If you will use more than 10% of available funds to reduce or retire indebtedness and the indebtedness was incurred within the two preceding years, describe the principal purposes for which the indebtedness was used. If the creditor is an insider, associate or affiliate of the issuer, identify the creditor and the nature of the relationship to the issuer and disclose the outstanding amount owed.*
- 3. If you will use more than 10% of available funds to acquire assets, describe the assets. If known, disclose the particulars of the purchase price being paid for or being allocated to the assets or categories of assets, including intangible assets. If the vendor of the asset is an insider, associate or affiliate of the issuer, identify the vendor and nature of the relationship to the issuer, and disclose the method used to determine the purchase price.*
- 4. If any of the available funds will be paid to an insider, associate or affiliate of the issuer, disclose in a note to the use of available funds table in item 19 the name of the insider, associate or affiliate, the relationship to the issuer, and the amount to be paid.*
- 5. If you will use more than 10% of available funds for research and development of products or services,*
 - a. describe the timing and stage of research and development that management anticipates will be reached using the funds,*

- b. *describe the major components of the proposed programs you will use the available funds for, including an estimate of anticipated costs,*
 - c. *state if you are conducting your own research and development, are subcontracting out the research and development or are using a combination of those methods, and*
 - d. *describe the additional steps required to reach commercial production and an estimate of costs and timing.*
6. *If you may reallocate available funds, include the following statement:*

“We intend to spend the available funds as stated. We will reallocate funds only for sound business reasons.”

20. How long will the available funds last?

State the following in bold:

“How long will the available funds last?”

Explain how long management anticipates the available funds will last. If you do not have adequate funds to cover anticipated expenses for the next 12 months, state the sources of financing that the issuer has arranged but not yet used. Also, provide an analysis of the issuer’s ability to generate sufficient amounts of cash and cash equivalents in the short term and the long term to maintain capacity, and to meet planned growth or to fund development activities. You should describe sources of funding and circumstances that could affect those sources that are reasonably likely to occur. If this results in material uncertainties that cast significant doubt upon the issuer’s ability to continue as a going concern, disclose this fact.

If you expect the available funds to last for more than 12 months, state this expectation.

PART 4 INSIDER PARTICIPATION

21. Intention of insiders

State the following in bold:

“Will insiders be participating?”

Provide the answer. If “yes”, provide details of insiders’ intentions to exercise their rights, to the extent known to the issuer after reasonable inquiry.

22. Holders of at least 10% before and after the rights offering

State the following in bold:

“Who are the holders of 10% or more of our securities before and after the rights offering?”

Provide this information in the following tabular form, to the extent known to the issuer after reasonable inquiry:

Name	Holdings before the offering	Holdings after the offering
[Name of security holder]	[State the number or amount of securities held and the percentage of security holdings this represents]	[State the number or amount of securities held and the percentage of security holdings this represents]

PART 5 DILUTION

23. Dilution

State the following in bold:

“If you do not exercise your rights, by how much will your security holdings be diluted?”

Provide a percentage in the rights offering circular and state the assumptions used, as appropriate.

PART 6 STAND-BY COMMITMENT

24. Stand-by guarantor

State the following in bold:

“Who is the stand-by guarantor and what are the fees?”

Explain the nature of the issuer’s relationship with the stand-by guarantor including whether, and the basis on which, if applicable, the stand-by guarantor is a related party of the issuer. Describe the stand-by commitment and the material terms of the basis on

which the stand-by guarantor may terminate the obligation under the stand-by commitment.

Instructions:

In determining if a stand-by guarantor is a related party, you should refer to the issuer's GAAP which has the same meaning as in National Instrument 52-107 Acceptable Accounting Principles and Auditing Standards.

25. Financial ability of the stand-by guarantor

State the following in bold:

“Have we confirmed that the stand-by guarantor has the financial ability to carry out its stand-by commitment?”

If the offering has a stand-by commitment, state that you have confirmed that the stand-by guarantor has the financial ability to carry out its stand-by commitment.

26. Security holdings of the stand-by guarantor

State the following in bold:

“What are the security holdings of the stand-by guarantor before and after the rights offering?”

Provide this information in the following tabular form, to the extent known to the issuer after reasonable inquiry:

Name	Holdings before the offering	Holdings after the offering if the stand-by guarantor takes up the entire stand-by commitment
[Name of stand-by guarantor]	[State the number or amount of securities held and the percentage of security holdings this represents]	[State the number or amount of securities held and the percentage of security holdings this represents]

PART 7 MANAGING DEALER, SOLICITING DEALER AND UNDERWRITING CONFLICTS

27. The managing dealer, the soliciting dealer and their fees

State the following in bold:

“Who is the [managing dealer/soliciting dealer] and what are its fees?”

Identify the managing dealer, if any, and the soliciting dealer, if any, and describe the commissions or fees payable to them.

28. Managing dealer/soliciting dealer conflicts

State the following in bold:

“Does the [managing dealer/soliciting dealer] have a conflict of interest?”

If disclosure is required by National Instrument 33-105 *Underwriting Conflicts*, include that disclosure.

PART 8 HOW TO EXERCISE THE RIGHTS

29. Security holders who are registered holders

State the following in bold:

“How does a security holder that is a registered holder participate in the rights offering?”

Explain how a registered holder can participate in the rights offering.

30. Security holders who are not registered holders

State the following in bold:

“How does a security holder that is not a registered holder participate in the rights offering?”

Explain how a security holder who is not a registered holder can participate in the rights offering.

31. Eligibility to participate

State the following in bold:

“Who is eligible to receive rights?”

List the jurisdictions in which you are making the rights offering.

Explain how a security holder in a foreign jurisdiction can acquire the rights and securities issuable upon the exercise of the rights.

32. Additional subscription privilege

State the following in bold:

“What is the additional subscription privilege and how can you exercise this privilege?”

Describe the additional subscription privilege and explain how a holder of rights who has exercised the basic subscription privilege can exercise the additional subscription privilege.

33. Transfer of rights

State the following in bold:

“How does a rights holder sell or transfer rights?”

Explain how a holder of rights can sell or transfer rights. If the rights will be listed on an exchange, provide further details related to the trading of the rights on the exchange.

34. Trading of underlying securities

State the following in bold:

“When can you trade securities issuable upon the exercise of your rights?”

State when a security holder can trade the securities issuable upon the exercise of the rights.

35. Resale restrictions

State the following in bold:

“Are there restrictions on the resale of securities?”

If the issuer is offering rights in one or more jurisdictions where there are restrictions on the resale of securities, include a statement disclosing when those rights and underlying securities will become freely tradable and that until then such securities may not be resold except pursuant to a prospectus or prospectus exemption, which may be available only in limited circumstances.

36. Fractional securities upon exercise of the rights

State the following in bold:

“Will we issue fractional underlying securities upon exercise of the rights?”

Respond “yes” or “no” and explain (if necessary).

PART 9 APPOINTMENT OF DEPOSITORY

37. Depository

State the following in bold:

“Who is the depository?”

If the rights offering is subject to a minimum offering amount, or if there is a stand-by commitment, state the name of the depository you appointed to hold all money received upon exercise of the rights until the minimum offering amount or stand-by commitment is received or until the money is returned.

38. Release of funds from depository

State the following in bold:

“What happens if we do not raise the [minimum offering amount] or if we do not receive funds from the stand-by guarantor?”

If the offering is subject to a minimum offering amount, or if there is a stand-by commitment, state that you have entered into an agreement with the depository under which the depository will return the money held by it to holders of rights that have already subscribed for securities under the offering, if you do not raise the minimum offering amount or receive funds from the stand-by guarantor.

PART 10 FOREIGN ISSUERS

39. Foreign issuers

State the following in bold:

“How can you enforce a judgment against us?”

If the issuer is incorporated, continued, or otherwise organized under the laws of a foreign jurisdiction or resides outside of Canada, state the following:

“[The issuer] is incorporated, continued or otherwise organized under the laws of a foreign jurisdiction or resides outside of Canada. It may not be possible for investors to enforce judgments obtained in Canada against any person or company that is incorporated, continued or otherwise organized under the laws of a foreign jurisdiction or resides outside of Canada.”

PART 11 ADDITIONAL INFORMATION

40. Additional information

State the following in bold:

“Where can you find more information about us?”

Provide the SEDAR website address and state that a security holder can access the issuer’s continuous disclosure from that site. If applicable, provide the issuer’s website address.

PART 12 MATERIAL FACTS AND MATERIAL CHANGES

41. Material facts and material changes

State the following in bold:

“There is no material fact or material change about the issuer that has not been generally disclosed.”

If there is a material fact or material change about the issuer that has not been generally disclosed, add disclosure of that material fact or material change.

Guidance

Issuers should be aware that disclosing a material change in the rights offering circular does not relieve the issuer of the requirement to issue a news release and file a material change report as required by Part 7 of NI 51-102.

Form 45-106F16
Notice of Use of Proceeds

[Insert issuer name]

For the financial year ended [Insert end date of most recently completed financial year]

Date: [Specify the date of the Notice. The date must be no earlier than the date of the auditor's report on the financial statements for the issuer's most recently completed financial year.]

[Provide the information specified in the following table.]

1 Opening Proceeds		
(A)	Closing unused proceeds balance from the last Notice in Form 45-106F16 filed, if any	\$
(B)	Proceeds raised in the most recently completed financial year	\$
(C)	Total opening proceeds [Line (C) = Line (A) + Line (B)]	\$
2 Proceeds Used During the Most Recently Completed Financial Year		
	<p>[Provide in reasonable detail a breakdown of all proceeds used in the most recently completed financial year, including proceeds used to pay the following, as applicable:</p> <ul style="list-style-type: none"> i. selling commissions and fees ii. other offering costs iii. amounts paid in respect of each use of available funds identified in the offering memorandum iv. each other principal use of proceeds, identified separately] 	\$
(D)	Total used proceeds [Line (D) is the sum of the uses of proceeds itemized in this section 2 of the table, and must equal the aggregate gross proceeds used during the most recently completed financial year.]	\$
3 Closing Unused Proceeds		
(E)	Closing unused proceeds [Line (E) = Line (C) – Line (D)]	\$

[If any of the proceeds required to be disclosed in this table were paid directly or indirectly to a related party (as defined in Instruction A.6 of Form 45-106F2 Offering Memorandum Form for Non-Qualifying Issuers) of the issuer, state in each case the name of the related party to whom the payment was made, their relationship to the issuer and the amount paid to the related party.]

**Instructions for Completing
Form 45-106F16
*Notice of Use of Proceeds***

1. The amount for Line (A) is taken from Line (E) in the prior year's Notice of Use of Proceeds (Notice), if applicable. If a Notice was not required in the prior year, then the amount for Line (A) is \$nil.
2. The amount for Line (B) is the aggregate gross proceeds raised in all jurisdictions in Canada under section 2.9 [*Offering memorandum*] of National Instrument 45-106 (the OM exemption) during the most recently completed financial year. If an issuer raised funds in reliance on other prospectus exemptions concurrently with the OM exemption during the year and it is impractical to separately track proceeds raised only under the OM exemption, the issuer can provide the disclosure outlined in the table for the aggregate gross proceeds raised under all prospectus exemptions during the most recently completed financial year.
3. If Line (C) is \$nil, then the issuer does not have an obligation to file, deliver or make reasonably available the Notice for that financial year.
4. In Section 2 of the table, the issuer must provide a breakdown in reasonable detail of the uses of the aggregate gross proceeds during the most recently completed financial year. Issuers should ensure that the disclosure is specific enough and provides sufficient detail for an investor to understand how the proceeds have been used.
5. Both direct and indirect payments to related parties must be disclosed. An example of an indirect payment could include repayment of a debt that was incurred for a prior payment to a related party.
6. Proceeds invested on a temporary basis would not generally be considered to have been used.

Form 45-106F17
Notice of Specified Key Events

This is the form required under subsection 2.9(17.20) of National Instrument 45-106 *Prospectus Exemptions* (NI 45-106) in New Brunswick, Nova Scotia and Ontario to make available notice of specified key events to holders of securities acquired under subsection 2.9(2.1) of NI 45-106.

1. Issuer Name and Address

Provide the following information.

Full legal name	<input type="text"/>		
Street address	<input type="text"/>	Province/State	<input type="text"/>
Municipality	<input type="text"/>	Postal code/Zip code	<input type="text"/>
Website	<input type="text"/>	Country	<input type="text"/>

2. Specified Key Event

Provide the following information.

The event, as described in section 3, is: *[Select one or more type of event from the list below]*

- (a) a discontinuation of the issuer's business
- (b) a change in the issuer's industry
- (c) a change of control of the issuer

Date on which the event occurred (yyyy/mm/dd):

3. Event Description

Provide a brief description of the event identified in section 2.

4. Contact Person

Provide the following information for a person at the issuer who can be contacted regarding the event described in section 3.

Name	<input type="text"/>	Title	<input type="text"/>
Email address	<input type="text"/>	Telephone number	<input type="text"/>

Date of notice (yyyy/mm/dd):

Companion Policy 45-106CP
Prospectus Exemptions

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Companion Policy 45-106CP
Prospectus Exemptions

PART 1 – INTRODUCTION

National Instrument 45-106 *Prospectus Exemptions* (NI 45-106) provides: (i) exemptions from the prospectus requirement and (ii) one exemption from the issuer bid requirements. It does not provide exemptions from the requirement to be registered as a dealer, adviser or investment fund manager. National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103) contains some exemptions from the registration requirement.

1.1 Purpose

The purpose of this Companion Policy is to help users understand how the provincial and territorial securities regulatory authorities and regulators interpret or apply certain provisions of NI 45-106. This Companion Policy includes explanations, discussion and examples of the application of various parts of NI 45-106.

1.2 All distributions and other trades are subject to securities legislation

The securities legislation of a local jurisdiction applies to any trade in, or distribution of, a security in the local jurisdiction, whether or not the issuer of the security is a reporting issuer in that jurisdiction. Likewise, the definition of “trade” in securities legislation includes any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of a trade. A person who engages in these activities, or other trading activities, must comply with the securities legislation of each jurisdiction in which the trade or distribution occurs.

1.3 Multi-jurisdictional distributions

A distribution can occur in more than one jurisdiction. If it does, the person conducting the distribution must comply with the securities legislation of each jurisdiction in which the distribution occurs. For example, a distribution from a person in Alberta to a purchaser in British Columbia may be considered a distribution in both jurisdictions.

1.4 Other exemptions

In addition to the exemptions in NI 45-106, exemptions may also be available to persons under securities legislation of each local jurisdiction.

1.5 Discretionary relief

In addition to the exemptions contained in NI 45-106 and those available under securities legislation of a local jurisdiction, the securities regulatory authority or regulator in each jurisdiction has the discretion to grant exemptions from the prospectus requirement.

1.6 Registration business trigger for trading and advising

Securities legislation requires certain persons to be registered if they are any of the following:

- in the business of trading
- in the business of advising
- holding themselves out as being in the business of trading or advising
- acting as an underwriter
- acting as an investment fund manager

NI 31-103 sets out the requirements for registration as well as certain exemptions from these registration requirements.

Issuers relying on prospectus exemptions to distribute securities, or any selling agents they use, may be required to be registered. Companion Policy 31-103CP gives guidance to issuers on how to apply the registration business trigger.

1.7 Underwriters

Underwriters should not sell securities to the public without providing a prospectus. If an underwriter purchases securities with a view to distribution, the underwriter should purchase the securities under the prospectus exemption in section 2.33 of NI 45-106. If the underwriter purchases securities under this exemption, the first trade in the securities will be a distribution. As a result, the underwriter will only be able to resell the securities if it can rely on another exemption from the prospectus requirement, or if a prospectus is delivered to the purchasers of the securities.

There may be legitimate transactions where a dealer purchases securities under a prospectus exemption other than the exemption in section 2.33 of NI 45-106; however, these transactions are only appropriate when the dealer purchases the securities with investment intent and not with a view to distribution.

If a dealer purchases securities through a series of exempt transactions in order to avoid the obligation to deliver a prospectus, the transactions will be viewed as a whole to determine if they constitute a distribution. If a transaction is in effect an indirect distribution, a prospectus will be required to qualify the sale of the securities despite the fact that each interim step in the transaction could otherwise be completed under a prospectus exemption. Such indirect distributions cannot be legitimately structured under NI 45-106.

1.8 Persons created to use exemptions (“syndication”)

Sections 2.3(5), 2.4(1), 2.9(3), 2.9(3.0.1) and 2.10(2) of NI 45-106 specifically prohibit syndications. A distribution of securities to a person that had no pre-existing purpose and is created or used solely to purchase or hold securities under exemptions (a “syndicate”) may be considered a distribution of securities to the persons beneficially owning or controlling the syndicate.

For example, a newly formed company with 15 shareholders is set up with the intention of purchasing \$150 000 worth of securities under the minimum amount investment exemption. Each shareholder of the newly formed company contributes \$10 000. In this situation the shareholders of the newly formed company are indirectly investing \$10 000 when the exemption requires that they each invest \$150 000. Consequently, both the newly formed company and its shareholders may need to comply with the requirements of the minimum amount investment exemption, or find an alternative exemption to rely on.

Syndication related concerns should not ordinarily arise if the purchaser under the exemption is a corporation, syndicate, partnership or other form of entity that is pre-existing and has a bona fide purpose other than investing in the securities being sold. However, it is an inappropriate use of these exemptions to indirectly distribute securities when the exemption is not available to directly distribute securities to each person in the syndicate.

1.9 Responsibility for compliance and verifying purchaser status

(1) Determining whether an exemption is available

The prospectus exemptions in NI 45-106 set out specific terms and conditions that must be satisfied in order for the person relying on the exemption to distribute securities. The person relying on a prospectus exemption is responsible for determining whether the terms and conditions of the prospectus exemption are met. That person should retain all necessary documents to demonstrate that they properly relied on the exemption.

Some of the prospectus exemptions in NI 45-106 are available to both issuers and selling security holders. For purposes of this section, the term “seller” refers to the person relying on a prospectus exemption, whether an issuer or a selling security holder.

(2) Registration related requirements

Registered dealers and representatives have specific obligations under NI 31-103, including the “know your client,” “know your product” and suitability obligations. These obligations apply to securities traded on a marketplace, distributed under a prospectus or distributed under a prospectus exemption.

Registered dealers or representatives may be involved in distributions under prospectus exemptions in different ways. The registered dealer or representative may be acting on behalf of a seller in connection with a distribution using a prospectus exemption.

In both cases, the registered dealer or representative must not only establish that a prospectus exemption is available, it must also comply with its registration obligations. For example, even if a registered dealer or representative has determined that a purchaser qualifies as an accredited investor or eligible investor, the registered dealer or representative must still assess whether the investment is suitable for the purchaser.

(3) Exemptions based on purchaser characteristics

Some of the prospectus exemptions in NI 45-106 require the purchaser of the securities to meet certain characteristics or have certain relationships with a director, executive officer, founder or control person of the issuer. These exemptions include:

- Exemptions based on income or asset tests - The accredited investor exemption and the “eligible investor” test in the offering memorandum exemption in some jurisdictions require a purchaser to meet certain income or asset tests in order for securities to be sold in reliance on the exemption.
- Exemptions based on relationships - The private issuer exemption, the family, friends and business associates exemption and the “eligible investor” test in the offering memorandum exemption in some jurisdictions require a relationship between the purchaser and a director, executive officer, founder or control person of the issuer, such as that of a family member, close personal friend, or close business associate.

When distributing securities under these exemptions, the seller will have to obtain information from the purchaser in order to determine whether the purchaser has the requisite income, assets or relationship to meet the terms of the exemption.

It will not be sufficient for the seller to accept standard representations in a subscription agreement or an initial beside a category on Form 45-106F9 *Form for Individual Accredited Investors* unless the seller has taken reasonable steps to verify the representations made by the purchaser.

(4) Reasonable steps

Described below are procedures that a seller could implement in order to reasonably confirm that the purchaser meets the conditions for a particular exemption. Whether the types of steps are reasonable will depend on the particular facts and circumstances of the purchaser, the offering and the exemption being relied on, including:

- how the seller identified or located the potential purchaser
- what category of accredited investor or eligible investor the purchaser claims to meet
- what type of relationship the purchaser claims to have and with which director, executive officer, founder or control person of the issuer
- how much and what type of background information is known about the purchaser
- whether the person who meets with, or provides information to, the purchaser is registered

We expect a seller to be in a position to explain why certain steps were not taken or to be able to explain how alternative steps were reasonable in the circumstances. It is the seller that is relying on the prospectus exemption and it is the seller that is responsible to ensure the terms of the exemption are met. If the seller has any reservations about whether the purchaser qualifies under the exemption, the seller should not sell securities to the purchaser in reliance on that exemption.

(a) Understand the terms and conditions of the exemption

The seller should fully understand the terms and conditions of the exemption being relied on. “Understanding” includes being able to:

- Explain the terms and conditions – The seller must be able to explain to a purchaser the meaning of the terms and conditions of the particular exemption, including the difference between alternative qualification criteria for the same exemption.

For example, the accredited investor definition uses the terms “financial assets” and “net assets”. In some jurisdictions, the offering memorandum exemption also uses the term “net assets” as part of the eligible investor definition. A seller should be capable of explaining the meaning and differences between the two terms, including describing the specific assets and liabilities that form part of each calculation.

- Apply the specific facts of the purchaser to the terms and conditions – The terms “close personal friend” and “close business associate” used in some exemptions are difficult to define and can mean different things to different people. Sections 2.7 and 2.8 of this Companion Policy provide guidance on the key elements necessary to establish these types of relationships. We have not provided a “bright line” test for these relationships. A seller should understand the key elements of these relationships and be able to evaluate whether the relationship claimed by the purchaser meets those key elements.

(b) Establish appropriate policies and procedures

The seller is also responsible for confirming that all parties acting on behalf of the seller in a distribution understand the conditions that must be satisfied to rely on the exemption. This includes any employee, officer, director, agent, finder or other intermediary (whether registered or not) involved in the transaction.

We expect a seller to have policies and procedures in place to confirm that these other parties understand the exemption being relied on, are able to describe the terms of the exemption to purchasers and know what information and documentation must be obtained from purchasers to confirm the conditions of the exemption have been satisfied.

(c) Verify the purchaser meets the criteria set out in the exemption

Before discussing the details of an investment with a prospective purchaser, we expect the seller to obtain information that confirms the purchaser meets the criteria set out in the exemption. It

would not be sufficient for a seller to rely solely on a form of subscription agreement or other document that only states: “I am an accredited investor” or “I am a friend of a director”.

We would also have concerns if a seller only accepted detailed representations or an initial beside a category on the Form 45-106F9 *Form for Individual Accredited Investors* from the purchaser. In both cases, we expect the seller to take additional steps to confirm that the purchaser understood the meaning of what the purchaser was signing or initialing and that the purchaser was truthful in making the representation or initialing the category.

For example:

- Exemptions based on income or asset tests - To assess whether a purchaser is an accredited investor or eligible investor, we expect the seller to ask questions about the purchaser’s net income, financial assets or net assets, or to ask other questions designed to elicit details about the purchaser’s financial circumstances.

If the seller has concerns about the purchaser’s responses, the seller should make further inquiries about the purchaser’s financial circumstances. If the seller still questions the purchaser’s eligibility, the seller could ask to see documentation that independently confirms the purchaser’s claims.

- Exemptions based on relationships - If an exemption is based on the existence of a specific relationship between the purchaser and a principal of the issuer (such as that of a family member, “close personal friend” or “close business associate”), we expect the seller to ask questions designed to confirm the nature and length of the relationship. The seller should also confirm the nature and length of the relationship with the director, executive officer, founder or control person identified by the purchaser.

For example, if the purchaser claims to be a close personal friend of a director of an issuer, the seller could ask the purchaser for the name of the director and a description of the nature and length of the purchaser’s relationship with the director. The seller could verify with the director that the information is accurate. Based on that factual information, the seller could determine whether the purchaser is a close personal friend of the director for the purposes of the family, friends and business associates exemption.

(d) Keep relevant and detailed documentation

The seller should consider what documentation it needs to retain or collect from a purchaser to evidence the steps the seller followed to establish the purchaser met the conditions of the exemption.

The seller should consider whether it is necessary to have the purchaser sign that documentation before distributing securities to that purchaser. For example, if the purchaser claims to be a close personal friend of a director of the issuer, the seller could ask the purchaser to sign a statement giving the name of the director and describing the nature and length of the purchaser’s relationship with the director. The seller could also ask the director to sign the statement

confirming the relationship. In other cases, the seller may determine it is not necessary for the purchaser to sign the documentation, for example, if the seller is using meeting notes and email communications to demonstrate its verification efforts.

The seller should retain this documentation to evidence the steps the seller has taken to verify the availability of the exemption. Certain exemptions require the seller to obtain a signed risk acknowledgement form from the purchaser and to retain that risk acknowledgement for 8 years after the distribution. The 8-year period reflects the longest limitation period under securities legislation in Canada. The seller should consider local legislation concerning limitation periods when deciding how long to retain other documentation it considers necessary to demonstrate that it complied with the exemption.

The seller should also consider and comply with the requirements under provincial or federal legislation concerning the protection of personal information when collecting and retaining purchaser information.

1.10 Prohibited activities

Securities legislation in certain jurisdictions prohibits any person from making certain representations to a purchaser of securities, including an undertaking about the future value or price of the securities. In certain jurisdictions, these provisions also prohibit a person from making any statement that the person knows or ought reasonably to know is a misrepresentation. These prohibitions apply whether or not a trade or distribution is made under an exemption.

Misrepresentation is defined in securities legislation. The use of exaggeration, innuendo or ambiguity in an oral or written representation about a material fact, or other deceptive behaviour relating to a material fact, might be a misrepresentation.

PART 2 – INTERPRETATION

2.1 Definitions

Unless defined in NI 45-106, terms used in NI 45-106 have the meaning given to them in local securities legislation or in National Instrument 14-101 *Definitions*.

The term “contract of insurance” in the definition of “financial assets” has the meaning assigned to it in the legislation for the jurisdiction referenced in Appendix A of NI 45-106.

2.2 Executive officer (“policy making function”)

The definition of “executive officer” in NI 45-106 is based on the definition of the same term contained in National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102).

Paragraph (c) of the definition "executive officer" includes individuals that are not employed by the issuer or any of its subsidiaries, but who perform a policy-making function in respect of the issuer.

The definition includes someone who “performs a policy-making function” in respect of the issuer. The CSA is of the view that an individual who “performs a policy-making function” in respect of an issuer is someone who is responsible, solely or jointly with others, for setting the direction of the issuer and is sufficiently knowledgeable of the business and affairs of the issuer so as to be able to respond meaningfully to inquiries from investors about the issuer.

2.3 Directors, executive officers and officers of non-corporate issuers

The term “director” is defined in NI 45-106 and it includes, for non-corporate issuers, individuals who perform functions similar to those of a director of a company.

When the term “officer” is used in NI 45-106, or any of the NI 45-106 forms, a non-corporate issuer should refer to the definitions in securities legislation. Securities legislation in most jurisdictions defines “officer” to include any individual acting in a capacity similar to that of an officer of a company. Therefore, in most jurisdictions, non-corporate issuers must determine which individuals are acting in capacities similar to that of directors and officers of corporate issuers, for the purposes of complying with NI 45-106 and its forms.

For example, the determination of who is acting in the capacity of a director or executive officer may be important where a person intends to distribute securities of a limited partnership under an exemption that is conditional on a relationship with a director or executive officer. The person must conclude that the purchaser has the necessary relationship with an individual who is acting in a capacity with the limited partnership that is similar to that of a director or executive officer of a company.

2.4 Founder

The definition of “founder” includes a requirement that, at the time of the distribution of a security the person be actively involved in the business of the issuer. Accordingly, a person who takes the initiative in founding, organizing or substantially reorganizing the business of the issuer within the meaning of the definition but subsequently ceases to be actively engaged in the day to day operations of the business of the issuer would no longer be a “founder” for the purposes of NI 45-106, regardless of the person’s degree of prior involvement with the issuer or the extent of the person’s continued ownership interest in the issuer.

2.5 Investment fund

Generally, the definition of “investment fund” would not include a trust or other entity that issues securities that entitle the holder to net cash flows generated by: (i) an underlying business owned by the trust or other entity, or (ii) the income-producing properties owned by the trust or other entity. Examples of trusts or other entities that are not included in the definition are business income trusts, real estate investment trusts and royalty trusts.

2.6 Affiliate, control and related entity

(1) Affiliate

Section 1.3 of NI 45-106 contains rules for determining whether persons are affiliates for the purposes of NI 45-106, which may be different than those contained in other securities legislation.

(2) Control

The concept of control has two different interpretations in NI 45-106. For the purposes of Division 4 of Part 2 (employee, executive officer, director and consultant exemptions), the interpretation of control is contained in section 2.23(1). For the purposes of the rest of NI 45-106, the interpretation of control is found in section 1.4 of NI 45-106. The reason for having two different interpretations of control is that the exemptions for distributions of securities to employees, executive officers, directors and consultants require a broader concept of control than is considered necessary for the rest of NI 45-106 to accommodate the issuance of compensation securities in a wide variety of business structures.

2.7 Close personal friend

For purposes of both the private issuer exemption in section 2.4 of NI 45-106 and the family, friends and business associates exemption in section 2.5 of NI 45-106, a “close personal friend” of a director, executive officer, founder or control person of an issuer is an individual who knows the director, executive officer, founder or control person well enough and has known them for a sufficient period of time to be in a position to assess their capabilities and trustworthiness and to obtain information from them with respect to the investment. The term “close personal friend” can include a family member who is not already specifically identified in the exemptions if the family member satisfies the criteria described above.

We consider the following factors as relevant to this determination:

- (a) the length of time the individual has known the director, executive officer, founder or control person,
- (b) the nature of the relationship between the individual and the director, executive officer, founder or control person including such matters as the frequency of contacts between them and the level of trust and reliance in the other circumstances, and
- (c) the number of “close personal friends” of the director, executive officer, founder or control person to whom securities have been distributed in reliance on the private issuer exemption or the family, friends and business associates exemption.

An individual is not a close personal friend solely because the individual is:

- (a) a relative,
- (b) a member of the same club, organization, association or religious group,
- (c) a co-worker, colleague or associate at the same workplace,
- (d) a client, customer, former client or former customer,
- (e) a mere acquaintance, or
- (f) connected through some form of social media, such as Facebook, Twitter or LinkedIn.

The relationship between the individual and the director, executive officer, founder or control person must be direct. For example, the exemption is not available to a close personal friend of a close personal friend of a director of the issuer.

We would not consider a relationship that is primarily founded on participation in an Internet forum to be that of a close personal friend.

The person relying on the exemption is responsible for determining that the purchaser meets the characteristics required under the exemption. See section 1.9 of this Companion Policy for guidance on how to verify and document purchaser status.

2.8 Close business associate

For the purposes of both the private issuer exemption in section 2.4 of NI 45-106 and the family, friends and business associates exemption in section 2.5 of NI 45-106, a “close business associate” is an individual who has had sufficient prior business dealings with a director, executive officer, founder or control person of the issuer to be in a position to assess their capabilities and trustworthiness and to obtain information from them with respect to the investment.

We consider the following factors as relevant to this determination:

- (a) the length of time the individual has known the director, executive officer, founder or control person,
- (b) the nature of any specific business relationships between the individual and the director, executive officer, founder or control person, including, for each relationship, when it began, the frequency of contact between them and when it terminated if it is not ongoing, and the level of trust and reliance in the other circumstances,
- (c) the nature and number of any business dealings between the individual and the director, executive officer, founder or control person, the length of the period

during which they occurred, and the nature and date of the most recent business dealing, and

- (d) the number of “close business associates” of the director, executive officer, founder or control person to whom securities have been distributed in reliance on the private issuer exemption or the family, friends and business associates exemption.

An individual is not a close business associate solely because the individual is:

- (a) a member of the same club, organization, association or religious group,
- (b) a co-worker, colleague or associate at the same workplace,
- (c) a client, customer, former client or former customer,
- (d) a mere acquaintance, or
- (e) connected through some form of social media, such as Facebook, Twitter or LinkedIn.

The relationship between the individual and the director, executive officer, founder or control person must be direct. For example, the exemptions are not available for a close business associate of a close business associate of a director of the issuer.

We would not consider a relationship that is primarily founded on participation in an internet forum to be that of a close business associate.

The person relying on the exemption is responsible for determining that the purchaser meets the characteristics required under the exemption. See section 1.9 of this Companion Policy for guidance on how to verify and document purchaser status.

2.9 Indirect interest

Under paragraph (t) of the definition of “accredited investor” in section 1.1 of NI 45-106, an “accredited investor” includes a person in respect of which all of the owners of interests in that person, direct, indirect or beneficial, are accredited investors. The interpretive provision in section 1.2 of NI 45-106 is needed to confirm the meaning of indirect interest in British Columbia.

PART 3 – CAPITAL RAISING EXEMPTIONS

3.1 Soliciting purchasers - (1) Soliciting purchasers - Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Québec, Saskatchewan and Yukon

Part 2, Division 1 (capital raising exemptions) in NI 45-106 does not prohibit the use of registrants, finders, or advertising in any form (for example, Internet, e-mail, direct mail, newspaper or magazine) to solicit purchasers under any of the exemptions. However, use of any of these means to find purchasers under the private issuer exemption in section 2.4 of NI 45-106 or under the family, friends and business associates exemption in section 2.5 of NI 45-106, may give rise to a presumption that the relationship required for use of these exemptions is not present. If, for example, an issuer advertises or pays a commission or finder's fee to a third party to find purchasers under the family, friends and business associates exemption, it suggests that the precondition of a close relationship between the purchaser and the issuer may not exist and therefore the issuer cannot rely on this exemption.

Use of a finder by a private issuer to find an accredited investor, however, would not preclude the private issuer from relying upon the private issuer exemption, provided that all of the other conditions to that exemption are met.

Any solicitation activities that aim to identify a particular category of investor should clearly state the kind of investor being sought and the criteria that investors will be required to meet. Any print materials used to find accredited investors, for example, should clearly and prominently state that only accredited investors should respond to the solicitation.

(2) Soliciting purchasers – Ontario

Part 2, Division 1 (capital raising exemptions) in NI 45-106 does not prohibit the use of registrants, finders, or advertising in any form (for example, Internet, e-mail, direct mail, newspaper or magazine) to solicit purchasers under any of the exemptions.

Any solicitation activities that aim to identify a particular category of investor should clearly state the kind of investor being sought and the criteria that investors will be required to meet. Any print materials used to find accredited investors, for example, should clearly and prominently state that only accredited investors should respond to the solicitation.

The Ontario Securities Commission considers the use of registrants, finders or advertising to find or attract purchasers to be inconsistent with the use of the family, friends and business associates exemption in section 2.5 of NI 45-106 and the private issuer exemption in section 2.4 of NI 45-106 for distributions to family members, close personal friends or close business associates. Since advertising should not be required to find a family member, close personal friend or close business associate, the Ontario Securities Commission does not expect that advertising would be used to find or attract purchasers for distributions made solely under section 2.5 of NI 45-106 or to identify purchasers for distributions made in reliance on that exemption. The Ontario Securities Commission also does not expect that advertising would be used for distributions made solely to family members, close personal friends or close business associates under section 2.4 of NI 45-106 or to identify those types of purchasers for distributions made in reliance on that exemption.

If a distribution is being made in reliance on one or more other prospectus exemptions, advertising in connection with those other exemptions does not prevent concurrent reliance on

the family, friends and business associates exemption in section 2.5 or the private issuer exemption in section 2.4 of NI 45-106. Similarly, use of a finder by a private issuer to find an accredited investor would not preclude the private issuer from relying upon the private issuer exemption under section 2.4 of NI 45-106 provided that all of the other conditions to that exemption are met.

3.2 Soliciting purchasers – Ontario

The Ontario Securities Commission takes the position that if an issuer retains an employee whose primary job function is to actively solicit members of the public for the purposes of selling the issuer's securities, the issuer and its employee are in the business of selling securities. Further, if an issuer and its employees are deemed to be in the business of selling securities the Ontario Securities Commission considers both the issuer and its employees to be market intermediaries. This applies whether the issuer and its employees are located in Ontario and solicit members of the public outside of Ontario or whether the issuer and its employees are located outside of Ontario and solicit members of the public in Ontario. Accordingly, in order to be in compliance with securities legislation, these issuers and their employees should be registered under the appropriate category of registration in Ontario.

3.3 Advertising

NI 45-106 does not restrict the use of advertising to solicit or find purchasers. However, issuers and selling security holders should review other securities legislation and securities directions for guidelines, limitations and prohibitions on advertising intended to promote interest in an issuer or its securities. For example, any advertising or marketing communications must not contain a misrepresentation and should be consistent with the issuer's public disclosure record.

3.3.1 Advertising and marketing materials under the offering memorandum exemption

In Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan, an offering memorandum prepared in accordance with the offering memorandum exemption in section 2.9(2.1) of NI 45-106 must incorporate by reference any marketing materials used in relation to a distribution under the offering memorandum exemption. Subsection 2.9(8) of NI 45-106 requires the issuer to sign a certificate that indicates that the offering memorandum does not contain a misrepresentation. As marketing materials are incorporated by reference into the offering memorandum, the issuer must also ensure that the information contained in marketing materials does not contain a misrepresentation.

In these jurisdictions, an issuer or registrant that uses marketing materials as part of an offering made in reliance on the offering memorandum exemption must review the marketing materials to confirm that they are consistent with the offering document and are fair, balanced and not misleading. In addition, these jurisdictions expect an issuer or registrant to determine whether any claims set out in marketing materials adequately refer to information to support these claims and representations. For example, if benchmarks are used for comparison purposes, the issuer or registrant should assess whether the benchmarks are relevant and comparable to the investment in question and confirm the marketing materials:

- (a) adequately explain differences between the benchmark and the investment,
- (b) make reference to the source of the benchmark and identify the date to which the information is current, and
- (c) where relevant, caution purchasers that historical performance is not necessarily indicative of future results.

Issuers that prepare offering memoranda in accordance with Form 45-106F2 *Offering Memorandum for Non-Qualifying Issuers*, are also required to comply with requirements relating to forward-looking information, which are described in Instructions A.12 and B.14 of Form 45-106F2. Issuers cannot disseminate material forward-looking information unless it is contained within the offering memorandum. Additionally, forward-looking information contained in an offering memorandum must comply with certain requirements in National Instrument 51-102 *Continuous Disclosure Obligations*. These requirements also extend to marketing materials that are used in connection with a distribution under the offering memorandum exemption.

In these jurisdictions, if an issuer or registrant intends to rely on marketing materials prepared by a third party, such as an analyst report that rates a security or compares a security with securities of other issuers, the issuer or registrant is expected to perform its own assessment of the marketing materials to confirm that they are fair, balanced and not misleading. For example, if the report has been paid for by the issuer, or if there are other relationships between the analyst and the issuer, it would be inappropriate to describe the report as being an “independent” report. The report should also prominently disclose the fees paid and relationships between the analyst and the issuer. An issuer or registrant should not rely on marketing materials prepared by a third party without independently reviewing the materials prior to use.

A registrant should be aware of other CSA guidance on the review and use of marketing materials and reliance on marketing materials prepared by third parties.

3.4 Restrictions on finder’s fees or commissions

The following restrictions apply with respect to certain exemptions under NI 45-106:

- (1) no commissions or finder’s fees may be paid to directors, officers, founders and control persons in connection with a distribution made under the private issuer exemption or the family, friends and business associates exemption, except in connection with a distribution of a security to an accredited investor under the private issuer exemption; and
- (2) in Northwest Territories and Nunavut, only a registered dealer may be paid a commission or finder’s fee in connection with a distribution of a security to a purchaser in one of those jurisdictions under the offering memorandum exemption.

3.4.01 Payment of Finder's Fees or Commissions to Any Person

Subsection 2.5(2) of NI 45-106 prohibits the payment of commissions or finder's fees to any director, officer, founder or control person of an issuer or an affiliate of an issuer in connection with a distribution under the family, friends and business associates exemption.

The Ontario Securities Commission considers the payment of fees or commissions to any person, including registrants or finders, to identify, find or introduce one's family members, close personal friends or close business associates to be inconsistent with the family, friends and business associates exemption. However, the Ontario Securities Commission recognizes that fees may be paid to a person in connection with a distribution under the family, friends and business associates exemption in certain circumstances.

For example:

- Documentation and certain other activities – Fees may be paid for the documentation and other activities relating to the closing of the distribution.
- Concurrent reliance on other prospectus exemptions – If distributing securities on the same terms concurrently under one or more other prospectus exemptions in respect of which fees or commissions are being paid, then such fees and commissions may also be paid in respect of securities distributed under the family, friends and business associates exemption.

3.4.1 Reinvestment plans

(1) When is a plan administrator acting “for or on behalf of the issuer”?

Section 2.2 of NI 45-106 contains a prospectus exemption for distributions of securities by a trustee, custodian or administrator acting for or on behalf of the issuer. If the trustee, custodian or administrator is engaged by the issuer, the plan administrator acts “for or on behalf of the issuer” and therefore falls within the language contained in section 2.2(1). The fact that the plan administrator may act on or in accordance with instructions of a plan participant, under the plan, does not preclude the administrator from relying on the exemption contained in section 2.2 of NI 45-106.

(2) Providing a description of material attributes and characteristics of securities

The reinvestment plan exemption in section 2.2(5) of NI 45-106 includes a requirement, effective September 28, 2009, that if the securities distributed under a reinvestment plan are of a different class or series than the securities to which the dividend or distribution is attributable, the issuer or plan agent must have provided the plan participants with a description of the material attributes and characteristics of the securities being distributed. An issuer or plan agent with an existing reinvestment plan can satisfy this requirement in a number of ways. If plan participants have previously signed a plan agreement or received a copy of a reinvestment plan that included this information, the issuer or plan agent does not need to take any further action

for current plan participants. (Future participants should receive the same type of information before their first trade of a security under the plan.)

If plan participants have not received this information in the past, the issuer or plan agent can provide the required information or a reference to a website where the information is available with other materials sent to holders of that class of securities, for example with proxy materials.

(3) Interest payments

The exemption in section 2.2 of NI 45-106 may be available where a person invests interest payable on debentures or other similar securities into other securities of the issuer. The words “distributions out of earnings...or other sources” cover interest payable on debentures.

3.5 Accredited investor

(1) Individual qualification – financial tests

An individual is an “accredited investor” for the purposes of NI 45-106 if the individual satisfies one of four tests set out in the “accredited investor” definition in section 1.1 of NI 45-106:

- the \$1 000 000 financial asset test in paragraph (j)
- the \$5 000 000 financial asset test in paragraph (j.1)
- the net income test in paragraph (k)
- the net asset test in paragraph (l)

Three branches of the definition (in paragraphs (j), (k) and (l)) are designed to treat spouses as a single investing unit, so that either spouse qualifies as an “accredited investor” if the combined financial assets of both spouses exceed \$1 000 000, the combined net income of both spouses exceeds \$300 000, or the combined net assets of both spouses exceeds \$5 000 000.

The fourth branch, the \$5 000 000 financial asset test, does not treat spouses as a single investing unit. If an individual meets the \$5 000 000 financial asset test, they also meet the test to be a “permitted client” under NI 31-103. Permitted clients are entitled to waive the “know your client” and suitability obligations of registered dealers and advisers under NI 31-103. Under subsection 2.3(7) of NI 45-106, an issuer distributing securities under the accredited investor exemption to an individual who meets the \$5 000 000 financial asset test in paragraph (j.1) under the definition of “accredited investor” is not required to obtain a signed risk acknowledgement in Form 45-106F9 *Form for Individual Accredited Investors* from that individual.

For the purposes of the financial asset tests in paragraphs (j) and (j.1), “financial assets” are defined in NI 45-106 to mean cash, securities, or a contract of insurance, a deposit or an evidence of a deposit that is not a security for the purposes of securities legislation. These financial assets are generally liquid or relatively easy to liquidate. The value of a purchaser’s personal residence is not included in a calculation of financial assets.

By comparison, the net asset test under paragraph (l) means all of the purchaser’s total assets minus all of the purchaser’s total liabilities. Accordingly, for the purposes of the net asset test,

the calculation of total assets would include the value of a purchaser's personal residence and the calculation of total liabilities would include the amount of any liability (such as a mortgage) in respect of the purchaser's personal residence.

If the combined net income of both spouses does not exceed \$300 000, but the net income of one of the spouses exceeds \$200 000, only the spouse whose net income exceeds \$200 000 qualifies as an accredited investor.

(2) Bright-line standards – individuals

The monetary thresholds in the “accredited investor” definition are intended to create “bright-line” standards. Investors who do not satisfy these monetary thresholds do not qualify as accredited investors under the applicable paragraph.

(3) Beneficial ownership of financial assets

Paragraphs (j) and (j.1) of the “accredited investor” definition refer to the beneficial ownership of financial assets. As a general matter, it should not be difficult to determine whether financial assets are beneficially owned by an individual, an individual's spouse, or both, in any particular instance. However, in the case where financial assets are held in a trust or in another type of investment vehicle for the benefit of an individual there may be questions as to whether the individual beneficially owns the financial assets. The following factors are indicative of beneficial ownership of financial assets:

- (a) physical or constructive possession of evidence of ownership of the financial asset;
- (b) entitlement to receipt of any income generated by the financial asset;
- (c) risk of loss of the value of the financial asset; and
- (d) the ability to dispose of the financial asset or otherwise deal with it as the individual sees fit.

For example, securities held in a self-directed RRSP, for the sole benefit of an individual, are beneficially owned by that individual. In general, financial assets in a spousal RRSP would also be included for the purposes of the \$1 000 000 financial asset test in paragraph (j) because it takes into account financial assets owned beneficially by a spouse. However, financial assets in a spousal RRSP would not be included for purposes of the \$5 000 000 financial asset test in paragraph (j.1). Financial assets held in a group RRSP under which the individual does not have the ability to acquire the financial assets and deal with them directly would not meet the beneficial ownership requirements in either paragraph (j) or paragraph (j.1).

(4) Calculation of an individual purchaser's net assets

To calculate a purchaser's net assets under the net asset test in paragraph (l) of the "accredited investor" definition, subtract the purchaser's total liabilities from the purchaser's total assets. The value attributed to assets should reasonably reflect their estimated fair value. Income tax should be considered a liability if the obligation to pay it is outstanding at the time of the distribution of the security.

(4.1) Risk acknowledgement from individual investors

Persons relying on the accredited investor exemption in section 2.3 of NI 45-106 and section 73.3 of the *Securities Act* (Ontario) to distribute securities to individual accredited investors described in paragraphs (j), (k) and (l) of the "accredited investor" definition must obtain a completed and signed risk acknowledgement from that individual accredited investor.

"Individual" is defined in the securities legislation of certain jurisdictions to mean a natural person. The definition specifically excludes partnerships, unincorporated associations, unincorporated syndicates, unincorporated organizations and trusts. It also specifically excludes a natural person acting in the capacity of trustee, executor, administrator or personal or other legal representative.

(5) Financial statements

The minimum net asset threshold of \$5 000 000 specified in paragraph (m) of the "accredited investor" definition must, in the case of a non-individual entity, be shown on the entity's "most recently prepared financial statements". The financial statements must be prepared in accordance with applicable generally accepted accounting principles.

(6) Time for assessing qualification

The financial tests prescribed in the accredited investor definition are to be applied only at the time of the distribution of the security. The person is not required to monitor the purchaser's continuing qualification as an accredited investor after the distribution of the security is completed.

(7) Recognition or designation as an "accredited investor"

Paragraph (v) of the "accredited investor" definition in NI 45-106 contemplates that a person may apply to be recognized or designated as an accredited investor by the securities regulatory authorities or, except in Ontario and Québec, the regulators. The securities regulatory authorities or regulators have not adopted any specific criteria for granting accredited investor recognition or designation to applicants, as the securities regulatory authorities or regulators believe that the "accredited investor" definition generally covers all types of persons that do not require the protection of the prospectus requirement. Accordingly, the securities regulatory authorities or regulators expect that applications for accredited investor recognition or designation will be utilized on a very limited basis. If a securities regulatory authority or regulator considers it

appropriate in the circumstances, it may grant accredited investor recognition or designation to a person on terms and conditions, including a requirement that the person apply annually for renewal of accredited investor recognition or designation.

(8) Verifying accredited investor status

Persons relying on the accredited investor exemption are responsible for determining whether a purchaser meets the definition of “accredited investor”. See section 1.9 of this Companion Policy for guidance on how to verify and document purchaser status.

3.6 Private issuer

(1) Meaning of “the public”

Whether or not a person is a member of the public must be determined on the facts of each particular case. The courts have interpreted “the public” very broadly in the context of securities trading. Whether a person is a part of the public will be determined on the particular facts of each case, based on the tests that have developed under the relevant case law. A person who intends to distribute securities in reliance upon the private issuer prospectus exemption in section 2.4(2) of NI 45-106 to a person not listed in paragraphs (a) through (j) of that section will have to satisfy itself that the distribution of the security is not to the public.

(2) Meaning of “close personal friend” and “close business associate”

See sections 2.7 and 2.8 of this Companion Policy for a discussion of the meaning of “close personal friend” and “close business associate”.

(2.1) Meaning of “non-convertible debt securities”

Paragraph (b) of the definition of private issuer has a number of restrictions that apply to the securities, other than non-convertible debt securities, of a private issuer. Non-convertible debt securities are debt securities that do not have a right or obligation to exchange or convert into another security of the issuer.

(3) Business combination of private issuers

A distribution of securities in connection with an amalgamation, merger, reorganization, arrangement or other statutory procedure involving two private issuers to holders of securities of those issuers is not a distribution of a security to the public, provided that the resulting issuer is a private issuer.

Similarly, a distribution of securities by a private issuer in connection with a share exchange take-over bid for another private issuer is not a distribution of securities to the public, provided the offeror remains a private issuer after completion of the bid.

(4) Acquisition of a private issuer

Persons relying on a private issuer exemption in NI 45-106 must be satisfied that the purchaser is not a member of the public. Generally, however, if the owner of a private issuer sells the business of the private issuer by way of a sale of securities, rather than assets, to another party who acquires all of the securities, the sale will not be considered to have been to the public.

(5) Ceasing to be a private issuer

The term “private issuer” is defined in section 2.4(1) of NI 45-106. A private issuer can distribute securities only to the persons listed in section 2.4(2) of NI 45-106. If a private issuer distributes securities to a person not listed in section 2.4(2), even under another exemption, it will no longer be a private issuer and will not be able to continue to use the private issuer prospectus exemption in section 2.4(2). For example, if a private issuer distributes securities under the offering memorandum exemption, it will no longer be a private issuer.

Issuers that cease to be private issuers do not automatically become “reporting issuers”. They are simply no longer able to rely on the private issuer exemption in section 2.4(1). Such issuers would still be able to use other exemptions to distribute their securities. For example, such issuers could rely on the family, friends and business associates prospectus exemption (except in Ontario) or the accredited investor prospectus exemption. However, issuers that rely on these prospectus exemptions must file a report of exempt distribution with the securities regulatory authority or regulator in each jurisdiction in which the distribution took place.

An issuer that completes a going private transaction (for example, by way of an amalgamation, squeeze out or a takeover bid with a subsequent statutory compulsory acquisition) can use the private issuer exemption after a going private transaction.

3.7 Family, friends and business associates

(1) Number of purchasers

There is no restriction on the number of persons that the issuer may sell securities to under the family, friends and business associates exemption in section 2.5 of NI 45-106. However, an issuer selling securities to a large number of persons under this exemption may give rise to a presumption that not all of the purchasers are family, close personal friends or close business associates and that the exemption may not be available.

(2) Meaning of “close personal friend” and “close business associate”

See sections 2.7 and 2.8 of this Companion Policy for a discussion of the meaning of “close personal friend” and “close business associate”.

(3) Risk acknowledgement - Saskatchewan

Under section 2.6 of NI 45-106, the family, friends and business associates exemption in section 2.5 of NI 45-106 cannot be relied upon in Saskatchewan for a distribution of securities based on a close personal friendship or close business association unless the person obtains a signed “risk acknowledgement” in the required form from the purchaser and retains the form for eight years after the distribution of securities.

3.8 Offering memorandum

(1) Eligibility criteria - Manitoba, Northwest Territories, Nunavut and Prince Edward Island

Manitoba, Northwest Territories, Nunavut, Prince Edward Island and Yukon impose eligibility criteria on persons investing under the offering memorandum exemption. In these jurisdictions, the purchaser must be an eligible investor if the purchaser’s acquisition cost is more than \$10 000.

In determining the acquisition cost to a purchaser who is not an eligible investor, include any future payments that the purchaser will be required to make. Proceeds that may be obtained on exercise of warrants or other rights, or on conversion of convertible securities, are not considered to be part of the acquisition cost unless the purchaser is legally obligated to exercise or convert the securities. The \$10 000 maximum acquisition cost is calculated per distribution of security.

Nevertheless, concurrent and consecutive, closely-timed offerings to the same purchaser will usually constitute one distribution of a security. Consequently, when calculating the acquisition cost, all of these offerings by or on behalf of the issuer to the same purchaser who is not an eligible investor would be included. It would be inappropriate for an issuer to try to circumvent the \$10 000 threshold by dividing a subscription in excess of \$10 000 by one purchaser into a number of smaller subscriptions of \$10 000 or less that are made directly or indirectly by the same purchaser.

A purchaser can qualify as an eligible investor under various categories of the definition, including if the purchaser has and has had in prior years either \$75 000 pre-tax net income or profit or has \$400 000 worth of net assets. In calculating a purchaser’s net assets, subtract the purchaser’s total liabilities from the purchaser’s total assets. The value attributed to assets should reasonably reflect their estimated fair value. Income tax should be considered a liability if the obligation to pay it is outstanding at the time of the distribution of a security.

Another way a purchaser can qualify as an eligible investor is to obtain advice from an eligibility adviser. An eligibility adviser is a person registered as an investment dealer (or in an equivalent category of unrestricted dealer in the purchaser’s jurisdiction) that is authorized to give advice with respect to the type of security being distributed. In Saskatchewan and Manitoba, certain lawyers and public accountants may also act as eligibility advisers.

A registered investment dealer providing advice to a purchaser in these circumstances is expected to comply with the “know your client” and suitability requirements under applicable securities legislation and SRO rules and policies. Some dealers have obtained exemptions from the “know your client” and suitability requirements because they do not provide advice. An

assessment of suitability by these dealers is not sufficient to qualify a purchaser as an eligible investor.

(1.1) Eligibility criteria and investment limits – Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan

(a) Eligibility criteria

Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan impose eligibility criteria on persons investing under the offering memorandum exemption.

The qualification criteria for becoming an eligible investor are substantially the same as in the jurisdictions identified in subsection (1), above. Note, however, that in Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan, it is not possible to qualify as an eligible investor by receiving advice from an “eligibility advisor”.

A purchaser can qualify as an eligible investor under various categories of the definition, including if the purchaser has and has had in prior years either \$75 000 pre-tax net income or profit or has \$400 000 worth of net assets. In calculating a purchaser’s net assets, subtract the purchaser’s total liabilities from the purchaser’s total assets. The value attributed to assets should reasonably reflect their estimated fair value. Income tax should be considered a liability if the obligation to pay it is outstanding at the time of the distribution of a security.

(b) Investment limits for individual eligible and non-eligible investors

Both eligible investors and purchasers that do not qualify as eligible investors (non-eligible investors) who are individuals are subject to investment limits under the offering memorandum exemption. In these jurisdictions, non-eligible investors who are individuals are subject to an investment limit of \$10 000 and eligible investors who are individuals are subject to an investment limit of \$30 000. In both cases, the investment limits apply to all securities acquired by the purchaser under the offering memorandum exemption in the preceding 12 months.

However, an individual purchaser that qualifies as an eligible investor because the investor is an accredited investor or is a person described in the family, friends and business associates exemption, is not subject to an investment limit under the offering memorandum exemption.

The fact that investment limits have been established for eligible and non-eligible investors who are individuals does not mean that these amounts are suitable investments in all cases. If a registrant is involved in a transaction, the registrant must still conduct a suitability assessment to determine that the amount of the investment and the investment itself is suitable for the purchaser. This may result in a lower investment amount for a purchaser.

The \$30 000 investment limit may be exceeded by an eligible investor who receives advice from a portfolio manager, investment dealer or exempt market dealer that exceeding the investment limit of \$30 000 and the investment itself is suitable for the eligible investor. In this case, the investment limit for all securities acquired by the purchaser under the offering memorandum exemption in the preceding 12 months is \$100 000.

In determining the acquisition cost to a purchaser subject to investment limits, include any future payments that the purchaser will be required to make. Proceeds that may be obtained on exercise of warrants or other rights, or on conversion of convertible securities, are not considered to be part of the acquisition cost unless the purchaser is legally obligated to exercise or convert the securities.

“Individual” is defined in the securities legislation of certain jurisdictions to mean a natural person. The definition specifically excludes partnerships, unincorporated associations, unincorporated syndicates, unincorporated organizations and trusts. It also specifically excludes a natural person acting in the capacity of trustee, executor, administrator or personal or other legal representative.

(c) Circumstances when investment limits can be exceeded

The fact that higher investment limits apply to individual eligible investors than individual non-eligible investors does not mean these higher amounts will be suitable in all cases for eligible investors. It is a condition of the offering memorandum exemption that, in order to exceed the \$30 000 investment limit, a registrant must determine that an investment above the \$30,000 investment limit is suitable for the purchaser. Unless a registrant determines that exceeding the \$30 000 investment limit is suitable for the purchaser, the issuer cannot accept a subscription in excess of \$30 000 from the purchaser. In this case, the registrant could also not proceed to take instructions from the purchaser to exceed the \$30 000 investment limit.

(d) Investment limits apply over a 12-month period

The investment limits for both individual eligible and non-eligible investors apply to the aggregate of all investments made by a purchaser in distributions by different issuers (or multiple offerings by the same issuer) under the offering memorandum exemption during the preceding 12 months, which may or may not be a calendar year. For example, if a purchaser wishes to acquire securities of an issuer under the offering memorandum exemption on January 15, the issuer must include in the calculation all investments made by the purchaser under the offering memorandum exemption beginning on January 16 of the prior year, up to and including the date of the proposed investment.

On each distribution, the issuer must confirm that the amount invested by a purchaser who is an individual does not exceed the applicable limit and should take reasonable steps to do so. This will require the issuer to first understand whether or not the purchaser is an eligible investor. As described above in section 1.9, the issuer should gather information that confirms the purchaser meets the criteria set out in the exemption. As part of this exercise, the issuer should also discuss with the purchaser the investment limits that apply to the purchaser.

In making a determination as to whether a purchaser is within the applicable investment limit, an issuer should obtain appropriate representations from the purchaser that confirm the purchaser has not exceeded the applicable investment limit over the relevant period. Note that we would have concerns if an issuer simply accepted standard representations from a purchaser without taking steps to verify the representations made by the purchaser. For instance, inquiries could be made with respect to other investments made under the offering memorandum exemption during the 12-month period preceding the current investment.

Notwithstanding the representations made by a purchaser in the schedules to the risk acknowledgement form, we expect an issuer to be able to explain what steps were taken to verify the representations made by the purchaser. We recognize that in many circumstances, a registrant may act as agent on behalf of an issuer for this process. In both cases, the guidance in section 1.9 above may also be instructive for this purpose.

(1.2) Role of registrant in providing suitability advice and conflicts of interest

A registrant involved in a distribution of securities pursuant to a prospectus exemption must not only establish that the prospectus exemption is available, it must also comply with its registrant obligations, including know-your-client, know-your-product and suitability. In assessing the level of investment that may be suitable for a purchaser under the offering memorandum exemption, registrants should take into consideration guidance published by the CSA on best practices for conducting a suitability assessment, which includes considering the level of concentration of investments in the client's portfolio.

NI 31-103 and the related companion policy provide a framework that requires registrants to identify and respond to material conflicts of interest that may affect their ability to meet their regulatory obligations, including suitability.

Where a registrant is providing suitability advice to a purchaser in respect of an offering by a related or connected issuer, we expect the registrant that is related or connected to the issuer to be aware of the material conflicts that arise in these circumstances, and to take appropriate steps to respond to the conflicts to ensure it is fulfilling its regulatory obligations. We expect a registrant to be able to demonstrate that it is addressing the conflicts by avoiding or managing and disclosing the conflicts of interest appropriately to ensure compliance with its obligation to deal fairly, honestly and in good faith with clients.

We expect all registrants to be aware of other CSA guidance on registrant obligations with respect to know-your-client, know-your-product and suitability, and identify and respond to conflicts of interest.

(2) Form of offering memorandum

There are two forms of offering memorandum: Form 45-106F3, which may be used by qualifying issuers, and Form 45-106F2, which must be used by all other issuers. Form 45-106F3 requires qualifying issuers to incorporate by reference their annual information form (AIF), management's discussion and analysis (MD&A), annual financial statements and subsequent specified continuous disclosure documents required under NI 51-102.

A qualifying issuer is a reporting issuer that has filed an AIF under NI 51-102 and has met all of its other continuous disclosure obligations, including those in NI 51-102, National Instrument 43-101 *Standards of Disclosure for Mineral Projects*, and National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*. Under NI 51-102, venture issuers are not required to file AIFs. However, if a venture issuer wants to use Form 45-106F3, the venture issuer must

voluntarily file an AIF under NI 51-102 in order to incorporate that AIF into its offering memorandum.

(3) Date of certificate and required signatories

The issuer must ensure that the information provided to the purchaser is current and does not contain a misrepresentation. For example, if a material change occurs in the business of the issuer after delivery of an offering memorandum to a potential purchaser, the issuer must give the potential purchaser an update to the offering memorandum before the issuer accepts the agreement to purchase the securities. The update to the offering memorandum may take the form of an amendment describing the material change, a new offering memorandum containing up-to-date disclosure or a material change report, whichever the issuer decides will most effectively inform purchasers.

Whatever form of update the issuer uses, it must include a newly signed and dated certificate as required in the applicable subsection 2.9(9), (10), (10.1), (10.2), (10.3), (11), (11.1), or (12) of NI 45-106.

“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.

(4) Consideration to be held in trust

The purchaser has, or must be given, the right to cancel the agreement to purchase the securities until midnight on the 2nd business day after signing the agreement. During this period, the issuer must arrange for the consideration to be held in trust on behalf of the purchaser.

It is up to the issuer to decide what arrangements are necessary to preserve the consideration received from the purchaser. The requirement to hold the consideration in trust may be satisfied if, for example, the issuer keeps the purchaser’s cheque, without cashing or depositing it, until the expiration of the two business day cancellation period.

It is also the issuer’s responsibility to ensure that whoever is holding the consideration promptly returns it to the purchaser if the purchaser cancels the agreement to purchase the securities.

(5) Filing of offering memorandum

The issuer is required to file the offering memorandum with the securities regulatory authority or regulator in each of the jurisdictions in which the issuer distributes securities under an offering memorandum exemption. The issuer must file the offering memorandum on or before the 10th day after the distribution.

If the issuer is conducting multiple closings, the offering memorandum must be filed on or before the 10th day after the first closing. Once the offering memorandum has been filed, there is no need to file it again after subsequent closings, unless it has been updated.

(5.1) Filing of marketing materials

In Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan, marketing materials used in the context of an offering made in reliance on the offering memorandum exemption must also be filed with the securities regulatory authority. Once the marketing materials have been filed, there is no need to file them again after subsequent closings, unless there is a change to the marketing materials.

(6) Purchasers' rights

Unless securities legislation in a purchaser's jurisdiction provides a purchaser with a comparable right of cancellation or revocation, an issuer must give each purchaser under an offering memorandum a contractual right to cancel the agreement to purchase the securities by delivering a notice to the issuer not later than midnight on the 2nd business day after the purchaser signs the agreement.

Unless securities legislation in a purchaser's jurisdiction provides purchasers with comparable statutory rights, the issuer must also give the purchaser a contractual right of action against the issuer in the event the offering memorandum contains a misrepresentation. This contractual right of action must be available to the purchaser regardless of whether the purchaser relied on the misrepresentation when deciding to purchase the securities. This right is similar to that given to a purchaser under a prospectus. The purchaser may claim damages or ask that the agreement be cancelled. If the purchaser wants to cancel the agreement, the purchaser must commence the action within 180 days after signing the agreement to purchase the securities. If the purchaser is seeking damages, the purchaser must commence the action within the earlier of 180 days after learning of the misrepresentation or 3 years after signing the agreement to purchase the securities.

The issuer is required to describe in the offering memorandum any rights available to the purchaser, whether they are provided by the issuer contractually as a condition to the use of the exemption or provided under securities legislation.

- (7) Types of securities that can be distributed under the exemption – Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan

In Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan, issuers are prohibited from distributing certain types of securities under the offering memorandum exemption, including specified derivatives and structured finance products. Note that this is in addition to the prohibition in subsection 2.9(3.1) against distributions of short-term securitized products under the offering memorandum exemption.

These types of securities have been excluded because the purpose of the exemption is for raising capital and it is not intended to be used to distribute complex or novel securities to purchasers. We would have concerns if issuers relied on the offering memorandum exemption to distribute novel or complex securities, even if they do not fall within the prohibited categories.

- (8) Ongoing disclosure – Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan

In Alberta, New Brunswick, Ontario, Québec and Saskatchewan, non-reporting issuers that issue securities under the offering memorandum exemption are required, in respect of each financial year, to file or deliver (as applicable) to the securities regulatory authority and make available to purchasers, audited annual financial statements within 120 days from the issuer’s financial year end. In Nova Scotia, issuers are not required to file or deliver these financial statements to the securities regulatory authority, but are only required to make them available to purchasers that acquired securities under the offering memorandum exemption.

The following table illustrates when the first audited annual financial statements of an issuer would be due, as required by subsections (17.4), (17.5) and (17.6), following an initial distribution of securities under the offering memorandum exemption. The examples in the table take into account the extension to the filing deadline provided by subsection (17.7).

The following examples assume the issuer’s financial year end is December 31.

Date of formation	Date of first distribution under subsection 2.9(2.1)	Deadline for first annual financial statements under subsections 2.9(17.4), (17.5) and (17.6)	Financial periods included in annual financial statements	Notes
January 1, 20X3	April 15, 20X7	June 14, 20X7	December 31, 20X6 and December 31, 20X5	The issuer completes its first distribution under the offering memorandum exemption in

Date of formation	Date of first distribution under subsection 2.9(2.1)	Deadline for first annual financial statements under subsections 2.9(17.4), (17.5) and (17.6)	Financial periods included in annual financial statements	Notes
				subsection 2.9(2.1) before the filing deadline for annual financial statements, which would be April 30, 20X7. Since the distribution was completed so close to the filing deadline, the issuer can take advantage of the extension in subsection 2.9(17.7) and file the statements on June 14, 20X7.
January 1, 20X7	April 15, 20X7	April 30, 20X8	December 31, 20X7	The issuer completes its first distribution under the offering memorandum exemption in subsection 2.9(2.1) before the filing deadline for annual financial statements, which would be April 30, 20X7. However, since the issuer has not completed a financial year, the issuer would not be required to file annual financial statements until

Date of formation	Date of first distribution under subsection 2.9(2.1)	Deadline for first annual financial statements under subsections 2.9(17.4), (17.5) and (17.6)	Financial periods included in annual financial statements	Notes
				April 30, 20X8 for the financial year ended December 31, 20X7.
January 1, 20X3	June 15, 20X7	April 30, 20X8	December 31, 20X7 and December 31, 20X6	The issuer completes its first distribution under the offering memorandum exemption in subsection 2.9(2.1) after the filing deadline for annual financial statements in 20X7. The offering memorandum would already include audited annual financial statements for the year ended December 31, 20X6. The next audited annual financial statements of the issuer would be required to be filed by April 30, 20X8 for the year ended December 31, 20X7.

The requirement to file or deliver (as applicable) to the securities regulatory authority and make available to purchasers annual financial statements continues to apply each year after the initial distribution under subsection 2.9(2.1) until the earlier of (1) the date the issuer becomes a reporting issuer and (2) the date the issuer ceases to carry on business.

- (9) Ongoing disclosure – notice of specified key events – New Brunswick, Nova Scotia and Ontario

In addition to audited annual financial statements and a notice of how the proceeds raised under the offering memorandum exemption have been used, non-reporting issuers that issue securities in reliance on the offering memorandum exemption in New Brunswick, Nova Scotia and Ontario must also make available to investors a notice of certain key events, within 10 days of the occurrence of the event. These events are considered to be significant changes in the business of the issuer of which purchasers should be notified. This requirement is in addition to any similar requirement under corporate law and also applies to non-reporting issuers with non-corporate structures, such as trusts or partnerships.

In making a determination as to whether an issuer's industry has changed, issuers may consider whether they would identify a different industry category on Form 45-106F1 *Report of Exempt Distribution* than the category previously identified.

A non-reporting issuer must continue to provide notice of the specified events, if applicable, until the earlier of (i) the date the issuer becomes a reporting issuer or (ii) the date the issuer ceases to carry on business.

- (10) Meaning of “make reasonably available”

In Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan, disclosure documents will be considered to have been made reasonably available to each holder of a security acquired under the offering memorandum exemption if the documents are mailed to security holders, or if security holders receive notice that the disclosure documents can be viewed on a public website of the issuer or a website accessible by all holders of securities acquired under subsection 2.9(2.1) of the issuer (such as a password protected website). Issuers should take reasonable steps to enable purchasers to receive or access these documents promptly.

3.9 Minimum amount investment

- (1) Baskets of securities

An issuer may wish to distribute more than one kind of security of its own issue, such as shares and debt, in a single transaction under the minimum investment amount exemption. Provided that the shares and debt are sold in units that have a total acquisition cost of not less than \$150 000 paid in cash at the time of the distribution of a security, the exemption can, if otherwise available, be used, notwithstanding that the acquisition cost of the shares and the acquisition cost of the debt, taken separately, are both less than \$150 000.

- (2) Not available for distributions to individuals or syndicates

The minimum amount investment exemption in section 2.10 of NI 45-106 is not available for distributions to individuals. “Individual” is defined in the securities legislation of certain jurisdictions to mean a natural person. The definition specifically excludes partnerships,

unincorporated associations, unincorporated syndicates, unincorporated organizations and trusts. It also specifically excludes a natural person acting in the capacity of trustee, executor, administrator or personal or other legal representative.

Subsection 2.10(2) of NI 45-106 specifically prohibits using the minimum amount investment exemption to distribute to persons created or used solely to rely on this exemption. See section 1.8 of this Companion Policy for a discussion of the “anti-syndication” provisions in NI 45-106.

3.10 Rights offering - reporting issuer

(1) Offer available to all security holders in Canada

One of the conditions of the rights offering exemption for reporting issuers in section 2.1 of NI 45-106 is that the issuer must make the basic subscription privilege available on a pro rata basis to every security holder in Canada of the class of securities to be distributed on exercise of the rights, regardless of how many security holders reside in a local jurisdiction.

(2) Market price and fair value

Paragraph 2.1(3)(g) of NI 45-106 provides that if there is no published market for the securities, the subscription price must be lower than fair value unless the issuer restricts all insiders from increasing their proportionate interest in the issuer through the rights offering or a stand-by commitment. If there is no published market for the securities and the issuer restricts all insiders from increasing their proportionate interest in the issuer, the subscription price may be set at any price. Under section 13 of Form 45-106F15, an issuer must explain in its rights offering circular how it determined the fair value of the securities. For these purposes, an issuer could consider a fairness opinion or a valuation.

For the purposes of paragraph 2.1(3)(g) of NI 45-106, insiders will not be prohibited from participating in the offering if the published market price or fair value of the securities falls below the subscription price following filing of the rights offering notice.

The rights offering exemption is not intended to be used by insiders or related parties for the purpose of increasing their proportionate interest in the issuer, although we recognize that as a potential outcome. One of the reasons for the above pricing restrictions, and the similar restrictions in paragraph 2.1(3)(g) for issuers with a published market, is to prevent insiders and other related parties from using the rights offering exemption as a means of taking control of the issuer.

(3) Stand-by commitments

To provide the confirmation in subparagraph 2.1(3)(i)(ii) of NI 45-106 that the stand-by guarantor has the financial ability to carry out its obligations under the stand-by commitment, the issuer could consider the following:

- a statement of net worth attested to by the stand-by guarantor

- a bank letter of credit
- the most recent annual audited financial statements of the stand-by guarantor.

A registered dealer that acquires a security of an issuer as part of the stand-by commitment may use the exemption in section 2.1.1 of NI 45-106. However, we would have concerns if a dealer or other person uses the exemption in section 2.1.1 in a situation where the dealer or other person

- (a) is acting as an underwriter with respect to the distribution, and
- (b) acquires the security with a view to distribution.

If (a) and (b) apply, the dealer or other person should acquire the security under the exemption in section 2.33 of NI 45-106. Please refer to section 1.7 of this Companion Policy.

(4) Calculation of number of securities

In calculating the number of outstanding securities for purposes of paragraph 2.1(3)(h) of NI 45-106, CSA staff generally take the view that

(a) if

$x =$ the number or amount of securities of the class of the securities that may be or have been issued upon the exercise of rights under all rights offerings made by the issuer in reliance on the exemption during the previous 12 months,

$y =$ the maximum number or amount of securities that may be issued upon exercise of rights under the proposed rights offering, and

$z =$ the number or amount of securities of the class of securities that is issuable upon the exercise of rights under the proposed rights offering that are outstanding as of the date of the rights offering circular;

then $\frac{x + y}{z}$ must be equal to or less than 1, and

- (b) if the convertible securities that may be acquired under the proposed rights offering may be converted before 12 months after the date of the proposed rights offering, the potential increase in outstanding securities, and specifically, “y” in paragraph (a), should be calculated as if the conversion of those convertible securities had occurred,
- (c) despite paragraph (b), if the convertible security is a warrant that forms part of a unit and the warrant has nominal or no value, the potential increase in outstanding securities, and specifically, “y” in paragraph (a), should not be calculated as if the conversion of the warrant had occurred.

One of the conditions of the exemption is that the issuer must make the basic subscription privilege available on a pro rata basis to each security holder of the class of securities to be distributed on exercise of the rights. For clarity, this means that an issuer cannot use a rights offering to distribute a new class of securities.

(5) Investment funds

As a reminder, pursuant to section 9.1.1 of National Instrument 81-102 *Investment Funds* (NI 81-102), investment funds that are subject to NI 81-102 are restricted from issuing warrants or rights.

3.11 Rights offering – issuer with a minimal connection to Canada

It may be difficult for an issuer to determine beneficial ownership of its securities as a result of the book-based system of holding securities. We are of the view that, for the purpose of determining beneficial ownership to comply with the exemption in section 2.1.2 of NI 45-106, procedures comparable to those found in National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer*, or any successor instrument, are appropriate.

In section 2.1.2(1)(a), the issuer must determine the number of beneficial security holders in Canada and the number of securities held by those security holders “to the issuer’s knowledge after reasonable enquiry”. We think an issuer could generally satisfy this requirement by relying on its most recently-conducted beneficial ownership search procedures conducted for the purpose of distributing proxy material for a shareholders meeting that occurred within the last 12 months, unless the issuer has reason to believe that it would no longer meet the test in section 2.1.2 of NI 45-106. For example, if, after the previous search procedures, the issuer conducted a financing in Canada that could affect the results, they may not be able to rely on those procedures.

PART 4 - OTHER EXEMPTIONS

4.1 Employee, executive officer, director and consultant exemptions

Trustees, custodians or administrators who engage in activities, contemplated in the prospectus exemption in section 2.27 of NI 45-106, that bring together purchasers and sellers of securities should have regard to the provisions of National Instrument 21-101 *Marketplace Operation* respecting “marketplaces” and “alternative trading systems”.

The employee, executive officer, director and consultant exemptions are based on the alignment of economic interests between an issuer and its employees. They may, where available, be used to provide employees and other similar persons with an opportunity to participate in the growth of the employer’s business and to compensate persons for the services they provide to an issuer. The securities regulatory authorities or regulators will generally not grant exemptive relief analogous to these exemptions except in very limited circumstances.

4.2 Business combination and reorganization

(1) Statutory procedure

The securities regulatory authorities and regulators interpret the phrase “statutory procedure” broadly and are of the view that the prospectus exemption contained in section 2.11 of NI 45-106 applies to all distributions of securities of an issuer that are both part of the procedure and necessary to complete the transaction, regardless of when the distribution of a security occurs.

The prospectus exemption contained in section 2.11 of NI 45-106 exempts distributions of securities in connection with an amalgamation, merger, reorganization or arrangement if the same is done “under a statutory procedure”. The securities regulatory authorities or regulators are of the view that the references to statutory procedure in sections 2.11 are to any statute of a jurisdiction or foreign jurisdiction under which the entities involved have been incorporated or created and exist or under which the transaction is taking place. This would include, for example, an arrangement under the *Companies’ Creditors Arrangement Act* (Canada).

(2) Three-cornered amalgamations

Certain corporate statutes permit a so-called “three-cornered merger or amalgamation” under which two companies will amalgamate or merge and security holders of the amalgamating or merging entities will receive securities of a third party affiliate of one amalgamating or merging entity. The prospectus exemption contained in section 2.11 of NI 45-106 refers to these distributions of a security when they refer to a distribution of a security made in connection with an amalgamation or merger done under a statutory procedure.

(3) Exchangeable shares

A transaction involving a procedure described in the prospectus exemption contained in section 2.11 of NI 45-106 may include an exchangeable share structure to achieve certain tax-planning objectives. For example, where a non-Canadian company seeks to acquire a Canadian company under a plan of arrangement, an exchangeable share structure may be used to allow the Canadian shareholders of the company to be acquired to receive, in substance, shares of the non-Canadian company while avoiding the adverse tax consequences associated with exchanging shares of a Canadian company for shares of a non-Canadian company. Instead of receiving shares of the non-Canadian company directly, the Canadian shareholders receive shares of a Canadian company which, through various contractual arrangements, have economic terms and voting rights that are essentially identical to the shares of the non-Canadian company and permit the holder to exchange such shares, at a time of the holder’s choosing, for shares of the non-Canadian company.

Historically, the use of an exchangeable share structure in connection with a statutory procedure has raised a question as to whether the exemption now contained in section 2.11 of NI 45-106 was available for all distributions necessary to complete the transaction. For example, in the case of the acquisition under a plan of arrangement noted above, the use of an exchangeable share structure may result in a delay of several months or even years between the date of the

arrangement and the date the shares of the non-Canadian company are distributed to the former shareholders of the acquired company. As a result of this delay, some filers have questioned whether the distribution of the non-Canadian company's shares upon the exercise of the exchangeable shares may still be viewed as being "in connection with" the statutory transaction, and have made application for exemptive relief to address this uncertainty.

The securities regulatory authorities or regulators take the position that the statutory procedure exemption contained in section 2.11 of NI 45-106 refers to all distributions of securities that are necessary to complete an exchangeable share transaction involving a procedure described in section 2.11, even where such distributions occur several months or years after the transaction. In the case of the acquisition noted above, the investment decision of the shareholders of the acquired company at the time of the arrangement represented a decision to, ultimately, exchange their shares for shares of the non-Canadian company. The distribution of such shares upon the exercise of the exchangeable shares does not represent a new investment decision, but merely represents the completion of that original investment decision. Accordingly, additional exemptive relief is not warranted in circumstances where the original transaction was completed in reliance on this exemption.

4.3 Asset acquisition - character of assets to be acquired

When issuing securities, issuers must comply with the requirements under applicable corporate or other governing legislation that the securities be issued for fair value. Where securities are issued for non-cash consideration such as assets or resource properties, it is the responsibility of the issuer and its board of directors to determine the fair market value of the assets or resource properties and to retain records to demonstrate how that fair market value was determined. In some situations, cash assets that make up working capital could also be considered in the total calculation of the fair market value.

4.4 Securities for debt - *bona fide debt*

A bona fide debt is one that was incurred for value, on commercially reasonable terms and that on the date the debt was incurred the parties believed would be repaid in cash.

A reporting issuer may distribute securities to settle a debt only after the debt becomes due, as evidenced by the creditor issuing an invoice, demand letter or other written statement to the issuer indicating that the debt is due. The securities for debt exemption may not be relied on for the issuance of securities by an issuer to secure a debt that will remain outstanding after the issuance.

4.5 Take-over bid and issuer bid

(1) Exempt bids

The terms "take-over bid" and "issuer bid", for the purposes of section 2.16 of NI 45-106, include an exempt take-over bid and exempt issuer bid.

(2) Bids involving exchangeable shares

The take-over bid and issuer bid exemptions refer to all distributions necessary to complete a take-over bid or an issuer bid that involves an exchangeable share structure (as described under section 4.2 of this Companion Policy), even where such distributions may occur several months or even years after the bid is completed.

4.6 Isolated distribution

The exemption contained in section 2.30 of NI 45-106 is limited to a distribution of a security made by an issuer in a security of its own issue. It is intended that this exemption will only be used rarely and not to distribute securities to multiple purchasers.

4.6.1 Short-term securitized products

(1) Types of short-term securitized products

Section 2.35.1 is a prospectus exemption for the distribution of short-term securitized products. Short-term securitized products distributed in Canada are generally asset-backed commercial paper.

(2) Definition of “asset pool”

The term “cash-flow generating assets” in the definition of “asset pool” refers to the bonds, mortgages, leases, loans, receivables, or royalties in which a conduit has a direct or indirect ownership or security interest. It does not refer to a security or other instrument through which a conduit obtains an indirect ownership or security interest in underlying cash-flow generating assets. For example, a conduit may enter into an asset transaction whereby it purchases a note from a trust that owns a pool of mortgages, thereby acquiring an indirect ownership or security interest in that pool of mortgages. In this scenario, the “cash-flow generating assets” are the mortgages, not the note.

(3) Interaction of conditions with credit ratings

In order for the short-term securitized products prospectus exemption to be available, the short-term securitized product must satisfy certain conditions relating to credit ratings as set out in subparagraphs 2.35.2(a)(i) and (ii). The short-term securitized product and issuing conduit must also satisfy other conditions regarding liquidity support, series or class seniority and asset pool composition as set out in subparagraphs 2.35.2(a)(iii) and (iv) and paragraphs 2.35.2(b) and (c).

Short-term securitized products that satisfy the conditions in the prospectus exemption relating to liquidity support, series or class seniority and asset pool composition may not necessarily satisfy the credit-rating conditions; particularly the requirement in subparagraph 2.35.2(a)(i) that one of the two credit ratings must be at the highest rating category. Designated rating organizations each have their own rating methodologies and may require features that go beyond those

specified in the prospectus exemption in order for a short-term securitized product to obtain a credit rating in the highest category.

(4) Liquidity provider

Clause 2.35.2(a)(iv)(B) requires a liquidity provider to be a deposit-taking institution regulated or approved to carry on business in Canada by the Office of the Superintendent of Financial Institutions (OSFI) or a Canadian federal or provincial government department or regulatory authority. This provision allows a foreign bank to be a liquidity provider if it is a Schedule II or Schedule III bank that is regulated by OSFI or approved by OSFI to carry on business in Canada.

(5) Exceptions relating to liquidity agreements

The intention of subsection 2.35.3(2) is to permit a liquidity agreement to provide that a liquidity provider need not advance funds in respect of assets that have defaulted and that are not covered by any applicable credit enhancement. For purposes of paragraph 2.35.3(2)(a), we expect that the aggregate value of the non-defaulted assets would be the book value, unless some other method of determining the value is specified by the provisions of the applicable liquidity agreement, e.g. discounted value or market value.

(6) Disclosure – meaning of “make reasonably available”

Section 2.35.4 requires that each information memorandum and reports on Form 45-106F7 and Form 45-106F8 be made reasonably available both to securities regulators and purchasers of a short-term securitized product.

This requirement could generally be satisfied by a conduit posting the document on a website maintained by it or on its behalf. If a password is used to limit access to the website, we would expect that the password would be promptly provided upon application. We generally would not object if a prospective purchaser, before being provided access to a website on which the documents are posted, would have to agree to keep the information on the website confidential or that it would not provide others with access to the website or the documents available on it.

4.7 Mortgages

In British Columbia, Alberta, Manitoba, Québec and Saskatchewan, NI 45-106 specifically excludes syndicated mortgages from the mortgage prospectus exemption in section 2.36. In determining what constitutes a syndicated mortgage, issuers will need to refer to the corresponding definition provided in section 2.36(1) of NI 45-106.

The mortgage prospectus exemption does not apply to distributions in securities that secure mortgages by bond, debenture, trust deed or similar obligation. The mortgage prospectus exemption also does not apply to a distribution of a security that represents an undivided co-ownership interest in a pool of mortgages, such as a pass-through certificate issued by an issuer of asset-backed securities.

4.8 Not for profit issuer

(1) Eligibility to use this exemption

This exemption applies to distributions of securities of an issuer that is organized exclusively for educational, benevolent, fraternal, charitable, religious or recreational purposes and not for profit (“not for profit issuer”). To use this exemption, an issuer must be organized exclusively for one or more of the listed purposes and use the funds raised for those purposes.

If an issuer is organized exclusively for one of the listed purposes, but its mandate changes so that it is no longer primarily engaged in the purpose it was organized for, the issuer may no longer be able to rely on this exemption. For example, if an issuer organized exclusively for educational purposes over time devotes more and more of its efforts to lending money, even if it is only to other educational entities, the lending issuer may be unable to rely on these exemptions. The same would also be true if one of an issuer’s mandates was to provide an investment vehicle for its members. An issuer that issues securities that pay dividends would also not be able to use these exemptions, because no part of the issuer’s net earnings can go to any security holder. However, if the securities are debt securities and the issuer agrees to repay the principal amount with or without interest, the security holders are not considered to be receiving part of the net earnings of the issuer. The debt securities may be secured or unsecured.

If investors could receive any special treatment as a result of purchasing securities, the security holders are not typically receiving part of the net earnings of the issuer and the sale may still fit within these exemptions. For example, if the not for profit issuer runs a golf course and offers security holders a waiver of greens fees for three years, it could still rely on this exemption, provided all other conditions are met (and the exemption remains available in the relevant jurisdiction(s)).

If, at the time of the distribution of the security, the purchaser has an entitlement to the assets of the issuer on the basis that they would be getting part of the net earnings of the issuer, then the sale would not fit within this exemption.

In Québec, not for profit issuers may still rely on the broad exemption available for not for profit issuers under section 3 of the *Securities Act* (Québec).

(2) Meaning of “no commission or other remuneration”

Section 2.38(b) provides that “no commission or other remuneration is paid in connection with the sale of the security”. This is intended to ensure that no one is paid to find purchasers of the securities. However, the issuer may pay its legal and accounting advisers for their legal or accounting services in connection with the sale.

PART 5 – FORMS

5.1 Report of exempt distribution

(1) Requirement to file

An issuer that has distributed a security of its own issue under any of the prospectus exemptions listed in section 6.1 of NI 45-106 is required to file a report of exempt distribution, on or before the 10th day after the distribution. Alternatively, if an underwriter distributes securities acquired under section 2.33 of NI 45-106, either the issuer or the underwriter may complete and file the form. If there is a syndicate of underwriters, the lead underwriter may file the form on behalf of the syndicate or each underwriter may file a form relating to the portion of the distribution it was responsible for.

The required form of report is Form 45-106F1 *Report of Exempt Distribution* in all jurisdictions except British Columbia. In British Columbia, the required form of report is Form 45-106F6 *British Columbia Report of Exempt Distribution*.

In determining if it is required to file a report in a particular jurisdiction, the issuer or underwriter should consider the following questions:

- (a) Is there a distribution in the jurisdiction? (Please refer to the securities legislation of the jurisdiction for guidance, if any, on when a distribution occurs in the jurisdiction.)
- (b) If there is a distribution in the jurisdiction, what exemption from the prospectus requirement is the issuer relying on for the distribution of the security?
- (c) Does the exemption referred to in paragraph (b) trigger a reporting requirement? (Reports of exempt distribution are required for distributions made in reliance on the prospectus exemptions listed in section 6.1 of NI 45-106.)

A distribution may occur in more than one jurisdiction. In this case, the issuer is required to file a single report in each Canadian jurisdiction where the distribution has occurred, except British Columbia. The report will set out all distributions in each Canadian jurisdiction.

If the distribution occurs in British Columbia and one or more other jurisdictions, the issuer is required to file Form 45-106F6 with the British Columbia Securities Commission and file Form 45-106F1 in the other applicable jurisdictions.

(2) Access to information in jurisdictions other than British Columbia

The securities legislation of several provinces requires that information filed with the securities regulatory authority or, where applicable, the regulator under such securities legislation, be made available for public inspection during normal business hours except for information that the securities regulatory authority, or where applicable, the regulator,

- (a) believes to be personal or other information of such a nature that the desirability of avoiding disclosure thereof in the interest of any affected individual outweighs the desirability of adhering to the principle that information filed with the securities regulatory authority or the regulator, as applicable, be available to the public for inspection,
- (b) in Alberta, considers that it would not be prejudicial to the public interest to hold the information in confidence, and
- (c) in Québec, considers that access to the information could result in serious prejudice.

Based on the above mentioned provisions of securities legislation, the securities regulatory authorities or regulators, as applicable, have determined that the information listed in Form 45-106F1 *Report of Exempt Distribution*, Schedule I (“Schedule I”) discloses personal or other information of such a nature that the desirability of avoiding disclosure of this personal information outweighs the desirability of making the information available to the public for inspection. In addition, in Alberta, the regulator considers that it would not be prejudicial to the public interest to hold the information listed in Schedule I in confidence. In Québec, the securities regulatory authority considers that access to Schedule I by the public in general could result in serious prejudice and consequently, the information listed in Schedule I will not be made publicly available.

(3) Filings in British Columbia

For filings made in British Columbia, issuers are required to file Form 45-106F6 and pay the fees associated with that filing electronically using BCSC e-services. This requirement only applies to filings that are required to be made within 10 days of the distribution. It does not apply to filings made annually by investment funds under section 6.2(2) of NI 45-106. Please refer to BC Instrument 13-502 *Electronic Filing of Reports of Exempt Distribution* for further information.

5.2 Forms required under the offering memorandum exemption

NI 45-106 designates two forms of offering memorandum. The first, Form 45-106F2, is for non-qualifying issuers and the second, Form 45-106F3, can only be used by qualifying issuers (as defined in NI 45-106).

The required form of risk acknowledgment under sections 2.9(1), 2.9(2) and 2.9(2.1) of NI 45-106 is Form 45-106F4.

In Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan, Form 45-106F4, required under subsection 2.9(2.1), includes Schedule 1 *Classification of Investors Under the Offering Memorandum Exemption*, with respect to eligibility of individual investors, and Schedule 2 *Investment Limits for Investors Under the Offering Memorandum Exemption*, with respect to investment limits of individual investors.

5.3 Real estate securities

Certain jurisdictions impose alternative or additional disclosure requirements in relation to the distribution of real estate securities by offering memorandum. Refer to securities legislation in the jurisdictions where securities are being distributed.

5.4 Risk acknowledgement form for distributions to close personal friends and close business associates in Saskatchewan

In Saskatchewan, a risk acknowledgment is also required under section 2.6(1) of NI 45-106 if the person intends to rely upon the “family, friends and business associates exemption” in section 2.5 of NI 45-106, which is based on a relationship of close personal friendship or close business association. The form of risk acknowledgement required in these circumstances is Form 45-106F5.

5.5 Risk acknowledgement form for distributions to individual accredited investors

A person relying on the accredited investor exemption in section 2.3 of NI 45-106 and section 73.3 of the *Securities Act* (Ontario) to distribute securities to an individual must obtain a signed risk acknowledgement from that individual accredited investor. Under subsection 2.3(7) of NI 45-106, this requirement does not apply if the individual accredited investor meets the highest threshold to be an individual accredited investor, that is, the individual owns \$5 000 000 of financial assets as set out in paragraph (j.1) of the definition of “accredited investor” in section 1.1 of NI 45-106. The required form of risk acknowledgement for the accredited investor exemption is Form 45-106F9 *Form for Individual Accredited Investors*.

PART 6 – RESALE OF SECURITIES ACQUIRED UNDER AN EXEMPTION

6.1 Resale restrictions

In most jurisdictions, securities distributed under a prospectus exemption may be subject to restrictions on their resale. The particular resale, or “first trade”, restrictions depend on the parties to the distribution and the particular exemption that was relied upon to distribute the securities. In certain circumstances, no resale restrictions will apply and the securities acquired under an exempt distribution will be freely tradable.

Resale restrictions are imposed under National Instrument 45-102 *Resale of Securities* (NI 45-102). While NI 45-106 contains text boxes providing commentary on resale, these text boxes are intended as guidance only and are not a substitute for reviewing the applicable provisions in NI 45-102 to determine what resale restrictions, if any, apply to the securities in question.

The resale restrictions operate by the resale transaction triggering the prospectus requirement unless certain conditions are satisfied. Securities that are subject to such restrictions in circumstances where the conditions cannot be satisfied may nevertheless be distributed under an

exemption from the prospectus requirement, whether under NI 45-106 or other securities legislation.

PART 7 – TRANSITION

7.1 Transition – Application of IFRS amendments

The amendments to NI 45-106 and this Companion Policy which came into effect on January 1, 2011 only apply in respect of an offering memorandum or an amendment to an offering memorandum of an issuer which includes or incorporates by reference financial statements of the issuer in respect of periods relating to financial years beginning on or after January 1, 2011.

Modified: Except in Ontario, this Companion Policy takes effect on May 5, 2015. In Ontario, this Companion Policy will take effect on the later of the following:

- (a) May 5, 2015 and**
- (b) the day on which subsection 12(2) of Schedule 26 of the *Budget Measures Act, 2009* is proclaimed in force.**