CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA Notice and Request for Comment
Proposed Amendments to National Instrument 45-106 *Prospectus Exemptions*

and

Proposed Changes to Companion Policy 45-106CP *Prospectus Exemptions*

Relating to the Offering Memorandum Prospectus Exemption

September 17, 2020

Introduction

The Canadian Securities Administrators (the **CSA** or **we**) are publishing for a 90-day comment period proposed amendments (the **Proposed Amendments**) to National Instrument 45-106 *Prospectus Exemptions* (**NI 45-106**).

The Proposed Amendments are set out in Annex A of this notice. Related proposed changes (the **Proposed Changes**) to Companion Policy 45-106CP *Prospectus Exemptions* (**45-106CP**) are set out in Annex B. This notice will be available on the websites of CSA jurisdictions including:

www.bcsc.bc.ca
www.albertasecurities.com
www.fcaa.gov.sk.ca
www.mbsecurities.ca
www.osc.gov.on.ca
www.lautorite.qc.ca
www.fcnb.ca
nssc.novascotia.ca.

Substance and Purpose

The Proposed Amendments set out new disclosure requirements for issuers that are engaged in "real estate activities" and those issuers that are "collective investment vehicles". Both terms are new definitions in NI 45-106. As further discussed below, many issuers utilizing the OM Exemption (as defined below) are issuers that meet these definitions. The new requirements are intended to set out a clear disclosure framework for these issuers, giving them greater certainty as to what they must disclose, and resulting in better information for investors.

In addition, the Proposed Amendments include a number of proposed general amendments (the **General Amendments**), which are meant to clarify or streamline parts of NI 45-106 or improve disclosure for investors.

Where the Proposed Amendments are to a form for an offering memorandum, they are to Form 45-106F2 *Offering Memorandum for Non-Qualifying Issuers* (**Form 45-106F2**).

Background

The offering memorandum prospectus exemption found in section 2.9 of NI 45-106 (the **OM Exemption**) was originally designed as a small business financing tool to help early stage and small businesses raise capital from a large pool of investors without having to comply with the more costly prospectus regime. It was expected to be used by relatively simple issuers for relatively small amounts of capital, prior to issuers becoming reporting issuers.

In practice, the use of the OM Exemption has evolved differently. To a significant extent, larger and more complex issuers than those originally envisioned are using it. In addition, issuers using the OM Exemption are often engaged in specific activities, such as real estate ownership or development, or acting as a type of collective investment vehicle carrying out mortgage lending or making other investments.

Based on an analysis by CSA staff of Canada-wide data from reports of exempt distribution for issuers using the OM Exemption in 2017, approximately 40% of the issuers had total assets of $100 million or more. In addition, 17% of issuers reported their industry as real estate, and approximately 43% were issuers that might, depending on their purpose and investment objectives, be collective investment vehicles under the Proposed Amendments.

Compliance reviews have also indicated that under the current OM Exemption requirements, it can be unclear to issuers what disclosure is required in order to provide investors with sufficient information. By tailoring the disclosure to the issuer's industry, and clarifying other requirements, issuers should be able to more easily determine what is required to be included in their offering memorandum.

Summary of the Proposed Amendments

Issuers Engaged in Real Estate Activities

The Proposed Amendments include the new defined term "real estate activities". Issuers engaged in real estate activities would be subject to new requirements, including:

- Providing an independent appraisal of an interest in real property to the purchaser if
    - the issuer has acquired or proposes to acquire an interest in real property from a related party (**Related Party**), as that term is defined in NI 45-106,
    - a value for an interest in real property is disclosed in the offering memorandum, or
    - the issuer intends to spend a material amount of the proceeds of the offering on an interest in real property.

- Completing new Schedule 1 *Additional Disclosure Requirements for an Issuer Engaged in Real Estate Activities* (**Schedule 1**) to Form 45-106F2, which includes:
    - Disclosure relevant to issuers that are developing real property, such as a description of the approvals or permissions required, and milestones of the project.
    - Disclosure relevant to issuers that own and operate developed real property, such as the age, condition and occupancy level of the real property.
    - Disclosure of penalties, sanctions, bankruptcy, insolvency and criminal or quasi-criminal convictions for parties other than the issuer, such as a party acting as developer.
    - Disclosure of any purchase and sale history of the issuer's real property with a Related Party, so investors can better evaluate transactions involving Related Parties.

We note that Schedule 1 would not apply to real property that when taken together would not be significant to a reasonable investor. This exception is intended to ensure that issuers are not subject to an undue disclosure burden.

We think the Proposed Amendments as they relate to issuers engaged in real estate activities are necessary because as noted, research indicates that a significant proportion of issuers utilizing the OM Exemption are engaged in real estate activities. We think more specific disclosure about the real property or development plans for the real property is needed for investors, and we also think that these issuers will benefit from the greater certainty provided by a disclosure framework tailored for them.

Issuers that are Collective Investment Vehicles

The Proposed Amendments also include the new defined term "collective investment vehicle". A collective investment vehicle is defined as an issuer whose primary purpose is to invest money provided by its security holders in a portfolio of securities. This definition would include issuers that hold portfolios of mortgages, other loans, or receivables. To the extent they are permitted to use the OM Exemption, the definition would also include investment funds.

Issuers that are collective investment vehicles would be required to complete new Schedule 2 *Additional Disclosure Requirements for an Issuer That is a Collective Investment Vehicle* to Form 45-106F2, which includes:

- A description of the issuer's investment objectives.
- Disclosure of penalties, sanctions, bankruptcy, insolvency and criminal or quasi- criminal convictions for persons involved in the selection and management of the investments.
- Disclosure of information regarding the portfolio.
- Disclosure regarding the performance of the portfolio.

We think the Proposed Amendments as they relate to issuers that are collective investment vehicles are necessary because as noted, research indicates that a large proportion of issuers utilizing the OM Exemption could under the Proposed Amendments be collective investment vehicles. We think investors need more information, including about the party making the

investment decisions, how the investments are chosen and the composition and performance of the portfolio. As with issuers engaged in real estate activities, we think issuers that would be collective investment vehicles will also benefit from the greater certainty provided by a disclosure framework tailored for them.

General Amendments

The General Amendments include:

- Making the provisions in the OM Exemption that deal with the standard of disclosure for an offering memorandum and amending an offering memorandum clearer and more user-friendly for issuers and investors.
- Requiring that the filed copy of an offering memorandum allow for the searching of words electronically. This change is intended to make reading and reviewing offering memorandums more efficient for all recipients.
- With respect to Form 45-106F2:
    - The addition of several more disclosure items to the cover page to highlight those matters for investors.
    - Enhanced disclosure where a material amount of the proceeds of the offering will be transferred to another issuer that is not the issuer's subsidiary, or a material amount of the issuer's business is carried out by another issuer that is not the issuer's subsidiary. This is intended to give investors better disclosure as to arrangements of this nature and the ultimate use of the offering proceeds.
    - Disclosure of any purchase or sale history of any business or asset of the issuer's (excluding real property) with a Related Party, so investors can better evaluate transactions involving Related Parties.
    - The addition of Related Parties that receive compensation to the compensation disclosure and securities ownership table.
    - For item 3.3, adding disclosure of criminal or quasi-criminal convictions. This is consistent with disclosure requirements for more recently developed prospectus exemptions.
    - The addition of disclosure regarding fees or limitations with respect to redemption or retraction rights.
    - Further disclosure regarding redemption or retraction, including requests made to the issuer, requests fulfilled by the issuer including the price paid and the source of the funds, and outstanding requests.
    - A new requirement to disclose the source of funds for dividends or distributions paid that exceeded cash flow from operations.
    - Reference to the requirements of National Instrument 33-105 *Underwriting Conflicts*.
    - New cautionary disclosure for instances where expert reports, statements or opinions are included in an offering memorandum and there is no statutory liability against the expert.
    - A new requirement to amend an offering memorandum to include an interim financial report for the most recently completed 6 month interim period when a distribution of securities under an offering memorandum is ongoing.

- Other amendments intended to clarify or streamline existing provisions or provide improved disclosure.

The General Amendments are closely related to issues that we have seen in our ongoing review and compliance work regarding offering memorandums.

Other matters included in or related to the Proposed Amendments

In addition, the Proposed Amendments also include changes to Form 45-106F4 *Risk Acknowledgement*, which is the required form of risk acknowledgement for investors purchasing a security under the OM Exemption. These changes are to make the form more understandable and useful to investors, and are consistent with recent amendments to risk acknowledgement forms required in connection with other prospectus exemptions.

We note that if the Proposed Amendments are enacted in the future, some of the guidance in Multilateral CSA Staff Notice 45-309 *Guidance for Preparing and Filing an Offering Memorandum under National Instrument 45-106 Prospectus and Registration Exemptions* (**SN 45-309**) may no longer apply or may need to be revised. Consequently, we expect that if in the future the Proposed Amendments or some version of them is enacted, we would publish a revised SN 45-309 in conjunction with the effective date of those amendments.

Impact on Investors

The Proposed Amendments would give investors enhanced disclosure, and where the issuer is engaged in real estate activities, or is a collective investment vehicle, the investor would receive disclosure that is more tailored to that kind of issuer. We anticipate that this enhanced and tailored disclosure would provide investors with better information, enabling them to make more informed investment decisions.

Local Matters

Annex E is being published in any local jurisdiction that is proposing related changes to local securities laws, including local notices or other policy instruments in that jurisdictions. It may also include additional information that is relevant to that jurisdiction only.

Request for Comments

We welcome your comments on the Proposed Amendments and the Proposed Changes.

Please submit your comments in writing on or before December 16, 2020. If you are not sending your comments by email, please send a CD containing the submissions (in Microsoft Word format).

Address your submission to all of the CSA as follows:

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Office of the Superintendent of Securities, Service NL
Financial and Consumer Services Commission, New Brunswick
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Office of the Yukon Superintendent of Securities
Northwest Territories Office of the Superintendent of Securities
Nunavut Securities Office

Deliver your comments only to the addresses below. Your comments will be distributed to the other CSA jurisdictions.

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consultation-en-cours@lautorite.qc.ca

We cannot keep submissions confidential because securities legislation in certain provinces requires publication of the written comments received during the comment period. All comments received will be posted on the websites of each of the Alberta Securities Commission at www.albertasecurities.com, the Autorité des marchés financiers at www.lautorite.qc.ca and the Ontario Securities Commission at www.osc.gov.on.ca. Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

Contents of Annexes

Annex A – Proposed Amendments to NI 45-106

Annex B – Proposed Changes to 45-106CP

Annex C – Main body of NI 45-106 reflecting the Proposed Amendments, compared by way of blackline to that material as currently in-force

Annex D – Form 45-106F2 reflecting the Proposed Amendments, compared by way of blackline to that material as currently in-force

Annex E – Local Matters

Questions

Please refer your questions to any of the following:

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ANNEX A

PROPOSED AMENDMENTS TO
NATIONAL INSTRUMENT 45-106 *PROSPECTUS EXEMPTIONS*

1. National Instrument 45-106 Prospectus Exemptions is amended by this Instrument.

2. Section 1.1 is amended in paragraph (b) of the definition of "eligibility advisor***" by replacing "***an institute or association of chartered accountants, certified general accountants or certified management accountants in a jurisdiction of Canada***" with "***the Chartered Professional Accountants of Canada***".***

3. Section 1.1 is amended by adding the following definitions:

"**collective investment vehicle**" means an issuer whose primary purpose is to invest money provided by its security holders in a portfolio of securities;

"**material contract**" means any contract that an issuer or any of its subsidiaries is a party to, that is material to the issuer;

"**net asset value**" has the same meaning with respect to a collective investment vehicle as it does with respect to an investment fund in National Instrument 81-106 *Investment Fund Continuous Disclosure*;

"**real estate activities**" means an undertaking, the purpose of which is primarily to generate for security holders income or gain from the lease, sale or other disposition of real property, but does not include any of the following:

(a) activities in respect of a mineral project, as defined in National Instrument 43-101 *Standards of Disclosure for Mineral Projects*;

(b) oil and gas activities as defined in National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*;

(c) in Québec, in addition to paragraphs (a) and (b), the distribution of either of the following:

(i) an investment contract that includes a real right of ownership in an immovable and a rental management agreement;

(ii) a security of an issuer that owns an immovable giving the holder a right of exclusive use of a residential unit and a space in such immovable;

"related party" means any of the following:

(a) a director, officer, promoter or control person of the issuer;

(b) in regard to any individual referred to in paragraph (a), a child, parent, grandparent or sibling, or other relative living in the same residence;

(c) in regard to any individual referred to in paragraph (a) or (b), his or her spouse;

(d) an insider of the issuer;

(e) a person controlled by a person referred to in any of paragraph (a) to (d), or controlled by a person referred to in any of paragraph (a) to (d) acting jointly or in concert with another person;

(f) in the case of a person referred to in any of paragraph (a) to (d) that is not an individual, any person that controls that person, or that controls that person by acting jointly or in concert with another person;**.**

4. Subparagraphs 2.9(1)(b)(i), (2)(c)(i) and (2.1)(c)(i) are amended by replacing "(13)***" with "***(14.1)***".***

5. Paragraph 2.9(2.2)(a) is amended by adding ",***" after "***non-redeemable investment fund***".***

6. Subsection 2.9(5.2) is amended by replacing "A***" with "***In Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan, a***".***

7. Subsection 2.9(13) is repealed.

8. Section 2.9 is amended by adding the following subsections:

(13.1) An offering memorandum must not contain a misrepresentation on the date the certificate under subsection (8) or (14.1) is signed.

(13.2) If a material change with respect to the issuer occurs after the certificate under subsection (8) or (14.1) is signed, and before the issuer accepts an agreement to purchase the security from the purchaser, the issuer must amend the offering memorandum to reflect the material change, and deliver the amended offering memorandum to the purchaser.

(13.3) An offering memorandum delivered under this section must provide a reasonable purchaser with sufficient information to make an informed investment decision**..**

9. Subsection 2.9(14) is repealed.

10. Section 2.9 is amended by adding the following subsection:

(14.1) An issuer that amends an offering memorandum must replace the certificate in the offering memorandum with a newly dated certificate signed in compliance with subsections (9), (10), (10.1), (10.2), (10.3), (11), (11.1) and (12), as applicable.**.**

11. Subsection 2.9(17) is replaced with the following:

(17) The issuer must file a copy of an offering memorandum delivered under this section and any amended offering memorandum with the securities regulatory authority on or before the 10th day after the distribution under the offering memorandum or the amended offering memorandum.**.**

12. Section 2.9 is amended by adding the following subsection:

(17.0.1) Each copy of an offering memorandum that is filed must be in a format that allows for the searching of words electronically using reasonably available technology.**.**

13. Subsection 2.9(19) is amended by replacing "subsections (19.1) and (19.3), a qualified appraiser is independent of an issuer of a syndicated mortgage***" with "***subsections (19.1), (19.3), (19.6) and (19.7), a qualified appraiser is independent of an issuer***".***[1]

14. Section 2.9 is amended by adding the following after subsection (19.4):

(19.5) An issuer relying on an exemption set out in subsection (1), (2) or (2.1) that is engaged in real estate activities must comply with subsection (19.6) if any of the following apply:

(a) the issuer proposes to acquire, or has acquired, an interest in real property from a related party;

(b) except for in its financial statements, the issuer discloses in the offering memorandum a value for an interest in real property;

(c) the issuer proposes to use a material amount of the proceeds of the offering to acquire an interest in real property.

(19.6) An issuer to which any of paragraphs (19.5)(a), (b) or (c) applies must, at the same time or before the issuer delivers an offering memorandum to the purchaser in

[1] Amending instructions 13 and 14 take into account the amendments to this instrument published in Annex B of the CSA Notice dated August 6, 2020 announcing amendments to NI 45-106 *Prospectus Exemptions* and National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (the **August 6 CSA Notice**).

accordance with subsections (1), (2) or (2.1), deliver to the purchaser an appraisal of the interest in real property referred to in subsection (19.5) that satisfies all of the following: [2]

(a) it is prepared by a qualified appraiser that is independent of the issuer;

(b) it includes a certificate signed by the qualified appraiser stating that the appraisal is prepared in accordance with the standards and the code of ethics established or endorsed by the professional association of which the qualified appraiser is a member;

(c) it provides the appraised fair market value of the interest in real property, without considering any proposed improvements or proposed development;

(d) it provides the appraised fair market value of the interest in real property as at a date that is within 6 months preceding the date that the appraisal is delivered to the purchaser.

(19.7) If an issuer relying on an exemption set out in subsection (1), (2) or (2.1) is engaged in real estate activities, and discloses in any communication related to the distribution under the exemption a representation of, or opinion as to, a value for an interest in real property referred to in subsection (19.5), other than the appraised fair market value disclosed in the appraisal referred to in subsection (19.6), the issuer must have a reasonable basis for that value, and must disclose all of the following in that communication:

(a) with equal or greater prominence as the representation or opinion, the appraised fair market value referred to in subsection (19.6);

(b) the material factors or assumptions used to determine the representation or opinion;

(c) whether or not the representation or opinion was determined by a qualified appraiser who is independent of the issuer.

(19.8) An issuer must file a copy of any appraisal delivered under subsection (19.6) with the securities regulatory authority concurrently with the filing of the offering memorandum.**.**

[2] The definitions of "qualified appraiser" and "professional association" were published in Annex B of the August 6 CSA Notice.

15. Section 6.4 is amended by adding the following after subsection (3) [3]***:***

(4) An issuer preparing an offering memorandum in accordance with Form 45-106F2 that is engaged in real estate activities must supplement the offering memorandum with Schedule 1 of that form.

(5) An issuer preparing an offering memorandum in accordance with Form 45-106F2 that is a collective investment vehicle must supplement the offering memorandum with Schedule 2 of that form.**.**

16. Section 8.4 is repealed.

17. Section 8.4.1 is repealed.

18. Section 8.4.2 is repealed.

19. Section 8.4.3 is repealed.

20. Form 45-106F2 Offering Memorandum for Non-Qualifying Issuers is repealed and replaced with the material in Schedule A-1.

21. Form 45-106F4 Risk Acknowledgement is amended

(a) by repealing and replacing all content prior to Schedule 1 with the material in Schedule A-2,

(b) in B. of Schedule 1, by replacing **"**subsection 7.3(3) of the *Securities Act* (Ontario)**"** ***with*** **"**subsection 73.3 of the *Securities Act* (Ontario)**" ,** ***and***

(c) in B. of Schedule 2, by replacing **"**subsection 7.3(3) of the *Securities Act* (Ontario)**"** ***with*** **"**subsection 73.3 of the *Securities Act* (Ontario)**" .**

22. This Instrument comes into force on ●.

[3] Amending instruction 15 takes into account the amendments to this instrument published in Annex B of the August 6 CSA Notice.

Schedule A-1

FORM 45-106F2
OFFERING MEMORANDUM FOR NON-QUALIFYING ISSUERS

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

The Issuer
Name:

Head office: Address:
Phone #:
Website address:
E-mail address:

Currently listed or quoted? [If no, state in bold type: "**These securities do not trade on any exchange or market.**". If yes, identify the exchange or market.]

Reporting issuer? [Yes/No. If yes, state where.]

The Offering
Securities offered:

Price per security:

Minimum/Maximum offering: [If there is no minimum, state in bold type: "**There is no minimum.**" and also state in bold type: "**You may be the only purchaser.**"]

Minimum subscription amount: [State the minimum amount each investor must invest, or state "There is no minimum subscription amount an investor must invest."]

Payment terms:

Proposed closing date(s):

Income tax consequences: There are important tax consequences to these securities. See item 6. [If income tax consequences are not material, delete this item.]

Insufficient Funds
If item 2.6 applies, state in bold type: "**Funds available under the offering may not be sufficient to accomplish the proposed objectives. See item 2.6.**".

Compensation Paid to Sellers and Finders
If item 7 applies, state the following: "A person has received or will receive compensation for the sale of securities under this offering. See item 7.".

Underwriter(s)
State the name of any underwriter.

Guidance: The requirements of National Instrument 33-105 *Underwriting Conflicts* may be applicable.

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

Working Capital Deficiency
If the issuer is disclosing a working capital deficiency under item 1.1, state the following, with the bracketed information completed: "[name of issuer] has a working capital deficiency. See item 1.1.".

Payments to Related Party
If the issuer is disclosing payment to a related party under item 1.2, state the following, with the bracketed information completed as applicable: "[All of][Some of] your investment will be paid to a related party of the issuer. See item 1.2.".

Certain Related Party Transactions
If the issuer is making disclosure under item 2.8(b), or subsection 7(2) of Schedule 1, state the following with the bracketed information completed as applicable: "This offering memorandum contains disclosure with respect to one or more transactions between [name of issuer] and a related party, where [name of issuer] [paid more to a related party than the related party paid for a business, asset or real property] [and] [was paid less by a related party for a business, asset or real property than [name of issuer] paid for it]. See [item 2.8(b)] [and] [subsection 7(2) of Schedule 1].".

Certain Dividends or Distributions
If the issuer is making disclosure under item 5B, state the following with the bracketed information completed: "[name of issuer] has paid dividends or distributions that exceeded cash flow from operations. See item 5B.".

Redemption or Retraction Right
If the purchaser will have a right to require the issuer to repurchase its securities and there is any restriction, fee or price associated with this right, state in bold type with the bracketed information completed, as applicable: "**You will have a right to require the issuer to repurchase its securities from you, but this right is qualified by [a specified price] [and] [restrictions] [and] [fees]. As a result, you might not receive the amount of proceeds that you want. See item 5.1.**"

Purchaser's Rights
State: "You have 2 business days to cancel your agreement to purchase these securities. If there is a misrepresentation in this offering memorandum, you have a right to damages or to cancel the agreement. See item 11."

State in bold type:

"**No securities regulatory authority or regulator has assessed the merits of these securities or reviewed this offering memorandum. Any representation to the contrary is an offence. This is a risky investment. See item 8.**"

Instructions

1. Include all of the above information at the beginning of the offering memorandum.

2. After the above information, include a table of contents for the rest of the information in the offering memorandum.

Item 1: Use of Available Funds

1.1 ***Funds*** - Using the following table, disclose the funds available as a result of the offering. If the issuer plans to combine additional sources of funding with the available funds from the offering to achieve its principal capital-raising purpose, provide details about each additional source of funding. If there is no minimum offering, state "$0" as the minimum. Disclose any working capital deficiency of the issuer as at a date not more than 30 days before the date of the offering memorandum. If the working capital deficiency will not be eliminated by the use of available funds, state how the issuer intends to eliminate or manage the deficiency.

		Assuming minimum offering	Assuming maximum offering
A.	Amount to be raised by this offering	$	$
B.	Selling commissions and fees	$	$
C.	Estimated offering costs (including legal, accounting and audit)	$	$
D.	Available funds: D = A - (B+C)	$	$
E.	Additional sources of funding required	$	$
F.	Working capital deficiency	$	$
G.	Total: G = (D+E) - F	$	$

1.2 ***Use of Available Funds*** - Using the following table, provide a detailed breakdown of how the issuer will use the available funds. If any of the available funds will be paid to a related party, disclose in a note to the table the name of the related party, the relationship to the issuer, and the amount. If more than 10% of the available funds will be used by the issuer to pay debt and the issuer incurred the debt within the two preceding financial years, describe why the debt was incurred.

Description of intended use of available funds listed in order of priority	Assuming minimum offering	Assuming maximum offering
	$	$
	$	$
Total: Equal to G in the Funds table above	$	$

1.2.1 ***Proceeds Transferred to Other Issuers*** **-** If a significant amount of the proceeds of the offering will be invested in, loaned to, or otherwise transferred to another issuer that is not a subsidiary controlled by the issuer, or a significant amount of the issuer's business is carried out by another issuer that is not a subsidiary controlled by the issuer, provide the disclosure specified by items 2, 3, 4.1, 4.2, 8 and 12 and, as applicable, Schedule 1 of this form if the other issuer is engaged in real estate activities, and Schedule 2 of this form if the other issuer is a collective investment vehicle, as if each of those other issuers were the issuer preparing the offering memorandum. In addition, describe the relationship between the issuer and each of those other issuers, and supplement the description with a diagram.

1.3 [Repealed]

Item 2: Business of the Issuer and Other Information and Transactions

2.1 ***Structure*** - State whether the issuer is a partnership, corporation or trust, or if the issuer is not a corporation, partnership or trust then state what type of business association the issuer is. State any statute under which the issuer is incorporated, continued or organized, and the date of incorporation, continuance or organization.

2.2 The Business - Describe the issuer's business.

(a) For a non-resource issuer include in the description the following:

(i) principal products or services;
(ii) operations;
(iii) market, marketing plans and strategies;
(iv) a discussion of the issuer's current and prospective competitors.

(b) For a resource issuer include in the description the following:

(i) a description of principal properties (including interest held);
(ii) a summary of material information including, as applicable, the stage of development, reserves, geology, operations, production and mineral reserves or mineral resources being explored or developed.

Guidance

1. For a resource issuer disclosing scientific or technical information for a mineral project, see General Instruction A.8 of this Form.

2. For a resource issuer disclosing information about its oil and gas activities, see General Instruction A.9 of this Form.

2.3 ***Development of Business*** - Describe the general development of the issuer's business over at least its two most recently completed financial years and any subsequent period. Include any major events that have occurred or conditions that have influenced (favourably or unfavourably) the development or financial condition of the issuer.

2.4 ***Long Term Objectives*** – With respect to the issuer's objectives subsequent to the next 12 months after the date of the offering memorandum, describe each significant event associated with those objectives, state the specific time period in which each event is expected to occur, and the costs related to each event.

2.5 ***Short Term Objectives***

(a) Disclose the issuer's objectives for the next 12 months after the date of the offering memorandum.

(b) Using the following table, disclose how the issuer intends to meet those objectives.

Actions to be taken	Target completion date or, if not known, number of months to complete	Cost to complete
		$
		$

2.6 ***Insufficient Funds***

If applicable, disclose that the funds available as a result of the offering either may not or will not be sufficient to accomplish all of the issuer's proposed objectives and there is no assurance that alternative financing will be available. With respect to any alternative financing that has been arranged, disclose the amount, source and all outstanding conditions.

2.6.1: ***Additional Disclosure for Issuers Without Significant Revenue***

(1) If the issuer has not had significant revenue from operations in either of its two most recently completed financial years, or has not had significant revenue from operations since inception, provide, for each period referred to in subsection (2), a breakdown of the material components of the following:

(a) exploration and evaluation assets or expenditures and, if the issuer's business primarily involves mining exploration and development, provide the breakdown on a property-by-property basis;

(b) expensed research and development costs;

(c) intangible assets arising from development;

(d) general and administration expenses;

(e) any material costs, whether expensed or recognized as assets, not referred to in paragraphs (a) through (d).

(2) Include the disclosure in subsection (1) with respect to each period for which financial statements are included in the offering memorandum.

(3) Subsection (1) does not apply to any period for which the information specified under subsection (1) has been disclosed in the financial statements that are included in the offering memorandum.

2.7 ***Material Contracts*** - Disclose the key terms of all material contracts to which the issuer is currently a party including, for certainty, the following:

(a) if the contract is with a related party, the name of the related party and the relationship to the issuer;

(b) a description of any asset, property or interest acquired, disposed of, leased or under option;

(c) a description of any service provided;

(d) purchase price and payment terms (including payment by instalments, cash, securities or work commitments);

(e) the principal amount of any debenture or loan, the repayment terms, security, due date and interest rate;

(f) the date of the contract;

(g) the amount of any finder's fee or commission paid or payable to a related party in connection with the contract;

(h) any material outstanding obligations under the contract.

2.8 ***Related Party Transactions***

With respect to any purchase and sale transaction between the issuer and a related party that does not relate to real property,

(a) using the following table and starting with the most recent transaction, provide the specified information, and

Description of business or asset	Date of transfer	Legal name of seller	Legal name of buyer	Amount and form of consideration exchanged in connection with transfer

(b) explain the reason for any material difference between the amount of consideration paid by the issuer and the amount of consideration paid by a related party for the business or asset.

Item 3: Compensation and Security Holdings of Certain Parties

3.1 ***Compensation and Securities Held***

Using the following table, provide the specified information for the following:

(a) each director, officer and promoter of the issuer;

(b) each person that has beneficial ownership of, or direct or indirect control over, or a combination of beneficial ownership and direct or indirect control over, 10% or more of any class of voting securities of the issuer;

(c) any related party not specified in paragraph (a) or (b) that received compensation in the most recently completed financial year, or is expected by the issuer to receive compensation in the current financial year.

Full legal name and place of residence or, if not an individual, jurisdiction of organization	If paragraph (a) or (b) applies, specify whether the person is a director, officer, promoter or person referred to in paragraph (b); if paragraph (c) applies, specify the person's relationship to the issuer; in all cases, specify the date that the person became a person identified in paragraph (a), (b) or (c)	Compensation paid by issuer or related party in the most recently completed financial year and the compensation expected to be paid in the current financial year	Number, type and percentage of securities of the issuer held after completion of minimum offering	Number, type and percentage of securities of the issuer held after completion of maximum offering

Instructions

1. If the issuer has not completed its first financial year, disclose for the period from the date of the issuer's inception to the date of the offering memorandum.

2. Compensation includes any form of remuneration including, for certainty, cash, shares and options.

3. If a person identified in paragraph (a), (b) or (c) is not an individual, state in a note to the table the full legal name of any person that has beneficial ownership of, or direct or indirect control over, or a combination of beneficial ownership and direct or indirect control over, more than 50% of the voting rights of the person.

3.2 ***Management Experience*** - Using the following table, provide the specified information for the directors and executive officers of the issuer for the 5 years preceding the date of the offering memorandum.

Full Legal Name	Principal occupation and description of experience associated with the occupation

3.3 ***Penalties, Sanctions, Bankruptcy, Insolvency and Criminal or Quasi-Criminal Matters***

(a) If the following have occurred during the 10 years preceding the date of the offering memorandum with respect to a director, executive officer or control person of the issuer, or an issuer of which any of those persons was a director, executive officer or control person at the time, describe the penalty, other sanction or order, including the reason for it and whether it is currently in effect:

(i) a penalty or other sanction imposed by a court relating to a contravention of securities legislation;

(ii) a penalty or other sanction imposed by a regulatory body relating to a contravention of securities legislation;

(iii) an order restricting trading in securities, not including an order that was in effect for less than 30 consecutive days.

(b) If the following have occurred during the 10 years preceding the date of the offering memorandum with respect to a director, executive officer or control person of the issuer, or an issuer of which any of those persons was a director, executive officer or control person at the time, state that it has occurred:

(i) a declaration of bankruptcy;

(ii) a voluntary assignment in bankruptcy;

(iii) a proposal under bankruptcy or insolvency legislation;

(iv) a proceeding, arrangement or compromise with creditors or appointment of a receiver, receiver manager or trustee to hold assets.

(c) Disclose and describe the following, if the issuer or a director, executive officer or control person of the issuer has ever pled guilty to or been found guilty of:

(i) a summary conviction or indictable offence under the *Criminal Code* (Canada);

(ii) a quasi-criminal offence in any jurisdiction of Canada or a foreign jurisdiction;

(iii) a misdemeanour or felony under the criminal legislation of the United States of America, or any state or territory of the United States of America;

(iv) an offence under the criminal legislation of any other foreign jurisdiction.

3.4 ***Certain Loans***

For any debenture, bond or loan agreement between the issuer and a related party, disclose the following:

(a) as at a date not more than 30 days before the date of the offering memorandum, the parties to the agreement, including which party is lender and which party is borrower, the principal amount, the repayment terms, any security, due date and interest rate;

(b) during the two most recently completed financial years and up to a date not more than 30 days before the date of the offering memorandum, any material amendment to the agreement, or any release, cancellation or forgiveness.

Item 4: Capital Structure

4.1 ***Securities Except for Debt Securities*** - Using the following table, provide the specified information about outstanding securities of the issuer, not including debt securities. Add notes to the table to describe the material terms of the securities, including, for certainty, voting rights or restrictions on voting, exercise price and date of expiry, rights of redemption or retraction, including redemption or retraction price and any fee or restriction, and any interest rate or dividend or distribution policy.

Description of security	Number authorized to be issued	Price per security	Number outstanding as at a date not more than 30 days before the date of the offering memorandum	Number outstanding after minimum offering	Number outstanding after maximum offering

4.2 ***Long Term Debt Securities*** - Using the following table, provide the specified information about outstanding debt of the issuer for which all or a portion is due, or may be outstanding, more than 12 months from the date of the offering memorandum. Add notes to the table to disclose any amounts of the debt that are due within 12 months of the date of the offering memorandum. In addition, add notes to the table to describe any conversion terms. If the securities being offered are debt securities, complete the applicable parts of the table for the debt, and add columns to the table disclosing the amount of the debt that will be outstanding after both the minimum and maximum offering.

Description of debt (including whether secured)	Interest rate	Repayment terms	Amount outstanding at a date not more than 30 days before the date of the offering memorandum
			$
			$

4.3 ***Prior Sales*** - If the issuer has issued any securities of the class being offered under the offering memorandum (or convertible or exchangeable into the class being offered under the offering memorandum) within the 12 months before the date of the offering memorandum, use the following table to provide the information specified. If securities were issued in exchange for assets or services, describe in a note to the table the assets or services that were provided.

Date of issuance	Type of security issued	Number of securities issued	Price per security	Total funds received

Item 5: Securities Offered

5.1 ***Terms of Securities***

(a) Describe the material terms of the securities being offered, including, for certainty, the following:

(i) voting rights or restrictions on voting;

(ii) conversion or exercise price and date of expiry;

(iii) right of redemption or retraction, including redemption or retraction price and any fee or restriction;

(iv) interest rate, and dividend or distribution policy.

(b) Provide a sample calculation in relation to any redemption or retraction right included in the terms of the securities being offered.

5.2 ***Subscription Procedure***

(a) Describe how a purchaser can subscribe for the securities and the method of payment.

(b) State that the consideration will be held in trust and the period that it will be held (refer at least to the mandatory two day period).

(c) Disclose any conditions to closing, including any receipt of additional funds from other sources. If there is a minimum offering, disclose when consideration will be returned to purchasers if the minimum is not met**,** and whether the issuer will pay the purchasers interest on consideration.

Item 5A: Redemption and Retraction History

(1) With respect to any securities of the issuer for which investors have a right of redemption or retraction, disclose the following:

(a) for each of the two most recently completed financial years, the information specified by the following table;

Description of security	Date of end of financial year	Number of securities with outstanding redemption or retraction requests on the first day of the year	Number of securities for which investors made redemption or retraction requests during the year	Number of securities redeemed or retracted during the year	Average price paid for the securities redeemed or retracted	Source of funds used to complete the redemptions or retractions	Number of securities with outstanding redemption or retraction requests on the last day of the year

(b) for the period after the end of the issuer's most recently completed financial year and up to a date not more than 30 days before the date of the offering memorandum, the information specified by the following table;

Description of security	Date of beginning of period and date	Number of securities with outstanding redemption	Number of securities for which investors made	Number of securities redeemed or	Average price paid for the securities	Source of funds used to complete the redemptions	Number of securities with outstanding redemption

	of end of period	or retraction requests on the first day of the period	redemption or retraction requests during the period	retracted during the period	redeemed or retracted	or retractions	or retraction requests on the last day of the period

(c) with respect to the periods specified in (a) and (b), the reason for any non-fulfillment of investor requests for redemption or retraction, unless the non-fulfillment was in accordance with terms governing the redemption or retraction right.

Item 5B: Certain Dividends or Distributions

If in the two most recently completed financial years, or any subsequent interim period, the issuer paid dividends or distributions that exceeded cash flow from operations, disclose the source of those payments.

Item 6: Income Tax Consequences and RRSP Eligibility

6.1 State: "You should consult your own professional advisers to obtain advice on the income tax consequences that apply to you."

6.2 If income tax consequences are a material aspect of the securities being offered, provide

(a) a summary of the significant income tax consequences to Canadian residents, and

(b) the name of the person providing the income tax disclosure in (a).

6.3 Provide advice regarding the RRSP eligibility of the securities and the name of the person providing the advice or state "Not all securities are eligible for investment in a registered retirement savings plan (RRSP). You should consult your own professional advisers to obtain advice on the RRSP eligibility of these securities."

Item 7: Compensation Paid to Sellers and Finders

If any person has or will receive any commission, corporate finance fee or finder's fee or any other compensation in connection with the offering, provide the following information:

(a) a description of each type of compensation and the estimated amount to be paid for each type;

(b) if a commission is being paid, the percentage that the commission will represent of the gross proceeds of the offering (assuming both the minimum and maximum offering);

(c) details of any broker's warrants or agent's option (including number of securities under option, exercise price and expiry date);

(d) if any portion of the compensation will be paid in securities, details of the securities (including number, type and, if options or warrants, the exercise price and expiry date).

Item 8: Risk Factors

Describe in order of importance, starting with the most important, the risk factors material to the issuer that a reasonable investor would consider important in deciding whether to buy the issuer's securities.

Guidance: Risk factors will generally fall into the following three categories:

(a) Investment Risk - risks that are specific to the securities being offered. Some examples include

- arbitrary determination of price,
- no market or an illiquid market for the securities,
- resale restrictions, and
- subordination of debt securities.

(b) Issuer Risk - risks that are specific to the issuer. Some examples include

- insufficient funds to accomplish the issuer's business objectives,
- no history or a limited history of revenue or profits,
- lack of specific management or technical expertise,
- management's regulatory and business track record,
- dependence on key employees, suppliers or agreements,
- dependence on financial viability of guarantor,
- pending and outstanding litigation, and
- political risk factors.

(c) Industry Risk - risks faced by the issuer because of the industry in which it operates. Some examples include

- environmental and industry regulation,
- product obsolescence, and
- competition.

Item 9: Reporting Obligations

9.1 Disclose the documents, including any financial information required by the issuer's corporate legislation, constating documents, or other documents under which the issuer is organized, that will be sent to purchasers on an annual or on-going basis. If the issuer is not

required to send any documents to the purchasers on an annual or on-going basis, state in bold type: "**We are not required to send you any documents on an annual or ongoing basis.**"

9.2 If corporate or securities information about the issuer is available from a government, securities regulatory authority or regulator, SRO or quotation and trade reporting system, disclose where that information can be located (including website address).

Item 10: Resale Restrictions

10.1 [Repealed]

10.2 Restricted Period - For trades in Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island, Québec, Saskatchewan and Yukon state one of the following, as applicable:

(a) If the issuer is not a reporting issuer in a jurisdiction at the distribution date state:

"Unless permitted under securities legislation, you cannot trade the securities before the date that is 4 months and a day after the date [insert name of issuer] became a reporting issuer in any province or territory of Canada."

(b) If the issuer is a reporting issuer in a jurisdiction at the distribution date state:

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

10.3 Manitoba Resale Restrictions - For trades in Manitoba, if the issuer will not be a reporting issuer in a jurisdiction at the time the security is acquired by the purchaser state:

"Unless permitted under securities legislation, you must not trade the securities without the prior written consent of the regulator in Manitoba unless

(a) [name of issuer] has filed a prospectus with the regulator in Manitoba with respect to the securities you have purchased and the regulator in Manitoba has issued a receipt for that prospectus, or

(b) you have held the securities for at least 12 months.

The regulator in Manitoba will consent to your trade if the regulator is of the opinion that to do so is not prejudicial to the public interest."

Item 11: Purchasers' Rights

11.1 Statements Regarding Purchasers' Rights **-** State the following:

"If you purchase these securities you will have certain rights, some of which are described below. For information about your rights you should consult a lawyer.

(1) Two Day Cancellation Right - You can cancel your agreement to purchase these securities. To do so, you must send a notice to us by midnight on the 2nd business day after you sign the agreement to buy the securities.

(2) Statutory Rights of Action in the Event of a Misrepresentation [Insert this section only if the securities legislation of the jurisdiction in which the trade occurs provides purchasers with statutory rights in the event of a misrepresentation in an offering memorandum. Modify the language, if necessary, to conform to the statutory rights.] If there is a misrepresentation in this offering memorandum, you have a statutory right to sue:

(a) [name of issuer] to cancel your agreement to buy these securities, or

(b) for damages against [state the name of issuer and the title of any other person against whom the rights are available].

This statutory right to sue is available to you whether or not you relied on the misrepresentation. However, there are various defences available to the persons or companies that you have a right to sue. In particular, they have a defence if you knew of the misrepresentation when you purchased the securities.

If you intend to rely on the rights described in (a) or (b) above, you must do so within strict time limitations. You must commence your action to cancel the agreement within [state time period provided by the securities legislation]. You must commence your action for damages within [state time period provided by the securities legislation.]

(3) Contractual Rights of Action in the Event of a Misrepresentation - [Insert this section only if the securities legislation of the jurisdiction in which the purchaser is resident does not provide purchasers with statutory rights in the event of a misrepresentation in an offering memorandum.] If there is a misrepresentation in this offering memorandum, you have a contractual right to sue [name of issuer]:

(a) to cancel your agreement to buy these securities, or

(b) for damages.

This contractual right to sue is available to you whether or not you relied on the misrepresentation. However, in an action for damages, the amount you may recover will not exceed the price that you paid for your securities and will not include any part of the damages that [name of issuer] proves does not represent the depreciation in value of the securities resulting from the misrepresentation. [Name of issuer] has a defence if it proves that you knew of the misrepresentation when you purchased the securities.

If you intend to rely on the rights described in (a) or (b) above, you must do so within strict time limitations. You must commence your action to cancel the agreement within 180 days after you signed the agreement to purchase the securities. You must commence your action for damages within the earlier of 180 days after learning of the misrepresentation and 3 years after you signed the agreement to purchase the securities."

11.2 Cautionary Statement Regarding Report, Statement or Opinion by Expert - If a report, statement or opinion by a solicitor, auditor, accountant, engineer, appraiser, notary in Québec or other person or company whose profession or business could, to a reasonable person, be viewed as giving authority to a statement made by that person or company, is included or referenced in the offering memorandum, and purchasers do not have a statutory right of action in the local jurisdiction against that person or company for a misrepresentation in the offering memorandum, state the following, with the bracketed information completed, as applicable:

> "This offering memorandum [includes][references] [describe any report, statement or opinion, the party that gave it, and the effective date of the document]. You do not have a statutory right of action against [this party][these parties] for a misrepresentation in the offering memorandum. You should consult with a legal adviser for further information."

Item 12: Financial Statements

Include in the offering memorandum immediately before the certificate page of the offering memorandum all financial statements specified in the Instructions.

Item 13: Date and Certificate

State the following on the certificate page of the offering memorandum:

"Dated [insert the date the certificate page of the offering memorandum is signed].

This offering memorandum does not contain a misrepresentation."

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

A. General Instructions

0.1 Refer to subsections 2.9(13.1) and (13.3) of the Instrument, which set out the standard of disclosure for an offering memorandum.

1. Draft the offering memorandum so that it is easy to read and understand. Be concise and use clear, plain language. Avoid technical terms. If technical terms are necessary, provide definitions.

2. Address the items required by the form in the order set out in the form. However, it is not necessary to provide disclosure in response to a requirement or part of a requirement that does not apply.

3. The issuer may include additional information in the offering memorandum other than that specifically required by the form.

4. The issuer may wrap the offering memorandum around a prospectus or similar document. However, all matters required to be disclosed by the offering memorandum must be addressed and the offering memorandum must provide a cross-reference to the page number or heading in the wrapped document where the relevant information is contained. The certificate to the offering memorandum must be modified to indicate that the offering memorandum, including the document around which it is wrapped, does not contain a misrepresentation.

5. It is an offence to make a misrepresentation in the offering memorandum. This applies to both information that is required by the form and additional information that is provided. Include particulars of any material facts, which have not been disclosed under any of the Item numbers and for which failure to disclose would constitute a misrepresentation in the offering memorandum. Refer also to section 3.8(3) of Companion Policy 45-106CP for additional information.

5.1 Do not disclose a maximum offering amount unless the issuer reasonably expects, as at the date of the offering memorandum, to distribute that amount under the offering memorandum.

6. [Repealed]

7. [Repealed]

8. Refer to National Instrument 43-101 *Standards of Disclosure for Mineral Projects* (NI 43-101) when disclosing scientific or technical information for a mineral project of the issuer.

9. If an oil and gas issuer is disclosing information about its oil and gas activities, it must ensure that the information is disclosed in accordance with Part 4 and Part 5 of National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* (NI 51-101). Under section 5.3 of NI 51-101, disclosure of reserves or resources must be consistent with the reserves and resources terminology and categories set out in the Canadian Oil and Gas Evaluation Handbook. For the purposes of this instruction, references to reporting issuer in Part 4 and Part 5 of NI 51-101 will be deemed to include all issuers.

10. Securities legislation restricts what can be told to investors about the issuer's intent to list or quote securities on an exchange or market. Refer to applicable securities legislation before making any such statements.

11. If an issuer uses this form in connection with a distribution under an exemption other than section 2.9 (*offering memorandum*) of the Instrument, the issuer must modify the disclosure in item 11 to correctly describe the purchaser's rights. If a purchaser does not have statutory or contractual rights of action in the event of a misrepresentation in the offering memorandum, that fact must be stated in bold on the face page.

12. During the course of a distribution of securities, any material forward-looking information disseminated must only be that which is set out in the offering memorandum. If an extract of FOFI, as defined in National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102), is disseminated, the extract or summary must be reasonably balanced and have a cautionary note in boldface stating that the information presented is not complete and that complete FOFI is included in the offering memorandum.

13. The term quasi-criminal offence includes offences under tax, immigration or money laundering legislation.

B. Financial Statements - General

1. All financial statements, operating statements for an oil and gas property that is an acquired business or a business to be acquired, and summarized financial information as to the aggregated amounts of assets, liabilities, revenue and profit or loss of an acquired business or business to be acquired that is, or will be, an investment accounted for by the issuer using the equity method included in the offering memorandum must comply with National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*, regardless of whether the issuer is a reporting issuer or not.

   Under National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*, financial statements are generally required to be prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises. An issuer using this form cannot use Canadian GAAP applicable to private enterprises, except, subject to the requirements of NI 52-107, certain issuers may use Canadian GAAP applicable to private enterprises for financial statements for a business referred to in C.1. An issuer that is not a reporting issuer may prepare acquisition statements in accordance with the requirements of NI 52-107 as if the issuer were a venture issuer as defined in NI 51-102.

For the purposes of Form 45-106F2, the "applicable time" in the definition of a venture issuer is the acquisition date.

2. Include all financial statements required by these instructions in the offering memorandum immediately before the certificate page of the offering memorandum.

3. If the issuer has not completed one financial year or its first financial year end is less than 120 days from the date of the offering memorandum, include in the offering memorandum financial statements of the issuer consisting of:

   (a) a statement of comprehensive income, a statement of changes in equity and a statement of cash flows for the period from inception to a date not more than 90 days before the date of the offering memorandum,

   (b) a statement of financial position as at the end of the period referred to in paragraph (a), and

   (c) notes to the financial statements.

4. If the issuer has completed one or more financial years, include in the offering memorandum annual financial statements of the issuer consisting of:

   (a) a statement of comprehensive income, a statement of changes in equity and a statement of cash flows for

      (i) the most recently completed financial year that ended more than 120 days before the date of the offering memorandum, and

      (ii) the financial year immediately preceding the financial year in clause (i), if any,

   (b) a statement of financial position as at the end of each of the periods referred to in paragraph (a),

   (c) a statement of financial position as at the beginning of the earliest comparative period for which financial statements that are included in the offering memorandum comply with IFRS in the case of an issuer that

      (i) discloses in its annual financial statements an unreserved statement of compliance with IFRS, and

      (ii) does any of the following:

         (A) applies an accounting policy retrospectively in its annual financial statements;

         (B) makes a retrospective restatement of items in its annual financial statements;

(C) reclassifies items in its annual financial statements,

(d) in the case of an issuer's first IFRS financial statements as defined in NI 51-102, the opening IFRS statement of financial position at the date of transition to IFRS as defined in NI 51-102, and

(e) notes to the financial statements.

4.1 If an issuer presents the components of profit or loss in a separate income statement, the separate income statement must be displayed immediately before the statement of comprehensive income filed under Item 4 above.

5. If the issuer has completed one or more financial years, include in the offering memorandum an interim financial report of the issuer comprised of:

(a) a statement of comprehensive income, a statement of changes in equity and a statement of cash flows for the most recently completed interim period that ended

(i) more than 60 days before the date of the offering memorandum, and

(ii) after the year-end date of the financial statements required under B.4(a)(i),

(b) a statement of comprehensive income, a statement of changes in equity and a statement of cash flows for the corresponding period in the immediately preceding financial year, if any,

(c) a statement of financial position as at the end of the period required by paragraph (a) and the end of the immediately preceding financial year,

(d) a statement of financial position as at the beginning of the earliest comparative period for which financial statements that are included in the offering memorandum comply with IFRS in the case of an issuer that

(i) discloses in its interim financial report an unreserved statement of compliance with International Accounting Standard 34 *Interim Financial Reporting*, and

(ii) does any of the following:

(A) applies an accounting policy retrospectively in its interim financial report;

(B) makes a retrospective restatement of items in its interim financial report;

(C) reclassifies items in its interim financial report,

(e) in the case of the first interim financial report in the year of adopting IFRS, the opening IFRS statement of financial position at the date of transition to IFRS,

(f) for an issuer that is not a reporting issuer in at least one jurisdiction of Canada immediately before filing the offering memorandum, if the issuer is including an interim financial report of the issuer for the second or third interim period in the year of adopting IFRS include

(i) the issuer's first interim financial report in the year of adopting IFRS, or

(ii) both

(A) the opening IFRS statement of financial position at the date of transition to IFRS, and

(B) the annual and date of transition to IFRS reconciliations required by IFRS 1 *First-time Adoption of International Financial Reporting Standards* to explain how the transition from previous GAAP to IFRS affected the issuer's reported financial position, financial performance and cash flows, and

(g) notes to the financial statements.

5.1 If an issuer presents the components of profit or loss in a separate income statement, the separate income statement must be displayed immediately before the statement of comprehensive income filed under item 5 above.

6. An issuer is not required to include the comparative financial information for the period in B.4.(a)(ii) in an offering memorandum if the issuer includes financial statements for a financial year ended less than 120 days before the date of the offering memorandum.

7. For an issuer that is not an investment fund, the term "interim period" has the meaning set out in NI 51-102. In most cases, an interim period is a period ending 9, 6, or 3 months before the end of a financial year. For an issuer that is an investment fund, the term "interim period" has the meaning set out in National Instrument 81-106 *Investment Fund Continuous Disclosure* (NI 81-106).

8. The comparative financial information required under B.5(b) and (c) may be omitted if the issuer has not previously prepared financial statements in accordance with its current or, if applicable, its previous GAAP.

9. The financial statements required by B.3, B.4 and B.12.1(a) must be audited. The financial statements required by B.5, B.6, B.12.1(b) and the comparative financial information required by B.4 may be unaudited; however, if any of those financial statements have been audited, the auditor's report must be included in the offering memorandum.

10. Refer to National Instrument 52-108 *Auditor Oversight* for requirements relating to reporting issuers and public accounting firms.

11. All unaudited financial statements and unaudited comparatives must be clearly labelled as unaudited.

12. [Repealed]

12.1 If the distribution is ongoing, the issuer must do the following:

(a) if the offering memorandum does not contain audited annual financial statements for the issuer's most recently completed financial year, the issuer must do the following:

(i) amend the offering memorandum to include the audited annual financial statements and the accompanying auditor's report as soon as the issuer has approved the audited financial statements, but in any event no later than the 120th day following the financial year end;

(ii) present the offering memorandum and the audited annual financial statements in accordance with the instructions in A, B and C and, for that purpose, the reference to the financial year in B.4(a)(i) shall mean the issuer's most recently completed financial year;

(b) if the offering memorandum does not contain an interim financial report for the issuer's most recently completed 6-month period, the issuer must do the following:

(i) amend the offering memorandum to include the interim financial report no later than the 60th day following the end of the period;

(ii) present the offering memorandum and the interim financial report in accordance with the instructions in A, B and C and, for that purpose, the reference to the interim period in B.5(a) shall mean the issuer's most recently completed 6-month period.

12.2 If the issuer has included in its offering memorandum an interim financial report for its most recently completed 9-month period, B. 12.1(b) does not apply.

13. [Repealed]

14. Forward looking information, as defined in NI 51-102, included in an offering memorandum must comply with section 4A.2 of NI 51-102 and must include the disclosure described in section 4A.3 of NI 51-102. In addition to the foregoing, FOFI or a financial outlook, each as defined in NI 51-102, included in an offering memorandum must comply with Part 4B of NI 51-102. For an issuer that is not a reporting issuer, references to "reporting issuer" in section 4A.2, section 4A.3 and Part 4B of NI 51-102 must be read as references to an "issuer". Additional guidance may be found in the companion policy to NI 51-102.

15. [Repealed]

16. [Repealed]

C. Financial Statements - Business Acquisitions

1. If the issuer

   (a) has acquired a business during the past two years and the audited financial statements of the issuer included in the offering memorandum do not include the results of the acquired business for 9 consecutive months, or

   (b) is proposing to acquire a business and the acquisition has progressed to a state where a reasonable person would believe that the likelihood of the acquisition being completed is high,

   include the financial statements specified in C.4 for the business if either of the tests in C.2 is met, irrespective of how the issuer accounts, or will account, for the acquisition.

2. Include the financial statements specified in C.4 for a business referred to in C.1 if either:

   (a) the issuer's proportionate share of the consolidated assets of the business exceeds 100% of the consolidated assets of the issuer calculated using the annual financial statements of each of the issuer and the business for the most recently completed financial year of each that ended before the acquisition date or, for a proposed acquisition, the date of the offering memorandum or

   (b) the issuer's consolidated investments in and advances to the business as at the acquisition date or the proposed date of acquisition exceeds 100% of the consolidated assets of the issuer, excluding any investments in or advances to the business, as at the last day of the issuer's most recently completed financial year that ended before the date of acquisition or the date of the offering memorandum for a proposed acquisition. For information about how to perform the investment test in this paragraph, please refer to subsections 8.3(4.1) and (4.2) of NI 51-102. Additional guidance may be found in the companion policy to NI 51-102.

2.1 [Repealed]

3. If an issuer or a business has not yet completed a financial year, or its first financial year ended within 120 days of the offering memorandum date, use the financial statements referred to in B.3 to make the calculations in C.2.

4. If under C.2 you must include in an offering memorandum financial statements for a business, the financial statements must include:

   (a) If the business has not completed one financial year or its first financial year end is less than 120 days from the date of the offering memorandum

      (i) a statement of comprehensive income, a statement of changes in equity and a statement of cash flows

(A) for the period from inception to a date not more than 90 days before the date of the offering memorandum, or

(B) if the date of acquisition precedes the ending date of the period referred to in (A), for the period from inception to the acquisition date or a date not more than 45 days before the acquisition date,

(ii) a statement of financial position dated as at the end of the period referred to in clause (i), and

(iii) notes to the financial statements.

(b) If the business has completed one or more financial years include

(i) annual financial statements comprised of:

(A) a statement of comprehensive income, a statement of changes in equity and a statement of cash flows for the following annual periods:

i. the most recently completed financial year that ended before the acquisition date and more than 120 days before the date of the offering memorandum, and

ii. the financial year immediately preceding the most recently completed financial year specified in clause i, if any,

(B) a statement of financial position as at the end of each of the periods specified in (A),

(C) notes to the financial statements, and

(ii) an interim financial report comprised of

(A) either

i. a statement of comprehensive income, a statement of changes in equity and a statement of cash flows for the most recently completed year-to-date interim period ending on the last date of the interim period that ended before the acquisition date and more than 60 days before the date of the offering memorandum and ended after the date of the financial statements required under subclause (b)(i)(A)(i), and a statement of comprehensive income and a statement of changes in equity for the 3-month period ending on the last date of the interim period that ended before the acquisition date and more than 60 days before the date of the offering memorandum and ended after the date of the

financial statements required under subclause (b)(i)(A)(i), or

ii. a statement of comprehensive income, a statement of changes in equity and a statement of cash flows for the period from the first day after the financial year referred to in subparagraph (b)(i) to a date before the acquisition date and after the period end in subclause (b)(ii)(A)(i),

(B) a statement of comprehensive income, a statement of changes in equity and a statement of cash flows for the corresponding period in the immediately preceding financial year, if any,

(C) a statement of financial position as at the end of the period required by clause (A) and the end of the immediately preceding financial year, and

(D) notes to the financial statements.

Refer to Instruction B.7 for the meaning of "interim period".

5. The information for the most recently completed financial period referred to in C.4(b)(i) must be audited and accompanied by an auditor's report. The financial statements required under C.4(a), C.4(b)(ii) and the comparative financial information required by C.4(b)(i) may be unaudited; however, if those financial statements or comparative financial information have been audited, the auditor's report must be included in the offering memorandum.

6. If the offering memorandum does not contain audited financial statements for a business referred to in C.1 for the business's most recently completed financial year that ended before the acquisition date and the distribution is ongoing, update the offering memorandum to include those financial statements accompanied by an auditor's report when they are available, but in any event no later than the date 120 days following the year-end.

7. The term "business" should be evaluated in light of the facts and circumstances involved. Generally, a separate entity or a subsidiary or division of an entity is a business and, in certain circumstances, a lesser component of an entity may also constitute a business, whether or not the subject of the acquisition previously prepared financial statements. The subject of an acquisition should be considered a business where there is, or the issuer expects there will be, continuity of operations. The issuer should consider:

(a) whether the nature of the revenue producing activity or potential revenue producing activity will remain generally the same after the acquisition, and

(b) whether any of the physical facilities, employees, marketing systems, sales forces, customers, operating rights, production techniques or trade names are acquired by the issuer instead of remaining with the vendor after the acquisition.

8. If a transaction or a proposed transaction for which the likelihood of the transaction being completed is high has been or will be a reverse take-over as defined in NI 51-102, include financial statements for the legal subsidiary in the offering memorandum in accordance with Part A. The legal parent is considered to be the business acquired. C.1 may also require financial statements of the legal parent.

9. An issuer satisfies the requirements in C.4 if the issuer includes in the offering memorandum the financial statements required in a business acquisition report under NI 51-102.

D. Financial Statement - Exemptions

1. [Repealed]

2. Notwithstanding the requirements in section 3.3(1)(a)(i) of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*, an auditor's report that accompanies financial statements of an issuer or a business contained in an offering memorandum of a non-reporting issuer may express a qualification of opinion relating to inventory if

   (a) the issuer includes in the offering memorandum a statement of financial position that is for a date that is after the date to which the qualification relates,

   (b) the statement of financial position referred to in paragraph (a) is accompanied by an auditor's report that does not express a qualification of opinion relating to closing inventory, and

   (c) the issuer has not previously filed financial statements for the same entity accompanied by an auditor's report for a prior year that expressed a qualification of opinion relating to inventory.

3. If an issuer has, or will account for a business referred to in C.1 using the equity method, then financial statements for a business required by Part C are not required to be included if:

   (a) the offering memorandum includes disclosure for the periods for which financial statements are otherwise required under Part C that:

      (i) summarizes information as to the aggregated amounts of assets, liabilities, revenue and profit or loss of the business, and

      (ii) describes the issuer's proportionate interest in the business and any contingent issuance of securities by the business that might significantly affect the issuer's share of profit or loss;

   (b) the financial information provided under D.3(a) for the most recently completed financial year has been audited, or has been derived from audited financial statements of the business; and

(c) the offering memorandum discloses that:

(i) the financial information provided under D.3(a) for any completed financial year has been audited, or identifies the audited financial statements from which the financial information provided under D.3(a) has been derived; and

(ii) the audit opinion with respect to the financial information or financial statements referred to in D.3(c)(i) was an unmodified opinion.

4. Financial statements relating to the acquisition or proposed acquisition of a business that is an interest in an oil and gas property are not required to be included in an offering memorandum if either of the following apply:

(a) the acquisition is significant based only on the asset test;

(b) the issuer is unable to provide the financial statements in respect of the significant acquisition otherwise required because those financial statements do not exist or the issuer does not have access to those financial statements, and the following apply:

(i) the acquisition was not or will not be a reverse take-over, as defined in NI 51-102;

(ii) the following apply:

(A) the offering memorandum includes an operating statement for the business or related businesses for each of the financial periods for which financial statements would, but for this section, be required under C.4 prepared in accordance with subsection 3.11(5) of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*;

(B) the operating statement for the most recently completed financial period referred to in C.4(b)(i) is audited;

(C) the offering memorandum includes a description of the property or properties and the interest acquired by the issuer;

(D) the offering memorandum includes information with respect to the estimated reserves and related future net revenue attributable to the business, the material assumptions used in preparing the estimates and the identity and relationship to the issuer or to the seller of the person who prepared the estimates;

(E) the offering memorandum includes actual production volumes of the property for the most recently completed year;

(F) the offering memorandum includes estimated production volumes of the property for the first year reflected in the estimate disclosed under D.4(d)(iv).

5. Financial statements for a business that is an interest in an oil and gas property, or for the acquisition or proposed acquisition by an issuer of an oil and gas property, are not required to be audited if, during the 12 months preceding the acquisition date or the proposed acquisition date, the average daily production of the property is less than 20% of the average daily production of the seller for the same or similar periods and:

(i) despite reasonable efforts during the purchase negotiations, the issuer was prohibited from including in the purchase agreement the rights to obtain an audited operating statement of the property,

(ii) the purchase agreement includes representations and warranties by the seller that the amounts presented in the operating statement agree to the seller's books and records, and

(iii) the offering memorandum discloses

1. that the issuer was unable to obtain an audited operating statement,
2. the reasons for that inability,
3. the fact that the purchase agreement includes the representations and warranties referred to in D.5(ii), and
4. that the results presented in the operating statements may have been materially different if the statements had been audited.

Schedule 1- Additional Disclosure Requirements for an Issuer Engaged in Real Estate Activities

Guidance

For an issuer engaged in real estate activities, see subsection 6.4(4) of the Instrument with respect to the completion of this schedule.

General Instructions

1. Despite General Instruction A. 2, an issuer may choose where to integrate the disclosure specified by this schedule within the offering memorandum.

2. Information specified by this schedule that is disclosed in the offering memorandum in response to another provision of this form need not be repeated.

1. Definitions

In this schedule

"rental management agreement" means an agreement, other than a rental pool agreement, under which a person manages the generation of revenue from real property for another person;

"rental pool agreement" means an agreement creating a rental pool;

"rental pool" means an arrangement under which revenues derived from, or expenses relating to, two or more properties are pooled and shared among the owners of the properties in accordance with their proportionate interests in the pool.

2. Application

(1) This schedule applies to the following:

(a) each interest in real property held by the issuer;

(b) each interest in real property proposed to be acquired by the issuer, if the proposed acquisition has progressed to a state where a reasonable person would believe that the likelihood of the issuer completing the acquisition is high.

(2) Despite subsection (1), and except in the circumstances described in section 4, 5, 10 and 11, this schedule does not apply in respect of an interest in real property, or more than one interest in real property taken together, that when considered in relation to all interests in real property held by the issuer, is not significant enough

to influence a decision by a reasonable investor to buy, hold or sell a security of the issuer.

3. Description of Real Property

(1) Describe the following with respect to each interest in real property:

(a) the real property's location, both legal and descriptive;

(b) the nature of the interest;

(c) any encumbrances;

(d) any restriction on sale or disposition;

(e) any environmental liabilities, hazards or contamination;

(f) any tax arrears;

(g) who provides any utilities and other services or, if utilities and other services are not currently being provided, describe how they will be provided and who will provide them;

(h) the current use;

(i) the proposed use and why the issuer considers the real property to be suitable for its plans;

(j) with respect to any buildings affixed to the real property, the type of construction, age and condition, and a description of any units for sale or rental;

(k) for real property that the issuer leases to others, the occupancy level as at a date not more that 60 days before the date of the offering memorandum.

(2) If the issuer is providing disclosure on 20 or more interests in real property, it may for the purposes of subsection (1) disclose the information on a summarized basis with respect to either of the following:

(a) the portfolio of real property interests as a whole;

(b) the portfolio of real property interests broken into subgroups.

(3) Describe any current legal proceedings, or legal proceedings that the issuer knows to be contemplated, relating to each interest in real property, including, for each proceeding, the name of the court, the date instituted, the parties to the

proceeding, the nature of the claim, any amount claimed, whether the proceeding is being contested, and the present status of the proceeding.

Instruction to Section 3

With respect to a proposed acquisition of one or more interests in real property, disclose the issuer's expectations regarding the matters set out in paragraphs (1)(b), (c) and (d) for the event that the acquisition is completed.

4. Appraisal

(1) If subsection 2.9(19.6) of the Instrument applies, disclose the following for any appraisal:

(a) the appraised fair market value of the interest in real property that is the subject of the appraisal;

(b) the effective date of the appraisal;

(c) that the appraisal is required to be delivered to the purchaser at the same time or before the offering memorandum is delivered to the purchaser.

(2) For each interest in real property to which subsection (1) applies, provide the most recent assessment by any assessing authority.

5. Purchaser's Interest in Real Property

If the purchaser will acquire an interest in real property, disclose the following:

(a) a description of the interest;

(b) how the interest will be evidenced in a public registry;

(c) any existing or anticipated encumbrances on the interest.

6. Developer, or Manager under a Rental Pool Agreement or Rental Management Agreement, Organization, Occupation and Experience, and Penalties, Sanctions, Bankruptcy, Insolvency and Criminal or Quasi-Criminal Matters

(1) Subsection (2) applies for the following persons:

(a) a person other than the issuer that is or will be acting in the role of developer in respect of an interest in real property;

(b) in respect of real property in which the purchaser will acquire an interest, a person other than the issuer that will be acting in the role of manager

under a rental management agreement, or manager for a rental pool.

(2) For each person described in subsection (1),

(a) state the legal name of the person, describe the business of the person and any experience that the person has in similar projects or a similar business, and, if the person is not an individual, the laws under which the person is organized or incorporated and the date that the person was organized or incorporated,

(b) if the person is not an individual, in the form of the following table, provide the specified information for any directors and executive officers of the person for the 5 years preceding the date of the offering memorandum,

Full legal name	Principal occupation and description of experience associated with the occupation

(c) if the following have occurred during the 10 years preceding the date of the offering memorandum with respect to the person, a director, executive officer or control person of the person, or an issuer of which any of those persons was a director, executive officer or control person at the time, describe the penalty, sanction or order, including the reason for it and whether it is currently in effect:

(i) a penalty or other sanction imposed by a court relating to a contravention of securities legislation;

(ii) a penalty or other sanction imposed by a regulatory body relating to a contravention of securities legislation;

(iii) an order restricting trading in securities, not including an order that was in effect for less than 30 consecutive days,

(d) if the following have occurred during the 10 years preceding the date of the offering memorandum with respect to the person, a director, executive officer or control person of the person, or an issuer of which any of those persons was a director, executive officer or control person at the time, state that it has occurred:

(i) a declaration of bankruptcy;

(ii) a voluntary assignment in bankruptcy;

(iii) a proposal under bankruptcy or insolvency legislation;

(iv) a proceeding, arrangement or compromise with creditors or appointment of a receiver, receiver manager or trustee to hold assets, and

(e) disclose and describe the following, if the person, or a director, executive officer or control person of the person has ever pled guilty to or been found guilty of:

(i) a summary conviction or indictable offence under the *Criminal Code* (Canada);

(ii) a quasi-criminal offence in any jurisdiction of Canada or a foreign jurisdiction;

(iii) a misdemeanour or felony under the criminal legislation of the United States of America, or any state or territory of the United States of America;

(iv) an offence under the criminal legislation of any other foreign jurisdiction.

7. Transfers

(1) For each interest in real property, for any transaction that a related party was party to, using the following table, starting with the most recent transaction and specifying which party was the related party, disclose the following.

Date of transfer	Legal name of seller	Legal name of buyer	Amount and form of consideration

(2) Explain the reason for any material difference between the amount of consideration paid by the issuer and the amount of consideration paid by a related party for the interest in real property.

8. Approvals

For each interest in real property, if that real property is being developed, disclose the following:

(a) any approval required from a regulatory body or any level of government;

(b) the anticipated cost and timing of the approval;

(c) any reports required as part of the approval process, including the anticipated cost and timing of producing or procuring those reports;

(d) what will happen if the approvals are not obtained, including the effect on the following:

(i) the project;

(i) the purchaser's investment;

(ii) if applicable, the purchaser's interest in the real property.

9. Costs and Objectives

For each interest in real property, if that real property is being developed, disclose the following:

(a) estimated costs to complete the development;

(b) any significant assumptions that underlie the cost estimates;

(c) when significant costs will be incurred;

(d) the objectives of the project that are expected to be met within the 24 months following the date of the offering memorandum, including the following:

(i) the expected timeline for meeting the objectives;

(ii) how the issuer will meet the objectives;

(iii) the estimated costs of meeting each objective;

(iv) how the issuer will fund the cost of meeting each objective;

(e) the objectives for the project that are expected to be met after the 24-month period following the date of the offering memorandum, including the following:

(i) the expected timeline for meeting the objectives;

(ii) how the issuer will meet the objectives;

(iii) if the objectives are to be completed in phases, details about each phase;

(iv) the estimated cost of meeting each objective;

(v) how the issuer will fund the cost of meeting each objective;

(f) what reasonably might happen if any of the stated objectives are not met, including the effect of not meeting on objective on the following:

(i) the project;

(ii) the purchaser's investment;

(iii) if applicable, the purchaser's interest in the real property.

10. Future Cash Calls

If the purchaser is required to contribute additional funds in the future, disclose the following:

(a) the amount the purchaser is required to contribute;

(b) when the purchaser will be required to contribute;

(c) the effect on the purchaser's investment and, if applicable, the purchaser's interest in the real property, if the purchaser fails to contribute;

(d) the effect on the purchaser's investment and, if applicable, the purchaser's interest in the real property, if the purchaser contributes, but other purchasers fail to contribute.

11. Rental Pool Agreement or Rental Management Agreement

If the purchaser will acquire an interest in real property, and that interest will be or could be subject to a rental pool agreement or a rental management agreement, disclose the following:

(a) the key terms of the agreement, including, for certainty, those provisions dealing with whether the agreement is mandatory or optional, the duration of the agreement, opting out of the agreement, termination of the agreement, the sharing of revenues and losses, the payment of expenses, and any fees payable under the agreement;

(b) whether financial or other information about the rental pool or the results

arising from the rental management agreement will be made available to purchasers, and if so, include the following:

(i) a description of the information;

(ii) if the information will include financial information, whether that financial information will be audited or subject to an independent review;

(iii) the frequency with which the information will be made available;

(iv) whether the information will be delivered to purchasers or whether access will be provided to it;

(v) if purchasers are to be provided access to the information, a description of the means of gaining access to it;

(c) the following statement, with the bracketed information completed as applicable:

"The success or failure of the [rental pool][arrangement resulting from the rental management agreement] will depend in part on the abilities of the manager";

(d) if the purchaser will be responsible for paying any loss arising pursuant to the rental pool agreement or rental management agreement, the following statement, with the bracketed information completed as applicable:

"If the [rental pool][rental management agreement] generates a loss, the purchaser must contribute further funds in addition to the purchaser's initial investment.".

12. Information Statements

If the purchaser will acquire an interest in real property, state the following in bold type:

"**Your rights relating to your interest in real property will be those provided under the laws of the jurisdiction in which the real property is located. Therefore, it is prudent to consult a lawyer who is familiar with the laws of that jurisdiction before making an investment.**

All real estate investments are subject to significant risk arising from changing market conditions.".

13. Risk Factors Relating to Real Property

With respect to the issuer's interests in real property, and any interest in real property to be acquired by the purchaser, describe the risk factors that would influence a reasonable investor's decision whether to invest, including, if applicable:

(a) risks associated with the following:

(i) the development of undivided real property into subdivisions;

(ii) the leasing of real property;

(iii) the holding of real property for sale or development;

(b) risks associated with encumbrances, conditions, or covenants on the real property that could affect the following:

(i) the purchaser's interest in the real property, if applicable;

(ii) the completion of the development of real property;

(c) risks pertaining to the development of real property, including the following:

(i) a right or lack of right of the purchaser with respect to the management and control of the real property;

(ii) a right or lack of right of the purchaser to change the developer of the property;

(d) risks pertaining to potential liability for the following:

(i) environmental damage;

(ii) unpaid obligations to builders, contractors and tradespersons;

(e) risks associated with litigation that relates to the real property.

Schedule 2 – Additional Disclosure Requirements for an Issuer That is a Collective Investment Vehicle

Guidance

For an issuer that is a collective investment vehicle, see subsection 6.4(5) of the Instrument with respect to the completion of this schedule.

General Instructions

1. Despite General Instruction A. 2, an issuer may choose where to integrate the disclosure specified by this schedule within the offering memorandum.

2. Information specified by this schedule that is disclosed in the offering memorandum in response to another provision of this form need not be repeated.

1. Investment Objectives and Strategy

(1) Except with respect to mortgage lending, describe the following:

(a) the issuer's investment objectives, investment strategy and investment criteria;

(b) any limitations or restrictions on investments, including concentration limits and use of leverage;

(c) how securities are identified, selected and approved for purchase or sale.

(2) For any mortgage lending by the issuer, describe the following:

(a) the issuer's investment objectives with respect to the following:

(i) the type of properties for which the issuer lends money;

(ii) the issuer's geographical focus;

(iii) the material mortgage terms, including range of interest rates and length of term;

(iv) the priority ranking of mortgages, in terms of first priority, second priority and third or lower priority;

(b) any policies or practices of the issuer with respect to the following:

(i) after initial funding of a mortgage, conducting any subsequent valuation of a property;

(ii) loaning money to a related party;

(iii) renewals;

(iv) concentrating funds in a single mortgage or lending funds to a single borrower or group of affiliated borrowers;

(v) determining that a borrower has the ability to repay a mortgage.

2. Portfolio Management and Penalties, Sanctions, Bankruptcy, Insolvency and Criminal or Quasi-Criminal Matters

(1) Identify the person responsible for the following:

(a) establishing and implementing the issuer's investment objectives and investment strategy;

(b) setting any limitations or restrictions on investments;

(c) monitoring the performance of the portfolio;

(d) making any adjustments to the issuer's portfolio.

(2) For each person described in subsection (1) that is not registered under the securities legislation of a jurisdiction of Canada,

(a) in the form of the following table, provide the specified information for the person and any directors and executive officers of the person for the 5 years preceding the date of the offering memorandum,

Full legal name	Principal occupation and description of experience associated with the occupation

(b) if the following have occurred during the 10 years preceding the date of the offering memorandum with respect to the person, or an issuer of which the person was a director, executive officer or control person at the time, describe the penalty, sanction or order, including the reason for it and whether it is currently in effect:

(i) a penalty or other sanction imposed by a court relating to a contravention of securities legislation;

(ii) a penalty or other sanction imposed by a regulatory body relating to a contravention of securities legislation;

(iii) an order restricting trading in securities, not including an order that was in effect for less than 30 consecutive days,

(c) if the following have occurred during the 10 years preceding the date of the offering memorandum with respect to the person, or an issuer of which the person was a director, executive officer or control person at the time, state that is has occurred:

(i) a declaration of bankruptcy;

(ii) a voluntary assignment in bankruptcy;

(iii) a proposal under bankruptcy or insolvency legislation;

(iv) a proceeding, arrangement or compromise with creditors or appointment of a receiver, receiver manager or trustee to hold assets,

(d) disclose and describe the following, if the person has ever pled guilty to or been found guilty of:

(i) a summary conviction or indictable offence under the *Criminal Code* (Canada);

(ii) a quasi-criminal offence in any jurisdiction of Canada or a foreign jurisdiction;

(iii) a misdemeanour or felony under the criminal legislation of the United States of America, or any state or territory of the United States of America;

(iv) an offence under the criminal legislation of any other foreign jurisdiction, and

(e) disclose any exemption relied on by the person from the requirement to be registered under the securities legislation of a jurisdiction of Canada.

(3) For any person identified in subsection (1) that is not an employee of the issuer, disclose any remuneration paid to the person, and how the remuneration is calculated.

(4) Identify any person that is not an employee of the issuer, other than a person identified under subsection (1), that performs a significant role or provides a significant service for the issuer with respect to the securities in the issuer's portfolio, and describe the following:

(a) the role performed or service provided;

(b) the remuneration paid to the person and how that remuneration is calculated.

3. Portfolio Summary

(1) Except with respect to mortgage lending, as at a date not more than 60 days before the date of the offering memorandum, disclose the following:

(a) a description of the portfolio, or a description of the portfolio divided into subgroups including the percentage of the net asset value in each subgroup;

(b) the percentage of the net asset value that is impaired;

(c) the total number of positions held in securities.

(2) Except with respect to mortgage lending, if a security comprises 10% or more of the issuer's net asset value, disclose the following with respect to the security:

(a) the percentage of net asset value represented;

(b) a description of the security;

(c) any security interest held against the security;

(d) the amount of any impairment assigned to the security.

(3) For any mortgage lending by the issuer, disclose the following:

(a) the average of the interest rates payable under the mortgages, weighted by the principal amount of the mortgages;

(b) the average of the terms to maturity of the mortgages, weighted by the principal amount of the mortgages;

(c) the average loan-to-value ratio of the mortgages, calculated for each mortgage by dividing the total principal amount of the issuer's mortgage and all other loans ranking in equal or greater priority to the issuer's mortgage by the fair market value of the property, weighted by the principal amount of each mortgage;

(d) the principal amount, and the percentage of the total principal amount of the mortgages, that rank in the following:

(i) first priority;

(ii) second priority;

(iii) third or lower priority;

(e) the principal amount, and the percentage of the total principal amount of the mortgages, that is attributable to each jurisdiction of Canada, each state or territory of the United States of America and each other foreign jurisdiction;

(f) a breakdown by property type, and the principal amount, and the percentage of the total principal amount of the mortgages, that is attributable to each property type;

(g) with respect to mortgages that will mature in less than one year of the date of the summary provided in subsection (1), the percentage that those mortgages represent of the total principal amount of the mortgages;

(h) with respect to mortgages with payments more than 90 days overdue, the number of those mortgages, the principal amount of those mortgages, and the percentage that those mortgages represent of the total principal amount of the mortgages;

(i) with respect to mortgages that have an impaired value, the principal amount, and the percentage that those mortgages represent of the total principal amount of the mortgages;

(j) if known by the issuer, or if reasonably available to the issuer, the average credit score of the borrowers, weighted by the principal amount of the mortgages;

(k) if a mortgage comprises 10% or more of the total principal amount of the mortgages, disclose the following with respect to the mortgage:

(i) the principal amount, and the percentage of the total principal amount of the mortgages;

(ii) the interest rate payable;

(iii) the term to maturity;

(iv) the loan-to-value ratio, calculated by dividing the total principal amount of the issuer's mortgage and all other loans ranking in

equal or greater priority to the issuer's mortgage by the fair market value of the property;

(v) whether the mortgage ranks in first, second, or third or lower priority;

(vi) the property type;

(vii) where the property is located;

(viii) any payment that is more than 90 days overdue;

(ix) any impairment of the mortgage;

(x) if known by the issuer, or if reasonably available to the issuer, the credit score of each borrower.

(4) If the issuer's portfolio includes self-liquidating financial assets other than mortgages, with respect to those assets, and for any subgroups identified in paragraph (1)(a), disclose the following:

(a) the collection rate for each of the issuer's two most recently completed financial years that ended more than 120 days before the date of the offering memorandum;

(b) the issuer's reasonably anticipated loss and collection rate for the current financial year.

Instruction to Section 3

Calculate impairment in accordance with the accounting standards applicable to the issuer, and in a manner that is consistent with the disclosure in the issuer's financial statements.

4. Portfolio Performance

(1) For the 10 most recently completed financial years of the issuer ended more than 120 days before the date of the offering memorandum, provide performance data for the issuer's portfolio.

(2) Describe the methodology used with respect to the following:

(a) determining the value of the securities in the portfolio for the purposes of calculating the performance data;

(b) calculating the performance data of the portfolio.

Instruction to Section 4

The methodology described in paragraph (2)(a) must be the same as the methodology used in the issuer's financial statements.

5. Ongoing Disclosure

Describe any information that purchasers will receive on an ongoing basis about the issuer's portfolio. If none, state that fact.

6. Conflicts of Interest

Describe any conflicts of interest, including, for certainty, with respect to related parties, that a reasonable purchaser would need to be made aware of to make an informed investment decision.

Schedule A-2

FORM 45-106F4
Risk Acknowledgement

WARNING!

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

1. Risks and other information The issuer must delete any rows required to be deleted The purchaser must initial each statement to confirm understanding	**Your Initials**
Risk of loss – You could lose your entire investment of $ _____. [*Instruction: Insert the total dollar amount of the investment.]*	
No approval – No securities regulatory authority or regulator has evaluated or approved the merits of these securities or the disclosure in the offering memorandum.	
No registration – The person selling me these securities is not registered with a securities regulatory authority or regulator and has no duty to tell you whether this investment is suitable for you. *[Instruction: Delete if sold by registrant]*	
Liquidity risk – You will not be able to sell these securities except in very limited circumstances. You may never be able to sell these securities. *[Instruction: Delete if issuer is reporting]*	
Redemption – The securities are redeemable, but you may only be able to redeem them in limited circumstances. *[Instruction: Delete if securities are not redeemable]*	
Four month hold – You will not be able to sell these securities for 4 months. *[Instruction: Delete if issuer is not reporting or if the purchaser is a Manitoba resident]*	
You are buying Exempt Market Securities [4] They are called *exempt market securities* because the issuer does not have to give you a prospectus (a document that describes investment in detail and gives you some legal protections). *Exempt market securities* are more risky than other securities.	
You will not receive advice – *[Instruction: Delete if sold by registrant]*	

[4] This row is not included in the publication for comment of other CSA jurisdictions. However, it is intended that any amendments ultimately implemented will be harmonized.

You will not get professional advice about whether the investment is suitable for you. But you can still seek that advice from a registered adviser or registered dealer. In Manitoba, Northwest Territories, Nunavut, Prince Edward Island and Yukon to qualify as an eligible investor, you may be required to obtain that advice.	
The securities you are buying are not listed *[Instruction: Delete if securities are listed or quoted]* The securities you are buying are not listed on any stock exchange, and they may never be listed.	
The issuer of your securities is a non-reporting issuer *[Instruction: Delete if issuer is reporting]* A *non-reporting issuer* does not have to publish financial information or notify the public of changes in its business. You may not receive ongoing information about this issuer. For more information on the exempt market, contact your local securities regulator. You can find contact information at www.securities-administrators.ca.	
Total investment – You are investing $ _____ [*Instruction: total consideration*] in total; this includes any amount you are obliged to pay in future. _____ [*Instruction: name of issuer*] will pay $_____ [*Instruction: amount of fee or commission*] of this to _____ [*Instruction: name of person selling the securities*] as a fee or commission.	
Your name and signature	
By signing this form, you confirm that you have read this form and you understand the risks of making this investment as identified in this form.	
First and last name (print)**:**	
Signature:	Date:
[Instruction: Sign 2 copies of this document. Keep one copy for your records.]	

2. Salesperson information Below information must be completed by the salesperson	
[Instruction: The salesperson is the person who meets with, or provides information to, the purchaser with respect to making this investment. That could include a representative of the issuer, a registrant or a person who is exempt from the registration requirement.]	
First and last name of salesperson (print):	
Telephone:	Email:
Name of firm:	

3. **Additional information**

The issuer must complete the required information in this section before giving the form to the purchaser
You have 2 business days to cancel your purchase To do so, send a notice to [name of issuer] stating that you want to cancel your purchase. You must send the notice before midnight on the 2nd business day after you sign the agreement to purchase the securities. You can send the notice by fax or email or deliver it in person to [name of issuer] at its business address. Keep a copy of the notice for your records. Issuer Name and Address: Fax: E-mail:
You will receive an offering memorandum Read the offering memorandum carefully because it has important information about the issuer and its securities. Keep the offering memorandum because you have rights based on it. Talk to a lawyer for details about these rights.

ANNEX B

PROPOSED CHANGES TO
COMPANION POLICY 45-106CP *PROSPECTUS EXEMPTIONS*

1. Companion Policy 45-106CP Prospectus Exemptions is changed by this Document.

2. The following sections are added after section 2.9:

2.10 Real estate activities

We consider the following non-exhaustive list to be examples of instances in which an issuer is engaged in "real estate activities" as defined in section 1.1 of NI 45-106:

- An issuer that is developing or redeveloping real property for sale as commercial or industrial space, residential building lots or homes, or condominiums;
- An issuer that is developing or redeveloping real property for lease;
- An issuer that owns real property for lease;
- An issuer that buys, holds or sells real property, with a view to making a gain or income;
- An issuer of an interest in real property that is a security.

If an issuer (the first issuer) is engaged in real estate activities through one or more of its subsidiaries, we consider the first issuer to be engaged in real estate activities.

2.11 Collective investment vehicle

We view investment funds, in the jurisdictions in which they are permitted to use the offering memorandum exemption, as being included in the definition of "collective investment vehicle". We are also of the view that the definition applies to mortgage investment entities, issuers that act as lender for a portfolio of non-mortgage loans, and in certain circumstances, issuers that invest in receivables.

If an issuer (the first issuer) satisfies the definition of "collective investment vehicle" through the actions of one or more its subsidiaries, we consider the first issuer to be a collective investment vehicle..

3. Subsection 3.8(3) is replaced with the following:

(3) Standard of disclosure for an offering memorandum, amending an offering memorandum and related matters

(a) Standard of disclosure for an offering memorandum

There are two standards that make up the standard of disclosure for an offering memorandum. First, under subsection 2.9(13.1) of the Instrument, an offering memorandum must not contain a misrepresentation on the date its certificate is signed. Second, under subsection 2.9(13.3) of the Instrument, an offering memorandum delivered under the section must provide a reasonable purchaser with sufficient information to make an informed investment decision.

(b) Amending an offering memorandum

The requirements of Instruction B.12.1 of Form 45-106F2 include that if a distribution is ongoing, an issuer must, after a certain period, amend its offering memorandum to include financial statements for its most recently completed financial year, or an interim financial report for its most recently completed 6 month interim period, as the case may be.

There are a number of requirements in Form 45-106F2 that refer to a completed financial year or years, or a completed interim period. As a result, each time an issuer includes in its offering memorandum financial statements for a financial year or an interim financial report for an interim period, it is required to ensure that any disclosure that is in response to a requirement that references a financial year or interim period is amended if necessary.

It is not necessary for an offering memorandum to contain annual financial statements or an interim financial report for more financial years or interim periods than are required by B. of the instructions to Form 45-106F2. Accordingly, an issuer amending its offering memorandum to include more recent annual financial statements or a more recent interim financial report may exclude, in its amended offering memorandum, any annual financial statements or interim financial report for a financial year or interim period that is no longer required.

An issuer is also required to amend its offering memorandum if a material change occurs after the certificate is signed, and before the issuer accepts an agreement to purchase the security from the purchaser. See subsection 2.9(13.2) of the Instrument. Material change is defined in provincial and territorial securities legislation.

In addition, if a distribution is ongoing and an issuer becomes subject to instruction C.1 of Form 45-106F2 with respect to the acquisition or proposed acquisition of a business, and the financial statements required by that instruction are not contained in the offering memorandum, the issuer must amend its offering memorandum to include them.

We also note that an issuer may voluntarily amend its offering memorandum.

(c) New certificate

Each time an issuer amends its offering memorandum, it is required under subsection 2.9(14.1) of the Instrument to replace the certificate in the offering memorandum with a new certificate. We also note that Form 45-106F2 provides that the date of the offering memorandum is the date of the certificate.

There are certain requirements in Form 45-106F2 that refer to the date of the offering memorandum. As a result, each time an issuer includes a new certificate in its offering memorandum, it is required to ensure that any disclosure in response to a requirement that references the date of the offering memorandum is amended if necessary..

4*. *Section 3.8 is changed by adding the following after subsection 3.8(3):

(3.1) Certificate of promoter

"Promoter" is defined differently in provincial and territorial securities legislation across CSA jurisdictions. It is generally defined as meaning a person who has taken the initiative in founding, organizing or substantially reorganizing the business of the issuer or who has received consideration over a prescribed amount for services or property or both in connection with founding, organizing or substantially reorganizing the issuer. "Promoter" has not been defined in the *Securities Act* (Québec) and a broad interpretation is taken in Québec in determining who would be considered a promoter.

Under securities legislation, persons who receive consideration solely as underwriting commissions or in consideration of property and who do not otherwise take part in the founding, organizing or substantially reorganizing the issuer are not promoters. Simply selling securities, or in some way facilitating sales in securities, does not make a person a promoter under the offering memorandum exemption..

***5*. *Subsection 3.8(13) is changed*[1]**

[1] Instructions 5, 6 and 7 take into account the changes to this policy published in Annex C of the August 6 CSA Notice.

(a) by deleting **"**for syndicated mortgages**",** ***and***

(b) by replacing **"**the issuer of a syndicated mortgage***" with "***an issuer***".***

6. ***Subsection 3.8(14) is changed by adding*** **"**of property subject to a syndicated mortgage***" after "***Appraisals***".***

7. ***Section 3.8 is changed by adding the following after subsection 3.8(14):***

(15) Collective investment vehicles - disclosure

An issuer that is a collective investment vehicle should consider the complexity of its offering and determine whether appropriate and sufficient information can be provided under its offering memorandum, as these distributions can be made to less sophisticated investors. Disclosure should be clear and described in plain language, avoiding technical terms as much as possible. If the disclosure will be complex or contains technical terms that are difficult to easily describe, the issuer should consider whether a distribution under the offering memorandum exemption is appropriate.**.**

8. Section 5.3 is deleted.

9. These changes become effective on ●.

Annex C

Blackline

Main body of NI 45-106 reflecting the Proposed Amendments, compared by way of blackline to that material as currently in-force

NATIONAL INSTRUMENT 45-106
PROSPECTUS EXEMPTIONS

Text boxes in this Instrument located above sections 2.1 to 2.5, 2.7 to 2.21, 2.24, 2.26, 2.27, and 2.30 to 2.43 refer to National Instrument 45-102 Resale of Securities. These text boxes do not form part of this Instrument.

Text boxes in this Instrument located below sections 2.34, 2.36, 2.37, and 2.41 refer to the Securities Act (Ontario). These text boxes do not form part of this Instrument.

Table of Contents

2.8 Affiliates
2.9 Offering memorandum
2.10 Minimum amount investment

Division 2: Transaction Exemptions

2.11 Business combination and reorganization
2.12 Asset acquisition
2.13 Petroleum, natural gas and mining properties
2.14 Securities for debt
2.15 Issuer acquisition or redemption
2.16 Take-over bid and issuer bid
2.17 Offer to acquire to security holder outside local jurisdiction

Division 3: Investment Fund Exemptions
2.18 Investment fund reinvestment
2.19 Additional investment in investment funds
2.20 Private investment club
2.21 Private investment fund - loan and trust pools

Division 4: Employee, Executive Officer, Director and Consultant Exemptions
2.22 Definitions
2.23 Interpretation
2.24 Employee, executive officer, director and consultant
2.25 Unlisted reporting issuer exception
2.26 Distributions among current or former employees, executive officers, directors, or consultants of non-reporting issuer
2.27 Permitted transferees
2.28 Limitations re: permitted transferees
2.29 Issuer bid

Division 5: Miscellaneous Exemptions
2.30 Isolated distribution by issuer
2.31 Dividends and distributions
2.32 Distribution to lender by control person for collateral
2.33 Acting as underwriter
2.34 Specified debt
2.35 Short-term debt
2.35.1 Short-term securitized products
2.35.1.1 Definition applicable to section 2.35.2
2.35.2 Limitations on short-term securitized product exemption
2.35.3 Exceptions relating to liquidity agreements
2.35.4 Disclosure requirements
2.36 Mortgages
2.37 Personal property security legislation
2.38 Not for profit issuer

NATIONAL INSTRUMENT 45-106
PROSPECTUS EXEMPTIONS

PART 1 DEFINITIONS AND INTERPRETATION

Definitions

1.1 In this Instrument

"accredited investor" means

(a) except in Ontario, a Canadian financial institution, or a Schedule III bank,

(b) except in Ontario, the Business Development Bank of Canada incorporated under the *Business Development Bank of Canada Act* (Canada),

(c) except in Ontario, a subsidiary of any person referred to in paragraphs (a) or (b), if the person owns all of the voting securities of the subsidiary, except the voting securities required by law to be owned by directors of that subsidiary,

(d) except in Ontario, a person registered under the securities legislation of a jurisdiction of Canada as an adviser or dealer,

(e) an individual registered under the securities legislation of a jurisdiction of Canada as a representative of a person referred to in paragraph (d),

(e.1) an individual formerly registered under the securities legislation of a jurisdiction of Canada, other than an individual formerly registered solely as a representative of a limited market dealer under one or both of the *Securities Act* (Ontario) or the *Securities Act* (Newfoundland and Labrador),

(f) except in Ontario, the Government of Canada or a jurisdiction of Canada, or any crown corporation, agency or wholly owned entity of the Government of Canada or a jurisdiction of Canada,

(g) except in Ontario, a municipality, public board or commission in Canada and a metropolitan community, school board, the Comité de gestion de la taxe scolaire de l'île de Montréal or an intermunicipal management board in Québec,

(h) except in Ontario, any national, federal, state, provincial, territorial or municipal government of or in any foreign jurisdiction, or any agency of that government,

(i) except in Ontario, a pension fund that is regulated by the Office of the Superintendent of Financial Institutions (Canada), a pension commission or similar regulatory authority of a jurisdiction of Canada,

(j) an individual who, either alone or with a spouse, beneficially owns financial assets having an aggregate realizable value that, before taxes but net of any related liabilities, exceeds $1 000 000,

(j.1) an individual who beneficially owns financial assets having an aggregate realizable value that, before taxes but net of any related liabilities, exceeds $5 000 000,

(k) an individual whose net income before taxes exceeded $200 000 in each of the 2 most recent calendar years or whose net income before taxes combined with that of a spouse exceeded $300 000 in each of the 2 most recent calendar years and who, in either case, reasonably expects to exceed that net income level in the current calendar year,

(l) an individual who, either alone or with a spouse, has net assets of at least $5 000 000,

(m) a person, other than an individual or investment fund, that has net assets of at least $5 000 000 as shown on its most recently prepared financial statements,

(n) an investment fund that distributes or has distributed its securities only to

(i) a person that is or was an accredited investor at the time of the distribution,

(ii) a person that acquires or acquired securities in the circumstances referred to in sections 2.10 [*Minimum amount investment*], or 2.19 [*Additional investment in investment funds*], or

(iii) a person described in paragraph (i) or (ii) that acquires or acquired securities under section 2.18 [*Investment fund reinvestment*],

(o) an investment fund that distributes or has distributed securities under a prospectus in a jurisdiction of Canada for which the regulator or, in Québec, the securities regulatory authority, has issued a receipt,

(p) a trust company or trust corporation registered or authorized to carry on business under the *Trust and Loan Companies Act* (Canada) or under comparable legislation in a jurisdiction of Canada or a foreign jurisdiction, acting on behalf of a fully managed account managed by the trust company or trust corporation, as the case may be,

(q) a person acting on behalf of a fully managed account managed by that person, if that person is registered or authorized to carry on business as an adviser or the equivalent under the securities legislation of a jurisdiction of Canada or a foreign jurisdiction,

(r) a registered charity under the *Income Tax Act* (Canada) that, in regard to the trade, has obtained advice from an eligibility adviser or an adviser registered under the securities legislation of the jurisdiction of the registered charity to give advice on the securities being traded,

(s) an entity organized in a foreign jurisdiction that is analogous to any of the entities referred to in paragraphs (a) to (d) or paragraph (i) in form and function,

(t) a person in respect of which all of the owners of interests, direct, indirect or beneficial, except the voting securities required by law to be owned by directors, are persons that are accredited investors,

(u) an investment fund that is advised by a person registered as an adviser or a person that is exempt from registration as an adviser,

(v) a person that is recognized or designated by the securities regulatory authority or, except in Ontario and Québec, the regulator as an accredited investor; or

(w) a trust established by an accredited investor for the benefit of the accredited investor's family members of which a majority of the trustees are accredited investors and all of the beneficiaries are the accredited investor's spouse, a former spouse of the accredited investor or a parent, grandparent, brother, sister, child or grandchild of that accredited investor, of that accredited investor's spouse or of that accredited investor's former spouse;

In Ontario, paragraphs (a) to (h) of subsection 73.3(1) of the *Securities Act* (Ontario) correspond to paragraphs (a) to (d) and paragraphs (f) to (i) of the definition of "accredited investor" in section 1.1 of this Instrument.

"acquisition date" has the same meaning as in the issuer's GAAP;

"AIF" means

(a) an AIF as defined in National Instrument 51-102 *Continuous Disclosure Obligations*,

(b) a prospectus filed in a jurisdiction, other than a prospectus filed under a CPC instrument, if the issuer has not filed or been required to file an AIF or annual financial statements under National Instrument 51-102 *Continuous Disclosure Obligations*, or

(c) a QT circular if the issuer has not filed or been required to file annual financial statements under National Instrument 51-102 *Continuous Disclosure Obligations*, subsequent to filing a QT circular;

"**asset pool**" means a pool of cash-flow generating assets in which an issuer of a securitized product has a direct or indirect ownership or security interest;

"**asset transaction**" means a transaction or series of transactions in which a conduit acquires a direct or indirect ownership or security interest in an asset pool in connection with issuing a short-term securitized product;

"bank" means a bank named in Schedule I or II of the *Bank Act* (Canada);

"Canadian financial institution" means

(a) an association governed by the *Cooperative Credit Associations Act* (Canada) or a central cooperative credit society for which an order has been made under section 473(1) of that Act, or

(b) a bank, loan corporation, trust company, trust corporation, insurance company, treasury branch, credit union, caisse populaire, financial services cooperative, or league that, in each case, is authorized by an enactment of Canada or a jurisdiction of Canada to carry on business in Canada or a jurisdiction of Canada;

"**collective investment vehicle**" means an issuer whose primary purpose is to invest money provided by its security holders in a portfolio of securities;

"**conduit**" means an issuer of a short-term securitized product

(a) created to conduct one or more asset transactions, and

(b) in respect of which it is reasonable for the issuer to expect that, in the event of a bankruptcy or insolvency proceeding under the *Bankruptcy and Insolvency Act* (Canada), the *Companies Creditors' Arrangement Act* (Canada) or a proceeding under similar legislation in Canada, a jurisdiction of Canada or a foreign jurisdiction,

(i) none of the assets in an asset pool of the issuer in which the issuer has an ownership interest will be consolidated with the assets of a third party that transferred or participated in the transfer of assets to the issuer prior to satisfaction in full of all securitized products that are backed in whole or in part by the assets transferred by the third party, or

(ii) for the assets in an asset pool of the issuer in which the issuer has a security interest, the issuer will realize against the assets in that asset pool in priority to the claims of other persons;

"CPC instrument" means a rule, regulation or policy of the TSX Venture Exchange Inc. that applies only to capital pool companies, and, in Québec, includes Policy Statement 41-601Q, Capital Pool Companies;

"**credit enhancement**" means a method used to reduce the credit risk of a series or class of securitized product;

"debt security" means any bond, debenture, note or similar instrument representing indebtedness, whether secured or unsecured;

"designated rating" has the same meaning as in paragraph (b) of the definition of "designated rating" in National Instrument 81-102 *Investment Funds*;

"designated rating organization" has the same meaning as in National Instrument 44-101 *Short Form Prospectus Distributions*;

"director" means

(a) a member of the board of directors of a company or an individual who performs similar functions for a company, and

(b) with respect to a person that is not a company, an individual who performs functions similar to those of a director of a company;

"**DRO affiliate**" has the same meaning as in section 1 of National Instrument 25-101 *Designated Rating Organizations*;

"eligibility adviser" means

(a) a person that is registered as an investment dealer and authorized to give advice with respect to the type of security being distributed, and

(b) in Manitoba, also means a lawyer who is a practicing member in good standing with a law society of a jurisdiction of Canada or a public accountant who is a member in good standing of ~~an institute or association of chartered accountants, certified general accountants or certified management accountants in a jurisdiction~~the Chartered Professional Accountants of Canada provided that the lawyer or public accountant must not

(i) have a professional, business or personal relationship with the issuer, or any of its directors, executive officers, founders, or control persons, and

(ii) have acted for or been retained personally or otherwise as an employee, executive officer, director, associate or partner of a person that has acted for or been retained by the issuer or any of its directors, executive officers, founders or control persons within the previous 12 months;

"eligible investor" means

(a) a person whose

(i) net assets, alone or with a spouse, in the case of an individual, exceed $400 000,

(ii) net income before taxes exceeded $75 000 in each of the 2 most recent calendar years and who reasonably expects to exceed that income level in the current calendar year, or

(iii) net income before taxes, alone or with a spouse, in the case of an individual, exceeded $125 000 in each of the 2 most recent calendar years and who reasonably expects to exceed that income level in the current calendar year,

(b) a person of which a majority of the voting securities are beneficially owned by eligible investors or a majority of the directors are eligible investors,

(c) a general partnership of which all of the partners are eligible investors,

(d) a limited partnership of which the majority of the general partners are eligible investors,

(e) a trust or estate in which all of the beneficiaries or a majority of the trustees or executors are eligible investors,

(f) an accredited investor,

(g) a person described in section 2.5 [*Family, friends and business associates*], or

(h) in Manitoba, Northwest Territories, Nunavut, Prince Edward Island and Yukon, a person that has obtained advice regarding the suitability of the investment and, if the person is resident in a jurisdiction of Canada, that advice has been obtained from an eligibility adviser;

"executive officer" means, for an issuer, an individual who is

(a) a chair, vice-chair or president,

(b) a vice-president in charge of a principal business unit, division or function including sales, finance or production, or

(c) performing a policy-making function in respect of the issuer;

"financial assets" means

(a) cash,

(b) securities, or

(c) a contract of insurance, a deposit or an evidence of a deposit that is not a security for the purposes of securities legislation;

"financial statements" includes interim financial reports;
"founder" means, in respect of an issuer, a person who,

(a) acting alone, in conjunction, or in concert with one or more persons, directly or indirectly, takes the initiative in founding, organizing or substantially reorganizing the business of the issuer, and

(b) at the time of the distribution or trade is actively involved in the business of the issuer;

"fully managed account" means an account of a client for which a person makes the investment decisions if that person has full discretion to trade in securities for the account without requiring the client's express consent to a transaction;

"investment fund" has the same meaning as in National Instrument 81-106 *Investment Fund Continuous Disclosure;*

"issuer's GAAP" has the same meaning as in National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*;

"**liquidity provider**" means a person that is obligated to provide funds to a conduit to enable the conduit to pay principal or interest in respect of a maturing securitized product;

"marketplace" has the same meaning as in National Instrument 21-101 *Marketplace Operation*;

"**material contract**" means any contract that an issuer or any of its subsidiaries is a party to, that is material to the issuer;

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

"net asset value" has the same meaning with respect to a collective investment vehicle as it does with respect to an investment fund in National Instrument 81-106 *Investment Fund Continuous Disclosure*;

"non-redeemable investment fund" has the same meaning as in National Instrument 81-106 *Investment Fund Continuous Disclosure;*

"**person**" includes

(a) an individual,

(b) a corporation,

(c) a partnership, trust, fund and an association, syndicate, organization or other organized group of persons, whether incorporated or not, and

(d) an individual or other person in that person's capacity as a trustee, executor, administrator or personal or other legal representative;

"private enterprise" has the same meaning as in Part 3 of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*;

"publicly accountable enterprise" has the same meaning as in Part 3 of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*;

"QT circular" means an information circular or filing statement in respect of a qualifying transaction for a capital pool company filed under a CPC instrument;

"qualifying issuer" means a reporting issuer in a jurisdiction of Canada that

(a) is a SEDAR filer,

(b) has filed all documents required to be filed under the securities legislation of that jurisdiction, and

(c) if not required to file an AIF, has filed in the jurisdiction,

(i) an AIF for its most recently completed financial year for which annual statements are required to be filed, and

(ii) copies of all material incorporated by reference in the AIF not previously filed;

"**real estate activities**" means an undertaking, the purpose of which is primarily to generate for security holders income or gain from the lease, sale or other disposition of real property, but does not include any of the following:

(a) activities in respect of a mineral project, as defined in National Instrument 43-101 *Standards of Disclosure for Mineral Projects*;

(b) oil and gas activities as defined in National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*;

(c) in Québec, in addition to paragraphs (a) and (b), the distribution of either of the following:

(i) an investment contract that includes a real right of ownership in an immovable and a rental management agreement;

(ii) a security of an issuer that owns an immovable giving the holder a right of exclusive use of a residential unit and a space in such immovable;

"related liabilities" means

(a) liabilities incurred or assumed for the purpose of financing the acquisition or ownership of financial assets, or

(b) liabilities that are secured by financial assets;

"related party" means any of the following:

(a) a director, officer, promoter or control person of the issuer;

(b) in regard to any individual referred to in paragraph (a), a child, parent, grandparent or sibling, or other relative living in the same residence;

(c) in regard to any individual referred to in paragraph (a) or (b), his or her spouse;

(d) an insider of the issuer;

(e) a person controlled by a person referred to in any of paragraph (a) to (d), or controlled by a person referred to in any of paragraph (a) to (d) acting jointly or in concert with another person;

(f) in the case of a person referred to in any of paragraph (a) to (d) that is not an individual, any person that controls that person, or that controls that person by acting jointly or in concert with another person;

"retrospective" has the same meaning as in Canadian GAAP applicable to publicly accountable enterprises;

"retrospectively" has the same meaning as in Canadian GAAP applicable to publicly accountable enterprises;

"RRIF" means a registered retirement income fund as defined in the *Income Tax Act* (Canada);

"RRSP" means a registered retirement savings plan as defined in the *Income Tax Act* (Canada);

"Schedule III bank" means an authorized foreign bank named in Schedule III of the *Bank Act* (Canada);

"**securitized product**" means a security that

(a) is governed by a trust indenture or similar agreement setting out the rights and protections applicable to a holder of the security,

(b) provides a holder with a direct or indirect ownership or security interest in one or more asset pools, and

(c) entitles a holder to one or more payments of principal or interest primarily obtained from one or more of the following:

(i) the proceeds from the distribution of securitized products;

(ii) the cash flows generated by one or more asset pools;

(iii) the proceeds obtained on the liquidation of one or more assets in one or more asset pools;

"SEDAR filer" means an issuer that is an electronic filer under National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR);*

"**self-directed RESP**" means an educational savings plan registered under the *Income Tax Act* (Canada)

(a) that is structured so that a contribution by a subscriber to the plan is deposited directly into an account in the name of the subscriber, and

(b) under which the subscriber maintains control and direction over the plan to direct how the assets of the plan are to be held, invested or reinvested subject to compliance with the *Income Tax Act* (Canada);

"**short-term securitized product**" means a securitized product that is a negotiable promissory note or commercial paper that matures not more than one year from the date of issue;

"spouse" means, an individual who,

(a) is married to another individual and is not living separate and apart within the meaning of the *Divorce Act* (Canada), from the other individual,

(b) is living with another individual in a marriage-like relationship, including a marriage-like relationship between individuals of the same gender, or

(c) in Alberta, is an individual referred to in paragraph (a) or (b), or is an adult interdependent partner within the meaning of the *Adult Interdependent Relationships Act* (Alberta);

"subsidiary" means an issuer that is controlled directly or indirectly by another issuer and includes a subsidiary of that subsidiary;

"**successor credit rating organization**" has the same meaning as in National Instrument 44-101 *Short Form Prospectus Distributions*;

"TFSA" means a tax-free savings account as described in the *Income Tax Act (Canada)*.

1.1.1 In this Instrument, in Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan

"**date of transition to IFRS**" has the same meaning as in National Instrument 51-102 *Continuous Disclosure Obligations*;

"**exempt market dealer**" has the same meaning as in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;

"**first IFRS financial statements**" has the same meaning as in National Instrument 51-102 *Continuous Disclosure Obligations*;

"**investment dealer**" has the same meaning as in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;

"**new financial year**" means the financial year of an issuer that immediately follows a transition year;

"**old financial year**" means the financial year of an issuer that immediately precedes a transition year;

"**OM marketing materials**" means a written communication, other than an OM standard term sheet, intended for prospective purchasers regarding a distribution of securities under an offering memorandum delivered under section 2.9 [*Offering memorandum*] that contains material facts relating to an issuer, securities or an offering;

"**OM standard term sheet**" means a written communication intended for prospective purchasers regarding a distribution of securities under an offering memorandum delivered under section 2.9 [*Offering memorandum*] that

(a) is dated,

(b) includes the following legend, or words to the same effect, on the first page:

"This document does not provide disclosure of all information required for an investor to make an informed investment decision. Investors should read the offering memorandum, especially the risk factors relating to the securities offered, before making an investment decision.",

(c) contains only the following information in respect of the issuer, the securities or the offering:

(i) the name of the issuer;

(ii) the jurisdiction or foreign jurisdiction in which the issuer's head office is located;

(iii) the statute under which the issuer is incorporated, continued or organized or, if the issuer is an unincorporated entity, the laws of the jurisdiction or foreign jurisdiction under which it is established and exists;

(iv) a brief description of the business of the issuer;

(v) a brief description of the securities;

(vi) the price or price range of the securities;

(vii) the total number or dollar amount of the securities, or range of the total number or dollar amount of the securities;

(viii) the names of any agent, finder or other intermediary, whether registered or not, involved with the offering and the amount of any commission, fee or discount payable to them;

(ix) the proposed or expected closing date of the offering;

(x) a brief description of the use of proceeds;

(xi) the exchange on which the securities are proposed to be listed, if any, provided that the OM standard term sheet complies with the requirements of securities legislation for listing representations;

(xii) in the case of debt securities, the maturity date of the debt securities and a brief description of any interest payable on the debt securities;

(xiii) in the case of preferred shares, a brief description of any dividends payable on the securities;

(xiv) in the case of convertible securities, a brief description of the underlying securities into which the convertible securities are convertible;

(xv) in the case of exchangeable securities, a brief description of the underlying securities into which the exchangeable securities are exchangeable;

(xvi) in the case of restricted securities, a brief description of the restriction;

(xvii) in the case of securities for which a credit supporter has provided a guarantee or alternative credit support, a brief description of the credit supporter and the guarantee or alternative credit support provided;

(xviii) whether the securities are redeemable or retractable;

(xix) a statement that the securities are eligible, or are expected to be eligible, for investment in registered retirement savings plans, tax-free savings accounts or other registered plans, if the issuer has received, or reasonably expects to receive, a legal opinion that the securities are so eligible;

(xx) contact information for the issuer or any registrant involved, and

(d) for the purposes of paragraph (c), "brief description" means a description consisting of no more than three lines of text in type that is at least as large as that used generally in the body of the OM standard term sheet;

"**portfolio manager**" has the same meaning as in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;

"**SEC issuer**" has the same meaning as in National Instrument 51-102 *Continuous Disclosure Obligations;*

"**specified derivative**" has the same meaning as in National Instrument 44-102 *Shelf Distributions*;

"**structured finance product**" has the same meaning as in National Instrument 25-101 *Designated Rating Organizations*;

"**transition year**" means the financial year of an issuer in which the issuer has changed its financial year end;

"**U.S. laws**" has the same meaning as in National Instrument 51-102 *Continuous Disclosure Obligations.*

Interpretation of indirect interest

1.2 For the purposes of paragraph 1.1(t), in British Columbia, an indirect interest means an economic interest in the person referred to in that paragraph.

Affiliate

1.3 For the purpose of this Instrument, an issuer is an affiliate of another issuer if

(a) one of them is the subsidiary of the other, or

(b) each of them is controlled by the same person.

Control

1.4 Except in Part 2, Division 4, for the purpose of this Instrument, a person (first person) is considered to control another person (second person) if

(a) the first person beneficially owns or directly or indirectly exercises control or direction over securities of the second person carrying votes which, if exercised, would entitle the first person to elect a majority of the directors of the second person, unless that first person holds the voting securities only to secure an obligation,

(b) the second person is a partnership, other than a limited partnership, and the first person holds more than 50% of the interests of the partnership, or

(c) the second person is a limited partnership and the general partner of the limited partnership is the first person.

Registration requirement

1.5 (1) An exemption in this Instrument that refers to a registered dealer is only available for a trade in a security if the dealer is registered in a category that permits the trade described in the exemption.

(2) [Repealed]

Definition of distribution – Manitoba

1.6 For the purpose of this Instrument, in Manitoba, "**distribution**" means a primary distribution to the public.

Definition of trade – Québec

1.7 For the purpose of this Instrument, in Québec, "**trade**" refers to any of the following activities:

(a) the activities described in the definition of "dealer" in section 5 of the *Securities Act* (R.S.Q., c. V-1.1), including the following activities:

(i) the sale or disposition of a security by onerous title, whether the terms of payment be on margin, installment or otherwise, but does not include a transfer or the giving in guarantee of securities in connection with a debt or the purchase of a security, except as provided in paragraph (b);

(ii) participation as a trader in any transaction in a security through the facilities of an exchange or a quotation and trade reporting system;

(iii) the receipt by a registrant of an order to buy or sell a security;

(b) a transfer or the giving in guarantee of securities of an issuer from the holdings of a control person in connection with a debt.

Designation of insider

1.8 For the purpose of this Instrument, in Ontario, the following classes of persons are designated as insiders:

(a) a director or an officer of an issuer;

(b) a director or an officer of a person that is an insider or a subsidiary of an issuer;

(c) a person that has

(i) beneficial ownership of, or control or direction over, directly or indirectly, securities of an issuer carrying more than 10% of the voting rights attached to all the issuer's outstanding voting securities, excluding, for the purpose of the calculation of the percentage held, any securities held by the person as underwriter in the course of a distribution, or

(ii) a combination of beneficial ownership of, and control or direction over, directly or indirectly, securities of an issuer carrying more than 10% of the voting rights attached to all the issuer's outstanding voting securities, excluding, for the purpose of the calculation of the percentage held, any securities held by the person as underwriter in the course of a distribution;

(d) an issuer that has purchased, redeemed or otherwise acquired a security of its own issue, for so long as it continues to hold that security.

PART 2 PROSPECTUS EXEMPTIONS

Division 1: Capital Raising Exemptions

Rights offering – reporting issuer

Refer to Appendix E of National Instrument 45-102 *Resale of Securities*. First trades are subject to a seasoning period on resale.

2.1 (1) In this section and sections 2.1.1, 2.1.2, 2.1.3 and 2.1.4,

"additional subscription privilege" means a privilege, granted to a holder of a right, to subscribe for a security not subscribed for by any holder under a basic subscription privilege;

"basic subscription privilege" means a privilege to subscribe for the number or amount of securities set out in a rights certificate held by the holder of the rights certificate;

"closing date" means the date of completion of the distribution of the securities issued upon exercise of the rights issued under this section;

"listing representation" means a representation that a security will be listed or quoted, or that an application has been or will be made to list or quote the security, either on an exchange or on a quotation and trade reporting system, in a foreign jurisdiction;

"listing representation prohibition" means the provisions of securities legislation set out in Appendix C;

"managing dealer" means a person that has entered into an agreement with an issuer under which the person has agreed to organize and participate in the solicitation of the exercise of the rights issued by the issuer;

"market price" means, for securities of a class for which there is a published market,

(a) except as provided in paragraph (b),

(i) if the published market provides a closing price, the simple average of the closing price of securities of that class on the published market for each of the trading days on which there was a closing price falling not more than 20 trading days immediately before the day as of which the market price is being determined, or

(ii) if the published market does not provide a closing price, but provides only the highest and lowest prices of securities of the class traded, the average of the simple averages of the highest and lowest prices of securities of the class on the published market for each of the trading days on which there were highest and lowest prices falling not more than 20 trading days immediately before the day as of which the market price is being determined, or

(b) if trading of securities of the class on the published market has occurred on fewer than 10 of the immediately preceding 20 trading days, the average of the following amounts established for each of the 20 trading days immediately before the day as of which the market price is being determined:

(i) the average of the closing bid and closing ask prices for each day on which there was no trading;

(ii) if the published market

(A) provides a closing price of securities of the class for each day that there was trading, the closing price, or

(B) provides only the highest and lowest prices, the average of the highest and lowest prices of securities of that class for each day that there was trading;

"published market" means, for a class of securities, a marketplace on which the securities are traded, if the prices at which they have been traded on that marketplace are regularly

(a) disseminated electronically, or

(b) published in a newspaper or business or financial publication of general and regular paid circulation;

"rights offering circular" means a completed Form 45-106F15 *Rights Offering Circular for Reporting Issuers*;

"rights offering notice" means a completed Form 45-106F14 *Rights Offering Notice for Reporting Issuers*;

"secondary market liability provisions" means the provisions of securities legislation set out in Appendix D opposite the name of the local jurisdiction;

"soliciting dealer" means a person whose interest in a distribution of rights is limited to soliciting the exercise of the rights by holders of those rights;

"stand-by commitment" means an agreement by a person to acquire the securities of an issuer not subscribed for under the basic subscription privilege or the additional subscription privilege;

"stand-by guarantor" means a person who agrees to provide the stand-by commitment.

(2) For the purpose of the definition of "market price", if there is more than one published market for a security and

(a) only one of the published markets is in Canada, the market price is determined solely by reference to that market,

(b) more than one of the published markets is in Canada, the market price is determined solely by reference to the published market in Canada on which the greatest volume of trading in the particular class of securities occurred during the 20 trading days immediately before the date as of which the market price is being determined, and

(c) none of the published markets are in Canada, the market price is determined solely by reference to the published market on which the greatest volume of trading in the particular class of securities occurred during the 20 trading days immediately before the date as of which the market price is being determined.

(3) The prospectus requirement does not apply to a distribution by an issuer, of a right to purchase a security of the issuer's own issue, to a security holder of the issuer if all of the following apply:

(a) the issuer is a reporting issuer in at least one jurisdiction of Canada;

(b) if the issuer is a reporting issuer in the local jurisdiction, the issuer has filed all periodic and timely disclosure documents that it is required to have filed in that jurisdiction as required by each of the following:

(i) applicable securities legislation;

(ii) an order issued by the regulator or, in Québec, the securities regulatory authority;

(iii) an undertaking to the regulator or, in Québec, the securities regulatory authority;

(c) before the commencement of the exercise period for the rights, the issuer files and sends the rights offering notice to all security holders, resident in Canada, of the class of securities to be issued upon exercise of the rights;

(d) concurrently with filing the rights offering notice, the issuer files a rights offering circular;

(e) the basic subscription privilege is available on a pro rata basis to the security holders, resident in Canada, of the class of securities to be distributed upon the exercise of the rights;

(f) in Québec, the documents filed under paragraphs (c) and (d) are prepared in French or in French and English;

(g) the subscription price for a security to be issued upon the exercise of a right is:

(i) if there is a published market for the security, lower than the market price of the security on the day the rights offering notice is filed, or

(ii) if there is no published market for the security, lower than the fair value of the security on the day the rights offering notice is filed unless the issuer restricts all of its insiders from increasing their proportionate interest in the issuer through the exercise of the rights distributed or through a stand-by commitment;

(h) if the distribution includes an additional subscription privilege, all of the following apply:

(i) the issuer grants the additional subscription privilege to all holders of the rights;

(ii) each holder of a right is entitled to receive, upon the exercise of the additional subscription privilege, the number or amount of securities equal to the lesser of

(A) the number or amount of securities subscribed for by the holder under the additional subscription privilege, and

(B) the number or amount calculated in accordance with the following formula:

x(y/z) where

x = the aggregate number or amount of securities available through unexercised rights after giving effect to the basic subscription privilege;

y = the number of rights exercised by the holder under the basic subscription privilege;

z = the aggregate number of rights exercised under the basic subscription privilege by holders of the rights that have subscribed for securities under the additional subscription privilege;

(iii) all unexercised rights have been allocated on a pro rata basis to holders who subscribed for additional securities under the additional subscription privilege;

(iv) the subscription price for the additional subscription privilege is the same as the subscription price for the basic subscription privilege;

(i) if the issuer enters into a stand-by commitment, all of the following apply:

(i) the issuer has granted an additional subscription privilege to all holders of the rights;

(ii) the issuer has included a statement in the rights offering circular that the issuer has confirmed that the stand-by guarantor has the financial ability to carry out its stand-by commitment;

(iii) the subscription price under the stand-by commitment is the same as the subscription price under the basic subscription privilege;

(j) if the issuer has stated in its rights offering circular that no security will be issued upon the exercise of a right unless a stand-by commitment is provided, or unless proceeds of no less than the stated minimum amount are received by the issuer, all of the following apply:

(i) the issuer has appointed a depository to hold all money received upon the exercise of the rights until either the stand-by commitment is provided or the stated minimum amount is received and the depository is one of the following:

(A) a Canadian financial institution;

(B) a registrant in the jurisdiction in which the funds are proposed to be held that is acting as managing dealer for the distribution of the rights or, if there is no managing dealer for the distribution of the rights, that is acting as a soliciting dealer;

(ii) the issuer and the depository have entered into an agreement, the terms of which require the depository to return the money referred to in subparagraph (i) in full to the holders of rights that have subscribed for securities under the distribution of the rights if the stand-by commitment is not provided or if the stated minimum amount is not received by the depository during the exercise period for the rights;

(k) the rights offering circular contains the following statement:

"There is no material fact or material change about [name of issuer] that has not been generally disclosed".

(4) An issuer must not file an amendment to a rights offering circular filed under paragraph (3)(d) unless

(a) the amendment amends and restates the rights offering circular,

(b) the issuer files the amended rights offering circular before the earlier of

(i) the listing date of the rights, if the issuer lists the rights for trading, and

(ii) the date the exercise period for the rights commences, and

(c) the issuer issues and files a news release explaining the reason for the amendment concurrently with the filing of the amended rights offering circular.

(5) On the closing date or as soon as practicable following the closing date, the issuer must issue and file a news release containing all of the following information:

(a) the aggregate gross proceeds of the distribution;

(b) the number or amount of securities distributed under the basic subscription privilege to

(i) all persons who were insiders before the distribution or became insiders as a result of the distribution, as a group, to the knowledge of the issuer after reasonable inquiry, and

(ii) all other persons, as a group;

(c) the number or amount of securities distributed under the additional subscription privilege to

(i) all persons who were insiders before the distribution or became insiders as a result of the distribution, as a group, to the knowledge of the issuer after reasonable inquiry, and

(ii) all other persons, as a group;

(d) the number or amount of securities distributed under any stand-by commitment;

(e) the number or amount of securities of the class issued and outstanding as of the closing date;

(f) the amount of any fees or commissions paid in connection with the distribution.

(6) Subsection (3) does not apply to a distribution of rights if any of the following apply:

(a) there would be an increase of more than 100% in the number, or, in the case of debt, the principal amount, of the outstanding securities of the class to be issued upon the exercise of the rights, assuming the exercise of all rights issued under a distribution of rights by the issuer during the 12 months immediately before the date of the rights offering circular;

(b) the exercise period for the rights is less than 21 days, or more than 90 days, and commences after the day the rights offering notice is sent to security holders;

(c) the issuer has entered into an agreement that provides for the payment of a fee to a person for soliciting the exercise of rights by holders of rights that were not security holders of the issuer immediately before the distribution under subsection (3) and that fee is higher than the fee payable for soliciting the exercise of rights by holders of rights that were security holders at that time.

Rights Offering – stand-by commitment

Refer to Appendix E of National Instrument 45-102 *Resale of Securities*. First trades are subject to a seasoning period on resale.

2.1.1 The prospectus requirement does not apply to the distribution of a security by an issuer to a stand-by guarantor as part of a distribution under section 2.1 if the stand-by guarantor acquires the security as principal.

Rights offering – issuer with a minimal connection to Canada

Refer to Appendix E of National Instrument 45-102 *Resale of Securities*. First trades are subject to a seasoning period on resale.

2.1.2 (1) The prospectus requirement does not apply to a distribution by an issuer, of a right to purchase a security of the issuer's own issue, to a security holder of the issuer if all of the following apply:

(a) to the knowledge of the issuer after reasonable inquiry,

(i) the number of beneficial holders of the class for which the rights are issued that are resident in Canada does not constitute 10% or more of all holders of that class, and

(ii) the number or amount of securities of the issuer of the class for which the rights are issued that are beneficially held by security holders that are resident in Canada does not constitute, in the aggregate, 10% or more of the outstanding securities of that class;

(b) all materials sent to any other security holders for the distribution of the rights are concurrently filed and sent to each security holder of the issuer that is resident in Canada;

(c) the issuer files a written notice that it is relying on this exemption and a certificate that states that, to the knowledge of the person signing the certificate after reasonable inquiry,

(i) the number of beneficial holders of the class for which the rights are issued that are resident in Canada does not constitute 10% or more of all holders of that class, and

(ii) the number or amount of securities of the issuer of the class for which the rights are issued that are beneficially held by security holders that are resident in Canada does not constitute, in the aggregate, 10% or more of the outstanding securities of that class.

(2) For the purposes of paragraph (1)(c), a certificate of an issuer must be signed,

(a) if the issuer is a limited partnership, by an officer or director of the general partner of the issuer,

(b) if the issuer is a trust, by a trustee or officer or director of a trustee of the issuer, or

(c) in any other case, by an officer or director of the issuer.

Rights offering – listing representation exemption

2.1.3 The listing representation prohibition does not apply to a listing representation made in a rights offering circular for a distribution of rights conducted under section 2.1.2 if the listing representation is not a misrepresentation.

Rights offering – civil liability for secondary market disclosure

2.1.4 (1) The secondary market liability provisions apply to

(a) the acquisition of an issuer's security pursuant to the exemption from the prospectus requirement set out in section 2.1, and

(b) the acquisition of an issuer's security pursuant to the exemption from the prospectus requirement set out in section 2.42 if the security previously issued by the issuer was acquired pursuant to the exemption set out in section 2.1.

(2) For greater certainty, in British Columbia, the classes of acquisitions referred to in subsection (1) are prescribed classes of acquisitions under paragraph 140.2(b) of the *Securities Act* (British Columbia).

Reinvestment plan

Refer to Appendix E of National Instrument 45-102 *Resale of Securities*. First trades are subject to a seasoning period on resale.

2.2 (1) Subject to subsections (3), (4) and (5), the prospectus requirement does not apply to the following distributions by an issuer, or by a trustee, custodian or administrator acting for or on behalf of the issuer, to a security holder of the issuer if the distributions are permitted by a plan of the issuer:

(a) a distribution of a security of the issuer's own issue if a dividend or distribution out of earnings, surplus, capital or other sources payable in respect of the issuer's securities is applied to the purchase of the security, and

(b) subject to subsection (2), a distribution of a security of the issuer's own issue if the security holder makes an optional cash payment to purchase the security of the issuer that trades on a marketplace.

(2) Subsection (1) does not apply unless the aggregate number of securities issued under the optional cash payment referred to in subsection (1)(b) does not exceed, in the financial year of the issuer during which the distribution takes place, 2% of the issued and outstanding securities of the class to which the plan relates as at the beginning of the financial year.

(3) A plan that permits a distribution described in subsection (1)(a) or (b) must be available to every security holder in Canada to which the dividend or distribution out of earnings, surplus, capital or other sources is available.

(4) Subsection (1) does not apply to a distribution of a security of an investment fund.

(5) If the security distributed under a plan described in subsection (1) is of a different class or series than the class or series of the security to which the dividend or distribution is attributable, the issuer or the trustee, custodian or administrator must have provided to each participant that is eligible to receive a security under the plan either a description of the material attributes and characteristics of the security distributed under the plan or notice of a source from which the participant can obtain the information without charge.

Accredited investor

Refer to Appendix D of National Instrument 45-102 *Resale of Securities*. First trades are subject to a restricted period on resale.

2.3 (0.1) In this section, "accredited investor exemption" means

(a) in a jurisdiction other than Ontario, the prospectus exemption under subsection (1), and

(b) in Ontario, the prospectus exemption under subsection 73.3(2) of the *Securities Act* (Ontario).

(1) The prospectus requirement does not apply to a distribution of a security if the purchaser purchases the security as principal and is an accredited investor.

(2) Subject to subsection (3), for the purpose of the accredited investor exemption, a trust company or trust corporation described in paragraph (p) of the definition of "accredited investor" in section 1.1 [*Definitions*] is deemed to be purchasing as principal.

(3) Subsection (2) does not apply to a trust company or trust corporation registered under the laws of Prince Edward Island that is not registered or authorized under the *Trust and Loan Companies Act* (Canada) or under comparable legislation in another jurisdiction of Canada.

(4) For the purpose of the accredited investor exemption, a person described in paragraph (q) of the definition of "accredited investor" in section 1.1 [*Definitions*] is deemed to be purchasing as principal.

(5) The accredited investor exemption does not apply to a distribution of a security to a person if the person was created, or is used, solely to purchase or hold securities as an accredited investor described in paragraph (m) of the definition of "accredited investor" in section 1.1 [*Definitions*].

(6) The accredited investor exemption does not apply to a distribution of a security to an individual described in paragraphs (j), (k) or (l) of the definition of "accredited investor" in section 1.1 [*Definitions*] unless the person distributing the security obtains from the individual a signed risk acknowledgement in the required form at the same time or before that individual signs the agreement to purchase the security.

(7) A person relying on the accredited investor exemption to distribute a security to an individual described in paragraphs (j), (k) or (l) of the definition of "accredited investor" in section 1.1 [*Definitions*] must retain the signed risk acknowledgement required in subsection (6) of this section for 8 years after the distribution.

(8) Subsection (1) does not apply in Ontario.

In Ontario, subsection 73.3(2) of the *Securities Act* (Ontario) provides a similar exemption to the exemption in subsection 2.3(1) of this Instrument.

Private issuer

Refer to Appendix E of National Instrument 45-102 *Resale of Securities*. First trades are subject to a seasoning period on resale.

2.4 (1) In this section,

"**private issuer**" means an issuer

(a) that is not a reporting issuer or an investment fund,

(b) the securities of which, other than non-convertible debt securities,

(i) are subject to restrictions on transfer that are contained in the issuer's constating documents or security holders' agreements, and

(ii) are beneficially owned by not more than 50 persons, not including employees and former employees of the issuer or its affiliates, provided that each person is counted as one beneficial owner unless the person is created or used solely to purchase or hold securities of the issuer in which case each beneficial owner or each beneficiary of the person, as the case may be, must be counted as a separate beneficial owner, and

(c) that

(i) has distributed its securities only to persons described in subsection (2), or

(ii) has completed a transaction and immediately following the completion of the transaction, its securities were beneficially owned only by persons described in subsection (2) and since the completion of the transaction has distributed its securities only to persons described in subsection (2).

(2) The prospectus requirement does not apply to a distribution of a security of a private issuer to a person who purchases the security as principal and is

(a) a director, officer, employee, founder or control person of the issuer,

(b) a director, officer or employee of an affiliate of the issuer,

(c) a spouse, parent, grandparent, brother, sister, child or grandchild of a director, executive officer, founder or control person of the issuer,

(d) a parent, grandparent, brother, sister, child or grandchild of the spouse of a director, executive officer, founder or control person of the issuer,

(e) a close personal friend of a director, executive officer, founder or control person of the issuer,

(f) a close business associate of a director, executive officer, founder or control person of the issuer,

(g) a spouse, parent, grandparent, brother, sister, child or grandchild of the selling security holder or of the selling security holder's spouse,

(h) a security holder of the issuer,

(i) an accredited investor,

(j) a person of which a majority of the voting securities are beneficially owned by, or a majority of the directors are, persons described in paragraphs (a) to (i),

(k) a trust or estate of which all of the beneficiaries or a majority of the trustees or executors are persons described in paragraphs (a) to (i), or

(l) a person that is not the public.

(2.1) The following persons are prescribed for purposes of subsection 73.4(2) of the *Securities Act* (Ontario):

(a) a director, officer, employee, founder or control person of the issuer,

(b) a director, officer or employee of an affiliate of the issuer,

(c) a spouse, parent, grandparent, brother, sister, child or grandchild of a director, executive officer, founder or control person of the issuer,

(d) a parent, grandparent, brother, sister, child or grandchild of the spouse of a director, executive officer, founder or control person of the issuer,

(e) a close personal friend of a director, executive officer, founder or control person of the issuer,

(f) a close business associate of a director, executive officer, founder or control person of the issuer,

(g) a spouse, parent, grandparent, brother, sister, child or grandchild of the selling security holder or of the selling security holder's spouse,

(h) a security holder of the issuer,

(i) an accredited investor,

(j) a person of which a majority of the voting securities are beneficially owned by, or a majority of the directors are, persons described in paragraphs (a) to (i),

(k) a trust or estate of which all of the beneficiaries or a majority of the trustees or executors are persons described in paragraphs (a) to (i), or

(l) a person that is not the public.

(3) Except for a distribution to an accredited investor, no commission or finder's fee may be paid to any director, officer, founder or control person of an issuer in connection with a distribution

under subsection (2) or, in Ontario, a distribution under subsection 73.4(2) of the *Securities Act* (Ontario).

(4) Subsection (2) does not apply to a distribution of a short-term securitized product.

(5) Subsection (2) does not apply in Ontario.

In Ontario, subsection 73.4(2) of the *Securities Act* (Ontario) provides a similar exemption to the exemption in subsection 2.4(2) of this Instrument.

Family, friends and business associates

Refer to Appendix D of National Instrument 45-102 *Resale of Securities*. First trades are subject to a restricted period on resale.

2.5 (1) Subject to section 2.6 [*Family, friends and business associates -- Saskatchewan*] and section 2.6.1 [*Family, friends and business associates* – Ontario], the prospectus requirement does not apply to a distribution of a security to a person who purchases the security as principal and is

(a) a director, executive officer or control person of the issuer, or of an affiliate of the issuer,

(b) a spouse, parent, grandparent, brother, sister, child or grandchild of a director, executive officer or control person of the issuer, or of an affiliate of the issuer,

(c) a parent, grandparent, brother, sister, child or grandchild of the spouse of a director, executive officer or control person of the issuer or of an affiliate of the issuer,

(d) a close personal friend of a director, executive officer or control person of the issuer, or of an affiliate of the issuer,

(e) a close business associate of a director, executive officer or control person of the issuer, or of an affiliate of the issuer,

(f) a founder of the issuer or a spouse, parent, grandparent, brother, sister, child, grandchild, close personal friend or close business associate of a founder of the issuer,

(g) a parent, grandparent, brother, sister, child or grandchild of a spouse of a founder of the issuer,

(h) a person of which a majority of the voting securities are beneficially owned by, or a majority of the directors are, persons described in paragraphs (a) to (g), or

(i) a trust or estate of which all of the beneficiaries or a majority of the trustees or executors are persons described in paragraphs (a) to (g).

(2) No commission or finder's fee may be paid to any director, officer, founder, or control person of an issuer or an affiliate of the issuer in connection with a distribution under subsection (1).

(3) Subsection (1) does not apply to a distribution of a short-term securitized product or, in Ontario, a distribution under subsection 73.4(2) of the *Securities Act* (Ontario).

Family, friends and business associates - Saskatchewan

2.6 (1) In Saskatchewan, section 2.5 [*Family, friends and business associates*] does not apply unless the person making the distribution obtains a signed risk acknowledgement from the purchaser in the required form for a distribution to

(a) a person described in section 2.5(1) (d) or (e) [*Family, friends and business associates*],

(b) a close personal friend or close business associate of a founder of the issuer, or

(c) a person described in section 2.5(1)(h) or (i) [*Family, friends and business associates*] if the distribution is based in whole or in part on a close personal friendship or close business association.

(2) The person making the distribution must retain the required form referred to in subsection (1) for 8 years after the distribution.

(3) Subsection (1) does not apply to a distribution of a short-term securitized product.

Family, friends and business associates - Ontario

2.6.1 (1) In Ontario, section 2.5 [*Family, friends and business associates*] does not apply to a distribution of a security of an issuer unless all of the following are satisfied:

(a) the issuer is not an investment fund;

(b) the person making the distribution obtains a risk acknowledgement signed by all of the following:

(i) the purchaser;

(ii) an executive officer of the issuer other than the purchaser;

(iii) if the purchaser is a person referred to under paragraph 2.5(1)(b), the director, executive officer or control person of the issuer or an affiliate of the issuer who has the specified relationship with the purchaser;

(iv) if the purchaser is a person referred to under paragraph 2.5(1)(c), the director, executive officer or control person of the issuer or an affiliate of the issuer whose spouse has the specified relationship with the purchaser;

(v) if the purchaser is a person referred to under paragraph 2.5(1)(d) or (e), the director, executive officer or control person of the issuer or an affiliate of the issuer who is a close personal friend or a close business associate of the purchaser; and

(vi) the founder of the issuer, if the purchaser is a person referred to in paragraph 2.5(1)(f) or (g) other than the founder of the issuer.

(2) The person making the distribution must retain the required form referred to in subsection (1) for 8 years after the distribution.

2.7 [Repealed]

Affiliates

Refer to Appendix D of National Instrument 45-102 *Resale of Securities*. First trades are subject to a restricted period on resale.

2.8 The prospectus requirement does not apply to a distribution by an issuer of a security of its own issue to an affiliate of the issuer that is purchasing as principal.

Offering memorandum

Refer to Appendix D of National Instrument 45-102 *Resale of Securities*. First trades are subject to a restricted period on resale.

2.9 (1) In British Columbia and Newfoundland and Labrador, the prospectus requirement does not apply to a distribution by an issuer of a security of its own issue to a purchaser if

(a) the purchaser purchases the security as principal, and

(b) at the same time or before the purchaser signs the agreement to purchase the security, the issuer

(i) delivers an offering memorandum to the purchaser in compliance with subsections (5) to (~~13~~14.1), and

(ii) obtains a signed risk acknowledgement from the purchaser in compliance with subsection (15).

(2) In Manitoba, Northwest Territories, Nunavut, Prince Edward Island and Yukon, the prospectus requirement does not apply to a distribution by an issuer of a security of its own issue to a purchaser if

(a) the purchaser purchases the security as principal,

(b) the purchaser is an eligible investor or the acquisition cost to the purchaser does not exceed $10 000,

(c) at the same time or before the purchaser signs the agreement to purchase the security, the issuer

(i) delivers an offering memorandum to the purchaser in compliance with subsections (5) to (~~13~~14.1), and

(ii) obtains a signed risk acknowledgement from the purchaser in compliance with subsection (15),

and

(d) if the issuer is an investment fund, the investment fund is

(i) a non-redeemable investment fund, or

(ii) a mutual fund that is a reporting issuer.

(2.1) In Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan, the prospectus requirement does not apply to a distribution by an issuer of a security of its own issue to a purchaser if

(a) the purchaser purchases the security as principal,

(b) the acquisition cost of all securities acquired by a purchaser who is an individual under this section in the preceding 12 months does not exceed the following amounts:

(i) in the case of a purchaser that is not an eligible investor, $10 000;

(ii) in the case of a purchaser that is an eligible investor, $30 000;

(iii) in the case of a purchaser that is an eligible investor and that received advice from a portfolio manager, investment dealer or exempt market dealer that the investment is suitable, $100 000,

(c) at the same time or before the purchaser signs the agreement to purchase the security, the issuer

(i) delivers an offering memorandum to the purchaser in compliance with subsections (5) to (~~13~~14.1), and

(ii) obtains a signed risk acknowledgement from the purchaser in compliance with subsection (15), and

(d) the security distributed by the issuer is not either of the following:

(i) a specified derivative;

(ii) a structured finance product.

(2.2) The prospectus exemption described in subsection (2.1) is not available

(a) in Alberta, Nova Scotia and Saskatchewan, to an issuer that is an investment fund, unless the issuer is a non-redeemable investment fund, or a mutual fund that is a reporting issuer, or

(b) in New Brunswick, Ontario and Québec, to an issuer that is an investment fund.

(2.3) The investment limits described in subparagraphs (2.1)(b)(ii) and (iii) do not apply if the purchaser is

(a) an accredited investor, or

(b) a person described in subsection 2.5(1) [*Family, friends and business associates*].

(3) In Manitoba, Northwest Territories, Nunavut, Prince Edward Island and Yukon, this section does not apply to a distribution of a security to a person described in paragraph (a) of the definition of "eligible investor" in section 1.1 [*Definitions*] if that person was created, or is used, solely to purchase or hold securities in reliance on the exemption from the prospectus requirement set out in subsection (2).

(3.0.1) In Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan, this section does not apply to a distribution of a security to a person that was created, or is used, solely to purchase or hold securities in reliance on the exemption from the prospectus requirement set out in subsection (2.1).

(3.1) Subsections (1), (2) and (2.1) do not apply to a distribution of a short-term securitized product.

(4) No commission or finder's fee may be paid to any person, other than a registered dealer, in connection with a distribution to a purchaser in the Northwest Territories, Nunavut and Yukon under subsection (2).

(5) An offering memorandum delivered under this section must be in the required form.

(5.1) 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~~In Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan, a portfolio manager, investment dealer or exempt market dealer must not distribute OM marketing materials unless the OM marketing materials have been approved in writing by the issuer.

(6) If the securities legislation where the purchaser is resident does not provide a comparable right, an offering memorandum delivered under this section must provide the purchaser with a contractual right to cancel the agreement to purchase the security by delivering a notice to the issuer not later than midnight on the 2nd business day after the purchaser signs the agreement to purchase the security.

(7) If the securities legislation where the purchaser is resident does not provide statutory rights of action in the event of a misrepresentation in an offering memorandum delivered under this section, the offering memorandum must contain a contractual right of action against the issuer for rescission or damages that

(a) is available to the purchaser if the offering memorandum, or any information or documents incorporated or deemed to be incorporated by reference into the offering memorandum, contains a misrepresentation, without regard to whether the purchaser relied on the misrepresentation,

(b) is enforceable by the purchaser delivering a notice to the issuer

(i) in the case of an action for rescission, within 180 days after the purchaser signs the agreement to purchase the security, or

(ii) in the case of an action for damages, before the earlier of

(A) 180 days after the purchaser first has knowledge of the facts giving rise to the cause of action, or

(B) 3 years after the date the purchaser signs the agreement to purchase the security,

(c) is subject to the defence that the purchaser had knowledge of the misrepresentation,

(d) in the case of an action for damages, provides that the amount recoverable

(i) must not exceed the price at which the security was offered, and

(ii) does not include all or any part of the damages that the issuer proves does not represent the depreciation in value of the security resulting from the misrepresentation, and

(e) is in addition to, and does not detract from, any other right of the purchaser.

(8) An offering memorandum delivered under this section must contain a certificate that states the following:

"This offering memorandum does not contain a misrepresentation.".

(9) If the issuer is a company, a certificate under subsection (8) must be signed

(a) by the issuer's chief executive officer and chief financial officer or, if the issuer does not have a chief executive officer or chief financial officer, an individual acting in that capacity,

(b) on behalf of the directors of the issuer, by

(i) any 2 directors who are authorized to sign, other than the persons referred to in paragraph (a), or

(ii) all the directors of the issuer, and

(c) by each promoter of the issuer.

(10) If the issuer is a trust, a certificate under subsection (8) must be signed by

(a) the individuals who perform functions for the issuer similar to those performed by the chief executive officer and the chief financial officer of a company, and

(b) each trustee and the manager of the issuer.

(10.1) If a trustee or the manager that is signing the certificate of the issuer is

(a) an individual, the individual must sign the certificate,

(b) a company, the certificate must be signed

(i) by the chief executive officer and the chief financial officer of the trustee or the manager, and

(ii) on behalf of the board of directors of the trustee or the manager, by

(A) any two directors of the trustee or the manager, other than the persons referred to in subparagraph (i), or

(B) all of the directors of the trustee or the manager,

(c) a limited partnership, the certificate must be signed by each general partner of the limited partnership as described in subsection (11.1) in relation to an issuer that is a limited partnership, or

(d) not referred to in paragraphs (a), (b) or (c), the certificate may be signed by any person or company with authority to act on behalf of the trustee or the manager.

(10.2) Despite subsections (10) and (10.1), if the issuer is an investment fund and the declaration of trust, trust indenture or trust agreement establishing the investment fund delegates the authority to do so, or otherwise authorizes an individual or company to do so, the certificate may be signed by the individual or company to whom the authority is delegated or that is authorized to sign the certificate.

(10.3) Despite subsections (10) and (10.1), if the trustees of an issuer, other than an investment fund, do not perform functions for the issuer similar to those performed by the directors of a company, the trustees are not required to sign the certificate of the issuer if at least two individuals who perform functions for the issuer similar to those performed by the directors of a company sign the certificate.

(11) If the issuer is a limited partnership, a certificate under subsection (8) must be signed by

(a) each individual who performs a function for the issuer similar to any of those performed by the chief executive officer or the chief financial officer of a company, and

(b) each general partner of the issuer.

(11.1) If a general partner of the issuer is

(a) an individual, the individual must sign the certificate,

(b) a company, the certificate must be signed

(i) by the chief executive officer and the chief financial officer of the general partner, and

(ii) on behalf of the board of directors of the general partner, by

(A) any two directors of the general partner, other than the persons referred to in subparagraph (i), or

(B) all of the directors of the general partner,

(c) a limited partnership, the certificate must be signed by each general partner of the limited partnership and, for greater certainty, this subsection applies to each general partner required to sign,

(d) a trust, the certificate must be signed by the trustees of the general partner as described in subsection 10 in relation to an issuer that is a trust, or

(e) not referred to in paragraphs (a) to (d), the certificate may be signed by any person or company with authority to act on behalf of the general partner.

(12) If an issuer is not a company, trust or limited partnership, a certificate under subsection (8) must be signed by the persons that, in relation to the issuer, are in a similar position or perform a similar function to any of the persons referred to in subsections (9), (10), (10.1), (10.2), (10.3), (11) and (11.1).

(13) [Repealed]

(13.1) ~~**(13)** A~~An offering memorandum must not contain a misrepresentation on the date the certificate under subsection (8) ~~must be true~~

~~(a) at the date the certificate~~or (14.1) is signed~~, and (b) at the date the offering memorandum is delivered to the purchaser~~.

(13.2) ~~**(14)**~~ If a material change with respect to the issuer occurs after the certificate under subsection (8) ~~ceases to be true after it is delivered to the purchaser, the issuer cannot accept~~or (14.1) is signed, and before the issuer accepts an agreement to purchase the security from the purchaser ~~unless (a) the purchaser receives an update of~~, the issuer must amend the offering memorandum~~,~~ to reflect the material change, and deliver the amended offering memorandum to the purchaser.

(13.3) An offering memorandum delivered under this section must provide a reasonable purchaser with sufficient information to make an informed investment decision.

(14) [Repealed]

(14.1) ~~(b) the update of the~~An issuer that amends an offering memorandum ~~contains~~must replace the certificate in the offering memorandum with a newly dated certificate signed in compliance with ~~subsection~~subsections (9), (10), (10.1), (10.2), (10.3), (11) ~~or~~, (11.1) and~~(c) the purchaser re-signs the agreement to purchase the security~~ (12), as applicable.

(15) A risk acknowledgement under subsection (1), (2) or (2.1) must be in the required form and an issuer relying on subsection (1), (2) or (2.1) must retain the signed risk acknowledgment for 8 years after the distribution.

(16) The issuer must

(a) hold in trust all consideration received from the purchaser in connection with a distribution of a security under subsection (1), (2) or (2.1) until midnight on the 2nd business day after the purchaser signs the agreement to purchase the security, and

(b) return all consideration to the purchaser promptly if the purchaser exercises the right to cancel the agreement to purchase the security described under subsection (6).

(17) The issuer must file a copy of an offering memorandum delivered under this section and any ~~update of a previously filed~~amended offering memorandum with the securities regulatory authority on or before the 10th day after the distribution under the offering memorandum or ~~update of~~ the amended offering memorandum.

(17.0.1) Each copy of an offering memorandum that is filed must be in a format that allows for the searching of words electronically using reasonably available technology.

(17.1) In Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan, the issuer must file with the securities regulatory authority a copy of all OM marketing materials required or deemed to be incorporated by reference into an offering memorandum delivered under this section,

(a) if the OM marketing materials are prepared on or before the filing of the offering memorandum, concurrently with the filing of the offering memorandum, or

(b) if the OM marketing materials are prepared after the filing of the offering memorandum, within 10 days of the OM marketing materials being delivered or made reasonably available to a prospective purchaser.

(17.2) OM marketing materials filed under subsection (17.1) must include a cover page clearly identifying the offering memorandum to which they relate.

(17.3) Subsections (17.4) to (17.21) apply to issuers that rely on subsection (2.1) and that are not reporting issuers in any jurisdiction of Canada.

(17.4) In Alberta, an issuer must, within 120 days after the end of each of its financial years, file with the securities regulatory authority annual financial statements and make them reasonably available to each holder of a security acquired under subsection (2.1).

(17.5) In New Brunswick, Ontario, Québec and Saskatchewan, an issuer must, within 120 days after the end of each of its financial years, deliver annual financial statements to the securities regulatory authority and make them reasonably available to each holder of a security acquired under subsection (2.1).

(17.6) In Nova Scotia, an issuer must, within 120 days after the end of each of its financial years, make reasonably available annual financial statements to each holder of a security acquired under subsection (2.1).

(17.7) Despite subsections (17.4), (17.5) and (17.6), as applicable, if an issuer is required to file, deliver or make reasonably available annual financial statements for a financial year that ended before the issuer distributed securities under subsection (2.1) for the first time, those annual financial statements must be filed in Alberta, delivered in New Brunswick, Ontario, Québec and

Saskatchewan or made reasonably available in Nova Scotia, as applicable, on or before the later of

(a) the 60th day after the issuer first distributes securities under subsection (2.1), and

(b) the deadline in subsection (17.4), (17.5) or (17.6), as applicable, to file, deliver or make reasonably available the annual financial statements.

(17.8) The annual financial statements of an issuer referred to in subsections (17.4), (17.5) and (17.6) must include

(a) a statement of comprehensive income, a statement of changes in equity, and a statement of cash flows for

(i) the most recently completed financial year, and

(ii) the financial year immediately preceding the most recently completed financial year, if any,

(b) a statement of financial position as at the end of each of the periods referred to in paragraph (a),

(c) in the following circumstances, a statement of financial position as at the beginning of the financial year immediately preceding the most recently completed financial year:

(i) the issuer discloses in its annual financial statements an unreserved statement of compliance with IFRS, and

(ii) the issuer

(A) applies an accounting policy retrospectively in its annual financial statements,

(B) makes a retrospective restatement of items in its annual financial statements, or

(C) reclassifies items in its annual financial statements,

(d) in the case of the issuer's first IFRS financial statements, the opening IFRS statement of financial position at the date of transition to IFRS, and

(e) notes to the annual financial statements.

(17.9) If the annual financial statements referred to in subsection (17.8) present the components of profit or loss in a separate income statement, the separate income statement must be displayed immediately before the statement of comprehensive income referred to in subsection (17.8).

(17.10) The annual financial statements referred to in subsection (17.8) must be audited.

(17.11) Despite subsection (17.10), for the first annual financial statements of an issuer referred to in subsections (17.4), (17.5) and (17.6), comparative information relating to the preceding financial year is not required to be audited if it has not been previously audited.

(17.12) Any period referred to in subsection (17.8) that has not been audited must be clearly labelled as unaudited.

(17.13) In Alberta, New Brunswick, Ontario, Québec and Saskatchewan, if an issuer decides to change its financial year end by more than 14 days, it must deliver to the securities regulatory authority and make reasonably available to each holder of a security acquired under subsection (2.1) a notice containing the information set out in subsection (17.15) as soon as practicable and, in any event, no later than the earlier of

(a) the deadline, based on the issuer's old financial year end, for the next annual financial statements referred to in subsections (17.4) and (17.5), and

(b) the deadline, based on the issuer's new financial year end, for the next annual financial statements referred to in subsections (17.4) and (17.5).

(17.14) In Nova Scotia, if an issuer decides to change its financial year end by more than 14 days, it must make reasonably available to each holder of a security acquired under subsection (2.1) a notice containing the information set out in subsection (17.15) as soon as practicable and, in any event, no later than the earlier of

(a) the deadline, based on the issuer's old financial year end, for the next annual financial statements referred to in subsection (17.6), and

(b) the deadline, based on the issuer's new financial year end, for the next annual financial statements referred to in subsection (17.6).

(17.15) The notice referred to in subsections (17.13) and (17.14) must state

(a) that the issuer has decided to change its financial year end,

(b) the reason for the change,

(c) the issuer's old financial year end,

(d) the issuer's new financial year end,

(e) the length and ending date of the periods, including the comparative periods, of the annual financial statements referred to in subsections (17.4), (17.5) and (17.6) for the issuer's transition year and its new financial year, and

(f) the filing deadline for the annual financial statements for the issuer's transition year.

(17.16) If a transition year is less than 9 months in length, the issuer must include as comparative financial information to its annual financial statements for its new financial year

(a) a statement of financial position, a statement of comprehensive income, a statement of changes in equity, a statement of cash flows, and notes to the financial statements for its transition year,

(b) a statement of financial position, a statement of comprehensive income, a statement of changes in equity, a statement of cash flows, and notes to the financial statements for its old financial year,

(c) in the following circumstances, a statement of financial position as at the beginning of the old financial year:

(i) the issuer discloses in its annual financial statements an unreserved statement of compliance with IFRS, and

(ii) the issuer

(A) applies an accounting policy retrospectively in its annual financial statements,

(B) makes a retrospective restatement of items in its annual financial statements, or

(C) reclassifies items in its annual financial statements, and

(d) in the case of the issuer's first IFRS financial statements, the opening IFRS statement of financial position at the date of transition to IFRS.

(17.17) A transition year must not exceed 15 months.

(17.18) An SEC issuer satisfies subsections (17.13), (17.14) and (17.16) if

(a) it complies with the requirements of U.S. laws relating to a change of fiscal year, and

(b) it delivers a copy of all materials required by U.S. laws relating to a change in fiscal year to the securities regulatory authority at the same time as, or as soon as practicable after, they are filed with or furnished to the SEC and, in any event, no later than 120 days after the end of its most recently completed financial year.

(17.19) The financial statements of an issuer referred to in subsections (17.4), (17.5) and (17.6) must be accompanied by a notice of the issuer disclosing in reasonable detail the use of the aggregate gross proceeds raised by the issuer under section 2.9 in accordance with Form 45-106F16, unless the issuer has previously disclosed the use of the aggregate gross proceeds in accordance with Form 45-106F16.

(17.20) In New Brunswick, Nova Scotia and Ontario, an issuer must make reasonably available to each holder of a security acquired under subsection (2.1) a notice of each of the following events in accordance with Form 45-106F17, within 10 days of the occurrence of the event:

(a) a discontinuation of the issuer's business;

(b) a change in the issuer's industry;

(c) a change of control of the issuer.

(17.21) An issuer is required to make the disclosure required respectively by subsections (17.4), (17.5), (17.6), (17.19) and (17.20) until the earliest of

(a) the date the issuer becomes a reporting issuer in any jurisdiction of Canada, and

(b) the date the issuer ceases to carry on business.

(17.22) In Ontario, an issuer that is not a reporting issuer in Ontario that distributes securities in reliance on the exemption in subsection (2.1) is designated a market participant under the *Securities Act* (Ontario).

(17.23) In New Brunswick, an issuer that is not a reporting issuer in New Brunswick that distributes securities in reliance on the exemption in subsection (2.1) is designated a market participant under the *Securities Act* (New Brunswick).

(18) [Repealed]

(19) Explanatory note: with respect to this subsection, the proposed amendments of this project shown in Annex A, would amend the amendments published in Annex B of the CSA Notice dated August 6, 2020 announcing amendments to NI 45-106 *Prospectus Exemptions* and National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (the **August 6 CSA Notice**) that are not in force yet. See Annex B of the August 6 CSA Notice, and Annex A of this notice, to assess the combined effect of both amendments to this subsection.

(19.5) [1]An issuer relying on an exemption set out in subsection (1), (2) or (2.1) that is engaged in real estate activities must comply with subsection (19.6) if any of the following apply:

(a) the issuer proposes to acquire, or has acquired, an interest in real property from a related party;

(b) except for in its financial statements, the issuer discloses in the offering memorandum a value for an interest in real property;

[1] The numbering of subsections (19.5) to (19.8) takes into account the amendments to this section published in Annex B of the August 6 CSA Notice.

(c) the issuer proposes to use a material amount of the proceeds of the offering to acquire an interest in real property.

(19.6) An issuer to which any of paragraphs (19.5)(a), (b) or (c) applies must, at the same time or before the issuer delivers an offering memorandum to the purchaser in accordance with subsections (1), (2) or (2.1), deliver to the purchaser an appraisal of the interest in real property referred to in subsection (19.5) that satisfies all of the following:

(a) it is prepared by a qualified appraiser that is independent of the issuer;

(b) it includes a certificate signed by the qualified appraiser stating that the appraisal is prepared in accordance with the standards and the code of ethics established or endorsed by the professional association of which the qualified appraiser is a member;

(c) it provides the appraised fair market value of the interest in real property, without considering any proposed improvements or proposed development;

(d) it provides the appraised fair market value of the interest in real property as at a date that is within 6 months preceding the date that the appraisal is delivered to the purchaser.

(19.7) If an issuer relying on an exemption set out in subsection (1), (2) or (2.1) is engaged in real estate activities, and discloses in any communication related to the distribution under the exemption a representation of, or opinion as to, a value for an interest in real property referred to in subsection (19.5), other than the appraised fair market value disclosed in the appraisal referred to in subsection (19.6), the issuer must have a reasonable basis for that value, and must disclose all of the following in that communication:

(a) with equal or greater prominence as the representation or opinion, the appraised fair market value referred to in subsection (19.6);

(b) the material factors or assumptions used to determine the representation or opinion;

(c) whether or not the representation or opinion was determined by a qualified appraiser who is independent of the issuer.

(19.8) An issuer must file a copy of any appraisal delivered under subsection (19.6) with the securities regulatory authority concurrently with the filing of the offering memorandum.

Minimum amount investment

Refer to Appendix D of National Instrument 45-102 *Resale of Securities*. First trades are subject to a restricted period on resale.

2.10 (1) The prospectus requirement does not apply to a distribution of a security to a person if all of the following apply:

(a) that person is not an individual;

(b) that person purchases as principal;

(c) the security has an acquisition cost to that person of not less than $150 000 paid in cash at the time of the distribution;

(d) the distribution is of a security of a single issuer.

(2) Subsection (1) does not apply to a distribution of a security to a person if the person was created, or is used, solely to purchase or hold securities in reliance on the exemption from the prospectus requirement set out in subsection (1).

Division 2: Transaction Exemptions

Business combination and reorganization

Refer to Appendix E of National Instrument 45-102 *Resale of Securities*. First trades are subject to a seasoning period on resale.

2.11 The prospectus requirement does not apply to a distribution of a security in connection with

(a) an amalgamation, merger, reorganization or arrangement that is under a statutory procedure,

(b) an amalgamation, merger, reorganization or arrangement that

(i) is described in an information circular made pursuant to National Instrument 51-102 *Continuous Disclosure Obligations* or in a similar disclosure record and the information circular or similar disclosure record is delivered to each security holder whose approval of the amalgamation, merger, reorganization or arrangement is required before it can proceed, and

(ii) is approved by the security holders referred to in subparagraph (i),

or

(c) a dissolution or winding-up of the issuer.

Asset acquisition

Refer to Appendix D of National Instrument 45-102 *Resale of Securities*. First trades are subject to a restricted period on resale.

2.12 The prospectus requirement does not apply to a distribution by an issuer of a security of its own issue to a person as consideration for the acquisition, directly or indirectly, of the assets of the person, if those assets have a fair value of not less than $150 000.

Petroleum, natural gas and mining properties

Refer to Appendix D of National Instrument 45-102 *Resale of Securities*. First trades are subject to a restricted period on resale.

2.13 The prospectus requirement does not apply to a distribution by an issuer of a security of its own issue as consideration for the acquisition, directly or indirectly, of petroleum, natural gas or mining properties or any interest in them.

Securities for debt

Refer to Appendix D of National Instrument 45-102 *Resale of Securities*. First trades are subject to a restricted period on resale.

2.14 The prospectus requirement does not apply to a distribution by a reporting issuer of a security of its own issue to a creditor to settle a bona fide debt of that reporting issuer.

Issuer acquisition or redemption

This provision is not cited in any Appendix of National Instrument 45-102 *Resale of Securities*.

2.15 The prospectus requirement does not apply to a distribution of a security to the issuer of the security.

Take-over bid and issuer bid

Refer to section 2.11 or Appendix E of National Instrument 45-102 *Resale of Securities*. First trades are subject to a seasoning period on resale unless the requirements of section 2.11 of National Instrument 45-102 are met.

2.16 The prospectus requirement does not apply to a distribution of a security in connection with a take-over bid in a jurisdiction of Canada or an issuer bid in a jurisdiction of Canada.

Offer to acquire to security holder outside local jurisdiction

Refer to Appendix E of National Instrument 45-102 *Resale of Securities*. First trades are subject to a seasoning period on resale.

2.17 The prospectus requirement does not apply to a distribution by a security holder outside the local jurisdiction to a person in the local jurisdiction if the distribution would have been in connection with a take-over bid or issuer bid made by that person were it not for the fact that the security holder is outside of the local jurisdiction.

Division 3: Investment Fund Exemptions

Investment fund reinvestment

Refer to Appendix E of National Instrument 45-102 *Resale of Securities*. First trades are subject to a seasoning period on resale.

2.18 (1) Subject to subsections (3), (4), (5) and (6), the prospectus requirement does not apply to the following distributions by an investment fund, and the investment fund manager of the fund, to a security holder of the investment fund if the distributions are permitted by a plan of the investment fund:

(a) a distribution of a security of the investment fund's own issue if a dividend or distribution out of earnings, surplus, capital or other sources payable in respect of the investment fund's securities is applied to the purchase of the security that is of the same class or series as the securities to which the dividend or distribution out of earnings, surplus, capital or other sources is attributable, and

(b) subject to subsection (2), a distribution of a security of the investment fund's own issue if the security holder makes an optional cash payment to purchase the security of the investment fund that is of the same class or series of securities described in paragraph (a) that trade on a marketplace.

(2) The aggregate number of securities issued under the optional cash payment referred to in subsection (1) (b) must not exceed, in any financial year of the investment fund during which the distribution takes place, 2% of the issued and outstanding securities of the class to which the plan relates as at the beginning of the financial year.

(3) A plan that permits the distributions described in subsection (1) must be available to every security holder in Canada to which the dividend or distribution out of earnings, surplus, capital or other sources is available.

(4) A person must not charge a fee for a distribution described in subsection (1).

(5) An investment fund that is a reporting issuer and in continuous distribution must set out in its current prospectus:

(a) details of any deferred or contingent sales charge or redemption fee that is payable at the time of the redemption of the security,

(b) any right that the security holder has to make an election to receive cash instead of securities on the payment of a dividend or making of a distribution by the investment fund, and

(c) instructions on how the right referred to in paragraph (b) can be exercised.

(6) An investment fund that is a reporting issuer and is not in continuous distribution must provide the information required by subsection (5) in its prospectus, annual information form or a material change report.

Additional investment in investment funds

Refer to Appendix D of National Instrument 45-102 *Resale of Securities*. First trades are subject to a restricted period on resale.

2.19 The prospectus requirement does not apply to a distribution by an investment fund, or the investment fund manager of the fund, of a security of the investment fund's own issue to a security holder of the investment fund if

(a) the security holder initially acquired securities of the investment fund as principal for an acquisition cost of not less than $150 000 paid in cash at the time of the distribution,

(b) the distribution is of a security of the same class or series as the securities initially acquired, as described in paragraph (a), and

(c) the security holder, as at the date of the distribution, holds securities of the investment fund that have

(i) an acquisition cost of not less than $150 000, or

(ii) a net asset value of not less than $150 000.

Private investment club

Refer to Appendix E of National Instrument 45-102 *Resale of Securities*. First trades are subject to a seasoning period on resale.

2.20 The prospectus requirement does not apply to a distribution of a security of an investment fund if the investment fund

(a) has no more than 50 beneficial security holders,

(b) does not seek and has never sought to borrow money from the public,

(c) does not and has never distributed its securities to the public,

(d) does not pay or give any remuneration for investment management or administration advice in respect of trades in securities, except normal brokerage fees, and

(e) for the purpose of financing the operations of the investment fund, requires security holders to make contributions in proportion to the value of the securities held by them.

Private investment fund - loan and trust pools

Refer to Appendix E of National Instrument 45-102 *Resale of Securities*. First trades are subject to a seasoning period on resale.

2.21 (1) Subject to subsection (2), the prospectus requirement does not apply to a distribution of a security of an investment fund if the investment fund

(a) is administered by a trust company or trust corporation that is registered or authorized by an enactment of Canada or a jurisdiction of Canada to carry on business in Canada or a jurisdiction of Canada,

(b) has no promoter or investment fund manager other than the trust company or trust corporation referred to in paragraph (a), and

(c) co-mingles the money of different estates and trusts for the purpose of facilitating investment.

(2) A trust company or trust corporation registered under the laws of Prince Edward Island that is not registered under the *Trust and Loan Companies Act* (Canada) or under comparable legislation in another jurisdiction of Canada is not a trust company or trust corporation for the purpose of subparagraph (1)(a).

Division 4: Employee, Executive Officer, Director and Consultant Exemptions

Definitions

2.22 In this Division

"associate", when used to indicate a relationship with a person, means

(a) an issuer of which the person beneficially owns or controls, directly or indirectly, voting securities entitling the person to more than 10% of the voting rights attached to outstanding voting securities of the issuer,

(b) any partner of the person,

(c) any trust or estate in which the person has a substantial beneficial interest or in respect of which the person serves as trustee or executor or in a similar capacity, or

(d) in the case of an individual, a relative of that individual, including

(i) a spouse of that individual, or

(ii) a relative of that individual's spouse

if the relative has the same home as that individual;

"associated consultant" means, for an issuer, a consultant of the issuer or of a related entity of the issuer if

(a) the consultant is an associate of the issuer or of a related entity of the issuer, or

(b) the issuer or a related entity of the issuer is an associate of the consultant;

"compensation" means an issuance of securities in exchange for services provided or to be provided and includes an issuance of securities for the purpose of providing an incentive;

"consultant" means, for an issuer, a person, other than an employee, executive officer, or director of the issuer or of a related entity of the issuer, that

(a) is engaged to provide services to the issuer or a related entity of the issuer, other than services provided in relation to a distribution,

(b) provides the services under a written contract with the issuer or a related entity of the issuer, and

(c) spends or will spend a significant amount of time and attention on the affairs and business of the issuer or a related entity of the issuer

and includes

(a) for an individual consultant, a corporation of which the individual consultant is an employee or shareholder, and a partnership of which the individual consultant is an employee or partner, and

(b) for a consultant that is not an individual, an employee, executive officer, or director of the consultant, provided that the individual employee, executive

officer, or director spends or will spend a significant amount of time and attention on the affairs and business of the issuer or a related entity of the issuer;

"holding entity" means a person that is controlled by an individual;

"investor relations activities" means activities or communications, by or on behalf of an issuer or a security holder of the issuer, that promote or could reasonably be expected to promote the purchase or sale of securities of the issuer, but does not include

(a) the dissemination of information or preparation of records in the ordinary course of the business of the issuer

(i) to promote the sale of products or services of the issuer, or

(ii) to raise public awareness of the issuer

that cannot reasonably be considered to promote the purchase or sale of securities of the issuer,

(b) activities or communications necessary to comply with the requirements of

(i) securities legislation of any jurisdiction of Canada,

(ii) the securities laws of any foreign jurisdiction governing the issuer, or

(iii) any exchange or market on which the issuer's securities trade, or

(c) activities or communications necessary to follow securities directions of any jurisdiction of Canada;

"investor relations person" means a person that is a registrant or that provides services that include investor relations activities;

"issuer bid requirements" means the requirements under securities legislation that apply to an issuer bid;

"listed issuer" means an issuer, any of the securities of which

(a) are listed and not suspended, or the equivalent, from trading on

(i) TSX Inc.,

(ii) TSX Venture Exchange Inc.,

(ii.1) Aequitas NEO Exchange Inc.,

(iii) NYSE Amex Equities,

(iv) The New York Stock Exchange,

(v) the London Stock Exchange, or

(b) are quoted on the Nasdaq Stock Market;

"permitted assign" means, for a person that is an employee, executive officer, director or consultant of an issuer or of a related entity of the issuer,

(a) a trustee, custodian, or administrator acting on behalf of, or for the benefit of the person,

(b) a holding entity of the person,

(c) a RRSP, RRIF, or TFSA of the person,

(d) a spouse of the person,

(e) a trustee, custodian, or administrator acting on behalf of, or for the benefit of the spouse of the person,

(f) a holding entity of the spouse of the person, or

(g) a RRSP, RRIF, or TFSA of the spouse of the person;

"plan" means a plan or program established or maintained by an issuer providing for the acquisition of securities of the issuer by persons described in section 2.24(1) [*Employee, executive officer, director and consultant*] as compensation;

"related entity" means, for an issuer, a person that controls or is controlled by the issuer or that is controlled by the same person that controls the issuer;

"related person" means, for an issuer,

(a) a director or executive officer of the issuer or of a related entity of the issuer,

(b) an associate of a director or executive officer of the issuer or of a related entity of the issuer, or

(c) a permitted assign of a director or executive officer of the issuer or of a related entity of the issuer;

"security holder approval" means an approval for the issuance of securities of an issuer as compensation or under a plan

(a) given by a majority of the votes cast at a meeting of security holders of the issuer other than votes attaching to securities beneficially owned by related persons to whom securities may be issued as compensation or under that plan, or

(b) evidenced by a resolution signed by all the security holders entitled to vote at a meeting, if the issuer is not required to hold a meeting; and

"support agreement" includes an agreement to provide assistance in the maintenance or servicing of indebtedness of the borrower and an agreement to provide consideration for the purpose of maintaining or servicing indebtedness of the borrower.

Interpretation

2.23 (1) In this Division, a person (first person) is considered to control another person (second person) if the first person, directly or indirectly, has the power to direct the management and policies of the second person by virtue of

(a) ownership of or direction over voting securities in the second person,

(b) a written agreement or indenture,

(c) being the general partner or controlling the general partner of the second person, or

(d) being a trustee of the second person.

(2) In this Division, participation in a distribution is considered voluntary if

(a) in the case of an employee or the employee's permitted assign, the employee or the employee's permitted assign is not induced to participate in the distribution by expectation of employment or continued employment of the employee with the issuer or a related entity of the issuer,

(b) in the case of an executive officer or the executive officer's permitted assign, the executive officer or the executive officer's permitted assign is not induced to participate in the distribution by expectation of appointment, employment, continued appointment or continued employment of the executive officer with the issuer or a related entity of the issuer,

(c) in the case of a consultant or the consultant's permitted assign, the consultant or the consultant's permitted assign is not induced to participate in the distribution by expectation of engagement of the consultant to provide services or continued engagement of the consultant to provide services to the issuer or a related entity of the issuer, and

(d) in the case of an employee of a consultant, the individual is not induced by the issuer, a related entity of the issuer, or the consultant to participate in the distribution by expectation of employment or continued employment with the consultant.

Employee, executive officer, director and consultant

Refer to Appendix E of National Instrument 45-102 *Resale of Securities.* First trades are subject to a seasoning period on resale.

2.24 (1) Subject to section 2.25 [*Unlisted reporting issuer exception*], the prospectus requirement does not apply to a distribution

(a) by an issuer in a security of its own issue, or

(b) by a control person of an issuer of a security of the issuer or of an option to acquire a security of the issuer,

with

(c) an employee, executive officer, director or consultant of the issuer,

(d) an employee, executive officer, director or consultant of a related entity of the issuer, or

(e) a permitted assign of a person referred to in paragraphs (c) or (d)

if participation in the distribution is voluntary.

(2) For the purposes of subsection (1), a person referred to in paragraph (c), (d) or (e) includes a trustee, custodian or administrator acting as agent for that person for the purpose of facilitating a trade.

Unlisted reporting issuer exception

2.25 (1) For the purpose of this section, "**unlisted reporting issuer**" means a reporting issuer in a jurisdiction of Canada that is not a listed issuer.

(2) Subject to subsection (3), section 2.24 [*Employee, executive officer, director and consultant*] does not apply to a distribution to an employee or consultant of the unlisted reporting issuer who is an investor relations person of the issuer, an associated consultant of the issuer, an executive officer of the issuer, a director of the issuer, or a permitted assign of those persons if, after the distribution,

(a) the number of securities, calculated on a fully diluted basis, reserved for issuance under options granted to

(i) related persons, exceeds 10% of the outstanding securities of the issuer, or

(ii) a related person, exceeds 5% of the outstanding securities of the issuer, or

(b) the number of securities, calculated on a fully diluted basis, issued within 12 months to

(i) related persons, exceeds 10% of the outstanding securities of the issuer, or

(ii) a related person and the associates of the related person, exceeds 5% of the outstanding securities of the issuer.

(3) Subsection (2) does not apply to a distribution if the unlisted reporting issuer

(a) obtains security holder approval, and

(b) before obtaining security holder approval, provides security holders with the following information in sufficient detail to permit security holders to form a reasoned judgment concerning the matter:

(i) the eligibility of employees, executive officers, directors, and consultants to be issued or granted securities as compensation or under a plan;

(ii) the maximum number of securities that may be issued, or in the case of options, the number of securities that may be issued on exercise of the options, as compensation or under a plan;

(iii) particulars relating to any financial assistance or support agreement to be provided to participants by the issuer or any related entity of the issuer to facilitate the purchase of securities as compensation or under a plan, including whether the assistance or support is to be provided on a full-, part-, or non-recourse basis;

(iv) in the case of options, the maximum term and the basis for the determination of the exercise price;

(v) particulars relating to the options or other entitlements to be granted as compensation or under a plan, including transferability; and

(vi) the number of votes attaching to securities that, to the issuer's knowledge at the time the information is provided, will not be included for the purpose of determining whether security holder approval has been obtained.

Distributions among current or former employees, executive officers, directors, or consultants of non-reporting issuer

Refer to Appendix E of National Instrument 45-102 *Resale of Securities*. First trades are subject to a seasoning period on resale.

2.26 (1) Subject to subsection (2), the prospectus requirement does not apply to a distribution of a security of an issuer by

(a) a current or former employee, executive officer, director, or consultant of the issuer or related entity of the issuer, or

(b) a permitted assign of a person referred to in paragraph (a),

to

(c) an employee, executive officer, director, or consultant of the issuer or a related entity of the issuer, or

(d) a permitted assign of the employee, executive officer, director, or consultant.

(2) The exemption in subsection (1) is only available if

(a) participation in the distribution is voluntary,

(b) the issuer of the security is not a reporting issuer in any jurisdiction of Canada, and

(c) the price of the security being distributed is established by a generally applicable formula contained in a written agreement among some or all of the security holders of the issuer to which the transferee is or will become a party.

Permitted transferees

Refer to Appendix E of National Instrument 45-102 *Resale of Securities*. First trades are subject to a seasoning period on resale.

2.27 (1) Subject to section 2.28, the prospectus requirement does not apply to a distribution of a security of an issuer acquired by a person described in section 2.24(1)[*Employee, executive officer, director and consultant*] under a plan of the issuer if the distribution

(a) is between

(i) a person who is an employee, executive officer, director or consultant of the issuer or a related entity of the issuer, and

(ii) the permitted assign of that person,

or

(b) is between permitted assigns of that person.

(2) Subject to section 2.28, the prospectus requirement does not apply to a distribution of a security of an issuer by a trustee, custodian or administrator acting on behalf, or for the benefit,

of employees, executive officers, directors or consultants of the issuer or a related entity of the issuer, to

(a) an employee, executive officer, director or consultant of the issuer or a related entity of the issuer, or

(b) a permitted assign of a person referred to in paragraph (a),

if the security was acquired from

(c) an employee, executive officer, director or consultant of the issuer or a related entity of the issuer, or

(d) the permitted assign of a person referred to in paragraph (c).

(3) For the purposes of the exemptions in subsection (1) and paragraphs (2) (c) and (d), all references to employee, executive officer, director, or consultant include a former employee, executive officer, director, or consultant.

Limitation re: permitted transferees

2.28 The exemption from the prospectus requirement under subsection 2.27(1) or (2) is only available if the security was acquired

(a) by a person described in section 2.24(1) [*Employee, executive officer, director, and consultant*] under any exemption that makes the resale of the security subject to section 2.6 of National Instrument 45-102 *Resale of Securities*, or

(b) in Manitoba, by a person described in section 2.24(1) [*Employee, executive officer, director, and consultant*].

Issuer bid

2.29 The issuer bid requirements do not apply to the acquisition by an issuer of a security of its own issue that was acquired by a person described in section 2.24(1) [*Employee, executive officer, director, and consultant*] if

(a) the purpose of the acquisition by the issuer is to

(i) fulfill withholding tax obligations, or

(ii) provide payment of the exercise price of a stock option,

(b) the acquisition by the issuer is made in accordance with the terms of a plan that specifies how the value of the securities acquired by the issuer is determined,

(c) in the case of securities acquired as payment of the exercise price of a stock option, the date of exercise of the option is chosen by the option holder, and

(d) the aggregate number of securities acquired by the issuer within a 12 month period under this section does not exceed 5% of the outstanding securities of the class or series at the beginning of the period.

Division 5: Miscellaneous Exemptions

Isolated distribution by issuer

Refer to Appendix D of National Instrument 45-102 *Resale of Securities*. First trades are subject to a restricted period.

2.30 The prospectus requirement does not apply to a distribution by an issuer of a security of its own issue if the distribution is an isolated distribution and is not made

(a) in the course of continued and successive transactions of a like nature, and

(b) by a person whose usual business is trading in securities.

Dividends and distributions

Subsection (1) is cited in Appendix E of National Instrument 45-102 *Resale of Securities*. First trades are subject to a seasoning period on resale.

Subsection (2) is cited in Appendix D and Appendix E of National Instrument 45-102. Resale restriction is determined by the exemption under which the previously issued security was first acquired

2.31 (1) The prospectus requirement does not apply to a distribution by an issuer of a security of its own issue to a security holder of the issuer as a dividend or distribution out of earnings, surplus, capital or other sources.

(2) The prospectus requirement does not apply to a distribution by an issuer to a security holder of the issuer of a security of a reporting issuer as an in specie dividend or distribution out of earnings or surplus.

Distribution to lender by control person for collateral

The provision is not cited in any Appendix of National Instrument 45-102 *Resale of Securities*. Trades by a lender, pledgee, mortgagee or other encumbrancer to realize on a debt are regulated by section 2.8 of National Instrument 45-102

2.32 The prospectus requirement does not apply to a distribution of a security of an issuer to a lender, pledgee, mortgagee or other encumbrancer from the holdings of a control person of the issuer for the purpose of giving collateral for a bona fide debt of the control person.

Acting as underwriter

Refer to Appendix F of National Instrument 45-102 *Resale of Securities*. First trades are a distribution.

2.33 The prospectus requirement does not apply to a distribution of a security between a person and a purchaser acting as an underwriter or between or among persons acting as underwriters.

Specified debt

This provision is not cited in any Appendix of National Instrument 45-102 *Resale of Securities*. These securities are free trading.

2.34 (1) In this section, "**permitted supranational agency**" means

(a) the African Development Bank, established by the Agreement Establishing the African Development Bank which came into force on September 10, 1964, that Canada became a member of on December 30, 1982;

(b) the Asian Development Bank, established under a resolution adopted by the United Nations Economic and Social Commission for Asia and the Pacific in 1965;

(c) the Caribbean Development Bank, established by the Agreement Establishing the Caribbean Development Bank which came into force on January 26, 1970, as amended, that Canada is a founding member of;

(d) the European Bank for Reconstruction and Development, established by the Agreement Establishing the European Bank for Reconstruction and Development and approved by the *European Bank for Reconstruction and Development Agreement Act* (Canada), that Canada is a founding member of;

(e) the Inter-American Development Bank, established by the Agreement establishing the Inter-American Development Bank which became effective December 30, 1959, as amended from time to time, that Canada is a member of;

(f) the International Bank for Reconstruction and Development, established by the Agreement for an International Bank for Reconstruction and Development approved by the *Bretton Woods and Related Agreements Act* (Canada); and

(g) the International Finance Corporation, established by Articles of Agreement approved by the *Bretton Woods and Related Agreements Act* (Canada).

(2) The prospectus requirement does not apply to a distribution of

(a) a debt security issued by or guaranteed by the Government of Canada or the government of a jurisdiction of Canada,

(b) a debt security issued by or guaranteed by a government of a foreign jurisdiction if the debt security has a designated rating from a designated rating organization or its DRO affiliate,

(c) a debt security issued by or guaranteed by a municipal corporation in Canada, or secured by or payable out of rates or taxes levied under the law of a jurisdiction of Canada on property in the jurisdiction and collectable by or through the municipality in which the property is situated,

(d) a debt security issued by or guaranteed by a Canadian financial institution or a Schedule III bank, other than debt securities that are subordinate in right of payment to deposits held by the issuer or guarantor of those debt securities,

(d.1) in Ontario, a debt security issued by or guaranteed by a loan corporation, trust company, trust corporation, insurance company, treasury branch, credit union, caisse populaire, financial services cooperative, or league that, in each case, is authorized by an enactment of a jurisdiction of Canada other than Ontario to carry on business in a jurisdiction of Canada, other than debt securities that are subordinate in right of payment to deposits held by the issuer or guarantor of those debt securities,

(e) a debt security issued by the Comité de gestion de la taxe scolaire de l'île de Montréal, or

(f) a debt security issued by or guaranteed by a permitted supranational agency if the debt securities are payable in the currency of Canada or the United States of America.

(3) Paragraphs (2)(a), (c) and (d) do not apply in Ontario.

In Ontario, subsections 73(1) and (2) of the *Securities Act* (Ontario) provide similar exemptions to the exemptions in paragraphs (2)(a) and (c) of this Instrument.

In Ontario, subsections 73.1(1) and (2) of the *Securities Act* (Ontario), read together, provide a similar exemption to the exemptions in paragraph (2)(d) of this Instrument.

Short-term debt

This provision is not cited in any Appendix of National Instrument 45-102 *Resale of Securities*. These securities are free trading.

2.35 (1) The prospectus requirement does not apply to a distribution of a negotiable promissory note or commercial paper if all of the following apply:

(a) the note or commercial paper matures not more than one year from the date of issue;

(b) the note or commercial paper has a credit rating from a designated rating organization listed below, from a DRO affiliate of an organization listed below, from a designated rating organization that is a successor credit rating organization of an organization listed below or from a DRO affiliate of such successor credit rating organization, that is at or above one of the following corresponding rating categories or that is at or above a category that replaces one of the following corresponding rating categories:

(i) R-1(low) - DBRS Limited;

(ii) F1 - Fitch Ratings, Inc.;

(iii) P-1 - Moody's Canada Inc.;

(iv) A-1(Low) (Canada national scale) – S&P Global Ratings Canada;

(c) the note or commercial paper has no credit rating from a designated rating organization listed below, from a DRO affiliate of an organization listed below, from a designated rating organization that is a successor credit rating organization of an organization listed below or from a DRO affiliate of such successor credit rating organization, that is below one of the following corresponding rating categories or that is below a category that replaces one of the following corresponding rating categories:

(i) R-1(low) - DBRS Limited;

(ii) F2 - Fitch Ratings, Inc.;

(iii) P-2 - Moody's Canada Inc.;

(iv) A-1(Low) (Canada national scale) or A-2 (global scale) - S&P Global Ratings Canada.

(2) Subsection (1) does not apply to a distribution of a negotiable promissory note or commercial paper if either of the following applies:

(a) the note or commercial paper is a securitized product;

(b) the note or commercial paper is convertible or exchangeable into or accompanied by a right to purchase another security other than a security described in subsection (1).

Short-term securitized products

2.35.1 The prospectus requirement does not apply to a distribution of a short-term securitized product if all of the following apply:

(a) the short-term securitized product is a security described in section 2.35.2;

(b) the conduit issuing the short-term securitized product complies with section 2.35.4;

(c) the short-term securitized product is not convertible or exchangeable into or accompanied by a right to purchase another security other than a security described in paragraph (a) and for which disclosure is provided pursuant to paragraph (b).

Definition applicable to section 2.35.2

2.35.1.1 For the purposes of paragraph 2.35.2(a), a reference to "designated rating organization" includes the DRO affiliates of the organization, a designated rating organization that is a successor credit rating organization of the designated rating organization and the DRO affiliates of such successor credit rating organization.

Limitations on short-term securitized product exemption

2.35.2 All of the following must apply to a short-term securitized product distributed under section 2.35.1:

(a) it has short-term securitized product is of a series or class of securitized product to which all of the following apply:

(i) it has a credit rating from not less than two designated rating organizations listed below and at least one of the credit ratings is at or above one of the following corresponding rating categories or is at or above a category that replaces one of the following corresponding rating categories:

(A) R-1(high)(sf) - DBRS Limited;

(B) F1+sf - Fitch Ratings, Inc.;

(C) P-1(sf) - Moody's Canada Inc.;

(D) A-1(High)(sf) (Canada national scale) or A-1+(sf) (global scale) - S&P Global Ratings Canada;

(ii) it has no credit rating from a designated rating organization listed below that is below one of the following corresponding rating categories or that is below a category that replaces one of the following corresponding rating categories:

(A) R-1(low)(sf) - DBRS Limited;

(B) F2sf - Fitch Ratings, Inc.;

(C) P-2(sf) - Moody's Canada Inc.;

(D) A-1(Low)(sf) (Canada national scale) or A-2(sf) (global scale) - S&P Global Ratings Canada;

(iii) the conduit has entered into one or more agreements that, subject to section 2.35.3, obligate one or more liquidity providers to provide funds to the conduit to enable the conduit to satisfy all of its obligations to pay principal or interest as that series or class of short-term securitized product matures;

(iv) all of the following apply to each liquidity provider:

(A) the liquidity provider is a deposit-taking institution;

(B) the liquidity provider is regulated or approved to carry on business in Canada by one or both of the following:

1. the Office of the Superintendent of Financial Institutions (Canada);

2. a government department or regulatory authority of Canada, or of a jurisdiction of Canada responsible for regulating deposit-taking institutions;

(C) the liquidity provider has a credit rating from each of the designated rating organizations providing a credit rating on the short-term securitized product referred to in subparagraph 2.35.2(a)(i), for its senior, unsecured short-term debt, none of which is dependent upon a guarantee by a third party, and each credit rating from those designated rating organizations is at or above the following corresponding rating categories or is at or above a category that replaces one of the following corresponding rating categories:

1. R-1(low) - DBRS Limited;

2. F2 - Fitch Ratings, Inc.;

3. P-2 - Moody's Canada Inc.;

4. A-1(Low) (Canada national scale) or A-2 (global scale) - S&P Global Ratings Canada;

(b) if the conduit has issued more than one series or class of short-term securitized product, the short-term securitized product to be distributed under section 2.35.1, when issued, will not in the event of bankruptcy, insolvency or winding-up of the conduit be subordinate in priority of claim to any other outstanding series or class of short-term securitized product issued by the conduit in respect of any asset pool backing the short-term securitized product to be distributed under section 2.35.1;

(c) the conduit has provided an undertaking to or has agreed in writing with the purchaser of the short-term securitized product or an agent, custodian or trustee appointed to act on behalf of purchasers of that series or class of short-term securitized product, that any asset pool of the conduit will consist only of one or more of the following:

(i) a bond;

(ii) a mortgage;

(iii) a lease;

(iv) a loan;

(v) a receivable;

(vi) a royalty;

(vii) any real or personal property securing or forming part of that asset pool.

Exceptions relating to liquidity agreements

2.35.3 (1) Despite subparagraph 2.35.2(a)(iii), an agreement with a liquidity provider may provide that a liquidity provider is not obligated to advance funds in respect of a series or class of short-term securitized product distributed under section 2.35.1 if the conduit is subject to any of the following:

(a) bankruptcy, or insolvency proceedings under the *Bankruptcy and Insolvency Act* (Canada);

(b) an arrangement under the *Companies Creditors' Arrangement Act* (Canada);

(c) proceedings similar to those referred to in paragraph (a) or (b) under the laws of Canada or a jurisdiction of Canada or a foreign jurisdiction.

(2) Despite subparagraph 2.35.2(a)(iii), an agreement with a liquidity provider may provide that a liquidity provider is not obligated to advance funds in respect of a series or class of short-term securitized product distributed under section 2.35.1 that exceed the sum of the following:

(a) the aggregate value of the non-defaulted assets in the asset pool to which the agreement relates;

(b) the amount of credit enhancement applicable to the asset pool to which the agreement relates.

Disclosure requirements

2.35.4 (1) A conduit that distributes a short-term securitized product under section 2.35.1 must, on or before the date a purchaser purchases the short-term securitized product, do all of the following:

(a) provide to or make reasonably available to the purchaser an information memorandum prepared in accordance with Form 45-106F7 *Information Memorandum for Short-term Securitized Products Distributed under Section 2.35.1*;

(b) provide an undertaking to or agree in writing with the purchaser, or with an agent, custodian or trustee appointed to act on behalf of purchasers of that series or class of securitized product, to

(i) for so long as a short-term securitized product of that class remains outstanding, prepare the documents specified in subsections (5) and (6) within the time periods specified in those subsections, and

(ii) provide to or make reasonably available to each holder of a short-term securitized product of that series or class, the documents specified in subsections (5) and (6).

(2) Subsection (1) does not apply to a conduit distributing a short-term securitized product under section 2.35.1 if

(a) the conduit has previously distributed a short-term securitized product of the same series or class as the short-term securitized product to be distributed,

(b) in connection with that previous distribution the conduit prepared an information memorandum that complied with paragraph (1)(a), and

(c) the conduit, on or before the time each purchaser in the current distribution purchases a short-term securitized product, does each of the following:

(i) provides to or makes reasonably available to the purchaser the information memorandum prepared in connection with the previous distribution;

(ii) provides to or makes reasonably available to the purchaser all documents specified in subsections (5) and (6) that have been prepared in respect of that series or class of short-term securitized product.

(3) A conduit must, on or before the 10th day following a distribution of a short-term securitized product under section 2.35.1, do each of the following:

(a) provide to or make reasonably available to the securities regulator either of the following:

(i) the information memorandum required under paragraph (1)(a);

(ii) if the conduit is relying on subsection (2), the documents referred to in paragraph (c) of subsection (2);

(b) subject to subsection (4), deliver to the securities regulator an undertaking that it will, in respect of that series or class of short-term securitized product,

(i) provide to or make reasonably available to the securities regulator the documents specified in subsections (5) and (6), and

(ii) promptly deliver to the securities regulator each document specified in subsections (5) and (6) that is requested by the securities regulator.

(4) Paragraph (3)(b) does not apply if

(a) the conduit has delivered an undertaking to the securities regulator under paragraph (3)(b) in respect of a previous distribution of a securitized product that is of the same series or class as the short-term securitized product currently being distributed, and

(b) the undertaking referred to in paragraph (a) applies in respect of the current distribution.

(5) For the purpose of subsection 2.35.4(1), the undertaking or agreement must require the conduit to prepare a monthly disclosure report relating to the series or class of short-term securitized product that is

(a) prepared in accordance with Form 45-106F8 *Monthly Disclosure Report for Short-term Securitized Products Distributed under Section 2.35.1*,

(b) current as at the last business day of each month, and

(c) no later than 50 days from the end of the most recent month to which it relates, made reasonably available to each holder of that series or class of the conduit's short-term securitized product.

(6) For the purpose of subsection 2.35.4(1), the undertaking or agreement must require the conduit to prepare a timely disclosure report, providing the information specified in subsection (7), in each of the following circumstances:

(a) a downgrade in one or more of the conduit's credit ratings;

(b) failure by the conduit to make any required payment of principal or interest on the series or class of short-term securitized product;

(c) the occurrence of a change or event that the conduit would reasonably expect to have a significant adverse effect on the payment of principal or interest on the series or class of short-term securitized product.

(7) The timely disclosure report referred to in subsection (6) must

(a) describe the nature and substance of the change or event and the actual or potential effect on any payment of principal or interest to a holder of that series or class of short-term securitized product, and

(b) be provided to or made reasonably available to holders of that series or class of short-term securitized product no later than the second business day after the conduit becomes aware of the change or event.

Mortgages

This provision is not cited in any Appendix of National Instrument 45-102 *Resale of Securities*. These securities are free trading.

2.36 (1) In this section, "**syndicated mortgage**" means a mortgage in which 2 or more persons participate, directly or indirectly, as a lender in a debt obligation that is secured by the mortgage.

(2) Except in Ontario, and subject to subsection (3), the prospectus requirement does not apply to a distribution of a mortgage on real property in a jurisdiction of Canada by a person who is registered or licensed, or exempted from registration or licensing, under mortgage brokerage or mortgage dealer legislation of that jurisdiction.

(3) In Alberta, British Columbia, Manitoba, New Brunswick, Québec and Saskatchewan, subsection (2) does not apply to a distribution of a syndicated mortgage.

In Ontario, subsection 73.2(3) of the *Securities Act* (Ontario) provides a similar exemption to the exemption in subsection (2).

Personal property security legislation

This provision is not cited in any Appendix of National Instrument 45-102 *Resale of Securities*. These securities are free trading.

2.37 Except in Ontario, the prospectus requirement does not apply to a distribution to a person, other than an individual, in a security evidencing indebtedness secured by or under a security agreement, secured in accordance with personal property security legislation of a jurisdiction of Canada that provides for the granting of security in personal property.

In Ontario, subsection 73.2(1)(a) of the *Securities Act* (Ontario) provides a similar exemption to the exemption in section 2.37.

Not for profit issuer

This provision is not cited in any Appendix of National Instrument 45-102 *Resale of Securities*. These securities are free trading.

2.38 The prospectus requirement does not apply to a distribution by an issuer that is organized exclusively for educational, benevolent, fraternal, charitable, religious or recreational purposes and not for profit in a security of its own issue if

(a) no part of the net earnings benefit any security holder of the issuer, and

(b) no commission or other remuneration is paid in connection with the sale of the security.

Variable insurance contract

This provision is not cited in any Appendix of National Instrument 45-102 *Resale of Securities*. These securities are free trading.

2.39 (1) In this section,

(a) "**contract**" "**group insurance**", "**insurance company**", "**life insurance**" and "**policy**" have the respective meanings assigned to them in the legislation for a jurisdiction referenced in Appendix A.

(b) "**variable insurance contract**" means a contract of life insurance under which the interest of the purchaser is valued for purposes of conversion or surrender by reference to the value of a proportionate interest in a specified portfolio of assets.

(2) The prospectus requirement does not apply to a distribution of a variable insurance contract by an insurance company if the variable insurance contract is

(a) a contract of group insurance,

(b) a whole life insurance contract providing for the payment at maturity of an amount not less than 75% of the premium paid up to age 75 years for a benefit payable at maturity,

(c) an arrangement for the investment of policy dividends and policy proceeds in a separate and distinct fund to which contributions are made only from policy dividends and policy proceeds, or

(d) a variable life annuity.

RRSP/RRIF/TFSA

Refer to Appendix D and Appendix E of National Instrument 45-102 *Resale of Securities*. The resale restriction is determined by the exemption under which the security was first acquired.

2.40 The prospectus requirement does not apply to a distribution of a security between

(a) an individual or an associate of the individual, and

(b) a RRSP, RRIF, or TFSA

(i) established for or by the individual, or

(ii) under which the individual is a beneficiary.

Schedule III banks and cooperative associations - evidence of deposit

This provision is not cited in any Appendix of National Instrument 45-102 *Resale of Securities*. These securities are free trading.

2.41 Except in Ontario, the prospectus requirement does not apply to a distribution of an evidence of deposit issued by a Schedule III bank or an association governed by the *Cooperative Credit Associations Act* (Canada).

In Ontario, clause (e) of the definition of "security" in subsection 1(1) of the *Securities Act* (Ontario) excludes these evidences of deposit from the definition of "security".

Conversion, exchange, or exercise

Subsection (1)(a) is cited in Appendix D and Appendix E of National Instrument 45-102 *Resale of Securities*. Resale restriction is determined by the exemption under which the previously issued security was first acquired.

Subsection (1)(b) is cited in Appendix E of National Instrument 45-102 *Resale of Securities*. First trades are subject to a seasoning period on resale, unless the requirements of section 2.10 of NI 45-102 are met.

2.42 (1) The prospectus requirement does not apply to a distribution by an issuer if

(a) the issuer distributes a security of its own issue to a security holder of the issuer in accordance with the terms and conditions of a security previously issued by that issuer, or

(b) subject to subsection (2), the issuer distributes a security of a reporting issuer held by it to a security holder of the issuer in accordance with the terms and conditions of a security previously issued by that issuer.

(2) Subsection (1)(b) does not apply unless

(a) the issuer has given the regulator or, in Québec, the securities regulatory authority, prior written notice stating the date, amount, nature and conditions of the distribution, and

(b) the regulator or, in Québec, the securities regulatory authority, has not objected in writing to the distribution within 10 days of receipt of the notice referred to in paragraph (a) or, if the regulator or securities regulatory authority objects to the distribution, the issuer must deliver to the regulator or securities regulatory authority information relating to the securities that is satisfactory to and accepted by the regulator or securities regulatory authority.

Self-directed registered educational savings plans

This provision is not cited in any Appendix of National Instrument 45-102 *Resale of Securities*. These securities are free trading.

2.43 The prospectus requirement does not apply to a distribution of a self-directed RESP to a subscriber if

(a) the distribution is conducted by

(i) a dealing representative of a mutual fund dealer who is acting on behalf of the mutual fund dealer,

(ii) a Canadian financial institution, or,

(iii) in Ontario, a financial intermediary, and

(b) the self-directed RESP restricts its investments in securities to securities in which the person who distributes the self-directed RESP is permitted to distribute.

PART 3 [REPEALED]

PART 4 CONTROL BLOCK DISTRIBUTIONS

Control block distributions

4.1 (1) In this Part,

"control block distribution" means a trade to which the provisions of securities legislation listed in Appendix B apply.

(2) Terms defined or interpreted in National Instrument 62-103 *The Early Warning System and Related Take-over Bid and Insider Reporting Issues* and used in this Part have the same meaning as is assigned to them in that Instrument.

(3) The prospectus requirement does not apply to a control block distribution by an eligible institutional investor of a reporting issuer's securities if

(a) the eligible institutional investor

(i) has filed the reports required under the early warning requirements or files the reports required under Part 4 of National Instrument 62-103 *The Early Warning System and Related Take-over Bid and Insider Reporting Issues*,

(ii) does not have knowledge of any material fact or material change with respect to the reporting issuer that has not been generally disclosed,

(iii) does not receive in the ordinary course of its business and investment activities knowledge of any material fact or material change with respect to the reporting issuer that has not been generally disclosed, and

(iv) either alone or together with any joint actors, does not possess effective control of the reporting issuer,

(b) there are no directors or officers of the reporting issuer who were, or could reasonably be seen to have been, selected, nominated or designated by the eligible institutional investor or any joint actor,

(c) the control block distribution is made in the ordinary course of business or investment activity of the eligible institutional investor,

(d) securities legislation would not require the securities to be held for a specified period of time if the trade were not a control block distribution,

(e) no unusual effort is made to prepare the market or to create a demand for the securities, and

(f) no extraordinary commission or consideration is paid in respect of the control block distribution.

(4) An eligible institutional investor that makes a distribution in reliance on subsection (3) must file a letter within 10 days after the distribution that describes the date and size of the distribution, the market on which it was made and the price at which the securities being distributed were sold.

Distributions by a control person after a take-over bid

4.2 (1) Subject to subsection (2), the prospectus requirement does not apply to a distribution in a security from the holdings of a control person acquired under a take-over bid for which a take-over bid circular was issued and filed if

(a) the issuer whose securities are being acquired under the take-over bid has been a reporting issuer for at least 4 months at the date of the take-over bid,

(b) the intention to make the distribution is disclosed in the take-over bid circular issued in respect of the take-over bid,

(c) the distribution is made within the period beginning on the date of the expiry of the bid and ending 20 days after that date,

(d) a notice of intention to distribute securities in Form 45-102F1 *Notice of Intention to Distribute Securities under Section 2.8 of NI 45-102 Resale of Securities* under National Instrument 45-102 *Resale of Securities* is filed before the distribution,

(e) an insider report of the distribution in Form 55-102F2 *Insider Report* or Form 55-102F6 *Insider Report,* as applicable, under National Instrument 55-102 *System for Electronic Disclosure by Insiders* (*SEDI*) is filed within 3 days after the completion of the distribution,

(f) no unusual effort is made to prepare the market or to create a demand for the security, and

(g) no extraordinary commission or consideration is paid in respect of the distribution.

(2) A control person referred to in subsection (1) is not required to comply with subsection (1) (b) if

(a) another person makes a competing take-over bid for securities of the issuer for which the take-over bid circular is issued, and

(b) the control person sells those securities to that other person for a consideration that is not greater than the consideration offered by that other person under its take-over bid.

PART 5 OFFERINGS BY TSX VENTURE EXCHANGE OFFERING DOCUMENT

Application and interpretation

5.1 (1) This Part does not apply in Ontario.

(2) In this Part

"exchange policy" means Exchange Policy 4.6 - *Public Offering by Short Form Offering Document* and Exchange Form 4H - *Short Form Offering Document,* of the TSX Venture Exchange as amended from time to time;

"gross proceeds" means the gross proceeds that are required to be paid to the issuer for listed securities distributed under a TSX Venture exchange offering document;

"listed security" means a security of a class listed on the TSX Venture Exchange;

"prior exchange offering" means a distribution of securities by an issuer under a TSX Venture exchange offering document that was completed during the 12-month period immediately preceding the date of the TSX Venture exchange offering document;

"subsequently triggered report" means a material change report that must be filed no later than 10 days after a material change under securities legislation as a result of a material change that occurs after the date the TSX Venture exchange offering document is certified but before a purchaser enters into an agreement of purchase and sale;

"TSX Venture Exchange" means the TSX Venture Exchange Inc.;

"TSX Venture exchange offering document" means an offering document that complies with the exchange policy;

"warrant" means a warrant of an issuer distributed under a TSX Venture exchange offering document that entitles the holder to acquire a listed security or a portion of a listed security of the same issuer.

TSX Venture Exchange offering

Refer to Appendix D of National Instrument 45-102 *Resale of Securities*. These securities are free trading unless the security is acquired by

(i) a purchaser that, at the time the security was acquired, was an insider or promoter of the issuer of the security, an underwriter of the issuer, or a member of the underwriter's professional group, or

(ii) any other purchaser in excess of $40 000 for the portion of the securities in excess of $40 000.

first trade by purchasers under (i) and (ii) are subject to a restricted period.

5.2 The prospectus requirement does not apply to a distribution by an issuer in a security of its own issue if

(a) the issuer has filed an AIF in a jurisdiction of Canada,

(b) the issuer is a SEDAR filer,

(c) the issuer is a reporting issuer in a jurisdiction of Canada and has filed in a jurisdiction of Canada

(i) a TSX Venture exchange offering document,

(ii) all documents required to be filed under the securities legislation of that jurisdiction, and

(iii) any subsequently triggered report,

(d) the distribution is of listed securities or units consisting of listed securities and warrants,

(e) the issuer has filed with the TSX Venture Exchange a TSX Venture exchange offering document in respect of the distribution, that

(i) incorporates by reference the following documents of the issuer filed with the securities regulatory authority in any jurisdiction of Canada:

(A) the AIF,

(B) the most recent annual financial statements and the MD&A relating to those financial statements,

(C) all unaudited interim financial reports and the MD&A relating to those financial reports, filed after the date of the AIF but before or on the date of the TSX Venture exchange offering document,

(D) all material change reports filed after the date of the AIF but before or on the date of the TSX Venture exchange offering document, and

(E) all documents required under National Instrument 43-101 *Standards of Disclosure for Mineral Projects* and National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* filed on or after the date of the AIF but before or on the date of the TSX Venture exchange offering document,

(ii) deems any subsequently triggered report required to be delivered to a purchaser under this Part to be incorporated by reference,

(iii) grants to purchasers contractual rights of action in the event of a misrepresentation, as required by the exchange policy,

(iv) grants to purchasers contractual rights of withdrawal, as required by the exchange policy, and

(v) contains all the certificates required by the exchange policy,

(f) the distribution is conducted in accordance with the exchange policy,

(g) the issuer or the underwriter delivers the TSX Venture exchange offering document and any subsequently triggered report to each purchaser

(i) before the issuer or the underwriter enters into the written confirmation of purchase and sale resulting from an order or subscription for securities being distributed under the TSX Venture exchange offering document, or

(ii) not later than midnight on the 2nd business day after the agreement of purchase and sale is entered into,

(h) the listed securities issued under the TSX Venture exchange offering document, when added to the listed securities of the same class issued under prior exchange offerings, do not exceed

(i) the number of securities of the same class outstanding immediately before the issuer distributes securities of the same class under the TSX Venture exchange offering document, or

(ii) the number of securities of the same class outstanding immediately before a prior exchange offering,

(i) the gross proceeds under the TSX Venture exchange offering document, when added to the gross proceeds from prior exchange offerings do not exceed $2 million,

(j) no purchaser acquires more than 20% of the securities distributed under the TSX Venture exchange offering document, and

(k) no more than 50% of the securities distributed under the TSX Venture exchange offering document are subject to section 2.5 of National Instrument 45-102 *Resale of Securities*.

Underwriter obligations

5.3 An underwriter that qualifies as a "sponsor" under TSX Venture Exchange Policy 2.2 - *Sponsorship and Sponsorship Requirements* as amended from time to time must sign the TSX Venture exchange offering document and comply with TSX Venture Exchange Appendix 4A - *Due Diligence Report* in connection with the distribution.

PART 6 REPORTING REQUIREMENTS

Report of exempt distribution

6.1 (1) Subject to subsection (2) and section 6.2 [*When report not required*], issuers that distribute their own securities and underwriters that distribute securities they acquired under section 2.33 must file a completed report if they make the distribution under one or more of the following exemptions:

(a) section 2.3 [*Accredited investor*] or, in Ontario, section 73.3 of the *Securities Act* (Ontario) [*Accredited investor*];

(b) section 2.5 [*Family, friends and business associates*];

(c) subsection 2.9 (1), (2) or (2.1) [*Offering memorandum*];

(d) section 2.10 [*Minimum amount investment*];

(e) section 2.12 [*Asset acquisition*];

(f) section 2.13 [*Petroleum, natural gas and mining properties*];

(g) section 2.14 [*Securities for debt*];

(h) section 2.19 [*Additional investment in investment funds*];

(i) section 2.30 [*Isolated distribution by issuer*];

(j) section 5.2 [*TSX Venture Exchange offering*].

(2) The issuer or underwriter must file the report in the jurisdiction where the distribution takes place no later than 10 days after the distribution.

When report not required

6.2 (1) An issuer is not required to file a report under section 6.1(1)(a) [*Report of exempt distribution*] for a distribution of a debt security of its own issue or, concurrently with the distribution of the debt security, an equity security of its own issue, to a Canadian financial institution or a Schedule III bank.

(2) An investment fund is not required to file a report under section 6.1 [*Report of exempt distribution*] for a distribution under section 2.3 [*Accredited investor*], section 2.10 [*Minimum amount investment*] or section 2.19 [*Additional investment in investment funds*], or section 73.3 of the Securities Act (Ontario) [*Accredited investor*], if the investment fund files the report not later than 30 days after the end of the calendar year.

(3) An issuer or underwriter is not required to file a report under section 6.1 for a distribution of a security if a report has been filed by another issuer or underwriter for the distribution of the same security.

Required form of report of exempt distribution

6.3 (1) The required form of report under section 6.1 [*Report of exempt distribution*] is Form 45-106F1.

(2) Except in Manitoba, an issuer that makes a distribution under an exemption from a prospectus requirement not provided for in this Instrument is exempt from the requirements in securities legislation to file a report of exempt trade or exempt distribution in the required form if the issuer files a report of exempt distribution in accordance with Form 45-106F1.

Required form of offering memorandum

6.4 (1) The required form of offering memorandum under section 2.9 [*Offering memorandum*] is Form 45-106F2.

(2) Despite subsection (1), a qualifying issuer may prepare an offering memorandum in accordance with Form 45-106F3.

(4) [2]An issuer preparing an offering memorandum in accordance with Form 45-106F2 that is engaged in real estate activities must supplement the offering memorandum with Schedule 1 of that form.

[2] The numbering of subsections (4) and (5) take into account the amendments to this section published in Annex B of the August 6 CSA Notice.

(5) An issuer preparing an offering memorandum in accordance with Form 45-106F2 that is a collective investment vehicle must supplement the offering memorandum with Schedule 2 of that form.

Required form of risk acknowledgement

6.5 (0.1) The required form of risk acknowledgement under subsection 2.3(6) [*Accredited investor*] is Form 45-106F9.

(1) The required form of risk acknowledgement under subsection 2.9(15) *[Offering memorandum*] is Form 45-106F4.

(1.1) In Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan, the required form of risk acknowledgement for individual investors includes Schedule 1 *Classification of Investors Under the Offering Memorandum Exemption* and Schedule 2 *Investment Limits for Investors Under the Offering Memorandum Exemption* to Form 45-106F4.

(2) In Saskatchewan, the required form of risk acknowledgement under section 2.6 *[Family, friends and business associates – Saskatchewan]* is Form 45-106F5.

(3) In Ontario, the required form of risk acknowledgement under section 2.6.1 [*Family, friends and business associates – Ontario*] is Form 45-106F12.

PART 7 EXEMPTION

Exemption

7.1 (1) Subject to subsection (2), the regulator or the securities regulatory authority may grant an exemption to this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

(2) In Ontario, only the regulator may grant an exemption and only from Part 6, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

(3) Except in Alberta and Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction.

PART 8 TRANSITIONAL, COMING INTO FORCE

Additional investment - investment funds – exemption from prospectus requirement

8.1 The prospectus requirement does not apply to a distribution by an investment fund in a security of its own issue to a purchaser that initially acquired the security as principal before this Instrument came into force if

(a) the security was initially acquired under any of the following provisions:

(i) in Alberta, sections 86(e) and 131(1)(d) of the *Securities Act* (Alberta) as they existed prior to their repeal by sections 9(a) and 13 of the *Securities Amendment Act* (Alberta), 2003 SA c.32 and sections 66.2 and 122.2 of the *Alberta Securities Commission Rules (General)*;

(ii) in British Columbia, sections 45(2) (*5*) and (*22*), and 74(2) (*4*) and (*19*) of the *Securities Act* (British Columbia),

(iii) in Manitoba, sections 19(3) and 58(1)(a) of the *Securities Act* (Manitoba) and section 90 of the *Securities Regulation* MR 491/88R;

(iv) in New Brunswick, section 2.8 of Local Rule 45-501 *Prospectus and Registration Exemptions*;

(v) in Newfoundland and Labrador, sections 36(1)(e) and 73(1)(d) of the *Securities Act* (Newfoundland and Labrador);

(vi) in Nova Scotia, sections 41(1)(e) and 77(1)(d) of the *Securities Act* (Nova Scotia);

(vii) in Northwest Territories, section 3(c) and (z) of Blanket Order No. 1;

(viii) in Nunavut, section 3(c) and (z) of Blanket Order No. 1;

(ix) in Ontario, sections 35(1)5 and 72(1)(d) of the Securities Act (Ontario) and section 2.12 of Ontario Securities Commission Rule 45-501 Exempt Distributions that came into force on January 12, 2004;

(x) in Prince Edward Island, section 2(3)(d) of the *Securities Act* (Prince Edward Island) and Prince Edward Island Local Rule 45-512 -Exempt Distributions - Exemption for Purchase of Mutual Fund Securities;

(xi) in Québec, section 51 and 155.1(2) of the *Securities Act* (Québec);

(xii) in Saskatchewan, sections 39(1)(e) and 81(1)(d) of the *The Securities Act, 1988* (Saskatchewan).

(b) the distribution is of a security of the same class or series as the initial distribution, and

(c) the security holder, as at the date of the distribution, holds securities of the investment fund that have

(i) an acquisition cost of not less than the minimum amount prescribed by securities legislation referred to in paragraph (a) under which the initial distribution was conducted, or

(ii) a net asset value of not less than the minimum amount prescribed by securities legislation referred to in paragraph (a) under which the initial distribution was conducted.

8.1.1 [Repealed]

Definition of "accredited investor" - investment fund

8.2 An investment fund that distributed its securities to persons pursuant to any of the following provisions is an investment fund under paragraph (n)(ii) of the definition of "accredited investor":

(a) in Alberta, sections 86(e) and 131(1)(d) of the *Securities Act* (Alberta) as they existed prior to their repeal by sections 9(a) and 13 of the *Securities Amendment Act* (Alberta), 2003 SA c.32 and sections 66.2 and 122.2 of the *Alberta Securities Commission Rules (General)*;

(b) in British Columbia, sections 45(2) (*5*) and (*22*), and 74(2) (*4*) and (*19*) of the *Securities Act* (British Columbia),

(c) in Manitoba, sections 19(3) and 58(1)(a) of the *Securities Act* (Manitoba) and section 90 of the *Securities Regulation* MR 491/88R;

(d) in New Brunswick, section 2.8 of Local Rule 45-501 *Prospectus and Registration Exemptions*;

(e) in Newfoundland and Labrador, sections 36(1)(e) and 73(1)(d) of the *Securities Act* (Newfoundland and Labrador);

(f) in Nova Scotia, sections 41(1)(e) and 77(1)(d) of the *Securities Act* (Nova Scotia);

(g) in Northwest Territories, section 3(c) and (z) of Blanket Order No. 2;

(h) in Nunavut, section 3(c) and (z) of Blanket Order No. 3;

(i) in Ontario, sections 35(1)5 and 72(1)(d) of the *Securities Act* (Ontario) and section 2.12 of Ontario Securities Commission Rule 45-501 *Exempt Distributions* that came into force on January 12, 2004 ;

(j) in Prince Edward Island, section 2(3)(d) of the *Securities Act* (Prince Edward Island) and Prince Edward Island Local Rule 45-512 -*Exempt Distributions - Exemption for Purchase of Mutual Fund Securities*;

(k) in Québec, section 51 and 155.1(2) of the *Securities Act* (Québec);

(l) in Saskatchewan, sections 39(1)(e) and 81(1)(d) of the *The Securities Act, 1988* (Saskatchewan).

Transition – Closely-held issuer – exemption from prospectus requirement

8.3 (1) In this section,

"2001 OSC Rule 45-501" means the Ontario Securities Commission Rule 45-501 *Exempt Distributions* that came into force on November 30, 2001;

"2004 OSC Rule 45-501" means the Ontario Securities Commission Rule 45-501 *Exempt Distributions* that came into force on January 12, 2004;

"closely-held issuer" has the same meaning as in 2004 OSC Rule 45-501;

(2) The prospectus requirement does not apply to a distribution of a security that was previously distributed by a closely-held issuer under section 2.1 of 2001 OSC Rule 45-501, or under section 2.1 of 2004 OSC Rule 45-501, to a person who purchases the security as principal and is

(a) a director, officer, employee, founder or control person of the issuer,

(b) a spouse, parent, grandparent, brother, sister or child of a director, executive officer, founder or control person of the issuer,

(c) a parent, grandparent, brother, sister or child of the spouse of a director, executive officer, founder or control person of the issuer,

(d) a close personal friend of a director, executive officer, founder or control person of the issuer,

(e) a close business associate of a director, executive officer, founder or control person of the issuer,

(f) a spouse, parent, grandparent, brother, sister or child of the selling security holder or of the selling security holder's spouse,

(g) a security holder of the issuer,

(h) an accredited investor,

(i) a person of which a majority of the voting securities are beneficially owned by, or a majority of the directors are, persons described in paragraphs (a) to (h),

(j) a trust or estate of which all of the beneficiaries or a majority of the trustees or executors are persons described in paragraphs (a) to (h), or

(k) a person that is not the public.

8.3.1 [Repealed]

~~**Transition – reinvestment plan**~~

8.4 ~~Despite subsection 2.2(5), if an issuer's reinvestment plan was established before September 28, 2009, and provides for the distribution of a security that is of a different class or series than the class or series of the security to which the dividend or distribution is attributable, the issuer or the trustee, custodian or administrator of the plan must provide to each person who is already a participant the description of the material attributes and characteristics of the securities traded under the plan or notice of a source from which the participant can obtain the information not later than 140 days after the next financial year end of the issuer ending on or after September 28, 2009.~~[Repealed]

~~**Transition – offering memorandum exemption – update of offering memorandum**~~

8.4.1 ~~Despite subsection 2.9(5.1), in Alberta, New Brunswick, Nova Scotia, Québec and Saskatchewan, an issuer is not required to update an offering memorandum that was filed in the local jurisdiction before April 30, 2016, solely to incorporate the statement required under paragraph 2.9(5.1)(a), unless the offering memorandum would otherwise be required to be updated pursuant to subsection 2.9(14) or Instruction B.12 of Form 45-106F2 *Offering Memorandum for Non-Qualifying Issuers*.~~[Repealed]

~~**Transition – offering memorandum exemption – marketing materials**~~

8.4.2 ~~Despite paragraph 2.9(17.1)(a), in Alberta, New Brunswick, Nova Scotia, Québec and Saskatchewan, OM marketing materials that relate to an offering memorandum that was filed in the local jurisdiction before April 30, 2016 and that are delivered or made reasonably available after April 30, 2016 must be filed within 10 days from the earlier of delivery to, or being made reasonably available to, a prospective purchaser.~~[Repealed]

~~**Transition – investment funds – required form of report**~~

8.4.3 ~~Despite section 6.3, an investment fund that files a report on or before the date required by subsection 6.2(2) for a distribution that occurred before January 1, 2017 may file a report prepared in accordance with the version of Form 45-106F1 in force on June 29, 2016.~~[Repealed]

8.5 [Repealed]

Repeal of former instrument

8.6 National Instrument 45-106 *Prospectus and Registration Exemptions* which came into force on September 14, 2005 is repealed on September 28, 2009.

Effective date

8.7 (1) Except in Ontario, this Instrument comes into force on September 28, 2009.

(2) In Ontario, this Instrument comes into force on the later of the following:

(a) September 28, 2009;

(b) the day on which sections 5 and 11, subsection 12(1) and section 13 of Schedule 26 of the *Budget Measures Act, 2009* are proclaimed in force.

[as amended on January 1, 2011, June 30, 2011, May 31, 2013, September 22, 2014, May 5, 2015, November 17, 2015, December 8, 2015, April 30, 2016, June 30, 2016, June 12, 2018, local amendments in Ontario as described in CSA Notice 11-330, October 5, 2018, local amendments in New Brunswick as described in CSA Notice 11-334 and local amendments in Nunavut and New Brunswick as described in CSA Staff Notice 11-335]

Appendix A
to
National Instrument 45-106 *Prospectus Exemptions*
Variable insurance contract exemption
(section 2.39)

JURISDICTION	LEGISLATION REFERENCE
ALBERTA	"contract of insurance", "group insurance", "life insurance", and "policy" have the respective meanings assigned to them under the *Insurance Act* (Alberta) and the regulations under that Act. "insurance company" means an insurer as defined in the *Insurance Act* (Alberta) that is licensed under that Act.
BRITISH COLUMBIA	"contract", "group insurance", and "policy" have the respective meanings assigned to them under the *Insurance Act* (British Columbia) and the regulations under that Act. "life insurance" has the respective meaning assigned to it under the *Financial Institutions Act* (British Columbia) and the regulations under that Act. "insurance company" means an insurance company, or an extraprovincial insurance corporation, authorized to carry on insurance business under the *Financial Institutions Act* (British Columbia).
MANITOBA	"contract of insurance", "group insurance", "life insurance", and "policy" have the respective meanings assigned to them under the *Insurance Act* (Manitoba) and the regulations under that Act. "insurance company" means an insurer as defined in the *Insurance Act* (Manitoba) that is licensed under that Act.
NEW BRUNSWICK	"contract of insurance", "group insurance", "life insurance", and "policy" have the respective meanings assigned to them under the *Insurance Act* (New Brunswick) and the regulations under that Act. "insurance company" means an insurer as defined in the *Insurance Act* (New Brunswick) that is licensed under that Act.

NORTHWEST TERRITORIES	"contract", "group insurance", "life insurance", and "policy" have the respective meanings assigned to them under the *Insurance Act* (Northwest Territories). "insurance company" means an insurer as defined in the *Insurance Act* (Northwest Territories) that is licensed under that Act.
NOVA SCOTIA	"contract", "group insurance", "life insurance", and "policy" have the respective meanings assigned to them under the *Insurance Act* (Nova Scotia) and the regulations under that Act. "insurance company" has the same meaning as in section 3(1)(a) of the *General Securities Rules* (Nova Scotia).
NUNAVUT	"contract", "group", "life insurance" and "policy" have the respective meanings assigned to them under the *Insurance Act* (Nunavut). "insurance company" means an insurer as defined in the *Insurance Act* (Nunavut) that is licensed under that Act.
ONTARIO	"contract", "group insurance", and "policy" have the respective meanings assigned to them in section 1 and 171 of the *Insurance Act* (Ontario). "life insurance" has the respective meaning assigned to it in Schedule 1 by Order of the Superintendent of Financial Services. "insurance company" has the same meaning as in section 1(2) of the *General Regulation* (Ont. Reg. 1015).
QUÉBEC	"contract of insurance", "group insurance", "life insurance", and "policy" have the respective meanings assigned to them under the Civil Code of Québec. "insurance company" means an insurer holding a license under the Act respecting insurance (R.S.Q., c. A-32).

PRINCE EDWARD ISLAND	"contract", "group insurance", "insurer", "life insurance and "policy" have the respective meanings assigned to them in sections 1 and 174 of the *Insurance Act* (Prince Edward Island). "insurance company" means an insurance company licensed under the *Insurance Act* (R.S.P.E.I. 1988, Cap. I-4),
SASKATCHEWAN	"contract", "life insurance" and "policy" have the respective meanings assigned to them in section 2 of *The Saskatchewan Insurance Act* (Saskatchewan). "group insurance" has the respective meaning assigned to it in section 133 of *The Saskatchewan Insurance Act* (Saskatchewan). "insurance company" means an issuer licensed under *The Saskatchewan Insurance Act* (Saskatchewan).
YUKON	"contract", "group", "life insurance" and "policy" have the respective meanings assigned to them under the *Insurance Act* (Yukon) and the regulations made under that Act. "insurance company" means an insurer as defined in the *Insurance Act* (Yukon) that is licensed under that Act.

Appendix B
to
National Instrument 45-106 *Prospectus Exemptions*
Control Block Distributions
(PART 4)

JURISDICTION	SECURITIES LEGISLATION REFERENCE
ALBERTA	Section 1(p)(iii) of the *Securities Act* (Alberta)
BRITISH COLUMBIA	Paragraph (c) of the definition of "distribution" contained in section 1 of the *Securities Act* (British Columbia)
MANITOBA	Section 1(b) of the definition of "primary distribution to the public" contained in subsection 1(1) of the *Securities Act* (Manitoba)
NEW BRUNSWICK	Paragraph (c) of the definition of "distribution" contained in section 1(1) of the *Securities Act* (New Brunswick)
NEWFOUNDLAND AND LABRADOR	Section 2(1)(1)(iii) of the *Securities Act* (Newfoundland and Labrador)
NORTHWEST TERRITORIES	Paragraph (c) of the definition of "distribution" in subsection 1(1) of the *Securities Act* (Northwest Territories)
NOVA SCOTIA	Section 2(1)(1)(iii) of the *Securities Act* (Nova Scotia)
NUNAVUT	Paragraph (c) of the definition of "distribution" in subsection 1(1) of the *Securities Act* (Nunavut).
ONTARIO	Paragraph (c) of the definition of "distribution" contained in subsection 1(1) of the *Securities Act* (Ontario)
PRINCE EDWARD ISLAND	Section 1(f)(iii) of the *Securities Act* (Prince Edward Island)
QUÉBEC	Paragraph 9 of the definition of "distribution" contained section 5 of the *Securities Act* (Québec)
SASKATCHEWAN	Section 2(1)(r)(iii) of *The Securities Act, 1988* (Saskatchewan)
YUKON	Paragraph (c) of the definition of "distribution" in subsection 1(1) of the *Securities Act* (Yukon)

Appendix C
to
National Instrument 45-106 *Prospectus Exemptions*
Listing Representation Prohibitions

JURISDICTION	SECURITIES LEGISLATION REFERENCE
ALBERTA	Subsection 92(3) of the *Securities Act* (Alberta)
MANITOBA	Subsection 69(3) of *The Securities Act* (Manitoba)
NEW BRUNSWICK	Subsection 58(3) of the *Securities Act* (New Brunswick)
NEWFOUNDLAND AND LABRADOR	Subsection 39(3) of the *Securities Act* (Newfoundland and Labrador)
NORTHWEST TERRITORIES	Subsection 147(1) of the *Securities Act* (Northwest Territories)
NOVA SCOTIA	Subsection 44(3) of the *Securities Act* (Nova Scotia)
NUNAVUT	Subsection 147(1) of the *Securities Act* (Nunavut)
ONTARIO	Subsection 38(3) of the *Securities Act* (Ontario)
PRINCE EDWARD ISLAND	Subsection 147(1) of the *Securities Act* (Prince Edward Island)
QUÉBEC	Subsection 199(4) of the *Securities Act* (Québec)
SASKATCHEWAN	Subsection 44(3) of *The Securities Act, 1988* (Saskatchewan)
YUKON	Subsection 147(1) of the *Securities Act* (Yukon)

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

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

Annex D

Blackline

Form 45-106F2 reflecting the Proposed Amendments, compared by way of blackline to that material as currently in-force

FORM 45-106F2
OFFERING MEMORANDUM FOR NON-QUALIFYING ISSUERS

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

The Issuer
Name:

Head office: Address:
Phone #:
Website address:
E-mail address:
~~Fax #:~~

Currently listed or quoted? [If no, state in bold type: "**These securities do not trade on any exchange or market.**". If yes, ~~state where, e.g., TSX/TSX Venture Exchange~~identify the exchange or market.]

Reporting issuer? [Yes/No. If yes, state where.]

~~SEDAR filer? [Yes/No]~~

The Offering
Securities offered:

Price per security:

Minimum/Maximum offering: [If there is no minimum, state in bold type: "**There is no minimum.**" and also state in bold type: "**You may be the only purchaser.**"]

~~State in bold type: **Funds available under the offering may not be sufficient to accomplish our proposed objectives.**~~

Minimum subscription amount: [State the minimum amount each investor must invest, or state "There is no minimum subscription amount an investor must invest."]

Payment terms:

Proposed closing date(s):

Income tax consequences: There are important tax consequences to these securities. See item 6. [If income tax consequences are not material, delete this item.]

~~Selling agent? [Yes/No. If yes, state "See item 7". The name of the selling agent may also be stated.]~~

Insufficient Funds

If item 2.6 applies, state in bold type: "**Funds available under the offering may not be sufficient to accomplish the proposed objectives. See item 2.6.**".

Compensation Paid to Sellers and Finders
If item 7 applies, state the following: "A person has received or will receive compensation for the sale of securities under this offering. See item 7.".

Underwriter(s)
State the name of any underwriter.

Guidance: The requirements of National Instrument 33-105 *Underwriting Conflicts* may be applicable.

Resale ~~restrictions~~Restrictions
State: "You will be restricted from selling your securities for [4 months and a day/an indefinite period]. See item 10."

Working Capital Deficiency
If the issuer is disclosing a working capital deficiency under item 1.1, state the following, with the bracketed information completed: "[name of issuer] has a working capital deficiency. See item 1.1.".

Payments to Related Party
If the issuer is disclosing payment to a related party under item 1.2, state the following, with the bracketed information completed as applicable: "[All of][Some of] your investment will be paid to a related party of the issuer. See item 1.2.".

Certain Related Party Transactions
If the issuer is making disclosure under item 2.8(b), or subsection 7(2) of Schedule 1, state the following with the bracketed information completed as applicable: "This offering memorandum contains disclosure with respect to one or more transactions between [name of issuer] and a related party, where [name of issuer] [paid more to a related party than the related party paid for a business, asset or real property] [and] [was paid less by a related party for a business, asset or real property than [name of issuer] paid for it]. See [item 2.8(b)] [and] [subsection 7(2) of Schedule 1].".

Certain Dividends or Distributions
If the issuer is making disclosure under item 5B, state the following with the bracketed information completed: "[name of issuer] has paid dividends or distributions that exceeded cash flow from operations. See item 5B.".

Redemption or Retraction Right
If the purchaser will have a right to require the issuer to repurchase its securities and there is any restriction, fee or price associated with this right, state in bold type with the bracketed information completed, as applicable: "**You will have a right to require the issuer to repurchase its securities from you, but this right is qualified by [a specified price] [and]**

[restrictions] [and] [fees]. As a result, you might not receive the amount of proceeds that you want. See item 5.1."

Purchaser's ~~rights~~Rights

State: "You have 2 business days to cancel your agreement to purchase these securities. If there is a misrepresentation in this offering memorandum, you have ~~the~~a right to~~ sue either for~~ damages or to cancel the agreement. See item 11."

State in bold type:

"**No securities regulatory authority or regulator has assessed the merits of these securities or reviewed this offering memorandum. Any representation to the contrary is an offence. This is a risky investment. See item 8.**"

Instructions

1. ~~[All~~Include all of the above information ~~must appear on a single cover page.]~~at the beginning of the offering memorandum.

2. After the above information, include a table of contents for the rest of the information in the offering memorandum.

~~**Item 1:**~~
Item 1: Use of Available Funds

~~1.1~~ 1.1 ***Funds*** - Using the following table, disclose the funds available as a result of the offering. If the issuer plans to combine additional sources of funding with the available funds from the offering to achieve its principal capital-raising purpose, ~~please~~ provide details about each additional source of funding. If there is no minimum offering, state "$0" as the minimum. Disclose ~~also the amount of~~ any working capital deficiency~~, if any,~~ of the issuer as at a date not more than 30 days ~~prior to~~before the date of the offering memorandum. If the working capital deficiency will not be eliminated by the use of available funds, state how the issuer intends to eliminate or manage the deficiency.

		Assuming ~~min.~~minimum offering	Assuming ~~max.~~maximum offering
A.	Amount to be raised by this offering	$	$
B.	Selling commissions and fees	$	$
C.	Estimated offering costs (~~e.g.,~~including legal, accounting~~,~~ and audit~~.~~)	$	$
D.	Available funds: D = A - (B+C)	$	$
E.	Additional sources of funding required	$	$
F.	Working capital deficiency	$	$
G.	Total: G = (D+E) - F	$	$

~~1.2~~ 1.2 ***Use of Available Funds*** - Using the following table, provide a detailed breakdown of how the issuer will use the available funds. If any of the available funds will be paid to a related party, disclose in a note to the table the name of the related party, the relationship to the issuer, and the amount. ~~If the issuer has a working capital deficiency, disclose the portion, if any, of the available funds to be applied against the working capital deficiency.~~ If more than 10% of the available funds will be used by the issuer to pay debt and the issuer incurred the debt within the two preceding financial years, describe why the debt was incurred.

Description of intended use of available funds listed in order of priority	Assuming ~~min.~~minimum offering	Assuming ~~max.~~maximum offering
	$	$
	$	$
Total: Equal to G in the Funds table above	$	$

~~**1.3 *Reallocation*** - The available funds must be used for the purposes disclosed in the offering memorandum. The board of directors can reallocate the proceeds to other uses only for sound business reasons. If the available funds may be reallocated, include the following statement:~~

> ~~"We intend to spend the available funds as stated. We will reallocate funds only for sound business reasons."~~

1.2.1 *Proceeds Transferred to Other Issuers* - If a significant amount of the proceeds of the offering will be invested in, loaned to, or otherwise transferred to another issuer that is not a subsidiary controlled by the issuer, or a significant amount of the issuer's business is carried out by another issuer that is not a subsidiary controlled by the issuer, provide the disclosure specified by items 2, 3, 4.1, 4.2, 8 and 12 and, as applicable, Schedule 1 of this form if the other issuer is engaged in real estate activities, and Schedule 2 of this form if the other issuer is a collective investment vehicle, as if each of those other issuers were the issuer preparing the offering memorandum. In addition, describe the relationship between the issuer and each of those other issuers, and supplement the description with a diagram.

1.3 [Repealed]

~~**Item 2: Business of [name of issuer or other term used to refer to issuer]**~~ **Item 2: Business of the Issuer and Other Information and Transactions**

~~**2.1**~~ **2.1** ***Structure*** - State ~~the business structure (e.g.,~~whether the issuer is a partnership, corporation or trust~~), the statute and the province, state or other jurisdiction~~, or if the issuer is not a corporation, partnership or trust then state what type of business association the issuer is. State any statute under which the issuer is incorporated, continued or organized, and the date of incorporation, continuance or organization.

~~**2.2 *Our***~~ ***2.2 The Business*** - Describe the issuer's business. ~~The disclosure must provide sufficient information to enable a prospective purchaser to make an informed investment decision.~~

(a) For a non-resource issuer ~~this disclosure may~~ include in the description the following:

(i) principal products or services~~,~~;
(ii) operations~~,~~;
(iii) market, marketing plans and strategies ~~and~~;
(iv) a discussion of the issuer's current and prospective competitors.

(b) For a resource issuer ~~this will require~~ include in the description the following:

(i) a description of principal properties (including interest held) ~~and~~ ;
(ii) a summary of material information including, ~~if~~as applicable~~:~~, the stage of development, reserves, geology, operations, production and mineral reserves or mineral resources being explored or developed. ~~A~~

Guidance

1. For a resource issuer disclosing scientific or technical information for a mineral project ~~must follow~~, see General Instruction A.8 of this Form. ~~A~~

2. For a resource issuer disclosing information about its oil and gas activities ~~must follow~~, see General Instruction A.9 of this Form.

~~2.3~~ **2.3** ***Development of Business*** - Describe ~~(generally, in one or two paragraphs)~~ the general development of the issuer's business over at least its two most recently completed financial years and any subsequent period. Include ~~the~~any major events that have occurred or conditions that have influenced (favourably or unfavourably) the development or financial condition of the issuer.

~~2.4~~ **2.4** ***Long Term Objectives*** ~~– Describe~~ – With respect to the issuer's objectives subsequent to the next 12 months after the date of the offering memorandum, describe each significant event ~~that must occur to accomplish the issuer's long term~~associated with those objectives, state the specific time period in which each event is expected to occur, and the costs related to each event.

~~2.5~~ **2.5** ***Short Term Objectives*** ~~*and How We Intend to Achieve Them*~~

(a) Disclose the issuer's objectives for the next 12 months after the date of the offering memorandum.

(b) Using the following table, disclose how the issuer intends to meet those objectives ~~for the next 12 months~~.

~~What we must do and how we will do it~~Actions to be taken	Target completion date or, if not known, number of months to complete	~~Our cost~~Cost to complete
		$
		$

~~2.6~~ **2.6** ***Insufficient Funds***

If applicable, disclose that the funds available as a result of the offering either may not or will not be sufficient to accomplish all of the issuer's proposed objectives and there is no assurance that alternative financing will be available. ~~If~~With respect to any alternative financing that has been arranged, disclose the amount, source and all outstanding conditions ~~that must be satisfied~~.

2.6.1: Additional Disclosure for Issuers Without Significant Revenue

(1) If the issuer has not had significant revenue from operations in either of its two most recently completed financial years, or has not had significant revenue from operations since inception, provide, for each period referred to in subsection (2), a breakdown of the material components of the following:

(a) exploration and evaluation assets or expenditures and, if the issuer's business primarily involves mining exploration and development, provide the breakdown on a property-by-property basis;

(b) expensed research and development costs;

(c) intangible assets arising from development;

(d) general and administration expenses;

(e) any material costs, whether expensed or recognized as assets, not referred to in paragraphs (a) through (d).

(2) Include the disclosure in subsection (1) with respect to each period for which financial statements are included in the offering memorandum.

(3) Subsection (1) does not apply to any period for which the information specified under subsection (1) has been disclosed in the financial statements that are included in the offering memorandum.

~~2.7~~ **2.7** ***Material*** ~~***Agreements***~~ ***Contracts*** - Disclose the key terms of all material ~~agreements(a)~~ contracts to which the issuer is currently a party~~, or~~

~~(b) with a related party~~ including, for certainty, the following ~~information~~:

(a) ~~(i)~~ if the ~~agreement~~contract is with a related party, the name of the related party and the relationship~~,~~ to the issuer;

(b) ~~(ii)~~ a description of any asset, property or interest acquired, disposed of, leased~~,~~ or under option~~, etc.,~~;

(c) ~~(iii)~~ a description of any service provided~~,~~;

(d) ~~(iv)~~ purchase price and payment terms (~~e.g., paid in~~including payment by instalments, cash, securities or work commitments)~~,~~;

(e) ~~(v)~~ the principal amount of any debenture or loan, the repayment terms, security, due date and interest rate~~,~~;

(f) ~~(vi)~~ the date of the ~~agreement,~~contract;

(g) ~~(vii)~~ the amount of any finder's fee or commission paid or payable to a related party in connection with the ~~agreement,~~contract;

(h) ~~(viii)~~ any material outstanding obligations under the ~~agreement, and~~contract.

2.8 Related Party Transactions

With respect to any purchase and sale transaction between the issuer and a related party that does not relate to real property,

(a) using the following table and starting with the most recent transaction, provide the specified information, and

Description of business or asset	Date of transfer	Legal name of seller	Legal name of buyer	Amount and form of consideration exchanged in connection with transfer

(b) ~~(ix) for any transaction involving the purchase of assets by or sale of assets to the issuer from a related party, state the cost of the assets to the related party, and the cost of the assets to the issuer.~~explain the reason for any material difference between the amount of consideration paid by the issuer and the amount of consideration paid by a related party for the business or asset.

~~**Item 3: Interests of Directors, Management, Promoters and Principal Holders**~~

Item 3: Compensation and Security Holdings of Certain Parties

~~3.1~~ **3.1** ***Compensation and Securities Held*** ~~–~~

Using the following table, provide the specified information ~~about~~ for the following:

(a) each director, officer and promoter of the issuer ~~and each person who, directly or indirectly, beneficially owns or controls~~;

(b) each person that has beneficial ownership of, or direct or indirect control over, or a combination of beneficial ownership and direct or indirect control over, 10% or more of any class of voting securities of the issuer ~~(a "principal holder"). If the principal holder is not an individual, state in a note to the table the name of any person that, directly or indirectly, beneficially owns or controls more than 50% of the voting rights of the principal holder. If the issuer has not completed its first financial year, then include compensation paid since inception. Compensation includes any form of remuneration including cash, shares and options.~~;

(c) any related party not specified in paragraph (a) or (b) that received compensation in the most recently completed financial year, or is expected by the issuer to receive compensation in the current financial year.

~~Name~~Full legal name and ~~municipality~~place of ~~principal~~ residence or, if not an individual, jurisdiction of organization	~~Positions held (e.g.,~~If paragraph (a) or (b) applies, specify whether the person is a director, officer, promoter ~~and/or principal holder) and the date of obtaining~~or person referred to in paragraph (b); if paragraph (c) applies, specify the person's relationship to the issuer; in all cases, specify the date that ~~position~~the person became a person identified in paragraph (a), (b) or (c)	Compensation paid by issuer or related party in the most recently completed financial year and the compensation ~~anticipated~~expected to be paid in the current financial year	Number, type and percentage of securities of the issuer held after completion of ~~min.~~minimum offering	Number, type and percentage of securities of the issuer held after completion of ~~max.~~maximum offering

Instructions

1. If the issuer has not completed its first financial year, disclose for the period from the date of the issuer's inception to the date of the offering memorandum.

2. Compensation includes any form of remuneration including, for certainty, cash, shares and options.

3. If a person identified in paragraph (a), (b) or (c) is not an individual, state in a note to the table the full legal name of any person that has beneficial ownership of, or direct or indirect control over, or a combination of beneficial ownership and direct or indirect control over, more than 50% of the voting rights of the person.

~~3.2~~ 3.2 ***Management Experience*** - Using the following table, ~~disclose the principal occupations of~~ provide the specified information for the directors and executive officers ~~over~~of the issuer for the ~~past five~~5 years preceding the date of the offering memorandum. ~~In addition, for each individual, describe any relevant experience in a business similar to the issuer's.~~

Full Legal Name	Principal occupation and ~~related~~description of experience associated with the occupation

~~3.3~~ 3.3 ***Penalties, Sanctions ~~and~~, Bankruptcy, Insolvency and Criminal or Quasi-Criminal Matters***

(a) ~~Disclose any penalty or~~If the following have occurred during the 10 years preceding the date of the offering memorandum with respect to a director, executive officer or control person of the issuer, or an issuer of which any of those persons was a director, executive officer or control person at the time, describe the penalty, other sanction ~~(~~or order, including the reason for it and whether it is currently in effect~~) that has been in effect during the last 10 years, or any cease trade order that has been in effect for a period of more than 30 consecutive days during the past 10 years against~~:

(i) a penalty or other sanction imposed by a court relating to a contravention of securities legislation;

(ii) a penalty or other sanction imposed by a regulatory body relating to a contravention of securities legislation;

(iii) an order restricting trading in securities, not including an order that was in effect for less than 30 consecutive days.

(b) If the following have occurred during the 10 years preceding the date of the offering memorandum with respect to a director, executive officer or control person of the issuer, or an issuer of which any of those persons was a director, executive officer or control person at the time, state that it has occurred:

(i) a declaration of bankruptcy;

(ii) a voluntary assignment in bankruptcy;

(iii) a proposal under bankruptcy or insolvency legislation;

(iv) a proceeding, arrangement or compromise with creditors or appointment of a receiver, receiver manager or trustee to hold assets.

(c) Disclose and describe the following, if the issuer or a director, executive officer or control person of the issuer has ever pled guilty to or been found guilty of:

(i) a ~~director, executive officer or control person of the issuer, or~~summary conviction or indictable offence under the *Criminal Code* (Canada);

(ii) a quasi-criminal offence in any jurisdiction of Canada or a foreign jurisdiction;

(iii) a misdemeanour or felony under the criminal legislation of the United States of America, or any state or territory of the United States of America;

(iv) ~~(ii)~~ an ~~issuer of which a person referred to in (i) above was a director, executive officer or control person at the time.~~offence under the criminal legislation of any other foreign jurisdiction.

~~(b) Disclose any declaration of bankruptcy, voluntary assignment in bankruptcy, proposal under any bankruptcy or insolvency legislation, proceedings, arrangement or compromise with creditors or appointment of a receiver, receiver manager or trustee to hold assets, that has been in effect during the last 10 years with regard to any~~

~~(i) director, executive officer or control person of the issuer, or~~

~~(ii) issuer of which a person referred to in (i) above was a director, executive officer or control person at that time.~~

~~3.4~~ 3.4 *Certain Loans* ~~– Disclose the principal amount of any debenture or loan~~

For any debenture, bond or loan agreement between the issuer and a related party, disclose the following:

(a) as at a date not more than 30 days before the date of the offering memorandum, the parties to the agreement, including which party is lender and which party is borrower, the principal amount, the repayment terms, any security, due date and interest rate ~~due to or from the directors, management, promoters and principal holders as at~~;

(b) during the two most recently completed financial years and up to a date not more than 30 days ~~prior to~~before the date of the offering memorandum, any material amendment to the agreement, or any release, cancellation or forgiveness.

~~Item 4:~~ Item 4: Capital Structure

~~4.1 *Share Capital*~~**4.1 *Securities Except for Debt Securities*** - Using the following table, provide the ~~required~~specified information about outstanding securities of the issuer~~(~~, not including ~~options, warrants and other~~debt securities~~ convertible into shares). If necessary,~~. Add notes to the table ~~may be added~~ to describe the material terms of the securities~~.~~, including, for certainty, voting rights or restrictions on voting, exercise price and date of expiry, rights of redemption or retraction, including redemption or retraction price and any fee or restriction, and any interest rate or dividend or distribution policy.

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

~~4.2~~ **4.2 *Long Term Debt Securities*** - Using the following table, provide the ~~required~~specified information about outstanding ~~long term debt of the issuer. Disclose the portion of the debt~~debt of the issuer for which all or a portion is due, or may be outstanding, more than 12 months from the date of the offering memorandum. Add notes to the table to disclose any amounts of the debt that are due within 12 months of the date of the offering memorandum. In addition, add notes to the table to describe any conversion terms. If the securities being offered are debt securities, ~~add a column~~complete the applicable parts of the table for the debt, and add columns to the table disclosing the amount of the debt that will be outstanding after both the minimum and maximum offering. ~~If the debt is owed to a related party, indicate that in a note to the table and identify the related party.~~

Description of ~~long term~~ debt (including whether secured)	Interest rate	Repayment terms	Amount outstanding at ~~[~~a date not more than 30 days ~~prior to~~before the date of the offering memorandum ~~date]~~
			$
			$

~~4.3~~ **4.3 *Prior Sales*** - If the issuer has issued any securities of the class being offered under the offering memorandum (or convertible or exchangeable into the class being offered under the offering memorandum) within the ~~last~~ 12 months before the date of the offering memorandum, use the following table to provide the information specified. If securities were issued in

exchange for assets or services, describe in a note to the table the assets or services that were provided.

Date of issuance	Type of security issued	Number of securities issued	Price per security	Total funds received

~~Item 5:~~ Item 5: Securities Offered

~~5.1~~ 5.1 Terms of Securities~~-~~

(a) Describe the material terms of the securities being offered, including, for certainty, the following:

(i) ~~(a)~~ voting rights or restrictions on voting~~,~~;

(ii) ~~(b)~~ conversion or exercise price and date of expiry~~,~~;

(iii)~~(c)~~ ~~rights~~ right of redemption or retraction, ~~and~~including redemption or retraction price and any fee or restriction;

(iv)~~(d)~~ interest ~~rates or~~rate, and dividend ~~rates~~or distribution policy.

(b) Provide a sample calculation in relation to any redemption or retraction right included in the terms of the securities being offered.

~~5.2~~ 5.2 Subscription Procedure

(a) Describe how a purchaser can subscribe for the securities and the method of payment.

(b) State that the consideration will be held in trust and the period that it will be held (refer at least to the mandatory two day period).

(c) Disclose any conditions to closing, ~~e.g.,~~including any receipt of additional funds from other sources. If there is a minimum offering, disclose when consideration will be returned to purchasers if the minimum is not met**,** and whether the issuer will pay the purchasers interest on consideration.

Item 5A: Redemption and Retraction History

(1) With respect to any securities of the issuer for which investors have a right of redemption or retraction, disclose the following:

(a) for each of the two most recently completed financial years, the information specified by the following table;

Description of security	Date of end of financial year	Number of securities with outstanding redemption or retraction requests on the first day of the year	Number of securities for which investors made redemption or retraction requests during the year	Number of securities redeemed or retracted during the year	Average price paid for the securities redeemed or retracted	Source of funds used to complete the redemptions or retractions	Number of securities with outstanding redemption or retraction requests on the last day of the year

(b) for the period after the end of the issuer's most recently completed financial year and up to a date not more than 30 days before the date of the offering memorandum, the information specified by the following table;

Description of security	Date of beginning of period and date of end of period	Number of securities with outstanding redemption or retraction requests on the first day of the period	Number of securities for which investors made redemption or retraction requests during the period	Number of securities redeemed or retracted during the period	Average price paid for the securities redeemed or retracted	Source of funds used to complete the redemptions or retractions	Number of securities with outstanding redemption or retraction requests on the last day of the period

(c) with respect to the periods specified in (a) and (b), the reason for any non-fulfillment of investor requests for redemption or retraction, unless the non-fulfillment was in accordance with terms governing the redemption or retraction right.

Item 5B: Certain Dividends or Distributions

If in the two most recently completed financial years, or any subsequent interim period, the issuer paid dividends or distributions that exceeded cash flow from operations, disclose the source of those payments.

~~Item 6:~~ Item 6: Income Tax Consequences and RRSP Eligibility

~~6.1~~ 6.1 State: "You should consult your own professional advisers to obtain advice on the income tax consequences that apply to you."

~~6.2~~ 6.2 If income tax consequences are a material aspect of the securities being offered ~~(e.g., flow-through shares)~~, provide

(a) a summary of the significant income tax consequences to Canadian residents, and

(b) the name of the person providing the income tax disclosure in (a).

~~6.3~~ 6.3 Provide advice regarding the RRSP eligibility of the securities and the name of the person providing the advice or state "Not all securities are eligible for investment in a registered retirement savings plan (RRSP). You should consult your own professional advisers to obtain advice on the RRSP eligibility of these securities."

~~Item 7:~~ Item 7: Compensation Paid to Sellers and Finders

If any person has or will receive any ~~compensation (e.g.,~~ commission, corporate finance fee or finder's fee~~)~~ or any other compensation in connection with the offering, provide the following information ~~to the extent applicable~~:

(a) a description of each type of compensation and the estimated amount to be paid for each type~~,~~;

(b) if a commission is being paid, the percentage that the commission will represent of the gross proceeds of the offering (assuming both the minimum and maximum offering)~~,~~;

(c) details of any broker's warrants or agent's option (including number of securities under option, exercise price and expiry date)~~, and~~;

(d) if any portion of the compensation will be paid in securities, details of the securities (including number, type and, if options or warrants, the exercise price and expiry date).

~~Item 8:~~ Item 8: Risk Factors

Describe in order of importance, starting with the most important, the risk factors material to the issuer that a reasonable investor would consider important in deciding whether to buy the issuer's securities.

Guidance: Risk factors will generally fall into the following three categories:

(a) Investment Risk - risks that are specific to the securities being offered. Some examples include

- arbitrary determination of price,
- no market or an illiquid market for the securities,
- resale restrictions, and
- subordination of debt securities.

(b) Issuer Risk - risks that are specific to the issuer. Some examples include

- insufficient funds to accomplish the issuer's business objectives,
- no history or a limited history of revenue or profits,
- lack of specific management or technical expertise,
- management's regulatory and business track record,
- dependence on key employees, suppliers or agreements,
- dependence on financial viability of guarantor,
- pending and outstanding litigation, and
- political risk factors.

(c) Industry Risk - risks faced by the issuer because of the industry in which it operates. Some examples include

- environmental and industry regulation,
- product obsolescence, and
- competition.

~~Item 9:~~ Item 9: Reporting Obligations

~~9.1~~ 9.1 Disclose the documents, including any financial information required by the issuer's corporate legislation, constating documents, or other documents under which the issuer is organized, that will be sent to purchasers on an annual or on-going basis. If the issuer is not required to send any documents to the purchasers on an annual or on-going basis, state in bold type: "**We are not required to send you any documents on an annual or ongoing basis.**"

~~9.2~~ 9.2 If corporate or securities information about the issuer is available from a government, securities regulatory authority or regulator, SRO or quotation and trade reporting system, disclose where that information can be located (including website address).

~~Item 10:~~ Item 10: Resale Restrictions

~~**10.1** General Statement - For trades in Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island, Québec, Saskatchewan and Yukon, state:~~

~~"These securities will be subject to a number of resale restrictions, including a restriction on trading. Until the restriction on trading expires, you will not be able to trade the securities unless you comply with an exemption from the prospectus and registration requirements under securities legislation."~~

10.1 [Repealed]

~~**10.2**~~ **10.2** Restricted Period - For trades in Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island, Québec, Saskatchewan and Yukon state one of the following, as applicable:

(a) If the issuer is not a reporting issuer in a jurisdiction at the distribution date state:

"Unless permitted under securities legislation, you cannot trade the securities before the date that is 4 months and a day after the date [insert name of issuer ~~or other term used to refer to the issuer] becomes~~] became a reporting issuer in any province or territory of Canada."

(b) If the issuer is a reporting issuer in a jurisdiction at the distribution date state:

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

~~**10.3**~~ **10.3** Manitoba Resale Restrictions - For trades in Manitoba, if the issuer will not be a reporting issuer in a jurisdiction at the time the security is acquired by the purchaser state:

"Unless permitted under securities legislation, you must not trade the securities without the prior written consent of the regulator in Manitoba unless

(a) [name of issuer ~~or other term used to refer to issuer~~] has filed a prospectus with the regulator in Manitoba with respect to the securities you have purchased and the regulator in Manitoba has issued a receipt for that prospectus, or

(b) you have held the securities for at least 12 months.

The regulator in Manitoba will consent to your trade if the regulator is of the opinion that to do so is not prejudicial to the public interest."

~~**Item 11:**~~ **Item 11: Purchasers' Rights**

11.1 Statements Regarding Purchasers' Rights - State the following:

"If you purchase these securities you will have certain rights, some of which are described below. For information about your rights you should consult a lawyer.

(1) Two Day Cancellation Right - You can cancel your agreement to purchase these securities. To do so, you must send a notice to us by midnight on the 2nd business day after you sign the agreement to buy the securities.

(2) Statutory Rights of Action in the Event of a Misrepresentation [Insert this section only if the securities legislation of the jurisdiction in which the trade occurs provides purchasers with statutory rights in the event of a misrepresentation in an offering memorandum. Modify the

language, if necessary, to conform to the statutory rights.] If there is a misrepresentation in this offering memorandum, you have a statutory right to sue:

(a) [name of ~~issuer or other term used to refer to~~ issuer] to cancel your agreement to buy these securities, or

(b) for damages against [state the name of issuer ~~or other term used to refer to issuer~~ and the title of any other person against whom the rights are available].

This statutory right to sue is available to you whether or not you relied on the misrepresentation. However, there are various defences available to the persons or companies that you have a right to sue. In particular, they have a defence if you knew of the misrepresentation when you purchased the securities.

If you intend to rely on the rights described in (a) or (b) above, you must do so within strict time limitations. You must commence your action to cancel the agreement within [state time period provided by the securities legislation]. You must commence your action for damages within [state time period provided by the securities legislation.]

(3) Contractual Rights of Action in the Event of a Misrepresentation - [Insert this section only if the securities legislation of the jurisdiction in which the purchaser is resident does not provide purchasers with statutory rights in the event of a misrepresentation in an offering memorandum.] If there is a misrepresentation in this offering memorandum, you have a contractual right to sue [name of issuer ~~or other term used to refer to issuer~~]:

(a) to cancel your agreement to buy these securities, or

(b) for damages.

This contractual right to sue is available to you whether or not you relied on the misrepresentation. However, in an action for damages, the amount you may recover will not exceed the price that you paid for your securities and will not include any part of the damages that [name of issuer ~~or other term used to refer to issuer~~] proves does not represent the depreciation in value of the securities resulting from the misrepresentation. [Name of issuer ~~or other term used to refer to issuer~~] has a defence if it proves that you knew of the misrepresentation when you purchased the securities.

If you intend to rely on the rights described in (a) or (b) above, you must do so within strict time limitations. You must commence your action to cancel the agreement within 180 days after you signed the agreement to purchase the securities. You must commence your action for damages within the earlier of 180 days after learning of the misrepresentation and 3 years after you signed the agreement to purchase the securities."

11.2 Cautionary Statement Regarding Report, Statement or Opinion by Expert - If a report, statement or opinion by a solicitor, auditor, accountant, engineer, appraiser, notary in Québec or other person or company whose profession or business could, to a reasonable person, be viewed as giving authority to a statement made by that person or company, is

included or referenced in the offering memorandum, and purchasers do not have a statutory right of action in the local jurisdiction against that person or company for a misrepresentation in the offering memorandum, state the following, with the bracketed information completed, as applicable:

"This offering memorandum [includes][references] [describe any report, statement or opinion, the party that gave it, and the effective date of the document]. You do not have a statutory right of action against [this party][these parties] for a misrepresentation in the offering memorandum. You should consult with a legal adviser for further information."

~~Item 12:~~ Item 12: Financial Statements

Include in the offering memorandum immediately before the certificate page of the offering memorandum all ~~required~~ financial statements ~~as set out~~specified in the Instructions.

~~Item 13:~~ Item 13: Date and Certificate

State the following on the certificate page of the offering memorandum:

"Dated [insert the date the certificate page of the offering memorandum is signed].

This offering memorandum does not contain a misrepresentation."

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

A. General Instructions

0.1 Refer to subsections 2.9(13.1) and (13.3) of the Instrument, which set out the standard of disclosure for an offering memorandum.

1. Draft the offering memorandum so that it is easy to read and understand. Be concise and use clear, plain language. Avoid technical terms. If technical terms are necessary, provide definitions.

2. Address the items required by the form in the order set out in the form. However, it is not necessary to provide disclosure ~~about an item~~in response to a requirement or part of a requirement that does not apply.

3. The issuer may include additional information in the offering memorandum other than that specifically required by the form. ~~An offering memorandum is generally not required to contain the level of detail and extent of disclosure required by a prospectus. Generally, this description should not exceed 2 pages. However, an offering memorandum must provide a prospective purchaser with sufficient information to make an informed investment decision.~~

4. The issuer may wrap the offering memorandum around a prospectus or similar document. However, all matters required to be disclosed by the offering memorandum must be addressed and the offering memorandum must provide a cross-reference to the page number or heading in the wrapped document where the relevant information is contained. The certificate to the offering memorandum must be modified to indicate that the offering memorandum, including the document around which it is wrapped, does not contain a misrepresentation.

5. It is an offence to make a misrepresentation in the offering memorandum. This applies to both ~~to~~ information that is required by the form and ~~to~~ additional information that is provided. Include particulars of any material facts, which have not been disclosed under any of the Item numbers and for which failure to disclose would constitute a misrepresentation in the offering memorandum. Refer also to section 3.8(3) of Companion Policy 45-106CP for additional information.

5.1 Do not disclose a maximum offering amount unless the issuer reasonably expects, as at the date of the offering memorandum, to distribute that amount under the offering memorandum.

6. ~~When the term "related party" is used in this form, it refers to:~~[Repealed]

~~(a) a director, officer, promoter or control person of the issuer,~~

~~(b) in regard to a person referred to in (a), a child, parent, grandparent or sibling, or other relative living in the same residence,~~

~~(c) in regard to a person referred to in (a) or (b), his or her spouse or a person with whom he or she is living in a marriage-like relationship,~~

~~(d) an insider of the issuer,~~

~~(e) a company controlled by one or more individuals referred to in (a) to (d), and~~

~~(f) in the case of an insider, promoter or control person that is not an individual, any person that controls that insider, promoter or control person.~~

~~(If the issuer is not a reporting issuer, the reference to "insider" includes persons or companies who would be insiders of the issuer if that issuer were a reporting issuer.)~~

7. ~~Disclosure is required in item 3.1 of compensation paid directly or indirectly by the issuer or a related party to a director, officer, promoter and/or principal holder if the issuer receives a direct benefit from such compensation paid.~~[Repealed]

8. Refer to National Instrument 43-101 *Standards of Disclosure for Mineral Projects* (NI 43-101) when disclosing scientific or technical information for a mineral project of the issuer.

9. If an oil and gas issuer is disclosing information about its oil and gas activities, it must ensure that the information is disclosed in accordance with Part 4 and Part 5 of National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* (NI 51-101). Under section 5.3 of NI 51-101, disclosure of reserves or resources must be consistent with the reserves and resources terminology and categories set out in the Canadian Oil and Gas Evaluation Handbook. For the purposes of this instruction, references to reporting issuer in Part 4 and Part 5 of NI 51-101 will be deemed to include all issuers.

10. Securities legislation restricts what can be told to investors about the issuer's intent to list or quote securities on an exchange or market. Refer to applicable securities legislation before making any such statements.

11. If an issuer uses this form in connection with a distribution under an exemption other than section 2.9 (*offering memorandum*) of ~~National~~the Instrument ~~45-106 *Prospectus and Registration Exemptions*~~, the issuer must modify the disclosure in

item 11 to correctly describe the purchaser's rights. If a purchaser does not have statutory or contractual rights of action in the event of a misrepresentation in the offering memorandum, that fact must be stated in bold on the face page.

12. During the course of a distribution of securities, any material forward-looking information disseminated must only be that which is set out in the offering memorandum. If an extract of FOFI, as defined in National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102), is disseminated, the extract or summary must be reasonably balanced and have a cautionary note in boldface stating that the information presented is not complete and that complete FOFI is included in the offering memorandum.

13. The term quasi-criminal offence includes offences under tax, immigration or money laundering legislation.

B. Financial Statements - General

1. All financial statements, operating statements for an oil and gas property that is an acquired business or a business to be acquired, and summarized financial information as to the aggregated amounts of assets, liabilities, revenue and profit or loss of an acquired business or business to be acquired that is, or will be, an investment accounted for by the issuer using the equity method included in the offering memorandum must comply with National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*, regardless of whether the issuer is a reporting issuer or not.

   Under National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*, financial statements are generally required to be prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises. An issuer using this form cannot use Canadian GAAP applicable to private enterprises, except, subject to the requirements of NI 52-107, certain issuers may use Canadian GAAP applicable to private enterprises for financial statements for a business referred to in C.1. An issuer that is not a reporting issuer may prepare acquisition statements in accordance with the requirements of NI 52-107 as if the issuer were a venture issuer as defined in NI 51-102. For the purposes of Form 45-106F2, the "applicable time" in the definition of a venture issuer is the acquisition date.

2. Include all financial statements required by these instructions in the offering memorandum immediately before the certificate page of the offering memorandum.

3. If the issuer has not completed one financial year or its first financial year end is less than 120 days from the date of the offering memorandum, include in the offering memorandum financial statements of the issuer consisting of:

(a) a statement of comprehensive income, a statement of changes in equity and a statement of cash flows for the period from inception to a date not more than 90 days before the date of the offering memorandum,

(b) a statement of financial position as at the end of the period referred to in paragraph (a), and

(c) notes to the financial statements.

4. If the issuer has completed one or more financial years, include in the offering memorandum annual financial statements of the issuer consisting of:

(a) a statement of comprehensive income, a statement of changes in equity and a statement of cash flows for

(i) the most recently completed financial year that ended more than 120 days before the date of the offering memorandum, and

(ii) the financial year immediately preceding the financial year in clause (i), if any,

(b) a statement of financial position as at the end of each of the periods referred to in paragraph (a),

(c) a statement of financial position as at the beginning of the earliest comparative period for which financial statements that are included in the offering memorandum comply with IFRS in the case of an issuer that

(i) discloses in its annual financial statements an unreserved statement of compliance with IFRS, and

(ii) does any of the following:

(A) applies an accounting policy retrospectively in its annual financial statements;

(B) makes a retrospective restatement of items in its annual financial statements;

(C) reclassifies items in its annual financial statements,

(d) in the case of an issuer's first IFRS financial statements as defined in NI 51-102, the opening IFRS statement of financial position at the date of transition to IFRS as defined in NI 51-102, and

(e) notes to the financial statements.

4.1 If an issuer presents the components of profit or loss in a separate income statement, the separate income statement must be displayed immediately before the statement of comprehensive income filed under Item 4 above.

5. If the issuer has completed one or more financial years, include in the offering memorandum an interim financial report of the issuer comprised of:

(a) a statement of comprehensive income, a statement of changes in equity and a statement of cash flows for the most recently completed interim period that ended

(i) more than 60 days before the date of the offering memorandum, and

(ii) after the year-end date of the financial statements required under B.4(a)(i),

(b) a statement of comprehensive income, a statement of changes in equity and a statement of cash flows for the corresponding period in the immediately preceding financial year, if any,

(c) a statement of financial position as at the end of the period required by paragraph (a) and the end of the immediately preceding financial year,

(d) a statement of financial position as at the beginning of the earliest comparative period for which financial statements that are included in the offering memorandum comply with IFRS in the case of an issuer that

(i) discloses in its interim financial report an unreserved statement of compliance with International Accounting Standard 34 *Interim Financial Reporting*, and

(ii) does any of the following:

(A) applies an accounting policy retrospectively in its interim financial report;

(B) makes a retrospective restatement of items in its interim financial report;

(C) reclassifies items in its interim financial report,

(e) in the case of the first interim financial report in the year of adopting IFRS, the opening IFRS statement of financial position at the date of transition to IFRS,

(f) for an issuer that is not a reporting issuer in at least one jurisdiction of Canada immediately before filing the offering memorandum, if the issuer is including an interim financial report of the issuer for the second or third interim period in the year of adopting IFRS include

(i) the issuer's first interim financial report in the year of adopting IFRS, or

(ii) both

(A) the opening IFRS statement of financial position at the date of transition to IFRS, and

(B) the annual and date of transition to IFRS reconciliations required by IFRS 1 *First-time Adoption of International Financial Reporting Standards* to explain how the transition from previous GAAP to IFRS affected the issuer's reported financial position, financial performance and cash flows, and

(g) notes to the financial statements.

5.1 If an issuer presents the components of profit or loss in a separate income statement, the separate income statement must be displayed immediately before the statement of comprehensive income filed under item 5 above.

6. An issuer is not required to include the comparative financial information for the period in B.4.(a)(ii) in an offering memorandum if the issuer includes financial statements for a financial year ended less than 120 days before the date of the offering memorandum.

7. For an issuer that is not an investment fund, the term "interim period" has the meaning set out in NI 51-102. In most cases, an interim period is a period ending ~~nine, six,~~9, 6, or ~~three~~3 months before the end of a financial year. For an issuer that is an investment fund, the term "interim period" has the meaning set out in National Instrument 81-106 *Investment Fund Continuous Disclosure* (NI 81-106).

8. The comparative financial information required under B.5(b) and (c) may be omitted if the issuer has not previously prepared financial statements in accordance with its current or, if applicable, its previous GAAP.

9. The financial statements required by B.~~3 and the financial statements of the most recently completed financial period referred to in B.4~~3, B.4 and B.12.1(a) must be audited. The financial statements required ~~under~~by B.5, B.~~6~~6, B.12.1(b) and the comparative financial information required by B.4 may be unaudited; however, if

any of those financial statements have been audited, the auditor's report must be included in the offering memorandum.

10. Refer to National Instrument 52-108 *Auditor Oversight* for requirements relating to reporting issuers and public accounting firms.

11. All unaudited financial statements and unaudited comparatives must be clearly labelled as unaudited.

12. [Repealed]

~~12. If~~12.1 If the distribution is ongoing, the issuer must do the following:

(a) if the offering memorandum does not contain audited annual financial statements for the issuer's most recently completed financial year, ~~and if the distribution is ongoing, update~~the issuer must do the following:

(i) amend the offering memorandum to include the ~~annual~~ audited annual financial statements and the accompanying auditor's report as soon as the issuer has approved the audited financial statements, but in any event no later than the 120th day following the financial year end~~.~~;

(ii) present the offering memorandum and the audited annual financial statements in accordance with the instructions in A, B and C and, for that purpose, the reference to the financial year in B.4(a)(i) shall mean the issuer's most recently completed financial year;

(b) ~~13. The~~if the offering memorandum does not ~~have to be updated~~contain an interim financial report for the issuer's most recently completed 6-month period, the issuer must do the following:

(i) amend the offering memorandum to include the interim financial ~~reports for periods completed after the date that is 60 days before~~report no later than the 60th day following the ~~date of the offering memorandum unless it is necessary to prevent the offering memorandum from containing a misrepresentation.~~end of the period;

(ii) present the offering memorandum and the interim financial report in accordance with the instructions in A, B and C and, for that purpose, the reference to the interim period in B.5(a) shall mean the issuer's most recently completed 6-month period.

12.2 If the issuer has included in its offering memorandum an interim financial report for its most recently completed 9-month period, B. 12.1(b) does not apply.

13. [Repealed]

14. Forward looking information, as defined in NI 51-102, included in an offering memorandum must comply with section 4A.2 of NI 51-102 and must include the disclosure described in section 4A.3 of NI 51-102. In addition to the foregoing, FOFI or a financial outlook, each as defined in NI 51-102, included in an offering memorandum must comply with Part 4B of NI 51-102. For an issuer that is not a reporting issuer, references to "reporting issuer" in section 4A.2, section 4A.3 and Part 4B of NI 51-102 ~~should~~must be read as references to an "issuer". Additional guidance may be found in the companion policy to NI 51-102.

15. ~~If the issuer is a limited partnership, in addition to the financial statements required for the issuer, include in the offering memorandum the financial statements in accordance with Part B for the general partner and, if the limited partnership has active operations, for the limited partnership.~~[Repealed]

16. ~~Despite section B.5, an issuer may include a comparative interim financial report of the issuer for the most recent interim period, if any, ended~~ [Repealed]

~~(a) subsequent to the most recent financial year in respect of which annual financial statements of the issuer are included in the offering memorandum, and~~

~~(b) more than 90 days before the date of the offering memorandum.~~

~~This section does not apply unless~~

~~(a) the comparative interim financial report is the first interim financial report required to be filed in the year of adopting IFRS, and the issuer is disclosing, for the first time, a statement of compliance with International Accounting Standard 34 *Interim Financial Reporting*,~~

~~(b) the issuer is a reporting issuer in the local jurisdiction immediately before the date of the offering memorandum, and~~

~~(c) the offering memorandum is dated before June 29, 2012.~~

C. Financial Statements - Business Acquisitions

1. If the issuer

(a) has acquired a business during the past two years and the audited financial statements of the issuer included in the offering memorandum do not include the results of the acquired business for 9 consecutive months, or

(b) is proposing to acquire a business and the acquisition has progressed to a state where a reasonable person would believe that the likelihood of the acquisition being completed is high,

include the financial statements specified in C.4 for the business if either of the tests in C.2 is met, irrespective of how the issuer accounts, or will account, for the acquisition.

2. Include the financial statements specified in C.4 for a business referred to in C.1 if either:

(a) the issuer's proportionate share of the consolidated assets of the business exceeds ~~40~~100% of the consolidated assets of the issuer calculated using the annual financial statements of each of the issuer and the business for the most recently completed financial year of each that ended before the acquisition date or, for a proposed acquisition, the date of the offering memorandum or

(b) the issuer's consolidated investments in and advances to the business as at the acquisition date or the proposed date of acquisition exceeds ~~40~~100% of the consolidated assets of the issuer, excluding any investments in or advances to the business, as at the last day of the issuer's most recently completed financial year that ended before the date of acquisition or the date of the offering memorandum for a proposed acquisition. For information about how to perform the investment test in this paragraph, please refer to subsections 8.3(4.1) and (4.2) of NI 51-102. Additional guidance may be found in the companion policy to NI 51-102.

2.1 [Repealed]

3. If an issuer or a business has not yet completed a financial year, or its first financial year ended within 120 days of the offering memorandum date, use the financial statements referred to in B.3 to make the calculations in C.2.

4. If under C.2 you must include in an offering memorandum financial statements for a business, the financial statements must include:

(a) If the business has not completed one financial year or its first financial year end is less than 120 days from the date of the offering memorandum

(i) a statement of comprehensive income, a statement of changes in equity and a statement of cash flows

(A) for the period from inception to a date not more than 90 days before the date of the offering memorandum, or

(B) if the date of acquisition precedes the ending date of the period referred to in (A), for the period from inception to the acquisition date or a date not more than 45 days before the acquisition date,

(ii) a statement of financial position dated as at the end of the period referred to in clause (i), and

(iii) notes to the financial statements.

(b) If the business has completed one or more financial years include

(i) annual financial statements comprised of:

(A) a statement of comprehensive income, a statement of changes in equity and a statement of cash flows for the following annual periods:

i. the most recently completed financial year that ended before the acquisition date and more than 120 days before the date of the offering memorandum, and

ii. the financial year immediately preceding the most recently completed financial year specified in clause i, if any,

(B) a statement of financial position as at the end of each of the periods specified in (A),

(C) notes to the financial statements, and

(ii) an interim financial report comprised of

(A) either

i. a statement of comprehensive income, a statement of changes in equity and a statement of cash flows for the most recently completed year-to-date interim period ending on the last date of the interim period

that ended before the acquisition date and more than 60 days before the date of the offering memorandum and ended after the date of the financial statements required under subclause (b)(i)(A)(i), and a statement of comprehensive income and a statement of changes in equity for the ~~three~~ 3-month period ending on the last date of the interim period that ended before the acquisition date and more than 60 days before the date of the offering memorandum and ended after the date of the financial statements required under subclause (b)(i)(A)(i), or

ii. a statement of comprehensive income, a statement of changes in equity and a statement of cash flows for the period from the first day after the financial year referred to in subparagraph (b)(i) to a date before the acquisition date and after the period end in subclause (b)(ii)(A)(i),

(B) a statement of comprehensive income, a statement of changes in equity and a statement of cash flows for the corresponding period in the immediately preceding financial year, if any,

(C) a statement of financial position as at the end of the period required by clause (A) and the end of the immediately preceding financial year, and

(D) notes to the financial statements.

Refer to Instruction B.7 for the meaning of "interim period".

5. The information for the most recently completed financial period referred to in C.4(b)(i) must be audited and accompanied by an auditor's report. The financial statements required under C.4(a), C.4(b)(ii) and the comparative financial information required by C.4(b)(i) may be unaudited; however, if those financial statements or comparative financial information have been audited, the auditor's report must be included in the offering memorandum.

6. If the offering memorandum does not contain audited financial statements for a business referred to in C.1 for the business's most recently completed financial year that ended before the acquisition date and the distribution is ongoing, update the offering memorandum to include those financial statements accompanied by

an auditor's report when they are available, but in any event no later than the date 120 days following the year-end.

7. The term "business" should be evaluated in light of the facts and circumstances involved. Generally, a separate entity or a subsidiary or division of an entity is a business and, in certain circumstances, a lesser component of an entity may also constitute a business, whether or not the subject of the acquisition previously prepared financial statements. The subject of an acquisition should be considered a business where there is, or the issuer expects there will be, continuity of operations. The issuer should consider:

   (a) whether the nature of the revenue producing activity or potential revenue producing activity will remain generally the same after the acquisition, and

   (b) whether any of the physical facilities, employees, marketing systems, sales forces, customers, operating rights, production techniques or trade names are acquired by the issuer instead of remaining with the vendor after the acquisition.

8. If a transaction or a proposed transaction for which the likelihood of the transaction being completed is high has been or will be a reverse take-over as defined in NI 51-102, include financial statements for the legal subsidiary in the offering memorandum in accordance with Part A. The legal parent is considered to be the business acquired. C.1 may also require financial statements of the legal parent.

9. An issuer satisfies the requirements in C.4 if the issuer includes in the offering memorandum the financial statements required in a business acquisition report under NI 51-102.

D. Financial Statement - Exemptions

1. ~~An issuer will satisfy the financial statement requirements of this form if it includes the financial statements required by securities legislation for a prospectus.~~[Repealed]

2. Notwithstanding the requirements in section 3.3(1)(a)(i) of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*, an auditor's report that accompanies financial statements of an issuer or a business contained in an offering memorandum of a non-reporting issuer may express a qualification of opinion relating to inventory if

(a) the issuer includes in the offering memorandum a statement of financial position that is for a date that is ~~subsequent to~~after the date to which the qualification relates, ~~and~~

(b) the statement of financial position referred to in paragraph (a) is accompanied by an auditor's report that does not express a qualification of opinion relating to closing inventory, and

(c) the issuer has not previously filed financial statements for the same entity accompanied by an auditor's report for a prior year that expressed a qualification of opinion relating to inventory.

3. If an issuer has, or will account for a business referred to in C.1 using the equity method, then financial statements for a business required by Part C are not required to be included if:

(a) the offering memorandum includes disclosure for the periods for which financial statements are otherwise required under Part C that:

(i) summarizes information as to the aggregated amounts of assets, liabilities, revenue and profit or loss of the business, and

(ii) describes the issuer's proportionate interest in the business and any contingent issuance of securities by the business that might significantly affect the issuer's share of profit or loss;

(b) the financial information provided under D.3(a) for the most recently completed financial year has been audited, or has been derived from audited financial statements of the business; and

(c) the offering memorandum discloses that:

(i) the financial information provided under D.3(a) for any completed financial year has been audited, or identifies the audited financial statements from which the financial information provided under D.3(a) has been derived; and

(ii) the audit opinion with respect to the financial information or financial statements referred to in D.3(c)(i) was an unmodified opinion.

4. Financial statements relating to the acquisition or proposed acquisition of a business that is an interest in an oil and gas property are not required to be included in an offering memorandum if either of the following apply:

(a) the acquisition is significant based only on the asset test ~~or:~~;

(b) ~~(a)~~ the issuer is unable to provide the financial statements in respect of the significant acquisition otherwise required because those financial statements do not exist or the issuer does not have access to those financial statements, and the following apply:

(i) ~~(b)~~ the acquisition was not or will not be a reverse take-over, as defined in NI 51-~~102, and~~102;

~~(c) [Repealed]~~

(ii) the following apply:

(A) ~~(d)~~ the offering memorandum ~~contains alternative disclosure for the business which~~ includes~~:(i)~~ an operating statement for the business or related businesses for each of the financial periods for which financial statements would, but for this section, be required under C.4 prepared in accordance with subsection 3.11(5) of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*~~. The~~;

(B) the operating statement for the most recently completed financial period referred to in C.4(b)(i) ~~must be~~is audited~~.~~;

(C) ~~(ii)~~ the offering memorandum includes a description of the property or properties and the interest acquired by the issuer~~;~~;

(D) ~~(iii)~~ the offering memorandum includes information with respect to the estimated reserves and related future net revenue attributable to the business, the material assumptions used in preparing the estimates and the identity and relationship to the issuer or to the seller of the person who prepared the estimates~~;~~;

(E) ~~(iv)~~ the offering memorandum includes actual production volumes of the property for the most recently completed year~~, and~~;

(F) ~~(v)~~ the offering memorandum includes estimated production volumes of the property for the first year reflected in the estimate disclosed under D.4(d)(iv).

5. Financial statements for a business that is an interest in an oil and gas property, or for the acquisition or proposed acquisition by an issuer of ~~a~~an oil and gas property, are not required to be audited if, during the 12 months preceding the acquisition date or the proposed acquisition date, the ~~daily~~ average daily production of the property ~~on a barrel of oil equivalent basis (with gas converted to oil in the ratio of six thousand cubic feet of gas being the equivalent of one barrel of oil) is less than 20 per cent~~is less than 20% of the ~~total daily~~ average daily production of the seller for the same or similar periods and:

   (i) despite reasonable efforts during the purchase negotiations, the issuer was prohibited from including in the purchase agreement the rights to obtain an audited operating statement of the property,

   (ii) the purchase agreement includes representations and warranties by the seller that the amounts presented in the operating statement agree to the seller's books and records, and

   (iii) the offering memorandum discloses

      1. that the issuer was unable to obtain an audited operating statement,
      2. the reasons for that inability,
      3. the fact that the purchase agreement includes the representations and warranties referred to in D.5(ii), and
      4. that the results presented in the operating statements may have been materially different if the statements had been audited.

Schedule 1- Additional Disclosure Requirements for an Issuer Engaged in Real Estate Activities

Guidance

For an issuer engaged in real estate activities, see subsection 6.4(4) of the Instrument with respect to the completion of this schedule.

General Instructions

1. Despite General Instruction A. 2, an issuer may choose where to integrate the disclosure specified by this schedule within the offering memorandum.

2. Information specified by this schedule that is disclosed in the offering memorandum in response to another provision of this form need not be repeated.

1. Definitions

In this schedule

"rental management agreement" means an agreement, other than a rental pool agreement, under which a person manages the generation of revenue from real property for another person;

"rental pool agreement" means an agreement creating a rental pool;

"rental pool" means an arrangement under which revenues derived from, or expenses relating to, two or more properties are pooled and shared among the owners of the properties in accordance with their proportionate interests in the pool.

2. Application

(1) This schedule applies to the following:

(a) each interest in real property held by the issuer;

(b) each interest in real property proposed to be acquired by the issuer, if the proposed acquisition has progressed to a state where a reasonable person would believe that the likelihood of the issuer completing the acquisition is high.

(2) Despite subsection (1), and except in the circumstances described in section 4, 5, 10 and 11, this schedule does not apply in respect of an

interest in real property, or more than one interest in real property taken together, that when considered in relation to all interests in real property held by the issuer, is not significant enough to influence a decision by a reasonable investor to buy, hold or sell a security of the issuer.

3. Description of Real Property

(1) Describe the following with respect to each interest in real property:

(a) the real property's location, both legal and descriptive;

(b) the nature of the interest;

(c) any encumbrances;

(d) any restriction on sale or disposition;

(e) any environmental liabilities, hazards or contamination;

(f) any tax arrears;

(g) who provides any utilities and other services or, if utilities and other services are not currently being provided, describe how they will be provided and who will provide them;

(h) the current use;

(i) the proposed use and why the issuer considers the real property to be suitable for its plans;

(j) with respect to any buildings affixed to the real property, the type of construction, age and condition, and a description of any units for sale or rental;

(k) for real property that the issuer leases to others, the occupancy level as at a date not more that 60 days before the date of the offering memorandum.

(2) If the issuer is providing disclosure on 20 or more interests in real property, it may for the purposes of subsection (1) disclose the information on a summarized basis with respect to either of the following:

(a) the portfolio of real property interests as a whole;

(b) the portfolio of real property interests broken into subgroups.

(3) Describe any current legal proceedings, or legal proceedings that the issuer knows to be contemplated, relating to each interest in real property, including, for each proceeding, the name of the court, the date instituted, the parties to the proceeding, the nature of the claim, any amount claimed, whether the proceeding is being contested, and the present status of the proceeding.

Instruction to Section 3

With respect to a proposed acquisition of one or more interests in real property, disclose the issuer's expectations regarding the matters set out in paragraphs (1)(b), (c) and (d) for the event that the acquisition is completed.

4. Appraisal

(1) If subsection 2.9(19.6) of the Instrument applies, disclose the following for any appraisal:

(a) the appraised fair market value of the interest in real property that is the subject of the appraisal;

(b) the effective date of the appraisal;

(c) that the appraisal is required to be delivered to the purchaser at the same time or before the offering memorandum is delivered to the purchaser.

(2) For each interest in real property to which subsection (1) applies, provide the most recent assessment by any assessing authority.

5. Purchaser's Interest in Real Property

If the purchaser will acquire an interest in real property, disclose the following:

(a) a description of the interest;

(b) how the interest will be evidenced in a public registry;

(c) any existing or anticipated encumbrances on the interest.

6. Developer, or Manager under a Rental Pool Agreement or Rental Management Agreement, Organization, Occupation and Experience, and

Penalties, Sanctions, Bankruptcy, Insolvency and Criminal or Quasi-Criminal Matters

(1) Subsection (2) applies for the following persons:

(a) a person other than the issuer that is or will be acting in the role of developer in respect of an interest in real property;

(b) in respect of real property in which the purchaser will acquire an interest, a person other than the issuer that will be acting in the role of manager under a rental management agreement, or manager for a rental pool.

(2) For each person described in subsection (1),

(a) state the legal name of the person, describe the business of the person and any experience that the person has in similar projects or a similar business, and, if the person is not an individual, the laws under which the person is organized or incorporated and the date that the person was organized or incorporated,

(b) if the person is not an individual, in the form of the following table, provide the specified information for any directors and executive officers of the person for the 5 years preceding the date of the offering memorandum,

Full legal name	Principal occupation and description of experience associated with the occupation

(c) if the following have occurred during the 10 years preceding the date of the offering memorandum with respect to the person, a director, executive officer or control person of the person, or an issuer of which any of those persons was a director, executive officer or control person at the time, describe the penalty, sanction or order, including the reason for it and whether it is currently in effect:

(i) a penalty or other sanction imposed by a court relating to a contravention of securities legislation;

(ii) a penalty or other sanction imposed by a regulatory body relating to a contravention of securities legislation;

(iii) an order restricting trading in securities, not including an order that was in effect for less than 30 consecutive days,

(d) if the following have occurred during the 10 years preceding the date of the offering memorandum with respect to the person, a director, executive officer or control person of the person, or an issuer of which any of those persons was a director, executive officer or control person at the time, state that it has occurred:

(i) a declaration of bankruptcy;

(ii) a voluntary assignment in bankruptcy;

(iii) a proposal under bankruptcy or insolvency legislation;

(iv) a proceeding, arrangement or compromise with creditors or appointment of a receiver, receiver manager or trustee to hold assets, and

(e) disclose and describe the following, if the person, or a director, executive officer or control person of the person has ever pled guilty to or been found guilty of:

(i) a summary conviction or indictable offence under the *Criminal Code* (Canada);

(ii) a quasi-criminal offence in any jurisdiction of Canada or a foreign jurisdiction;

(iii) a misdemeanour or felony under the criminal legislation of the United States of America, or any state or territory of the United States of America;

(iv) an offence under the criminal legislation of any other foreign jurisdiction.

7. Transfers

(1) For each interest in real property, for any transaction that a related party was party to, using the following table, starting with the most recent

transaction and specifying which party was the related party, disclose the following.

Date of transfer	Legal name of seller	Legal name of buyer	Amount and form of consideration

(2) Explain the reason for any material difference between the amount of consideration paid by the issuer and the amount of consideration paid by a related party for the interest in real property.

8. Approvals

For each interest in real property, if that real property is being developed, disclose the following:

(a) any approval required from a regulatory body or any level of government;

(b) the anticipated cost and timing of the approval;

(c) any reports required as part of the approval process, including the anticipated cost and timing of producing or procuring those reports;

(d) what will happen if the approvals are not obtained, including the effect on the following:

(i) the project;

(i) the purchaser's investment;

(ii) if applicable, the purchaser's interest in the real property.

9. Costs and Objectives

For each interest in real property, if that real property is being developed, disclose the following:

(a) estimated costs to complete the development;

(b) any significant assumptions that underlie the cost estimates;

(c) when significant costs will be incurred;

(d) the objectives of the project that are expected to be met within the 24 months following the date of the offering memorandum, including the following:

(i) the expected timeline for meeting the objectives;

(ii) how the issuer will meet the objectives;

(iii) the estimated costs of meeting each objective;

(iv) how the issuer will fund the cost of meeting each objective;

(e) the objectives for the project that are expected to be met after the 24-month period following the date of the offering memorandum, including the following:

(i) the expected timeline for meeting the objectives;
(ii) how the issuer will meet the objectives;

(iii) if the objectives are to be completed in phases, details about each phase;

(iv) the estimated cost of meeting each objective;

(v) how the issuer will fund the cost of meeting each objective;

(f) what reasonably might happen if any of the stated objectives are not met, including the effect of not meeting on objective on the following:

(i) the project;

(ii) the purchaser's investment;

(iii) if applicable, the purchaser's interest in the real property.

10. Future Cash Calls

If the purchaser is required to contribute additional funds in the future, disclose the following:

(a) the amount the purchaser is required to contribute;

(b) when the purchaser will be required to contribute;

(c) the effect on the purchaser's investment and, if applicable, the purchaser's interest in the real property, if the purchaser fails to contribute;

(d) the effect on the purchaser's investment and, if applicable, the purchaser's interest in the real property, if the purchaser contributes, but other purchasers fail to contribute.

11. Rental Pool Agreement or Rental Management Agreement

If the purchaser will acquire an interest in real property, and that interest will be or could be subject to a rental pool agreement or a rental management agreement, disclose the following:

(a) the key terms of the agreement, including, for certainty, those provisions dealing with whether the agreement is mandatory or optional, the duration of the agreement, opting out of the agreement, termination of the agreement, the sharing of revenues and losses, the payment of expenses, and any fees payable under the agreement;

(b) whether financial or other information about the rental pool or the results arising from the rental management agreement will be made available to purchasers, and if so, include the following:

(i) a description of the information;

(ii) if the information will include financial information, whether that financial information will be audited or subject to an independent review;

(iii) the frequency with which the information will be made available;

(iv) whether the information will be delivered to purchasers or whether access will be provided to it;

(v) if purchasers are to be provided access to the information, a description of the means of gaining access to it;

(c) the following statement, with the bracketed information completed as applicable:

"The success or failure of the [rental pool][arrangement resulting from the rental management agreement] will depend in part on the abilities of the manager";

(d) if the purchaser will be responsible for paying any loss arising pursuant to the rental pool agreement or rental management agreement, the following statement, with the bracketed information completed as applicable:

"If the [rental pool][rental management agreement] generates a loss, the purchaser must contribute further funds in addition to the purchaser's initial investment.".

12. Information Statements

If the purchaser will acquire an interest in real property, state the following in bold type:

"**Your rights relating to your interest in real property will be those provided under the laws of the jurisdiction in which the real property is located. Therefore, it is prudent to consult a lawyer who is familiar with the laws of that jurisdiction before making an investment.**

All real estate investments are subject to significant risk arising from changing market conditions.".

13. Risk Factors Relating to Real Property

With respect to the issuer's interests in real property, and any interest in real property to be acquired by the purchaser, describe the risk factors that would influence a reasonable investor's decision whether to invest, including, if applicable:

(a) risks associated with the following:

(i) the development of undivided real property into subdivisions;

(ii) the leasing of real property;

(iii) the holding of real property for sale or development;

(b) risks associated with encumbrances, conditions, or covenants on the real property that could affect the following:

(i) the purchaser's interest in the real property, if applicable;

(ii) the completion of the development of real property;

(c) risks pertaining to the development of real property, including the following:

(i) a right or lack of right of the purchaser with respect to the management and control of the real property;

(ii) a right or lack of right of the purchaser to change the developer of the property;

(d) risks pertaining to potential liability for the following:

(i) environmental damage;

(ii) unpaid obligations to builders, contractors and tradespersons;

(e) risks associated with litigation that relates to the real property.

Schedule 2 – Additional Disclosure Requirements for an Issuer That is a Collective Investment Vehicle

Guidance

For an issuer that is a collective investment vehicle, see subsection 6.4(5) of the Instrument with respect to the completion of this schedule.

General Instructions

1. Despite General Instruction A. 2, an issuer may choose where to integrate the disclosure specified by this schedule within the offering memorandum.

2. Information specified by this schedule that is disclosed in the offering memorandum in response to another provision of this form need not be repeated.

1. Investment Objectives and Strategy

(1) Except with respect to mortgage lending, describe the following:

(a) the issuer's investment objectives, investment strategy and investment criteria;

(b) any limitations or restrictions on investments, including concentration limits and use of leverage;

(c) how securities are identified, selected and approved for purchase or sale.

(2) For any mortgage lending by the issuer, describe the following:

(a) the issuer's investment objectives with respect to the following:

(i) the type of properties for which the issuer lends money;

(ii) the issuer's geographical focus;

(iii) the material mortgage terms, including range of interest rates and length of term;

(iv) the priority ranking of mortgages, in terms of first priority, second priority and third or lower priority;

(b) any policies or practices of the issuer with respect to the following:

(i) after initial funding of a mortgage, conducting any subsequent valuation of a property;

(ii) loaning money to a related party;

(iii) renewals;

(iv) concentrating funds in a single mortgage or lending funds to a single borrower or group of affiliated borrowers;

(v) determining that a borrower has the ability to repay a mortgage.

2. Portfolio Management and Penalties, Sanctions, Bankruptcy, Insolvency and Criminal or Quasi-Criminal Matters

(1) Identify the person responsible for the following:

(a) establishing and implementing the issuer's investment objectives and investment strategy;

(b) setting any limitations or restrictions on investments;

(c) monitoring the performance of the portfolio;

(d) making any adjustments to the issuer's portfolio.

(2) For each person described in subsection (1) that is not registered under the securities legislation of a jurisdiction of Canada,

(a) in the form of the following table, provide the specified information for the person and any directors and executive officers of the person for the 5 years preceding the date of the offering memorandum,

Full legal name	Principal occupation and description of experience associated with the occupation

(b) if the following have occurred during the 10 years preceding the date of the offering memorandum with respect to the person, or an

issuer of which the person was a director, executive officer or control person at the time, describe the penalty, sanction or order, including the reason for it and whether it is currently in effect:

(i) a penalty or other sanction imposed by a court relating to a contravention of securities legislation;

(ii) a penalty or other sanction imposed by a regulatory body relating to a contravention of securities legislation;

(iii) an order restricting trading in securities, not including an order that was in effect for less than 30 consecutive days,

(c) if the following have occurred during the 10 years preceding the date of the offering memorandum with respect to the person, or an issuer of which the person was a director, executive officer or control person at the time, state that is has occurred:

(i) a declaration of bankruptcy;

(ii) a voluntary assignment in bankruptcy;

(iii) a proposal under bankruptcy or insolvency legislation;

(iv) a proceeding, arrangement or compromise with creditors or appointment of a receiver, receiver manager or trustee to hold assets,

(d) disclose and describe the following, if the person has ever pled guilty to or been found guilty of:

(i) a summary conviction or indictable offence under the *Criminal Code* (Canada);

(ii) a quasi-criminal offence in any jurisdiction of Canada or a foreign jurisdiction;

(iii) a misdemeanour or felony under the criminal legislation of the United States of America, or any state or territory of the United States of America;

(iv) an offence under the criminal legislation of any other foreign jurisdiction, and

(e) disclose any exemption relied on by the person from the requirement to be registered under the securities legislation of a jurisdiction of Canada.

(3) For any person identified in subsection (1) that is not an employee of the issuer, disclose any remuneration paid to the person, and how the remuneration is calculated.

(4) Identify any person that is not an employee of the issuer, other than a person identified under subsection (1), that performs a significant role or provides a significant service for the issuer with respect to the securities in the issuer's portfolio, and describe the following:

(a) the role performed or service provided;

(b) the remuneration paid to the person and how that remuneration is calculated.

3. Portfolio Summary

(1) Except with respect to mortgage lending, as at a date not more than 60 days before the date of the offering memorandum, disclose the following:

(a) a description of the portfolio, or a description of the portfolio divided into subgroups including the percentage of the net asset value in each subgroup;

(b) the percentage of the net asset value that is impaired;

(c) the total number of positions held in securities.

(2) Except with respect to mortgage lending, if a security comprises 10% or more of the issuer's net asset value, disclose the following with respect to the security:

(a) the percentage of net asset value represented;

(b) a description of the security;

(c) any security interest held against the security;

(d) the amount of any impairment assigned to the security.

(3) For any mortgage lending by the issuer, disclose the following:

(a) the average of the interest rates payable under the mortgages, weighted by the principal amount of the mortgages;

(b) the average of the terms to maturity of the mortgages, weighted by the principal amount of the mortgages;

(c) the average loan-to-value ratio of the mortgages, calculated for each mortgage by dividing the total principal amount of the issuer's mortgage and all other loans ranking in equal or greater priority to the issuer's mortgage by the fair market value of the property, weighted by the principal amount of each mortgage;

(d) the principal amount, and the percentage of the total principal amount of the mortgages, that rank in the following:

(i) first priority;

(ii) second priority;

(iii) third or lower priority;

(e) the principal amount, and the percentage of the total principal amount of the mortgages, that is attributable to each jurisdiction of Canada, each state or territory of the United States of America and each other foreign jurisdiction;

(f) a breakdown by property type, and the principal amount, and the percentage of the total principal amount of the mortgages, that is attributable to each property type;

(g) with respect to mortgages that will mature in less than one year of the date of the summary provided in subsection (1), the percentage that those mortgages represent of the total principal amount of the mortgages;

(h) with respect to mortgages with payments more than 90 days overdue, the number of those mortgages, the principal amount of those mortgages, and the percentage that those mortgages represent of the total principal amount of the mortgages;

(i) with respect to mortgages that have an impaired value, the principal amount, and the percentage that those mortgages represent of the total principal amount of the mortgages;

(j) if known by the issuer, or if reasonably available to the issuer, the average credit score of the borrowers, weighted by the principal amount of the mortgages;

(k) if a mortgage comprises 10% or more of the total principal amount of the mortgages, disclose the following with respect to the mortgage:

(i) the principal amount, and the percentage of the total principal amount of the mortgages;

(ii) the interest rate payable;

(iii) the term to maturity;

(iv) the loan-to-value ratio, calculated by dividing the total principal amount of the issuer's mortgage and all other loans ranking in equal or greater priority to the issuer's mortgage by the fair market value of the property;

(v) whether the mortgage ranks in first, second, or third or lower priority;

(vi) the property type;

(vii) where the property is located;

(viii) any payment that is more than 90 days overdue;

(ix) any impairment of the mortgage;

(x) if known by the issuer, or if reasonably available to the issuer, the credit score of each borrower.

(4) If the issuer's portfolio includes self-liquidating financial assets other than mortgages, with respect to those assets, and for any subgroups identified in paragraph (1)(a), disclose the following:

(a) the collection rate for each of the issuer's two most recently completed financial years that ended more than 120 days before the date of the offering memorandum;

(b) the issuer's reasonably anticipated loss and collection rate for the current financial year.

Instruction to Section 3

Calculate impairment in accordance with the accounting standards applicable to the issuer, and in a manner that is consistent with the disclosure in the issuer's financial statements.

4. Portfolio Performance

(1) For the 10 most recently completed financial years of the issuer ended more than 120 days before the date of the offering memorandum, provide performance data for the issuer's portfolio.

(2) Describe the methodology used with respect to the following:

(a) determining the value of the securities in the portfolio for the purposes of calculating the performance data;

(b) calculating the performance data of the portfolio.

Instruction to Section 4

The methodology described in paragraph (2)(a) must be the same as the methodology used in the issuer's financial statements.

5. Ongoing Disclosure

Describe any information that purchasers will receive on an ongoing basis about the issuer's portfolio. If none, state that fact.

6. Conflicts of Interest

Describe any conflicts of interest, including, for certainty, with respect to related parties, that a reasonable purchaser would need to be made aware of to make an informed investment decision.

ANNEX E

Local Matters

ASC Rule 45-509

ASC Rule 45-509 *Offering Memorandum for Real Estate Securities* (**ASC Rule 45-509**) requires additional disclosure in an offering memorandum when the purchaser's investment relates to a real estate project, as that term is defined in the rule. The Proposed Amendments contemplate a broader regime, in which all issuers engaged in "real estate activities" (as defined in the Proposed Amendments) would provide additional disclosure in an offering memorandum. As a result, staff expect that if in the future the Proposed Amendments or some version of them are enacted, staff would seek the repeal of ASC Rule 45-509.

Proposed Amendments to ASC Rule 45-511

The Proposed Amendments necessitate conforming changes to ASC Rule 45-511 *Local Prospectus Exemptions and Related Requirements* (**ASC Rule 45-511**). As a result, amendments are proposed to ASC Rule 45-511, which are shown in the Schedule.

SCHEDULE

PROPOSED AMENDMENTS TO
ALBERTA SECURITIES COMMISSION RULE 45-511 *LOCAL PROSPECTUS EXEMPTIONS AND RELATED REQUIREMENTS*

1. Alberta Securities Commission Rule 45-511 Local Prospectus Exemptions and Related Requirements is amended by this Instrument.

2. Subparagraph 3.4(2)(a)(i) is amended by replacing "(14)**" with "**(14.1)**".***

3. Clause 3.4(2)(a)(ii)(A) is replaced with the following:

(A) the certificate required by subsections 2.9(8), (9), (10), (10.1), (10.2), (10.3), (11), (11.1), (12) and (14.1) of National Instrument 45-106 *Prospectus Exemptions*, and**.**

4. This Instrument comes into force on •.

LIST OF COMMENTERS

	Commenter
1.	Canadian Advocacy Council of CFA Societies Canada
2.	Canadian Association of Alternative Strategies & Assets
3.	Equiton Partners Inc.
4.	FrontFundr Financial Services Inc.
5.	Investment Industry Association of Canada
6.	Norton Rose Fulbright Canada LLP
7.	Larry Wilkins
8.	Private Capital Markets Association of Canada
9.	Skyline Group of Companies
10.	Steve Cohen Law Professional Corporation
11.	Three Point Capital Corp.
12.	Veronica Armstrong Law Corporation
13.	Wanda Morris

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December 16, 2020

VIA EMAIL

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Office of the Superintendent of Securities, Service NL
Financial and Consumer Services Commission, New Brunswick
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Office of the Yukon Superintendent of Securities
Northwest Territories Office of the Superintendent of Securities
Nunavut Securities Office

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Dear Sirs/Mesdames:

Re: Proposed Amendments to National Instrument 45-106 Prospectus Exemptions and Proposed Changes to Companion Policy 45-106CP Prospectus Exemptions Relating to the Offering Memorandum Prospectus Exemption (collectively, the "Proposed Amendments")

The Canadian Advocacy Council of CFA Societies Canada[1] (the "CAC") appreciates the opportunity to provide the following comments on the Proposed Amendments.

We understand that the Proposed Amendments are intended to provide clarity and additional information on issuers engaged in "real estate activities" and those that are "collective investment vehicles" when they utilize the Offering Memorandum Prospectus Exemption ("OM Exemption") for distributing securities.

As CFA charterholders that hold investment decision-making roles, we often find that the fees, organizational disclosures, and investment risks and attributes set out in an offering memorandum ("OM") to be complicated, buried within other legal disclosures, and difficult for readers to understand in order to adequately evaluate a given investment opportunity. We agree there are several positive recommendations and prospective modifications to the OM disclosure in the Proposed Amendments, and we support the approach where disclosure is standardized across issuers and supplemented with industry specific information in Schedules to the greatest extent possible. We urge the CSA to continue to consider emphasizing clear and prominent fee and conflict disclosures upfront on the face pages of the OM as an important investor protection mechanism. We would encourage the CSA to also consider imposing a "plain language requirement" for specific portions of the OM, including the summary section, with cross references to where more detailed disclosures can be found in the document.

The notice accompanying the Proposed Amendments states that the OM Exemption is being used by larger and more complex issuers than originally contemplated. We believe the use of diagrams and tables, such as those that are already required for the "Use of Available Funds" disclosure, is more digestible for

[1] The CAC is an advocacy council for CFA Societies Canada, representing the 12 CFA Institute Member Societies across Canada and over 18,000 Canadian CFA charterholders. The council includes investment professionals across Canada who review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital markets in Canada. Visit www.cfacanada.org to access the advocacy work of the CAC.
CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organization is a champion of ethical behavior in investment markets and a respected source of knowledge in the global financial community. Our aim is to create an environment where investors' interests come first, markets function at their best, and economies grow. There are more than 177,600 CFA charterholders worldwide in 165 markets. CFA Institute has nine offices worldwide and there are 160 local member societies. For more information, visit www.cfainstitute.org.

investors than dense descriptive disclosure. Given the length and detailed nature of the prescribed form of OM, we would suggest mandating that issuers include an easily understandable organizational chart of their structure, showing the flow of fees and other funds upfront (currently, a description of the structure is required under Item 2.1 of Form 45-106F2). It is particularly important for issuers to be transparent about the amount, frequency and source of all fees that are payable in connection with the investment and the impact the payment of such fees will have on the net returns payable to the investors. Currently, fees paid to various services providers may be described throughout the document and thus it is difficult for investors to aggregate these costs in order to compare the total fees to other products or market norms.

The Proposed Amendments do not focus on the current "Use of Available Funds" chart in the OM. However, we believe this chart must also be improved in order to help investors understand the projected gross return of an investment and that, in some cases, the aggregate fees and costs associated with an investment could represent a large percentage of the aggregate capital raised, therefore substantially reducing the projected net return of such investment. Investors could then determine whether it will be difficult to earn a return on capital, or even a return of original capital, in the early years of an investment. This could also help with some confusion investors face from their client statements showing the investment at cost, which usually does not represent the redemption price. The chart should require an issuer to state the expected use of funds in both dollar terms and as a percentage of the amount raised. Such disclosure would also better represent the "J curve" of certain types of investments such as private equity funds (where certain vehicles tend to deliver negative returns in the early years).

We note that the Proposed Amendments have struck out disclosure in the OM to the effect that the available funds must be used for the disclosed purposes, and that if the funds may be reallocated, a statement would have been required indicating that funds would only be reallocated for sound business reasons. We are unsure of whether this removal means that such reallocation is no longer permitted and would appreciate confirmation of same.

We do not believe that the Proposed Amendments address all the concerns raised in Multilateral CSA Staff Notice 45-309 *Guidance for Preparing and Filing an Offering Memorandum under National Instrument 45-106 Prospectus and Registration Exemptions*. We have concerns about issuers with a practice of utilizing overly promotional marketing materials which is not consistent with the disclosure in the corresponding OM. We are aware that issuers often partner with exempt market dealers to promote an investment opportunity through investment seminars or presentation materials, and that those materials are often unbalanced and do not contain adequate conflict or risk disclosure.

Even though issuers are required in several jurisdictions to incorporate OM marketing materials by reference into the OM, stricter rules on the composition of marketing materials is required to ensure they are balanced. They need to contain key

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material facts and disclosure about the investment structure, fees and risks. For example, while fees may be discussed at a high-level, the impact of the fees on the potential return of investment is usually not discussed, nor are any conflicts arising from related party involvement in the offering. For issuers with complex organizational structures or investment strategies, marketing materials may use terms such as “indirect exposure” to the underlying investment (particularly debt exposure) without detailing what that really means. In addition, marketing materials may describe the “aspirational” objective of the capital raise (e.g. to acquire and flip commercial property) but fail to disclose the current stage of the project and the steps required before a return on investment is realistic. Assumptions used should be clearly disclosed, and the timing and likelihood of these assumptions occurring should be indicated where possible. A description of the assumptions is particularly important in the current economic environment, where business plans might take longer to materialize. We understand the inherently promotional nature of marketing materials, but regulators must set out their expectations for balanced marketing materials specifically in connection with the use of the revised OM Exemption.

Clarity on regulatory expectations for these specific marketing materials would also assist exempt market dealers or other registrants reviewing such documents against their know-your-client, know-your-product and suitability obligations.

We are also supportive of harmonizing, when possible, prospectus exemptions across Canada for ease of use by registrants, investors and issuers and to reduce the possibility of regulatory arbitrage across jurisdictions. For example, the requirement to incorporate marketing materials into an OM as part of the OM Exemption is not uniform across Canada, providing less protection to some investors. In addition, the OM Exemption is not available in some jurisdictions for the distribution of securities of an investment fund, which has led to issuers located in those jurisdictions utilizing the OM Exemption where permitted (even if that was not the intention of the regulators) and simply providing the same OM to other investors using a different prospectus exemption. We encourage regulators to continue to try to provide uniform protections across the country to investors purchasing securities under the OM Exemption.

In order to help fulfil the stated purpose of providing more certainty to issuers on the disclosure expectations, if the Proposed Amendments are adopted it would be helpful to quickly publish regulatory guidance identifying any issues so that they can be corrected and avoided in a timely manner. An ongoing review of the effectiveness of the amendments will lead to collecting more data and potentially lead to enhanced oversight of specific requirements for the use of the OM Exemption.

Our specific comments related to the Proposed Amendments follow.

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Issuers Engaged in Real Estate Activities

The Proposed Amendments would require issuers engaged in real estate activities to provide an independent appraisal of an interest in real property to the investor in the specified circumstances, including if the issuer intends to spend a material amount of the proceeds of the offering on an interest in real property. Such issuers would also need to add specific disclosure relating to the properties on a new Schedule 1 to Form 45-106F2, including information for those developing or operating real property.

We believe the definition of "real estate activities" is relatively clear, with the exception of the additional activities listed for the province of Quebec as exclusions, which is currently written as "the distribution of either of the following: (i) an investment contract that includes a real right of ownership in an immovable and a rental management agreement; or (ii) a securities of an issuer that owns an immovable giving the holder a right of exclusive use of a residential unit and a space in such immovable". We believe these phrases are ambiguous and open to interpretation, and thus would suggest some clarifications may be required.

We understand the purpose of the proposed requirement to provide an independent appraisal for real property. The Proposed Amendments suggest that an appraisal would be required if the issuer intends to spend "*a material amount of the proceeds*" (emphasis added) on an interest in real property. Different issuers and their managers may interpret the term "material" differently and/or too liberally, which presents risks to investors.

A single purpose vehicle making an investment in one property would likely meet this threshold and should be required to provide the suggested appraisal. However, as we are cognizant of the time and expense involved in obtaining independent appraisals, vehicles with different forms of investments or strategies would benefit from regulatory clarity on what "material" means in this context. We also query the benefit of providing hundreds of property appraisals for larger portfolios to the end investors, if "materiality" is not interpreted on a property-by-property basis but rather that a material amount of the proceeds are invested in one or more interests in real properties. For the later type of investment vehicle, it might suffice if a property appraisal were required for any one property that constituted a "material amount" (once defined) of the entire portfolio, or of a geographic region. Alternatively, appraisals could be provided on a rolling basis (e.g. obtaining an annual appraisal for 25% of the properties in the portfolio each year for four years until the entire portfolio is covered). Additional regulatory guidance on this point would help balance the cost burden with the benefits of additional transparency when warranted.

This requirement could be further expanded to require an appraisal within a shorter timeframe if there has been an event that has had a material adverse impact on the value of a property, but only in circumstances that in aggregate would have a

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material impact on the issuer's total portfolio. We anticipate this could be most useful for non-stabilized properties (such as those in development or pre-development). Such a requirement would deal with unforeseen market events, such as the expropriation of surrounding properties.

Item 3.1(k) in Schedule 1 would require disclosure, for real property that the issuer leases to others, of the occupancy level as at a date not more than 60 days before the date of the OM. We understand that different issuers have described the occupancy level of their investment properties differently from one another. Given that occupancy rates are a key metric reviewed by potential investors and that the methodology of the calculation and inputs into such rate are not standardized, we believe the CSA should mandate additional disclosure if this metric is included. Such disclosure should include the potential biases in presenting the information, which may otherwise understate the risk and inflate the prospects of the offering. For instance, certain issuers might report a tenant as "occupying" a property because the tenant is in place, but not because the tenant actually pays rent, as often landlords will offer free rent during the initial months of a lease to induce a tenant to move into their premises. The disclosure that a property is 100% occupied does not therefore necessarily mean that all tenants pay rent. For improved disclosure, we also believe that material rent abatements (duration and extent) granted by a landlord under certain circumstances (such as during the current pandemic) should be disclosed.

We strongly support the additional disclosures contemplated by the Proposed Amendments for related party transactions. It is important that investors be able to assess the validity of past transactions, the marketability of the underlying collateral and determine if the cost basis of the investment is subject to any bias. Item 7 of new Schedule 1 would require specific disclosure for each interest in real property for any transaction to which a related party was a party, including the amount and form of consideration. Issuers should also be required to disclose the basis or methodology of the amount of consideration, and whether an independent valuation was made available.

Issuers that are Collective Investment Vehicles

The Proposed Amendments would require collective investment vehicles to add specific disclosure on a new Schedule 2 to Form 45-106F2, including disclosure regarding the performance of the portfolio, in order to help provide prospective investors with additional information on the composition and performance of the portfolio.

We agree that disclosure of the performance of the portfolio is a useful metric to include in the OM, but note that in certain circumstances, absent regulatory guidance to the contrary, it may be necessary to update the document more frequently than would otherwise be the case if there has been a material change in the performance of the issuer leading to a potential misrepresentation in the OM if it is not updated or corrected.

For those issuers involved in factoring or otherwise holding receivables, the instructions could clarify that the information on the portfolio should include sufficient information on the unique or specific underlying business risks (e.g. with respect to potential non-payment of foreign receivables and /or the inability (or potential risks) in seeking recourse).

We think that additional guidance on the regulatory expectations for the preparation of performance numbers is important for issuers, particularly for those who may not have had to calculate performance numbers for distribution previously. CSA Staff Notice 31-325 *Marketing Practices of Portfolio Managers* contains good information on the potential use of hypothetical performance data, including the fact that such data should be restricted to investors known to have sophisticated investment knowledge, include clear and meaningful disclosure regarding the assumptions used to create the data, and clear disclosure of the risks and limitations of such data. The CSA should set out its expectations for the calculation and methodology used to present performance data over and above what is currently set out in the Proposed Amendments.

General Amendments

Other Proposed Amendments which would apply to all issuers using the OM Exemption are intended to address disclosure issues that staff have identified in their compliance reviews regarding offering memoranda.

We support the requirement to require the filed copy of an OM to allow for the searching of words electronically, which will be of assistance to investors and their advisors looking for key terms. We are also in favour of the new explicit requirement for an issuer to state on or close to the face page if they are disclosing a working capital deficiency as well as if they have paid dividends or distributions that exceeded cash flow from operations.

The Proposed Amendments include a new definition of a “related party”, which is key to some of the new disclosure requirements. Given the requirement to incorporate financial statements into the OM, we would recommend confirming that there are no gaps between the proposed definition and the definition of a related party under IAS 24 Related Party Disclosures, the purpose of which is in part to ensure disclosure draws the reader’s attention to the fact that an issuer’s financial position may be affected by the existence of related parties.

The Proposed Amendments would also require an offering memorandum to be updated to include interim financial reports for the most recently completed 6-month interim period where the distribution of securities under the offering memorandum is ongoing. While we are of the view that additional disclosure is generally beneficial for investors, we are concerned that given the time and costs involved in amending an offering memorandum frequently, the benefits to including such statements in the document may be outweighed by the burden placed on issuers. It may be possible as

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an alternative to encourage issuers to make interim financial statements available to investors but not require such statements to be incorporated into the document as a condition of the OM Exemption.

Section 2.9 (13.2) of NI 45-106 would require an amendment to the OM if there is a material change with respect to the issuer after the certificate is signed but before the issuer accepts an agreement to purchase the security. We think the requirement should refer to either a material change with respect to the issuer or the securities being offered through the OM.

A new Item 2.8 in the Form will require specific information in tabular format for related party transactions, including a column for the amount and form of consideration exchanged in connection with the transfer. As noted above, it is important that investors be able to determine if the transaction was completed at a fair price or subject to any bias, and thus we would recommend an additional column where the basis for the consideration would be described, including the valuation methodology (e.g. price in the purchase and sale agreement, valued at NAV, carrying cost).

Under Item 3.1 “Compensation and Security Holdings of Certain Parties”, we think it would be helpful if the item clarified that trustees of issuers set up as trust should be required to disclose any ownership interest, which is of particular importance for mortgage or real estate investment vehicles with individual trustees.

We strongly support the enhanced disclosure that is proposed to be required under Item 3.3 “Penalties, Sanctions, Bankruptcy, Insolvency and Criminal or Quasi-Criminal Matters”. We note that Section 3.3(a) requires disclosure if certain sanctions or orders relating to, among other things, a contravention of securities legislation has occurred during the 10 preceding years with respect to a director, executive officer or control person of the issuer. We query whether the 10 year period is sufficient with respect to sanctions under securities legislation, and note that when an individual seeks registration with a securities regulatory authority, Item 13.1(d) of Form 33-109F4 *Registration of Individuals and Review of Permitted Individuals* requires the applicant to disclose whether they have <u>ever</u> been subject to any disciplinary proceedings or order resulting from disciplinary proceedings under securities or derivatives legislation.

Item 4.2 “Long Term Debt Securities” will require disclosure of the interest rate payable on the debt of the issuer. We recommend specifying whether the interest rate is fixed or variable directly within the table or a link to the section explaining the debt, which can help determine whether any such debt is subject to interest rate risk.

We strongly support the addition of the chart in Item 5A illustrating the issuer’s redemption and retraction history. An OM currently describes the rights of investors to redeem their securities and the potential gates and limitations thereon, however it does not provide investors with a sense of how often the gates or other limitations or full suspension have been used in the past. The chart will provide a clear, easy to read

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summary which potential investors can use when considering the implications on the liquidity of their own potential investment.

We are also supportive of the proposed new Item 5B to Form 45-106F2, as the source of funds for dividends and distributions is an important indicator of any possible cash flow constraints. The information will be able to help investors identify if the issuer is raising additional capital to fund existing distribution (or redemption) obligations, which can have a large impact on the issuer's future performance.

Concluding Remarks

We thank you for the opportunity to provide these comments. We would be happy to address any questions you may have and appreciate the time you are taking to consider our points of view. Please feel free to contact us at cac@cfacanada.org on this or any other issue in future.

(Signed) *The Canadian Advocacy Council of CFA Societies Canada*

The Canadian Advocacy Council of CFA Societies Canada

00284754-4

CAASA
CANADIAN ASSOCIATION OF ALTERNATIVE STRATEGIES & ASSETS

SENT BY ELECTRONIC MAIL

December 16, 2020

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Office of the Superintendent of Securities, Service NL
Financial and Consumer Services Commission, New Brunswick
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Office of the Yukon Superintendent of Securities
Northwest Territories Office of the Superintendent of Securities
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Dear Sirs/Mesdames:

Re: CSA Notice and Request for Comment – Proposed Amendments to National Instrument 45-106 Prospectus Exemptions and Proposed Changes to Companion Policy 45-106CP Prospectus Exemptions Relating to the Offering Memorandum Prospectus Exemption (collectively, the "OM Exemption Amendments")

The Canadian Association of Alternative Strategies & Assets ("CAASA") is pleased to have this opportunity to comment on the OM Exemption Amendments.

CAASA was created in response to industry requests for a national group to represent the Canadian alternative investment participants, including investors, asset managers, and service providers. CAASA currently proudly represents more than 250 members including more than 25 of which are active in real estate investment funds and more than 15 that are active in mortgage lending. CAASA is inclusive in that it welcomes participation from all companies active in the space as well as select individuals (such as those employed by investors) who might want to participate in committees and working groups — or simply attend member events — without their employer being a member of the association. CAASA is very active with 12 committees and working groups, organizing approximately 50 events each year. Pan-alternative, for CAASA, encompasses all alternative strategies and assets including hedge funds/alternative trading strategies, private and public real estate (funds and direct), private lending, private equity, infrastructure, development and project finance, digital assets/crypto-assets, weather derivatives and cat bonds, and all aspects of diligence, trading, structuring, dealing, and monitoring alternatives in a stand-alone portfolio and as part of a larger investment strategy. For more information, please visit www.caasa.ca.

The OM Exemption Amendments, if adopted, will require issuers engaged in real estate activities (as defined) to include additional significant disclosure when they use the offering memorandum exemption (the "OM Exemption") to sell securities. To a somewhat lesser extent, issuers that are considered collective investment vehicles will also have additional disclosure obligations. Our comments below relate to the requirements that will be placed on issuers investing in real estate projects and mortgage investment entities. While we are supportive of minimum standards requiring clear, meaningful disclosure, we are concerned that the additional regulatory burden associated with several of the proposed new requirements outweigh the potential benefits to investors. Some of our members have estimated that the cost of preparing and filing an offering memorandum in the current form required by the OM Exemption can exceed $100,000. Issuers often utilize the services of third-party exempt market dealers, who charge the issuers a 10% commission, resulting in an issuer committing 12% of capital raised before even getting off the ground. While many of the new disclosure requirements are a welcome development, the totality of the new obligations may make it even more difficult and cost prohibitive for early stage and small businesses to raise capital in the private markets, and who need to be able to scale operations to thrive.

Our specific comments are set out below.

CAASA
CANADIAN ASSOCIATION OF ALTERNATIVE STRATEGIES & ASSETS

Property Appraisal Requirement

The OM Exemption Amendments would require issuers engaged in real estate activities to provide an independent appraisal of an interest in real property to the purchaser in the enumerated circumstances, including if the issuer intends to spend a material amount (emphasis added) of the proceeds of the offering on an interest in real property.

The application of the requirement to provide an appraisal if an issuer intends to spend a material amount of the proceeds of the offering on an interest in real property is unclear. We understand that a property appraisal may be an important consideration for single purpose investments, such as for a limited partnership that is formed for the purpose of raising capital to invest in one property. If an issuer's only activity relates to one property, then the issuer's business, the property, and the valuation methodology for the purchase price should all be explained and verified for potential investors. However, the utility of providing investors with copies of property appraisals vastly diminish for larger, more diversified property portfolios. The cost of providing many appraisals could become prohibitive quickly; to illustrate, it could cost upwards of $1 million/year to provide appraisals for a portfolio of approximately 80 buildings twice a year. These issuers would also be subject to the increased administrative burden of obtaining such appraisals, a burden to which not even reporting issuers would be subject.

We query whether investors would review tens, if not hundreds, of property appraisals as part of their investment decision making process. We believe the OM Exemption Amendments should clarify that the requirement only applies to the extent a material amount of the proceeds is directed to any one interest in real property. Clarification of this point, as well as additional regulatory guidance on the meaning of a "material amount" in this context, would be welcome by issuers to ensure a consistent level of disclosure in the industry. We have similar comments with respect to the new disclosure requirements in Schedule 1 to Form 45-106F2, below.

We also understand that larger issuers with a real estate portfolio already undertake a number of verification steps with respect to the values of their properties (initially set by their own experts), including obtaining consultant reports, cap rates and offset rates at the time of purchase. Such issuers also utilize the services of large professional audit firms that use their own valuators to confirm the reported prices and assumptions used for the portfolio and management of those issuers are responsible to report back to their boards of directors. Such measures are a valuable alternative to requiring unnecessary independent property appraisals adding hundreds of pages of disclosure and additional costs passed along to investors.

We note as well that even for smaller issuers, providing investors with a copy of a property appraisal could put that issuer at a competitive disadvantage if it later intends to try to sell that property. The value indicated on the appraisal could potentially set a ceiling value in

future auction negotiations and could be seen by some as proprietary information that should not specifically be handed out to investors.

Additional Disclosure in Schedule 1 to Form 45-106F2 for Issuers Engaged in Real Estate Activities

A new Schedule to Form 45-106F2 is proposed for issuers engaged in real estate activities, including, for issuers that own and operate developed real property, the age, condition and occupancy level of the property.

It is noted that the Schedule would not apply to an interest in real property, or more than one interest in real property taken together, that when considered in relation to all interests in real property held by the issuer, would not be significant enough to influence a decision by a reasonable investor to buy, hold or sell a security of the issuer. We agree that both issuers and investors benefit from the certainty provided from a tailored disclosure framework, but do not believe that the exception as stated is clear in its application. We would appreciate further guidance from the CSA on their expectations with respect to when the additional disclosure would be required (e.g. for interests in one property representing greater than 20% of the total investment portfolio of the issuer) in order to meet the stated purpose of consistent disclosure requirements for issuers.

The application of the exclusion is important, as the disclosure required by Section 3 of proposed Schedule 1 would amount to a large volume of additional material for any issuer with a substantial real estate portfolio. We submit that reams of information such as the legal description of a property's location, the utility provider, the type of construction, age and condition of any buildings affixed to the real property and a description of any units for sale or rental may be useful for a single purpose limited partnership investing in one commercial property, but the same cannot be said of a mature real estate fund with hundreds of properties. We believe it is more important that those issuers accurately, clearly and concisely describe their properties as they do currently, rather than incur the time and expense to prepare information that investors have not asked for and objectively do not require with respect to a larger portfolio. While the exclusion would seem to apply in these circumstances, greater certainly would be welcome. The demarcation is further confused in Section 3(2) of the Schedule, which provides that if the issuer is providing disclosure on 20 or more interests in real property, it may disclose the information on a summarized basis with respect to either the portfolio interests as a whole, or broken into subgroups. Such language suggests that portfolios of 20 or more would still be expected to provide the information in the Schedule (albeit in a summarized form) and the exclusion would not apply.

We note that the proposed exclusion would also not apply to section 4 (regarding any appraisals provided), section 5 (applicable to purchasers acquiring interests in real property),

section 10 (future cash calls) and section 11 (applicable to purchasers acquiring an interest in real property that could be subject to a rental pool agreement or a rental management agreement) of the Schedule.

While we would prefer that issuers with large, diversified portfolios not be subject to the additional disclosure in the Schedule, we agree that investors should be made aware of any potential future contribution requirements they will be called upon to make.

Additional Disclosure in Schedule 2 to Form 45-106F2 for Issuers that are Collective Investment Vehicles

The OM Exemption Amendments would require collective investment vehicles to complete a new Schedule 2 to Form 45-106F2, which would include requirements to disclose specific portfolio information. As it relates to issuers involved in mortgage lending, most of the disclosure requirements in Section 3(3) of the Schedule appear to be on an aggregate basis or based on an average of all mortgages in the portfolio. We would be concerned with any disclosure requirement that would allow competitors to reverse engineer the details of any one mortgage to identify the property or the borrower, including with respect to the borrower's name, interest rate or maturity date. For example, Section 3(3)(k) of the Schedule would require additional disclosure if a mortgage were to comprise 10% or more of the total principal amount of the mortgages. The extra disclosure would include the property type and where the property is located. The later requirement would not raise an issue if the property's location could be described in a general fashion (i.e. in the City of Montreal), but if it required a legal description of the property that would become problematic.

Section 4 of the Schedule would require an issuer to provide performance data for the 10 most recently completed financial years of the issuer ended more than 120 days before the date of the offering memorandum, including a description of the valuation methodology for the portfolio securities and the methodology for calculating the performance data. We think it would be helpful to clarify regulatory expectations for issuers with less than 10 years of history as well as additional guidance on how the performance numbers should be presented (e.g. in chart form with metrics following).

General Amendments

Certain of the proposed amendments would apply to all issuers using the OM Exemption, including a requirement to amend an offering memorandum to include an interim financial report for the most recently completed 6-month interim period, when a distribution of securities under the document is ongoing. We believe that the current financial statement requirements required for use of the OM Exemption are sufficient. Together with the requirement to ensure that an offering memorandum does not contain a misrepresentation, we believe that investors are

provided with sufficient accurate financial information. The added time and cost to update every offering memorandum to include interim financial reports in the enumerated circumstances does not appear to be warranted.

If there have been specific concerns with the audited information presented, we would prefer to see more targeted regulatory reforms or enforcement actions related to those specific issues.

Concluding Remarks

Thank you for considering our submissions. We would be pleased to answer any questions you may have or discuss our comments in further detail.

Yours truly,

"James Burron"
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December 15, 2020

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Nova Scotia Securities Commission
Nunavut Securities Office
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Ontario Securities Commission
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

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Dear Sirs/Mesdames:

Re: Request for Comment - Proposed Amendments to National Instrument 45-106 Prospectus Exemptions and Proposed Changes to Companion Policy 45-106CP Prospectus Exemptions Relating to the Offering Memorandum Prospectus Exemption (the "Proposed Amendments")

We are pleased to provide comments on the Proposed Amendments on behalf of Equiton Partners Inc. and its affiliates ("Equiton"). Equiton is a private equity firm specializing in real estate that offers alternative investments in the private capital market through two private real estate investment trusts (REITs) with a combined net asset value exceeding $240 million. These funds are issuers engaged in real estate activities as defined in the Proposed Amendments.

We support the CSA's effort to improve disclosure for investors accessing the private capital market through the Offering Memorandum Prospectus Exemption and to provide issuers with clear disclosure requirements. The private capital market is important for providing small issuers with access to capital and providing investors with real estate investment opportunities that are not subject to the volatility of the public markets. Improved disclosure will give investors more confidence in making private market investments and better serve all private market participants. We do have some specific comments on aspects of the Proposed Amendments that will impose an inordinate regulatory burden or require some clarification.

Interim Financial Statements

The Proposed Amendments will impose a requirement on issuers in ongoing distributions to amend the offering memorandum to include interim financial reports for the most recently completed 6-month period. These interim financial reports may be unaudited. While this may seem like an innocuous requirement, it will impose a significant regulatory burden and cost.

The offering memorandums for the Equiton funds are updated and amended annually through a process requiring a review and approval by the fund's external legal counsel which prepares the updated offering memorandums as well as a review and approval by the fund's auditors which prepare the audited financial statements attached to the offering memorandums. These reviews and approvals are required before the independent trustees of the fund will approve the updated memorandum. This review process is important to ensure that the updated offering memorandum provides full and accurate disclosure and does not contain any misrepresentations. This is a costly process that involves not only professional fees for external counsel and the auditors but also for the independent property appraisers that prepare the property valuations that the auditors rely on to produce the financial statements. Once approved, there are also translation costs of the offering memorandum for distributions in Quebec which are significant. Amending the offering memorandum after six months to include unaudited interim financial statements will require a similar process and associated costs.

These costs are not fully captured in Table 7 *(Estimated Total Cost of 6-month Amendment of Offering Memorandum)* of the cost-benefit analysis contained in Annex E to the Proposed Amendments. It is submitted that these total costs far exceed the anticipated benefit that more current disclosure will allow investors to make a "more informed' investment decision. It is also submitted that this proposed six-month update by amendment to the offering memorandum is

unnecessary. Interim financial statements will typically not disclose any significant change in the financial position of an issuer that would impact an investor's decision to invest. Any significant change in the financial position of an issuer during the year constituting a material change would require issuers to amend the offering memorandum in any event. The proposed amendment of the offering memorandum to include unexceptional interim financial statements requires the same process as updating and amending the offering memorandum annually and the associated costs. The regulatory burden associated with this requirement in the Proposed Amendments is issuance costs that will be almost 100% higher. It is our experience that investors are not seeking this information as we have never received such a request for unaudited interim financial statements.

If the CSA feels that it is important to get unaudited financial statements for the six month period to investors, a less costly alternative could be accomplished by an amendment to the Offering Memorandum Prospectus Exemption requiring that these unaudited financial statements be filed with the regulators where they will be posted on SEDAR and made available to the public as are the annual audited financial statements. This would impose virtually no cost on issuers as it would not require an amendment to the offering memorandum. Any investors who want this information would be able to access it on SEDAR at no cost.

Appraisals

The Proposed Amendments would require issuers to deliver an appraisal of an interest in real estate where the issuer proposes to use a material amount of the proceeds of the offering to acquire an interest in real property. This requirement may be reasonable for an issuer proposing to raise funds to acquire an identified property but is problematic for issuers in ongoing distributions that raise money to acquire interests in real properties to add to a portfolio in accordance with the investment objectives disclosed in the offering memorandum. While all of the proceeds of the offering will be used to acquire interests in real property, a specific property may not be identified at the time of a distribution or properties may be in negotiation which are typically subject to non-disclosure agreements until a purchase and sale agreement is finalized. The operation of proposed section s.19.5(c) and s.19.6 would require the issuer to deliver to a purchaser an appraisal of "the interest in real property" but it Is not clear as to what "interest in real property" is to be the subject of the appraisal given that a specific property has not been identified. There needs to be an exception from section 19.5(c) for issuers using proceeds of offerings with ongoing distributions.

A further issue arises with the requirement on issuers to deliver an appraisal to purchasers with the offering memorandum under proposed section 19.6 and file an appraisal with regulators concurrently with the offering memorandum under proposed section 19.7. The appraised or estimated value of a commercial property is largely based on the net operating income of the property. Appraisals of commercial properties generally are lengthy documents running 75 pages or more and contain operating and financial data for the property that may have been provided by the owner/vendor of the property on a confidential basis and may be subject to a non-disclosure agreement. A similar confidentiality agreement between the property appraiser and the client is also typically contained in the property appraisal itself which requires the prior written consent of the appraiser to disseminate all or any part of the appraisal. A condition contained in property appraisals recently prepared for Equiton expressly states that "all or part of the contents of the report shall not be disseminated or otherwise conveyed to the public in any manner whatsoever or ... quoted from or referred to in any offering memorandum of the

client or in any documents filed with any governmental agency without the prior written consent and approval of the author...". This is contained in the Assumptions and Limiting Conditions Addendum attached to the appraisal which we believe follows a template mandated by the Appraisal Institute of Canada for use by its members. The proposed delivery and filing requirements may require an issuer to breach such agreements. It may be possible to address some of the confidentiality issues as it relates to non-arms-length related party transactions where independent appraisals are critical but we would recommend that the CSA consult with the Appraisal Institute of Canada on this proposal and the role of its members' appraisals in the securities regulatory regime before proceeding with the Proposed Amendments.

Form 45-106F2 -Schedule 1 - Additional Disclosure Requirements

The additional disclosure requirements for issuers engaged in real estate activities set out in proposed Schedule 1 to Form 45-106F2 will require the disclosure of information that may be voluminous and significantly add to the length of the offering memorandum while not providing any useful information. We address those requirements with reference to the section numbers in the proposed schedule below.

Description of Real Property

In Section 3 of the proposed Schedule 1 prescribing the disclosure of the Description of Real Property, subparagraph 3(1)(a) would require disclosure of the "property's location, both legal and descriptive". Legal descriptions of real property can be long and complex due to numerous and complicated easements. Further, one of our funds also owns a couple of condominium properties held as purpose-built rental apartment buildings but the legal description of these properties consists of individual legal descriptions for each of the individual condominium units as well as the common elements and runs for over five pages for each property. For most properties, it is submitted that a municipal address is sufficient disclosure to identify the location of the property for the purposes of the offering memorandum.

Subparagraph 3(1)(c) would require the disclosure of any encumbrances but in addition to mortgages, construction liens, tax liens and execution liens, easements are another type of encumbrance against title to a property. As discussed above, the description of easements, which in many cases are utility easements, can be long and complex with references to parts on registered reference plans that provide no useful information to investors. It is submitted that easements should be expressly excluded from the disclosure of encumbrances in subparagraph 3(1)(c).

Subparagraph 3(1)(g) would require disclosure of the entities providing utilities and other services to the property. Given that most utility providers are municipally owned (hydro, water) or heavily regulated (gas, cable, phone) monopolies with no choice available to property owners, it is difficult to understand how this disclosure is of any use to investors.

Subparagraph 3(1)(k) would require disclosure of the occupancy level of property that an issuer leases as at a date not more than 60 days before the date of the offering memorandum. As with all information disclosed in the offering memorandum, occupancy levels should only be disclosed in the offering memorandum if it is material information. For example, the occupancy levels in a portfolio of 50 multi-family residential apartment buildings with thousands of rental units may change on an almost daily basis and is likely not material, particularly when it is "as

of" a date 60 days prior to the date of the offering memorandum and which may be many months before an investor makes an investment decision based on it. Further, if occupancy levels are disclosed in the offering memorandum, is this now considered material information that requires an amendment to the offering memorandum if it changes? Using the apartment portfolio example, if during the 60 day period prior to the date of the offering memorandum, the occupancy level across the portfolio dropped from a disclosed 98% in the offering memorandum to 93% and then increased to 95% on the date of the offering memorandum, would these changes require amendments to the offering memorandum? If not, would the failure to update the offering memorandum with the most recent occupancy level on the issue date constitute a misrepresentation?

The materiality of occupancy levels will differ depending on the type of commercial property (multi-family residential, office, retail, industrial) as well as the particular property. In some instances, the occupancy level may be material as would the length of the term remaining on the leases of major tenants in an office building or retail property but the decision as to the materiality should be left to the issuer who is responsible for providing sufficient information in the offering memorandum to allow investors to make an informed investment decision.

Approvals/Costs and Objectives for Real Estate Development Projects

Sections 8 and 9 in proposed Schedule 1 prescribing disclosures related to *Approvals* and *Costs and Objectives* "if the property is being developed" are problematic as the requirements fail to consider the numerous and different paths that real estate development projects may proceed. For many real estate development projects, much of the information that would be required to be disclosed under the proposed Schedule is simply not known and cannot be known at the time the offering memorandum is prepared and the money is raised. This is largely due to the uncertainties of the development approval process which can involve significant negotiations with numerous governmental authorities at all three levels of government. The product of these negotiations can and often do impact the nature and timing of the development. These proposed disclosure requirements may effectively prohibit the use of the Offering Memorandum Prospectus Exemption to raise capital for real estate development projects depriving eligible investors of such investment opportunities. To avoid this result, the disclosures prescribed in these sections should be made subject to an overarching "if known or available" qualification.

Conclusion

We thank you for the opportunity to provide our comments on the Proposed Amendments. Please feel free to contact me or Don Cant, General Counsel and Chief Compliance Officer at dcant@equiton.com if you wish to discuss our feedback further or require additional information.

Yours truly,

EQUITON PARTNERS INC.

Jason Roque
Chief Executive Officer

NOVEMBER 20, 2020

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Addressed to:

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Office of the Superintendent of Securities, Service NL
Financial and Consumer Services Commission, New Brunswick
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Office of the Yukon Superintendent of Securities
Northwest Territories Office of the Superintendent of Securities
Nunavut Securities Office

Re: *CSA Notice and Request for Comment, Proposed Amendments to National Instrument 45-106 Prospectus Exemptions and Proposed Changes to Companion Policy 45-106CP Prospectus Exemptions Relating to the Offering Memorandum Prospectus Exemption*

Comments made on behalf of FrontFundr Financial Services Inc.

Summary of the Proposed Amendments

Issuers Engaged in Real Estate Activities

The Proposed Amendments include the new defined term "real estate activities". Issuers engaged in real estate activities would be subject to new requirements, including:

- Providing an independent appraisal of an interest in real property to the purchaser if
  - the issuer has acquired or proposes to acquire an interest in real property from a related party (**Related Party**), as that term is defined in NI 45-106,
  - a value for an interest in real property is disclosed in the offering memorandum, or
  - the issuer intends to spend a material amount of the proceeds of the offering on an

interest in real property.

- Completing new Schedule 1 *Additional Disclosure Requirements for an Issuer Engaged in Real Estate Activities* (**Schedule 1**) to Form 45-106F2, which includes:
  - Disclosure relevant to issuers that are developing real property, such as a description of the approvals or permissions required, and milestones of the project.
  - Disclosure relevant to issuers that own and operate developed real property, such as the age, condition and occupancy level of the real property.
  - Disclosure of penalties, sanctions, bankruptcy, insolvency and criminal or quasi-criminal convictions for parties other than the issuer, such as a party acting as developer.
  - Disclosure of any purchase and sale history of the issuer's real property with a Related Party, so investors can better evaluate transactions involving Related Parties.

We note that Schedule 1 would not apply to real property that when taken together would not be significant to a reasonable investor. This exception is intended to ensure that issuers are not subject to an undue disclosure burden.

We think the Proposed Amendments as they relate to issuers engaged in real estate activities are necessary because as noted, research indicates that a significant proportion of issuers utilizing the OM Exemption are engaged in real estate activities. We think more specific disclosure about the real property or development plans for the real property is needed for investors, and we also think that these issuers will benefit from the greater certainty provided by a disclosure framework tailored for them.

Comment:

We agree with the proposed amendments. Real Estate products can often have complex structures in place with several entities working in tandem toward specific goals regarding the development, management or sale of real property. As the OM at times becomes a headwater between retail and/or more experienced investors, the need for clarity on an issuer's working relationships or target for an issuer's use of funds becomes more essential. We have found that issuers recognize the importance of transparency in this regard in general, and often provide additional disclosure within their offerings that may not be strictly called upon via the legislation.

We note that a schedule directing issuers to include additional disclosure within Item 2.2: The Business might be appropriate, in order to highlight pertinent information early within the document.

Issuers that are Collective Investment Vehicles

The Proposed Amendments also include the new defined term "collective investment vehicle". A collective investment vehicle is defined as an issuer whose primary purpose is to invest money provided by its security holders in a portfolio of securities. This definition would include issuers that hold portfolios of mortgages, other loans, or receivables. To the extent they are permitted to use the OM Exemption, the definition would also include investment funds.

Issuers that are collective investment vehicles would be required to complete new Schedule 2 *Additional Disclosure Requirements for an Issuer That is a Collective Investment Vehicle* to Form 45-106F2, which includes:

- A description of the issuer's investment objectives.
- Disclosure of penalties, sanctions, bankruptcy, insolvency and criminal or quasi- criminal convictions for persons involved in the selection and management of the investments.
- Disclosure of information regarding the portfolio.
- Disclosure regarding the performance of the portfolio.

We think the Proposed Amendments as they relate to issuers that are collective investment vehicles are necessary because as noted, research indicates that a large proportion of issuers utilizing the OM Exemption could under the Proposed Amendments be collective investment vehicles. We think investors need more information, including about the party making the investment decisions, how the investments are chosen and the composition and performance of the portfolio. As with issuers engaged in real estate activities, we think issuers that would be collective investment vehicles will also benefit from the greater certainty provided by a disclosure framework tailored for them.

General Amendments

The General Amendments include:

- Making the provisions in the OM Exemption that deal with the standard of disclosure for an offering memorandum and amending an offering memorandum clearer and more user-friendly for issuers and investors.
- Requiring that the filed copy of an offering memorandum allow for the searching of words electronically. This change is intended to make reading and reviewing offering memorandums more efficient for all recipients.
- With respect to Form 45-106F2:
    - The addition of several more disclosure items to the cover page to highlight those matters for investors.
    - Enhanced disclosure where a material amount of the proceeds of the offering will be transferred to another issuer that is not the issuer's subsidiary, or a material amount of the issuer's business is carried out by another issuer that is not the issuer's subsidiary. This is intended to give investors better disclosure as to arrangements of this nature and the ultimate use of the offering proceeds.
    - Disclosure of any purchase or sale history of any business or asset of the issuer's (excluding real property) with a Related Party, so investors can better evaluate transactions involving Related Parties.
    - The addition of Related Parties that receive compensation to the compensation disclosure and securities ownership table.
    - For item 3.3, adding disclosure of criminal or quasi-criminal convictions. This is consistent with disclosure requirements for more recently developed prospectus exemptions.

- The addition of disclosure regarding fees or limitations with respect to redemption or retraction rights.
- Further disclosure regarding redemption or retraction, including requests made to the issuer, requests fulfilled by the issuer including the price paid and the source of the funds, and outstanding requests.
- A new requirement to disclose the source of funds for dividends or distributions paid that exceeded cash flow from operations.
- Reference to the requirements of National Instrument 33-105 *Underwriting Conflicts*.
- New cautionary disclosure for instances where expert reports, statements or opinions are included in an offering memorandum and there is no statutory liability against the expert.
- A new requirement to amend an offering memorandum to include an interim financial report for the most recently completed 6 month interim period when a distribution of securities under an offering memorandum is ongoing.
- Other amendments intended to clarify or streamline existing provisions or provide improved disclosure.

The General Amendments are closely related to issues that we have seen in our ongoing review and compliance work regarding offering memorandums.

Comment:

We agree with the proposed additions in conjunction with the following considerations:

- Disclosure of information regarding the portfolio.
- Disclosure regarding the performance of the portfolio.

If we are understanding the proposed change correctly, the suggested requirements may be suitable for an investment fund, wherein timely NAV pricing comes into play etc, but for a CIV that acts like a portfolio, but in fact may not be a true portfolio run by a PM, this may force an inexperienced issuer to provide disclosure which may not be accurate if related to an interim period. The portfolio disclosure requirement becomes less necessary however, if CIVs are restricted in their activities and goals, and outcomes are specific in nature (clearly identified investment flow or acquisition target within the OM, for example, and the historical outcomes of these actions, if provided on an interim basis).

We also note that a schedule directing issuers to include additional disclosure within Item 2.2: The Business might be appropriate, in order to highlight pertinent information early within the document.

2.6.1: *Additional Disclosure for Issuers Without Significant Revenue*

Comment:
It is not clear whether 2.6.1 refers exclusively to resource related issuers or also includes non-resource related issuers. The wording 'without significant' revenue, if not clearly defined, is

*perhaps too ambiguous. A stand-alone section providing disclosure on revenue exclusively would be of benefit to an investor; and not only to understanding low or no revenue issuers. A devoted revenue section should be shaped by **how** an issuer earns revenue and not **how much** revenue they expect to earn. Projections not based on audited financials and supported by a set number of years of activity are invariably optimistic in nature and can be misleading. As part of best practice, issuers could provide a picture of anticipated sales given their revenue model, including both supporting and mitigating factors, with additional reference to Item 8: Risks and Item 12: Financial Statements.*

Other matters included in or related to the Proposed Amendments

In addition, the Proposed Amendments also include changes to Form 45-106F4 *Risk Acknowledgement*, which is the required form of risk acknowledgement for investors purchasing a security under the OM Exemption. These changes are to make the form more understandable and useful to investors and are consistent with recent amendments to risk acknowledgement forms required in connection with other prospectus exemptions.

Comment:

We agree with the proposed amendments, though note that a further distinction may be required in identifying the type of registrant in the last risk item within the acknowledgement: **You will not receive advice –** *[Instruction: Delete if sold by registrant]. We recommend the line be changed to [Delete if sold by a registered portfolio manager]. The instruction as is may produce some confusion for other registrants that do not provide investment advice as part of their responsibilities (EMD).*

*We also note that though "***The issuer of your securities is a non-reporting issuer** *[Instruction: Delete if issuer is reporting]" is part of the current F4, it presents somewhat contradictory or potentially confusing guidance, as issuers must publicly provide audited financial statements as a requirement of the exemption at the time of a distribution, along with an F16 use of funds for each year in which it is utilized, as applicable.*

Other considerations:

To reduce costs for an issuance, without unduly increasing risk to investors, Staff might consider the use of a 'review' of financial statements rather than an audit for distributions under a set amount ($2M, for example) and further defined by a restriction of use as applicable (CIV or otherwise). Dependent upon the maximum amount allowable under the forthcoming NI 45-110 Crowdfunding, a bridged approach to OM use by developing or established non-reporting issuers could be an important component within the market and our collective investment ecosystem. There is an opportunity for available exemptions to work in tandem more efficiently and better facilitate a possible path toward the public markets for an issuer, or to other traditional exit or growth opportunities. Actions in this regard would provide Canadian start-ups or developing issuers a much clearer path toward capital collection then what we have seen to date.

IIACACCVM
INVESTMENT INDUSTRY ASSOCIATION OF CANADA
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December 17, 2020

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Dear Sir/Madam:

Re: Proposed Amendments to National Instrument 45-106 *Prospectus Exemptions* (the "Amendments")

The Investment Industry Association of Canada (the "IIAC" or the "Association") appreciates the opportunity to comment on the Amendments.

The IIAC supports the purpose of the Amendments, which is to create clear and relevant disclosure for issuers engaged in specific activities that were not envisioned to be financed via the Offering Memorandum exemption but who have become significant users of this means of financing. Given that the existing Offering Memorandum does not contain disclosure germane to issuers using this document to raise significant funds, it is appropriate that the disclosure requirements be amended to ensure investors have the appropriate information upon which to make informed investment decisions.

In respect of the Amendments for issuers engaged in real estate activities, the requirement for an independent appraisal where:

- the interest in the property is or is proposed to be acquired from a Related Party;
- a value for the interest in the property is disclosed in the Offering Memorandum; or
- the issuer intends to spend a material amount of the proceeds of the offering on the property interest

is appropriate to ensure investors have an independent basis upon which to evaluate their potential investment.

It would be helpful, however, to specify the how current this appraisal must be (eg. completed within a specified number of months). In addition, it is important to note that there might be a practical issue in attaching or sending out 3rd party appraisals to general investors. Such appraisals are also often in the dozens to hundreds of pages long and would be very unwieldy to add to an OM. Disclosure regarding the valuation, with an ability to link to it digitally, and details regarding the appraisal company issuing the valuation would be a more practical approach.

In regards to the disclosure relevant to issuers that are developing real property, such as a description of the approvals or permissions required, and milestones of the project, it should be recognized that there could be a massive amount of approvals or permissions required, depending on zoning. Even for straightforward developments, there are often dozens of separate permits required. Some of these approvals may be very basic and routine. Others may be significant, with uncertain outcomes. The disclosure should differentiate between the significance and certainty around such approvals and permissions.

The accompanying disclosure in Schedule 1, relating to the condition, background and transaction history of the property is reasonable and appropriate.

In respect of issuers that are collective investment vehicles, the disclosure in Schedule 2 is also appropriate to provide investors with information relevant to their investment.

In addition to the Amendments specific to the real estate and collective investment vehicles, the Amendments also introduce a number of “General Amendments” to enhance the level of disclosure provided in the Offering Memorandum applicable to all issuers. Although these provisions add to the disclosure burden of using an Offering Memorandum, the additional disclosure will generally be useful to investors.

Thank you for considering our comments. If you have any questions, please don’t hesitate to contact me.

Yours sincerely,

Susan Copland

NORTON ROSE FULBRIGHT

Barristers & Solicitors / Patent & Trade-mark Agents

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December 16, 2020

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Office of the Superintendant of Securities, Service NL
Financial and Consumer Services Commission, New Brunswick
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Officer of the Yukon Superintendent of Securities
Northwest Territories Office of the Superintendent of Securities
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Comments on the Proposed Amendments to National Instrument 45-106 *Prospectus Exemptions* relating to the Offering Memorandum Prospectus Exemption

Introduction

This letter is submitted in response to the 90-day comment period with respect to the proposed amendments (the "**Proposed Amendments**") to National Instrument 45-106 – *Prospectus Exemptions* ("**NI 45-106**") issued by the Canadian Securities Administrators (the "**CSA**") on September 17, 2020. Norton Rose Fulbright Canada LLP ("**Norton Rose**" or "**we**") welcomes the opportunity to comment on this important matter.

In this letter, we offer general observations and discuss broad principles as they relate to the offering memorandum exemption found in section 2.9 of NI 45-106 (the "**OM Exemption**"). Further, we provide specific drafting comments and seek clarification with respect to certain of the Proposed Amendments.

General Observations and Key Principles

Norton Rose continues to support the objective of providing investors with disclosure that allows them to make informed investment decisions. We act as external counsel for a number of issuers located in Ontario, British Columbia and Alberta that currently rely on the OM Exemption to raise funds from investors. For many of these issuers, we were retained to advise on the issuers' creation and have continued to advise them as they mature. These issuers vary by size, engage in distinct activities, and operate businesses across a variety of industries, including issuers that engage in "Real Estate Activities" ("**Real Estate Issuers**"), issuers that are "Collective Investment Vehicles" ("**CIVs**"), and issuers that engage in continuous distribution. We recognize that the OM Exemption is used by many issuers that are larger and more complex than the CSA originally envisioned, and accordingly, amendments to NI 45-106 and Form 45-106F2 – *Offering Memorandum for Non-Qualifying Issuers* ("**Form 45-106F2**") must be made to ensure that the above objective continues to be achieved.

Norton Rose is of the view that the following considerations are important when assessing any proposed amendments to ensure that: (A) the OM Exemption continues to be an effective fundraising tool for early stage and small businesses; and (B) such amendments do not inadvertently restrict access to private investments for an entire class of investors.

(a) **Offering Memorandums should not be seen as a stepping stone to becoming a reporting issuer.** Many issuers that rely on the OM Exemption do not intend to become a reporting issuer. Often, such issuers purchase one or more illiquid assets that are intended to be sold after a specified investment horizon or the completion of specified plans, with the issuer subsequently winding up and the proceeds distributed. For issuers of this nature, continuous disclosure obligations can be costly but ultimately prove to be of limited value to investors because, regardless of any interim events or results, their returns are only realized at the end of the specified investment horizon upon a successful exit transaction.

(b) **Structures are tax driven.** The CSA notes that many issuers using the OM Exemption have complex structures. We note that as the OM Exemption allows access to retail investors, it is critical that such investments are qualified investments for deferred plans under the *Income Tax Act.* Structures are often created with this feature in mind, which results in additional complexity. We recognize that an offering memorandum must include disclosure regarding the underlying business of an issuer in order to provide investors with sufficient disclosure to make informed investment decisions. Notably, we believe the guidance in National Policy 41-201 – *Income Trust and Other Indirect Offerings* regarding disclosure standards for "operating entities" is instructive when preparing offering memorandums for more complex structures.

(c) **Issuers can access other sources of capital.** We understand that changes to Form 45-106F2 are needed to provide additional clarity on disclosure standards for issuers that conduct specific activities. However, it is important to recognize that many issuers that rely on the OM Exemption are also able to access significant capital from accredited and institutional investors. This fact is acknowledged by the Ontario Securities Commission in OSC Staff Notice 45-717, which states that, "[m]ost issuers relying on the OM and FFBA exemptions raised larger sums of capital under other prospectus-exemptions, most notably the AI exemption." Care should be taken to ensure that any changes are not so onerous that issuers simply decide to cease using the OM Exemption, and instead opt to focus on non-retail investors by using non-form-compliant offering memorandums. This would deny non-accredited investors the opportunity to participate in such investments, but also could have inadvertent undesirable effects, including: (i) issuers that have the ability to access other sources of capital sidestep the additional requirements of the OM Exemption, while the costs of compliance are borne solely by early stage and small businesses who are least able to afford them; (ii) the removal of larger, more mature issuers from the pool of

issuers available to investors that are non-accredited, which likely increases the risk profile of remaining issuers in such pool as a whole; and (iii) the standard of disclosure that is given to the accredited investors that invest in issuers that rely on the OM Exemption is ultimately reduced.

(d) **Costs are already significant for early stage and small businesses.** It is critical to recognize that of the prospectus exemptions generally available to early stage and small businesses, the OM Exemption is already the most expensive option and that such costs are ultimately borne by investors. Irrespective of their industry or investment activities, issuers that utilize the OM Exemption incur significant costs, including costs associated with: (i) producing and filing a form-compliant offering memorandum; (ii) obtaining audited financial statements (initially and on a continuous basis); and (iii) adhering to continuous disclosure obligations that persist after the distribution is completed. At the same time, the capital expected to be raised is limited by the investment limits imposed on individual investors with respect to the amount they can invest in any 12-month period in certain provinces. In our view, these factors lead to the OM Exemption being underutilized – OSC Staff Notice 45-717 shows that the OM Exemption only represented 6% of the $3.3 billion raised from individual investors in 2019. The addition of new compliance costs on issuers that wish to distribute securities under the OM Exemption (in particular on Real Estate Issuers and issuers in continuous distribution), combined with the ability of such issuers to access other sources of capital as discussed above, increases the likelihood that such issuers will cease using the OM Exemption altogether.

(e) **The Offering Memorandum is often provided to an investor even if the exemption is not relied on.** The application and use of a Form 45-106F2 compliant offering memorandum among investors in the capital markets should not be underestimated. Once an issuer has engaged in the process of creating a form-compliant offering memorandum (or creating a Form 45-106F2 "wrapper" to be attached to an existing non-form compliant offering memorandum), it is common that such offering memorandum is provided to all prospective investors, even if those investors are accredited investors that would not otherwise require a form-compliant offering memorandum. Therefore, it is reasonable to expect that for issuers that have prepared an offering memorandum, investors investing pursuant to other prospectus exemptions would nevertheless be provided with, and benefit from, the disclosure provided in the issuer's offering memorandum (including the associated statutory remedies). Accordingly, a reduction in the use of the OM Exemption may also inadvertently reduce the level of disclosure provided to accredited investors that invest in the same issuers (including ongoing financial statement disclosure).

Specific Comments on the Proposed Amendments

We recognize the primary objectives of the CSA in publishing the Proposed Amendments are to modernize, clarify, or streamline parts of NI 45-106 and to improve disclosure for investors. It is our view that many of the Proposed Amendments align with current best practices and the overall principle of providing investors with sufficient information to make an informed investment decision. We view a number of the Proposed Amendments as a step in the right direction, especially with respect to multi-entity structures and issuers that have the mandate to invest funds in other assets. For example, the general concept of necessitating additional portfolio information is a positive development.

However, for certain other of the Proposed Amendments, we are concerned that the new requirements will result in disclosure which does not benefit the investing community and does not adequately balance the significant additional costs to issuers, which may ultimately deter issuers from pursuing this avenue of raising capital. Thus, we have provided specific comments on the Proposed Amendments in the following annexes to this comment letter:

Annex	Topic
A	Real Estate Issuers
B	CIVs
C	General Amendments

We ask for greater guidance on the concerns set out in these annexes and an opportunity to engage with appropriate persons to exchange views and consider ways that these concerns can be addressed.

***

We thank you again for the opportunity to provide comments. We are of the view that the securities regulators must seek a balance between investor protection and supporting an environment where issuers can access the capital markets in an efficient manner. Indeed, Ontario's Capital Market Modernization Taskforce expects to recommend that the Ontario Securities Commission expand its mandate to include "fostering capital formation and competition in the markets".[1] We believe that our specific comments are consistent with this approach.

We would be pleased to meet with staff to discuss any of our comments, and would also be pleased to contribute in any way we can to any ongoing debates and discussions as you work to implement updates to the OM Exemption. If you would like to discuss this matter further, please contact Tommy Wong at (416) 202-6727 or tommy.wong@nortonrosefulbright.com.

Yours very truly,

(signed)

Norton Rose Fulbright Canada LLP

[1] Walied Soliman, "Keynote speech: OSC Dialogue Conference" (abridged version of keynote speech delivered at the OSC Dialogue Conference, 04 November 2020), online: <https://www.nortonrosefulbright.com/en-ca/news/3c4ff6cd/keynote-speech-osc-dialogue-conference>.

Annex A

Real Estate Issuers

Appraisal Requirement

As noted by the CSA, the OM Exemption is frequently used by Real Estate Issuers. We recognize that the CSA desires to provide greater disclosure requirements and investor protection in respect of investments in such issuers. However, the addition of an appraisal requirement for Real Estate Issuers is a significant burden that we do not believe to be justified by the benefits to an investor. While we understand and appreciate that the appraisal requirement is similar to those requirements imposed on the sale of syndicated mortgages published in the CSA Notice dated August 6, 2020, these requirements create a number of issues when applied to operating entities, as further described below. We are concerned that the cumulative effect of these requirements will cause Real Estate Issuers to cease relying on Form 45-106F2, which will ultimately harm investors as a whole by prohibiting access to non-accredited investors, while not increasing (and likely decreasing) the standard of disclosure made available to accredited investors investing in the same issuers.

(a) **Inconsistent with reporting issuer disclosure requirements.** Reporting issuers engaged in real estate activities are not required to provide an appraisal for any interest in real property held by such reporting issuers. Rather, investors will evaluate the issuer as a whole based on financial information, the reporting issuer's continuous disclosure record, economic conditions, management experience, and other relevant information. It is unclear to us why an issuer that distributes securities under the OM Exemption should be evaluated on a different basis. This appraisal requirement creates an undue burden on Real Estate Issuers and creates inconsistency in securities regulation by treating like-issuers differently.

(b) **An appraisal requirement is more appropriate in a mortgage context.** The application of an appraisal within the syndicated mortgage industry is logical since, in that context, the requirement is targeted at whether or not the perceived safety of a mortgage can be supported by the value of the real property that secures it. However, we strongly believe that an appraisal is not appropriate and possibly misleading when investors are evaluating an equity investment in an issuer. We are concerned that the inclusion of an appraisal can undervalue an issuer, while simultaneously providing a false sense of security to investors. In the case of an issuer whose value is expected to be derived from business operations and growth prospects, an appraisal that cannot take into account any proposed improvements or developments will always disclose a value that is lower than the value ascribed by management, detracting from even the most robust business plans and dampening capital raising. Conversely, an appraisal that discloses what would appear to be a "base case" value obfuscates the fact that an equity investor does not have any direct recourse to such real estate interests, and will be subordinate to all of the issuer's creditors should the issuer fail, such that an investment could be lost in its entirety even if the value of the real estate interest holds.

We also note that third-party property sales are often subject to strict confidentiality obligations. Any appraisal, by necessity, may reference certain information that is the subject of the confidentiality covenants. This puts the issuer in a position where it is unable to rely on the OM Exemption as disclosure would breach the terms of the purchase agreement.

Lastly, appraisers may demand increased fees if their appraisal will be included in an offering document for an operating entity, due to perceptions about increased liability and/or reputational risk.

(c) **The appraisal requirement creates bias between different types of Real Estate Issuers.** The proposed appraisal requirements appear to endorse a specific method of valuing Real Estate Issuers, which is that their assets should be appraised without regard to developments or improvements. Such method does not apply consistently and accurately across all issuers,

especially those issuers that develop real estate or use their real estate assets as part of larger business operations. We are concerned that such appraisals will favour Real Estate Issuers that have a "buy and hold" strategy while disadvantaging Real Estate Issuers that seek to generate value through development or improvements by undervaluing their investments. Perversely, Real Estate Issuers that wish to discuss what they believe the value of an investment would be after their business plans are complete will need to essentially "disprove" an appraisal that assumes no action is taken, which appraisal is required to be featured with equal or greater prominence.

(d) **The related party appraisal requirement is extremely broad and perpetual.** The Proposed Amendments require that an issuer obtain an appraisal for an interest in real property that it proposes to acquire or has acquired from a related party. While we understand that the purpose of this requirement is to ensure that assets are acquired from related parties at fair market value, this requirement misses the mark and is far too broad for a couple of reasons:

(i) this requirement is not limited by time or materiality, which would require an issuer to obtain appraisals for any real property acquired from a related party in perpetuity. Therefore, an issuer that acquired multiple properties from related parties in the last 20 years would have to include an appraisal for all such properties in every offering memorandum that it issues subsequently. This would create a very significant cost that effectively prohibits the use of the OM Exemption; and

(ii) as stated above, we view the purpose of this requirement as a safeguard to ensure that a related party transaction is fair. The relevant information for an investor to consider the fairness of a related party transaction is the appraisal value of a property as at the time of the transaction. By contrast, the appraisal value of such property as at the date of an offering memorandum is not informative. When making such determination, an investor should consider the fair market value of the property at the time of the transaction, not at the time that an offering memorandum is delivered, which could be well after the time of the transaction.

To better align this proposed requirement with what we understand to be the purpose of this requirement, we propose that: (i) issuers are only required to include an appraisal for a related party acquisition completed prior to the date of the offering memorandum if the financial statements included in the offering memorandum do not include the results of such acquisition for six months; and (ii) such appraisal, if required, be a one-time requirement to be dated within six months of the acquisition date (not the time of delivery of the offering memorandum).

Lastly, we propose that such appraisal requirement be subject to a materiality qualifier whereby an appraisal is only required if the acquisition represents more than 25% of the asset or investment tests contained in C.2 of the instructions. This aligns with the exemption to the requirement for a formal valuation in related party transactions contained in Section 5.5(a) of Multilateral Instrument 61-101 – *Protection of Minority Security Holders in Special Transactions*.

(e) **The appraisal requirement has no materiality threshold.** As proposed, an appraisal requirement applies without regard to the size of the issuer making the acquisition and is incongruent with the materiality standards set out in the instructions to Form 45-106F2 with respect to business acquisition disclosure. This over emphasizes proposed acquisitions when investors should be more focused on the issuer as a whole (as shown in the financial statements).

(f) **Additional clarity is required on the interaction between the requirement to provide an appraisal and the requirement to amend the offering memorandum.** The Proposed Amendments are unclear on what is required of a Real Estate Issuer that is required to deliver an appraisal (or a new appraisal) subsequent to the date of the offering memorandum. It is not explicit that the requirement to deliver an appraisal will trigger an amendment to the offering memorandum, but it is somewhat implied by Section 19.8 which states that an appraisal must be

delivered concurrently with the filing of an offering memorandum (in contrast to Section 17.1 which specifically provides for OM marketing materials that are prepared after the filing of the offering memorandum). We urge the CSA to provide additional guidance to issuers on this matter.

If the requirement for a new appraisal triggers an amendment to the offering memorandum, then Real Estate Issuers that are in continuous distribution will be required to update their offering memorandums more often than other issuers which are required only to update their offering memorandum in the event of a material change. This is a significant burden on Real Estate Issuers specifically. We provide an example in the table below showing two issuers, one Real Estate Issuer (with an appraisal requirement) and one non-real estate issuer, both of which are in continuous distribution and whose financial years end on December 31. These issuers have amended their offering memorandums on August 31 to include the semi-annual financial statements for the 6-month period ended June 30 (Instruction B. 12.1(b))

Category of Issuer	Financial Year End	Date of OM	Date of Appraisal	Date New Appraisal is Required (Section 19.6(d)	Latest Date of Next OM (Instruction B. 12.1(a))	# of months that the OM is available for use
Non-real estate issuer	December 31	August 31	N/A	N/A	April 30 of the next year	8 months
Real Estate Issuer	December 31	August 31	August 31[(1)]	February 28 of the next year	February 28 of the next year	6 months

Note:

(1) If, while preparing the offering memorandum, the issuer obtains an appraisal earlier than the date of the offering memorandum (i.e. August 31), that would further hasten the requirement to amend the offering memorandum.

(g) **Additional clarity is required on the application of the appraisal requirement to acquisitions yet to be identified.** The Proposed Amendments are unclear on what is required of an issuer that seeks to acquire an interest in real property that has yet to be identified at the time of the offering memorandum. We urge the CSA to provide additional guidance to issuers with respect to what is required when a real property interest is identified for acquisition subsequent to the date of the offering memorandum. As drafted, the Proposed Amendments do not preclude the possibility that an appraisal requirement can arise after an offering memorandum is filed, but similar to the above, it is unclear whether this triggers an offering memorandum amendment. If the CSA is of the view that identifying a real property interest for acquisition after the date of the offering memorandum would trigger both an appraisal requirement and an amendment to the offering memorandum, such requirements would effectively remove the ability of Real Estate Issuers to raise funds to be deployed under a set of investment criteria, while that option remains available to issuers in other businesses (such as CIVs).

Other Proposed Amendments

(a) **Schedule 1 – Section 3 – Description of Real Property.** While we recognize the CSA's intention in providing a comprehensive set of disclosure requirements, the proposed list of descriptions to be included with respect to an interest in real property is overly broad and may not be relevant or material for all real estate interests. For example, we do not believe that disclosing minutia such as standard encumbrances (such as utilities easements), utilities providers, or minor legal proceedings is necessary for investors to make an investment decision in most cases. We suggest that a materiality threshold is added to this section so that issuers and investors, alike, can focus on descriptions of real property that materially affect the value of such real property and would be important for investors to know in order to make informed investment decisions.

(b) **Schedule 1 – Section 3(2) – Description of Real Property.** Subsection 3(2) attempts to alleviate the burden on issuers who hold 20 or more interests in real property. We are of the view that 20

is an arbitrary number for providing this type of relief. If a Real Estate Issuer has multiple properties of a similar class or with similar characteristics, it would make sense to disclose such information summarily. This would not only assist the issuer in its preparation of its offering memorandum, but a clean, summarized description in this case would also make it simpler for the prospective investor who is reading the offering memorandum and attempting to understand the information to make conclusions about what is materially important in their investment-making decision.

(c) **Schedule 1 – Section 6 – Developer, or Manager under a Rental Pool Agreement or Rental Management Agreement, Organization, Occupation and Experience, and Penalties, Sanctions, Bankruptcy, Insolvency and Criminal or Quasi-Criminal Matters.** We are concerned about the application of this section as it applies to persons that are not affiliates of the issuer. The information required in this section is significant and onerous for an issuer to obtain when applied to third parties and it would be difficult, if not impossible, for an issuer to verify such information for third parties with sufficient certainty to allow the issuer's representatives to sign the certificate in the offering memorandum. In the case of a person to be disclosed in this section that is arm's length to the issuer, we propose that the disclosure be limited to the identity and experience of such person (proposed Section 6(2)(a)).

Annex B

CIVs

Norton Rose welcomes the Proposed Amendments as they apply to CIVs. We support the additional requirements relating to the disclosure of a CIV's investment objectives and strategies, as well as the inclusion of a portfolio summary, as they are necessary changes to ensure that investors have sufficient information to make informed investment decisions. As stated in the body of our letter, we view many of these changes as aligning with current best practices.

We offer the following comments for consideration on the Proposed Amendments as they relate to CIVs.

(a) **Allow "investment funds" to use the OM Exemption.** Currently, the availability of the OM Exemption to investment funds varies depending on province. With the proposed amendments relating to CIVs, investment funds would need to provide all of the disclosure applicable to CIVs. In light of such enhanced disclosure and its similarity to disclosure requirements for public investment funds, we urge the CSA to allow investment funds to use the OM Exemption.

(b) **Section 1.1 Definition of "collective investment vehicle".** The Proposed Amendments define a "collective investment vehicle" as an issuer whose primary purpose is to invest money provided by its security holders in a portfolio of securities. We note that this definition is broad and would capture even subsidiaries and affiliates of the issuer. For example, an issuer that acquires 100% of a number of operating companies and holds such companies in subsidiary entities would be captured under the definition of collective investment vehicle. In our view, such issuer should disclose its subsidiaries as part of the issuer itself, rather than as an external portfolio held by the issuer. In addition, such subsidiaries would be captured in the issuer's financial statements. Therefore, we propose that the definition of "collective investment vehicle" exclude subsidiaries and affiliates of the issuer, as such entities should be considered part of the issuer and not part of a portfolio. In the alternative, it can be clarified that the holding of securities in a manner that is ancillary to the issuer's primary business would not make an issuer a CIV.

(c) **Section 1.1 Definition of "net asset value".** We note that defining net asset value ("**NAV**") in the context of CIVs in the same manner as an investment fund under National Instrument 81-106 *Investment Fund Continuous Disclosure* strengthens our assertions above:

(i) investment funds are well equipped to provide NAV calculations and provide the additional disclosure to be provided by CIVs; and

(ii) issuers that are not investment funds do not generally disclose the value of their subsidiaries using NAV concepts. Rather, information about the performance of subsidiaries is set out in the issuer's financial statements. Assigning a NAV to operating subsidiaries is of little value as the realizable value of such corporate entities is uncertain until the company is sold (and would be worth different amounts to different buyers). It is likely that this is an unintended consequence of the proposed definition of CIV and it is important that this is clarified prior to any amendments coming into force. Indeed, we understand and agree that the proposed CIV definition makes sense when applied to an issuer that owns a portfolio of securities of arm's length entities.

(d) **Section 3 – Portfolio Summary.** This section provides that CIVs that are not mortgage lenders shall disclose a description of the portfolio as at a date not more than 60 days before the date of the offering memorandum. We propose that this information be provided as at a date that is not prior to the end of the last financial period for which financial statements are required to be included in the offering memorandum as many CIVs assess portfolio performance (and impairment) at the time that financial statements are prepared.

Annex C

General Amendments

Norton Rose welcomes the Proposed Amendments as they relate to Form 45-106F2. We support the efforts of the CSA to clarify the disclosure standards of Form 45-106F2 and how they apply to many of the issuers that use the OM Exemption. Similar to the changes in respect of CIVs, we view many of these changes as aligning with current best practices.

We offer the following general comments for consideration on the Proposed Amendments as they relate to general amendments, specifically to Form 45-106F2.

(a) **The inclusion of semi-annual financial statements should not automatically require an amendment to the offering memorandum.** As noted in Annex E of the CSA notice dated September 17, 2020 announcing the Proposed Amendments, the cost to update an offering memorandum is the most significant of the estimated costs to issuers associated with the Proposed Amendments, with average costs of up to $66,701. This is a significant burden to issuers that, in our view, can be decreased without compromising investor protection goals. We propose that the semi-annual financial statements be filed publicly, but not trigger an automatic amendment to the Offering Memorandum. This makes sense for a number of reasons:

(i) this approach is similar to the shelf prospectus regime for reporting issuers, where the reporting issuer would not be required to update its prospectus or AIF in connection with the filing of updated financial statements;

(ii) it avoids the cost of an amendment when it may not be justified. For example, if an issuer with a December 31 year end files an offering memorandum on April 30 of a year (to include audited annual financial statements for the last financial year), the semi-annual financial statements would need to be filed on or about the end of August, which is a period of only four months. In the absence of a material change, the requirement to update an offering memorandum so quickly is not justified; and

(iii) the issuer remains subject to the general requirement that an offering memorandum be amended in the event of a material change (Sections 13.1 and 13.2 of NI 45-106).

(b) **45-106F2 – Item 4.2 – Long Term Debt Securities.** For clarity, we suggest removing “Securities” from the heading of this section as the text of the section requires disclosure of all indebtedness, such as bank credit facilities.

(c) **45-106F2 – Item 5A – Redemption & Retraction History.** We are not convinced that the information to be provided in the column “source of funds used to complete the redemptions or retractions” would be useful information to investors. As money is fungible, it is artificial for an issuer to allocate a particular source of funds to redemptions compared to other matters when it would have no impact on financial statements of the issuer. For example, it appears that an issuer with revenue that is continuing to raise capital could insert either of those sources in this column.

(d) **45-106F2 – Sections B. 12.1 of the Instructions – Financial Statements.** It is our understanding that the Proposed Amendments are not intended to require that an issuer update its offering memorandum more than twice a year for the inclusion of financial statements. Please confirm our interpretation that for an issuer in continuous distribution with a December 31 year end, the dates that such issuer would be required to amend its offering memorandum for the inclusion of financial statements (assuming no material changes) are as shown below.

OM # (per year)	Most Recent Financial Year End	Date of OM	Financial Statements Included in OM	Next OM Date	# of months that the OM is available for use
First OM	December 31, 2020	April 30, 2021	Audited Financial Statements for the year ended December 31, 2020	August 29, 2021 (i.e., 60 days after most recently completed 6-month period not included in OM) (12.1(b))	4 months
Second OM	December 31, 2020	August 29, 2021	Audited Financial Statements for the year ended December 31, 2020 Interim financial statements for the 6 month period ended June 30, 2021	April 30, 2022 (i.e., 120 days after 2021 financial year end)	8 months

December 13, 2020

The Secretary
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To whom it may concern,

Re: Comments on draft Form 45-106F2 – the role of independent professionals

I am writing in response to your request for comment on CSA's proposed changes to the Offering Memorandum (OM) form - Form 45-106F2.

By way of background, I retired last year after working for a provincial securities regulator for 35 years. The last 15 years of my career were spent reviewing and investigating Exempt Market offerings for compliance with the rules and regulations. My primary focus was on OMs filed by private issuers.

General

I believe the changes CSA proposes to make to Form 45-1062, if approved, will significantly improve the quality of information investors receive in OMs. This should help them make better informed investment decisions.

I also believe the changes will make it easier for issuers, and their professional advisers, to provide the level of disclosure in an OM that CSA expects from them. Currently, many issuers and their advisers, particularly those who haven't previously filed an OM with a securities regulator, only learn of many of these requirements if their OMs are selected for review by the regulator.

The improved instructions and guidance should ultimately reduce costs to issuers as they will be able to avoid the costs associated with, in some cases, having to retract and reissue their OMs as a result of defective disclosure.

When time permits, I suggest CSA review Form 45-106F2 in its entirety and, after consulting with users and preparers of OMs, take the necessary steps to condense, simplify and 'plain language' the document, e.g. more than half of Form 45-106F2, as it currently exists, is devoted to financial statement requirements. This would make it easier for issuers, particularly small businesses for which the OM exemption was originally created, to comply with the disclosure requirements.

Role of independent professionals in OM distributions

I am focusing my comments on one issue – the role independent professionals play in OM distributions. Currently, Form 45-106F2 requires issuers to include audit reports and, in certain cases, engineering reports in their OMs. Under the proposed changes, this will be expanded to include reports prepared by independent professional valuators.

Based on my experience, I know many investors, particularly those who are not financially sophisticated, feel confident investing in an Exempt Market issuer when they see an independent professional's report included in the issuer's OM – particularly if the professional represents a well-known firm.

Unfortunately, if my understanding is correct, this sense of security may be misplaced. As the *Hercules* and *Livent* decisions have shown, independent professionals do not owe a legal duty of care, under Common Law, to individual investors or groups of investors who may have relied on their reports when they made their investment decision. This seems ironic considering CSA presumably imposed the requirement for such reports specifically to protect investors.

Similarly, aside from British Columbia, no jurisdiction in Canada offers statutory rights to investors for misrepresentations contained in an independent professional's report included in an OM. Unlike Common Law, under statutory law an investor is *deemed* to have relied on a misrepresentation contained in a prescribed document like an OM – they do not have to prove they *actually* relied on it.

While BC introduced statutory rights for investors for such misrepresentations in 2019, the new law requires that independent professionals provide their consent for the inclusion of their reports in an OM.

Draft Form 45-106F2 does not appear to contain a consent requirement, either in the body of the form or as an attached appendix, i.e. Appendix E. Consequently, the BC legislation doesn't appear to actually provide statutory protection to investors at this point.

Recommendation:

When Form 45-106F2 was originally drafted 25+ years ago, I presume CSA mandated the inclusion of reports prepared by independent professionals because it believed professionals *were* liable, under Common Law, to investors for misrepresentations in their reports. However, based on Hercules and Livenet, that level of protection does not exist.

Until effective statutory liability legislation is introduced by securities regulators across Canada for OMs and other prescribed documents, CSA should consider eliminating the requirement to include independent professional reports and, instead, make their inclusion voluntary.

The lack of such reports would highlight the risk associated with investing in *some* Exempt Market issuers to prospective investors. It would also let issuers spend money on the development of their business that would otherwise be required to pay professional service fees.

If CSA retains the requirement for independent reports then it should consider including a consent requirement in Form 45-106F2, with the professional's consent being included in the body of the OM. The consent document would clarify the professional's role, rights and obligations to people who are considering investing in the issuer.

While this would not protect investors under Common Law, it would correct the misunderstanding that currently exists among many investors. I also believe it would strengthen an issuer's ability to sue a professional it retained to prepare a report for its OM that was subsequently found to have contained a misrepresentation.

Including a consent requirement would also make BC's statutory liability provision enforceable.

On a related note, Item 11.2 of Draft Form 45-106F2 requires issuers to disclose certain "cautionary" language in Item 11 – *Purchaser's Rights* regarding the relationship between a prospective investor and an independent professional whose report appears in the OM. It refers to the lack of statutory right of action and suggests the investor "consult with a legal adviser for further information."

With respect, I think this section should be reworded to simply state that a prospective investor has no legal right to sue a professional for misrepresentations that may be contained in their reports. This would eliminate any potential misunderstanding and the need for an investor to seek, and pay for legal advice simply to confirm they cannot sue an independent professional in an effort to recover their investment.

Given its importance and, based on my experience, the reluctance of many investors to read through the body of an OM, I recommend this warning, if adopted, should also be required disclosure, in bold-face type, on the Face Page of OMs.

Regards,

Larry Wilkins

January 10, 2021

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Office of the Superintendent of Securities, Service NL
Financial and Consumer Services Commission New Brunswick
Superintendent of Securities Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Office of the Yukon Superintendent of Securities
Northwest Territories Office of the Superintendent of Securities
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Dear Sirs/Mesdames:

Re: CSA Notice and Request for Comment Proposed Amendments to National Instrument 45-106 *Prospectus Exemptions* and Proposed Changes to Companion Policy 45-106CP *Prospectus Exemptions* Relating to the Offering Memorandum Prospectus Exemption (the "Proposed Amendments")

The Private Capital Markets Association of Canada ("**PCMA"** or **"we"**) is pleased to provide our comments in connection with the Proposed Amendments as set out below.

About the PCMA

The PCMA is a not-for-profit association founded in 2002 as the national voice of the exempt market dealers ("**EMDs**"), issuers and industry professionals in the private capital markets across Canada.

The PCMA plays a critical role in the private capital markets by:

- assisting hundreds of dealer and issuer member firms and individual dealing representatives to understand and implement their regulatory responsibilities;
- providing high-quality and in-depth educational opportunities to the private capital markets professionals;
- encouraging the highest standards of business conduct amongst its membership across Canada;
- increasing public and industry awareness of private capital markets in Canada;
- being the voice of the private capital markets to securities regulators, government agencies and other industry associations and public capital markets;
- providing valuable services and cost-saving opportunities to its member firms and individual dealing representatives; and
- connecting its members across Canada for business and professional networking.

Additional information about the PCMA is available on our website at www.pcmacanada.com.

GENERAL COMMENTS

The PCMA is pleased that the CSA has reviewed the offering memorandum exemption (the "**OM Exemption**") set out in section 2.9 of National Instrument 45-106 *Prospectus Exemptions* ("**NI 45-106**") and Form 45-106F2 *Offering Memorandum for Non-Qualifying Issuers* (the "**Form 45-106F2** and we appreciate the opportunity to provide our comments.

The PCMA believes providing clear and targeted disclosure requirements for issuers that are engaged in real estate activities ("**Real Estate Issuers**") and issuers that are collective investment vehicles ("**CIVs**") is in the public interest. Instituting appropriately tailored disclosure requirements for these issuers will benefit investors, registrants and issuers, since doing so will provide greater transparency and increase confidence in the private markets.

The PCMA believes that certain of the Proposed Amendments fail to strike the right balance and that the cost of complying with these amendments outweighs the additional protections afforded to private market investors. The PCMA is concerned that private market issuers will determine that the cost of complying with certain of the Proposed Amendments outweighs the benefits of raising capital under the OM Exemption and that these issuers may simply decide to stop using the OM Exemption. The effect of this will further widen the accessibility gap between retail and high net worth investors to diverse asset classes and will reduce the availability of competitive alternatives for investors. In addition, PCMA members are concerned that if a mid-year disclosure requirement requires the completion and filing of a new offering memorandum (an "**OM**") by issuers, irrespective of whether or not these disclosures constitute a material change (which is unclear in the Proposed Amendments), it may cause an

interruption to raising capital as EMDs may need to consider ceasing distributions to complete their due diligence review processes as part of their ongoing know your product ("**KYP**") obligations. This is a poor outcome for both private issuers and investors for the following reasons:

- **Less Disclosure.** Private issuers who decide to abandon the OM Exemption will continue to raise funds under the accredited investor exemption (the "**Accredited Investor Exemption**") set out in section 2.3 of NI 45-106. There are minimal disclosure requirements for offerings made under the Accredited Investor Exemption (*i.e.,* the document cannot have a misrepresentation and certain jurisdictions impose statutory rights of action). Accordingly, private market participants may receive less disclosure if private issuers stop relying on the OM Exemption.

- **Less Diversification.** The PCMA believes most Canadians would benefit from holding private investments as part of a more diversified investment portfolio. Only a small percentage of Canadians qualify to purchase securities under the Accredited Investor Exemption. The OM Exemption appropriately expands private market access to more Canadians while also introducing detailed investor protection safeguards, including but not limited to, increased disclosure requirements and having investors sign a standardized Risk Acknowledgment Form.

- **Less Capital.** Many Canadian markets are facing serious housing affordability challenges. The investments made by certain PCMA members who are Real Estate Issuers are expected to add tens of thousands of residential units to Canada's housing stock. Encouraging private investment in real estate is part of the solution to address this housing shortage and the private markets are a viable option for achieving this objective.

- **Less Regulated Distribution.** If the new disclosure requirements result in updating OMs more frequently, distributions by EMDs may be delayed midway through an issuer's financial year as a result of EMDs having to revisit KYP when further changes are captured by the new disclosure requirements (which KYP is already being expanded under the client focused reforms). In some cases, EMDS may refuse to distribute these securities because they lack sufficient resources imposed by the additional KYP costs. As a result, issuers may lose access to the distribution channel that protects investors through the robust regulations of the registrant regime. The PCMA is concerned that if issuers are pushed out of the EMD distribution network, due to increased regulatory costs, these issuers will seek capital themselves or through unregistered salespersons that are held to little or no regulatory oversight. This would be an unintended consequence for Canadian investors and issuers.

To better understand why private issuers may choose to abandon the OM Exemption, it is important to first contextualize the OM Exemption's role in Canada's private capital markets. According to OSC Staff Notice 45-717 – *Ontario's Exempt Market*, $3.3 billion worth of private capital was raised from individuals in Ontario in 2019. Of this amount, only $202 million, or approximately 6%, was raised under the OM Exemption, while 88% was raised under the Accredited Investor Exemption.

Since its introduction in Ontario in 2016, only a minority of private issuers raising funds in Ontario (including other CSA jurisdictions) have relied on the OM Exemption. We believe the primary reasons for this include:

- **Legal Costs and Liability.** The additional legal costs and liability associated with producing an OM that meets the prescribed requirements set out in Form 45-106F2 and the other

requirements of the OM Exemption depending on the jurisdiction where the investor resides (for example, marketing materials).

- **Investment Limits.** The investment limits imposed on purchasers restrict the amount that an issuer can raise under the OM Exemption by each investor, in particular when an investor has not received suitability advice from a portfolio manager, investment dealer or exempt market dealer. The investment limits may result in the need for additional investors to meet the capital needs of the issuers and consequently the costs associated with investor services.

- **Financial Statement and Reporting Costs.** The cost of preparing audited annual financial statements and meeting the associated continuous disclosure requirements is significant for most private issuers raising funds under the OM Exemption compared to the amount of capital being raised.

It is the PCMA's understanding that most Real Estate Issuers and CIVs relying on the OM Exemption also rely on the Accredited Investor Exemption. Due to the investment limits imposed under the OM Exemption, investors utilizing the exemption typically subscribe for a lesser amount compared to the average investment amount for an Accredited Investor. As a result, a relatively small portion of the total funds raised are completed in reliance on the OM Exemption for offerings involving Real Estate Issuers and CIVs. Accordingly, the PCMA believes that the cost of complying with the OM Exemption does not need to increase significantly before Real Estate Issuers and CIVs will determine that it is in their economic interest to cease relying on the OM Exemption.

The PCMA recognizes that that the OM Exemption has evolved beyond its original purposes as a small business financing tool to help early stage and small businesses to raise capital.[1] However, the PCMA recommends that the CSA revisit the OM Exemption to make the OM Exemption more suitable for the needs of these issuers, while maintaining the ability for Real Estate Issuers and CIVs to rely on the OM Exemption. We would welcome the opportunity to share our recommendations for improving the OM Exemption for early stage and small businesses. As investment fund managers are registrants, the PCMA would also welcome the elimination of the prohibition on the use of the OM Exemption by investment funds (including mutual funds that are not a reporting issuer) in all jurisdictions except British Columbia and Newfoundland and Labrador, which already allow investment funds to use the OM Exemption.

The PCMA has been encouraged by the recent burden reduction initiatives undertaken by the CSA and the various CSA jurisdictions. In the spirit of those initiatives, we would respectfully request that the CSA consider our comments below and our recommendations for improving certain components of the Proposed Amendments.

SPECIFIC COMMENTS

PROPOSED APPRAISAL REQUIREMENT

The PCMA agrees with the requirement that issuers engaged in real estate activities should be required to provide a qualified appraisal in certain circumstances as discussed below.

[1] Specifically, according to OSC Staff Notice 45-717, of the funds raised under the OM Exemption from individuals in 2019, real estate issuers and mortgage issuers (each, as defined in the staff notice) accounted for 44% and 26% of the total, respectively.

The PCMA believes the need for a qualified appraisal is required where a Real Estate Issuer: (a) engages in a related party transaction; or (b) bases compensation or other value-based metrics on the appraised value of real estate held within the issuer's portfolio since it represents a conflict of interest.

Below are the PCMA's comments regarding the proposed sections to NI 45-106 involving appraisals.

(19.5) An issuer relying on an exemption set out in subsection (1), (2) or (2.1) that is engaged in real estate activities
must comply with subsection (19.6) if any of the following apply:

(a) the issuer proposes to acquire, or has acquired, an interest in real property from a related party;

PCMA Comment
A related party transaction raises conflicts of interest and the PCMA believes investors have increased protection by having an appraisal completed by a qualified appraiser (as discussed below).

(b) except for in its financial statements, the issuer discloses in the offering memorandum a value for an interest in real property;

PCMA Comment
The PCMA disagrees that Real Estate Issuers should always be required to obtain an appraisal of the interest in real property from a qualified appraiser absent material conflicts of interest and/or a related party transaction. Appraisals are costly to obtain and we believe that this cost outweighs any potential benefit to investors. For clarity, a material conflict of interest arises when any member of an issuer group receives compensation or pay-out based, in whole or in part, on the value of the real estate, such as an issuer receiving management fees based on the fair market value of the real estate. If an appraisal is completed by, for example, a mortgage broker that is not a qualified appraiser, it may not follow professional appraisal standards and be a higher value resulting in higher management fees which is not in the best interest of investors.

(c) the issuer proposes to use a material amount of the proceeds of the offering to acquire an interest in real property.

PCMA Comment
See our previous comment regarding limiting the appraisal requirement to situations involving material conflicts of interest and/or related party transaction. If the CSA decides not to limit the requirement in this manner, then we would recommend clarifying the definition of a "material amount". Materiality could be based on the aggregate amount of proceeds that are used to acquire various interests in real property or in connection with a single interest in real property. The PCMA recommends that the materiality threshold should be 25% or more of the fair market value of the issuer which funds are used to acquire an interest in real estate.

(19.6) An issuer to which any of paragraphs (19.5)(a), (b) or (c) applies must, at the same time or before the issuer delivers an offering memorandum to the purchaser in accordance with

subsections (1), (2) or (2.1), deliver to the purchaser an appraisal of the interest in real property referred to in subsection (19.5) that satisfies all of the following:

(a) it is prepared by a qualified appraiser that is independent of the issuer;

PCMA Comment
The PCMA agrees that an appraiser must be independent.

The PCMA understands that the term "**Qualified Appraiser**" will come into effect in March 2021 in connection with certain amendment to NI 45-106 involving syndicated mortgages. The PCMA recommends that the definition of a "Qualified Appraiser" be used for purposes hereof involving the Proposed Amendments to provide definitional certainty. We believe this was not explicitly addressed by the CSA in the Proposed Amendments but seek confirmation of same since it is critical that such term is defined.

The PCMA understands that the definition of "Qualified Appraiser" means an individual who (a) regularly performs property appraisals for compensation, (b) is a member of a professional association and holds the designation, certification or license to act as an appraiser for the class of property appraised, and (c) is in good standing with the professional association referred to in paragraph (b).

We also understand that reference to a "Professional Association" will also come into effect in March 2021 as part of the amendments to NI 45-106 involving syndicated mortgages and is defined as an association or other organization, whether incorporated or not, of real property appraisers that (a) has its head office in Canada, (b) admits its members on the basis of their academic qualifications, experience and ethical fitness, (c) requires its members to meet standards of competence and comply with a code of ethics it has established or endorsed, (d) requires or encourages its members to engage in continuing professional development, and (e) under the powers conferred by statute or under an agreement, may suspend or expel its members if misconduct occurs.

(b) it includes a certificate signed by the qualified appraiser stating that the appraisal is prepared in accordance with the standards and the code of ethics established or endorsed by the professional association of which the qualified appraiser is a member;

PCMA Comment
The PCMA agrees that a real estate appraisal should be certified by a Qualified Appraisal as proposed above. PCMA members have noted that in certain circumstances, EMDs have questioned a 'favourable' appraisal provided by a mortgage broker and requiring a Qualified Appraiser to provide an appraisal ensures that the same professional standards are applied in the preparation of all appraisals when required.

(c) it provides the appraised fair market value of the interest in real property, without considering any proposed improvements or proposed development;

PCMA Comment
The PCMA supports this requirement especially when it involves a related party transaction and when compensation to an issuer and its management team is based on the fair market value of in an interest in real estate that also includes proposed improvements or proposed developments.

Investors should receive an appraisal by a Qualified Appraiser without considering any proposed improvements or proposed developments. However, if an issuer desires to provide investors with such information, this should not be prohibited by the CSA. The PCMA realizes there may be circumstances when an appraisal should include proposed improvements or proposed developments, however, it should be done by a Qualified Appraiser.

(d) it provides the appraised fair market value of the interest in real property as at a date that is within 6 months preceding the date that the appraisal is delivered to the purchaser.

PCMA Comment
The PCMA believes that the CSA should define the term "appraised fair market value" so the concept is clear to all parties.

The PCMA is concerned that when an issuer updates its OM, including arguably when it provides Interim Financial Statements, there is a requirement to provide updated Qualified Appraisals. The time, money and effort to have more than one appraisal during any OM Offering Period (as defined below) is too burdensome, impractical and does not enhance investor protection.

For purposes hereof, an "OM Offering Period" means the period of time commencing on January 1 of a given year (Year 1) and ending on April 30 of the immediately following year (Year 2). The end date in April of Year 2 is the outside date that an OM must be amended and restated to include audited annual financial statements for the fiscal year ending in Year 1.

Accordingly, the PCMA submits that any issuer engaging in real estate activities that is required to provide an appraisal under the OM Exemption, should only be required to provide one appraisal per property by a Qualified Appraiser during any OM Offering Period (the "**One Appraisal Requirement**"). The PCMA believes this One Appraisal Requirement strikes the right balance between investor protection and fair and efficient capital markets. Moreover, the PCMA believes that if a new appraisal is required each time an issuer updates its OM, then issuers may leave or not enter the private markets in reliance on the OM Exemption.

Registrants may also be less inclined to sell such securities since the due diligence it must undertake each time an OM is updated is too burdensome and disruptive to a normal sales cycle for investors, the EMD and the issuer.

(19.7) If an issuer relying on an exemption set out in subsection (1), (2) or (2.1) is engaged in real estate activities, and discloses in any communication related to the distribution under the exemption a representation of, or opinion as to, a value for an interest in real property referred to in subsection (19.5), other than the appraised fair market value disclosed in the appraisal referred to in subsection (19.6), the issuer must have a reasonable basis for that value, and must disclose all of the following in that communication:

PCMA Comment
The PCMA agrees with the requirements below.

(a) with equal or greater prominence as the representation or opinion, the appraised fair market value referred to in subsection (19.6);

PCMA Comment
The PCMA agrees with this requirement.

(b) the material factors or assumptions used to determine the representation or opinion;

PCMA Comment
The PCMA believes that where an issuer discloses in any communication related to the distribution under the exemption a representation of, or opinion as to, a value for an interest in real property referred to in subsection (19.5), other than the appraised fair market value disclosed in the appraisal referred to in subsection (19.6), then such disclosure amounts to forward-looking information ("**FLI**") including possibly, future-oriented financial information ("**FOFI**"), which has specific disclosure requirements set out in the form requirements for Form 45-106F2.

The PCMA requests that the CSA reference the FLI and FOFI requirements set out in Form 45-106F2 or clarify how such disclosure requirements are related to those required by this section.

(c) whether or not the representation or opinion was determined by a qualified appraiser who is independent of the issuer.

PCMA Comment
The PCMA agrees that this disclosure is important to clarify what has been reviewed by a Qualified Appraiser and what is the issuer's representation and/or opinion. One may have greater weight to an investor or registrant than the other and should be appropriately distinguished.

(19.8) An issuer must file a copy of any appraisal delivered under subsection (19.6) with the securities regulatory authority concurrently with the filing of the offering memorandum.

PCMA Comment
The PCMA agrees with this requirement and it should be publicly available on SEDAR. We do note that some PCMA members are concerned about potential confidentiality and other concerns raised by a Qualified Appraiser to publicly file their appraisal as well as concerns by appraiser institutes and insurance carriers. However, we believe that such disclosure will add to the rigor that such appraisals are undertaken within appropriate industry standards, qualifications, assumptions and otherwise, as recommended by a professional association.

PROPOSED SEMI-ANNUAL FINANCIAL STATEMENTS REQUIREMENT

12.1 (b) if the offering memorandum does not contain an interim financial report for the issuer's most recently completed 6-month period, the issuer must do the following: (i) amend the offering memorandum to include the interim financial report no later than the 60th day following the end of the period; (ii) present the offering memorandum and the interim financial report in accordance with the instructions in A, B and C and, for that purpose, the reference to the interim period in B.5(a) shall mean the issuer's most recently completed 6-month period.

PCMA Comment

The PCMA does not support the inclusion of a 6-month interim financial report ("**Semi-Annual Financial Statements**") by issuers who seek to raise capital under the OM Exemption. The reasons are set out below:

Timing

We note that issuers in continuous distribution have: (a) to amend their OMs no later than April 30 of a given year (assuming the issuer has a December 31 year-end) and (b) their audited annual financial statements, dated as of December 31 of the prior fiscal year, already included in the OM (no interims are required assuming the issuer files its updated OM by April 30 of a given year). If an issuer then has to start its OM review process again two-months later (June 30), the date Semi-Annual Financial Statements are required, the PCMA is concerned that this may be extremely burdensome for issuers, and does not enhance investor protection.

The financial position of an issuer will likely not have changed in two months. While the annual financial statements are as of December 31, if the OM is dated April 30, the OM must be materially accurate which would include the issuer having to consider any material changes to its financial position from its year-end, to the date of the OM. Furthermore, auditors typically review an issuer's financial matters for the stub period after an issuer's fiscal year-end up to the date the auditors sign their reporting letter that accompanies an issuer's audited annual financial statements. Accordingly, it is not clear what extra benefit is achieved for investors with the timing proposed in connection with the Semi-Annual Financial Statement requirement.

Private Market Issuers are Not Reporting Issuers

The PCMA is concerned that: (a) no other prospectus exemption imposes such burdensome disclosure requirements on private market issuers; and (b) the OM is increasingly becoming 'prospectus-like' and imposing disclosure requirements akin to reporting issuers which is antithetical to a prospectus exemption regime. Private market issuers have purposely elected not be reporting issuers and incur the significant compliance burden and costs related to a continuous disclosure regime unless they contractually agree to do so with investors. The PCMA is concerned that the requirement for Semi-Annual Financial Statements and the associated additional cost and regulatory burden will deter issuers from using/relying on the OM Exemption.

Regulatory Burden

Any update and review of an OM requires substantial resources. Management teams and their legal counsel have to review an OM in its entirety, at any time when it is updated, for non-material and conforming updates, and make any other further updates (such as updated portfolio disclosure) in addition to adding the Semi-Annual Financial Statements. Such matters also involve an issuer's board of directors, possibly their auditors (even though Semi-Annual Financial Statements are non-audited) and others.

If sold through a registrant, such as an EMD, an updated due diligence and review process by the EMD may need to be undertaken, with continued dialogue between the EMD and issuer, which may require a substantial amount of resources for both parties.

While it is dealers that most often cite concerns over compliance burden and cost in new regulation, it is the investors that pay the price. Significant changes to the NI 31-103 registrant oversight regime are dramatically increasing the KYP requirements for EMDs that are retained by those issuers impacted by

the Proposed Amendments. In order to economically operate a dealership, many EMDs currently do not distribute securities for an issuer raising less than $5-$10 million. The Proposed Amendments may have the effect of increasing this threshold figure for Real Estate Issuers and CIVs, because the volume and frequency of KYP responsibility for dealers distributing their securities will be markedly increased.

While for some issuers, this may mean that they are unable to raise capitalize (in and of itself a problem), others may continue to raising capital on their own or through unregistered salespersons. When this happens, investors are missing the far greater protections they would have been afforded under the NI 31-103 regime, including the absence of any know-your-client, KYP, suitability, conflict mitigation, performance reporting or duty of care requirements. Enhanced disclosure theoretically provides better protection to investors. However, if this enhanced disclosure comes at the cost of investors losing the protections they would have had, or result in less investment opportunities without a corresponding increase in investor protection, then the Proposed Amendments will have an opposite effect to what is clearly intended.

The PCMA is concerned that the CSA appears to be of the view that increasing the disclosure standards for private issuers, will push them towards becoming publicly traded reporting issuers. This is not necessarily the case. Instead, it may push them towards unregulated distribution platforms (direct sales and unregistered salespersons) and less regulated distribution platforms (like crowdfunding) and outside of the prescribed disclosure regime involving the OM Exemption. Before adopting the Proposed Amendments, the CSA must consider the risk of these potential unintended consequences (increase distributions outside of the registrant regime).

Translation Costs and Other Costs

The requirement for Semi-Annual Financial Statements will also impose additional translation costs on issuers offering securities in Québec, which costs were not captured in the cost/benefit analysis set out in the Proposed Amendments.

Issuers are typically interested in distributing their securities under the OM Exemption in Québec. Most, however, opt not to since French-language translation costs can be prohibitive. This will be compounded if the CSA imposes the requirement for issuers to provide Semi-Annual Financial Statements and update its OM twice in a typical OM review cycle when in continuous distribution, in addition to any other requirements to update an OM, as required under the OM Exemption and applicable securities law.

The PCMA notes that *Table 7 – Estimated Total Cost of 6-Month Amendment of Offering Memorandum* set out in the Appendix E to the Proposed Amendments, states that costs imposed by adding the Semi-Annual Financial Statements requirement can be up to almost $80,000. The PCMA submits that this represents a significant cost increase to issuers who are likely only raising a small portion of the associated offering proceeds under the OM Exemption. If these costs are incurred by the issuer they will likely be passed on to all investors (not just those purchasing under the OM Exemption), reducing an investors expected returns.

Impact on EMDs and Other Registrants

Semi-Annual Financial Statements will likely be received in August of each year. Arguably, this will require all issuers whose securities are distributed by a registrant, such as an EMD, to cease distribution while the registrant reviews such Semi-Annual Financial Statements and engages in due diligence.

EMDs may cease distributions when an OM is updated during an offering cycle (January 1 of Year 1 to April 30 of Year 2) and dealing representatives cannot carry on business during this time. While this currently may occur once in any OM offering cycle, twice (or more) is impractical, burdensome and does not make commercial sense for an EMD to undertake. The PCMA believes this additional regulatory burden will result in EMDs only accepting offerings made under the Accredited Investor Exemption, to the detriment of investors who would otherwise qualify to participate under the OM Exemption.

An OM review for an issuer in continuous distribution occurs once every 16 months (assuming an offering period occurs, for example, January 1 of Year 1 and ends on April 30 of Year 2) which is a significant, although necessary, burden on registrants. Undertaking such an exercise twice per year, if not more if further amendments are required, is excessive on all registrants and may result in a smaller EMD product shelf if this Proposed Amendment is implemented. A small selection of investment opportunities does not help small and medium sized enterprises or investors with a greater selection in available private market investments.

EMDs may also charge issuers additional fees for undertaking such a review, which will ultimately be borne by investors.

Notwithstanding the foregoing, the PCMA wants to be clear that EMDs try and balance the impact of additional due diligence requirements, such as those imposed if Semi-Annual Financial Statements are required, and the EMD's legal obligation to monitor issuers whose products are/were distributed by the EMD. Investors may also appreciate semi-annual updates of their investment holdings and many EMDs attempt to do the same, however, the burden of one issuer working with many EMDs seeking any financial and non-financial updates can be extremely onerous.

Accordingly, if the CSA seeks to move forward with the Semi-Annual Financial Statements requirement, the PCMA recommends the following:

- the Semi-Annual Financial Statements must only be filed on SEDAR as part of an issuer's continuous disclosure record, such as the filing of any OM and OM marketing materials;

- the CSA ensure that all issuers who distribute securities under the OM Exemption have a SEDAR profile. We note that some issuers file their OM and OM marketing materials directly with a CSA member and have no issuer profile on SEDAR;

- EMDs have a 90-day period to review the Semi-Annual Financial Statements of an issuer when filed on SEDAR, and there is no obligation that the EMD must 'pull the offering' (i.e., cease distribution) until its due diligence review is completed, except if there are obvious material issues and concerns, so called "red flags"; and

- the CSA needs to consider the impact of any non-compliance if an issuer does not file its Semi-Annual Financial Statements on SEDAR within the prescribed time-line on EMDs distributing securities of said issuer. An EMD should not be required to automatically cease distribution until the Semi-Annual Financial Statements are filed.

Although the creation and filing of a Semi-Annual Financial Statements involves costs, the PCMA believes a filing only requirement, and not an OM update, is the least burdensome, all things considered, and maintains sufficient investor protection.

PROPOSED CHANGES TO SECTION 2.9 OF NI 45-106

Definition – "collective investment vehicle"

"**collective investment vehicle**" means an issuer whose primary purpose is to invest money provided by its security holders in a portfolio of securities.

PCMA Comment
This is an extremely broad definition and could include an investment fund, which we understand this definition excludes. The definition should be narrowed or tied into the definition of an investment fund so such terms are clearly distinguished. Issuers and their counsel need legal certainty regarding such matters.

Definition – "material contract"

"**material contract**" means any contract that an issuer or any of its subsidiaries is a party to, that is material to the issuer.

PCMA Comment
Reference is made to a "material contract". The PCMA believes the term should be added as a defined term so it is clear to a reader since there will be varied interpretations by issuers, industry and CSA members.

Definition – "Real estate activities"

"**real estate activities**" means an undertaking, the purpose of which is primarily to generate for security holders income or gain from the lease, sale or other disposition of real property, but does not include any of the following: a) activities in respect of a mineral project, as defined in National Instrument 43-101 *Standards of Disclosure for Mineral Projects*; b) oil and gas activities as defined in National Instrument 51-101 Standards of Disclosure for Oil and Gas Activities; c) in Québec, in addition to paragraphs (a) and (b), the distribution of either of the following: i. an investment contract that includes a real right of ownership in an immovable and a rental management agreement; ii. a security of an issuer that owns an immovable giving the holder a right of exclusive use of a residential unit and a space in such immovable;

PCMA Comment
Reference is made to "primarily". A definition of should be provided for clarity to issuers, industry and investors.

The PCMA believe all disclosure involving real estate under the OM Exemption should be included in these form requirements. If the Proposed Amendments are enacted, we commend the Alberta Securities Commission (the "**ASC**") and the British Columbia Securities Commission (the "**BCSC**") for seeking to revoke their respective Instruments regarding "real estate securities" as set out below.

- ASC Rule 45-509 ASC Rule 45-509 Offering Memorandum for Real Estate Securities
  See - https://asc.ca/-/media/ASC-Documents-part-1/Regulatory-Instruments/2020/09/5898940-CSA-Notice-for-Comment-Proposed-Amendments-to-NI-45-106-Relating-to-OM-Prospectus-Exemption.ashx (see page 208)

- BC Instrument 45-512 – Real Estate Securities
  See - https://www.bcsc.bc.ca/-/media/PWS/New-Resources/Securities-Law/Instruments-and-Policies/Policy-4/45106-Local-Matters-September-17-2020.pdf

These Instruments are not nationalized with other CSA members or harmonized between the ASC and BCSC, and were an unnecessary disclosure burden on issuers. For example, if an issuer wanted to distribute "real estate securities" nationally, it would have to: (a) comply with the either the AB or BC Instrument; (b) seek exemptive relief from the other jurisdictions involving the real estate security disclosure requirements; and (c) prepare an OM wrapper to the form of OM used in compliance with either the AB or BC Instrument involving real estate securities, and any required disclosure pursuant to any exemptive relief.

Section 13.2 (material changes occurs in an OM after the certificate is signed)

(13.2) If a material change with respect to the issuer occurs after the certificate under subsection (8) or (14.1) is signed, and before the issuer accepts an agreement to purchase the security from the purchaser, the issuer must amend the offering memorandum to reflect the material change, and deliver the amended offering memorandum to the purchaser

PCMA Comment
Additional guidance is required as to what constitutes a "material change" in this context.

Business Acquisitions / Change in Holdings
Certain issuers have taken the view that certain changes to their portfolio holdings, such as investments or divestitures, are not material changes, since their business strategy and guidelines are set out in their OM.

The current guidance to item C – Financial Statements – Business Acquisitions under the *Instructions for Completing Form 45-106F2 – Offering Memorandum for Non-Qualifying Is*suers discusses acquisition of businesses which is not relevant to many exempt market issuers, unless they are, for example, private equity funds of reporting issuers. The PCMA believes the CSA should clarify the concept of material change as it relates to Real Estate Issuers and CIVs.

Use of OM Marketing Materials and Material Change Matters
Many issuers in continuous distribution update OM marketing materials to reflect certain material changes, such as changes in portfolio composition, and provide such OM marketing materials to investors as a stand-alone document that accompanies the OM at least 48 hours prior to the time of a trade. While not all OM marketing materials must be provided to investors, all OM marketing material must be filed within specified time limits under the OM Exemption in most jurisdictions.

If certain OM marketing material is considered an amendment to an OM, then an issuer should have the choice to append the document to its subscription agreement so it is clear that an investor received the requisite disclosure to reflect the material change. An example, is an issuer that updates its portfolio

holdings quarterly and provides more current disclosure to investors in the form of OM marketing materials (and filed on SEDAR) without being required to update its OM.

The PCMA submits that the time and money for lawyers and auditors and management to work on any amendment, obtain board approval and then have it reviewed by an EMD while distributions of securities of the issuer is ceased while under review is too burdensome relative to potential investor benefits. In addition, investors are already protected since securities legislation already imposes statutory liability for all OM marketing materials provided to investors.

Below is sample language that we submit the CSA may want to have included in an OM so such matters are clarified which certain issuer are currently doing.

OM MARKETING MATERIALS

Any "**OM marketing materials**" (as such term is defined in NI 45-106) related to each distribution under this Offering Memorandum and delivered or made reasonably available to a prospective investor before the termination of such distribution will be, and will be deemed to be, incorporated by reference into this Offering Memorandum, provided that any OM marketing materials to be incorporated by reference into this Offering Memorandum are not part of the Offering Memorandum to the extent that the contents of such OM marketing materials have been modified or superseded by a statement contained in an amended and restated offering memorandum or OM marketing materials subsequently delivered or made reasonably available to a prospective investor prior to the execution of the subscription agreement by the investor. The modifying or superseding statement need not state that it has modified or superseded a prior statement or include any other information set forth in the document that it modifies or supersedes. The making of a modifying or superseding statement is not deemed an admission for any purposes that the modified or superseded statement, when made, constituted a misrepresentation, an untrue statement of a material fact or an omission to state a material fact that is required to be stated or that is necessary to make a statement not misleading in light of the circumstances in which it was made. Any statement so modified or superseded is not deemed, except as so modified or superseded, to constitute a part of this Offering Memorandum.

The [Issuer] intends to update certain information disclosed in this Offering Memorandum, including information concerning assets then held by the [underlying entity], on a [quarterly] basis, with OM marketing materials. Potential investors should confirm with their [EMD] that they have received the most recent OM marketing materials. OM marketing materials will be filed by the [Issuer] on SEDAR as required pursuant to section 2.9 of NI 45-106, which information is available electronically from SEDAR at www.sedar.com.

Section 13.3 (provide a "*reasonable purchaser with sufficient information to make an informed investment decision*")

(13.3) An offering memorandum delivered under this section must provide a reasonable purchaser with sufficient information to make an informed investment decision. [the *"***Sufficiency of Information Requirement***")*

PCMA Comment
There is prescribed disclosure requirements for a form of OM set out in Form 45-106F2 and Form 45-106F3. Section 13.3 was added (see above) and the language below is proposed to the Companion Policy to NI 45-106.

> *Subsection 3.8(3) is replaced with the following: (3) Standard of disclosure for an offering memorandum, amending an offering memorandum and related matters (a) Standard of disclosure for an offering memorandum* ***There are two standards that make up the standard of disclosure for an offering memorandum****. First, under subsection 2.9(13.1) of the Instrument, an offering memorandum must not contain a misrepresentation on the date its certificate is signed. Second, under subsection 2.9(13.3) of the Instrument, an offering memorandum delivered under the section must provide a reasonable purchaser with sufficient information to make an informed investment decision.* [**bold** added for emphasis]

It is not clear why the Sufficiency of Information Requirement was added or more specifically, what harm this language is contemplated to remedy, as no commentary was provided by the CSA for its inclusions. Issuers and their legal counsel need reasonable certainty that they have complied with their disclosure obligations and that is why the CSA members have provided prescribed disclosure requirements under Form 45-106F2 and Form 45-106F3.

Certain PCMA issuers and EMDs have been involved with offerings where there is a reasonable difference of opinion, as when CSA Staff take a view that an OM includes a misrepresentation, or arguably, has failed to meet the Sufficiency of Information Requirement. In such circumstances, the stakes are high since a CSA will likely require an issuer to offer its investors rescissions rights when there is a reasonable disagreement. In such circumstances, forcing an issuer to offer investors rescission rights is not always in the public interest. For example, consider a situation where a business is doing well, but for an alleged disclosure violation, and the issuer has to offer rescission rights, when investor funds may be already be fully deployed and cannot be returned on short notice (for example, proceed were used to buy real estate). Arguably, this could result in the cessation of business of an issuer if they have to sell assets, assuming they can, to pay out those investors who exercised their rescission rights.

Based on the foregoing, the PCMA recommends that each CSA member should provide issuers with a right of appeal of a Staff opinion/recommendation of an alleged disclosure failure in an OM to a Commissioner for a non-binding review. The PCMA believe this will provide due process for issuers and their counsel to have a 'second set of eyes' on a disclosure matter when both sides have become positional and such a review would be in the public interest. Moreover, the cost, time, effort and disruption for an updated OM are high, for all parties, including investors who have already invested in an offering, therefore this warrants heightened attention by the CSA.

PROPOSED CHANGES TO FORM 45-106F2

Below are the PCMA's comments involving Form45-106F2.

The Issuer

PCMA Comment:
Head office - The PCMA agrees that the requirement to disclose a facsimile should be removed since e-mails are more common today and not all issuers will have a facsimile number.

Currently listed or quoted - The PCMA agrees with the change to generic language since there are other exchanges or markets than TSX/TSX Venture Exchange, such as the Canadian Securities Exchange.

Insufficient Funds

PCMA Comment:
The concept of insufficient funds should relate to a minimum offering. The PCMA agrees that there may be insufficient funds to accomplish the proposed objectives, however, there should be disclosure about the basis for how an issuer determined the minimum offering amount. For example, what is the underlying rationale for the amount of the minimum offering, and more importantly, how will funds be deployed among the various Use of Proceeds, if the minimum offering is achieved but less than the maximum offering. This should be clearly disclosed by issuers in the OM.

Also, the PCMA recommends adding a sentence that if amounts less than the maximum offering are raised, how such funds will be allocated, in terms of priority of use, as set out in the Use of Proceeds.

Certain Dividends or Distributions

Certain Dividends or Distributions If the issuer is making disclosure under item 5B, state the following with the bracketed information completed: "[name of issuer] has paid dividends or distributions that exceeded cash flow from operations. See item 5B."

PCMA Comment:
The PCMA would like additional guidance on why this disclosure will be required. If it is in response to a J-Curve effect on an issuer's distribution of funds, then additional explanation is required so industry and investor understand the basis of this disclosure, including adding related risk factors.

The PCMA does not object to such disclosure, however, an issuer should be required to explain: (a) why this is occurring as at the date of the OM; (b) why management is paying such dividends/distributions; (c) how such dividends/distributions are being funded; and (d) management's expectations as to when the issuer will no longer fund dividends/distributions from cash flow.

Item 1.1 Funds

PCMA Comment:
Certain issuers raise capital in an indirect offering structure where the amounts identified in A through G are paid by the underlying issuer, such as a limited partnership in a trust/limited partnership offering structure. Accordingly, certain issuers disclose $0.00 and add a footnote that such amounts are paid by the partnership with no further disclosure. The PCMA suggests that a Funds Table should be completed by the issuer and the ultimate entity that makes such payments so such information is clear to an investor. Otherwise, this information may not be completed and there is no disclosure in the Fund Table. The PCMA understands some counsel advise their issuer clients that such a chart only applies to the issuer and not the ultimate entity, such as an underlying limited partnership, that may receive such funds and make such payments.

The PCMA believes the requirement to merely disclose that such amounts are paid by a related party in a note to the table is insufficient disclosure.

Item 1.2 Use of Available Funds

PCMA Comment:
The issuer should be required to order the Use of Available Funds in the order of use/priority where the maximum offering is not achieved. The CSA should require this level of disclosure as investors should understand the priority of use of funds contemplated by management.

Item 2.1 Structure

PCMA Comment:
The PCMA believes issuers should be required to provide a structure diagram explaining the relationship among the various entities and link them via material contracts to improve disclosure.

Item 4.1 Securities Except for Debt Securities

PCMA Comment:
Issuers should be required to disclose their capital structure on an undiluted and fully diluted basis. Accordingly, issuers should also be required to disclose all compensation based arrangements and provide particulars. The CSA may want to consider providing a sample table(s) of what such disclosure is required by issuers.

Item 5A Redemption and Retraction History

PCMA Comment:
Issuers who have cash limits on what they are legally required to pay in cash in connection with a redemption may advise investors that they have insufficient cash proceeds and will issue a redemption note unless their redemption request is retracted. This is concerning to investors who hold investments in registered plans since the PCMA understands redemptions notes cannot be held within a registered plan. This may result in the retraction by investors of their redemption request, which arguably may not be captured in the proposed table since the table refers to "outstanding" requests. Accordingly, the PCMA recommends that a column be added stating the number of securities with *Redemption Requests Made and Retracted During the Calendar Year*.

Item 5B Certain Dividends or Distributions

PCMA Comment:
See the PCMA's comments above.

Item 7 Compensation Paid to Sellers and Finders

PCMA Comment:
This section should be extended to wholesalers who may earn both a minimum flat amount and percentage of capital raised.

Item 11.2 Cautionary Statement Regarding Report, Statement or Opinion of Expert

PCMA Comment:
Issuers often summarize, refer to and link to reports of experts or other sources of information, often in their industry overview section. The CSA should provide guidance on acceptable and unacceptable sources and indicate the format and level of footnotes related thereto, including weblinks and recommended practices. Moreover, the CSA should explicitly state that investors have no right of action against such firms/authors/sources of information to reduce uncertainty.

PROPOSED CHANGES TO INSTRUCTIONS FOR COMPLETING FORM 45-106F2 OFFERING MEMORANDUM FOR NON-QUALIFYING ISSUERS

A – General Instructions - Section 5.1

PCMA Comment:
It is not clear what "reasonably expects" means. Issuers may often contemplate raising $100,000,000 and only close on $10,000,000, despite *bona fide* intentions. The PCMA requests that the CSA provide additional guidance.

The PCMA also requests that the CSA provide additional guidance on what amounts it expects issuers to state in relation to a continuous offering. Is it an amount the issuer reasonably expects to raise during its fiscal year or some other time period? The PCMA requests that this be clarified.

The PCMA also believes the CSA should also require issuers to disclose whether they are raising capital in connection with a concurrent offering and amounts contemplated to be raised in relation thereto.

B – Financial Statements – General

PCMA Comment:
The PCMA believes that if US issuers want to raise capital under the OM Exemption, they should not be required to provided audited statements in accordance with Canadian GAAP. Simply, US issuers should be able to provide audited annual financial statements as required under US laws for that type of public or private issuer that is raising capital under the OM Exemption in Canada. The PCMA believes US issuers should not be required to restate their financial statements or apply for exemptive relief from certain financial statement requirements under Form 45-106F2 in such circumstances.

B – Financial Statements – No Audited Financial Statement Requirements for Newly Formed Entities with Minimal Capital

PCMA Comment:
The PCMA strongly believes that if an issuer has been newly formed, such as a trust which has been settled for $10.00, there should be no requirement for the issuer to prepared audited financial statements. Instead, a simple prominent statement informing investors that the issuer is a newly formed entity with nominal assets should be inserted. The PCMA believes that this requirement imposes an unnecessary financial burden on issuers that does not provide any benefit to investors and accordingly is not in the public interest.

PROPOSED NEW SCHEDULE 1 - ADDITIONAL DISCLOSURE REQUIREMENTS FOR AN ISSUER ENGAGED IN REAL ESTATE ACTIVITIES

The PCMA agrees with most of the disclosure requirements proposed by the CSA in Schedule 1, except as discussed below.

Section 3(1)(a) of Schedule 1
Section 3(1)(a) of Schedule 1 requires a real property's legal description which we understand can be quite lengthy. The PCMA believes that a municipal address should suffice or only require the legal description information to be filed on SEDAR.

Section 3(1)(c) of Schedule 1
Section 3(1)(c) of Schedule 1 requires any encumbrances on real property to be disclosed which, like legal descriptions, can be quite lengthy. Accordingly, the PCMA believes that only material encumbrances, such as mortgages, easements and liens (*e.g.,* construction, tax, execution or otherwise), should be required to be disclosed.

Section 3(1)(g) of Schedule 1
Section 3(1)(g) of Schedule 1 requires disclosure about utilities and other services and how they are provided. The PCMA is not clear why this is relevant unless it is a conflict of interest and the CSA seeks disclosure regarding same. We do not see how this disclosure would impact an investor's decision to invest.

Section 3(1)(k) of Schedule 1
Section 3(1)(k) of Schedule 1 requires disclosure regarding occupancy levels. We believe that such disclosure suggest that tenants are paying rent. However, as a result of COVID-19, tenants may occupy a unit but be subject to a rent deferral or rent reduction. The PCMA believes such disclosure should be added so an investor can assess occupancy and rental income appropriately. Therefore, the occupancy level and percentage of full rent being paid should be disclosed.

OM Marketing Materials and Portfolio Updates
The PCMA believes that certain information in Schedule 1 may change during the course of an offering (or between OM updates in the case of a continuous offering). As stated above, the PCMA believes that an issuer should be able to provide investors with updated portfolio information without requiring an OM amendment since the time, money and effort required is not worth the cost. Moreover, investors would benefit from more frequent portfolio updates, such as updated quarterly portfolio information, if an issuer seeks to provide such information.

Accordingly, the PCMA submits the CSA should allow CIVs to use OM market material to provide portfolio updates since all OM marketing material prescribes statutory liability on an issuer for a misrepresentation in any OM marketing material. Therefore, whether an investor receives an OM or OM marketing material, neither can have a misrepresentation and the issuer has the same statutory liability.

PROPOSED NEW SCHEDULE 2 - ADDITIONAL DISCLOSURE REQUIREMENTS FOR AN ISSUER THAT IS A COLLECTIVE INVESTMENT VEHICLE

The PCMA agrees with most of the disclosure requirements proposed by the CSA in Schedule 2 for CIVs, except as discussed below.

Loans/Leases Whose Term Were Changed

The PCMA is concerned about circumstances where issuers change their deal terms to mask a default. For example, in circumstances where a loan or lease agreement is in technical default and could be cured, an issuer may amend the agreement. We believe this may make commercial sense in certain circumstances, however, it also may disguise or mask the true risk profile of an issuer. The PCMA is aware of one issuer in particular who claimed they never had a default with a lessee yet never disclosed that it changed the lease terms, including providing a substantial period where no lease payments were required.

With respect to mortgages that have an impaired value, Section 3(i) requires disclosure of the principal amount and the percentage that those mortgages represent of the total principal amount of the mortgage. The PCMA believes disclosure should be made about loans that were in default (whether small 'c' default (subject to a cure period) or big 'D' default (in actual default)) and whose terms were amended so the loan or lease was no longer in default.

In order to address this matter, the PCMA proposed the following disclosure for each loan/lease whose terms were changed and which loan/lease remain outstanding:

(i) the initial amount of a loan or lease and any refinanced amounts;
(ii) the principal amount of any loan or lease and any interest or lease payments made;
(iii) the initial term of the loan or lease and any changes to the term;
(iv) the initial interest rate of the loan or lease and any changes to the interest rate;

And on a portfolio basis, the following disclosure:

(i) the percentage of the portfolio whose loan or lease terms were changed based on the aggregate principal amount loaned or leased and not repaid; and
(ii) the aggregate dollar amount of the portfolio whose loan or lease terms were changed based on the aggregate principal amount loaned or leased and not repaid.

Investment Funds

The PCMA believes that all investment funds (including mutual funds that are not a reporting issuer) should be permitted to be distributed under the OM Exemption in all jurisdictions in Canada. For example, a trust should be allowed to invest in securities of issuers that are not a mutual fund, such as a another alternative investment fund, without running afoul of the requirements under the OM Exemption. Issuers and their legal counsel should not have to create unique legal structures to avoid being classified as an investment fund for securities law purposes to be able to make use of the OM Exemption.

The PCMA submits that with the disclosure requirements involving CIVs is robust enough to allow investment funds to be distributed under the OM Exemption in all jurisdictions. In addition, the PCMA notes that investment fund managers are registrants and investments funds are generally required to follow National Instrument 81-106 – *Investment Funds Continuous Disclosure* and as such, does not understand why these types of issuers would be excluded from distributing under the OM Exemption given the inherent investor protection built into the regulatory regime these issuers must follow.

Mortgage Payment Deferrals, Payment Reductions Etc.
As a result of COVID-19, certain mortgage lenders may have provided mortgage payment deferrals, mortgage payment reductions or otherwise. The PCMA believes such matters should be disclosed in the OM in Section 3(3) of Table 2 so investors understand that revenue has decreased although a mortgage is not technically impaired.

COMMENTS TO ANNEX E - LOCAL MATTERS (ONTARIO)

The PCMA commends the OSC for providing some analysis of the anticipated costs for the Proposed Amendments. We believe this type of analysis is critical for the capital markets instead of anecdotal evidence by CSA members and industry sources. However, the PCMA is not clear on how the number of hours were estimated for each amendment considered. More information should be provided on how the estimate was determined.

Moreover, the PCMA questions the hourly rates use by the OSC for hourly wages of both external and internal lawyers. We note reference is made to the *Counsel Network In-House Counsel Compensation & Career Survey Report 2018.* We are not clear why the OSC believes this is reliable and the best evidence of hourly rates, when there may be more reliable information provided by Robert Half and ZSA Legal Recruitment.

For example, the OSC provided the following hourly rates.

Issuer Internal Review	Average Hourly Wage
Junior In-House Counsel	$58
Senior In-House Counsel	$86
General Counsel/Executive	$111
External Assistance	
Senior Counsel (6-10 yr. experience)	$328

The PCMA notes the work to be undertaken to amend any OM would involve a securities lawyer and not general practitioner and such lawyers are generally located in major urban centres since securities law is a specialized area. PCMA members that are issuers advise that the hourly rates charged by their legal counsel are significantly more than the hourly rates noted above.

Again, we want to encourage the CSA to continue to provide such evidence-based cost-benefit analysis, however, want to make sure the costs are reasonable and the PCMA does not believe the hourly rates above are reflective of actual commercial practice.

OTHER MATTERS

Use of Videos as OM Marketing Material
Issuers and EMDs are increasingly relying on videos as a means of communication with investors especially with COVID-19. It is not clear how a video would be construed as “OM marketing material” as well as how it should be filed on SEDAR if it is considered OM marketing material.

The PCMA respectfully requests that the CSA provide further guidance regarding the disclosure and filing requirements involving videos used as part of the offering material provided to investors in light of COVID-19 and the challenges in face-to-face meeting with investors.

Industry Overview and Proper Citation Requirements
Issuers may include an industry overview section in their OM. If so, issuers will source various information to build their business case to support their investment thesis. As stated above in connection with expert opinions, please provide guidance on acceptable and unacceptable sources and indicate the format and level of footnotes related thereto, including weblinks and recommended practices.

Reference to Independence and Corporate Governance
The PCMA is aware of issuers that include corporate governance disclosure in connection with conflicts of interest. Private market failed offerings have involved conflicts of interest. Although governance structures addressing conflicts of interest are not required under the OM Exemption, we want to commend those issuers who have included such investor protections.

The PCMA notes that issuers may reference National Instrument 81-107 – *Independent Review Committee for Investment Funds* ("**NI 81-107**") for definitions of "**independence**" and "**conflict of interest**", however, they are not required to self-impose any requirement under NI 81-107 unless they voluntarily elect to do so.

The PCMA would appreciate if the CSA would make reference to suggest voluntary disclosure practices and advise issuers that they are permitted to adopt their own definition of "independence" so long as they comply with it. For example, certain issuers may pay a director certain amounts in addition to their director's fees and maintain such director is independent. Presently, such amounts are negotiated between issuers and EMDs but any CSA guidance would be appreciated.

In addition, if an issuer adopts a governance regime, the CSA should provide a clear statement that it requires compliance by the issuer on what they say they do and that its practice is consistent with any adopted policy, which may form the basis of any CSA member review of an issuer and its OM.

CLOSING REMARKS

The PCMA would like to thank to the CSA for soliciting feedback from various stakeholders.

* * * *

The PCMA thanks you for considering its submissions and we would be pleased to respond to any questions or meet with you to discuss our comments.

Yours truly,

PCMA COMMENT LETTER COMMITTEE MEMBERS

"*Brian Koscak*"
Chair of Advocacy Committee & Executive Committee Member

"*Dean Koeller*"
Committee Member

"*Nadine Milne*"
Co-Chair of the Compliance Committee

cc: PCMA Board of Directors

SKYLINE

December 15, 2020

BY EMAIL

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Financial and Consumer Services Commission, New Brunswick
Manitoba Securities Commission
Nova Scotia Securities Commission
Nunavut Securities Office
Office of the Superintendent of Securities, Newfoundland and Labrador
Northwest Territories Office of the Superintendent of Securities,
Office of the Yukon Superintendent of Securities
Ontario Securities Commission
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

Gordon Smith
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Email: gsmith@bcsc.b.ca

Dear Sirs/Mesdames:

Re: CSA Notice and Request for Comment – Proposed Amendment to National Instrument Policy 45-106 *Prospectus Exemptions* ("Proposed Amendments")

The Skyline Group of Companies appreciates the opportunity to comment on the Proposed Amendments.

We have outlined our comments on specific aspects of the Proposed Amendments below.

A. Annex C – Proposed Amendments to NI 45-106

Real Estate Activity (19.6) Triggers

Proposed subsection 2.9 (19.5)(a) states that "*if any of the following apply: (a) the issuer proposes to acquire, or* ***has acquired****, an interest in real property from a related party.*" The CSA may wish to

consider providing further guidance on the period for which this disclosure is intended to apply as it relates to previously acquired properties. A plain reading of subsections 2.9(19.5)(a) and 19.6 together suggests that for all interests in real property previously acquired from related parties would require an updated appraisal of such property each time an OM is delivered and that such appraisal provide a value as of a date within 6 months prior to delivery of the appraisal.

Proposed subsection 2.9 (19.5)(c) states that *"if any of the following apply: (c) the issuer proposes to use a material amount of the proceeds of the offering to acquire an interest in real property."* The CSA may wish to consider providing further guidance on when the proceeds of the offering relate to multiple acquisitions and whether in such a case the proceeds amount would be considered material for all acquisitions being considered under the offering memorandum ("OM").

Independent Appraisal

We are generally supportive of the new requirements relating to the Offering Memorandum Exemption under section 2.9 of NI 45-106. Proposed subsection 2.9(19.6) will require an issuer to deliver to a purchaser an appraisal by a qualified appraisal that is independent of the issuer of the interest in the property that values the property as at a date that is within 6 months preceding the date that the appraisal is delivered. The CSA may wish to reconsider the timing of providing an independent appraisal from 'at the same time or before the issuer delivers an OM to a time 'shortly thereafter' as the timing of when an appraisal is requested is generally preceding the acquisition. Typically, when the OM is created for the acquisition, it is generally done well in advance of the acquisition, therefore, the appraisal would not be available at the time of the delivery of the OM. The CSA may also wish to consider amending the timing in Section 29(19.6)(d) to refer to a date that is within 6 months preceding the date that the property is proposed to be or was acquired such that multiple appraisals are not required for the same property if a property is required to be included in multiple iterations of the OM.

Subsection 2.9(19.7) will outline the requirements for an issuer engaged in real estate activities relying on an exemption set out in subsection (1), (2) or (2.1) to disclose any communication pertaining to a representation or an opinion as to the value of a property other than the fair market value. One such requirement is disclosure of the material factors or assumptions used to determine the value. We are of the view that such disclosure may not adequately address the risk. We suggest that investors should also be made aware of the limitations of the valuation method used, in order to better understand the value that is disclosed. To achieve this, we believe the disclosure should also contain a description of the inherent risks and limitations of the assumptions relied upon.

B. Schedule 1 – Additional Disclosure Requirements for an Issuer Engaged in Real Estate Activities

4. Appraisal

In section (1)(c) of Item 4, the Schedule will require that the appraisal is delivered to the purchaser at the same time or before the OM is delivered. Given that these appraisals can be lengthy and the OM could be related to multiple acquisitions, in addition to the comment above regarding timing of delivery, we recommend that there be an option to allow the Issuer to provide a link within this Schedule to a landing page where the purchase could view the appraisals associated to the offering.

We wish to thank you for this opportunity to comment on the proposed amendments and we will be pleased to discuss them further with you, if you wish.

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Sincerely,

[redacted]

Wayne Byrd
Chief Financial Officer
Skyline Group of Companies

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December 16, 2020

VIA EMAIL

British Columbia Securities Commission
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Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marches financiers
Office of the Superintendent of Securities, Service NL
Financial and Consumer Services Commission, New Brunswick
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Officer of the Yukon Superintendent of Securities
Northwest Territories Office of the Superintendent of Securities
Nunavut Securities Office

Attention:

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The Secretary
Ontario Securities Commission comments@osc.gov.on.ca

Philippe Lebel, Corporate Secretary and Executive Director, Legal Affairs
Autorité des marches financiers consultation-en-cours@lautorite.qc.ca

Dear Sirs/Mesdames:

RE: Proposed Amendments to National Instrument 45-106 *Prospectus Exemptions* relating to the Offering Memorandum Prospectus Exemption

I am delighted to provide you with comments on the proposed amendments to NI 45-106 relating to the OM Exemption issued by the Canadian Securities Administrators on September 17, 2020.

By way of background, I have practised corporate securities law in Ontario since my call to the Ontario bar in 1999. My practice focuses on all aspects of corporate securities law with a particular emphasis on M&A and corporate finance. My early years of practice were spent at a leading Canadian law firm, and since 2006, I have continued my practice in a boutique corporate securites law setting. I regularly act as external counsel for issuers and dealers operating in the exempt market.

My comments relate to issuers that are collective investment vehicles, and in particular mortgage investment corporations (MICs) and other mortgage investment entities (MIEs), though some of my concerns apply equally to issuers engaged in real estate activities.

General Comments

I have over the years advised and encouraged my MIE and other clients disseminating offering memoranda (whether under the OM Exemption or otherwise) to always consider enhanced disclosure even when it is not technically prescribed. Since its release on April 26, 2012, I have directed my clients to carefully review Multilateral CSA Staff Notice 45-309 *Guidance for Preparing and Filing an Offering Memorandum under NI 45-106* which, as you know, specifically identifies OM deficiencies relating to mortgage investment entities and real estate development entities. I am not sure why the principles outlined in Multilateral CSA Staff Notice 45-309 should not continue to apply and why the robust prescribed supplemental disclosures are being proposed at this time. The new disclosure requirements set out in the proposals impose a disclosure standard that appears to approach the 'full, true and plain disclosure of all material facts' standard applicable to reporting issuers as opposed to the lesser standard of not containing any 'misrepresentation' and providing a reasonable investor with sufficient information to make an informed decision. I worry that these comprehensive supplemental disclosures and their corresponding compliance costs will have a chilling effect on the use of the OM Exemption. This will result in inequities between larger issuers who have the resources to comply with the OM Exemption and smaller issuers who will not and therefore will need to access capital through other channels.

Even prior to your announcement of these proposed supplemental disclosures, it has been my experience that issuers shy away from using the OM Exemption in jurisdictions like Ontario where individual investment limits apply. If the securities regulators in these jurisdictions are adamant that these prescribed disclosures are required in order to provide the appropriate investor safeguards and if those same regulators believe that the OM Exemption should be widely available for use by issuers, large and small, then I would propose that collective investment vehicles and issuers engaged in real estate activities who are willing to spend the time and money to comply with the proposed supplemental disclosures should have their OM Exemption offerings exempted from the individual investment limit restrictions. Insofar as a more stringent disclosure standard is being prescribed, the policy objective in imposing investment limits on individuals subsides.

I am also concerned that by prescribing this level of comprehensive disclosure under the OM Exemption, securities regulators are signalling the type of 'gold standard' disclosures they will expect during compliance reviews in offering memoranda (and other offering materials) disseminated by non-reporting MIE and other issuers under all prospectus exemptions. This would likely have an additional chilling effect on the use of an offering memorandum (whether in conjunction with the OM Exemption or some other prospectus exemption) by smaller issuers, who will eventually look to solicit by way of term sheet only, ultimately resulting in less disclosure to prospective investors.

Specific Comments

1. Proposed clause 1.2.1 of Form 45-106F2 provides, in part, that if a significant amount of an MIE's business is carried out by another entity that is not a subsidiary of the MIE, then additional disclosure would be required from that other entity, and Schedule 2 of Form 45-106F2 would be prepared as if that other entity were the issuer. For most MIEs with externalized management, this would result in increased compliance costs and regulatory burdens imposed on the MIE issuer. I recognize that to a certain extent it is the business expertise of an MIE's manager that is being offered to investors, and for that reason, I agree that an offering memorandum should include robust disclosure relating to the MIE's manager including disclosure relating to the material terms of its management agreement with the MIE issuer, as well as detailed disclosure about the MIE issuer's investment objectives and strategies, and how the MIE's manager plans to meet those objectives. Section 3.1 (compensation and securities held), section 3.2 (management bios), section 3.3 (regulatory disclosure) and section 3.4 (loans disclosure) should apply to the directors and executive officers of any MIE manager (if not also directors and executive officers of the MIE issuer) if that MIE manager essentially operates the MIE issuer's business. I also agree that any risk factors that affect an MIE's manager who effectively runs the MIE issuer's business should also be disclosed clearly and prominently.

   I disagree, however, with taking this any further and treating the MIE's manager as the issuer for purposes of the offering. Requiring audited financial statements from not only the MIE issuer (which financial statements would in any event refer to related party transactions and the role of the MIE's manager) but also from the MIE's manager results in increased regulatory burdens and significant compliance costs that are in my view not warranted and may even confuse prospective investors. I would also imagine that many MIE issuers would be reluctant to proceed under the OM Exemption if its manager was required to disclose its financial statements particularly where that MIE's manager is involved (as they often are) in other business activities besides the MIE's business. For those that still wish to use the OM Exemption, I would anticipate many MIE issuers taking steps to seek to avoid this financial statement disclosure requirement by either internalizing management or creating special purpose management companies.

2. The requirement to amend the offering memorandum to include a 6 month interim financial report results in significant but unnecessary additional compliance costs. For continuous distributions, there is already a requirement to amend an offering memorandum to the extent there are material developments affecting the issuer and its business. In my experience acting for several MICs over the years, there are often no material developments that occur during the year, and requiring all MIEs to amend their offering memoranda every six months, whether or not those reports would illustrate any material changes, is a regulatory burden that should not be imposed.

3. The requirement to provide portfolio performance data for the issuer's portfolio in Section 4 of Schedule 2 requires further clarification at least as it pertains to MIEs. While the extent to which an MIE issuer's mortgage portfolio is impaired or in default is important disclosure for prospective investors (and is proposed to be required in clause 3(3) 'Portfolio Summary' of Schedule 2), MIE investors are ultimately interested in target and historical yields on their equity investments. The amendments should make clear that the required performance data as it pertains to a mortgage lending business relates to historical dividends or other distributions paid on an investor's equity investment. I also query, depending on the nature of the performance data required, whether the 10 year period might be too long a period, and if formulating historical data for several years back might be overly cumbersome for some existing issuers.

I wish to thank you for considering my comments above and I would be pleased to respond to any questions or concerns you may have. I can be reached at steve@acuitylaw.ca or 1.416.409.5493.

Yours very truly,

STEVE COHEN LAW PROFESSIONAL CORPORATION

Per: "*Steve Cohen*"

Steve Cohen, LL.B, LL.M

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December 15, 2020

Re: CSA Notice and Request for Comment – Proposed Amendments to NI 45-106 and Proposed Changes to CP 45-106CP Relating to the Offering Memorandum Prospectus Exemption

Dear Sir,

We are writing you on behalf of Three Point Capital Corp., a Mortgage Investment Corporation (MIC), incorporated under the laws of B.C. which currently relies on the OM Exemption to raise capital. Three Point Capital Corp (ThreePoint) is also a member of the BC MIC Managers Association.

ThreePoint is already providing the enhanced disclosure being proposed in their OM regarding the portfolio and agree that consistency across the industry would be helpful to investors. Disclosure around the portfolio, such as investment strategy, portfolio composition and performance data are all important metrics to be considered by investors.

ThreePoint is also in favour of the enhanced "bad actor" disclosure where litigation, criminal convictions, etc involving the principals are disclosed. We believe that information is good for investors and good for the industry in general.

ThreePoint also thinks that enhanced redemption disclosure, including restrictions on redemptions, the amount of requests received and fulfilled is important information for investors. ThreePoint has been including this information in their OM since inception. The requirement of naming the source of funds might be challenging for MICs. Most of their funds flow through their bank account or line of credit and change on a daily basis. The bank account changes daily for MICs. It's a mixture of mortgage payouts, new mortgage fundings, interest and principal payments received, share capital issuances, dividends payments, etc. I predict it will be almost impossible to name the source of funds used to pay for redemptions. I would recommend eliminating the disclosure of source of funds for redemptions requirement as I predict will be very cumbersome and fraught with inconsistent application.

The new requirement to amend an OM to include interim financial reporting when the distribution of securities is ongoing is the most material change for MICs. Currently, we understand that any time a material change has taken place, a new OM must be prepared. So it doesn't make sense to have a requirement for a second OM in the year if there have been no material changes. Most MICs like ThreePoint, turn over their mortgage portfolio, so though the specific mortgages held may be different in six months, but generally the average mortgage size, loan to value, interest rate, geographic area, 1st mortgages vs seconds, etc remain consistent. And in fact, if there were material changes, then an additional OM is already required. But to make it mandatory to include a 6-month interim report will

just increase the cost to the investors, resulting in less of a return on their investment as offering memorandums are costly to prepare. That cost will ultimately be borne by the investor. We recommend that this change not be adopted and we keep the rules in place that require an amended OM if there are material changes to be disclosed.

One of our most concerning aspects of the amendments is the proposed Form 45-106F4 Risk Acknowledgement. Below is the proposed top of the form:

WARNING!

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

This is a very big change from what investors currently sign. There is a big difference between acknowledging that "this is a risky investment and I could lose all the money I invest" to the statement above which sounds like it is likely that you will lose all of your money.

Since February, 2020 all MICs need to raise capital through an EMD. Some of us built our own captive dealers, others made arrangements with outside EMDs. Regardless, potential investors now have to go through the suitability process before a person can invest in MIC shares. It is hard to imagine a situation for someone investing in a MIC that they could lose all of their money. A portion perhaps, but all? Very unlikely.

This amended wording (in red) at the top of the form will make capital raising very difficult, if not impossible. MICs are not high-tech start-ups or potential gold mines that exist just on ideas or hunches. MICs are secured by real property in Canada. Most of the MICs in BC have loan to values from 50-75%. There would have to be a catastrophic valuation decline in the real estate industry in order for a MIC to lose all of an investor's money.

We therefore recommend changing the proposed Risk Acknowledgement Form to eliminate the large red warning on top of the form and have the first box amended to the current warning of "This is a risky investment, and I could lose all the money I invest".

Thank you for requesting comments.

Respectfully submitted,

Three Point Capital Corp

Marylyn Needham, CPA, CA, CGA
Vice President

Veronica Armstrong
Law Corporation

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission of New Brunswick
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
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December 14, 2020

Dear Regulators

Comments on the proposed amendments to NI 45-106 relating to the OM prospectus exemption

Thank you for the opportunity to submit comments to the proposed amendments to NI 45-106 relating to the OM prospectus exemption.

While we feel most of the amendments are reasonable, we do have concerns about the rationale for the amendments and about some of the proposals.

What is the rationale for the proposed amendments?
The CSA has not set forth a cogent rationale for the proposed amendments. The assertion that larger issuers are using the exemption despite the CSA's apparent original intention that it should be used by smaller, simpler issuers does not by itself justify the proposals, which may have a strong negative on those smaller issuers that happen to fall within their scope. Are there specific deficiencies or harms the regulators have identified either in their examinations or that are new in the market? If so, we are of the opinion the regulators should make those known to industry. Are there alternatives to the proposed disclosure requirements? We have read Ontario's Staff Notice 45-717, but have not had the opportunity to consider the findings in relation to the proposed amendments.

While we agree that investors should be in the best possible position to make informed decisions, the sheer volume of information that is currently required and that is proposed is becoming overwhelming. This raises two matters of concern:

1. Making disclosure more complex and voluminous may result in clients relying more and more on the advice of the dealer rather than reading through large volumes of documents they find difficult to understand. This would not be ideal.
2. Increasing disclosure so that it approaches prospectus level information will likely lead to increased costs, which would defeat one of the stated purposes of the OM exemption.

We have the following specific comments:

Some definitions appear to be overly broad
We had difficulty understanding the regulators' intent with respect to some of the definitions, which appear to be overly broad. In particular, the following caused concern:

"Collective investment vehicle"—This definition is very broad and would capture all types of pooling vehicles, including those that fall within the definition of "investment fund". The regulators have recognized this, but refer specifically to mortgage, loan, and receivables portfolios. If the regulators are concerned with these specific types of vehicles, then they should limit the definition to those.
"Material contract"—This definition is very broad, particularly as it includes contracts of an issuer's subsidiaries. Is the test meant to be objective? There is an implication that it is for the issuer to decide what is material. Could they be certain the regulators would accept their determination that a contract is not material?
"Qualified appraiser"—This does not appear to be defined. However, the requirements would make it incumbent on the appraiser to certify that the appraisal meets the standards of the professional

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association to which the appraiser belongs. This implies that a qualified appraiser must belong to a professional association. What if the professional association has not publicly endorsed any standards? For example, AIC-BC does not state on its website whether it endorses any particular set of standards.

Some of the proposed disclosure requirements may be harmful or costly to business

Effectively requiring an updated appraisal every six months

The proposed amendment would require that an issuer that is engaged in real estate activities provide an appraisal containing the fair market value appraised within six months before the appraisal is given to the purchaser. Appraisals are costly and requiring one or possibly more (if an issuer has interests in more than one property) every six months would necessitate time and money without necessarily providing the equivalent value in terms of timely information to a purchaser. In addition, it would mean that purchasers might receive different information depending on the time the appraisal is given to them. Furthermore, please clarify that the intention of subsection 19.8 is that all appraisals must be delivered to the regulator when an OM is filed.

Disclosure of dividends and distributions

Proposed item 1.2.1 of Form 45-106F2 would require the issuer to complete Schedules 1 or 2 as if the other issuers were the issuer. In those circumstances, the issuer would be completely dependent on the information provided by those other issuers, yet would bear all the burden of liability, particularly if there are misrepresentations. The cautionary statement in item 11.2 appears not to apply in these circumstances. Despite all the due diligence the issuer may perform in respect of the other issuers, it is possible for misrepresentations or even fraud to take place. Making the issuer liable despite all precautions it may have taken would be unfair and inequitable.

Issuers without significant revenue

The information asked for in proposed item 2.6.1 of Form 45-106F2 appears to relate to mining and exploration issuers and may be irrelevant for other types of issuers. We suggest this be amended to refer only to mining and exploration issuers.

Material contracts

Proposed item 2.7 of Form 45-106F2 refers to material contracts to which the issuer is a party, yet the definition of material contract includes contracts entered into by a subsidiary of the issuer, which are material to the issuer. The inconsistency should be resolved.

Compensation and security holdings of certain persons

Some of the information required under proposed items 3.1 and 3.2 of Form 45-106F2 is intrusive and exceeds the bounds of privacy, for example, place of residence, expected compensation, and experience associated with principal occupation. Experience related to the person's role in the issuer would be more helpful to a purchaser. In addition, the information required for beneficial owners holding more than 50% of a non-individual person may be necessary for anti-money laundering purposes but serves no purpose for the purchaser.

Redemption and retraction history

Some of the information required in proposed items 5A and 5B may be harmful to issuers because it will disclose information to their competitors that can be used against them.

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Interim financial report

The proposed instructions would require the issuer with an ongoing offering to update its offering memorandum at least twice and possibly three times a year. The costs associated with updating the offering memorandum would increase concomitantly. Auditing fees are expensive and rising. Spending money unnecessarily on auditing fees increases the offering costs and leaves less money for the actual investment objectives.

Comments on proposed Schedule 1 and Schedule 2 to Form 45-10F2

We offer a general comment that the information required is extensive and disclosure of some of it may be harmful from a competition perspective; it will be time-consuming to collect and ensure accuracy; and it may be costly as a result.

Once again, thank you for the opportunity to provide these comments.

Yours truly

Veronica Armstrong

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Wanda Morris, CPA, CA
Surrey, BC

British Columbia Securities Commission
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Ontario Securities Commission
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Nova Scotia Securities Commission
Office of the Yukon Superintendent of Securities
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December 16, 2020

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Re: CSA Notice and Request for Comment Proposed Amendments to National Instrument 45-106 Prospectus Exemptions and Proposed Changes to Companion Policy 45-106CP Prospectus Exemptions Relating to the Offering Memorandum Prospectus Exemption

I am pleased to provide comments on the provisions of the above CSA Proposal. My comments will address ways to improve information provided to investors in real estate activities and help protect them from harm.

Independent Appraisal to be performed by Qualified Appraiser

The CSA proposal states that issuers engaged in real estate activities would be subject to new requirements, including providing an independent appraisal of an interest in real property to the purchaser under certain circumstances.

I am in favour of the requirement for an independent appraisal, and would like the CSA to go further.

The appraisal must not just be independent, it must also be performed by an appropriately qualified individual or firm who investors may reasonably rely upon. An appraisal may be independent without being reliable. For example, many residential realtors provide free appraisals on request, such an appraisal is unlikely to be sufficiently reliable to protect

investors. The new instrument needs to specify the experience and qualifications needed to be a qualified appraiser.

Appraisal to Reflect Value of Real Property Under Current Status

Real estate projects typically feature developmental hurdles which significantly impact their value. For instance, a project may require a change in zoning, an exemption to density requirements, or a waiver of required parking spaces. Failure to surmount these hurdles can significantly impact investors' returns.

The current disclosure requirements for Offering Memoranda relating to real estate projects requires:

the issuer disclose each significant event that must occur to accomplish the development project, the specific time period in which each event is expected to occur and the costs related to each event.

Where an appraisal is required, the appraisal must be based on the current status of the project and not contemplate any change in value for significant events that have not yet occurred.

For example, if the success of a project is contingent on rezoning, the issuer must be required to disclose the appraised value of the real property without the rezoning. A prospective investor cannot make an informed investment decision without this knowledge.

Thank you for the opportunity to provide comments. I welcome the public posting of this submission and would be pleased to discuss this letter with you.

Sincerely,

Wanda Morris

Wanda Morris, CPA, CA