

The Ontario Securities Commission

INTRODUCTION OF PROPOSED PROSPECTUS EXEMPTIONS AND PROPOSED REPORTS OF EXEMPT DISTRIBUTION IN ONTARIO

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The Ontario Securities Commission

Cadillac Fairview Tower
Suite 1903, Box 55
20 Queen Street West
Toronto, Ontario
M5H 3S8

416-593-8314 or Toll Free 1-877-785-1555

Contact Centre - Inquiries, Complaints:

Office of the Secretary:

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One Corporate Plaza
2075 Kennedy Road
Toronto, Ontario
M1T 3V4

416-609-3800 or 1-800-387-5164

Fax: 416-593-8122
TTY: 1-866-827-1295

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2075 Kennedy Road
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M1T 3V4

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Toronto 1-416-609-3800
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INTRODUCTION OF PROPOSED PROSPECTUS EXEMPTIONS AND PROPOSED REPORTS OF EXEMPT DISTRIBUTION IN ONTARIO

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NOTICE AND REQUEST FOR COMMENT

**PROPOSED AMENDMENTS TO
NATIONAL INSTRUMENT 45-106 PROSPECTUS AND REGISTRATION EXEMPTIONS
COMPANION POLICY 45-106CP PROSPECTUS AND REGISTRATION EXEMPTIONS**

PROPOSED AMENDMENTS TO OSC RULE 45-501 ONTARIO PROSPECTUS AND REGISTRATION EXEMPTIONS

**PROPOSED MULTILATERAL INSTRUMENT 45-108 CROWDFUNDING
COMPANION POLICY 45-108CP CROWDFUNDING**

**PROPOSED
FORM 45-106F10 REPORT OF EXEMPT DISTRIBUTION FOR INVESTMENT FUND ISSUERS (ALBERTA, NEW
BRUNSWICK, ONTARIO AND SASKATCHEWAN)
AND
FORM 45-106F11 REPORT OF EXEMPT DISTRIBUTION FOR ISSUERS OTHER THAN INVESTMENT FUNDS (ALBERTA,
NEW BRUNSWICK, ONTARIO AND SASKATCHEWAN)**

1. INTRODUCTION

As a securities regulator, the Ontario Securities Commission (**OSC** or the **Commission**) has a responsibility to examine whether Ontario securities law contributes to the efficient functioning of capital markets, which in turn is necessary for Ontario's economic growth and prosperity. The exempt market, in which securities are issued and acquired on a prospectus-exempt basis, is an integral part of Ontario's capital markets. To that end, we have engaged in a broad review of the exempt market (the **Exempt Market Review**) to consider whether the OSC should introduce new prospectus exemptions that would facilitate capital raising for business enterprises, particularly start-ups and small and medium-sized enterprises (**SMEs**), while protecting the interests of investors.

In connection with our Exempt Market Review, we are publishing for a 90-day comment period proposals for four new capital raising prospectus exemptions in Ontario (the **Proposed Prospectus Exemptions**):

- an offering memorandum (**OM**) prospectus exemption (the **OM Prospectus Exemption**),
- a family, friends and business associates prospectus exemption (the **FFBA Prospectus Exemption**),
- a prospectus exemption for distributions by a reporting issuer to its existing security holders (the **Existing Security Holder Prospectus Exemption**), and
- a crowdfunding prospectus exemption (the **Crowdfunding Prospectus Exemption**) and regulatory requirements applicable to a crowdfunding portal (the **Crowdfunding Portal Requirements**).

We are also proposing two new reports of exempt distribution for use in Ontario (the **Proposed Reports**):

- Form 45-106F10 *Report of Exempt Distribution For Investment Fund Issuers (Alberta, New Brunswick, Ontario and Saskatchewan)* (**Form 45-106F10**), and
- Form 45-106F11 *Report of Exempt Distribution For Issuers Other Than Investment Funds (Alberta, New Brunswick, Ontario and Saskatchewan)* (**Form 45-106F11**).

We invite general comment on the Proposed Prospectus Exemptions, the Proposed Reports and the Consequential Amendments (as defined below). In addition, for each of the Proposed Prospectus Exemptions and Proposed Reports, we have raised a number of questions for your specific consideration. Comments must be submitted in writing by **June 18, 2014**.

2. STRUCTURE OF NOTICE AND REQUEST FOR COMMENT

This Notice and Request for Comment (the **Notice**) is structured as follows:

- Part 3 identifies the proposed amendments to existing rules and policies and proposed new rules to adopt the Proposed Prospectus Exemptions and the Proposed Reports. Part 3 also includes a detailed list of the Appendices to this Notice.
- Part 4 summarizes the background and history of the OSC's Exempt Market Review, including the project scope and the consultation and review process undertaken.
- Part 5 discusses the substance and purpose of each of the Proposed Prospectus Exemptions, including proposed activity fees related to the filing of reports of exempt distribution for the Proposed Prospectus Exemptions.
- Part 6 discusses the substance and purpose of the Proposed Reports.
- Part 7 discusses the various alternatives considered during the Exempt Market Review.
- Part 8 provides a detailed analysis of the anticipated costs and benefits associated with the introduction of the Proposed Prospectus Exemptions and Proposed Reports.
- Part 9 indicates that we did not rely on any unpublished materials.
- Part 10 sets out our rule-making authority for the proposed amendments.
- Part 11 explains how interested parties can provide their feedback.
- Part 12 provides contact persons for any questions with respect to the Notice.

3. REQUEST FOR PUBLIC COMMENT

We are publishing for a 90-day comment period the Proposed Prospectus Exemptions, the Proposed Reports and the Consequential Amendments (as defined below). The Proposed Prospectus Exemptions, the Proposed Reports and the Consequential Amendments would be given effect through amendments to existing rules and policies and new rules and policies, as set out below.

OM Prospectus Exemption

- amendments to National Instrument 45-106 *Prospectus and Registration Exemptions (NI 45-106)* that:
 - give effect to the OM Prospectus Exemption, and
 - prescribe Form 45-106F13 *Risk Acknowledgement Form for Offering Memorandum Investors (Form 45-106F13)*, and
- amendments to Companion Policy 45-106CP *Prospectus and Registration Exemptions (45-106CP)* to provide policy guidance on the OM Prospectus Exemption.

FFBA Prospectus Exemption

- amendments to NI 45-106 that:
 - give effect to the FFBA Prospectus Exemption, and
 - prescribe Form 45-106F12 *Risk Acknowledgement Form for Family, Friend and Business Associate Investors (Form 45-106F12)*, and
- amendments to 45-106CP to provide policy guidance on the FFBA Prospectus Exemption.

Existing Security Holder Prospectus Exemption

- amendments to OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions (OSC Rule 45-501)* which give effect to the Existing Security Holder Prospectus Exemption.

Crowdfunding Prospectus Exemption and Crowdfunding Portal Requirements

- the introduction of Multilateral Instrument 45-108 *Crowdfunding* and related Companion Policy 45-108CP *Crowdfunding*, which give effect to the Crowdfunding Prospectus Exemption and Crowdfunding Portal Requirements,
- amendments that prescribe Form 45-108F1 *Crowdfunding Offering Document (Form 45-108F1)*, and
- amendments that prescribe Form 45-108F2 *Risk Acknowledgement Form for Crowdfunding Investors (Form 45-108F2)*.

Proposed Reports

- amendments to NI 45-106 that prescribe:
 - Form 45-106F10, and
 - Form 45-106F11,
- amendments to NI 45-106 and OSC Rule 45-501 that mandate the filing of the Proposed Reports, and
- amendments to 45-106CP to provide policy guidance on filing the Proposed Reports.

Consequential Amendments

Related to the introduction of the Proposed Prospectus Exemptions, we are also proposing consequential amendments to (the **Consequential Amendments**):

- OSC Rule 13-502 *Fees (OSC Rule 13-502)*,
- National Instrument 45-102 *Resale of Securities*,
- OSC Rule 45-501, and
- National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards (NI 52-107)*.

These Consequential Amendments may be modified or additional consequential amendments introduced in connection with the final adoption of the Proposed Prospectus Exemptions and the Proposed Reports. We do not expect these changes to be material.

The full text of the proposed rules and amendments and detailed charts outlining the key features of each Proposed Prospectus Exemption are set out in the following Appendices to the Notice:

| Appendix A – OM Prospectus Exemption | |
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| Annex A-1 | Framework for the OM Prospectus Exemption |
| Annex A-2 | Amendments to NI 45-106 that create the OM Prospectus Exemption and prescribe Form 45-106F13 |
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| Annex B-3 | Form 45-106F12 <i>Risk Acknowledgement Form for Family, Friend and Business Associate Investors</i> |
| Annex B-4 | Amendments to 45-106CP that provide policy guidance on the FFBA Prospectus Exemption |
| Appendix C – Existing Security Holder Prospectus Exemption | |
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| Annex E-4 | Amendments to 45-106CP that provide policy guidance on the Proposed Reports |
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4. BACKGROUND – THE EXEMPT MARKET REVIEW

Original scope of review

The Exempt Market Review was originally focussed on the accredited investor prospectus exemption in section 2.3 of NI 45-106 (the **AI Exemption**) and the minimum amount investment prospectus exemption in section 2.10 of NI 45-106 (the **MA Exemption**). On November 10, 2011, CSA staff published CSA Staff Consultation Note 45-401 *Review of Minimum Amount and Accredited Investor Exemptions*. This review largely originated out of investor protection concerns associated with these two exemptions that came to light during the 2007-2008 financial crisis.

Expanded OSC exempt market review

As a result of the feedback received during the original Exempt Market Review, the OSC decided to expand the focus of its review to consider whether there was potential to facilitate greater access to capital through the

exempt market, particularly by start-ups and SMEs, while maintaining appropriate investor protection.

Announcement of broadening scope of review

On June 7, 2012, we published OSC Staff Notice 45-707 *OSC Broadening Scope of Review of Prospectus Exemptions*. We indicated that, in light of feedback from stakeholders, we were broadening the scope of our review to consider whether the OSC should introduce any new prospectus exemptions that would assist capital raising for business enterprises while protecting the interests of investors.

Creation of advisory committee

We also established an ad hoc committee, the OSC Exempt Market Advisory Committee, to advise us on possible regulatory approaches to the exempt market.

Publication of concept ideas for new prospectus exemptions

On December 14, 2012, OSC staff published OSC Staff Consultation Paper 45-710 *Considerations for New Capital Raising Prospectus Exemptions* (the **Consultation Paper**). The Consultation Paper described four concept ideas for possible new prospectus exemptions, including a crowdfunding prospectus exemption and an OM prospectus exemption. The comment period on the Consultation Paper ended on March 8, 2013 and we received 102 comment letters. A detailed summary of the comment letters is in Appendix A of the Progress Report described below.

Stakeholder consultations and investor survey

Following release of the Consultation Paper, OSC staff conducted extensive public consultations and stakeholder outreach, including:

- holding 46 one-on-one meetings with stakeholders,
- hosting five town hall meetings, and
- participating in various other discussion panels and stakeholder forums.

We also engaged a third-party service provider to conduct an investor survey to gain insight into retail investors' views on investing in start-ups and SMEs. A summary of the results of the investor survey is in Appendix B of the Progress Report described below.

Identification and development of new prospectus exemptions

On August 28, 2013, we published OSC Notice 45-712 *Progress Report on Review of Prospectus Exemptions to Facilitate Capital Raising* (the **Progress Report**). The Progress Report identified the following key themes from the Exempt Market Review:

- the need to facilitate SME capital raising through expanded prospectus exemptions while maintaining investor protection,
- the importance of harmonizing prospectus exemptions across Canada,
- the emergence of crowdfunding as a new way for some start-ups and SMEs to raise capital, and
- the importance of regulatory monitoring and oversight in the exempt market and the need to deploy additional resources required to effectively monitor and oversee exempt market activity if new prospectus exemptions are adopted.

The Progress Report also stated that the OSC was directing staff to undertake further work on developing the Proposed Prospectus Exemptions and the Proposed Reports.¹

¹ The OSC also directed staff to work on developing a streamlined version of the existing rights offering exemption. OSC staff are reviewing this exemption with other members of the CSA. OSC staff were also directed to pursue amending the existing accredited investor exemption to permit fully managed accounts to purchase investment fund securities using the managed account category of the accredited investor exemption in Ontario, and this issue is being addressed through the CSA's review of the AI Exemption and MA Exemption.

Related CSA developments

On November 21, 2013, certain CSA jurisdictions published for comment Multilateral CSA Notice 45-312 *Proposed Prospectus Exemption for Distributions to Existing Security Holders*. Following the CSA's publication, OSC staff were directed to develop a framework for a similar exemption that is substantially harmonized with the CSA's proposal.

Commitment to publish for comment in Q1 of 2014 Proposed Prospectus Exemptions

On December 4, 2013, we announced our commitment to publish the Proposed Prospectus Exemptions in the first quarter of 2014.

5. THE PROPOSED PROSPECTUS EXEMPTIONS – SUBSTANCE AND PURPOSE

The Proposed Prospectus Exemptions are intended to facilitate capital raising for issuers, particularly start-ups and SMEs, at different stages in their growth and business cycles. At the same time, the Proposed Prospectus Exemptions have requirements that are intended to maintain an appropriate level of investor protection and regulatory oversight.

The following is a high-level summary of each of the four Proposed Prospectus Exemptions.

A. OM Prospectus Exemption

We are proposing the OM Prospectus Exemption because we think that it may support the capital raising needs of issuers that are moving beyond the early stages of development. In order to facilitate harmonization, we have based this exemption on the existing OM prospectus exemption in section 2.9(2) of NI 45-106, which is currently not available in Ontario. We have worked closely with staff of the Alberta Securities Commission, the Autorité des marchés financiers, the Financial and Consumer Services Commission (New Brunswick) and the Financial and Consumer Affairs Authority (Saskatchewan) in formulating the OM Prospectus Exemption.

We expect that the OM Prospectus Exemption will provide enhanced opportunities for exempt market dealers (**EMDs**) to be involved in start-up and SME financings. We remind EMDs of the regulatory obligations they undertake towards investors through their involvement in such financings, in particular, with respect to their "know-your-client", "know-your-product" and suitability obligations.

At this time, our work has focused on the introduction of an OM Prospectus Exemption in Ontario to assist capital raising by start-ups and SMEs. As a second phase of this work, assuming an OM Prospectus Exemption is implemented in Ontario, we plan to consider whether changes to the disclosure provided to investors at the point of sale would be appropriate. For example, we will consider whether disclosure tailored to specific industries, such as real estate, should be added to the current form of OM. The framework for the OM Prospectus Exemption at Annex A-1 identifies those areas where we think that additional or enhanced disclosure may be appropriate.

The following is a high-level summary of the OM Prospectus Exemption. A more detailed framework setting out the key features of the OM Prospectus Exemption is at Annex A-1.

| Element of exemption | Details |
|--|--|
| Issuer restrictions | |
| Qualification criteria | <ul style="list-style-type: none"> • Available to both reporting issuers and non-reporting issuers • Not available to investment funds |
| Distribution details | |
| Types of securities | <ul style="list-style-type: none"> • Not available for distributions of the following complex or novel securities: <ul style="list-style-type: none"> ○ specified derivatives as defined in National Instrument 44-102 <i>Shelf Distributions</i>, and ○ structured finance products as set out in the proposed definition to be included in National Instrument 25-101 <i>Designated Rating Organizations</i>) |
| Offering parameters | <ul style="list-style-type: none"> • No limit on: <ul style="list-style-type: none"> ○ the size of offerings, ○ the number of offerings an issuer may make (either in total or in a given period), or ○ the number of offerings that may be made by individuals involved with the issuer, such as directors, officers, control persons or promoters • No requirements with respect to the length of time an OM offering can remain open |
| Registrants | <ul style="list-style-type: none"> • No restrictions on the category of registrant that can be involved in an OM offering • Registrants that are related (i.e., affiliates or in the same corporate structure) to an issuer will be prohibited from participating in an OM distribution |
| Investor protection measures | |
| Investor qualifications - definition of “eligible investor” | <p><u>Net income test</u></p> <ul style="list-style-type: none"> • Retained the current net income test for the definition of an individual eligible investor • Removed the net income test for non-individual investors <p><u>Net asset test</u></p> <ul style="list-style-type: none"> • Two net asset tests, one for individual investors and one for non-individual investors: <ul style="list-style-type: none"> ○ the net asset test for individuals has been reduced from \$400,000 to \$250,000 and the value of an individual investor’s primary residence must be excluded from calculation of the net asset test, and ○ for non-individual investors, the net asset test remains at \$400,000 <p><u>Role of “eligibility adviser”</u></p> <ul style="list-style-type: none"> • An investor may qualify as an eligible investor by obtaining advice from an “eligibility adviser” |
| Investment limits | <ul style="list-style-type: none"> • Proposed investment limits for both eligible and non-eligible investors that are individuals: <ul style="list-style-type: none"> ○ for individual investors that do not meet the definition of eligible investor, there is a cap of \$10,000 on the amount that can be invested under the exemption in a calendar year, and |

| Element of exemption | Details |
|--|---|
| | <ul style="list-style-type: none"> ○ for individual investors that qualify as eligible investors (but do not meet the accredited investor definition), there is a cap of \$30,000 on the amount that can be invested under the exemption in a calendar year ● Additional guidance in 45-106CP on steps that can be taken by an issuer to determine whether an investor has exceeded these annual limits |
| Risk acknowledgement form | <ul style="list-style-type: none"> ● At the same time or before an investor who is an individual investor signs the agreement to purchase the security, the issuer must obtain a signed risk acknowledgement form (Form 45-106F13) from the investor ● Risk acknowledgement form must be retained by the issuer for eight years after the distribution |
| Point of sale disclosure | <ul style="list-style-type: none"> ● Existing OM forms must be used ● OM must be delivered to the OSC on or before the 10th day after the distribution |
| Advertising and marketing materials | <ul style="list-style-type: none"> ● No new restrictions on advertising ● Issuers are required to incorporate by reference into the OM any marketing materials used ● Additional guidance on appropriate marketing practices in 45-106CP ● Any marketing materials used in an OM offering must be delivered to the OSC |
| Statutory or contractual rights in the event of a misrepresentation | <ul style="list-style-type: none"> ● Investors have certain rights of action for damages or rescission in the event of a misrepresentation |
| Right of withdrawal | <ul style="list-style-type: none"> ● Investors have a two business day right of withdrawal |
| Resale restrictions | <ul style="list-style-type: none"> ● Securities of a reporting issuer are subject to a four month hold period (subject to certain other conditions being met) ● Securities of a non-reporting issuer are subject to an indefinite hold period and can only be resold under another prospectus exemption or under a prospectus |
| Ongoing disclosure | <ul style="list-style-type: none"> ● Limited continuous disclosure is required for non-reporting issuers that distribute securities under the exemption ● Non-reporting issuers are required to make available to investors and deliver to the securities regulatory authority: <ul style="list-style-type: none"> ○ audited annual financial statements, on or before the 120th day after the end of its most recently completed financial year, and ○ a notice that accompanies the audited annual financial statements disclosing in reasonable detail the use of the aggregate gross proceeds raised by the issuer in all OM distributions ● Audited annual financial statements must comply with the requirements of section 4.1 of National Instrument 51-102 <i>Continuous Disclosure Obligations</i> (NI 51-102) and NI 52-107 ● A non-reporting issuer must also make available to the investor a notice of the following events within 10 days of the event: <ul style="list-style-type: none"> ○ a fundamental change in, or discontinuation of, the issuer's business, ○ a significant change to the issuer's capital structure, ○ a major reorganization, amalgamation or merger, ○ a take-over bid or issuer bid involving the issuer, ○ a significant acquisition, and ○ changes in its directors and executive officers |

| Element of exemption | Details |
|----------------------------------|---|
| | <ul style="list-style-type: none"> • A non-reporting issuer must continue to provide the above disclosure until the earliest of the following events: <ul style="list-style-type: none"> ○ the issuer becomes a reporting issuer, or ○ the issuer ceases to carry on business |
| Reporting | |
| Reporting of distribution | <ul style="list-style-type: none"> • Report of exempt distribution on Form 45-106F11 must be filed within 10 days of the distribution |

Specific requests for comment – OM Prospectus Exemption

General

- 1) We note that the existing OM Prospectus Exemption available in other CSA jurisdictions has not been frequently used by start-ups and SMEs. Have we proposed changes that will encourage start-ups and SMEs to use the OM Prospectus Exemption? What else could we do to make the OM Prospectus Exemption a useful financing tool for start-ups and SMEs?

Issuer qualification criteria

- 2) We have concerns with permitting non-reporting issuers to raise an unlimited amount of capital in reliance on the OM Prospectus Exemption. Should we impose a cap or limit on the amount that a non-reporting issuer can raise under the exemption? If so, what should that limit be and for what period of time? For example, should there be a “lifetime” limit or a limit for a specific period of time, such as a calendar year?
- 3) What type of issuer is most likely to use the OM Prospectus Exemption to raise capital? Should we vary the requirements of the OM Prospectus Exemption to be different (for example, disclosure requirements) depending on the issuer’s industry, such as real estate or mining?
- 4) We have identified certain concerns with the sale of real estate securities by non-reporting issuers in the exempt market. As phase two of the Exempt Market Review, we propose to develop tailored disclosure requirements for these types of issuers. Is this timing appropriate or should we consider including tailored disclosure requirements concurrently with the introduction of the OM Prospectus Exemption in Ontario?

Types of securities

- 5) We are proposing to specify types of securities that may not be distributed under the OM Prospectus Exemption, rather than limit the distribution of securities to a defined group of permitted securities. Do you agree with this approach? Should we exclude other types of securities as well?
- 6) Specified derivatives and structured finance products cannot be distributed under the OM Prospectus Exemption. Should we exclude other types of securities in order to prevent complex and/or novel securities being sold without the full protections afforded by a prospectus?

Offering parameters

- 7) We have not proposed any limits on the length of time an OM offering can remain open. This aligns with the current OM Prospectus Exemption available in other jurisdictions. Should there be a limit on the offering period? How long does an OM distribution need to stay open? Is there a risk that “stale-dated” disclosure will be provided to investors?

Registrants

- 8) Do you agree with our proposal to prohibit registrants that are “related” to the issuer (as defined in National Instrument 33-105 *Underwriting Conflicts*) from participating in an OM distribution? We have significant investor protection concerns about the activities of some EMDs that distribute securities of “related” issuers. How would this restriction affect the ability of start-ups and SMEs to raise capital?
- 9) Concerns have been raised about the role of unregistered finders in identifying investors of securities. Should we prohibit the payment of a commission or finder’s fee to any person, other than a registered dealer, in connection with a distribution, as certain other jurisdictions have done? What role do finders play in the exempt market? What purposes do these commissions or fees serve and what are the risks associated with permitting them? If we restrict these commissions or fees, what impact would that have on capital raising?

Investor qualifications – definition of eligible investor

- 10) We have proposed changing the \$400,000 net asset test for individual eligible investors so that the value of the individual’s primary residence is excluded, and the threshold is reduced to \$250,000. We have concerns that permitting individuals to include the value of their primary residence in determining net assets may result in investors qualifying as eligible investors based on the relatively illiquid value of their home. This may put these investors at risk, particularly if they do not have other assets. Do you agree with excluding the value of the investor’s primary residence from the net asset test? Do you agree with lowering the threshold as proposed?
- 11) An investor may qualify as an eligible investor by obtaining advice from an eligibility advisor that is a registered investment dealer (a member of the Investment Industry Regulatory Organization of Canada). Is this an appropriate basis for an investor to qualify as an eligible investor? Should the category of registrants qualified to act as an eligibility advisor be expanded to include EMDs?

Investment limits

- 12) Do you support the proposed investment limits on the amounts that individual investors can invest under the OM Prospectus Exemption? In our view, limits on both eligible and non-eligible investors are appropriate to limit the amount of money that retail investors invest in the exempt market. Are the proposed investment limits appropriate?

Point of sale disclosure

- 13) Current OM disclosure requirements do not contain specific requirements for blind pool issuers. Would blind pool issuers use the OM Prospectus Exemption? Would disclosure specific to a blind pool offering be useful to investors?
- 14) We are not considering any significant changes to the OM form at this time. However, we are aware that many OMs are lengthy, prospectus-like documents. Are there other tools we could use at this time (short of redesigning the form) to encourage OMs to be drafted in a manner that is clear and concise?

Advertising and marketing materials

- 15) In our view any marketing materials used by issuers relying on the OM Prospectus Exemption should be consistent with the disclosure in the OM. We have proposed requiring that marketing materials be incorporated by reference into the OM (with the result that liability would attach to the marketing materials). Do you agree with this requirement?

Ongoing information available to investors

- 16) Do you support requiring some form of ongoing disclosure for issuers that have used the OM Prospectus Exemption, such as the proposed requirement for annual financial statements? In our view, this type of disclosure will provide a level of accountability. Should the annual financial statements be audited over a certain threshold amount? If the aggregate amount raised is \$500,000 or less, is a review of financial statements adequate?

- 17) We have proposed that non-reporting issuers that use the OM Prospectus Exemption must notify security holders of certain specified events, within 10 days of the occurrence of the event. We consider these events to be significant matters that security holders should be notified of. Do you agree with the list of events?
- 18) Is there other disclosure that would also be useful to investors on an ongoing basis?
- 19) We propose requiring that non-reporting issuers that use the OM Prospectus Exemption must continue to provide the specified ongoing disclosure to investors until the issuer either becomes a reporting issuer or the issuer ceases to carry on business. Do you agree that a non-reporting issuer should continue to provide ongoing disclosure until either of these events occurs? Are there other events that would warrant expiration of the disclosure requirements?

Reporting of distribution

- 20) We believe that it is important to obtain additional information to assist in monitoring compliance with and use of the OM Prospectus Exemption. Form 45-106F11 would require disclosure of the category of “eligible investor” that each investor falls under. This additional information is provided in a confidential schedule to Form 45-106F11 and would not appear on the public record. Do you agree that collecting this information would be useful and appropriate?

B. FFBA Prospectus Exemption

We are proposing the FFBA Prospectus Exemption because we think that start-ups and other early-stage issuers could benefit from greater access to capital from their network of family, close personal friends and close business associates than is currently permitted under Ontario securities law. In order to facilitate harmonization, we have based this exemption on the existing FFBA Prospectus Exemption in subsection 2.5(1) of NI 45-106, which is currently not available in Ontario. With the proposed introduction of the FFBA Prospectus Exemption, we are also proposing to repeal the existing founder, control person and family exemption in section 2.7 of NI 45-106 (the **Founder, Control Person and Family Exemption**) in Ontario.

The following is a high-level summary of the FFBA Prospectus Exemption. A more detailed framework setting out the key features of the FFBA Prospectus Exemption is in Annex B-1.

| Element of exemption | Details |
|-------------------------------|---|
| Issuer restrictions | |
| Qualification criteria | <ul style="list-style-type: none"> • Available to both reporting issuers and non-reporting issuers • Not available to investment funds |
| Distribution details | |
| Types of securities | <ul style="list-style-type: none"> • Exemption applies to a distribution of a security by an issuer as well as a selling security holder, subject to the conditions of the exemption being met • Novel or complex products cannot be distributed • Only the following types of securities can be distributed: <ul style="list-style-type: none"> ○ common shares, ○ non-convertible preference shares, ○ securities convertible into common shares or non-convertible preference shares, ○ non-convertible debt securities linked to a fixed or floating interest rate, ○ units of a limited partnership, or |

| Element of exemption | Details |
|--|--|
| | <ul style="list-style-type: none"> ○ flow-through shares under the <i>Income Tax Act</i> (Canada) |
| Offering parameters | <ul style="list-style-type: none"> ● No limit on the size of offering made under the exemption |
| Restrictions on solicitation and advertising | <ul style="list-style-type: none"> ● Advertising to solicit investors is prohibited ● Payment of any commission, finder's fee, referral fee or similar payment to any person in connection with a distribution is prohibited |
| Investor protection measures | |
| Investor qualifications | <ul style="list-style-type: none"> ● Exemption available for distributions to family members, close personal friends and close business associates, as set out in subsection 2.5(1) of NI 45-106 ● Expanded guidance in 45-106CP on meaning of close personal friend and close business associate including: <ul style="list-style-type: none"> ○ onus on issuer to establish whether a close personal relationship exists, various factors will be considered relevant in making this determination, and ○ we will not generally consider an individual with whom a friendship is primarily founded on participation in an internet forum or social media to be a close personal friend or close business associate |
| Investment limits | <ul style="list-style-type: none"> ● No investment limits |
| Risk acknowledgement | <ul style="list-style-type: none"> ● Risk acknowledgement form (Form 45-106F12) must be signed by the investor, the director, executive officer, founder or control person of the issuer with whom the investor has asserted the relationship (either directly or through the spouse of the director, executive officer, founder or control person) and the issuer ● Investor must disclose: <ul style="list-style-type: none"> ○ the identity of the director, executive officer, founder or control person of the issuer, ○ that person's position at or relationship with the issuer, ○ the category of the relationship asserted by investor, ○ how long the investor has known that person, and ○ that he or she acknowledges certain risks associated with the investment ● Risk acknowledgement form must be retained by the person making the distribution for period of eight years after the distribution |
| Point of sale disclosure | <ul style="list-style-type: none"> ● No requirement for issuer or selling security holder to provide investor with any disclosure at time of distribution |
| Statutory or contractual rights in the event of a misrepresentation | <ul style="list-style-type: none"> ● If an issuer or selling security holder voluntarily provides a potential investor with an OM in connection with a distribution, investors have certain rights of action for damages or rescission in the event of a misrepresentation |
| Right of withdrawal | <ul style="list-style-type: none"> ● No right of withdrawal available to investors |
| Resale restrictions | <ul style="list-style-type: none"> ● Securities of a reporting issuer are subject to a four month hold period (subject to certain other conditions being met) ● Securities of a non-reporting issuer are subject to an indefinite hold period and can only be resold under another prospectus exemption or under a prospectus |
| Ongoing disclosure | <ul style="list-style-type: none"> ● No requirement for non-reporting issuers to provide any ongoing disclosure ● Reporting issuers subject to ongoing continuous disclosure obligations under securities law |

| Element of exemption | Details |
|----------------------------------|--|
| Reporting | |
| Reporting of distribution | <ul style="list-style-type: none"> Report of exempt distribution on Form 45-106F11 must be filed within 10 days of the distribution |

Specific requests for comment – FFBA Prospectus Exemption

Types of securities

1) Do you agree with our proposal to limit the types of securities that can be distributed under the FFBA Prospectus Exemption to preclude novel and complex securities? Do you agree with the proposed list of permitted securities?

Offering parameters

2) Should there be an overall limit on the amount of capital that can be raised by an issuer under the FFBA Prospectus Exemption?

Investor qualifications

3) Do you agree with the revised guidance in sections 2.7 and 2.8 of 45-106CP regarding the meaning of “close personal friend” and “close business associate”? Is there other guidance that could be provided regarding the meaning of these terms?

Investment limits

4) Should there be limits on the size of each investment made by an individual under the FFBA Prospectus Exemption or an annual limit on the amount that can be invested?

Risk acknowledgement form

5) Does the use of a risk acknowledgement form that is required to be signed by both the investor and the person at the issuer with whom the investor has the relationship mitigate against potential risks associated with improper reliance on the FFBA Prospectus Exemption?

Reporting of distribution

6) We believe it is important to obtain additional information in Form 45-106F11 to assist in monitoring compliance with and use of the FFBA Prospectus Exemption. Form 45-106F11 would require disclosure of the person at the issuer with whom the investor has a relationship. This additional information is provided in a schedule to Form 45-106F11 that does not appear on the public record. Do you agree that collecting this information would be useful and appropriate?

C. Existing Security Holder Prospectus Exemption

Many SMEs continue to face capital raising challenges after they have become reporting issuers and are listed on an exchange. Furthermore, retail security holders generally have less opportunity to invest in primary offerings by listed issuers, even if they have already made an investment decision to acquire the issuer’s securities in the secondary market. We are proposing the Existing Security Holder Prospectus Exemption to address these issues. To facilitate harmonization, we have based our proposal on the existing security holder prospectus exemption adopted by certain other CSA jurisdictions on March 13, 2014.

A more detailed framework setting out the key features of the Existing Security Holder Prospectus Exemption is in Annex C-1.

| Element of exemption | Details |
|-------------------------------------|---|
| Issuer restrictions | |
| Qualification criteria | <ul style="list-style-type: none"> • Reporting issuers with a class of equity securities listed on the Toronto Stock Exchange (TSX), TSX Venture Exchange (TSXV) and Canadian Securities Exchange (CSE) • The issuer must have been a reporting issuer for not less than 12 months or have become a reporting issuer by filing and obtaining a receipt for a prospectus • Not available to investment funds |
| Distribution details | |
| Types of securities | <ul style="list-style-type: none"> • Exemption applies to a distribution by an issuer of securities of its own issue • Offering can consist only of the class of equity securities listed on the TSX, TSXV or CSE, or units consisting of the listed security and a warrant to acquire the listed security |
| Offering parameters | <ul style="list-style-type: none"> • An offering cannot result in an increase of more than 100% of the outstanding securities of the same class • Issuer must permit each person who, as of the record date, held a listed security of the issuer of the same class and series as the listed security to be distributed under the exemption, to subscribe for securities distributed under the exemption • Issuer must allocate existing security holders a pro rata portion of the offering (subject to rounding to avoid the issuance of fractional securities and odd lots) • Any securities that are not taken up by existing security holders can be allocated at the issuer's discretion to other existing security holders |
| Registrants | <ul style="list-style-type: none"> • There are no restrictions that limit the type of registrant that may participate in an offering under the exemption |
| Investor protection measures | |
| Investor qualifications | <ul style="list-style-type: none"> • Each investor must represent in writing to the issuer that as at the record date the investor held, and continues to hold, the type of listed security that the investor is acquiring under the exemption • The record date must be at least one day prior to the day that an issuer issues an offering news release |
| Investment limits | <ul style="list-style-type: none"> • Unless the purchaser has obtained advice regarding the suitability of the investment and, if the purchaser is a resident of a jurisdiction of Canada, that advice is from a person or company registered in that jurisdiction as an investment dealer, the aggregate amount invested by the investor in the previous 12 months under the exemption cannot exceed \$15,000 |
| Risk acknowledgement form | <ul style="list-style-type: none"> • No requirement for a risk acknowledgement form |
| Point of sale disclosure | <ul style="list-style-type: none"> • Issuer is not required to provide an offering document. • Issuer must issue an offering news release disclosing the proposed offering that includes reasonable detail of the proposed distribution and proposed use of proceeds • Issuer must file any offering materials (other than the subscription agreement) on the same day it provides the materials to purchasers |

| Element of exemption | Details |
|--|---|
| Statutory or contractual rights in the event of a misrepresentation | <ul style="list-style-type: none"> Subscription agreement between the issuer and purchaser must contain a contractual right of action against the issuer for any misrepresentation in a “document” or “core document”, each as defined in section 138.1 of the <i>Securities Act</i> (Ontario) (the Act). |
| Right of withdrawal | <ul style="list-style-type: none"> No right of withdrawal available to investors |
| Resale restrictions | <ul style="list-style-type: none"> Securities of a reporting issuer are subject to a four month hold period (subject to certain other conditions being met) |
| Ongoing disclosure | <ul style="list-style-type: none"> Reporting issuers must comply with continuous disclosure obligations under securities law |
| Reporting | |
| Reporting of distribution | <ul style="list-style-type: none"> Report of exempt distribution on Form 45-106F11 must be filed for a distribution |

Specific requests for comment – Existing Security Holder Prospectus Exemption

Issuer qualification criteria

- 1) Do you agree with allowing any issuer listed on the TSX, TSXV and CSE to use the Existing Security Holder Prospectus Exemption?

Offering parameters

- 2) Do you agree that the offer must be made to all security holders and on a pro rata basis? Do you agree that these conditions support the fair treatment of all security holders?
- 3) Do you agree that it is not necessary to differentiate between a security holder that bought securities in the secondary market one day before the announcement of the offering and a security holder that bought the securities some longer period before the announcement of the offering?

Resale restrictions

- 4) Should securities distributed under the Existing Security Holder Prospectus Exemption be freely tradeable?

D. Crowdfunding Prospectus Exemption and Crowdfunding Portal Requirements

In a relatively short period of time, crowdfunding has become an important new method of raising capital through the internet for a broad range of purposes. To date, it has been used to raise money for a specific project and does not generally involve the issuance of securities. However, in some foreign jurisdictions, crowdfunding is emerging as a way for businesses, particularly start-ups and SMEs, to raise capital through the issuance of securities.

We think that crowdfunding through an appropriately regulated crowdfunding portal can be a viable method for start-ups and SMEs to raise capital.

The proposed crowdfunding securities regulatory framework has two main components:

- the Crowdfunding Prospectus Exemption, and
- a set of Crowdfunding Portal Requirements.

To facilitate harmonization, we have worked closely with staff of the AMF, the Manitoba Securities Commission, the Financial and Consumer Services Commission (New Brunswick), the Financial and Consumer Affairs Authority

(Saskatchewan) and the Nova Scotia Securities Commission in formulating both the Crowdfunding Prospectus Exemption and the Crowdfunding Portal Requirements, and all of these jurisdictions are also publishing the Crowdfunding Prospectus Exemption and the Crowdfunding Portal Requirements. We understand that each of these jurisdictions (other than Saskatchewan) will also concurrently publish for comment a local crowdfunding prospectus and registration exemption. The Financial and Consumer Affairs Authority (Saskatchewan) implemented General Order 45-925 Saskatchewan Equity Crowdfunding Exemption on December 6, 2013 and is not republishing this exemption for comment. The Financial and Consumer Affairs Authority (Saskatchewan) will publish the local crowdfunding exemptions for comment with a view to harmonization with other CSA jurisdictions publishing this exemption.

Crowdfunding Prospectus Exemption

The following is a high-level summary of the Crowdfunding Prospectus Exemption. A more detailed framework setting out the key features of the Crowdfunding Prospectus Exemption is in Annex D-1.

| Element of exemption | Details |
|-------------------------------|--|
| Issuer restrictions | |
| Qualification criteria | <ul style="list-style-type: none"> • Issuer must be incorporated or organized in Canada • Head office must be situated in Canada • Majority of directors must be resident in Canada • Available to both reporting issuers and non-reporting issuers • Not available to investment funds, real estate issuers that are not reporting issuers, or issuers without a written business plan • Not available to issuers not in compliance with the ongoing requirements of the crowdfunding prospectus exemption |
| Distribution details | |
| Types of securities | <ul style="list-style-type: none"> • Limited to distributions by an issuer of securities of its own issue • Limited types of securities can be offered: <ul style="list-style-type: none"> ○ common shares, ○ non-convertible preference shares, ○ securities convertible into common shares or non-convertible preference shares, ○ non-convertible debt securities linked to a fixed or floating interest rate, ○ units of a limited partnership, and ○ flow-through shares under the <i>Income Tax Act</i> (Canada) |
| Offering parameters | <ul style="list-style-type: none"> • Cannot raise more than \$1.5 million under the crowdfunding prospectus exemption during the period commencing 12 months prior to the current offering • \$1.5 million limit applies, in aggregate, to the issuer, an affiliate of the issuer, and any other issuer that is engaged in a common enterprise with the issuer or with an affiliate of the issuer • Offering cannot remain open for more than 90 days • Offering document must disclose minimum offering size and whether there is a maximum offering size • Offering cannot be completed unless: (i) minimum offering fully subscribed and (ii) at time of completion of offering, issuer has financial resources sufficient to achieve the next milestone in written business plan or, if no milestones, to carry out the activities set out in the business plan |

| Element of exemption | Details |
|--|--|
| Restrictions on solicitation and advertising | <ul style="list-style-type: none"> • Issuer, portal or any other person involved with an offering cannot advertise the offering or solicit potential investors, except as specifically permitted • Offering materials must be made available to potential investors on portal's website • Offering document cannot be posted on any other website • Offering materials must be delivered to the regulator at same time they are posted on portal's website • Investors can be directed to portal's website by paper notice or through social media • Marketing materials limited to offering document, documents described in offering document and any term sheet or other summary (including a video) |
| Investor protection measures | |
| Investment limits | <ul style="list-style-type: none"> • An investor cannot invest more than \$2,500 in a single investment under the crowdfunding prospectus exemption • An investor cannot invest more than \$10,000 in total under the crowdfunding prospectus exemption in a calendar year |
| Restriction on borrowing money | <ul style="list-style-type: none"> • Portals, issuers and their directors and officers cannot lend money to, or arrange financing for, potential investors |
| Risk acknowledgement form | <ul style="list-style-type: none"> • Investors must sign a risk acknowledgement form (proposed Form 45-108F2) confirming that the investor falls within the investment limits, that the investor could lose all of the money he or she invests, and understands the other specified risks that are set out in the form |
| Point of sale disclosure | <ul style="list-style-type: none"> • Streamlined disclosure document must be provided that includes basic information about the offering, the issuer and the portal • Includes the following financial information: <ul style="list-style-type: none"> ○ disclosure of the amount of issuer's cash together with third party confirmation of cash in bank account or held in trust if issuer has not incurred any expenditures and its only asset is cash, ○ annual financial statements if issuer has incurred expenditures, ○ annual financial statements must be audited if issuer has achieved the financial threshold referred to below, or be reviewed by an independent public accounting firm if issuer has not achieved the financial threshold, and ○ achieving the financial threshold means that the issuer has raised more than \$500,000 under the crowdfunding prospectus exemption or any other prospectus exemption since its formation and has expended more than \$150,000 since that time • Offering document must be delivered to the regulator at the time that it is posted on the portal's website |
| Statutory or contractual rights in the event of a misrepresentation | <ul style="list-style-type: none"> • If comparable right not provided by securities legislation of jurisdiction in which purchaser resides, issuer must provide contractual right of action for rescission or damages in the event of a misrepresentation in any materials made available to purchaser |
| Right of withdrawal | <ul style="list-style-type: none"> • Investors have 48 hours prior to the disclosed offering deadline to withdraw |
| Resale restrictions | <ul style="list-style-type: none"> • Securities of a reporting issuer are subject to a four-month hold period (subject to certain other conditions being met) |

| Element of exemption | Details |
|----------------------------------|---|
| | <ul style="list-style-type: none"> Securities of a non-reporting issuer are subject to an indefinite hold period and can only be resold under another prospectus exemption or under a prospectus |
| Ongoing disclosure | <p><u>Ongoing disclosure</u></p> <ul style="list-style-type: none"> A reporting issuer must provide ongoing continuous disclosure in accordance with securities law requirements A non-reporting issuer must provide the following ongoing disclosure on an annual basis: <ul style="list-style-type: none"> annual financial statements that are audited if the issuer has achieved the financial threshold referred to above, or reviewed by an independent public accounting firm if the issuer has not achieved the financial threshold, a notice that discloses how the proceeds of a crowdfunding offering have been expended, and disclosure of certain specified events <p><u>Books and records</u></p> <ul style="list-style-type: none"> A non-reporting issuer must keep books and records which contain at a minimum: <ul style="list-style-type: none"> the offering document, documents described in the offering document and any term sheet or other summary (including a video) provided to investors, completed risk acknowledgement forms, the documents set out above under <i>Ongoing disclosure</i> for non-reporting issuers, the number of securities issued by the issuer under the crowdfunding prospectus exemption as well as the issue price and date, and names of all security holders and the number and type of securities held by each security holder |
| Reporting | |
| Reporting of distribution | <ul style="list-style-type: none"> Report of exempt distribution on proposed Form 45-106F11 or Form 45-106F1, as applicable, must be filed within 10 days of completion of the distribution |

Crowdfunding Portal Requirements

It is a condition of the Crowdfunding Prospectus Exemption that investments are made through a funding portal registered under applicable securities law. The following is a high-level summary of the terms and conditions applicable to a registered portal. A more detailed framework setting out the key features of the Crowdfunding Portal Requirements is in Annex D-2.

| Element of framework | Details |
|----------------------------|---|
| Portal registration | |
| Registration | <ul style="list-style-type: none"> A portal that facilitates offerings made in reliance on the Crowdfunding Prospectus Exemption will be registered as a restricted dealer Only entities registered in this category may facilitate crowdfunding offerings Portals will not be permitted to register in any other dealer or adviser category (i.e., there will be no dual registration of portals) |

| Element of framework | Details |
|--|---|
| Portal obligations | |
| General registrant obligations | <ul style="list-style-type: none"> • Portals must comply with general registrant requirements applicable to EMDs (with certain exceptions), including minimum capital, insurance, regulatory reporting, record-keeping and record-retention requirements |
| Additional portal obligations | <ul style="list-style-type: none"> • Portals will be required to: <ul style="list-style-type: none"> ○ conduct background checks on issuers, directors, officers, promoters and control persons, ○ understand the general structure, features and risks of a security offered, ○ review the information presented by the issuer on the portal's website to confirm that the information adequately sets out the general features and structure of the security, issuer-specific risks, parties involved, any identified conflicts of interest, and the intended use of funds, ○ deny access to an issuer if it has reason to believe that the issuer or its offering is fraudulent, and ○ provide investor education materials in plain language and obtain a signed risk acknowledgement form from investors |
| Permitted and prohibited activities | |
| Permitted activities | <ul style="list-style-type: none"> • A portal may apply criteria to limit the offerings on its platform, provided the criteria are disclosed, applied consistently and would not be viewed by a reasonable person as a recommendation or endorsement |
| Prohibited activities | <ul style="list-style-type: none"> • A portal cannot: <ul style="list-style-type: none"> ○ provide specific recommendations or advice to investors about securities being offered on their platform, ○ solicit purchases or sales of securities offered on their platform (other than through posting an offering on the platform), ○ compensate employees or agents to solicit the sale of securities on their platform, ○ hold or handle investor funds/securities, ○ invest in any issuer or underwrite any issuer (subject to receiving fees in the form of securities that do not exceed a 10% ownership interest in the issuer), ○ endorse or comment on the merits or expected returns of an investment to investors (since this would constitute a recommendation or advice), or ○ facilitate secondary trading (resales) in any securities issued under the exemption |

Specific requests for comment – Crowdfunding Prospectus Exemption and Crowdfunding Portal Requirements

Crowdfunding Prospectus Exemption

Issuer qualification criteria

- 1) Should the availability of the Crowdfunding Prospectus Exemption be restricted to non-reporting issuers?
- 2) Is the proposed exclusion of real estate issuers that are not reporting issuers appropriate?
- 3) The Crowdfunding Prospectus Exemption would require that a majority of the issuer's directors be resident in Canada. One of the key objectives of our crowdfunding initiative is to facilitate capital raising for Canadian

issuers. We also think this requirement would reduce the risk to investors. Would this requirement be appropriate and consistent with these objectives?

Offering parameters

- 4) The Crowdfunding Prospectus Exemption would impose a \$1.5 million limit on the amount that can be raised under the exemption by the issuer, an affiliate of the issuer, and an issuer engaged in a common enterprise with the issuer or with an affiliate of the issuer, during the period commencing 12 months prior to the issuer's current offering. Is \$1.5 million an appropriate limit? Should amounts raised by an affiliate of the issuer or an issuer engaged in a common enterprise with the issuer or with an affiliate of the issuer be subject to the limit? Is the 12 month period prior to the issuer's current offering an appropriate period of time to which the limit should apply?
- 5) Should an issuer be able to extend the length of time a distribution could remain open if subscriptions have not been received for the minimum offering? If so, should this be tied to a minimum percentage of the target offering being achieved?

Restrictions on solicitation and advertising

- 6) Are the proposed restrictions on general solicitation and advertising appropriate?

Investment limits

- 7) The Crowdfunding Prospectus Exemption would prohibit an investor from investing more than \$2,500 in a single investment under the exemption and more than \$10,000 in total under the exemption in a calendar year. An accredited investor can invest an unlimited amount in an issuer under the AI Exemption. Should there be separate investment limits for accredited investors who invest through the portal?

Statutory or contractual rights in the event of a misrepresentation

- 8) The Crowdfunding Prospectus Exemption would require that, if a comparable right were not provided by the securities legislation of the jurisdiction in which the investor resides, the issuer must provide the investor with a contractual right of action for rescission or damages if there is a misrepresentation in any written or other materials made available to the investor (including video). Is this the appropriate standard of liability? What impact would this standard of liability have on the length and complexity of offering documents?

Provision of ongoing disclosure

- 9) How should the disclosure documents best be made accessible to investors? To whom should the documents be made accessible?
- 10) Would it be appropriate to require that all non-reporting issuers provide financial statements that are either audited or reviewed by an independent public accounting firm? Are financial statements without this level of assurance adequate for investors? Would an audit or review be too costly for non-reporting issuers?
- 11) The proposed financial threshold to determine whether financial statements are required to be audited is based on the amount of capital raised by the issuer and the amount it has expended. Are these appropriate parameters on which to base the financial reporting requirements? Is the dollar amount specified for each parameter appropriate?

Other

- 12) Are there other requirements that should be imposed to protect investors?

Crowdfunding Portal Requirements

General registrant obligations

- 13) The Crowdfunding Portal Requirements provide that portals will be subject to a minimum net capital

requirement of \$50,000 and a fidelity bond insurance requirement of at least \$50,000. The fidelity bond is intended to protect against the loss of investor funds if, for example, a portal or any of its officers or directors breach the prohibitions on holding, managing, possessing or otherwise handling investor funds or securities. Are these proposed insurance and minimum net capital amounts appropriate?

Additional portal obligations

14) Do you think an international background check should be required to be performed by the portal on issuers, directors, executive officers, promoters and control persons to verify the qualifications, reputation and track record of the parties involved in the offering?

Prohibited activities

15) The Crowdfunding Portal Requirements would allow portal fees to be paid in securities of the issuer so long as the portal's investment in the issuer does not exceed 10%. Is the investment threshold appropriate? In light of the potential conflicts of interest from the portal's ownership of an issuer, should portals be prohibited from receiving fees in the form of securities?

16) The Crowdfunding Portal Requirements restrict portals from holding, handling or dealing with client funds. Is this requirement appropriate? How will this impact the portal's business operations? Should alternatives be considered?

Other

17) Are there other requirements that should be imposed on portals to protect the interests of investors?

18) Will the regulatory framework applicable to portals permit a portal to appropriately carry on business?

E. Activity Fees

Issuers that rely on certain prospectus exemptions are currently required to file a report of exempt distribution and pay an activity fee of \$500 at the time they file the report under OSC Rule 13-502. We are proposing that issuers that rely on the Proposed Prospectus Exemptions must file a report of exempt distribution and pay activity fees. We are also proposing two new exempt distribution report forms, as further described below.

With the exception of the OM Prospectus Exemption, the activity fee for a report of exempt distribution will remain \$500. In the case of the OM Prospectus Exemption, we propose that the activity fee will be the greater of:

- \$500, and
- 0.025% of the proceeds raised in Ontario under the distribution.

The purpose of requiring an activity fee for filing an exempt distribution report is cost recovery for compliance programs. We think that, for most prospectus exemptions, an activity fee of \$500 is appropriate. However, we think that the OM Prospectus Exemption will likely result in a significant increase in capital raising activity by non-reporting issuers targeted at retail investors. We therefore will need to significantly enhance existing exempt market compliance review programs when the OM Prospectus Exemption is implemented.

In proposing the activity fees, we were guided by the following:

- We are sensitive to the concerns of start-ups and SMEs regarding the cost of capital raising.
- We believe that it is important that we monitor capital raising activity under any new prospectus exemptions.
- We do not want to create any disincentives for raising capital in the public market by making the activity fee for a prospectus significantly higher than the activity fee for exempt market activity under the OM Prospectus Exemption.

Specific requests for comment – Activity fees

- 1) Are the proposed activity fees appropriate? Do they address the objectives and concerns by which were guided?
- 2) Should we consider any other activity fees for exempt market activity?

6. THE PROPOSED REPORTS – SUBSTANCE AND PURPOSE

Currently, issuers who rely on certain prospectus exemptions to distribute securities are required to file Form 45-106F1 *Report of Exempt Distribution* (the **Current Exempt Distribution Report**). We think there is a need to obtain better information on exempt market activity than is presently provided through the Current Exempt Distribution Report.

Both investment fund and non-investment fund issuers would have to file the applicable Proposed Reports if they use the prospectus exemptions that currently trigger the filing of a Current Exempt Distribution Report. In addition, an issuer that uses any of the four Proposed Prospectus Exemptions would also have to file Form 45-106F11.

To facilitate harmonization, we have worked closely with staff of the Alberta Securities Commission, the Financial and Consumer Services Commission (New Brunswick) and the Financial and Consumer Affairs Authority (Saskatchewan) in formulating the Proposed Reports.

Information that would be required to be provided in the Proposed Reports includes:

For non-investment fund issuers:

- details about the issuer, firm size and the industry it operates in,
- where the issuer's securities are listed or traded,
- identification of the issuer's directors, executive officers, control persons and promoters,
- details regarding the securities distributed,
- aggregated and specific details regarding the exemptions relied on, on a per investor basis, and
- details regarding the involvement of registrants, finders and insiders, including compensation paid.

For investment fund issuers:

- identification of the exemption relied on and the type of investor (for example, individual vs. institutional),
- reporting of redemptions,
- size of fund and general category of fund, for example:
 - whether a money market fund or other investment fund,
 - whether a mutual fund or a closed-end fund, or
 - whether subject to National Instrument 81-102 *Mutual Funds* and/or National Instrument 81-104 *Commodity Pools*, and
- additional profile information about the fund and its key service providers.

For distributions under certain prospectus exemptions (including the AI Exemption and MA Exemption), investment funds currently have the option to report annually within 30 days after their financial year-end instead of within 10 days after a distribution. We are also proposing to increase the frequency of the alternative filing requirement for investment funds from annually to quarterly. The filing must be submitted within 30 days after each calendar quarter in which a distribution was made.

The full text of Form 45-106F10 (for investment fund issuers) is in Annex E-2 and the full text of Form 45-106F11 (for non-investment fund issuers) is in Annex E-3.

Specific requests for comment – Proposed Reports

- 1) Do the changes to the reporting requirements strike an appropriate balance between: (i) the benefits of collecting information that will enhance our understanding of exempt market activity and as a result, facilitate more effective regulatory oversight of the exempt market and inform our decisions about regulatory changes to the exempt market, and (ii) the compliance burden that may result for issuers and underwriters?
- 2) Should any of the information requested through the Proposed Reports not be required to be provided? Is there any alternative or additional information that should be provided that is not referred to in the Proposed Reports?

7. ALTERNATIVES CONSIDERED

As stated in the Progress Report, our focus on the Proposed Prospectus Exemptions is based on the support we received for these exemptions during our various stakeholder consultations and the overall importance of these proposals for capital raising in the exempt market.

In addition, the CSA recently published for comment proposed amendments to NI 45-106, which if adopted would, among other things:

- require persons relying on the AI Exemption to obtain a signed risk acknowledgement in Form 45-106F9 *Risk Acknowledgement Form for Individual Accredited Investors* from certain individual accredited investors who are not permitted clients,
- restrict the MA Exemption to distributions to non-individual investors, and
- harmonize the definition of accredited investor to allow fully managed accounts to purchase investment fund securities using the managed account category of the AI Exemption in Ontario.

We also continue to work with other CSA members to see if the existing rights offering exemption in section 2.1 of NI 45-106 which is available across Canada can be streamlined to improve its efficiency and effectiveness for reporting issuers.

As identified in the Progress Report, there are a number of prospectus exemptions or amendments that we are not considering at this time because we received limited or mixed support for them during our stakeholder consultations. The following are the prospectus exemptions or amendments we are not considering:

- an investor sophistication exemption,
- a registrant advice exemption,
- changes to the existing private issuer exemption, and
- the re-introduction of the closely-held issuer exemption.

8. ANTICIPATED COSTS AND BENEFITS

The Proposed Prospectus Exemptions are expected to broaden access to the exempt market for both issuers and retail investors. Issuers, in particular start-ups and SMEs, will have access to more capital raising options in Ontario through the OM Prospectus Exemption, the FFBA Prospectus Exemption and the Crowdfunding Prospectus Exemption. Reporting issuers will also be able to raise funds from their security holders in a more cost-effective manner through the Existing Security Holder Prospectus Exemption.

The Proposed Prospectus Exemptions would increase investment opportunities for non-accredited investors who currently have very limited options to participate in the exempt market. Similarly, issuers would now have access to a larger pool of investors from whom to raise capital. While full harmonization of the Proposed Prospectus Exemptions with other CSA jurisdictions would reduce market inefficiencies, the OSC believes that certain key investor protection concerns should be addressed in implementing the Proposed Prospectus Exemptions. In developing the Proposed Prospectus Exemptions, we have also considered the experiences of other jurisdictions with similar exemptions.

Impacted Stakeholders

Through the Exempt Market Review we have identified that the Proposed Prospectus Exemptions will affect issuers, investors and intermediaries.

Issuers

Issuers that want to raise money across Canada currently face higher funding costs because capital raising rules in the exempt market are not harmonized across the CSA. Many issuers in Ontario are limited to raising capital under the AI Exemption or MA Exemption. Apart from these two prospectus exemptions, issuers can only raise capital from retail investors that are closely associated with the issuer either through the existing private issuer exemption in section 2.4 of NI 45-106 (the **Private Issuer Exemption**) or the Founder, Control Person and Family Exemption.

Many businesses are facing challenges obtaining capital in the current market. Many of these businesses are either too small to be of interest to large accredited investors or lack the cash flows or collateral to borrow from traditional lending sources. There is evidence that start-ups and SMEs, especially those that are idea-based or research and development intensive, face funding constraints either through limited access to, or high costs of, capital.

A review of exempt market activity in Ontario found that close to three quarters of the capital raised by non-investment fund issuers in 2012 was through the issuance of debt-related securities. This may mean that issuers in the exempt market are traditionally more established entities with cash-flow-generating assets, rather than start-ups and SMEs. This may also suggest that accredited investors, who financed 90% of the capital raised in the Ontario exempt market in 2012, may be less willing to invest in very early stage businesses that do not have sufficient cash-flow-generating assets.

Investors

As indicated above, retail investors currently have less access to the exempt market than accredited investors. They are limited to the MA Exemption which requires that they invest at least \$150,000 or need to be closely associated with an issuer looking to raise capital. Thus, retail investors generally do not have the opportunity to participate in the initial or preliminary funding stages of a business.

Intermediaries (EMDs and portals)

Currently intermediaries are faced with similar challenges as issuers, having to comply with multiple rules in multiple CSA jurisdictions in order to raise capital across Canada.

The following provides a more detailed look at the anticipated cost and benefits under each of the proposed prospectus exemptions.

A. OM Prospectus Exemption

Issuers

The OSC anticipates that the OM Prospectus Exemption may have the largest impact on capital raising among the Proposed Prospectus Exemptions. The OM Prospectus Exemption would allow issuers to raise capital from retail investors in Ontario without the need to file a prospectus.

Although issuers will have to comply with different versions of the OM Prospectus Exemption across Canada, at this time, we are proposing that the same offering document could be used across all CSA jurisdictions. This would limit issuers' costs since we have heard feedback that the largest expenditure for issuers relying on the exemption is preparing the OM. Under our proposal, non-reporting issuers would also incur annual expenses to prepare audited annual financial statements and indicate how proceeds were used. Other requirements, such as the need for a risk acknowledgement form to be filled out by the investor and retained by the issuer, may impose a limited administrative burden on issuers.

Investors

The OM Prospectus Exemption is expected to increase access to investment opportunities for Ontario retail investors. As a result of this increased access, the OM Prospectus Exemption includes additional investor protection measures such as investment limits and a signed risk acknowledgement form. Investors will have the added protection of audited annual statements and disclosure of certain specified events.

Intermediaries

Intermediaries are expected to benefit from the OM Prospectus Exemption because it would provide an additional funding source for their clients to raise capital. However, like issuers, they will have to comply with different versions of the OM Prospectus Exemption if they intend to raise funds outside of Ontario.

B. FFBA Prospectus Exemption

Issuers

An issuer's network of family, friends and business associates is often the first funding source for many start-ups and SMEs. The FFBA Prospectus Exemption may benefit early-stage companies looking to raise capital from their existing network of family, friends and business associates. The FFBA Prospectus Exemption is also anticipated to be the most cost-efficient way for issuers to raise capital since there are no disclosure requirements or intermediary involvement.

Although the FFBA Prospectus Exemption aligns with the existing FFBA prospectus exemption in other CSA jurisdictions and broadens access beyond what is available under the existing Private Issuer Exemption and the Founder, Control Person and Family Exemption in Ontario (which it replaces), it also introduces two new requirements. Under the FFBA Prospectus Exemption, the issuer would be required to submit a report of exempt distribution to the OSC in which additional information regarding the investor's connection to the issuer is required. In addition, a risk acknowledgement form must be signed by the investor and the person at the issuer who has a relationship with the investor. The risk acknowledgement form would have to be retained by the issuer for at least eight years. The OSC believes these added investor protections against improper use of the exemption outweigh any potential administrative burden on the issuer.

Investors

The FFBA Prospectus Exemption increases investment opportunities to investors that are closely related to the issuer but would not have qualified under the Private Issuer Exemption, Founder, Control Person and Family Exemption or AI Exemption. While the FFBA Prospectus Exemption may be the easiest way for people to invest in a family member's or friend's business, it provides investors with no disclosure of the business at the point of sale or on an on-going basis. Any information provided to investors is at the discretion of the issuer. There is no intermediary involved in the distribution to verify suitability of the investment. However, the close relationship of the investor to insiders mitigates against these potential concerns.

From an investor protection perspective, the risk acknowledgement form will help to inform the investor of the key risks involved with the investment and verify that the investor is allowed to purchase the securities under the FFBA Prospectus Exemption.

C. Existing Security Holder Prospectus Exemption

Issuers

The Existing Security Holder Prospectus Exemption may provide a cost-effective method for reporting issuers listed on the TSX, TSXV and the CSE to raise capital from their existing security holders. There are no additional disclosures or filing requirements (other than an offering news release) than those already required for reporting issuers.

Investors

The Existing Security Holder Prospectus Exemption will permit existing security holders who have already acquired shares of the issuer in the secondary market to acquire additional securities. One investor protection concern is that existing security holders that do not participate in the distribution may experience significant dilution of up to 100% of the outstanding securities. However, this concern is mitigated because issuers must give existing security holders the right to subscribe for a pro rata percentage of the offering.

D. Crowdfunding Prospectus Exemption and Crowdfunding Portal Requirements

The Crowdfunding Prospectus Exemption is intended to provide a cost-effective capital raising mechanism for start-ups and SMEs while addressing important investor protection concerns. The Crowdfunding Prospectus Exemption may in fact lower the cost of funding for many start-ups and SMEs that currently face capital raising challenges. However, not all such issuers will wish to raise capital through crowdfunding.

Issuers

The Crowdfunding Prospectus Exemption may provide a cheaper funding source for many early stage issuers such as local businesses that have limited ability to raise capital in other traditional ways.

Reporting issuers that rely on crowdfunding are not expected to incur any additional compliance costs. However, non-reporting issuers will be subject to certain ongoing disclosure requirements. Although the anticipated costs of these requirements should be significantly less than those of a reporting issuer, they may be higher than the cost of raising funds through other prospectus exemptions such as the AI Exemption, the MA Exemption or the FFBA Prospectus Exemption.

The most significant ongoing expenditure for non-reporting issuers would involve preparation of annual financial statements. Issuers would need to provide annual financials at point of sale if they have had incurred any expenditures and would have to provide them on an annual basis to investors. Annual financial statements would need to be reviewed by an independent public accounting firm. However, if the aggregate amount raised under the Crowdfunding Prospectus Exemption and any other prospectus exemption is over \$500,000 since the issuer's formation and the issuer has expended at least \$150,000 since that time, then the annual financial statements would need to be audited. Issuers are expected to incur minimal ongoing cost since they are only required to inform investors of specified events.

Investors

The Crowdfunding Prospectus Exemption will allow retail investors to participate in the various funding stages of start-ups and SMEs, providing broader access to investment opportunities. However, crowdfunding may be a highly risky investment and investors may experience a high probability of loss, even if there is no fraud. Many start-ups and SMEs are expected to fail. Canadian data shows that only 72% of SMEs that entered the marketplace in 2007 survived for two years² and only 51% of SMEs that entered the market place in 2005 survived for five years.³ The survival rate of issuers that rely on equity crowdfunding may be lower since there is the possibility of

² Industry Canada, Key Small Business Statistics - August 2013.

³ Industry Canada, Key Small Business Statistics - July 2012.

adverse selection. Businesses with good prospects may gravitate towards donation or rewards-based crowdfunding or other cheaper sources of financing whereas less successful businesses may use securities-based crowdfunding because they are unable to raise funds from other sources.

However, investors that participate in securities-based crowdfunding may do so for a number of different reasons to support an early stage business and not strictly as an investment. Further, the requirements for investors to sign a risk acknowledgment form and the requirement for the portal to provide general information and educational materials to investors will help investors understand the high risk of investing in a business through crowdfunding. In addition, any investment loss will be limited because of the restrictions on the amounts an investor can invest.

Intermediaries

Portals will play a key role in facilitating the use of the Crowdfunding Prospectus Exemption and will be required to register in the jurisdictions in which they carry on business. The Crowdfunding Portal Requirements require registration of a portal and limit the ability of existing registrants to register.

Ongoing regulatory compliance costs are not expected to exceed those under other registration categories. However, unlike traditional broker-dealer businesses, the portal is expected to incur costs to build and maintain an electronic platform that will serve as the main conduit through which investors and issuers are connected. While the upfront costs may be significant, the portal's business is expected to be scalable allowing for significant economies of scale in the long run. Hence, costs to portals on a per unit basis are expected to decrease significantly once transaction volumes increase.

The proposed offering limit on issuers⁴ and investment limits on investors⁵ may also impact the economic viability of crowdfunding portals if they are unable to achieve sufficient participation rates from both issuers and investors.

Many portals will realize the importance of conducting due diligence on issuers, especially if the portal expects to maintain its business in what is expected to be a very competitive market. More specific rules for portals such as providing standardized investor education at point of sale and providing the OSC with a quarterly report on deal activity are largely administrative expenses and not expected to add significant burden or cost for the portal.

E. Proposed Reports

The Proposed Reports are intended to streamline the Current Exempt Distribution Report and to obtain additional information about the issuer, registrant and investor that was previously either missing or not clearly stated. The additional information is not expected to result in a material increase in cost for the issuer or underwriter preparing the report. The Proposed Reports and all related schedules will be in electronic format, which will facilitate the submission process.

We note that investment fund issuers filing under certain prospectus exemptions⁶ will now be required to file the report quarterly rather than annually, as an alternative to filing the report no later than 10 days after the distribution. This increase in the alternative filing frequency may affect the costs for investment fund issuers. In particular, it may increase aggregate filing fees from \$500 per year to \$2,000 per year if issuers make multiple distributions throughout the calendar year. We believe the information that is collected from investment fund issuers will be significantly improved as a result of this change, which will provide us with more timely and better quality data.

⁴ An issuer group cannot raise more than \$1.5 million under the exemption during the period commencing 12 months prior to the beginning of the issuer's current offering.

⁵ An investor is not permitted to invest more than \$2,500 in a single investment under the exemption, or more than \$10,000 in total under the Crowdfunding Prospectus Exemption in a calendar year.

⁶ The MA Exemption, the AI Exemption and the Additional Investment in Investment Funds Exemption (section 2.19 of NI 45-106).

The information collected from the Proposed Reports will enhance our ability to monitor exempt market activity, inform future policy making and permit us to assess whether the Proposed Prospectus Exemptions have had their intended effect.

9. RELIANCE ON UNPUBLISHED MATERIALS

We did not rely upon any significant unpublished study, report or other written materials in developing the Proposed Prospectus Exemptions or the Proposed Reports.

10. AUTHORITY

The following provisions of the *Securities Act* (Ontario) provide the OSC with the authority to adopt the Proposed Prospectus Exemptions, the Proposed Reports and the Consequential Amendments: paragraphs 143(1)1, 1.1, 1.2, 1.3, 1.4, 1.5, 1.6, 2, 3, 4, 5, 5.1, 6, 7, 8, 8.1, 8.2, 10, 13, 18, 20, 22, 23, 24, 25, 31, 33, 34, 35, 39, 39.1, 40, 43, 44, 45, 46, 49, 50, 55 and 56.

11. HOW TO PROVIDE FEEDBACK

We invite interested parties to make written submissions on the Proposed Prospectus Exemptions (and the related guidance), the Proposed Reports and the Consequential Amendments. You must submit your comments in writing by **June 18, 2014**. If you are sending your comments by email, you should also send an electronic file containing the submissions in Microsoft Word.

Please note that, as part of the consultation process, we will also take into account the comments received on the Consultation Paper.

Please address and send your comments to the address below:

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8
Fax: 416-593-2318
Email: comments@osc.gov.on.ca

Please note that all comments received during the comment period will be made publicly available. We will post all comments received during the comment period to the OSC website at www.osc.gov.on.ca to improve the transparency of the policy-making process.

12. QUESTIONS

Please refer your questions to any of the following staff:

| | |
|---|---|
| Jo-Anne Matear Manager, Corporate Finance 416-593-2323 jmatear@osc.gov.on.ca | Elizabeth Topp Senior Legal Counsel, Corporate Finance Branch 416-593-2377 etopp@osc.gov.on.ca |
| Winnie Sanjoto Senior Legal Counsel, Corporate Finance Branch 416-593-8119 wsanjoto@osc.gov.on.ca | Rick Whiler Senior Accountant, Corporate Finance Branch 416-593-8127 rwhiler@osc.gov.on.ca |
| Stephanie Tjon Senior Legal Counsel, Corporate Finance 416-593-3655 stjon@osc.gov.on.ca | Jennifer Jeffrey Law Student, Corporate Finance 416-595-8934 jjeffrey@osc.gov.on.ca |
| Maria Carelli Senior Accountant, Compliance and Registrant Regulation Branch 416-593-2380 mcarelli@osc.gov.on.ca | Paul Hayward Senior Legal Counsel, Compliance and Registrant Regulation Branch 416-593-3657 phayward@osc.gov.on.ca |
| Kevin Yang Senior Research Analyst, Strategy and Operations Branch 416-204-8983 kyang@osc.gov.on.ca | Paul Redman Principal Economist, Strategy and Operations Branch 416-593-2396 predman@osc.gov.on.ca |
| Melissa Schofield Senior Legal Counsel, Investment Funds Branch 416-595-8777 mschofield@osc.gov.on.ca | Frederick Gerra Legal Counsel, Investment Funds Branch 416-204-4956 fgerra@osc.gov.on.ca |
| Michael Balter Senior Legal Counsel, General Counsel's Office 416-593-3739 mbalter@osc.gov.on.ca | |

March 20, 2014.

APPENDIX A
OFFERING MEMORANDUM
PROSPECTUS EXEMPTION

ANNEX A-1

KEY PROVISIONS OF THE PROPOSED OM PROSPECTUS EXEMPTION¹

The following is a summary of the proposed offering memorandum (**OM**) exemption and the proposed changes from the existing OM exemption in National Instrument 45-106 *Prospectus and Registration Exemptions* (NI 45-106) that is available in Alberta and certain other CSA jurisdictions. We are soliciting comments on the terms and conditions of the proposed exemption. The summary is divided into the following sections.

| Topic | Specific discussion areas |
|--------------------------|--|
| 1. Issuer qualifications | <ul style="list-style-type: none"> • Reporting issuers vs. non-reporting issuers • Investment funds vs. non-investment funds • Issuers without a specific business plan (blind pools) • Jurisdiction of incorporation or organization and location of issuer’s head office • Jurisdiction where directors and officers resident |
| 2. Distribution details | <ul style="list-style-type: none"> • Types of securities • Seller • Offering size and limits on offerings • Proceeds • Period of distribution • Restrictions or requirements imposed on principals of issuer • Registrants |
| 3. Investors | <ul style="list-style-type: none"> • Investor qualification • Investment limits • Use of leverage to finance investment • Risk acknowledgment form • Rights • Ability to resell securities |

¹ This summary compares the OSC’s proposal with the existing OM exemption available in Alberta and other CSA jurisdictions. Other CSA jurisdictions in which the OM exemption is currently available may also be proposing changes to the terms of the exemption. Any such proposed changes are not reflected in this summary.

| Topic | Specific discussion areas |
|------------------------------|--|
| 4. Disclosure | <ul style="list-style-type: none"> • Management certification and liability attached to materials • Delivery requirements • Format and content of point of sale disclosure • Advertising and marketing materials • Ongoing information available to investors |
| 5. Reporting of distribution | <ul style="list-style-type: none"> • Reporting of distribution |

| Issue | Existing “Alberta model” of OM exemption | Proposed exemption | Comments and explanation of any differences |
|--|---|---|--|
| 1. Issuer qualifications | | | |
| Reporting issuers vs. non-reporting issuers | <ul style="list-style-type: none"> • Both reporting issuers and non-reporting issuers can use the exemption. | <ul style="list-style-type: none"> • Both reporting issuers and non-reporting issuers can use the exemption. | <p>No change.</p> <ul style="list-style-type: none"> • As the overall goal of our initiative is to facilitate capital raising for start-ups and small and medium-sized enterprises (SMEs), we think the exemption should be available to both reporting issuers and non-reporting issuers. |
| Investment funds vs. non-investment funds | <ul style="list-style-type: none"> • There are no restrictions on the type of non-investment fund issuer that can use the exemption. • If the issuer is an investment fund, in order to distribute securities under the exemption the investment fund must be either: <ul style="list-style-type: none"> ○ a non-redeemable investment fund, or | <ul style="list-style-type: none"> • Investment funds cannot use the exemption. | <p>Proposed change.</p> <ul style="list-style-type: none"> • The exclusion of investment funds is consistent with the objective of facilitating capital raising for start-ups and SMEs. • As separate initiatives, we are currently undertaking significant policy projects to modernize product regulation for |

| Issue | Existing “Alberta model” of OM exemption | Proposed exemption | Comments and explanation of any differences |
|---|---|---|---|
| | <ul style="list-style-type: none"> ○ a mutual fund that is a reporting issuer. | | investment funds, for point of sale disclosure for mutual funds and to review the cost of ownership of mutual funds. |
| Issuers without a specific business plan (blind pools) | <ul style="list-style-type: none"> • There are no restrictions on the nature of the business of an issuer that relies on the exemption. As a result, a blind pool or an issuer without a specific business plan may use the exemption. | <ul style="list-style-type: none"> • There are no restrictions on the nature of the business of an issuer that relies on the exemption. As a result, a blind pool or an issuer without a specific business plan may use the exemption. | <p>No change.</p> <ul style="list-style-type: none"> • We will consider as phase two work whether to add disclosure requirements in the OM form tailored to blind pools and other issuers without a specific business plan. |
| Jurisdiction of incorporation or organization and location of issuer’s head office | <ul style="list-style-type: none"> • The issuer does not have to be incorporated or organized in Canada or have its head office in Canada in order to use the exemption. | <ul style="list-style-type: none"> • The issuer does not have to be incorporated or organized in Canada or have its head office in Canada in order to use the exemption. | <p>No change.</p> <ul style="list-style-type: none"> • We think imposing restrictions on where an issuer is incorporated or organized or where its head office is located would be unduly restrictive. • The OM form requires disclosure of where the issuer is incorporated or organized. |
| Jurisdiction where directors and officers resident | <ul style="list-style-type: none"> • There are no requirements relating to the jurisdiction where directors and officers of the issuer reside. | <ul style="list-style-type: none"> • There are no requirements relating to the jurisdiction where directors and officers of the issuer reside. | <p>No change.</p> <ul style="list-style-type: none"> • We think adding requirements regarding the residency of directors and officers would be unduly restrictive. • The OM form requires disclosure of the location of the principal residence of each director and officer of the issuer. |

| Issue | Existing “Alberta model” of OM exemption | Proposed exemption | Comments and explanation of any differences |
|--|---|--|--|
| 2. Distribution details – types of securities | | | |
| Types of securities | <ul style="list-style-type: none"> There are no restrictions on the types of securities that can be distributed under the exemption. | <ul style="list-style-type: none"> The following novel or complex securities cannot be distributed under the exemption: <ul style="list-style-type: none"> specified derivatives as defined in National Instrument 44-102 <i>Shelf Distributions</i>, and structured finance products as set out in the proposed definition to be included in National Instrument 25-101 <i>Designated Rating Organizations</i>. “Specified derivative” means an instrument, agreement or security, the market price, value or payment obligations of which are derived from, referenced to, or based on an underlying interest, other than one that is also <ol style="list-style-type: none"> a conventional convertible security, a specified asset-backed security, an index participation unit, a government or corporate strip bond, a capital, equity dividend or income share of a subdivided equity or fixed income security, a conventional warrant or right, or a special warrant. “Structured finance product” means any of the following: | <p>Proposed change.</p> <ul style="list-style-type: none"> Given that the securities distributed under the exemption will be targeted at retail investors, we do not think that it is appropriate to allow complex and/or novel securities to be sold without the full protections afforded by a prospectus. With other prospectus exemptions that we anticipate will be used primarily by start-ups and SMEs, we have chosen to provide a list of permitted types of securities that can be distributed under the exemption. In the case of the proposed OM exemption, however, we have listed the types of securities that may not be distributed under the exemption. We expect that a wider range of issuers at different stages of development may use the exemption. Also, investors purchasing securities under the exemption will be provided with a disclosure document that includes information about the terms of the securities. For these reasons we thought it appropriate to exclude only specific types of securities, rather than limit the distribution of securities under the exemption to a defined group of |

| Issue | Existing "Alberta model" of OM exemption | Proposed exemption | Comments and explanation of any differences |
|-------|--|---|---|
| | | <p>(a) a security that entitles the security holder to receive payments that primarily depend on the cash flow from self-liquidating financial assets collateralizing the security, such as loans, leases, mortgages, and secured or unsecured receivables, including:</p> <ul style="list-style-type: none"> (i) an asset-backed security, (ii) a collateralized mortgage obligation, (iii) a collateralized debt obligation, (iv) a collateralized bond obligation, (v) a collateralized debt obligation of asset-backed securities, (vi) a collateralized debt obligation of collateralized debt obligations, <p>(b) a security that entitles the security holder to receive payments that substantially reference or replicate the payments made on one or more securities of the type described in paragraph (a) but that do not primarily depend on the cash flow from self-liquidating financial assets that collateralize the security, including:</p> <ul style="list-style-type: none"> (i) a synthetic asset-backed security, (ii) a synthetic collateralized mortgage obligation, | <p>permitted securities.</p> <ul style="list-style-type: none"> • We have sought specific comment on this issue. |

| Issue | Existing “Alberta model” of OM exemption | Proposed exemption | Comments and explanation of any differences |
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| | | <ul style="list-style-type: none"> (iii) a synthetic collateralized debt obligation, (iv) a synthetic collateralized bond obligation, (v) a synthetic collateralized debt obligation of asset-backed securities, (vi) a synthetic collateralized debt obligation of collateralized debt obligations. | |
| 2. Distribution details – seller | | | |
| Who can distribute securities under the exemption | <ul style="list-style-type: none"> • The exemption applies to a distribution of a security by an issuer of securities of its own issue. | <ul style="list-style-type: none"> • The exemption applies to a distribution of a security by an issuer of securities of its own issue. | <p>No change.</p> <ul style="list-style-type: none"> • As phase two work we will consider requiring additional disclosure where the “issuer” of the security is not an operating entity. For example, we will consider whether to be explicit that the concerns discussed in National Policy 41-201 <i>Income Trusts and Other Indirect Offerings</i> may require disclosure of underlying operating entities that conduct the business of the issuer. We will also consider whether to require financial statements of an operating entity to be included in the OM. |

| Issue | Existing “Alberta model” of OM exemption | Proposed exemption | Comments and explanation of any differences |
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| 2. Distribution details – offering size and limits on offerings | | | |
| Limit on offering size | <ul style="list-style-type: none"> There is no limit on the size of an offering made under the exemption. | <ul style="list-style-type: none"> There is no limit on the size of an offering made under the exemption. | <p>No change.</p> <ul style="list-style-type: none"> We are not proposing any offering limits because we anticipate that the OM may be a useful prospectus exemption for growing businesses that have moved beyond the start-up stage. It would be difficult for us to determine a reasonable limit on the amount of funds a business at the next stage of development needs to move forward. Appropriate limits could vary depending on the issuer’s industry. |
| Limit on number of offerings by an issuer | <ul style="list-style-type: none"> There is no limit on the number of offerings an issuer may make under the exemption (either in total or in a given period). Form 45-106F2 <i>Offering Memorandum for Non-Qualifying Issuers</i> (Form 45-106F2) requires disclosure of any issuances in the past 12 months of securities of the same class as those being offered under the OM. This does not require disclosure of securities issuances of a different class, nor does it require disclosure of how the funds raised were used. | <ul style="list-style-type: none"> There is no limit on the number of offerings an issuer may make under the exemption (either in total or in a given period). | <p>No change.</p> <ul style="list-style-type: none"> As phase two work, we will consider requiring disclosure in the OM of offerings and funds raised by the issuer within a defined period and the use of funds raised during that period. |

| Issue | Existing “Alberta model” of OM exemption | Proposed exemption | Comments and explanation of any differences |
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| Limits on number of offerings by issuers that are affiliates or engaged in common enterprise with the issuer | <ul style="list-style-type: none"> • There is no restriction on the number of offerings under the exemption (or other prospectus exemptions) that may be made by an issuer and affiliated issuers or issuers in the same corporate structure. • No specific disclosure is required in the OM form on offerings by related or affiliated entities. | <ul style="list-style-type: none"> • There is no restriction on the number of offerings under the exemption (or other prospectus exemptions) that may be made by an issuer and affiliated issuers or issuers in the same corporate structure. | <p>No change.</p> <ul style="list-style-type: none"> • We have some concerns that permitting non-reporting issuers to raise an unlimited amount of capital under the exemption potentially undermines the prospectus and continuous disclosure regimes under securities law. • We have sought specific comment on this issue, and, in particular have asked whether a cap on the total amount raised under the exemption in a given period would be appropriate. • As phase two work, we will consider requiring appropriate disclosure in the OM of all offerings made by entities in the same corporate structure. |
| Limits on number of offerings by same individuals | <ul style="list-style-type: none"> • There are no limits on the number of offerings under the exemption (or other prospectus exemptions) that may be made by individuals involved with the issuer, such as directors, officers, control persons or promoters. | <ul style="list-style-type: none"> • There are no limits on the number of offerings under the exemption (or other prospectus exemptions) that may be made by individuals involved with the issuer, such as directors, officers, control persons or promoters. | <p>No change.</p> <ul style="list-style-type: none"> • As phase two work, we will consider whether disclosure should be made about other issuers that directors, officers, control persons or promoters of the issuer are involved with. |

| Issue | Existing “Alberta model” of OM exemption | Proposed exemption | Comments and explanation of any differences |
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| 2. Distribution details – proceeds | | | |
| Use of proceeds | <ul style="list-style-type: none"> There are no restrictions on the use of proceeds raised under the exemption. | <ul style="list-style-type: none"> There are no restrictions on the use of proceeds raised under the exemption. | <p>No change.</p> <ul style="list-style-type: none"> We have not proposed restrictions on the use of proceeds. We think doing so would unnecessarily restrict businesses seeking financing. |
| Proceeds held in trust | <ul style="list-style-type: none"> An issuer must: <ul style="list-style-type: none"> hold in trust all consideration received from an investor in connection with a distribution of a security until midnight on the second business day after the investor signs the subscription or purchase agreement, and return all consideration to the investor promptly if the investor exercises the two day right of withdrawal. | <ul style="list-style-type: none"> The same requirements apply. | <p>No change.</p> |
| 2. Distribution details – period of distribution | | | |
| Length of time an offering can remain open | <ul style="list-style-type: none"> There are no restrictions on the length of time an offering can remain open. Subsection 2.9(14) of NI 45-106 states that if a certificate (confirming no misrepresentation) “ceases to be true after it is delivered to the purchaser” the issuer must provide the investor with an update of the OM prior to accepting an agreement to purchase the security from the investor. | <ul style="list-style-type: none"> There are no restrictions on the length of time an offering can remain open. We have retained the requirements in subsection 2.9(14) of NI 45-106 to provide an up to date OM to prospective investors and to require a new certificate in the OM. We also require an investor to re-sign the agreement to purchase the | <p>No change.</p> <ul style="list-style-type: none"> As phase two work, we will consider requiring additional disclosure in this area. For example, we will consider requiring disclosure in the OM as to how long the offering will remain open. We have also proposed, as a condition to the use of the exemption, that an issuer provide some form of ongoing |

| Issue | Existing “Alberta model” of OM exemption | Proposed exemption | Comments and explanation of any differences |
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| | <ul style="list-style-type: none"> Any updated OM must contain a new certificate. The investor must re-sign the agreement to purchase the security. | security, if applicable. | disclosure to investors, such as annual financial statements. See “Ongoing information available to investors” below. |
| 2. Distribution details – restrictions or requirements imposed on principals of issuer | | | |
| Requirement for investment by principals in an issuer | <ul style="list-style-type: none"> The principals² of an issuer are not required to invest their own money in the issuer before making an offering under the exemption. Form 45-106F2 requires disclosure of: <ul style="list-style-type: none"> whether or not the principals own securities of the issuer, if so, the number, type and percentage of securities held after completion of the offering (including any minimum and maximum offering), and details of any loans to or from principals of the issuer. The form of OM for qualifying issuers, Form 45-106F3 <i>Offering Memorandum for Qualifying Issuers</i> (Form 45-106F3), requires this information, but allows | <ul style="list-style-type: none"> The principals of an issuer are not required to invest their own money in the issuer before making an offering under the exemption. | <p>No change.</p> <ul style="list-style-type: none"> Requiring the principals to invest their own money in the issuer would align their interests with those of the investors in the issuer. However, we have not proposed to require principals to do so since one of the primary purposes of the exemption is to enable an entrepreneur to finance a start-up or SME without having the personal financial resources to do so. |

² “Principal” is defined in National Policy 46-201 *Escrow for Initial Public Offerings* (NP 46-201) as (a) a person or company who acted as a promoter of the issuer within two years before an IPO prospectus, (b) a director or senior officer of the issuer or any of its material operating subsidiaries at the time of an IPO prospectus, (c) a person or company that holds securities carrying more than 20% of the voting rights attached to the issuer’s outstanding securities immediately before and immediately after the issuer’s IPO, (d) a person or company that (i) holds securities carrying more than 10% of the voting rights attached to the issuer’s outstanding securities immediately before and immediately after the issuer’s IPO and (ii) has elected or appointed, or has the right to elect or appoint, one or more directors or senior officers of the issuer or any of its material operating subsidiaries.

| Issue | Existing “Alberta model” of OM exemption | Proposed exemption | Comments and explanation of any differences |
|----------------------------|---|---|---|
| | <p>issuers to refer to other previously filed documents that contain this information and that are available on SEDAR.</p> | | |
| Escrow requirements | <ul style="list-style-type: none"> There is no escrow requirement for principals of an issuer that are not otherwise subject to the provisions of NP 46-201. | <ul style="list-style-type: none"> There is no escrow requirement for principals of an issuer that are not otherwise subject to the provisions of NP 46-201. | <p>No change.</p> <ul style="list-style-type: none"> Requiring escrow would be a significant departure from the approach taken in the exempt market, as there are no escrow requirements for issuers that rely on other prospectus exemptions. The principal regulatory objective of an escrow is to tie in an issuer’s principals and founders for a period of time following the issuer’s initial offering to give them an incentive to devote their time and attention to the issuer’s business. Securities of a non-reporting issuer are subject to an indefinite hold period, so principals are very limited as to whom they can sell securities. Even for a reporting issuer, a four-month hold period is imposed, which limits the possibility for immediate exit by principals. |

| Issue | Existing “Alberta model” of OM exemption | Proposed exemption | Comments and explanation of any differences |
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| 2. Distribution details – registrants | | | |
| Requiring dealer involvement as a condition to use of the exemption | <ul style="list-style-type: none"> Except where an issuer is in the business of trading in securities and is required to register under National Instrument 31-103 <i>Registration Requirements, Exemptions and Ongoing Registrant Obligations</i> (NI 31-103), there is no requirement that the securities must be sold through a registrant. | <ul style="list-style-type: none"> Except where an issuer is in the business of trading in securities and is required to register under NI 31-103, there is no requirement that the securities must be sold through a registrant. The usual business trigger will apply to distributions made under the exemption. Some issuers, especially start-ups and SMEs, may wish to distribute securities directly. | <p>No change.</p> <ul style="list-style-type: none"> Given that our goal is primarily to provide greater capital raising options for start-ups and SMEs, issuers should have the ability to distribute their securities directly, within the current regulatory regime, subject to the usual registration business trigger considerations. |
| Types of registrants permitted to be involved in distributing securities under the exemption | <ul style="list-style-type: none"> There are no restrictions that limit the type of registrant that may participate in an OM distribution. | <ul style="list-style-type: none"> There are no restrictions that limit the type of registrant that may participate in an OM distribution. IIROC dealers and exempt market dealers (EMDs) will have to fulfill “know your client” and “suitability” obligations in relation to distributions of securities under the exemption. | <p>No change.</p> |

| Issue | Existing “Alberta model” of OM exemption | Proposed exemption | Comments and explanation of any differences |
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| <p>Role of registrants that are related or connected to the issuer</p> | <ul style="list-style-type: none"> There are no restrictions on whether a registrant that is connected or related to the issuer may participate in an OM distribution. | <ul style="list-style-type: none"> Registrants that are related (i.e., affiliates or in the same corporate structure) to an issuer will be prohibited from participating in an OM distribution. Registrants that are connected to an issuer are not prohibited from participating in an OM distribution. | <p>Proposed change.</p> <ul style="list-style-type: none"> One of the purposes of the exemption is to enable capital raising by start-ups and SMEs. It seems unlikely that a start-up or SME would find it worthwhile to establish a related registrant to sell its securities. Staff of our Compliance and Registrant Regulation Branch, through compliance reviews, continue to identify significant compliance issues with EMDs that distribute securities of “related issuers” and “connected issuers” as those terms are defined in National Instrument 33-105 <i>Underwriting Conflicts</i>. The results of the review are set out in OSC Staff Notice 33-740 <i>Report on the results of the 2012 targeted review of portfolio managers and exempt market dealers to assess compliance with the know your client, know your product and suitability obligations</i>. As the exemption will expand the class of investors with whom an EMD may deal to include retail investors, we are concerned that these issues may be exacerbated if the EMD is related to the issuer. Accordingly, we have proposed that the exemption not be available for a distribution by a registrant of securities of a related issuer. |

| Issue | Existing “Alberta model” of OM exemption | Proposed exemption | Comments and explanation of any differences |
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| | | | <ul style="list-style-type: none"> In view of the wide range of relationships that may give rise to a connected issuer relationship, we do not propose to prohibit the use of the exemption in the case of connected issuer offerings but we will monitor the use of the exemption and may propose further amendments at a later date. |
| Fees | <ul style="list-style-type: none"> There are no restrictions on fees being paid to “finders”. However, note that subsection 2.9(4) of NI 45-106 prohibits the payment of a commission or finder’s fee to any person, other than a registered dealer, in connection with a distribution to an investor in the Northwest Territories, Nunavut and Yukon. | <ul style="list-style-type: none"> There are no restrictions on fees being paid to “finders”. | <p>No change.</p> <ul style="list-style-type: none"> Concerns have been raised about the role of unregistered finders in identifying investors of securities. In its comment letter in response to OSC Staff Consultation Paper 45-710, one commenter suggested that we should prohibit commissions or compensation being paid to agents or finders that do not have IIROC dealer responsibilities. We have sought specific comment on the role that unregistered finders play in assisting businesses to identify potential investors and whether including such a prohibition would be appropriate or would unduly restrict capital raising activity for start-ups and SMEs. |

| Issue | Existing “Alberta model” of OM exemption | Proposed exemption | Comments and explanation of any differences |
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| 3. Investors – investor qualification | | | |
| Definition of “eligible investor” Financial tests | <ul style="list-style-type: none"> The investor must be an eligible investor OR the acquisition cost to the investor must not exceed \$10,000. The definition of “eligible investor” is set out at the end of this summary. | <p><u>Net income test</u></p> <ul style="list-style-type: none"> We have retained the current net income test for the definition of an individual eligible investor. This income test only applies to investors that are individuals. We have removed the net income test for non-individuals. <p><u>Net asset test</u></p> <ul style="list-style-type: none"> There are two net asset tests, one for individual investors and one for non-individual investors. The net asset test for individuals has been reduced from \$400,000 to \$250,000. The value of an individual investor’s primary residence, however, must be excluded from calculation of the net asset test. For non-individual investors, the net asset test remains at \$400,000. | <p>Proposed change.</p> <p><u>Net income test</u></p> <ul style="list-style-type: none"> For individual investors we have retained the current net income threshold for the definition of eligible investor. The net income test for eligible investors applies only to individual investors. In our view this is appropriate and aligns with the approach taken in the accredited investor definition which does not have a net income test for persons who are not individuals. <p><u>Net asset test</u></p> <ul style="list-style-type: none"> We have concerns that the current \$400,000 net asset test for an individual investor can include real estate, including the value of a person’s primary residence. As a result, many Canadians (particularly those living in large urban centres) would qualify as eligible investors based on the value of their primary residence. We do not believe that a \$400,000 net asset threshold that includes the value of an individual’s primary residence is |

| Issue | Existing “Alberta model” of OM exemption | Proposed exemption | Comments and explanation of any differences |
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| | | | <p>appropriate, as it could allow a significant number of people to qualify as eligible investors and to make unlimited investments based on the relatively illiquid nature of their primary residence.</p> <ul style="list-style-type: none"> Given our proposal to exclude the value of an individual’s primary residence from the net asset test, we have proposed to reduce the net asset test to \$250,000 for individual investors. We have sought specific comment on whether this approach is appropriate |
| Definition of “eligible investor” Inapplicability | <ul style="list-style-type: none"> The exemption does not apply to a distribution to a person described in paragraph (a) of the definition of “eligible investor” if that person was created, or is used, solely to purchase or hold securities in reliance on the exemption. | <ul style="list-style-type: none"> We have included this restriction. | <p>No change.</p> <ul style="list-style-type: none"> In our view this type of anti-avoidance provision is appropriate, as we do not want entities to be created as a way to avoid the application of the eligible investor tests. |
| Definition of “eligible investor” Role of “eligibility adviser” | <ul style="list-style-type: none"> Part (h) of the definition of “eligible investor” includes investors who have received advice regarding the suitability of the investment from an “eligibility adviser”. Accordingly, investors who have received such advice can invest an unlimited amount under the exemption. | <ul style="list-style-type: none"> An investor may qualify as an eligible investor by obtaining advice from an “eligibility adviser”. We have not adopted the Saskatchewan and Manitoba definition of “eligibility adviser” that includes lawyers and accountants in some circumstances. | <p>No change.</p> <ul style="list-style-type: none"> Allowing individuals with a low income to invest an unlimited amount in an exempt product because they have received advice from an investment dealer would potentially expose a large number of individuals to significant financial risk. We have sought specific comment on whether this is an appropriate category |

| Issue | Existing “Alberta model” of OM exemption | Proposed exemption | Comments and explanation of any differences |
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| | <ul style="list-style-type: none"> The definition of “eligibility adviser” is set out at the end of this summary. EMDs are currently excluded from providing such advice. In Saskatchewan and Manitoba, the definition includes a lawyer or accountant in certain circumstances. | | <p>of eligible investor.</p> <ul style="list-style-type: none"> This may be less of a concern for offerings under the exemption by reporting issuers. In addition, we have sought specific comment on whether the category of registrants qualified to act as an eligibility adviser should be expanded to include EMDs and, if so, whether EMDs should be required to be independent of the issuer. |
| 3. Investors – investment limits | | | |
| Investment limits | <ul style="list-style-type: none"> There are no limits on the amount of money that an investor who meets the definition of eligible investor can invest in an OM distribution (either in a single distribution or on an aggregate basis). If the investor is <u>not</u> an eligible investor, then the cost to the investor must not exceed \$10,000 for a particular offering. There is no maximum limit on the number of offerings that an investor (whether eligible or not) may participate in (for example, in a year). | <ul style="list-style-type: none"> There are investment limits for both eligible and non-eligible investors that are individuals. For individual investors that do <u>not</u> meet the definition of eligible investor, there is a cap of \$10,000 on the amount that can be invested under the exemption in a calendar year. For individual investors that qualify as eligible investors but do not meet the accredited investor definition, there is a cap of \$30,000 on the amount that can be invested under the exemption in a calendar year. We have added guidance in the Companion Policy on steps that can be | <p>Proposed change.</p> <ul style="list-style-type: none"> We have concerns with the unlimited investments that could be made by investors with relatively low incomes or net worth. While there is currently a \$10,000 <u>per investment</u> cap on non-eligible investors under the “Alberta model” of the OM exemption, there are no limits on the number of times these investors can invest in different offerings, even for the same issuer. In our view, investment limits are appropriate for individual investors, including those that qualify as eligible investors (but who are not accredited |

| Issue | Existing “Alberta model” of OM exemption | Proposed exemption | Comments and explanation of any differences |
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| | | taken by an issuer to determine whether an investor has exceeded these annual limits. | investors). <ul style="list-style-type: none"> We have sought specific comment on the proposed caps and whether these limits are appropriate. |
| 3. Investors – use of leverage to finance investment | | | |
| Use of leverage to finance investment | <ul style="list-style-type: none"> An investor can borrow money to finance the purchase of securities under the exemption. | <ul style="list-style-type: none"> An investor can borrow money to finance the purchase of securities under the exemption. | No change. <ul style="list-style-type: none"> Prohibiting an investor from borrowing money to finance the purchase of securities under the exemption would be overly intrusive and difficult to enforce. This type of restriction does not exist in other prospectus exemptions. Our approach instead is to require an investor to sign a risk acknowledgment form. See “Risk acknowledgment form” below. |
| 3. Investors – risk acknowledgment form | | | |
| Risk acknowledgment form | <ul style="list-style-type: none"> At the same time or before the investor signs the agreement to purchase the security, the issuer must obtain a signed risk acknowledgment form from the investor in the required form. The issuer must retain the risk acknowledgment form for eight years after the distribution. | <ul style="list-style-type: none"> At the same time or before an investor that is an individual signs the agreement to purchase the security, the issuer must obtain a signed risk acknowledgment form from the investor in the required form. An individual that meets the definition of permitted client set out in paragraph | No change. <ul style="list-style-type: none"> Given that this exemption allows retail investors to purchase securities in the exempt market, we believe that investors should be required to sign a risk acknowledgment form that draws their attention to the key risks associated with investing in the exempt |

| Issue | Existing “Alberta model” of OM exemption | Proposed exemption | Comments and explanation of any differences |
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| | | <p>(o) of the definition of “permitted client” in NI 31-103 is not required to sign a risk acknowledgment form.</p> <ul style="list-style-type: none"> • The risk acknowledgement form sets out the key risks associated with the investment, such as: <ul style="list-style-type: none"> ○ it is a risky investment, ○ the investor could lose all of the money invested, ○ the investor may never be able to sell the securities, ○ the investor will receive only limited ongoing information from the issuer, and ○ because the investor is purchasing the securities under a prospectus exemption, the investor will not have the benefit of protections under securities law. • The issuer must retain the risk acknowledgment form for eight years after the distribution. | <p>market.</p> <ul style="list-style-type: none"> • An individual that qualifies as a permitted client (meaning the individual has financial assets that exceed \$5 million net of related liabilities) is considered to be a sophisticated investor and is able to waive the suitability requirements under NI 31-103. As a result, we do not think it is necessary to have these investors sign a risk acknowledgment form. |
| 3. Investors – rights | | | |
| Right of withdrawal | <ul style="list-style-type: none"> • Subsection 2.9(6) of NI 45-106 provides that if the securities legislation where the investor is resident does not provide a comparable right, an OM must provide the investor with a contractual right to cancel the agreement to purchase the security by | <ul style="list-style-type: none"> • Investors have a two business day right of withdrawal. | No change. |

| Issue | Existing “Alberta model” of OM exemption | Proposed exemption | Comments and explanation of any differences |
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| | <p>delivering a notice to the issuer not later than midnight on the second business day after the investor signs the agreement to purchase the security.</p> | | |
| Statutory right of action | <ul style="list-style-type: none"> Subsection 2.9(7) of NI 45-106 provides that if the securities legislation where the investor is resident does not provide statutory rights of action in the event of a misrepresentation in an OM, the OM must contain a contractual right of action against the issuer for rescission or damages. | <ul style="list-style-type: none"> Investors have a statutory right of action to sue in the event of a misrepresentation. See “Certification and standard of liability attached to disclosure” below. | No change. |
| 3. Investors – ability to resell securities | | | |
| Resale restrictions | <ul style="list-style-type: none"> Securities of a reporting issuer are subject to a four-month hold period (subject to certain other conditions being met). Securities of a non-reporting issuer are subject to an indefinite hold period and can only be resold under a prospectus exemption or under a prospectus. | <ul style="list-style-type: none"> Securities of a reporting issuer are subject to a four-month hold period (subject to certain other conditions being met). Securities of a non-reporting issuer are subject to an indefinite hold period and can only be resold under a prospectus exemption or under a prospectus. | <p>No change.</p> <ul style="list-style-type: none"> We think that the current resale restrictions are appropriate. |

| Issue | Existing “Alberta model” of OM exemption | Proposed exemption | Comments and explanation of any differences |
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| 4. Disclosure – management certification and liability attached to materials | | | |
| Certification and standard of liability attached to disclosure | <ul style="list-style-type: none"> • Subsection 2.9(8) of NI 45-106 requires that an OM contain a certificate that states as follows: “This offering memorandum does not contain a misrepresentation” (see the definition of misrepresentation under the “Proposed exemption” column). • The certificate must be true at the date the certificate is signed and at the date the OM is delivered to the investor. • If a certificate ceases to be true after it is delivered to the investor, the issuer cannot accept an agreement to purchase the security from the investor unless: <ul style="list-style-type: none"> ○ the investor receives an updated OM, ○ the updated OM contains a newly dated certificate, and ○ the investor re-signs the agreement to purchase the security. | <ul style="list-style-type: none"> • The same standard as set out in subsection 2.9(8) will apply. • This aligns with section 130.1 of the <i>Securities Act</i> (Ontario) (the Act), which provides certain rights of action for damages or rescission where an OM contains a misrepresentation. <p>Section 130.1 of the Act</p> <ul style="list-style-type: none"> • Section 130.1 of the Act provides that where an offering memorandum contains a misrepresentation, an investor who purchases a security offered by the offering memorandum during the period of distribution has, without regard to whether the investor relied on the misrepresentation, the following rights: <ul style="list-style-type: none"> ○ the investor has a right of action for damages against the issuer and a selling security holder on whose behalf the distribution is made, and ○ if the investor purchased the security from a person or company referred to above, the investor may elect to exercise a right of rescission against the person or company. If the investor exercises this right, the investor ceases to have a right of action for damages against the person or company. | <p>No change.</p> <ul style="list-style-type: none"> • Adopting the same standard as in subsection 2.9(8) will result in the same liability standard applying across the country. |

| Issue | Existing “Alberta model” of OM exemption | Proposed exemption | Comments and explanation of any differences |
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| | | <ul style="list-style-type: none"> • “Misrepresentation” is defined in the Act to mean: <ul style="list-style-type: none"> ○ an untrue statement of 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 the light of the circumstances in which it was made. | |
| 4. Disclosure – delivery requirements | | | |
| Delivery requirements | <ul style="list-style-type: none"> • Under subsection 2.9(17) of NI 45-106 an issuer must file a copy of an OM and any update of a previously filed OM with the securities regulatory authority on or before the 10th day after the distribution under the OM or update of the OM. | <ul style="list-style-type: none"> • An issuer must deliver a copy of an OM and any update of a previously delivered OM to the Ontario Securities Commission on or before the 10th day after the distribution under the OM or update of the OM. | <p>No change.</p> <ul style="list-style-type: none"> • Offering memoranda used to distribute securities under certain prospectus exemptions are currently required to be delivered to the Ontario Securities Commission under Part 5 of OSC Rule 45-501 <i>Ontario Prospectus and Registration Exemptions</i>. |
| 4. Disclosure – format and content of point of sale disclosure | | | |
| Point of sale disclosure | <ul style="list-style-type: none"> • The issuer must deliver an OM to an investor in the required form at the same time or before the investor signs the agreement to purchase the security. • The prescribed forms are Form 45-106F2 and Form 45-106F3 <i>Offering Memorandum for Qualifying Issuers</i> | <ul style="list-style-type: none"> • The issuer must deliver an OM to an investor in the required form at the same time or before the investor signs the agreement to purchase the security. • The prescribed forms are Form 45-106F2 and Form 45-106F3. | <p>No change.</p> <ul style="list-style-type: none"> • We propose to initially adopt the OM forms currently used in other CSA jurisdictions. • As phase two work, we will consider how the OM forms could provide improved disclosure to investors. This |

| Issue | Existing “Alberta model” of OM exemption | Proposed exemption | Comments and explanation of any differences |
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| | (Form 45-106F3). | | may be streamlined disclosure in some cases or tailored disclosure for issuers operating in certain industries. For example, we may consider requiring a one-page “term sheet” like document in addition to an OM. |
| 4. Disclosure – advertising and marketing materials | | | |
| Advertising and use of marketing materials | <ul style="list-style-type: none"> • There are no specific restrictions on advertising related to offerings made under the exemption. • Guidance in 45-106CP states as follows: <ul style="list-style-type: none"> ○ “[The capital raising exemptions] in NI 45-106 do not prohibit the use of registrants, finders or advertising in any form (for example, internet, e-mail, direct mail, newspaper or magazine) to solicit purchasers under any of the exemptions.” ○ “Any solicitation activities that aim to identify a particular category of investors should clearly state the kind of investor being sought and the criteria that investors will be required to meet. Any print materials used to find accredited investors, for example, should clearly and prominently state that only accredited investors should respond to solicitation.” ○ “NI 45-106 does not restrict the use of advertising to solicit or find | <p>Advertising</p> <ul style="list-style-type: none"> • There are no new restrictions on advertising. <p>Marketing activities</p> <ul style="list-style-type: none"> • Issuers relying on the exemption are required to incorporate by reference into the OM any marketing materials. Any marketing materials prepared after the OM is first delivered to investors are deemed to be incorporated by reference into the OM. • We have provided additional guidance in 45-106CP on appropriate marketing practices. • An issuer must deliver to the Ontario Securities Commission any marketing materials required to be incorporated by reference into an offering memorandum. • Such marketing materials must be delivered concurrently with the offering memorandum or, if prepared | <p>Proposed change.</p> <ul style="list-style-type: none"> • We think that requiring any marketing materials used to sell OM securities to be incorporated by reference into the OM is appropriate and that marketing materials should be subject to the same standard of liability as the OM. • We have provided expanded guidance on appropriate marketing practices to mitigate concerns about potentially abusive or misleading marketing practices. |

| Issue | Existing “Alberta model” of OM exemption | Proposed exemption | Comments and explanation of any differences |
|---|---|--|---|
| | <p>purchasers. However, issuers and selling securityholders should review other securities legislation and securities directions for guidelines, limitations and prohibitions on advertising intended to promote interest in an issuer or its securities.”</p> | <p>after the delivery of the offering memorandum, within 10 days of the marketing materials being disclosed to a prospective investor.</p> | |
| 4. Disclosure – ongoing information available to investors | | | |
| <p>Ongoing information available to investors</p> | <ul style="list-style-type: none"> • A reporting issuer is subject to ongoing continuous disclosure obligations under securities law. • There is no requirement to provide continuous disclosure to investors that acquired securities of a non-reporting issuer under the exemption. | <p>Reporting issuers</p> <ul style="list-style-type: none"> • A reporting issuer is subject to ongoing continuous disclosure obligations under securities law. <p>Non-reporting issuers</p> <ul style="list-style-type: none"> • Limited continuous disclosure is required for non-reporting issuers that distribute securities under the exemption. • A non-reporting issuer must deliver to the securities regulatory authority and make reasonably available to the investor, the following documents: <ul style="list-style-type: none"> ○ on or before the 120th day after the end of its most recently completed financial year, audited annual financial statements, and ○ a notice that accompanies the audited annual financial statements disclosing in reasonable detail the use of the aggregate gross proceeds raised by | <p>Proposed change.</p> <ul style="list-style-type: none"> • Though corporate law requires a company to provide audited annual financial statements to shareholders, many issuers in the exempt market are not corporations and thus are not governed by corporate law statutes. • Certain ongoing disclosure is necessary for investors to be able to make informed investment decisions or discern how an issuer has performed. • The requirement to make reasonably available to investors certain ongoing disclosure also imposes a level of accountability on an issuer and its directors and officers. • We note that it is a significant departure from current rules to require continuous disclosure for non-reporting issuers and such a requirement might |

| Issue | Existing “Alberta model” of OM exemption | Proposed exemption | Comments and explanation of any differences |
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| | | <p>the issuer in all OM distributions.</p> <ul style="list-style-type: none"> • The audited annual financial statements must comply with the requirements of both of the following, as if the issuer was a reporting issuer: <ul style="list-style-type: none"> ○ section 4.1 of National Instrument 51-102 <i>Continuous Disclosure Obligations</i>, and ○ national Instrument 52-107 <i>Acceptable Accounting Principles and Auditing Standards</i>. • In addition, a non-reporting issuer must also make reasonably available to the investor a notice of the following within 10 days of the event: <ul style="list-style-type: none"> ○ a fundamental change in, or discontinuation of, the issuer’s business, ○ a significant change to the issuer’s capital structure, ○ a major reorganization, amalgamation or merger ○ a take-over bid or issuer bid involving the issuer, ○ a significant acquisition, and ○ changes in its directors and executive officers. • A non-reporting issuer must also deliver any such notice to the Ontario Securities Commission upon request. | <p>reduce the level of reliance on the exemption. However, since the exemption will allow issuers to raise capital from a large number of retail investors, we think that requiring certain ongoing disclosure is appropriate.</p> <ul style="list-style-type: none"> • An alternative approach would be to require that the issuer provide disclosure on the type and amount of continuous disclosure that it proposes to provide on an ongoing basis to investors. • We have sought specific comment on our proposal and possible alternative approaches. We have also sought specific comment on how long a non-reporting issuer should be required to provide this ongoing disclosure. |

| Issue | Existing “Alberta model” of OM exemption | Proposed exemption | Comments and explanation of any differences |
|-------------------------------------|--|--|---|
| | | <ul style="list-style-type: none"> • A non-reporting issuer must continue to provide the above disclosure until the earliest of the following events: <ul style="list-style-type: none"> ○ the issuer becomes a reporting issuer, or ○ the issuer ceases to carry on business. | |
| 5. Reporting of distribution | | | |
| Reporting of distribution | <ul style="list-style-type: none"> • A report of exempt distribution (on either Form 45-106F1 <i>Report of Exempt Distribution</i> or Form 45-106F6 <i>British Columbia Report of Exempt Distribution</i>) must be filed for distributions made under the exemption. • Schedule 1 of Form 45-106F1 and in British Columbia, Form 45-106F6 requires that an issuer or underwriter identify the exemption relied on, on a per investor basis. These forms are required to be filed with the appropriate securities regulatory authorities. | <ul style="list-style-type: none"> • A report of exempt distribution on proposed Form 45-106F11 <i>Report of Exempt Distribution for Issuers other than Investment Funds (Alberta, New Brunswick, Ontario and Saskatchewan)</i> must be filed for a distribution made under the exemption. • To enable us to appropriately monitor use of the exemption, the report of exempt distribution must disclose the category of “eligible investor” that each investor falls under, as applicable. • This additional information is provided in a confidential schedule to the report of exempt distribution and does not appear on the public record. | <p>Proposed change.</p> <ul style="list-style-type: none"> • Requiring a report of exempt distribution to be filed is consistent with the approach taken in other jurisdictions. • We believe that it is important to obtain additional information to assist in monitoring compliance with the exemption. See the discussion regarding the proposed form of report in the Notice and Request for Comment. |

Definition of “eligible investor”

“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, along 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) 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.

Definition of “eligibility adviser”

An “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 Saskatchewan or Manitoba, also means a lawyer who is a practising member in good standing with a law society of a jurisdiction of Canada or a public accountant who is a member in good standing of an institute or association of chartered accountants, certified general accountants or certified management accountants in a jurisdiction of Canada provided that the lawyer or public accountant must not
 - (i) have a professional, business or personal relationship with the issuer, or any of its directors, executive officers, founders or control persons, and
 - (ii) have acted for or been retained personally or otherwise as an employee, executive officer, director, associate or partner of a person that has acted for or been retained by the issuer or any of its directors, executive officers, founders or control persons within the previous 12 months.

ANNEX A-2

OM PROSPECTUS EXEMPTION

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

PART 1 — DEFINITIONS AND INTERPRETATION

Definitions

1.1 In this Instrument

...

“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 Saskatchewan or Manitoba, also means a lawyer who is a practicing member in good standing with a law society of a jurisdiction of Canada or a public accountant who is a member in good standing of an institute or association of chartered accountants, certified general accountants or certified management accountants in a jurisdiction of Canada provided that the lawyer or public accountant must not
 - (i) have a professional, business or personal relationship with the issuer, or any of its directors, executive officers, founders, or control persons, and
 - (ii) have acted for or been retained personally or otherwise as an employee, executive officer, director, associate or partner of a person that has acted for or been retained by the issuer or any of its directors, executive officers, founders or control persons within the previous 12 months;

“eligible investor” means:

- (a) except in New Brunswick and Ontario, 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 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,
- (a.1) in New Brunswick and Ontario
 - (i) a person, other than an individual, whose net assets exceed \$400 000,
 - (ii) an individual whose net assets, alone or with a spouse, exceed \$250 000, excluding the value of the individual’s primary residence,
 - (iii) an individual whose 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

- (iv) an individual whose net income before taxes, alone or with a spouse, 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(1) [*Family, friends and business associates*], or
- (h) 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;

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

“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 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 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;

“related issuer” has the same meaning as in National Instrument 33-105 *Underwriting Conflicts*;

“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*.

PART 2 — PROSPECTUS EXEMPTIONS

DIVISION 1 — CAPITAL RAISING EXEMPTIONS

Offering memorandum

2.9 (1) In British Columbia, Newfoundland and Labrador and Nova Scotia, the prospectus requirement does not apply to a distribution by an issuer of a security of its own issue to a purchaser if

- (a) the purchaser purchases the security as principal, and
- (b) at the same time or before the purchaser signs the agreement to purchase the security, the issuer
 - (i) delivers an offering memorandum to the purchaser in compliance with subsections (5) to (13), and
 - (ii) obtains a signed risk acknowledgement from the purchaser in compliance with subsection (15).

(2) In Manitoba, Northwest Territories, Nunavut, Prince Edward Island and Yukon, the prospectus requirement does not apply to a distribution by an issuer of a security of its own issue to a purchaser if

- (a) the purchaser purchases the security as principal,
- (b) the purchaser is an eligible investor or the acquisition cost to the purchaser does not exceed \$10 000,
- (c) at the same time or before the purchaser signs the agreement to purchase the security, the issuer
 - (i) delivers an offering memorandum to the purchaser in compliance with subsections (5) to (13), and
 - (ii) obtains a signed risk acknowledgement from the purchaser in compliance with subsection (15), and
- (d) if the issuer is an investment fund, the investment fund is
 - (i) a non-redeemable investment fund, or
 - (ii) a mutual fund that is a reporting issuer.

(2.1) In Alberta, Quebec 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 all of the following apply:

- (a) the purchaser purchases the security as principal;
- (b) the acquisition cost of all securities acquired by the purchaser under this section in the preceding 12 months does not exceed:
 - (i) \$10 000 in the case of a purchaser that is not an eligible investor, and
 - (ii) \$30 000 in the case of an eligible investor who is an individual, excluding a purchaser that is either of the following
 - (A) an accredited investor,
 - (B) a person described in subsection 2.5(1) [*Family, friends and business associates*];
- (c) at the same time or before the purchaser signs the agreement to purchase the security, the issuer
 - (i) delivers an offering memorandum to the purchaser in compliance with subsections (5) to (13), and
 - (ii) obtains a signed risk acknowledgement in compliance with subsection (15) from each purchaser, other than a purchaser who qualifies as a “permitted client” in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;
- (d) the security distributed by the issuer is not either of the following:
 - (i) a specified derivative;
 - (ii) a structured finance product;
- (e) 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.

(2.2) In New Brunswick and Ontario, the prospectus requirement does not apply to a distribution by an issuer of a security of its own issue to a purchaser if all of the following apply:

- (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:
 - (i) \$10 000 in the case of a purchaser who is not an eligible investor, and
 - (ii) \$30 000 in the case of a purchaser who is an eligible investor, excluding a purchaser that is an accredited investor;
- (c) at the same time or before the purchaser signs the agreement to purchase the security, the issuer
 - (i) delivers an offering memorandum to the purchaser in compliance with subsections (5) to (13), and
 - (ii) obtains a signed risk acknowledgement in compliance with subsection (15) from each purchaser who is an individual, other than an individual who qualifies under paragraph (o) of the definition of “permitted client” in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;
- (d) the security distributed by the issuer is not either of the following:
 - (i) a specified derivative;
 - (ii) a structured finance product;
- (e) the issuer is not either of the following:
 - (i) a related issuer of any registrant involved in a distribution under this subsection;
 - (ii) an investment fund.

(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).

(3.01) In Alberta, New Brunswick, Ontario, Québec and Saskatchewan, this section does not apply to a distribution of a security to a person described in paragraph (a) or (a.1)(i) 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 either subsection (2.1) or (2.2).

[(3.1) Subsections (1), (2), (2.1) and (2.2) do not apply to the distribution of a short-term securitized product.]¹

(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, Ontario, Québec and Saskatchewan an offering memorandum must

- (a) incorporate by reference any OM marketing materials related to a distribution under the offering memorandum, and is deemed to incorporate any OM marketing materials prepared after the date of the offering memorandum and delivered to a prospective purchaser before the termination of the distribution, and
- (b) state that all OM marketing materials relating to each distribution under the offering memorandum, including those prepared after the date of the offering memorandum, are

¹ The language in subsection (3.1) was included in proposed amendments to National Instrument 45-106 *Prospectus and Registration Exemptions* published for comment on January 23, 2014 relating to short term securitized instruments.

incorporated by reference into the offering memorandum and are deemed to form part of the offering memorandum.

(6) If the securities legislation where the purchaser is resident does not provide a comparable right, an offering memorandum delivered under this section must provide the purchaser with a contractual right to cancel the agreement to purchase the security by delivering a notice to the issuer not later than midnight on the 2nd business day after the purchaser signs the agreement to purchase the security.

(7) If the securities legislation where the purchaser is resident does not provide statutory rights of action in the event of a misrepresentation in an offering memorandum delivered under this section, the offering memorandum must contain a contractual right of action against the issuer for rescission or damages that

- (a) is available to the purchaser if the offering memorandum, or any information or documents incorporated or deemed to be incorporated by reference into the offering memorandum, contains a misrepresentation, without regard to whether the purchaser relied on the misrepresentation,
- (b) is enforceable by the purchaser delivering a notice to the issuer
 - (i) in the case of an action for rescission, within 180 days after the purchaser signs the agreement to purchase the security, or
 - (ii) in the case of an action for damages, before the earlier of
 - (A) 180 days after the purchaser first has knowledge of the facts giving rise to the cause of action, or
 - (B) 3 years after the date the purchaser signs the agreement to purchase the security,
- (c) is subject to the defence that the purchaser had knowledge of the misrepresentation,
- (d) in the case of an action for damages, provides that the amount recoverable
 - (i) must not exceed the price at which the security was offered, and
 - (ii) does not include all or any part of the damages that the issuer proves does not represent the depreciation in value of the security resulting from the misrepresentation, and
- (e) is in addition to, and does not detract from, any other right of the purchaser.

(8) An offering memorandum delivered under this section must contain a certificate that states the following: "This offering memorandum does not contain a misrepresentation."

(9) If the issuer is a company, a certificate under subsection (8) must be signed

- (a) by the issuer's chief executive officer and chief financial officer or, if the issuer does not have a chief executive officer or chief financial officer, an individual acting in that capacity,
- (b) on behalf of the directors of the issuer, by
 - (i) any 2 directors who are authorized to sign, other than the persons referred to in paragraph (a), or
 - (ii) all the directors of the issuer, and
- (c) by each promoter of the issuer.

(10) If the issuer is a trust, a certificate under subsection (8) must be signed by

- (a) the individuals who perform functions for the issuer similar to those performed by the chief executive officer and the chief financial officer of a company, and
- (b) each trustee and the manager of the issuer.

(10.1) If a trustee or the manager that is signing the certificate of the issuer is

- (a) an individual, the individual must sign the certificate,
- (b) a company, the certificate must be signed
 - (i) by the chief executive officer and the chief financial officer of the trustee or the manager, and
 - (ii) on behalf of the board of directors of the trustee or the manager, by
 - (A) any two directors of the trustee or the manager, other than the persons referred to in subparagraph (i), or
 - (B) all of the directors of the trustee or the manager,
- (c) a limited partnership, the certificate must be signed by each general partner of the limited partnership as described in subsection (11.1) in relation to an issuer that is a limited partnership, or
- (d) not referred to in paragraphs (a), (b) or (c), the certificate may be signed by any person or company with authority to act on behalf of the trustee or the manager.

(10.2) Despite subsections (10) and (10.1), if the issuer is an investment fund and the declaration of trust, trust indenture or trust agreement establishing the investment fund delegates the authority to do so, or otherwise authorizes an individual or company to do so, the certificate may be signed by the individual or company to whom the authority is delegated or that is authorized to sign the certificate.

(10.3) Despite subsections (10) and (10.1), if the trustees of an issuer, other than an investment fund, do not perform functions for the issuer similar to those performed by the directors of a company, the trustees are not required to sign the certificate of the issuer if at least two individuals who perform functions for the issuer similar to those performed by the directors of a company sign the certificate.

(11) If the issuer is a limited partnership, a certificate under subsection (8) must be signed by

- (a) each individual who performs a function for the issuer similar to any of those performed by the chief executive officer or the chief financial officer of a company, and
- (b) each general partner of the issuer.

(11.1) If a general partner of the issuer is

- (a) an individual, the individual must sign the certificate,
- (b) a company, the certificate must be signed
 - (i) by the chief executive officer and the chief financial officer of the general partner, and
 - (ii) on behalf of the board of directors of the general partner, by
 - (A) any two directors of the general partner, other than the persons referred to in subparagraph (i), or
 - (B) all of the directors of the general partner,

- (c) a limited partnership, the certificate must be signed by each general partner of the limited partnership and, for greater certainty, this subsection applies to each general partner required to sign,
- (d) a trust, the certificate must be signed by the trustees of the general partner as described in subsection (10) in relation to an issuer that is a trust, or
- (e) not referred to in paragraphs (a) to (d), the certificate may be signed by any person or company with authority to act on behalf of the general partner.

(12) If an issuer is not a company, trust or limited partnership, a certificate under subsection (8) must be signed by the persons that, in relation to the issuer, are in a similar position or perform a similar function to any of the persons referred to in subsections (9), (10), (10.1), (10.2), (10.3), (11) and (11.1).

(13) A certificate under subsection (8) must be true

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

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

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

(15) A risk acknowledgement under subsection (1), (2), (2.1) or (2.2) must be in the required form and an issuer relying on subsection (1), (2), (2.1) or (2.2) 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), (2.1) or (2.2) 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) Except in New Brunswick and Ontario, the issuer must file with the securities regulatory authority a copy of an offering memorandum delivered under this section and any update of a previously filed offering memorandum on or before the 10th day after the distribution under the offering memorandum or update of the offering memorandum.

[Note to reader: A similar requirement to subsection 2.9(17) is provided for in OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions* and in New Brunswick Implementing Instrument 45-802 *Prospectus and Registration Exemptions*.]

(17.1) In Alberta, Québec and Saskatchewan, the issuer must file with the securities regulatory authority a copy of all OM marketing materials required to be incorporated by reference into an offering memorandum filed under subsection (17) either

- (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 disclosed to a prospective purchaser.

(17.2) In New Brunswick and Ontario, the issuer must deliver to the securities regulatory authority a copy of all OM marketing materials required to be incorporated by reference into an offering memorandum delivered to the securities regulatory authority pursuant to, in New Brunswick, section 2.3 of New Brunswick Implementing Instrument 45-802 *Prospectus and Registration Exemptions* or, in Ontario, section 5.4 of OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions*, either

- (a) if the OM marketing materials are prepared on or before the delivery of the offering memorandum, concurrently with the delivery of the offering memorandum, or
- (b) if the OM marketing materials are prepared after the delivery of the offering memorandum, within 10 days of the OM marketing materials being disclosed to a prospective purchaser.

(17.3) OM marketing materials required to be filed or delivered under subsection (17.1) or (17.2) must include a cover page clearly identifying the offering memorandum to which they relate.

(17.4) In Alberta, Québec and Saskatchewan, if the issuer is not a reporting issuer and not an investment fund, the issuer must within 120 days from the end of its financial year, file and make available to a holder of a security acquired under subsection (2.1), audited annual financial statements of the issuer that comply with the requirements of both of the following, as if the issuer was a reporting issuer:

- (a) section 4.1 of National Instrument 51-102 *Continuous Disclosure Obligations*;
- (b) National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*.

(17.5) In Alberta, Québec and Saskatchewan, if the issuer is not a reporting issuer but is an investment fund, the issuer must within 120 days from the end of its financial year, file and make available to a holder of a security acquired under subsection (2.1), audited annual financial statements of the issuer that comply with the requirements of National Instrument 81-106 *Investment Fund Continuous Disclosure* as if the issuer was a reporting issuer.

(17.6) In New Brunswick and Ontario, if the issuer is not a reporting issuer, the issuer must within 120 days from the end of its financial year, deliver to the securities regulatory authority and make available to a holder of a security acquired under subsection (2.2), audited annual financial statements of the issuer that comply with the requirements of both of the following, as if the issuer was a reporting issuer:

- (a) section 4.1 of National Instrument 51-102 *Continuous Disclosure Obligations*;
- (b) National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*.

(17.7) 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 in all distributions under subsections (2.1) and (2.2).

(17.8) An issuer is not required to provide the notice referred to in subsection (17.7) if it has disclosed in one or more prior notices the use of the aggregate gross proceeds raised by the issuer in all distributions under subsections (2.1) and (2.2).

(17.9) In New Brunswick and Ontario, if the issuer is not a reporting issuer, the issuer must make available to a holder of a security acquired under subsection (2.2) a notice of any of the following events, within 10 days of the occurrence of the event:

- (a) a fundamental change in the nature, or a discontinuation, of the issuer's business;
- (b) a significant change to the issuer's capital structure;
- (c) a major reorganization, amalgamation or merger involving the issuer;
- (d) a take-over bid, issuer bid or insider bid involving the issuer;
- (e) a significant acquisition or disposition of assets, property or joint venture interests;
- (f) changes to the issuer's board of directors or executive officers, including the departure of the issuer's chief executive officer, chief financial officer, chief operating officer or president or persons acting in similar capacities.

(17.10) In New Brunswick and Ontario, an issuer that is not a reporting issuer must continue to provide the disclosure required by subsections (17.6) and (17.9) until the earliest of

- (a) the date the issuer becomes a reporting issuer, or
- (b) the date the issuer ceases to carry on business.

(17.11) In Alberta, Québec and Saskatchewan an issuer that is not a reporting issuer must continue to provide the disclosure required by subsection (17.4) or (17.5), as applicable, until the earliest of

- (a) the date the issuer becomes a reporting issuer, or
- (b) the date the issuer ceases to carry on business.

(17.12) In Ontario, a non-reporting issuer that distributes securities in reliance on the exemption in subsection (2.2) is designated a market participant under the *Securities Act* (Ontario).

(17.13) In New Brunswick, a non-reporting issuer that distributes securities in reliance on the exemption in subsection (2.2) is designated a market participant under the *Securities Act* (New Brunswick).

(18) Repealed. [B.C. Reg. 86/2011, s. (e).].

PART 6 — REPORTING REQUIREMENTS

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

(2) Despite subsection (1), a qualifying issuer may prepare an offering memorandum in accordance with Form 45-106F3.

Required form of risk acknowledgement

6.5 (1) Except in New Brunswick and Ontario, the required form of risk acknowledgement under subsection 2.9(15) [*Offering memorandum*] is Form 45-106F4.

(1.1) In New Brunswick and Ontario, the required form of risk acknowledgement under subsection 2.9(15) [*Offering memorandum*] is Form 45-106F13.

(1.2) Despite subsection (1) in Alberta until January 1, 2017, a form required under subsection 2.9(15) in respect of an individual may be prepared in Form 45-106F13 if the issuer concurrently conducts the distribution in a jurisdiction that requires a risk acknowledgment in Form 45-106F13.

² Subsection 6.4(1) of the version of NI 45-106 currently in force includes a reference to "section 3.9". This section was an offering memorandum registration exemption that has been unavailable since March 27, 2010. As part of proposed amendments to NI 45-106 published for comment on February 27, 2014, the CSA has proposed to delete this reference. Therefore, we have not included it in this proposal.

ANNEX A-3
 OM PROSPECTUS EXEMPTION
 PROPOSED FORM 45-106F13
 RISK ACKNOWLEDGEMENT FORM FOR OFFERING MEMORANDUM INVESTORS (NEW BRUNSWICK AND
 ONTARIO)

WARNING TO INVESTORS

TO BE COMPLETED BY THE PURCHASER:

1. Acknowledgement of risk

I acknowledge that this is a risky investment. I could lose all of the \$_____ [*insert amount being invested, including any amounts you have agreed to pay in the future*] I invest.

I understand that I may never be able to sell these securities and I will be provided with less disclosure than public companies are required to provide to their investors. [*Instruction: Delete if issuer is a reporting issuer.*]

I acknowledge that, because I am purchasing this investment under a prospectus exemption, I will not have the benefit of protections under securities law for investments made under a prospectus.

I understand that borrowing money to invest increases the risk of my investment because I will be responsible for repaying the borrowed money and any interest owing even if I lose all the money I invest.

First and last name (please print):

Signature:

Date:

2. What I am buying

Number and type of securities:

Name of issuer:

I understand that \$_____ of my total investment is being paid to the salesperson as a fee or commission.

Initial by the purchaser:

3. How I qualify to buy these securities and the investment limits that I am subject to

I confirm that I am qualified to buy these securities because one of the following applies:

Purchaser's initials

A. I am an accredited investor because [*check all applicable boxes*]:

- Either alone or with my spouse, I own cash and securities worth more than \$1 million, less any related debt.
- My net income before taxes was more than \$200,000 in each of the 2 most recent calendar years and I expect it to exceed \$200,000 in this calendar year. (The amount of net income can be found in your personal income tax form.)

| | |
|--|--|
| <ul style="list-style-type: none"> <input type="checkbox"/> My net income before taxes combined with my spouse’s was more than \$300,000 in each of the 2 most recent calendar years and I expect our combined net income to exceed \$300,000 in this calendar year. (The amount of net income can be found in your personal income tax form.) <input type="checkbox"/> Either alone or with my spouse, I own net assets (being my total assets, including real estate, less my total debt) worth more than \$5 million. | |
| <p>B. I am an eligible investor because <i>[check all applicable boxes]</i>:</p> <ul style="list-style-type: none"> <input type="checkbox"/> My net income before taxes was more than \$75,000 in each of the 2 most recent calendar years and I expect it to exceed \$75,000 in this calendar year. (The amount of net income can be found in your personal income tax form.) <input type="checkbox"/> My net income before taxes combined with my spouse’s was more than \$125,000 in each of the 2 most recent calendar years and I expect our combined net income to exceed \$125,000 in this calendar year. (The amount of net income can be found in your personal income tax form.) <input type="checkbox"/> Either alone or with my spouse, I own net assets (being my total assets, including real estate <u>other than my primary residence</u>), less my total debt) worth more than \$250,000. <input type="checkbox"/> I have obtained advice regarding the suitability of this investment and, if I am a resident of Ontario, I obtained that advice from an investment dealer. <input type="checkbox"/> I am <i>[check all applicable boxes]</i>: <ul style="list-style-type: none"> <input type="checkbox"/> a director of the issuer or an affiliate of the issuer <input type="checkbox"/> an executive officer of the issuer or an affiliate of the issuer <input type="checkbox"/> a control person of the issuer or an affiliate of the issuer <input type="checkbox"/> a founder of the issuer <input type="checkbox"/> I am a family member (either directly or through the spouse of the person listed below), a close personal friend or a close business associate of a person who is <i>[check all applicable boxes]</i>: <ul style="list-style-type: none"> <input type="checkbox"/> a director of the issuer or an affiliate of the issuer <input type="checkbox"/> an executive officer of the issuer or an affiliate of the issuer <input type="checkbox"/> a control person of the issuer or an affiliate of the issuer <input type="checkbox"/> a founder of the issuer <p>I acknowledge that, as an eligible investor, I cannot invest more than \$30,000 during this calendar year in investments made under the offering memorandum exemption. I confirm that, after taking into account my investment of \$_____ today in this issuer, I have not exceeded my investment limit.</p> | |
| <p>C. I am not an accredited investor or an eligible investor.</p> <p>I acknowledge that I cannot invest more than \$10,000 during this calendar year in investments made under the offering memorandum exemption. I confirm that, after taking into account my investment of \$_____ today in this issuer, I have not exceeded my investment limit.</p> | |

TO BE COMPLETED BY THE ISSUER: [Instruction: The issuer must complete this section before delivering to the purchaser.]

| |
|--|
| 4. How to contact the issuer |
| Name and address of issuer: |
| First and last name of contact person: |
| Phone number: |
| Email address: |
| Signature of executive officer of issuer: |

TO BE COMPLETED BY THE PERSON INVOLVED IN SELLING THESE SECURITIES: [Instruction: Any person involved in selling these securities (which may involve meeting with or providing information to the purchaser) must complete this section by answering “yes” or “no” and filling in their contact information before delivering to the purchaser.]

| | |
|---|---------------|
| 5. Who is selling these securities? | Yes/No |
| I am registered with _____ (insert name of registered firm).* | |
| I am a director, officer or employee of the issuer. | |
| I am not registered with a securities regulator and generally not qualified to provide investment advice. | |
| First and last name (please print): | |
| Signature: | |
| Date: | |
| Phone number: | |
| Email address: | |

*Persons in the business of selling securities or offering investment advice are generally required to be registered with their provincial securities regulator, unless they have an exemption. A purchaser can check the seller’s registration status and history at the following website: www.aretheyregistered.ca.

Form Instructions:

1. This form must be presented to purchasers on no more than two double-sided pages, with items 1 to 4 appearing on the first double-sided page.
2. The purchaser, issuer and salesperson (if any) must sign 2 copies of this form. Each of the purchaser and the issuer must receive an originally signed copy of this form. The issuer is required to keep a copy of this form for 8 years after the distribution. If a salesperson has signed this form, the salesperson may choose to keep a copy for their records. The salesperson must ensure that the purchaser and the issuer receive originally signed copies.

ANNEX A-4

OM PROSPECTUS EXEMPTION

PROPOSED AMENDMENTS TO COMPANION POLICY 45-106CP PROSPECTUS AND REGISTRATION EXEMPTIONS

PART 1 – INTRODUCTION

1.9 Responsibility for compliance and verifying compliance with an exemption

(1) Determination of whether exemption is available

Certain prospectus exemptions in NI 45-106 specify criteria to be satisfied in order for the seller to rely on the exemption. These criteria may include requirements regarding the relationship between the purchaser and the issuer or may require the purchaser (or seller) to meet other conditions.

For example:

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

A seller (including an agent of the seller, such as a registrant) that intends to distribute or trade securities in reliance on an exemption is responsible for determining whether that exemption is available. In making this determination, we expect a seller to take all reasonable steps necessary to confirm that the terms of the exemption are complied with and to verify that the purchaser meets the criteria set out in the exemption.

(2) Steps to support compliance

Where an exemption requires a purchaser to meet certain criteria, we expect a seller to confirm compliance with the terms of the exemption. Described below are procedures that could be implemented by a seller seeking to reasonably confirm that the criteria for a particular exemption have been met. While the general principles associated with these procedures apply to all sellers, the details of the steps taken in each case may vary, depending on the facts and circumstances of the particular purchaser and the details of the offering.

We expect a seller to be in a position to explain why certain steps were not taken or to be able to explain how alternative steps were reasonable in the circumstances. If there is any doubt about the truth of the purchaser’s statements, securities should not be sold to the purchaser.

(a) Understand the terms and conditions of the exemption

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

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

For example, the accredited investor definition uses the terms “financial assets” and “net assets”. The offering memorandum exemption also uses the term “net assets” as part of the eligible investor definition. A seller should be capable of explaining the detailed meaning of both terms, including the specific assets and liabilities that form part of each calculation.

- Able to apply terms and conditions to the specific facts of the purchaser - The family, friends and business associates exemption permits securities to be sold to the “close personal friends” and “close business associates” of certain individuals at the issuer. The offering memorandum exemption includes within the definition of “eligible investor” those individuals who qualify as “close personal friends” and “close business associates” under the family, friends and business associates exemption. The terms “close personal friend” and “close business associate” are difficult to define and can mean different things to different people. We have provided guidance in sections 2.7 and 2.8 of this companion policy on the key elements necessary to establish this type of relationship. However, we have not provided a “bright line” test for these relationships. A seller should understand the key principles of these exemptions and be able to evaluate whether they apply given the circumstances of different purchasers.

(b) Establish appropriate policies and procedures

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

A seller should consider having policies and procedures in place to confirm that these other parties understand the exemption being relied on, are able to describe the terms of the exemption to purchasers and know what information and documentation is needed to be obtained from purchasers to confirm the conditions of the exemption have been satisfied.

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

Before discussing the details of an investment with a prospective purchaser, we expect the seller to obtain information that confirms the purchaser meets the criteria set out in the exemption. We would not generally consider it sufficient for a seller to rely solely on a form of subscription agreement or other document that states that the purchaser meets the applicable criteria for a particular exemption. Similarly, we would have concerns if a seller accepted representations from the purchaser (for example in a subscription agreement or risk acknowledgment form) without taking additional steps to verify the representation has been given by the purchaser on a fully-informed basis.

For example:

- Exemptions based on income or asset tests - With respect to the accredited investor exemption, it is not sufficient to ask whether the purchaser is an accredited investor. To assess whether the purchaser is an accredited investor, we expect the seller to ask questions about the purchaser’s net income, financial assets or net assets, as applicable, or to ask other questions designed to elicit details about the purchaser’s financial circumstances. A similar approach would apply to the “eligible investor” test in the offering memorandum exemption.

Where an exemption requires the purchaser to have a certain level of income or assets, the seller may want to ask the purchaser to provide documentation to confirm the purchaser’s income or assets. That may include income tax returns, bank statements, investment statements, tax assessments or appraisal reports issued by independent third parties.

- Exemptions based on relationships - If an exemption is based on the existence of a specific relationship between the purchaser and a principal of the issuer (such as that of a family member, “close personal friend” or “close business associate”), we expect the seller to obtain information designed to confirm the nature and extent of the relationship.

For example, a seller distributing securities to a close personal friend of a director of an issuer could obtain from the purchaser a signed statement giving the name of the director and describing the nature and length of the purchaser’s relationship with the director. In addition, the seller could verify with the director that the information is accurate. Based on that factual information, the seller could determine whether the purchaser is a close personal friend of the director for the purposes of the family, friends and business associates exemption. We would generally not consider it sufficient for a seller to rely merely on a written representation that “I am a close personal friend of a director.”

In the case of a family relationship, if there is any doubt about the exact nature of that relationship, a seller could request documentation to confirm that the parties are related. Such documentation could include birth certificates or marriage certificates. As with close personal friends and close business associates, it may be necessary to request that the principal of the issuer with whom the purchaser is claiming the relationship, either directly or through his or her spouse, also provide verification.

(d) Keep relevant and detailed documentation signed by the purchaser

As described above, a seller should request sufficient information from the purchaser to verify that the terms of the exemption being relied on are satisfied. To the extent a seller has obtained relevant supporting documents, these should be retained by the seller. Information about the purchaser’s qualification is necessary to complete the report of exempt distribution required under Part 6 of the Instrument.

We expect information confirming the purchaser’s eligibility to be signed by the purchaser. In the case of an exemption that is based on the purchaser having a specified relationship with a principal of the issuer, any supporting documentation should also be signed by the person with whom the purchaser has a specified relationship before securities are distributed under the exemption.

(e) Registration related requirements

Registered dealers or salespersons must also comply with their obligations under securities legislation, particularly the “know your client” and suitability obligations in connection with securities purchased under an exemption. For example, even if a purchaser qualifies as an accredited investor or eligible investor, a registered dealer or salesperson must still assess whether the investment is suitable for the purchaser.

PART 3 – CAPITAL RAISING EXEMPTIONS

3.3 Advertising

[Note to reader: This would be added to existing section 3.3.]

The Ontario Securities Commission also expects a seller (including an issuer, selling security holder or a registered dealer) that uses marketing materials, in addition to or in place of an offering memorandum or other offering document, to review the marketing materials to confirm that they are consistent with the offering document and are fair, balanced and not misleading. In addition, the Ontario Securities Commission expects a seller to consider and confirm whether any claims set out in marketing materials adequately refer to information to support these claims. For example, where benchmarks are used for comparison purposes, the seller should assess whether the benchmarks are relevant and comparable to the investment in question and confirm the marketing materials:

- (a) adequately explain differences between the benchmark and the investment,

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

If a seller intends to rely on marketing materials prepared by a third party, such as an analyst report that rates a security or compares a security with securities of other issuers, the Ontario Securities Commission expects a seller to perform its own assessment of the marketing materials to confirm that they are fair, balanced and not misleading. For example, if the report has been paid for by the issuer, or if there are other relationships between the analyst and the issuer, it may be misleading to describe the report as being an "independent" report without prominently disclosing the fees and relationships. A seller should not rely on marketing materials prepared by an issuer or third party without independently reviewing the materials prior to use.

3.8 Offering memorandum

[Proposed addition of the following subsections]

(7) Eligibility criteria (Ontario) – The Ontario Securities Commission imposes eligibility criteria on individuals investing under the offering memorandum exemption. In Ontario, the purchaser must meet certain financial tests to be considered an eligible investor. An eligible investor who is an individual, excluding an individual that qualifies as an accredited investor, is able to invest up to a maximum of \$30,000 under the offering memorandum exemption in a 12 month period. Individual purchasers that do not qualify as eligible investors are subject to an investment limit of \$10,000 under the offering memorandum exemption in a 12 month period. These limits apply to the aggregate of all investments made by the purchaser in offerings by different issuers under the exemption during the 12 month period.

In Ontario, the net income branch of the test for eligible investor applies only to individual purchasers. As a result, non-individuals that wish to qualify as “eligible investors” must meet the net asset test or qualify under one of the other branches of the definition. The net asset test is different for individuals and non-individuals. When determining the purchaser’s net assets, an individual purchaser must exclude the value of the purchaser’s primary residence from the calculation. In addition, the threshold for the net asset test is higher for non-individuals.

This approach is similar to the approach taken under the qualification criteria for the accredited investor exemption.

In calculating a purchaser’s net assets, subtract the purchaser’s total liabilities from the purchaser’s total assets (in the case of an individual purchaser, excluding the value of the individual’s primary residence). The value attributed to assets should reasonably reflect their estimated fair value. **[Note to reader: This paragraph is duplicated from existing section 3.8(1).]**

Another way a purchaser can qualify as an eligible investor is to obtain advice from an eligibility adviser. An eligibility adviser is a person registered as an investment dealer (or in an equivalent category of unrestricted dealer in the purchaser’s jurisdiction) that is authorized to give advice with respect to the type of security being distributed or traded. A registered investment dealer providing advice to a purchaser in these circumstances is expected to comply with “know your client” and suitability requirements under applicable securities legislation and SRO rules and policies. Some dealers have obtained exemptions from the “know your client” and suitability requirements because they do not provide advice. An assessment of suitability by these dealers is not sufficient to qualify a purchaser as an eligible investor. **[Note to reader: This paragraph is duplicated from existing section 3.8(1).]**

(8) Investment limits for purchasers under the exemption (Ontario) – In Ontario, individual purchasers, both eligible investors and non-eligible investors, are subject to investment limits under the exemption. Sellers should take steps to confirm that purchasers do not exceed these limits.

This will require the seller to first understand whether or not the purchaser is an eligible investor. As described above in section 1.9, the seller should gather information that confirms the purchaser meets the criteria set out in the exemption. As part of this exercise, the seller should also discuss with the purchaser the investment limits that apply to the purchaser.

On each distribution, the seller must confirm that the amount invested by a purchaser does not exceed the applicable limit.

Sellers should also consider whether a purchaser is within the applicable investment limit for securities acquired under the exemption over the past 12 months. In making this determination a seller should obtain appropriate representations from purchasers, for example in the subscription agreement, that confirm the purchaser has not exceeded the applicable investment limits over the relevant period. However, we would have concerns if a seller accepted standard representations from a purchaser without taking steps to confirm that the representation was given by the purchaser on a fully-informed basis.

In determining the acquisition cost to an individual purchaser subject to investment limits, any future payments that the purchaser will be required to make should be included. Proceeds which may be obtained on exercise of warrants or other rights, or on conversion of convertible securities, are not considered to be part of the acquisition cost, unless the purchaser is legally obligated to exercise or convert the securities. **[Note to reader: This paragraph is duplicated from existing section 3.8(1).]**

(9) Types of securities that can be distributed under the exemption (Ontario) – In Ontario, issuers are prohibited from distributing specified derivatives and structured finance products under the exemption. These types of securities have been excluded because the exemption is for the purposes of raising capital and is not intended to be used to distribute complex or novel securities to purchasers. We would have concerns if sellers relied on the exemption to distribute novel or complex securities, even if they do not fall within the prohibited categories.

(10) Continuous disclosure (Ontario) – In Ontario, non-reporting issuers are required to make available to the purchaser certain ongoing disclosure documents. These include audited annual financial statements and notices of specified events. Issuers may choose to make these documents available to purchasers in different ways, provided they take reasonable steps to enable purchasers to receive or access the documents.

The Ontario Securities Commission considers disclosure documents to have been made available if they are mailed to each security holder or if the security holder receives notice that the disclosure documents can be viewed on a public website of the issuer or a website accessible by all security holders of the issuer.

(11) Filing or delivery of offering memorandum – The issuer is required to file the offering memorandum (and in Ontario, deliver the offering memorandum) with the securities regulatory authority or regulator in each of the jurisdictions in which the issuer distributes or trades securities under an offering memorandum exemption. The issuer must file (or deliver, as applicable) the offering memorandum on or before the 10th day after the distribution. **[Note to reader: Existing section 3.8(5) is modified for Ontario.]**

APPENDIX B

**FAMILY, FRIENDS AND BUSINESS ASSOCIATES
PROSPECTUS EXEMPTION**

ANNEX B-1

KEY PROVISIONS OF THE PROPOSED FFBA PROSPECTUS EXEMPTION

The following is a summary of the proposed family, friends and business associates exemption and of the changes from the existing family, friends and business associates exemption in National Instrument 45-106 Prospectus and Registration Exemptions (**NI 45-106**). We are soliciting comments on the terms and conditions of the proposed exemption. This summary is divided into the following sections:

| General topic | Specific discussion areas |
|------------------------------|--|
| 1. Issuer qualifications | <ul style="list-style-type: none">• Reporting issuers vs. non-reporting issuers• Investment funds vs. non-investment funds• Issuers without a specific business plan (blind pools)• Jurisdiction of incorporation or organization and location of issuer's head office• Jurisdiction where directors and officers resident |
| 2. Distribution details | <ul style="list-style-type: none">• Types of securities• Seller• Offering size and limits on offerings• Proceeds• Restrictions or requirements imposed on principals of issuer• Registrants, finders and advertising |
| 3. Investors | <ul style="list-style-type: none">• Investor qualification• Investment limits• Use of leverage to finance investment• Risk acknowledgement form• Rights• Ability to resell securities |
| 4. Disclosure | <ul style="list-style-type: none">• Point of sale disclosure• Ongoing disclosure |
| 5. Reporting of distribution | <ul style="list-style-type: none">• Reporting of distribution |

| Issue | Existing family, friends and business associates exemption in NI 45-106 | Proposed exemption | Comments and explanation of any differences |
|---|--|--|---|
| 1. Issuer qualifications | | | |
| Reporting issuers vs. non-reporting issuers | <ul style="list-style-type: none"> Both reporting issuers and non-reporting issuers can use the exemption. | <ul style="list-style-type: none"> Both reporting issuers and non-reporting issuers can use the exemption. | <p>No change.</p> <ul style="list-style-type: none"> As the overall goal of our initiative is to facilitate capital raising for start-ups and small and medium-sized enterprises (SMEs), we think the exemption should be available to both reporting issuers and non-reporting issuers. |
| Investment funds vs. non-investment funds | <ul style="list-style-type: none"> Both investment funds and non-investment funds can use the exemption. | <ul style="list-style-type: none"> Investment funds cannot use the exemption. | <p>Proposed change.</p> <ul style="list-style-type: none"> The exclusion of investment funds is consistent with the objective of facilitating capital raising for start-ups and SMEs. As separate initiatives, we are currently undertaking significant policy projects to modernize product regulation for investment funds, for point of sale disclosure for mutual funds and to review the cost of ownership of mutual funds. |
| Issuers without a specific business plan (blind pools) | <ul style="list-style-type: none"> There are no restrictions on the nature of the business of an issuer that uses the exemption. As a result, a blind pool or an issuer without a specific business plan may use the exemption. | <ul style="list-style-type: none"> There are no restrictions on the nature of the business of an issuer that uses the exemption. As a result, a blind pool or an issuer without a specific business plan may use the exemption. | <p>No change.</p> <ul style="list-style-type: none"> This exemption is targeted at start-ups and SMEs. |

| Issue | Existing family, friends and business associates exemption in NI 45-106 | Proposed exemption | Comments and explanation of any differences |
|---|---|--|--|
| Jurisdiction of incorporation or organization and location of issuer's head office | <ul style="list-style-type: none"> The issuer does not have to be incorporated or organized in Canada or have its head office in Canada in order to use the exemption. | <ul style="list-style-type: none"> The issuer does not have to be incorporated or organized in Canada or have its head office in Canada in order to use the exemption. | <p>No change.</p> <ul style="list-style-type: none"> We think imposing restrictions on where an issuer is incorporated or organized or where its head office is located would be unduly restrictive. |
| Jurisdiction where directors and officers resident | <ul style="list-style-type: none"> There are no requirements relating to the jurisdiction where directors and officers of the issuer reside. | <ul style="list-style-type: none"> There are no requirements relating to the jurisdiction where directors and officers of the issuer reside. | <p>No change.</p> <ul style="list-style-type: none"> We think adding requirements regarding the residency of directors and officers would be unduly restrictive. |
| 2. Distribution details – types of securities | | | |
| Types of securities | <ul style="list-style-type: none"> There are no restrictions on the types of securities that can be distributed under the exemption. | <ul style="list-style-type: none"> Novel or complex products cannot be distributed under the exemption. The only securities that can be distributed under the exemption are: <ul style="list-style-type: none"> common shares, non-convertible preference shares, securities convertible into common shares or non-convertible preference shares, non-convertible debt securities linked to a fixed or floating interest rate, units of a limited partnership, or flow-through shares under the <i>Income Tax Act (Canada)</i>. | <p>Proposed change.</p> <ul style="list-style-type: none"> We do not think it is appropriate to allow novel or complex securities to be sold without the full protections afforded by a prospectus. In our view, it is unlikely that a start-up or SME (the type of issuer that the exemption is targeted at) would need to issue novel or complex securities to raise capital. |

| Issue | Existing family, friends and business associates exemption in NI 45-106 | Proposed exemption | Comments and explanation of any differences |
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| 2. Distribution details – seller | | | |
| Who can distribute securities under the exemption | <ul style="list-style-type: none"> The exemption applies to a distribution of a security by an issuer as well as by a selling security holder, subject to the conditions of the exemption being met. | <ul style="list-style-type: none"> The exemption applies to a distribution of a security by an issuer as well as by a selling security holder, subject to the conditions of the exemption being met. | <p>No change.</p> <ul style="list-style-type: none"> This is consistent with the availability of the existing private issuer exemption in NI 45-106. |
| 2. Distribution details – offering size and limits on offerings | | | |
| Limit on offering size | <ul style="list-style-type: none"> There is no limit on the size of an offering made under the exemption. | <ul style="list-style-type: none"> There is no limit on the size of an offering made under the exemption. | <p>No change.</p> <ul style="list-style-type: none"> We do not think that a limit should be imposed on the size of the offering as this may unduly restrict access to capital by issuers that wish to use the exemption. No such restriction is imposed in the other prospectus exemptions that are based on relationships with the issuer, including the existing private issuer and family, friends and business associates exemptions in NI 45-106. |
| 2. Distribution details – proceeds | | | |
| Use of proceeds | <ul style="list-style-type: none"> There are no restrictions on the use of proceeds raised under the exemption. | <ul style="list-style-type: none"> There are no restrictions on the use of proceeds raised under the exemption. | <p>No change.</p> <ul style="list-style-type: none"> We have not proposed restrictions on the use of proceeds. We think doing so would unnecessarily restrict businesses seeking financing. |

| Issue | Existing family, friends and business associates exemption in NI 45-106 | Proposed exemption | Comments and explanation of any differences |
|---|---|---|--|
| | | | <ul style="list-style-type: none"> No such restrictions are imposed in the other prospectus exemptions that are based on relationships with the issuer, including the existing private issuer and family, friends and business associates exemptions in NI 45-106. |
| 2. Distribution details – restrictions or requirements imposed on principals of issuer | | | |
| Requirement for investment by principals of an issuer | <ul style="list-style-type: none"> The principals¹ of an issuer are not required to invest their own money in the issuer before making an offering under the exemption. | <ul style="list-style-type: none"> The principals of an issuer are not required to invest their own money in the issuer before making an offering under the exemption. | <p>No change.</p> <ul style="list-style-type: none"> Requiring the principals of a business to invest their own money in the issuer would align their interests with those of other investors in the issuer. However, we have not proposed to require principals to do so since one of the primary purposes of the exemption is to enable an entrepreneur to finance a start-up or SME without having the personal financial resources to do so. |

¹ “Principal” is defined in National Policy 46-201 *Escrow for Initial Public Offerings* (NP 46-201) as: (a) a person or company who acted as a promoter of the issuer within two years before an IPO prospectus, (b) a director or senior officer of the issuer or any of its material operating subsidiaries at the time of an IPO prospectus, (c) a person or company that holds securities carrying more than 20% of the voting rights attached to the issuer’s outstanding securities immediately before and immediately after the issuer’s IPO, (d) a person or company that (i) holds securities carrying more than 10% of the voting rights attached to the issuer’s outstanding securities immediately before and immediately after the issuer’s IPO and (ii) has elected or appointed, or has the right to elect or appoint, one or more directors or senior officers of the issuer or any of its material operating subsidiaries.

| Issue | Existing family, friends and business associates exemption in NI 45-106 | Proposed exemption | Comments and explanation of any differences |
|---|---|--|--|
| Escrow requirements | <ul style="list-style-type: none"> There is no escrow requirement for principals of an issuer who are not otherwise subject to the provisions of NP 46-201. | <ul style="list-style-type: none"> There is no escrow requirement for principals of an issuer who are not otherwise subject to the provisions of NP 46-201. | <p>No change.</p> <ul style="list-style-type: none"> Requiring escrow would be a significant departure from the approach taken in the exempt market, as there are no escrow requirements for issuers that rely on other prospectus exemptions. The principal regulatory objective of an escrow is to tie in an issuer's principals for a period of time following the issuer's initial offering to give them an incentive to devote their time and attention to the issuer's business. Securities of a non-reporting issuer are subject to an indefinite hold period, so principals are very limited as to whom they can sell securities. Even for a reporting issuer, a four-month hold period is imposed, which limits the possibility for immediate exit by principals. |
| 2. Distribution details – registrants, finders and advertising | | | |
| Use of registrants, finders or advertising | <ul style="list-style-type: none"> Section 3.1 of 45-106CP notes that the family, friends and business associates exemption does not prohibit the use of registrants, finders or advertising in any form (for example, internet, e-mail, direct mail, newspaper or magazine) to solicit investors under the exemption. | <ul style="list-style-type: none"> Advertising to solicit investors in connection with a distribution under the exemption is prohibited. | <p>Proposed change.</p> <ul style="list-style-type: none"> Given that investors are to be within the personal networks of the directors, executive officers, founders or control persons of the issuer, we do not think it should be necessary to advertise to find |

| Issue | Existing family, friends and business associates exemption in NI 45-106 | Proposed exemption | Comments and explanation of any differences |
|-------------|--|---|---|
| | <ul style="list-style-type: none"> • However, it indicates that the use of any of these means to find investors under the exemption may give rise to a presumption that the relationship required for use of the exemption is not present. If, for example, an issuer advertises or pays a commission or finder's fee to a third party to find investors under the exemption, it suggests that the precondition of a close relationship between the investor and the issuer may not exist and therefore the issuer cannot use the exemption. • The section further indicates that any solicitation activities that aim to identify a particular category of investor should clearly state the kind of investor being sought and the criteria investors will be required to meet. | | <p>such investors. Using any such advertising would raise concerns regarding the availability of the exemption.</p> |
| Fees | <ul style="list-style-type: none"> • The payment of a commission or finder's fee to a director, officer, founder or control person of an issuer or an affiliate of an issuer in connection with a distribution under the exemption is prohibited. | <ul style="list-style-type: none"> • The payment of any commission, finder's fee, referral fee or similar payment to any person in connection with a distribution under the exemption is prohibited. | <p>Proposed change.</p> <ul style="list-style-type: none"> • Given that the investors are to be within the personal networks of the directors, executive officers, founders or control persons of the issuer, we do not think it should be necessary to compensate individuals for "finding" these investors. |

| Issue | Existing family, friends and business associates exemption in NI 45-106 | Proposed exemption | Comments and explanation of any differences |
|--|--|--|--|
| 3. Investors – investor qualification | | | |
| Investor qualification | <ul style="list-style-type: none"> The exemption is available for distributions to family members, close personal friends and close personal business associates, as set out in subsection 2.5(1) of NI 45-106. 45-106CP provides guidance on the interpretation of the meaning of a close personal friend and a close business associate. See “Guidance on investor qualifications” below. | <ul style="list-style-type: none"> The exemption is available for distributions to family members, close personal friends and close personal business associates, as set out in subsection 2.5(1) of NI 45-106. However, we have included additional guidance in 45-106CP on the meaning of a close personal friend and a close business associate to mitigate against improper use of the exemption. See “Guidance on investor qualifications” below. | <p>No change.</p> <ul style="list-style-type: none"> The categories of investors are substantially the same as those contemplated in the existing private issuer exemption in NI 45-106 available in Ontario. We considered imposing a limit on the number of security holders an issuer could have to qualify for this exemption similar to the private issuer exemption, which limits the number of the issuer’s security holders to 50 (excluding current and former employees of the issuer or its affiliates). However, we think that such a limit would be unduly restrictive. |
| Guidance on investor qualifications | <ul style="list-style-type: none"> Section 2.7 of 45-106CP notes that a “close personal friend” is an individual who knows a director, executive officer, founder or control person of an issuer well enough and has known them for a sufficient period of time to be in a position to assess their capabilities and trustworthiness. Further, the relationship must be direct. Section 2.7 of 45-106CP also points out that an individual is not a close personal friend solely because the individual is: <ul style="list-style-type: none"> a relative, | <ul style="list-style-type: none"> We have expanded the guidance in sections 2.7 and 2.8 of 45-106CP to include the following: <ul style="list-style-type: none"> the onus will be on the issuer to establish whether a close personal relationship exists, and we will consider a number of factors (including the number of close relationships the person related to the issuer has) to be relevant in making this determination, and we will not generally consider an individual with whom a friendship is primarily founded on participation in an internet forum, such as | <p>Proposed change.</p> <ul style="list-style-type: none"> We are concerned that the current guidance in sections 2.7 and 2.8 of 45-106CP, which is intended to clarify what is meant by a “close personal friend” and a “close business associate”, respectively, is not sufficient. The guidance included in 45-106CP for determining who constitutes a close personal friend (i.e., knowing a director, executive officer, founder or control person of an issuer well enough and for a |

| Issue | Existing family, friends and business associates exemption in NI 45-106 | Proposed exemption | Comments and explanation of any differences |
|---|---|--|--|
| | <ul style="list-style-type: none"> ○ a member of the same organization, association or religious group, or ○ a client, customer, former client or former customer. <ul style="list-style-type: none"> ● Section 2.8 of 45-106CP notes that a “close business associate” is an individual who has had sufficient prior business dealings with a director, executive officer, founder or control person of an issuer to be in a position to assess their capabilities and trustworthiness. Further, the relationship must be direct. ● Section 2.8 of 45-106CP also points out that an individual is not a close business associate solely because the individual is: <ul style="list-style-type: none"> ○ a member of the same organization, association or religious group, or ○ a client, customer, former client or former customer. | <p>“Facebook” or “LinkedIn”, to be a close personal friend or close business associate.</p> | <p>sufficient period of time to be in a position to assess their capabilities and trustworthiness) is not necessarily descriptive of who would constitute a close personal friend in real life.</p> <ul style="list-style-type: none"> ● Similarly, the guidance for determining who constitutes a close business associate (i.e., having had sufficient prior business dealings with a director, executive officer, founder or control person of an issuer to be in a position to assess their capabilities and trustworthiness) is not necessarily descriptive of who would constitute a close business associate in real life. ● In both instances, being in a position to assess an individual’s capabilities and trustworthiness does not necessarily mean the individual is a close personal friend or close business associate. |
| 3. Investors – investment limits | | | |
| Investment limits | <ul style="list-style-type: none"> ● There are no investment limits. Investors can invest an unlimited amount of money. | <ul style="list-style-type: none"> ● There are no investment limits. Investors can invest an unlimited amount of money. | <p>No change.</p> <ul style="list-style-type: none"> ● We do not think there should be a limit on the amount of capital an issuer can obtain from family members, close personal friends and close personal business associates. This is consistent with the existing private issuer and family, friends and business associates exemptions in NI 45-106. |

| Issue | Existing family, friends and business associates exemption in NI 45-106 | Proposed exemption | Comments and explanation of any differences |
|---|---|---|---|
| | | | <ul style="list-style-type: none"> • Our approach instead is to require an investor to sign a risk acknowledgement form in which the investor must acknowledge that he or she could lose all of the money invested. See “Risk acknowledgement form” below. |
| 3. Investors – use of leverage to finance investment | | | |
| Use of leverage to finance investment | <ul style="list-style-type: none"> • An investor can borrow money to finance the purchase of securities under the exemption. | <ul style="list-style-type: none"> • An investor can borrow money to finance the purchase of securities under the exemption. | <p>No change.</p> <ul style="list-style-type: none"> • Prohibiting an investor from borrowing money to finance the purchase of securities under the exemption would be overly restrictive and difficult to enforce. • This type of restriction does not exist in other prospectus exemptions. • Our approach instead is to require an investor to sign a risk acknowledgement form. See “Risk acknowledgement form” below. |

| Issue | Existing family, friends and business associates exemption in NI 45-106 | Proposed exemption | Comments and explanation of any differences |
|---|---|--|--|
| 3. Investors – risk acknowledgement form | | | |
| Risk acknowledgement form | <ul style="list-style-type: none"> • In Saskatchewan, an investor that qualifies as a “close personal friend” or “close business associate” is required to sign a risk acknowledgement form (Form 45-106F5 <i>Risk Acknowledgement</i>). • The form: <ul style="list-style-type: none"> ○ highlights the risks associated with the investment, ○ requires the investor to disclose the name of the close personal friend or close business associate, their title, and the name of the issuer or affiliate, ○ requires the investor to acknowledge that they are purchasing the securities based on their close relationship with a director, executive officer, founder or control person of the issuer whom they know well enough and for a sufficient period of time to be able to assess his or her capabilities and trustworthiness, and ○ requires the investor to acknowledge that it is a risky investment and that he or she could lose all the money invested. | <ul style="list-style-type: none"> • An investor who is an individual must sign a risk acknowledgement form in Form 45-106F12 <i>Risk Acknowledgment Form for Family, Friend and Business Associate Investors (Ontario)</i>. • The form must also be signed by: <ul style="list-style-type: none"> ○ the director, executive officer, founder or control person of the issuer with whom the investor has asserted the relationship (either directly or through the spouse of the director, executive officer, founder or control person), and ○ the issuer. • The form requires the investor to disclose: <ul style="list-style-type: none"> ○ the identity of the director, executive officer, founder or control person of the issuer, ○ that person’s position at or relationship with the issuer, ○ the category of the relationship asserted by the investor, with the director, executive officer, founder or control person of the issuer, and ○ how long the investor has known the director, executive officer, founder or control person of the issuer where the investor is asserting that he or she is a close personal friend or close business associate. | <p>Proposed change.</p> <ul style="list-style-type: none"> • We are requiring that an investor who is an individual sign a risk acknowledgement form. • Given that the exemption allows retail investors to purchase securities, we believe that investors who are individuals should be required to sign a risk acknowledgment form that draws their attention to the key risks associated with investing in the exempt market. • In addition, we believe that the proposed form of risk acknowledgement may contribute to greater consistency in the application of the definitions of “close personal friend” and “close business associate” and thereby mitigate against the risks to investors resulting from improper reliance on the exemption. |

| Issue | Existing family, friends and business associates exemption in NI 45-106 | Proposed exemption | Comments and explanation of any differences |
|------------------------------|--|---|--|
| | | <ul style="list-style-type: none"> • The form also requires the investor to acknowledge certain risks associated with the investment, including that: <ul style="list-style-type: none"> ○ it is a risky investment, ○ the investor could lose all of the money they invest, ○ the investor may never be able to sell the securities, ○ the investor will be provided with less disclosure than public companies provide, ○ the investor will not have the benefit of protections associated with an investment made under a prospectus, and ○ borrowing money to invest increases the risks of an investment. • The person making the distribution must retain the form for a period of eight years after the distribution. | |
| 3. Investors – rights | | | |
| Right of withdrawal | <ul style="list-style-type: none"> • The exemption does not provide investors with a right of withdrawal. | <ul style="list-style-type: none"> • The exemption does not provide investors with a right of withdrawal. | <p>No change.</p> <ul style="list-style-type: none"> • This is consistent with the approach taken under the existing private issuer exemption in NI 45-106. |

| Issue | Existing family, friends and business associates exemption in NI 45-106 | Proposed exemption | Comments and explanation of any differences |
|----------------------------------|---|---|---|
| Statutory right of action | <ul style="list-style-type: none"> The rights available to investors vary depending on the jurisdiction. | <ul style="list-style-type: none"> If an issuer or selling security holder voluntarily provides a potential investor with an offering memorandum in connection with a distribution under the exemption, the rights set out in section 130.1 of the <i>Securities Act</i> (Ontario) (the Act) apply and investors have rights of action for damages or rescission if the offering memorandum contains a misrepresentation. <p>Section 130.1 of the Act</p> <ul style="list-style-type: none"> Section 130.1 of the Act provides that where an offering memorandum contains a misrepresentation, an investor who purchases a security offered by the offering memorandum during the period of distribution has, without regard to whether the investor relied on the misrepresentation, the following rights: <ul style="list-style-type: none"> the investor has a right of action for damages against the issuer and a selling security holder on whose behalf the distribution was made, and if the investor purchased the security from a person or company referred to above, the investor may elect to exercise a right of rescission against the person or company. If the investor exercises this right, the investor ceases to have a right of action for damages against the person or company. | <p>Proposed change.</p> <ul style="list-style-type: none"> Having the statutory rights regarding a misrepresentation in an offering memorandum apply is consistent with the approach taken under other prospectus exemptions, including the existing private issuer exemption in NI 45-106. Refer to Part 5 of OSC Rule 45-501 <i>Ontario Prospectus and Registration Exemptions</i>. |

| Issue | Existing family, friends and business associates exemption in NI 45-106 | Proposed exemption | Comments and explanation of any differences |
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| | | <ul style="list-style-type: none"> • “Misrepresentation” is defined in the Act to mean: <ul style="list-style-type: none"> ○ an untrue statement of 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 the light of the circumstances in which it was made. | |
| 3. Investors – ability to resell securities | | | |
| Resale restrictions | <ul style="list-style-type: none"> • Securities of a reporting issuer are subject to a four-month hold period (subject to certain other conditions being met). • Securities of a non-reporting issuer are subject to an indefinite hold period and can only be resold under another prospectus exemption or under a prospectus. | <ul style="list-style-type: none"> • Securities of a reporting issuer are subject to a four-month hold period (subject to certain other conditions being met). • Securities of a non-reporting issuer are subject to an indefinite hold period and can only be resold under another prospectus exemption or under a prospectus. | <p>No change.</p> <ul style="list-style-type: none"> • We think that the current resale restrictions are appropriate. |
| 4. Disclosure | | | |
| Point of sale disclosure | <ul style="list-style-type: none"> • There is no requirement for an issuer or selling security holder to provide an investor with any disclosure at the time of the distribution. | <ul style="list-style-type: none"> • There is no requirement for an issuer or selling security holder to provide an investor with any disclosure at the time of the distribution. | <p>No change.</p> <ul style="list-style-type: none"> • The exemption is premised on an investor having a relationship with a director, executive officer, founder or control person of an issuer that enables the investor to obtain sufficient information about the issuer and the investment to make an informed |

| Issue | Existing family, friends and business associates exemption in NI 45-106 | Proposed exemption | Comments and explanation of any differences |
|-------------------------------------|--|---|--|
| | | | investment decision. |
| Ongoing disclosure | <ul style="list-style-type: none"> There is no requirement under securities law for a non-reporting issuer to provide an investor with any ongoing disclosure. A reporting issuer is subject to ongoing continuous disclosure obligations under securities law. | <ul style="list-style-type: none"> There is no requirement under securities law for a non-reporting issuer to provide an investor with any ongoing disclosure. A reporting issuer is subject to ongoing continuous disclosure obligations under securities law. | <p>No change.</p> <ul style="list-style-type: none"> The exemption is premised on an investor having a relationship with director, executive officer, founder or control person of an issuer that enables the investor to obtain sufficient information about the issuer. We note that an issuer may be required to provide annual financial statements to investors under corporate law. |
| 5. Reporting of distribution | | | |
| Reporting of distribution | <ul style="list-style-type: none"> A report of exempt distribution (on either Form 45-106F1 <i>Report of Exempt Distribution</i> or Form 45-106F6 <i>British Columbia Report of Exempt Distribution</i>) must be filed for distributions made under the exemption. Schedule 1 of Form 45-106F1 and, in British Columbia, Form 45-106F6 requires that an issuer or underwriter identify the exemption used, on a per investor basis. These forms are required to be filed with the appropriate securities regulatory authorities. | <ul style="list-style-type: none"> A report of exempt distribution on proposed Form 45-106F11 <i>Report of Exempt Distribution for Issuers other than Investment Funds (Alberta, New Brunswick, Ontario and Saskatchewan)</i> must be filed for a distribution made under the exemption. To enable us to appropriately monitor use of the exemption, the report of exempt distribution must disclose: <ul style="list-style-type: none"> the identity of the director, executive officer, founder or control person of an issuer with whom the relationship has been asserted (either directly or through the spouse of the director, executive | <p>Proposed change.</p> <ul style="list-style-type: none"> Requiring a report of exempt distribution to be filed is consistent with the approach taken in other jurisdictions. We believe that it is important to obtain additional information to assist in monitoring compliance with the exemption. In particular, we propose to require disclosure of relevant information about the relationship with a close personal friend or close business associate in the report of exempt distribution. Requiring |

| Issue | Existing family, friends and business associates exemption in NI 45-106 | Proposed exemption | Comments and explanation of any differences |
|-------|---|---|--|
| | | <p>officer, founder or control person),</p> <ul style="list-style-type: none"> ○ the position or relationship of the director, executive officer, founder or control person with the issuer, and ○ the category of the relationship asserted by the investor. <ul style="list-style-type: none"> ● This additional information is provided in a confidential schedule to the report of exempt distribution and does not appear on the public record. | <p>disclosure of this information will likely create greater consistency in the interpretation of “close personal friend” and “close business associate”. We will also be able to consider the basis upon which these relationships have been asserted and incorporate this information into our compliance oversight program.</p> <ul style="list-style-type: none"> ● This information will also help to inform future policy work in this area. ● See the discussion regarding the proposed form of report in the Notice and Request for Comment. |

ANNEX B-2

FFBA PROSPECTUS EXEMPTION

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

**PART 2 — PROSPECTUS EXEMPTIONS
DIVISION 1 — CAPITAL RAISING EXEMPTIONS**

Family, friends and business associates

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).

(2.1) In Ontario, no commission, finder's fee, referral fee or similar payment may be paid to any person in connection with a distribution under subsection (1).

[(3) Subsection (1) does not apply to a distribution of a short-term securitized product.]¹

(4) In Ontario, no advertising to solicit purchasers is permitted in connection with a distribution under subsection (1).

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.

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 security is
 - (i) a common share of the issuer,
 - (ii) a non-convertible preference share of the issuer,
 - (iii) a security convertible into securities referred to in subparagraphs (i) or (ii),
 - (iv) a non-convertible debt security of the issuer linked to a fixed or floating interest rate,
 - (v) a unit of an issuer that is a limited partnership, or
 - (vi) a flow-through share under the ITA of the issuer;
- (c) the person making the distribution obtains a risk acknowledgement in the required form from a purchaser who is an individual signed by the purchaser and the applicable persons specified in subsection (2).

(2) The following persons are specified for the purpose of paragraph (1)(c):

- (a) an executive officer of the issuer, acting on behalf of the issuer;
- (b) if the distribution is to a purchaser who is a person specified in paragraph 2.5(1)(b) or (c), the director, executive officer or control person of the issuer or an affiliate of the issuer specified in that paragraph;

¹ The language in subsection (3) was included in proposed amendments to National Instrument 45-106 *Prospectus and Registration Exemptions* published for comment on January 23, 2014 relating to short term securitized instruments.

- (c) if the distribution is to a purchaser who is a person specified in paragraph 2.5(1)(d), the director, executive officer or control person of the issuer or an affiliate of the issuer specified in that paragraph;
- (d) if the distribution is to a purchaser who is a person specified in paragraph 2.5(1)(e), the director, executive officer or control person of the issuer or an affiliate of the issuer specified in that paragraph;
- (e) if the distribution is to a purchaser who is a person, other than a founder of the issuer, specified in paragraph 2.5(1)(f) or (g), the founder of the issuer specified in that paragraph.

(3) The person making the distribution must retain the required form described in paragraph (1)(c) for 8 years after the date of the distribution.

[Note to reader: We plan to recommend repealing the current section 2.7 [*Founder, control person and family – Ontario*] with the proposed introduction of a family, friends and business associates exemption.]

PART 6 — REPORTING REQUIREMENTS REPORT OF EXEMPT DISTRIBUTION

Required form of risk acknowledgement

6.5 (2) In Saskatchewan, the required form of risk acknowledgement under section 2.6 [*Family, friends and business associates*] is Form 45-106F5.²

(3) In Ontario, the required form of risk acknowledgement under section 2.6.1 [*Family, friends and business associates*] is Form 45-106F12.

² Subsection 6.5(2) of the version of NI 45-106 currently in force includes a reference to "section 3.6". This section was a family, friends and business associates registration exemption that has been unavailable since March 27, 2010. As part of proposed amendments to NI 45-106 published for comment on February 27, 2014, the CSA has proposed to delete this reference. Therefore, we have not included it in this proposal.

ANNEX B-3
FFBA PROSPECTUS EXEMPTION
PROPOSED FORM 45-106F12
RISK ACKNOWLEDGEMENT FORM FOR FAMILY, FRIEND AND BUSINESS ASSOCIATE INVESTORS (ONTARIO)

WARNING TO INVESTORS

TO BE COMPLETED BY THE PURCHASER:

| |
|---|
| 1. Acknowledgement of risk |
| <p>I acknowledge that this is a risky investment. I could lose all of the \$_____ [<i>insert amount being invested, including any amounts you have agreed to pay in the future</i>] I invest.</p> <p>I understand that I may never be able to sell these securities and I will be provided with less disclosure than public companies are required to provide to their investors. [<i>Instruction: Delete if issuer is a reporting issuer.</i>]</p> <p>I acknowledge that, because I am purchasing this investment under a prospectus exemption, I will not have the benefit of protections under securities law for investments made under a prospectus.</p> <p>I understand that borrowing money to invest increases the risk of my investment because I will be responsible for repaying the borrowed money and any interest owing even if I lose all of the money I invest.</p> |
| First and last name (please print): |
| Signature: |
| Date: |

| |
|--------------------------------|
| 2. What I am buying |
| Number and type of securities: |
| Name of issuer: |
| Initial by the purchaser: |

| | |
|--|-----------------------------|
| 3. How I qualify to buy these securities | |
| I confirm that I am a qualified investor because I satisfy one of the following: | Purchaser's initials |
| <p>I am [<i>check all applicable boxes</i>]:</p> <ul style="list-style-type: none"> <input type="checkbox"/> a director of the issuer or an affiliate of the issuer <input type="checkbox"/> an executive officer of the issuer or an affiliate of the issuer <input type="checkbox"/> a control person of the issuer or an affiliate of the issuer <input type="checkbox"/> a founder of the issuer | |

| | |
|--|--|
| <p>I am a family member of: _____ [Insert the name of the person who is your relative either directly or through his or her spouse], who holds the following position at the issuer or an affiliate of the issuer: _____.</p> <p>My relationship with that person is: _____ [Instruction: The possible relationships include spouse, parent, grandparent, brother, sister, child or grandchild.]</p> | |
| <p>I am a close personal friend of: _____ [Insert the name of your close personal friend], who holds the following position at the issuer or an affiliate of the issuer: _____.</p> <p>I have known that person for ____ years.</p> | |
| <p>I am a close business associate of: _____ [Insert the name of your close business associate], who holds the following position at the issuer or an affiliate of the issuer: _____.</p> <p>I have known that person for ____ years.</p> | |

TO BE COMPLETED BY THE ISSUER: [Instruction: The issuer must complete this section before delivering to the purchaser. An executive officer acting on behalf of the issuer must sign below.]

| |
|--|
| 4. How to contact the issuer |
| Name and address of issuer: |
| First and last name of contact person: |
| Phone number: |
| Email address: |
| Signature of executive officer of issuer: |

TO BE COMPLETED BY THE DIRECTOR, EXECUTIVE OFFICER, CONTROL PERSON OR FOUNDER WITH WHOM THE PURCHASER HAS A RELATIONSHIP (if applicable):

| |
|---|
| 5. Contact person at issuer |
| First and last name (please print): |
| <p>I confirm that I have, or my spouse has, the following relationship with the purchaser: [check the one that applies]</p> <p><input type="checkbox"/> Family relationship as set out above</p> <p><input type="checkbox"/> Close personal friend</p> <p><input type="checkbox"/> Close business associate</p> |
| Position with issuer or affiliate of the issuer (director, officer, control person or founder): |
| Signature: |
| Phone number: |
| Email address: |

Form Instructions:

1. *This form must be presented to purchasers on one double-sided page.*
2. *The purchaser, issuer, and director, executive officer, control person or founder must sign 2 copies of this form. Each of the purchaser and the issuer must receive an originally signed copy of this form. The issuer is required to keep a copy of this form for 8 years after the distribution.*
3. *The detailed relationships required to purchase securities under this exemption are set out in section 2.5 of National Instrument 45-106 Prospectus and Registration Exemptions. For guidance on the meaning of “close personal friend” and “close business associate”, please refer to sections 2.7 and 2.8, respectively, of Companion Policy 45-106CP Prospectus and Registration Exemptions.*

ANNEX B-4

FFBA PROSPECTUS EXEMPTION

**PROPOSED AMENDMENTS TO COMPANION POLICY 45-106CP
PROSPECTUS AND REGISTRATION EXEMPTIONS**

[Note to reader: proposed section 1.9 of the Companion Policy included in the draft companion policy language for the offering memorandum exemption will also be relevant to this exemption.]

PART 2 - INTERPRETATION

2.7 Close personal friend

[Note to reader: This would be added within existing section 2.7.]

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

The Ontario Securities Commission considers the following factors as relevant to this determination:

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

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

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

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

The Ontario Securities Commission would not consider a relationship that is primarily founded on participation in an internet forum to be that of a close personal friend.

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

2.8 Close business associate

[Note to reader: This would be added to existing section 2.8.]

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

The Ontario Securities Commission considers the following factors as being relevant to this determination:

- (a) the length of time the individual has known the director, executive officer, founder or control person,
- (b) the nature of any specific business relationships between the individual and the director, executive officer, founder or control person, including, for each relationship, when it began, the frequency of contact between them and when it terminated if it is not ongoing, and the level of trust and reliance in other circumstances,
- (c) the nature and number of any business dealings between the individual and the director, executive officer, founder or control person, the length of the period during which they occurred, and the nature and date of the most recent business dealing, and
- (d) the number of “close business associates” of the director, executive officer, founder or control person to whom securities have been distributed in reliance on the private issuer exemption or the family, friends and business associates exemption.

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

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

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

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

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

PART 3 – CAPITAL RAISING EXEMPTIONS

3.7.1 Family, friends and business associates (Ontario)

[Note to reader: This would be a new provision in the Companion Policy.]

Section 2.6.1 of the Instrument contains various conditions to be satisfied in Ontario for the distribution of securities under the family, friends and business associate exemption in section 2.5 of NI 45-106. Paragraph 2.6.1(1)(b) sets out a list of the types of securities that can be sold. It is intended that the distribution of novel or complex securities would not qualify for the exemption in section 2.5.

APPENDIX C
EXISTING SECURITY HOLDER
PROSPECTUS EXEMPTION

ANNEX C-1

KEY PROVISIONS OF THE PROPOSED EXISTING SECURITY HOLDER PROSPECTUS EXEMPTION

The following is a summary of the proposed existing security holder exemption and of the changes from the existing security holder exemption adopted by certain CSA jurisdictions with respect to issuers on the Toronto Stock Exchange (TSX), TSX Venture Exchange (TSVX) and Canadian Securities Exchange (CSE).¹ We are soliciting comments on the terms and conditions of the proposed exemption. This summary is divided into the following sections:

| General topic | Specific discussion areas |
|--------------------------|--|
| 1. Issuer qualifications | <ul style="list-style-type: none">• Reporting issuers vs. non-reporting issuers• Investment funds vs. non-investment funds |
| 2. Distribution details | <ul style="list-style-type: none">• Types of securities• Seller• Offering size and limits on offerings• Proceeds• Period of distribution• Offer to all security holders• Dilution• Restrictions or requirements imposed on principals of issuer• Registrants |
| 3. Investors | <ul style="list-style-type: none">• Investor qualification• Investment limits• Use of leverage to finance investment• Rights• Ability to resell securities |

¹ On March 13, 2014, certain CSA jurisdictions adopted an existing security holder prospectus exemption as set out in CSA Notice 45-313 *Prospectus Exemption for Distributions to Existing Security Holders*.

| General topic | Specific discussion areas |
|------------------------------|--|
| 4. Disclosure | <ul style="list-style-type: none"> • Offering news release • Filing requirements • Advertising and use of marketing materials |
| 5. Reporting of distribution | <ul style="list-style-type: none"> • Reporting of distribution |

| Issue | Exemption for existing security holders adopted by certain CSA jurisdictions | Proposed exemption | Comments and explanation of any differences |
|--|--|---|---|
| 1. Issuer qualifications | | | |
| Reporting issuers vs. non-reporting issuers | <ul style="list-style-type: none"> • Only reporting issuers can use the exemption. • The issuer must have a class of equity securities listed on the TSX, TSXV and CSE. • The issuer must have filed all timely and periodic disclosure documents as required under applicable securities laws. | <ul style="list-style-type: none"> • Only reporting issuers can use the exemption. • The issuer must have a class of equity securities listed on the TSX, TSXV and CSE. • The issuer must have been a reporting issuer for not less than 12 months, or become a reporting issuer by filing and obtaining a receipt for a prospectus. | <p>Proposed change.</p> <ul style="list-style-type: none"> • This exemption will significantly reduce the transaction costs for listed reporting issuers who wish to obtain capital from their existing security holders (including retail security holders). • For purposes of investor protection, we propose that the issuer must have a base disclosure record. The issuer must have been a reporting issuer for not less than 12 months, or become a reporting issuer by filing and obtaining a receipt for a prospectus. • The exemption has two primary policy rationales: <ul style="list-style-type: none"> ○ Allow existing security holders to |

| Issue | Exemption for existing security holders adopted by certain CSA jurisdictions | Proposed exemption | Comments and explanation of any differences |
|-------|--|--------------------|--|
| | | | <p><i>invest in reliance on reporting issuer disclosure.</i> Reporting issuers listed on a Canadian exchange are subject to reporting issuer disclosure obligations and insider trading prohibitions under securities law, as well as disclosure and other obligations and restrictions under the relevant listing requirements. It is appropriate to permit existing security holders who have already made a decision to invest in the issuer to rely on this disclosure record to make additional investments. Investors can already acquire such securities in the secondary market. The exemption is also restricted to issuers with an appropriate base level of disclosure.</p> <ul style="list-style-type: none"> ○ <i>Enhance existing retail security holder access to primary offerings.</i> For different reasons, retail security holders generally have less opportunity to invest in primary offerings of listed issuers, even if they already own the issuer's securities. This exemption removes disincentives to obtain capital from retail security holders by significantly reducing transaction costs. |

| Issue | Exemption for existing security holders adopted by certain CSA jurisdictions | Proposed exemption | Comments and explanation of any differences |
|--|---|--|---|
| | | | <ul style="list-style-type: none"> • These rationales apply to all reporting issuers listed on a Canadian exchange. |
| Investment funds vs. non-investment funds | <ul style="list-style-type: none"> • There are no restrictions on whether investment funds or non-investment fund issuers can rely on the exemption. | <ul style="list-style-type: none"> • Investment fund issuers cannot rely on the exemption. | <p>Proposed change.</p> <ul style="list-style-type: none"> • The exclusion of investment funds is consistent with the objective of facilitating capital raising for start-ups and small and medium-sized enterprises. • As separate initiatives, we are currently undertaking significant policy projects to modernize product regulation for investment funds, for point of sale disclosure for mutual funds and to review the cost of ownership of mutual funds. |
| 2. Distribution details – types of securities | | | |
| Only listed equity securities or warrants | <ul style="list-style-type: none"> • The offering can consist only of the class of equity securities listed on the TSX, TSXV or CSE or units consisting of the listed security and a warrant to acquire the listed security. | <ul style="list-style-type: none"> • The offering can consist only of the class of equity securities listed on the TSX, TSXV or CSE, or units consisting of the listed security and a warrant to acquire the listed security. | <p>No change.</p> <ul style="list-style-type: none"> • Limiting the exemption to equity securities that are already listed and trading is consistent with investor protection as they are generally not a novel or complex type of security. |

| Issue | Exemption for existing security holders adopted by certain CSA jurisdictions | Proposed exemption | Comments and explanation of any differences |
|--|---|---|---|
| 2. Distribution details – seller | | | |
| Who can distribute securities under the exemption | <ul style="list-style-type: none"> The exemption applies to a distribution by an issuer of a security of its own issue. | <ul style="list-style-type: none"> The exemption applies to a distribution by an issuer of a security of its own issue. | No change. |
| 2. Distribution details – offering size and limits on offerings | | | |
| Limit on offering size | <ul style="list-style-type: none"> There is no limit on the size of an offering made under the exemption. | <ul style="list-style-type: none"> Subject to the dilution limit discussed below, there is no limit on the size of offering made under the exemption. | No change. <ul style="list-style-type: none"> We think imposing such a limit would unnecessarily restrict businesses seeking financing. |
| Limit on number of offerings by an issuer | <ul style="list-style-type: none"> There is no limit on the number of offerings an issuer may make under the exemption (either in aggregate or in a given period). | <ul style="list-style-type: none"> There is no limit on the number of offerings an issuer may make under the exemption (either in aggregate or in a given period). | No change. <ul style="list-style-type: none"> We think imposing such a limit would unnecessarily restrict businesses seeking financing. |
| 2. Distribution details – proceeds | | | |
| Use of proceeds | <ul style="list-style-type: none"> There are no restrictions on the use of proceeds raised under the exemption. | <ul style="list-style-type: none"> There are no restrictions on the use of proceeds raised under the exemption. | No change. <ul style="list-style-type: none"> We think imposing any such restrictions would unnecessarily restrict businesses seeking financing. |

| Issue | Exemption for existing security holders adopted by certain CSA jurisdictions | Proposed exemption | Comments and explanation of any differences |
|--|--|--|---|
| 2. Distribution details – period of distribution | | | |
| Length of time an offering can remain open | <ul style="list-style-type: none"> There are no requirements on the length of time the offering can remain open. | <ul style="list-style-type: none"> There are no requirements on the length of time the offering can remain open. | <p>No change.</p> <ul style="list-style-type: none"> We expect that issuers will attempt to close an offering as quickly as possible. |
| 2. Distribution details – offer to all security holders | | | |
| Offer to all security holders | <ul style="list-style-type: none"> Subject to applicable securities laws, the issuer must permit each person who, as of the record date, held a listed security of the issuer of the same class and series as the listed security to be distributed under the exemption, to subscribe for securities distributed under the exemption. | <ul style="list-style-type: none"> Subject to applicable securities laws, the issuer must permit each person who, as of the record date, held a listed security of the issuer of the same class and series as the listed security to be distributed under the exemption, to subscribe for securities distributed under the exemption. | <p>No change.</p> <ul style="list-style-type: none"> This requirement is intended to achieve the objective of giving existing retail security holders greater opportunities to participate in primary offerings of the issuer. We think that without this restriction, some issuers might “cherry pick” which existing security holders they solicit for investments, which may be unfair to the security holders not offered the opportunity to participate. |

| Issue | Exemption for existing security holders adopted by certain CSA jurisdictions | Proposed exemption | Comments and explanation of any differences |
|---|--|---|---|
| 2. Distribution details – dilution | | | |
| <p>Pro rata allocation and limit on overall dilution</p> | <ul style="list-style-type: none"> • While an offer must be made to all security holders (as discussed above), there is no requirement that existing security holders be allocated a pro rata portion of the offering. • There is no limit on the dilution resulting from an offering under the exemption. | <ul style="list-style-type: none"> • The issuer must allocate existing security holders a pro rata portion of the offering (subject to rounding to avoid the issuance of fractional securities or odd lots). A security holder’s allocation is subject to investment limits described below. • Any securities that are not taken up by existing security holders can be allocated at the discretion of the issuer to other existing security holders. • However, any distribution under this exemption cannot result in an increase of more than 100% of the outstanding securities of the same class. | <p>Proposed change.</p> <ul style="list-style-type: none"> • We are concerned that the exemption could be used in a manner that results in security holders suffering significant dilution. • Pro rata allocation gives existing security holders the right to invest in order to avoid dilution. • Issuers will be able to raise the capital they require because they can allocate shares that are not taken up under the pro rata allocation to other existing security holders at their discretion. However, we think that the overall dilution should not exceed 100%. |

| Issue | Exemption for existing security holders adopted by certain CSA jurisdictions | Proposed exemption | Comments and explanation of any differences |
|---|---|---|---|
| 2. Distribution details – restrictions or requirements imposed on principals of issuer | | | |
| Requirement for investment by principals in an issuer | <ul style="list-style-type: none"> The principals² of an issuer are not required to invest their own money in the issuer before making an offering under the exemption. | <ul style="list-style-type: none"> The principals of an issuer are not required to invest their own money in the issuer before making an offering under the exemption. | <p>No change.</p> <ul style="list-style-type: none"> Requiring the principals to invest in the issuer would align their interests with those of the issuer’s security holders. It may, however, significantly reduce the ability of an issuer to raise new capital. One of the primary purposes of the exemption is to enable existing security holders to provide further financing to the issuer and increase their investment in the issuer. |
| Escrow requirements | <ul style="list-style-type: none"> There is no escrow requirement for principals of an issuer that are not otherwise subject to the provisions of NP 46-201. | <ul style="list-style-type: none"> There is no escrow requirement for principals of an issuer that are not otherwise subject to the provisions of NP 46-201. | <p>No change.</p> <ul style="list-style-type: none"> Requiring escrow would be a significant departure from the approach taken in the exempt market, as there are no escrow requirements for issuers that rely on other prospectus exemptions. |

² “Principal” is defined in National Policy 46-201 *Escrow for Initial Public Offerings* (NP 46-201) as (a) a person or company who acted as a promoter of the issuer within two years before an IPO prospectus, (b) a director or senior officer of the issuer or any of its material operating subsidiaries at the time of an IPO prospectus, (c) a person or company that holds securities carrying more than 20% of the voting rights attached to the issuer’s outstanding securities immediately before and immediately after the issuer’s IPO, (d) a person or company that (i) holds securities carrying more than 10% of the voting rights attached to the issuer’s outstanding securities immediately before and immediately after the issuer’s IPO and (ii) has elected or appointed, or has the right to elect or appoint, one or more directors or senior officers of the issuer or any of its material operating subsidiaries.

| Issue | Exemption for existing security holders adopted by certain CSA jurisdictions | Proposed exemption | Comments and explanation of any differences |
|---|--|---|--|
| 2. Distribution details – registrants | | | |
| Requiring dealer involvement as a condition to use of the exemption | <ul style="list-style-type: none"> Except where an issuer is carrying on the business of trading in securities and is required to register under National Instrument 31-103 <i>Registration Requirements, Exemptions and Ongoing Registrant Obligations</i> (NI 31-103), there is no requirement that the securities must be sold through a registrant. | <ul style="list-style-type: none"> Except where an issuer is carrying on the business of trading in securities and is required to register under NI 31-103, there is no requirement that the securities must be sold through a registrant. | <p>No change.</p> <ul style="list-style-type: none"> Issuers should have the ability to distribute their securities directly to their existing security holders without the assistance of a registrant, subject to the usual business trigger for requiring registration. |
| Types of registrants permitted to be involved in distributing securities under the exemption | <ul style="list-style-type: none"> There are no restrictions that limit the type of registrant that may participate in a distribution under the exemption. | <ul style="list-style-type: none"> There are no restrictions that limit the type of registrant that may participate in a distribution under the exemption. IIROC dealers and EMDs will have to fulfill “know your client” and “suitability” obligations in relation to distributions of securities under the exemption. | <p>No change.</p> |
| Role of registrants that are related or connected to the issuer | <ul style="list-style-type: none"> There are no restrictions on whether a registrant that is related or connected to the issuer (as these terms are defined in National Instrument 33-105 <i>Underwriting Conflicts</i> (NI 33-105)) may participate in a distribution under the exemption. | <ul style="list-style-type: none"> There are no restrictions on whether a registrant that is related or connected to the issuer (as these terms are defined in NI 33-105) may participate in a distribution under the exemption. | <p>No change.</p> |

| Issue | Exemption for existing security holders adopted by certain CSA jurisdictions | Proposed exemption | Comments and explanation of any differences |
|--|--|--|--|
| Fees | <ul style="list-style-type: none"> There are no restrictions on fees being paid to “finders”. | <ul style="list-style-type: none"> There are no restrictions on fees being paid to “finders”. | No change. |
| 3. Investors – investor qualification | | | |
| Existing security holder | <ul style="list-style-type: none"> Each investor must represent in writing to the issuer that as at the record date the investor held, and continues to hold, the type of listed security that the investor is acquiring under the exemption. The record date must be at least one day prior to the day that an issuer issues an offering news release. | <ul style="list-style-type: none"> Each investor must represent in writing to the issuer that as at the record date the investor held, and continues to hold, the type of listed security that the investor is acquiring under the exemption. The record date must be at least one day prior to the day that an issuer issues an offering news release. | <p>No change.</p> <ul style="list-style-type: none"> We do not think it is necessary to require that a security holder have been a security holder on a date that is more than one day before the announcement of the offering. We would treat as improper any effort to solicit investors to purchase shares in the secondary market in order to rely on the exemption. |
| 3. Investors – investment limits | | | |
| Investment limits | <ul style="list-style-type: none"> Unless the investor has obtained advice regarding the suitability of the investment and, if the investor is a resident of a jurisdiction of Canada, that advice is from a person or company registered in that jurisdiction as an investment dealer, the aggregate amount invested by the investor in the previous 12 months under the exemption cannot exceed \$15,000. | <ul style="list-style-type: none"> Unless the investor has obtained advice regarding the suitability of the investment and, if the investor is a resident of a jurisdiction of Canada, that advice is from a person or company registered in that jurisdiction as an investment dealer, the aggregate amount invested by the investor in the previous 12 months under the exemption cannot exceed \$15,000. | <p>No change.</p> <ul style="list-style-type: none"> This amount is higher than the investment limit that we are proposing as part of the proposed offering memorandum exemption and the proposed crowdfunding exemption. However, we think it is appropriate because issuers relying on this exemption will be reporting |

| Issue | Exemption for existing security holders adopted by certain CSA jurisdictions | Proposed exemption | Comments and explanation of any differences |
|--|---|---|---|
| | | | <p>issuers and existing security holders will already have made an investment decision to purchase the issuer's securities. This amount is also harmonized with the exemption adopted by other CSA jurisdictions.</p> |
| <p>3. Investors – use of leverage to finance investment</p> | | | |
| <p>Use of leverage to finance investment</p> | <ul style="list-style-type: none"> An investor can borrow money to finance the purchase of securities under the exemption. | <ul style="list-style-type: none"> An investor can borrow money to finance the purchase of securities under the exemption. | <p>No change.</p> <ul style="list-style-type: none"> Prohibiting an investor from borrowing money to finance the purchase of securities under the exemption would be overly intrusive and difficult to enforce. This type of restriction does not exist in other prospectus exemptions. |

| Issue | Exemption for existing security holders adopted by certain CSA jurisdictions | Proposed exemption | Comments and explanation of any differences |
|---|---|--|--|
| 3. Investors - rights | | | |
| Statutory or contractual civil liability for misrepresentation | <ul style="list-style-type: none"> • The subscription agreement between the issuer and investor must contain a contractual right of action against the issuer for any misrepresentation in a document or core document, each as defined in applicable securities laws, which was not corrected before the investor acquires a security under the exemption, without regard to whether the investor relied on the misrepresentation. • The subscription agreement must be enforceable by the investor delivering a notice to the issuer <ul style="list-style-type: none"> ○ in the case of an action for rescission, within 180 days after the investor signs the agreement to purchase the security, or ○ in the case of an action for damages, before the earlier of 180 days after the investor first has knowledge of the facts giving rise to the cause of action, or three years after the date the investor signs the agreement to purchase the security. • The issuer will have a contractual defence that the investor had | <ul style="list-style-type: none"> • The subscription agreement between the issuer and investor must contain a contractual right of action against the issuer for any misrepresentation in a document or core document, each as defined in section 138.1 of the <i>Securities Act</i> (Ontario) (the Act) which was not corrected before the investor acquires a security under the exemption, without regard to whether the investor relied on the misrepresentation. • The subscription agreement must be enforceable by the investor delivering a notice to the issuer <ul style="list-style-type: none"> ○ in the case of an action for rescission, within 180 days after the investor signs the agreement to purchase the security, or ○ in the case of an action for damages, before the earlier of 180 days after the investor first has knowledge of the facts giving rise to the cause of action, or three years after the date the investor signs the agreement to purchase the security. | <p>No change.</p> <ul style="list-style-type: none"> • The secondary market civil liability provisions in section 138.1 of the Act do not apply to a distribution made in reliance on a prospectus exemption unless the relevant exemption is prescribed by regulation. • Currently, the rights of action for damages or rescission in the event of a misrepresentation contained in section 130.1 of the Act only apply to an offering memorandum delivered to an investor in connection with a distribution under a limited number of specified exemptions. • This exemption would have to be prescribed by regulation in order for the secondary market civil liability provisions in section 138.1 of the Act to apply to the offering or an offering document provided to an existing security holder to be subject to section 130.1 of the Act. • We are considering proposing such regulations. The current proposal would require issuers to provide a |

| Issue | Exemption for existing security holders adopted by certain CSA jurisdictions | Proposed exemption | Comments and explanation of any differences |
|--|--|---|--|
| | <p>knowledge of the misrepresentation.</p> <ul style="list-style-type: none"> • Damages will be capped at the price at which the security was offered and excludes damages that the issuer proves does not represent the depreciation in value of the security resulting from the misrepresentation. • The issuer must represent in the subscription agreement that the issuer's documents and core documents, each as defined in applicable securities laws, do not contain a misrepresentation and that there is no material fact or material change related to the issuer which has not been generally disclosed. | <ul style="list-style-type: none"> • The issuer will have a contractual defence that the investor had knowledge of the misrepresentation. • Damages will be capped at the price at which the security was offered and excludes damages that the issuer proves does not represent the depreciation in value of the security resulting from the misrepresentation. • The issuer must represent in the subscription agreement that the issuer's documents and core documents, each as defined in section 138.1 of the Act, do not contain a misrepresentation and that there is no material fact or material change related to the issuer which has not been generally disclosed. | <p>contractual right of action.</p> |
| 3. Investors – ability to resell securities | | | |
| Resale restrictions | <ul style="list-style-type: none"> • Securities acquired under the exemption are subject to a four-month hold period (subject to certain other conditions being met). | <ul style="list-style-type: none"> • Securities of a reporting issuer are subject to a four-month hold period (subject to certain other conditions being met). | <p>No change.</p> <ul style="list-style-type: none"> • We think it is appropriate to take an approach that is consistent with the resale restrictions for other capital raising exemptions such as the accredited investor exemption. |

| Issue | Exemption for existing security holders adopted by certain CSA jurisdictions | Proposed exemption | Comments and explanation of any differences |
|------------------------------|---|---|---|
| 4. Disclosure | | | |
| Offering news release | <ul style="list-style-type: none"> • The issuer is not required to provide an offering document. • However, the issuer must issue an offering news release disclosing the proposed offering that includes reasonable detail of the proposed distribution and proposed use of proceeds including: <ul style="list-style-type: none"> ○ the minimum and maximum number of securities proposed to be distributed and the minimum and maximum aggregate gross proceeds of the distribution, ○ the proposed principal uses, including estimated dollar amounts, of the gross proceeds of the distribution, assuming both the minimum and maximum offering, and ○ a description of how the issuer intends to allocate securities. | <ul style="list-style-type: none"> • The issuer is not required to provide an offering document. • However, the issuer must issue an offering news release disclosing the proposed offering that includes reasonable detail of the proposed distribution and proposed use of proceeds including: <ul style="list-style-type: none"> ○ the minimum and maximum number of securities proposed to be distributed and the minimum and maximum aggregate gross proceeds of the distribution, ○ the proposed principal uses, including estimated dollar amounts, of the gross proceeds of the distribution, assuming both the minimum and maximum offering, and ○ a description of how the issuer intends to allocate securities. | <p>No change.</p> <ul style="list-style-type: none"> • The approach taken will inform investors of the material terms of the offering in a simple and transparent manner. • A material change report would have to be filed in connection with an offering. |
| Filing requirements | <ul style="list-style-type: none"> • The issuer must file any offering materials (other than the subscription agreement) it provides to investors on the same day as they are provided. | <ul style="list-style-type: none"> • The issuer must file any offering materials (other than the subscription agreement) it provides to investors on the same day as they are provided. | No change. |

| Issue | Exemption for existing security holders adopted by certain CSA jurisdictions | Proposed exemption | Comments and explanation of any differences |
|--|--|---|---|
| Advertising and use of marketing materials | <ul style="list-style-type: none"> There are no specific restrictions on advertising related to offerings made under the exemption. | <ul style="list-style-type: none"> There are no specific restrictions on advertising related to offerings made under the exemption. | No change. |
| 5. Reporting of distribution | | | |
| Reporting of distribution | <ul style="list-style-type: none"> A report of exempt distribution (on either Form 45-106F1 <i>Report of Exempt Distribution</i> or Form 45-106F6 <i>British Columbia Report of Exempt Distribution</i>) must be filed for distributions made under the exemption. Schedule 1 of Form 45-105F1 and in British Columbia, Form 45-101F6 requires that an issuer or underwriter identify the exemption relied on, on a per investor basis. These forms are required to be filed with the appropriate securities regulatory authorities. | <ul style="list-style-type: none"> A report of exempt distribution on proposed Form 45-106F11 <i>Report of Exempt Distribution for Issuers other than Investment Funds (Alberta, New Brunswick, Ontario and Saskatchewan)</i> must be filed for a distribution made under the exemption. | <p>Proposed change.</p> <ul style="list-style-type: none"> Requiring a report of exempt distribution to be filed is consistent with the approach taken in other jurisdictions. We believe it is important to obtain information with respect to the use of the exemption to assist in monitoring compliance with it. |

ANNEX C-2

EXISTING SECURITY HOLDER PROSPECTUS EXEMPTION

**PROPOSED AMENDMENTS TO OSC RULE 45-501
ONTARIO PROSPECTUS AND REGISTRATION EXEMPTIONS**

PART 2 – PROSPECTUS EXEMPTIONS

Distributions to existing security holders

2.9(1) In this section,

“announcement date” means the day that an issuer issues an offering news release;

“investment dealer” has the same meaning as in section 1.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;

“listed security” means an equity security of an issuer of a class listed and trading on the Toronto Stock Exchange, the TSX Venture Exchange or the Canadian Securities Exchange;

“offering material” means a document purporting to describe the business and affairs of an issuer that has been prepared to assist a prospective purchaser to make an investment decision in respect of securities being sold in a distribution under this section;

“offering news release” means a news release of an issuer announcing its intention to conduct a distribution under this section;

“record date” means the date determined by an issuer that intends to conduct a distribution under this section that is at least one day prior to the announcement date;

“warrant” means a warrant of an issuer that entitles the holder to acquire a listed security or a fraction of a listed security of the same issuer; and

“unit” means a listed security and a warrant.

(2) The prospectus requirement does not apply to a distribution by an issuer of a listed security or a unit of its own issue to a security holder of the issuer purchasing as principal if each of the following applies:

- (a) the issuer
 - (i) is a reporting issuer in at least one jurisdiction of Canada with a class of listed securities,

- (ii) has been a reporting issuer for not less than 12 months or became a reporting issuer by filing a prospectus for which a securities regulator or securities regulatory authority issued a receipt under securities legislation, and
 - (iii) is not an investment fund;
- (b) the issuer has filed in each jurisdiction of Canada in which it is a reporting issuer all periodic and timely disclosure documents that it is required to have filed in that jurisdiction as and when required
 - (i) under applicable securities legislation,
 - (ii) pursuant to an order issued by the regulator or securities regulatory authority, or
 - (iii) pursuant to an undertaking to the regulator or securities regulatory authority;
- (c) the issuer has issued and filed an offering news release describing in reasonable detail the proposed distribution, including, without limitation,
 - (i) the minimum and maximum number of securities proposed to be distributed under this section and the minimum and maximum aggregate gross proceeds of the distribution,
 - (ii) the proposed principal uses, including estimated dollar amounts, of the gross proceeds of the distribution, assuming both the minimum and maximum offering, and
 - (iii) a description of how the issuer intends to allocate securities;
- (d) subject to applicable securities laws, the issuer permits each person who, as of the record date, held a listed security of the issuer of the same class and series as the listed securities to be distributed under this section to subscribe for a percentage of securities in the distribution that is equal to its percentage ownership of the outstanding listed securities of the same class and series of the issuer at the record date;
- (e) the purchaser has represented in writing to the issuer that the purchaser held at the record date, and continues to hold, a listed security of the issuer of the same class and series as the listed securities to be distributed under this section;
- (f) the issuer or any salesperson acting on behalf of the issuer in connection with a distribution under this section does not reasonably believe that the representation of the purchaser, referred to in paragraph (e), is untrue;
- (g) one of the following applies:
 - (i) the purchaser has obtained advice regarding the suitability of the investment and, if the purchaser is a resident of a jurisdiction of Canada, that advice is from a person or company registered in that jurisdiction as an investment dealer;
 - (ii) the acquisition cost to the purchaser of securities to be purchased from the issuer under the distribution, when added to the acquisition cost to the purchaser of all other securities of the issuer acquired in reliance on this section in the 12-month period immediately preceding the distribution, does not exceed \$15,000.

(3) Despite paragraph (2)(d),

- (a) the number of shares allocated to a security holder by the issuer may be rounded to avoid the issuance of fractional shares or odd lots, and
- (b) any securities that are allocated to but not purchased by a security holder may be sold by the issuer to any other security holder that held at the record date a listed security of the same class and series as the listed securities being distributed.

(4) An issuer that relies on the exemption in subsection (2) must enter into a subscription agreement with the purchaser that contains a contractual right of action against the issuer for rescission or damages that,

- (a) is available to the purchaser if a document or core document, each as defined in section 138.1 of the Act, contains a misrepresentation which was not corrected before the purchaser acquires a security under this exemption, 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) three years after the date the purchaser signs the agreement to purchase the security,
- (c) is subject to a 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 rights of the purchaser.

(5) The issuer must represent each of the following to the purchaser in the subscription agreement:

- (a) the issuer's "core documents" and "documents", as those terms are defined in section 138.1 of the Act, do not contain a misrepresentation;
- (b) there is no material fact or material change related to the issuer which has not been generally disclosed.

(6) A distribution of listed securities or units by an issuer under subsection (2) must not result in an increase of more than 100 percent in the number of outstanding listed securities of the same class and series.

(7) Other than the subscription agreement, any offering materials prepared in connection with a distribution under this exemption must be filed with the securities regulatory authority by the issuer no later than the day that the offering material was first provided or made available to a potential purchaser.

APPENDIX D
CROWDFUNDING

ANNEX D-1

KEY PROVISIONS OF THE PROPOSED CROWDFUNDING PROSPECTUS EXEMPTION

The following is a summary of the proposed crowdfunding prospectus exemption. We are soliciting comments on the terms and conditions of the proposed exemption. The summary is divided into the following sections:

| General topic | Specific discussion areas |
|--------------------------|---|
| 1. Issuer qualifications | <ul style="list-style-type: none"> • Reporting issuers vs. non-reporting issuers • Investment funds vs. non-investment funds • Real estate issuers • Issuers without a written business plan (blind pools) • Jurisdiction of incorporation or organization and location of issuer’s head office • Jurisdiction where directors resident • Issuers that are not in compliance with the ongoing requirements of the crowdfunding prospectus exemption • Issuers that are the subject of sanctions imposed by a court or a regulatory body |
| 2. Distribution details | <ul style="list-style-type: none"> • Types of securities • Seller • Offering size and other limits and conditions • Length of time an offering can remain open • Restrictions or requirements imposed on principals of issuer • Portals • Promotion of offering • Reporting of distribution |
| 3. Integration | <ul style="list-style-type: none"> • Crowdfunding distributions and distributions made under other exemptions • Combining securities and non-securities rewards and perks in a crowdfunding offering |
| 4. Investors | <ul style="list-style-type: none"> • Investment limits • Use of leverage to finance investment • Risk acknowledgement form • Rights • Ability to resell securities |

| General topic | Specific discussion areas |
|---------------|--|
| 5. Disclosure | <ul style="list-style-type: none"> • Management certification and liability attached to materials • Format of disclosure • Content of point of sale disclosure • Advertising and marketing materials • Ongoing disclosure |

| Issue | Proposed crowdfunding prospectus exemption | Comments |
|---|---|---|
| 1. Issuer qualifications | | |
| Reporting issuers vs. non-reporting issuers | <ul style="list-style-type: none"> • Both reporting issuers and non-reporting issuers can use the crowdfunding prospectus exemption (crowdfunding exemption or exemption). | <ul style="list-style-type: none"> • As the overall goal of our crowdfunding initiative is to facilitate capital raising for start-ups and small and medium-sized enterprises (SMEs), we think the exemption should be available to both reporting issuers and non-reporting issuers. • We have been advised that reporting issuers may wish to raise capital through crowdfunding, particularly venture issuers that may be experiencing difficulties in raising capital through more traditional means in the current economic environment. • We support allowing reporting issuers to raise capital through crowdfunding as reporting issuers should not have fewer capital raising options than non-reporting issuers, particularly since reporting issuers have a continuous disclosure record and are subject to regulatory oversight. • In OSC Staff Consultation Paper 45-710 <i>Considerations for New Capital Raising Prospectus Exemptions</i> (Consultation Paper), it was proposed that the exemption be available to both reporting |

| Issue | Proposed crowdfunding prospectus exemption | Comments |
|---|---|---|
| | | <p>and non-reporting issuers. No specific comments were received on the Consultation Paper regarding that aspect of the concept idea. However, one commenter thought that listed issuers should qualify for the crowdfunding exemption.</p> <ul style="list-style-type: none"> • We have sought specific comment on whether the availability of the exemption should be restricted to non-reporting issuers. |
| Investment funds vs. non-investment funds | <ul style="list-style-type: none"> • Investment funds cannot use the exemption. | <ul style="list-style-type: none"> • We think this restriction is consistent with the overall goal of our crowdfunding initiative which is to facilitate capital raising for start-ups and SMEs. • As separate initiatives, we are currently undertaking significant policy projects to: <ul style="list-style-type: none"> ○ modernize product regulation for investment funds, ○ develop point of sale disclosure for mutual funds, and ○ review the cost of ownership of mutual funds. |
| Real estate issuers | <ul style="list-style-type: none"> • Real estate issuers that are not reporting issuers cannot use the exemption. • Real estate issuers include: <ul style="list-style-type: none"> ○ real estate investment trusts (REITs), ○ mortgage investment entities, and ○ issuers that primarily invest in, or develop, real estate, or derive their revenues primarily from investments in real estate. | <ul style="list-style-type: none"> • Our objective is to facilitate capital raising by start-ups and SMEs. • We have concerns with the sale of real estate securities by non-reporting issuers in the exempt market. • We have sought specific comment on whether this restriction on the availability of the crowdfunding exemption is appropriate. |

| Issue | Proposed crowdfunding prospectus exemption | Comments |
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| Issuers without a written business plan (blind pools) | <ul style="list-style-type: none"> • Blind pools are excluded from being able to use the exemption. A blind pool includes an issuer that does not have a written business plan setting out its business or proposed business, its goals or milestones and the plan for reaching those goals or milestones. It also includes an issuer where the proceeds of the distribution under the exemption will be used primarily by the issuer to invest in, merge with or acquire another unspecified business. • An issuer must disclose the nature of its existing or proposed business, its business plan, and the use of the proceeds of the distribution in furtherance of the business plan. | <ul style="list-style-type: none"> • We think this restriction is consistent with the overall goal of our crowdfunding initiative which is to facilitate capital raising for start-ups and SMEs. • In addition, we are concerned about allowing blind pools to sell securities to retail investors without a prospectus as blind pools raise additional investor protection concerns. |
| Jurisdiction of incorporation or organization and location of issuer's head office | <ul style="list-style-type: none"> • The issuer, and if applicable, the parent and the principal operating subsidiary of the issuer, must be incorporated or organized under the laws of Canada or a jurisdiction of Canada. • In addition, the issuer's head office must be situated in Canada. | <ul style="list-style-type: none"> • One of the key objectives of our crowdfunding initiative is to facilitate capital raising for Canadian issuers and we think these restrictions are consistent with that objective. • We think that requiring incorporation or organization under Canadian laws and a Canadian head office may reduce the risks to investors. |
| Jurisdiction where directors resident | <ul style="list-style-type: none"> • A majority of the issuer's directors must be resident in Canada. | <ul style="list-style-type: none"> • One of the key objectives of our crowdfunding initiative is to facilitate capital raising for Canadian issuers and we think this restriction is consistent with that objective. • We think that requiring that a majority of an issuer's directors be resident in Canada may reduce the risks to investors. • We have sought specific comment on whether this restriction is appropriate and consistent with these |

| Issue | Proposed crowdfunding prospectus exemption | Comments |
|--|---|--|
| | | objectives. |
| Issuers that are not in compliance with the ongoing requirements of the crowdfunding exemption | <ul style="list-style-type: none"> The exemption is not available to an issuer if the issuer has previously raised capital under the exemption and is not in compliance with its ongoing disclosure and other obligations. | <ul style="list-style-type: none"> We think that, in the interest of investor protection, issuers that previously raised capital under the exemption and are not in compliance with its ongoing disclosure and other requirements should be prohibited from using the exemption. |
| Issuers that are the subject of sanctions imposed by a court or a regulatory body | <ul style="list-style-type: none"> The portal must take reasonable steps to establish that the business of the issuer will be conducted with integrity and in the best interests of the security holders of the issuer based on the information contained in the issuer’s application and the results of background checks. This obligation includes considering the past conduct of the issuer and any of the issuer’s executive officers, directors, promoters or control persons. The portal must also conduct background checks on the issuer and its directors, executive officers, promoters and control persons as described more fully in item 5 - <i>Portal due diligence</i> in the <i>Regulatory framework for crowdfunding – key provisions of the proposed regulation of a portal</i>. | <ul style="list-style-type: none"> The scope of capital raising activity that a person is permitted to engage in may be narrowed by sanctions imposed by an order of a court or regulatory body. |
| 2. Distribution details – types of securities | | |
| Types of securities | <ul style="list-style-type: none"> Novel or complex securities cannot be offered under the exemption. The only securities that can be offered under the exemption are: <ul style="list-style-type: none"> common shares, non-convertible preference shares, securities convertible into common shares or non-convertible preference shares, non-convertible debt securities linked to a | <ul style="list-style-type: none"> As the overall goal of our crowdfunding initiative is to facilitate capital raising by start-ups and SMEs, we do not think it is necessary or appropriate to allow complex securities, such as derivatives and securitized products, to be offered under the exemption. We have identified types of securities that may be offered under the exemption rather than try to define a category of “novel” or “complex” |

| Issue | Proposed crowdfunding prospectus exemption | Comments |
|--|--|---|
| | <ul style="list-style-type: none"> ○ fixed or floating interest rate, ○ units of a limited partnership, and ○ flow-through shares under the <i>Income Tax Act</i> (Canada). <ul style="list-style-type: none"> ● All of the securities offered in a crowdfunding distribution must have the same price, terms and conditions. | <p>securities that would be excluded.</p> <ul style="list-style-type: none"> ● We have included flow-through shares as they are frequently associated with government tax incentives. We think start-ups and SMEs should be able to take advantage of these incentives. ● Few comments were received on the Consultation Paper regarding the types of securities that could be offered through crowdfunding and these comments were largely supportive of the proposal that included the first four securities included in the list of securities in this proposed framework. |
| 2. Distribution details – seller | | |
| Who can issue securities under the exemption | <ul style="list-style-type: none"> ● The exemption is limited to distributions by an issuer of securities of its own issue. | <ul style="list-style-type: none"> ● We do not think that selling security holders should be permitted to use the exemption. The exemption is intended to facilitate capital raising and not the resale of securities. |
| 2. Distribution details – offering size and other limits and conditions | | |
| Limit on offering size | <ul style="list-style-type: none"> ● There is a \$1.5 million limit on the aggregate amount that can be raised under the exemption by the issuer group in a specified time period. ● The issuer group includes the issuer, an affiliate of the issuer, and any other issuer that is engaged in a common enterprise with the issuer or with an affiliate of the issuer. ● The sum of the following must not exceed \$1.5 million: <ul style="list-style-type: none"> ○ the aggregate proceeds to be raised by the issuer in its current distribution under the | <ul style="list-style-type: none"> ● As the exemption is focused on financing for start-ups and SMEs, we think a distribution limit of \$1.5 million is appropriate. ● Commenters on the Consultation Paper generally supported imposing an offering limit as a means of limiting risk and because the exemption is focused on start-ups and SMEs. However, the commenters had differing views on what the dollar amount of the offering limit should be. ● We have sought specific comment on whether this limit is appropriate. |

| Issue | Proposed crowdfunding prospectus exemption | Comments |
|---|---|---|
| | <p>exemption,</p> <ul style="list-style-type: none"> ○ the aggregate proceeds to be raised under a concurrent distribution under the exemption by any issuer in the issuer group, and ○ the aggregate proceeds received by the issuer group under distributions under the exemption during the 12-month period immediately preceding the beginning of the issuer’s current distribution under the exemption. | |
| Anti-avoidance in application of offering limit | <ul style="list-style-type: none"> • The imposition of the offering limit on the aggregate proceeds raised by the issuer group, rather than only by the issuer, is intended to prevent the \$1.5 offering limit from being circumvented. • In addition, disclosure is required of all current, previously closed, and failed distributions made under the exemption by each issuer that comprises the issuer group. (see item 5 - <i>Disclosure - content of point of sale disclosure - Required disclosure</i>). | <ul style="list-style-type: none"> • We think the imposition of the \$1.5 million offering limit on the issuer group will mitigate attempts to circumvent the limit on distribution size. • In addition, the required disclosure will help investors make informed investment decisions. |
| Offering size and conditions to complete distribution | <ul style="list-style-type: none"> • An issuer’s offering document for a crowdfunding distribution must disclose the minimum number or principal amount of securities being offered, and whether there is a maximum number or principal amount of securities being offered. • A crowdfunding offering must not be completed unless: <ul style="list-style-type: none"> ○ the minimum amount of funds to be raised under the exemption, as disclosed in the crowdfunding offering document, has been subscribed for, and ○ at the time of completion of the offering, the | <ul style="list-style-type: none"> • Requiring that these two conditions be satisfied before a crowdfunding offering can be completed will provide an element of investor protection, as an investor will know the minimum amount of proceeds that will be raised under the offering and will have some assurance that, on completion of the offering, the issuer will have financial resources sufficient to achieve the next milestone set out in its written business plan or to carry out the activities set out in its written business plan. |

| Issue | Proposed crowdfunding prospectus exemption | Comments |
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| | <p>issuer has financial resources sufficient to: (a) achieve the next milestone set out in its written business plan, or (b) if the issuer does not have any milestones set out in its written business plan, to carry out the activities set out in its written business plan.</p> <ul style="list-style-type: none"> • A portal must ensure that a crowdfunding offering is not completed until these conditions have been satisfied. | |
| Sufficient financial resources to achieve next milestone/carry out activities in business plan | <ul style="list-style-type: none"> • As noted above, a crowdfunding offering cannot be completed unless, at the time of completion of the offering, the issuer has financial resources sufficient to: (a) achieve the next milestone set out in its written business plan, or (b) if the issuer does not have any milestones set out in its written business plan, to carry out the activities set out in its written business plan. • The financial resources necessary to satisfy this requirement may include: <ul style="list-style-type: none"> ○ the net proceeds of the offering, ○ the net proceeds raised by the issuer from any distribution under a prospectus exemption other than the crowdfunding exemption, and ○ any other financial resources of the issuer. | <ul style="list-style-type: none"> • Permitting the net proceeds raised by the issuer from a distribution under a prospectus exemption other than the crowdfunding exemption to be included in the determination as to whether this requirement has been satisfied will permit an issuer to satisfy the requirement as quickly as possible. |
| Ability to offer additional securities | <ul style="list-style-type: none"> • An issuer can offer more than the number of securities initially proposed to be offered in its offering document if it has disclosed the maximum number of securities that could be offered under the exemption and the use of proceeds for the additional proceeds that would be raised. | <ul style="list-style-type: none"> • This approach will allow an issuer to raise additional funds to allocate to the advancement of its business plan if there is strong investor interest in the offering, subject to the overall distribution limit of \$1.5 million. • No comments were received on the Consultation Paper that focused directly on this provision. |

| Issue | Proposed crowdfunding prospectus exemption | Comments |
|---|--|---|
| | <ul style="list-style-type: none"> • However, the \$1.5 million limit on the aggregate amount that can be raised under the exemption by the issuer group in a specified time period must be complied with. | <p>However, three commenters were not in favour of setting limits on the size of an offering.</p> |
| 2. Distribution details – length of time an offering can remain open | | |
| <p>Length of time an offering can remain open</p> | <ul style="list-style-type: none"> • An issuer’s offering document must disclose how long the offer will remain open. • A crowdfunding offering cannot remain open for more than 90 days. • If an issuer cannot complete a crowdfunding offering within 90 days, it must withdraw it. The issuer can commence a new crowdfunding offering after the 90 day period. | <ul style="list-style-type: none"> • Similar to the prospectus regime, a 90 day limit on the length of time an offering can remain open will help to ensure that the information in the offering document does not become stale (see item 5 – <i>Disclosure</i>). • We have sought specific comment on whether an issuer should be able to extend the length of time an offering could remain open if subscriptions have not been received for the minimum offering and, if so, whether there should be a minimum percentage of the minimum offering that must have been received to do so. |
| 2. Distribution details – restrictions or requirements imposed on principals of issuer | | |
| <p>Requirement for investment by principals in an issuer</p> | <ul style="list-style-type: none"> • The principals of an issuer seeking to raise capital under the exemption are not required to invest their own money in a venture before making an offering to the public. • However, an issuer must disclose: <ul style="list-style-type: none"> ○ whether or not the principals own securities of the issuer, ○ if so, the number and type of the securities and how much the principals paid for them, ○ whether or not the securities are subject to an escrow or hold period, and ○ if so, details of the escrow or hold period. | <ul style="list-style-type: none"> • Requiring the principals of a business to invest their own money in the issuer would align their interests with those of other investors in the issuer. • We do not think the principals of an issuer seeking to raise capital under the exemption should be required to invest their own money in a venture before using this exemption. One of the principal purposes of the exemption is to enable an entrepreneur to finance a start-up where he or she does not have the personal financial resources to do so. |

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| | <ul style="list-style-type: none"> See item 5 - <i>Disclosure – contents of point of sale disclosure – Required disclosure.</i> | <ul style="list-style-type: none"> However, requiring an issuer to disclose whether or not the principals own securities of the issuer, the number and type of the securities, how much the principals paid for the securities, whether or not the securities are subject to an escrow or hold period and details of any escrow or hold period will help investors make informed investment decisions. |
| Escrow requirements | <ul style="list-style-type: none"> There is no escrow requirement for principals¹ of an issuer who are not otherwise caught by National Policy 46-201 <i>Escrow for Initial Public Offerings.</i> | <ul style="list-style-type: none"> Requiring an escrow would be a significant departure from the approach taken in the exempt market, as there are no escrow requirements for issuers that rely on other prospectus exemptions. The principal regulatory objective of an escrow is to tie in an issuer’s principals for a period of time following the issuer’s initial offering to give them an incentive to devote their time and attention to the issuer’s business. Securities of a non-reporting issuer are subject to an indefinite hold period, so principals are very limited as to whom they can sell securities. Even for a reporting issuer, a four-month hold period is imposed, which limits the possibility for immediate exit by principals. |

¹ “Principal” is defined in NP 46-201 as (a) a person or company who acted as a promoter of the issuer within two years before an IPO prospectus, (b) a director or senior officer of the issuer or any of its material operating subsidiaries at the time of an IPO prospectus, (c) a person or company that holds securities carrying more than 20% of the voting rights attached to the issuer’s outstanding securities immediately before and immediately after the issuer’s IPO, (d) a person or company that (i) holds securities carrying more than 10% of the voting rights attached to the issuer’s outstanding securities immediately before and immediately after the issuer’s IPO and (ii) has elected or appointed, or has the right to elect or appoint, one or more directors or senior officers of the issuer or any of its material operating subsidiaries.

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| 2. Distribution details – portals | | |
| Requirement to offer securities through registered funding portal | <ul style="list-style-type: none"> An issuer must offer its securities through a registered funding portal. See <i>Regulatory framework for crowdfunding – key provisions of the proposed regulation of a portal</i>. The intermediary must be registered in the category of restricted dealer. | <ul style="list-style-type: none"> Requiring that all crowdfunding offers be made through a registrant will provide a measure of investor protection. |
| Ability to offer securities through multiple portals | <ul style="list-style-type: none"> An issuer can only offer its securities under the exemption on one portal during the distribution period established by the issuer. | <ul style="list-style-type: none"> All relevant information should be included in one place (i.e., the portal’s website) for ease of investor reference and to facilitate the exchange of information and views that is conducive to eliciting the “wisdom of the crowd”. It will also make it easier to monitor both the distribution and investment limits. |
| 2. Distribution details – promotion of offering | | |
| Compensation of persons promoting the offering | <ul style="list-style-type: none"> Disclosure must be provided about any person or entity promoting the offering. An issuer may not, directly or indirectly, pay a commission, finder's fee, referral fee or similar payment to any person in connection with an offering under the exemption, other than to a portal. This restriction does not apply to payments to persons as compensation for their services to an issuer in preparing materials in connection with an offering under the exemption, such as accounting or legal fees. | <ul style="list-style-type: none"> We think that prohibiting any form of payment to persons in connection with an offering under the exemption will mitigate potential conflicts of interest. |

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| 2. Distribution details – reporting of distribution | | |
| Requirement for report of exempt distribution | <ul style="list-style-type: none"> A report of exempt distribution on proposed Form 45-106F11 <i>Report of Exempt Distribution for Issuers other than Investment Funds (Alberta, New Brunswick, Ontario and Saskatchewan)</i> must be filed for a distribution made under the exemption within 10 days of completion of the distribution. | <ul style="list-style-type: none"> Requiring a report of exempt distribution is consistent with the approach taken for other prospectus exemptions. The information derived from these reports will help us to effectively oversee the market and inform any future policy development regarding the exemption. |
| 3. Integration - crowdfunding distributions and distributions made under other exemptions | | |
| Application of offering limit under the crowdfunding exemption to capital raised concurrently under other exemptions | <ul style="list-style-type: none"> The net proceeds raised by the issuer from a distribution under a prospectus exemption other than the crowdfunding exemption can be included in the determination as to whether the issuer has satisfied the requirement that, at the time of completion of a crowdfunding offering, the issuer has financial resources sufficient to: (a) achieve the next milestone set out in its written business plan, or (b) if the issuer does not have any milestones set out in its written business plan, to carry out the activities set out in its written business plan. However, the proceeds from the distribution under that other prospectus exemption would not be included in the calculation as to whether there has been compliance with the \$1.5 million offering limit under the crowdfunding exemption. | <ul style="list-style-type: none"> We consider the range of prospectus exemptions available to an issuer to be complementary, so that an issuer can use different exemptions to raise capital provided that the terms of the exemptions are complied with. For example, an issuer may use other available prospectus exemptions (such as the accredited investor exemption) in addition to the proposed crowdfunding exemption. We do not want to restrict an issuer's options for raising capital in the exempt market. |

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| Type and terms of securities distributed under the crowdfunding exemption vs. securities distributed concurrently under other exemptions | <ul style="list-style-type: none"> If an issuer distributes securities under other exemptions (such as the accredited investor exemption) during the period beginning at the commencement of the crowdfunding offering and ending one month after the distribution date (prescribed period), the securities must have the same price, terms and conditions as those distributed under the crowdfunding exemption. | <ul style="list-style-type: none"> This requirement is intended to promote fairness to investors by prohibiting an issuer from offering securities during the prescribed period at different prices, or with different terms and conditions, than those being distributed under the exemption. Limiting the prescribed period to one month following the distribution date is appropriate because once an issuer receives the funds, the value of the issuer or its operations could quickly change, thus justifying offering securities at different prices or with different terms and conditions than those that were distributed under the crowdfunding exemption. |
| 3. Integration – combining securities and non-securities rewards and perks in a crowdfunding offering | | |
| Combining securities and non-securities rewards and perks in a crowdfunding offering | <ul style="list-style-type: none"> An issuer can combine securities and non-securities rewards and perks in a crowdfunding offering. An issuer must describe in the offering document any non-securities rewards or perks that are being offered and on what terms. | <ul style="list-style-type: none"> Permitting an issuer to combine securities and non-securities rewards and perks in a crowdfunding offering will enable the issuer to derive the benefits of both securities-based and non-securities-based crowdfunding. Non-securities-based crowdfunding has been cited as contributing to consumer and investor loyalty, product development, and marketing. As a result, combining securities and non-securities rewards and perks in a crowdfunding offering may result in a better investment opportunity for investors without detracting from investor protection. |

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| 4. Investors – investment limits | | |
| Investment limits | <ul style="list-style-type: none"> • An investor is not permitted to invest: <ul style="list-style-type: none"> ○ more than \$2,500 in a single investment under the exemption, or ○ more than \$10,000 in total under the exemption in a calendar year. | <ul style="list-style-type: none"> • Having low investment limits minimizes an investor’s exposure. • Specified maximum dollar amounts are easier to administer than an approach that requires calculations based on an investor’s annual income or net worth. In addition, it avoids the concern that investors may be unwilling to share their tax returns or other personal financial information with issuers or portals to establish they are investing within the prescribed limits. • Most commenters on the Consultation Paper were in favour of imposing investment limits, but there were differing views as to what the dollar amount of the limits should be. Further, a few commenters thought that an investor’s annual income and/or net worth should play a role in determining investment limits. • In spring 2013, The Brondesbury Group was retained by the OSC to conduct a survey to gain insight into retail investors’ views on investing in start-ups and SMEs (Investor Survey). • Responses to the Investor Survey indicated that four out of 10 investors would invest less than \$1,000 through crowdfunding and a further four out of 10 would invest between \$1,000 and \$4,999. Only two out of 10 investors would invest \$5,000 or more in a crowdfunding offering. • We are not proposing to require that these amounts be adjusted for inflation. |

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| | | <ul style="list-style-type: none"> We have sought specific comment on whether there should be separate investment limits for accredited investors who invest through the portal. An accredited investor can invest an unlimited amount in the issuer under the accredited investor exemption. |
| Applicability of investment limits to accredited investors | <ul style="list-style-type: none"> An accredited investor that purchases securities under the crowdfunding exemption is subject to the same investment limits as other investors. However, an issuer can distribute securities to the accredited investor under the accredited investor exemption simultaneously with the distribution of securities under the crowdfunding exemption. In so doing, the issuer must comply with all applicable requirements under both exemptions, including the requirement that the securities distributed under the accredited investor exemption during the prescribed period have the same price, terms and conditions as those distributed under the crowdfunding exemption. | <ul style="list-style-type: none"> We think that compliance reviews will be easier to conduct with only one set of investment limits for all investors based on specified dollar amounts. We think that issuers should be able to use more than one prospectus exemption at the same time to raise capital. We think it should be possible for an accredited investor to make a contemporaneous investment in securities of the issuer under the accredited investor exemption at the same time as other investors invest through the portal under the crowdfunding exemption. |
| Monitoring of compliance with investment limits | <ul style="list-style-type: none"> With each investment, an investor must self-certify that he or she: <ul style="list-style-type: none"> is not investing more than \$2,500 in the particular investment through the portal, and will not have invested more than \$10,000 in investments under the exemption in the current calendar year after taking into account the current investment. A portal is responsible for verifying that the investor: <ul style="list-style-type: none"> is not investing more than \$2,500 in the particular investment, and will not have invested more than \$10,000 in | <ul style="list-style-type: none"> We think that self-certification bolstered by a portal monitoring compliance by the investor with the investment limits based on investments made by the investor through the portal is a reasonable and practical approach. |

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| | <p>investments under the exemption made through the portal in the current calendar year after taking into account the current investment.</p> <ul style="list-style-type: none"> For more information, see item 8 - <i>Investor education and screening</i> in the <i>Regulatory framework for crowdfunding – key provisions of the proposed regulation of a portal</i>. | |
| 4. Investors – use of leverage to finance investment | | |
| Restrictions on investors' ability to borrow money to finance the purchase of securities under the exemption | <ul style="list-style-type: none"> An issuer, a portal, and their respective directors and executive officers must not lend or finance, or arrange lending or financing (e.g., from an affiliate), for an investor to purchase securities of the issuer under the exemption. | <ul style="list-style-type: none"> This approach will help to address concerns associated with retail investors using leverage to invest through crowdfunding. Prohibiting a potential investor from borrowing money to finance the purchase of securities under the exemption would be overly intrusive and difficult to enforce. |
| 4. Investors – risk acknowledgement form | | |
| Risk acknowledgement form | <ul style="list-style-type: none"> At or before the time an investor enters into an agreement to purchase the security, the issuer must obtain a signed risk acknowledgement form from the investor in which the investor confirms that the investor falls within the investment limits and acknowledges the risks associated with the investment, including the following: <ul style="list-style-type: none"> it is a very risky investment, the investor could lose all of the money they invest, the investor may never be able to sell the securities, the investor will be provided with less | <ul style="list-style-type: none"> Requiring that an investor sign a risk acknowledgement form may help to alert the investor to the risks of the investment, including that the investor may lose his or her entire investment. |

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| | <p>disclosure than public companies provide,</p> <ul style="list-style-type: none"> ○ the investor will not have the benefit of protections associated with an investment made under a prospectus, ○ borrowing money increases the risk of an investment, and ○ the portal will not be responsible if the investor loses all or some of the money they invest. <ul style="list-style-type: none"> ● The risk acknowledgement form may be signed by an online signature. ● The issuer must retain the signed risk acknowledgement form for eight years after the distribution. | |
| 4. Investors – rights | | |
| Right of withdrawal | <ul style="list-style-type: none"> ● An issuer that offers securities under the exemption must provide an investor with a contractual right to withdraw an offer or agreement to purchase the security by delivering a notice to the issuer within at least 48 hours prior to the date of completion of the distribution disclosed in the issuer’s offering document. ● See item 2 - <i>Distribution details – period of distribution – Length of time a distribution can remain open.</i> | <ul style="list-style-type: none"> ● A right of withdrawal will provide an investor with a “cooling off” period to consider the disclosure provided and reflect on his or her investment decision. ● Limited comments were received on the Consultation Paper on this issue. These comments, however, were generally supportive of including a right of withdrawal. |

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| Shareholder rights and protections (e.g., tag-along, pre-emptive rights) | <ul style="list-style-type: none"> • There is no requirement to provide crowdfunding investors with shareholder rights, such as tag-along or pre-emptive rights. • However, an issuer must disclose the specific risks to investors if such rights are not provided. Further, the risk acknowledgement form to be signed by investors will identify the potential risks which may arise. | <ul style="list-style-type: none"> • Commenters on the Consultation Paper expressed differing views about requiring these rights. Some thought they should be applied at the discretion of the issuer while others questioned the practicality of one or more of these rights in the context of a crowdfunding offering. • We think issuers should have the flexibility to structure their transactions in a way that suits their circumstances. However, we also think that issuers should be required to disclose the specific risks to investors if such rights are not provided. • A portal may, in its discretion, impose requirements for the granting by the issuer of such rights to investors. |
| 4. Investors – ability to resell securities | | |
| Resale restrictions | <ul style="list-style-type: none"> • Securities acquired through crowdfunding cannot be resold until the issuer becomes a reporting issuer, unless the sale is made under another prospectus exemption (other than the crowdfunding exemption). • Securities of a reporting issuer acquired through crowdfunding are subject to a four month hold period. | <ul style="list-style-type: none"> • Permitting the resale of securities sold under a prospectus exemption (other than a sale made under another prospectus exemption) before an issuer becomes a reporting issuer and is therefore subject to continuous and timely disclosure requirements would be inappropriate and a significant departure from current policy. |

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| 5. Disclosure – management certification and liability attached to materials | | |
| Management certification of offering document | <ul style="list-style-type: none"> • A crowdfunding offering document must contain a certificate signed by the issuer. • The certificate must state that: <ul style="list-style-type: none"> ○ the offering document does not contain a misrepresentation, and ○ investors have rights of action and withdrawal in the case of a misrepresentation. • A misrepresentation is as defined in securities law. | <ul style="list-style-type: none"> • Requiring that an issuer certify its offering document will: <ul style="list-style-type: none"> ○ make management and directors accountable for the disclosure, and ○ make investors aware of their rights of action. • See the discussion below in item 5 - <i>Disclosure – management certification and liability attached to materials – Rights of action and standard of liability for offering documents and other materials.</i> |
| Rights of action and standard of liability for offering documents and other materials | <ul style="list-style-type: none"> • If a comparable right is not provided by the securities legislation of the jurisdiction in which an investor resides, the issuer must provide a contractual right of action for rescission or damages (if such investor no longer holds the security) in the event of a misrepresentation in any written or other materials that are made available to the investor (including video). • The right of action applies to the issuer, management, and any director who has certified the issuer’s disclosure. • As a condition of the exemption, the issuer must provide a contractual right of action for rescission or damages to each investor and security holder in the event of a misrepresentation. • Issuers, management, directors, and portals must have a due diligence defence as well as a defence that the investor knew of the misrepresentation. | <ul style="list-style-type: none"> • It is important for market confidence that investors have a contractual right to sue for misrepresentation. • We will consider preparing policy guidance on how issuers can satisfy the due diligence defence. For example, OSC Policy 51-604 <i>Defence for Misrepresentations in Forward-Looking Information</i> contains OSC guidance on satisfying the statutory defence for misrepresentations in forward-looking information. • We have sought specific comment on the potential impact that this standard of liability would have on the length and complexity of offering documents. • Currently, the statutory right to sue in the event of a misrepresentation contained in s. 130.1 of the <i>Securities Act (Ontario) (Act)</i> only applies to an offering memorandum delivered to an investor in connection with a distribution under a limited number of specified exemptions. We are proposing that the crowdfunding exemption be designated as |

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| | | an exemption to which s. 130.1 of the Act would apply. |
| 5. Disclosure – format of disclosure | | |
| Prescribed format for disclosure | <ul style="list-style-type: none"> No specific format for disclosure is required. | <ul style="list-style-type: none"> We are concerned that prescribing the format of disclosure could detract from the objective of streamlined disclosure that is necessary for crowdfunding to be a cost effective means of raising capital. |
| 5. Disclosure – content of point of sale disclosure | | |
| General commentary | <ul style="list-style-type: none"> The disclosure in an issuer’s offering document (referred to item 5 – <i>Disclosure - content of point of sale disclosure - Required disclosure</i>) should be streamlined and focus on material information that is relevant to the issuer’s business and an investment in the securities offered. | <ul style="list-style-type: none"> For crowdfunding to be a viable method of raising capital, investors must be provided with appropriate information to make informed investment decisions without imposing excessive costs on issuers. This is consistent with the disclosure requirements in other areas of securities law. |
| Required disclosure | <ul style="list-style-type: none"> An issuer must make the offering document available to an investor through the portal at or before the time the investor enters into an agreement to purchase the security. The offering document requires disclosure under the following headings: <ul style="list-style-type: none"> ITEM 1 – REQUIRED STATEMENTS <ul style="list-style-type: none"> 1.1 Warning to investors ITEM 2 – FINANCING FACTS <ul style="list-style-type: none"> 2.1 Offering summary 2.2 Description of securities offered and relevant | <ul style="list-style-type: none"> Investors will require appropriate disclosure to make an informed investment decision. The disclosure must be straightforward for the issuer to prepare and for the investor to understand. We do not intend that the point of sale offering document be overly lengthy or complicated. Commenters on the Consultation Paper generally agreed that some form of disclosure should be required at the point of sale. Although most commenters broadly supported the proposed content of that disclosure, some expressed |

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| | <p>rights</p> <p>2.3 Ability to resell securities</p> <p>2.4 Right of action for misrepresentation and right of withdrawal</p> <p>2.5 Concurrent offerings</p> <p>2.6 Use of proceeds</p> <p>2.7 Ability to achieve next milestone or business plan</p> <p>2.8 Other crowdfunding offerings</p> <p>2.9 Persons promoting and marketing the offering</p> <p>ITEM 3 – ISSUER FACTS</p> <p>3.1 Business of the issuer</p> <p>3.2 Principal risks facing the business</p> <p>3.3 Financial information</p> <p>3.4 Ongoing information</p> <p>3.5 Mining issuer disclosure</p> <p>3.6 Capital structure</p> <p>3.7 Executive officers, directors and other principals</p> <p>3.8 Management compensation</p> <p>3.9 Related party transactions</p> <p>3.10 Other relevant information</p> <p>ITEM 4 – REGISTRANT FACTS</p> <p>4.1 Registered funding portal</p> <p>ITEM 5 – CONTACT INFORMATION</p> <p>5.1 Contact information for the issuer</p> <p>5.2 Contact information for the registered funding portal</p> <p>CERTIFICATE</p> | <p>differing views about the content and extent of the disclosure that should be required.</p> <ul style="list-style-type: none"> We do not think disclosure of how the issuer was valued or the offering price was determined should be required since it is difficult to value start-ups or early stage issuers. However, a few commenters supported requiring this disclosure. |

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| Financial information and attestation requirements | <ul style="list-style-type: none"> • A non-reporting issuer must include certain financial information in its offering document and must prepare annual financial statements and make them available to each holder of its securities that were acquired under the exemption. See Appendix 1 – Disclosure of financial information for non-reporting issuers. • Reporting issuers must comply with existing continuous disclosure obligations under securities law. | <ul style="list-style-type: none"> • Respondents to the Investor Survey considered the following three types of information about a start-up or SME that raises capital through crowdfunding to be particularly important: <ul style="list-style-type: none"> ○ financial information about the issuer, ○ yearly information about how the issuer is doing, and ○ how the issuer will use the money it receives from investors. • Results from the Investor Survey also showed that three-quarters of those respondents interested in crowdfunding would want financial information about an issuer, and a significant majority of the respondents would prefer financial information that had been verified by an independent source (for example, by an independent accounting firm or through tax returns). • However, we are cognizant of the cost to issuers of being required to provide financial statements that are audited or accompanied by a review report. • We have sought specific comment on this issue. |
| 5. Disclosure – advertising and marketing materials | | |
| Use of marketing materials | <ul style="list-style-type: none"> • The only materials (offering materials) that may be made available to potential investors in connection with a crowdfunding offering are: <ul style="list-style-type: none"> ○ the issuer’s offering document, ○ a document that is described in the offering document such as the issuer’s business plan or shareholders’ agreements, and ○ a term sheet or other summary, including a video, of the information that is included in the | <ul style="list-style-type: none"> • We do not consider materials, other than the offering materials, to be necessary for a crowdfunding offering. Crowdfunding offerings will primarily be conducted online via the portal’s website. • All relevant information should be available in one place (i.e., the portal’s website) for ease of investor reference and to facilitate the exchange of |

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| | <p>offering document.</p> <ul style="list-style-type: none"> • The offering materials must be made available to potential investors through the website of the portal through which the distribution will be made. • The offering document cannot be posted on any other website. • The issuer must electronically deliver a copy of the offering materials to the regulator at the time they are posted on the website of the portal. • An issuer, portal and any other person involved with an offering under the exemption may: <ul style="list-style-type: none"> ○ make the offering materials available to potential investors, and ○ advise potential investors, including customers and clients of the issuer, that the issuer is proposing to offer its securities under the exemption and refer the potential investors to the website of the portal through which the offering will be made. This advice may be provided in paper format or through the use of social media. • In addition, a portal may advertise the fact that an offering under the exemption is being made to potential investors through the portal. • Other than as described above, an issuer, portal and any other person involved with an offering under the exemption must not advertise the offering or solicit potential investors. | <p>information and views that is conducive to eliciting the “wisdom of the crowd”.</p> <ul style="list-style-type: none"> • We think it is important that the regulator receive the required disclosure documents in electronic format, as is required for documents filed with the OSC. • We also think it is important that the disclosure documents be accessible to the regulator to facilitate regulatory oversight and to members of the public considering making an investment to help those investors make informed investment decisions. • We have sought specific comment on how disclosure documents delivered by non-reporting issuers can best be made accessible and to whom they should be accessible. • We think that all offering materials should be subject to the same level of liability. • There are no restrictions on an issuer dealing with or making information available to investors who have participated in a crowdfunding offering. • We have sought specific comment on whether the proposed restrictions on general solicitation and advertising are appropriate. |

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| 5. Disclosure – ongoing disclosure | | |
| Ongoing disclosure | <p>Reporting issuers</p> <ul style="list-style-type: none"> • A reporting issuer must provide ongoing continuous disclosure in accordance with securities law requirements. • Reporting issuers must file all disclosure documents on SEDAR. <p>Non-reporting issuers</p> <ul style="list-style-type: none"> • A non-reporting issuer must electronically deliver its annual financial statements to the regulator and make them available to each investor as more fully set out in Appendix 1 – <i>Disclosure of financial information for non-reporting issuers</i>. • The financial statements of a non-reporting issuer must be accompanied by a notice of the issuer that discloses how the gross proceeds of a crowdfunding distribution have been expended. An issuer is no longer required to provide this notice if it has disclosed in one or more prior notices the actual use of the entire gross proceeds from the distribution, or if it is no longer required to deliver and make available annual financial statements. • A non-reporting issuer must make available to the holders of its securities acquired under the exemption within 10 days of the occurrence of each of the following events, a notice of the event: <ul style="list-style-type: none"> ○ a fundamental change in the nature, or a discontinuation, of the issuer’s business, ○ a material change to the issuer’s capital structure, ○ a major reorganization, amalgamation or | <ul style="list-style-type: none"> • Certain ongoing disclosure is necessary for investors to be able to make informed investment decisions or discern how an issuer or investment has performed. • The requirement to provide ongoing disclosure also imposes a level of accountability on an issuer and its executive officers and directors. • We note that it will be a novel approach in Canada to require that a non-reporting issuer provide ongoing disclosure. However, since the exemption will allow issuers to raise money from a large number of retail investors, we think that requiring certain limited ongoing disclosure is appropriate. • Commenters on the Consultation Paper were generally supportive of requiring non-reporting issuers to provide ongoing disclosure although there were differing views as to the form, frequency and content of that disclosure. • We have not proposed that non-reporting issuers be required to provide timely disclosure of material changes on an ongoing basis. However, we propose to require that they disclose specified material events in their ongoing disclosure. |

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| | <p>merger involving the issuer,</p> <ul style="list-style-type: none"> ○ a take-over bid, issuer bid or insider bid involving the issuer, ○ a significant acquisition or disposition of assets, property or joint venture interests, ○ changes to the issuer’s board of directors or executive officers, including the departure of the issuer’s chief executive officer, chief financial officer, chief operating officer or president or persons acting in similar capacities. <ul style="list-style-type: none"> ● A non-reporting issuer remains subject to the foregoing disclosure obligations until the earliest of the following events: <ul style="list-style-type: none"> ○ the issuer becomes a reporting issuer, ○ the issuer ceases to carry on business, and ○ securities of the issuer are beneficially owned, directly or indirectly, by fewer than 51 security holders worldwide that acquired such securities under the exemption. | |
| Books and records | <ul style="list-style-type: none"> ● An issuer that is not a reporting issuer that distributes securities under the exemption must maintain the following books and records: <ul style="list-style-type: none"> ○ the offering document and other offering materials set out under item 5 - <i>Disclosure - advertising and marketing materials - Use of marketing materials</i>, ○ completed risk acknowledgement forms, ○ the ongoing disclosure documents for non-reporting issuers set out under item 5 - <i>Disclosure - ongoing disclosure - Ongoing disclosure</i>, ○ the number of securities issued by the issuer under the exemption, and the date of issuance | <ul style="list-style-type: none"> ● An issuer needs to maintain books and records to generate financial statements and other ongoing disclosure. ● We think that requiring an issuer to maintain books and records will impose a level of accountability on issuers and their executive officers and directors. |

| Issue | Proposed crowdfunding prospectus exemption | Comments |
|-------|---|----------|
| | <ul style="list-style-type: none"> ○ and the price per security, and ○ the names of all security holders of the issuer, together with the number and the type of securities held by each security holder. | |

Appendix 1

Disclosure of financial information for non-reporting issuers

| Status of issuer | Financial information | Frequency and level of assurance |
|---|--|---|
| Point of sale | | |
| Issuer has not incurred any expenditures and its only asset is cash | Disclosure of amount of cash in point of sale disclosure | Third party confirmation of cash in bank account or held in trust |
| Issuer has incurred some expenditures but has not yet achieved financial threshold ¹ | Complete set of annual financial statements ² | Annual: review by independent public accounting firm ³ |
| Issuer has achieved financial threshold ¹ | Complete set of annual financial statements ² | Annual: audit ³ |
| Ongoing | | |
| Issuer has incurred some expenditures but has not yet achieved financial threshold ¹ | Complete set of annual financial statements ² Notice disclosing use of proceeds ⁴ | Annual: review by independent public accounting firm ³ |
| Issuer has achieved financial threshold ¹ | Complete set of annual financial statements ² Notice disclosing use of proceeds ⁴ | Annual: audit ³ |

¹ For purposes of this framework, financial threshold means the issuer has raised more than \$500,000 under the crowdfunding exemption or any other prospectus exemption since its formation, and has expended more than \$150,000 since that time. In determining the proposed threshold on which to base financial reporting requirements, we considered a range of options including industry-specific thresholds. However, we concluded that these other thresholds would be overly complicated and, in many instances, subject to broad interpretation. We have therefore proposed a financial threshold that is objective and applicable to all non-reporting issuers that rely on the exemption. The amount of capital an issuer has raised is intended to serve as a proxy for the size of the issuer and the amount it has expended as a proxy for its level of activity. We have sought specific feedback as to whether these are appropriate parameters on which to base the financial reporting requirements and whether the dollar amount specified for each parameter is appropriate. A portal has the discretion to require an issuer to make further financial disclosure.

² Includes financial statements covering the shorter of the issuer's two most recently completed fiscal years or the period since the inception of its business.

³ An issuer would be required to provide its security holders with annual financial statements within 120 days from the end of its fiscal year.

⁴ The ongoing financial statements of a non-reporting issuer must be accompanied by a notice of the issuer that discloses how the gross proceeds of a crowdfunding distribution have been expended. An issuer is no longer required to provide this notice if it has disclosed in one or more prior notices the actual use of the entire gross proceeds from the distribution, or if it is no longer required to deliver and make available annual financial statements.

ANNEX D-2

KEY PROVISIONS OF THE PROPOSED CROWDFUNDING PORTAL REQUIREMENTS

The following is a summary of the proposed registration framework. We are soliciting comments on the terms and conditions of the proposed framework. The summary is divided into the following sections:

| General topic | Specific discussion areas |
|---|--|
| 1. Registration | <ul style="list-style-type: none"> • Category of registration |
| 2. Membership in a self-regulatory organization (SRO) | <ul style="list-style-type: none"> • SRO Membership requirement |
| 3. General description of portal activities | <ul style="list-style-type: none"> • Required and prohibited portal activities, including: <ul style="list-style-type: none"> • providing specific recommendations or advice to investors, • soliciting purchases or sales of securities offered on their platform, • compensating employees or agents to solicit the sale of securities on their platform, and • holding or handling investor funds/securities. |
| 4. General portal obligations | <ul style="list-style-type: none"> • Required and prohibited portal activities, including: <ul style="list-style-type: none"> • Reporting and record-keeping, • Minimum capital and insurance, • Confirmation of transaction, • Issuer information, • Accounts and electronic delivery, • Completion of offerings, cancellations, reconfirmations, and • Notice of investment commitment. |
| 5. Portal due diligence | <ul style="list-style-type: none"> • Background checks on issuers and their directors, executive officers, control persons and promoters • Due diligence on the issuer’s business |
| 6. Fees and conflicts of interest | <ul style="list-style-type: none"> • Disclosure requirements |

| General topic | Specific discussion areas |
|---|--|
| 7. Advertising limits | <ul style="list-style-type: none"> Permitted and prohibited advertising activities |
| 8. Investor education and screening | <ul style="list-style-type: none"> Portal obligations to educate investors and appropriate risk disclosure |
| 9. Other services | <ul style="list-style-type: none"> Online communication requirements |
| 10. Portal reporting | <ul style="list-style-type: none"> Regulatory filings and ongoing reporting requirements |
| 11. IIROC execution-only (OrderX) platforms | <ul style="list-style-type: none"> No dual registration (OrderX platforms not permitted to use crowdfunding prospectus exemption) |
| 12. EMDs operating portals | <ul style="list-style-type: none"> Consideration of whether EMDs should be permitted to operate portals |
| 13. Secondary trading | <ul style="list-style-type: none"> Prohibition of secondary trading activities through portal |

| Issue | Proposed framework | Comments |
|---|--|---|
| 1. Registration | | |
| <ul style="list-style-type: none"> Under what category should funding portals (portals) be registered? | <ul style="list-style-type: none"> Offerings made in reliance on the proposed new crowdfunding prospectus exemption (crowdfunding exemption) must be conducted through a portal registered as a restricted dealer. The portal may only act as an intermediary in connection with offerings pursuant to the crowdfunding exemption (no other exemptions or secondary transactions). A non-resident portal that carries on business in Ontario (either by facilitating offerings by Ontario issuers and/or by facilitating offerings to Ontario investors) must also be registered as a restricted dealer. Non-resident portals will be required to | <ul style="list-style-type: none"> A key investor protection element of the new crowdfunding exemption is the requirement for registration of the portal. Registration is necessary to address, among other things, potential integrity, proficiency and solvency concerns that may apply to funding portals and the persons operating them, as well as potential concerns relating to conflicts of interest and self-dealing. The registration requirement is also intended to serve as a safeguard against funding portals being used to facilitate fraudulent offerings of securities through the internet. In response to the request for comments on OSC Staff Consultation Paper 45-710 <i>Considerations for</i> |

| Issue | Proposed framework | Comments |
|---|--|--|
| | <p>ensure funds collected from Ontario investors will be held with a Canadian financial institution until disbursed to the issuer.</p> <ul style="list-style-type: none"> • Similar to other registrants, a portal will be required to act honestly, fairly and in good faith. | <p><i>New Capital Raising Prospectus Exemptions</i> (Consultation Paper), most commenters supported some form of portal registration, although staff received disparate views regarding the appropriate level of regulatory oversight.</p> <ul style="list-style-type: none"> • A number of commenters indicated that we should not be too restrictive and that we should permit different business models. |
| 2. Membership in a self-regulatory organization (SRO) | | |
| <ul style="list-style-type: none"> • Is SRO membership required for portals? | <ul style="list-style-type: none"> • A portal is not required to be a member of the Investment Industry Regulatory Organization of Canada (IIROC) or another SRO. | |
| 3. General description of portal activities | | |
| <ul style="list-style-type: none"> • What portal activities are prohibited? | <ul style="list-style-type: none"> • A portal will not be able to: <ul style="list-style-type: none"> ○ provide specific recommendations or advice to investors about specific securities, ○ solicit purchases or sales of securities offered on its platform (other than through posting an offering on its platform), ○ compensate employees or agents to solicit the sale of securities on their platform, or ○ hold or handle investor funds/securities. • A portal will not be able to act as, or be registered as, an EMD, investment dealer, portfolio manager or investment fund manager. • A portal may assist issuers with the creation of offering documents and other documents required by the portal (such as a business plan or | <ul style="list-style-type: none"> • Portals will not be able to hold or deal with client funds or securities. Portals may, to a limited extent, be able to provide directions as to when and to whom client funds may be released. • We have sought specific comment as to whether the current restriction on registrants holding, handling or dealing with client funds or securities is appropriate. • Provisions are included within the framework to ensure portals require reputable third parties to handle funds. Funds would have to be held externally in a trust or escrow arrangement until the offering minimum has been achieved. |

| Issue | Proposed framework | Comments |
|-------|--|---|
| | <p>shareholders' agreement) in respect of an offering prior to posting on its platform.</p> <ul style="list-style-type: none"> • A portal may not comment on the merits of, or expected returns from, an investment to investors (since this would constitute a recommendation or advice). • A portal may apply objective criteria to limit the offerings on its platform, provided the criteria are disclosed, applied consistently and would not be viewed by a reasonable person as a recommendation or endorsement. • A portal must deny access to an issuer if it has reason to believe that the issuer or its offering is fraudulent. • A portal must withdraw any offering if fraud is suspected during the offering period and report immediately any withdrawal to the principal regulator. • The portal will deny access to an issuer if, based upon its review of the issuer's application and information obtained through background checks, it believes that the business of the issuer may not be conducted with integrity and in the best interests of security holders because of, among other reasons, the conduct of, <ul style="list-style-type: none"> (i) the issuer, or (ii) any of the issuer's executive officers, directors, promoters, or control persons. <p>This test is modeled on the prospectus receipt refusal ground in s. 61(2)(e) of the <i>Securities Act</i></p> | <ul style="list-style-type: none"> • As discussed below, we propose that portals be subject to minimum net capital and insurance requirements. We propose to set these requirements similar to the levels prescribed for EMDs. We have sought feedback in the Request for Comment on these issues. • Where a portal has a financial stake in a particular issuer, it may have an incentive to promote that issuer over other issuers on the portal. We acknowledge this is a potential concern. However, we also recognize that many start-ups and small and medium enterprises (SMEs) may have limited resources to pay portal fees. We would permit portal fees to be paid in securities of the issuer, provided this compensation is fully disclosed to investors, and the investment would not result in the portal owning or controlling more than 10% of the issuer. • We have sought specific comment as to whether we should allow portal fees to be paid in securities of the issuer. |

| Issue | Proposed framework | Comments |
|-------|---|----------|
| | <p>(Ontario).</p> <ul style="list-style-type: none"> • A portal may not: <ul style="list-style-type: none"> ○ assist with the completion of an issuer’s subscription documentation, if any, other than providing assistance with respect to form and information requirements, ○ clear or settle any trades in an issuer’s securities, ○ invest in any issuer or underwrite any issuer, (subject to receiving fees in the form of securities), ○ collect know-your-client information other than information necessary to identify investors, comply with anti-money laundering requirements and determine eligibility for prospectus exemptions, ○ participate in any referral arrangements as defined in section 13.7 of NI 31-103, except that a portal may compensate a third party for referring an issuer, ○ lend money, extend credit or provide margin to any investor or recommend that an investor use borrowed money to finance any purchase of a security, or ○ accept or handle funds for the purchase of an issuer’s securities or hold assets of investors (funds will be held externally by a reputable third party, in a trust or an escrow arrangement). | |

| Issue | Proposed framework | Comments |
|--|---|--|
| 4. General portal obligations | | |
| <ul style="list-style-type: none"> What are the portal obligations? | <p><u>Reporting and record-keeping</u></p> <ul style="list-style-type: none"> Portals must comply with general registrant requirements, including account opening, reporting, record-keeping and record-retention requirements, analogous to those imposed on EMDs. <p><u>Minimum capital and insurance</u></p> <ul style="list-style-type: none"> Portals will be subject to a minimum net capital requirement of \$50,000 and a fidelity bond insurance obligation providing for coverage of at least \$50,000. (The fidelity bond requirement is intended to help insure against the loss of investor funds that may occur if, for example, a portal or any of its officers or directors breach the prohibitions on holding, managing, possessing or otherwise handling investor funds or securities.) To the extent a portal, its officers and directors hold, handle or deal with investor funds or securities, additional insurance requirements will be applicable. Similar to other registrants, the portal will be required to act honestly, fairly and in good faith. <p><u>Confirmation of transaction</u></p> <ul style="list-style-type: none"> The proposed rules will require portals to comply with general registrant requirements analogous to those imposed on EMDs. | <ul style="list-style-type: none"> Under this approach, we anticipate that portals will be required to comply with existing requirements applicable to EMDs except for: <ul style="list-style-type: none"> “client-specific” know-your-client and suitability requirements, and certain other requirements applicable to EMDs as set out in the rule. <p>(The term “client-specific suitability” refers to the obligation to determine that an investment is suitable for a particular client in light of the particular client’s investment needs and objectives.)</p> <ul style="list-style-type: none"> We think net capital and insurance requirements are necessary to maintain the solvency of a portal (i.e., to ensure the portal has sufficient resources to meet its obligations). This is a key regulatory tool in minimising harm to investors if a portal ceases operations. Requiring insurance will help insure against the loss of investor funds that might occur if, for example, a funding portal were to violate the prohibition on holding, managing, possessing or otherwise handling investor funds or securities. We have sought specific comment on whether the insurance amount is appropriate. Portals are expected to play a gatekeeper role in attempting to ensure that issuers comply with the new crowdfunding exemption and their ongoing obligations. A portal is also free to impose upon issuers conducting offerings through them such requirements as the portal considers desirable to |

| Issue | Proposed framework | Comments |
|---|---|--|
| | <p><u>Completion of offerings, cancellations, reconfirmations</u></p> <ul style="list-style-type: none"> • Where a material change in the offering occurs, the portal must notify committed investors of the change and require reconfirmation of their commitment within five business days, after which the investment must be cancelled and money returned. • Portals must notify committed investors within five business days of a cancelled offering and must take appropriate steps so that investor money is returned. <p><u>Notice of investment commitment</u></p> <ul style="list-style-type: none"> • Upon receipt of an investment commitment, a portal will be required to deliver to the investor an electronic notification containing certain prescribed information. <p><u>Other</u></p> <ul style="list-style-type: none"> • Changes in control of the portal will require regulatory approval. | <p>protect the interests of investors. A portal may develop standard form documents for that purpose.</p> <ul style="list-style-type: none"> • Commenters on the Consultation Paper generally supported the view that portals should play some form of gatekeeper role. |
| 5. Portal due diligence | | |
| <ul style="list-style-type: none"> • What due diligence should the portal conduct on issuers and their directors and key management? | <ul style="list-style-type: none"> • Background checks on issuers, directors, executive officers, promoters and control persons will be performed by the portal to verify the qualifications, reputation and track record of the parties involved in the key aspects of the offering. The checks will include identifying criminal and regulatory issues. • The following checks will be conducted by the portal either directly or through a third party. | <ul style="list-style-type: none"> • Requiring a document similar to a PIF to be filed with the regulator is intended to (i) act as a deterrent against false statements (since it is an offence to make a false statement in a required filing) and to (ii) ensure that regulatory authorities have recourse against the person making a false statement in a PIF. |

| Issue | Proposed framework | Comments |
|---|---|---|
| | <p><u>On issuers:</u></p> <ul style="list-style-type: none"> ○ The existence of the entity and its business registration (incorporation documents would be delivered to the portal), ○ securities enforcement history checks, ○ bankruptcy check, and ○ court record check, where available. <p><u>On directors, executive officers, control persons and promoters of the issuer:</u></p> <ul style="list-style-type: none"> ○ A document similar to a Personal Information Form (PIF) will be completed by each of these individuals and sent to the portal. ○ The portal will be required to perform the following checks: <ul style="list-style-type: none"> (i) criminal record, (ii) securities enforcement, (iii) bankruptcy, and (iv) court records, where available. <ul style="list-style-type: none"> ● A document similar to the PIF required in connection with a prospectus offering would be required to be delivered by the issuer to the portal and filed with the regulator. | <ul style="list-style-type: none"> ● We have sought specific comment as to whether an international check should be required. ● Commenters on the Consultation Paper generally supported some form of due diligence being conducted by portals, including background and regulatory/criminal checks, to reduce the risk of fraud. ● Some commenters were of the view that the portal should play a role in ensuring issuers' compliance with regulatory requirements, including compliance with disclosure requirements. |
| <ul style="list-style-type: none"> ● What due diligence should the portal conduct on the issuer's business (e.g., steps to assess the viability of an issuer's business plan)? | <ul style="list-style-type: none"> ● A portal must understand the general structure, features and risks of securities presented on their platform. ● The portal will review the information presented by the issuer on the portal's website to form a reasonable belief that the information adequately sets out the: <ul style="list-style-type: none"> ○ general features and structure of the security, ○ issuer-specific risks, ○ parties involved and any inherent conflicts of | |

| Issue | Proposed framework | Comments |
|--|---|---|
| | <p>interest, and</p> <ul style="list-style-type: none"> ○ intended use of funds. <ul style="list-style-type: none"> • The portal will not be liable for the accuracy or completeness of the issuer information. • No portal may include on its website any issuer information or communication that appears to be false, deceptive, misleading or contains a misrepresentation and must terminate any offering and report immediately to the principal regulator if fraud is discovered during the distribution period. • The portal must take reasonable steps to confirm that the minimum offering is achieved before funds are transferred to the issuer. • Business plans must be prepared by the issuer’s management. Portals will not be required to assess the commercial viability of the business plan. | |
| 6. Fees and conflicts of interest | | |
| <ul style="list-style-type: none"> • What are fee disclosure and conflict of interest requirements? | <ul style="list-style-type: none"> • Portals must disclose all compensation and fees paid by issuers to the portal. • Portals must identify and appropriately deal with conflicts of interest that may arise in the activities of the portal. | <ul style="list-style-type: none"> • Several commenters on the Consultation Paper were of the view that portals should disclose how they are paid. |

| Issue | Proposed framework | Comments |
|---|--|----------|
| 7. Advertising limits | | |
| <ul style="list-style-type: none"> Should restrictions on portal advertising be imposed? | <ul style="list-style-type: none"> A portal may advertise its existence, the fact that crowdfunding offerings can be made through the portal and the fact that information about such offerings is posted on its website. | |
| 8. Investor education and screening | | |
| <ul style="list-style-type: none"> Should the portal conduct any type of investor education or other form of investor screening? | <ul style="list-style-type: none"> A portal must take reasonable steps to ensure that investors understand the risks of a crowdfunding investment. Such steps could require investors to: <ul style="list-style-type: none"> correctly answer questions in an interactive questionnaire conducted at the time of the account opening that demonstrates that the investor understands the level of risk generally applicable to investments in start-ups, emerging businesses, and small issuers and the risk of illiquidity, and correctly answer questions in an interactive questionnaire conducted annually thereafter. An investor will be required to positively affirm that the investor understands that the investor is making a high risk investment and is risking the loss of their entire investment. Portals must obtain a written certification from investors that they comply with the annual investment limit. Further, cumulative investments made by the same investor on the portal's platform must be | |

| Issue | Proposed framework | Comments |
|---|---|--|
| | monitored by the portal to ensure the annual investment limit is not exceeded. | |
| 9. Other services | | |
| <ul style="list-style-type: none"> Should the portal offer additional services to issuers and investors, particularly services that may enhance investor protection? | <ul style="list-style-type: none"> Services targeted towards assisting issuers to meet disclosure and record-keeping obligations will be permitted, but would not be a condition of portal registration. If the portal offers a discussion board or other means of communication between investors and/or an issuer and its investors (for example, via chat rooms or a blog), it must ensure that all comments made within such forum can be traced back to their authors. | <ul style="list-style-type: none"> We are not proposing to require portals to provide online communication between issuers and investors. We will leave it to portals to determine what forms of communication are appropriately facilitated. |
| 10. Portal reporting | | |
| <ul style="list-style-type: none"> What forms of reporting is required of portals? | <ul style="list-style-type: none"> A portal will provide quarterly (within 30 days of the end of each quarter of its financial year) to the regulator a report on: <ul style="list-style-type: none"> the amounts raised through offerings on the portal that were successfully completed within the quarter based on information received from issuers, on a per offering basis, including the name of the issuer, details on the type and amount of the offering, the industry of the issuer and the number of investors participating in each such offering (issuers have the obligation to file this information, but the obligation could be delegated to the portal), the names and types of issuers given access to the portal and the types of offerings posted | |

| Issue | Proposed framework | Comments |
|--|--|----------|
| | <p>on its website,</p> <ul style="list-style-type: none"> ○ the names and types of issuers denied access to the portal at the time of initial application and the reasons for denial of access, ○ the names and types of issuers granted access to the portal at the time of initial application that were subsequently removed from the portal and the reasons for removal, ○ the names of issuers who have not complied with ongoing disclosure / reporting obligations to investors, and ○ such other information as the regulator may reasonably request. <ul style="list-style-type: none"> ● The regulator may also request other information or information on a more frequent basis (e.g., PIFs). | |
| 11. IIROC execution-only (OrderX) platforms | | |
| <ul style="list-style-type: none"> ● How should portals fit in with the discount brokerage model? | <ul style="list-style-type: none"> ● There will be no dual registration of portals. ● Registrants, including execution-only discount brokerage firms, will not be permitted to use a portal to offer securities on a suitability-exempt basis under the proposed new crowdfunding exemption. | |

| Issue | Proposed framework | Comments |
|---|---|--|
| 12. EMDs operating portals | | |
| <ul style="list-style-type: none"> • What conditions should be imposed on EMDs to engage in crowdfunding initiatives? | <ul style="list-style-type: none"> • EMDs and other registrant categories will not be permitted to distribute securities in reliance on the proposed new crowdfunding prospectus exemption. | <ul style="list-style-type: none"> • EMDs and investment dealers may establish and operate internet portals to facilitate the distribution of securities in connection with other prospectus exemptions, including the accredited investor exemption and the proposed new “offering memorandum” exemption, provided they comply with the ordinary requirements applicable to EMDs and investment dealers, respectively, including know-your-client and suitability obligations. |
| 13. Secondary trading | | |
| <ul style="list-style-type: none"> • Should portals be permitted to get involved with secondary market trading? If so, on what conditions? | <ul style="list-style-type: none"> • Portals are not permitted to facilitate trading in any securities issued under the exemption, including any secondary market trading. • Securities sold in reliance on the crowdfunding prospectus exemption will be subject to ordinary resale restrictions. Generally, this will result in a hold period of four months after the date the issuer becomes a reporting issuer. During the hold period, the security holder may resell securities in accordance with other prospectus exemptions (e.g., to an accredited investor). • The investor education materials will make it clear to investors that there are significant resale restrictions and the securities cannot be resold through the portal. | |

ANNEX D-3

CROWDFUNDING PROSPECTUS EXEMPTION AND CROWDFUNDING PORTAL REQUIREMENTS

PROPOSED MULTILATERAL INSTRUMENT 45-108 CROWDFUNDING

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Appendix A - Signing Requirements for Certificate of a Crowdfunding Offering Document referred to in Section 15

Form 45-108F1 Crowdfunding offering document

Form 45-108F2 Risk acknowledgement form

PART 1
DEFINITIONS AND INTERPRETATION

Definitions

1. (1) In this Instrument

“Canadian financial institution” has the same meaning as in section 1.1 [Definitions] of NI 45-106;

“connected issuer” has the same meaning as in section 1.1 [Definitions] of National Instrument 33-105 *Underwriting Conflicts*;

“crowdfunding offering document” means the document referred to in section 15 [Disclosure at time of distribution – crowdfunding offering document] and any document incorporated by reference in such document;

“crowdfunding prospectus exemption” means the exemption from the prospectus requirement in section 7 [Crowdfunding prospectus exemption];

“debt security” has the same meaning as in section 1.1 [Definitions] of NI 45-106;

“director” has the same meaning as in section 1.1 [Definitions] of NI 45-106;

“distribution period” means the period referred to in the crowdfunding offering document during which an issuer offers its securities to purchasers in reliance on the crowdfunding prospectus exemption and that ends no later than 90 days after the date the issuer first offers its securities to potential purchasers;

“eligible crowdfunding issuer” means an issuer referred to in section 8 [Availability of crowdfunding prospectus exemption to issuers];

“eligible securities” means any of the following:

- (a) a common share;
- (b) a non-convertible preference share;
- (c) a security convertible into securities referred to paragraphs (a) or (b);
- (d) a non-convertible debt security linked to a fixed or floating interest rate;
- (e) a unit of a limited partnership;
- (f) a flow-through share under the ITA;

“executive officer” has the same meaning as in section 1.1 [Definitions] of NI 45-106;

“interim financial report” means the interim financial report described in subsections 4.3(2) and (2.1) [Interim financial report] of NI 51-102;

“interim period” has the same meaning as in section 1.1 [Definitions] of NI 51-102;

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

“issuer access agreement” means an agreement entered into between an issuer and a registered funding portal containing all of the following:

- (a) the terms and conditions under which the issuer proposes to offer securities through the registered funding portal;
- (b) confirmation that the issuer will comply with the registered funding portal’s posting policies, including confirmation that the information that the issuer provides to the registered funding portal or posts on the registered funding portal’s website will
 - (i) comply with applicable securities legislation,
 - (ii) not contain unduly promotional statements or material that cannot be reasonably supported or any misrepresentation,
 - (iii) be presented in a fair and balanced manner, and
 - (iv) not be misleading;
- (c) confirmation by the issuer that it is responsible for compliance with applicable securities laws, including those pertaining to reliance on prospectus exemptions, the drafting, delivery and filing of offering documents, the filing of reports of exempt distribution and the payment of filing fees;
- (d) a requirement for the issuer to prepare and send to its security holders that invest through the registered funding portal’s website annual financial statements and a notice detailing the actual use of the gross proceeds received by the issuer under the crowdfunding prospectus exemption as required under sections 23 [*Annual financial statements*] and 24 [*Annual disclosure of use of proceeds*];
- (e) such other terms and conditions as may be required by the registered funding portal;

“issuer group” means:

- (a) the issuer;
- (b) an affiliate of the issuer; and
- (c) any other issuer that is engaged in a common enterprise with the issuer or with an affiliate of the issuer;

“issuer’s GAAP” has the same meaning as in NI 52-107;

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

“NI 31-103” means National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;

“NI 45-106” means National Instrument 45-106 *Prospectus and Registration Requirements*;

“NI 51-102” means National Instrument 51-102 *Continuous Disclosure Obligations*;

"NI 52-107" means National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*;

"person" has the same meaning as in section 1.1 [*Definitions*] of NI 45-106;

"posting policies" means policies and procedures established by a registered funding portal governing the information that an issuer may post on the registered funding portal's website;

"Principal Regulator" has the same meaning as in section 1.3 [*Information may be given to the principal regulator*] of NI 31-103;

"private enterprise" has the same meaning as in section 3.1 [*Definitions and application*] of NI 52-107;

"publicly accountable enterprise" has the same meaning as in section 3.1 [*Definitions and application*] of NI 52-107;

"public accounting firm" has the same meaning as in section 1.1 [*Definitions*] of National Instrument 52-108 *Auditor Oversight*;

"real estate issuer" means an issuer that is

- (a) a real estate investment trust,
- (b) a mortgage investment entity, or
- (c) a person that primarily invests in, or develops, real estate, or derives its revenues primarily from investments in real estate;

"registered firm" means a registered dealer, a registered adviser, or a registered investment fund manager;

"registered individual" means an individual who is registered

- (a) in a category that authorizes the individual to act as a dealer or an adviser on behalf of a registered firm,
- (b) as an ultimate designated person, or
- (c) as a chief compliance officer;

"registered funding portal" means a person or company who

- (a) is registered in the category of restricted dealer,
- (b) acts or proposes to act as an intermediary in a distribution of securities made in reliance on the crowdfunding prospectus exemption, and
- (c) is in compliance with the restrictions and obligations imposed on a registered funding portal in Part 3 of this Instrument;

"related issuer" has the same meaning as in section 1.1 [*Definitions*] of National Instrument 33-105 *Underwriting Conflicts*;

"restricted dealer" means a person or company registered in the category of restricted dealer;

“restricted portfolio manager” means a person or company registered in the category of restricted portfolio manager;

“SEC issuer” has the same meaning as in section 1.1 [*Definitions*] of NI 52-107;

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

“U.S. GAAP” has the same meaning as in section 1.1 [*Definitions*] of NI 52-107.

Interpretation of affiliate

2. 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

3. 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

4. An exemption in this Instrument from the prospectus requirement 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.

Definition of trade – Québec

5. 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.

Language

6. In Québec, an issuer must file a crowdfunding offering document and any other document required to be delivered under this Instrument in French or in French and English.

PART 2 CROWDFUNDING PROSPECTUS EXEMPTION

Division 1: Offering requirements

Crowdfunding prospectus exemption

7. The prospectus requirement does not apply to a distribution by an issuer of securities of its own issue to a purchaser if all of the following apply:
- (a) the securities are eligible securities of an eligible crowdfunding issuer;
 - (b) the sum of the following does not exceed \$1,500,000:
 - (i) the aggregate proceeds to be raised under the distribution;
 - (ii) the aggregate proceeds to be raised under a concurrent distribution under the crowdfunding prospectus exemption by any issuer in the issuer group;
 - (iii) the aggregate proceeds received by the issuer group under distributions made in reliance on the crowdfunding prospectus exemption during the 12-month period immediately preceding the beginning of the distribution period;
 - (c) the distribution is conducted through a registered funding portal;
 - (d) the distribution is made during the distribution period;
 - (e) the purchaser purchases the securities as principal;
 - (f) at or before the time that the purchaser enters into an agreement to purchase the security,
 - (i) the issuer makes available to the purchaser the crowdfunding offering document through the registered funding portal in compliance with section 15 [*Disclosure at time of distribution – crowdfunding offering document*], and
 - (ii) the issuer obtains a signed risk acknowledgement from the purchaser in compliance with section 20 [*Risk acknowledgement*].

Availability of crowdfunding prospectus exemption to issuers

8. (1) For the purposes of section 7 [*Crowdfunding prospectus exemption*], an eligible crowdfunding issuer means an issuer if all of the following apply:
- (a) the issuer, and if applicable, the parent and the principal operating subsidiary of the issuer, are incorporated or organized under the laws of Canada or a jurisdiction of Canada;
 - (b) the head office of the issuer is situated in Canada;
 - (c) a majority of the directors of the issuer are resident in Canada.
- (2) Despite subsection (1), a real estate issuer that is not a reporting issuer is not an eligible crowdfunding issuer.
- (3) Despite subsection (1), an investment fund is not an eligible crowdfunding issuer.
- (4) Despite section 7 [*Crowdfunding prospectus exemption*], the crowdfunding prospectus exemption does not apply to a distribution of an issuer in a distribution period if
- (a) the issuer does not have a written business plan setting out its business or proposed business, its goals or milestones and the plan for reaching those goals or milestones; or
 - (b) the proceeds of the distribution will be used primarily by the issuer to invest in, merge with or acquire another unspecified business.
- (5) Despite section 7 [*Crowdfunding prospectus exemption*], the crowdfunding prospectus exemption does not apply to a distribution of an issuer in a distribution period if the issuer has previously distributed securities in reliance on the crowdfunding prospectus exemption and the issuer is not in compliance with sections 23, 24, 25, 26 and 27 with respect to that distribution.

Investment limits

9. Despite section 7 [*Crowdfunding prospectus exemption*], a distribution of securities to a purchaser may not be made in reliance of the crowdfunding prospectus exemption if
- (a) the acquisition cost to the purchaser of securities distributed under the crowdfunding prospectus exemption exceeds \$2,500, or
 - (b) the sum of the following exceeds \$10,000:
 - (i) the acquisition cost referred to in paragraph (a);
 - (ii) the acquisition cost of all other securities previously distributed to the purchaser in the same calendar year in reliance on the crowdfunding prospectus exemption.

Restriction on lending

10. An issuer, or a director or executive officer of the issuer, must not lend or finance, or arrange lending or financing, for a purchaser to purchase securities of the issuer under the crowdfunding prospectus exemption.

Prohibition on distributions through multiple registered funding portals

11. For the purposes of paragraph 7(c) [*Crowdfunding prospectus exemption*], during the distribution period, an issuer must not use more than one registered funding portal to conduct a distribution of securities under the crowdfunding prospectus exemption.

Terms and conditions of securities to be distributed

12. Despite section 7 [*Crowdfunding prospectus exemption*], all securities distributed under the crowdfunding prospectus exemption during a distribution period must have the same price, terms and conditions.

Full subscription of distribution and financial resources available

13. (1) Despite section 7 [*Crowdfunding prospectus exemption*], a distribution in reliance on the crowdfunding prospectus exemption must not be completed by the issuer unless
- (a) the minimum amount of funds to be raised under the crowdfunding prospectus exemption, as specified in the crowdfunding offering document, has been subscribed for, and
 - (b) at the time of completion of the distribution, the issuer has
 - (i) financial resources sufficient to achieve the next milestone set out in the issuer's written business plan, or
 - (ii) if the issuer does not have any milestones set out in the issuer's written business plan, financial resources sufficient to carry out the activities set out in the written business plan.
- (2) For the purposes of subsection (1), the issuer's financial resources include
- (a) the net proceeds of the distribution under the crowdfunding prospectus exemption;
 - (b) the net proceeds of any distribution under a prospectus exemption, other than the crowdfunding prospectus exemption; and
 - (c) any other financial resources of the issuer.
- (3) Prior to proceeds being transferred to the issuer, the issuer must confirm to the registered funding portal that the conditions in subsection (1) have been satisfied.

Concurrent distributions under other prospectus exemptions

14. If an issuer distributes a security under a prospectus exemption other than the crowdfunding prospectus exemption during the period beginning on the first day of the distribution period and ending one month after the end of the distribution period, the security must have the same price, terms and conditions as the security distributed under the crowdfunding prospectus exemption.

Disclosure at time of distribution – crowdfunding offering document

15. (1) For the purposes of subparagraph 7(f)(i) [*Crowdfunding prospectus exemption*], a crowdfunding offering document must contain
- (a) the disclosure required by Form 45-108F1, and

- (b) a certificate signed by the issuer in accordance with the applicable provision of Appendix A, stating: “This offering document does not contain a misrepresentation. Purchasers of securities have rights of action and withdrawal in the case of a misrepresentation.”
- (2) A certificate under paragraph 1(b) must be true as at the date the certificate is signed and as of the date the crowdfunding offering document is made available to a potential purchaser.
 - (3) Despite section 7 [*Crowdfunding prospectus exemption*], if a certificate under paragraph (1)(b) ceases to be true after it is made available to a potential purchaser, the issuer must not accept an offer to purchase the security from the purchaser unless
 - (a) an amended and restated crowdfunding offering document is posted on the website of the registered funding portal and is made available to the purchaser,
 - (b) the amended and restated crowdfunding offering document contains a newly dated certificate signed by the issuer in accordance with the provisions of Appendix A, and
 - (c) the purchaser reconfirms its offer, or does not withdraw its offer, to purchase the security prior to the end of the distribution period.
 - (4) A crowdfunding offering document cannot be posted on any website other than the website of the registered funding portal through which the distribution is being conducted.

Disclosure at time of distribution – marketing materials

- 16. (1) The only materials that may be made available to potential purchasers by an issuer during a distribution period in connection with a distribution under the crowdfunding prospectus exemption are
 - (a) the crowdfunding offering document,
 - (b) a document that is described in the crowdfunding offering document, and
 - (c) a term sheet or other summary, including a video, of the information that is included in the crowdfunding offering document.
- (2) The documents referred to in subsection (1) must be made available to potential purchasers through the website of the registered funding portal through which the distribution will be made.

Delivery of distribution materials

- 17. The issuer must deliver a copy of the documents referred to in subsection 16(1) [*Disclosure at the time of distribution – marketing materials*] to the securities regulatory authority at the time that they are posted on the website of the registered funding portal.

Advertising and general solicitation

- 18. (1) An issuer, the registered funding portal through which a distribution is being made and any other person involved with a distribution under the crowdfunding prospectus exemption must not advertise the distribution or solicit potential purchasers.

- (2) Despite subsection (1), a person referred to in subsection (1) may
- (a) make the materials referred to in section 16 [*Disclosure at time of distribution – marketing materials*] available to potential purchasers, and
 - (b) advise potential purchasers, including customers and clients of the issuer, that the issuer is proposing to distribute securities under the crowdfunding prospectus exemption and refer the potential purchasers to the website of the registered funding portal through which the distribution will be made.
- (3) Despite subsection (1), a registered funding portal may advertise the fact that a distribution in reliance on the crowdfunding prospectus exemption is being made to potential purchasers through the registered funding portal and may carry on the activities contemplated by this Instrument.

Commissions or fees

19. An issuer may not, directly or indirectly, pay a commission, finder's fee, referral fee or similar payment to any person in connection with a distribution in reliance on the crowdfunding prospectus exemption, other than to a registered funding portal.

Risk acknowledgement

20. (1) A risk acknowledgement under paragraph 7(f)(ii) [*Crowdfunding prospectus exemption*] must be in Form 45-108F2.
- (2) An issuer must retain the signed risk acknowledgment for 8 years after the distribution.

Division 2: Rights of security holders

Right of withdrawal

21. If the securities legislation of the jurisdiction in which the purchaser resides does not provide a comparable right, an issuer of securities under the crowdfunding prospectus exemption that makes a crowdfunding offering document available to a purchaser must provide the purchaser with a contractual right to withdraw any offer or agreement to purchase the security by delivering a notice to the issuer within at least 48 hours prior to the date of completion of the distribution disclosed in the crowdfunding offering document.

Liability for misrepresentation

22. (1) If the securities legislation of the jurisdiction in which the purchaser resides does not provide a comparable right, an issuer of securities under the crowdfunding prospectus exemption that makes a crowdfunding offering document or any other document or video available to potential purchasers must provide a contractual right of action against the issuer for rescission or damages that
- (a) is available to the purchaser if the crowdfunding offering document, other document or video made available to the purchaser 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 agrees 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 agrees 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) does 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.
- (2)** In addition to subsection (1), in Québec
- (a) the crowdfunding offering document and any other document or videos that are made available to potential purchasers are documents authorized by the Autorité des marchés financiers for use in lieu of a prospectus;
 - (b) a crowdfunding offering is considered to be a securities distribution to which a special disclosure scheme is established by regulation under section 64 of the *Securities Act* (Québec).

Division 3: Ongoing disclosure requirements for issuers that have relied on the crowdfunding prospectus exemption

Annual financial statements

- 23. (1)** A reporting issuer that distributes securities under the crowdfunding prospectus exemption must comply with its disclosure obligations under securities legislation, including the requirement to file annual financial statements as and when required under sections 4.1 and 4.2 of NI 51-102.
- (2)** An issuer that is not a reporting issuer that distributes securities under the crowdfunding prospectus exemption must deliver to the securities regulatory authority and make available to each purchaser, within 120 days after the end of its most recently completed financial year
- (a) annual financial statements reviewed by an independent public accounting firm, if the issuer has incurred any expenditures and has
 - (i) raised an aggregate of \$500,000 or less under the crowdfunding prospectus exemption or any other prospectus exemption since its formation, or
 - (ii) expended \$150,000 or less since its formation,
 - (b) annual financial statements audited by an independent public accounting firm, if the issuer has
 - (i) raised an aggregate of more than \$500,000 under the crowdfunding prospectus exemption or any other prospectus exemption since its formation, and

(ii) expended more than \$150,000 since its formation.

- (3) The financial statements referred to in subsection (2) must be prepared in accordance with paragraph (a) of subsection 3.2(1) [*Acceptable accounting principles – general requirements*] of NI 52-107 and include the disclosure required by paragraph (b)(i) of subsection 3.2(1) [*Acceptable accounting principles – general requirements*] of NI 52-107.
- (4) Despite subsection (3), the financial statements of an SEC issuer may be prepared in accordance with U.S. GAAP.
- (5) Despite subsection (3), the financial statements of an issuer that is not a publicly accountable enterprise may be prepared in accordance with Canadian GAAP for private enterprises.
- (6) The financial statements referred to in paragraph (2)(a) must be reviewed in accordance with the relevant standards set out in the Handbook for a review of financial statements by a public accounting firm.
- (7) The financial statements referred to in paragraph (2)(b) must be audited in compliance with section 3.3 [*Acceptable auditing standards – general requirements*] of NI 52-107 by an auditor that complies with section 3.4 [*Acceptable auditors*] of NI 52-107.
- (8) Despite paragraph 2(a) and subsections (6) and (7), the financial statements of an SEC issuer may be audited in accordance with section 3.8 [*Acceptable auditing standards for SEC issuers*] of NI 52-107.

Annual disclosure of use of proceeds

24. (1) The financial statements of an issuer referred to in section 23 [*Annual financial statements*] must be accompanied by a notice of the issuer disclosing in reasonable detail the actual use of the gross proceeds received by the issuer under the distribution made under the crowdfunding prospectus exemption.
- (2) An issuer is not required to provide a notice referred to in subsection (1) if
 - (a) it has disclosed in one or more prior notices the actual use of the entire gross proceeds from the distribution under the crowdfunding prospectus exemption, or
 - (b) it is no longer required to deliver and make available annual financial statements.

Notice of specified events

25. (1) An issuer that is not a reporting issuer that distributes securities in reliance on the crowdfunding prospectus exemption must make available to each holder of a security acquired under the crowdfunding prospectus exemption within 10 days of their occurrence, a notice of each of the following events:
 - (a) a fundamental change in the nature, or a discontinuation, of the issuer's business;
 - (b) a material change to the issuer's capital structure;
 - (c) a major reorganization, amalgamation or merger involving the issuer;
 - (d) a take-over bid, issuer bid or insider bid involving the issuer;
 - (e) a significant acquisition or disposition of assets, property or joint venture interests;

- (f) changes to the issuer's board of directors or executive officers, including the departure of the issuer's chief executive officer, chief financial officer, chief operating officer or president or persons acting in similar capacities.

Period of time for providing ongoing disclosure

- 26.** An issuer that is not a reporting issuer must continue to provide the disclosure required by sections 23 [*Annual financial statements*] and 25 [*Notice of specified events*] until the earliest of the following events:
- (a) the issuer becomes a reporting issuer;
 - (b) the issuer ceases to carry on business;
 - (c) securities of the issuer are beneficially owned, directly or indirectly, by fewer than 51 security holders worldwide that acquired such securities under the crowdfunding prospectus exemption.

Books and records

- 27.** An issuer that is not a reporting issuer that distributes securities under the crowdfunding prospectus exemption must maintain the following books and records:
- (a) the crowdfunding offering document and the other documents and things described in section 16;
 - (b) the risk acknowledgement form described in section 20;
 - (c) the ongoing disclosure documents described in Division 3;
 - (d) the number of securities issued by the issuer under the crowdfunding prospectus exemption, and the date of issuance and the price per security; and
 - (e) the names of all security holders of the issuer together with the number and the type of securities held by each security holder.

Market participant

- 28.** In Ontario, a non-reporting issuer that distributes securities in reliance on the crowdfunding prospectus exemption is designated a market participant under the *Securities Act* (Ontario).

PART 3 REGISTRATION REQUIREMENTS, EXEMPTIONS AND ONGOING OBLIGATIONS FOR REGISTERED FUNDING PORTALS

Division 1: Obligations of a registered funding portal and its registered individuals

General

- 29. (1)** A registered funding portal and a registered individual of a registered funding portal must comply with the terms, conditions, restrictions or requirements applicable to an exempt market dealer under NI 31-103 except for the following requirements:
- (a) section 12.3 [*Insurance - dealer*];

- (b) paragraph 13.2(2)(c) [*Know your client*];
 - (c) section 13.3 [*Suitability*];
 - (d) paragraphs 14.2(2)(i), (j), (k) and (m) [*Relationship disclosure information*];
 - (e) division 3 of Part 14 [*Client assets*];
 - (f) division 4 of Part 14 [*Client accounts*], except for:
 - (i) section 14.10 [*Allocating investment opportunities*];
 - (ii) section 14.11 [*Selling or assigning client accounts*];
 - (g) division 5 of Part 14 [*Reporting to clients*], except for section 14.12 [*Content and delivery of trade confirmation*].
- (2) Subsection (1) only applies to a registered funding portal and a registered individual of a registered funding portal if the registered funding portal and the registered individual comply with the terms, conditions, restrictions and requirements in this Instrument.
- (3) A registered funding portal and every registered individual of a registered funding portal must deal fairly, honestly and in good faith with purchasers.

Proficiency

30. (1) A registered individual of a registered funding portal must not perform an activity in connection with a distribution of securities made through the registered funding portal unless the individual has the education, training and experience that a reasonable person would consider necessary to perform the activity competently, including understanding the structure, features and risks of each security distributed.
- (2) For the purposes of subsection (1), the obligation to understand the structure, features and risks of each security does not include any obligation to assess
- (a) the merits or expected returns of an investment to purchasers, or
 - (b) the commercial viability of a proposed business or offering.

Division 2: Permitted and restricted dealing activities

Permitted dealing activities

31. A registered funding portal and every registered individual of the registered funding portal may only act as an intermediary in connection with a distribution of securities made in reliance on the crowdfunding prospectus exemption.

Restricted dealing activities

32. A registered funding portal and its registered individuals must not act as an intermediary in connection with a distribution of or trade in securities of an issuer that is a related issuer of the registered funding portal.

Prohibition on providing recommendations or advice

- 33. (1)** A registered funding portal and its registered individuals must not provide a recommendation or advice to a potential purchaser to purchase securities under the crowdfunding prospectus exemption or in connection with any other trade in a security.
- (2)** Despite subsection (1), and provided that the following would not be viewed by a reasonable person as an assessment of the quality or commercial viability of a crowdfunding offering, a portal may
- (a) present or display information about an issuer or a crowdfunding offering on its website, if the information is presented or displayed in a fair, balanced and reasonable manner,
 - (b) use objective criteria to limit the crowdfunding offerings on its website, provided the objective criteria are disclosed on the website and applied consistently to all offerings on the website,
 - (c) prohibit crowdfunding offerings on its website based on a good faith determination that an issuer is not complying with securities law, including the provisions of this instrument,
 - (d) assist an issuer in the preparation of an offering document, business plan or other document contemplated by this instrument, provided that the service is limited to assisting the issuer comply with its disclosure obligations and to ensure the information is presented in a fair, balanced and reasonable manner,
 - (e) provide general information and educational materials to potential purchasers about crowdfunding offerings, provided that the information and materials are presented in a fair, balanced and reasonable manner,
 - (f) provide on its website search functions or other tools for potential purchasers to search, sort or categorize crowdfunding offerings available on the funding portal's website according to objective criteria, and
 - (g) provide communication channels or discussion boards to enable potential purchasers pursuant to a crowdfunding offering, to communicate with one another and with representatives of the issuer about a crowdfunding offering displayed on the funding portal's website provided that communication by a person can be traced back to its author.

Division 3: Portal obligations – issuer access to the portal

Issuer access agreement

- 34.** Prior to allowing an issuer to access the registered funding portal's website, the registered funding portal must enter into an issuer access agreement with that issuer.

Personal information forms and background checks

- 35. (1)** Prior to allowing an issuer to access the registered funding portal's website, the registered funding portal must require directors, executive officers and promoters of the issuer
- (a) to complete a personal information form that contains substantially the same information as set out in Appendix A to National Instrument 41-101 *General Prospectus Requirements*, and
 - (b) to consent to criminal record and other background checks and the collection of personal information in accordance with applicable privacy legislation.

- (2) For the purposes of paragraph (1)(b), the form containing the consent referred to in that paragraph must acknowledge that
- (a) the registered funding portal will file, as agent of the issuer, a copy of the completed personal information form and the results of any criminal record or other background checks with the Principal Regulator, and
 - (b) it is an offence to make a statement in any document required to be filed with the Principal Regulator that, in a material respect, is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the statement not misleading.

Criminal record and background checks

36. The registered funding portal must arrange for criminal record and background checks to be conducted on
- (a) each individual who is, at the time of application for access, a director, executive officer or promoter of an issuer, and
 - (b) each individual who subsequently becomes a director, executive officer or promoter of an issuer, in which case section 35 [*Personal information forms and background checks*] and paragraph (a) apply to in respect of the individual with necessary modifications during the distribution period.

Issuers' access refusal – general

37. Prior to allowing an issuer to access the registered funding portal's website, a registered funding portal must
- (a) review the information referred to in sections 35 [*Personal information forms and background checks*] and 36 [*Criminal record and background checks*];
 - (b) make a good faith determination that it does not appear that
 - (i) the issuer or the offering is a fraud,
 - (ii) the issuer's offering documents or other materials contain a statement or information that is false, deceptive, misleading or that constitutes a misrepresentation,
 - (iii) the business of the issuer may not be conducted with integrity and in the best interests of security holders because of the past conduct of
 - (A) the issuer, or
 - (B) any of the issuer's executive officers, directors or promoters,
 - (iv) the issuer is not complying with this Instrument, and
 - (c) if it appears to the portal that, based upon its review of the issuer's application for access, completed personal information forms and the results of the criminal records and background checks, any of the following is true, ensure that such information is disclosed in the issuer's crowdfunding offering document:

- (i) a director or executive officer of the issuer is or has been, within 10 years before the date of the personal information form, a director or executive officer of an issuer that is or has been
 - (A) subject to a cease trade order or similar order, or
 - (B) bankrupt or subject to a similar insolvency proceeding;
- (ii) a director or executive officer of the issuer is or has been, within 10 years before the date of such personal information form, bankrupt or subject to a similar insolvency proceeding;
- (iii) a director or executive officer of the issuer is or has been subject to
 - (A) penalties or sanctions imposed by a court relating to contraventions of securities legislation or by a securities regulatory authority or who entered into a settlement agreement with a securities regulatory authority, or
 - (B) any other penalties or sanctions imposed by a court or regulatory body that would likely be considered important to a reasonable purchaser in making an investment decision.

Issuers' access refusal – misleading disclosure

- 38.** A registered funding portal must not include on its website any offering document or information that appears to be false, deceptive, misleading or contains a misrepresentation and must terminate any offering and report immediately to the Principal Regulator if fraud is discovered during the distribution period.

Restriction on cross ownership

- 39.** A registered funding portal must not allow an issuer access to the funding portal's website if the registered funding portal, or any officer, director or significant shareholder of the registered funding portal or of any affiliate of the registered funding portal
- (a) has beneficial ownership of, or control or direction over, more than 10% of the issued and outstanding securities of the issuer, or securities convertible into securities of the issuer, or
 - (b) except as permitted under clause (a), otherwise has an economic interest in the issuer.

Division 4: General portal obligations and prohibited activities

Required website disclosure

- 40.** A registered funding portal must
- (a) take reasonable steps to ensure that potential purchaser accessing the registered funding portal's website understands the high risk nature of any investment made under the crowdfunding prospectus exemption,
 - (b) include on its website prominent disclosure that discloses

- (i) no securities regulatory authority or regulator has approved or expressed an opinion about the securities offered on the registered funding portal's website,
- (ii) "A crowdfunding investment is highly risky. You may lose all your investment and you may not be able to sell any securities you purchase.",
- (iii) all compensation, including fees, costs and other expenses that the registered funding portal may charge to, or impose on, an issuer or purchaser.

Monitoring purchaser communications

- 41.** If a registered funding portal establishes on its website a communication channel by which potential purchasers may communicate with one another and with representatives of the issuer about offerings of securities displayed on the website, the registered funding portal must monitor postings to confirm that the issuer is not making any statement or providing information that is inconsistent with the crowdfunding offering document or is not in compliance with this Instrument and remove any material that it deems inappropriate, or that raises investor protection concerns.

Prohibition on holding, handling or having access to purchaser funds or assets

- 42.** A registered funding portal and every registered individual of the registered funding portal must not hold, handle or have access to purchaser funds or assets.

Custodial arrangements

- 43. (1)** The portal must arrange for a Canadian financial institution
- (a) to hold in trust all funds or consideration received from a potential purchaser in connection with a distribution of a security under the crowdfunding prospectus exemption until midnight on the second business day after the purchaser agrees to purchase the security, and
 - (b) to return all funds or consideration to the purchaser promptly if the purchaser exercises the right to cancel the agreement to purchase the security described under section 21 [*Right of withdrawal*].
- (2)** The registered funding portal must confirm that the conditions in section 13 [*Full subscription of distribution and financial resources available*] have been satisfied.

Insurance

- 44.** The registered funding portal must maintain fidelity bonding or insurance of
- (a) \$50,000 per employee, agent and dealing representative or \$200,000, whichever is less, and
 - (b) such other amount as may be determined by the regulator.

Restriction on lending

- 45.** A registered funding portal, or a director or executive officer of the registered funding portal, must not lend or finance, or arrange lending or financing, for a purchaser to purchase securities of an issuer under the crowdfunding prospectus exemption.

Restrictions on referral agreements

46. A registered funding portal must not participate in a “referral arrangement” as such term is defined in section 13.7 [*Definitions – Referral arrangements*] of NI 31-103, except that a registered funding portal may compensate a third party for referring an issuer to the registered funding portal.

PART 4 REPORTING REQUIREMENTS

Report of exempt distribution

47. (1) An issuer that distributes securities under section 7 [*Crowdfunding prospectus exemption*] must file a report within 10 days of completion of the distribution.
- (2) The required form of report under subsection (1) is
- (a) in Saskatchewan, Ontario and New Brunswick, Form 45-106F11, and
 - (b) in Manitoba, Nova Scotia and Québec, Form 45-106F1.

Registered funding portal reporting requirement

48. A registered funding portal must provide within 30 days of the end of each quarter of its financial year to the Principal Regulator a report on
- (a) the amounts raised through offerings on the portal that were successfully completed within the quarter based on information received from issuers, on a per offering basis, including the name of the issuer, details on the type and amount of the offering, the industry of the issuer and the number of purchasers participating in each such offering,
 - (b) the names and types of issuers given access to the portal and the types of offerings posted on the portal,
 - (c) the names and types of issuers denied access to the portal at the time of initial application and the reasons for denial of access,
 - (d) the names and types of issuers granted access to the portal at the time of initial application that were subsequently removed from the portal and the reasons for removal,
 - (e) the names of issuers who have not complied with ongoing disclosure obligations to purchasers, and
 - (f) such other information as the Principal Regulator may reasonably request.

**PART 5
EXEMPTION**

Exemption

49. (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 3 [*Registration requirements, exemptions and ongoing registrant obligations for registered funding portals*] and Part 4 [*Reporting requirements*], in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.
- (3) Except in Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction.

**PART 6
COMING INTO FORCE**

Effective date

50. This Instrument comes into force on •.

Appendix A

Signing Requirements for Certificate of a Crowdfunding Offering Document referred to in Section 15

1. If the issuer is a company, a certificate under paragraph 15(1)(b) of the Instrument complies with this section if it is 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.
2. If the issuer is a trust, a certificate under paragraph 15(1)(b) of the Instrument complies with this section if it is 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.
3. A certificate under paragraph 15(1)(b) of the Instrument complies with this section
 - (a) if a trustee or manager signing the certificate is an individual, the individual signs the certificate,
 - (b) if a trustee or manager signing the certificate is a company, the certificate is 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) if a trustee or manager signing the certificate is a limited partnership, the certificate is signed by each general partner of the limited partnership as described in section 5 in relation to an issuer that is a limited partnership, or
 - (d) in any other case, the certificate is signed by any person or company with authority to act on behalf of the trustee or the manager.
4. Despite sections 2 and 3, if the trustees of an issuer, 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.

5. If the issuer is a limited partnership, a certificate under paragraph 15(1)(b) of the Instrument complies with this section if it is 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.

6. A certificate under paragraph 15(1)(b) of the Instrument complies with this section
 - (a) if a general partner of the issuer is an individual, the individual signs the certificate,
 - (b) if a general partner of the issuer is a company, the certificate is 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) if a general partner of the issuer is a limited partnership, the certificate is signed by each general partner of the limited partnership and, for greater certainty, this section applies to each general partner required to sign,
 - (d) if a general partner of the issuer is a trust, the certificate is signed by the trustees of the general partner as described in section 7 in relation to an issuer that is a trust, or
 - (e) in any other case where there is a general partner of the issuer, the certificate is signed by any person or company with authority to act on behalf of the general partner.

7. If an issuer is not a company, trust or limited partnership, a certificate under paragraph 15(1)(b) of the Instrument complies with this section if it is 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 section 1, 2, 3, 4, 5 or 6.

ANNEX D-4

CROWDFUNDING PROSPECTUS EXEMPTION AND CROWDFUNDING PORTAL REQUIREMENTS

PROPOSED FORM 45-108F1 CROWDFUNDING OFFERING DOCUMENT

Instructions

This Form contains the disclosure items that an entity distributing securities under the crowdfunding prospectus exemption (the **issuer** or **you**) must include in a crowdfunding offering document. If any disclosure item is not applicable, include the relevant heading and state “Not applicable” under it.

Use plain language and focus on relevant information that would assist investors in making an investment decision. Use tables, charts and other graphic methods of presenting information if this will make information easier to understand. A longer document is not necessarily a better document.

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CERTIFICATE

ITEM 1 – REQUIRED STATEMENTS

1.1 – Warning

Include the following text at the top of this crowdfunding offering document.

WARNING TO INVESTORS

This document is intended to help you decide whether or not to make a crowdfunding investment in this issuer. **Read this document carefully before making any investment decision.**

You should understand the following before you make an investment:

- **Many start-ups and small businesses fail.** Investing in these entities through crowdfunding involves a high degree of risk, and you should not invest in this offering unless you can afford to lose your entire investment.
- **You may not be able to resell your securities.** Securities of start-ups and small businesses are difficult to sell. The securities are subject to resale restrictions under securities legislation.
- **You may receive limited ongoing information about the issuer’s performance.** Unless the issuer is a reporting issuer, you will receive limited ongoing information about how the issuer’s business is performing.
- **No securities regulatory authority has reviewed this offering.** No securities regulatory authority has reviewed this crowdfunding offering document for its truth or accuracy. No securities regulatory authority has reviewed the business or management of the issuer, the securities being offered or any other aspect of this offering.

ITEM 2 – FINANCING FACTS

2.1 – Offering summary

Provide the following information in the format set out below:

Offering Details

| | |
|--|--|
| Issuer information | |
| Full legal name of issuer | |
| Legal status (form of entity and jurisdiction of organization) | |
| Date of organization | |
| Reporting issuer (yes/no) | |
| Offering information | |
| Type of securities being offered | |
| Additional rewards or benefits that are not securities | |

| | |
|---|--|
| Offering start date | |
| Offering closing date | |
| Name of any person promoting or marketing this offering | |
| Registered funding portal | |
| Name of registered funding portal | |
| Full website address of registered funding portal | |

Amount of offering

| | |
|---|----------|
| Number or principal amount of securities being offered ⁽¹⁾ | \$ _____ |
| Offering price per security | \$ _____ |
| Total amount of offering | \$ _____ |

Estimated expenses of offering

| | |
|---|----------|
| Fees to be paid to registered funding portal ⁽²⁾ | \$ _____ |
| Other expenses of offering, if any ⁽³⁾ | \$ _____ |
| Total estimated expenses of offering | \$ _____ |
| Estimated net proceeds of offering | \$ _____ |

- (1) This information relates to the minimum number or principal amount of securities being offered. Disclose whether there is a maximum number or principal amount of securities being offered.
- (2) Disclose the estimated number and value of the issuer’s securities to be issued, if any, in consideration for all or a portion of the portal’s fees.
- (3) State the nature of each expense, the estimated amount of the expense and to whom it is being paid.

2.2 – Description of securities offered and relevant rights

Basic information about securities

Provide basic information about the rights and characteristics of the securities being offered, including:

- (a) dividend rights,
- (b) voting rights,
- (c) interest rates (if applicable), and
- (d) conversion rights (if applicable).

Other rights or obligations

State whether investors will have protections such as tag-along or pre-emptive rights. If no such rights will be provided or are minimal in nature, explain:

- (a) the risks associated with being a minority security holder, and
- (b) that the absence of such rights affects the value of the securities.

Dilution

Include the following statement:

The rights of purchasers of the securities under this offering may be diluted or negatively affected as a result of a number of factors, including the rights and characteristics of other securities already issued by the issuer, future issuances of securities by the issuer, and potential changes to the capital structure and/or control of the issuer.

2.3 – Ability to resell securities

Disclose:

- (a) whether there is any market for the securities and the impact on an investor's ability to resell the securities, and
- (b) the applicable resale restrictions under securities legislation.

2.4 – Rights of action for misrepresentation and right of withdrawal

State that an investor has the following contractual rights:

- (a) a right of action for damages or rescission if this crowdfunding offering document, or any document or video made available to a purchaser in addition to this crowdfunding offering document, contains a misrepresentation, and
- (b) a right to withdraw from a purchase of securities offered by this crowdfunding offering document.

Explain how an investor can exercise each of the above rights, including who an investor needs to contact, how an investor can contact such person and the deadline for an investor to do so. You may choose to include a link to the relevant portion of the registered funding portal's website.

2.5 – Concurrent offerings

Provide the following information about each concurrent offering by the issuer during the period beginning on the first day of the distribution period of this offering and ending one month after the end of the distribution period of this offering:

| | |
|--|--|
| Type of securities being offered | |
| Proposed size of concurrent offering | |
| Proposed closing date of concurrent offering | |
| Price of securities offered in concurrent offering | |

2.6 – Use of proceeds

Minimum subscription

State the minimum funds to be raised in this offering.

Use of proceeds

State in a table how you intend to spend the net proceeds to be raised from this offering, including the principal purposes to which proceeds will be allocated, for both of the following circumstances:

- (a) if you raise the minimum funds to be raised in this offering, and
- (b) if you raise more than the minimum funds.

Proceeds for insiders and related parties

Disclose if any of the following persons will receive any proceeds from this offering, directly or indirectly and, if so, the amount each person will receive:

- (a) any of your executive officers, directors or founders,
- (b) a person promoting or marketing this offering,
- (c) a person who owns 20% or more of your voting securities, or
- (d) any other person that is a related party to you.

2.7 – Ability to achieve next milestone or business plan

State your current financial resources (not including the proceeds from this offering). Explain how the net proceeds of this offering, the net proceeds of any concurrent offering, and your current financial resources will enable you to achieve the next milestone in your business plan or, if there are no milestones in your business plan, to carry out the activities that are set out in the plan as disclosed in Item 3 – Issuer Facts.

2.8 – Other crowdfunding offerings

Provide the following information for all previous crowdfunding offerings (both completed offerings and offerings that were commenced but were not completed) made by you, your affiliate or any other entity that is engaged in common enterprise with you or your affiliate:

For crowdfunding offerings that were commenced but not completed:

- (a) the date that each offering was discontinued,

For completed crowdfunding offerings:

- (b) the date that each offering commenced and the date each offering was completed,
- (c) the registered funding portal through which the offering was made,
- (d) the offering amount stated in the relevant crowdfunding offering document and the actual amount raised, and
- (e) the intended use of proceeds stated in the relevant crowdfunding offering document and the actual use of proceeds.

2.9 – Persons promoting and marketing this offering

State the name of each person promoting and marketing this offering. Include a link to any other crowdfunding offerings that the person has been involved with in a similar capacity within the past two years.

ITEM 3 – ISSUER FACTS

3.1 – Business of the issuer

Briefly describe:

- (a) your business or proposed business,
- (b) your business plan, including any goals or milestones in your business plan,
- (c) how your business has evolved over the last two years (or, if you were founded less than two years ago, since your formation), including your activities over that period of time, advancements in achieving your business plan and the current status of your business relative to your business plan, and
- (d) if applicable, the next milestone in your business plan, the anticipated length of time to achieve the milestone and the total cost and a breakdown of the key expenditures to achieve the milestone.

3.2 – Principal risks facing the business

State no more than the six most important risks facing your business that could result in an investor losing the value of the investor's investment. The risks should be disclosed in order of most to least significant. These risks should exclude the general risks identified under "Warning to Investors" on the first page of this crowdfunding offering document.

In addition to discussing the principal risks in this crowdfunding offering document, reporting issuers may refer to the risk disclosure in their continuous disclosure documents (for example, their annual information form or MD&A).

3.3 – Financial information

Reporting issuer

If you are a reporting issuer, attach as an appendix to this crowdfunding offering document:

- (a) the most recent annual financial statements you have filed with the securities regulatory authority, and
- (b) each of the most recent interim financial reports you have filed with the securities regulatory authority for an interim period that is subsequent to the financial year covered by the annual financial statements referred to in paragraph (a).

Non-reporting issuer

If you are not a reporting issuer, attach as an appendix to this crowdfunding offering document:

- (a) if you have not yet incurred any expenditures and your only asset is cash, disclosure of the amount of cash you have, together with a third party confirmation of your cash in a bank account or held in trust,
- (b) annual financial statements reviewed by an independent public accounting firm, if you have incurred any expenditures and have either:
 - (i) raised \$500,000 or less under the crowdfunding prospectus exemption or any other prospectus exemption since your formation, or
 - (ii) expended \$150,000 or less since your formation, or
- (c) annual financial statements audited by an independent public accounting firm, if you have
 - (i) raised more than \$500,000 under the crowdfunding prospectus exemption or any other prospectus exemption since your formation, and
 - (ii) expended more than \$150,000 since your formation.

Accounting principles

The financial statements referred to in paragraphs (b) and (c) must be prepared in accordance with paragraph (a) of subsection 3.2(1) [*Acceptable accounting principles – general requirements*] of NI 52-107 and include the disclosure required by paragraph (b)(i) of subsection 3.2(1) [*Acceptable accounting principles – general requirements*] of NI 52-107, subject to the following two exceptions:

- (a) the financial statements of an SEC issuer may be prepared in accordance with U.S. GAAP, and
- (b) the financial statements of an issuer that is not a publicly accountable enterprise may be prepared in accordance with Canadian GAAP for private enterprises.

Review and auditing standards

The financial statements referred to in paragraph (b) must be reviewed in accordance with the relevant standards set out in the Handbook for a review of financial statements by a public accounting firm.

The financial statements referred to in paragraph (c) must be audited in compliance with section 3.3 [*Acceptable auditing standards – general requirements*] of NI 52-107 by an auditor that complies with section 3.4 [*Acceptable auditors*] of NI 52-107.

Despite the above, the financial statements of an SEC issuer that are otherwise required to be reviewed or audited by an independent public accounting firm as set out above, may be audited in accordance with section 3.8 [*Acceptable auditing standards for SEC issuers*] of NI 52-107.

3.4 – Ongoing disclosure

Reporting issuer

If you are a reporting issuer, state that you are subject to reporting obligations under securities legislation and explain how an investor can access your continuous disclosure documents.

Non-reporting issuer

If you are not a reporting issuer:

- (a) state that you have limited disclosure obligations under securities legislation and that you are required to provide only annual financial statements, annual disclosure regarding use of proceeds and notice of certain specified events,
- (b) state the nature and frequency of any other disclosure you intend to provide to investors, and
- (c) explain how investors can access the disclosure documents referred to in paragraphs (a) and (b).

3.5 – Mining issuer disclosure

If you are a mining issuer, state that you are subject to the requirements of National Instrument 43-101 *Standards of Disclosure for Mineral Projects*.

3.6 – Capital structure

Disclose your capital structure, including the terms and conditions of any other securities that are issued and outstanding as of the date of this crowdfunding offering document.

3.7 – Executive officers, directors and other principals

Background of executive officers and directors

Provide the following information in the format set out below for each of your executive officers and directors:

| Name and position at issuer | Principal occupation for the last two years | Any expertise, education and/or experience that will contribute to the issuer achieving its business objectives, including the next milestone (if the issuer has one) |
|-----------------------------|---|---|
| | | |
| | | |
| | | |

| Name and position at issuer | Principal occupation for the last two years | Any expertise, education and/or experience that will contribute to the issuer achieving its business objectives, including the next milestone (if the issuer has one) |
|-----------------------------|---|---|
| | | |
| | | |

Cease trade orders, bankruptcies and insolvencies, penalties and sanctions

For each of your executive officers and directors, state whether he or she is or has been:

- (a) within the last 10 years, a director or executive officer of an issuer that is or has been subject to a cease trade order or similar order, or bankrupt or subject to a similar insolvency proceeding,
- (b) within the last 10 years, bankrupt or subject to a similar insolvency proceeding, or
- (c) at any time subject to
 - (i) penalties or sanctions imposed by a court relating to securities legislation or by a securities regulatory authority or who entered into a settlement agreement with a securities regulatory authority, or
 - (ii) any other penalties or sanctions imposed by a court or regulatory body that would likely be considered important to a reasonable investor in making an investment decision.

Investment by executive officers, directors and principals

Provide the following information in the format set out below for each of the following persons:

- (a) each of your executive officers, directors and founders,
- (b) any person promoting or marketing this offering,
- (c) any person who owns more than 20% of your voting securities, and
- (d) any other person that is related to you.

| Name and relationship to issuer | Number and type of securities owned | Date securities were acquired and price of securities | Percentage of the issuer's securities held as of the date of this crowdfunding offering document (on a fully diluted basis) |
|---------------------------------|-------------------------------------|---|---|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

3.8 – Management compensation

Reporting issuer

If you are a reporting issuer, provide a cross reference to the disclosure provided for purposes of Item 3 of Form 51-102F6 *Statement of Executive Compensation* (Form 51-102F6) and also any other cross-references to other information disclosed in the issuer’s Form 51-102F6 as needed.

Non-reporting issuer

If you are a non-reporting issuer, provide the following information for each director and the three most highly compensated executive officers (or all executive officers if you have fewer than three) in the format set out below:

| Name of person and position at issuer | Total amount of compensation paid to that person during the 12 month period preceding commencement of this offering | Total amount of compensation expected to be paid to that person during the 12 month period following closing of this offering |
|---------------------------------------|---|---|
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |

3.9 – Related party transactions

Describe any significant transactions that have occurred between you and any of the following persons during the 12 months preceding the date of this crowdfunding offering document:

- (a) any of your executive officers, directors or founders,
- (b) a person promoting or marketing this offering,
- (c) a person who owns 20% of more of your voting securities, or
- (d) any other person that is a related party to you.

For each transaction, include details of the transaction including the nature of the goods, services or other consideration that were exchanged and how they were valued.

3.10 – Other relevant information

State any other facts that would likely be important to an investor purchasing securities under this crowdfunding offering document.

ITEM 4 – REGISTRANT FACTS

4.1 – Registered funding portal

State that you are using the services of a registered funding portal to offer your securities and provide the following information about the registered funding portal:

- (a) its full legal name, and
- (b) all compensation that the registered funding portal is receiving in connection with this offering.

Include the following statement:

An investor can check the registered funding portal’s registration status and history at the following website: www.aretheyregistered.ca

ITEM 5 – CONTACT INFORMATION

5.1 – Contact information for the issuer

Provide your contact information in the format set out below:

| | |
|----------------------------------|--|
| Full name of contact person | |
| Street address | |
| City | |
| Province or territory | |
| Canada | |
| Postal code | |
| Business telephone number | |
| Business email address of issuer | |

5.2 – Contact information for the registered funding portal

Provide the contact information of the registered funding portal in the format set out below:

| | |
|---|--|
| Full name of contact person | |
| Street address | |
| City | |
| Province, territory, state or other equivalent | |
| Country | |
| Postal/zip code | |
| Business telephone number | |
| Business email address of registered funding portal | |

CERTIFICATE

Insert the date of this crowdfunding offering document and include the following statement:

This crowdfunding offering document does not contain a misrepresentation.

Sign this crowdfunding offering document in accordance with section 15 [*Disclosure at time of distribution – crowdfunding offering document*] and Appendix A to Multilateral Instrument 45-108 *Crowdfunding*.

ANNEX D-5

CROWDFUNDING PROSPECTUS EXEMPTION AND CROWDFUNDING PORTAL REQUIREMENTS

PROPOSED FORM 45-108F2
RISK ACKNOWLEDGEMENT FORM FOR CROWDFUNDING INVESTORS

WARNING TO INVESTORS

TO BE COMPLETED BY THE PURCHASER:

1. Acknowledgement of risk

I acknowledge that this is a very risky investment. I could lose all of the \$ _____ *[insert amount being invested, including any amounts you have agreed to pay in the future]* I invest.

I understand that I may never be able to sell these securities and I will be provided with less disclosure than public companies are required to provide to their investors. *[Instruction: Delete if issuer is a reporting issuer.]*

I acknowledge that, because I am purchasing this investment under a prospectus exemption, I will not have the benefit of protections under securities law for investments made under a prospectus.

I understand that borrowing money to invest increases the risk of my investment because I will be responsible for repaying the borrowed money and any interest owing even if I lose all of the money I invest.

The portal is not allowed to recommend or provide me with investment advice about any offering that is posted on its website. I understand that the portal will not be responsible if I lose all or part of the money I invest.

First and last name (please print):

Signature:

By clicking the [I confirm] button, I acknowledge that I am signing this form electronically and agree that this is the legal equivalent of my handwritten signature. I will not at any time in the future claim that my electronic signature is not legally binding.

Date:

2. What I am buying

Number and type of securities:

Name of issuer:

I understand that \$ _____ of my total investment is being paid to the registered funding portal as a fee or commission.

Initial by the purchaser:

By clicking the [I confirm] button, I acknowledge that I am initialling this form electronically and agree that this is the legal equivalent of my handwritten initials. I will not at any time in the future claim that my electronic initials are not legally binding.

| 3. Investment limits that I am subject to | |
|--|------------------------------|
| | Purchaser's initials* |
| I acknowledge that my investment of \$ _____ today in this issuer, is not more than \$2,500. | |
| I acknowledge that I cannot invest more than \$10,000 during this calendar year in investments made under the crowdfunding exemption. I confirm that, after taking into account my investment of \$ _____ today in this issuer, I have not exceeded my investment limit. | |

** By clicking the [I confirm] button, I acknowledge that I am initialling this form electronically and agree that this is the legal equivalent of my handwritten initials.*

TO BE COMPLETED BY THE REGISTERED FUNDING PORTAL: *[Instruction: The registered funding portal must complete this section before delivering this form to the purchaser. An executive officer acting on behalf of the registered funding portal must sign below.]*

| 4. How to contact the registered funding portal |
|--|
| Name and address of portal*: |
| First and last name of contact person: |
| Phone number: |
| Email address: |
| Signature of executive officer of registered funding portal: By clicking the [I confirm] button, I acknowledge that I am signing this form electronically and agree that this is the legal equivalent of my handwritten signature. I will not at any time in the future claim that my electronic signature is not legally binding. |

**A purchaser can check the portal's registration status and history at the following website:
www.aretheyregistered.ca*

TO BE COMPLETED BY THE ISSUER: *[Instruction: The issuer must complete this section before delivering this form to the purchaser. An executive officer acting on behalf of the issuer must sign below.]*

| 5. How to contact the issuer |
|---|
| Name and address of issuer: |
| First and last name of contact person: |
| Phone number: |
| Email address: |
| Signature of executive officer of issuer: By clicking the [I confirm] button, I acknowledge that I am signing this form electronically and agree that this is the legal equivalent of my handwritten signature. I will not at any time in the future claim that my electronic signature is not legally binding. |

Form Instructions:

1. *This form may be presented to purchasers online through the registered funding portal.*
2. *The purchaser, issuer and registered funding portal must electronically sign this form. Each of the purchaser, issuer and registered funding portal must receive a signed copy of this form. The issuer and the registered funding portal are required to keep a completed signed copy of this form for 8 years after the distribution.*

ANNEX D-6

CROWDFUNDING PROSPECTUS EXEMPTION AND CROWDFUNDING PORTAL REQUIREMENTS

PROPOSED COMPANION POLICY 45-108CP
CROWDFUNDING

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PREAMBLE TO COMPANION POLICY

Purpose of this Companion Policy

This Companion Policy sets out how the participating members of the Canadian Securities Administrators (the **participating CSA members** or **we**) interpret or apply the provisions of Multilateral Instrument 45-108 *Crowdfunding* (the **Instrument**) and related securities legislation.

The Instrument provides

- (a) in Part 2, a prospectus exemption for eligible crowdfunding issuers that wish to make a crowdfunding offering in accordance with the regime described in the Instrument,
- (b) in Part 3, the principal registration requirements, exemptions and ongoing obligations that apply to a funding portal that wishes to act as an intermediary in a crowdfunding offering in accordance with the regime described in the Instrument, and
- (c) in Part 4, the reporting requirements for eligible crowdfunding issuers and registered funding portals that make a crowdfunding offering in accordance with the regime described in the Instrument.

Numbering system

Except for this preamble, the numbering of parts, divisions and sections in this Companion Policy corresponds to the numbering in the Instrument. Any general guidance for a part or a division appears immediately after the part or division name. Any specific guidance on sections in the Instrument follows any general guidance. If there is no guidance for a part, division or section, the numbering in this Companion Policy will skip to the next provision that does have guidance. All references in this Companion Policy to parts, divisions and sections are to the Instrument, unless otherwise noted.

Meaning of crowdfunding

Crowdfunding is a method of funding a project or venture through small amounts of money raised from a potentially large number of people over the internet via an internet portal acting as intermediary. There are at least five models of crowdfunding:

- (a) the donation model, which is the practice of the crowd donating to a project or venture in exchange for nothing of tangible value;
- (b) the reward model, which is the practice of the crowd donating to a project or venture in exchange for some tangible reward or a “perk”;
- (c) the pre-purchase model, which is the practice of the crowd donating to a project or venture in exchange for a future tangible reward, such as a consumer product;
- (d) the peer-to-peer lending model, which is the practice of an online intermediary facilitating money lending between individuals to fund a project or a business, usually in the form of unsecured personal loans;
- (e) the securities-based model, which is the practice of the crowd investing in an issuer and its business in exchange for securities, which are often equity securities but may include other types of securities, including debt securities.

In this Companion Policy, when we refer to a “crowdfunding offering”, we are referring to an offering (distribution) of securities made in reliance on the crowdfunding prospectus exemption through a registered funding portal as described in the Instrument.

Applicability of securities legislation

Crowdfunding activities that are limited to the donation model, reward model and/or pre-purchase model generally will not constitute or involve a distribution of securities. However, crowdfunding offerings based on the peer-to-peer lending model and the securities-based model will generally involve an offering of securities. As a result, issuers that wish to make a crowdfunding offering based on the peer-to-peer lending model or the securities-based model will generally be subject to the prospectus requirement in securities legislation or be required to limit their offering to accredited investors or other investors who are eligible to purchase securities in the “exempt market”.

Securities-based and non-securities-based crowdfunding

An issuer may wish to include both securities and non-securities rewards and perks in a crowdfunding offering. Permitting an issuer to do so may enable an issuer to derive the benefits of both securities-based and non-securities based crowdfunding. Where an issuer combines securities and non-securities rewards and perks in a crowdfunding offering, it must disclose in the crowdfunding offering document information about the non-securities rewards and perks that are being offered.

All distributions and other trades are subject to securities legislation

The securities legislation of a local jurisdiction applies to any distribution of a security in that jurisdiction, whether or not the issuer of the security is a reporting issuer in that jurisdiction. A person who engages in this activity must comply with the securities legislation of each jurisdiction in which the distribution occurs. That may include the requirement that such person be registered under securities legislation.

Multi-jurisdictional distributions

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

PART 1 DEFINITIONS AND INTERPRETATION

Defined terms used in this Companion Policy have the meaning ascribed to that term in the Instrument unless otherwise noted.

Definitions

- 1. (1) Directors and executive officers** – The term “director” is defined in the Instrument and includes, for non-corporate issuers, individuals who perform functions similar to those of a director of a company. Therefore, non-corporate issuers must determine in light of the particular circumstances which individuals or persons are acting in such capacities for the purposes of complying with the Instrument and Form 45-108F1 *Crowdfunding Offering Document*.

The term “executive officer” includes an individual who is performing a policy-making function in respect of the issuer. We would consider an individual who is employed by an entity separate from the issuer, but who performs a policy-making function in respect of the issuer through that separate entity or otherwise, to fit within this definition.

- (2) Distribution period – The Instrument contemplates a distribution period of 90 days. If an issuer cannot complete a crowdfunding distribution within 90 days, the issuer must withdraw it. It can commence a new crowdfunding distribution after the 90-day period.
- (3) Principal Regulator – A registered funding portal’s Principal Regulator will generally be determined in accordance with section 1.3 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations (NI 31-103)*. This means that the principal regulator will usually be the securities regulatory authority or regulator in the jurisdiction where the registered funding portal’s head office is located.
- (4) Registered funding portal – A person that intends to operate a portal, platform or website to facilitate offerings made in reliance on the crowdfunding prospectus exemption is required to register as a restricted dealer under NI 31-103. The restricted dealer category is described in paragraph 7.1(2)(e) of NI 31-103 and permits specialized dealers or other intermediaries with an unconventional business model to carry on a limited trading business.

We recognize that other categories of registered dealers and advisers may wish to operate internet portals, platforms or websites that may facilitate distributions of securities in reliance on other prospectus exemptions, such as the accredited investor exemption in section 2.3 of National Instrument 45-106 *Prospectus and Registration Exemptions (NI 45-106)* or the offering memorandum exemption in section 2.9 of NI 45-106, and may be similar to the registered funding portal concept described in the Instrument. However, the registered funding portal described in the Instrument is intended to be a specialized type of restricted dealer to facilitate only distributions of securities in reliance on the crowdfunding prospectus exemption described in the Instrument. Accordingly, the regulatory regime for registered funding portals described in the Instrument, including the exemptions from certain usual registrant requirements described in Part 3 of the Instrument, are not available to other types of registrants that facilitate the sale of securities through the internet. A registered funding portal will not be permitted to obtain dual registration in another registration category.

- (5) Registered individual – The term "registered individual" is defined in NI 31-103 and ordinarily refers to an individual who is registered as the ultimate designated person (**UDP**), chief compliance officer (**CCO**) or a dealing or advising representative of a registered firm. A registered funding portal is not permitted to provide recommendations or advice to investors, except as permitted in subsection 33(2) [*Prohibition on providing recommendations or advice*] of the Instrument. Therefore, we do not anticipate that it will be necessary for an individual to register as a dealing or advising representative of a registered funding portal.

PART 2 CROWDFUNDING PROSPECTUS EXEMPTION

Division 1: Offering requirements

Crowdfunding prospectus exemption

- 7. Subsection 7(b) [*Crowdfunding prospectus exemption*] imposes a \$1.5 million limit on the amount that can be raised under the crowdfunding prospectus exemption by the issuer group during a specified time period. The imposition of the offering limit on the aggregate proceeds raised by the issuer group, rather than only by the issuer, is intended to prevent the \$1.5 million limit being circumvented.

Availability of crowdfunding prospectus exemption to issuers

- 8. (1) Reporting and non-reporting issuers – Subsections 8(1) to (3) [*Availability of crowdfunding prospectus exemption to issuers*] impose certain conditions on the availability of the crowdfunding prospectus exemption. Subject to these conditions, the crowdfunding prospectus exemption is available to both reporting issuers and non-reporting issuers.

- (2) Real estate issuers – A “real estate issuer”, as defined in section 1 of the Instrument, that is not a reporting issuer, is excluded from being able to rely on the crowdfunding prospectus exemption. A real estate issuer includes a non-reporting issuer that “is a person that primarily invests in, or develops, real estate, or derives its revenues primarily from investments in real estate”. This exclusion is intended to capture non-reporting issuers whose primary business is focused on real estate. It is not intended to capture an issuer with a primary business that is not focused on real estate, but that invests in or develops real estate in the furtherance of its primary business. For example, an issuer that is developing a bakery business might need to rent or purchase real estate in order to establish retail bakery locations. We would not generally consider real estate activity that is ancillary to the issuer’s primary business as precluding the issuer from being able to rely on the exemption.

Investment limits

9. Section 9 [*Investment limits*] of the Instrument imposes certain investment limits on purchasers of securities distributed under the crowdfunding prospectus exemption. An accredited investor that purchases securities under the crowdfunding prospectus exemption is subject to the same investment limits as other investors. However, an issuer can distribute securities to the accredited investor under the accredited investor prospectus exemption simultaneously with the distribution of securities under the crowdfunding prospectus exemption. In so doing, the issuer must comply with all applicable requirements under both exemptions, including the requirement that the securities distributed under the accredited investor prospectus exemption during the prescribed period have the same price, terms and conditions as those distributed under the crowdfunding prospectus exemption. The registered funding portal is not permitted to act as an intermediary in the distribution of securities under the accredited investor prospectus exemption. However, information about this distribution must be disclosed in the issuer’s marketing materials described in section 16 [*Disclosure at time of distribution – marketing materials*].

Full subscription of distribution and financial resources available

13. Section 13 [*Full subscription of distribution and financial resources available*] requires that, at the time of the closing of an offering under the crowdfunding prospectus exemption, an issuer must have financial resources sufficient to achieve the next milestone set out in its written business plan. If no milestones have been established, the financial resources must be sufficient to carry out the activities set out in the business plan. This requirement will provide an element of investor protection, as a purchaser will have some assurance that the issuer will raise a sufficient amount of proceeds to achieve the next milestone or activities set out in its written business plan. In addition, permitting the additional financial resources of the issuer to be included in the determination as to whether this requirement has been satisfied will permit an issuer to satisfy the requirement as quickly as possible.

Concurrent distributions under other prospectus exemptions

14. (1) The crowdfunding prospectus exemption set out in the Instrument is in addition to other prospectus exemptions contained in securities legislation, including the prospectus exemptions contained in NI 45-106. An eligible crowdfunding issuer may rely on other prospectus exemptions and may distribute securities through other types of registered intermediaries at the same time as conducting a crowdfunding offering in accordance with the crowdfunding regime described in the Instrument.
- (2) Section 14 [*Concurrent distributions under other prospectus exemptions*] of the Instrument requires that securities distributed under another prospectus exemption during the period beginning on the first day of the distribution period and ending one month after the end of the distribution period, must have the same price, terms and conditions as those distributed under the crowdfunding prospectus exemption. This requirement is intended to promote fairness to purchasers by prohibiting an issuer from offering securities during the prescribed period at different prices, or with different terms and conditions, than those distributed under the crowdfunding prospectus exemption.

Advertising and general solicitation

18. Subsections 18(1) and (2) [*Advertising and general solicitation*] of the Instrument impose limits on advertising and soliciting purchasers in connection with a crowdfunding offering other than through the registered funding portal. No person involved with a crowdfunding offering can advertise the offering or solicit purchasers except as described below. However, an issuer or any other person involved with a crowdfunding offering can advise potential purchasers, including the issuer's customers and clients, that the issuer is proposing to offer its securities through crowdfunding and refer the potential purchasers to the website of the portal through which the distribution will be made. This advice can be provided in paper format or through the use of social media. However, in all cases, the advice must be limited to directing the potential purchaser to the portal's website to obtain relevant information about the offering.

Commissions or fees

19. Section 19 [*Commissions or fees*] of the Instrument prohibits the payment by an issuer of a commission, finder's fee, referral fee or similar payment to any person in connection with a crowdfunding offering, other than to a registered funding portal. This is meant to mitigate against potential conflicts of interest. However, this restriction is not intended to prohibit payments to persons as compensation for their services to an issuer in preparing materials in connection with a crowdfunding offering, such as accounting or legal fees.

Risk acknowledgement

20. (1) The risk acknowledgment form required by section 20 [*Risk acknowledgement*] of the Instrument may be completed online through the registered funding portal through which the distribution is made.
- (2) The risk acknowledgment form should be completed and signed by the issuer and registered funding portal (including by online signature) before it is provided to a purchaser.

Division 2: Rights of security holders

Liability for misrepresentation

22. (1) In Ontario, the crowdfunding offering document required to be delivered by an issuer under the Instrument is considered to be an offering memorandum and the rights available under section 130.1 of the *Securities Act* (Ontario) apply in respect of the crowdfunding offering document. Refer to OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions* and the related Companion Policy for more information. Under section 22 [*Liability for misrepresentation*] of the Instrument, an issuer must provide a purchaser with a contractual right equivalent to the right in section 130.1 for any document or video made available to a purchaser in addition to the crowdfunding offering document.
- (2) In Québec, the crowdfunding offering document and any other documents or videos that are made available to potential purchasers are documents authorized by the Authority for use in lieu of a prospectus in regards to which rights of action established in section 217 to 219 of *Securities Act* (Québec) may be exercised. In addition, an issuer must provide a purchaser with a contractual right equivalent to the right in sections 217 to 219 of *Securities Act* (Québec) for any document or video made available to a purchaser in addition to the crowdfunding offering document.
- (3) The offering document required to be delivered by an issuer under the Instrument is considered to be an offering memorandum and the rights available under section 138 of the *Securities Act* (Nova Scotia) apply in respect of the offering document. Refer to Nova Scotia Securities Commission Rule 45-501 *Statutory Liability for Misrepresentations in an Offering Memorandum Under Certain Exemptions From the Prospectus Requirement* and the related Companion Policy for more information. Under section 22 [*Liability for misrepresentation*] of the Instrument, an issuer must provide a purchaser with a contractual right equivalent to

the right in section 138 for any document or video made available to a purchaser in addition to the crowdfunding offering document.

Division 3: Ongoing disclosure requirements for issuers that have relied on the crowdfunding prospectus exemption

Ongoing disclosure – reporting issuers and non-reporting issuers

23. (1) Section 23 [*Annual financial statements*] of the Instrument prescribes ongoing disclosure obligations for non-reporting issuers that distribute securities under the crowdfunding prospectus exemption. For reporting issuers that distribute securities under the crowdfunding prospectus exemption, all applicable continuous disclosure obligations under securities law will continue to apply.
- (2) Non-reporting issuers are required to make available to the purchaser certain ongoing disclosure documents. These include annual financial statements, notices disclosing the use of proceeds and notices of specified events. Issuers may choose to make these documents available to purchasers in different ways, provided they take reasonable steps to ensure that all purchasers receive or can access the documents.

We consider disclosure documents to have been made available if they are mailed to each security holder or if the security holder receives notice that the disclosure documents can be viewed on a public website of the issuer or a website accessible by all security holders of the issuer.

**PART 3
REGISTRATION REQUIREMENTS, EXEMPTIONS
AND ONGOING REGISTRANT OBLIGATIONS FOR REGISTERED FUNDING PORTALS**

Division 1: Obligations of a registered funding portal and its registered individuals

General

29. A registered funding portal and its registered individuals must deal fairly, honestly and in good faith with its clients. This is consistent with the obligation imposed on all registrants, including restricted dealers, under securities legislation. A registered funding portal's clients include both issuers that enter into a contractual relationship with the portal to distribute securities through the portal and investors who open an account with the portal to purchase these securities.

Proficiency

30. (1) Section 30 [*Proficiency*] of the Instrument provides that a registered individual of a registered funding portal must, among other things, understand the structure, features and risks of each security distributed through the registered funding portal. This is consistent with the general proficiency requirement applicable to all registered individuals in section 3.4 of NI 31-103.
- (2) We expect the registered individual to develop an understanding of the structure, features and risks of each security distributed through the registered funding portal based on a review of the issuer's articles of incorporation, other constating documents and other materials included in the application for access to the registered funding portal. For example:
- (a) a registered funding portal and its registered individuals are expected to take reasonable steps to confirm that an issuer that proposes to make an offering through a registered funding portal meets the definition of an "eligible crowdfunding issuer" and that the proposed offering involves "eligible securities";

- (b) if an issuer proposes to offer securities described as “common shares” to the public, but the issuer’s constating documents and application for access indicate that the “common shares” contain restrictions on voting, or contain redemption rights that allow the issuer to redeem the shares in certain circumstances, or that insiders or promoters of the issuer hold another class of securities that have multiple votes, the registered funding portal should understand that it may be misleading to investors if the issuer describes the securities as “common shares” or does not disclose the existence and material terms of the securities held by the insiders and promoters;
 - (c) if the issuer is part of a corporate group, and the issuer’s interest in the business or the assets of the business are owned through one or more subsidiaries, the registered funding portal should understand the features and risks of the capital structure of the corporate group and assess whether the issuer’s disclosure adequately discloses these risks.
- (3) Subsection 30(2) [*Proficiency*] of the Instrument provides that the obligation to understand the structure, features and risks of a security does not include any obligation to assess
- (a) the merits or expected returns of an investment to investors, or
 - (b) the commercial viability of a proposed business or offering.

In addition, the obligation does not include any obligation to determine whether an issuer’s milestones are realistic or achievable or to assess the experience of the executive officers or directors of the issuer.

Division 2: Permitted and restricted dealing activities

Permitted dealing activities

31. (1) Section 31 [*Permitted dealing activities*] of the Instrument provides that a registered funding portal and every registered individual of the registered funding portal may only act as an intermediary in connection with a distribution of securities made in reliance on the crowdfunding prospectus exemption. This means that registered funding portals are not permitted to engage in a broader range of dealing and/or advising activities, including
- (a) facilitating distributions of securities in reliance on other prospectus exemptions;
 - (b) facilitating resales of securities acquired by an investor to accredited investors or other investors who are eligible to purchase securities on a prospectus-exempt basis; or
 - (c) providing other services of a corporate finance nature to issuers.
- (2) The limitation on dealing activities applies only to activities in connection with a distribution of securities under the crowdfunding prospectus exemption. A registered funding portal may engage in other types of crowdfunding activities that do not involve a distribution of securities, including facilitating crowdfunding activities based on a donation model, reward model or pre-purchase model.

Restricted dealing activities

32. (1) Section 32 [*Restricted dealing activities*] of the Instrument provides that a registered funding portal and every registered individual of the registered funding portal must not allow an issuer access to the funding portal’s website if the issuer is a “related issuer” of the registered funding portal. The definition of a “related issuer” is described in National Instrument 33-105 *Underwriting Conflicts* (NI 33-105) and generally refers to a situation where there is cross-ownership between an issuer and the registered funding portal. Subsection 1.2(2) of NI 33-105 provides that an entity is a related issuer to another entity if one of them is an “influential securityholder” of

the other, or each of them is a related issuer of the same third party.

- (2) If a registered funding portal or a registered individual of a registered funding portal proposes to allow an issuer that is a connected issuer access to the registered funding portal, the registered funding portal should ensure that the issuer's offering documents include the disclosure required by Appendix C to NI 33-105. The definition of a "connected issuer" is described in NI 33-105 and generally refers to a situation where an issuer is not a related issuer of the registrant, but has some other relationship with the registrant that would cause a reasonable investor to question whether the registrant and the issuer are independent of each other for purposes of the distribution. Refer to NI 33-105 and the related guidance in Companion Policy 33-105CP for more information.

Prohibition on providing recommendations or advice

33. (1) Section 33 [*Prohibition on providing recommendations or advice*] of the Instrument provides that a registered funding portal and a registered individual of the registered funding portal must not provide a recommendation or advice to an investor in connection with a distribution of or other trade in a security. Certain activities undertaken by registered funding portals may, by their nature, be considered a form of express or implied recommendation, endorsement or advice to investors. These activities may include activities in relation to:
- (a) selecting, screening or approving an issuer for access to the registered funding portal, which is sometimes referred to as curating;
 - (b) highlighting, showcasing or spotlighting an issuer on the portal's website;
 - (c) matching an issuer to an investor based on selection criteria identified by an investor;
 - (d) distributing information about a particular issuer or offering to an investor based on selection criteria identified by an investor.

Since these activities may be considered part of the *bona fide* activities of a registered funding portal, the Instrument provides that the prohibition on providing a recommendation or advice does not prevent the activities described in subsection 33(2) of the Instrument.

- (2) Nothing in the Instrument prevents a registered funding portal from establishing additional criteria or terms and conditions that an issuer must satisfy or meet in order to participate in a distribution under the crowdfunding prospectus exemption through the registered funding portal. In addition to its obligations under section 37 [*Issuers' access refusal – general*], a registered funding portal may establish additional criteria or due diligence checks to prevent access by an issuer to its portal for any reason, including any concern of the registered funding portal that:
- (a) any offering document or marketing materials of the issuer contain any statement or information that is misleading, false or deceptive or contains a misrepresentation;
 - (b) the proceeds from a distribution under the crowdfunding prospectus exemption, together with any other amounts referred to in subsection 13(2) [*Full subscription of distribution and financial resources available*], are insufficient to accomplish the milestone or business plan referred to in section 8 [*Availability of crowdfunding prospectus exemption to issuers*];
 - (c) the issuer may not be financially responsible in the conduct of its business or such business may not be conducted with integrity and with a view to the best interests of investors; or

- (d) the issuer has not complied with, or is not complying with, securities law or the undertakings, terms and conditions agreed to by the issuer in connection with any distribution under the crowdfunding prospectus exemption or otherwise.
- (3) We expect a registered funding portal to take reasonable steps to confirm that an investor proposing to participate in a crowdfunding distribution through its website understands the risks of such a distribution. In this respect, a registered funding portal should not rely solely on the risk acknowledgement form signed by an investor.

Division 3: Portal obligations – issuer access to the portal

Criminal record and background checks

36. (1) Section 36 [*Criminal record and background checks*] of the Instrument requires a registered funding portal to obtain the following documents from the the directors, executive officers and promoters of an issuer prior to allowing the issuer access to the registered funding portal’s website:
- (a) a completed personal information form that contains substantially the same information as set out in Appendix A to National Instrument 41-101 *General Prospectus Requirements*, and
 - (b) a consent to criminal record and other background checks and the collection of personal information in accordance with applicable privacy legislation.
- (2) At a minimum, we expect the following checks to be conducted by a registered funding portal:
- (a) regarding issuers:
 - (i) the existence of the issuer and its business registration, including a review of the issuer’s constating documents,
 - (ii) criminal record and securities enforcement history checks,
 - (iii) bankruptcy check, and
 - (iv) court record check, where available;
 - (b) regarding directors, executive officers, control persons and promoters of the issuer:
 - (i) criminal record and securities enforcement history checks,
 - (ii) bankruptcy check, and
 - (iii) court record check, where available.
- (3) A registered funding portal may retain a third party to perform these checks. However, the responsibility to comply with this section remains with the registered funding portal.
- (4) Subsection 35(2) requires the registered funding portal to file the completed personal information form with its Principal Regulator. This requirement is intended to act as a deterrent against false statements in a personal information form since it is an offence to make a false statement in a document that is required to be filed or furnished to the securities regulatory authorities and to ensure that regulatory authorities have recourse against the person making a false statement in a personal information form.

Restriction on cross ownership

39. (1) Section 39 [*Restriction on cross ownership*] of the Instrument provides that a registered funding portal must not accept an application for access by an issuer if the registered funding portal, or any officer, director or significant shareholder of the registered funding portal or of any affiliate of the registered funding portal,
- (a) has beneficial ownership of, or control or direction over, more than 10% of the issued and outstanding securities of the issuer, or securities convertible into securities of the issuer, or
 - (b) except as permitted in paragraph (a), otherwise has an economic interest in the issuer.
- (2) A registered funding portal may accept securities of an issuer as payment of portal access fees or similar fees, provided the investment by the registered funding portal does not exceed the limit contained in section 39. However, an investment by a registered funding portal in an issuer that intends to distribute securities through the registered funding portal, including an investment in the form of securities accepted as payment for fees, will generally give rise to a conflict of interest. Accordingly, we expect the registered funding portal to prominently disclose the investment and to comply with the conflicts of interest provisions in Part 13 of NI 31-103.
- (3) A registered funding portal is not permitted to recommend or endorse a particular issuer or offering on its website. Accordingly, a registered funding portal is not permitted to advertise or promote an issuer in which it has an investment in a manner that is more prominent than, or inconsistent with, the manner in which other issuers are displayed on its website.

Division 4: General portal obligations and prohibited activities

Prohibition on holding, handling or having access to purchaser funds or assets

42. (1) Section 42 [*Prohibition on holding, handling or having access to purchaser funds or assets*] of the Instrument provides that a registered funding portal and its registered individuals must not hold, handle or have access to purchaser funds or purchaser assets. Indicia of holding or having access to an investor's funds or assets include
- (a) holding an investor's securities, certificates or cash for any period of time;
 - (b) having authority (e.g., a power of attorney) to withdraw funds or securities from an investor's account;
 - (c) accepting funds from an investor directly (e.g., a cheque made payable to the registered funding portal) or accepting funds on the investor's behalf from a custodian);
 - (d) acting in the capacity of a trustee for an investor;
 - (e) having, in any capacity, legal ownership of, or access to, the investor's funds or securities.
- (2) For the purposes of this condition, we interpret the phrase "hold, handle or have access" as not including the handling in transit of an investor's cheque made payable to a third party. For example, a registered funding portal may handle in transit an investor's cheque made payable to a Canadian financial institution or other acceptable escrow party.

Restriction on lending

45. (1) Section 45 [*Restriction on lending*] of the Instrument provides that a registered funding portal must not lend money, extend credit or provide margin to an investor or recommend that an investor use borrowed money to finance the purchase of securities of the issuer under the crowdfunding prospectus exemption. This activity

would create a conflict of interest which cannot be properly managed. In addition, investments made in reliance on the crowdfunding prospectus exemption will generally be made without the benefit of a suitability assessment or other advice from a registrant.

- (2) To the extent that products sold to clients are structured in a way that would result in the registered funding portal becoming a lender to the clients, including the portal extending margin to the client, we would consider the registered funding portal to not be in compliance with section 45.

MISCELLANEOUS

Resale of securities distributed under the crowdfunding prospectus exemption

Securities acquired under the crowdfunding prospectus exemption are subject to resale restrictions. Securities of a reporting issuer acquired under the crowdfunding prospectus exemption are subject to a four-month hold period. Securities of a non-reporting issuer cannot be resold in a jurisdiction:

- (a) until the issuer becomes a reporting issuer and certain other conditions are met, or
- (b) unless the sale is made under another available prospectus exemption.

The crowdfunding prospectus exemption is not available for distributions by selling security holders. Refer to National Instrument 45-102 *Resale of Securities*.

APPENDIX E
REPORTS OF EXEMPT DISTRIBUTION

ANNEX E-1
REPORTS OF EXEMPT DISTRIBUTION
PROPOSED AMENDMENTS TO
NATIONAL INSTRUMENT 45-106 PROSPECTUS AND REGISTRATION EXEMPTIONS
AND
OSC RULE 45-501 ONTARIO PROSPECTUS AND REGISTRATION EXEMPTIONS

Proposed amendments to National Instrument 45-106 *Prospectus and Registration Exemptions*

PART 6 — REPORTING REQUIREMENTS
REPORT OF EXEMPT DISTRIBUTION

Report of exempt distribution

6.1 (1) Subject to subsection (2) and section 6.2 [*When report not required*], issuers that distribute their own securities and underwriters that distribute securities they acquired under section 2.33 must file a report if they make the distribution under one or more of the following exemptions:

- (a) section 2.3 [*Accredited investor*];
- (b) section 2.5 [*Family, friends and business associates*];
- (c) subsection 2.9 (1), (2), (2.1) or (2.2) [*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) Except in Alberta, New Brunswick, Ontario and Saskatchewan, 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*] or section 2.19 [*Additional investment in investment funds*] if the investment fund files the report not later than 30 days after the financial year-end of the investment fund.

(3) In Alberta, New Brunswick, Ontario and Saskatchewan, 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*] or section 2.19 [*Additional investment in investment funds*] if the investment fund files the report not later than 30 days after the end of each calendar quarter.

Required form of report of exempt distribution

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

- (a) Form 45-106F1 in all jurisdictions except Alberta, British Columbia, New Brunswick, Ontario and Saskatchewan;
- (b) Form 45-106F6 in British Columbia, and
- (c) in Alberta, New Brunswick, Ontario and Saskatchewan,
 - (i) Form 45-106F10, if the issuer is an investment fund,
 - (ii) Form 45-106F11, if the issuer is not an investment fund.

(1.1) Despite paragraph 1(c) in Alberta until January 1, 2017, a report required under section 6.1 [*Report of exempt distribution*] may be prepared in Form 45-106F1 if the report is in respect of a distribution that the issuer concurrently conducted in a jurisdiction that requires the report to be prepared in that form.

(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:

- (a) Form 45-106F1, in all jurisdictions except Alberta, British Columbia, New Brunswick, Ontario and Saskatchewan;
- (b) in British Columbia, Form 45-106F6, or
- (c) in Alberta, New Brunswick, Ontario and Saskatchewan,
 - (i) Form 45-106F10, if the issuer is an investment fund,
 - (ii) Form 45-106F11, if the issuer is not an investment fund.

(3) Despite paragraph (2)(c), in Alberta until January 1, 2017, an issuer that makes a distribution under an exemption from a prospectus requirement not provided for in this Instrument may prepare a report in Form 45-106F1 if the issuer concurrently conducted a distribution in a jurisdiction that requires the report to be prepared in that form.

Use of information in Form 45-106F6 Schedule I

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

Proposed amendments to OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions*

6.1 Report of exempt distribution – If an issuer distributed a security of its own issue under section 2.1 [*Government incentive security*] or section 2.9 [*Distributions to existing security holders*], the issuer must file a report on or before the 10th day after the distribution.

6.2 Required form of report of exempt distribution – The required form of report of exempt distribution under section 6.1 is Form 45-106F11.

ANNEX E-2
PROPOSED FORM 45-106F10
REPORT OF EXEMPT DISTRIBUTION FOR INVESTMENT FUND ISSUERS (ALBERTA, NEW BRUNSWICK, ONTARIO AND SASKATCHEWAN)

[Notes to reader: This is an illustration of the proposed Form 45-106F10 *Report of Exempt Distribution for Investment Fund Issuers*. In Alberta, New Brunswick and Saskatchewan, this form will be a paper form. In Ontario, this form will be an e-form.]

When creating the final version of the e-form, we will incorporate the use of drop-down menus wherever appropriate in order to make the e-form more “user-friendly” and easier to complete. Pursuant to OSC Rule 11-501 *Electronic Delivery of Documents to the Ontario Securities Commission*, issuers are required to file the report electronically in Ontario. In certain sections below, we have included notes to the reader to help them understand how the e-form will appear online. These notes do not form part of the form.

In addition to the changes reflected in Form 45-106F10, we are proposing amendments to subsection 6.2(2) of NI 45-106 to increase the alternative frequency of the filing requirement from annually within 30 days after the financial year-end of the investment fund to quarterly within 30 days after each calendar quarter in which there has been a distribution.]

See the instructions contained at the end of this form for assistance in completing the form.

INVESTMENT FUND/UNDERWRITER INFORMATION

ITEM 1 – PARTY COMPLETING THE REPORT

Who is completing this report?

- Investment fund/Investment fund manager on behalf of the investment fund
 Underwriter

| | |
|---|--|
| Full legal name of investment fund | |
| Former name if changed since last report | |
| FundSERV Code | |
| Date investment fund created <i>(use the date the investment fund first became available to investors)</i> (month/day/year) | |
| Financial year-end of investment fund (month/day) | |
| Jurisdiction of organization of investment fund | [Note to reader: In Ontario, the e-form will contain a drop-down menu that will allow the filer to select a jurisdiction. It will also contain an “other” field that will allow the filer to enter the jurisdiction if unavailable in the list.] |

If an underwriter is completing this report, also provide the following:

[Note to reader: In Ontario, the e-form will allow you to fill in the information below if “Underwriter” is selected.]

| | |
|---|--|
| Underwriter | |
| Full legal name of underwriter | |
| Street address | |
| City | |
| Province, territory, state or other equivalent | |
| Country | |
| Postal/zip code | |
| Business telephone number | |
| Business email address of underwriter’s chief executive officer or individual acting in that capacity | |

ITEM 2 – REPORTING ISSUER STATUS AND LISTING STATUS OF THE INVESTMENT FUND

Is the investment fund a reporting issuer in any jurisdiction of Canada?

- Yes
- No

If yes, provide the following information:

| | |
|--|---|
| Jurisdiction(s) of Canada in which the investment fund is a reporting issuer | [Note to reader: In Ontario, the e-form contains a drop-down menu from which to select the jurisdiction(s) of Canada in which the investment fund is a reporting issuer.] |
| SEDAR profile number | |

Is the investment fund listed or traded on an exchange or through another marketplace (as defined in National Instrument 21-101 *Marketplace Operation*)?

- Yes
- No

If yes, provide the following information:

| | |
|--|---|
| Name all the exchanges or marketplaces that the investment fund is listed or traded on | [Note to reader: In Ontario, the e-form contains a drop-down menu from which to select the names of exchanges or marketplaces and also contains an “other” category in order to identify exchanges or marketplaces not included in the list.] |
|--|---|

ITEM 3 – STRUCTURE OF THE INVESTMENT FUND

Indicate the legal structure of the investment fund by checking the applicable box.

| | |
|--|--------------------------|
| Trust | <input type="checkbox"/> |
| Corporation or part of a corporation (e.g. class) referable to a separate portfolio of assets (corporate fund) | <input type="checkbox"/> |
| Limited partnership | <input type="checkbox"/> |
| Other (describe) _____ | <input type="checkbox"/> |

Indicate whether the investment fund is a:¹

| | |
|--------------------------------|--------------------------|
| Mutual fund | <input type="checkbox"/> |
| Non-redeemable investment fund | <input type="checkbox"/> |

(Note 1 - for the definition of non-redeemable investment fund and related guidance on these terms please refer to section 1.1 of National Instrument 81-106 *Investment Fund Continuous Disclosure* (NI 81-106) and section 1.2 of the Companion Policy 81-106CP to NI 81-106)

ITEM 4 – DIRECTORS AND EXECUTIVE OFFICERS OF THE INVESTMENT FUND

If the investment fund is a corporate fund or a limited partnership, complete the following table by listing the directors and executive officers of the applicable entity as of the date of this report and provide their jurisdiction of residence (i.e. for a corporate fund, list the directors and executive officers of the corporation, and for a limited partnership, list the directors and executive officers of the general partner).

| Full legal name of director or executive officer | Title(s) or position(s) at investment fund | Jurisdiction of residence |
|--|--|---------------------------|
| | | |
| | | |

[Note to reader: In Ontario, additional rows can be added in the e-form if needed.]

ITEM 5 – TYPE OF INVESTMENT FUND

Indicate the type of investment fund by checking the appropriate box.

| | |
|-----------------------|--------------------------|
| Money market fund | <input type="checkbox"/> |
| Hedge fund | <input type="checkbox"/> |
| Other investment fund | <input type="checkbox"/> |

Is the investment fund subject to any of the following (check if yes):

| | |
|---|--------------------------|
| National Instrument 81-102 <i>Mutual Funds</i> (NI 81-102) | <input type="checkbox"/> |
| NI 81-102 and National Instrument 81-104 <i>Commodity Pools</i> | <input type="checkbox"/> |

ITEM 6 – SIZE OF THE INVESTMENT FUND

| | |
|---|----------------|
| Indicate the size of the investment fund (net asset value) in Canadian dollars as of the date of this report. | (CAN) \$ _____ |
|---|----------------|

ORGANIZATION AND MANAGEMENT DETAILS OF THE INVESTMENT FUND

ITEM 7 – INVESTMENT FUND MANAGER INFORMATION

Complete the following table.

| | |
|---|--|
| Full legal name of the investment fund manager | |
| NRD number | |
| Address of the head office of the investment fund manager | |
| City | |
| Province, territory, state or other equivalent | |
| Country | |
| Postal/zip code | |
| Business telephone number of the head office of the investment fund manager | |
| Business email address of the investment fund manager's chief executive officer or individual acting in that capacity | |

ITEM 8 – DIRECTORS AND EXECUTIVE OFFICERS OF THE INVESTMENT FUND MANAGER

Complete the following table by listing the directors and executive officers of the investment fund manager, including the chief compliance officer and ultimate designated person, as of the date of this report and provide their jurisdiction of residence.

| Full legal name of director or executive officer | Title(s) or position(s) at investment fund manager | Jurisdiction of residence |
|--|--|---------------------------|
| | | |
| | | |
| | | |

[Note to reader: In Ontario, additional rows can be added in the e-form if needed.]

ITEM 9 – PRINCIPAL SERVICE PROVIDERS

Complete the following table by providing the name and municipality of the principal office or head office of each of the other principal service providers to the investment fund, as applicable.

| Service Provider | Name | Municipality of principal/head office |
|--------------------------|------|---------------------------------------|
| Trustee | | |
| Portfolio manager | | |
| Sub-portfolio manager | | |
| Custodian | | |
| Registrar/transfer agent | | |
| Auditor | | |

DETAILS OF DISTRIBUTION**ITEM 10 – FIRST REPORT**

Indicate whether this is the first report of exempt distribution that has been filed for the investment fund.

- Yes
 No

ITEM 11 – DOCUMENTS PROVIDED IN CONNECTION WITH THE DISTRIBUTION

Indicate whether the following document has been provided to investors in connection with the distribution(s):

| | |
|---|---|
| Offering memorandum: | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Date of offering memorandum: (month/day/year) | |

[Note to reader: In Ontario, if yes, you will be able to attach an electronic copy of the offering memorandum directly to the e-form.]

ITEM 12 – PURCHASER INFORMATION

Complete Schedule 1 to this report. Schedule 1 is designed to assist in completing the remainder of this report. See “**Instructions for Schedule 1 to Form 45-106F10**” below.

[Note to reader: In Ontario, Schedule 1 is in the form of an Excel spreadsheet.]

ITEM 13 – DATE OF DISTRIBUTION(S)

State the distribution date. If the report is being filed for securities distributed on more than one distribution date, state the dates of the first and last distribution.

| | |
|---------|--|
| Date(s) | [Note to reader: In Ontario, the e-form contains a calendar from which to select the date(s) of the distribution. There is an option to select a single distribution date or the first and last distribution dates.] |
|---------|--|

ITEM 14 – GENERAL INFORMATION ABOUT SECURITIES DISTRIBUTED

For each type of security distributed, provide the following information:

| | |
|---|--|
| Describe the type of security | [Note to reader: In Ontario, the e-form contains a drop-down menu from which the specific type of security can be selected.] |
| Total number of securities distributed | |
| Price of each security (Canadian \$) If the securities are distributed at different prices, list the highest and lowest prices of the securities | [Note to reader: In Ontario, the e-form will have an option to indicate a single price or the highest and lowest price.] |

[Note to reader: In Ontario, the e-form provides an option for this information to be provided for more than one type of security.]

If a convertible or exchangeable security was distributed, provide the following additional information for each type of convertible or exchangeable security distributed.

| | |
|---|--|
| Expiry date (if applicable) | [Note to reader: In Ontario, the e-form contains a calendar from which to select the expiry date.] |
| Exercise price | |
| Other key terms of the convertible or exchangeable security | |
| Type of security of the underlying security | [Note to reader: In Ontario, the e-form contains a drop-down menu from which the specific type of security can be selected from a list.] |

[Note to reader: In Ontario, the e-form provides an option for this information to be provided for more than one type of convertible or exchangeable security.]

ITEM 15 – AGGREGATE PURCHASER INFORMATION

Complete the following table. Do not include in this table securities issued as payment for commissions or finder's fees disclosed under item 16, below. The information provided in this table must reconcile with the information provided in Schedule 1.

| Each Canadian and foreign jurisdiction where purchasers reside (indicate province/territory and/or country) | Exemption relied on ¹ | Number of purchasers | Total dollar value raised from purchasers in the jurisdiction (Canadian \$) |
|---|----------------------------------|----------------------|---|
| | | | |
| | | | |
| | | | |
| | | | |
| Total number of purchasers | | | |
| Total dollar value of distribution(s) in all jurisdictions (Canadian \$) | | | |
| Total dollar value of redemptions since last report filed (Canadian \$)² | | | |

[Note to reader: In Ontario, additional rows can be added in the e-form if needed.]

Note 1: If different exemptions were relied on in the same jurisdiction, indicate the number of purchasers in that jurisdiction per exemption.

Note 2: If this is the first report of exempt distribution filed for the investment fund, enter all redemptions since the investment fund was created.

ITEM 16 - COMPENSATION

Please indicate whether any of the following parties received compensation in connection with the distribution(s) (check all that apply).

- Registrant
 Finder, other individual or entity (other than a registrant)

If any cash or compensation was paid to a: (i) registrant, or (ii) finder, other individual or entity in connection with the distribution(s), complete Schedule 2 *Commissions and Finders Fees*. Ensure that all compensation paid in connection with the distribution(s) is appropriately reflected in Schedule 2 – see “**Instructions for Schedule 2 to Form 45-106F10**” below. [Note to reader: In Ontario, Schedule 2 is in the form of an Excel spreadsheet.]

ITEM 17 – INDIRECT COLLECTION OF PERSONAL INFORMATION FOR DISTRIBUTIONS (ONTARIO)

If a distribution is made in Ontario to one or more individuals, complete the following.

Notice - Collection and use of personal information

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

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

Authorization of indirect collection of personal information for distributions in Ontario

Were any securities distributed to individuals?

- Yes
 No

[Note to reader: The following confirmation will only be required to be completed if there was a distribution of securities to an individual.]

The attached Schedule 1 may contain personal information of purchasers and details of the distribution(s). The information in Schedule 1 will not be placed on the public file of any securities regulatory authority or, where applicable, regulator. However, freedom of information legislation in certain jurisdictions may require the securities regulatory authority or, where applicable, regulator to make this information available if requested.

The investment fund/investment fund manager/underwriter hereby confirms that each purchaser listed in Schedule 1 of this report who is resident in Ontario:

- (a) has been notified by the investment fund/investment fund manager/underwriter of the delivery to the Ontario Securities Commission of the information pertaining to the purchaser as set out in Schedule 1,
- (i) that this information is being collected by the Ontario Securities Commission under the authority granted to it in securities legislation,
 - (ii) that this information is being collected for the purposes of the administration and enforcement of the securities legislation of Ontario, and
 - (iii) of the title, business address and business telephone number of the public official in Ontario, as set out in this report, who can answer questions about the Ontario Securities Commission’s indirect collection of the information, and

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

The investment fund/investment fund manager/underwriter confirms the above.

[Note to reader: In Ontario, this box must be checked for the e-form to be submitted.]

ITEM 18 - CERTIFICATE

I am submitting this form as agent for the [investment fund/investment fund manager/underwriter] and have been authorized to do so. By checking this box, I certify that the [investment fund/investment fund manager/underwriter] provided me with all of the information on this form.

By completing the information in the table below, I certify to the securities regulatory authority that:

- I have read this form and understand the questions, and
- All of the information provided on this form is true and complete

Name of [investment fund/investment fund manager/underwriter]: _____

Provide the full legal name, title, telephone number and email of person certifying this report:

| | |
|--------------------------------------|--|
| Full legal name | |
| Title | |
| Business telephone number | |
| Business address | |
| Business email address of individual | |

Provide the signature of the individual certifying this report.

| | |
|-----------|--|
| Signature | [Note to reader: In Ontario, the e-form will require insertion of an electronic signature here.] |
|-----------|--|

Date: _____

[Note to reader: In Ontario, the e-form contains a calendar from which to select the date of the report.]

IT IS AN OFFENCE TO MAKE A MISREPRESENTATION IN THIS REPORT

ITEM 19 – CONTACT PERSON REGARDING CONTENT OF REPORT

Provide the following information for the individual who may be contacted with respect to any questions regarding the contents of this report, if different than the individual certifying the report above.

Same as individual certifying the report

| | |
|--------------------------------------|--|
| Name | |
| Title | |
| Organization | |
| Business telephone number | |
| Business address | |
| Business email address of individual | |

SCHEDULE 1 TO FORM 45-106F10

[Note to reader: The following describes the information that would be required to be provided in Schedule 1 to Form 45-106F10. In Ontario, Schedule 1 will be filed in the form of an Excel spreadsheet. When creating the final version of the schedule, Ontario will incorporate the use of drop-down menus wherever appropriate in order to make this e-form more “user-friendly” and easier to complete.]

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

General information

- Investment fund/Investment fund manager/Underwriter name
- Date Form 45-106F10 filed

Purchaser information (to be provided for each purchaser)

- Individual (Y/N)
- First name
- Last name
- Company name
- Address
- Telephone number
- Email address
- Province
- Country
- Age range if an individual (18 to 25 years, 26 to 34 years, 35 to 49 years, 50 to 64 years, 65 to 79 years, 80 years and older)

Information about securities purchased (to be provided for each distribution)

- Number
- Type
- Total purchase price (CAD \$)
- Date of distribution (month/day/year)

Information about exemption relied on (to be provided for each distribution)

[Note to reader: In Ontario, the e-form contains a drop-down menu for each exemption that could be relied on.]

- Section
- Subsection
- Paragraph

Other information (to be provided if applicable)

- Offering memorandum (if exemption is available for investment fund)
 - Category of “eligible investor”
- Family, friends and business associates (if exemption is available for investment fund)
 - Person at issuer with whom purchaser has relationship (name and title)
- Registrant information
 - NRD number of registrant (if applicable)

SCHEDULE 2 TO FORM 45-106F10

[Note to reader: The following describes the information that would be required to be provided in Schedule 2 to Form 45-106F10. In Ontario, Schedule 2 will be filed in the form of an Excel spreadsheet. When creating the final version of the schedule, Ontario will incorporate the use of drop-down menus wherever appropriate in order to make this e-form more “user-friendly” and easier to complete.]

Information about registrants or finders

- Is person or entity being compensated a (i) registrant, or (ii) finder, other individual or entity (other than a registrant)
- Is person or entity being compensated the investment fund, the investment fund manager, an affiliate or associate of the investment fund manager, or a director, officer or employee of any of them
- If registrant, NRD number, registration category, affiliated registered firm (if registered individual) and NRD number of affiliated registered firm (if registered individual)

General information – firms

- Firm name
- Street
- City, province, country
- Postal code
- Email address

General information – individuals

- First name
- Last name
- Street
- City, province, country
- Postal code
- Email address

Form of Compensation

- Cash
 - Amount (CAD \$)
- Securities
 - Number
 - Type
 - Price per security
 - Exemption relied on
 - Date of distribution (month/day/year)
- Total dollar value (include the value of any securities and cash, added together, in CAD \$)

Information about other fees paid to registrants

- If registrant, finder's fees paid to registrant
- If registrant, broker fees paid to registrant

Other information

- Description of terms (where applicable)

INSTRUCTIONS

Instructions for Form 45-106F10:

1. **Filing instructions in Ontario** – File this report in Ontario through the online e-form available at www.osc.gov.on.ca.
2. **Filing instructions in Alberta, New Brunswick and Saskatchewan** – File this report and the applicable fee at the following addresses:

Alberta Securities Commission
Suite 600, 250 – 5th Street SW
Calgary, Alberta T2P 0R4
Telephone: (403) 297-6454
Toll free in Canada: 1-877-355-0585
Facsimile: (403) 297-2082

Financial and Consumer Services Commission (New Brunswick)
85 Charlotte Street, Suite 300
Saint John, New Brunswick E2L 2J2
Telephone: (506) 658-3060
Toll free: 1-866-933-2222
Facsimile: (506) 658-3059

Financial and Consumer Affairs Authority of Saskatchewan
Suite 601 – 1919 Saskatchewan Drive
Regina, Saskatchewan S4P 4H2
Telephone: (306) 787-5879
Facsimile: (306) 787-5899

[Note to reader: The Alberta Securities Commission is considering various options to provide issuers with a means of electronically submitting Form 45-106F10 and the related Schedules 1 and 2.]

3. **Payment of filing fee in Ontario** – Refer to Appendix C – Activity Fees of OSC Rule 13-502 *Fees* for the applicable filing fee. The filing fee must be paid at the time that the e-form is submitted.
4. **Payment of filing fee (other than in Ontario)** – In order to determine the applicable fee, consult the securities legislation of each jurisdiction in which a distribution is made.
5. **Filing instructions if distributions made in more than one jurisdiction** – Refer to the securities legislation in each jurisdiction where the distribution is made to determine which form(s) of report of exempt distribution is/are required or permitted to be filed. The report should identify all purchasers in each of the jurisdictions in which the distribution is made. Filing fees associated with the filing of the reports are not affected by identifying all purchasers in a single report.
6. **Date of information in report** – Unless otherwise indicated in the report, provide the information as of the date of the report.
7. **Jurisdiction of distribution** – A “distribution” includes distributions made to purchasers resident in the local jurisdiction. A “distribution” may also occur if the issuer of the securities is located in or has a significant connection to the jurisdiction. Consult securities legislation in the particular jurisdiction for

guidance on when an issuer is considered to be located in or have a significant connection to that jurisdiction.

8. **References to purchaser** – References to a purchaser in this report are to the beneficial owner of the securities. If a trust company or a registered adviser has purchased on behalf of a fully managed account under subsections 2.3(2) and (4) of National Instrument 45-106 *Prospectus Exemptions* (NI 45-106), give information about both the trust company or registered adviser and the beneficial owner of the fully managed account.
9. **Currency** – All dollar amounts are in Canadian dollars.
10. **Aggregate information in item 15** –
 - (1) Do not include in this table securities issued as payment for commissions or finder's fees disclosed in Schedule 2.
 - (2) The information in this table should be included for each Canadian and foreign jurisdiction where purchasers of the securities reside.
 - (3) If different exemptions were relied on in the same jurisdiction, indicate the number of purchasers in that jurisdiction per exemption.
11. **Reconciliation of information** – The information provided in response to items 13, 14 and 15 must reconcile with the information provided in Schedule 1 of Form 45-106F10.

Instructions for Schedule 1 to Form 45-106F10:

12. **Public disclosure of information** – *The information in Schedule 1 will not be placed on the public file of any securities regulatory authority or, where applicable, regulator.* However, freedom of information legislation in certain jurisdictions may require the securities regulatory authority or, where applicable, regulator to make this information available if requested.
13. **Exclusion of securities as payment for commissions or finder's fees** - Do not include in Schedule 1 any securities issued as payment for commissions or finder's fees as disclosed in Schedule 2 of this report.
14. **Age range of purchaser** – If the purchaser is an individual, identify which of the following age ranges applies to the purchaser: 18-25, 26-34, 35-49, 50-64, 65-79, 80+.
15. **Reference to exemption relied on** - When identifying the exemption relied on, refer to the specific subsection of NI 45-106. For example, if relying on the exemption in section 2.10 [*Minimum Amount Investment*], the column should state "2.10(1)". For exemptions that require the purchaser to meet certain characteristics, such as the exemption in section 2.3 [*Accredited investor*], also state the specific paragraph that applies to the purchaser. If the purchaser qualifies under multiple paragraphs, state all paragraphs that apply. For example, when relying on section 2.3 [*Accredited investor*], if the purchaser qualifies under paragraph (j) of the definition of accredited investor in section 1.1, the section column should show "2.3(1) – (j)". If the purchaser qualifies under both paragraphs (j) and (k), the column should show "2.3(1) – (j), (k)".

It is not necessary to list the exemption, if any, relied on in the securities legislation of a securities regulatory authority that provides a similar exemption to that provided in NI 45-106. For example, if an issuer relies on the exemption in section 73.3(2) under the *Securities Act* (Ontario) for a distribution in Ontario, it can identify the exemption relied on in the table as the accredited investor exemption in section 2.3(1) of NI 45-106.

Instructions for Schedule 2 to Form 45-106F10:

16. **Reference to compensation** - Complete Schedule 2 by providing information for each person who has received or who will receive compensation in connection with the distribution(s). Compensation includes commissions, discounts or other fees or payments of a similar nature. Do not include payments for services incidental to the distribution, such as clerical, printing, legal or accounting services.
17. **Information regarding convertible or exchange securities issued as compensation** - If the securities being issued as compensation are or include convertible or exchangeable securities, such as warrants or options, please add sufficient details under the column "Description of Terms" in Schedule 2 to describe the terms of the convertible or exchangeable securities, including the term and exercise price. Do not include the exercise price of any convertible or exchangeable security in the total dollar value of the compensation unless the securities have been converted or exchanged.

Questions

Refer any questions to:

Securities Regulatory Authorities and Regulators

Alberta Securities Commission
Suite 600, 250 – 5th Street SW
Calgary, Alberta T2P 0R4
Telephone: (403) 297-6454
Toll free in Canada: 1-877-355-0585
Facsimile: (403) 297-2082

Financial and Consumer Services Commission (New Brunswick)
85 Charlotte Street, Suite 300
Saint John, New Brunswick E2L 2J2
Telephone: (506) 658-3060
Toll free in Canada: 1-866-933-2222
Facsimile: (506) 658-3059

Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8
Telephone: (416) 593- 8314
Toll free in Canada: 1-877-785-1555
Facsimile: (416) 593-8122
Public official contact regarding indirect collection of information: Inquiries Officer

Financial and Consumer Affairs Authority (Saskatchewan)
Suite 601 – 1919 Saskatchewan Drive
Regina, Saskatchewan S4P 4H2
Telephone: (306) 787-5879
Facsimile: (306) 787-5899

ANNEX E-3
PROPOSED FORM 45-106F11
REPORT OF EXEMPT DISTRIBUTION FOR ISSUERS OTHER THAN INVESTMENT FUNDS (ALBERTA, NEW BRUNSWICK, ONTARIO AND SASKATCHEWAN)

[Notes to reader: This is an illustration of the proposed Form 45-106F11 *Report of Exempt Distribution for Issuers other than Investment Funds*. In Alberta, New Brunswick and Saskatchewan, this form will be a paper form. In Ontario, this form will be an e-form.]

When creating the final version of the e-form, we will incorporate the use of drop-down menus wherever appropriate in order to make the e-form more “user-friendly” and easier to complete. Pursuant to OSC Rule 11-501 *Electronic Delivery of Documents to the Ontario Securities Commission*, issuers are required to file the report electronically in Ontario. In certain sections below, we have included notes to the reader to help them understand how the e-form will appear online. These notes do not form part of the form.]

See the instructions contained at the end of this form for assistance in completing the form.

ITEM 1 – PARTY COMPLETING THE REPORT

Who is completing this report?

- Issuer
 Underwriter

ITEM 2 – UNDERWRITER INFORMATION (IF APPLICABLE)

If an underwriter is completing this report, provide the following information:

| | |
|---|--|
| Underwriter | |
| Full legal name of underwriter | |
| Street address | |
| City | |
| Province, territory, state or other equivalent | |
| Country | |
| Postal/zip code | |
| Business telephone number | |
| Business email address of underwriter’s chief executive officer or individual acting in that capacity | |

ITEM 3 – ISSUER INFORMATION

3.1 Name of issuer and parent

Provide the following information:

| | |
|--|--|
| Full legal name of issuer | |
| Former "Issuer Full Legal Name" if changed since last report | |
| Full legal name of parent of issuer (if applicable) | |

3.2 Contact information for issuer

Provide the following information regarding the issuer's head office and contact information:

| | |
|--|--|
| Street address | |
| City | |
| Province, territory, state or other equivalent | |
| Country | |
| Postal/zip code | |
| Business telephone number | |
| Business email address of issuer's chief executive officer or individual acting in that capacity | |

3.3 Other information regarding the issuer

3.3.1 Size of issuer and financial year-end

Provide the following information:

| | |
|---|--|
| Year of formation of issuer (month/day/year) | |
| Issuer's date of financial year-end (month/day) | |
| Approximate number of employees of the issuer at the time of the distribution | <p>[Note to reader: In Ontario, the e-form will contain a drop-down menu with the following ranges:</p> <ul style="list-style-type: none">• 1-9• 10-49• 50-99• 100 to 499• 500 or more |

3.3.2 Reporting issuer status of the issuer

Is the issuer a reporting issuer in any jurisdiction of Canada at the time of the distribution?

- Yes
 No

If yes, provide the following information:

| | |
|---|--|
| Jurisdiction(s) of Canada in which the issuer is a reporting issuer | |
| Issuer's SEDAR profile number | |

3.3.3 Listing(s) of securities of the issuer

Is any class of securities of the issuer listed or traded on an exchange or through another marketplace (as defined in National Instrument 21-101 *Marketplace Operation*)?

- Yes
 No

If yes, provide the following information:

| | |
|---|--|
| Name(s) of all the exchanges or marketplaces on which securities of the issuer are listed or traded | [Note to reader: In Ontario, the e-form contains a drop-down menu from which to select the names of major Canadian and international exchanges or marketplaces. The drop-down menu also contains an "other" category in order to identify exchanges or marketplaces not included in the list.] |
|---|--|

3.3.4 Primary industry of the issuer

Indicate the primary industry in which the issuer operates. Further explanation of the industry in which the issuer operates can be provided in the space at the end of this item.

Financial services

- Financial services – mortgage investment company
 Financial services – insurance company
 Financial services – banks & trusts
 Financial services – securitization conduits
 Financial services – private equity/venture capital
 Financial services – other (describe): _____

Mining and other resource industries

- Mining – exploration/development
 Mining – production
 Oil and gas
 Forestry
 Agriculture

Real estate

- Real estate/land development
- Real estate investment trust

Other industries

- Bio-technology/pharmaceutical/health care
- Utilities/power generation
- Pipelines
- Media/communications/entertainment
- Industrial products
- Transportation & infrastructure
- Technology/clean technology
- Consumer products & merchandising
- Education

Other

- Capital pool company
- Government
- Charity/not-for-profit
- Other (describe): _____

Further explanation of primary industry in which the issuer operates (optional): _____

3.3.5 Directors, executive officers, control persons and promoters of the issuer

Provide the following information for each director, executive officer, control person and promoter of the issuer at the time of the distribution:

| Full legal name of director, executive officer, control person or promoter | Title(s) or position(s) at issuer | Jurisdiction of residence |
|--|-----------------------------------|---------------------------|
| | | |
| | | |
| | | |
| | | |
| | | |

[Note to reader: In Ontario, additional rows can be added in the e-form if needed.]

ITEM 4 – INFORMATION ABOUT THE DISTRIBUTION

4.1 Date of distribution

State the distribution date. If the report is being filed for securities distributed on more than one distribution date, state the dates of the first and last distributions.

Date(s): _____

[Note to reader: In Ontario, the e-form contains a calendar from which to select the date(s) of the distribution. There is an option to select a single distribution date or the first and last distribution dates.]

4.2 Type of security(ies) distributed

4.2.1 General information about securities distributed

For each type of security distributed, provide the following information:

| | |
|---|--|
| Type of security | <input type="checkbox"/> Equity and other securities <input type="checkbox"/> Debt <input type="checkbox"/> Derivatives [Note to reader: In Ontario, the e-form contains a drop-down menu under each of these categories from which the specific type of security can be selected.] |
| Total number of securities distributed | |
| Price of each security (in Canadian \$) If securities are distributed at different prices, list the highest and lowest prices of the securities. | [Note to reader: In Ontario, the e-form will have an option to indicate a single price or the highest and lowest prices.] |

[Note to reader: In Ontario, the e-form provides an option for this information to be provided for more than one type of security.]

4.2.2 Additional information about convertible or exchangeable securities distributed

If a convertible or exchangeable security was distributed, provide the following additional information for each type of convertible or exchangeable security distributed:

| | |
|---|--|
| Expiry date (month/day/year) | [Note to reader: In Ontario, the e-form contains a calendar from which to select the expiry date.] |
| Exercise price | |
| Other key terms of the convertible or exchangeable security | |
| Type of security of the underlying security | <input type="checkbox"/> Equity and other securities <input type="checkbox"/> Debt <input type="checkbox"/> Derivatives [Note to reader: In Ontario, the e-form contains a drop-down menu under each of these categories from which the specific type of security can be selected.] |

[Note to reader: In Ontario, the e-form provides an option for this information to be provided for more than one type of convertible or exchangeable security.]

4.3 Documents provided in connection with the distribution

Indicate whether any of the following documents (offering materials) have been provided to investors in connection with the distribution:

| | |
|---|---|
| Offering memorandum: | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Date of offering memorandum: (month/day/year) | |
| Presentations or other marketing materials: | <input type="checkbox"/> Yes <input type="checkbox"/> No |

[Note to reader: In Ontario, the information in the table below and related offering materials will be required to be provided as part of the electronic filing of this report.]

If you responded “yes” to either of the above, attach an electronic copy of any offering materials that have not been previously filed with the Ontario Securities Commission. If the offering materials have been previously filed with the Ontario Securities Commission, state the date(s) on each of the offering materials and the date(s) on which they were previously filed.

Details of previously filed offering materials:

| Type of Document | Amendment (y/n) | Date of offering materials (see Note 1) | Date filed with securities regulatory authority |
|------------------|-----------------|--|--|
| | | | |
| | | | |

[Note to reader: In Ontario, the e-form contains a calendar from which to select the date of filing and the option to add rows if needed.]

Note 1: Indicate either the date of the offering materials or the date of the offering memorandum to which the offering materials relate.

4.4 Exemptions relied on, purchasers and capital raised

4.4.1 Aggregated purchaser information

Complete the following table. Do not include in this table securities issued as payment for commissions or finder's fees discussed under section 4.5 of this report. The information provided in this table must reconcile with the information provided in Schedule 1.

| Each jurisdiction where purchasers under the distribution reside (includes jurisdictions of Canada as well as foreign jurisdictions) | Exemption(s) relied on (see Note 2) | Number of purchasers | Total dollar value raised from purchasers (in Canadian \$) |
|--|---|----------------------|--|
| | | | |
| | | | |
| | | | |
| Total number of purchasers | | | |
| Total dollar value of distribution(s) in all jurisdictions (in Canadian \$) | | | |

[Note to reader: In Ontario, additional rows can be added in the e-form if needed.]

Note 2: If different exemptions were relied on in the same jurisdiction, indicate the number of purchasers in that jurisdiction for each exemption.

4.4.2 Information regarding each purchase

Complete Schedule 1 to this report - see “**Instructions for Schedule 1 to Form 45-106F11**” below.
[Note to reader: In Ontario, Schedule 1 is in the form of an Excel spreadsheet.]

4.5 Involvement of registrants, insiders and finders

4.5.1 Involvement of registrants, insiders and finders

Please indicate whether any of the following parties received compensation from the issuer in connection with the distribution (check all that apply).

- Registrant
 Insider
 Finder, other individual or entity (other than a registrant or insider)

4.5.2 Compensation

If any cash or other compensation was paid to a: (i) registrant, (ii) insider, or (iii) finder, other individual or entity in connection with the distribution, complete Schedule 2 *Commissions and Finders Fees*. Ensure that all compensation paid by the issuer in connection with the distribution is appropriately reflected in Schedule 2 – see “**Instructions for Schedule 2 to Form 45-106F11**” below.

[Note to reader: In Ontario, Schedule 2 is in the form of an excel spreadsheet.]

ITEM 5 – INDIRECT COLLECTION OF PERSONAL INFORMATION FOR DISTRIBUTIONS (ONTARIO)

If a distribution is made in Ontario to one or more individuals, complete the following.

Notice - Collection and use of personal information

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

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

Authorization of indirect collection of personal information for distributions in Ontario

Were any securities distributed to individuals?

- Yes
 No

[Note to reader: The following confirmation will only be required to be completed if there was a distribution of securities to an individual.]

The attached Schedule 1 may contain personal information of purchasers and details of the distribution(s). The information in Schedule 1 will not be placed on the public file of any securities regulatory authority or, where

applicable, regulator. However, freedom of information legislation in certain jurisdictions may require the securities regulatory authority or, where applicable, regulator to make this information available if requested.

The issuer/underwriter hereby confirms that each purchaser listed in Schedule 1 of this report who is resident in Ontario:

- (a) has been notified by the issuer/underwriter of the delivery to the Ontario Securities Commission of the information pertaining to the purchaser as set out in Schedule 1,
 - (i) that this information is being collected by the Ontario Securities Commission under the authority granted to it in securities legislation,
 - (ii) that this information is being collected for the purposes of the administration and enforcement of the securities legislation of Ontario, and
 - (iii) of the title, business address and business telephone number of the public official in Ontario, as set out in this report, who can answer questions about the Ontario Securities Commission’s indirect collection of the information, and
- (b) has authorized the indirect collection of the information by the Ontario Securities Commission.

The issuer/underwriter confirms the above.

[Note to reader: In Ontario, this box must be checked for the e-form to be submitted.]

ITEM 6 – CERTIFICATE

6.1 Authorization to submit form and certification

I am submitting this form as agent for the [issuer/underwriter] and have been authorized to do so. By checking this box, I certify that the [issuer/underwriter] provided me with all of the information on this form.

By completing the information in the table below, I certify to the securities regulatory authority that:

- I have read this form and understand the questions, and
- all of the information provided on this form is true and complete.

Provide the following information regarding the individual certifying the report:

| | |
|---|--|
| Full legal name | |
| Title | |
| Organization (name of issuer or underwriter, as applicable) | |
| Business telephone number | |
| Business address | |
| Business email address of individual | |

Provide the signature of the individual certifying this report:

| | |
|-----------|--|
| Signature | [Note to reader: In Ontario, the e-form will require insertion of an electronic signature here.] |
|-----------|--|

Date: _____

[Note to reader: In Ontario, the e-form contains a calendar from which to select the date of the report.]

IT IS AN OFFENCE TO MAKE A MISREPRESENTATION IN THIS REPORT

6.2 Contact person regarding content of report

Provide the following information for the individual who may be contacted with respect to any questions regarding the contents of this report, if different than the individual certifying the report above.

Same as individual certifying the report.

| | |
|---|--|
| Name | |
| Title | |
| Organization (name of issuer or underwriter, as applicable) | |
| Business telephone number | |
| Business address | |
| Business email address of individual | |

SCHEDULE 1 TO FORM 45-106F11

[Note to reader: The following describes the information that would be required to be provided in Schedule 1 to Form 45-106F11. In Ontario, Schedule 1 will be filed in the form of an Excel spreadsheet. When creating the final electronic version of the schedule in Ontario, we will incorporate the use of drop-down menus wherever appropriate in order to make this schedule more “user-friendly” and easier to complete.]

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

General information

- Issuer/underwriter name
- Date Form 45-106F11 filed

Purchaser information (to be provided for each purchaser)

- Individual (Y/N)
- First name
- Last name (Company name)
- Address
- Telephone number
- Email address
- Province
- Country
- Age range if an individual (18 to 25 years, 26 to 34 years, 35 to 49 years, 50 to 64 years, 65 to 79 years, 80 years and older)

Information about securities purchased (to be provided for each distribution)

- Number
- Type
- Total purchase price (CAD \$)
- Date of distribution (month/day/year)

Information about exemption relied on (to be provided for each distribution)

[Note to reader: In Ontario, the e-form contains a drop-down menu for each exemption that could be relied on.]

- Section
- Subsection
- Paragraph

Other information (to be provided if applicable)

- Offering memorandum
 - Category of "eligible investor"
- Family, friends and business associates
 - Person at issuer with whom purchaser has relationship (name and title)
- Registrant information
 - NRD number of registrant (if applicable)

SCHEDULE 2 TO FORM 45-106F11

[Note to reader: The following describes the information that would be required to be provided in Schedule 2 to Form 45-106F11. In Ontario, Schedule 2 will be filed in the form of an Excel spreadsheet. When creating the final electronic version of the schedule in Ontario, we will incorporate the use of drop-down menus wherever appropriate in order to make this schedule more “user-friendly” and easier to complete.]

Information about insiders, registrants or finders

- Indicate if person being compensated is: (i) a registrant, (ii) an insider of the issuer or (iii) a finder, other individual or entity (other than a registrant or insider)
- Relationship to issuer [Note to reader: In Ontario, the e-form contains a drop-down menu of sub-categories, including “Other – explain”, to further specify the nature of the relationship of the person being compensated to the issuer.]
- If registrant, NRD number, registration category, affiliated registered firm (if registered individual) and NRD number of affiliated registered firm (if registered individual)

General information – firms

- Company name
- Street
- City, province, country
- Postal code
- Email address

General information – individuals

- First name
- Last name
- Street
- City, province, country
- Postal code
- Email address

Form of Compensation

- Cash
 - Amount (CAD \$)
- Securities
 - Number
 - Type
 - Price per security
 - Exemption relied on
 - Date of distribution (month/day/year)
- Total dollar value (include the value of any securities and cash, added together, in CAD \$)

Information about other fees paid to registrants

- If registrant, finder's fees paid to registrant
- If registrant, broker fees paid to registrant

Other information

- Description of terms (where applicable)

INSTRUCTIONS

Instructions for Form 45-106F11

1. **Filing instructions in Ontario** – File this report in Ontario through the online e-form available at www.osc.gov.on.ca.
2. **Filing instructions (other than Ontario)** - File this report and the applicable fee at the following address(es), as applicable:

Alberta Securities Commission
Suite 600, 250 - 5th Street SW
Calgary, Alberta T2P 0R4
Telephone: (403) 297-6454
Toll free in Canada: 1-877-355-0585
Facsimile: (403) 297-2082

Financial and Consumer Services Commission (New Brunswick)
85 Charlotte Street, Suite 300
Saint John, New Brunswick E2L 2J2
Telephone: (506) 658-3060
Toll free: 1-866-933-2222
Facsimile: (506) 658-3059

Financial and Consumer Affairs Authority of Saskatchewan
Suite 601 - 1919 Saskatchewan Drive
Regina, Saskatchewan S4P 4H2
Telephone: (306) 787-5879
Facsimile: (306) 787-5899

[Note to reader: The Alberta Securities Commission is considering various options to provide issuers with a means of electronically submitting Form 45-106F11 and the related Schedules 1 and 2.]

3. **Payment of filing fee in Ontario** – Refer to Appendix C – Activity Fees of OSC Rule 13-502 *Fees* for the applicable filing fee. The filing fee must be paid at the time that the e-form is submitted.
4. **Payment of filing fee (other than in Ontario)** - In order to determine the applicable fee, consult the securities legislation of each jurisdiction in which a distribution is made.
5. **Filing instructions if distributions made in more than one jurisdiction** – Refer to the securities legislation in each jurisdiction where the distribution is made to determine which form(s) of report of exempt distribution is/(are) required or permitted to be filed. The report should identify all purchasers in each of the jurisdictions in which the distribution is made. Filing fees associated with the filing of the reports are not affected by identifying all purchasers in a single report.
6. **Date of information in report** - Unless otherwise indicated in the report, provide the information as of the date of the report.
7. **Jurisdiction of distribution** – A “distribution” includes distributions made to purchasers resident in the local jurisdiction. A “distribution” may also occur if the issuer of the securities is located in or has a significant

connection to the jurisdiction. Consult securities legislation in the particular jurisdiction for guidance on when an issuer is considered to be located in or to have a significant connection to that jurisdiction.

8. **Multiple distributions** – One report may be used for multiple distributions occurring within 10 days of each other provided the report is filed on or before the 10th day following the first of such distributions.
9. **References to purchaser** – References to a purchaser in this report are to the beneficial owner of the securities. If a trust company or a registered adviser has purchased on behalf of a fully managed account under subsections 2.3(2) and (4) of National Instrument 45-106 *Prospectus Exemptions* (NI 45-106), give information about both the trust company or registered adviser and the beneficial owner of the fully managed account.
10. **Currency** – All dollar amounts are in Canadian dollars.
11. **Aggregate information in item 4.4.1** –
 - (1) Do not include in this table securities issued as payment for commissions or finder's fees disclosed in Schedule 2.
 - (2) The information in this table should be included for each Canadian and foreign jurisdiction where purchasers of the securities reside.
 - (3) If different exemptions were relied on in the same jurisdiction, indicate the number of purchasers in that jurisdiction per exemption.
12. **Reconciliation of information** – The information provided in response to Item 4.4.1 must reconcile with the information provided in Schedule 1 of Form 45-106F11.

Instructions for Schedule 1 to Form 45-106F11

13. **Public disclosure of information** - The information in Schedule 1 will not be placed on the public file of any securities regulatory authority or, where applicable, regulator. However, freedom of information legislation in certain jurisdictions may require the securities regulatory authority or, where applicable, regulator to make this information available if requested.
14. **Exclusion of securities as payment for commissions or finder's fees** – Do not include in Schedule 1 any securities issued as payment for commissions or finder's fees as disclosed in Schedule 2 of this report.
15. **Age range of purchaser** - If the purchaser is an individual, identify which of the following age ranges applies to the purchaser: 18-25, 26-34, 35-49, 50-64, 65-79, or 80+.
16. **Reference to exemption relied on** – When identifying the exemption relied on, refer to the specific subsection of NI 45-106. For example, if relying on the exemption in section 2.10 [*Minimum Amount Investment*], the column should state "2.10(1)". For exemptions that require the purchaser to meet certain characteristics, such as the exemption in section 2.3 [*Accredited investor*] or section 2.5 [*Family, friends and business associates*], also state the specific paragraph that applies to the purchaser. If the purchaser qualifies under multiple paragraphs, state all paragraphs that apply. For example, when relying on section 2.3 [*Accredited investor*], if the purchaser qualifies under paragraph (j) of the definition of accredited investor in section 1.1, the section column should show "2.3(1) – (j)". If the purchaser qualifies under both paragraphs (j) and (k), the column should show "2.3(1) – (j), (k)".

It is not necessary to list the exemption, if any, relied on in the securities legislation of a securities regulatory authority that provides a similar exemption to that provided in NI 45-106. For example, if an issuer relies on the exemption in section 73.3(2) under the *Securities Act* (Ontario) for a distribution in Ontario, it can identify the exemption relied on in the table as the accredited investor exemption in section 2.3(1) of NI 45-106.

17. **Information required where reliance on the offering memorandum exemption** – If the purchaser qualifies under the exemption in section 2.9 of NI 45-106 [*Offering memorandum*], specify the category of "eligible investor" of the purchaser based on parts (a) to (h) of the definition of "eligible investor".
18. **Information required where reliance on the family, friends and business associates exemption** – If the purchaser qualifies under the exemption in section 2.5 of NI 45-106 [*Family, friends and business associates*], specify the name and title of the individual at the issuer with whom the purchaser has the applicable relationship.
19. **Reports filed under subsection 6.1(1)(j) [TSX Venture Exchange offering] of NI 45-106 in Alberta** – For reports filed under subsection 6.1(1)(j) [*TSX Venture Exchange offering*] of NI 45-106 in Alberta, New Brunswick or Saskatchewan the table in Schedule 1 only needs to list the total number of purchasers by jurisdiction instead of including the name, residential address and email address of each purchaser.

Instructions for Schedule 2 to Form 45-106F11

20. **Reference to compensation** – Complete Schedule 2 by providing information for each person who has received or who will receive compensation in connection with the distribution(s). Compensation includes commissions, discounts or other fees or payments of a similar nature. Do not include payments for services incidental to the distribution, such as clerical, printing, legal or accounting services.
21. **Information regarding convertible or exchange securities issued as compensation** – If the securities being issued as compensation are or include convertible or exchangeable securities, such as warrants or options, please add sufficient details under the column "Description of Terms" in Schedule 2 to describe the terms of the convertible or exchangeable securities, including the term and exercise price. Do not include the exercise price of any convertible or exchangeable security in the total dollar value of the compensation unless the securities have been converted or exchanged.

Questions

Refer any questions to:

Securities Regulatory Authorities and Regulators

Alberta Securities Commission
Suite 600, 250 – 5th Street SW
Calgary, Alberta T2P 0R4
Telephone: (403) 297-6454
Toll free in Canada: 1-877-355-0585
Facsimile: (403) 297-2082

Financial and Consumer Services Commission (New Brunswick)
85 Charlotte Street, Suite 300
Saint John, New Brunswick E2L 2J2
Telephone: (506) 658-3060
Toll free in Canada: 1-866-933-2222
Facsimile: (506) 658-3059

Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8
Telephone: (416) 593- 8314
Toll free in Canada: 1-877-785-1555
Facsimile: (416) 593-8122
Public official contact regarding indirect collection of information: Inquiries Officer

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

ANNEX E-4

REPORTS OF EXEMPT DISTRIBUTION

**PROPOSED AMENDMENTS TO COMPANION POLICY 45-106CP
PROSPECTUS AND REGISTRATION EXEMPTIONS**

5.1 Report of exempt distribution
[Proposed addition of the following subsection]

(4) Filings by investment funds in Ontario – Subsection 6.2(3) of the Instrument provides that an investment fund is not required, in some cases, to file a report of exempt distribution within 10 days of a distribution provided the report is filed by the investment fund not later than 30 days after the end of each calendar quarter. If a distribution is made by an investment fund in each calendar quarter, the dates by which the investment fund must file a report of exempt distribution under this provision are: April 30 (for the quarter ending March 31); July 30 (for the quarter ending June 30); October 30 (for the quarter ending September 30); and January 30 (for the quarter ending December 31). An investment fund is not required to file a report under subsection 6.2(3) for a calendar quarter in which it does not make a distribution.

APPENDIX F
CONSEQUENTIAL AMENDMENTS

ANNEX F-1
CONSEQUENTIAL AMENDMENTS

Proposed amendments to OSC Rule 13-502 Fees

APPENDIX C – ACTIVITY FEES

B. Fees relating to exempt distributions under OSC Rule 45-501 Ontario Prospectus and Registration Exemptions and NI 45-106 Prospectus and Registration Exemptions

| Document or Activity | Fee |
|---|--|
| 1. Application for recognition, or renewal of recognition, as an accredited investor | \$500 |
| 2. Filing of a Form 45-106F10 or 45-106F11 for a distribution of securities of an issuer under an exemption from the prospectus requirement other than section 2.9 [<i>Offering memorandum</i>] of National Instrument 45-106 <i>Registration and Prospectus Exemptions</i> | \$500 |
| 2.1 Filing of a 45-106F11 for a distribution of securities of an issuer under section 2.9 [<i>Offering memorandum</i>] of National Instrument 45-106 <i>Registration and Prospectus Exemptions</i> | Greater of (i) \$500 or (ii) 0.025% of the gross proceeds realized by the issuer from the distribution in Ontario |
| 3. Filing of a rights offering circular in Form 45-101F | \$3,750 (plus \$2,000 if neither the applicant nor an issuer of which the applicant is a wholly owned subsidiary is subject to or is reasonably expected to become subject to, a participation fee under this Rule) |

Proposed amendments to NI 45-102 Resale of Securities

APPENDIX D — TO NATIONAL INSTRUMENT 45-102 RESALE OF SECURITIES—RESTRICTED PERIOD TRADES

- ...
- section 2.5 [*Family, friends and business associates*] (~~except in Ontario~~);
- ...
- ~~section 2.7 [*Founder, control person and family*] (Ontario);~~

- section 2.9 [*Offering memorandum*] (~~in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Qu'ebec, Saskatchewan and Yukon~~);

...

- section 7 of Multilateral Instrument 45-108 *Crowdfunding*

...

3. Ontario Provisions – Definitions

In this Appendix

...

- “2009 OSC Rule 45-501” means the Ontario Securities Commission Rule 45-501 *Ontario Prospectus and Registration Exemption* that came into force on the later of (a) September 28, 2009 and (b) the day on which sections 5 and 11, subsection 12(1) and section 13 of Schedule 26 of the *Budget Measures Act, 2009*, were proclaimed into force, as amended in 2010;

...

(b) 2005 OSC Rule 45-501 and 2009 OSC Rule 45-501

Section 2.1 of the 2005 OSC Rule 45-501 and 2009 OSC Rule 45-501;

Section 2.2 of the 2005 OSC Rule 45-501 and 2009 OSC Rule 45-501;

Section 2.9 of the 2009 OSC Rule 45-501.

Proposed amendments to OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions*

5.1 Application – This Part only applies to a distribution made in reliance on an exemption from the prospectus requirement in

- (a) section 73.3 of the Act [*Accredited investor*],
- (b) section 73.4 of the Act [*Private issuer*],
- (b.1) section 2.5 of NI 45-106 [*Family, friends and business associates*]
- (c) ~~section 2.7 of NI 45-106 [*Founder, control person and family – Ontario*],~~
- (d) section 2.8 of NI 45-106 [*Affiliates*],
- (d.1) section 2.9 of NI 45-106 [*Offering memorandum*],
- (e) section 2.10 of NI 45-106 [*Minimum amount investment*],
- (f) section 2.19 of NI 45-106 [*Additional investment in investment funds*],
- (g) section 2.1 [*Government incentive security*], and
- (h) section 7 of Multilateral Instrument 45-108 *Crowdfunding*.

5.4 Content of offering memorandum –

(1) Other than in the case of an offering memorandum delivered in connection with a distribution made in reliance on the exemption in section 2.1 of the Rule [*Government incentive security*] and section 2.9 of NI 45-106 [*Offering memorandum*] and subject to subsection (2), Ontario securities legislation generally does not prescribe the content of an offering memorandum. The decision relating to the appropriate disclosure in an offering memorandum generally rests with the issuer, the selling security holder and their advisors.

(2) Under section 5.3 of the Rule, the rights referred to in section 130.1 of the Act must be described in an offering memorandum delivered in connection with a distribution to which the rights apply.

5.5 Review of offering memorandum –

(1) Staff may review the form and content of an offering memorandum filed in connection with a distribution made in reliance on the exemption in section 2.9 of NI 45-106 [*Offering memorandum*], or delivered in connection with a distribution made in reliance on another exemption referred to in Part 5 of the Rule, for the purpose of determining whether the issuer has complied with the requirements, conditions and restrictions of the exemption relied on for the distribution.

(2) If Commission staff becomes aware that an offering memorandum contains a misrepresentation, fails to disclose material information relating to a security that is the subject of a distribution, or the distribution otherwise fails to comply with Ontario securities law, staff may recommend remedial action or, in appropriate circumstances, enforcement action.

[Note to reader: In light of the introduction of new and expanded prospectus exemptions that increase issuer and investor access to the exempt market, staff are in the process of developing an expanded and enhanced compliance review program that will focus on, among other things,

- **enhancing our compliance monitoring and oversight of exempt market activity,**
- **expanding our educational outreach to issuers and investors, and**
- **in the event of non-compliance, assessing the regulatory tools available to us and when and how they should be deployed.**

We intend to consult with other CSA members as we consider these issues and develop and implement this program.]

Proposed amendment to NI 52-107 *Acceptable Accounting Principles and Auditing Standards*

1.1 **Definitions** — In this Instrument:

“acquisition statements” means financial statements of an acquired business or a business to be acquired, or an operating statement for an oil and gas property that is an acquired business or a business to be acquired, that are

...

- (d) ~~except in Ontario,~~ included in an offering memorandum required under National Instrument 45-106 *Prospectus and Registration Exemptions* or OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions*;

...

2.1 **Application**— (1) This Instrument does not apply to investment funds.

(2) This Instrument applies to

...

- (c) all financial statements included in
- (i) a prospectus, a take-over bid circular or any other document that is filed by or in connection with an issuer, or
 - (ii) ~~except in Ontario,~~ an offering memorandum required to be delivered by an issuer under National Instrument 45-106 *Prospectus and Registration Exemptions* or OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions*,
- (d) any operating statement for an oil and gas property that is an acquired business or a business to be acquired, that is
- (i) filed by an issuer under National Instrument 51-102 *Continuous Disclosure Obligations*,
 - (ii) included in a prospectus, take-over bid circular or any other document that is filed by or in connection with an issuer, or
 - (iii) ~~except in Ontario,~~ included in an offering memorandum required to be delivered by an issuer under National Instrument 45-106 *Prospectus and Registration Exemptions* or OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions*,

...

- (f) summary financial information for a credit supporter or credit support issuer that is
- (i) filed under National Instrument 51-102 *Continuous Disclosure Obligations*,
 - (ii) included in a prospectus, take-over bid circular or any other document that is filed by or in connection with an issuer, or
 - (iii) ~~except in Ontario,~~ included in an offering memorandum required to be delivered by an issuer under National Instrument 45-106 *Prospectus and Registration Exemptions* or OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions*,
- (g) summarized financial information 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, that is
- (i) filed by an issuer under National Instrument 51-102 *Continuous Disclosure Obligations*,
 - (ii) included in a prospectus, take-over bid circular or any other document that is filed by or in connection with an issuer, or
 - (iii) ~~except in Ontario,~~ included in an offering memorandum required to be delivered by an issuer under National Instrument 45-106 *Prospectus and Registration Exemptions* or OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions*,

...

