

**Companion Policy 41-501CP**  
***Prospectus Requirements and Exemptions***

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**PART 1 INTRODUCTION AND DEFINITIONS**

**1. Introduction**

**Purpose of this Companion Policy**

This Companion Policy explains how the Authority interprets and applies the provisions of CMRA Regulation 41-501 *Prospectus Requirements and Exemptions* (the Regulation).

**Numbering system**

Except for Part 1, the numbering of Parts and sections in this Companion Policy correspond to the numbering in the Regulation. Any general guidance for a Part appears immediately after the Part name. Any specific guidance on sections in the Regulation follows any general guidance. If there is no guidance for a Part or section, the numbering in this Companion Policy will skip to the next provision for which there is guidance.

**2. Definitions**

Unless defined in the Regulation, terms used in the Regulation and in this Companion Policy have the meaning given to them in the Act, CMRA Regulation 11-501 *Definitions, Procedure, Civil Liability and Related Matters* or National Instrument 14-101 *Definitions*.

**PART 2 PUBLICATION OF RESEARCH REPORTS DURING DISTRIBUTIONS**

**6. Publication of research reports during distributions**

**Definitions**

The definition of “connected security” in subsection 6(1) the Regulation includes, among other things, a security of the issuer of the offered security or another issuer that, according to the terms of the offered security, may *significantly determine* the value of the offered security. The Authority takes the view that, absent other mitigating factors, a connected security “significantly determines” the value of the offered security, if, in whole or in part, it accounts for more than 25 per cent of the value of the offered security.

The definition of “dealer-restricted period” in subsection 6(1) the Regulation, with respect to a prospectus distribution and a “restricted private placement”, refers to the end of the period as the date that the selling process ends and all stabilization arrangements relating to the offered security are terminated. Subparagraph (6)(2)(c)(i) provides interpretation as to when the selling process is considered to end. As further clarification, the selling process is considered to end for a prospectus distribution when the receipt for the prospectus has been issued, the dealer has distributed all securities allocated to it and is no longer stabilizing, all selling efforts have ceased and the syndicate is broken. Selling efforts have ceased when the dealer is no longer making efforts to sell, and there is no intention to exercise an over-allotment option other than to

cover the syndicate's short position. If the dealer or syndicate subsequently exercises an over-allotment option in an amount that exceeds the syndicate short position, the selling efforts would not be considered to have ceased. Securities allocated to a dealer that are held and transferred to their inventory account at the end of the distribution are considered distributed. Subsequent sales of such securities are secondary market transactions and should occur on a marketplace subject to any applicable exemptions (unless the subsequent sale transaction is a distribution by prospectus). To provide certainty around when the distribution has ended, appropriate steps should be taken to move the securities from the syndication account to the dealer's inventory account.

### **Meaning of “acting jointly or in concert”**

The definition of “dealer-restricted person” in subsection 6(1) of the Regulation includes a person acting jointly or in concert with a person that is also a dealer-restricted person for a particular transaction. In the context of this Regulation only, it is a question of fact whether a person is acting jointly or in concert with a dealer-restricted person and, without limiting the generality of the foregoing, every person who, as a result of an agreement, commitment or understanding, whether formal or informal, with a dealer-restricted person, bids for or purchases a restricted security will be presumed to be acting jointly or in concert with such dealer-restricted person.

### **Compilations and industry research, and issuers of highly-liquid securities**

#### **Prospectus requirement**

Subsections 6(4) and 6(5) of the Regulation provide exemptions from the prospectus requirement that permit providing research that in the Authority's view constitutes an act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of a trade prior to the filing and receipt of the preliminary prospectus and prospectus. The Authority is of the view that although subsections 6(4) and 6(5) do permit dealer-restricted persons to disseminate research reports, this dissemination continues to be subject to the usual restrictions applicable to dealer-restricted persons when they are in possession of material inside information regarding the issuer.

#### **Meaning of “reasonable regularity”**

Subsections 6(4) and 6(5) of the Regulation provide circumstances where a dealer-restricted person may publish or disseminate information, an opinion, or a recommendation relating to the issuer of a restricted security. Paragraph 6(4)(a) and subsection 6(5) require that the information, opinion or recommendation be contained in a publication which is disseminated with reasonable regularity in the normal course of business of the dealer-restricted person. The Authority considers that it is a question of fact whether a publication was disseminated “with reasonable regularity” and whether it was in the “normal course of business”. A research publication would not likely be considered to have been published with reasonable regularity if it had not been published within the previous twelve month period or there had been no coverage of the issuer within the previous twelve month period. The nature and extent of the published information should also be consistent with prior publications and the dealer should not undertake new initiatives in the context of the distribution. For example, the inclusion of projections of issuers' earnings and revenues would likely only be permitted if they had previously been included on a regular basis. In considering whether it was “in the normal course of business”, the Authority may consider the distribution channels. The research should

be distributed through the dealer-restricted person's usual research distribution channels and should not be targeted or distributed specifically to prospective investors in the distribution as part of a marketing effort. However, the research may be distributed to a prospective investor if that investor was previously on the mailing list for the research publication.

### **Meaning of “similar coverage” and of “substantial number of companies”**

Subparagraph 6(4)(a)(ii) of the Regulation requires that the information, opinion or recommendation include similar coverage in the form of information, opinions or recommendations with respect to a substantial number of issuers in the issuer's industry. This should not be interpreted as requiring that the opinions and recommendations relating to the issuer and other issuers in the issuer's industry must be similar or the same. In this context, in determining what is a “substantial number of issuers”, reference should be made to the relevant industry. Generally, the Authority would consider a minimum of six issuers to be a sufficient number. However, where there are less than six issuers in an industry, then all issuers should be included in the research report. In any event the number of issuers should not be less than three.

## **PART 5 PROSPECTUS AND REGISTRATION EXEMPTIONS**

### **9. Capital accumulation plans**

[Not included for publication]

### **10. Bonus or finder's fee**

[Not included for publication]

### **11. Existing security holder**

[Not included for publication]

### **13. Mortgages**

[Not included for publication]

## **PART 6 PROSPECTUS AND REGISTRATION EXEMPTIONS RELATED TO PROVINCIAL AND TERRITORIAL LEGISLATION**

### **14. Cooperative association**

[Not included for publication]

**15. Credit union**

[Not included for publication]

**17. Provincial economic development programs**

[Not included for publication]