

CMRA Regulation 41-501
Prospectus Requirements and Exemptions

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CMRA Regulation 41-501
Prospectus Requirements and Exemptions

PART 1 PROSPECTUS REQUIREMENTS

1. Definitions and interpretation

[To be prepared when Parts 5 and 6 are complete. At this time there are no definitions used in multiple sections.]

2. Refusal to issue receipt for prospectus

- (1) For the purposes of subsection 30(2) of the Act, the Chief Regulator must not issue a receipt for a prospectus if it appears to the Chief Regulator that
- (a) the prospectus or any record required to be filed with it
 - (i) does not comply in any substantial respect with any of the requirements of capital markets law,
 - (ii) contains any statement, promise, estimate or forward-looking information that is misleading, false or deceptive, or
 - (iii) contains a misrepresentation;
 - (b) an unconscionable consideration has been paid or given, or is intended to be paid or given, for any services or promotional purposes or for the acquisition of property;
 - (c) the aggregate of
 - (i) the proceeds from the sale of the securities under the prospectus that are to be paid into the treasury of the issuer, and
 - (ii) the other resources of the issueris insufficient to accomplish the purpose of the issue stated in the prospectus;
 - (d) the issuer cannot reasonably be expected to be financially responsible in the conduct of its business because of the financial condition of
 - (i) the issuer,
 - (ii) any of the issuer's officers, directors, promoters, or control persons, or
 - (iii) the investment fund manager of the issuer or any of the investment fund manager's officers, directors or control persons;

- (e) the business of the issuer may not be conducted with integrity and in the best interests of the security holders of the issuer because of the past conduct of
 - (i) the issuer,
 - (ii) any of the issuer's officers, directors, promoters or control persons, or
 - (iii) the investment fund manager of the issuer or any of the investment fund manager's officers, directors or control persons;
- (f) a person that has prepared or certified any part of the prospectus, or that is named as having prepared or certified a report or valuation used in connection with the prospectus, is not acceptable;
- (g) an escrow or pooling agreement in the form that the Chief Regulator considers necessary or advisable with respect to the securities has not been entered into;
- (h) adequate arrangements have not been made for the holding in trust of the proceeds payable to the issuer from the sale of the securities pending the distribution of the securities; or
- (i) the directors and officers of the issuer or the directors and officers of the investment fund manager of the issuer lack the knowledge and expertise necessary to conduct the business of the issuer in the best interests of the security holders of the issuer.

3. Permitted activities under preliminary prospectus

- (1) For the purposes of section 34 of the Act, but subject to Part 9 of the Act, the permitted activities relating to the proposed distribution are
 - (a) communicating with a person by
 - (i) identifying the security proposed to be issued,
 - (ii) stating the price of the security, if determined,
 - (iii) stating the name and address of a person from whom purchases of the security may be made,
 - (iv) stating any further information permitted or required by any other regulation,so long as the person states the name and address of a person from whom a preliminary prospectus may be obtained;
 - (b) giving out a preliminary prospectus; and
 - (c) soliciting expressions of interest from a prospective purchaser, so long as before the solicitation, or as soon as practicable after the prospective purchaser

indicates an interest in purchasing the security, a copy of the preliminary prospectus is sent to the prospective purchaser.

- (2) Any dealer or issuer distributing a security to which subsection (1) applies must, in addition to the requirements of paragraph (1)(c), send a copy of the preliminary prospectus to each prospective purchaser who, without solicitation, indicates an interest in purchasing the security and requests a copy of the preliminary prospectus.

4. Material given on distribution

- (1) From the date the Chief Regulator issues a receipt for a prospectus relating to a security, a person distributing the security may give out
- (a) the prospectus;
 - (b) any record filed with or referred to in the prospectus; and
 - (c) any record used to communicate with a person that
 - (i) identifies the security proposed to be distributed,
 - (ii) states the price of the security, if determined,
 - (iii) states the name and address of a person from whom purchases of the security may be made,
 - (iv) states any further information permitted or required by any other regulation, and
 - (v) states the name and address of a person from whom a prospectus may be obtained.

5. Obligation to send prospectus

- (1) For the purposes of subsection 37(1) of the Act, the person must send the latest prospectus filed or required to be filed and any amendment to that prospectus filed or required to be filed to the purchaser either
- (a) before entering into the written confirmation of the agreement of purchase and sale resulting from the purchase order or subscription, or
 - (b) not later than midnight on the second business day after entering into the agreement.
- (2) Despite subsection (1), a person who trades in securities is not required to send an amendment to a prospectus to a purchaser if the agreement of purchase and sale of the security has been entered into before the obligation to file the amendment arises.

PART 2 PUBLICATION OF RESEARCH REPORTS DURING DISTRIBUTIONS

6. Publication of research reports during distributions

Definitions

(1) In this section,

“connected security” means, in respect of an offered security,

- (a) a security into which the offered security is immediately convertible, exchangeable or exercisable unless the security is a listed security or quoted security and the price at which the offered security is convertible, exchangeable or exercisable is greater than 110 per cent of the best ask price of the security at the commencement of the restricted period,
- (b) 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,
- (c) if the offered security is a special warrant, the security that would be issued on the exercise of the special warrant, and
- (d) if the offered security is an equity security, any other equity security of the issuer,

where the security trades on a market place or a market where there is mandated transparency of orders or trade information;

“dealer-restricted period” means, for a dealer-restricted person, the period,

- (a) in connection with a prospectus distribution or a restricted private placement of any offered security,
 - (i) commencing two trading days prior to
 - (A) the day the offering price of the offered security is determined if the securities are to be issued at a fixed price as part of a non-continuous distribution, or
 - (B) the issuance of the offered security, if the securities are issued as part of:
 - (I) a continuous distribution;
 - (II) a distribution at a non-fixed price under National Instrument 44-101 *Short Form Prospectus Distributions*, or
 - (III) an at-the-market distribution for the purposes of National Instrument 44-102 *Shelf Distributions*, and

- (ii) ending on the date the selling process has ended and all stabilization arrangements relating to the offered security are terminated,

provided that the period commences on the date the dealer enters into an agreement or reaches an understanding to participate in the prospectus distribution or restricted private placement of securities, whether or not the terms and conditions of participation have been agreed upon if that date is later than determined for the purposes of clause (i)(A) or (i)(B);

- (b) in connection with a securities exchange take-over bid or issuer bid, commencing on the date of dissemination of the take-over bid circular, issuer bid circular or similar document and ending with the termination of the period during which securities may be deposited under the bid, including any extension thereof, or the withdrawal of the bid; and
- (c) in connection with an amalgamation, arrangement, capital reorganization or similar transaction, commencing on the date of dissemination of the information circular for the transaction and ending on the date of approval of the transaction by the security holders that will receive the offered security or the termination of the transaction by the issuer or issuers;

“dealer-restricted person” means, in respect of a particular offered security,

- (a) a dealer that
 - (i) is an underwriter in a prospectus distribution or a restricted private placement,
 - (ii) is participating, as agent but not as an underwriter, in a restricted private placement of securities, and has been allotted or is otherwise entitled to sell more than 25 per cent of the securities to be issued under the restricted private placement,
 - (iii) has been appointed by an offeror to be the dealer-manager, manager, soliciting dealer or adviser in respect of a securities exchange take-over bid or issuer bid, or
 - (iv) has been appointed by an issuer to be the soliciting dealer or adviser in respect of obtaining security holder approval for an amalgamation, arrangement, capital reorganization or similar transaction that would result in the issuance of securities that would be a distribution exempt from the prospectus requirement in accordance with capital markets laws,

where, in each case, adviser means an adviser whose compensation depends on the outcome of the transaction;

- (b) a related entity of the dealer referred to in paragraph (a) but does not include a related entity, or any separate and distinct department or division of a dealer referred to in paragraph (a) where,
 - (i) the dealer

- (A) maintains and enforces written policies and procedures reasonably designed to prevent the flow of information regarding any prospectus distribution, private placement or other transaction referred to in paragraph (a) to or from the related entity, department or division, and
- (B) obtains an annual assessment of the operation of the policies and procedures,
- (ii) the dealer has no officers or employees that solicit orders or recommend transactions in securities in common with the related entity, department or division, and
- (iii) the related entity, department or division does not during the dealer-restricted period, in connection with the restricted security,
 - (A) act as a market maker (other than to meet its obligations under the rules of a recognized exchange),
 - (B) solicit orders from clients, or
 - (C) enter principal orders or otherwise engage in proprietary trading;
- (c) a partner, director, officer, employee or a person holding a similar position or acting in a similar capacity, of the dealer referred to in paragraph (a) or for a related entity of the dealer referred to in paragraph (b); or
- (d) any person acting jointly or in concert with a person described in paragraph (a), (b) or (c) for a particular transaction;

“highly-liquid security” means a listed security or quoted security that

- (a) has traded, in total, on one or more market places as reported on a consolidated market display during a 60-day period ending not earlier than 10 days prior to the commencement of the restricted period,
 - (i) an average of at least 100 times per trading day, and
 - (ii) with an average trading value of at least \$1,000,000 per trading day; or
- (b) is subject to Regulation M under the 1934 Act and is considered to be an “actively-traded security” thereunder;

“offered security” means all securities, that trade on a market place or a market where there is mandated transparency of orders or trade information, of the class of security that

- (a) is offered pursuant to a prospectus distribution or a restricted private placement,

- (b) is offered by an offeror in a securities exchange take-over bid in respect of which a take-over bid circular or similar document is required to be filed under capital markets law,
- (c) is offered by an issuer in an issuer bid in respect of which an issuer bid circular or similar document is required to be filed under capital markets law, or
- (d) would be issuable to a security holder pursuant to an amalgamation, arrangement, capital reorganization or similar transaction in relation to which proxies are being solicited from security holders that will receive the offered security in such circumstances that the issuance would be a distribution exempt from prospectus requirements in accordance with applicable capital markets law;

“restricted private placement” means a distribution of offered securities made pursuant to sections 2.3 or 2.30 of National Instrument 45-106 *Prospectus Exemptions*; and

“restricted security” means the offered security or any connected security.

Interpretation

- (2) In this section,
 - (a) the term “affiliated entity” has the meaning ascribed to that term in section 1.3 of National Instrument 21-101 *Marketplace Operation*;
 - (b) in respect of a dealer, a related entity is an affiliated entity of the dealer that carries on business in Canada and is registered as a dealer or adviser in accordance with applicable securities legislation;
 - (c) for the purposes of the definition of “dealer-restricted period”,
 - (i) the selling process must be considered to end,
 - (A) in the case of a prospectus distribution, if a receipt has been issued for the final prospectus, the dealer has allocated all of its portion of the securities to be distributed under the prospectus and all selling efforts have ceased, and
 - (B) in the case of a restricted private placement, the dealer has allocated all of its portion of the securities to be distributed under the offering; and
 - (ii) stabilization arrangements must be considered to have terminated in the case of a syndicate of underwriters or agents when, in accordance with the syndication agreement, the lead underwriter or agent determines that the syndication agreement has been terminated such that any purchase or sale of a restricted security by a dealer after the time of termination is not subject to the stabilization arrangements or otherwise made jointly for the dealers that were party to the stabilization arrangements.

Deemed re-commencement of a restricted period

- (3) If a dealer appointed to be an underwriter in a prospectus distribution or a restricted private placement receives a notice or notices of the exercise of statutory rights of withdrawal or rights of rescission from purchasers of, in the aggregate, not less than 5 per cent of the offered securities allotted to or acquired by the dealer in connection with the prospectus distribution or the restricted private placement then a dealer-restricted period must be deemed to have re-commenced upon receipt of the notice or notices and must be deemed to have ended at the time the dealer has distributed its participation, including the securities that were the subject of the notice or notices of the exercise of statutory rights of withdrawal or rights of rescission.

Compilations and industry research

- (4) Despite the prospectus requirement, a dealer-restricted person may publish or disseminate any information, opinion, or recommendation relating to the issuer of a restricted security provided that the information, opinion or recommendation,
- (a) is contained in a publication which
 - (i) is disseminated with reasonable regularity in the normal course of business of the dealer-restricted person, and
 - (ii) includes similar coverage in the form of information, opinions or recommendations with respect to a substantial number of companies in the issuer's industry or contains a comprehensive list of securities currently recommended by the dealer-restricted person; and
 - (b) is given no materially greater space or prominence in the publication than that given to other securities or issuers.

Issuers of highly-liquid securities

- (5) Despite the prospectus requirement, a dealer-restricted person may publish or disseminate any information, opinion, or recommendation relating to the issuer of a restricted security that is a highly-liquid security provided that the information, opinion, or recommendation is contained in a publication which is disseminated with reasonable regularity in the normal course of the business of the dealer-restricted person.

PART 3 TRUST INDENTURES

7. Trust indentures

Definitions

- (1) In this section,

“entity” means a company or an unincorporated body;

“event of default” means an event, specified in a trust indenture, on the occurrence of which

- (a) a security interest constituted by or under the trust indenture becomes enforceable; or
- (b) the principal, interest or other money payable under the trust indenture becomes, or may be declared to be, payable before the date of maturity,

but an event is not an event of default unless and until the conditions set out in the trust indenture in connection with that event for the sending of notice or the lapse of time or otherwise have been satisfied;

“trustee” means a person that is

- (a) a company incorporated under the laws of Canada or a CMR Jurisdiction; and
- (b) appointed as trustee by or under a trust indenture,

and includes any successor trustee;

“trust indenture” means a deed, indenture or other record, however designated, including every supplement or amendment to it, made by an entity

- (a) under which the entity issues or guarantees, or provides for the issue or guarantee of, debentures; and
- (b) by or under which a person is appointed as trustee for the persons holding the debentures issued or guaranteed under the trust indenture; and

“unincorporated body” means a trust, partnership or other unincorporated association or organization.

Application

- (2) This section applies to a trust indenture only if a prospectus, securities exchange issuer circular or take-over bid circular has been filed, under the Act, in respect of the debentures issued or guaranteed or to be issued or guaranteed under the trust indenture.

Eligibility of trustee

- (3) A person must not be appointed as a trustee unless that person is, and a group of persons must not be appointed as a trustee unless at least one of those persons is
 - (a) resident in a CMR Jurisdiction; and
 - (b) authorized to carry on business as a trust company under applicable legislation of a CMR Jurisdiction.
- (4) A person must not be appointed or act as a trustee if there is a material conflict of interest between the person's role as trustee and the person's role in any other capacity.

- (5) A trustee must, within 3 months after becoming aware that a material conflict of interest referred to in subsection (4) exists,
- (a) eliminate that conflict of interest; or
 - (b) resign as trustee.
- (6) If, despite this section, a trustee has a material conflict of interest, the material conflict of interest does not, in any manner, affect the validity and enforceability of
- (a) the trust indenture by or under which the trustee has been appointed;
 - (b) the security interest constituted by or under the trust indenture; and
 - (c) the debentures issued under the trust indenture.
- (7) If a trustee has a material conflict of interest referred to in subsection (4), an interested party may apply to the court, whether or not the period referred to in subsection (5) has expired, for an order that the trustee be removed and replaced, and the court may make any order it considers appropriate.

Persons may request information from trustee

- (8) Any person may, on payment to the trustee of any reasonable fee required by the trustee under this subsection, require the trustee to provide, within 25 days after the trustee receives from the person a statutory declaration or affidavit referred to in subsection (9), a list of the following information as it appears on the records of the trustee on the date that the statutory declaration or affidavit is received by the trustee:
- (a) for each person holding outstanding debentures issued under the trust indenture
 - (i) the name and address of that person, and
 - (ii) the aggregate principal amount of the outstanding debentures held by that person;
 - (b) the aggregate principal amount of all outstanding debentures under the trust indenture.
- (9) The statutory declaration or affidavit required under subsection (8) must
- (a) be made by the person requiring the list;
 - (b) contain
 - (i) the name and mailing address of the person requiring the list, or
 - (ii) if that person is a company, its name and the mailing address and, if different, the delivery address of its registered office or equivalent; and

- (c) contain a statement that the requested list will not be used except as permitted under subsection (12).
- (10) If the person requiring the trustee to furnish a list under subsection (8) is a company, the statutory declaration or affidavit required under that subsection must be made by a director or officer of the company.
- (11) If, without reasonable excuse, the trustee fails to provide the list within the time required by subsection (8), the person requiring the list may apply to the court for an order requiring the trustee to provide the list and the court may make the order.
- (12) A person must not use a list obtained under this section except in connection with
 - (a) an effort to influence the voting of the persons holding the debentures;
 - (b) an offer to acquire the debentures; or
 - (c) any other matter relating to the debentures.

Information for trustee

- (13) An issuer or guarantor of debentures must, on demand by a trustee, promptly provide to the trustee the information required to enable the trustee to comply with subsection (8).

Evidence of compliance with trust indenture

- (14) If requested to do so by the trustee, an issuer or a guarantor of debentures issued or to be issued under a trust indenture must, before doing any of the following acts, provide to the trustee evidence of compliance with every term of the trust indenture relating to that act:
 - (a) issuing, certifying and delivering debentures under the trust indenture;
 - (b) releasing, or releasing and substituting, property, rights or interests subject to a security interest constituted by the trust indenture;
 - (c) satisfying and discharging the trust indenture;
 - (d) taking any other action to be taken by the trustee at the request of or on the application of the issuer or guarantor.

Contents of evidence of compliance

- (15) Evidence of compliance as required by subsection (14) consists of
 - (a) a certificate, statutory declaration or affidavit made by the issuer or guarantor stating that the conditions referred to in that subsection have been complied with in accordance with the terms of the trust indenture;
 - (b) if the trust indenture requires compliance with conditions that are subject to review by a lawyer, an opinion of a lawyer acceptable to the trustee that those

terms have been complied with in accordance with the terms of the trust indenture;

- (c) if the trust indenture requires compliance with conditions that are subject to review by an auditor or accountant, an opinion or report of the auditor or accountant of the issuer or guarantor, or of any other accountant that the trustee may select, that those terms have been complied with in accordance with the terms of the trust indenture; and
- (d) a statement by each person giving evidence of compliance under paragraph (a), (b) or (c)
 - (i) declaring that the person has read and understands the terms of the trust indenture concerning which the evidence is given,
 - (ii) describing the nature and scope of the examination or investigation on which the person based the statutory declaration, affidavit, certificate, opinion or report, and
 - (iii) declaring that the person has made the examination or investigation the person believes necessary to enable the person to make the statements or to give the opinions contained or expressed in it.

Additional evidence of compliance

- (16) An issuer or guarantor of debentures issued or to be issued under a trust indenture must, on demand by the trustee, provide to the trustee evidence, in the form the trustee requires, as to compliance with any condition in the trust indenture relating to any action required or permitted to be taken by the issuer or guarantor under the trust indenture.
- (17) An issuer or guarantor of debentures issued or to be issued under a trust indenture must, on demand by the trustee, provide to the trustee a certificate
 - (a) stating that the issuer or guarantor has complied with all of the requirements contained in the trust indenture that, if not complied with, would, with the sending of notice, lapse of time or otherwise, constitute an event of default; or
 - (b) if the issuer or guarantor has not complied with one or more of those requirements, giving particulars of the failure to comply.
- (18) An issuer or guarantor of debentures issued under a trust indenture must at least once in each twelve-month period beginning on the date debentures are first issued under a trust indenture provide to the trustee the certificate required under subsection (17).

Notice of default

- (19) Unless the trustee in good faith determines that it is in the best interests of the persons holding the debentures to withhold notice and so informs the issuer or guarantor of the trust indenture in writing, the trustee must send to the persons holding debentures issued under a trust indenture notice of each event of default arising under the trust indenture and continuing at the time the notice is sent.

- (20) The trustee must send the notice required under subsection (19) within a reasonable time but not more than one month after the trustee becomes aware of the event of default.
- (21) Where the notice required under subsection (19) is sent and the default is thereafter cured, notice that the default is no longer continuing must be given by the trustee to the persons holding debentures issued under a trust indenture within a reasonable time but not more than one month after the trustee becomes aware that the default has been cured.

Trustee's duty of care

- (22) The trustee must exercise the trustee's powers and duties
- (a) honestly, in good faith and in a commercially reasonable manner;
 - (b) with the care, diligence and skill of a reasonably prudent trustee; and
 - (c) with a view to the best interests of the persons holding the debentures issued under the trust indenture.

Reliance on statements

- (23) A trustee is not in contravention of subsection (22) if the trustee relies and acts in good faith on statements contained in a certificate, statutory declaration, affidavit, opinion or report that complies with the Act or the trust indenture.

Trustee not relieved from duties

- (24) No term of a trust indenture, and no term of an agreement between a trustee and any or all of the persons holding debentures issued under the trust indenture or between the trustee and the issuer or guarantor of the trust indenture, relieves a trustee from the duties imposed on that trustee by subsection (22).

PART 4 RESTRICTED SHARES

8. Restricted shares

Definitions

- (1) In this section,

“class” includes a series of a class;

“common shares” means equity shares to which are attached voting rights exercisable in all circumstances, irrespective of the number or percentage of shares owned, that are not less, on a per share basis, than the voting rights attaching to any other shares of an outstanding class of shares of the issuer, unless the Chief Regulator makes a determination under subsection (8) that the shares are restricted shares;

“equity shares” means shares of an issuer that carry a residual right to participate in the earnings of the issuer and, upon the liquidation or winding up of the issuer, in its assets;

“minority approval” means approval of a proposed reorganization or stock distribution given at a meeting of shareholders of an issuer called to consider the reorganization or stock distribution by a majority of the votes cast by holders of voting shares and, if required by corporate law governing the issuer, by a majority of the votes cast by holders of a class of shares voting separately as a class other than, in both cases, the votes attaching at the time to securities held directly or indirectly by affiliates of the issuer and securities held directly or indirectly by control persons of the issuer;

“non-voting shares” means restricted shares that do not carry the right to vote generally, except for a right to vote that is mandated in special circumstances by law;

“preference shares” means shares to which are attached a preference or right over the shares of any class of equity shares of the issuer, but does not include equity shares;

“private issuer” has the same meaning as in section 2.4 of National Instrument 45-106 *Prospectus Exemptions*;

“reorganization” means

- (a) the creation of a class of shares that are restricted shares, either directly or through the creation of a class of subject securities, including by way of
 - (i) an amendment to an issuer’s constating documents,
 - (ii) a resolution of the board of directors of an issuer setting the terms of a series of shares of the issuer, or
 - (iii) a restructuring, recapitalization, reclassification, arrangement, amalgamation or merger; or
- (b) if the issuer has one or more classes of restricted shares outstanding, an amendment to an issuer’s constating documents to increase
 - (i) the per share voting rights attached to an issuer’s common shares without at the same time making a proportionate increase in the per share voting rights attached to an existing class of restricted shares of the issuer, or
 - (ii) the number of common shares authorized;

“restricted share term” means each of “non-voting shares”, “subordinate voting shares”, “restricted voting shares” and every other term designated by the Chief Regulator under subsection (9);

“restricted shares” means

- (a) equity shares that are not common shares, and

- (b) equity shares determined to be restricted shares under subsection (8);

“restricted voting shares” means restricted shares that carry a right to vote subject to a restriction on the number or percentage of shares that may be voted by a person or any combination of persons, except to the extent the restriction or limit is permitted or prescribed by statute and is applicable only to persons that are not citizens or residents of Canada or that are otherwise considered as a result of any law applicable to the issuer to be non-Canadians;

“stock distribution” means a distribution of restricted shares or subject securities, or securities that are directly or indirectly convertible into or exercisable or exchangeable for restricted shares or subject securities, whether in conjunction with a reorganization or otherwise, other than

- (a) a distribution of previously unissued restricted shares by way of stock dividend in the ordinary course to shareholders instead of a cash dividend if at the time of distribution there is a published market for the restricted shares; or
- (b) a stock split that takes the form of a distribution of previously unissued restricted shares by way of stock dividend to holders of the same class of restricted shares if at the time of distribution there is a published market for the restricted shares and the distribution is part of a concurrent distribution by way of stock dividend to holders of all equity shares under which all outstanding equity shares of the issuer are increased in the same proportion;

“subject securities” means shares that have the effect, or would have the effect if and when issued, of changing a class of outstanding equity shares into restricted shares; and

“subordinate voting shares” means restricted shares that carry a right to vote, if there are shares of another class of shares outstanding that carry a greater right to vote on a per share basis.

Application

- (2) This section does not apply to
 - (a) shares of mutual funds;
 - (b) shares that carry a right to vote subject to a restriction on the number or percentage of shares that may be voted or owned by persons that are not citizens or residents of Canada or that are otherwise considered as a result of any law applicable to the issuer to be non-Canadians, but only to the extent of the restriction; or
 - (c) shares that are subject to a restriction, imposed by any law governing the issuer, on the level of ownership of the shares by a person or combination of persons, but only to the extent of the restriction.
- (3) Subsections (5), (6), and (7) do not apply to an issuer distributing securities in accordance with National Instrument 71-101 *The Multijurisdictional Disclosure System*.
- (4) Subsections (5), (6), and (7) do not apply to an issuer if,

- (a) as of a date not more than seven days before the date that the issuer finalizes the final offering document or information circular; or
- (b) as of a date not more than seven days before completion of the stock distribution if there is no offering document or information circular;

the issuer expects that the number of shares of each class of equity shares of the issuer held by registered holders whose last address as shown on the books of the issuer is in a CMR Jurisdiction or beneficially owned by persons in a CMR Jurisdiction will be less than two percent of the outstanding shares of the class after giving effect to the proposed stock distribution.

Prospectus exemptions not available

(5) The prospectus exemptions under capital markets law are not available for a stock distribution of securities of

- (a) a reporting issuer; or
- (b) an issuer if the issuer will become a reporting issuer as a result of the stock distribution;

unless

- (c) either
 - (i) the stock distribution received minority approval, or
 - (ii) all of the conditions set out in subsection (6) are satisfied; and
- (d) the information circular in connection with the shareholders' meeting held to obtain minority approval for the stock distribution or each reorganization carried out by the issuer related to the restricted shares that are the subject of the stock distribution,
 - (i) included, if known after reasonable inquiry,
 - (A) the name of each affiliate of the issuer that is or was a beneficial owner of securities of the issuer and the number of securities beneficially owned, directly or indirectly, by the affiliate as of the date of the information circular;
 - (B) the name of each control person and the number of securities beneficially owned, directly or indirectly, by the control person as of the date of the information circular; and
 - (C) a statement of the number of votes attaching to the securities that are or were not to be counted for the purpose of the approval, and

- (ii) if sent after the coming into force of this Regulation, described the purpose and business reasons for the use of the restricted shares or subject securities.
- (6) The conditions are as follows:
 - (a) each reorganization carried out by the issuer related to the restricted shares that are the subject of the stock distribution received minority approval;
 - (b) at the time of each reorganization referred to in paragraph (a), the issuer was a reporting issuer in any jurisdiction;
 - (c) if any proposed uses for the restricted shares were described in the information circular sent to shareholders in connection with the shareholders' meeting held to approve a reorganization referred to in paragraph (a), the reason for the stock distribution is not inconsistent with those uses.
- (7) Subsection (5) does not apply to a stock distribution if
 - (a) the reorganization took place before December 21, 1984; or
 - (b) the stock distribution is
 - (i) of securities of an issuer that was a private issuer immediately before the completion of the stock distribution; or
 - (ii) a subsequent distribution by an issuer described in subparagraph (i) of securities of the same class that were the subject of the stock distribution described in subparagraph (i).

Determination of status

- (8) The Chief Regulator may determine that equity shares of an issuer are restricted shares for purposes of this Regulation, if one of the following factors is present:
 - (a) there is another class of shares that, in view of the consideration and time at which the shares were or are being issued, carries a disproportionate vote per share relative to the equity shares;
 - (b) the conditions of the equity shares, the conditions of other classes of shares or the issuer's constating documents have provisions that tend to nullify or significantly restrict the voting rights or voting interests of the equity shares;
 - (c) there is another class of equity shares, the shares of which are entitled to participate in earnings or assets to a substantially lesser extent, on a per share basis, than the extent to which the first class of equity shares is entitled to participate.
- (9) If the Chief Regulator determines that equity shares are restricted shares, the Chief Regulator may also determine the appropriate restricted share term to be used to

designate the shares, taking into account the voting attributes attached to the shares and the term that will best describe the attributes.

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]

12. Crowdfunding

[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]

16. Real estate securities

[Not included for publication]

17. Provincial economic development programs

[Not included for publication]

**PART 7 REPORTING REQUIREMENTS RELATED TO PROSPECTUS AND
REGISTRATION EXEMPTIONS**

18. Delivery of offering memorandum

[Not included for publication]

19. Report of exempt distribution

[Not included for publication]