

**CMRA Regulation 45-501**  
***Prospectus and Registration Exemptions***

**PART 1      GENERAL PROSPECTUS AND REGISTRATION EXEMPTIONS**

**Division 1      Capital Accumulation Plans**

1.            Definitions
2.            Registration and prospectus exemptions
3.            Resale restrictions
4.            Filing requirements

**Division 2      Bonus or Finder's Fee**

5.            Prospectus exemption
6.            Resale restrictions
7.            Report of exempt distribution

**Division 3      Existing Security Holders**

8.            Definitions
9.            Prospectus exemption
10.          Resale restrictions
11.          Report of exempt distribution

**Division 4      Start-up Crowdfunding**

12.          Definitions
13.          Registration exemption for funding portals
14.          Prospectus exemption for issuers
15.          Filing requirements
16.          Resale restrictions

**Division 5      Syndicated Mortgages**

17.          Definitions
18.          Registration exemption for trades in syndicated mortgages to institutional investors
19.          Registration and prospectus exemptions for trades in and distributions of qualified syndicated mortgages
20.          Resale restrictions
21.          Report of exempt distribution

**Division 6      Real Estate Securities**

22.          Definitions
23.          Registration and prospectus exemptions for trades of an optional rental pool security or a rental property security
24.          Resale restrictions for subsequent trades in an optional rental pool security or a rental property security

- 25. Resale restrictions for subsequent trades in certain real estate securities acquired before CMR launch date relating to real property in British Columbia
- 26. Report of exempt distribution
- 26.1 Delivery of disclosure to the Chief Regulator

## **PART 2 PROSPECTUS AND REGISTRATION EXEMPTIONS RELATED TO PROVINCIAL AND TERRITORIAL LEGISLATION**

### **Division 1 Cooperative Associations**

- 27. British Columbia
- 28. Saskatchewan
- 29. Ontario
- 30. New Brunswick
- 31. Prince Edward Island

### **Division 2 Credit Unions**

- 32. British Columbia
- 33. Saskatchewan
- 34. Ontario
- 35. New Brunswick
- 36. Prince Edward Island

### **Division 3 British Columbia *Employee Investment Act***

- 37. Definitions
- 38. Registration and prospectus exemptions
- 39. Resale restrictions
- 40. Report of exempt distribution

### **Division 4 Saskatchewan *Labour-sponsored Venture Capital Corporations Act***

- 41. Definitions
- 42. Registration and prospectus exemptions when testing the waters
- 43. Registration and prospectus exemptions for trades and distributions by an LSVCC of its securities to employees
- 44. Prospectus exemption for a distribution by an operating company of its securities to an LSVCC

### **Division 5 Ontario Government Incentive Securities**

- 45. Definitions
- 46. Prospectus exemption
- 46.1 Resale restrictions
- 47. Report of exempt distribution

**Division 6     **New Brunswick Community Economic Development Corporations and Associations****

- 48.           Definitions
- 49.           Prospectus and registration exemptions
- 50.           Resale restrictions
- 51.           Letter of non-objection
- 52.           Revocation of letter of non-objection
- 53.           Prohibition on trading
- 54.           Permitted activities
- 55.           Directors and officers
- 56.           Potential security holders
- 57.           Promotional material
- 58.           Form of offering document
- 59.           Financial statements included in the offering document
- 60.           Use of proceeds
- 61.           Time limitation on offering
- 62.           Amounts to be held in trust
- 63.           Amendments to the offering document
- 64.           Report of exempt distribution
- 65.           Annual financial statements
- 66.           Copies to security holders
- 67.           Notice of specified events
- 68.           Compliance no longer required
- 69.           Accounting and auditing standards
- 70.           Recordkeeping

**Division 7     **Prince Edward Island *Community Development Equity Tax Credit Act*****

- 71.           Definitions
- 72.           Prospectus exemption
- 73.           Application
- 74.           Restrictions
- 75.           Certificate of registration
- 76.           Letter of non-objection
- 77.           Revocation of letter of non-objection
- 78.           Promoter's activity before issuance of letter of non-objection
- 79.           Directors and officers
- 80.           Minimum offering
- 81.           Amounts to be held in trust
- 82.           Amount not to exceed \$3,000,000
- 83.           Use of proceeds
- 84.           Potential security holders
- 85.           Promotional material
- 86.           Amendments to offering document
- 86.1          Financial statements included in the offering document
- 87.           Financial forecasts
- 88.           Time limitation on offering
- 88.1          Notice of specified events
- 89.           Report of exempt distribution
- 90.           CEDB with restrictive constitution

- 91. Changes to investment strategy, objectives or restrictions
- 92. Accounting and auditing standards
- 93. When CEDB no longer required to comply with section 92
- 94. Bona fide attempt to comply
- 95. Report of trade

**Division 8 Yukon Qualified Investments under the *Income Tax Act (Yukon)***

- 96. Definitions
- 97. Registration and prospectus exemptions

**PART 3 OFFERING MEMORANDUM REQUIREMENTS**

- 98. Definitions
- 99. Delivery of offering memorandum
- 100. Description of rights in offering memorandum
- 101. Alternative compliance with description of rights in offering memorandum
- 102. Required form of offering memorandum for real estate securities under s. 2.9 of NI 45-106

**CMRA Regulation 45-501**  
***Prospectus and Registration Exemptions***

**PART 1      GENERAL PROSPECTUS AND REGISTRATION EXEMPTIONS**

**Division 1      Capital Accumulation Plans**

**1.      Definitions**

In this Division,

“capital accumulation plan” means a tax assisted investment or savings plan, including a defined contribution registered pension plan, a group registered retirement savings plan, a group registered education savings plan, or a deferred profit sharing plan, established by a plan sponsor that permits a member to make investment decisions among two or more investment options offered within the plan;

“member” means a current or former employee of an employer, or a person who belongs, or did belong to a trade union or association, or

- (a) his or her spouse,
- (b) a trustee, custodian or administrator who is acting on his or her behalf, or for his or her benefit, or on behalf of, or for the benefit of, his or her spouse, or
- (c) his or her holding entity, or a holding entity of his or her spouse,

that has assets in a capital accumulation plan, and includes a person that is eligible to participate in a capital accumulation plan;

“plan sponsor” means an employer, trustee, trade union or association or a combination of them that establishes a capital accumulation plan, and includes a service provider to the extent that the plan sponsor has delegated its responsibilities to the service provider; and

“service provider” means a person that provides services to a plan sponsor to design, establish, or operate a capital accumulation plan.

**2.      Registration and prospectus exemptions**

- (1) The dealer registration requirement does not apply to a trade by a person in a security of a mutual fund to a capital accumulation plan, or to a member of a capital accumulation plan as part of the member’s participation in the capital accumulation plan, if the following conditions are met:
  - (a) the plan sponsor selects the mutual funds that members will be able to invest in under the capital accumulation plan;

- (b) the plan sponsor establishes a policy, and provides members with a copy of the policy and any amendments to it, describing what happens if a member does not make an investment decision;
- (c) in addition to any other information that the plan sponsor believes is reasonably necessary for a member to make an investment decision within the capital accumulation plan, and unless that information has previously been provided, the plan sponsor provides the member with the following information about each mutual fund the member may invest in:
  - (i) the name of the mutual fund,
  - (ii) the name of the manager of the mutual fund and its portfolio adviser,
  - (iii) the fundamental investment objective of the mutual fund,
  - (iv) the investment strategies of the mutual fund or the types of investments the mutual fund may hold,
  - (v) a description of the risks associated with investing in the mutual fund,
  - (vi) where a member can obtain more information about each mutual fund's portfolio holdings,
  - (vii) where a member can obtain more information generally about each mutual fund, including any continuous disclosure, and
  - (viii) whether the mutual fund is considered foreign property for income tax purposes, and if so, a summary of the implications of that status for a member who invested in that mutual fund;
- (d) the plan sponsor provides members with a description and amount of any fees, expenses and penalties relating to the capital accumulation plan that are borne by the members, including
  - (i) any costs that must be paid when the mutual fund is bought or sold,
  - (ii) costs associated with accessing or using any of the investment information, decision-making tools or investment advice provided by the plan sponsor,
  - (iii) mutual fund management fees,
  - (iv) mutual fund operating expenses,
  - (v) record keeping fees,
  - (vi) any costs for transferring among investment options, including penalties, book and market value adjustments and tax consequences,
  - (vii) account fees, and

(viii) fees for services provided by service providers,

provided that the plan sponsor may disclose the fees, penalties and expenses on an aggregate basis, if the plan sponsor discloses the nature of the fees, expenses and penalties, and the aggregated fees do not include fees that arise because of a choice that is specific to a particular member;

- (e) the plan sponsor has within the past year, provided the members with performance information about each mutual fund the members may invest in, including
- (i) the name of the mutual fund for which the performance is being reported,
  - (ii) the performance of the mutual fund, including historical performance for one, three, five and 10 years if available,
  - (iii) a performance calculation that is net of investment management fees and mutual fund expenses,
  - (iv) the method used to calculate the mutual fund's performance return calculation, and information about where a member could obtain a more detailed explanation of that method,
  - (v) the name and description of a broad-based securities market index, selected in accordance with National Instrument 81-106 *Investment Fund Continuous Disclosure*, for the mutual fund, and corresponding performance information for that index, and
  - (vi) a statement that past performance of the mutual fund is not necessarily an indication of future performance;
- (f) the plan sponsor has, within the past year, informed members if there were any changes in the choice of mutual funds that members could invest in and where there was a change, provided information about what members needed to do to change their investment decision, or make a new investment;
- (g) the plan sponsor provides members with investment decision-making tools that the plan sponsor reasonably believes are sufficient to assist them in making an investment decision within the capital accumulation plan;
- (h) the plan sponsor provides the information required by paragraphs (b), (c), (d) and (g) prior to the member making an investment decision under the capital accumulation plan;
- (i) if the plan sponsor makes investment advice from a registrant available to members, the plan sponsor must provide members with information about how they can contact the registrant.

- (2) The exemption in subsection (1) is not available to a person if the person is registered in a CMR Jurisdiction in a category of registration that permits the person to act as a dealer in respect of the activities for which the exemption is provided.
- (3) The prospectus requirement does not apply to a distribution of a security of a mutual fund in the circumstances set out in subsection (1), if
  - (a) the conditions in subsection (1) have been complied with, and
  - (b) the mutual fund complies with Part 2 of National Instrument 81-102 *Investment Funds*.

### **3. Resale restrictions**

A trade in a security acquired under subsection 2(3) is subject to section 2.6 of National Instrument 45-102 *Resale of Securities*.

### **4. Filing requirements**

Before the first time a mutual fund relies on the exemption in subsection 2(3), the mutual fund must file Form 45-501F1 *Notice of Intention to Rely on Exemption in Subsection 2(3) of CMRA Regulation 45-501*.

## **Division 2 Bonus or Finder's Fee**

### **5. Prospectus exemption**

The prospectus requirement does not apply to a distribution of a security by a reporting issuer in a security of its own issue as consideration for

- (a) a loan or loan guarantee; or
- (b) services performed by a person, that is not an insider or an associate of an insider of the issuer, in connection with
  - (i) arranging a loan or loan guarantee,
  - (ii) the issuer acquiring or disposing of assets, other than proceeds of a distribution, or
  - (iii) the issuer making a distribution under a prospectus exemption.

### **6. Resale restrictions**

A trade in a security acquired under section 5 is subject to section 2.5 of National Instrument 45-102 *Resale of Securities*.



## **7. Report of exempt distribution**

An issuer that distributes a security under this Division must file a completed Form 45-106F1 *Report of Exempt Distribution* no later than the 10<sup>th</sup> day after the distribution.

## **Division 3 Existing Security Holders**

### **8. Definitions**

In this Division,

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

“core document” means a prospectus, an offering document prescribed for the purposes of paragraph 156(2)(b) of the Act, a take-over bid circular, an issuer bid circular, a directors’ circular, a notice of change or variation in respect of any of those circulars, a rights offering circular, management’s discussion and analysis, an annual information form, an information circular, an annual financial statement, an interim financial report of a reporting issuer or a material change report;

“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 a security of an issuer of a class of equity security listed on the TSX Venture Exchange, the Toronto Stock Exchange, Aequitas NEO Exchange Inc., the Canadian Securities Exchange or another recognized exchange;

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

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

“record date” is the date that is at least one day prior to the announcement date; and

“warrant” means a warrant issued by an issuer that entitles the holder to acquire a listed security or a fraction of a listed security of the same issuer.

### **9. Prospectus exemptions**

- (1) The prospectus requirement does not apply to a distribution by an issuer of a security of its own issue to a security holder of the issuer if
  - (a) the issuer is not an investment fund;
  - (b) the issuer is a reporting issuer in at least one jurisdiction of Canada;

- (c) the issuer's equity securities are listed securities;
  - (d) 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 required by each of the following:
    - (i) applicable securities legislation,
    - (ii) an order issued by the Chief Regulator or the Authority,
    - (iii) an undertaking to the Chief Regulator or the Authority;
  - (e) the issuer has issued and filed the offering news release;
  - (f) the distribution is of a listed security or a unit consisting of a listed security and a warrant;
  - (g) subject to applicable securities legislation, the issuer makes the offer available to all persons 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 this exemption;
  - (h) the purchaser purchases the security as principal;
  - (i) the purchaser represents in writing to the issuer that, on or before the record date, the purchaser acquired and continues to hold, a listed security of the issuer of the same class and series as the listed security to be distributed under this exemption; and
  - (j) one of the following applies:
    - (i) the purchaser is 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 a person that is registered as an investment dealer in the jurisdiction,
    - (ii) the aggregate acquisition cost to the purchaser for the securities purchased under this Division, when combined with the acquisition cost to the purchaser for the purchase of any other security from the issuer under this Division in the last 12 months, does not exceed \$15,000.
- (2) The offering news release must include reasonable detail of the proposed distribution and proposed use of gross proceeds including
- (a) the minimum and maximum number of securities proposed to be distributed and the minimum and maximum aggregate gross proceeds of the distribution;
  - (b) a description of the principal purposes, with approximate amounts, for which the issuer will use the gross proceeds, assuming both the minimum and maximum offering; and

- (c) a description of how the issuer intends to allocate securities.
- (3) The issuer must represent each of the following to the purchaser in the subscription agreement:
- (a) the issuer's core documents and "documents", as that term is defined in section 147 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.
- (4) A distribution of listed securities or units by an issuer under subsection (1) must not result in an increase of more than 100 per cent in the number of outstanding listed securities in the same class.
- (5) The issuer or any salesperson acting on behalf of the issuer in connection with a distribution under this section does not have reasonable grounds to believe that the representation of the purchaser, referred to in paragraph (1)(i), is untrue.
- (6) The exemption in subsection (1) is not available for a distribution of a listed security if the class of listed security has been suspended from trading for failure to comply with the ongoing requirements of the applicable exchange.
- (7) Other than the subscription agreement, any offering material provided to a purchaser in connection with a distribution under this Division must be filed no later than the day that the material was first provided to a purchaser.

## **10. Resale restrictions**

The first trade in a security acquired under this Division is subject to section 2.5 of National Instrument 45-102 *Resale of Securities*.

## **11. Report of exempt distribution**

An issuer that distributes a security under this Division must file a completed Form 45-106F1 *Report of Exempt Distribution* no later than the 10<sup>th</sup> day after the distribution.

## **Division 4 Start-up Crowdfunding**

### **12. Definitions**

In this Division,

"closing of the distribution" means, at the discretion of the issuer, any time after the minimum offering amount is reached;

“corresponding start-up crowdfunding exemption” means an order issued or a rule adopted by another securities regulatory authority or regulator, the terms of which are substantially similar to this Division;

“eligible security” means

- (a) a common share,
- (b) a non-convertible preference share,
- (c) a security convertible into a security referred to in (a) or (b),
- (d) a non-convertible debt security linked to a fixed or floating interest rate; and
- (e) a unit of a limited partnership;

“funding portal” means a person that facilitates or proposes to facilitate online start-up crowdfunding distributions;

“issuer group” means

- (a) the issuer,
- (b) an affiliate of the issuer, and
- (c) any other issuer
  - (i) that is engaged in a common enterprise with the issuer or with an affiliate of the issuer, or
  - (ii) whose business is founded or organized, directly or indirectly, by the same person who founded or organized the issuer;

“minimum offering amount” means the minimum amount disclosed in the offering document;

“offering document” means a completed Form 45-501F2 *Start-up Crowdfunding – Offering Document*, including any amendment to the offering document;

“participating jurisdictions” means the CMR Jurisdictions, Manitoba, Nova Scotia, Québec, and any other jurisdiction whose securities regulatory authority or regulator has adopted a corresponding start-up crowdfunding exemption;

“principal” means a promoter, director, officer or control person;

“risk warning” means the risk warning document set out in Form 45-501F3 *Start-up Crowdfunding – Risk Acknowledgement*, and

“start-up crowdfunding distribution” means a distribution through a funding portal of an eligible security that is exempt from the prospectus requirement under subsection 14(1) or a corresponding start-up crowdfunding exemption.

### 13. Registration exemption for funding portals

The dealer registration requirement does not apply to a trade by a funding portal in connection with a start-up crowdfunding distribution if the funding portal

- (a) does not facilitate its first start-up crowdfunding distribution until the Chief Regulator confirms in writing receipt of the following:
  - (i) a completed Form 45-501F4 *Start-up Crowdfunding – Funding Portal Information Form*,
  - (ii) a completed Form 45-501F5 *Start-up Crowdfunding – Funding Portal – Individual Information Form* for each principal of the funding portal,
  - (iii) such other completed documents and any additional information as may be requested by the Chief Regulator;
- (b) delivers to the Chief Regulator any amendments to the documents referred to in paragraph (a) as soon as practicable;
- (c) has not been notified by the Chief Regulator that the business of the funding portal is prejudicial to the public interest because the principals or their past conduct demonstrate a lack of
  - (i) integrity,
  - (ii) financial responsibility, or
  - (iii) relevant knowledge or expertise;
- (d) has its head office located in a jurisdiction of Canada;
- (e) has a majority of its directors resident in Canada;
- (f) maintains books and records at its head office to accurately record its financial affairs and client transactions, and to demonstrate the extent of the funding portal's compliance with this section for a period of eight years from the date a record is created;
- (g) is not registered under Canadian securities legislation;
- (h) does not provide advice to a purchaser or otherwise recommend or represent
  - (i) that an eligible security is suitable, or
  - (ii) any information about the merits of the investment;
- (i) prior to allowing any person entry to its website, requires the person to acknowledge that they are entering a website of a funding portal

- (i) that it is not operated by a registered dealer under Canadian securities legislation, and
  - (ii) that does not provide advice about the suitability of any security or about the merits of any investment;
- (j) discloses on its website,
  - (i) for each principal of the funding portal, their full legal name, municipality and jurisdiction of residence, business mailing and email address, and business telephone number, and
  - (ii) that the funding portal is relying on this exemption from the dealer registration requirement;
- (k) does not receive a commission, fee or other amount from a purchaser of an eligible security;
- (l) holds a purchaser's assets
  - (i) separate and apart from the funding portal's own property,
  - (ii) in trust for the purchaser, and
  - (iii) in the case of cash, in a designated trust account at a Canadian financial institution;
- (m) receives payment for an eligible security electronically through the funding portal's website;
- (n) takes reasonable measures to ensure that an issuer and a purchaser are residents of a participating jurisdiction where the offering document is made available;
- (o) makes available to a purchaser through the funding portal's website the offering document and the risk warnings;
- (p) does not allow a purchaser to subscribe for an eligible security until the purchaser confirms that the purchaser has read and understood the offering document and the risk warnings;
- (q) notifies a purchaser of any amendment to the offering document and the right of the purchaser to withdraw their subscription after receiving notification of the amendment;
- (r) returns all funds to a purchaser within five business days of receiving a withdrawal notification under section 142 of the Act from that purchaser; and
- (s) completes one of the following:

- (i) if the minimum offering amount has not been raised by the 90<sup>th</sup> day after the offering document is first made available on the funding portal's website or the start-up crowdfunding distribution is withdrawn, no later than five business days following such occurrence,
  - (A) returns, or causes to return, all funds to each purchaser, and
  - (B) notifies the issuer and each purchaser that funds have been returned,
- (ii) if the two-day period in paragraph 21.3(c) of CMRA Regulation 11-501 *Definitions, Procedure, Civil Liability and Related Matters* has elapsed,
  - (A) releases, or causes to release, all funds due to the issuer at the closing of the distribution, and
  - (B) no later than fifteen days after the closing of the distribution,
    - (I) notifies each purchaser that the funds have been released to the issuer, and
    - (II) provides the issuer with all information required to comply with the issuer's obligations in paragraph 15(b).

#### **14. Prospectus exemption for issuers**

The prospectus requirement does not apply to a start-up crowdfunding distribution by an issuer if

- (a) the distribution is of its own eligible security;
- (b) the distribution and payment for the eligible security is facilitated through a funding portal that is
  - (i) relying on the exemption in section 13; or
  - (ii) operated by an investment dealer, an exempt market dealer or a restricted dealer, as applicable, under Canadian securities legislation, provided the issuer has obtained written confirmation from the registered dealer that
    - (A) it has filed a completed Form 33-109F5 *Change of Registration Information* or Form 33-109F6 *Firm Registration* that describes its business as including operating a funding portal under this Division,
    - (B) it meets or will meet the conditions set out in paragraphs 13(m) to (s), and

- (C) prior to allowing any person entry to its website, requires the person to acknowledge that they are entering a website of a funding portal
  - (I) that is operated by an investment dealer, an exempt market dealer or a restricted dealer, as applicable, under Canadian securities legislation;
  - (II) that will provide advice about the suitability of the eligible security if is required to do so under securities legislation; and
  - (III) that will not provide advice about the suitability of the eligible security if subclause (II) does not apply;
- (c) the issuer is not a reporting issuer or an investment fund in any jurisdiction of Canada or foreign jurisdiction;
- (d) the head office of the issuer is located in a participating jurisdiction;
- (e) the aggregate funds raised in any start-up crowdfunding distribution by any person in the issuer group does not exceed \$250,000;
- (f) the issuer group is restricted to no more than two start-up crowdfunding distributions in a calendar year;
- (g) the distribution occurs no later than the 90<sup>th</sup> day after the first date the offering document is made available on the funding portal's website;
- (h) the issuer uses an offering document to conduct the distribution and provides the offering document to the funding portal for the purpose of making it available to a purchaser through the funding portal's website;
- (i) the issuer amends the offering document in the event the offering document is no longer true and provides it to the funding portal as soon as practicable for the purpose of making it available to a purchaser through the funding portal's website;
- (j) the offering document discloses how the issuer intends to use the funds raised and the minimum offering amount to close the distribution;
- (k) the issuer raises the minimum offering amount described in the offering document, which may be reduced by the amount of any concurrent distribution made under a prospectus exemption other than the prospectus exemption set out in this section and a corresponding start-up crowdfunding exemption, provided that the funds from the concurrent distribution are unconditionally available to the issuer;
- (l) no concurrent start-up crowdfunding distribution is made by any person in the issuer group for the purpose described in the offering document;



- (m) no commission, fee or other amounts are paid to the issuer group or any of their principals, employees or agents with respect to the distribution;
- (n) a principal of the issuer group is not a principal of the funding portal;
- (o) no person invests more than \$1,500; and
- (p) within 30 days after the closing of the distribution, the issuer delivers or causes to be delivered to each purchaser a confirmation setting out the following:
  - (i) the date of subscription and the closing of the distribution,
  - (ii) the quantity and description of the eligible security purchased,
  - (iii) the price per eligible security paid by the purchaser,
  - (iv) the total commission, fee and any other amounts paid by the issuer to the funding portal in respect of the start-up crowdfunding distribution.

## 15. Filing requirements

An issuer that distributes a security under section 14 must file no later than the 30<sup>th</sup> day after the closing of the distribution:

- (a) the offering document, and
- (b) a completed Form 45-106F1 *Report of Exempt Distribution*.

## 16. Resale restrictions

The first trade in a security acquired under section 14 or a corresponding start-up crowdfunding exemption is subject to section 2.5 of National Instrument 45-102 *Resale of Securities*.

## Division 5 Syndicated Mortgages

### 17. Definitions

In this Division,

“institutional investor” means

- (a) the government of Canada or any province or territory of Canada or a crown corporation or agency of a Canadian federal, provincial or territorial government,
- (b) a municipal corporation, public board or commission in Canada,
- (c) a Canadian financial institution, or an authorized foreign bank named in Schedule III of the *Bank Act* (Canada),

- (d) the Business Development Bank of Canada,
- (e) a pension fund that is regulated by either the Office of the Superintendent of Financial Institutions (Canada) or a provincial pension supervisory authority,
- (f) a mortgage broker acting as principal,
- (g) a person registered under the Act or the securities legislation of another jurisdiction as an investment dealer or equivalent, acting as principal or as an agent or trustee for accounts that are fully managed by it,
- (h) a person registered under the Act or the securities legislation of another jurisdiction as a portfolio manager or equivalent, acting as principal or as an agent or trustee for accounts that are fully managed by it,
- (i) an investment fund, if the investment portfolio of the fund is advised by a person that is registered under the Act or the securities legislation of another jurisdiction as a portfolio manager or equivalent, or
- (j) a person that is designated to be an institutional investor by order of the Authority;

“qualified syndicated mortgage” means a syndicated mortgage if

- (a) the syndicated mortgage is not contained in or secured by a bond, debenture or similar obligation or in a trust deed or other instrument to secure bonds or debentures or similar obligations,
- (b) the syndicated mortgage secures a debt obligation on property used solely for residential purposes and containing no more than four residential dwelling units,
- (c) the syndicated mortgage does not secure a debt obligation incurred for the construction or development of property,
- (d) at the time of issue, the amount of the debt secured by the syndicated mortgage, together with all other debt secured by mortgages on the property that have priority over, or the same priority as, the syndicated mortgage, does not exceed 90 per cent of the fair market value of the property, excluding any value that may be attributed to proposed or pending development on the property,
- (e) the syndicated mortgage is limited to one identified debt obligation,
- (f) the rate of interest payable under the syndicated mortgage is equal to the rate of interest payable under the identified debt obligation,
- (g) any amount charged for the administration of the syndicated mortgage is disclosed to the purchaser, and
- (h) the term of the syndicated mortgage is not different from the term of the identified debt obligation; and

“syndicated mortgage” means a mortgage on real property in which two or more persons participate, directly or indirectly, as lenders in the debt obligation that is secured by the mortgage.

**18. Registration exemption for trades in syndicated mortgages to institutional investors**

The dealer registration requirement does not apply to a trade in a syndicated mortgage to an institutional investor by a person who is registered or licensed under mortgage brokers legislation in the jurisdiction in which the property is located, or by a person exempted from registration or licensing under mortgage brokers legislation in the jurisdiction in which the property is located.

**19. Registration and prospectus exemptions for trades in and distributions of qualified syndicated mortgages**

The dealer registration requirement and the prospectus requirement do not apply to a trade in, or distribution of, a qualified syndicated mortgage if

- (a) the qualified syndicated mortgage is sold through a person who is registered or licensed under mortgage brokers legislation in the jurisdiction in which the property is located; and
- (b) before the agreement of purchase and sale is entered into, the purchaser is provided with Form 45-501F6 *Investor/Lender Information Sheet*.

**20. Resale restrictions**

A trade in a security acquired under section 19 is subject to section 2.5 of National Instrument 45-102 *Resale of Securities*.

**21. Report of exempt distribution**

An issuer that distributes a security under this Division must file a completed Form 45-106F1 *Report of Exempt Distribution* no later than the 10<sup>th</sup> day after the distribution.

**Division 6 Real Estate Securities**

**22. Definitions**

In this Division,

“developer” means a person who, directly or indirectly, owns, leases or has a right to acquire or dispose of a property that is

- (a) 5 or more condominium or strata lots in a stratified building,
- (b) 5 or more leasehold interests in a residential leasehold complex,
- (c) 5 or more time share interests in a time share plan,
- (d) 2 or more cooperative interests in a cooperative association, or
- (e) 2 or more shared interests in the same parcel or parcels of land;

“disclosure document” means any disclosure statement, offering memorandum, summary disclosure statement or financial statements relating to an optional rental pool security or a rental property security;

“eligible seller” means a seller, other than a developer or an agent acting on a developer’s behalf;

“IFRS” has the same meaning as in NI 51-102;

“interim period” has the same meaning as in NI 51-102;

“manager” means any manager or operator under a rental pool agreement or rental management agreement;

“marketing” means any sales communication, excluding providing any disclosure document;

“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*;

“optional rental pool security” means an investment contract

- (a) that is comprised of a direct interest in real property and an option to enter into a rental pool agreement for that property,
- (b) that does not include, or purport to include, any rental or cash flow guarantee, or other financial commitment on the part of any person connected with the offering,
- (c) under which the rental pool agreement is entered into at the sole discretion of the owner and is terminable by the owner at any time at the owner’s sole discretion, with reasonable notice or on other reasonable conditions, and
- (d) under which the owner has the right to occupy the property at any time, with reasonable notice;

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

“rental pool” for a particular property means an arrangement under which revenues derived from, and/or expenses relating to, the use of that property and other properties as a lodging are pooled and shared among the owners of the properties in accordance with their proportionate interests in the pool;

“rental pool agreement” means the agreement or agreements creating or giving rise to a rental pool;

“rental property security” means either a Type A security or a Type B security;

“sales communication” means communication, including advertising, by an issuer, developer, vendor, promoter or manager, or an agent acting on behalf of any of the foregoing persons, to a prospective purchaser of an optional rental pool security or rental property security with the intention or effect of inducing the purchase by a prospective purchaser of the optional rental pool security or rental property security;

“summary disclosure statement” means,

- (a) for a rental pool, a summary of the rental pool arrangement that includes the disclosure required by
  - (i) paragraphs (8), (9) and (11) of the disclosure required on the cover page, Items 2.3, 3.9(c) and (d), 9.1, 11.2, 11.3(a), (b) and (c), 12.1 and 12.2 of Form 45-501F7 *Offering Memorandum – Real Estate Securities* with respect to the offering, modified as necessary to reflect the operation of the rental pool and the form of disclosure, and
  - (ii) Item 4.3 of Form 45-501F7 *Offering Memorandum – Real Estate Securities* with respect to the manager under the rental pool agreement, modified so that the period of disclosure runs from the date of the certificate attached to the summary,

and is certified by the developer or manager in the form of certificate required by Item 17 of Form 45-501F7 *Offering Memorandum – Real Estate Securities*, and

- (b) for a rental management agreement,
  - (i) the rental management agreement, and
  - (ii) a summary of the rental manager’s past experience that includes Item 4.3 of Form 45-501F7 *Offering Memorandum – Real Estate Securities* with respect to the manager under the rental management agreement, modified so that the period of disclosure runs from the date of the certificate attached to the summary, and is certified by the developer or manager in the form of certificate required under Item 17 of Form 45-501F7 *Offering Memorandum – Real Estate Securities*;

“Type A Property” means real property

- (a) that is subject to a restrictive covenant or other restriction on the owner’s right to occupy the property in favor of a province, territory, municipality or other

government authority, other than a zoning restriction, that is registered against the title of the property,

- (b) for which the restrictive covenant or other restriction does not restrict the number of days during a year, season or other period that the owner may occupy the property, and
- (c) for which the restrictive covenant or other restriction requires that when the property is not occupied by the owner, the property must be available for rent to the general public;

“Type A Security” means an investment contract

- (a) that is comprised of a direct interest in a Type A Property with either a rental pool agreement or rental management agreement for that property,
- (b) that does not include, or purport to include, any rental or cash flow guarantee, or other financial commitment on the part of any person connected with the offering, and
- (c) under which the owner has the right to occupy the property at any time, with reasonable notice;

“Type B Property” means real property

- (a) that is subject to a restrictive covenant or other restriction on the owner’s right to occupy the property, in favor of a province, territory, municipality or other government authority, other than a zoning restriction, that is registered against the title of the property,
- (b) for which the owner’s right to occupy is limited by the restrictive covenant or other restriction to a stipulated maximum number of days per year or season or other period, and
- (c) for which the owner’s right to occupy stipulated by the restrictive covenant or other restriction is, in any case, not less than 30 days per year;

“Type B Security” means an investment contract

- (a) that is comprised of a direct interest in a Type B Property with either a rental pool agreement or rental management agreement for that property,
- (b) that does not include, or purport to include, any rental or cash flow guarantee, or other financial commitment on the part of any person connected with the offering, and
- (c) under which the owner has the right to occupy the property for the entire period stipulated by the restrictive covenant or other government imposed restriction, with reasonable notice or on other reasonable conditions; and

“U.S. GAAP” has the same meaning as in NI 52-107.

**23. Registration and prospectus exemptions for trades of an optional rental pool security or a rental property security**

The dealer registration requirement and the prospectus requirement do not apply to a trade by a developer, or an agent acting on its behalf, in an optional rental pool security or a rental property security provided that

- (a) the developer or its agent has delivered to the prospective purchaser before an agreement of purchase and sale is entered into, disclosure required by Form 45-501F7 *Offering Memorandum – Real Estate Securities*, excluding Items 8, 11.3(d) and 14;
- (b) forward looking information as defined in NI 51-102 is not used in any written communications, except in the disclosure referred to in paragraph (a);
- (c) where any forward looking information as defined in NI 51-102 is included in the disclosure referred to in paragraph (a), the information must
  - (i) comply with section 4A.2 of NI 51-102,
  - (ii) include the disclosure described in section 4A.3 of NI 51-102, and
  - (iii) include disclosure stating that the preparer of the offering document does not plan to provide any updates to the forward looking information or compare actual results to the forward looking information, andreferences in sections 4A.2 and 4A.3 of NI 51-102 to “reporting issuer” must be read as references to “developer or its agent”;
- (d) where any future-oriented financial information or a financial outlook, each as defined in NI 51-102, is included in the disclosure referred to in paragraph (a), it must comply with sections 4B.2 and 4B.3 of NI 51-102, and references to “reporting issuer” in those sections must be read as references to “a developer or its agent”;
- (e) where there is a rental pool, the rental pool agreement imposes an irrevocable obligation on the developer or the manager to send to a holder of the securities on or before the 140<sup>th</sup> day after the end of each financial year, comparative annual financial statements for the business contemplated by the rental pool agreement that comply with section 4.1 of NI 51-102 and that are prepared in accordance with Canadian GAAP, IFRS or U.S. GAAP, together with an auditor’s report that complies with sections 3.3 and 3.4 of NI 52-107, and references to “issuer” or “reporting issuer” in those sections must be read as references to “the business contemplated by the rental pool agreement”;
- (f) where there is a rental pool, the rental pool agreement imposes an irrevocable obligation on the developer or the manager to send to a holder of the securities, on or before the 60<sup>th</sup> day after the last day of each interim period, interim financial statements for the business contemplated by the rental pool agreement that

comply with the requirements for interim financial reports in section 4.3 of NI 51-102 and that are prepared in accordance with Canadian GAAP, IFRS or U.S. GAAP, and references to “reporting issuer” in that section must be read as references to “the business contemplated by the rental pool agreement”;

- (g) where there is a rental management agreement, the agreement imposes an irrevocable obligation on the developer or the manager to send to a holder of the securities quarterly statements of revenues and expenses for the property subject to the rental management agreement on or before the 60th day after the date to which they are made up;
- (h) in the case of a Type B Security, the rental pool agreement or rental management agreement imposes an irrevocable obligation on
  - (i) the developer to deliver to any subsequent prospective purchaser, upon reasonable notice of an intended sale by the holder of the security, before an agreement of purchase and sale is entered into, if a subsequent trade by a holder of a Type B Security occurs within 12 months of, or prior to, the issuance of permission to occupy the property, the disclosure referred to in paragraph (a), and
  - (ii) the developer or the manager to deliver to any subsequent prospective purchaser, upon reasonable notice of an intended sale by the holder of the security, before an agreement of purchase and sale is entered into, if a subsequent trade by a holder of a Type B Security occurs after 12 months from the date of the issuance of permission to occupy the property, a summary disclosure statement;
- (i) where there is a rental pool, the rental pool agreement imposes an irrevocable obligation on the developer or the manager to deliver to a subsequent prospective purchaser, upon reasonable notice of an intended sale by the holder of the security, before an agreement of purchase and sale is entered into,
  - (i) the most recent comparative annual financial statements and auditor’s report referred to in paragraph (e), and
  - (ii) the most recent interim financial statements referred to in paragraph (f) if those statements are for a period that ended after the year-end date of the statements required by subparagraph (i);
- (j) where there is a rental management agreement, the agreement imposes an irrevocable obligation on the developer or the manager to deliver to a subsequent prospective purchaser, upon reasonable notice of an intended sale by the holder of the security, before an agreement of purchase and sale is entered into, the quarterly statements referred to in paragraph (g) for the two-year period preceding the entering into of the agreement of purchase and sale for that property, if the property was subject to a rental management agreement during that two-year period;
- (k) there is no marketing of the expected economic benefits of the rental pool agreement or rental management agreement to a prospective purchaser; and



- (l) the rental pool agreement or rental management agreement imposes an irrevocable obligation on a holder of the security to notify
  - (i) the developer or the manager about an intended trade prior to selling the optional rental pool security or rental property security, and
  - (ii) subsequent prospective purchasers of their right to obtain from the developer or the manager the information specified in paragraphs (i) and (j) and, in the case of a Type B Security, the disclosure referred to in paragraph (h).

**24. Resale restrictions for subsequent trades in an optional rental pool security or a rental property security**

- (1) A subsequent trade in an optional rental pool security or a rental property security acquired under section 23 or under this subsection is a distribution unless
  - (a) the seller is an eligible seller; and
  - (b) the seller, or an agent acting on the seller's behalf, does not advertise the expected economic benefits of the rental pool agreement or rental management agreement to a subsequent prospective purchaser.
- (2) The dealer registration requirement does not apply to a subsequent trade in an optional rental pool security or a rental property security acquired under section 23 or under subsection (1) if
  - (a) the seller is an eligible seller; and
  - (b) the seller, or an agent acting on the seller's behalf, does not advertise the expected economic benefits of the rental pool agreement or rental management agreement to a subsequent prospective purchaser.

**25. Resale restrictions for subsequent trades in certain real estate securities acquired before CMR launch date relating to real property in British Columbia**

- (1) A subsequent trade by a person, other than a developer, that acquired a security under any of BC Instrument 45-512 *Real Estate Securities*, BC Blanket Order Relief (BOR) #97/1 *Real Estate Securities*, BC Blanket Order Relief (BOR) #96/19 *Optional Rental Pool Securities*, BC Instrument 45-513 *Resale Relief for Eligible Real Estate Securities*, or BC Blanket Order Relief (BOR) #97/3 *Resale Relief for Eligible Real Estate Securities* relating to real property in British Columbia before CMR launch date or under this subsection is a distribution unless
  - (a) the seller is an eligible seller; and

- (b) the seller, or an agent acting on the seller's behalf, does not advertise the expected economic benefits of the rental pool agreement or rental management agreement to a subsequent prospective purchaser.
- (2) The dealer registration requirement does not apply to a subsequent trade in a security described in subsection (1) if
- (a) the seller is an eligible seller; and
  - (b) the seller, or an agent acting on the seller's behalf, does not advertise the expected economic benefits of the rental pool agreement or rental management agreement to a subsequent prospective purchaser.

## **26. Report of exempt distribution**

The developer must file a completed Form 45-106F1 *Report of Exempt Distribution* for a distribution of an optional rental pool security or a rental property security made in reliance on the prospectus exemption in section 23 no later than the 10<sup>th</sup> day after the distribution.

### **26.1 Delivery of disclosure to the Chief Regulator**

A developer that distributes an optional rental pool security or a rental property security in reliance on the prospectus exemption in section 23 must deliver the disclosure required in paragraph 23(a) to the Chief Regulator no later than the 10th day after the distribution.

## **PART 2 PROSPECTUS AND REGISTRATION EXEMPTIONS RELATED TO PROVINCIAL AND TERRITORIAL LEGISLATION**

### **Division 1 Cooperative Associations**

#### **27. British Columbia**

(1) In this section,

“association” means an association as defined in the *Cooperative Association Act* (British Columbia);

“investment share” means an investment share as defined in the *Cooperative Association Act* (British Columbia);

“member” means a member as defined in the *Cooperative Association Act* (British Columbia);

“membership share” means a membership share as defined in the *Cooperative Association Act* (British Columbia); and

“patronage return” means a patronage return as defined in the *Cooperative Association Act* (British Columbia).

- (2) For the purposes of subsections (3) to (7), membership shares or investment shares acquired as, or by the application of, a dividend, interest, or a patronage return are considered to have no acquisition cost.
- (3) In British Columbia, the dealer registration requirement does not apply to an association with respect to a trade in membership shares of its own issue if
- (a) before the trade, the association receives from the purchaser a statement in writing declaring the aggregate acquisition cost of all membership and investment shares of that association currently held by the purchaser;
  - (b) at the time of the trade, the association has no reasonable grounds to believe that the amount declared under paragraph (a) is not accurate; and
  - (c) the acquisition cost to the purchaser of the membership shares, together with the amount declared under paragraph (a), does not exceed \$5,000.
- (4) In British Columbia, the dealer registration requirement does not apply to an association with respect to a trade in investment shares of its own issue if
- (a) before the trade, the association receives from the purchaser a statement in writing declaring the aggregate acquisition cost of all membership and investment shares of that association currently held by the purchaser;
  - (b) at the time of the trade, the association has no reasonable grounds to believe that the amount declared under paragraph (a) is not accurate;
  - (c) the acquisition cost to the purchaser of the investment shares, together with the amount declared under paragraph (a), does not exceed \$5,000;
  - (d) the number of members of the association whose last address as shown on the books of the association is in British Columbia does not exceed 150, not including members that are employed by the association in a full time capacity; and
  - (e) the purchaser is a member and has been a member of the association
    - (i) for at least 12 months; or
    - (ii) since the inception of the association, if the association has been in existence for less than 12 months.
- (5) In British Columbia, the dealer registration requirement does not apply to an association with respect to a trade in a security of its own issue if
- (a) the security is distributed by it as, or by the application of, a dividend, interest or a patronage return; and
  - (b) no commission or other remuneration is paid or given to others in respect of the trade except for administrative or professional services or for services performed by a registered dealer.

- (6) In British Columbia, the dealer registration requirement does not apply to a trade in a security issued by a cooperative association, as defined in the *Real Estate Development Marketing Act* (British Columbia), for the purpose of evidencing a right to use or occupy a part of the land owned by the cooperative association where the securities cannot be dealt with apart from the right to use or occupy, so long as a disclosure statement has been filed and accepted under the *Real Estate Development Marketing Act* (British Columbia).
- (7) In British Columbia, the prospectus requirement does not apply to a distribution of a security in the circumstances set out in subsections (3) to (6).

## **28. Saskatchewan**

- (1) In Saskatchewan, the dealer registration requirement does not apply to a trade in a security issued by a company in accordance with *The Co-operatives Act, 1996* (Saskatchewan).
- (2) In Saskatchewan, the prospectus requirement does not apply to a distribution of a security in the circumstances set out in subsection (1).

## **29. Ontario**

- (1) In Ontario, the prospectus requirement does not apply to a distribution of a security issued by a corporation to which the *Co-operative Corporations Act* (Ontario) applies.
- (2) In Ontario, the dealer registration requirement does not apply to a trade in a security in the circumstances set out in subsection (1).

## **30. New Brunswick**

- (1) In New Brunswick, the dealer registration requirement does not apply to a trade in a security that is a share as defined in the *Co-operative Associations Act* (New Brunswick).
- (2) In New Brunswick, the prospectus requirement does not apply to a distribution of a security in the circumstances set out in subsection (1).

## **31. Prince Edward Island**

- (1) In Prince Edward Island, the dealer registration requirement does not apply to a trade in a security that is a co-op share as defined in the *Co-operative Associations Act* (Prince Edward Island).
- (2) In Prince Edward Island, the prospectus requirement does not apply to a distribution of a security in the circumstances set out in subsection (1).

- (3) Subsections (1) and (2) do not apply to a distribution of or a trade in a share that is a part of a specified issue as defined in the *Community Development Equity Tax Credit Act* (Prince Edward Island).

## **Division 2 Credit Unions**

### **32. British Columbia**

- (1) In British Columbia, the dealer registration requirement does not apply to a trade in a share of a credit union within the meaning of the *Credit Union Incorporation Act* (British Columbia).
- (2) In British Columbia, the prospectus requirement does not apply to a distribution of a share in the circumstances set out in subsection (1).

### **33. Saskatchewan**

- (1) In Saskatchewan, the dealer registration requirement does not apply to a trade in a security issued by a credit union to its members in accordance with *The Credit Union Act, 1998* (Saskatchewan) or issued pursuant to an exemption granted by that act.
- (2) In Saskatchewan, the prospectus requirement does not apply to distribution of a security in the circumstances set out in subsection (1).

### **34. Ontario**

- (1) In Ontario, the prospectus requirement does not apply to a distribution of a
- (a) membership share or patronage share of a credit union within the meaning of the *Credit Unions and Caisses Populaires Act, 1994* (Ontario);
  - (b) security issued to its members by a credit union to which the *Credit Unions and Caisses Populaires Act, 1994* (Ontario) applies; or
  - (c) security issued to its members or the members of its member credit unions by a league to which the *Credit Unions and Caisses Populaires Act, 1994* (Ontario) applies.
- (2) In Ontario, the dealer registration requirement does not apply to a trade in a security issued to its members by a credit union to which the *Credit Unions and Caisses Populaires Act, 1994* (Ontario) applies.
- (3) In Ontario, the dealer registration requirement does not apply to a trade in a security issued to its members or the members of its member credit unions by a league to which the *Credit Unions and Caisses Populaires Act, 1994* (Ontario) applies.

### **35. New Brunswick**

- (1) In New Brunswick, the dealer registration requirement does not apply to a trade in a membership share of a credit union within the meaning of the *Credit Unions Act* (New Brunswick).
- (2) In New Brunswick, the prospectus requirement does not apply to a distribution of a membership share in the circumstances set out in subsection (1).

### **36. Prince Edward Island**

- (1) In Prince Edward Island, the dealer registration requirement does not apply to a trade in a share of a credit union within the meaning of the *Credit Unions Act* (Prince Edward Island).
- (2) In Prince Edward Island, the prospectus requirement does not apply to a distribution of a security in the circumstances set out in subsection (1).

## **Division 3 British Columbia *Employee Investment Act***

### **37. Definitions**

In this Division,

“EI Act” means the *Employee Investment Act* (British Columbia);

“eligible business” has the same meaning as in the EI Act;

“employee” means, when used in relation to an eligible business, an employee of the eligible business or of an affiliate of the eligible business;

“employee venture capital plan” has the same meaning as in subsection 1(1) of the EI Act;

“EVCC” means an employee venture capital corporation registered under the EI Act, and constituted to

- (a) restrict the EVCC to investing in shares of a particular eligible business and in investments permitted by paragraphs 22(1)(b), (d), (e) and (f) of the EI Act, and
- (b) prohibit the EVCC from issuing shares to any person other than a permitted purchaser; and

“permitted purchaser” means, when used in relation to an EVCC, an employee of the EVCC’s eligible business.

### **38. Registration and prospectus exemptions**

- (1) In British Columbia, the dealer registration requirement does not apply to a trade in a share issued by an EVCC provided that
  - (a) the EVCC has distributed its shares only
    - (i) to permitted purchasers, and
    - (ii) to the first subscriber or subscribers under subsection 10(1) of the *Business Corporations Act* (British Columbia);
  - (b) the trade is made under the employee venture capital plan of the EVCC;
  - (c) the share certificate contains a legend stating that transfers of the shares must comply with National Instrument 45-102 *Resale of Securities* and sections 38 to 40; and
  - (d) before the trade, the EVCC notifies the permitted purchaser in writing about the resale restrictions this section and National Instrument 45-102 *Resale of Securities* impose.
- (2) In British Columbia, the prospectus requirement does not apply to a distribution of a share in the circumstances set out in subsection (1).
- (3) In British Columbia, the prospectus requirement does not apply to
  - (a) a trade by a permitted purchaser to another permitted purchaser in a share issued by an EVCC; or
  - (b) a trade by an employee to another employee in a share issued by an eligible business under an employee share ownership plan.

### **39. Resale restrictions**

A trade in a share issued by an EVCC under subsection 38(2) is subject to section 2.6 of National Instrument 45-102 *Resale of Securities*.

### **40. Report of exempt distribution**

An issuer that distributes a security under this Division must file a completed Form 45-106F1 *Report of Exempt Distribution* no later than the 10<sup>th</sup> day after the distribution.

## **Division 4 Saskatchewan Labour-sponsored Venture Capital Corporations Act**

### **41. Definitions**

In this Division,

“employee” means an employee of an operating company or of an associated person of an operating company who qualifies as an eligible investor under the provisions of the LSVCC Act;

“LSVCC” means a labour-sponsored venture capital corporation which intends to apply for or has been issued a Type B certificate of registration under the provisions of the LSVCC Act;

“LSVCC Act” means *The Labour-sponsored Venture Capital Corporations Act* (Saskatchewan);

“operating company” means a person in which an LSVCC intends to invest or has invested and which is an eligible business under the provisions of the LSVCC Act; and

“testing the waters” means soliciting expressions of interest in, advertising or providing promotional material, sales literature or other information about a proposed offering of securities by an LSVCC to employees of the operating company in which the LSVCC intends to invest, or of an associated person of the operating company, prior to the offering.

### **42. Registration and prospectus exemptions when testing the waters**

- (1) In Saskatchewan, the dealer registration requirement does not apply to any person who engages in testing the waters provided that
  - (a) testing the waters
    - (i) is restricted to providing information about the general nature of the proposed trade and particulars of the LSVCC Act,
    - (ii) is restricted to obtaining expressions of interest from the employees to buy the securities of the LSVCC, and
    - (iii) does not include particulars of the proposed trade itself; and
  - (b) any promotional material distributed in the course of testing the waters
    - (i) is clear and understandable,
    - (ii) does not contain a misrepresentation,
    - (iii) directs the employees to consider the material required to be provided under paragraph 43(1)(a) before making an investment decision,
    - (iv) discloses that employment or continued employment is not conditional upon employees buying the securities of the LSVCC,



- (v) recommends that employees consult with a professional adviser before deciding to buy the securities of the LSVCC,
  - (vi) disclose that the expressions of interest to buy the securities of the LSVCC given by employees are non-binding, and
  - (vii) is distributed to all employees eligible to participate in the proposed trade; and
- (c) subscription agreements are not completed and funds are not collected prior to receipt by a subscriber of the material required to be provided under paragraph 43(1)(a).
- (2) In Saskatchewan, the prospectus requirement does not apply to a distribution of a security in the circumstances set out in subsection (1).

**43. Registration and prospectus exemptions for trades and distributions by an LSVCC of its securities to employees**

- (1) In Saskatchewan, the dealer registration requirement does not apply to a trade by an LSVCC in its securities to employees of the operating company in which it intends to invest or of an associated person of the operating company provided that
- (a) each employee eligible to participate in the trade receives the following material before he or she buys securities of the LSVCC:
    - (i) a completed Form 45-501F8 *LSVCC Securities Offering Disclosure (Saskatchewan)*,
    - (ii) certificate of incorporation, articles of incorporation and any amendments thereto (or restated articles of incorporation) of the LSVCC and the operating company,
    - (iii) the latest financial statements of the LSVCC,
    - (iv) the latest financial statements of the operating company;
  - (b) any material provided to employees with to respect to the trade
    - (i) is clear and understandable,
    - (ii) does not contain a misrepresentation,
    - (iii) discloses that employment or continued employment is not conditional upon employees buying the securities of the LSVCC,
    - (iv) recommends that employees consult with a professional adviser before deciding to buy the securities of the LSVCC; and
    - (v) is distributed to all employees eligible to participate in the proposed trade;

- (c) solicitation of and sales to employees are made only by
    - (i) directors, officers or employees of the LSVCC or operating company, or
    - (ii) a person registered under the Act to trade in the type of securities to be issued by the LSVCC;
  - (d) employees are not induced to purchase securities of the LSVCC by expectation of employment or continued employment;
  - (e) no selling or promotional expenses are paid or incurred in connection with the trade except for professional services or for the services of a registered dealer;
  - (f) prior to any closing, funds raised pursuant to the trade are held by the LSVCC in trust for the investors until the following conditions of closing have been met and, if the conditions of closing are not met, the funds are to be returned to the investors without interest or deduction
    - (i) the LSVCC is registered as a labour-sponsored venture capital corporation pursuant to the LSVCC Act, and
    - (ii) the tax incentives under the LSVCC Act are available to investors.
- (2) In Saskatchewan, the prospectus requirement does not apply to a distribution of a security in the circumstances set out in subsection (1).
- (3) Further trades in securities of the LSVCC acquired under subsection (2) are subject to section 2.6 of National Instrument 45-102 *Resale of Securities*, unless the further trade is
- (a) to the LSVCC,
  - (b) to a self-directed registered retirement savings plan of a security holder of the LSVCC or the security holder's spouse,
  - (c) to another employee of the operating company in which the LSVCC intends to invest or has invested or of an associated person of the operating company if the employee has received a copy of the latest financial statements of the LSVCC and the operating company, or
  - (d) from a self-directed registered retirement savings plan of a security holder of the LSVCC or the security holder's spouse to the security holder or one of the persons or companies listed in paragraphs (a), (b) or (c).

**44. Prospectus exemption for a distribution by an operating company of its securities to an LSVCC**

- (1) In Saskatchewan, the prospectus requirement does not apply to a distribution by an operating company of its securities to an LSVCC provided that no selling or promotional

expenses are paid or incurred in connection with the trade except for professional services or for services of a registered dealer.

- (2) Unless the trade is consented to by the Chief Regulator or is to the operating company, further trades in securities of the operating company acquired under subsection (1) are subject to section 2.6 of National Instrument 45-102 *Resale of Securities*.

## **Division 5 Ontario Government Incentive Securities**

### **45. Definitions**

In this Division,

“government incentive security” means

- (a) a security, or unit or interest in a partnership that invests in a security, that is issued by a company and for which the company has agreed to renounce in favour of the holder of the security, unit or interest, amounts that will constitute Canadian exploration expense, as defined in subsection 66.1(6) of the ITA, Canadian development expense, as defined in subsection 66.2(5) of the ITA, or Canadian oil and gas property expense, as defined in subsection 66.4(5) of the ITA, or
- (b) a unit or interest in a partnership or joint venture that is issued in order to fund Canadian exploration expense, as defined in subsection 66.1(6) of the ITA, Canadian development expense, as defined in subsection 66.2(5) of the ITA, or Canadian oil and gas property expense, as defined in subsection 66.4(5) of the ITA; and

“offering document” means a document that provides information, including information about the business or affairs of an issuer, and that has been prepared primarily for sending to and review by a prospective purchaser to assist the prospective purchaser in making an investment decision about securities being sold in a distribution for which the prospectus requirement would apply but for the availability of the exemption contained in section 46.

### **46. Prospectus exemption**

- (1) In Ontario, the prospectus requirement does not apply to a distribution by an issuer or a promoter of an issuer of a security of the issuer that is a government incentive security, if
- (a) not more than 75 prospective purchasers are solicited resulting in sales to not more than 50 purchasers;
  - (b) before entering into an agreement of purchase and sale, the prospective purchaser has been supplied with an offering document that includes information
    - (i) identifying every officer and director of the issuer,
    - (ii) identifying every promoter of the issuer,

- (iii) giving the particulars of the professional qualifications and associations during the five years before the date of the offering document of each officer, director and promoter of the issuer that are relevant to the offering,
    - (iv) indicating each of the directors that will be devoting his or her full time to the affairs of the issuer, and
    - (v) describing the right of action referred to in section 122 of the Act that is applicable in respect of the offering document;
  - (c) the prospective purchaser has access to substantially the same information concerning the issuer that a prospectus filed under the Act would provide and,
    - (i) because of net worth and investment experience or because of consultation with or advice from a person that is not a promoter of the issuer and that is a registered dealer or registered adviser under the Act, is able to evaluate the prospective investment on the basis of information about the investment presented to the prospective purchaser by the issuer or selling security holder, or
    - (ii) is an executive officer or director of the issuer or of an affiliate of the issuer or a spouse or child of a director or executive officer of the issuer or of an affiliate of the issuer;
  - (d) the offer and sale of the security is not accompanied by an advertisement and no selling or promotional expenses have been paid or incurred for the offer and sale except for professional services or for services performed by a registered dealer under the Act; and
  - (e) the promoter, if any, has not acted as a promoter of any other issue of securities under this exemption within the calendar year.
- (2) For the purposes of determining the number of purchasers or prospective purchasers under paragraph (1)(a), a company, partnership, trust or other entity is counted as one purchaser or prospective purchaser unless the entity has been created, or is being used, primarily for the purposes of purchasing a security of the issuer, in which event each beneficial owner of an equity security of the entity or each beneficiary of the entity, as the case may be, is counted as a separate purchaser or prospective purchaser.
- (3) In Ontario, the prospectus requirement does not apply to a distribution of a security that was previously distributed under the exemption in subsection (1) if each of the parties to the trade is one of the not more than 50 purchasers referred to in the exemption.

#### **46.1 Resale restrictions**

A trade in a security acquired under subsection 46(1) or (3) is subject to section 2.5 of National Instrument 45-102 *Resale of Securities*.

#### **47. Report of exempt distribution**

An issuer that distributes a security under this Division must file a completed Form 45-106F1 *Report of Exempt Distribution* no later than the 10<sup>th</sup> day after the distribution.

### **Division 6 New Brunswick Community Economic Development Corporations and Associations**

#### **48. Definitions**

In this Division,

“affiliate” has the same meaning as in the SBITC Act;

“CEDC” means a community economic development corporation or association that is registered under subsection 15(1) of the SBITC Act;

“eligible share” has the same meaning as in the SBITC Act;

“financial statements” includes interim financial reports;

“letter of non-objection” means the letter of non-objection referred to in section 51;

“offering document” means an offering document prepared in accordance with Form 45-501F9 *Offering Document for Community Economic Development Corporations and Associations (New Brunswick)*;

“promotional material” means information relating to an offering and includes advertising and sales literature;

“private enterprise” means a private enterprise as defined in the Handbook;

“publicly accountable enterprise” means a publicly accountable enterprise as defined in the Handbook;

“SBITC Act” means the *Small Business Investor Tax Credit Act (New Brunswick)*;

“specified issue” has the same meaning as in the SBITC Act; and

“tax credit certificate” means the tax credit certificate described in subsection 22(1) of the SBITC Act.

#### **49. Prospectus and registration exemptions**

- (1) In New Brunswick, the prospectus requirement does not apply to a distribution by a CEDC of an eligible share of its own issue that is or is part of a specified issue to a purchaser if

- (a) the CEDC has delivered to the Chief Regulator its certificate of registration issued under section 15 of the SBITC Act, and such certificate has not been revoked under subsection 23(1) of that act or surrendered under section 24 of that act;
  - (b) [the CEDC has filed with the Chief Regulator an offering document in compliance with sections 57 to 61 and section 69, along with the prescribed fee][This provision will be considered as part of the fee project];
  - (c) the Chief Regulator has issued a letter of non-objection;
  - (d) at the same time or before the purchaser signs the agreement to purchase eligible shares of the CEDC, the CEDC
    - (i) delivers the offering document to the purchaser, and
    - (ii) obtains a completed Form 45-106F4 *Risk Acknowledgement* from the purchaser; and
  - (e) the eligible shares are not sold by, or through, a registrant.
- (2) In New Brunswick, the dealer registration requirement does not apply to a trade in a share in the circumstances referred to in subsection (1) if
- (a) the trade is made by individuals described in the offering document; and
  - (b) the CEDC does not provide advice to a purchaser or otherwise recommend or represent
    - (i) that an eligible share is suitable, or
    - (ii) any information about the merits of the investment.
- (3) A CEDC is exempt from the requirements under capital markets law pertaining to investment funds and investment fund managers if
- (a) the CEDC includes in its offering document the following warning in bold type:

**“WARNING: Unlike most investment funds, this fund will not be required to comply with the requirements of an investment fund manager provided that the fund complies with Part 2, Division 6 [New Brunswick Community Economic Development Corporations and Associations] of CMRA Regulation 45-501 Prospectus and Registration Exemptions. Other investment funds are required to have registered investment fund managers to afford investors a level of protection that is not present in this investment. When investors purchase or own shares in this fund they should be aware that they will not have the protections of the requirements and standards imposed on investment fund managers under capital markets law, which include:**

- **meeting experience and education requirements**
- **complying with investment fund reporting requirements,**
- **employing a chief compliance officer,**
- **maintaining minimum levels of working capital,**
- **maintaining specified levels of insurance or bonding, and**
- **undergoing compliance reviews; and**

(b) the CEDC is in compliance with this Division.

(4) A CEDC relying on subsection (1) must retain the signed risk acknowledgment for eight years after the distribution.

#### **50. Resale restrictions**

The first trade and each subsequent trade in an eligible share of a CEDC is a distribution, unless,

- (a) in the case of a corporation, the conditions in subsection 2.5(2) of National Instrument 45-102 *Resale of Securities* are satisfied or the trade is made in accordance with an exemption from the prospectus and registration requirements;
- (b) in the case of an association, the trade is made in accordance with the *Co-operative Associations Act* (New Brunswick).

#### **51. Letter of non-objection**

(1) The Chief Regulator must issue a letter of non-objection to an offering document unless, in the opinion of the Chief Regulator, any of the following apply:

- (a) it is not in the public interest to do so;
- (b) the offering document does not meet all the requirements of this Division;
- (c) the offering is not, or will not, be made in compliance with this Division.

(2) On receipt of an offering document, the Chief Regulator may do any of the following:

- (a) inquire into any aspect of the offering and the offering document;
- (b) request delivery of supplemental information before or after determining whether to issue a letter of non-objection;

- (c) require the inclusion of supplemental information in the offering document before or after issuing a letter of non-objection.

## **52. Revocation of letter of non-objection**

- (1) If, after issuing a letter of non-objection, it appears to the Chief Regulator that the continuation of the offering would be prejudicial to the public interest or that any requirement of this Division has not been, or is not being, complied with, the Chief Regulator may revoke the letter of non-objection.
- (2) The Chief Regulator must not revoke the letter of non-objection without giving the CEDC an opportunity to be heard.
- (3) Upon receipt of notice of revocation referred to in subsection (1), the CEDC and any other person trading on its behalf must immediately cease trading shares of the CEDC until the CEDC is notified by the Chief Regulator that
  - (a) the Chief Regulator has withdrawn the notice of revocation; or
  - (b) the Tribunal has, by order, determined that it would not be prejudicial to the public interest for the offering to continue.

## **53. Prohibition on trading**

Other than provided for in section 54, there must be no trading in the shares of the CEDC before the Chief Regulator issues a letter of non-objection to an offering document under section 51.

## **54. Permitted activities**

- (1) Before the Chief Regulator issues a letter of non-objection to an offering document, a promoter may
  - (a) talk individually, or in group situations, with potential security holders to give the potential security holders a general overview of the offering, including any of the following information:
    - (i) identification of the CEDC,
    - (ii) an indication of the amount of money needed to be raised,
    - (iii) a general description of what use will be made of the money raised,
    - (iv) an outline of the tax consequences;
  - (b) gather the names of potential security holders who may be interested in the offering; and



- (c) distribute promotional material or expression of interest forms provided that the promotional material used or distributed includes
  - (i) the disclaimer described in subsection (3),
  - (ii) an endorsement of a director, officer or promoter of the CEDC evidencing the approval of the promotional material, and
  - (iii) no other information other than
    - A. the name of the CEDC,
    - B. the location, date and time of any meeting,
    - C. the purpose of the meeting, which must be to determine if there is sufficient interest to proceed with the offering, and
    - D. the contact information respecting the meeting.
- (2) After the Chief Regulator issues a letter of non-objection to an offering document, a promoter may distribute promotional material or expression of interest forms provided that the promotional material used or distributed includes
  - (a) the disclaimer described in subsection (3);
  - (b) an endorsement of a director, officer or promoter of the CEDC evidencing the approval of the promotional material;
  - (c) the name of the CEDC; and
  - (d) no other information other than
    - (i) the name and contact information of the selling agents,
    - (ii) how to obtain a copy of the offering document,
    - (iii) the price per share,
    - (iv) the individual minimum purchase amount,
    - (v) information regarding the tax credit under the SBITC Act, including confirmation that the CEDC complies with all applicable legislation for purchasers to benefit from the tax credit,
    - (vi) potential income tax consequences,
    - (vii) the location, date and time of any meeting, and
    - (viii) in whole or in part, the information in summary form, contained in items 2.2, 7.1 and 8 of the offering document of the CEDC.

- (3) The promotional materials must contain the following disclaimer which must be legible without magnification, or in the case of audibly transmitted promotional material, included audibly in the material:

**This Community Economic Development Corporation or Association offering may be a high risk investment. This offering is made through an offering document, which can be obtained through a person authorized to sell the eligible shares. This offering is an exempt offering of eligible shares only in New Brunswick. Investors should read the offering document before making an investment decision.**

- (4) The CEDC must deliver a copy of its promotional materials to the Chief Regulator no later than two business days after the materials are first used.
- (5) The promotional materials, other than radio and television promotional materials, must be distributed to all potential purchasers who have received the offering document.
- (6) The promotional materials must not be made available, used or distributed after the latest permitted closing date of the offering.
- (7) A promoter must not accept any binding commitments or binding expressions of interest, whether oral or written or consideration from any potential security holders before the Chief Regulator issues a letter of non-objection to the offering document.
- (8) An expression of interest form must contain the following warnings to potential security holders:
- (a) that they should read and consider the offering document that they will receive with respect to the offering, if the offering does proceed;
  - (b) that they should consult with a professional advisor before deciding to purchase shares under the offering;
  - (c) that the expression of interest is not a binding commitment to purchase shares under the offering.
- (9) A CEDC may distribute shares under other prospectus exemptions concurrently with the distribution of eligible shares in a specified issue if full details of the concurrent distribution are disclosed in the offering document.

## **55. Directors and officers**

The directors and officers of the CEDC must be individuals who are suitable to act in such a capacity and whose past conduct does not afford reasonable grounds to believe that the business of the CEDC will not be conducted fairly, honestly and in good faith.

## **56. Potential security holders**

A CEDC must provide each potential security holder with

- (a) a copy of all promotional material, the offering document and a subscription agreement; and
- (b) any additional materials required by the Chief Regulator.

## **57. Promotional material**

An offering document must state that all promotional materials relating to each distribution under the offering document, including those prepared after the date of the offering document, are incorporated by reference into the offering document and are deemed to form part of the offering document.

## **58. Form of offering document**

The required form of offering document is Form 45-501F9 *Offering Document for Community Economic Development Corporations and Associations (New Brunswick)*.

## **59. Financial statements included in the offering document**

- (1) If the CEDC has not completed one financial year or its first financial year end is less than 120 days from the date of the offering document, the offering document must include an interim financial report of the CEDC as at a date not more than 90 days before the date of the offering document.
- (2) If the CEDC has completed one or more financial years, the offering document must include the annual financial statements of the CEDC
  - (a) for the most recently completed financial year; and
  - (b) for the financial year immediately preceding the financial year in paragraph (a), if any.
- (3) If the CEDC has completed one or more financial years, the offering document must include an interim financial report of the CEDC
  - (a) for the most recently completed interim period that ended no more than 90 days prior to the date of the offering document; and
  - (b) after the year end date of the financial statements required under paragraph (2)(a).

## **60. Use of proceeds**

All amounts raised under an offering must be used as indicated in the offering document.

## **61. Time limitation on offering**

- (1) An offering initially closes on the date specified in the offering document.
- (2) Unless the Authority grants an extension under subsection (3), the initial closing date specified in the offering must be a date no later than 90 days after the date the CEDC issued its certificate of registration under section 15 of the SBITC Act.
- (3) The Authority may grant an extension of the 90-day period on application by the CEDC.
- (4) After the initial closing date, a CEDC may continue to offer shares under the offering document if the Chief Regulator has issued a letter of non-objection for the subsequent sales and only for such time period as indicated in the letter of non-objection.

## **62. Amounts to be held in trust**

- (1) All amounts subscribed under an offering must be held in a designated trust account at a Canadian financial institution until after
  - (a) the CEDC meets its minimum offering amount for the initial closing and all conditions of closing have been met, and
  - (b) the initial closing occurs.
- (2) Any amounts subscribed for under an offering made after the initial closing as described in subsection 61(4) must be held in the same manner as in subsection (1) until after
  - (a) the CEDC meets its minimum offering amount for the next closing and all the conditions of the next closing have been met; and
  - (b) the next closing occurs.
- (3) The requirements in subsection (2) apply to each subsequent closing.
- (4) The CEDC must return all consideration received promptly to the purchaser if
  - (a) the CEDC does not meet its minimum offering amount by the applicable closing date; or
  - (b) the purchaser exercises its right, described in section 142 of the Act to rescind the purchase.

### **63. Amendments to the offering document**

- (1) Except as required in this section, no amendments may be made to an offering document after the Chief Regulator issues a letter of non-objection to the offering document.
- (2) After the Chief Regulator issues a letter of non-objection to an offering document, the CEDC must file an amendment to the offering document with the Chief Regulator if
  - (a) the CEDC has not yet met its minimum offering amount, the initial closing has not yet occurred, and any of the following apply:
    - (i) there is a material change in the affairs of the CEDC,
    - (ii) the terms or conditions of the offering are being altered,
    - (iii) additional shares of the same class are to be distributed in addition to the securities previously described in the offering document; or
  - (b) the CEDC is still distributing its shares under the offering document after having met its minimum offering amount and having had the initial closing take place, and there is a material change in the affairs of the CEDC.
- (3) An amendment to an offering document must describe the change that resulted in the amendment and receive the written non-objection of the Chief Regulator.
- (4) An amendment to an offering document must be sent to all subscribers of the specified issue after the Chief Regulator has issued a non-objection to the amendment.

### **64. Report of exempt distribution**

A CEDC that distributes a security under this Division must file a completed Form 45-106F1 *Report of Exempt Distribution* no later than the 30<sup>th</sup> day after each closing of an offering.

### **65. Annual financial statements**

- (1) Where a CEDC has met its minimum offering and if the initial closing has occurred, the CEDC must file annual financial statements with the Chief Regulator.
- (2) The annual financial statements required to be filed under subsection (1) must be filed within 140 days from the end of the CEDC's most recently completed financial year.

### **66. Copies to security holders**

The CEDC must make reasonably available to all its security holders a copy of its annual financial statements required to be filed under subsection 65(1) at the same time as the annual financial statements are filed with the Chief Regulator.

## **67. Notice of specified events**

The CEDC must make reasonably available to each holder of an eligible share acquired under section 49, a notice of any of the following events in accordance with Form 45-501F10 *Notice of Specified Events (New Brunswick and Prince Edward Island)*, within 10 days of the occurrence of the event:

- (a) a fundamental change in the nature, or a discontinuation, of the CEDC's business;
- (b) a significant change to the CEDC's capital structure;
- (c) a major reorganization, amalgamation or merger involving the CEDC;
- (d) a significant acquisition or disposition of assets, property or joint venture interests;
- (e) changes to the CEDC'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.

## **68. Compliance no longer required**

A CEDC is no longer required to comply with this Division if

- (a) the CEDC delivers to the Chief Regulator a notification from the Minister of Finance for New Brunswick that the CEDC has surrendered its registration or the Minister of Finance for New Brunswick has revoked its registration; or
- (b) the CEDC files with the Chief Regulator a statement from the officers of the CEDC certifying all of the following:
  - (i) that the CEDC has fewer than three shareholders,
  - (ii) that the holding period required by the SBITC Act has expired on all shares,
  - (iii) that financial statements on which a review has been carried out by an independent accountant in compliance with the review standards as set out in the Handbook and that are dated within 90 days of the filing have been filed with the Chief Regulator,
  - (iv) that the CEDC has complied with all the requirements of this Division,
  - (v) that shareholders, representing 66.6 per cent or more of shares eligible to be voted have voted in favour of not being required to comply with this Division.

## **69. Accounting and auditing standards**

- (1) A CEDC's annual financial statements do not require a report of an auditor if all of the following apply:
  - (a) the security holders are not required by law to appoint an auditor;
  - (b) a general review has been carried out by an independent accountant in compliance with the general review standards as set out in the Handbook;
  - (c) the financial statements are accompanied by a review engagement report as set out in the Handbook.
- (2) For the purposes of this Division, the financial statements for a CEDC may be prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises or Canadian GAAP applicable to private enterprises as set out in the Handbook.
- (3) If a CEDC files financial statements prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises, it must continue to deliver financial statements prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises.
- (4) Any use of financial forecasts or projections must be made in accordance with Part 4B of National Instrument 51-102 *Continuous Disclosure Obligations*.

## **70. Recordkeeping**

A CEDC must maintain books and records at its head office to accurately record its financial affairs, client transactions, and the extent of the CEDC's compliance with this Division, for a period of eight years from the date a record is created.

## **Division 7 Prince Edward Island *Community Development Equity Tax Credit Act***

### **71. Definitions**

In this Division,

“affiliated” has the same meaning as in the CDETC Act;

“association” has the same meaning as in the *Co-operative Associations Act* (Prince Edward Island);

“CDETC Act” means the *Community Development Equity Tax Credit Act* (Prince Edward Island);

“CEDB” or “community economic-development business” means a company or association that meets the criteria prescribed by the General Regulations and is registered as a community economic-development business by the Minister under section 2 of the CDETC Act;

“community economic-development plan” means a community economic-development plan proposed by a CEDB that contains the information prescribed by the General Regulations;

“company” has the same meaning as in the CDETC Act;

“eligible business entity” has the same meaning as in the General Regulations;

“General Regulations” means the Community Development Equity Tax Credit Act General Regulations made under the CDETC Act;

“Minister” has the same meaning as in the CDETC Act;

“offering” means an offering of shares by a CEDB in accordance with the exemption contained in section 72;

“offering document” means an offering document prepared in the form of Form 45-501F11 *Offering Document for Community Economic Development Businesses – Corporations (Prince Edward Island)* for corporations or Form 45-501F12 *Offering Document for Community Economic Development – Associations (Prince Edward Island)* for associations;

“promotional material” means information relating to an offering and includes advertising and sales literature;

“registered retirement savings plan” has the same meaning as in the ITA;

“security holder” means a person who owns shares of a CEDB;

“specified issue” has the same meaning as in the CDETC Act; and

“tax-free savings account” has the same meaning as in the ITA.

## **72. Prospectus exemption**

In Prince Edward Island, the prospectus requirement does not apply to a distribution by a CEDB of shares of the CEDB made in accordance with this Division.

## **73. Application**

- (1) This Division applies to a CEDB that engages in a distribution of or a trade in a share of its own issue that is or is part of a specified issue in respect of which a tax-credit certificate has been issued under section 6 of the CDETC Act.
- (2) Each first trade and each subsequent trade in shares of a CEDB purchased under an offering is a distribution, unless
  - (a) the conditions in subsection 2.5(2) of National Instrument 45-102 *Resale of Securities* are satisfied; or



- (b) the trade is made
  - (i) to the CEDB in accordance with section 2.15 of National Instrument 45-102 *Resale of Securities*,
  - (ii) to a registered retirement savings plan of the security holder or the security holder's spouse that is directed by the security holder or by the spouse of the security holder, as the case may be,
  - (iii) to the spouse of the security holder,
  - (iv) to a tax-free savings account of the security holder or the security holder's spouse,
  - (v) from a registered retirement savings plan of the security holder or the security holder's spouse to the security holder that is directed by the security holder or by the spouse of the security holder, as the case may be,
  - (vi) from a tax-free savings account of the security holder to the security holder or the security holder's spouse,
  - (vii) to a purchaser who owns shares of the CEDB and who is advised in writing by or on behalf of the vendor before entering into an agreement of purchase and sale that the purchaser will not accrue any advantage under the CDETC Act as a result of the purchase, or
  - (viii) to a purchaser who purchases by way of a trade made in compliance with capital markets law.
- (3) This Division does not apply to a promoter of a CEDB who is not a promoter of the CEDB at the time its offering document is filed.

#### **74. Restrictions**

- (1) Concurrent with the distribution of shares through a specified issue, a CEDB may distribute shares under other prospectus exemptions, but only if full details of the concurrent distribution of shares or proposed distribution of shares are disclosed in the offering document.
- (2) Subject to section 78, a person must not distribute a security to which this Division applies unless an offering document has been filed and a letter of non-objection has been issued by the Chief Regulator.
- (3) Distributions of shares of a CEDB may be made only by registrants registered under the Act that are authorized to trade in the shares or by the individuals listed as selling agents in the offering document.

## **75. Certificate of registration**

A CEDB must file its certificate of registration as a CEDB issued under section 2 of the CDETC Act with the Chief Regulator immediately upon receipt.

## **76. Letter of non-objection**

- (1) The Chief Regulator must issue a letter of non-objection to an offering document unless, in the opinion of the Chief Regulator, any of the following apply:
  - (a) it is not in the public interest to do so;
  - (b) the offering document does not meet all of the requirements of this Division;
  - (c) the offering is not or will not be made in compliance with this Division.
- (2) On receipt of an offering document, the Chief Regulator may do any of the following:
  - (a) inquire into any aspect of the offering and the offering document;
  - (b) request delivery of supplemental information before or after determining whether to issue a letter of non-objection;
  - (c) require the inclusion of supplemental information in the offering document before or after issuing a letter of non-objection.
- (3) Before the Chief Regulator issues a letter of non-objection to an offering document, there must be no trading in the shares of the CEDB, except as provided in subsection 78(1) respecting a promoter's activity.

## **77. Revocation of letter of non-objection**

- (1) If, after issuing a letter of non-objection, it appears to the Chief Regulator that the continuation of the offering would not be in the public interest or that any requirement of this Division has not been or is not being complied with, the Chief Regulator may revoke the letter of non-objection.
- (2) On receipt of notice of a revocation referred to in subsection (1), the CEDB and any other person trading on its behalf must immediately cease trading shares of the CEDB until the CEDB is notified by the Chief Regulator that the Chief Regulator has withdrawn the notice of revocation.

## **78. Promoter's activity before issuance of letter of non-objection**

- (1) Before the Chief Regulator issues a letter of non-objection to an offering document, a promoter may

- (a) talk individually or in group situations with potential security holders to give them a general overview of the offering, including all of the following information:
    - (i) identification of the CEDB,
    - (ii) an indication of the amount of money needed to be raised,
    - (iii) a general description of what use will be made of the money raised,
    - (iv) an outline of the tax incentives; and
  - (b) gather the names of potential security holders who might be interested in the offering.
- (2) A promoter must not use or distribute promotional material or forms for the purpose of obtaining expressions of interest in purchasing under an offering without the prior written non-objection of the Chief Regulator.
  - (3) A promoter must not accept any binding commitments or binding expressions of interest, whether oral or written, or consideration in any form from potential security holders before the Chief Regulator issues a letter of non-objection to the offering document.
  - (4) A form for the purposes of obtaining an expression of interest must contain all of the following warnings to potential security holders:
    - (a) that they should read and consider the offering document they will receive with respect to the offering, if the offering does in fact proceed;
    - (b) that they should consult with a professional advisor before deciding to purchase shares under the offering;
    - (c) that the expression of interest is not in any way a binding commitment to purchase shares under the offering.

## **79. Directors and officers**

- (1) The promoters, officers, directors and selling agents of a CEDB must be individuals who are suitable to act as promoters, officers, directors and sales agents and whose past conduct does not afford reasonable grounds to believe that the business of the CEDB will not be conducted with integrity and in the best interests of the CEDB.
- (2) At least two directors of the CEDB must be independent within the meaning of section 1.4 of National Instrument 52-110 *Audit Committees*.

## **80. Minimum offering**

- (1) An offering document must state the minimum offering amount necessary to close the offering.

- (2) A CEDB must also provide detailed reasons in its offering document explaining why the amount specified as the minimum offering amount is a reasonable amount when considered in the context of its community economic-development plan.
- (3) An initial offering of a CEDB must obtain at least 25 purchasers.
- (4) A subsequent offering of a CEDB that has closed an initial offering must obtain at least three purchasers.

#### **81. Amounts to be held in trust**

- (1) All amounts subscribed under an offering must be held in trust by a trustee that is independent, within in the meaning of section 1.4 of National Instrument 52-110 *Audit Committees*, from the CEDB until after
  - (a) the CEDB meets its minimum offering amount and certifies to the trustee that all conditions of closing have been met; and
  - (b) the initial closing occurs.
- (2) Any offering amounts received by a trustee under an offering after the initial closing must be held in trust until after
  - (a) the CEDB certifies to the trustee that all conditions of the next closing have been met; and
  - (b) the next closing occurs.
- (3) The conditions in subsection (2) apply to each subsequent closing.
- (4) All amounts subscribed must be paid by cheque or bank draft made payable only to the trustee (in trust).

#### **82. Amount not to exceed \$3,000,000**

The amount subscribed under an offering must not exceed \$3,000,000.

#### **83. Use of proceeds**

All amounts raised under an offering must be used as indicated in the offering document.

#### **84. Potential security holders**

- (1) A CEDB must provide each potential security holder with
  - (a) all promotional material, the offering document and a subscription agreement; and

- (b) any additional materials required by the Chief Regulator.
- (2) A CEDB must maintain a record of the names and addresses of all persons to whom an offering document and subscription agreement have been provided.

**85. Promotional material**

- (1) Any promotional material that is used in connection with an offering is incorporated by reference into the offering document.
- (2) All promotional material must include a disclaimer as required by the Chief Regulator.
- (3) All promotional material must be delivered to the Chief Regulator and receive the written non-objection of the Chief Regulator before its use.

**86. Amendments to offering document**

- (1) Except as required in subsection (2), no amendments may be made to an offering document after the Chief Regulator issues a letter of non-objection to the offering document.
- (2) After the Chief Regulator issues a letter of non-objection to an offering document, the CEDB must file an amendment to the offering document with the Chief Regulator if
  - (a) the CEDB has not yet met its minimum offering amount, the initial closing has not yet occurred, and any of the following apply:
    - (i) there is a material change in the affairs of the CEDB,
    - (ii) the terms or conditions of the offering are being altered,
    - (iii) additional shares of the same class are to be distributed in addition to the securities previously described in the offering document; or
  - (b) the CEDB is still distributing its shares under the offering document after having met its minimum offering amount and having had the initial closing take place, and there is a material change in the affairs of the CEDB.
- (3) A CEDB that files an amendment under paragraph (2)(b) must also comply with Part 7 of National Instrument 51-102 *Continuous Disclosure Obligations*.
- (4) An amendment to an offering document must describe the change that resulted in the amendment and receive the written non-objection of the Chief Regulator.
- (5) An amendment to an offering document must be sent to all subscribers of the specified issue after the Chief Regulator has issued a non-objection to the amendment.

- (6) No later than 10 days after the date that a subscriber rescinds their agreement to purchase shares under paragraph 21.1(d) or (e) of CMRA Regulation 11-501 *Definitions, Procedure, Civil Liability and Related Matters*, the trustee must return the subscriber's funds to the subscriber.

#### **86.1 Financial statements included in the offering document**

- (1) If the CEDB has not completed one financial year or its first financial year end is less than 120 days from the date of the offering document, the offering document must include an interim financial report of the CEDB as at a date not more than 90 days before the date of the offering document.
- (2) If the CEDB has completed one or more financial years, the offering document must include the annual financial statements of the CEDB
  - (a) for the most recently completed financial year; and
  - (b) for the financial year immediately preceding the financial year in paragraph (a), if any.
- (3) If the CEDB has completed one or more financial years, the offering document must include an interim financial report of the CEDB
  - (a) for the most recently completed interim period that ended no more than 90 days prior to the date of the offering document; and
  - (b) after the year end date of the financial statements required under paragraph (2)(a).

#### **87. Financial forecasts**

Any use of financial forecasts or projections must be in accordance with Part 4B of National Instrument 51-102 *Continuous Disclosure Obligations*.

#### **88. Time limitation on offering**

- (1) An offering initially closes on the date specified in the offering document.
- (2) Unless the Authority grants an extension under subsection (3), the initial closing date specified in an offering document must be a date no later than 90 days after the date of the letter of non-objection issued by the Chief Regulator for the offering document.
- (3) The Authority may grant an extension of the 90-day period on application by the CEDB.
- (4) After the initial closing date, a CEDB may continue to offer shares under the offering document, but only if the initial closing has occurred and the Chief Regulator has issued a letter of non-objection for the subsequent sales.

### **88.1 Notice of specified events**

The CEDB must make reasonably available to each holder of a share acquired under section 72, a notice of any of the following events in accordance with Form 45-501F10 *Notice of Specified Events (New Brunswick and Prince Edward Island)*, within 10 days of the occurrence of the event:

- (a) a fundamental change in the nature, or a discontinuation, of the CEDB's business;
- (b) a significant change to the CEDB's capital structure;
- (c) a major reorganization, amalgamation or merger involving the CEDB;
- (d) a significant acquisition or disposition of assets, property or joint venture interests;
- (e) changes to the CEDB'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.

### **89. Report of exempt distribution**

A CEDB that distributes a security under this Division must file a completed Form 45-106F1 *Report of Exempt Distribution* no later than the 10<sup>th</sup> day after the distribution.

### **90. CEDB with restrictive constitution**

- (1) If the proceeds of an offering are to be used by a CEDB with a constitution that restricts it to making investments as specified in its constitution and the investments are in eligible business entities in accordance with its community economic-development plan, the CEDB must
  - (a) outline its investment strategy, objectives and restrictions in the offering document; and
  - (b) meet the requirements of subsection (2) if it proposes to
    - (i) invest more than 40 per cent of the total proceeds of the current offering or more than 40 per cent of the total proceeds of the current offering combined with all previous offerings in an eligible investment that was not disclosed in the offering document, and the eligible investment is in an eligible business entity or in eligible business entities that are affiliated, or
    - (ii) use the proceeds from the offering for an eligible investment that was not disclosed in the offering document, and the proposed use of the proceeds is an additional investment to an investment that meets the conditions of subparagraph (i).

- (2) Before entering into binding arrangements for an investment described in subparagraph (1)(b)(i) or (ii), a CEDB to which subsection (1) applies must
- (a) provide security holders with an information circular that describes the investment to be made with the proceeds in sufficient detail to permit security holders to form a reasoned judgment concerning the investment; and
  - (b) have the approval of at least 50 per cent plus one vote of the votes cast by security holders who vote at a meeting of security holders called to consider the making of the eligible investment, excluding the shares voted by officers, directors and promoters and parties related to the officers, directors and promoters.

## **91. Changes to investment strategy, objectives or restrictions**

Changes to a CEDB's investment strategy, objectives or restrictions referred to in paragraph 90(1)(a) must be approved by at least 50 per cent plus one vote of the votes cast by security holders who vote at a meeting of security holders called to consider an amendment to the strategy, objectives or restrictions, excluding the shares voted by officers, directors and promoters and parties related to the officers, directors and promoters.

## **92. Accounting and auditing standards**

- (1) A CEDB's annual financial statements need not be accompanied by a report of an auditor if all of the following apply:
- (a) the security holders are not required by law to appoint an auditor;
  - (b) a general review has been carried out by an independent accountant in compliance with the general review standards as set out in the Handbook;
  - (c) the financial statements are accompanied by a review engagement report as set out in the Handbook.
- (2) For the purposes of this Division, effective for all fiscal years beginning on and after January 1, 2011, the financial statements for a CEDB may be prepared in accordance with Canadian GAAP using IFRS for publicly accountable enterprises or Canadian GAAP for private enterprises as set out in the Handbook.
- (3) If a CEDB files financial statements prepared in accordance with Canadian GAAP using IFRS for publicly accountable enterprises, it must continue to file financial statements prepared in accordance with Canadian GAAP using IFRS for publicly accountable enterprises.



### **93. When CEDB no longer required to comply with section 92**

A CEDB is no longer required to comply with section 92 if

- (a) the CEDB files with the Chief Regulator a notification from the Minister that the CEDB has surrendered its registration; or
- (b) the CEDB files with the Chief Regulator a statement from the officers of the CEDB certifying all of the following:
  - (i) that the CEDB has fewer than five shareholders,
  - (ii) that the hold period required by the CDETC Act has expired on all shares,
  - (iii) that financial statements on which a general review has been carried out by an independent accountant in compliance with the general review standards as set out in the Handbook and that are dated within 90 days of the filing have been filed with the Chief Regulator,
  - (iv) that no shares are held in self-directed registered retirement savings plans or tax-free savings accounts,
  - (v) that the CEDB has complied with all the requirements of this Division,
  - (vi) that a certified vote has been obtained indicating that 66.6 per cent or more of shares eligible to be voted have been voted in favour of not being required to comply with section 92.

### **94. Bona fide attempt to comply**

If a trade is made by a CEDB in the bona fide and reasonable belief that there has been full compliance with this Division, the failure of one or more security holders to purchase as principal, to receive an offering document or amendments to an offering document in a timely manner, or to receive any other materials required by the Chief Regulator does not affect the application of the remaining provisions of this Division, but only if

- (a) the CEDB exercised due diligence to ensure that the failure would not occur; and
- (b) the CEDB delivers the offering document or amendments to the offering document or other material required by the Chief Regulator to the security holders on request.

### **95. Report of trade**

Except for a distribution by a CEDB, the vendor must file a completed Form 45-106F1 *Report of Exempt Distribution* no later than the 10<sup>th</sup> day after each trade made under this Division.

## **Division 8 Yukon Qualified Investments under the *Income Tax Act (Yukon)***

### **96. Definitions**

In this Division,

“eligible investor” has the same meaning as in subsection 13(1) of the *Income Tax Act (Yukon)*;

“eligible small business corporation” has the same meaning as in subsection 13(1) of the *Income Tax Act (Yukon)*; and

“small business corporation investment tax credit certificate” has the same meaning as in subsection 13(1) of the *Income Tax Act (Yukon)*.

### **97. Registration and prospectus exemptions**

- (1) In Yukon, the dealer registration requirement does not apply to a trade in a security by an eligible small business corporation where
  - (a) the eligible small business corporation has been issued a small business corporation investment tax credit certificate that relates to the trade; and
  - (b) before the trade is completed, the eligible small business corporation delivers to the eligible investor who is to acquire the security
    - (i) a copy of the application to the Yukon Minister of Economic Development under subsection 13(8) of the *Income Tax Act (Yukon)* for the small business corporation investment tax credit certificate;
    - (ii) all accompanying documents or information provided to the minister under paragraphs 13(9)(a), (c), (d) and (g) to (i) of the *Income Tax Act (Yukon)*, but not including any personal information other than the name and address of an individual referred to in paragraph 13(9)(d); and
    - (iii) any disclosure document that
      - (A) the Yukon Minister of Economic Development requires the eligible small business corporation to deliver to the eligible investor, or
      - (B) is prescribed for the purposes of subsection 13(11) of the *Income Tax Act (Yukon)*.
- (2) In Yukon, the prospectus requirement does not apply to a distribution of a security in the circumstances set out in subsection (1).

## **PART 3 OFFERING MEMORANDUM REQUIREMENTS**

### **98. Definitions**

In this Part,

“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 specified term sheet;

“eligible foreign security” means a security offered primarily in a foreign jurisdiction as part of a distribution of securities in either of the following circumstances:

- (a) the security is issued by an issuer
  - (i) that is incorporated, formed or created under the laws of a foreign jurisdiction,
  - (ii) that is not a reporting issuer in a jurisdiction of Canada,
  - (iii) that has its head office outside of Canada, and
  - (iv) that has a majority of the executive officers and a majority of the directors ordinarily resident outside of Canada;
- (b) the security is issued or guaranteed by the government of a foreign jurisdiction;

“executive officer” means, for an issuer, an individual who is

- (a) a chair, vice-chair or president,
- (b) a chief executive officer or chief financial officer,
- (c) a vice-president in charge of a principal business unit, division or function including sales, finance or production, or
- (d) performing a policy-making function in respect of the issuer;

“international dealer” means a person that is exempt from the dealer registration requirement under section 8.18 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;

“offering memorandum” means a document purporting to describe the business or affairs of an issuer that has been prepared primarily for making available to or sending to, and review by a prospective purchaser to assist the prospective purchaser in making an investment decision about securities being sold in a distribution for which a prospectus would be required but for the availability of an exemption from that requirement under capital markets law, but does not include a specified term sheet;

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

“specified 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 information in respect of the issuer, the securities or the offering that is disclosed in, or derived from, the offering memorandum other than contact information for any registrant involved,
- (d) contains a brief description of the business of the issuer, and
- (e) 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 securities;
  - (v) the price or price range of the securities;
  - (vi) the total number or dollar amount of the securities, or range of the total number or dollar amount of the securities;
  - (vii) 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;
  - (viii) the proposed or expected closing date of the offering;
  - (ix) a brief description of the use of proceeds;
  - (x) the exchange on which the securities are proposed to be listed, if any, provided that the specified term sheet complies with the requirements of securities legislation for listing representations;
  - (xi) 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;

- (xii) in the case of preferred shares, a brief description of any dividends payable on the securities;
- (xiii) in the case of convertible securities, a brief description of the underlying securities into which the convertible securities are convertible;
- (xiv) in the case of exchangeable securities, a brief description of the underlying securities into which the exchangeable securities are exchangeable;
- (xv) in the case of restricted securities, a brief description of the restriction;
- (xvi) 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;
- (xvii) whether the securities are redeemable or retractable;
- (xviii) 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;
- (xix) contact information for the issuer or any registrant involved.

#### **99. Delivery of offering memorandum**

- (1) Unless otherwise provided for in this Regulation, if an offering memorandum is provided to a prospective purchaser, the seller must deliver to the Chief Regulator a copy of the offering memorandum or any amendment to a previously delivered offering memorandum within 10 days of the date of the distribution.
- (2) The requirement in subsection (1) does not apply to an offering memorandum prepared and filed with the Chief Regulator in accordance with section 2.9 of National Instrument 45-106 *Prospectus Exemptions*.

#### **100. Description of rights in offering memorandum**

If a seller delivers an offering memorandum to a prospective purchaser in connection with a distribution to which the rights referred to in section 122 of the Act apply, the rights must be described in the offering memorandum.

#### **101. Alternative compliance with description of rights in offering memorandum**

- (1) If a seller delivers an offering memorandum to a prospective purchaser that is a permitted client in connection with a distribution of an eligible foreign security, the

requirement in section 100 to disclose the rights referred to in section 122 of the Act does not apply if a specified disclosure statement is made in one of the following:

- (a) the offering memorandum;
  - (b) a document delivered to the permitted client which accompanies, but is not part of, the offering memorandum;
  - (c) a written notice that:
    - (i) has been delivered to the permitted client by a registered dealer or an international dealer that proposes to make future distributions of securities to the permitted client; and
    - (ii) which contains a statement to the effect that the disclosure will apply to all future distributions.
- (2) For the purposes of subsection (1), a specified disclosure statement must be in the following form or a substantively similar form:
- (a) if the statement is made in a document referred to in paragraph (1)(a),

*Securities legislation in certain provinces or territories of Canada may provide a purchaser with remedies for rescission or damages if the offering memorandum (including any amendment thereto) contains a misrepresentation, provided that the remedies for rescission or damages are exercised by the purchaser within the time limit prescribed by the securities legislation of the purchaser's province or territory. The purchaser should refer to any applicable provisions of the securities legislation of the purchaser's province or territory for particulars of these rights or consult with a legal advisor;*
  - (b) if the statement is made in a document referred to in paragraph (1)(b) or (1)(c),

*If, in connection with a distribution of an eligible foreign security as defined in section 98 of CMRA Regulation 45-501 Prospectus and Registration Exemptions, we deliver to you an offering document that constitutes an offering memorandum under applicable securities legislation in Canada, you may have, depending on the province or territory of Canada in which the trade was made to you, remedies for rescission or damages if the offering memorandum (including any amendment thereto) contains a misrepresentation, provided that the remedies for rescission or damages are exercised by you within the time limit prescribed by the securities legislation of your province or territory. You should refer to any applicable provisions of the securities legislation of your province or territory for the particulars of these rights or consult with a legal advisor.*

**102. Required form of offering memorandum for real estate securities under s. 2.9 of NI 45-106**

- (1) In subsection (2), “real estate security” has the meaning set out in General Instruction 2 of Form 45-501F7 *Offering Memorandum – Real Estate Securities*.
- (2) Despite section 6.4 of National Instrument 45-106 *Prospectus Exemptions*, the required form of offering memorandum for distributing a real estate security under section 2.9 of National Instrument 45-106 is Form 45-501F7 *Offering Memorandum – Real Estate Securities*.