

Companion Policy 45-501CP
Prospectus and Registration Exemptions

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PART A INTRODUCTION, DEFINITIONS, OTHER EXEMPTIONS AND FILINGS

1. Introduction

Purpose of this Companion Policy

This Companion Policy explains how the Authority interprets and applies the provisions of CMRA Regulation 45-501 *Prospectus and Registration Exemptions* (the Regulation).

Numbering system

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

Definitions

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

Other exemptions

In addition to the exemptions in the Regulation, exemptions may also be available to persons under National Instrument 45-106 *Prospectus Exemptions* (NI 45-106) and other provisions of capital markets law, including exemptions from the registration requirement under National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103).

In addition to the exemptions contained in the Regulation and those available under other provisions of capital markets law, the Authority has the discretion to grant exemptions from the prospectus requirement and the registration requirement.

Rights of action

The *Capital Markets Act* provides rights of action for damages or rescission if there is a misrepresentation in a prescribed disclosure document (section 122), rights of action for damages or rescission if a prescribed disclosure document or an amendment was not sent or made available as required by the regulations (paragraph 128(c)) and rights enabling a purchaser of a security to whom a prescribed disclosure document was required to be sent to rescind their purchase (section 142).

CMRA Regulation 11-501 *Definitions, Procedure, Civil Liability and Related Matters* prescribes the disclosure documents for which these rights are available along with the regulatory

requirements for sending or making documents available and the requirements a person exercising these rights must meet.

Filings

A person required under the Regulation to make a filing in a CMR Jurisdiction may satisfy that requirement by making a single filing with the Chief Regulator. Such filing will constitute a filing under the Act in all CMR Jurisdictions.

PART 1 GENERAL PROSPECTUS AND REGISTRATION EXEMPTIONS

Division 2 Bonus or finder's fee

Issuers and finders who rely on the prospectus exemption under section 5 of the Regulation will need to consider if their activities are also registerable. See the discussion in section 1.3 of Companion Policy 31-103 *Registration Requirements, Exemptions and Ongoing Obligations* for when registration is required.

Division 3 Existing security holders

Division 3 provides an exemption from the prospectus requirement for a distribution of securities by a listed issuer to an existing security holder.

The conditions of the exemption include a requirement that the issuer make 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 the exemption. All of the conditions are intended to ensure that an issuer treats all security holders fairly and in a manner that is perceived to be fair in connection with a distribution under the exemption.

In assessing whether an offer has been made available to all security holders, the Chief Regulator would consider the terms of the offering and specifically what steps the issuer has taken to make sure the offering is an offering to all securityholders. The steps an issuer must take will depend on the circumstances of the issuer and the offering.

Although the following list is not exhaustive, inclusion of these terms would support a conclusion that the offer has been made to all security holders:

- the issuer provides investors with a reasonable amount of time to submit their subscriptions
- restrictions on subscriptions, such as minimum subscription amounts per security holder, are limited to those reasonably necessary to facilitate efficient administration and fairness of the offering and do not frustrate participation by smaller security holders
- any subscription restrictions are clearly disclosed in the news release announcing the offering

- the offering news release sets out a fair process for allocating securities to security holders where the subscriptions exceed the maximum offering size (e.g. pro rata allocation).

Division 5 Syndicated mortgages

Background

Section 8.12 of NI 31-103 provides an exemption from the dealer registration requirement for trades in mortgages on real property by a person registered or licensed, or exempt from registration or licensing, under mortgage brokers legislation if the real property is located in the jurisdiction where the person is registered or licensed, or exempt from registration or licensing, as a mortgage broker.

Section 2.36 of NI 45-106 provides an exemption from the prospectus requirement for distributions of mortgages on real property by a person registered or licensed, or exempt from registration or licensing, under mortgage brokers legislation if the real property is located in the jurisdiction where the person is registered or licensed, or exempt from registration or licensing, as a mortgage broker.

In CMR Jurisdictions, neither of these exemptions covers mortgage syndications, where a single mortgage is sold to two or more investors. Syndicated mortgages, particularly on commercial property and development property, are complex and risky securities similar to other real estate based securities that are subject to the registration and prospectus requirements.

Purpose

The purpose of the exemption from the dealer registration requirement in section 18 of the Regulation is to allow trades in syndicated mortgages on real property to institutional investors by persons registered or licensed, or exempt from registration or licensing, under mortgage brokers legislation in the jurisdiction in which the property is located.

Some jurisdictions do not have mortgage brokers legislation. If there is no mortgage brokers legislation in a jurisdiction, a person cannot be exempt from registration or licensing under mortgage brokers legislation in that jurisdiction and the exemption is not available.

The purpose of the exemptions from the dealer registration requirement and prospectus requirement in section 19 of the Regulation is to allow trades in relatively simple syndicated mortgages, called “qualified syndicated mortgages” provided they are sold through a person who is a mortgage broker in the jurisdiction in which the property is located.

A qualified syndicated mortgage is defined as a syndicated mortgage on property that is used solely for residential purposes, that contains no more than four residential dwelling units, that is not under construction and that meets other conditions set out in the Regulation. Provincial mortgage brokers legislation continues to govern qualified syndicated mortgages.

General

The Authority does not intend these exemptions to restrict the use of other available exemptions in NI 31-103 and NI 45-106. Where an offering memorandum is required for the use of an

exemption, the required form for mortgages is Form 45-106F2 *Offering Memorandum for Non-Qualifying Issuers* or Form 45-106F3 *Offering Memorandum for Qualifying Issuers*, supplemented by Appendix A to those forms [Syndicated Mortgages (CMR Jurisdictions)].

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

Division 6 New Brunswick Community Economic Development Corporations and Associations

Fundamental concepts

Division 6 is complementary to, and works parallel with, the SBITC Act and New Brunswick Regulation 2003-39 under the SBITC Act (the General Regulation). A CEDC that wants to take advantage of the prospectus and registration exemptions in Division 6 must also comply with the requirements for the registration of community economic development corporations or associations outlined in the SBITC Act and the General Regulation.

If a corporation or association no longer meets the criteria to qualify for the prospectus and registration exemptions under Division 6, but proposes to distribute additional securities outside the scope of the SBITC Act, it should refer to other capital markets law such as NI 45-106 to determine if there are other prospectus exemptions available and NI 31-103 to determine whether it is subject to any registration requirements and if any registration exemptions are available.

Prospectus and registration exemptions

Sections 49 and 50 contain the requirements that a CEDC must meet in order to qualify for an exemption from the prospectus or registration requirements.

First and subsequent trades

A CEDC should be aware that there are penalties under the SBITC Act and the General Regulation if a CEDC redeems an eligible share prior to four years from the date on which the eligible share was issued. Under the General Regulation, early redemptions are only permitted in the circumstances set out in subsection 8(1) of the General Regulation, such as the death of the original purchaser of the eligible share. A CEDC should refer to the SBITC Act and subsection 8(1) of the General Regulation for the permitted circumstances and conditions for an early redemption.

A CEDC that is an association should be aware that the *Co-operative Associations Act* (New Brunswick) contains restrictions on the transferability of shares.

Letter of non-objection

The Chief Regulator has the power to revoke a letter of non-objection where Division 6 is not being complied with or the continuation of the offering would be contrary to the public interest. Where it has been determined that the SBITC Act and the General Regulation have not also been complied with, the Chief Regulator may make a determination to revoke the letter of non-

objection on the basis that the continuation of the offering would be contrary to the public interest.

A CEDC is permitted to distribute other shares under other available prospectus exemptions at the same time as it is doing an offering under Division 6 in conjunction with the SBITC Act program. These other shares are not eligible for investor tax credits under the SBITC Act Community Economic Development Corporations or Associations tax program. Only securities distributed using Division 6 procedures are eligible.

Directors and officers

Directors and officers of a CEDC must be fit and suitable to manage the affairs of a CEDC. To that end, among other things, we will look at those individual's education, training and experience and how that supports their role with the CEDC. We will also look at previous experience with CEDCs as well as with business ventures generally. Individuals must conduct themselves with integrity and have an honest character. We will also look at the overall financial condition of the individual. A person who is insolvent, or has a history of bankruptcies may not be a person suitable to act as a director or officer of the CEDC.

Use of proceeds

A CEDC should be aware that it may be subject to penalties or enforcement action under capital markets law if it does not use the amounts raised under the offering in the same manner as indicated in the offering document. In addition, a CEDC must adhere to the specific investment requirements outlined in section 9.8 of the General Regulation or it may be subject to a penalty outlined in section 9.9 of the General Regulation.

Time limitation on offering

If the CEDC applies to the Authority for an extension of the initial closing date under subsection 61(3), it must also obtain the approval of the New Brunswick Department of Finance for such an extension.

Similarly, if a CEDC proposes to offer shares after the initial closing date, in addition to the letter of non-objection from the Chief Regulator, the CEDC should also obtain any additional approval that may be required from the New Brunswick Department of Finance.

Amendments to the offering document

Section 63 outlines the requirements for a CEDC if it files an amendment to an offering document after the Chief Regulator has issued a letter of non-objection. In addition, CEDCs should be aware that the New Brunswick Department of Finance has its own requirements in the event that the CEDC makes an amendment. Specifically, if the CEDC files an amendment, the New Brunswick Department of Finance will require the CEDC to submit an updated investment plan for review. A CEDC should refer to the New Brunswick Department of Finance, the SBITC Act and the General Regulation to determine if it is subject to any additional requirements.

Report after closing

In addition to the report that the CEDC must file with the Chief Regulator, the CEDC must send an annual return to the New Brunswick Department of Finance no later than 30 days after each closing of an offering.

Copies to security holders

The Chief Regulator considers documents to have been made “reasonably available” to security holders if they are mailed to security holders, or if security holders receive an electronic notice that such documents can be viewed on a public website of the issuer or a website accessible by all holders of securities of the issuer that were acquired under the exemptions in Division 6 (such as a password protected website).