

REGULATION TO AMEND REGULATION 45-106 RESPECTING PROSPECTUS AND REGISTRATION EXEMPTIONS

Securities Act

(chapter V-1.1, s. 331.1, par. (1), (3), (6), (8), (11), (11.1), (14) and (34))

1. Section 1.1 of Regulation 45-106 respecting Prospectus and Registration Exemptions is amended by replacing the definition of the term “eligible investor” with the following:

““eligible investor” means

- (a) except in New Brunswick and Ontario, a person whose
 - (i) net assets, alone or with a spouse, in the case of an individual, exceed \$400 000,
 - (ii) net income before taxes exceeded \$75 000 in each of the 2 most recent calendar years and who reasonably expects to exceed that level in the current calendar year, or
 - (iii) net income before taxes, alone or with a spouse, in the case of an individual, exceeded \$125 000 in each of the 2 most recent calendar years and who reasonably expects to exceed that income level in the current calendar year,
- (a.1) in New Brunswick and Ontario
 - (i) a person, other than an individual, whose net assets exceed \$400 000,
 - (ii) an individual whose net assets, alone or with a spouse, exceed \$250 000, excluding the value of the individual’s primary residence,
 - (iii) an individual whose net income before taxes exceeded \$75 000 in each of the 2 most recent calendar years and who reasonably expects to exceed that income level in the current calendar year, or
 - (iv) an individual whose net income before taxes, alone or with a spouse, exceeded \$125 000 in each of the 2 most recent calendar years and who reasonably expects to exceed that income level in the current calendar year,
- (b) a person of which a majority of the voting securities are beneficially owned by eligible investors, or a majority of the directors are eligible investors,
- (c) a general partnership of which all of the partners are eligible investors,
- (d) a limited partnership of which the majority of the general partners are eligible investors,
- (e) a trust or estate in which all of the beneficiaries or a majority of the trustees or executors are eligible investors,
- (f) an accredited investor,
- (g) a person described in section 2.5(1), or
- (h) a person that has obtained advice regarding the suitability of the investment and, if the person is resident in a jurisdiction of Canada, that advice has been obtained from an eligibility adviser;”.

2. The Regulation is amended by inserting, after section 1.1, the following:

“1.1.1. Other definitions

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

“OM marketing materials” means a written communication, other than an OM standard term sheet, intended for prospective purchasers regarding a distribution of securities under an offering memorandum that contains material facts relating to an issuer, securities or an offering;

“OM standard term sheet” means a written communication intended for prospective purchasers regarding a distribution of securities under an offering memorandum that

- (a) is dated,
- (b) includes the following legend, or words to the same effect, on the

first page:

“This document does not provide disclosure of all information required for an investor to make an informed investment decision. Investors should read the offering memorandum, especially the risk factors relating to the securities offered, before making an investment decision.”,

(c) contains only the following information in respect of the issuer, the securities or the offering:

- (i) the name of the issuer;
- (ii) the jurisdiction or foreign jurisdiction in which the issuer’s head office is located;

(iii) the statute under which the issuer is incorporated, continued or organized or, if the issuer is an unincorporated entity, the laws of the jurisdiction or foreign jurisdiction under which it is established and exists;

(iv) a brief description of the business of the issuer;

(v) a brief description of the securities;

(vi) the price or price range of the securities;

(vii) the total number or dollar amount of the securities, or range of the total number or dollar amount of the securities;

(viii) the names of any agent, finder or other intermediary, whether registered or not, involved with the offering and the amount of any commission, fee or discount payable to them;

(ix) the proposed or expected closing date of the offering;

(x) a brief description of the use of proceeds;

(xi) the exchange on which the securities are proposed to be listed, if any, provided that the OM standard term sheet complies with the requirements of securities legislation for listing representations;

(xii) in the case of debt securities, the maturity date of the debt securities and a brief description of any interest payable on the debt securities;

(xiii) in the case of preferred shares, a brief description of any dividends payable on the securities;

(xiv) in the case of convertible securities, a brief description of the underlying securities into which the convertible securities are convertible;

(xv) in the case of exchangeable securities, a brief description of the underlying securities into which the exchangeable securities are exchangeable;

(xvi) in the case of restricted securities, a brief description of the restriction;

(xvii) in the case of securities for which a credit supporter has provided a guarantee or alternative credit support, a brief description of the credit supporter and the guarantee or alternative credit support provided;

(xviii) whether the securities are redeemable or retractable;

(xix) a statement that the securities are eligible, or are expected to be eligible, for investment in registered retirement savings plans, tax-free savings accounts or other registered plans, if the issuer has received, or reasonably expects to receive, a legal opinion that the securities are so eligible;

(xx) contact information for the issuer or any registrant involved, and

(d) for the purposes of paragraph (c), “brief description” means a description consisting of no more than three lines of text in type that is at least as large as that used generally in the body of the OM standard term sheet;

“related issuer” has the same meaning as in Regulation 33-105 respecting Underwriting Conflicts;

“specified derivative” has the same meaning as in Regulation 44-102 respecting Shelf Distributions;

“structured finance product” has the same meaning as in Regulation 25-101 respecting Designated Rating Organizations.”.

3. Section 2.5 of the Regulation is replaced with the following:

“2.5. Family, friends and business associates

(1) Subject to section 2.6 and section 2.6.1, the prospectus requirement does not apply to a distribution of a security to a person who purchases the security as principal and is

(a) a director, executive officer or control person of the issuer, or of an affiliate of the issuer,

(b) a spouse, parent, grandparent, brother, sister, child or grandchild of a director, executive officer or control person of the issuer, or of an affiliate of the issuer,

(c) a parent, grandparent, brother, sister, child or grandchild of the spouse of a director, executive officer or control person of the issuer or of an affiliate of the issuer,

(d) a close personal friend of a director, executive officer or control person of the issuer, or of an affiliate of the issuer,

(e) a close business associate of a director, executive officer or control person of the issuer, or of an affiliate of the issuer,

(f) a founder of the issuer or a spouse, parent, grandparent, brother, sister, child, grandchild, close personal friend or close business associate of a founder of the issuer,

(g) a parent, grandparent, brother, sister, child or grandchild of a spouse of a founder of the issuer,

(h) a person of which a majority of the voting securities are beneficially owned by, or a majority of the directors are, persons described in paragraphs (a) to (g), or

(i) a trust or estate of which all of the beneficiaries or a majority of the trustees or executors are persons described in paragraphs (a) to (g).

(2) No commission or finder's fee may be paid to any director, officer, founder, or

control person of an issuer or an affiliate of the issuer in connection with a distribution under subsection (1).

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

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

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

4. The Regulation is amended by inserting, after section 2.6, the following:

“2.6.1. Family, friends and business associates – Ontario

(1) In Ontario, section 2.5 does not apply to a distribution of a security of an issuer unless all of the following are satisfied:

- (a) the issuer is not an investment fund;
- (b) the security is
 - (i) a common share of the issuer,
 - (ii) a non-convertible preference share of the issuer,
 - (iii) a security convertible into securities referred to in subparagraphs (i) or (ii),
 - (iv) a non-convertible debt security of the issuer linked to a fixed or floating interest rate,
 - (v) a unit of an issuer that is a limited partnership, or
 - (vi) a flow-through share under the ITA of the issuer;

(c) the person making the distribution obtains a signed risk acknowledgement in the required form from a purchaser who is an individual signed by the purchaser and the applicable persons specified in subsection (2).

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

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

(3) The person making the distribution must retain the required form described in

¹ The language in subsection (3) was included in proposed amendments to Regulation 45-106 published on January 23, 2014 relating to short term securitized instruments.

paragraph (1)(c) for 8 years after the date of the distribution.”.

5. Section 2.9 of the Regulation is replaced with the following:

“2.9. Offering memorandum

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

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

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

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

(2.1) In Alberta, Québec and Saskatchewan, the prospectus requirement does not apply to a distribution by an issuer of a security of its own issue to a purchaser if all of the following apply:

- (a) the purchaser purchases the security as principal;
- (b) the acquisition cost of all securities acquired by the purchaser under this section in the preceding 12 months does not exceed
 - (i) \$10 000 in the case of a purchaser that is not an eligible investor, and
 - (ii) \$30 000 in the case of an eligible investor who is an individual, excluding a purchaser that is either of the following
 - (A) an accredited investor;
 - (B) a person described in subsection 2.5(1);
- (c) at the same time or before the purchaser signs the agreement to purchase

the security, the issuer

(i) delivers an offering memorandum to the purchaser in compliance with subsections (5) to (13), and

(ii) obtains a signed risk acknowledgement in compliance with subsection (15) from each purchaser, other than a purchaser who qualifies as a “permitted client” in Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations;

(d) the security distributed by the issuer is not either of the following:

(i) a specified derivative;

(ii) a structured finance product;

(e) if the issuer is an investment fund, the investment fund is

(i) a non-redeemable investment fund, or

(ii) a mutual fund that is a reporting issuer.

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

(a) the purchaser purchases the security as principal;

(b) the acquisition cost of all securities acquired by a purchaser who is an individual under this section in the preceding 12 months does not exceed

(i) \$10 000 in the case of a purchaser who is not an eligible investor, and

(ii) \$30 000 in the case of a purchaser who is an eligible investor, excluding a purchaser that is an accredited investor;

(c) at the same time or before the purchaser signs the agreement to purchase the security, the issuer

(i) delivers an offering memorandum to the purchaser in compliance with subsections (5) to (13), and

(ii) obtains a signed risk acknowledgement in compliance with subsection (15) from each purchaser who is an individual, other than an individual who qualifies under paragraph (o) of the definition of “permitted client” in Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations;

(d) the security distributed by the issuer is not either of the following:

(i) a specified derivative;

(ii) a structured finance product;

(e) the issuer is not either of the following:

(i) a related issuer of any registrant involved in a distribution under this subsection;

(ii) an investment fund.

(3) In Manitoba, Northwest Territories, Nunavut, Prince Edward Island and Yukon, this section does not apply to a distribution of a security to a person described in paragraph (a) of the definition of “eligible investor” in section 1.1 if that person was created, or is used, solely to purchase or hold securities in reliance on the exemption from the prospectus requirement set out in subsection (2).

(3.01) In Alberta, New Brunswick, Ontario, Québec and Saskatchewan, this section does not apply to a distribution of a security to a person described in paragraph (a) or (a.1)(i) of the definition of “eligible investor” in section 1.1 if that person was created, or is used, solely to purchase or hold securities in reliance on the exemption from the prospectus requirement set out in either subsection (2.1) or (2.2).

[(3.1) Subsections (1), (2), (2.1) and (2.2) do not apply to the distribution of a short-term securitized product².]

(4) No commission or finder’s fee may be paid to any person, other than a registered dealer, in connection with a distribution to a purchaser in the Northwest Territories, Nunavut and Yukon under subsection (2).

(5) An offering memorandum delivered under this section must be in the required form.

(5.1) In Alberta, New Brunswick, Ontario, Québec and Saskatchewan an offering memorandum must

(a) incorporate by reference any OM marketing materials related to a distribution under the offering memorandum, and is deemed to incorporate any OM marketing materials prepared after the date of the offering memorandum and delivered to a prospective purchaser before the termination of the distribution, and

(b) state that all OM marketing materials relating to each distribution under the offering memorandum, including those prepared after the date of the offering memorandum, are incorporated by reference into the offering memorandum and are deemed to form part of the offering memorandum.

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

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

(a) is available to the purchaser if the offering memorandum, or any information or documents incorporated or deemed to be incorporated by reference into the offering memorandum, contains a misrepresentation, without regard to whether the purchaser relied on the misrepresentation,

(b) is enforceable by the purchaser delivering a notice to the issuer

(i) in the case of an action for rescission, within 180 days after the purchaser signs the agreement to purchase the security, or

(ii) in the case of an action for damages, before the earlier of

(A) 180 days after the purchaser first has knowledge of the facts giving rise to the cause of action, or

(B) 3 years after the date the purchaser signs the agreement to purchase the security,

(c) is subject to the defence that the purchaser had knowledge of the misrepresentation,

² The language in subsection (3.1) was included in proposed amendments to Regulation 45-106 respecting Prospectus and Registration Exemptions published for comment on January 23, 2014 relating to short term securitized products.

(d) in the case of an action for damages, provides that the amount recoverable

- (i) must not exceed the price at which the security was offered, and
- (ii) does not include all or any part of the damages that the issuer proves does not represent the depreciation in value of the security resulting from the misrepresentation, and

(e) is in addition to, and does not detract from, any other right of the purchaser.

(8) An offering memorandum delivered under this section must contain a certificate that states the following:

“This offering memorandum does not contain a misrepresentation.”

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

(a) by the issuer’s chief executive officer and chief financial officer or, if the issuer does not have a chief executive officer or chief financial officer, an individual acting in that capacity,

(b) on behalf of the directors of the issuer, by

(i) any 2 directors who are authorized to sign, other than the persons referred to in paragraph (a), or

(ii) all the directors of the issuer, and

(c) by each promoter of the issuer.

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

(a) the individuals who perform functions for the issuer similar to those performed by the chief executive officer and the chief financial officer of a company, and

(b) each trustee and the manager of the issuer.

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

(a) an individual, the individual must sign the certificate,

(b) a company, the certificate must be signed

(i) by the chief executive officer and the chief financial officer of the trustee or the manager, and

(ii) on behalf of the board of directors of the trustee or the manager, by

(A) any two directors of the trustee or the manager, other than the persons referred to in subparagraph (i), or

(B) all of the directors of the trustee or the manager,

(c) a limited partnership, the certificate must be signed by each general partner of the limited partnership as described in subsection (11.1) in relation to an issuer that is a limited partnership, or

(d) not referred to in paragraphs (a), (b) or (c), the certificate may be signed by any person with authority to act on behalf of the trustee or the manager.

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

authorized to sign the certificate.

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

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

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

(b) each general partner of the issuer.

(11.1) If a general partner of the issuer is

(a) an individual, the individual must sign the certificate,

(b) a company, the certificate must be signed

(i) by the chief executive officer and the chief financial officer of the general partner, and

(ii) on behalf of the board of directors of the general partner, by

(A) any two directors of the general partner, other than the persons referred to in subparagraph (i), or

(B) all of the directors of the general partner,

(c) a limited partnership, the certificate must be signed by each general partner of the limited partnership and, for greater certainty, this subsection applies to each general partner required to sign,

(d) a trust, the certificate must be signed by the trustees of the general partner as described in subsection (10) in relation to an issuer that is a trust, or

(e) not referred to in paragraphs (a) to (d), the certificate may be signed by any person with authority to act on behalf of the general partner.

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

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

(a) at the date the certificate is signed, and

(b) at the date the offering memorandum is delivered to the purchaser.

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

(a) the purchaser receives an update of the offering memorandum,

(b) the update of the offering memorandum contains a newly dated certificate signed in compliance with subsection (9), (10), (10.1), (10.2), (10.3), (11) or (11.1), and

(c) the purchaser re-signs the agreement to purchase the security.

(15) A risk acknowledgement under subsection (1), (2), (2.1) or (2.2) must be in the

required form and an issuer relying on subsection (1), (2), (2.1) or (2.2) must retain the signed risk acknowledgment for 8 years after the distribution.

(16) The issuer must

(a) hold in trust all consideration received from the purchaser in connection with a distribution of a security under subsection (1), (2), (2.1) or (2.2) until midnight on the 2nd business day after the purchaser signs the agreement to purchase the security, and

(b) return all consideration to the purchaser promptly if the purchaser exercises the right to cancel the agreement to purchase the security described under subsection (6).

(17) Except in New Brunswick and Ontario, the issuer must file with the securities regulatory authority a copy of an offering memorandum delivered under this section and any update of a previously filed offering memorandum on or before the 10th day after the distribution under the offering memorandum or update of the offering memorandum.

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

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

(a) if the OM marketing materials are prepared on or before the filing of the offering memorandum, concurrently with the filing of the offering memorandum, or

(b) if the OM marketing materials are prepared after the filing of the offering memorandum, within 10 days of the OM marketing materials being disclosed to a prospective purchaser.

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

(a) if the OM marketing materials are prepared on or before the delivery of the offering memorandum, concurrently with the delivery of the offering memorandum, or

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

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

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

(a) section 4.1 of Regulation 51-102 respecting Continuous Disclosure Obligations;

(b) Regulation 52-107 respecting Acceptable Accounting Principles and Auditing Standards.

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

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

(a) section 4.1 of Regulation 51-102 respecting Continuous Disclosure Obligations;

(b) Regulation 52-107 respecting Acceptable Accounting Principles and Auditing Standards.

(17.7) The financial statements of an issuer referred to in subsections (17.4) (17.5) and (17.6) must be accompanied by a notice of the issuer disclosing in reasonable detail the use of the aggregate gross proceeds raised by the issuer in all distributions under subsections (2.1) and (2.2).

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

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

(a) a fundamental change in the nature, or a discontinuation, of the issuer's business;

(b) a significant change to the issuer's capital structure;

(c) a major reorganization, amalgamation or merger involving the issuer;

(d) a take-over bid, issuer bid or insider bid involving the issuer;

(e) a significant acquisition or disposition of assets, property or joint venture interests;

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

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

(a) the date the issuer becomes a reporting issuer, or

(b) the date the issuer ceases to carry on business.

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

(a) the date the issuer becomes a reporting issuer, or

(b) the date the issuer ceases to carry on business.

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

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

(18) *(paragraph repealed)*.”.

6. Sections 6.1 to 6.6 of the Regulation are replaced with the following:

“6.1 Report of exempt distribution

1) Subject to subsection (2) and section 6.2, issuers that distribute their own securities and underwriters that distribute securities they acquired under section 2.33 must file a report if they make the distribution under one or more of the following exemptions:

- (a) section 2.3;
- (b) section 2.5;
- (c) subsection 2.9 (1), (2), (2.1) or (2.2);
- (d) section 2.10;
- (e) section 2.12;
- (f) section 2.13;
- (g) section 2.14;
- (h) section 2.19;
- (i) section 2.30;
- (j) section 5.2.

(2) The issuer or underwriter must file the report in the jurisdiction where the distribution takes place no later than 10 days after the distribution.

“6.2. When report not required

(1) An issuer is not required to file a report under section 6.1(1)(a) for a distribution of a debt security of its own issue or, concurrently with the distribution of the debt security, an equity security of its own issue, to a Canadian financial institution or a Schedule III bank.

(2) Except in Alberta, New Brunswick, Ontario and Saskatchewan, an investment fund is not required to file a report under section 6.1 for a distribution under section 2.3, section 2.10 or section 2.19 if the investment fund files the report not later than 30 days after the financial year-end of the investment fund.

(3) In Alberta, New Brunswick, Ontario and Saskatchewan, an investment fund is not required to file a report under section 6.1 for a distribution under section 2.3, section 2.10 or section 2.19 if the investment fund files the report not later than 30 days after the end of each calendar quarter.

“6.3. Required form of report of exempt distribution

1) The required form of report under section 6.1 is:

- (a) Form 45-106F1 in all jurisdictions except Alberta, British Columbia, New Brunswick, Ontario and Saskatchewan;
- (b) Form 45-106F6 in British Columbia; and
- (c) in Alberta, New Brunswick, Ontario and Saskatchewan,
 - (i) Form 45-106F10, if the issuer is an investment fund

- (ii) Form 45-106F11, if the issuer is not an investment fund.

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

(2) Except in Manitoba, an issuer that makes a distribution under an exemption from a prospectus requirement not provided for in this Regulation is exempt from the requirements in securities legislation to file a report of exempt trade or exempt distribution in the required form if the issuer files a report of exempt distribution in accordance with

(a) Form 45-106F1, in all jurisdictions except Alberta, British Columbia, New Brunswick, Ontario and Saskatchewan,

(b) in British Columbia, Form 45-106F6, or

(c) in Alberta, New Brunswick, Ontario and Saskatchewan,

(i) Form 45-106F10, if the issuer is an investment fund, or

(ii) Form 45-106F11, if the issuer is not an investment fund.

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

“6.4. Required form of offering memorandum

(1) The required form of offering memorandum under section 2.9³ is Form 45-106F2.

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

“6.5. Required form of risk acknowledgement

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

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

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

(2) In Saskatchewan, the required form of risk acknowledgement under section 2.6 is Form 45-106F5.

(3) In Ontario, the required form of risk acknowledgement under section 2.6.1 is Form 45-106F12.

“6.6. Use of information in Form 45-106F6 Schedule I

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

³ Subsection 6.4(1) of the version of Regulation 45-106 respecting Prospectus and Registration Exemptions (Regulation 45-106) currently in force includes a reference to “section 3.9”. This section was an offering memorandum registration exemption that has been unavailable since March 27, 2010. As part of the proposed amendments to Regulation 45-106 published for comment on February 27, 2014, the CSA has proposed to delete this referenced. Therefore, we have not included it in this proposal.

7. This Regulation comes into force on *(indicate the date of coming into force of this Regulation)*.