

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), and s. 331.2)

1. Section 1.1 of Regulation 45-106 respecting Prospectus and Registration Exemptions is amended by replacing the title with the following:

“REGULATION 45-106 RESPECTING PROSPECTUS EXEMPTION”.

2. Section 1 of the Regulation is amended, in the definition of the expression “accredited investor”:

(1) by replacing paragraphs (a) to (i) with the following:

“(a) except in Ontario, a Canadian financial institution, or a Schedule III bank;

(b) except in Ontario, the Business Development Bank of Canada incorporated under the Business Development Bank of Canada Act (S.C., 1995, chapter 28);

(c) except in Ontario, a subsidiary of any person referred to in paragraphs (a) or (b), if the person owns all of the voting securities of the subsidiary, except the voting securities required by law to be owned by directors of that subsidiary;

(d) except in Ontario, a person registered under the securities legislation of a jurisdiction of Canada as an adviser or dealer;

(e) an individual registered under the securities legislation of a jurisdiction of Canada as a representative of a person referred to in paragraph (d);

(e.1) an individual formerly registered under the securities legislation of a jurisdiction of Canada, other than an individual formerly registered solely as a representative of a limited market dealer under one or both of the Securities Act (R.S.O., 1990, chapter S.5) of Ontario or the Securities Act (R.S.N.L., 1990, chapter S-13) of Newfoundland and Labrador,

(f) except in Ontario, the Government of Canada or a jurisdiction of Canada, or any crown corporation, agency or wholly owned entity of the Government of Canada or a jurisdiction of Canada;

(g) except in Ontario, a municipality, public board or commission in Canada and a metropolitan community, school board, the Comité de gestion de la taxe scolaire de l’île de Montréal or an intermunicipal management board in Québec;

(h) except in Ontario, any national, federal, state, provincial, territorial or municipal government of or in any foreign jurisdiction, or any agency of that government;

(i) except in Ontario, a pension fund that is regulated by the Office of the Superintendent of Financial Institutions (Canada), a pension commission or similar regulatory authority of a jurisdiction of Canada;”;

(2) by replacing, in paragraph (j), the words “that before taxes,” with the words “that, before taxes”;

(3) by inserting, after paragraph (j), the following:

“(j.1) an individual who beneficially owns financial assets having an aggregate realizable value that, before taxes but net of any related liabilities, exceeds \$5 000 000;”;

(4) by replacing paragraph (q) with the following:

“(q) a person acting on behalf of a fully managed account managed by that

person, if that person is registered or authorized to carry on business as an adviser or the equivalent under the securities legislation of a jurisdiction of Canada or a foreign jurisdiction;”;

(5) by inserting, after paragraph (v), the following:

“(w) a trust established by an accredited investor for the benefit of the accredited investor’s family members of which a majority of the trustees are accredited investors and all of the beneficiaries are the accredited investor’s spouse, a former spouse of the accredited investor or a parent, grandparent, brother, sister, child or grandchild of that accredited investor, of that accredited investor’s spouse or of that accredited investor’s former spouse;”.

3. Section 1.2 of the Regulation is amended by replacing the words “paragraph 1.1(t)” with the words “paragraph (t) of the definition of the expression “accredited investor” in section 1.1”.

4. Section 1.4 of the Regulation is amended by replacing, in the part preceding subparagraph (a), the words “in Parts 2 and 3” with the words “in Part 2”.

5. Section 1.5 of the Regulation is amended:

(1) by deleting, in paragraph (1), the words “from the dealer registration requirement, or from the prospectus requirement,”;

(2) by repealing paragraph (2).

6. Section 2.3 of the Regulation is amended:

(1) by inserting, before paragraph (1), the following:

“(0.1) In this section, “accredited investor exemption” means

(a) in a jurisdiction other than Ontario, the prospectus exemption under subsection (1); and

(b) in Ontario, the prospectus exemption under subsection 73.3(2) of the Securities Act (R.S.O., 1990, chapter S.5).”;

(2) by replacing, in paragraphs (2) and (4), the words “this section” with the words “the accredited investor exemption”;

(3) by replacing, in paragraph (5), the words “This section” with the words “The accredited investor exemption”;

(4) by inserting, after paragraph (5), the following:

“(6) The accredited investor exemption does not apply to a distribution of a security to an individual described in paragraphs (j), (k) or (l) of the definition of “accredited investor” in section 1.1 [Definitions] unless the person distributing the security obtains from the individual a signed risk acknowledgement in the required form at the same time or before that individual signs the agreement to purchase the security.

(7) A person relying on the accredited investor exemption to distribute a security to an individual described in paragraphs (j), (k) or (l) of the definition of “accredited investor” in section 1.1 [Definitions] must retain the signed risk acknowledgement required in subsection (6) of this section for 8 years after the distribution.

(8) Subsection (1) does not apply in Ontario.”.

7. Section 2.4 of the Regulation is amended:

(1) by inserting, after paragraph (2), the following:

“(2.1) The following persons are prescribed for purposes of subsection 73.4(2) of the Securities Act (R.S.O., 1990, chapter S.5) of Ontario:

- issuer,
- (a) a director, officer, employee, founder or control person of the issuer,
 - (b) a director, officer or employee of an affiliate of the issuer,
 - (c) a spouse, parent, grandparent, brother, sister, child or grandchild of a director, executive officer, founder or control person of the issuer,
 - (d) a parent, grandparent, brother, sister, child or grandchild of the spouse of a director, executive officer, founder or control person of the issuer,
 - (e) a close personal friend of a director, executive officer, founder or control person of the issuer,
 - (f) a close business associate of a director, executive officer, founder or control person of the issuer,
 - (g) a spouse, parent, grandparent, brother, sister, child or grandchild of the selling security holder or of the selling security holder's spouse,
 - (h) a security holder of the issuer,
 - (i) an accredited investor,
 - (j) 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 (i),
 - (k) 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 (i), or
 - (l) a person that is not the public.”;

(2) by inserting, in paragraph (3) and after the words “subsection (2)”, the words “or, in Ontario, a distribution under subsection 73.4(2) of the Securities Act.”;

(3) by adding, after paragraph (3), the following:

“(5) Subsection (2) does not apply in Ontario.”.

8. Section 2.10 of the Regulation is amended:

(1) by replacing paragraph (1) with the following:

“(1) The prospectus requirement does not apply to a distribution of a security to a person if all of the following apply:

- (a) that person is not an individual;
- (b) that person purchases as principal;
- (c) the security has an acquisition cost to that person of not less than \$150 000 paid in cash at the time of the distribution;
- (d) the distribution is of a security of a single issuer.”;

(2) by replacing, in paragraph (2), the words “this exemption” with the words “the exemption”.

9. Section 2.20 of the Regulation is amended, in paragraph (c), by replacing the words “does not and has never” with the words “does not distribute and has never”.

10. Section 2.22 of the Regulation is amended by deleting, in the part preceding the definition of the expression “associate”, the words “and in Division 4 of Part 3 of this Regulation”.

11. Section 2.34 of the Regulation is amended, in paragraph (g), by replacing the words “set out in Schedule IV of” with the words “approved by”.

12. The title of Part 3 and sections 1 to 5, and sections 3.0 to 3.50 of the Regulation are repealed.

13. Paragraph (1) of section 6.1 of the Regulation is amended by replacing subparagraph (a) with the following:

“(a) section 2.3 [Accredited investor] or, in Ontario, section 73.3 of the Securities Act (R.S.O., 1990, chapter S.5) [Accredited investor];”.

14. Paragraph (2) of section 6.2 of the Regulation is amended by replacing the words “section 2.10 [Minimum amount] or section 2.19 [Additional investment in investment funds]” with the words “section 2.10 [Minimum amount investment] or section 2.19 [Additional investment in investment funds], or section 73.3 of the Securities Act (R.S.O., 1990, chapter S.5) of Ontario [Accredited investor],”.

15. Paragraph (1) of section 6.4 of the Regulation is amended by deleting the words “or section 3.9”.

16. Section 6.5 of the Regulation is amended:

(1) by inserting, before paragraph (1), the following:

“(0.1) The required form of risk acknowledgement under subsection 2.3(6) [Accredited investor] is Form 45-106F9.”.

(2) by replacing, in paragraph (2), the words “or section 3.6 [Family, friends and business associates]” with “[Family, friends and business associates – Saskatchewan]”.

17. The title of section 6.6 of the Regulation is replaced with the following:

“6.6. Use of information in Form 45-106F6 Schedule I – British Columbia”.

18. Section 8.1.1 of the Regulation is repealed.

19. Section 8.3.1 of the Regulation is repealed.

20. Section 8.4 of the Regulation is amended by deleting “or 3.2(5)”.

21. Section 8.5 of the Regulation is repealed.

22. The Regulation is amended by inserting, after Form 45-106F6, the following:

“FORM 45-106F9 FORM FOR INDIVIDUAL ACCREDITED INVESTORS

<p>WARNING! This investment is risky. Don't invest unless you can afford to lose all the money you pay for this investment.</p>
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SECTION 1 TO BE COMPLETED BY THE ISSUER OR SELLING SECURITY HOLDER	
1. About your investment	
Type of securities: <i>[Instruction: Include a short description, e.g., common shares.]</i>	Issuer:

Purchased from: <i>[Instruction: Indicate whether securities are purchased from the issuer or a selling security holder.]</i>	
SECTIONS 2 TO 4 TO BE COMPLETED BY THE PURCHASER	
2. Risk acknowledgement	
This investment is risky. Initial that you understand that:	Your initials
Risk of loss – You could lose your entire investment of \$_____. <i>[Instruction: Insert the total dollar amount of the investment.]</i>	
Liquidity risk – You may not be able to sell your investment quickly – or at all.	
Lack of information – You may receive little or no information about your investment.	
Lack of advice – You will not receive advice from the salesperson about whether this investment is suitable for you unless the salesperson is registered. The salesperson is the person who meets with, or provides information to, you about making this investment. To check whether the salesperson is registered, go to www.aretheyregistered.ca .	
3. Accredited investor status	
You must meet at least one of the following criteria to be able to make this investment. Initial the statement that applies to you. (You may initial more than one statement.) The person identified in section 6 is responsible for ensuring that you meet the definition of accredited investor. That person, or the salesperson identified in section 5, can help you if you have questions about whether you meet these criteria.	Your initials
<ul style="list-style-type: none"> Your net income before taxes was more than \$200,000 in each of the 2 most recent calendar years, and you expect it to be more than \$200,000 in the current calendar year. (You can find your net income before taxes on your personal income tax return.) 	
<ul style="list-style-type: none"> Your net income before taxes combined with your spouse's was more than \$300,000 in each of the 2 most recent calendar years, and you expect your combined net income before taxes to be more than \$300,000 in the current calendar year. 	
<ul style="list-style-type: none"> Either alone or with your spouse, you own more than \$1 million in cash and securities, after subtracting any debt related to the cash and securities. 	
<ul style="list-style-type: none"> Either alone or with your spouse, you have net assets worth more than \$5 million. (Your net assets are your total assets (including real estate) minus your total debt.) 	
4. Your name and signature	
By signing this form, you confirm that you have read this form and you understand the risks of making this investment as identified in this form.	
First and last name (please print):	
Signature:	Date:
SECTION 5 TO BE COMPLETED BY THE SALESPERSON	
5. Salesperson information	
<i>[Instruction: The salesperson is the person who meets with, or provides information to, the purchaser with respect to making this investment. That could include a representative of the issuer or selling security holder, a registrant or a person who is exempt from the registration requirement.]</i>	
First and last name of salesperson (please print):	
Telephone:	Email:
Name of firm (if registered):	
SECTION 6 TO BE COMPLETED BY THE ISSUER OR SELLING SECURITY HOLDER	
6. For more information about this investment	
For investment in a non-investment fund <i>[Insert name of issuer/selling security holder]</i> <i>[Insert address of issuer/selling security holder]</i> <i>[Insert contact person name, if applicable]</i> <i>[Insert telephone number]</i> <i>[Insert email address]</i> <i>[Insert website address, if applicable]</i>	
For investment in an investment fund	

[Insert name of investment fund]
[Insert name of investment fund manager]
[Insert address of investment fund manager]
[Insert telephone number of investment fund manager]
[Insert email address of investment fund manager]
*[If investment is purchased from a selling security holder, also
insert name, address, telephone number and email address of selling security holder here]*

For more information about prospectus exemptions, contact your local securities regulator. You can find contact information at www.securities-administrators.ca.

Form instructions:

1. *This form does not mandate the use of a specific font size or style but the font must be legible.*
2. *The information in sections 1, 5 and 6 must be completed before the purchaser completes and signs the form.*
3. *The purchaser must sign this form. Each of the purchaser and the issuer or selling security holder must receive a copy of this form signed by the purchaser. The issuer or selling security holder is required to keep a copy of this form for 8 years after the distribution.”.*

23. The Regulation is amended by replacing, wherever they occur, the words “Regulation 45-106 respecting Prospectus and Registration Exemptions” with the words “Regulation 45-106 respecting Prospectus Exemptions”.

24. Except in Ontario, this Regulation comes into force on May 5, 2015.

25. In Ontario, this Regulation comes into force on the later of the following:

- (1) May 5, 2015 and
- (2) the day on which subsection 12(2) of Schedule 26 of the Budget Measures Act, 2009 is proclaimed in force.