

POLICY STATEMENT TO THE REGULATION RESPECTING REAL ESTATE PROSPECTUS AND REGISTRATION EXEMPTIONS

INTRODUCTION

Purpose

The purpose of this Policy Statement is to help users understand how the Autorité des marchés financiers (the “Authority”) interprets or applies certain provisions of the Regulation respecting real estate prospectus and registration exemptions (chapter V-1.1, r. X) (the “Regulation”).

Under the Regulation, an issuer is exempt from the requirement to prepare a prospectus for the distribution of an investment contract that includes a real right of ownership in an immovable as well as a rental management agreement, and for the distribution of a security of an issuer that owns an immovable giving the holder a right of exclusive use of a residential unit and a space in such immovable. The Regulation also provides an exemption from the requirement to register as a dealer or adviser in connection with some distributions.

Reference to Regulation

Other than Chapter 1, any provision in this Policy Statement refers to the equivalent provision in the Regulation, unless indicated otherwise.

CHAPTER I SCOPE AND INTERPRETATION

Concept of Investment Contract

Market participants seeking to offer or sell immovables that can be likened to hotel units or condominiums involving a rental management agreement giving subscribers or purchasers the option of combining ownership of an immovable with rental income (the “offer or sale of real estate units”) must determine whether such an offer or sale constitutes the distribution of a security, namely, an investment contract, which is a form of investment governed by the Securities Act (chapter V-1.1) (the “Act”). Any rental management agreement that offers potential individual rental income, or collective rental income through a real estate unit rental pool program providing for the distribution of expenses or income among participants or through any similar scheme, falls within the scope of the Regulation. Market participants, including the issuer, promoter and vendor, are responsible for determining whether or not an investment contract is being distributed.

In the Regulation, “investment contract” has the same meaning as in the Act.

The following factors are given to guide market participants in better understanding the concept of an investment contract.

The Authority considers a distribution very likely to be an investment contract where the offer or sale of real estate units includes a mandatory or optional rental management agreement for such units and rental of the units is co-ordinated or managed or other related services are provided by one or more persons who must be used by the subscriber or purchaser.

As well, depending on the circumstances, the presence of one or more of the factors below could indicate that the offer or sale of real estate units constitutes an investment contract. This list is not exhaustive:

- restrictions on the periods during which the subscriber or purchaser of a real estate unit can occupy the unit;
- representations made to a subscriber or purchaser highlighting economic advantages such as projected financial income or potential rental income from the real estate units;
- income or rent guarantees or other financial undertakings offered by any person connected with the offer or sale of real estate units.

Rental Management Agreement

The term “rental management agreement” refers to a mandatory or optional management agreement covering the rental of a real estate unit offered by the issuer, promoter or manager for the purpose of managing or co-ordinating the rental of the unit or providing other related services by one or more persons who must be used by the subscriber or purchaser. It also covers an agreement forming part of a mandatory or optional real estate unit rental pool program that includes the distribution of income among participants.

Concept of Promoter

“Promoter” is generally defined as meaning a person who has taken the initiative in founding, organizing or substantially reorganizing the business of the issuer or who has received consideration over a prescribed amount for services or property or both in connection with the founding, organizing or substantial reorganizing of the business of the issuer. In Québec, the term is not defined in the Act and is given a broad interpretation.

Persons who receive consideration solely as commissions related to a distribution or in consideration of a contribution in kind and who do not otherwise take part in the founding, organizing or substantial reorganizing of the business of the issuer are not promoters.

A definition of the terms “forward-looking information,” “future-oriented financial information” and “financial outlook” is given in Regulation 51-102 respecting continuous disclosure obligations (chapter V-1.1, r. 24).

Guidance regarding Registration Requirements

Given the factors that trigger the registration requirement set out in section 1.3 of the Policy Statement to Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations (chapter V-1.1, r. 10), registration as a securities dealer may be required in connection with the offer or sale of real estate units.

The requirement to register with the Authority may be triggered, for example, where the person carries on the activity with repetition, expects to receive compensation for carrying on the activity, conducts direct or indirect solicitation in respect of potential buyers and the person's activity is similar to that of certain registered securities dealers. This might apply to a real estate broker.

However, where the registration requirement is triggered in connection with the offer or sale of real estate units, the Authority may consider the presence or involvement of a registered securities dealer in the sale of the units as an important element that would cause the real estate broker not to be subject to the registration requirement. Indeed, the role of a securities dealer is to fulfill all the requirements related to the sale of the investment contract, in particular to understand the terms of the investment so as to be able to explain them to subscribers, know the client's investor profile and ensure the investment is suitable for the client's needs.

Real estate brokers and promoters are encouraged to contact the Authority in advance.

1. The security of an issuer that owns an immovable giving the holder a right of exclusive use of a residential unit and a space in such immovable under paragraph 2 of section 1 is known as a "proprietary lease." With respect to this type of distribution, a rental agreement is part of the agreement transferring the security and it gives the holder the exclusive enjoyment of a residential unit and, in some cases, a space in the immovable, such as a parking space. Although the holder owns the security, the issuer remains the owner of the immovable and the holder is considered a lessee within the meaning of the Civil Code of Québec (CQLR, c. C-1991).

2. The Authority authorizes use of the real estate offering document in lieu of a prospectus, thereby giving rise to the rights of action set forth in sections 217 to 221 of the Act.

CHAPTER II DISTRIBUTION OF AN INVESTMENT CONTRACT

DIVISION I PROSPECTUS EXEMPTION

3. The issuer is "in operation" where the venture involving the rental management of a real estate unit has begun. For the purpose of calculating the period in subparagraph 2(a) of section 3 of the Regulation, the date when the venture began refers in particular to the date a real estate unit is made available for rental purposes.

Where a real estate project consists of several phases, the offering document must present the statement of net revenue for the previous phases.

4. Material contracts relating to the use of the immovable generally cover the disclosure of the rights or obligations under the management agreement. For example, in the case of a rental program, the rental pool lease is a material contract.

DIVISION III DOCUMENTS TO BE FILED

10. Where the issuer is conducting multiple closings, the offering document must be filed no later than the 10th day after the first closing. Once the offering document has been filed, it does not need to be filed again after subsequent closings, unless it has been updated.

The filing of the report of exempt distribution must be accompanied by the fee indicated in subparagraph 4 of section 267 of the Securities Regulation (chapter V-1.1, r. 50).

Where required, the offering document and any update, along with any report of exempt distribution, are filed with the Authority electronically on the System for Electronic Document Analysis and Retrieval (SEDAR) in accordance with Regulation 13-101 respecting the System for Electronic Document Analysis and Retrieval (SEDAR) (chapter V-1.1, r. 2) ("Regulation 13-101").

To make a filing on SEDAR, the issuer can a) become a SEDAR subscriber and make the filing itself, or b) hire a filing agent to make the filing.

(a) Becoming a SEDAR subscriber currently involves:

- i. downloading and reading the information outlined in the SEDAR Information Package, which includes the necessary forms and information;
- ii. completing and signing SEDAR Form 1 – Application for SEDAR Filing Services;
- iii. signing SEDAR Form 2 – Filing Service Subscriber's Agreement;
- iv. returning SEDAR Form 1 and SEDAR Form 2 to the SEDAR Filing Service Contractor as indicated in the SEDAR Information Package;
- v. downloading and installing the SEDAR desktop client software at no charge.

To download the SEDAR desktop client software, the issuer would need Internet access and a computer that meets the minimum hardware and software requirements set out in the SEDAR Installation Guide. Training sessions on how to make filings on SEDAR are also offered on a periodic basis. For information about the training sessions, including how to register, visit http://www.sedar.com/sedar/sedar_en.htm or send an e-mail to csacrm@cgi.com.

(b) Hiring a filing agent

Filing agents include law firms, financial printers, trust companies acting as transfer agents and registrars and other service providers. To obtain a list of filing agents, please e-mail sedar@csa-acvm.ca or contact the CSA Service Desk at 1-800-219-5381.

There is currently no charge to become a SEDAR subscriber or to maintain a SEDAR subscription. However, an issuer that chooses to become a SEDAR subscriber and make its own filings would need to invest the time to learn how to use the SEDAR system. If an issuer uses a filing agent to make electronic filings, the filing agent will charge the issuer for their filing services. Issuers that make a limited number of filings will likely find it more convenient and/or cost effective to hire a filing agent rather than becoming a SEDAR subscriber.

To make a filing on SEDAR, an “Other Issuer” profile must be created, unless the issuer already has a SEDAR profile. If an issuer already has an “Other Issuer” profile, it should make the filing under its existing profile and should not create a new profile. Note that issuers are not permitted to use the “Other Filer” profile when making exempt market filings on SEDAR. For more information, refer to the SEDAR Filer Manual incorporated by reference in Regulation 13-101 as well as the quick reference guide available at http://www.sedar.com/sedarguides/Creating_a_Profile.pdf.

The offering document and any Report of Exempt Distribution should be filed under the category “Exempt Market Offerings and Disclosure.”

DIVISION IV CERTIFICATES

11. The Act prohibits a person from making any statement that the person knows or ought reasonably to know is a misrepresentation. This prohibition applies whether or not the distribution is made under an exemption. The term “misrepresentation” is defined in the Act and includes the use of exaggeration, innuendo or ambiguity in an oral or written representation about a material fact or other deceptive behaviour relating to a material fact.

The issuer must ensure that the information provided to the subscriber is current and does not contain a misrepresentation. For example, if a material change occurs in the business of the issuer or the financial information after delivery of the offering document referred to in subparagraph 1 of section 3 of the Regulation to the subscriber, the issuer must give the subscriber an update of the offering document before accepting an undertaking therefrom. The update of the offering document may take the form of an amendment describing the material change or a new real estate offering document containing up-to-date disclosure, whichever the issuer decides will most effectively inform subscribers.

Whatever form of update the issuer uses, it must include a newly signed and dated certificate.

DIVISION V PERIODIC DISCLOSURES

14. The issuer must deliver to the holders the periodic disclosures indicated in section 14 of the Regulation. As well, under section 7 of the Act, the promoter of the venture and the persons in charge of it must make the disclosure related to the venture unless the Authority specially designates a person in virtue of section 66 of the Act. The person who manages the rental of a real estate unit is generally considered a person referred to in the term “persons in charge of it.” This is a matter of fact.

The issuer, promoter or persons in charge of the venture are not required to deliver to or file with the Authority the annual or interim statement of net revenue of the venture. They need only deliver it to holders who acquired securities under the exemption regime set out in section 3 or 17 of the Regulation.

16. The requirement to deliver the annual and interim statement of net revenue of the venture to the holders continues to apply each year after the initial distribution until the earlier of (i) the date the issuer becomes a reporting issuer and (ii) the date the Authority ends the special disclosure scheme through an exemption. Under certain circumstances, such as where the rental pool program is terminated or the destination of the immovable changes, the Authority may, through an exemption, end the special disclosure scheme upon request by a party liable for delivering the periodic disclosure documents to the holders.

DIVISION VI RESALE

18. The notification must enable the person who is in charge of the venture to fulfill the requirement to provide the statement of net revenue.

CHAPTER III DISTRIBUTION OF A SECURITY GIVING A RIGHT OF EXCLUSIVE USE IN AN IMMOVABLE

DIVISION I PROSPECTUS AND REGISTRATION EXEMPTION

20. The Regulation provides for a prospectus and registration exemption in respect of the distribution of these securities at the time of the initial sale or resale of such securities provided a rental agreement is signed by the subscriber or purchaser giving the subscriber or purchaser a right of exclusive use of a designated residential unit and a space in the immovable.

CHAPTER IV TRANSITION AND OTHER EXEMPTIONS

22. The purpose of section 22 of the Regulation is to enable any person who purchased a security within the scope of section 1 of the Regulation under a prospectus exemption provided for under Regulation 45-106 respecting Prospectus Exemptions (chapter V-1.1, r. 21) to rely on the requirements, as the person so chooses, of any prospectus exemption regime applicable at the time of the resale of such securities.