

## **Draft Regulation**

Securities Act

(chapter V-1.1, s. 331.1, pars. (1), (2), (3), (4.1), (5), (8), (11), (14), (18), (19), (20) and (34), and s. 331.2)

### **Regulation respecting real estate prospectus and registration exemptions**

Notice is hereby given by the Autorité des marchés financiers (the "Authority") that, in accordance with section 331.2 of the *Securities Act*, chapter V-1.1, the following Regulation, the text of which is published hereunder, may be made by the Authority and subsequently submitted to the Minister of Finance for approval, with or without amendment, after 30 days have elapsed since its publication in the Bulletin of the Authority:

- *Regulation respecting real estate prospectus and registration exemptions.*

The following Policy Statement is also published hereunder:

- *Policy Statement to the Regulation respecting real estate prospectus and registration exemptions.*

### **Background**

On November 24, 2016, the AMF published for comment a draft local regulation to:

(i) exempt from the prospectus and registration requirement distributions of securities giving the holder an exclusive right of use of an immovable or a portion thereof, and to

(ii) exempt, with conditions, from the prospectus requirement distributions of investment contracts that consist of a real right in an immovable and a rental management agreement

(the "2016 draft Local Regulation").

The comment period ended on December 24, 2016. Of the comments received from market participants, the main one proposed adding an exemption from the registration requirement for individuals for distributions of investment contracts, provided that the individual holds a broker's licence issued under the *Real Estate Brokerage Act* (CQLR, chapter C-73.2) (the "Brokerage Act").

In the months following the publication of the 2016 draft Local Regulation, discussions were held among members of the Canadian Securities Administrators ("CSA") to undertake proposed amendments related to distributions under an offering memorandum, including real estate distributions.

In 2018, the CSA began work on amending the offering memorandum exemption. The work was aimed at adapting and enhancing the disclosure requirements for offering memoranda prepared by non-qualifying issuers, set out in Regulation 45-106 respecting Prospectus Exemptions, CQLR, chapter V-1.1, r. 21, ("Regulation 45-106") and focused on, among other things, issuers engaged in real estate activities.

On September 17, 2020, the CSA published a notice and request for comment to propose amendments to Regulation 45-106 and the Policy Statement to Regulation 45-106 respecting Prospectus Exemptions (the "September 2020 Publication"). The amendments contained in the September 2020 Publication set out new disclosure requirements for, among other things, issuers engaged in "real estate activities."

In the September 2020 Publication, the real estate distributions covered by the 2016 Draft Local Regulation were excluded from the definition of "real estate activities" in Regulation 45-106, since it is our

view that such distributions will benefit from regulation that is more specific and better suited to the Québec market. It is also our belief that there would be an increase in the regulatory burden for such issuers in Québec because, among other things, the real estate units purchased under an offering memorandum pursuant to Regulation 45-106 are subject to a resale restricted period in accordance with the resale conditions set out in Appendix D of Regulation 45-102 respecting Resale of Securities, CQLR, chapter V-1.1, r. 20, and to the filing of audited financial statements prepared in accordance with IFRS.

Since the 2016 draft Local Publication, the Authority has dealt with applications that would have been covered by the 2016 draft Local Regulation by granting discretionary exemptions. We waited for work to progress in connection with the September 2020 Publication before aligning the Regulation respecting Real Estate Prospectus and Registration Exemptions published below (the “new draft Local Regulation”) with the final amendments to Regulation 45-106. Since the publication of the 2016 draft Local Regulation, we have therefore made amendments primarily to *Form F1 – Real Estate Offering Document* in order to enhance issuers’ disclosure requirements for real estate offering documents.

The new draft Local Regulation sets out the criteria for determining whether a sale of real estate units accompanied by a rental management agreement as part of a real estate project constitutes an investment contract that, with conditions, is exempt from the prospectus requirement. It contains an exemption from the broker registration requirement for individuals for distributions of investment contracts, provided that the individual holds a broker’s licence issued in accordance with the Brokerage Act. It also sets out the conditions for a statutory prospectus and registration exemption for distribution of securities giving the holder a right of exclusive use of an immovable or a portion of the immovable. The new draft Local Regulation also includes the conditions for the resale of such investments.

We consider the changes made since the 2016 publication and reflected in the new draft Local Regulation to be significant, which is why we are publishing the new draft Local Regulation for a new 30-day comment period.

### **Purpose of the Regulation**

The Regulation prescribes the framework for certain real estate distributions while proposing, with conditions, a prospectus and registration exemption for sales of real estate investment contracts specified therein. Accordingly, a real estate offering document must be delivered to the purchaser and certain disclosures are required under the Regulation. The Regulation proposes a prospectus and registration exemption for distributions of securities giving the holder a right of exclusive use in an immovable or a portion of the immovable. The related Policy Statement is attached to help users interpret the Regulation and to provide guidance on future applications of the Regulation, including the elements of a real estate investment contract in Québec.

### **Request for Comment**

Comments regarding the above may be made in writing by **October 22, 2022** to the following:

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## **Further Information**

Further information is available from:

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**September 22, 2022**