

Appendix C

to CSA Notice of National Instrument 45-106

Summary of Changes to the Instrument

This summary sets out the changes made to proposed NI 45-106 *Prospectus and Registration Exemptions* that was published for comment on December 17, 2004. Please refer to Appendix B for an explanation of these changes.

NI 45-106

Part 1 Definitions and Interpretations

- the definitions of “private issuer”, “syndicated mortgage” and “variable insurance contract” were moved from Part 1 to sections 2.4, 2.36 and 2.39 respectively since these terms are only used once.

- definition of “accredited investor”
 - we added four entities particular to Québec in paragraph (g).
 - we added a subparagraph (iii) to paragraph (n) to clarify that an investment fund that meets the criteria in subparagraphs (i) or (ii) is not disqualified from being an accredited investor simply because the investment fund offers a reinvestment plan.
 - we changed paragraph (p) to refer to the defined term “fully managed account”.
 - the Ontario carve-out in paragraph (q) for foreign advisers has been deleted and the current Ontario provision for fully managed accounts that restricts purchases of securities to securities that are not securities of investment funds has been reinstated. The latter change maintains the status quo in Ontario.
 - the reference to “legal” in paragraph (t) has been deleted since the term was redundant.
 - we changed paragraph (v) to permit exempt purchasers in British Columbia and Alberta to be recognized as accredited investors.

- definition of “Canadian financial institution” - We added the revised term "financial services cooperative" in order to reflect the meaning of this expression under the Act respecting financial services cooperatives (Québec), which now, in Québec, encompasses caisses populaires and other similar entities.

- section 1.5 [Underwriter exemption] - We have deleted this provision.
- section 1.6 [Definition of trade - Québec] - We have added a reference to section 5 of the *Securities Act* (Québec) and we deleted paragraph (g) of the publication for comment draft.

Part 2 Prospectus and Registration Exemptions

- section 2.2 [Reinvestment plan] - We changed paragraph (a) of subsection (1) to remove the requirement that the security holder “direct” that dividends or other distributions be reinvested. We also clarified subsection (3) to apply only to security holders in Canada.
- section 2.3 [Accredited investor] - We changed subsection (6) to refer to persons that are created or used “solely” to purchase or hold securities as an accredited investor as described in paragraph (m) of the definition of “accredited investor” in section 1.1.
- section 2.9 [Offering memorandum] - We changed subsection (5) to refer to entities created or used “solely” to purchase or hold securities in reliance on this exemption.
- section 2.10 [Minimum amount investment] - We added paragraph (c) to subsection (1) to clarify that the exemption is available for a trade in a security of a single issuer. We also changed subsection (3) to refer to entities created or used “solely” to purchase or hold securities in reliance on this exemption.
- section 2.16 [Take-over bid and issuer bid] - We changed “under” to “in connection with” to make it clear that the exemption applies to all trades, including trades of tendered securities and trades of securities that are exchanged for tendered securities.
- section 2.18 [Investment fund reinvestment] - We changed paragraph (a) of subsection (1) to remove the requirement that the security holder “direct” that dividends or other distributions be reinvested. We also clarified subsection (3) to apply only to security holders in Canada.
- section 2.19 [Additional investment in investment funds] - We reorganized this section for clarity.
- section 2.22 [Division 4: Employee, Executive Officer, Director and Consultant Exemptions - definitions] - Under the definition of “listed issuer” we deleted references to any successor to any of the entities enumerated under the definition of “listed issuer” in paragraphs (a)(vi) and (b).

- section 2.30 [Division 5: Miscellaneous Exemptions - incorporation or organization] - We have deleted this exemption.
- section 2.31 [Dividends and distributions - section 2.32 of publication for comment draft] - We have added “distributions” to this exemption to permit non-corporate entities to make dividend-like distributions. We also clarified in subsection (2) that the distribution must be “out of earnings or surplus”.
- section 2.34 [Guaranteed debt - section 2.35 of publication for comment draft] We have qualified paragraph (e) to apply only in Ontario. We have deleted the requirement for certain debt securities to be rated by a rating agency if the trade occurs in British Columbia.
- section 2.36 [Mortgages - section 2.37 of publication for comment draft] - In subsection (2), we clarified that the trade must occur in the local jurisdiction. We have included syndicated mortgages within the exemption in all jurisdictions except British Columbia, Manitoba, Québec and Saskatchewan.
- section 2.39 [Variable insurance contract - section 2.40 of publication for comment draft] - We added a definition for “insurance company” for clarification.
- section 2.43 [Removal of exemptions- market intermediaries - section 2.44 of publication for comment draft] We added a reference to Newfoundland and Labrador and reorganized the section for clarity.

Part 3: Registration Only Exemptions

- section 3.8 [Investment dealer acting as portfolio manager] - We have identified that the IDA rules, policies or instruments that apply to this exemption in British Columbia must be previously filed with and not objected to by, the securities regulatory authority in British Columbia. This is consistent with the exemption in British Columbia’s current legislation. We also made it clear that any partner, director, officer or employee of a registered investment dealer who manages an investment portfolio for the registered investment dealer must be registered under the securities legislation of the jurisdiction to trade in securities.

Part 4: Control Block Distributions

- section 4.2 [Trades by a control person after a take-over bid] - We clarified that the take-over bid must be one for which a take-over bid circular was issued and filed.

Part 8: Transitional, Coming Into Force

- sections 8.1 and 8.2 [Additional investment - investment funds/Definition of “accredited investor” - investment fund] - We have added legislative references for several of the jurisdictions.
- section 8.3 [Transition - MI 45-103/MI 45-105/OSC Rule 45-501] - We have added a transition provision to address trades or distributions made in reliance on MI 45-103, MI 45-105 and Ontario Securities Commission Rule 45-501 *Exempt Distributions*.
- section 8.4 [Transition - closely-held issuer] - We have added a resale transition provision for security holders of closely-held issuers.

Form 45-106F2 Offering Memorandum for Non-Qualifying Issuers

- the offering [cover page]- We have added a requirement that the offering memorandum include additional minimum subscription information.
- section 2.7 [material agreements] - Under paragraph (iii) we have added an additional disclosure category - “description of any service provided”.
- item 8 [risk factors] - Under paragraph (b) we have added an additional example of risks to the issuer - “dependence on financial viability of guarantor”.

Form 45-106F3 Offering Memorandum for Qualifying Issuers

- the offering [cover page]- We have added a requirement that the offering memorandum include additional minimum subscription information.
- item 8 [risk factors] - Under paragraph (b) we have added an additional example of risks to the issuer - “dependence on financial viability of guarantor”.

Companion Policy 45-106CP Prospectus and Registration Exemptions

Part 1 - Introduction

- section 1.8 [underwriters] - Since section 1.5 of the Instrument was deleted, we have added a discussion about underwriters and their use of exemptions with a view to distribution.
- section 1.10 [responsibility for compliance] - We have added a discussion regarding the seller’s assessment of a purchaser as an “accredited investor”.

Part 3 - Capital Raising Exemptions

- section 3.5 [Accredited investor, exempt purchaser] -We have added a discussion to explain that an applicant should apply for recognition as an exempt purchaser in Alberta and British Columbia pursuant to the appropriate local rules in either of these provinces.
- section 3.9 [offering memorandum] - We have clarified the use of the offering memorandum exemption by investment funds.

Part 5 - Forms

- section 5.1 [report of exempt distributions] - We have added guidance for determining whether a report of exempt distributions needs to be filed.