

Nova Scotia Securities Commission Policy 45-601 Community Economic Development Investment Funds

1. Introduction

- 1.1. Community Economic Development Investment Funds (“CEDIFs”) sell shares to security holders and invest the proceeds. CEDIFs that do not seek to exercise control or actively manage the persons or companies (the “entities”) they invest in are classified as investment funds under the *Securities Act*, R.S.N.S. 1989, c. 418, as amended (the “Securities Act”). A number of existing CEDIFs are currently investment funds as defined in the Securities Act.
- 1.2. Under subsection 31(3) of the Securities Act, a person or company that directs the business, operations or affairs of an investment fund must be registered as an investment fund manager.
- 1.3. Nova Scotia securities laws impose requirements on investment funds and investment fund managers designed to protect investors in such funds. These requirements include filing detailed disclosure and material change reports, appointment of a chief compliance officer that meets specified competency requirements, maintaining minimum capital amounts, and holding stipulated levels of insurance.
- 1.4. The requirements in Nova Scotia securities laws relating to the registration of investment fund managers were implemented on September 28, 2009, subsequent to the creation of many existing CEDIFs.
- 1.5. The Province’s CEDIF program is intended to encourage capital raising by small, community based issuers run by non-professional managers. To facilitate the operation of the CEDIF program while fulfilling the Commission’s investor protection mandate, the following conditions will apply to existing CEDIFs that are investment funds as defined in the Securities Act that are not in compliance with Nova Scotia securities laws for investment funds, and to all new offerings of securities by CEDIFs that are investment funds as defined in the Securities Act.

2. Definition of Investment Fund

- 2.1. CEDIFs that invest for the purpose of exercising or seeking to exercise control of the entities they invest in, or for the purpose of being actively involved in the management

of the entities they invest in, are not investment funds under the Securities Act and are not subject to this policy.

2.2. Whether a CEDIF is “exercising or seeking to exercise control of” or “actively involved in the management of” the entities it invests in is a question of fact that will depend on a number of factors including the ownership structure of the entity, the existence and content of shareholder or management agreements, the proportion of voting shares owned by the CEDIF and the proportion of voting shares owned by other block shareholders, among other indicia of control or management. For the purposes of this policy, examples of how a CEDIF may be exercising or seeking to exercise control of the entities that it invests in or may be actively involved in the management of the entities that it invests in include:

2.2.1. Representation on the board of directors of the entities, or where an entity is a limited partnership, representation on the board of directors of the general partner of the limited partnership;

2.2.2. direct involvement in the appointment of managers of the entities;

2.2.3. the right to be consulted on material management decisions of the entities; or

2.2.4. the right to elect a board of directors and vote on corporate policy of the entities or where an entity is a limited partnership, the right to elect a board of directors and vote on corporate policy of the general partner of the limited partnership.

2.3. For the purposes of this policy, the mere fact of ownership of shares that represent less than a majority of the voting shares of an entity, in the absence of other indicia of control, is not sufficient to demonstrate that a CEDIF is exercising or seeking to exercise control of the entity or is actively involved in the management of the entity.

2.4. Whether a CEDIF is exercising or seeking to exercise control of or actively involved in the management of the entities it invests in may change over time. It is the responsibility of the CEDIF to ensure that it is in compliance with Nova Scotia securities laws, including this policy, at all times.

3. Conditions for Exemption from Investment Fund Requirements

3.1. A CEDIF that does not invest for the purpose of exercising or seeking to exercise control of the entities it invests in and does not invest for the purpose of being actively involved in the management of the entities it invests in is an investment fund under

the Securities Act and must comply with Nova Scotia securities laws relating specifically to investment funds unless one of the following conditions is met:

- 3.1.1. a) The offering document for the CEDIF specifies with particularity the investments that the CEDIF will make with the capital raised and any capital previously raised, including:
- i) the names of the entities invested in and to be invested in,
 - ii) a description of the entities invested in and to be invested in, including information relating to the entities' activities, management and financial position,
 - iii) the amount or percentage of the CEDIF's assets invested in and to be invested in each entity, and
 - iv) a description of all potential material conflicts of interest for each officer, director, promoter or key person of the CEDIF with each entity invested in and to be invested in,
- (collectively, the "Investee Information");
- b) prior to any change in these investments, the change must be approved by at least 50% plus 1 vote of the votes cast by security holders of the CEDIF who vote at a meeting of security holders called to consider the change, excluding the shares voted by officers, directors and promoters and parties related to the officers, directors and promoters; and
- c) for the meeting referred to in paragraph b) above, if the CEDIF proposes to make new investments in entities, it has provided to its security holders, together with the materials for the meeting, the Investee Information relating to the entities that the CEDIF proposes to invest in.
- 3.1.2. The amount of capital raised by the CEDIF under each offering must not exceed \$3,000,000 and the amount of capital raised by the CEDIF and any affiliated CEDIFs, within the meaning in the *Equity Tax Credit Act* (Nova Scotia), under all exemptions from the prospectus requirement must not exceed \$6,000,000 in aggregate.
- 3.1.3. For a CEDIF in existence on the effective date of this policy (the "Effective Date") that is not in compliance with section 3.1.1 or 3.1.2 on the Effective Date, or for a CEDIF that is not in compliance with section 3.1.1 and becomes non-compliant

with section 3.1.2 after the closing of its first offering of securities (the date of non-compliance referred to hereafter as the "Date of Non-compliance"), the CEDIF:

- a) Provides a written notice (the "Notice") containing the Investee Information for the entities it has invested in as of the Date of Non-compliance to all of its security holders no later than the date the CEDIF is required to send out its materials for the next annual general meeting following the Date of Non-compliance;
- b) prior to any change in the investments as of the Date of Non-compliance, the change must be approved by at least 50% plus 1 vote of the votes cast by security holders of the CEDIF who vote at a meeting of security holders called to consider the change, excluding the shares voted by officers, directors and promoters and parties related to the officers, directors and promoters;
- c) for the meeting referred to in paragraph b) above, if the CEDIF proposes to make new investments in entities, it has provided to its security holders, together with the materials for the meeting, the Investee Information relating to the entities that the CEDIF proposes to invest in; and
- d) for any subsequent offering of securities by the CEDIF under the *Community Economic-Development Corporations Regulations*, N.S. Reg. 168/2011, the CEDIF satisfies the conditions in section 3.1.1.

3.2. A CEDIF that is an investment fund that satisfies one of the conditions in section 3.1 of this policy must include in its offering document or the Notice, as applicable, the following warning:

"WARNING: Unlike most investment funds, this fund will not be required to comply with the requirements of an investment fund manager provided the fund complies with Nova Scotia Securities Commission Policy 45-601 Community Economic Development Investment Funds. **Other investment funds are required to have registered investment fund managers to afford investors a level of protection that is not present in this investment.**

When investors purchase or own shares in this fund they should be aware that they will not have the protections of the requirements and standards imposed on registered investment fund managers under Nova Scotia securities laws which include:

- a) meeting experience and education requirements,

- b) complying with investment fund reporting requirements,
- c) employing a chief compliance officer,
- d) maintaining minimum levels of working capital,
- e) maintaining specified levels of insurance or bonding, and
- f) undergoing Commission compliance reviews.”

3.3. A CEDIF that is an investment fund that satisfies one of the conditions in section 3.1 of this policy, together with any other affiliated CEDIFs, may raise no more than:

- a) \$15,000 per beneficial investor per calendar year in aggregate, or
- b) \$30,000 per beneficial investor per calendar year in aggregate if the investor has obtained advice regarding the suitability of the investment from a person or company registered as an investment dealer or exempt market dealer authorized to sell securities of the CEDIF.

These investment limits do not apply to an investor that meets the definition of an accredited investor under National Instrument 45-106 *Prospectus and Registration Exemptions*, or is an officer, director or promoter of the CEDIF.

3.4. CEDIFs that are investment funds remain subject to all Nova Scotia securities laws otherwise applicable to CEDIFs.

4. Implementation

4.1 A copy of the blanket order implementing this policy is attached as Schedule A.

5. Effective date

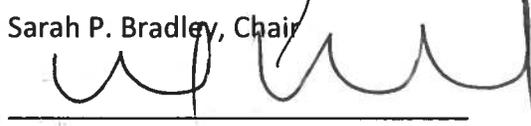
5.1. This policy is effective on January 17, 2014.

Dated at Halifax, Nova Scotia, this 17th day of January, 2014.

Nova Scotia Securities Commission



Sarah P. Bradley, Chair



Paul Radford, Q.C., Vice-chair

Schedule A

Blanket Order No. 45-521

In the Matter of the *Securities Act*, R.S.N.S. 1989,
Chapter 418, as amended

-and-

In the Matter of
Nova Scotia Securities Commission Policy 45-601
Community Economic Development Investment Funds

Order
(Section 151A)

Interpretation

1. Terms defined in the *Securities Act*, R.S.N.S. 1989, Chapter 418, as amended (the “*Securities Act*”) and National Instrument 14-101 *Definitions* have the same meaning in this order.

2. In this order:

“CEDIF” means a community economic development investment fund that makes or has made an offering of securities under the CEDIF Regulations.

“CEDIF Regulations” means the *Community Economic-Development Corporations Regulations*, N.S. Reg. 168/2011.

“entity” means a person or company that a CEDIF invests in.

“exempt CEDIF” means a CEDIF that does not invest for the purpose of exercising or seeking to exercise control of the entities it invests in and does not invest for the purpose of being actively involved in the management of the entities it invests in and is therefore an investment fund under the *Securities Act* that must comply with Nova Scotia securities laws relating specifically to investment funds unless one of the following conditions is met:

1. a) The offering document for the CEDIF specifies with particularity the investments that the CEDIF will make with the capital raised and any capital previously raised, including:
 - i) The names of the entities invested in and to be invested in,
 - ii) a description of the entities invested in and to be invested in, including information relating to the entities' activities, management and financial position,
 - iii) the amount or percentage of the CEDIF's assets invested in and to be invested in each entity, and
 - iv) a description of all potential material conflicts of interest for each officer, director, promoter or key person of the CEDIF with each entity invested in and to be invested in,

(collectively, the "Investee Information");
 - b) prior to any change in these investments, the change must be approved by at least 50% plus 1 vote of the votes cast by security holders of the CEDIF who vote at a meeting of security holders called to consider the change, excluding the shares voted by officers, directors and promoters and parties related to the officers, directors and promoters; and
 - c) for the meeting referred to in paragraph b) above, if the CEDIF proposes to make new investments in entities, it has provided to its security holders, together with the materials for the meeting, the Investee Information relating to the entities that the CEDIF proposes to invest in.
2. The amount of capital raised by the CEDIF under each offering must not exceed \$3,000,000 and the amount of capital raised by the CEDIF and any affiliated CEDIFs, within the meaning in the *Equity Tax Credit Act* (Nova Scotia), under all exemptions from the prospectus requirement must not exceed \$6,000,000 in aggregate.
 3. For a CEDIF in existence on the effective date of Nova Scotia Securities Commission Policy 45-601 Community Economic Development Investment Funds (the "Effective Date") that is not in compliance with section 1 or 2 of this definition on the Effective Date, or for a CEDIF that is not in compliance with section 1 of this definition and becomes non-compliant with section 2 of this definition after the closing of its first

offering of securities (the date of non-compliance referred to hereafter as the “Date of Non-compliance”), the CEDIF:

- a) Provides a written notice (the “Notice”) containing the Investee Information for the entities it has invested in as of the Date of Non-compliance to all of its security holders no later than the date the CEDIF is required to send out its materials for the next annual general meeting following the Date of Non-compliance;
- b) prior to any change in the investments as of the Date of Non-compliance, the change must be approved by at least 50% plus 1 vote of the votes cast by security holders of the CEDIF who vote at a meeting of security holders called to consider the change, excluding the shares voted by officers, directors and promoters and parties related to the officers, directors and promoters;
- c) for the meeting referred to in paragraph b) above, if the CEDIF proposes to make new investments in entities, it has provided to its security holders, together with the materials for the meeting, the Investee Information relating to the entities that the CEDIF proposes to invest in; and
- d) for any subsequent offering of securities by the CEDIF under the CEDIF Regulations, the CEDIF satisfies the conditions in section 1 of this definition.

Background

1. CEDIFs sell shares to security holders and invest the proceeds. CEDIFs that do not seek to exercise control or actively manage the entities they invest in are classified as investment funds under the Securities Act.
2. Under subsection 31(3) of the Securities Act, a person or company that directs the business, operations or affairs of an investment fund must be registered as an investment fund manager.
3. Nova Scotia securities laws impose requirements on investment funds and investment fund managers designed to protect investors in such funds. These requirements include filing detailed disclosure and material change reports, appointment of a chief compliance officer that meets specified competency requirements, maintaining minimum capital amounts, and holding stipulated levels of insurance.
4. The requirements in Nova Scotia securities laws relating to the registration of investment fund managers were implemented on September 28, 2009, subsequent to the creation of many existing CEDIFs.

5. The Province's CEDIF program is intended to encourage capital raising by small, community based issuers run by non-professional managers. The issuance of this blanket order facilitates the operation of the CEDIF program while fulfilling the Commission's investor protection mandate and applies to CEDIFs that are investment funds as defined in the Securities Act that are not in compliance with Nova Scotia securities laws for investment funds, and to all new offerings of securities by CEDIFs that are investment funds as defined in the Securities Act.

6. The Commission is of the opinion that to do so is not prejudicial to the public interest.

Order

IT IS ORDERED pursuant to subsection 151A(1) of the Act that an exempt CEDIF is exempted from the requirements in Nova Scotia securities laws applicable to investment funds and investment fund managers provided that:

1. The exempt CEDIF includes in its offering document or the Notice, as applicable, the following warning:

"WARNING: Unlike most investment funds, this fund will not be required to comply with the requirements of an investment fund manager provided the fund complies with Nova Scotia Securities Commission Policy 45-601 Community Economic Development Investment Funds. **Other investment funds are required to have registered investment fund managers to afford investors a level of protection that is not present in this investment.**

When investors purchase or own shares in this fund they should be aware that they will not have the protections of the requirements and standards imposed on registered investment fund managers under Nova Scotia securities laws which include:

- a) meeting experience and education requirements,
- b) complying with investment fund reporting requirements,
- c) employing a chief compliance officer,
- d) maintaining minimum levels of working capital,
- e) maintaining specified levels of insurance or bonding, and
- f) undergoing Commission compliance reviews.";

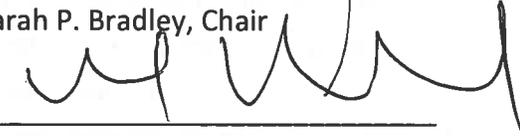
2. the exempt CEDIF, together with any other affiliated CEDIFs, may raise no more than:
 - a) \$15,000 per beneficial investor per calendar year in aggregate, or
 - b) \$30,000 per beneficial investor per calendar year in aggregate if the investor has obtained advice regarding the suitability of the investment from a person or company registered as an investment dealer or exempt market dealer authorized to sell securities of the CEDIF,except that these investment limits do not apply to an investor that meets the definition of an accredited investor under National Instrument 45-106 *Prospectus and Registration Exemptions*, or is an officer, director or promoter of the CEDIF; and
3. the exempt CEDIF remains subject to all Nova Scotia securities laws otherwise applicable to CEDIFs.

Dated at Halifax, Nova Scotia, this 17th day of January, 2014.

Nova Scotia Securities Commission



Sarah P. Bradley, Chair



Paul Radford, Q.C., Vice-chair