

Nova Scotia Securities Commission

Rule 45-106 (Amendment)
Prospectus Exemptions

- and-

Amendments to National Instrument 45-106
Prospectus Exemptions

- and-

Changes to Companion Policy 45-106CP
Prospectus Exemptions

WHEREAS:

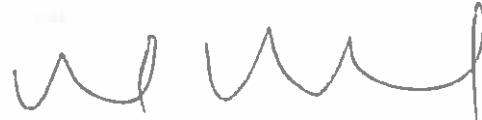
1. Pursuant to section 150 of the *Securities Act*, R.S.N.S. 1989, chapter 418, as amended (the Act), the Nova Scotia Securities Commission (the Commission) has power to make rules subject to compliance with the requirements of the Act;
2. Pursuant to section 19 of the Act, the Commission has power to issue and publish policy statements;
3. Amendments to National Instrument 45-106 *Prospectus Exemptions* (the Rule Amendments) and Changes to Companion Policy 45-106CP *Prospectus Exemptions* (the Policy Amendments), copies of which are attached hereto, have been made a rule by one or more of the Canadian securities regulatory authorities; and
4. The Commission is of the opinion that the attainment of the purpose of the Act is advanced by this Instrument.

NOW THEREFORE the Commission hereby:

- (a) pursuant to the authority contained in section 150 of the Act and subject to compliance with the requirements of section 150A of the Act, approves the Rule Amendments and makes the same a rule of the Commission;
- (b) pursuant to the authority contained in section 19 of the Act and subject to publication on the Commission's website, issues the Policy Amendments as a policy of the Commission; and
- (c) declares that the Rule Amendments approved and made pursuant to clause (a) and the Policy Amendments issued pursuant to clause (b) shall take effect on **April 30, 2016**, unless the Minister disapproves the Rule or returns it to the Commission in accordance

with subsection 150A(3) of the Act in which event the Rule and the Companion Policy shall not become effective until the Rule is approved by the Minister.

IN WITNESS WHEREOF this Instrument has been signed by the Vice-chair and Acting Chair of the Commission, being the member of the Commission prescribed by the Chair pursuant to subsection 15(3) of the Act to attend the hearing of this matter and the quorum with respect to this matter, on the 5th day of November, 2015.



Paul Radford Q.C.,
Vice-chair and Acting Chair

Attachments

**Amendments to
National Instrument 45-106 Prospectus Exemptions**

1. National Instrument 45-106 Prospectus Exemptions is amended by this Instrument.

2. Section 1.1 is amended

- (a) *in paragraph (b) of the definition of “eligibility adviser” by deleting “Saskatchewan or”,*
- (b) *in paragraph (h) of the definition of “eligible investor” by adding “in Manitoba, Northwest Territories, Nunavut, Prince Edward Island and Yukon,” before “a person that has obtained advice”.*

3. The Instrument is amended by adding the following section:

1.1.1 In this Instrument, in Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan

“date of transition to IFRS” has the same meaning as in National Instrument 51-102 *Continuous Disclosure Obligations*;

“exempt market dealer” has the same meaning as in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;

“first IFRS financial statements” has the same meaning as in National Instrument 51-102 *Continuous Disclosure Obligations*;

“investment dealer” has the same meaning as in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;

“new financial year” means the financial year of an issuer that immediately follows a transition year;

“old financial year” means the financial year of an issuer that immediately precedes a transition year;

“OM marketing materials” means a written communication, other than an OM standard term sheet, intended for prospective purchasers regarding a distribution of securities under an offering memorandum delivered under section 2.9 [*Offering memorandum*] that contains material facts relating to an issuer, securities or an offering;

“OM standard term sheet” means a written communication intended for prospective purchasers regarding a distribution of securities under an offering memorandum delivered under section 2.9 [*Offering memorandum*] that

- (a) is dated,
- (b) includes the following legend, or words to the same effect, on the first page:

“This document does not provide disclosure of all information required for an investor to make an informed investment decision. Investors should read the offering memorandum,

especially the risk factors relating to the securities offered, before making an investment decision.”,

- (c) contains only the following information in respect of the issuer, the securities or the offering:
- (i) the name of the issuer;
 - (ii) the jurisdiction or foreign jurisdiction in which the issuer’s head office is located;
 - (iii) the statute under which the issuer is incorporated, continued or organized or, if the issuer is an unincorporated entity, the laws of the jurisdiction or foreign jurisdiction under which it is established and exists;
 - (iv) a brief description of the business of the issuer;
 - (v) a brief description of the securities;
 - (vi) the price or price range of the securities;
 - (vii) the total number or dollar amount of the securities, or range of the total number or dollar amount of the securities;
 - (viii) the names of any agent, finder or other intermediary, whether registered or not, involved with the offering and the amount of any commission, fee or discount payable to them;
 - (ix) the proposed or expected closing date of the offering;
 - (x) a brief description of the use of proceeds;
 - (xi) the exchange on which the securities are proposed to be listed, if any, provided that the OM standard term sheet complies with the requirements of securities legislation for listing representations;
 - (xii) in the case of debt securities, the maturity date of the debt securities and a brief description of any interest payable on the debt securities;
 - (xiii) in the case of preferred shares, a brief description of any dividends payable on the securities;
 - (xiv) in the case of convertible securities, a brief description of the underlying securities into which the convertible securities are convertible;
 - (xv) in the case of exchangeable securities, a brief description of the underlying securities into which the exchangeable securities are exchangeable;
 - (xvi) in the case of restricted securities, a brief description of the restriction;
 - (xvii) in the case of securities for which a credit supporter has provided a guarantee or alternative credit support, a brief description of the credit supporter and the guarantee or alternative credit support provided;
 - (xviii) whether the securities are redeemable or retractable;
 - (xix) a statement that the securities are eligible, or are expected to be eligible, for investment in registered retirement savings plans, tax-free savings accounts or other registered plans, if the issuer has received, or reasonably expects to receive, a legal opinion that the securities are so eligible;
 - (xx) contact information for the issuer or any registrant involved, and
- (d) for the purposes of paragraph (c), “brief description” means a description consisting of no more than three lines of text in type that is at least as large as that used generally in the body of the OM standard term sheet;

“portfolio manager” has the same meaning as in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;

“SEC issuer” has the same meaning as in National Instrument 51-102 *Continuous Disclosure Obligations*;

“specified derivative” has the same meaning as in National Instrument 44-102 *Shelf Distributions*;

“structured finance product” has the same meaning as in National Instrument 25-101 *Designated Rating Organizations*;

“transition year” means the financial year of an issuer in which the issuer has changed its financial year end;

“U.S. laws” has the same meaning as in National Instrument 51-102 *Continuous Disclosure Obligations*.

4. Section 2.9 is amended

(a) in subsection (1) by deleting “, New Brunswick, Nova Scotia”,

(b) in subsection (2) by replacing “In Alberta, Manitoba, Northwest Territories, Nunavut, Prince Edward Island, Québec, Saskatchewan and Yukon” with “In Manitoba, Northwest Territories, Nunavut, Prince Edward Island and Yukon”,

(c) by adding the following subsections:

(2.1) In Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan, the prospectus requirement does not apply to a distribution by an issuer of a security of its own issue to a purchaser if

- (a) the purchaser purchases the security as principal,**
- (b) the acquisition cost of all securities acquired by a purchaser who is an individual under this section in the preceding 12 months does not exceed the following amounts:
 - (i) in the case of a purchaser that is not an eligible investor, \$10 000;**
 - (ii) in the case of a purchaser that is an eligible investor, \$30 000;**
 - (iii) in the case of a purchaser that is an eligible investor and that received advice from a portfolio manager, investment dealer or exempt market dealer that the investment is suitable, \$100 000,****
- (c) at the same time or before the purchaser signs the agreement to purchase the security, the issuer
 - (i) delivers an offering memorandum to the purchaser in compliance with subsections (5) to (13), and**
 - (ii) obtains a signed risk acknowledgement from the purchaser in compliance with subsection (15), and****
- (d) the security distributed by the issuer is not either of the following:
 - (i) a specified derivative;**
 - (ii) a structured finance product.****

(2.2) The prospectus exemption described in subsection (2.1) is not available

- (a) in Alberta, Nova Scotia and Saskatchewan, to an issuer that is an investment fund, unless the issuer is a non-redeemable investment fund or a mutual fund that is a reporting issuer, or**

(b) in New Brunswick, Ontario and Québec, to an issuer that is an investment fund.

(2.3) The investment limits described in subparagraphs (2.1)(b)(ii) and (iii) do not apply if the purchaser is

(a) an accredited investor, or

(b) a person described in subsection 2.5(1) [*Family, friends and business associates*],

(d) in subsection (3) by replacing “In Alberta, Manitoba, Northwest Territories, Nunavut, Prince Edward Island, Québec, Saskatchewan and Yukon” with “In Manitoba, Northwest Territories, Nunavut, Prince Edward Island and Yukon”,

(e) by adding the following subsection:

(3.0.1) In Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan, this section does not apply to a distribution of a security to a person that was created, or is used, solely to purchase or hold securities in reliance on the exemption from the prospectus requirement set out in subsection (2.1).

(f) in subsection (3.1) by replacing “Subsections (1) and (2)”, with “Subsections (1), (2) and (2.1)”,

(g) in subsection (4) by deleting “, Saskatchewan”,

(h) by adding the following subsections:

(5.1) In Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan, an offering memorandum delivered under subsection (2.1)

(a) must incorporate by reference, by way of a statement in the offering memorandum, OM marketing materials related to each distribution under the offering memorandum and delivered or made reasonably available to a prospective purchaser before the termination of the distribution, and

(b) is deemed to incorporate by reference OM marketing materials related to each distribution under the offering memorandum and delivered or made reasonably available to a prospective purchaser before the termination of the distribution.

(5.2) A portfolio manager, investment dealer or exempt market dealer must not distribute OM marketing materials unless the OM marketing materials have been approved in writing by the issuer.,

(i) in subsections (15) and (16) by replacing “(1) or (2)” with “(1), (2) or (2.1)” wherever the phrase appears, and

(j) by adding the following subsections:

(17.1) In Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan, the issuer must file with the securities regulatory authority a copy of all OM marketing materials required or deemed to be incorporated by reference into an offering memorandum delivered under this section,

- (a) if the OM marketing materials are prepared on or before the filing of the offering memorandum, concurrently with the filing of the offering memorandum, or
- (b) if the OM marketing materials are prepared after the filing of the offering memorandum, within 10 days of the OM marketing materials being delivered or made reasonably available to a prospective purchaser.

(17.2) OM marketing materials filed under subsection (17.1) must include a cover page clearly identifying the offering memorandum to which they relate.

(17.3) Subsections (17.4) to (17.21) apply to issuers that rely on subsection (2.1) and that are not reporting issuers in any jurisdiction of Canada.

(17.4) In Alberta, an issuer must, within 120 days after the end of each of its financial years, file with the securities regulatory authority annual financial statements and make them reasonably available to each holder of a security acquired under subsection (2.1).

(17.5) In New Brunswick, Ontario, Québec and Saskatchewan, an issuer must, within 120 days after the end of each of its financial years, deliver annual financial statements to the securities regulatory authority and make them reasonably available to each holder of a security acquired under subsection (2.1).

(17.6) In Nova Scotia, an issuer must, within 120 days after the end of each of its financial years, make reasonably available annual financial statements to each holder of a security acquired under subsection (2.1).

(17.7) Despite subsections (17.4), (17.5) and (17.6), as applicable, if an issuer is required to file, deliver or make reasonably available annual financial statements for a financial year that ended before the issuer distributed securities under subsection (2.1) for the first time, those annual financial statements must be filed in Alberta, delivered in New Brunswick, Ontario, Québec and Saskatchewan or made reasonably available in Nova Scotia, as applicable, on or before the later of

- (a) the 60th day after the issuer first distributes securities under subsection (2.1), and
- (b) the deadline in subsection (17.4), (17.5) or (17.6), as applicable, to file, deliver or make reasonably available the annual financial statements.

(17.8) The annual financial statements of an issuer referred to in subsections (17.4), (17.5) and (17.6) must include

- (a) a statement of comprehensive income, a statement of changes in equity, and a statement of cash flows for
 - (i) the most recently completed financial year, and
 - (ii) the financial year immediately preceding the most recently completed financial year, if any,
- (b) a statement of financial position as at the end of each of the periods referred to in paragraph (a),

- (c) in the following circumstances, a statement of financial position as at the beginning of the financial year immediately preceding the most recently completed financial year:
 - (i) the issuer discloses in its annual financial statements an unreserved statement of compliance with IFRS, and
 - (ii) the issuer
 - (A) applies an accounting policy retrospectively in its annual financial statements,
 - (B) makes a retrospective restatement of items in its annual financial statements, or
 - (C) reclassifies items in its annual financial statements,
- (d) in the case of the issuer's first IFRS financial statements, the opening IFRS statement of financial position at the date of transition to IFRS, and
- (e) notes to the annual financial statements.

(17.9) If the annual financial statements referred to in subsection (17.8) present the components of profit or loss in a separate income statement, the separate income statement must be displayed immediately before the statement of comprehensive income referred to in subsection (17.8).

(17.10) The annual financial statements referred to in subsection (17.8) must be audited.

(17.11) Despite subsection (17.10), for the first annual financial statements of an issuer referred to in subsections (17.4), (17.5) and (17.6), comparative information relating to the preceding financial year is not required to be audited if it has not been previously audited.

(17.12) Any period referred to in subsection (17.8) that has not been audited must be clearly labelled as unaudited.

(17.13) In Alberta, New Brunswick, Ontario, Québec and Saskatchewan, if an issuer decides to change its financial year end by more than 14 days, it must deliver to the securities regulatory authority and make reasonably available to each holder of a security acquired under subsection (2.1) a notice containing the information set out in subsection (17.15) as soon as practicable and, in any event, no later than the earlier of

- (a) the deadline, based on the issuer's old financial year end, for the next annual financial statements referred to in subsections (17.4) and (17.5), and
- (b) the deadline, based on the issuer's new financial year end, for the next annual financial statements referred to in subsections (17.4) and (17.5).

(17.14) In Nova Scotia, if an issuer decides to change its financial year end by more than 14 days, it must make reasonably available to each holder of a security acquired under subsection (2.1) a notice containing the information set out in subsection (17.15) as soon as practicable and, in any event, no later than the earlier of

- (a) the deadline, based on the issuer's old financial year end, for the next annual financial statements referred to in subsection (17.6), and

- (b) the deadline, based on the issuer's new financial year end, for the next annual financial statements referred to in subsection (17.6).

(17.15) The notice referred to in subsections (17.13) and (17.14) must state

- (a) that the issuer has decided to change its financial year end,
- (b) the reason for the change,
- (c) the issuer's old financial year end,
- (d) the issuer's new financial year end,
- (e) the length and ending date of the periods, including the comparative periods, of the annual financial statements referred to in subsections (17.4), (17.5) and (17.6) for the issuer's transition year and its new financial year, and
- (f) the filing deadline for the annual financial statements for the issuer's transition year.

(17.16) If a transition year is less than 9 months in length, the issuer must include as comparative financial information to its annual financial statements for its new financial year

- (a) a statement of financial position, a statement of comprehensive income, a statement of changes in equity, a statement of cash flows, and notes to the financial statements for its transition year,
- (b) a statement of financial position, a statement of comprehensive income, a statement of changes in equity, a statement of cash flows, and notes to the financial statements for its old financial year,
- (c) in the following circumstances, a statement of financial position as at the beginning of the old financial year:
 - (i) the issuer discloses in its annual financial statements an unreserved statement of compliance with IFRS, and
 - (ii) the issuer
 - (A) applies an accounting policy retrospectively in its annual financial statements,
 - (B) makes a retrospective restatement of items in its annual financial statements, or
 - (C) reclassifies items in its annual financial statements, and
- (d) in the case of the issuer's first IFRS financial statements, the opening IFRS statement of financial position at the date of transition to IFRS.

(17.17) A transition year must not exceed 15 months.

(17.18) An SEC issuer satisfies subsections (17.13), (17.14) and (17.16) if

- (a) it complies with the requirements of U.S. laws relating to a change of fiscal year, and

- (b) it delivers a copy of all materials required by U.S. laws relating to a change in fiscal year to the securities regulatory authority at the same time as, or as soon as practicable after, they are filed with or furnished to the SEC and, in any event, no later than 120 days after the end of its most recently completed financial year.

(17.19) The financial statements of an issuer referred to in subsections (17.4), (17.5) and (17.6) must be accompanied by a notice of the issuer disclosing in reasonable detail the use of the aggregate gross proceeds raised by the issuer under section 2.9 in accordance with Form 45-106F16, unless the issuer has previously disclosed the use of the aggregate gross proceeds in accordance with Form 45-106F16.

(17.20) In New Brunswick, Nova Scotia and Ontario, an issuer must make reasonably available to each holder of a security acquired under subsection (2.1) a notice of each of the following events in accordance with Form 45-106F17, within 10 days of the occurrence of the event:

- (a) a discontinuation of the issuer's business;
- (b) a change in the issuer's industry;
- (c) a change of control of the issuer.

(17.21) An issuer is required to make the disclosure required respectively by subsections (17.4), (17.5), (17.6), (17.19) and (17.20) until the earliest of

- (a) the date the issuer becomes a reporting issuer in any jurisdiction of Canada, and
- (b) the date the issuer ceases to carry on business.

(17.22) In Ontario, an issuer that is not a reporting issuer in Ontario that distributes securities in reliance on the exemption in subsection (2.1) is designated a market participant under the *Securities Act* (Ontario).

(17.23) In New Brunswick, an issuer that is not a reporting issuer in New Brunswick that distributes securities in reliance on the exemption in subsection (2.1) is designated a market participant under the *Securities Act* (New Brunswick).

(18) Repealed. [B.C. Reg. 86/2011, s. (e).]

5. Paragraph 6.1(1)(c) is amended by replacing "or (2) [Offering memorandum for Alberta, B.C., Manitoba, New Brunswick, Nova Scotia, Newfoundland and Labrador, Northwest Territories, Nunavut, Prince Edward Island, Québec, Saskatchewan and Yukon]" with ", (2) or (2.1) [Offering memorandum]".

6. Section 6.5 is amended by adding the following subsection:

(1.1) In Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan, the required form of risk acknowledgement for individual investors includes Schedule 1 *Classification of Investors Under the Offering Memorandum Exemption* and Schedule 2 *Investment Limits for Investors Under the Offering Memorandum Exemption* to Form 45-106F4..

7. Part 8 is amended by adding the following sections:

8.4.1 Transition – offering memorandum exemption – update of offering memorandum – Despite subsection 2.9(5.1), in Alberta, New Brunswick, Nova Scotia, Québec and Saskatchewan, an issuer is not required to update an offering memorandum that was filed in the local jurisdiction before April 30, 2016, solely to incorporate the statement required under paragraph 2.9(5.1)(a), unless the offering memorandum would otherwise be required to be updated pursuant to subsection 2.9(14) or Instruction B.12 of Form 45-106F2 *Offering Memorandum for Non-Qualifying Issuers*.

8.4.2 Transition – offering memorandum exemption – marketing materials – Despite paragraph 2.9(17.1)(a), in Alberta, New Brunswick, Nova Scotia, Québec and Saskatchewan, OM marketing materials that relate to an offering memorandum that was filed in the local jurisdiction before April 30, 2016 and that are delivered or made reasonably available after April 30, 2016 must be filed within 10 days from the earlier of delivery to, or being made reasonably available to, a prospective purchaser.

8. Item 10.1 of Form 45-106F2 *Offering Memorandum for Non-Qualifying Issuers* is amended by adding “Ontario,” before “Prince Edward Island”.

9. Item 10.2 of Form 45-106F2 *Offering Memorandum for Non-Qualifying Issuers* is amended by adding “Ontario,” before “Prince Edward Island”.

10. Item 10 of Form 45-106F3 *Offering Memorandum for Qualifying Issuers* is amended by adding “Ontario,” before “Prince Edward Island”.

11. Form 45-106F4 *Risk Acknowledgement* is amended

(a) by replacing “In Alberta, Manitoba, Northwest Territories, Nunavut, Prince Edward Island, Québec, Saskatchewan and Yukon to qualify as an eligible investor, you may be required to obtain that advice” with “In Manitoba, Northwest Territories, Nunavut, Prince Edward Island and Yukon to qualify as an eligible investor, you may be required to obtain that advice”, and

(b) by adding the following:

Schedule 1

Classification of Investors Under the Offering Memorandum Exemption

Instructions: This schedule must be completed together with the Risk Acknowledgement Form and Schedule 2 by individuals purchasing securities under the exemption (the offering memorandum exemption) in subsection 2.9(2.1) of National Instrument 45-106 *Prospectus Exemptions* (NI 45-106) in Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan.

How you qualify to buy securities under the offering memorandum exemption

Initial the statement under A, B, C or D containing the criteria that applies to you. (You may initial more than one statement.) If you initial a statement under B or C, you are not required to complete A.

A. You are an eligible investor because:		Your initials
ELIGIBLE INVESTOR	Your net income before taxes was more than \$75,000 in each of the 2 most recent calendar years, and you expect it to be more than \$75,000 in this calendar year. (You can find your net income before taxes on your personal income tax return.)	
	Your net income before taxes combined with your spouse's was more than \$125,000 in each of the 2 most recent calendar years, and you expect your combined net income to be more than \$125,000 in this calendar year. (You can find your net income before taxes on your personal income tax return.)	
	Either alone or with your spouse, you have net assets worth more than \$400,000. (Your net assets are your total assets, including real estate, minus your total debt including any mortgage on your property.)	

B. You are an eligible investor, as a person described in section 2.3 [<i>Accredited investor</i>] of NI 45-106 or, as applicable in Ontario, subsection 7.3(3) of the <i>Securities Act</i> (Ontario), because:		Your initials
ACCREDITED INVESTOR	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 this calendar year. (You can find your net income before taxes on your personal income tax return.)	
	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.	
	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.	
	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.)	

C. You are an eligible investor, as a person described in section 2.5 [*Family, friends and business associates*] of NI 45-106, because:

Your initials

FAMILY, FRIENDS AND BUSINESS ASSOCIATES	<p>You are:</p> <p>1) <i>[check all applicable boxes]</i></p> <p><input type="checkbox"/> a director of the issuer or an affiliate of the issuer</p> <p><input type="checkbox"/> an executive officer of the issuer or an affiliate of the issuer</p> <p><input type="checkbox"/> a control person of the issuer or an affiliate of the issuer</p> <p><input type="checkbox"/> a founder of the issuer</p> <p>OR</p> <p>2) <i>[check all applicable boxes]</i></p> <p><input type="checkbox"/> a person of which a majority of the voting securities are beneficially owned by, or a majority of the directors are, (i) individuals listed in (1) above and/or (ii) family members, close personal friends or close business associates of individuals listed in (1) above</p> <p><input type="checkbox"/> a trust or estate of which all of the beneficiaries or a majority of the trustees or executors are (i) individuals listed in (1) above and/or (ii) family members, close personal friends or close business associates of individuals listed in (1) above</p>	
	<p>You are a family member of _____</p> <p><i>[Instruction: Insert the name of the person who is your relative either directly or through his or her spouse], who holds the following position at the issuer or an affiliate of the issuer: _____.</i></p> <p>You are the _____ of that person or that person's spouse.</p> <p><i>[Instruction: To qualify for this investment, you must be (a) the spouse of the person listed above or (b) the parent, grandparent, brother, sister, child or grandchild of that person or that person's spouse.]</i></p>	
	<p>You are a close personal friend of _____</p> <p><i>[Instruction: Insert the name of your close personal friend], who holds the following position at the issuer or an affiliate of the issuer: _____.</i></p> <p>You have known that person for _____ years.</p>	

	You are a close business associate of _____ <i>[Instruction: Insert the name of your close business associate]</i> , who holds the following position at the issuer or an affiliate of the issuer: _____ You have known that person for _____ years.	
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D. You are not an eligible investor.		Your initials
NOT AN ELIGIBLE INVESTOR	You acknowledge that you are not an eligible investor.	

Schedule 2
Investment Limits for Investors Under the Offering Memorandum Exemption

Instructions: This schedule must be completed together with the Risk Acknowledgement Form and Schedule 1 by individuals purchasing securities under the exemption (the offering memorandum exemption) in subsection 2.9(2.1) of National Instrument 45-106 *Prospectus Exemptions* (NI 45-106) in Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan.

SECTION 1 TO BE COMPLETED BY THE PURCHASER

1. Investment limits you are subject to when purchasing securities under the offering memorandum exemption

You may be subject to annual investment limits that apply to all securities acquired under the offering memorandum exemption in a 12 month period, depending on the criteria under which you qualify as identified in Schedule 1. Initial the statement that applies to you.

A. You are an eligible investor.		Your initials
ELIGIBLE INVESTOR	As an eligible investor that is an individual, you cannot invest more than \$30,000 in all offering memorandum exemption investments made in the previous 12 months, unless you have received advice from a portfolio manager, investment dealer or exempt market dealer, as identified in section 2 of this schedule, that your investment is suitable.	
	Initial one of the following statements:	
	You confirm that, after taking into account your investment of \$_____ today in this issuer, you have not exceeded your investment limit of \$30,000 in all offering memorandum exemption investments made in the previous 12 months.	
	You confirm that you received advice from a portfolio manager, investment dealer or exempt market dealer, as identified in section 2 of this schedule that the following investment is suitable.	
	You confirm that, after taking into account your investment of \$_____ today in this issuer, you have not exceeded your investment limit in all offering memorandum exemption investments made in the previous 12 months of \$100,000.	

B. You are an eligible investor, as a person described in section 2.3 [<i>Accredited investor</i>] of NI 45-106 or, as applicable in Ontario, subsection 7.3(3) of the <i>Securities Act</i> (Ontario).		Your initials
ACCREDITED INVESTOR	You acknowledge that, by qualifying as an eligible investor as a person described in section 2.3 [<i>Accredited investor</i>], you are not subject to investment limits.	

C. You are an eligible investor, as a person described in section 2.5 [<i>Family, friends and business associates</i>] of NI 45-106.		Your initials
FAMILY, FRIENDS AND BUSINESS ASSOCIATES	You acknowledge that, by qualifying as an eligible investor as a person described in section 2.5 [<i>Family, friends and business associates</i>], you are not subject to investment limits.	

D. You are not an eligible investor.

Your
initials

NOT AN ELIGIBLE INVESTOR	<p>You acknowledge that you cannot invest more than \$10,000 in all offering memorandum exemption investments made in the previous 12 months.</p> <p>You confirm that, after taking into account your investment of \$ _____ today in this issuer, you have not exceeded your investment limit of \$10,000 in all offering memorandum exemption investments made in the previous 12 months.</p>	
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SECTION 2 TO BE COMPLETED BY THE REGISTRANT

2. Registrant information

[Instruction: this section must only be completed if an investor has received advice from a portfolio manager, investment dealer or exempt market dealer concerning his or her investment.]

First and last name of registrant (please print):

Registered as:

[Instruction: indicate whether registered as a dealing representative or advising representative]

Telephone:

Email:

Name of firm:

[Instruction: indicate whether registered as an exempt market dealer, investment dealer or portfolio manager.]

Date:

12. The Instrument is amended by adding the following form after Form 45-106F15:

**Form 45-106F16
Notice of Use of Proceeds**

[Insert issuer name]

For the financial year ended [Insert end date of most recently completed financial year]

Date: [Specify the date of the Notice. The date must be no earlier than the date of the auditor's report on the financial statements for the issuer's most recently completed financial year.]

[Provide the information specified in the following table.]

1 Opening Proceeds			
	(A)	Closing unused proceeds balance from the last Notice in Form 45-106F16 filed, if any	\$
	(B)	Proceeds raised in the most recently completed financial year	\$
	(C)	Total opening proceeds [Line (C) = Line (A) + Line (B)]	\$
2 Proceeds Used During the Most Recently Completed Financial Year			
		<i>[Provide in reasonable detail a breakdown of all proceeds used in the most recently completed financial year, including proceeds used to pay the following, as applicable: i. selling commissions and fees ii. other offering costs iii. amounts paid in respect of each use of available funds identified in the offering memorandum iv. each other principal use of proceeds, identified separately]</i>	\$
	(D)	Total used proceeds [Line (D) is the sum of the uses of proceeds itemized in this section 2 of the table, and must equal the aggregate gross proceeds used during the most recently completed financial year.]	\$
3 Closing Unused Proceeds			
	(E)	Closing unused proceeds [Line (E) = Line (C) – Line (D)]	\$

[If any of the proceeds required to be disclosed in this table were paid directly or indirectly to a related party (as defined in Instruction A.6 of Form 45-106F2 Offering Memorandum Form for Non-Qualifying Issuers) of the issuer, state in each case the name of the related party to whom the payment was made, their relationship to the issuer and the amount paid to the related party.]

**Instructions for Completing
Form 45-106F16
Notice of Use of Proceeds**

1. The amount for Line (A) is taken from Line (E) in the prior year's Notice of Use of Proceeds (Notice), if applicable. If a Notice was not required in the prior year, then the amount for Line (A) is \$nil.
2. The amount for Line (B) is the aggregate gross proceeds raised in all jurisdictions in Canada under section 2.9 [Offering memorandum] of National Instrument 45-106 (the OM exemption) during the most recently completed financial year. If an issuer raised funds in reliance on other

prospectus exemptions concurrently with the OM exemption during the year and it is impractical to separately track proceeds raised only under the OM exemption, the issuer can provide the disclosure outlined in the table for the aggregate gross proceeds raised under all prospectus exemptions during the most recently completed financial year.

3. If Line (C) is \$nil, then the issuer does not have an obligation to file, deliver or make reasonably available the Notice for that financial year.
4. In Section 2 of the table, the issuer must provide a breakdown in reasonable detail of the uses of the aggregate gross proceeds during the most recently completed financial year. Issuers should ensure that the disclosure is specific enough and provides sufficient detail for an investor to understand how the proceeds have been used.
5. Both direct and indirect payments to related parties must be disclosed. An example of an indirect payment could include repayment of a debt that was incurred for a prior payment to a related party.
6. Proceeds invested on a temporary basis would not generally be considered to have been used.

13. The Instrument is amended by adding the following form:

**Form 45-106F17
Notice of Specified Key Events**

This is the form required under subsection 2.9(17.20) of National Instrument 45-106 *Prospectus Exemptions* (NI 45-106) in New Brunswick, Nova Scotia and Ontario to make available notice of specified key events to holders of securities acquired under subsection 2.9(2.1) of NI 45-106.

1. Issuer Name and Address			
Provide the following information.			
Full legal name	<input style="width: 95%;" type="text"/>		
Street address	<input style="width: 95%;" type="text"/>	Province/State	<input style="width: 95%;" type="text"/>
Municipality	<input style="width: 95%;" type="text"/>	Postal code/Zip code	<input style="width: 95%;" type="text"/>
Website	<input style="width: 95%;" type="text"/>	Country	<input style="width: 95%;" type="text"/>
2. Specified Key Event			
Provide the following information.			
The event, as described in section 3, is: <i>[Select one or more type of event from the list below]</i>			
<input type="checkbox"/> a discontinuation of the issuer's business			
<input type="checkbox"/> a change in the issuer's industry			
<input type="checkbox"/> a change of control of the issuer			

Date on which the event occurred (yyyy/mm/dd):

3. Event Description

Provide a brief description of the event identified in section 2.

4. Contact Person

Provide the following information for a person at the issuer who can be contacted regarding the event described in section 3.

Name	<input type="text"/>
Email address	<input type="text"/>

Title	<input type="text"/>
Telephone number	<input type="text"/>

Date of notice (yyyy/mm/dd):

14. This Instrument comes into force in Ontario on January 13, 2016 and in Alberta, New Brunswick, Nova Scotia, Québec and Saskatchewan on April 30, 2016.

Blackline Showing Changes To Companion Policy 45-106 CP Prospectus Exemptions

This Annex reflects changes to Companion Policy 45-106CP *Prospectus Exemptions* that will take effect upon the coming into force of the Rule Amendments. Additions are represented with underlined text and deletions are represented with strikethrough text.

PART 1 – INTRODUCTION

1.8 Persons created to use exemptions (“syndication”)

Sections 2.3(5), 2.4(1), 2.9(3), ~~2.9(3.0.1)~~ and 2.10(2) of NI 45-106 specifically prohibit syndications. A distribution of securities to a person that had no pre-existing purpose and is created or used solely to purchase or hold securities under exemptions (a “syndicate”) may be considered a distribution of securities to the persons beneficially owning or controlling the syndicate.

For example, a newly formed company with 15 shareholders is set up with the intention of purchasing \$150 000 worth of securities under the minimum amount investment exemption. Each shareholder of the newly formed company contributes \$10 000. In this situation the shareholders of the newly formed company are indirectly investing \$10 000 when the exemption requires that they each invest \$150 000. Consequently, both the newly formed company and its shareholders may need to comply with the requirements of the minimum amount investment exemption, or find an alternative exemption to rely on.

Syndication related concerns should not ordinarily arise if the purchaser under the exemption is a corporation, syndicate, partnership or other form of entity that is pre-existing and has a bona fide purpose other than investing in the securities being sold. However, it is an inappropriate use of these exemptions to indirectly distribute securities when the exemption is not available to directly distribute securities to each person in the syndicate.

PART 3 – CAPITAL RAISING EXEMPTIONS

3.3 Advertising

NI 45-106 does not restrict the use of advertising to solicit or find purchasers. However, issuers and selling security holders should review other securities legislation and securities directions for guidelines, limitations and prohibitions on advertising intended to promote interest in an issuer or its securities. For example, any advertising or marketing communications must not contain a misrepresentation and should be consistent with the issuer’s public disclosure record.

3.3.1 Advertising and marketing materials under the offering memorandum exemption

In Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan, an offering memorandum prepared in accordance with the offering memorandum exemption in section 2.9(2.1) of NI 45-106 must incorporate by reference any marketing materials used in relation to a distribution under the offering memorandum exemption. Subsection 2.9(8) of NI 45-106 requires the issuer to sign a certificate that indicates that the offering memorandum does not contain a misrepresentation. As marketing materials are incorporated by reference into the offering memorandum, the issuer must also ensure that the information contained in marketing materials does not contain a misrepresentation.

In these jurisdictions, an issuer or registrant that uses marketing materials as part of an offering made in reliance on the offering memorandum exemption must review the marketing materials to confirm that they are consistent with the offering document and are fair, balanced and not misleading. In addition, these jurisdictions expect an issuer or registrant to determine whether any claims set out in marketing materials adequately refer to information to support these claims and representations. For example, if benchmarks are used for comparison purposes, the issuer or registrant should assess whether the benchmarks are relevant and comparable to the investment in question and confirm the marketing materials:

- (a) adequately explain differences between the benchmark and the investment,
- (b) make reference to the source of the benchmark and identify the date to which the information is current, and
- (c) where relevant, caution purchasers that historical performance is not necessarily indicative of future results.

Issuers that prepare offering memoranda in accordance with Form 45-106F2, *Offering Memorandum for Non-Qualifying Issuers*, are also required to comply with requirements relating to forward-looking information, which are described in Instructions A.12 and B.14 of Form 45-106F2. Issuers cannot disseminate material forward-looking information unless it is contained within the offering memorandum. Additionally, forward-looking information contained in an offering memorandum must comply with certain requirements in National Instrument 51-102 *Continuous Disclosure Obligations*. These requirements also extend to marketing materials that are used in connection with a distribution under the offering memorandum exemption.

In these jurisdictions, if an issuer or registrant intends to rely on marketing materials prepared by a third party, such as an analyst report that rates a security or compares a security with securities of other issuers, the issuer or registrant is expected to perform its own assessment of the marketing materials to confirm that they are fair, balanced and not misleading. For example, if the report has been paid for by the issuer, or if there are other relationships between the analyst and the issuer, it would be inappropriate to describe the report as being an “independent” report. The report should also prominently disclose the fees paid and relationships between the analyst and the issuer. An issuer or registrant should not rely on marketing materials prepared by a third party without independently reviewing the materials prior to use.

A registrant should be aware of other CSA guidance on the review and use of marketing materials and reliance on marketing materials prepared by third parties.

3.4 Restrictions on finder’s fees or commissions

The following restrictions apply with respect to certain exemptions under NI 45-106:

- (1) no commissions or finder’s fees may be paid to directors, officers, founders and control persons in connection with a distribution made under the private issuer exemption or the family, friends and business associates exemption, except in connection with a distribution of a security to an accredited investor under the private issuer exemption; and
- (2) in Northwest Territories, ~~and Nunavut and Saskatchewan~~, only a registered dealer may be paid a commission or finder’s fee in connection with a distribution of a security to a purchaser in one of those jurisdictions under the offering memorandum exemption.

3.8 Offering memorandum

- (1) Eligibility criteria – ~~Alberta, Manitoba, Northwest Territories, Nunavut, and Prince Edward Island, Québec and Saskatchewan~~

~~Alberta, Manitoba, Northwest Territories, Nunavut, Prince Edward Island, Québec, Saskatchewan, and Yukon~~ impose eligibility criteria on persons investing under the offering memorandum exemption. In these jurisdictions, the purchaser must be an eligible investor if the purchaser's acquisition cost is more than \$10 000.

In determining the acquisition cost to a purchaser who is not an eligible investor, include any future payments that the purchaser will be required to make. Proceeds that may be obtained on exercise of warrants or other rights, or on conversion of convertible securities, are not considered to be part of the acquisition cost unless the purchaser is legally obligated to exercise or convert the securities. The \$10 000 maximum acquisition cost is calculated per distribution of security.

Nevertheless, concurrent and consecutive, closely-timed offerings to the same purchaser will usually constitute one distribution of a security. Consequently, when calculating the acquisition cost, all of these offerings by or on behalf of the issuer to the same purchaser who is not an eligible investor would be included. It would be inappropriate for an issuer to try to circumvent the \$10 000 threshold by dividing a subscription in excess of \$10 000 by one purchaser into a number of smaller subscriptions of \$10 000 or less that are made directly or indirectly by the same purchaser.

A purchaser can qualify as an eligible investor under various categories of the definition, including if the purchaser has and has had in prior years either \$75 000 pre-tax net income or profit or has \$400 000 worth of net assets. In calculating a purchaser's net assets, subtract the purchaser's total liabilities from the purchaser's total assets. The value attributed to assets should reasonably reflect their estimated fair value. Income tax should be considered a liability if the obligation to pay it is outstanding at the time of the distribution of a security.

Another way a purchaser can qualify as an eligible investor is to obtain advice from an eligibility adviser. An eligibility adviser is a person registered as an investment dealer (or in an equivalent category of unrestricted dealer in the purchaser's jurisdiction) that is authorized to give advice with respect to the type of security being distributed. In ~~Saskatchewan and Manitoba~~, certain lawyers and public accountants may also act as eligibility advisers.

A registered investment dealer providing advice to a purchaser in these circumstances is expected to comply with the "know your client" and suitability requirements under applicable securities legislation and SRO rules and policies. Some dealers have obtained exemptions from the "know your client" and suitability requirements because they do not provide advice. An assessment of suitability by these dealers is not sufficient to qualify a purchaser as an eligible investor.

(1.1) Eligibility criteria and investment limits – Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan

(a) Eligibility criteria

Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan impose eligibility criteria on persons investing under the offering memorandum exemption.

The qualification criteria for becoming an eligible investor are substantially the same as in the jurisdictions identified in subsection (1), above. Note, however, that in Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan, it is not possible to qualify as an eligible investor by receiving advice from an “eligibility advisor”.

A purchaser can qualify as an eligible investor under various categories of the definition, including if the purchaser has and has had in prior years either \$75 000 pre-tax net income or profit or has \$400 000 worth of net assets. In calculating a purchaser’s net assets, subtract the purchaser’s total liabilities from the purchaser’s total assets. The value attributed to assets should reasonably reflect their estimated fair value. Income tax should be considered a liability if the obligation to pay it is outstanding at the time of the distribution of a security.

(b) Investment limits for individual eligible and non-eligible investors

Both eligible investors and purchasers that do not qualify as eligible investors (non-eligible investors) who are individuals are subject to investment limits under the offering memorandum exemption. In these jurisdictions, non-eligible investors who are individuals are subject to an investment limit of \$10 000 and eligible investors who are individuals are subject to an investment limit of \$30 000. In both cases, the investment limits apply to all securities acquired by the purchaser under the offering memorandum exemption in the preceding 12 months.

However, an individual purchaser that qualifies as an eligible investor because the investor is an accredited investor or is a person described in the family, friends and business associates exemption, is not subject to an investment limit under the offering memorandum exemption.

The fact that investment limits have been established for eligible and non-eligible investors who are individuals does not mean that these amounts are suitable investments in all cases. If a registrant is involved in a transaction, the registrant must still conduct a suitability assessment to determine that the amount of the investment and the investment itself is suitable for the purchaser. This may result in a lower investment amount for a purchaser.

The \$30 000 investment limit may be exceeded by an eligible investor who receives advice from a portfolio manager, investment dealer or exempt market dealer that exceeding the investment limit of \$30 000 and the investment itself is suitable for the eligible investor. In this case, the investment limit for all securities acquired by the purchaser under the offering memorandum exemption in the preceding 12 months is \$100 000.

In determining the acquisition cost to a purchaser subject to investment limits, include any future payments that the purchaser will be required to make. Proceeds that may be obtained on exercise of warrants or other rights, or on conversion of convertible securities, are not considered to be part of the acquisition cost unless the purchaser is legally obligated to exercise or convert the securities.

“Individual” is defined in the securities legislation of certain jurisdictions to mean a natural person. The definition specifically excludes partnerships, unincorporated associations, unincorporated syndicates, unincorporated organizations and trusts. It also specifically excludes a natural person acting in the capacity of trustee, executor, administrator or personal or other legal representative.

(c) Circumstances when investment limits can be exceeded

The fact that higher investment limits apply to individual eligible investors than individual non-eligible investors does not mean these higher amounts will be suitable in all cases for eligible investors. It is a condition of the offering memorandum exemption that, in order to exceed the \$30 000 investment limit, a

registrant must determine that an investment above the \$30,000 investment limit is suitable for the purchaser. Unless a registrant determines that exceeding the \$30 000 investment limit is suitable for the purchaser, the issuer cannot accept a subscription in excess of \$30 000 from the purchaser. In this case, the registrant could also not proceed to take instructions from the purchaser to exceed the \$30 000 investment limit.

(d) Investment limits apply over a 12-month period

The investment limits for both individual eligible and non-eligible investors apply to the aggregate of all investments made by a purchaser in distributions by different issuers (or multiple offerings by the same issuer) under the offering memorandum exemption during the preceding 12 months, which may or may not be a calendar year. For example, if a purchaser wishes to acquire securities of an issuer under the offering memorandum exemption on January 15, the issuer must include in the calculation all investments made by the purchaser under the offering memorandum exemption beginning on January 16 of the prior year, up to and including the date of the proposed investment.

On each distribution, the issuer must confirm that the amount invested by a purchaser who is an individual does not exceed the applicable limit and should take reasonable steps to do so. This will require the issuer to first understand whether or not the purchaser is an eligible investor. As described above in section 1.9, the issuer should gather information that confirms the purchaser meets the criteria set out in the exemption. As part of this exercise, the issuer should also discuss with the purchaser the investment limits that apply to the purchaser.

In making a determination as to whether a purchaser is within the applicable investment limit, an issuer should obtain appropriate representations from the purchaser that confirm the purchaser has not exceeded the applicable investment limit over the relevant period. Note that we would have concerns if an issuer simply accepted standard representations from a purchaser without taking steps to verify the representations made by the purchaser. For instance, inquiries could be made with respect to other investments made under the offering memorandum exemption during the 12-month period preceding the current investment.

Notwithstanding the representations made by a purchaser in the schedules to the risk acknowledgement form, we expect an issuer to be able to explain what steps were taken to verify the representations made by the purchaser. We recognize that in many circumstances, a registrant may act as agent on behalf of an issuer for this process. In both cases, the guidance in section 1.9 above may also be instructive for this purpose.

(1.2) Role of registrant in providing suitability advice and conflicts of interest

A registrant involved in a distribution of securities pursuant to a prospectus exemption must not only establish that the prospectus exemption is available, it must also comply with its registrant obligations, including know-your-client, know-your-product and suitability. In assessing the level of investment that may be suitable for a purchaser under the offering memorandum exemption, registrants should take into consideration guidance published by the CSA on best practices for conducting a suitability assessment, which includes considering the level of concentration of investments in the client's portfolio.

NI 31-103 and the related companion policy provide a framework that requires registrants to identify and respond to material conflicts of interest that may affect their ability to meet their regulatory obligations, including suitability.

Where a registrant is providing suitability advice to a purchaser in respect of an offering by a related or connected issuer, we expect the registrant that is related or connected to the issuer to be aware of the

material conflicts that arise in these circumstances, and to take appropriate steps to respond to the conflicts to ensure it is fulfilling its regulatory obligations. We expect a registrant to be able to demonstrate that it is addressing the conflicts by avoiding or managing and disclosing the conflicts of interest appropriately to ensure compliance with its obligation to deal fairly, honestly and in good faith with clients.

We expect all registrants to be aware of other CSA guidance on registrant obligations with respect to know-your-client, know-your-product and suitability, and identify and respond to conflicts of interest.

(5.1) Filing of marketing materials

In Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan, marketing materials used in the context of an offering made in reliance on the offering memorandum exemption must also be filed with the securities regulatory authority. Once the marketing materials have been filed, there is no need to file them again after subsequent closings, unless there is a change to the marketing materials.

(7) Types of securities that can be distributed under the exemption – Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan

In Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan, issuers are prohibited from distributing certain types of securities under the offering memorandum exemption, including specified derivatives and structured finance products. Note that this is in addition to the prohibition in subsection 2.9(3.1) against distributions of short-term securitized products under the offering memorandum exemption.

These types of securities have been excluded because the purpose of the exemption is for raising capital and it is not intended to be used to distribute complex or novel securities to purchasers. We would have concerns if issuers relied on the offering memorandum exemption to distribute novel or complex securities, even if they do not fall within the prohibited categories.

(8) Ongoing disclosure – Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan

In Alberta, New Brunswick, Ontario, Québec and Saskatchewan, non-reporting issuers that issue securities under the offering memorandum exemption are required, in respect of each financial year, to file or deliver (as applicable) to the securities regulatory authority and make available to purchasers, audited annual financial statements within 120 days from the issuer's financial year end. In Nova Scotia, issuers are not required to file or deliver these financial statements to the securities regulatory authority, but are only required to make them available to purchasers that acquired securities under the offering memorandum exemption.

The following table illustrates when the first audited annual financial statements of an issuer would be due, as required by subsections (17.4), (17.5) and (17.6), following an initial distribution of securities under the offering memorandum exemption. The examples in the table take into account the extension to the filing deadline provided by subsection (17.7).

The following examples assume the issuer's financial year end is December 31.

<u>Date of formation</u>	<u>Date of first distribution under subsection 2.9(2.1)</u>	<u>Deadline for first annual financial statements under subsections 2.9(17.4), (17.5) and (17.6)</u>	<u>Financial periods included in annual financial statements</u>	<u>Notes</u>
<u>January 1, 20X3</u>	<u>April 15, 20X7</u>	<u>June 14, 20X7</u>	<u>December 31, 20X6 and December 31, 20X5</u>	<u>The issuer completes its first distribution under the offering memorandum exemption in subsection 2.9(2.1) before the filing deadline for annual financial statements, which would be April 30, 20X7. Since the distribution was completed so close to the filing deadline, the issuer can take advantage of the extension in subsection 2.9(17.7) and file the statements on June 14, 20X7.</u>
<u>January 1, 20X7</u>	<u>April 15, 20X7</u>	<u>April 30, 20X8</u>	<u>December 31, 20X7</u>	<u>The issuer completes its first distribution under the offering memorandum exemption in subsection 2.9(2.1) before the filing deadline for annual financial statements, which would be April 30, 20X7. However, since the issuer has not completed a financial year, the issuer would not be required to file annual financial statements until April 30, 20X8 for the financial year ended December 31, 20X7.</u>

<u>Date of formation</u>	<u>Date of first distribution under subsection 2.9(2.1)</u>	<u>Deadline for first annual financial statements under subsections 2.9(17.4), (17.5) and (17.6)</u>	<u>Financial periods included in annual financial statements</u>	<u>Notes</u>
<u>January 1, 20X3</u>	<u>June 15, 20X7</u>	<u>April 30, 20X8</u>	<u>December 31, 20X7 and December 31, 20X6</u>	<u>The issuer completes its first distribution under the offering memorandum exemption in subsection 2.9(2.1) after the filing deadline for annual financial statements in 20X7. The offering memorandum would already include audited annual financial statements for the year ended December 31, 20X6. The next audited annual financial statements of the issuer would be required to be filed by April 30, 20X8 for the year ended December 31, 20X7.</u>

The requirement to file or deliver (as applicable) to the securities regulatory authority and make available to purchasers annual financial statements continues to apply each year after the initial distribution under subsection 2.9(2.1) until the earlier of (1) the date the issuer becomes a reporting issuer and (2) the date the issuer ceases to carry on business.

(9) Ongoing disclosure – notice of specified key events – New Brunswick, Nova Scotia and Ontario

In addition to audited annual financial statements and a notice of how the proceeds raised under the offering memorandum exemption have been used, non-reporting issuers that issue securities in reliance on the offering memorandum exemption in New Brunswick, Nova Scotia and Ontario must also make available to investors a notice of certain key events, within 10 days of the occurrence of the event. These events are considered to be significant changes in the business of the issuer of which purchasers should be notified. This requirement is in addition to any similar requirement under corporate law and also applies to non-reporting issuers with non-corporate structures, such as trusts or partnerships.

In making a determination as to whether an issuer's industry has changed, issuers may consider whether they would identify a different industry category on Form 45-106F1 *Report of Exempt Distribution* than the category previously identified.

A non-reporting issuer must continue to provide notice of the specified events, if applicable, until the earlier of (i) the date the issuer becomes a reporting issuer or (ii) the date the issuer ceases to carry on business.

(10) Meaning of "make reasonably available"

In Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan, disclosure documents will be considered to have been made reasonably available to each holder of a security acquired under the offering memorandum exemption if the documents are mailed to security holders, or if security holders receive notice that the disclosure documents can be viewed on a public website of the issuer or a website accessible by all holders of securities acquired under subsection 2.9(2.1) of the issuer (such as a password protected website). Issuers should take reasonable steps to enable purchasers to receive or access these documents promptly.

PART 5 – FORMS

5.2 Forms required under the offering memorandum exemption

NI 45-106 designates two forms of offering memorandum. The first, Form 45-106F2, is for non-qualifying issuers and the second, Form 45-106F3, can only be used by qualifying issuers (as defined in NI 45-106).

The required form of risk acknowledgment under sections 2.9(1), and 2.9(2) and 2.9(2.1) of NI 45-106 is Form 45-106F4.

In Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan, Form 45-106F4, required under subsection 2.9(2.1), includes Schedule 1 *Classification of Investors Under the Offering Memorandum Exemption*, with respect to eligibility of individual investors, and Schedule 2 *Investment Limits for Investors Under the Offering Memorandum Exemption*, with respect to investment limits of individual investors.

