

Notice No. 45-716

**NOTICE AND REQUEST FOR COMMENT
NOVA SCOTIA SECURITIES COMMISSION
NATIONAL INSTRUMENT 45-106 PROSPECTUS EXEMPTIONS
OFFERING MEMORANDUM**

May 7, 2015

Introduction

The Nova Scotia Securities Commission (the “Commission”) is proposing amendments to National Instrument 45-106 *Prospectus Exemptions* and is seeking comments on the proposed amendments during a 60 day comment period. The amendments will harmonize the offering memorandum exemption requirements with several other jurisdictions and therefore reduce the compliance burden for issuers while maintaining investor protection.

Background

In March of 2014 the securities regulatory authorities of Alberta, Saskatchewan, Ontario, New Brunswick and Quebec published for comment proposed amendments to National Instrument 45-106 *Prospectus Exemptions* regarding section 2.9 Offering Memorandum.

Staff of the Nova Scotia Securities Commission have determined it would be beneficial for Nova Scotia issuers and investors if the Commission participated in the project and adopted harmonized rules regarding the offering memorandum exemption.

Harmonized offering memorandum rules will benefit Nova Scotia issuers by increasing the number of jurisdictions where an offering can be made to raise capital without materially increasing their compliance burden and costs.

Harmonized offering memorandum rules will benefit Nova Scotia investors by enabling them to participate in a greater number of offerings from other jurisdictions. If Nova Scotia did not harmonize with the other jurisdictions many issuers may not extend their offering to Nova Scotia investors as it would also increase the compliance burden and costs to comply with the Nova Scotia regime.

While these changes may impose new conditions on the use of the offering memorandum exemption in Nova Scotia the resulting harmonization will decrease the complexity and likely increase its use in the Canadian exempt market.

Substance and Purpose

While the amendments have not been formally drafted, the Commission is seeking comments on the proposed conceptual changes as indicated in Table 1, which is attached to this notice. The amendments when finalized will harmonize the Nova Scotia offering memorandum requirements with the other participating jurisdictions. This will simplify the offering process for issuers and increase investment opportunities for Nova Scotia residents.

Comments

We welcome your comments on the proposed amendments. Please send your comments in writing by **Monday, July 6, 2015**, to:

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Table 1

<u>Current requirement</u>	<u>Proposed requirement</u>
There are no limits on how much an investor may invest in any offering under the offering memorandum exemption.	<p>There would be annual limits on how much investors could invest depending on the definition of eligible investor in NI 45-106 (please see Appendix A).</p> <p>Investors who do not qualify as eligible investors as defined in NI 41-106 would be limited to investing \$10,000 or less.</p> <p>Eligible investor would be able to invest up to \$30,000.</p> <p>Eligible investors with advice from exempt market dealers, IIROC dealers or portfolio managers could invest up to \$100,000.</p>
The qualification of an investor under the definition of eligible investor has no impact on investing under the offering memorandum exemption.	The definition of eligible investor would become integral and would be amended to remove category (h) <i>a person that has obtained advice regarding the suitability of the investment and, if the person is resident in a jurisdiction of Canada, that advice has been obtained from an eligibility adviser</i> from the definition of “eligible investor” under NI 45-106.
Issuers are not required to provide continuous disclosure to securityholders.	In NS issuers would have to make available to securityholders audited annual financial statements.
Issuers are not required to provide continuous disclosure to securityholders.	Issuers which are not reporting issuers would have to provide notice to securityholders of fundamental events such as: reorganizations, mergers, bids and changes in business.
No notice is provided to investors detailing the use of proceeds.	Issuers would have to provide a notice on the use of proceeds with the annual financial statements.
Marketing materials are not incorporated into the offering memorandum or filed with the regulator.	Marketing materials would be incorporated by reference into the offering memorandum and filed with the regulator and made public.
All investment funds are allowed.	Only mutual funds that are reporting issuers and non-redeemable investment funds will be allowed.

Appendix A

The current definition of eligible investor in NI 45-106 section 1.1:

“eligible investor” means

- (a) a person whose
 - (i) net assets, alone or with a spouse, in the case of an individual, exceed \$400 000,
 - (ii) net income before taxes exceeded \$75 000 in each of the 2 most recent calendar years and who reasonably expects to exceed that income level in the current calendar year, or
 - (iii) net income before taxes, alone or with a spouse, in the case of an individual, exceeded \$125 000 in each of the 2 most recent calendar years and who reasonably expects to exceed that income level in the current calendar year,
- (b) a person of which a majority of the voting securities are beneficially owned by eligible investors or a majority of the directors are eligible investors,
- (c) a general partnership of which all of the partners are eligible investors,
- (d) a limited partnership of which the majority of the general partners are eligible investors,
- (e) a trust or estate in which all of the beneficiaries or a majority of the trustees or executors are eligible investors,
- (f) an accredited investor,
- (g) a person described in section 2.5 [Family, friends and business associates], or
- (h) a person that has obtained advice regarding the suitability of the investment and, if the person is resident in a jurisdiction of Canada, that advice has been obtained from an eligibility adviser;