

British Columbia Securities Commission

Proposed BC Instrument 45-5**

***Exemptions from certain financial statement requirements of
Form 45-106F2 Offering Memorandum for Non-Qualifying Issuers***

Definitions

1. Terms defined in the *Securities Act*, National Instrument 14-101 *Definitions* or Multilateral Instrument 45-106 *Prospectus and Registration Exemptions* (NI 45-106) have the same meaning in this Instrument.
2. In this Instrument:

“corresponding OM order” means an order issued by another securities regulatory authority the terms of which are substantially similar to this Instrument;

“excluded security” means any one or more of the following:

- (a) a security issued by any of the following,
 - (i) an investment fund;
 - (ii) a mortgage investment entity;
 - (iii) an issuer to which either or both of the following apply:
 - A. is engaging in or proposes to engage in the business of acquiring, developing or marketing real property; and
 - B. proposes to use any of the proceeds of the relevant distribution to acquire securities of an issuer that is engaging in or proposes to engage in the business of acquiring, developing or marketing real property;
 - (iv) an issuer that is a reporting issuer in any jurisdiction of Canada or is subject, in a foreign jurisdiction, to reporting obligations similar to those that apply to a reporting issuer in a jurisdiction of Canada;
- (b) an asset-backed security, as that term is defined in National Instrument 51-102 *Continuous Disclosure Obligations*;
- (c) a derivative, other than an option, warrant or other security that is exercisable for or convertible into an equity security of the same issuer;

- (d) a security linked to a derivative or to another security, other than an equity security, of the same issuer;

“Form 45-106F2” means Form 45-106F2 *Offering Memorandum for Non-Qualifying Issuers*;

“issuer group” means an issuer (the first issuer) together with each other issuer to which either of the following apply:

- (a) it is an affiliate or associate of the first issuer;
- (b) it has an executive officer or founder who is also an executive officer or founder of the first issuer;

“mortgage investment entity” means a person

- (a) that invests substantially all of its assets in debts owing to it that are secured by one or more mortgages, hypothecs, or other instruments secured on real property; and
- (b) whose primary purpose or business activity is originating and administering mortgages, hypothecs or other instruments secured on real property, with the intent of holding the same for the entire term and using the revenues generated from them to provide a return for its investors;

“offering memorandum exemption” means the exemption from the prospectus requirement provided by section 2.9 of National Instrument 45-106 *Prospectus and Registration Exemptions*;

Background

3. Subsection 6.4(1) of National Instrument 45-106 *Prospectus and Registration Exemptions* prescribes Form 45-106F2 as the required form of offering memorandum under the offering memorandum exemption.
4. The Commission is satisfied, having considered the interests of investors and the financing needs of early stage businesses and other small and medium-sized enterprises, that, subject to the conditions of this Instrument, it is appropriate to provide exemptions from then requirements of Form 45-106F2 for:
 - (a) an audit on financial statements, operating statements and financial information; and
 - (b) the preparation of financial statements in accordance with Canadian GAAP applicable to publicly accountable enterprises.

Order under section 187

5. The Commission, considering that to do so would not be prejudicial to the public interest, orders under section 187(c) of the Act that the provisions of Form 45-106F2 described below do not apply to the persons described below.

Exemption from the audit requirement in Form 45-106F2

6. An issuer conducting a distribution of securities, other than excluded securities, under the offering memorandum exemption, is exempt from the following requirements in Form 45-106F2 if all of the conditions in section 7 are satisfied:

Requirements for an audit

- (a) the requirement, in each of the following Instructions, as applicable, for an audit of financial statements or an operating statement, or for financial information to be audited or derived from audited financial statements, if the financial statements or operating statement have not been audited; or the financial information has not been audited or derived from audited financial statements:
 - (i) Instruction B.9;
 - (ii) Instruction C.5;
 - (iii) Instruction D.3(b); and
 - (iv) Instruction D.4(d)(i);

Requirements to update with an audit

- (b) Instruction B.12 if, in the case of a distribution ongoing at the relevant time:
 - (i) the issuer's financial statements for its most recently completed financial year have not been audited; and
 - (ii) the issuer updates the offering memorandum to include financial statements for its most recently completed financial year, as soon as the issuer has approved the financial statements but in any event no later than the 120th day following its financial year-end;
- (c) Instruction C.6 if, in the case of a distribution ongoing at the relevant time:

- (i) the financial statements for a business referred to in Instruction C.1 for the business' most recently completed financial year that ended before the acquisition date, have not been audited; and
- (ii) the issuer updates the offering memorandum to include financial statements for that business' most recently completed financial year that ended before the acquisition date, when they are available but in any event no later than the date 120 days following the year-end;

Requirement to disclose an audit and no reservation of opinion

- (d) Instructions D.3(c)(i) and D.3(c)(ii) if the issuer, in the offering memorandum:
 - (i) discloses that the financial information presented has not been audited and is not derived from audited financial statements; and
 - (ii) identifies the financial statements from which the financial information has been derived;

Requirements to use GAAP for publicly accountable enterprises

- (e) the requirement in Instruction B.1 to prepare financial statements, an operating statement and financial information included in an offering memorandum in accordance with Canadian GAAP applicable to publicly accountable enterprises; if
 - (i) each financial statement, each operating statement and any financial information presented in the offering memorandum that has not been prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises is prepared in accordance with Canadian GAAP applicable to private enterprises; and
 - (ii) the issuer complies with section 3.11 of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*, to the extent applicable, as if references in that section to "acquisition statements" instead referred to the issuer's financial statements.
7. A distribution made by an issuer under the offering memorandum exemption relying on any exemption in section 6 of this Instrument (the particular distribution) must comply with all of the following conditions:
- (a) the aggregate maximum amount raised by the issuer group, in all distributions in all jurisdictions in reliance on this Instrument or a corresponding OM order, does not exceed \$500,000;

- (b) the aggregate acquisition cost to a purchaser, of all securities of the issuer group distributed in the particular distribution or in any other distribution made in reliance on this Instrument or a corresponding OM order during the 12 months preceding the particular distribution, does not exceed \$2,000;
- (c) the issuer states in bold font on the face page of each offering memorandum used in a distribution that relies on this Instrument or a corresponding OM order:

“This is a risky investment. The financial statements and financial information in this offering memorandum are not audited. They have been prepared using Canadian GAAP for private enterprises and are not comparable to financial statements prepared using Canadian GAAP for publicly accountable enterprises. [Instruction: Delete the last sentence if statements prepared using Canadian GAAP for publicly accountable enterprises.]

Particular conditions apply to this offering. When relying on those particular conditions, the issuer together with issuers related to it cannot raise more than \$500,000. You may choose to invest less but the issuer, together with the issuers related to it, must not sell you more than \$2,000 worth of securities in a 12 month period.”

- (d) the issuer states that it is relying on “2.9 OM BOR” under the column “Exemption relied on” in the tables in item 8 and Schedule II of each Form 45-106F6 *British Columbia Report of Exempt Distribution* filed in respect of a distribution that has relied on this Instrument or a corresponding OM order.

8. This order expires on 20 December 2014.

Date blanket order issued

(This part is for administrative purposes only and is not part of the Order)

Authority under which Order is made:

Act and section: *Securities Act*, section 187