

## ANNEX B

### Proposed Changes to Companion Policy 45-106CP *Prospectus Exemptions*

1. *Companion Policy 45-106CP Prospectus Exemptions is changed by this Document.*
2. *The following sections are added after section 2.9:*

#### **2.10 Real estate activities**

We consider the following non-exhaustive list to be examples of instances in which an issuer is engaged in “real estate activities” as defined in section 1.1 of NI 45-106:

- An issuer that is developing or redeveloping real property for sale as commercial or industrial space, residential building lots or homes, or condominiums;
- An issuer that is developing or redeveloping real property for lease;
- An issuer that owns real property for lease;
- An issuer that buys, holds or sells real property, with a view to making a gain or income;
- An issuer of an interest in real property that is a security.

If an issuer (the first issuer) is engaged in real estate activities through one or more of its subsidiaries, we consider the first issuer to be engaged in real estate activities.

#### **2.11 Collective investment vehicle**

We view investment funds, in the jurisdictions in which they are permitted to use the offering memorandum exemption, as being included in the definition of “collective investment vehicle”. We are also of the view that the definition applies to mortgage investment entities, issuers that act as lender for a portfolio of non-mortgage loans, and in certain circumstances, issuers that invest in receivables.

If an issuer (the first issuer) satisfies the definition of “collective investment vehicle” through the actions of one or more its subsidiaries, we consider the first issuer to be a collective investment vehicle..

3. ***Subsection 3.8(3) is replaced with the following:***

- (3) Standard of disclosure for an offering memorandum, amending an offering memorandum and related matters
- (a) Standard of disclosure for an offering memorandum

There are two standards that make up the standard of disclosure for an offering memorandum. First, under subsection 2.9(13.1) of the Instrument, an offering memorandum must not contain a misrepresentation on the date its certificate is signed. Second, under subsection 2.9(13.3) of the Instrument, an offering memorandum delivered under the section must provide a reasonable purchaser with sufficient information to make an informed investment decision.

- (b) Amending an offering memorandum

The requirements of Instruction B.12.1 of Form 45-106F2 include that if a distribution is ongoing, an issuer must, after a certain period, amend its offering memorandum to include financial statements for its most recently completed financial year, or an interim financial report for its most recently completed 6 month interim period, as the case may be.

There are a number of requirements in Form 45-106F2 that refer to a completed financial year or years, or a completed interim period. As a result, each time an issuer includes in its offering memorandum financial statements for a financial year or an interim financial report for an interim period, it is required to ensure that any disclosure that is in response to a requirement that references a financial year or interim period is amended if necessary.

It is not necessary for an offering memorandum to contain annual financial statements or an interim financial report for more financial years or interim periods than are required by B. of the instructions to Form 45-106F2. Accordingly, an issuer amending its offering memorandum to include more recent annual financial statements or a more recent interim financial report may exclude, in its amended offering memorandum, any annual financial statements or interim financial report for a financial year or interim period that is no longer required.

An issuer is also required to amend its offering memorandum if a material change occurs after the certificate is signed, and before the issuer accepts an agreement to purchase the security from the purchaser. See subsection 2.9(13.2) of the Instrument. Material change is defined in provincial and territorial securities legislation.

In addition, if a distribution is ongoing and an issuer becomes subject to instruction C.1 of Form 45-106F2 with respect to the acquisition or proposed acquisition of a business, and the financial statements required by that instruction are not contained in the offering memorandum, the issuer must amend its offering memorandum to include them.

We also note that an issuer may voluntarily amend its offering memorandum.

(c) New certificate

Each time an issuer amends its offering memorandum, it is required under subsection 2.9(14.1) of the Instrument to replace the certificate in the offering memorandum with a new certificate. We also note that Form 45-106F2 provides that the date of the offering memorandum is the date of the certificate.

There are certain requirements in Form 45-106F2 that refer to the date of the offering memorandum. As a result, each time an issuer includes a new certificate in its offering memorandum, it is required to ensure that any disclosure in response to a requirement that references the date of the offering memorandum is amended if necessary..

**4. Section 3.8 is changed by adding the following after subsection 3.8(3):**

(3.1) Certificate of promoter

“Promoter” is defined differently in provincial and territorial securities legislation across CSA jurisdictions. It is generally defined as meaning a person who has taken the initiative in founding, organizing or substantially reorganizing the business of the issuer or who has received consideration over a prescribed amount for services or property or both in connection with founding, organizing or substantially reorganizing the issuer. “Promoter” has not been defined in the *Securities Act* (Québec) and a broad interpretation is taken in Québec in determining who would be considered a promoter.

Under securities legislation, persons who receive consideration solely as underwriting commissions or in consideration of property and who do not otherwise take part in the founding, organizing or substantially reorganizing the issuer are not promoters. Simply selling securities, or in some way facilitating sales in securities, does not make a person a promoter under the offering memorandum exemption..

**5. Subsection 3.8(13) is changed<sup>1</sup>**

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<sup>1</sup> Instructions 5, 6 and 7 take into account the changes to this policy published in Annex C of the August 6 CSA Notice.

*(a) by deleting “for syndicated mortgages”, and*

*(b) by replacing “the issuer of a syndicated mortgage” with “an issuer”.*

6. *Subsection 3.8(14) is changed by adding “of property subject to a syndicated mortgage” after “Appraisals”.*

7. *Section 3.8 is changed by adding the following after subsection 3.8(14):*

(15) Collective investment vehicles - disclosure

An issuer that is a collective investment vehicle should consider the complexity of its offering and determine whether appropriate and sufficient information can be provided under its offering memorandum, as these distributions can be made to less sophisticated investors. Disclosure should be clear and described in plain language, avoiding technical terms as much as possible. If the disclosure will be complex or contains technical terms that are difficult to easily describe, the issuer should consider whether a distribution under the offering memorandum exemption is appropriate..

8. *Section 5.3 is deleted.*

9. These changes become effective on ●.