



IN THE MATTER OF THE SECURITIES ACT S.N.B. C. S-5.5 (the Act)

AND

**IN THE MATTER OF
EXEMPTIONS FROM CERTAIN FINANCIAL STATEMENT REQUIREMENTS OF
FORM 45-106F2 OFFERING MEMORANDUM FOR NON-QUALIFYING ISSUERS**

Blanket Order 45-504

Section 208

WHEREAS:

1. Terms defined in any of the *Act*, National Instrument 14-101 *Definitions*, or National Instrument 45-106 *Prospectus and Registration Exemptions* have the same meaning in this Blanket Order.

2. In this Blanket Order:

“Commission” means the New Brunswick Securities Commission;

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

“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. it is engaging in or proposes to engage in the business of acquiring, developing or marketing real property,

B. it 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 or equivalent 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; or
- (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*.

3. Under sections 2.9 and 6.4 of National Instrument 45-106 *Prospectus and Registration Exemptions*, it is a condition of reliance on the Offering Memorandum Exemption that an issuer, other than a qualifying issuer, deliver to a purchaser an offering memorandum in Form 45-106F2.
4. It is appropriate, having regard to the interests of investors and the financing needs of early-stage businesses and other small and medium-sized enterprises, subject to the conditions of this Blanket Order, to provide exemptions from requirements of Form 45-106F2 regarding:

- (a) audits of financial statements, operating statements and financial information, and
 - (b) the preparation of financial statements in accordance with Canadian GAAP applicable to publicly accountable enterprises.
5. The Commission considers it would not be prejudicial to the public interest to make the following order.

IT IS ORDERED pursuant to section 208 of the *Act* that:

- A. an issuer conducting a distribution of securities, other than Excluded Securities, in reliance on the Offering Memorandum Exemption, is exempt from the following requirements of Form 45-106F2, if all of the conditions specified in paragraph B below are satisfied:

Requirements for an audit

- I. 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:
 - (a) Instruction B.9,
 - (b) Instruction C.5,
 - (c) Instruction D.3(b), and
 - (d) Instruction D.4(d)(i);

Requirements to update with an audit

- II. Instruction B.12 if, in the case of a distribution ongoing at the relevant time:
 - (a) the issuer's financial statements for its most recently completed financial year have not been audited, and
 - (b) 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;
- III. Instruction C.6 if, in the case of a distribution ongoing at the relevant time:

- (a) 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
- (b) 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

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

Requirements to use GAAP for publicly accountable enterprises

- V. 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
 - (a) 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
 - (b) 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.
- B. A distribution made in reliance on the Offering Memorandum Exemption and any element of paragraph A above (the Particular Distribution) must satisfy all of the following conditions:
 - I. the aggregate maximum amount raised by the Issuer Group, in all distributions made in all jurisdictions in reliance on this Blanket Order or a Corresponding OM Order, does not exceed \$500,000;

- II. 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 Blanket Order or a Corresponding OM Order, during the 12 months preceding the Particular Distribution, does not exceed \$2,000;
- III. the issuer states in bold font on the face page of each offering memorandum used in a distribution that relies on this Blanket Order 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 are 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 when relying on those particular conditions 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."

- IV. the issuer states in bold font on the first page of each Form 45-106F1 *Report of Exempt Distribution* filed in respect of a distribution that has relied on this Blanket Order or a Corresponding OM Order:

"This distribution was made under exemptions from offering memorandum form requirements provided under blanket orders in one or more jurisdictions."

C. This Blanket order ceases to have effect after 20 December 2014.

DATED at Saint John, New Brunswick this 20th day of December 2012.

David G. Barry, Q.C.
Chair

Kenneth B. Savage
Member

