CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA Notice of Amendments to National Instrument 45-106 *Prospectus Exemptions* and Changes to Companion Policy 45-106CP *Prospectus Exemptions* Relating to the Offering Memorandum Prospectus Exemption

December 8, 2022

Introduction

The Canadian Securities Administrators (the **CSA** or **we**) are making amendments (the **Amendments**) to National Instrument 45-106 *Prospectus Exemptions* (**NI 45-106**).

The Amendments are set out in Annex B of this notice. Related changes (the **Changes**) to Companion Policy 45-106CP *Prospectus Exemptions* (**45-106CP**) are set out in Annex C.

Provided all necessary ministerial approvals are obtained, the Amendments will come into force on March 8, 2023.

Substance and Purpose

The Amendments set out new disclosure requirements for issuers that are engaged in "real estate activities" (**Real Estate Issuers**) and issuers that are "collective investment vehicles" (**CIV**s), when those issuers are preparing an offering memorandum (**OM**). Both definitions are new in NI 45-106. Many issuers using the OM Exemption (as defined below) are Real Estate Issuers or CIVs. The new requirements are intended to set out a clear disclosure framework for these issuers, giving them greater certainty as to what they must disclose, and giving better information to investors.

In addition, the Amendments include a number of general amendments (the **General Amendments**), which are meant to clarify or streamline parts of NI 45-106 or improve disclosure for investors.

Where the Amendments are to a form for an OM, they are to Form 45-106F2 *Offering Memorandum for Non-Qualifying Issuers* (**Form 45-106F2**).

Background

The offering memorandum prospectus exemption found in section 2.9 of NI 45-106 (the **OM Exemption**) was originally designed as a small business financing tool to help early stage and

small businesses raise capital from a large pool of investors without having to comply with the more costly prospectus regime. It was expected to be used by relatively simple issuers for relatively small amounts of capital, prior to becoming reporting issuers.

In practice, the use of the OM Exemption has evolved differently. To a significant extent, larger and more complex issuers than those originally envisioned are using it. In addition, issuers using the OM Exemption are often engaged in specific activities, for example as Real Estate Issuers, or as CIVs carrying out mortgage lending.

The Amendments were published for comment on September 17, 2020 (the **2020 Proposed Amendments**). For additional background and further detail, please refer to the 2020 Proposed Amendments.

Summary of Written Comments Received by the CSA

In response to the 2020 Proposed Amendments, we received submissions from 13 commenters. We have considered the comments received and thank the commenters for their input. The names of the commenters and a summary of their comments, together with our responses, are contained in Annex A of this notice.

Summary of Changes to the 2020 Proposed Amendments

The Amendments reflect changes to the 2020 Proposed Amendments that are in response to certain of the comments. Key changes to the 2020 Proposed Amendments are summarized below. As these changes are not material, we are not publishing the Amendments for a further comment period.

Six-Month Interim Financial Report

- In all jurisdictions other than Ontario, the requirement if distributions are ongoing to amend the OM to include an interim financial report for the issuer's most recently completed six month period has been removed.

- In Ontario, the Ontario Securities Commission continues to be of the view that this requirement is appropriate. However, in response to comments, the Commission has added an exemption to the requirement. The exemption would allow issuers to not amend their OM to include an interim financial report for the issuer's most recently completed six month period if the issuer appends an additional certificate certifying that

    - the OM does not include a misrepresentation when read as of the date of the additional certificate,

    - there has been no material change in relation to the issuer that is not disclosed in the OM, and

- the OM, when read as of the date of the additional certificate, provides a reasonable purchaser with sufficient information to make an informed investment decision.

Appraisal Requirements

- Due to practical issues noted by commenters regarding paragraph 2.9(19.5)(c) of NI 45-106, which required an appraisal if a Real Estate Issuer were using a material amount of the proceeds of the offering to acquire an interest in real property, we have removed this paragraph. We have determined that this is appropriate, because the more significant investor protection concerns that we have seen are with property acquired from a related party as defined in NI 45-106 (**Related Party**).

- Regarding transactions with a Related Party, we have revised paragraph 2.9(19.5)(a) of NI 45-106 so that it no longer applies to completed acquisitions from a Related Party, and therefore only applies to proposed acquisitions from a Related Party. We note that Real Estate Issuers will still be required to disclose certain details about completed transactions with a Related Party under section 7 of Schedule 1 to Form 45-106F2.

Definitions

- We have made changes to make the definition of CIV more straightforward, and also to ensure that an issuer is not a CIV by virtue of owning securities of subsidiaries.

- We have removed the definition of "net asset value", as we intended "net asset value" to have its generally accepted meaning.

Form 45-106F2

- We have modified the new provision of Item 1 in Form 45-106F2 that requires Form 45-106F2 disclosure for additional issuers in certain circumstances to narrow its scope to avoid unintended results, such as capturing management companies.

Schedule 1 to Form 45-106F2

- We have broadened paragraph 3(1)(a) to allow issuers more options to describe the location of the real property.

- We have added a materiality qualifier to paragraph 3(1)(c), subsection 3(3) and paragraph 8(a).

- Paragraph 3(1)(g) has been revised to narrow its application.

- To make the summarized disclosure permitted by subsection 3(2) a more useful accommodation, we have reduced the property threshold from 20 to 10.

Schedule 2 to Form 45-106F2

- We have added a new provision as paragraph (j) of subsection 3(3) that requires disclosure of accommodations made by an issuer to respond to financial difficulties of the borrower, if the accommodations would be material to a reasonable investor.

Coming into Force

As noted, all of the Amendments are expected to come into force on March 8, 2023 (the **Effective Date**).

However, the amending instrument for the Amendments contains a transition provision that subject to certain conditions, allows an issuer to continue using an OM that was prepared in accordance with the version of Form 45-106F2 that was in-force immediately prior to the Effective Date, until the OM is amended.

As indicated, the transition provision is only an accommodation relating to the pre-Amendments version of Form 45-106F2. There is no transition provision for any of the other Amendments.

Other Matters related to the Amendments

We are revising Multilateral CSA Staff Notice 45-309 *Guidance for Preparing and Filing an Offering Memorandum under National Instrument 45-106 Prospectus and Registration Exemptions* (**SN 45-309**) to make it consistent with the Amendments. We plan to publish revised SN 45-309 in conjunction with the effective date of the Amendments.

Impact on Investors

The Amendments are intended to give investors enhanced disclosure, and where the issuer is a Real Estate Issuer or a CIV, an investor will receive disclosure that is more tailored to the issuer. We anticipate that this enhanced and tailored disclosure will provide investors with better information, enabling them to make more informed investment decisions.

Local Matters

Annex D is being published in any local jurisdiction that is making related changes to local securities laws, including local notices or other policy instruments in that jurisdiction. It also includes any additional information that is relevant to that jurisdiction only.

Contents of Annexes

Annex A – Summary of Comments and Responses
Annex B – Amendments to NI 45-106
Annex C – Changes to 45-106CP
Annex D – Local Matters, if applicable

Questions

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ANNEX A

SUMMARY OF COMMENTS AND RESPONSES

	Commenter
1.	Canadian Advocacy Council of CFA Societies Canada
2.	Canadian Association of Alternative Strategies & Assets
3.	Equiton Partners Inc.
4.	FrontFundr Financial Services Inc.
5.	Investment Industry Association of Canada
6.	Norton Rose Fulbright Canada LLP
7.	Larry Wilkins
8.	Private Capital Markets Association of Canada
9.	Skyline Group of Companies
10.	Steve Cohen Law Professional Corporation
11.	Three Point Capital Corp.
12.	Veronica Armstrong Law Corporation
13.	Wanda Morris

Number	Comment	Response
General comments that are supportive of the 2020 Proposed Amendments		
1.	One commenter welcomes the 2020 Proposed Amendments as they relate to Form 45-106F2. The commenter supports the efforts of the CSA to clarify the OM Standard of Disclosure. Similar to the changes in respect of CIVs the commenter views many of these changes as aligning with current best practices.	We thank the commenter for the support and input.
2.	One commenter believes the following. First, providing clear and targeted disclosure requirements for Real Estate Issuers and CIVs is in the public interest. Second, instituting appropriately tailored disclosure requirements for these issuers will benefit investors, registrants and issuers, since doing so will provide greater transparency and increase confidence in the private markets.	We thank the commenter for the support and input.

Number	Comment	Response
3.	One commenter often finds that the fees, organizational disclosures, and investment risks and attributes set out in an OM to be complicated, buried within other legal disclosures, and difficult for readers to understand in order to adequately evaluate a given investment opportunity. The commenter believes there are several positive elements in the 2020 Proposed Amendments, and supports the approach where disclosure is standardized across issuers and supplemented with industry specific information in schedules to the greatest extent possible.	We thank the commenter for the support and input.
4.	One commenter believes the 2020 Proposed Amendments will significantly improve the quality of information investors receive in OMs, and help them make better informed investment decisions. The commenter also believes that the 2020 Proposed Amendments will make it easier for issuers and their professional advisers to provide the level of disclosure in an OM that CSA members expect from them. The commenter is of the view that the 2020 Proposed Amendments should ultimately reduce costs to issuers, as they will be able to avoid the costs associated with compliance action by regulators.	We thank the commenter for the support and input.
5.	One commenter supports the CSA's efforts to improve disclosure for investors and provide issuers with clear disclosure requirements.	We thank the commenter for the support and input.

Number	Comment	Response
6.	One commenter supports the purpose of the 2020 Proposed Amendments to create clear and relevant disclosure for issuers that were not originally envisioned to be users of the OM Exemption but who have become significant users of the exemption. Given the fact that the OM does not currently contain disclosure tailored to these types of issuers who are raising significant funds, it is appropriate to amend the disclosure requirements to ensure that purchasers are receiving sufficient information to make an informed investment decision.	We thank the commenter for the support and input.
7.	One commenter is of the view that, although the General Amendments add to the disclosure burden of using the OM Exemption, the additional disclosure will generally be useful to investors.	We thank the commenter for the support and input.
Various comments related to burden associated with the 2020 Proposed Amendments		
8.	One commenter is concerned that the cost of complying with the 2020 Proposed Amendments outweighs the additional protections afforded to OM investors.	We acknowledge these concerns. We submit that the Amendments have been changed from the 2020 Proposed Amendments in a way that strikes an appropriate balance between concerns about the cost of carrying out a financing under the OM Exemption and investor protection.

Number	Comment	Response
9.	One commenter observed that the OM Exemption is already a proportionately small part of the prospectus-exempt market. The commenter is of the view that issuers that have the ability to raise capital under other prospectus exemptions, for example the accredited investor exemption found in section 2.3 of NI 45-106, might reduce the amount of capital they raise under the OM Exemption, which could have certain unintended effects, including: • Retail investors could lose investment opportunities. • The issuers choosing to favour other prospectus exemptions may be larger and more mature issuers, increasing the risk profile of the remaining issuers using the OM Exemption. • Not using the OM Exemption would mean that a Form 45-106F2 compliant offering memorandum would not need to be prepared, which could inadvertently reduce the disclosure provided to purchasers under other prospectus exemptions, such as the AI Exemption, because these purchasers are often provided with an OM when the issuer is also raising capital under the OM Exemption.	We acknowledge these concerns. We submit that the Amendments have been changed from the 2020 Proposed Amendments in a way that strikes an appropriate balance between concerns about the cost of carrying out a financing under the OM Exemption and investor protection.
10.	One commenter is concerned that the additional disclosure included in the 2020 Proposed Amendments could make investors decide not to read the OM, and create an over-reliance on the dealer.	We acknowledge these concerns. We submit that the Amendments have been changed from the 2020 Proposed Amendments in a way that strikes an appropriate balance between concerns about the length of an OM and investor protection.

Number	Comment	Response
11.	One commenter made a number of comments relating to burden. The comments included the following concerns: • Certain of the 2020 Proposed Amendments fail to strike the right balance between cost and investor protection. • Some issuers will stop using the OM Exemption, resulting in fewer opportunities for retail investors. • The OM Exemption is used relatively little, compared to other prospectus exemptions, and this is likely because it is very expensive. The 2020 Proposed Amendments would increase this cost.	We acknowledge these concerns. We submit that the Amendments have been changed from the 2020 Proposed Amendments in a way that strikes an appropriate balance between concerns about the cost of carrying out a financing under the OM Exemption and investor protection.
12.	One commenter is concerned that the additional regulatory burden associated with some of the 2020 Proposed Amendments outweigh the potential benefits. The commenter notes that the cost of preparing an offering memorandum, combined with the cost of commissions, is already high and that the new requirements may make it even more difficult and cost prohibitive for early stage and small businesses to raise capital.	We acknowledge these concerns. We submit that the Amendments have been changed from the 2020 Proposed Amendments in a way that strikes an appropriate balance between concerns about the cost of carrying out a financing under the OM Exemption and investor protection.

Number	Comment	Response
13.	One commenter is of the view that the new disclosure requirements approach a disclosure standard that is similar to the "full, plain and true disclosure of all material facts" standard applicable to a prospectus. The commenter is concerned that these new requirements will lead to a decrease in the use of the OM Exemption, and result in inequities between larger issuers who have the resources to comply with the requirements and smaller issuers who do not. Another commenter is concerned that increasing the disclosure in an OM so that it approaches prospectus-level disclosure will increase the cost of the OM.	We acknowledge these concerns. We submit that the Amendments have been changed from the 2020 Proposed Amendments in a way that strikes an appropriate balance between concerns about the cost of carrying out a financing under the OM Exemption and investor protection. We are of the view that the OM Standard of Disclosure is not the same as the standard of disclosure for a prospectus.
14.	One commenter asserts the following. The OM Exemption is already the most expensive of the prospectus exemptions generally available to early stage and small businesses. Combined with the investment limits imposed by most jurisdictions, this results in under-utilization of the OM Exemption. The burden associated with the 2020 Proposed Amendments increases the likelihood that some issuers will cease using the OM Exemption altogether.	We acknowledge these concerns. We submit that the Amendments have been changed from the 2020 Proposed Amendments in a way that strikes an appropriate balance between concerns about the cost of carrying out a financing under the OM Exemption and investor protection.

NI 45-106 section 1.1: definition of "collective investment vehicle"		
15.	One commenter observed that the 2020 Proposed Amendments define CIV as an issuer whose primary purpose is to invest money provided by its security holders in a portfolio of securities. The commenter noted that this definition is broad and would capture subsidiaries and affiliates of the issuer. For example, an issuer that acquires 100% of a number of operating companies would be captured under the definition of CIV. In the commenter's view, such an issuer should disclose its subsidiaries as part of itself, rather than as an external portfolio held by the issuer. In addition, such subsidiaries would be captured in the issuer's financial statements. Therefore, the commenter proposes that the definition of "collective investment vehicle" exclude subsidiaries and affiliates of the issuer. The commenter believes that defining net asset value (**NAV**) in the context of CIVs in the same manner as an investment fund under National Instrument 81-106 *Investment Fund Continuous Disclosure* illustrates the point above. The commenter notes that issuers that are not investment funds do not generally disclose the value of their subsidiaries using NAV concepts. Rather, information about the performance of subsidiaries is set out in the issuer's financial statements. Assigning a NAV to operating subsidiaries would appear to be an unintended and undesirable result.	We have changed the definition of CIV to exclude the securities of subsidiaries controlled by the issuer. Affiliation is defined in NI 45-106 as issuers that are parent or subsidiary to each other, or issuers that are controlled by the same person. Because the concept of subsidiaries of the OM issuer has already been dealt with as noted above, and because being controlled by the same person or company would not in our view cause a problem with the definition of CIV, we have not excluded affiliates from the definition of CIV.

16.	One commenter believes that the definition is very broad and would capture all types of pooling vehicles, including those that fall within the definition of "investment fund". The commenter notes that the regulators have recognized this, but refer specifically to mortgage, loan, and receivables portfolios. The commenter suggests that if regulators are concerned with these specific types of vehicles, they should limit the definition to those.	The definition of "collective investment vehicle" is intentionally broad. We believe that Schedule 2 is appropriate disclosure for investment funds, in the jurisdictions where they are permitted use the OM Exemption. We have also highlighted issuers that invest in portfolios of loans, mortgages and in certain circumstances, receivables, as being issuers that are CIVs. In addition, it is possible that there could be issuers with portfolios of other investments for which Schedule 2 is appropriate, and for that reason, we kept the definition broad.
NI 45-106 section 1.1: definition of "material change"		
17.	One commenter requested guidance as to what constitutes a material change for an issuer distributing securities under the OM Exemption. The commenter provided examples of issuers determining that certain events are not material changes.	The term "material change" is defined in local securities acts. We have added certain guidance on this topic in paragraph 3.8(3)(b) of the 45-106CP. CSA member jurisdictions carry out review and compliance programs with respect to OMs, which can, among other things, assess the appropriateness of issuers' determinations regarding material changes.
NI 45-106 section 1.1: definition of "material contract"		
18.	One commenter is concerned that the definition is very broad, particularly as it includes contracts of an issuer's subsidiaries. The commenter asks whether the test meant to be objective, and whether regulators would accept an issuer's view that a contract is not material.	"Material contract" is used in Form 45-106F2, but is not defined. For issuers' ease of use, a definition has been included in the Amendments. It was taken, unchanged, from NI 51-102. We interpret the definition as being an objective test.
NI 45-106 section 1.1: definition of "real estate activities"		
19.	One commenter believes that a definition should be provided for the term "primarily".	We acknowledge the comment. We interpret "primarily" to have its generally understood meaning.

20.	One commenter believes that the exclusions to the definition listed for the province of Québec, namely "(i) an investment contract that includes a real right of ownership in an immovable and a rental management agreement; or (ii) a securities of an issuer that owns an immovable giving the holder a right of exclusive use of a residential unit and a space in such immovable", are ambiguous and open to interpretation. The commenter suggests clarification.	The carve-out with respect to Québec has been finalized to exclude activities relating to the forms of investments subject to *Regulation Respecting Real Estate Prospectus and Registration Exemptions* (Québec).
NI 45-106 section 1.1: definition of "qualified appraiser"		
21.	One commenter questioned if "qualified appraiser" is defined.	The definition of "qualified appraiser" was published as part of amendments that were announced by CSA notice dated August 6, 2020 (the **August 6, 2020 Notice)**. Those amendments are now effective.
NI 45-106 section 1.1: definition of "related party"		
22.	One commenter is of the understanding that the definition of "related party" is new, and suggests that it be conformed with the definition of a related party under IAS 24 Related Party Disclosures.	The definition of Related Party is not new. It has been moved from A. 6. of the instructions to Form 45-106F2 to section 1.1 of NI 45-106, for ease of reference. It has undergone minor revisions. Substantive changes to the definition are outside the scope of the project.

Comments on the OM Standard of Disclosure		
23.	Regarding NI 45-106 subsection 2.9(13.2) of the 2020 Proposed Amendments, which would require an OM to be amended if there is a material change between when its certificate is signed and when the issuer accepts an agreement to purchase the security, one commenter believes that this requirement should be triggered for a material change as to the issuer, or as to the securities being offered through the OM.	We note that significant changes to the terms of the securities being offered would likely require an amendment to the OM, in view of the OM Standard of Disclosure.
24.	Regarding NI 45-106 subsection 2.9(13.3) of the 2020 Proposed Amendments, which requires that an OM provide a reasonable purchaser with sufficient information to make an informed investment decision, one commenter questioned why this requirement was added.	This is a move of a requirement, rather than a new requirement. This requirement was previously in instruction A. 3. to Form 45-106F2. It has been slightly revised to make it clear that the test is objective.
The appraisal requirement: support		
25.	One commenter is generally supportive of the appraisal requirement.	We thank the commenter for the support and input.
26.	One commenter is supportive of an appraisal being required in the scenarios outlined in the 2020 Proposed Amendments.	We thank the commenter for the support and input.

The appraisal requirement: appraisal must be performed by an appropriately qualified appraiser		
27.	One commenter urges the CSA to ensure that the required appraisal be performed by an appropriately qualified appraiser. One commenter recommends that the definition effective March 1, 2021 of "qualified appraiser" be used for these provisions.	The appraisal must be performed by a "qualified appraiser". The definitions of "qualified appraiser" and the related term "professional association" were published in the August 6, 2020 Notice. The amendments from that notice are effective now. In brief, a qualified appraiser is an individual that regularly performs appraisals for compensation, is a member in good standing of a professional association that meets certain criteria and holds an appropriate designation, certification or license.
The appraisal requirement: burden		

28.	In one commenter's view, the addition of an appraisal requirement for Real Estate Issuers is a significant burden that is not justified by the benefits for investors. In addition, the commenter believes it could cause Real Estate Issuers to cease relying on the OM Exemption.	The Amendments reflect significant changes to the appraisal requirement to address certain of the concerns raised by commenters. Regarding transactions with related parties, we have revised paragraph 2.9(19.5)(a) so that it no longer applies to completed acquisitions from related parties and therefore only applies to proposed acquisitions from related parties. In addition, for greater certainty, we have added that to a reasonable person, the likelihood of the issuer completing the acquisition must be high. However, with respect to completed transactions, we note that section 7 of Schedule 1 of Form 45-106F2 requires a history of any transactions for which a Related Party was buyer or seller for each interest in real property held by the issuer. We have also added certain guidance related to proposed acquisitions from a Related Party. The guidance includes that such an acquisition could be a material change requiring that the OM be amended. We have also reminded issuers carrying out ongoing distributions under an OM that it is possible to trigger the appraisal requirement as to acquisitions from a Related Party after the OM's certificate is signed. Please see the 45-106CP for the complete guidance. We have also made changes to make it clearer that the appraisal requirement

		applies to each interest in real property (i.e. one or more). Regarding paragraph 2.9(19.5)(c), instances where the issuer plans to use a material amount of the proceeds to acquire real property, we have reconsidered this proposal. We recognize the practical problems pointed out by the commenters, and have determined that the larger investor protection concerns are with property acquired from related parties. As a result, we have removed paragraph (c).
The appraisal requirement: inconsistent with reporting issuer disclosure requirements		
29.	One commenter questioned why an issuer that distributes securities under the OM Exemption should be subject to more onerous requirements (i.e. the requirement to provide a real property appraisal in certain circumstances) than reporting issuer requirements. The commenter sees this as creating an undue burden, and inconsistency in how issuers are regulated.	We acknowledge the comment. For OM distributions, there have been particular problems with the stated valuations of real property. As a result, we are still of the view that in some circumstances the appraisal requirement is justified in order to protect investors. However, in the Amendments, we have significantly scaled back the appraisal requirement to deal with the high level of concern about this proposal. Please see our response to comment 28 for further detail.

The appraisal requirement has no materiality threshold		
30.	One commenter observes that as proposed, an appraisal requirement applies without regard to the size of the issuer making the acquisition and is incongruent with the materiality standards set out in the instructions to Form 45-106F2 with respect to business acquisition disclosure. In the commenter's view, this over-emphasizes acquisitions, when investors should be more focused on the issuer as a whole.	As noted, we have significantly scaled back the appraisal requirement to deal with the high level of concern about this proposal. Please see our response to comment 28 for further detail. Also as noted, for OM distributions, there have been particular problems with the stated valuations of real property. As a result, we are still of the view that in some circumstances the appraisal requirement is justified in order to protect investors, irrespective of the materiality of the acquisition.
The appraisal requirement could undervalue an issuer		
31.	One commenter asserted that an appraisal that cannot take into account any proposed improvements or developments will always disclose a value that is lower than the value ascribed by management.	We acknowledge the comment. While we recognize that the inability to include proposed improvements may have some drawbacks, it is important for investor protection purposes that the appraisal appraise the property in its present condition. We also note that an issuer may discuss proposed improvements in its OM.

32.	One commenter advised that appraisal without regard to developments or improvements could favour Real Estate Issuers that have a "buy and hold" strategy while disfavouring Real Estate Issuers that are developers, by undervaluing developers' investments. The commenter feels that this is inappropriate, as developers that wish to discuss what they believe the value of real property would be after their business plans are complete will need to essentially "disprove" an appraisal that assumes no action is taken, which appraisal is required to be featured with equal or greater prominence.	Please see our response to comment 31.
The appraisal requirement could provide a false sense of security to investors		
33.	One commenter is concerned that appraisals obfuscate the fact that an equity investor does not have any direct recourse to the issuer's real estate interests, and will be subordinate to all of the issuer's creditors should the issuer fail. That is, an investment could be lost in its entirety even if the appraisal was accurate.	We acknowledge the comment. In our understanding, investors are generally aware that typically they are not secured creditors as to the issuer's assets.
The appraisal requirement: concerns about confidentiality and competitive advantage		
34.	One commenter observes that property sales are often subject to strict confidentiality obligations. However, any appraisal, by necessity, may reference certain information that is the subject of the confidentiality covenants. The commenter is concerned that this may put the issuer in a position where it cannot to rely on the OM Exemption.	We are not aware of anything of a general binding nature specifying that appraisals must be confidential. In our understanding, any confidentiality over an appraisal is at the discretion of the party requesting the appraisal and the appraiser. We also note that the appraisal requirements recently imposed in NI 45-106 with respect to syndicated mortgages do not contemplate that the appraisal will be confidential.

35.	One commenter made the following comments about the appraisal requirement and confidentiality: • The appraisal requirement would appear to capture property that the issuer intends to purchase, but purchase agreements that are still in negotiation are typically subject to confidentiality agreements. • Appraisals are provided based on financial information provided by the vendor. The appraisal report typically contains this information or information derived from it, but vendors often provide the information on the condition of confidentiality. • Appraisal reports often provide that the information from the report can only be disseminated with the consent of the appraiser. The commenter notes that the requirements to deliver and file appraisals would clash with this condition. • The commenter sees the need for independent appraisals for properties transacted with a Related Party, but suggests that the CSA engage with the Appraisal Institute of Canada regarding the confidentiality issue.	Please refer to our response to comment 34. Regarding purchase agreements in negotiation, we acknowledge the comment. We note that in the Amendments we have significantly scaled back the appraisal requirement, but think that appraisals are still necessary for investor protection purposes in those narrowed circumstances. In these cases, issuers would need to obtain the required information, irrespective of the vendor's desire for confidentiality.
36.	One commenter notes that providing purchasers with an appraisal could put the issuer at a competitive disadvantage by limiting the price in a future sale to the appraised value, and also noted that the appraisal could be seen as proprietary information that should not be provided to investors.	We submit that greater transparency as to valuation has investor protection benefits, but does not determine a selling price, which is arrived at through negotiation between a purchaser and seller.

The appraisal requirement: timing concerns or clarifications		
37.	One commenter stated that the Proposed Amendments should specify how current the appraisal must be.	Paragraph 2.9(19.6)(d) of the Amendments states that the appraised fair market value of the interest in real property must be as at a date that is within 6 months preceding the date that the appraisal is delivered to the purchaser.
38.	Two commenters are concerned that the 2020 Proposed Amendments require appraisals to be updated due to the passage of time during the offering period.	The Amendments do not contain a general requirement to update appraisals. However, if distributions under an OM are ongoing, because an appraisal must be dated within 6 months preceding the date that the appraisal is delivered to the purchaser, an appraisal previously obtained by an issuer may be required to be updated due to the passage of time. As noted, we have significantly scaled back the appraisal requirement to deal with the high level of concern about this proposal. Please see our response to comment 28 for further detail.
39.	One commenter requests clarification as to whether an issuer has to meet the appraisal requirement if it arises after finalization of an OM, but before the issuer accepts an agreement to purchase the security from a purchaser.	Yes, the requirement would apply in this instance. Please see our response to comment 28 for further detail.

40.	One commenter expressed concern about the appraisal requirement and the passage of time. Specifically, the commenter appears to be contemplating a situation where the appraisal requirement is triggered, and the issuer carries out ongoing distributions under the OM for longer than 6 months. In view of this scenario, the commenter suggests that the CSA reconsider the requirement that the appraisal be as at a date that is within 6 months preceding the date that the appraisal is delivered to the purchaser.	Please see our response to comment 38. We also note that the appraisal requirements recently imposed in NI 45-106 with respect to syndicated mortgages included, in response to a recommendation from commenters, a requirement that the appraisal be dated within 6 months preceding the date that the appraisal is delivered to the purchaser. We believe that the same concern about currency of the appraisal applies to other distributions under the OM Exemption, and have therefore mirrored this requirement.
41.	One commenter suggests that the appraisal date should be required to be within less than 6 months, if there has been an event that has a material adverse impact on the issuer's total portfolio. The commenter suggests that this could be most useful for issuers with properties that are in development or pre-development. The commenter provided the expropriation of nearby properties as an example of an event that could have a material adverse impact on the issuer's total portfolio.	We acknowledge the comment. We have not made the suggested change, because we are concerned that the burden of a more nuanced requirement may outweigh its benefit. We also note that the comment appears to contemplate a material change, and if so, the OM would be required to be amended.
The appraisal requirement: increased fees		
42.	One commenter asserts that appraisers may demand increased fees if their appraisal will accompany an offering document, due to perceptions about increased liability and/or reputational risk.	We acknowledge the comment. As noted, we have significantly scaled back the appraisal requirement. As also noted, we are of the view that for the narrowed set of circumstances in which the requirement will still apply, appraisals are necessary, despite the concern about higher fees.
The appraisal requirement as to purchases from related parties: 2.9(19.5)(a)		
43.	One commenter supports the requirement.	We thank the commenter for the support and input.

44.	The commenter highlights the following issues and makes certain suggestions. The requirement is not limited by time or materiality, which would require an issuer to obtain appraisals for any real property acquired from a Related Party in perpetuity. This would create a very significant cost that effectively prohibits the use of the OM Exemption. The purpose of this requirement appears to be to ensure that the Related Party transaction was fair. When making such determination, an investor should consider the fair market value of the property at the time of the transaction, not at the time that an offering memorandum is delivered, which could be well after the time of the transaction. To better align this proposed requirement with what appears to be its purpose, we propose that: (i) issuers are only required to include an appraisal for a Related Party acquisition completed prior to the date of the offering memorandum if the financial statements included in the offering memorandum do not include the results of such acquisition for six months; and (ii) such appraisal, if required, be a one-time requirement to be dated within six months of the acquisition date (not the time of delivery of the offering memorandum). Lastly, the commenter proposes that such appraisal requirement be subject to a materiality qualifier whereby an appraisal is only required if the acquisition represents at least 25% of the consolidated assets of the issuer, determined in accordance with C.2 of the instructions to Form 45-106F2.	Please see our response to comment 28. We have not proposed a materiality threshold. However, as noted above, the appraisal requirement has been significantly scaled back.
45.	Another commenter notes that the requirement captures all interests previously acquired from related parties, and indicates that this could be burdensome, and that the CSA should re-examine this requirement.	Please see our response to comment 28.

The appraisal requirement as to use of a material amount of the proceeds: 2.9(19.5)(c)		
46.	One commenter disagrees with this requirement, and is of the view that the cost outweighs any benefit to investors.	Please see our response to comment 28.
47.	One commenter disagrees with this proposed requirement. If the CSA decides to retain it, the commenter suggests clarifying the term "material amount". Another commenter also suggests that the CSA clarify "material amount".	Please see our response to comment 28.
48.	One commenter believes that different issuers may interpret the term "material" differently. The commenter also understands the requirement to potentially require appraisals on hundreds of properties, and makes suggestions for this case.	Please see our response to comment 28.
49.	One commenter asserts that the requirement would work for issuers that are using the proceeds to purchase one interest in real property, but that it is unclear for issuers that plan to purchase multiple properties, because it is not clear for which interest in real property an appraisal would be required. The commenter also indicates that the requirement is unworkable for these issuers.	Please see our response to comment 28.

50.	One commenter asserts that the requirement to provide an appraisal if an issuer intends to spend a material amount of the offering proceeds on an interest in real property is unclear. The commenter believes that an appraisal may be important for single purpose investments, i.e. an issuer's only activity relates to one property, but that the value of providing investors with appraisals diminishes if an issuer has a diversified portfolio of properties. The costs of providing appraisals in this case would be prohibitive. The commenter is of the view that the Proposed Amendments should clarify that the requirement applies only if a material amount of the proceeds is directed to any one property. The commenter also believes that the term "material" should be clarified.	Please see our response to comment 28.
The appraisal requirement: delivery, and delivery timing		
51.	One commenter suggests that instead of physical delivery, the OM specify a web page on which any appraisals associated with an OM can be viewed.	As noted, we have significantly scaled back the appraisal requirement, reducing the instances in which an appraisal will be required. For these instances, we have retained the structure of the current delivery requirement for appraisals in connection with syndicated mortgages.
52.	One commenter notes that due to the length of some appraisal reports, it might not be practical to attach the reports to the OM. The commenter suggests that disclosure of the valuation and details regarding the appraiser in the OM with a digital link to the full report would be a more practical approach.	We note that the appraisal report is not required to be attached to the OM. With respect to making appraisals available through a link, please see our response to comment 51.

53.	One commenter is of the view that an offering memorandum is typically prepared before an appraisal is requested, and as a result, suggests that the CSA reconsider the requirement that an appraisal would need to be delivered at the same time or before the issuer delivers an offering memorandum to the purchaser.	We are of the view that in order to be timely and relevant for investors, any appraisal needs to be delivered to the purchaser by the time the purchaser receives the OM.
The appraisal requirement: fair market value		
54.	One commenter believes the CSA should define the term "fair market value".	We intend "fair market value" to have its generally accepted meaning.
The appraisal requirement: cannot consider any proposed improvements or proposed development		
55.	One commenter asserts that the appraisal must be based on the current status of the project and not contemplate any change in value for significant events that have not yet occurred.	The Amendments specify that the appraisal "provides the appraised fair market value of the interest in real property, without considering any proposed improvements or proposed development".
56.	One commenter supports this proposed requirement, especially for transactions involving related parties.	We thank the commenter for the support and input.
Requirements when disclosing a value other that the appraised fair market value: 2.9(19.7)		
57.	One commenter agrees with these provisions, and believes that such disclosure would be forward-looking information **(FLI)** or future-oriented financial information **(FOFI)**, and suggests that the CSA reference the requirements pertaining to same.	Whether or not such disclosure would include FLI or FOFI would depend on its particular facts. We note that Instruction B. 14 of Form 45-106F2 imposes requirements in respect of FLI or FOFI that occurs anywhere in an OM.
58.	One commenter believes this proposed requirement should also require disclosure of the inherent limitations and risks of the assumptions relied upon.	The provision requires disclosure of the material factors or assumptions used to determine the representation or opinion. We believe that this disclosure will be sufficient.
Appraisal: filing requirement		
59.	One commenter agrees with this requirement, notwithstanding any confidentiality concerns of appraisers or issuers.	We thank the commenter for the support and input.

Form 45-106F2: cover page		
60.	One commenter is in favour of the new requirement for an issuer to state on the cover page if there is a working capital deficiency, as well as if they have paid dividends or distributions that exceeded cash flow from operations.	We thank the commenter for the support and input.
Form 45-106F2: Item 1.2.1 (Proceeds Transferred to Other Issuers)		

61.	One commenter notes that in the circumstances described in the Item, an issuer would have to make extensive disclosure about another issuer, and the first issuer would bear the statutory liability for any misrepresentations in this material, not the other issuer. The commenter is concerned that this is unfair, given that despite whatever precautions the issuer may have taken, the issuer is still dependent on the other issuer for the information.	We acknowledge the comment. The requirement is meant to address scenarios where a significant amount of the proceeds of the offering are transferred to another issuer that is not a subsidiary of the issuer. We also note that the in-force requirement that an OM provide a reasonable investor with sufficient information to make an investment decision, and that the OM not contain a misrepresentation, would operate to require extensive disclosure on the other issuer in most cases. However, our compliance work has revealed that some issuers do not make this disclosure, or do not make it to the correct extent. Item 1.2.1 is intended to protect investors by reducing those instances. We also note that generally, staff have observed these arrangements taking place between Related Parties and in these cases we expect it will be easier and less burdensome for the issuer to obtain the information. We also note that in the Amendments we have renumbered parts of the replacement Form 45-106F2 shown in the 2020 Proposed Amendments to eliminate repealed section numbers and decimal numbering (the **Renumbering**). Due to the Renumbering, Item 1.2.1 in the 2020 Proposed Amendments became Item 1.3 in the Amendments.

62.	One commenter notes that proposed Item 1.2.1 of Form 45-106F2 requires that if a significant portion of an issuer's business will be managed by another issuer, the disclosure required by several items of Form 45-106F2 as well as Schedules 1 and 2 if applicable be provided as if the other issuer were the issuer preparing the OM. For mortgage investment entities that are externally managed, this would include the manager. While requiring some of this information relating to the manager would be useful, other items such as the financial statements would result in significant additional regulatory burden and costs. This may also increase reluctance to use the OM exemption since the manager may not want to provide financial statements, particularly if they are involved in other businesses.	We note that the requirement applies if "a significant amount of the proceeds of the offering will be invested in, loaned to, or otherwise transferred to another issuer that is not a subsidiary controlled by the issuer", or if "a significant amount of the issuer's business is carried out by another issuer that is not a subsidiary controlled by the issuer". We share the commenter's concern. We have deleted in the Amendments "a significant amount of the issuer's business is carried out by another issuer that is not a subsidiary controlled by the issuer".
Form 45-106F2: Item 1.3 (Reallocation)		
63.	One commenter notes that Item 1.3, which requires a statement indicating that funds would only be reallocated for sound business reasons, has been removed in the 2020 Proposed Amendments. The commenter is unsure if this removal means that such reallocation is no longer permitted, and would appreciate clarification.	The Amendments remove Item 1.3 because we do not think that it has any practical effect. We note that the duties of management to run the issuer prudently come from other legal obligations, and we are of the view that Item 1.3 does not create these obligations, or supplement them.
Form 45-106F2: Item 2.6.1 (Additional Disclosure for Issuers Without Significant Revenue)		
64.	One commenter notes that this requirement appears to pertain to mining issuers, and suggests that it be amended to make this clear.	Although the requirement includes additional disclosure for mining issuers, it pertains to all types of issuers that meet the criteria of the section. Due to the Renumbering, Item 2.6.1 in the 2020 Proposed Amendments became Item 2.7 in the Amendments.

65.	One commenter is also unclear whether the Item applies only to resource issuers, and suggests that the term "without significant revenue" should be more clearly defined. The commenter would prefer a "revenue" section in the OM, focusing on how an issuer earns revenue. The commenter also stated that, as a best practice, issuers could provide a picture of anticipated sales given their revenue model, and referencing items 8 and 12 of the OM.	With respect to the application of the Item, please see our response to comment 64. We have adapted this requirement from section 5.3 of NI 51-102, in which the term "without significant revenue" was used without a definition. Issuers are permitted to include anticipated sales in their OM, provided that they comply with sections 4A.2 and 4A.3 of NI 51-102. Under the current requirements, how an issuer will earn revenue should be discussed in order to meet the OM Standard of Disclosure. Therefore, we do not believe a separate section for revenue is necessary.
Form 45-106F2: Item 2.7: (Material Contracts)		
66.	One commenter observes that the section refers to material contracts to which the issuer is a party, yet the definition of material contract includes contracts entered into by a subsidiary of the issuer. The commenter suggests resolving this inconsistency.	We thank the commenter for the input. We have deleted, in the Amendments, the words "to which the issuer is currently a party". Due to the Renumbering, Item 2.7 in the 2020 Proposed Amendments became Item 2.8 in the Amendments.
Form 45-106F2: Items 3.1 (Compensation and Security Holdings of Certain Parties) and 3.2 (management experience)		
67.	One commenter suggests that Items refer to not only directors but trustees.	Through the definitions incorporated into NI 45-106, trustees are included.

68.	One commenter believes that the requirements are intrusive and exceed the bounds of privacy, for example, place of residence, expected compensation, and experience associated with principal occupation. The commenter suggests that experience related to the person's role in the issuer would be more helpful to a purchaser. In addition, the commenter believes including beneficial owners holding more than 50% of a non-individual person in Item 3.1 is not helpful for investors.	We submit that except for the addition of related parties not already included in the other parties identified, the changes to these items are of an organizational nature, and the elements that the commenter is highlighting are already contained in the in-force legislation. We continue to believe that this disclosure is relevant to investors.
Form 45-106F2: Item 3.3 (Penalties, Sanctions and, Bankruptcy, Insolvency and Criminal or Quasi-Criminal Matters)		
69.	One commenter suggests that the disclosure regarding penalties or sanctions for contravening securities legislation be with respect to any time in the past, instead of limited to the 10 years preceding the date of the OM. The commenter notes that this approach is taken in Item 13.1(d) of Form 33-109F4 *Registration of Individuals and Review of Permitted Individuals*, which requires the applicant to disclose whether they have ever been subject to any disciplinary proceedings or order under securities or derivatives legislation.	We acknowledge the comment. In this case, we have made the requirement consistent with other such requirements that apply to issuers, such as Item 10.2 of Form 51-102F2 *Annual Information Form*, rather than requirements pertaining to registrants.
70.	One commenter was supportive of the requirements in Item 3.3 to disclose penalties or sanctions for contravening securities legislation.	We thank the commenter for the support and input.
Form 45-106F2: Item 4.2 (Long Term Debt Securities)		
71.	One commenter suggests removing "Securities" from the heading of this section, as the text of the section requires disclosure of all indebtedness, such as bank credit facilities.	We thank the commenter for this input. We agree with the commenter that the item would include bank credit facilities. Although the definition of "security" in the local securities acts includes various forms of debt, we agree that for convenience and ease of use, it makes sense to remove the word "securities" from the title.

72.	One commenter is of the view that in providing the disclosure about the interest rate, the issuer should be required to specify whether the rate is fixed or variable, which will help determine whether there is a risk that the rate could go up.	We expect that that issuers will specify whether the rate is fixed or variable.
Form 45-106F2: Item 5A (Redemption and Retraction History) and Item 5B (Certain Dividends or Distributions)		
73.	One commenter believes that some of the information required in proposed Items 5A and 5B may be harmful to issuers, because it will disclose information to their competitors that can be used against them.	We recognize that the items require disclosure of potentially sensitive information, but we are of the view that any risk to an issuer's competitive position is outweighed by the importance of the disclosure to investors. Due to the Renumbering, Item 5A in the 2020 Proposed Amendments became Item 6 in the Amendments.
74.	One commenter suggested additional disclosure requirements for Item 5A aimed at disclosure of redemption or retraction requests that have not been fulfilled because an investor was not willing to accept redemption notes.	All repurchase requests that have not been fulfilled must be reflected in the table set out in Item 6.
75.	One commenter is not convinced that the information to be provided in the column entitled "source of funds used to complete the redemptions or retractions" of Item 5A(1)(a) would be useful information to investors. As money is fungible, it is artificial for an issuer to allocate a particular source of funds to redemptions compared to other matters. For example, it appears that an issuer with revenue that is continuing to raise capital could insert either of those sources in this column.	We acknowledge the commenter's point about the fungible nature of money. We continue to believe that an issuer's best efforts to pinpoint the source of funds will be informative for investors.

76.	One commenter was supportive of the additional disclosure relating to redemptions in the 2020 Proposed Amendments, including restrictions on redemptions, and the amount of requests received and fulfilled. However, the commenter believes that determining and disclosing the source of funds might be difficult, particularly for mortgage investment entities, because of the numerous types of cash flows typical of these entities. The commenter would prefer that the source of funds be eliminated from the required disclosure.	Please see our response to comment 75.
77.	One commenter strongly supports Item 5A and believes it will be helpful to investors.	We thank the commenter for the support and input.
78.	One commenter suggested that Item 5B require more detailed disclosure and explanation.	We did not increase the requirements of Item 5B due to concerns about imposing undue burden on issuers. Due to the Renumbering, Item 5B in the 2020 Proposed Amendments became Item 7 in the Amendments.
79.	One commenter strongly supports Item 5B, advising that the source of funds for dividends and distributions is an important indicator of possible cash flow constraints, and that it can help investors identify if the issuer is raising capital to fund existing distribution (or redemption) obligations.	We thank the commenter for the support and input.
Form 45-106F2: Instruction A. 5.1 (relating to maximum offering amount)		
80.	One commenter made two comments about this instruction: • That the CSA should provide guidance on what "reasonably expects" means. • That the CSA should clarify whether the instruction contemplates only the issuer's fiscal year, or some other time period.	With respect to "reasonably expects", we have used this wording so that the test is objective. With respect to the time period contemplated in the instruction, the instruction specifies "under the offering memorandum". This is intended to capture the total amount raised under the OM, for however long the issuer intends to raise money under it.
Form 45-106F2: Instruction B. 12.1 (b) (for ongoing distributions, amending the OM to include an interim financial report for the issuer's most recently completed 6-month period)		

81.	One commenter is strongly opposed to this proposed requirement, for reasons that include the following: • Increased burden on issuers. • The requirement is inappropriate for issuers that are not reporting issuers. • The requirement will deter issuers from using the OM Exemption. • The required review of the amended OM by management, legal counsel and the exempt market dealer (**EMD**) will increase burden. • Increased translation costs relating to the report and any other amendments. If the CSA goes ahead with the requirement, the commenter made suggestions that include the following: • That the report be filed on the System for Electronic Document Analysis and Retrieval (**SEDAR**) rather than included in the issuer's OM. • EMDs have a 90 day period to review the report, and are not required to cease acting within that period unless there are obvious defects.	Due to the lack of support for this proposal and high level of concern expressed by commenters, the members of the CSA, except Ontario, are not pursuing this requirement. In Ontario: • We published a cost-benefit analysis with the 2020 Proposed Amendments and concluded that the anticipated benefits outweighed the costs. Commenters did not provide details of specific costs that were not considered in our cost-benefit analysis other than French translation, which does not apply in Ontario. • While we continue to be of the view that amending the OM to include an interim financial report for the issuer's most recently completed 6-month period is appropriate, in response to comments, we have added an exemption to this requirement. The exemption would allow issuers to not amend their OM to include a 6-month financial report if the issuer appends an additional certificate to its OM that certifies that (i) the OM does not include a misrepresentation when read as of the date of the additional certificate, (ii) there has been no material change in relation to the issuer that is not disclosed in the OM, and (iii) the OM, when read as of the date of the additional certificate, provides a reasonable purchaser with

		sufficient information to make an informed investment decision. • Since the OM Exemption is premised in part on disclosure to prospective investors, we believe this approach balances investor protection while recognizing the possibility that an issuer in continuous distribution may not have had any material changes. • The CSA has added guidance to 45-106CP on materiality determinations.
82.	One commenter made a general comment that this requirement will be very costly for issuers.	Please see our response to comment 81.
83.	Rather than requiring an issuer to amend its OM to include the interim financial report for its most recently completed 6-month period, one commenter suggests a requirement to file the interim financial report. The commenter notes that amending an OM is very costly, and that this requirement would require some issuers to amend their OM after only a few months. The commenter also notes that this is similar to the shelf prospectus regime, and that the OM will still be required to be amended if a material change occurs.	Please see our response to comment 81.

84.	One commenter was also concerned about the time and costs involved in amending an OM, and believes that the benefits of including the interim financial report for the most recently completed 6-month period when distributions are ongoing may be outweighed by the burden on issuers. The commenter suggested that as an alternative, issuers could be encouraged to make this report available to investors, but not be required to incorporate the report into the document.	Please see our response to comment 81.
85.	One commenter was of the view that more frequent amendments to an OM will require more frequent reviews by EMDs to fulfill their know-your-product obligations, which could cause delay, and could cause issuers to distribute via channels that do not involve a registrant, which would decrease investor protection.	We acknowledge the comment. We note that know-your-product obligations apply to registrants at the time of sale, and are not limited to instances when an OM is amended.

86.	One commenter is of the view that this requirement will impose significant regulatory burden and cost. The commenter explains that it amends its offering memorandums annually, which includes obtaining real property appraisals that are relied on in connection with the financial statements, and review by its external legal counsel, auditors and independent trustees. The commenter also translates its amended OMs into French. The commenter advises that this process as a whole is very costly. The commenter submits that the true cost of this requirement was not fully captured in the cost analysis in the local Ontario annex. The commenter does not support this requirement for the following additional reasons: • In the commenter's view, a 6-month interim financial report typically does not include significant new information. • The commenter has never received a request for this report. • Any significant change in financial position constituting a material change would require an amendment in any event. If the CSA proceeds with this requirement, the commenter suggests that requiring the issuer to file the statements on SEDAR rather than amending the OM would be much less burdensome.	Please see our response to comment 81.
87.	One commenter is of the view that the requirement to amend the OM to include 6 month interim financial statements will result in significant additional costs and is unnecessary. The commenter feels that the requirement to update the OM when material changes have occurred is sufficient.	Please see our response to comment 81.

88.	One commenter asserts that the current financial statement requirements, along with the requirement that the OM not contain a misrepresentation, are sufficient and that the benefit of 6 month interim financial statements is outweighed by the additional costs.	Please see our response to comment 81.
89.	One commenter is of the view that the requirement to amend the OM to include interim financial statements for a six month period is unnecessary since the OM must already be amended if there is a material change. The commenter asserts that this will result in additional costs that will be borne by the investor, as it will reduce their return on investment.	Please see our response to comment 81.
Form 45-106F2: Instruction B. 12.1: clarification		
90.	One commenter is seeking clarification on the effect of Instruction B. 12.1. Specifically, the commenter seeks confirmation of its understanding that assuming the OM is not otherwise required to be amended, Instruction B. 12.1 would not cause more than two amendments of an OM per year. The commenter provided examples to illustrate its understanding.	Please see our response to comment 81.
General Comments about Schedules 1 and 2		
91.	One commenter believes that the requirements of Schedules 1 and 2 are very extensive, and therefore onerous for issuers. The commenter also believes that the disclosure of some of the information could be harmful as to an issuer's competitive position.	We acknowledge the concern about burden. We submit that the Amendments have been changed from the 2020 Proposed Amendments in a way that strikes an appropriate balance between concerns about burden and concerns about investor protection. We respectfully disagree with the comment about an issuer's competitive position. We believe that a prospectus exemption that is premised on a disclosure document, such as the OM Exemption, emphasizes disclosure to investors over keeping information confidential.

92.	One commenter agrees with most of the disclosure requirements in Schedule 1.	We thank the commenter for the support and input.
93.	One commenter states that they believe the disclosure required by Schedules 1 relating to the condition, background and transaction history of the property is reasonable and appropriate.	We thank the commenter for the support and input.
94.	One commenter welcomes the 2020 Proposed Amendments as they apply to CIVs. The commenter supports the additional requirements relating to the disclosure of a CIV's investment objectives and strategies, as well as the inclusion of a portfolio summary, as they are necessary changes to ensure that investors have sufficient information to make informed investment decisions. The commenter views many of these changes as aligning with current best practices.	We thank the commenter for the support and input.
95.	Two commenters agree with most of the disclosure requirements in Schedule 2.	We thank the commenters for the support and input.
96.	One commenter was supportive of the requirements in proposed Schedule 1. The commenter notes that Real Estate Issuers can often have complex structures, and that the need for clarity on an issuer's working relationships or planned use of funds is essential. The commenter is also supportive of the disclosure required by sections 3 and 4 of Schedule 2. The commenter also stated that providing direction that the additional disclosure required by Schedules 1 and 2 should be included in Item 2.2 of the OM may be helpful as this would ensure that this disclosure is near the start of the OM.	We thank the commenter for the support and input. The instructions to Schedule 1 and Schedule 2 state that issuers can integrate the disclosure from the schedules into their OMs where they choose. This is so an issuer can ensure that the disclosure in its OM is clear and logically organized.
97.	One commenter is supportive of the portfolio disclosure required by Schedule 2 including investment strategy, portfolio composition and performance data.	We thank the commenter for the support and input.
Form 45-106F2: Schedule 1: Section 2 (Application)		

98.	One commenter is requesting clarification in respect of subsection 2(2), which limits the application of Schedule 1. The commenter would like further guidance regarding when this limitation would apply. The commenter is of the view that this limitation is important, as an issuer with a large portfolio would need to provide large volumes of information to meet the requirements of section 3 of Schedule 1. While this may be appropriate for an issuer with a single property, the commenter believes that for issuers with a large portfolio, the information currently provided by issuers in the OM is more useful than the disclosure required by section 3.	We believe that subsection 2(2) allows an issuer to make a determination, based on its own particular circumstances. With respect to section 3, we note the following. First, subsection (2) allows an issuer making disclosure for multiple properties to present the information on a summarized basis. Second, with respect to the content of section 3, as explained below, we have made changes to address certain of the commenters' concerns, and to make the requirement more practical for issuers with a portfolio of properties.
Form 45-106F2: Schedule 1: Section 3 (Description of Real Property)		
99.	Two commenters assert that the requirement to set out the legal description of the interest in real property will be burdensome, and that instead the municipal address should suffice. One of the commenters owns condominium buildings, whose legal descriptions are especially lengthy as they are made up of the legal descriptions of all the units.	We acknowledge the comment. We have revised the provision to require the address or other description, to allow issuers other options beyond the legal description to describe the location of the real property.
100.	One commenter advises that minutia such as standard encumbrances (such as utilities easements), utilities providers, or minor legal proceedings are not necessary for investors to make an investment decision in most cases. The commenter suggests that a materiality threshold should be added to this section so that issuers and investors can focus on information that materially affects the value of such real property and would thus be important for investors to know.	Regarding paragraph 3(1)(c), we have qualified this requirement by making it as to encumbrances that would be material to a reasonable investor. We have made the same qualification to subsection 3(3). Regarding paragraph 3(1)(g), we have revised it so that it only applies if utilities and other services are not currently being provided.

101.	One commenter believes that because disclosure about encumbrances could be lengthy, only material encumbrances should be required to be disclosed.	Please see our response to comment 100.
102.	With respect to disclosure about encumbrances, one commenter notes that descriptions of easements can be lengthy, and submits that this information is not useful to investors. The commenter suggests that easements be excluded from paragraph 3(1)(c).	Please see our response to comment 100.
103.	With respect to disclosure about how and by whom utilities will be provided, one commenter questioned whether such disclosure is necessary. Another commenter asserted that because utilities are usually municipally owned or heavily regulated, and there is sometimes no choice of provider, this information is not useful to investors.	Please see our response to comment 100.
104.	Two commenters suggest that the disclosure required by paragraph 3(1)(k) of occupancy level for issuers that are landlords could be misleading on its own, because landlords often give rent incentives or abatements that result in tenants occupying space, but not paying rent. One of the commenters indicated that the extent of rent abatements or discounts in place should be disclosed.	We are concerned that the requirement to make disclosure about rental incentives or abatements could create undue complexity. We note that an OM must meet the OM Standard of Disclosure. For example, if an issuer disclosed a 100% occupancy rate but had provided significant rental incentives or abatements that were not disclosed, this likely would not meet the OM Standard of Disclosure.

105.	One commenter asserted that occupancy levels of real property should only be required to be disclosed if it is material information. The commenter observed that the materiality of occupancy levels can vary depending on the type of property, or the individual property, and suggests that it be left to the issuer to determine if disclosure of occupancy levels is necessary to meet the OM Standard of Disclosure. The commenter also wondered if small changes in occupancy levels would require an amendment to an OM.	We are of the view that in most cases, occupancy level of leased property is material to the issuer. With respect to when an OM is required to be amended, please see the changes to the 45-106CP.
106.	One commenter observes that subsection 3(2) attempts to alleviate the burden on issuers who hold 20 or more interests in real property. The commenter is of the view that 20 is an arbitrary number for providing this type of relief. If a Real Estate Issuer has multiple properties of a similar class or with similar characteristics, the commenter suggests that the issuer should be allowed to disclose such information summarily.	We acknowledge that there is an arbitrary element to bright-line tests. In this case, in order to make summarized disclosure a more useful accommodation, we have reduced the property threshold to 10.
Form 45-106F2 Schedule 1: Section 7 (Transfers)		
107.	One commenter supports the disclosure about real property transactions with Related Parties, including the requirement to disclose the consideration paid. The commenter believes that there should be an additional column where the basis for the consideration would be described, including the valuation methodology (e.g. price in the purchase and sale agreement, valued at NAV, carrying cost). The commenter also believes it should be required to disclose whether an independent valuation was made available.	We note that the disclosure calls for the consideration actually paid, rather than any methodology supporting it, or additional information made available at the time. As noted by the commenter, the purpose of this disclosure, and the other disclosure that would be required by the section, is to assist investors in evaluating whether or not the transaction with the Related Party was fair. We think that the requirements of the section accomplish this, and would be concerned about the burden associated with adding the disclosure suggested by the commenter.

Form 45-106F2 Schedule 1: Section 6 (Developer, or Manager under a Rental Pool Agreement or Rental Management Agreement: various information)		
108.	One commenter is concerned by the application of this section to persons that are not affiliates of the issuer. The commenter is concerned that the information required in this section is significant and onerous for an issuer to obtain when applied to third parties and it would be difficult, if not impossible, for an issuer to verify such information for third parties with sufficient certainty to allow the issuer's representatives to sign the certificate in the offering memorandum. In the case of a person to be disclosed in this section that is arm's length to the issuer, the commenter proposes that the disclosure be limited to the identity and experience of such person (proposed paragraph 6(2)(a)).	We acknowledge the concern about the burden and difficulty of this disclosure. However, we believe it is important for investors to know if critical parties such as developers or rental pool managers have recent insolvencies or sanctions. We are of the view that issuers should exercise care in selecting such parties and do the due diligence required to support the disclosure.
Form 45-106F2 Schedule 1: Sections 8 and 9 (approvals)		
109.	One commenter advised that when developing real property, there is so much uncertainty that often much of the information in proposed sections 8 and 9 cannot be known. The commenter suggests that these sections be subject to an overarching "if known and available" qualification.	In our view, this information is important, and can be determined or anticipated by the issuer.
110.	One commenter asserts that, in regard to disclosing a description of the approvals or permissions required, there may be a significant number of approvals and permits required. Some of these may be routine and basic while others may be significant and uncertain. The commenter suggests that the disclosure should differentiate between permits and approvals based on their significance and uncertainty.	We have revised paragraph 8(a) to specify that it is with respect to any approval that would be material to a reasonable investor.
Form 45-106F2: Schedule 1: Section 10 (Future Cash Calls)		

111.	One commenter notes that while they would prefer that issuers with large portfolios not be subject to the requirements in Schedule 1, they are supportive of a disclosure requirement for any future cash calls or potential future contributions.	We thank the commenter for the input. With respect to issuers with large portfolios, please see our response to comment 106.
Form 45-106F2 Schedule 2: section 3 (Portfolio Summary)		
112.	One commenter proposes that with respect to subsection (1), instead of this information being provided as at a date not more than 60 days before the date of the offering memorandum, that it be provided as at a date that is not prior to the end of the last financial period for which financial statements are required to be included in the offering memorandum, as many CIVs assess their portfolio at the time that financial statements are prepared.	We acknowledge the comment. We are of the view that this information should be reasonably current. We are also of the view that an issuer should be aware of this information at a recent date in order to meet the OM Standard of Disclosure.
113.	One commenter expressed concern about issuers amending loan terms in favour of a borrower order to avoid a default, and believes that such measures should be clearly disclosed. The commenter made similar comments about payment deferrals or reductions, such as in response to the COVID-19 pandemic.	We share the commenter's concern. We have added a new provision as paragraph (j) of subsection 3(3) that requires disclosure of such accommodations, if they would be material to a reasonable investor.
114.	One commenter believes that for issuers involved in factoring or otherwise holding receivables, the information on the portfolio should include information on the underlying business risks (e.g. with respect to potential non-payment of foreign receivables).	All issuers are required to disclose risk factors under Form 45-106F2 Item 8.
115.	One commenter expressed concerns that the requirements in subsection (3) could allow competitors to determine information about a specific mortgage to identify the property or the borrower. The commenter is specifically concerned with the requirement to disclose the property's location in accordance with paragraph (3)(k).	In our view, location does not need to be specific enough to identify the specific property. We also don't view the other information required to be disclosed in subsection (3) as being specific enough to identify the borrower.

116.	One commenter asserts that while the requirement to disclose NAV may be appropriate for an investment fund managed by a portfolio manager, this requirement may not be appropriate for other types of issuers that would be considered CIVs. The commenter notes that this requirement may lead to an inexperienced issuer providing inaccurate information.	We have removed the definition of NAV, as we intend NAV to have its generally accepted meaning. In our view, CIVs will be able to determine NAV in accordance with such generally accepted meaning.
Form 45-106F2 Schedule 2: section 4 (Portfolio Performance)		
117.	One commenter agrees with requiring portfolio performance information, but is concerned that the requirement will cause an OM to be amended more frequently than would otherwise be the case.	Under subsection 2.9(13.2) of NI 45-106, an OM must be amended if there is a material change between the date its certificate is signed and when the issuer accepts an agreement to purchase the security. Under subsection 2.9(13.3) of NI 45-106, an OM delivered under the section must provide a reasonable purchaser with sufficient information to make an informed investment decision. This requirement could also cause an OM to be required to be amended. An OM would be required to be amended to reflect significant changes in portfolio performance, if subsections 2.9 (13.2) or (13.3) are triggered.
118.	One commenter believes that the CSA should publish guidance on the regulatory expectations for the preparation of portfolio performance information.	We are concerned that additional instructions or frameworks could add burden for issuers. As a result, the requirement contemplates that issuer can calculate portfolio performance as it deems appropriate, subject to certain parameters as set out in the section, and subject to other general standards, such as the OM Standard of Disclosure.

119.	One commenter is of the view that the requirement to provide performance data requires further clarification for mortgage investment entities. Investors in these entities are ultimately interested in target and historical yields. For mortgage investment entities, the 2020 Proposed Amendments should clarify that the performance data provided relates to historical dividends or distributions paid.	Subject to the OM Standard of Disclosure, issuers are free to add any clarifying disclosure they feel is necessary in their OMs. For example, if a mortgage investment entity believes that an explanation regarding its performance data would be useful to investors, it can include this disclosure in its OM.
120.	One commenter stated that the 10 year period required for performance data may be too long, depending on the nature of the performance data required, and formulating this data may be too burdensome for some issuers.	The 10 year requirement is to ensure a thorough depiction of the issuer's past performance. Issuers should have the inputs necessary to calculate performance data for this period. Regarding burden, the requirement allows an issuer to calculate portfolio performance as it deems appropriate, subject to certain parameters as set out in the section, and subject to other general standards, such as the OM Standard of Disclosure.
121.	Regarding performance information for the most 10 recently completed financial years, one commenter requested clarification of the expectations for issuers with less than 10 years of history. The commenter also requests additional guidance as to how the performance data should be presented.	Issuers with less than 10 years of history should disclose available performance data since inception. We are concerned that additional instructions or frameworks could add burden for issuers. As a result, the requirement contemplates that the issuer can calculate portfolio performance as it deems appropriate, subject to certain parameters as set out in the section, and subject to other general standards, such as the OM Standard of Disclosure.
Form 45-106F4 Risk Acknowledgement		

122.	One commenter recommends changing the line "You will not receive advice – [Instruction: Delete if sold by registrant] to [Instruction: Delete if sold by a registered portfolio manager] as other registrants such as EMDs do not provide investment advice.	Investment dealers and EMDs provide suitability advice, and therefore deleting this sentence if the securities have been sold by a registrant remains appropriate.
123.	One commenter asserts that the language "the issuer of your securities is a non-reporting issuer" is confusing given that issuers must publicly provide audited financial statements at the time of the distribution, along with a Form 45-106F16 *Notice of Use of Proceeds* annually, as applicable.	Reporting issuer is a defined term in local securities acts. Despite the fact that issuers using the OM Exemption are required to make annual filings in some jurisdictions, this fact alone does not make such issuers reporting issuers. Therefore, it is still important to include this statement in Form 45-106F4 *Risk Acknowledgement* (**Form 45-106F4**).
124.	One commenter is concerned about the revised warning at the top of Form 45-106F4. The commenter believes that the warning implies that it is likely that an investor will lose all of their money. The commenter believes that this new warning will make it more difficult to raise capital. The commenter also notes that, due to the nature of a mortgage investment entity's investments, a total loss of invested capital is unlikely.	This change is being proposed to improve consistency with other forms that have adopted this language, including Form 45-106F9 *Form for Individual Accredited Investors* and Form 45-108F2 *Risk Acknowledgement*.
Miscellaneous comments		
125.	On commenter asserted that all requirements pertaining to real estate under the OM Exemption should be in one place. Accordingly, the commenter strongly supports the information in local notices for British Columbia and Alberta indicating that if the 2020 Proposed Amendments or a version of them is enacted, BCSC staff plan to seek the repeal of BC Form 45-906F *Offering Memorandum – Real Estate Securities* and ASC staff plan to seek the repeal of ASC Rule 45-509 *Offering Memorandum for Real Estate Securities*.	We thank the commenter for the support and input.

126.	One commenter believes that there is no cogent rationale underlying the 2020 Proposed Amendments, and that the statement made by the CSA that larger, more complex issuers are using the OM Exemption than those originally envisioned is not a basis for the proposal. The commenter asks if there are specific deficiencies that regulators have identified. The commenter is also concerned that the proposal will have a negative effect on smaller issuers.	The statement made by the CSA that larger, more complex issuers are using the OM Exemption than those originally envisioned was intended as background and context to the proposals. The 2020 Proposed Amendments respond to an identified need for better disclosure by Real Estate Issuers and CIVs. The General Amendments that were included in the 2020 Proposed Amendments were based on issues identified in compliance reviews of OMs. We acknowledge that there is burden associated with the Amendments (for all sizes of issuers), but we believe that the burden is justified by the benefit of a clearer disclosure framework for issuers and improved disclosure for investors.
127.	One commenter expressed concern about continuous disclosure obligations being imposed on issuers relying on the OM Exemption.	The 2020 Proposed Amendments do not impose continuous disclosure requirements.
128.	One commenter observed that because the OM Exemption allows access to retail investors, structures are often designed to qualify for tax-deferred plans. The commenter is of the view that National Policy 41-201 *Income Trust and Other Indirect Offerings* is instructive when preparing offering memorandums for more complex structures.	We acknowledge the comment.
129.	One commenter suggested that if the 2020 Proposed Amendments are adopted, ongoing reviews of the effectiveness of the amendments should be done. The commenter also suggested that guidance should be published to identify any compliance issues as to the amendments, so that they can be corrected.	We acknowledge the comment. Reviews for compliance with requirements are undertaken based a prioritized approach and available resources. Any additional guidance would be proposed on an as-needed basis.

130.	One commenter observed that SN 45-309 specifically identifies OM deficiencies relating to mortgage investment entities and real estate development entities. The commenter is unsure why the principles outlined in SN 45-309 no longer apply and why the new requirements in the 2020 Proposed Amendments are necessary.	SN 45-309 contains guidance, and therefore issuers are not required to follow its recommendations. While some issuers have followed the guidance, others have not incorporated the guidance in their OMs. We note that some of the guidance in SN 45-309 has been put in the form of requirements in the Amendments. We also plan to revise SN 45-309 and publish such revised version in conjunction with final amendments. Additionally, SN 45-309 was published in 2012. Since this time, compliance reviews have indicated the need for tailored disclosure requirements to ensure that OMs provide sufficient information for purchasers to make an informed investment decision.
Comments falling outside the scope of the project		

131.	One commenter made a large number of comments that fell outside the scope of the project or were otherwise not feasible to respond to in detail. The comments included the following specific comments: • The OM Exemption should be made more suitable for early stage businesses. • Proposed Item 4.1 of Form 45-106F2 should provide more detailed disclosure. • The CSA should provide guidance on acceptable and unacceptable information from experts or other third parties that is included in an OM • There should be a requirement for issuers to make disclosure about any other offering taking place concurrently with the offering under the OM. • Newly-formed issuers with nominal assets should not be required to include audited financial statements in the offering memorandum. Other comments concerned the following topics: • CSA member OM review and compliance programs. • Form 45-106F2 items relating to insufficient funds and minimum offering. • Form 45-106F2 Item 1.2. • Form 45-106F2 Item 2.1. • Accounting principles that should apply to United States organized issuers using the OM Exemption. • Director independence and corporate governance.	We acknowledge the comments.

Comments falling outside the scope of the project: the OM Exemption should be harmonized across Canada		
132.	One commenter urged the CSA to harmonize prospectus exemptions across Canada, including the OM Exemption. The commenter's observations included that the requirement to incorporate OM marketing materials into an OM is not uniform across Canada. The commenter made the same point about the availability of the OM Exemption for investment funds.	We acknowledge the comments.
Comments falling outside the scope of the project: investment funds and the OM Exemption		
133.	One commenter observed that currently, the availability of the OM Exemption to investment funds varies depending on province. With the proposed amendments relating to CIVs, investment funds would need to provide all of the disclosure applicable to CIVs. In light of such enhanced disclosure and its similarity to disclosure requirements for public investment funds, the commenter urges the CSA to allow investment funds to use the OM Exemption.	We acknowledge the comments.
134.	One commenter believes that all investment funds should be able to use the OM Exemption in all jurisdictions of Canada. The commenter asserts that the new requirements for CIVs will provide robust enough disclosure for investment funds. The commenter also notes that investment fund managers are registrants, and indicates that registration provides investor protection.	We acknowledge the comments.
Comments falling outside the scope of the project: investment limits should not apply to CIVs and Real Estate Issuers		

135.	One commenter asserts that issuers avoid the use of the OM Exemption in jurisdictions where investment limits apply. The commenter's view is that if the 2020 Proposed Amendments are adopted, the investment limits should no longer apply to issuers that are CIVs or Real Estate Issuers due to the added protection provided by the additional disclosure imposed by the 2020 Proposed Amendments.	Although we acknowledge the commenter's point and agree that additional disclosure is required for Real Estate Issuers and CIVs under the Amendments, revisiting the investment limits is outside the scope of the project.
Comments falling outside the scope of the project: whether videos are OM marketing materials		
136.	One commenter discussed the view that a video presentation relating to an offering under the OM Exemption could be OM marketing materials.	We acknowledge the comment. Guidance about OM marketing materials is outside the scope of the project.
Comments falling outside the scope of the project: using OM marketing materials to amend an OM		
137.	One commenter discussed the view that an OM can be amended using OM marketing materials, and certain ramifications of that.	We advise that OM marketing materials were never intended to be a means of amending an OM.
Comments falling outside the scope of the project: concerns about OM marketing materials		

138.	One commenter expressed concern about OM marketing materials, stating that they can be overly promotional. The commenter noted that in some jurisdictions, OM marketing materials are required to be incorporated by reference into an OM. The commenter cited certain specific concerns, including inadequate disclosure of risks, fees and assumptions. The commenter called for stricter rules on the composition of OM marketing materials, to ensure they are balanced.	Changes in respect of OM marketing materials are outside the scope of this project. However, we wish to make responses to certain of the commenter's comments. A standard for marketing materials specifically (i.e. the marketing materials on their own) was originally proposed in connection with the 2013 Marketing Amendments, but was not adopted (for further information, see the CSA notice of amendments dated May 30, 2013). As noted above, for OM marketing materials that are incorporated by reference into an OM, the OM must meet the standard of disclosure set out in subsections 2.9(13.1) to (13.3) of NI 45-106 (the **OM Standard of Disclosure**). In addition, as also noted above, all communications are subject to the prohibition on misleading disclosure contained in local securities acts.
Comments falling outside the scope of the project: statutory liability for independent professionals		

139.	One commenter asserted that with respect to independent professionals (**Experts**), there is no statutory right of action for investors against them with respect to their reports included in an OM (**Right of Action as to Expert Reports**). The commenter is also of the understanding that Experts do not owe a legal duty of care under common law to investors who may have relied on their reports when they made their investment decision. Based on the foregoing, the commenter makes certain suggestions, including: • Until a Right of Action as to Expert Reports is implemented by securities regulators across Canada, the CSA should consider eliminating the requirement to include Expert reports and, instead, make their inclusion voluntary. • Including a requirement for the Expert to consent to disclosure of their report, which would make the Right of Action as to Expert Reports introduced by British Columbia in 2019 enforceable. • Including a document in Form 45-106F2 that would clarify the Expert's role, rights and obligations to investors. • That the cautionary language in Item 11.2 of Form 45-106F2 be changed from encouraging investors to obtain (costly) legal advice, to stating that investors are unable to sue Experts at common law. There should also be a summary of this disclosure or cross-reference to it on the cover page of the OM.	We acknowledge that some jurisdictions currently do not have legislation enabling a Right of Action as to Expert Reports. The CSA does not at this time have a project to introduce a harmonized Right of Action as to Expert Reports or a harmonized requirement for experts to file a consent for their expert reports. These matters may be considered in the future, depending on regulatory priorities. Any future work in this area would consider burden on issuers and any corresponding benefit to investors. We make no comment regarding the potential liability under common law of Experts for reports provided in connection with an OM.
Comments falling outside the scope of the project: revisit the entire Form 45-102F2 to simplify and condense it		

140.	One commenter suggests that when time permits, the CSA review Form 45-106F2 in its entirety and, after consulting with users and preparers of OMs, condense, simplify and 'plain language' the document. The commenter indicates that for example, more than half of the in-force Form 45-106F2 is devoted to instructions regarding financial statements. The commenter believes that this would make it easier for issuers, particularly small businesses for which the OM Exemption was originally created, to comply with the disclosure requirements.	We acknowledge the comments. With respect to financial statement requirement instructions specifically, we note that if a disclosure document is required to include financial statements, instructions of significant detail and length are necessary. This can be seen in the prospectus rules, and in National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**).
Comments falling outside the scope of the project: request for enhanced plain language instruction, summary information, and cross-referencing		
141.	The commenter encourages the CSA to consider imposing a "plain language requirement" for specific portions of the OM, including the summary section, with cross references to where more detailed disclosures can be found in the document.	Instruction A. 2 to the Form 45-106F2 instructs issuers to draft the OM so that it is easy to read and understand, using plain language and avoiding technical terms. In-force Form 45-1065F2 requires certain summary information, with cross-references to where more detailed disclosure can be found. The Amendments have added additional matters, in the same format, to this part of the OM.
Comments falling outside the scope of the project: suggested different format for disclosure, and certain additional disclosures		

142.	One commenter believes the use of diagrams and tables, such as those that are already required for the "Use of Available Funds" disclosure, is more digestible for investors than dense descriptive disclosure. Given the length and detailed nature of the prescribed form of OM, the commenter suggests mandating that issuers include an easily understandable organizational chart of their structure, showing the flow of fees and other funds upfront. It is particularly important for issuers to be transparent about the amount, frequency and source of all fees that are payable in connection with the investment and the impact the payment of such fees will have on the net returns payable to the investors. Currently, fees paid to various services providers may be described throughout the document and thus it is difficult for investors to aggregate these costs in order to compare the total fees to other products or market norms. The commenter also urges the CSA to continue to consider emphasizing clear and prominent fee and conflict disclosures upfront on the face pages of the OM.	A generalized change in the format of disclosure for an OM, and some of the other changes mentioned, are outside the scope of the project. However, we wish to highlight certain in-force requirements or aspects of the Amendments that are relevant to portions of this comment. The Amendments provide for certain costs or financial considerations to be highlighted in summary form at the beginning of the OM, such as compensation paid to sellers or finders, working capital deficiency, payments to related parties, dividends or distributions that exceeded cash flow from operations and fees associated with redemption or retraction. We also note that with respect to disclosure of fees and costs, an OM must meet the OM Standard of Disclosure.
Comments falling outside the scope of the project: allow issuers raising smaller amount to use reviewed financial statements rather than audited financial statements		
143.	One commenter suggested that requiring a review of an issuer's financial statements, rather than an audit, for offerings at or below a set amount such as $2 million and restricted to certain types of issuers such as CIVs, could help provide a bridged approach to OM use for issuers engaged in crowdfunding. This approach could allow available exemptions to work in tandem more efficiently, and provide a possible path for issuers to the public markets or other exit or growth opportunities.	We acknowledge the comments.
Comments falling outside the scope of the project: revising Form 45-106F2 Items 1.1 and 1.2 regarding funds from the offering and the use of those funds		

144.	One commenter observed that the 2020 Proposed Amendments do not focus on the current "Use of Available Funds" chart in Form 45-106F2. However, the commenter believes this chart must be improved in order to help investors understand the projected gross return of an investment and that, in some cases, the aggregate fees and costs associated with an investment could represent a large percentage of the aggregate capital raised, therefore substantially reducing the projected net return of such investment. Investors could then determine whether it will be difficult to earn a return on capital, or even a return of original capital, in the early years of an investment. This could also help with potential confusion investors face from their client statements showing the investment at cost, which usually does not represent the redemption price. The chart should require an issuer to state the expected use of funds in both dollar terms and as a percentage of the amount raised. Such disclosure would also better represent the "J curve" of certain types of investments such as private equity funds (where certain vehicles tend to deliver negative returns in the early years).	Reformulating Form 45-106F2 Items 1.1 and 1.2 is outside the scope of the project. However, we would like to highlight certain aspects of in-force Form 45-106F2 or of the Amendments that are relevant to these comments. Form 45-106F2 Item 1.1 (use of available funds) requires that the costs of the offering be disclosed. With respect to ongoing costs and fees, as noted above, an OM must meet the OM Standard of Disclosure. The Amendments in section 2 of Schedule 2 of Form 45-106F2 also specifically require for CIVs disclosure of remuneration paid to outside parties involved in managing the CIV's investments. Overall, we understand the comment to advocate for a projection of the investment's return over time. We are concerned that being required to do this would be unduly onerous for issuers, and therefore have not proposed such a requirement.
Comments falling outside of the scope of the project: impact on other exemptions		
145.	One commenter is concerned that this level of comprehensive disclosure under the OM Exemption is a signal by regulators of the level of disclosure they will expect in compliance reviews in offering materials by issuers under all prospectus exemptions. This could reduce the number of smaller issuers using OMs, whether under the OM Exemption or other exemptions, which would ultimately result in investors receiving less disclosure.	The Amendments do not impact any other prospectus exemptions and do not change the level of disclosure expected to be provided in OMs used in conjunction with other prospectus exemptions.

ANNEX B

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 in paragraph (b) of the definition of "eligibility adviser***" by replacing "***public accountant who is a member in good standing of an institute or association of chartered accountants, certified general accountants or certified management accountants in a jurisdiction of Canada provided that the lawyer or public accountant must not***" with "***chartered professional accountant who is a member in good standing of an organization of chartered professional accountants in a jurisdiction of Canada provided that the lawyer or chartered professional accountant does not***".***

3. Section 1.1 is amended by adding the following definitions:

"collective investment vehicle" means either of the following:

(a) an investment fund;

(b) any other issuer, the primary purpose of which is to invest money provided by its security holders in a portfolio of securities other than securities of subsidiaries of the issuer;

"material contract" means any contract that an issuer or any of its subsidiaries is a party to that is material to the issuer;

"real estate activities" means activities, the primary purpose of which is to generate for security holders income or gain from the lease, sale or other disposition of real property but, for greater certainty, does not include any of the following:

(a) activities in respect of a "mineral project", as defined in National Instrument 43-101 *Standards of Disclosure for Mineral Projects*;

(b) "oil and gas activities" as defined in National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*;

(c) in Québec, activities relating to the forms of investments subject to *Regulation Respecting Real Estate Prospectus and Registration Exemptions* (Québec);

"related party**"** means any of the following:

(a) a director, officer, promoter or control person of an issuer;

(b) in regard to an individual referred to in paragraph (a), a child, parent, grandparent, sibling or other relative living in the same residence;

(c) in regard to an individual referred to in paragraph (a) or (b), the individual's spouse;

(d) an insider of an issuer;

(e) a person controlled by a person referred to in paragraphs (a) to (d), or controlled by a person referred to in paragraphs (a) to (d) acting jointly or in concert with another person;

(f) in the case of a person referred to in paragraph (a) or (d) that is not an individual, a person that, alone or together with one or more persons acting jointly or in concert, controls that person;**.**

4. Subparagraphs 2.9(1)(b)(i), (2)(c)(i) and (2.1)(c)(i) are amended by replacing "(13)***" with "***(13.3)***".***

5. Paragraph 2.9(2.2)(a) is amended by adding "," after "non-redeemable investment fund***".***

6. Subsection 2.9(5.2) is amended by replacing "A***" with "***In Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan, a***".***

7. Subsection 2.9(13) is repealed.

8. Section 2.9 is amended by adding the following subsections:

(13.1) An issuer must not make a misrepresentation in its offering memorandum.

(13.2) If a material change with respect to the issuer occurs after the certificate under subsection (8) or (14.1) is signed, and before the issuer accepts an agreement to purchase the security from the purchaser, the issuer must amend the offering memorandum to reflect the material change and deliver the amended offering memorandum to the purchaser.

(13.3) An issuer must not deliver an offering memorandum under this section unless the offering memorandum contains sufficient information to enable a reasonable purchaser to make an informed investment decision**..**

9. Subsection 2.9(14) is repealed.

10. Section 2.9 is amended by adding the following subsection:

(14.1) An issuer that amends its offering memorandum must include in the amended offering memorandum a newly dated certificate signed in compliance with subsections (9), (10), (10.1), (10.2), (10.3), (11), (11.1) and (12), as applicable**..**

11. Subsection 2.9(17) is replaced with the following:

(17) An issuer must file a copy of an offering memorandum delivered under this section and any amended offering memorandum on or before the 10th day after the distribution under the offering memorandum or the amended offering memorandum..

12. Section 2.9 is amended by adding the following subsection:

(17.0.1) An offering memorandum or amended offering memorandum filed under this section must be in a format that allows for the searching of words electronically using reasonably available technology..

13. Subsection 2.9(19) is amended by replacing "subsections (19.1) and (19.3), a qualified appraiser is independent of an issuer of a syndicated mortgage***" with "***subsections (19.1), (19.3), (19.6) and (19.7), a qualified appraiser is independent of an issuer***".***

14. Section 2.9 is amended by adding the following after subsection (19.4):

(19.5) Subsection (19.6) does not apply to an issuer unless all of the following apply:

(a) the issuer is relying on subsection (1), (2) or (2.1);

(b) the issuer is engaged in real estate activities;

(c) one or both of the following apply:

(i) the issuer proposes to acquire an interest in real property from a related party and a reasonable person would believe that the likelihood of the issuer completing the acquisition is high;

(ii) except in its financial statements contained in the offering memorandum, the issuer discloses in the offering memorandum a value for an interest in real property.

(19.6) An issuer must, at the same time or before the issuer delivers an offering memorandum to the purchaser under subsection (1), (2) or (2.1), deliver to the purchaser an appraisal of the interest in real property referred to in paragraph (19.5)(c) to which all of the following apply:

(a) the appraisal is prepared by a qualified appraiser that is independent of the issuer;

(b) the appraisal includes a certificate signed by a qualified appraiser stating that the appraisal is prepared in accordance with the standards and the code of ethics established or endorsed by the professional association of which the qualified appraiser is a member;

(c) the appraisal provides the appraised fair market value of the interest in real property without considering any proposed improvements to or proposed development of the interest;

(d) the appraised fair market value referred to in paragraph (c) is as at a date that is within 6 months preceding the date that the appraisal is delivered to the purchaser.

(19.7) If an issuer relying on subsection (1), (2) or (2.1) is engaged in real estate activities, the issuer must not disclose in any communication related to the distribution a representation of, or opinion as to, a value for an interest in real property referred to in paragraph (19.5)(c), other than the appraised fair market value disclosed in the appraisal referred to in subsection (19.6), unless the issuer has a reasonable basis for that value.

(19.8) If an issuer relying on subsection (1), (2) or (2.1) is engaged in real estate activities, and discloses in any communication related to the distribution a representation of, or opinion as to, a value for an interest in real property referred to in paragraph (19.5)(c), other than the appraised fair market value disclosed in the appraisal referred to in subsection (19.6), the issuer must also disclose in that communication,

(a) with equal or greater prominence as the representation or opinion, the appraised fair market value referred to in subsection (19.6),

(b) the material factors or assumptions used to determine the representation or opinion, and

(c) whether or not the representation or opinion was determined by a qualified appraiser who is independent of the issuer.

(19.9) An issuer must file a copy of any appraisal delivered under subsection (19.6) concurrently with the filing of the offering memorandum or any amended offering memorandum or, if the appraisal is produced after the filing of the offering memorandum or any amended offering memorandum, on or before the 10th day after the first distribution for which the appraisal was required to be delivered to a purchaser.**.**

15. Section 6.4 is amended by adding the following:

(4) An issuer that is engaged in real estate activities must supplement its offering memorandum with Schedule 1 of Form 45-106F2 *Offering Memorandum for*

Non-Qualifying Issuers, unless the offering memorandum is prepared under subsection (2).

(5) An issuer that is a collective investment vehicle must supplement its offering memorandum with Schedule 2 of Form 45-106F2 *Offering Memorandum for Non-Qualifying Issuers*, unless the offering memorandum is prepared under subsection (2)**.**

16. Form 45-106F2 Offering Memorandum for Non-Qualifying Issuers is repealed and replaced with the material in Schedule B-1.

17. Form 45-106F4 Risk Acknowledgement is amended

(a) by repealing and replacing all content prior to Schedule 1 with the material in Schedule B-2,

(b) in B. of Schedule 1, by replacing **"**subsection 7.3(3) of the *Securities Act* (Ontario)**"** ***with*** **"**subsection 73.3 of the *Securities Act* (Ontario)**"** ***, and***

(c) in B. of Schedule 2, by replacing **"**subsection 7.3(3) of the *Securities Act* (Ontario)**"** ***with*** **"**subsection 73.3 of the *Securities Act* (Ontario)**" .**

18. Form 45-106F18 Supplemental Offering Memorandum Disclosure for Syndicated Mortgages is amended by repealing instruction 7.

Transition

19. Subsections 6.4(1), (4) and (5) of National Instrument 45-106 *Prospectus Exemptions* do not apply to an issuer in respect of an offering memorandum if both of the following apply:

(a) the date of the certificate required under subsection 2.9(8) or (14.1) of National Instrument 45-106 *Prospectus Exemptions* is before March 8, 2023;

(b) the offering memorandum was prepared in accordance with the version of Form 45-106F2 *Offering Memorandum for Non-Qualifying Issuers* in force on March 7, 2023.

Effective date

20. (1) This Instrument comes into force on March 8, 2023.

(2) In Saskatchewan, despite subsection (1), if this Instrument is filed with the Registrar of Regulations after March 8, 2023, this Instrument comes into force on the day on which it is filed with the Registrar of Regulations.

Schedule B-1

FORM 45-106F2
OFFERING MEMORANDUM FOR NON-QUALIFYING ISSUERS

Date: [Insert the date from the certificate page.]

The Issuer
Name:

Head office: Address:
Phone #:
Website address:
Email address:

Currently listed or quoted? [If no, state in bold type: "**These securities do not trade on any exchange or market.**". If yes, identify the exchange or market.]

Reporting issuer? [Yes/No. If yes, state where.]

The Offering
Securities offered:

Price per security:

Minimum/Maximum offering: [If there is no minimum, state in bold type: "**There is no minimum.**" and also state in bold type: "**You may be the only purchaser.**"]

Minimum subscription amount: [State the minimum amount each investor must invest, or state "There is no minimum subscription amount an investor must invest."]

Payment terms:

Proposed closing date(s):

Income tax consequences: There are important tax consequences to these securities. See item 8. [If income tax consequences are not material, delete this item.]

Insufficient Funds
If item 2.6 applies, state in bold type: "**Funds available under the offering may not be sufficient to accomplish the proposed objectives. See item 2.6.**".

Compensation Paid to Sellers and Finders
If item 9 applies, state the following: "A person has received or will receive compensation for the sale of securities under this offering. See item 9.".

Underwriter(s)
State the name of any underwriter.

Guidance: The requirements of National Instrument 33-105 *Underwriting Conflicts* may be applicable.

Resale Restrictions
State: "You will be restricted from selling your securities for [4 months and a day/an indefinite period]. See item 12."

Working Capital Deficiency
If the issuer is disclosing a working capital deficiency under item 1.1, state the following, with the bracketed information completed: "[name of issuer] has a working capital deficiency. See item 1.1.".

Payments to Related Party
If the issuer is disclosing payment to a related party under item 1.2, state the following, with the bracketed information completed as applicable: "[All of][Some of] your investment will be paid to a related party of the issuer. See item 1.2.".

Certain Related Party Transactions
If the issuer is making disclosure under item 2.9(b), or subsection 7(2) of Schedule 1, state the following with the bracketed information completed as applicable: "This offering memorandum contains disclosure with respect to one or more transactions between [name of issuer] and a related party, where [name of issuer] [paid more to a related party than the related party paid for a business, asset or real property] [and] [was paid less by a related party for a business, asset or real property than [name of issuer] paid for it]. See [item 2.9(b)] [and] [subsection 7(2) of Schedule 1].".

Certain Dividends or Distributions
If the issuer is making disclosure under item 7, state the following with the bracketed information completed: "[name of issuer] has paid dividends or distributions that exceeded cash flow from operations. See item 7.".

Conditions on Repurchases
If the purchaser will have a right to require the issuer to repurchase the securities and there is any restriction, fee or price associated with this right, state in bold type with the bracketed information completed, as applicable: "**You will have a right to require the issuer to repurchase the securities from you, but this right is qualified by [a specified price] [and] [restrictions] [and] [fees]. As a result, you might not receive the amount of proceeds that you want. See item 5.1.**"

Purchaser's Rights
State: "You have 2 business days to cancel your agreement to purchase these securities. If there is a misrepresentation in this offering memorandum, you have a right to damages or to cancel the agreement. See item 13."

State in bold type:

"**No securities regulatory authority or regulator has assessed the merits of these securities or reviewed this offering memorandum. Any representation to the contrary is an offence. This is a risky investment. See item 10.**"

Instructions

1. Include all of the above information at the beginning of the offering memorandum.

2. After the above information, include a table of contents for the rest of the information in the offering memorandum.

Guidance

National Instrument 52-112 *Non-GAAP and Other Financial Measures Disclosure* may be applicable to disclosure in the offering memorandum.

Item 1: Use of Available Funds

1.1 ***Funds*** - Using the following table, disclose the funds available as a result of the offering. If the issuer plans to combine additional sources of funding with the available funds from the offering to achieve its principal capital-raising purpose, provide details about each additional source of funding. If there is no minimum offering, state "$0" as the minimum. Disclose any working capital deficiency of the issuer as at a date not more than 30 days before the date of the offering memorandum. If the working capital deficiency will not be eliminated by the use of available funds, state how the issuer intends to eliminate or manage the deficiency.

		Assuming minimum offering	Assuming maximum offering
A.	Amount to be raised by this offering	$	$
B.	Selling commissions and fees	$	$
C.	Estimated offering costs (including legal, accounting and audit)	$	$
D.	Available funds: D = A - (B+C)	$	$
E.	Additional sources of funding required	$	$
F.	Working capital deficiency	$	$
G.	Total: G = (D+E) - F	$	$

1.2 ***Use of Available Funds*** - Using the following table, provide a detailed breakdown of how the issuer will use the available funds. If any of the available funds will be paid to a related party, disclose in a note to the table the name of the related party, the relationship to the issuer, and the amount. If more than 10% of the available funds will be used by the issuer to pay debt and the issuer incurred the debt within the two preceding financial years, describe why the debt was incurred.

Description of intended use of available funds listed in order of priority	Assuming minimum offering	Assuming maximum offering
	$	$
	$	$
Total: Equal to G in the Funds table above	$	$

1.3 ***Proceeds Transferred to Other Issuers*** - If a significant amount of the proceeds of the offering will be invested in, loaned to, or otherwise transferred to another issuer that is not a subsidiary controlled by the issuer, provide the disclosure specified by items 2, 3, 4.1, 4.2, 10 and 14 and, as applicable, Schedule 1 of this form if the other issuer is engaged in real estate activities, and Schedule 2 of this form if the other issuer is a collective investment vehicle, as if each of those other issuers were the issuer preparing the offering memorandum. In addition, describe the relationship between the issuer and each of those other issuers, and supplement the description with a diagram.

Item 2: Business of the Issuer and Other Information and Transactions

2.1 ***Structure*** - State whether the issuer is a partnership, corporation or trust, or if the issuer is not a corporation, partnership or trust then state what type of business association the issuer is. State any statute under which the issuer is incorporated, continued or organized, and the date of incorporation, continuance or organization.

2.2 The Business - Describe the issuer's business.

(a) For a non-resource issuer include in the description the following:

(i) principal products or services;
(ii) operations;
(iii) market, marketing plans and strategies;
(iv) a discussion of the issuer's current and prospective competitors.

(b) For a resource issuer include in the description the following:

(i) a description of principal properties (including interest held);
(ii) a summary of material information including, as applicable, the stage of development, reserves, geology, operations, production and mineral reserves or mineral resources being explored or developed.

Guidance

1. For a resource issuer disclosing scientific or technical information for a mineral project, see General Instruction A.8 of this Form.

2. For a resource issuer disclosing information about its oil and gas activities, see General Instruction A.9 of this Form.

2.3 ***Development of Business*** - Describe the general development of the issuer's business over at least its two most recently completed financial years and any subsequent period. Include any major events that have occurred or conditions that have influenced (favourably or unfavourably) the development or financial condition of the issuer.

2.4 ***Long Term Objectives*** – With respect to the issuer's objectives subsequent to the next 12 months after the date of the offering memorandum, describe each significant event associated with those objectives, state the specific time period in which each event is expected to occur, and the costs related to each event.

2.5 ***Short Term Objectives***

(a) Disclose the issuer's objectives for the next 12 months after the date of the offering memorandum.

(b) Using the following table, disclose how the issuer intends to meet those objectives.

Actions to be taken	Target completion date or, if not known, number of months to complete	Cost to complete
		$
		$

2.6 ***Insufficient Funds***

If applicable, disclose that the funds available as a result of the offering either may not or will not be sufficient to accomplish all of the issuer's proposed objectives and there is no assurance that alternative financing will be available. With respect to any alternative financing that has been arranged, disclose the amount, source and all outstanding conditions.

2.7 ***Additional Disclosure for Issuers Without Significant Revenue***

(1) If the issuer has not had significant revenue from operations in either of its two most recently completed financial years, or has not had significant revenue from operations since inception, provide, for each period referred to in subsection (2), a breakdown of the material components of the following:

(a) exploration and evaluation assets or expenditures and, if the issuer's business primarily involves mining exploration and development, provide the breakdown on a property-by-property basis;

(b) expensed research and development costs;

(c) intangible assets arising from development;

(d) general and administration expenses;

(e) any material costs, whether expensed or recognized as assets, not referred to in paragraphs (a) through (d).

(2) Include the disclosure in subsection (1) with respect to each period for which financial statements are included in the offering memorandum.

(3) Subsection (1) does not apply to any period for which the information specified under subsection (1) has been disclosed in the financial statements that are included in the offering memorandum.

2.8 ***Material Contracts*** - Disclose the key terms of all material contracts including, for certainty, the following:

(a) if the contract is with a related party, the name of the related party and the relationship to the issuer;

(b) a description of any asset, property or interest acquired, disposed of, leased or under option;

(c) a description of any service provided;

(d) purchase price and payment terms (including payment by instalments, cash, securities or work commitments);

(e) the principal amount of any debenture or loan, the repayment terms, security, due date and interest rate;

(f) the date of the contract;

(g) the amount of any finder's fee or commission paid or payable to a related party in connection with the contract;

(h) any material outstanding obligations under the contract.

2.9 ***Related Party Transactions***

With respect to any purchase and sale transaction between the issuer and a related party that does not relate to real property,

(a) using the following table and starting with the most recent transaction, provide the specified information, and

Description of business or asset	Date of transfer	Legal name of seller	Legal name of buyer	Amount and form of consideration exchanged in connection with transfer

(b) explain the reason for any material difference between the amount of consideration paid by the issuer and the amount of consideration paid by a related party for the business or asset.

Item 3: Compensation and Security Holdings of Certain Parties

3.1 ***Compensation and Securities Held***

Using the following table, provide the specified information for the following:

(a) each director, officer and promoter of the issuer;

(b) each person that has beneficial ownership of, or direct or indirect control over, or a combination of beneficial ownership and direct or indirect control over, 10% or more of any class of voting securities of the issuer;

(c) any related party not specified in paragraph (a) or (b) that received compensation in the most recently completed financial year or is expected by the issuer to receive compensation in the current financial year.

Full legal name and place of residence or, if not an individual, jurisdiction of organization	If paragraph (a) or (b) applies, specify whether the person is a director, officer, promoter or person referred to in paragraph (b); if paragraph (c) applies, specify the person's relationship to the issuer; in all cases, specify the date that the person became a person identified in paragraph (a), (b) or (c)	Compensation paid by issuer or related party in the most recently completed financial year and the compensation expected to be paid in the current financial year	Number, type and percentage of securities of the issuer held after completion of minimum offering	Number, type and percentage of securities of the issuer held after completion of maximum offering

Instructions to Item 3.1

1. If the issuer has not completed its first financial year, disclose for the period from the date of the issuer's inception to the date of the offering memorandum.

2. Compensation includes any form of remuneration including, for certainty, cash, shares and options.

3. If a person identified in paragraph (a), (b) or (c) is not an individual, state in a note to the table the full legal name of any person that has beneficial ownership of, or direct or indirect control over, or a combination of beneficial ownership and direct or indirect control over, more than 50% of the voting rights of the person.

3.2 ***Management Experience*** - Using the following table, provide the specified information for the directors and executive officers of the issuer for the 5 years preceding the date of the offering memorandum.

Full Legal Name	Principal occupation and description of experience associated with the occupation

3.3 ***Penalties, Sanctions, Bankruptcy, Insolvency and Criminal or Quasi-Criminal Matters***

(a) If any of the following have occurred during the 10 years preceding the date of the offering memorandum with respect to a director, executive officer or control person of the issuer, or an issuer of which any of those persons was a director, executive officer or control person at the time, describe the details of the penalty, other sanction or order, including the reason for it and whether it is currently in effect:

(i) a penalty or other sanction imposed by a court relating to a contravention of securities legislation;

(ii) a penalty or other sanction imposed by a regulatory body relating to a contravention of securities legislation;

(iii) an order restricting trading in securities, not including an order that was in effect for less than 30 consecutive days.

(b) If any of the following have occurred during the 10 years preceding the date of the offering memorandum with respect to a director, executive officer or control person of the issuer, or an issuer of which any of those persons was a director, executive officer or control person at the time, state that it has occurred:

(i) a declaration of bankruptcy;

(ii) a voluntary assignment in bankruptcy;

(iii) a proposal under bankruptcy or insolvency legislation;

(iv) a proceeding, arrangement or compromise with creditors or appointment of a receiver, receiver manager or trustee to hold assets.

(c) Disclose and describe the details of the offence, if the issuer or a director, executive officer or control person of the issuer has ever pled guilty to or been found guilty of any of the following:

(i) a summary conviction or indictable offence under the *Criminal Code* (Canada);

(ii) a quasi-criminal offence in any jurisdiction of Canada or a foreign jurisdiction;

(iii) a misdemeanour or felony under the criminal legislation of the United States of America, or any state or territory of the United States of America;

(iv) an offence under the criminal legislation of any other foreign jurisdiction.

3.4 ***Certain Loans***

For any debenture, bond or loan agreement between the issuer and a related party, disclose the following:

(a) as at a date not more than 30 days before the date of the offering memorandum, the parties to the agreement, including which party is lender and which party is borrower, the principal amount, the repayment terms, any security, due date and interest rate;

(b) during the two most recently completed financial years and up to a date not more than 30 days before the date of the offering memorandum, any material amendment to the agreement, or any release, cancellation or forgiveness.

Item 4: Capital Structure

4.1 ***Securities Except for Debt Securities*** - Using the following table, provide the specified information about outstanding securities of the issuer, not including debt securities. Add notes to the table to describe the material terms of the securities, including, for certainty, voting rights or restrictions on voting, exercise price and date of expiry, any right of the purchaser to require the issuer to repurchase the securities including any price, fee or restriction associated with that right, and any interest rate or dividend or distribution policy.

Description of security	Number authorized to be issued	Price per security	Number outstanding as at a date not more than 30 days before the date of the offering memorandum	Number outstanding after minimum offering	Number outstanding after maximum offering

4.2 ***Long Term Debt*** **-** Using the following table, provide the specified information about outstanding debt of the issuer for which all or a portion is due, or may be outstanding, more than 12 months from the date of the offering memorandum. Add notes to the table to disclose any amounts of the debt that are due within 12 months of the date of the offering memorandum. In addition, add notes to the table to describe any conversion terms. If the securities being offered are debt securities, complete the applicable parts of the table for the debt, and add columns to the table disclosing the amount of the debt that will be outstanding after both the minimum and maximum offering.

Description of debt (including whether secured)	Interest rate	Repayment terms	Amount outstanding at a date not more than 30 days before the date of the offering memorandum
			$
			$

4.3 ***Prior Sales*** **-** If the issuer has issued any securities of the class being offered under the offering memorandum (or convertible or exchangeable into the class being offered under the offering memorandum) within the 12 months before the date of the offering memorandum, use the following table to provide the information specified. If securities were issued in exchange for assets or services, describe in a note to the table the assets or services that were provided.

Date of issuance	Type of security issued	Number of securities issued	Price per security	Total funds received

Item 5: Securities Offered

5.1 ***Terms of Securities***

(a) Describe the material terms of the securities being offered, including, for certainty, the following:

(i) voting rights or restrictions on voting;

(ii) conversion or exercise price and date of expiry;

(iii) any right of the purchaser to require the issuer to repurchase the securities, including any price, fee or restriction associated with that right;

(iv) interest rate, and dividend or distribution policy.

(b) Provide a sample calculation in respect of any right of the purchaser to require the issuer to repurchase the securities.

5.2 ***Subscription Procedure***

(a) Describe how a purchaser can subscribe for the securities and the method of payment.

(b) State that the consideration will be held in trust and the period that it will be held (refer at least to the mandatory two-day period).

(c) Disclose any conditions to closing, including any receipt of additional funds from other sources. If there is a minimum offering, disclose when consideration will be returned to purchasers if the minimum is not met, and whether the issuer will pay the purchasers interest on consideration.

Item 6: Repurchase Requests

(1) With respect to any securities of the issuer for which investors have a right to require the issuer to repurchase the securities, disclose the following:

(a) for each of the two most recently completed financial years, the information specified by the following table;

Description of security	Date of end of financial year	Number of securities with outstanding repurchase requests on the first day of the year	Number of securities for which investors made repurchase requests during the year	Number of securities repurchased during the year	Average price paid for the repurchased securities	Source of funds used to complete the repurchases	Number of securities with outstanding repurchase requests on the last day of the year

(b) for the period after the end of the issuer's most recently completed financial year and up to a date not more than 30 days before the date of the offering memorandum, the information specified by the following table;

Description of security	Beginning and end dates of the period	Number of securities with outstanding repurchase requests on the first day of the period	Number of securities for which investors made repurchase requests	Number of securities repurchased during the period	Average price paid for the securities repurchased	Source of funds used to complete the repurchases	Number of securities with outstanding repurchase requests on the last day of the period

			during the period				

(c) with respect to the periods specified in (a) and (b), the reason for any non-fulfillment of investor repurchase requests, unless the non-fulfillment was in accordance with terms governing the right.

Item 7: Certain Dividends or Distributions

If in the two most recently completed financial years, or any subsequent interim period, the issuer paid dividends or distributions that exceeded cash flow from operations, disclose the source of those payments.

Item 8: Income Tax Consequences and RRSP Eligibility

8.1 State: "You should consult your own professional advisers to obtain advice on the income tax consequences that apply to you."

8.2 If income tax consequences are a material aspect of the securities being offered, provide

(a) a summary of the significant income tax consequences to Canadian residents, and

(b) the name of the person providing the income tax disclosure in (a).

8.3 Provide advice regarding the RRSP eligibility of the securities and the name of the person providing the advice or state "Not all securities are eligible for investment in a registered retirement savings plan (RRSP). You should consult your own professional advisers to obtain advice on the RRSP eligibility of these securities."

Item 9: Compensation Paid to Sellers and Finders

If any person has or will receive any commission, corporate finance fee or finder's fee or any other compensation in connection with the offering, provide the following information:

(a) a description of each type of compensation and the estimated amount to be paid for each type;

(b) if a commission is being paid, the percentage that the commission will represent of the gross proceeds of the offering (assuming both the minimum and maximum offering);

(c) details of any broker's warrants or agent's option (including number of securities under option, exercise price and expiry date);

(d) if any portion of the compensation will be paid in securities, details of the securities (including number, type and, if options or warrants, the exercise price and expiry date).

Item 10: Risk Factors

Describe in order of importance, starting with the most important, the risk factors material to the issuer that a reasonable investor would consider important in deciding whether to buy the issuer's securities.

Guidance: Risk factors will generally fall into the following three categories:

(a) Investment Risk - risks that are specific to the securities being offered. Some examples include

- arbitrary determination of price,
- no market or an illiquid market for the securities,
- resale restrictions, and
- subordination of debt securities.

(b) Issuer Risk - risks that are specific to the issuer. Some examples include

- insufficient funds to accomplish the issuer's business objectives,
- no history or a limited history of revenue or profits,
- lack of specific management or technical expertise,
- management's regulatory and business track record,
- dependence on key employees, suppliers or agreements,
- dependence on financial viability of guarantor,
- pending and outstanding litigation, and
- political risk factors.

(c) Industry Risk - risks faced by the issuer because of the industry in which it operates. Some examples include

- environmental and industry regulation,
- product obsolescence, and
- competition.

Item 11: Reporting Obligations

11.1 Disclose the documents, including any financial information required by the issuer's corporate legislation, constating documents, or other documents under which the issuer is organized, that will be sent to purchasers on an annual or ongoing basis. If the issuer is not required to send any documents to the purchasers on an annual or ongoing basis, state in bold type: "**We are not required to send you any documents on an annual or ongoing basis.**"

11.2 If corporate or securities information about the issuer is available from a government, securities regulatory authority or regulator, SRO or quotation and trade reporting system, disclose where that information can be located (including website address).

Item 12: Resale Restrictions

12.1 Restricted Period - For trades in Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island, Québec, Saskatchewan and Yukon state one of the following, as applicable:

(a) If the issuer is not a reporting issuer in a jurisdiction at the distribution date state:

"Unless permitted under securities legislation, you cannot trade the securities before the date that is 4 months and a day after the date [insert name of issuer] became a reporting issuer in any province or territory of Canada."

(b) If the issuer is a reporting issuer in a jurisdiction at the distribution date state:

"Unless permitted under securities legislation, you cannot trade the securities before the date that is 4 months and a day after the distribution date."

12.2 Manitoba Resale Restrictions - For trades in Manitoba, if the issuer will not be a reporting issuer in a jurisdiction at the time the security is acquired by the purchaser state:

"Unless permitted under securities legislation, you must not trade the securities without the prior written consent of the regulator in Manitoba unless

(a) [name of issuer] has filed a prospectus with the regulator in Manitoba with respect to the securities you have purchased and the regulator in Manitoba has issued a receipt for that prospectus, or

(b) you have held the securities for at least 12 months.

The regulator in Manitoba will consent to your trade if the regulator is of the opinion that to do so is not prejudicial to the public interest."

Item 13: Purchasers' Rights

13.1 Statements Regarding Purchasers' Rights - State the following:

"If you purchase these securities, you will have certain rights, some of which are described below. For information about your rights, you should consult a lawyer.

(1) Two Day Cancellation Right - You can cancel your agreement to purchase these securities. To do so, you must send a notice to us by midnight on the 2nd business day after you sign the agreement to buy the securities.

(2) Statutory Rights of Action in the Event of a Misrepresentation [Insert this section only if the securities legislation of the jurisdiction in which the trade occurs provides purchasers with statutory rights in the event of a misrepresentation in an offering memorandum. Modify the language, if necessary, to conform to the statutory rights.] If there is a misrepresentation in this offering memorandum, you have a statutory right to sue:

(a) [name of issuer] to cancel your agreement to buy these securities, or

(b) for damages against [state the name of issuer and the title of any other person against whom the rights are available].

This statutory right to sue is available to you whether or not you relied on the misrepresentation. However, there are various defences available to the persons or companies that you have a right to sue. In particular, they have a defence if you knew of the misrepresentation when you purchased the securities.

If you intend to rely on the rights described in (a) or (b) above, you must do so within strict time limitations. You must commence your action to cancel the agreement within [state time period provided by the securities legislation]. You must commence your action for damages within [state time period provided by the securities legislation.]

(3) Contractual Rights of Action in the Event of a Misrepresentation - [Insert this section only if the securities legislation of the jurisdiction in which the purchaser is resident does not provide purchasers with statutory rights in the event of a misrepresentation in an offering memorandum.] If there is a misrepresentation in this offering memorandum, you have a contractual right to sue [name of issuer]:

(a) to cancel your agreement to buy these securities, or

(b) for damages.

This contractual right to sue is available to you whether or not you relied on the misrepresentation. However, in an action for damages, the amount you may recover will not exceed the price that you paid for your securities and will not include any part of the damages that [name of issuer] proves does not represent the depreciation in value of the securities resulting from the misrepresentation. [Name of issuer] has a defence if it proves that you knew of the misrepresentation when you purchased the securities.

If you intend to rely on the rights described in (a) or (b) above, you must do so within strict time limitations. You must commence your action to cancel the agreement within 180 days after you signed the agreement to purchase the securities. You must commence your action for damages within the earlier of 180 days after learning of the misrepresentation and 3 years after you signed the agreement to purchase the securities."

13.2 Cautionary Statement Regarding Report, Statement or Opinion by Expert - If a report, statement or opinion by a solicitor, auditor, accountant, engineer, appraiser, notary in Québec or other person or company whose profession or business could, to a reasonable person, be viewed

as giving authority to a statement made by that person or company, is included or referenced in the offering memorandum, and purchasers do not have a statutory right of action in the local jurisdiction against that person or company for a misrepresentation in the offering memorandum, state the following, with the bracketed information completed, as applicable:

> "This offering memorandum [includes][references] [describe any report, statement or opinion, the party that gave it, and the effective date of the document]. You do not have a statutory right of action against [this party][these parties] for a misrepresentation in the offering memorandum. You should consult with a legal adviser for further information."

Item 14: Financial Statements

Include in the offering memorandum immediately before the certificate page of the offering memorandum all financial statements specified in the Instructions.

Item 15: Date and Certificate

State the following on the certificate page of the offering memorandum:

"Dated [insert the date the certificate page of the offering memorandum is signed].

This offering memorandum does not contain a misrepresentation."

Instructions for Completing
Form 45-106F2
Offering Memorandum for Non-Qualifying Issuers

A. General Instructions

1. Refer to subsections 2.9(13.1), (13.2) and (13.3) of the Instrument, which set out the standard of disclosure for an offering memorandum.

2. Draft the offering memorandum so that it is easy to read and understand. Be concise and use clear, plain language. Avoid technical terms. If technical terms are necessary, provide definitions.

3. Address the items required by the form in the order set out in the form. However, it is not necessary to provide disclosure in response to a requirement or part of a requirement that does not apply.

4. The issuer may include additional information in the offering memorandum other than that specifically required by the form.

5. The issuer may wrap the offering memorandum around a prospectus or similar document. However, all matters required to be disclosed by the offering memorandum must be addressed and the offering memorandum must provide a cross-reference to the page number or heading in the wrapped document where the relevant information is contained. The certificate to the offering memorandum must be modified to indicate that the offering memorandum, including the document around which it is wrapped, does not contain a misrepresentation.

6. It is an offence to make a misrepresentation in the offering memorandum. This applies to both information that is required by the form and additional information that is provided. Include particulars of any material facts, which have not been disclosed under any of the Item numbers and for which failure to disclose would constitute a misrepresentation in the offering memorandum. Refer also to subsection 3.8(3) of Companion Policy 45-106CP for additional information.

7. Do not disclose a maximum offering amount unless the issuer reasonably expects, as at the date of the offering memorandum, to distribute that amount under the offering memorandum.

8. Refer to National Instrument 43-101 *Standards of Disclosure for Mineral Projects* (NI 43-101) when disclosing scientific or technical information for a mineral project of the issuer.

9. If an oil and gas issuer is disclosing information about its oil and gas activities, it must ensure that the information is disclosed in accordance with Part 4 and Part 5 of National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* (NI 51-101). Under section 5.3 of NI 51-101, disclosure of reserves or resources must be consistent with the reserves and resources terminology and categories set out in the Canadian Oil and Gas

Evaluation Handbook. For the purposes of this instruction, references to reporting issuer in Part 4 and Part 5 of NI 51-101 will be deemed to include all issuers.

10. Securities legislation restricts what can be told to investors about the issuer's intent to list or quote securities on an exchange or market. Refer to applicable securities legislation before making any such statements.

11. If an issuer uses this form in connection with a distribution under an exemption other than section 2.9 of the Instrument, the issuer must modify the disclosure in item 13 to correctly describe the purchaser's rights. If a purchaser does not have statutory or contractual rights of action in the event of a misrepresentation in the offering memorandum, that fact must be stated in bold on the face page.

12. During the course of a distribution of securities, any material forward-looking information disseminated must only be that which is set out in the offering memorandum. If an extract of FOFI, as defined in National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102), is disseminated, the extract or summary must be reasonably balanced and have a cautionary note in boldface stating that the information presented is not complete and that complete FOFI is included in the offering memorandum.

13. The term "quasi-criminal offence" includes offences under tax, immigration or money laundering legislation.

B. Financial Statements - General

1. All financial statements, operating statements for an oil and gas property that is an acquired business or a business to be acquired, and summarized financial information as to the aggregated amounts of assets, liabilities, revenue and profit or loss of an acquired business or business to be acquired that is, or will be, an investment accounted for by the issuer using the equity method included in the offering memorandum must comply with National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*, regardless of whether the issuer is a reporting issuer or not.

   Under National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*, financial statements are generally required to be prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises. An issuer using this form cannot use Canadian GAAP applicable to private enterprises, except, subject to the requirements of NI 52-107, certain issuers may use Canadian GAAP applicable to private enterprises for financial statements for a business referred to in Instruction C.1. An issuer that is not a reporting issuer may prepare acquisition statements in accordance with the requirements of NI 52-107 as if the issuer were a venture issuer as defined in NI 51-102. For the purposes of this form, the "applicable time" in the definition of a venture issuer is the acquisition date.

2. Include all financial statements required by these instructions in the offering memorandum immediately before the certificate page of the offering memorandum.

3. If the issuer has not completed one financial year or its first financial year end is less than 120 days from the date of the offering memorandum, include in the offering memorandum financial statements of the issuer consisting of:

   (a) a statement of comprehensive income, a statement of changes in equity and a statement of cash flows for the period from inception to a date not more than 90 days before the date of the offering memorandum,

   (b) a statement of financial position as at the end of the period referred to in paragraph (a), and

   (c) notes to the financial statements.

4. If the issuer has completed one or more financial years, include in the offering memorandum annual financial statements of the issuer consisting of

   (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 that ended more than 120 days before the date of the offering memorandum, and

      (ii) the financial year immediately preceding the financial year in subparagraph (i), if any,

   (b) a statement of financial position as at the end of each of the periods referred to in paragraph (a),

   (c) a statement of financial position as at the beginning of the earliest comparative period for which financial statements that are included in the offering memorandum comply with IFRS in the case of an issuer that

      (i) discloses in its annual financial statements an unreserved statement of compliance with IFRS, and

      (ii) does any of the following:

         (A) applies an accounting policy retrospectively in its annual financial statements;

         (B) makes a retrospective restatement of items in its annual financial statements;

         (C) reclassifies items in its annual financial statements,

   (d) in the case of an issuer's first IFRS financial statements as defined in NI 51-102, the opening IFRS statement of financial position at the date of transition to IFRS as defined in NI 51-102, and

(e) notes to the financial statements.

5. If an issuer presents 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 filed under Instruction B.4.

6. If the issuer has completed one or more financial years, include in the offering memorandum an interim financial report of the issuer comprised of

(a) a statement of comprehensive income, a statement of changes in equity and a statement of cash flows for the most recently completed interim period that ended

(i) more than 60 days before the date of the offering memorandum, and

(ii) after the year-end date of the financial statements required under Instruction B.4(a)(i),

(b) a statement of comprehensive income, a statement of changes in equity and a statement of cash flows for the corresponding period in the immediately preceding financial year, if any,

(c) a statement of financial position as at the end of the period required by paragraph (a) and the end of the immediately preceding financial year,

(d) a statement of financial position as at the beginning of the earliest comparative period for which financial statements that are included in the offering memorandum comply with IFRS in the case of an issuer that

(i) discloses in its interim financial report an unreserved statement of compliance with International Accounting Standard 34 *Interim Financial Reporting*, and

(ii) does any of the following:

(A) applies an accounting policy retrospectively in its interim financial report;

(B) makes a retrospective restatement of items in its interim financial report;

(C) reclassifies items in its interim financial report,

(e) in the case of the first interim financial report in the year of adopting IFRS, the opening IFRS statement of financial position at the date of transition to IFRS,

(f) for an issuer that is not a reporting issuer in at least one jurisdiction of Canada immediately before filing the offering memorandum, if the issuer is including an

interim financial report of the issuer for the second or third interim period in the year of adopting IFRS,

(i) the issuer's first interim financial report in the year of adopting IFRS, or

(ii) both

(A) the opening IFRS statement of financial position at the date of transition to IFRS, and

(B) the annual and date of transition to IFRS reconciliations required by IFRS 1 *First-time Adoption of International Financial Reporting Standards* to explain how the transition from previous GAAP to IFRS affected the issuer's reported financial position, financial performance and cash flows, and

(g) notes to the financial statements.

7. If an issuer presents 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 filed under Instruction B.6.

8. An issuer is not required to include the comparative financial information for the period in Instruction B.4.(a)(ii) in an offering memorandum if the issuer includes financial statements for a financial year ended less than 120 days before the date of the offering memorandum.

9. For an issuer that is not an investment fund, the term "interim period" has the meaning set out in NI 51-102. In most cases, an interim period is a period ending 9, 6, or 3 months before the end of a financial year. For an issuer that is an investment fund, the term "interim period" has the meaning set out in National Instrument 81-106 *Investment Fund Continuous Disclosure* (NI 81-106).

10. The comparative financial information required under Instruction B.6(b) and (c) may be omitted if the issuer has not previously prepared financial statements in accordance with its current or, if applicable, its previous GAAP.

11. The financial statements required by Instructions B.3, B.4 and B.14(a) must be audited. The financial statements required by Instructions B.6, B.8, B.14(b) and the comparative financial information required by Instruction B.4 may be unaudited; however, if any of those financial statements have been audited, the auditor's report must be included in the offering memorandum.

12. Refer to National Instrument 52-108 *Auditor Oversight* for requirements relating to reporting issuers and public accounting firms.

13. All unaudited financial statements and unaudited comparatives must be clearly labelled as unaudited.

14. If the distribution is ongoing, and the offering memorandum does not contain audited annual financial statements for the issuer's most recently completed financial year, the issuer must do the following:

    (a) amend the offering memorandum to include the audited annual financial statements and the accompanying auditor's report as soon as the issuer has approved the audited financial statements, but in any event no later than the 120th day following the financial year end;

    (b) present the amended offering memorandum and the audited annual financial statements in accordance with the instructions in Parts A, B and C and, for that purpose, the reference to the financial year in Instruction B.4(a)(i) shall mean the issuer's most recently completed financial year.

15. If the distribution is ongoing, and the offering memorandum is amended pursuant to subsection 2.9(13.2) of the Instrument to reflect a material change, the issuer must present the amended offering memorandum in accordance with the instructions in Parts A, B and C, including any interim financial report required by Instruction B.6(a).

16. In Ontario, if more than 60 days have elapsed since the end of the second interim period that commenced following the later of the issuer's inception and the issuer's most recently completed financial year, the offering memorandum does not comply with the requirements of this form unless

    (a) the offering memorandum, as amended, includes the interim financial report for the most recently completed second interim period,

    (b) the interim financial report required by paragraph (a) is presented in accordance with the instructions in Parts A, B and C and, for that purpose, Instruction B.6 shall apply regardless of whether the issuer has completed a financial year and the reference to the interim period in Instruction B.6(a) shall mean the issuer's most recently completed second interim period,

    (c) the date of the offering memorandum, as amended, is after the end of this most recently completed second interim period, and

    (d) the offering memorandum, as amended, contains all of the disclosure required by this form as of the date in paragraph (c).

17. In Ontario, Instruction B.16 does not apply if the issuer appends to the offering memorandum an additional certificate that

    (a) clearly identifies the offering memorandum,

    (b) forms part of the offering memorandum,

    (c) certifies all of the following to be true:

(i) the offering memorandum does not contain a misrepresentation when read as of the date in paragraph (d);

(ii) there has been no material change in relation to the issuer that is not disclosed in the offering memorandum;

(iii) the offering memorandum, when read as of the date in paragraph (d), provides a reasonable purchaser with sufficient information to make an informed investment decision,

(d) is dated after the end of the issuer's most recently completed second interim period, and

(e) is signed in accordance with subsections 2.9(9) to (12) of the Instrument.

18. In Ontario, if an issuer appends a certificate referred to in Instruction B.17 to its offering memorandum, it must file with the securities regulatory authority in Ontario a copy of the offering memorandum with the appended certificate on or before the 10th day after the distribution under the offering memorandum.

19. In Ontario, Instruction B.16 does not apply if the offering memorandum complies with all of the following:

(a) the offering memorandum, as amended, includes the interim financial report for the issuer's most recently completed third interim period;

(b) the interim financial report referred to in paragraph (a) is presented in accordance with the instructions in Parts A, B and C and, for that purpose, Instruction B.6 shall apply regardless of whether the issuer has completed a financial year and the reference to the interim period in Instruction B.6(a) shall mean the issuer's most recently completed third interim period;

(c) the date of the offering memorandum, as amended, is after the end of this most recently completed third interim period;

(d) the offering memorandum, as amended, contains all of the disclosure required by this form as of the date in paragraph (c).

20. Forward-looking information, as defined in NI 51-102, included in an offering memorandum must comply with section 4A.2 of NI 51-102 and must include the disclosure described in section 4A.3 of NI 51-102. In addition to the foregoing, FOFI or a financial outlook, each as defined in NI 51-102, included in an offering memorandum must comply with Part 4B of NI 51-102. For an issuer that is not a reporting issuer, references to "reporting issuer" in section 4A.2, section 4A.3 and Part 4B of NI 51-102 must be read as references to an "issuer". Additional guidance may be found in the companion policy to NI 51-102.

C. Financial Statements - Business Acquisitions

1. If the issuer

   (a) has acquired a business during the past two years and the audited financial statements of the issuer included in the offering memorandum do not include the results of the acquired business for 9 consecutive months, or

   (b) is proposing to acquire a business and the acquisition has progressed to a state where a reasonable person would believe that the likelihood of the acquisition being completed is high,

   include the financial statements specified in Instruction C.4 for the business if either of the tests in Instruction C.2 is met, irrespective of how the issuer accounts, or will account, for the acquisition.

2. Include the financial statements specified in Instruction C.4 for a business referred to in Instruction C.1 if either

   (a) the issuer's proportionate share of the consolidated assets of the business exceeds 100% of the consolidated assets of the issuer calculated using the annual financial statements of each of the issuer and the business for the most recently completed financial year of each that ended before the acquisition date or, for a proposed acquisition, the date of the offering memorandum, or

   (b) the issuer's consolidated investments in and advances to the business as at the acquisition date or the proposed date of acquisition exceeds 100% of the consolidated assets of the issuer, excluding any investments in or advances to the business, as at the last day of the issuer's most recently completed financial year that ended before the date of acquisition or the date of the offering memorandum for a proposed acquisition. For information about how to perform the investment test in this paragraph, please refer to subsections 8.3(4.1) and (4.2) of NI 51-102. Additional guidance may be found in the companion policy to NI 51-102.

3. If an issuer or a business has not yet completed a financial year, or its first financial year ended within 120 days of the offering memorandum date, use the financial statements referred to in Instruction B.3 to make the calculations in Instruction C.2.

4. If under Instruction C.2 you must include in an offering memorandum financial statements for a business, the financial statements must include

   (a) if the business has not completed one financial year or its first financial year end is less than 120 days from the date of the offering memorandum

      (i) a statement of comprehensive income, a statement of changes in equity and a statement of cash flows

(A) for the period from inception to a date not more than 90 days before the date of the offering memorandum, or

(B) if the date of acquisition precedes the ending date of the period referred to in clause (A), for the period from inception to the acquisition date or a date not more than 45 days before the acquisition date,

(ii) a statement of financial position dated as at the end of the period referred to in subparagraph (i), and

(iii) notes to the financial statements,

(b) if the business has completed one or more financial years

(i) annual financial statements comprised of

(A) a statement of comprehensive income, a statement of changes in equity and a statement of cash flows for the following annual periods:

(I) the most recently completed financial year that ended before the acquisition date and more than 120 days before the date of the offering memorandum, and

(II) the financial year immediately preceding the most recently completed financial year specified in subclause (I), if any,

(B) a statement of financial position as at the end of each of the periods specified in clause (A),

(C) notes to the financial statements, and

(ii) an interim financial report comprised of

(A) either

(I) a statement of comprehensive income, a statement of changes in equity and a statement of cash flows for the most recently completed year-to-date interim period ending on the last date of the interim period that ended before the acquisition date and more than 60 days before the date of the offering memorandum and ended after the date of the financial statements required under subclause (b)(i)(A)(I), and a statement of comprehensive income and a statement of changes in equity for the 3-month period ending on the last date of the interim period that ended before the acquisition date and more than 60 days before the date of

the offering memorandum and ended after the date of the financial statements required under subclause (b)(i)(A)(I), or

(II) a statement of comprehensive income, a statement of changes in equity and a statement of cash flows for the period from the first day after the financial year referred to in subparagraph (b)(i) to a date before the acquisition date and after the period end in subclause (b)(ii)(A)(I),

(B) a statement of comprehensive income, a statement of changes in equity and a statement of cash flows for the corresponding period in the immediately preceding financial year, if any,

(C) a statement of financial position as at the end of the period required by clause (A) and the end of the immediately preceding financial year, and

(D) notes to the financial statements.

Refer to Instruction B.9 for the meaning of "interim period".

5. The information for the most recently completed financial period referred to in Instruction C.4(b)(i) must be audited and accompanied by an auditor's report. The financial statements required under Instruction C.4(a), Instruction C.4(b)(ii) and the comparative financial information required by Instruction C.4(b)(i) may be unaudited; however, if those financial statements or comparative financial information have been audited, the auditor's report must be included in the offering memorandum.

6. If the offering memorandum does not contain audited financial statements for a business referred to in Instruction C.1 for the business's most recently completed financial year that ended before the acquisition date and the distribution is ongoing, update the offering memorandum to include those financial statements accompanied by an auditor's report when they are available, but in any event no later than the date 120 days following the year-end.

7. The term "business" should be evaluated in light of the facts and circumstances involved. Generally, a separate entity or a subsidiary or division of an entity is a business and, in certain circumstances, a lesser component of an entity may also constitute a business, whether or not the subject of the acquisition previously prepared financial statements. The subject of an acquisition should be considered a business where there is, or the issuer expects there will be, continuity of operations. The issuer should consider

(a) whether the nature of the revenue producing activity or potential revenue producing activity will remain generally the same after the acquisition, and

(b) whether any of the physical facilities, employees, marketing systems, sales forces, customers, operating rights, production techniques or trade names are acquired by the issuer instead of remaining with the vendor after the acquisition.

8. If a transaction or a proposed transaction for which the likelihood of the transaction being completed is high has been or will be a reverse takeover as defined in NI 51-102, include financial statements for the legal subsidiary in the offering memorandum in accordance with Part A. The legal parent is considered to be the business acquired. Instruction C.1 may also require financial statements of the legal parent.

9. An issuer satisfies the requirements in Instruction C.4 if the issuer includes in the offering memorandum the financial statements required in a business acquisition report under NI 51-102.

D. Financial Statement - Exemptions

1. Notwithstanding the requirements in subparagraph 3.3(1)(a)(i) of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*, an auditor's report that accompanies financial statements of an issuer or a business contained in an offering memorandum of a non-reporting issuer may express a qualification of opinion relating to inventory if

(a) the issuer includes in the offering memorandum a statement of financial position that is for a date that is after the date to which the qualification relates,

(b) the statement of financial position referred to in paragraph (a) is accompanied by an auditor's report that does not express a qualification of opinion relating to closing inventory, and

(c) the issuer has not previously filed financial statements for the same entity accompanied by an auditor's report for a prior year that expressed a qualification of opinion relating to inventory.

2. If an issuer has, or will account for a business referred to in Instruction C.1 using the equity method, then financial statements for a business required by Part C are not required to be included if

(a) the offering memorandum includes disclosure for the periods for which financial statements are otherwise required under Part C that

(i) summarizes information as to the aggregated amounts of assets, liabilities, revenue and profit or loss of the business, and

(ii) describes the issuer's proportionate interest in the business and any contingent issuance of securities by the business that might significantly affect the issuer's share of profit or loss,

(b) the financial information provided under paragraph (a) for the most recently completed financial year has been audited, or has been derived from audited financial statements of the business, and

(c) the offering memorandum discloses that

(i) the financial information provided under paragraph (a) for any completed financial year has been audited, or identifies the audited financial statements from which the financial information provided under paragraph (a) has been derived, and

(ii) the audit opinion with respect to the financial information or financial statements referred to in subparagraph (i) was an unmodified opinion.

3. Financial statements relating to the acquisition or proposed acquisition of a business that is an interest in an oil and gas property are not required to be included in an offering memorandum if either of the following apply:

(a) the acquisition is significant based only on the asset test;

(b) the issuer is unable to provide the financial statements in respect of the significant acquisition otherwise required because those financial statements do not exist or the issuer does not have access to those financial statements, and the following apply:

(i) the acquisition was not or will not be a reverse takeover, as defined in NI 51-102;

(ii) the following apply:

(A) the offering memorandum includes an operating statement for the business or related businesses for each of the financial periods for which financial statements would, but for this section, be required under Instruction C.4 prepared in accordance with subsection 3.11(5) of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*;

(B) the operating statement for the most recently completed financial period referred to in Instruction C.4(b)(i) is audited;

(C) the offering memorandum includes a description of the property or properties and the interest acquired by the issuer;

(D) the offering memorandum includes information with respect to the estimated reserves and related future net revenue attributable to the business, the material assumptions used in preparing the estimates and the identity and relationship to the issuer or to the seller of the person who prepared the estimates;

(E) the offering memorandum includes actual production volumes of the property for the most recently completed year;

(F) the offering memorandum includes estimated production volumes of the property for the first year reflected in the estimate disclosed under clause (D).

4. Financial statements for a business that is an interest in an oil and gas property, or for the acquisition or proposed acquisition by an issuer of an oil and gas property, are not required to be audited if, during the 12 months preceding the acquisition date or the proposed acquisition date, the average daily production of the property is less than 20% of the average daily production of the seller for the same or similar periods and

(a) despite reasonable efforts during the purchase negotiations, the issuer was prohibited from including in the purchase agreement the rights to obtain an audited operating statement of the property,

(b) the purchase agreement includes representations and warranties by the seller that the amounts presented in the operating statement agree to the seller's books and records, and

(c) the offering memorandum discloses

(i) that the issuer was unable to obtain an audited operating statement,

(ii) the reasons for that inability,

(iii) the fact that the purchase agreement includes the representations and warranties referred to in paragraph (b), and

(iv) that the results presented in the operating statements may have been materially different if the statements had been audited.

Schedule 1- Additional Disclosure Requirements for an Issuer Engaged in Real Estate Activities

Guidance

For an issuer engaged in real estate activities, see subsection 6.4(4) of the Instrument with respect to the completion of this schedule.

Instructions

1. Despite General Instruction A.3, an issuer may choose where to integrate the disclosure specified by this schedule within the offering memorandum.

2. Information specified by this schedule that is disclosed in the offering memorandum in response to another provision of this form need not be repeated.

1. Definitions

In this schedule

"rental management agreement" means an agreement, other than a rental pool agreement, under which a person manages the generation of revenue from real property for another person;

"rental pool agreement" means an agreement creating a rental pool;

"rental pool" means an arrangement under which revenues derived from, or expenses relating to, two or more properties are pooled and shared among the owners of the properties in accordance with their proportionate interests in the pool.

2. Application

(1) This schedule applies to the following:

(a) each interest in real property held by the issuer;

(b) each interest in real property proposed to be acquired by the issuer, if the proposed acquisition has progressed to a state where a reasonable person would believe that the likelihood of the issuer completing the acquisition is high.

(2) Despite subsection (1), and except in the circumstances described in sections 4, 5, 10 and 11, this schedule does not apply in respect of an interest in real property, or more than one interest in real property taken together, that when considered in relation to all interests in real property held by the issuer, is not significant enough

to influence a decision by a reasonable investor to buy, hold or sell a security of the issuer.

3. Description of Real Property

(1) Describe the following with respect to each interest in real property:

(a) the real property's location, by address or other description;

(b) the nature of the interest;

(c) any encumbrances that would be material to a reasonable investor;

(d) any restriction on sale or disposition;

(e) any environmental liabilities, hazards or contamination;

(f) any tax arrears;

(g) if utilities and other services are not currently being provided, describe how they will be provided and who will provide them;

(h) the current use;

(i) the proposed use and why the issuer considers the real property to be suitable for its plans;

(j) with respect to any buildings affixed to the real property, the type of construction, age and condition, and a description of any units for sale or rental;

(k) for real property that the issuer leases to others, the occupancy level as at a date not more than 60 days before the date of the offering memorandum.

(2) If the issuer is providing disclosure on 10 or more interests in real property, it may for the purposes of subsection (1) disclose the information on a summarized basis with respect to either of the following:

(a) the portfolio of real property interests as a whole;

(b) the portfolio of real property interests broken into subgroups.

(3) Describe any current legal proceedings, or legal proceedings that the issuer knows to be contemplated, relating to each interest in real property, that would be material to a reasonable investor, including, for each proceeding, the name of the court, the date instituted, the parties to the proceeding, the nature of the claim, any

amount claimed, whether the proceeding is being contested, and the present status of the proceeding.

Instruction to Section 3

With respect to a proposed acquisition of one or more interests in real property, disclose the issuer's expectations regarding the matters set out in paragraphs (1)(b), (c) and (d).

4. Appraisal

(1) If subsection 2.9(19.6) of the Instrument applies, disclose the following for any appraisal:

(a) the appraised fair market value of the interest in real property that is the subject of the appraisal;

(b) the effective date of the appraisal;

(c) that the appraisal is required to be delivered to the purchaser at the same time or before the offering memorandum is delivered to the purchaser.

(2) For each interest in real property to which subsection (1) applies, provide the most recent assessment by any assessing authority.

5. Purchaser's Interest in Real Property

If the purchaser will acquire an interest in real property, disclose the following:

(a) a description of the interest;

(b) how the interest will be evidenced in a public registry;

(c) any existing or anticipated encumbrances on the interest.

6. Developer, or Manager under a Rental Management Agreement or Rental Pool Agreement, Organization, Occupation and Experience, and Penalties, Sanctions, Bankruptcy, Insolvency and Criminal or Quasi-Criminal Matters

(1) Subsection (2) applies for the following persons:

(a) a person other than the issuer that is or will be acting in the role of developer in respect of an interest in real property;

(b) in respect of real property in which the purchaser will acquire an interest, a person other than the issuer that will be acting in the role of manager under a rental management agreement, or manager under a rental pool

agreement.

(2) For each person described in subsection (1)

(a) state the legal name of the person, describe the business of the person and any experience that the person has in similar projects or a similar business, and, if the person is not an individual, the laws under which the person is organized or incorporated and the date that the person was organized or incorporated,

(b) if the person is not an individual, in the form of the following table, provide the specified information for any directors and executive officers of the person for the 5 years preceding the date of the offering memorandum,

Full legal name	Principal occupation and description of experience associated with the occupation

(c) if any of the following have occurred during the 10 years preceding the date of the offering memorandum with respect to the person, a director, executive officer or control person of the person, or an issuer of which any of those persons was a director, executive officer or control person at the time, describe the details of the penalty, sanction or order, including the reason for it and whether it is currently in effect:

(i) a penalty or other sanction imposed by a court relating to a contravention of securities legislation;

(ii) a penalty or other sanction imposed by a regulatory body relating to a contravention of securities legislation;

(iii) an order restricting trading in securities, not including an order that was in effect for less than 30 consecutive days,

(d) if any of the following have occurred during the 10 years preceding the date of the offering memorandum with respect to the person, a director, executive officer or control person of the person, or an issuer of which any of those persons was a director, executive officer or control person at the time, state that it has occurred:

(i) a declaration of bankruptcy;

(ii) a voluntary assignment in bankruptcy;

(iii) a proposal under bankruptcy or insolvency legislation;

(iv) a proceeding, arrangement or compromise with creditors or appointment of a receiver, receiver manager or trustee to hold assets, and

(e) disclose and describe the details of the offence, if the person, or a director, executive officer or control person of the person has ever pled guilty to or been found guilty of any of the following:

(i) a summary conviction or indictable offence under the *Criminal Code* (Canada);

(ii) a quasi-criminal offence in any jurisdiction of Canada or a foreign jurisdiction;

(iii) a misdemeanour or felony under the criminal legislation of the United States of America, or any state or territory of the United States of America;

(iv) an offence under the criminal legislation of any other foreign jurisdiction.

7. Transfers

(1) For each interest in real property, for any transaction that a related party was party to, using the following table, starting with the most recent transaction and specifying which party was the related party, disclose the following:

Date of transfer	Legal name of seller	Legal name of buyer	Amount and form of consideration

(2) Explain the reason for any material difference between the amount of consideration paid by the issuer and the amount of consideration paid by a related party for the interest in real property.

8. Approvals

For each interest in real property, if that real property is being developed, disclose the following:

(a) any approval required from a regulatory body or any level of government that would be material to a reasonable investor;

(b) the anticipated cost and timing of the approval;

(c) any reports required as part of the approval process, including the anticipated cost and timing of producing or procuring those reports;

(d) what will happen if the approval is not obtained, including the effect on the following:

(i) the project;

(ii) the purchaser's investment;

(iii) if applicable, the purchaser's interest in the real property.

9. Costs and Objectives

For each interest in real property, if that real property is being developed, disclose the following:

(a) estimated costs to complete the development;

(b) any significant assumptions that underlie the cost estimates;

(c) when significant costs will be incurred;

(d) the objectives of the project that are expected to be met within the 24 months following the date of the offering memorandum, including the following:

(i) the expected timeline for meeting each objective;

(ii) how the issuer will meet each objective;

(iii) the estimated cost of meeting each objective;

(iv) how the issuer will fund the cost of meeting each objective;

(e) the objectives for the project that are expected to be met after the 24-month period following the date of the offering memorandum, including the following:

(i) the expected timeline for meeting each objective;

(ii) how the issuer will meet each objective;

(iii) if the objectives are to be completed in phases, details about each phase;

(iv) the estimated cost of meeting each objective;

(v) how the issuer will fund the cost of meeting each objective;

(f) what reasonably might happen if any of the stated objectives are not met, including the effect of not meeting the objective on the following:

(i) the project;

(ii) the purchaser's investment;

(iii) if applicable, the purchaser's interest in the real property.

10. Future Cash Calls

If the purchaser is required to contribute additional funds in the future, disclose the following:

(a) the amount the purchaser is required to contribute;

(b) when the purchaser will be required to contribute;

(c) the effect on the purchaser's investment and, if applicable, the purchaser's interest in the real property, if the purchaser fails to contribute;

(d) the effect on the purchaser's investment and, if applicable, the purchaser's interest in the real property, if the purchaser contributes, but other purchasers fail to contribute.

11. Rental Pool Agreement or Rental Management Agreement

If the purchaser will acquire an interest in real property, and that interest will be or could be subject to a rental pool agreement or a rental management agreement, disclose the following:

(a) the key terms of the agreement, including, for certainty, those provisions dealing with whether the agreement is mandatory or optional, the duration of the agreement, opting out of the agreement, termination of the agreement, the sharing of revenues and losses, the payment of expenses, and any fees payable under the agreement;

(b) whether financial or other information about the rental pool or the results arising from the rental management agreement will be made available to purchasers, and if so, include the following:

(i) a description of the information;

(ii) if the information will include financial information, whether that financial information will be audited or subject to an independent review;

(iii) the frequency with which the information will be made available;

(iv) whether the information will be delivered to purchasers or whether access will be provided to it;

(v) if purchasers are to be provided access to the information, a description of the means of gaining access to it;

(c) the following statement, with the bracketed information completed as applicable:

"The success or failure of the [rental pool][arrangement resulting from the rental management agreement] will depend in part on the abilities of the manager.";

(d) if the purchaser will be responsible for paying any loss arising pursuant to the rental pool agreement or rental management agreement, the following statement, with the bracketed information completed as applicable:

"If the [rental pool][rental management agreement] generates a loss, the purchaser must contribute further funds in addition to the purchaser's initial investment.".

12. Information Statements

If the purchaser will acquire an interest in real property, state the following in bold type:

"**Your rights relating to your interest in real property will be those provided under the laws of the jurisdiction in which the real property is located. Therefore, it is prudent to consult a lawyer who is familiar with the laws of that jurisdiction before making an investment.**

All real estate investments are subject to significant risk arising from changing market conditions.".

13. Risk Factors Relating to Real Property

With respect to the issuer's interests in real property, and any interest in real property to be acquired by the purchaser, describe the risk factors that would influence a reasonable investor's decision whether to invest, including, if applicable:

(a) risks associated with the following:

  (i) the development of undivided real property into subdivisions;

  (ii) the leasing of real property;

  (iii) the holding of real property for sale or development;

(b) risks associated with encumbrances, conditions or covenants on the real property that could affect the following:

  (i) the purchaser's interest in the real property, if applicable;

  (ii) the completion of the development of real property;

(c) risks pertaining to the development of real property, including the following:

  (i) a right or lack of right of the purchaser with respect to the management and control of the real property;

  (ii) a right or lack of right of the purchaser to change the developer of the property;

(d) risks pertaining to potential liability for the following:

  (i) environmental damage;

  (ii) unpaid obligations to builders, contractors and tradespersons;

(e) risks associated with litigation that relates to the real property.

Schedule 2 – Additional Disclosure Requirements for an Issuer that is a Collective Investment Vehicle

Guidance

For an issuer that is a collective investment vehicle, see subsection 6.4(5) of the Instrument with respect to the completion of this schedule.

Instructions

1. Despite General Instruction A.3, an issuer may choose where to integrate the disclosure specified by this schedule within the offering memorandum.

2. Information specified by this schedule that is disclosed in the offering memorandum in response to another provision of this form need not be repeated.

1. Investment Objectives and Strategy

(1) Except with respect to mortgage lending, describe the following:

(a) the issuer's investment objectives, investment strategy and investment criteria;

(b) any limitations or restrictions on investments, including concentration limits and use of leverage;

(c) how securities are identified, selected and approved for purchase or sale.

(2) For any mortgage lending by the issuer, describe the following:

(a) the issuer's investment objectives with respect to the following:

(i) the type of properties for which the issuer lends money;

(ii) the issuer's geographical focus;

(iii) the material mortgage terms, including range of interest rates and length of term;

(iv) the priority ranking of mortgages, in terms of first priority, second priority and third or lower priority;

(b) any policies or practices of the issuer with respect to the following:

(i) after initial funding of a mortgage, conducting any subsequent valuation of a property;

(ii) loaning money to a related party;

(iii) renewals;

(iv) concentrating funds in a single mortgage or lending funds to a single borrower or group of affiliated borrowers;

(v) determining that a borrower has the ability to repay a mortgage.

2. Portfolio Management and Penalties, Sanctions, Bankruptcy, Insolvency and Criminal or Quasi-Criminal Matters

(1) Identify the person responsible for the following:

(a) establishing and implementing the issuer's investment objectives and investment strategy;

(b) setting any limitations or restrictions on investments;

(c) monitoring the performance of the portfolio;

(d) making any adjustments to the issuer's portfolio.

(2) For each person described in subsection (1) that is not registered under the securities legislation of a jurisdiction of Canada,

(a) in the form of the following table, provide the specified information for the person and any directors and executive officers of the person for the 5 years preceding the date of the offering memorandum,

Full legal name	Principal occupation and description of experience associated with the occupation

(b) if any of the following have occurred during the 10 years preceding the date of the offering memorandum with respect to the person, or an issuer of which the person was a director, executive officer or control person at the time, describe the penalty, sanction or order, including the reason for it and whether it is currently in effect:

(i) a penalty or other sanction imposed by a court relating to a contravention of securities legislation;

(ii) a penalty or other sanction imposed by a regulatory body relating to a contravention of securities legislation;

(iii) an order restricting trading in securities, not including an order that was in effect for less than 30 consecutive days,

(c) if any of the following have occurred during the 10 years preceding the date of the offering memorandum with respect to the person, or an issuer of which the person was a director, executive officer or control person at the time, state that it has occurred:

(i) a declaration of bankruptcy;

(ii) a voluntary assignment in bankruptcy;

(iii) a proposal under bankruptcy or insolvency legislation;

(iv) a proceeding, arrangement or compromise with creditors or appointment of a receiver, receiver manager or trustee to hold assets,

(d) disclose and describe the details of the offence, if the person has ever pled guilty to or been found guilty of any of the following:

(i) a summary conviction or indictable offence under the *Criminal Code* (Canada);

(ii) a quasi-criminal offence in any jurisdiction of Canada or a foreign jurisdiction;

(iii) a misdemeanour or felony under the criminal legislation of the United States of America, or any state or territory of the United States of America;

(iv) an offence under the criminal legislation of any other foreign jurisdiction, and

(e) disclose any exemption relied on by the person from the requirement to be registered under the securities legislation of a jurisdiction of Canada.

(3) For any person identified in subsection (1) that is not an employee of the issuer, disclose any remuneration paid to the person, and how the remuneration is calculated.

(4) Identify any person that is not an employee of the issuer, other than a person identified under subsection (1), that performs a significant role or provides a significant service for the issuer with respect to the securities in the issuer's portfolio, and describe the following:

(a) the role performed or service provided;

(b) the remuneration paid to the person and how that remuneration is calculated.

3. Portfolio Summary

(1) Except with respect to mortgage lending, as at a date not more than 60 days before the date of the offering memorandum, disclose the following:

(a) a description of the portfolio, or a description of the portfolio divided into subgroups including the percentage of the net asset value in each subgroup;

(b) the percentage of the net asset value that is impaired;

(c) the total number of positions held in securities.

(2) Except with respect to mortgage lending, if a security comprises 10% or more of the issuer's net asset value, disclose the following with respect to the security:

(a) the percentage of net asset value represented;

(b) a description of the security;

(c) any security interest held against the security;

(d) the amount of any impairment assigned to the security.

(3) For any mortgage lending by the issuer, disclose the following:

(a) the average of the interest rates payable under the mortgages, weighted by the principal amount of the mortgages;

(b) the average of the terms to maturity of the mortgages, weighted by the principal amount of the mortgages;

(c) the average loan-to-value ratio of the mortgages, calculated for each mortgage by dividing the total principal amount of the issuer's mortgage and all other loans ranking in equal or greater priority to the issuer's mortgage by the fair market value of the property, weighted by the principal amount of each mortgage;

(d) the principal amount, and the percentage of the total principal amount of the mortgages, that rank in the following:

(i) first priority;

(ii) second priority;

(iii) third or lower priority;

(e) the principal amount, and the percentage of the total principal amount of the mortgages, that is attributable to each jurisdiction of Canada, each state or territory of the United States of America and each other foreign jurisdiction;

(f) a breakdown by property type, and the principal amount, and the percentage of the total principal amount of the mortgages, that is attributable to each property type;

(g) with respect to mortgages that will mature in less than one year of the date of the summary provided in subsection (1), the percentage that those mortgages represent of the total principal amount of the mortgages;

(h) with respect to mortgages with payments more than 90 days overdue, the number of those mortgages, the principal amount of those mortgages, and the percentage that those mortgages represent of the total principal amount of the mortgages;

(i) with respect to mortgages that have an impaired value, the principal amount, and the percentage that those mortgages represent of the total principal amount of the mortgages;

(j) for any mortgages that are not impaired or in default, but for which the issuer has made accommodations to respond to financial difficulties of the borrower, if the accommodations would be material to a reasonable investor, a summary of the accommodations, and the principal amount, and the percentage that those mortgages represent of the total principal amount of the mortgages;

(k) if known by the issuer, or if reasonably available to the issuer, the average credit score of the borrowers, weighted by the principal amount of the mortgages;

(l) if a mortgage comprises 10% or more of the total principal amount of the mortgages, disclose the following with respect to the mortgage:

(i) the principal amount, and the percentage of the total principal amount of the mortgages;

(ii) the interest rate payable;

(iii) the term to maturity;

(iv) the loan-to-value ratio, calculated by dividing the total principal amount of the issuer's mortgage and all other loans ranking in equal or greater priority to the issuer's mortgage by the fair market value of the property;

(v) whether the mortgage ranks in first, second, or third or lower priority;

(vi) the property type;

(vii) where the property is located;

(viii) any payment that is more than 90 days overdue;

(ix) any impairment of the mortgage;

(x) if known by the issuer, or if reasonably available to the issuer, the credit score of each borrower.

(4) If the issuer's portfolio includes self-liquidating financial assets other than mortgages, with respect to those assets, and for any subgroups identified in paragraph (1)(a), disclose the following:

(a) the collection rate for each of the issuer's two most recently completed financial years that ended more than 120 days before the date of the offering memorandum;

(b) the issuer's reasonably anticipated loss and collection rate for the current financial year.

Instruction to Section 3

Calculate impairment in accordance with the accounting standards applicable to the issuer, and in a manner that is consistent with the disclosure in the issuer's financial statements.

4. Portfolio Performance

(1) For the 10 most recently completed financial years of the issuer ended more than 120 days before the date of the offering memorandum, provide performance data for the issuer's portfolio.

(2) Describe the methodology used with respect to the following:

(a) determining the value of the securities in the portfolio for the purposes of calculating the performance data;

(b) calculating the performance data of the portfolio.

Instruction to Section 4

The methodology described in paragraph (2)(a) must be the same as the methodology used in the issuer's financial statements.

5. Ongoing Disclosure

Describe any information that purchasers will receive on an ongoing basis about the issuer's portfolio. If none, state that fact.

6. Conflicts of Interest

Describe any conflicts of interest, including, for certainty, with respect to related parties, that a reasonable purchaser would need to be made aware of to make an informed investment decision.

Schedule B-2

FORM 45-106F4
Risk Acknowledgement

WARNING!

This investment is risky. Don't invest unless you can afford to lose all the money you pay for this investment.

1. Risks and other information The issuer must delete any rows required to be deleted The purchaser must initial each statement to confirm understanding	**Your Initials**
Risk of loss – You could lose your entire investment of $ _____. [*Instruction: Insert the total dollar amount of the investment.]*	
No approval – No securities regulatory authority or regulator has evaluated or approved the merits of these securities or the disclosure in the offering memorandum.	
No registration – The person selling you these securities is not registered with a securities regulatory authority or regulator and has no duty to tell you whether this investment is suitable for you. *[Instruction: Delete if sold by registrant]*	
Liquidity risk – You will not be able to sell these securities except in very limited circumstances. You may never be able to sell these securities. *[Instruction: Delete if issuer is reporting]*	
Repurchase – You have a right to require the issuer to repurchase the securities, but there are limitations on this right. *[Instruction: Delete if inapplicable]*	
Four month hold – You will not be able to sell these securities for 4 months. *[Instruction: Delete if issuer is not reporting or if the purchaser is a Manitoba resident]*	
You are buying Exempt Market Securities They are called *exempt market securities* because the issuer does not have to give you a prospectus (a document that describes the investment in detail and gives you some legal protections). *Exempt market securities* are more risky than other securities.	
You will not receive advice – *[Instruction: Delete if sold by registrant]* You will not get professional advice about whether the investment is suitable for you, but you can still seek that advice from a registered adviser or registered dealer. In	

Manitoba, Northwest Territories, Nunavut, Prince Edward Island and Yukon to qualify as an eligible investor, you may be required to obtain that advice.	
The securities you are buying are not listed *[Instruction: Delete if securities are listed or quoted]* The securities you are buying are not listed on any stock exchange, and they may never be listed.	
The issuer of your securities is a non-reporting issuer *[Instruction: Delete if issuer is reporting]* A *non-reporting issuer* does not have to publish financial information or notify the public of changes in its business. You may not receive ongoing information about this issuer. For more information on the exempt market, contact your local securities regulator. You can find contact information at www.securities-administrators.ca.	
Total investment – You are investing $ _____ [*Instruction: total consideration*] in total; this includes any amount you are obliged to pay in future. _____ [*Instruction: name of issuer*] will pay $_____ [*Instruction: amount of fee or commission*] of this to _____ [*Instruction: name of person selling the securities*] as a fee or commission.	
Your name and signature	
By signing this form, you confirm that you have read this form and you understand the risks of making this investment as identified in this form.	
First and last name (print)**:**	
Signature:	Date:
[Instruction: Sign 2 copies of this document. Keep one copy for your records.]	

2. Salesperson information Below information must be completed by the salesperson	
[Instruction: The salesperson is the person who meets with, or provides information to, the purchaser with respect to making this investment. That could include a representative of the issuer, a registrant or a person who is exempt from the registration requirement.]	
First and last name of salesperson (print):	
Telephone:	Email:
Name of firm:	

3. **Additional information** The issuer must complete the required information in this section before giving the form to the purchaser

You have 2 business days to cancel your purchase

To do so, send a notice to [name of issuer] stating that you want to cancel your purchase. You must send the notice before midnight on the 2nd business day after you sign the agreement to purchase the securities. You can send the notice by fax or email or deliver it in person to [name of issuer] at its business address. Keep a copy of the notice for your records.

Issuer Name and Address:
Fax: Email:

You will receive an offering memorandum

Read the offering memorandum carefully because it has important information about the issuer and its securities. Keep the offering memorandum because you have rights based on it. Talk to a lawyer for details about these rights.

ANNEX C

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 are of the view that the definition of "collective investment vehicle" 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 three elements that make up the standard of disclosure for an offering memorandum. Subsection 2.9(13.1) of the Instrument provides that an issuer must not make a misrepresentation in its offering memorandum. A statement can only be or not be a misrepresentation when it is made, which for an offering memorandum is the date of the offering memorandum. As provided at the beginning of the offering memorandum form, the date of the offering memorandum is the date of the certificate. A statement that is not a misrepresentation when it is made cannot become a misrepresentation later, irrespective of whether circumstances have changed to render the statement inaccurate. However, with respect to ongoing events for the issuer, we refer issuers to subsections 2.9(13.3) and (13.2) of the Instrument.

Under subsection 2.9(13.3) of the Instrument, an issuer must not deliver an offering memorandum under the section unless it provides a reasonable purchaser with sufficient information to make an informed investment decision.

Subsection 2.9(13.2) of the Instrument provides that if a material change with respect to the issuer occurs after the certificate for the offering memorandum or amended offering memorandum is signed, and before the issuer accepts an agreement to purchase the security from the purchaser, the issuer must amend the offering memorandum to reflect the material change and deliver the amended offering memorandum to the purchaser.

(b) Amending an offering memorandum

Instruction B.14 of Form 45-106F2 provides 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.

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

With respect to an interim period, if an issuer amends its offering memorandum to include a further interim financial report, the same analysis applies. That is, there are a number of requirements in Form 45-106F2 that refer to a completed interim period, and the issuer is required to ensure that any disclosure that is in response to a requirement that references an interim period is revised 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.

As discussed in paragraph (a), 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 making materiality judgments it is necessary to consider a number of factors that cannot be captured in a simple bright-line test. National Policy 51-201 *Disclosure Standards* provides guidance regarding materiality determinations by reporting issuers.

Most of the issuers that rely on the offering memorandum exemption are not reporting issuers. Accordingly, materiality determinations must be assessed in the context of their specific circumstances and the overall disclosure to investors, including the offering memorandum and related documents. For example, if an issuer's offering memorandum discloses prospective operations and its financial statements reflect only an opening balance sheet, the raising of significant funds and commencing operations may constitute a material change. Similarly, where a collective investment vehicle such as a mortgage investment entity does not have a portfolio of mortgage loans at the time of its offering memorandum, the activity of deploying funds in a portfolio of mortgages could constitute a material change, particularly if the portfolio has characteristics and risks that have not been disclosed.

With respect to the requirement in paragraph 2.9(19.5)(a) of the Instrument to provide an appraisal in connection with a proposed acquisition from a related party, we note that issuers carrying out ongoing distributions could trigger this requirement after the date the certificate is signed.

If the proposed acquisition is not a material change, issuers should consider whether under subsection 2.9(13.3) of the Instrument the offering memorandum is required to be amended prior to delivery to reflect the proposed acquisition, so that the offering memorandum contains sufficient information for a reasonable investor to make an investment decision.

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 is required to amend its offering memorandum to include them.

For each delivery of an offering memorandum, we remind issuers of subsection 2.9(13.3) of the Instrument, which is discussed in paragraph (a). It may be necessary to amend an offering memorandum to meet this requirement.

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

Finally, we note that marketing materials were never intended to be a means of amending an 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 include a newly dated certificate in the amended offering memorandum. We also note that the date of the offering memorandum is the date of the certificate.

There are certain offering memorandum requirements 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 revised if necessary.

The certificate referred to in this subsection is the certificate required by Form 45-106F2 item 15, or Form 45-106F3 item 12, as applicable**.**

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

(4.1) Appraisal requirement

We remind issuers carrying out ongoing distributions under an offering memorandum that it is possible to trigger the appraisal requirement under subsection 2.9(19.5) of the Instrument after the date of the certificate of the offering memorandum. In this case, for all subsequent purchasers, the issuer is required pursuant to subsection 2.9(19.6) of the Instrument to deliver the appraisal at the same time or before it delivers its offering memorandum..

6. ***Subsection 3.8(13) is changed***

(a) by deleting **"**for syndicated mortgages**",** ***and***

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

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

8. ***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**..**

9. Section 5.3 is deleted.

10. These changes become effective on March 8, 2023.