



COMPANION POLICY 45-509

Community Economic Development Corporations and Associations

PART 1 - GENERAL COMMENTS

Introduction

This Companion Policy sets out how the Financial and Consumer Services Commission (the Commission or we) interprets or applies the provisions of Local Rule 45-509 *Community Economic Development Corporations and Associations* (LR 45-509) and related legislation.

Except for Part 1, the numbering of Parts in this Companion Policy corresponds to the numbering in LR 45-509. Any general guidance for a Part appears immediately after the Part name. Any specific guidance on sections in LR 45-509 follows any general guidance. If there is no guidance for a Part or section, the numbering in this Companion Policy will skip to the next provision that does have guidance.

Unless defined in LR 45-509, terms used in LR 45-509 and in this Companion Policy have the meaning given to them in securities legislation, including, for greater certainty, the *Securities Act*, National Instrument 14-101 *Definitions* and National Instrument 45-106 *Prospectus Exemptions* (NI 45-106).

Definitions

1. (1) In this Policy,

“SBITC Act” means the *Small Business Investor Tax Credit Act*, SNB 2003, c S-9.05,

“General Regulation” means New Brunswick Regulation 2003-39 under the *Small Business Investor Tax Credit Act*.

1.3 Fundamental concepts

Two fundamental concepts to securities legislation in New Brunswick are that: 1) every person who is in the business of trading or advising in securities must be registered with the Commission; and 2) every person who distributes new securities must disclose certain information to potential investors in the form of a prospectus. LR 45-509 provides exemptions from these two requirements for Community

Economic Development Corporations and Associations (CEDCs) that meet certain criteria outlined in that rule.

LR 45-509 is complementary to, and works parallel with, the *SBITC Act* and the General Regulation under that Act. A CEDC that wants to take advantage of the prospectus and registration exemptions in LR 45-509 must also comply with the requirements for the registration of community economic development corporations or associations outlined in the *SBITC Act* and General Regulation.

If a corporation or association no longer meets the criteria to qualify for the prospectus and registration exemptions under LR 45-509, but proposes to distribute additional securities outside the scope of the *SBITC Act*, it should refer to other securities laws such as NI 45-106 to determine if there are other prospectus exemptions available and NI 31-103 to determine whether it is subject to any registration requirements and if any registration exemptions are available.

PART 3 – PROSPECTUS AND REGISTRATION EXEMPTIONS

Part 3 contains the requirements that a CEDC must meet in order to qualify for an exemption from the prospectus or registration requirements contained in securities legislation.

First and subsequent trades

5. A CEDC should be aware that there are penalties under the *SBITC Act* and General Regulation if a CEDC redeems an eligible share prior to 4 years from the date on which the eligible share was issued. Under the General Regulation, early redemptions are only permitted in the circumstances as are prescribed in subsection 8(1) of the General Regulation, such as the death of the original purchaser of the eligible share. A CEDC should refer to the *SBITC Act* and subsection 8(1) of the General Regulation for the permitted circumstances and conditions for an early redemption.

A CEDC that is an association should be aware that the *Co-operative Associations Act* contains restrictions on the transferability of shares.

PART 4 – LETTER OF NON-OBJECTION

7. The Executive Director has the power to revoke a letter of non-objection where LR 45-509 is not being complied with or that the continuation of the offering would be contrary to the public interest. Where it has been determined that the *SBITC Act* and General Regulation have not also been complied with, the Executive Director may make a determination to revoke the letter of non-objection on the basis that the continuation of the offering would be contrary to the public interest.

- 9(9) A CEDC is permitted to distribute other shares under other available prospectus exemptions at the same time as it is doing an offering under LR 45-509 in conjunction with the *SBITC Act* program. These other shares are not eligible for investor tax credits under the *SBITC Act* Community Economic Development Corporations or Associations tax program. Only securities distributed using LR 45-509 procedures are eligible.

PART 6 – THE OFFERING

Directors and Officers

10. Directors and officers of a CEDC must be fit and suitable to manage the affairs of a CEDC. To that end, among other things, we will look at those individual's education, training and experience and how that supports their role with the CEDC. We will also look at previous experience with CEDCs as well as with business ventures generally. Individuals must conduct themselves with integrity and have an honest character. We will also look at the overall financial condition of the individual. A person who is insolvent, or has a history of bankruptcies may not be a person suitable to act as a director or officer of the CEDC.

Use of Proceeds

16. A CEDC should be aware that it may be subject to penalties or enforcement action under securities legislation if it does not use the amounts raised under the offering in the same manner as indicated in the offering document. In addition, a CEDC must adhere to the specific investment requirements outlined in section 9.8 of the General Regulation or it may be subject to a penalty outlined in section 9.9 of the General Regulation.

Time limitation on offering

17. (3) If the CEDC applies to the Executive Directive for an extension of the initial closing date under subsection 17(3), it must also obtain the approval of the Department of Finance for such an extension.
 - (4) Similarly, if a CEDC proposes to offer shares after the initial closing date, in addition to the letter of non-objection from the Executive Director, the CEDC should also obtain any additional approval that may be required from the Department of Finance.

Amendments to the offering document

19. Section 19 outlines the requirements for a CEDC if it delivers an amendment to an offering document after the Executive Directive has issued a letter of non-objection. In addition, CEDCs should be aware that the Department of Finance has its own requirements in the event that the CEDC makes an amendment. Specifically, if the CEDC delivers an amendment, the Department of Finance will require the CEDC to submit an updated investment plan for review. A CEDC should refer to the Department of Finance, the *SBITC Act* and the General Regulation to determine if it is subject to any additional requirements.

Report after closing

- 21.** In addition to the Report that the CEDC must deliver to the Executive Directive, the CEDC must send an annual return to the Department of Finance no later than 30 days after each closing of an offering.

PART 7 – ONGOING REPORTING REQUIREMENTS

Copies to security holders

- 24.** We consider documents to have been made “reasonably available” to security holders if they are mailed to security holders, or if security holders receive an electronic notice that such documents can be viewed on a public website of the issuer or a website accessible by all holders of securities of the issuer that were acquired under the exemptions in LR 45-509 (such as a password protected website).