

**FINANCIAL AND
CONSUMER SERVICES
COMMISSION**

regulation • education • protection



**COMMISSION DES SERVICES
FINANCIERS ET DES SERVICES
AUX CONSOMMATEURS**

réglementation • éducation • protection

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We cannot keep submissions confidential. A summary of the written comments received during the comment period may be published.

Questions

If you have any questions, please refer them to:

To-Linh Huynh
Executive Director of Securities
Financial and Consumer Services Commission (NB)
Tel: (506) 643-7856
Email: to-linh.huynh@fcnb.ca

Appendices

Appendix A – Proposed Local Rule 45-509 *Community Economic Development Corporations and Cooperatives*

Appendix B – Proposed Companion Policy 45-509 *Community Economic Development Corporations and Cooperatives*



16. If an offering document is filed with the Commission and the CEDC conducts no activity for 90 days after filing the offering document, the Commission may consider the application to be abandoned.

PART 4 LETTER OF NON-OBJECTION

Letter of non-objection

17. (1) The Executive Director may issue a letter of non-objection to an offering document unless, in the opinion of the Executive Director, any of the following apply:
- (a) the offering is not in the public interest;
 - (b) the offering document does not meet all the requirements of the *Securities Act*, the regulations, or this Instrument;
 - (c) the offering does not or will not comply with this Instrument;
 - (d) the offering document contains a misrepresentation or a statement, promise, estimate or forecast that is misleading, false or deceptive;
 - (e) the CEDC intends to pay or pays an unconscionable consideration for promotional purposes or for the acquisition of property;
 - (f) the proceeds from the offering, together with other resources of the CEDC, are insufficient to accomplish the objectives of the offering stated in the offering document;
 - (g) the CEDC cannot reasonably be expected to be financially responsible in the conduct of its business, having regard to the financial condition of the CEDC or of an officer, director or control person of the CEDC;
 - (h) the past conduct of the CEDC or of an officer, director or control person of the CEDC affords reasonable grounds for belief that the business of the CEDC will not be conducted with integrity and in the interests of its security holders.
- (2) On receipt of an offering document, the Executive Director may do any of the following:
- (a) inquire into any aspect of the disclosure in the offering document;
 - (b) request delivery of supplemental information before or after determining whether to issue a letter of non-objection;



Form 45-509F2

Report of Exemption Distribution for Community Economic Development Corporations and Cooperatives

General Instructions for Completing Form 45-509F2:

- 1. Instructions for preparing this report are italicized and in square brackets. Do not include these general instructions, or any specific instructions outlined below, in the completed report.*
- 2. The completed report can be filed with the Financial and Consumer Services Commission (the **Commission**). Relying on Blanket Order 13-503 In the Matter of an Exemption from the Requirement to File Reports of Exempt Distribution in Electronic Format on SEDAR for Distributions by Community Economic Development Corporations or Associations, submit the report by email to: EMF-MD@fcnb.ca.*

Item 1 – Community Economic Development Corporation and Cooperative (CEDC) Information

New report

Amended report If amended, provide filing date of amended report _____ (YYYY-MM-DD)

[Include the legal name of the CEDC and the registered office. This should be the same information as provided on the offering document.]

Full name _____ (the CEDC)

Address _____

Telephone _____

Website _____ (if applicable)

Email _____ (if applicable)

Item 2 – Details of Distribution

[State the distribution start and end dates. If the report is being filed for securities distributed on only one distribution date, provide the distribution date as both the start and end dates.]

Start Date _____ (YYYY-MM-DD) End Date _____ (YYYY-MM-DD) Closing Date _____ (if different than End Date) (YYYY-MM-DD)

Type of Security	Price per Security	Total Number of Security Distributed	Total Dollar Value Raised	Total Number of Purchasers

Item 3 – Promoters

[List the names of all promoters, as defined under the Securities Act, involved with the distribution, and state if any of these individuals received or will receive compensation (commission, finder’s fee or other payment) in connection with the distribution.]

Name of Promoter	Compensation Paid (Y/N)
_____	_____
_____	_____
_____	_____
_____	_____

Item 4 – Purchasers

[Complete Schedule 1 of this form for each purchaser and attach the schedule to the completed report.]

Item 5 – Certification

[This certificate must be signed by an officer or director of the CEDC or an agent authorized by an officer or director of the CEDC to prepare and certify this report on behalf of the CEDC.]

On behalf of the CEDC, I certify that the statements made in this report are true and accurate.

Signature	_____	Date	_____
Full name	_____	Telephone	_____
Title	_____	E-mail	_____

NOTE: IT IS AN OFFENSE TO MAKE A MISREPRESENTATION IN THIS REPORT.

Notice – Collection and Use of Personal Information

The personal information required under this form is collected on behalf and used by the Commission under the authority granted in the *Securities Act* for the purposes of the administration and enforcement of that Act. If you have any questions about the collection and use of this information, contact us at 1-866-933-2222 or info@fcnb.ca.

The attached Schedule 1 may contain personal information of individuals and details of the distribution(s). The information in Schedule 1 will not be placed on the public file of the Commission. However, the *Right to Information and Protection of Privacy Act* may require the Commission to make this information available if requested.

By signing this report, the CEDC confirms that each individual listed in Schedule 1: a) has been notified by the CEDC of the delivery to the Commission the information pertaining to the individual as set out in Schedule 1, that this information is being collected by the Commission under the authority granted in the *Securities Act* and that this information is being collected for the purposes of the administration and enforcement of the *Securities Act*; and b) has authorized the indirect collection of the information by the Commission.

Schedule 1 to Form 45-509F2

Name of Issuer	Certification Date of the Report (YYYY-MM-DD)

List of Purchasers

Full Name	Address	Telephone	Number of Shares Purchased	Total Purchase Price	Date of Purchase (YYYY-MM-DD)	Type of Security



Form 45-509F3

Risk Acknowledgement Form for Community Economic Development Corporations and Cooperatives

Risk Acknowledgement

- I acknowledge that this is a risky investment.
- I am investing entirely at my own risk.
- The Financial and Consumer Services Commission (the Commission) has not evaluated or endorsed the merits of these securities or the disclosure in the offering document.
- The person selling me these securities is not registered with the Commission and has no duty to tell me whether this investment is suitable for me.
- I will not be able to sell these securities except in very limited circumstances. I may never be able to sell these securities.
- The securities are redeemable, but I may only be able to redeem them in limited circumstances. *[Instruction: Delete if securities are not redeemable]*
- If I sell or redeem these securities before holding them for 4 years, I may lose some or all of my small business investor tax credit.
- I could lose all the money I invest.

I am investing \$ _____ in total.

I acknowledge that this is a risky investment and that I could lose all the money I invest.

Date

Signature of Purchaser

Print name of Purchaser

The purchaser must sign 2 copies of this form. The purchaser and the CEDC must each receive a signed copy.

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You have 2 business days to cancel your purchase *[Instruction: The CEDC must complete this section before giving the form to the purchaser.]*

To do so, send a notice to [name of the CEDC] 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 the CEDC] at its business address. Keep a copy of the notice for your records.

CEDC Name and Address: _____

Fax: _____

E-mail: _____



Form 45-509F4

Notice of Specified Events

This is the required form under section 24 of Local Rule 45-509 *Community Economic Development Corporations and Cooperatives* to provide notice of specified events to security holders of an eligible share acquired under section 3 of Local Rule 45-509.

PART 1 CEDC Name and Address

Provide the following information.

Full Legal Name: _____

Street Address: _____

Municipality: _____

Province: _____

Postal Code: _____

Website: _____

PART 2 Specified Event

The event, as described in Part 3, is: *[Select one or more type of event from the list below]*

- a fundamental change in the nature, or a discontinuation, of the CEDC's business
- a significant change to the CEDC's capital structure
- a major reorganization, amalgamation or merger involving the CEDC
- a significant acquisition or disposition of assets, property or joint venture interests
- changes to the CEDC's board of directors or executive officers, including the departure of the issuer's chief executive officer, chief financial officer, chief operating officer or president or persons acting in similar capacities

Date on which the event occurred: _____ (dd/mm/yyyy)

PART 3 Event Description

Provide a brief description of the event identified in Part 2.

PART 4 Contact Person

Give the name, title, business telephone number and email address of a person at the CEDC who can be contacted regarding the event described in Part 3.



APPENDIX B

COMPANION POLICY 45-509CP

Community Economic Development Corporations and Cooperatives

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 Cooperatives* (the Instrument) and related legislation.

Except for Part 1, the numbering of Parts in this Companion Policy corresponds to the numbering in the Instrument. Any general guidance for a Part appears immediately after the Part name. Any specific guidance on sections in the Instrument 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.

Terms used in the Instrument and in this Companion Policy have the meaning given to them in securities legislation, including, for greater certainty, National Instrument 14-101 *Definitions*, National Instrument 45-106 *Prospectus Exemptions* and the *Securities Act*.

Definitions

1. In this Companion Policy,

“*SBITC Act*” means the *Small Business Investor Tax Credit Act*, S.N.B. 2003, c S-9.05;

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

Fundamental concepts

2. 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 and derivatives 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.

The Instrument provides exemptions from these two requirements for CEDCs that meet certain criteria outlined in that rule. The Instrument 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 the Instrument must also comply with the requirements for the registration of community economic development corporations or cooperatives outlined in the *SBITC Act* and *General Regulation*.

If a corporation or cooperative no longer meets the criteria to qualify for the prospectus and registration exemptions under the Instrument, but proposes to distribute additional securities outside the scope of the *SBITC Act*, it should refer to other securities laws, such as National Instrument 45-106 *Prospectus Exemptions*, to determine if there are other prospectus exemptions available, and National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* to determine whether it is subject to any registration requirements, and if any registration exemptions are available.

PART 2 – PROSPECTUS AND REGISTRATION EXEMPTIONS

Part 2 contains the requirements that a CEDC must meet in order to qualify for an exemption from the prospectus and registration requirements contained in securities legislation.

First and subsequent trades

4. A CEDC should be aware that the distribution of securities may be subject to resale restrictions. This means that the securities cannot be resold by the purchaser unless certain requirements are met. This includes keeping the securities for a specific period of time, often referred to as a seasoning period or restricted period. The rules and additional guidance on resale restrictions can be found in National Instrument 45-102 *Resale of Securities*.

A purchaser that has claimed the New Brunswick Small Business Investor Tax Credit is also subject to holding requirements that are distinct and separate from those noted above. There are potential negative consequences 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 certain circumstances, such as the death of the original purchaser of the eligible share. A CEDC should refer to the *SBITC Act* and the *General Regulation* for the permitted circumstances and conditions for an early redemption.

A CEDC that is a cooperative should be aware that there may be restrictions in applicable cooperatives legislation on the transferability of shares, and there may be other restrictions in the by-laws of the cooperative.

PART 3 – THE OFFERING

Use of available funds

11. A CEDC should be aware that it may be in breach of securities legislation and may be subject to regulatory action 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 the *General Regulation* or it may be subject to a penalty outlined in the *General Regulation*.

Time limitation on offering

12. (3) If the CEDC applies to the Executive Director for an extension of the initial closing date under subsection 12(3), it must also obtain the approval of the Department of Finance for such an extension.

(4) Similarly, if a CEDC proposes to offer eligible 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

14. Section 14 outlines the requirements for a CEDC if it delivers an amendment to an offering document after the Executive Director 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 of exempt distribution

15. A CEDC that relies on the prospectus exemption in Part 2 must file the prescribed form of report of exempt distribution with the Executive Director no later than 30 days after the closing date of the offering. The CEDC must also send its financial statements to the Department of Finance no later than 30 days after each closing of an offering.

Abandonment

16. The application by the CEDC may be considered to be abandoned if the CEDC conducts no activity for 90 days after filing the offering document with the Commission. For example, an activity would include any correspondence with the Commission regarding the application. If the Commission determines that the CEDC has abandoned the application, the Commission will notify the CEDC that the application will be considered as abandoned, unless the CEDC contacts the Commission within 10 days.

PART 4 – LETTER OF NON-OBJECTION

Revocation of letter of non-objection

18. The Executive Director has the power to revoke a letter of non-objection where the Instrument is not being complied with or if the offering would be prejudicial 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 offering would be prejudicial to the public interest.

PART 5 – PERMITTED PROMOTIONAL ACTIVITIES

Permitted activities

19. (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 the Instrument 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 Cooperatives tax program. Only securities distributed using the Instrument procedures are eligible. Full details of the concurrent distribution must be disclosed in the offering document.

PART 6 – ONGOING REPORTING REQUIREMENTS

Copies to security holders

22. 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 CEDC or a website accessible by all security holders of the CEDC that were acquired under the exemptions in the Instrument (such as a password protected website).

Prohibition against insider trading, informing and recommending

23. Securities legislation prohibits any person in a “special relationship” with an issuer from trading in securities of the issuer while in possession of material non-public information (insider trading) or from informing or recommending any other person of the material non-public information, other than in the ordinary course of business (this is also known as “tipping”). Under securities legislation a “person in a special relationship” includes insiders, directors, officers and employees of the issuer. A CEDC that has met the requirements of the Instrument, *SBITC Act* and *General Regulation*, and has completed the initial closing will be subject to the same prohibitions on insider trading, informing and recommending that are applicable to issuers under section 147 of the *Securities Act*. A person in a special relationship with the CEDC will be subject to prohibitions in that section as well and may rely on the defences for insider trading, informing and recommending set out in the *Securities Act*.

PART 9 – DIRECTORS AND OFFICERS

Directors and Officers

28. 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 individuals’ 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.