

Annex F

Summary of Key Changes to the March 2014 Materials

Investment limits

The March 2014 materials published by the FCNB and OSC provided that the acquisition cost of all securities acquired by an investor under the OM exemption in the preceding 12 months could not exceed:

- in the case of a non-eligible investor that is an individual, \$10,000, and
- in the case of an eligible investor that is an individual, \$30,000.

The March 2014 proposals published by the ASC, AMF and FCAA provided that the acquisition cost of all securities acquired by an investor under the OM exemption in the preceding 12 months could not exceed:

- in the case of an investor that is not an eligible investor, \$10,000, and
- in the case of an eligible investor that is an individual and that is not an accredited investor and does not qualify as a specified family member, close personal friend or close business associate under the family, friends and business associates exemption, \$30,000.

The OSC proposals provided that the above limits would apply to *individuals* that were not accredited investors. The MI proposal provided that the \$10,000 limit for non-eligible investors would apply to both individual and non-individuals and the \$30,000 limit would apply only to *individuals*, excluding accredited investors or those that would qualify under the family, friends and business associates exemption.

Based on the feedback that we received, we considered various options for investment limits under the OM exemption. The final amendments introduce investment limits for individual investors other than those that would qualify as accredited investors or investors that would qualify to invest under the family, friends and business associates exemption substantially as follows:

- in the case of a non-eligible investor that is an individual, the acquisition cost of all securities acquired by the purchaser under the OM exemption in the preceding 12 months cannot exceed \$10,000,
- in the case of an eligible investor that is an individual, the acquisition cost of all securities acquired by the purchaser under the OM exemption in the preceding 12 months cannot exceed \$30,000,
- in the case of an eligible investor that is an individual and that receives advice from a portfolio manager, investment dealer or exempt market dealer that the investment is suitable, the acquisition cost of all securities acquired by the purchaser under the OM exemption in the preceding 12 months cannot exceed \$100,000.

The investment limits will not apply to non-individuals, whether eligible or non-eligible investors. The final amendments also prohibit reliance on the OM exemption by an entity, such as a corporation or trust, that was created solely for the purpose of acquiring securities under the OM exemption.

Eligibility criteria

The March 2014 materials provided that an investor could qualify as an eligible investor by receiving suitability advice from a registered investment dealer (a member of the Investment Industry Regulatory Organization of Canada). This is consistent with the eligibility criteria set out in paragraph (h) of the existing definition of “eligible investor” in section 1.1 of NI 45-106.

The final amendments do not retain this category of eligible investor. Consistent with the approach to investment limits under the final amendments, we believe that the relevance of suitability advice should apply to whether an eligible investor can exceed the \$30,000 investment limit, rather than to whether they would qualify as an eligible investor.

Risk acknowledgment form

The OSC proposal contemplated only requiring individual investors (other than individual investors who are permitted clients) to sign a new risk acknowledgment form that was based on the risk acknowledgment form for individual accredited investors. The MI proposals did not propose a change to the risk acknowledgement form but proposed not requiring permitted clients to have to sign the risk acknowledgment form.

The final amendments retain the requirement to have all investors purchasing securities under the OM exemption sign a risk acknowledgment form, which is the status quo in those jurisdictions that currently have the OM exemption. The required form is the same as the existing form of risk acknowledgement for the OM exemption (Form 45-106F4). In the future, we may consider updating the risk acknowledgement form and will seek to work with other CSA jurisdictions that have the same requirement. The final amendments also introduce two new schedules to the risk acknowledgement form to be completed only by investors that are individuals, as follows:

- one schedule asking an investor to confirm whether and how the investor meets the criteria of an eligible investor, and
- a second schedule asking an investor to confirm that the investor is investing within the appropriate investment limit or is not subject to an investment limit, whichever is applicable.

The second schedule also requires that information be provided with respect to any registrant that has provided advice to the investor. Investors that are not individuals do not have to complete these new schedules.

Notice of use of proceeds

The March 2014 materials contemplated that non-reporting issuers would be required to provide a notice disclosing in reasonable detail the use of the aggregate gross proceeds raised by the issuer in distributions under the OM exemption.

The final amendments retain this requirement, and have added a prescribed form – Form 45-106F16 *Notice of Use of Proceeds* – for providing notice of the use of proceeds. We think that a prescribed form will improve consistency in reporting, and will also provide guidance to issuers as to the nature of the information that should be provided, which will in turn support compliance.

Notice of discontinuation of the issuer's business, change of industry or change of control

In New Brunswick and Ontario, the March 2014 materials contemplated that non-reporting issuers would be required to provide notice to investors of the following specified key events within 10 days of the event occurring:

- a fundamental change in the nature, or a discontinuation, of the issuer's business,
- a significant change to the issuer's capital structure,
- a major reorganization, amalgamation or merger involving the issuer,
- a take-over bid, issuer bid or insider bid involving the issuer,
- a significant acquisition or disposition of assets, property or joint venture interests, and
- changes to the issuer'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.

The final amendments require that in New Brunswick, Nova Scotia and Ontario, non-reporting issuers provide notice to investors of a streamlined list of events within 10 days of the event occurring, as follows:

- a discontinuation of the issuer's business,
- a change in the issuer's industry, and
- a change of control of the issuer.

The final amendments also prescribe a form – Form 45-106F17 *Notice of Specified Key Events* – that sets parameters as to the nature and comprehensiveness of the information that is required to be provided to investors.

Offering memorandum – filing requirement in Ontario and New Brunswick

The March 2014 materials contemplated that the offering memorandum would be *delivered* to the securities regulatory authorities in Ontario and New Brunswick and not placed on the public record.

The final amendments require that the offering memorandum and any marketing materials incorporated by reference into the offering memorandum be *filed* with the securities regulatory authorities in these jurisdictions and placed on the public record. This aligns with the existing requirement to file the offering memorandum in the other participating jurisdictions.

Annual financial statements – timing

The March 2014 materials proposed that non-reporting issuers that distribute securities under the OM exemption would be required to prepare audited annual financial statements and, on or before the 120th day after the end of its most recently completed financial year, file or deliver those statements to the securities regulatory authorities in Alberta, New Brunswick, Ontario, Québec and Saskatchewan, as applicable. In Nova Scotia, these statements are not required to be filed or delivered to the securities regulatory authority, but must be made reasonably available to investors.

The final amendments permit additional time to file audited annual financial statements in certain circumstances. This would allow issuers to file the financial statements on or before the later of the 60th day after the issuer distributes securities under the OM exemption, and the deadline to file, deliver or make reasonably available the financial statements, as applicable.

Change in financial year end

The final amendments introduce certain requirements that non-reporting issuers must comply with in the event of a change in financial year end that were not contemplated in the March 2014 materials. These requirements are based on the requirements for reporting issuers that are set out in National Instrument 51-102 *Continuous Disclosure Obligations*.

Role of related registrants

In New Brunswick and Ontario, the March 2014 materials proposed that registrants related to the issuer (i.e., affiliated registrants or registrants in the same corporate structure) would be prohibited from participating in a distribution of securities under the OM exemption.

The final amendments do not prohibit related registrants from participating in a distribution under the OM exemption. The existing regulatory framework requires registrants to identify and respond to material conflicts of interest that may affect their ability to meet their regulatory obligations, including conducting suitability assessments. We have included companion policy guidance to remind registrants of their responsibilities to address conflicts of interest in accordance with their regulatory obligations under NI 31-103 and National Instrument 33-105 *Underwriting Conflicts*.

Investment funds

The March 2014 materials excluded investment funds from being able to distribute securities in reliance on the OM exemption in Ontario and New Brunswick. In the final amendments, Québec has also decided to adopt the same exclusion. The exclusion of investment funds is consistent with the objective of the OM exemption to facilitate capital raising for SMEs.

Marketing materials

There has been no change to the original proposal made in the March 2014 materials to require marketing materials to be incorporated by reference into an offering memorandum. This requirement has been adopted by all of the participating jurisdictions.

The final amendments prohibit portfolio managers, investment dealers and exempt market dealers from distributing marketing materials in connection with a distribution under the OM exemption unless the marketing materials have been approved in writing by the issuer. This prohibition has been added to address concerns around liability for issuers in respect of marketing materials they did not prepare.