ANNEX B

PROPOSED COMPANION POLICY 45-111
SELF-CERTIFIED INVESTOR PROSPECTUS EXEMPTION

Introduction

Multilateral Instrument 45-111 *Self-Certified Investor Prospectus Exemption* (**MI 45-111** or the **Instrument**) provides a prospectus exemption for distributions to purchasers who certify their financial and investment education and experience, but who may not meet the accredited investor criteria.

The purpose of this Companion Policy is to help users understand how staff of the securities regulatory authorities interpret or apply certain provisions of MI 45-111.

Section 3 - Multi-jurisdictional distributions

MI 45-111 is available to issuers and selling securityholders in jurisdictions that have adopted MI 45-111, and each other jurisdiction of Canada that adopts a corresponding exemption (the **Participating Jurisdictions**) seeking to raise capital from investors within the Participating Jurisdictions.

Section 3 - Purchaser representations

To rely on the Instrument, the issuer or selling securityholder must ensure that the purchaser represents in the agreement to purchase that, after completing the purchase, the aggregate acquisition cost of all securities acquired by the purchaser under the Instrument in the calendar year does not exceed $50,000. The issuer or selling securityholder must obtain a completed Form 45-111F1 *Confirmation of Qualifying Criteria* from the purchaser, in which the purchaser certifies that they meet at least one of the qualifying criteria required to invest, and a completed Form 45-111F2 *Acknowledgement of Risks*. Provided that the issuer or selling securityholder does not know and would not reasonably be expected to know that the statements made by the purchaser are false or misleading, no further verification is required.

Section 4 – Self-certified investors holding securities through a special purpose vehicle (SPV)

MI 45-111 provides a prospectus exemption that allows a distribution of securities to an SPV provided that all of the owners of interests in the SPV, except the voting securities required by law to be owned by directors, are accredited investors or self-certified investors. To rely on this exemption, the SPV must obtain a completed Form 45-111F1 *Confirmation of Qualifying Criteria* and a completed Form 45-111F2 *Acknowledgement of Risks* from each self-certified investor as though the self-certified investor was purchasing directly from the seller.

While the SPV is not subject to an investment limit when investing in an issuer under section 4 of the Instrument, each self-certified investor investing in the SPV remains subject to the $50,000 aggregate individual investment limit.

Section 4 - Special purpose vehicle and private issuers

Under subclause 2.4(1)(b)(ii) of National Instrument 45-106 *Prospectus Exemptions*, absent any discretionary exemptive relief, if an SPV is created solely to purchase or hold securities of a private issuer, then each beneficial owner or beneficiary would be required to be separately counted towards the 50-security holder limit applicable to private issuers. This could limit the number of investors (whether self-certified investors or otherwise) that are able to participate in an SPV that invests in the securities of a private issuer.

Sections 3 and 4 – Compliance with local securities laws

Issuers and SPVs that do not have a head office in a participating jurisdiction are responsible for ensuring that they are compliant with securities laws in their jurisdiction.

Sections 3 and 4 – No registration exemption

MI 45-111 does not provide an exemption from any other aspect of securities law, including the requirement to be registered and the requirements that apply once registered. Securities legislation requires certain persons to be registered if they are, among other activities, in the business of trading, in the business of advising, or acting as an investment fund manager, and as a registrant, to comply with all requirements applicable to such categories. The analysis of whether registration is required is fact specific.

Issuers and SPVs relying on the Instrument to distribute securities, and any person or company they use to assist them in distributing the securities, may be required to be registered or to rely on an exemption from registration. For more information on the registration requirements as well as some exemptions from the registration requirements, please see National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**). Section 1.3 of the related Companion Policy to NI 31-103 contains guidance to assess whether registration is required.

To rely on the Instrument, the issuer, and the SPV that an issuer intends to distribute securities to, cannot be an investment fund. The SPV should assess whether it is an investment fund. In particular, section 1.2 of the Companion Policy to National Instrument 81-106 *Investment Fund Continuous Disclosure* and OSC Staff Notice 81-734 *Summary Report for Investment Fund and Structured Product Issuers*, dated September 13, 2023, starting at page 8[1], provide guidance on the general nature of investment funds.

A person or company advising an SPV that is not an investment fund should consider whether it is in the business of advising in securities, as outlined in the guidance in section 1.3 of the Companion Policy to NI 31-103 and, on that basis, required to register.

If a registrant is involved with the distribution of securities under the Instrument, the registrant's typical obligations and responsibilities (e.g., relating to know-your-client, know-your-product, suitability, and conflicts of interest) continue to apply.

Section 5 - Filing of distribution materials

[1] https://www.osc.ca/en/securities-law/instruments-rules-policies/8/81-734/osc-staff-notice-81-734-summary-report-investment-fund-and-structured-product-issuers

The report of exempt distribution must, no later than 30 days after closing of the distribution, be filed electronically through SEDAR+, in accordance with National Instrument 13-103 *System for Electronic Document Analysis and Retrieval+ (SEDAR+)*. The Canadian Securities Administrators (**CSA**) has information regarding the SEDAR+ filing requirements. Please see:

> CSA Staff Notice 13-323 *Frequently Asked Questions About Making Exempt Market Offering and Disclosure Filings on SEDAR*
> CSA website on *Report of Exempt Distribution*

FORM 45-111F1 *Confirmation of Qualifying Criteria* - Qualifying Degree

Criteria (e), (f) and (g) refer to holding an "accredited" degree. An accredited degree is a degree issued by a university that has been approved to operate by the education ministry or department in the jurisdiction in which the university operates. The accredited degree must be conferred to the investor at the time of investing. An accredited degree does not need to be a degree issued by an educational institution within Canada or a Participating Jurisdiction.

Under criteria (e), the investor must certify that they hold a Master of Business Administration (MBA), Doctor of Business Administration, PhD or master's degree, where the degree specializes in finance or economics, from a university. A degree will be considered to specialize in finance or economics if finance or economics is listed on the program name or if a majority of classes required to obtain the degree directly relate to finance or economics.

Under criteria (f), an investor must certify they have a minimum of three years of relevant employment experience as well as meeting degree requirements to demonstrate the investor is able to adequately assess and understand the risk of investing in the issuer. Relevant employment allows the investor to make an investment decision that leverages a combination of their education and practical employment experiences.

Under criteria (g), an investor is required to certify they hold an accredited degree with a focus or specialization that directly relates to the industry or sector that the issuer operates in and, as a result of the knowledge they have obtained through their study, is able to adequately assess and understand the risk of investing in the issuer.

To illustrate the application of criteria (g), the following are examples that apply in this situation:

- an investor holding a Doctor of Dental Surgery degree from Dalhousie University who is investing under the Instrument in a dental clinic;
- an investor holding a master's degree in chemical engineering from the University of New Brunswick who is investing under the Instrument in a start-up that manufactures equipment for natural gas pipelines; and
- an investor holding a Bachelor of Science degree in Forestry from the University of Alberta who is investing under the Instrument in a company that detects forest fires using electronic heat sensors throughout national parks.

To further illustrate the application of criteria (g), the following are examples that do **not** apply in this situation:

- an investor holding a history degree from the University of Saskatchewan investing under the Instrument in a dairy farm operation, as the specialized degree and the industry of the issuer are not sufficiently related;
- an investor in the process of completing a law degree from the University of Manitoba investing under the Instrument in a legal tech company, as the investor's degree has not been conferred yet; and
- an investor holding a Master of Fine Arts degree from the University of Toronto investing under the Instrument in a company that operates oil wells, as the specialized degree and the industry of the issuer are not sufficiently related.

FORM 45-111F1 *Confirmation of Qualifying Criteria* - Qualifying Designation

An investor relying on criteria (k) should indicate the issuing provincial or territorial accounting body that provided the designation, specifically: CPA Alberta, CPA British Columbia, CPA Manitoba, CPA New Brunswick, CPA Newfoundland and Labrador, CPA Northwest Territories and Nunavut, CPA Nova Scotia, CPA Ontario, CPA Prince Edward Island, CPA Quebec, CPA Saskatchewan, or CPA Yukon.