

Amendments to the offering memorandum prospectus exemption



Disclaimer

The information in this presentation is meant to facilitate discussion and understanding of the amendments to the offering memorandum prospectus exemption effective March 8, 2023. It is meant as general information rather than legal advice, and represents the views of certain staff, not the Alberta Securities Commission.

Introduction to the amendments

- **Overview of the offering memorandum (OM) exemption**
 - OM is a less complex, less comprehensive offering document than prospectus
 - Generally used to sell to retail investors
 - Intended to be used by small issuers before becoming reporting issuers
 - Was not expected to be used by issuers for long periods of time

Why are we making changes?

- **OM exemption not being used as expected**
 - Used primarily by two types of issuers
 - Issuers involved in real estate
 - Issuers that meet the new defined term “collective investment vehicle”
 - The amendments provide tailored disclosure requirements for these types of issuers
 - Intent is to clarify the disclosure necessary for these issuers to provide sufficient information for an informed investment decision

New definitions

➤ 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);”*

Issuers who meet this definition must include disclosure from Schedule 1 to Form 45-106F2 in their OM.

New definitions...cont'd.

➤ 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;”*

Issuers who meet this definition must include disclosure from Schedule 2 to Form 45-106F2 in their OM.

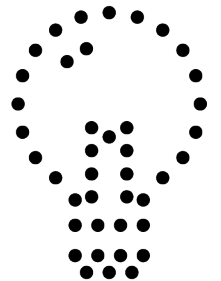
Real estate activities

Which issuers are included

- Real estate developers
- Real estate investment trusts
- Buy and hold
- Purchase of property for purposes of re-zoning and resale

Which issuers are not included

- Oil and gas
- Mining
- Mortgage investing/lending



Real estate activities...cont'd.

➤ Appraisal requirement – subsections 2.9(19.5) - 2.9(19.9) of NI 45-106

➤ Required if:

- proposing to acquire property from a related party, and acquisition is likely; or
- a value for a property is disclosed in OM

➤ Must be:

- performed by a qualified, independent appraiser
- delivered to purchaser (along with OM)
- filed with regulator (along with the OM or 10 days after first distribution for which appraisal was required to be delivered to purchaser)

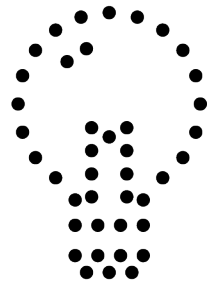
Collective investment vehicles

Which issuers are included

- Mortgage investment corporations/entities
- Investment funds
- Secured receivables

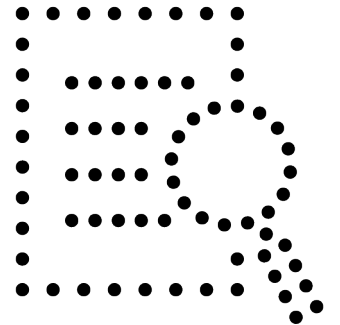
Which issuers are not included

- An issuer for which its only investment in securities is in securities of its subsidiaries



New disclosure schedules

- For issuers engaged in real estate activities and collective investment vehicles
- Disclosure can be included anywhere in OM
- No need to repeat disclosure required by schedules if already included in OM



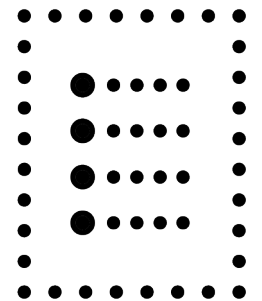
Schedule 1 – Real estate activities

➤ Application

- Properties already acquired or reasonably expected to be acquired
- Does not apply to properties that are immaterial to the issuer

➤ Description of real property

- Disclose address, legal description or other reasonable description of the location of the property
- For 10 or more properties, can disclose on portfolio basis or divide into subgroups
- Expectations for proposed acquisitions



Schedule 1 – Real estate activities...cont'd.

➤ Appraisal

- Only required if subsection 2.9(19.6) of NI 45-106 applies
- Schedule 1 requires disclosure of key information from the appraisal
- Must also include most recent assessment by any assessing authority

➤ Purchaser's interest in real property

➤ Developer or manager disclosure

- Applies to developer or manager under rental management/pool agreement
- Similar requirements to items 3.2 and 3.3 of the main body of the form

Schedule 1 – Real estate activities...cont'd.

➤ Transfers

- Applies to related party transactions
- Must explain price differences between transfers

➤ Approvals

➤ Costs and objectives

- For property to be developed
- Estimated costs and assumptions
- Short- and long-term objectives

Schedule 1 – Real estate activities...cont'd.

- **Future cash calls**
- **Rental pool agreement or rental management agreement**
- **Information statements**
 - Only if purchaser will acquire direct interest in property
- **Risk factors relating to real property**
 - Risk factors specific to the real property, including risks relating to development, leasing, speculative investment, encumbrances and control

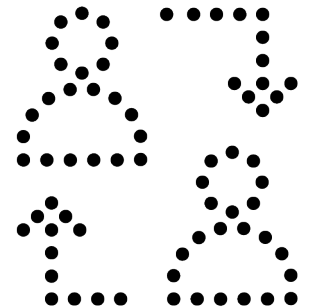
Schedule 2 – Collective investment vehicles

➤ Investment objectives and strategy

- Non-mortgage lenders
- Mortgage lenders

➤ Portfolio management

- Applies to person acting as portfolio manager
- Similar requirements to items 3.2 and 3.3 of the main body of the form



Schedule 2 – Collective investment vehicles...cont'd.

➤ Portfolio summary

➤ Non-mortgage lenders

- Can be disclosed in sub-groups
- Impaired assets
- Separately disclose information for securities that comprise more than 10% of portfolio

➤ Mortgage lenders

- Interest rates, terms, LTV, priority ranking, location, property type, credit ratings
- Overdue mortgages, impaired mortgages
- Separately disclose information for securities that comprise more than 10% of portfolio

➤ Other self-liquidating financial assets

Schedule 2 – Collective investment vehicles...cont'd.

➤ Portfolio performance

- Different methodologies accepted but must follow same methodology as financial statements
- Must describe methodology

➤ Ongoing disclosure

➤ Conflicts of interest

Other amendments to highlight

➤ Standard of disclosure

- No misrepresentation and sufficient information to make an informed decision
- Subsections 2.9(13.1) to 2.9(13.3) of NI 45-106
- Meant to be a clarification rather than a substantive change from previous version
- Clarifies issuers' obligations in case of material change

➤ Item 1.3 of Form 45-106F2

- Significant amount of offering proceeds will be transferred to another issuer that is not a subsidiary
- Requires disclosure of several items of the form for the other issuer, including financial statements
- Would include Schedule 1 or 2 if other issuer is engaged in real estate activities or a collective investment vehicle

Other amendments to highlight...cont'd.

➤ Six month interim financial statements

- Item B.16 of Instructions to Form 45-106F2
- Only applies in Ontario
- 60 days after end of six-month interim period must either:
 - amend the OM to include six-month interim financial statements; or
 - append a certificate to the OM stating that:
 - the OM does not contain a misrepresentation as at the date of the certificate
 - there have been no material changes since the date of OM
 - the OM still contains sufficient information to make an informed investment decision

Other amendments to highlight...cont'd.

➤ Transition provision

- Allows an issuer to continue to use its existing OM after March 8, until it is required to amend its OM
- When an issuer prepares or amends its OM on or after March 8, it must follow the new form requirements

➤ Form 45-106F4 *Risk Acknowledgement*

- Amendments are for the sake of consistency with other risk acknowledgement forms including Form 45-106F9 *Form for Individual Accredited Investors* and Form 45-108F2 *Risk Acknowledgement*

➤ CSA Staff Notice 45-309

- Revised version to reflect amendments to the rule will be published March 8, 2023

Questions?

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Thank you