



CURRENT DEVELOPMENTS

# Canadian Securities & Auditing Matters

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This edition provides a summary of newly effective and forthcoming regulatory and auditing matters in Canada from July 1, 2020 to September 30, 2020.

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# Canadian securities: New guidance

## Significance Tests for Business Acquisition Report Requirements

In August 2020, the Canadian Securities Administrators (CSA) published *Amendments to National Instrument 51-102 Continuous Disclosure Obligations and Changes to Certain Policies Related to the Business Acquisition Report (BAR) Requirements*.

The amendments apply to non-venture issuers and are effective November 18, 2020. The amendments are not retroactive. If a BAR filing requirement is triggered prior to that date, compliance with existing requirements is required unless exemptive relief is obtained.

BARs are required to be filed when a reporting issuer makes a “significant” acquisition. Currently the BAR requirements for non-venture reporting issuers (e.g. TSX listed) are based on three significance tests: the asset test, the investment test and the profit or loss test. The current rules only require one of the three tests to be met before the requirement to file a BAR is triggered. The amendments require at least two of the three tests to be met. In addition, the significance threshold for each of the trigger tests will be increased to 30% from 20%.

Both of these changes will result in decreased BAR filings for non-venture reporting issuers.

## Guidance on Registration Requirements for Chief Compliance Officers of Registrants

In July 2020, CSA Staff Notice 31-358 *Guidance on Registration Requirements for Chief Compliance Officers and Request for Comments* was published to assist with compliance with National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* for certain chief compliance officers (CCO) models.

Guidance on the following CCO models was provided:

- **shared CCO model:** an individual applying to be the CCO for more than one firm;

- **multiple CCO model:** a firm applying to have multiple CCOs, each responsible for one or more business lines and/or different registration categories within the firm; and
- **specialized CCO model:** an individual applying to be the CCO of a non-traditional or specialized firm, such as a fintech firm, where industry-specific experience may be considered as relevant experience for the purposes of assessing the individual's proficiency.

Registrants are invited to provide comments on how each of these models addresses their needs and how they may use these models in their operations. Comment will be used by the CSA to assist them in assessing whether additional policy initiatives should be considered in the future.

## Start Up Crowd Funding Registration and Prospectus Exemptions

In August 2020, the Ontario Securities Commission (OSC) published Ontario Instrument 45-506 *Start-Up Crowdfunding Registration and Prospectus Exemptions (interim Class Order)* to provide relief from the requirement to be registered as a dealer (the Registration Exemption) and from the requirement to file a prospectus in respect of a start-up crowdfunding distribution (the Prospectus Exemption), subject to conditions.

The order also provides that a firm registered in the category of investment dealer or exempt market dealer may operate a funding portal that facilitates the distribution of securities under the Prospectus Exemption provided that it meets the conditions in the order.

Details on the conditions necessary to be satisfied for reliance on the Registration Exemption and the Prospectus Exemption, are included in the order. The exemption is substantially similar to local exemptions in British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick and Nova Scotia.

The Registration Exemption and the Prospectus Exemption are intended to provide interim relief until such time as the CSA have had an opportunity to consider comments, finalize and, subject to Ministerial approval, implement the start-up

crowdfunding regime contemplated in the Proposed National Instrument 45-110 *Start-up Crowdfunding Registration and Prospectus Exemptions* published on February 27, 2020.

The order comes into effect on July 30, 2020 and remains in effect until the earlier of the date on which Proposed National Instrument 45-110 is adopted or the date that is 18 months from July 30, 2020.

### Start Up Crowd Funding Information

In August 2020, the OSC published three publications which provide general information about start up crowd funding:

- Start-up Crowd Funding Guide for Businesses
- Start-up Crowd Funding Guide for Funding Portals
- Start-up Crowd Funding Guide for Investors.

### Syndicated Mortgages

In August 2020, the CSA published *Amendments to National Instrument 45-106 Prospectus Exemptions and National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations* relating to Syndicated Mortgages. The Amendments, among other things, remove the prospectus and registration exemptions that currently apply to syndicated mortgages in Ontario, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island and Yukon.

The new requirements will only apply to syndicated mortgages distributed after the effective date of March 1, 2021. Existing mortgages will not be affected.

The CSA defined a syndicated mortgage as a mortgage where two or more persons participate directly or indirectly, as a lender in a debt obligation that is secured by the mortgage.

As a result of the Amendments, the CSA has removed the current registration and prospectus exemptions that apply to syndicated mortgages.

The Amendments impose additional requirements on the offering memorandum prospectus exemption (the "OM Exemption") to enhance investor disclosure for offerings of syndicated mortgages made under the OM Exemption. A new supplemental form is required.

The Amendments require issuers distributing securities in reliance on the OM Exemption to, among other requirements, deliver an appraisal, prepared by a qualified appraiser who is independent of the issuer, that determined the fair market

value of the property subject to the syndicated mortgage, without considering any proposed improvements or proposed development. The appraisal must be prepared at a date that is within six months before the date that the appraisal is delivered to the purchaser.

The Amendments will exclude syndicated mortgages from the private issuer exemption.

The OSC has concurrently published for comment additional amendments to OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions*. These amendments clarify the definition of "qualified syndicated mortgage" and expand the proposed exemptions related to mortgages. Under the proposed changes, the Financial Services Regulatory Authority of Ontario will continue to maintain oversight of qualified syndicated mortgage distributions. Comments were due September 21, 2020.

The syndicated mortgage exemptions in NI 45-106 and NI 31-103 are expected to apply in Ontario. The OSC, however, is also proposing to include exemptions related to the sale of mortgages by mortgage brokers licensed under the *Mortgage Brokerages, Lenders and Administrators Act*.

### Mutual Fund Sales Practices

In September 2020 the CSA adopted amendments to National Instrument 81-105 *Mutual Fund Sales Practices*, changes to Companion Policy 81-105CP *Mutual Fund Sales Practices* and related consequential amendments to National Instrument 41-101 *General Prospectus Requirements (NI 41-101)* and National Instrument 81-101 *Mutual Fund Prospectus Disclosure (NI 81-101)* (collectively, the Amendments)

The Amendments

- prohibit the payment of trailing commissions by members of the organization of publicly-offered mutual funds (fund organizations) to participating dealers who were not required to make a suitability determination in connection with a client's purchase and ongoing ownership of prospectus qualified mutual fund securities, and
- prohibit the solicitation or acceptance of trailing commissions by participating dealers from fund organizations, in connection with securities of the mutual fund held in an account of a client of the participating dealer if the participating dealer was not required to make a suitability determination in

respect of the client in connection with those securities.

The Amendments will effectively prohibit the payment of mutual fund trailing commissions to dealers who are not subject to the obligation to make a suitability determination.

In some jurisdictions, ministerial approvals are required for the implementation of the Amendments. Provided all ministerial approvals are obtained, the Amendments to NI 81-101 and NI 41-101, which provide certain exemptions from the delivery requirements for fund facts documents and ETF facts documents, respectively, for all switches from a trailing commission paying series or class of a mutual fund to a no trailing commission series or class of the same mutual fund, will come into force on December 31, 2020, and the Amendments to NI 81-105 will come into force on June 1, 2022.

## **Summary Report for Dealers, Advisers and Investment Fund Managers**

In September 2020 the OSC issued Staff Notice 33-751 *Summary Report for Dealers, Advisers and Investment Fund Managers* which outlines the OSC activities in fiscal 2019-20 providing oversight of registered firms and individuals.

The OSC also indicated that the compliance review activity in the 2020-21 fiscal year will prioritize:

- COVID-19 impact on registrants
- complaint handling processes
- marketing practices, including environmental, social and governance offerings
- suitability assessments, including concentration
- review of some firms to confirm their level of operational activities.

# Canadian securities: Proposed guidance

## Amendments to Prospectus Exemption for Issuers engaged in Real Estate Activities and Collective Investment Vehicles

In September 2020, the CSA published Proposed Amendments to National Instrument 45-106 *Prospectus Exemptions* and Proposed Changes to Companion Policy related to the Offering Memorandum Prospectus Exemption.

Comments are due December 16, 2020.

Issuers engaged in real estate activities would be subject to new requirements, including:

- Providing an independent appraisal of an interest in real property to the purchaser in certain circumstances;
- Completing new Schedule 1 *Additional Disclosure Requirements for an Issuer Engaged in Real Estate Activities* (Schedule 1) to Form 45-106F2, which includes certain additional disclosures.

Schedule 1 would not apply to real property that when taken together would not be significant to a reasonable investor.

The Proposed Amendments also include the new defined term "collective investment vehicle". A collective investment vehicle is an issuer whose primary purpose is

to invest money provided by its security holders in a portfolio of securities. This definition would include issuers that hold portfolios of mortgages, other loans, or receivables. The definition would also include investment funds permitted to use the Offering Memorandum Exemption.

Issuers that are collective investment vehicles would be required to complete new Schedule 2 *Additional Disclosure Requirements for an Issuer*. That is a Collective Investment Vehicle to Form 45-106F2, which includes:

- A description of the issuer's investment objectives;
- Disclosure of penalties, sanctions, bankruptcy, insolvency and criminal or quasi-criminal convictions for persons involved in the selection and management of the investments;
- Disclosure of information regarding the portfolio;
- Disclosure regarding the performance of the portfolio.

In addition, certain general amendments have been proposed to clarify or streamline existing rules, including changes to Form 45-106F4 *Risk Acknowledgement* to make the form more understandable for investors.

# Auditing matters

## Group audits

The Auditing and Assurance Standards Board (AASB) continued to solicit feedback on an exposure draft of Canadian Auditing Standard (CAS) 600, *Special Considerations – Audits of Group Financial Statements (Including the Work of Component Auditors)*. Group audit practitioners were invited to share their feedback during five virtual roundtable discussions held from June to August, ahead of the comment deadline of September 11, 2020.

On September 23, the AASB discussed a response letter to the International Auditing and Assurance Standards Board's (IAASB's) Exposure Draft.

## Quality Management for Firms

In September 2020, the IAASB approved International Standard on Quality Management (ISQM) 1 as a final standard. Firms will be required to design and implement systems of quality management in compliance with ISQM 1 by December 15, 2022. Once the Public Interest Oversight Board's (PIOB) confirmation that due process was followed is received, the Board will formally release the standard.

The AASB invited practitioners who perform related services engagements, specifically compilation engagements, to participate in a quality management case study workshop on August 24, 2020. The workshop allowed practitioners to test firsthand the scalability of proposed International Standard on Quality Management (ISQM 1) and identify practical challenges for adoption.

Feedback from the workshop will be shared with the AASB as it approves ISQM 1 as Canadian Standard on Quality Management (CSQM) 1 later this year and CPA Canada which develops implementation guidance for new and revised standards.

At the September AASB meeting the following was discussed on issues related to the IAASB's project:

- ISQM 1, *Quality Control for Firms that Perform Audits and Reviews of Financial Statements, or Other Assurance or Related Services Engagements*;
- ISQM 2, *Engagement Quality Reviews*; and
- ISA 220, *Quality Control for an Audit of Financial Statements*.

## Primary Financial Statements Project

The AASB reviewed a draft response letter to the International Accounting Standards Board's (IASB) exposure draft, *General Presentation and Disclosures*. The Board focused its discussion on the audit implications of introducing management performance measures in the notes to the financial statements and the proposal to define unusual income and expenses.

## Key Audit Matters

The AASB received an update on the development of non-authoritative guidance on communicating Key Audit Matters (KAMs) in the auditor's report. Such guidance will target small and medium-sized practitioners who perform audits of listed entities and who will be required to communicate KAMs in the auditor's report for periods ending on or after December 15, 2022. The Board expects to review the draft guidance at a future meeting.

## Standards Issued but Not yet Effective

The following standards have been issued but are not yet effective:

- CAS 315, *Identifying and Assessing the Risks of Material Misstatement*;
  - o Effective on or after December 15, 2021.
- CAS 700, *Forming an Opinion and Reporting on Financial Statements*;
  - o Effective for entities listed on the Toronto Stock Exchange who are required to comply with National Instrument 81-106, Investment Fund Continuous Disclosure, and for entities other than those listed on the Toronto Stock exchange, on or after December 15, 2021.



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