



LOCAL RULE 45-509

Community Economic Development Corporations and Associations

**PART 1
DEFINITIONS**

Definitions

1. In this Instrument

“Act” means the *Securities Act*;

“affiliate” has the same meaning as in the *Small Business Investor Tax Credit Act*;

“CEDC” means a community economic development corporation or association that is registered under section 13.3 of the *Small Business Investor Tax Credit Act*;

“Commission” means the Financial and Consumer Services Commission (New Brunswick); or a successor responsible for the regulation of securities in New Brunswick;

“Executive Director” has the same meaning as in the *Act*;

“eligible share” has the same meaning as in the *Small Business Investor Tax Credit Act*;

“financial statements” includes interim financial reports;

“Form 45-106F1” means Form 45-106 F1 *Report of Exempt Distribution* under National Instrument 45-106 *Prospectus Exemptions*;

“Form 45-106F4” means the Form 45-106F4 *Risk Acknowledgement* under National Instrument 45-106 *Prospectus Exemptions*.

“Handbook” means the CPA Canada Handbook - Accounting, as amended from time to time;

“letter of non-objection” means the letter of non-objection referred to in Part 4;

“offering document” means an offering document prepared in accordance with Form 45-509F1 *Offering Document for Community Economic Development Corporations and Associations*;

“person in a special relationship with an issuer” has the same meaning as in subsection 147(1) of the *Act*;

“promotional material” means information relating to an offering and includes advertising and sales literature;

“private enterprise” means a private enterprise as defined in the Handbook;

“publicly accountable enterprise” means a publicly accountable enterprise as defined in the Handbook;

“securities rules” means the rules of the Commission made under the *Act*;

“specified issue” has the same meaning as in the *Small Business Investor Tax Credit Act*;

“tax credit certificate” means the tax credit certificate described in subsection 15(1) of the *Small Business Investor Tax Credit Act*.

2. Unless otherwise defined in this Instrument, the terms defined in the *Act*, National Instrument 14-101 *Definitions* and National Instrument 45-106 *Prospectus Exemptions* have the same meaning in this Instrument.

PART 2 APPLICATION

3. This Instrument applies to a CEDC and its directors, officers and promoters.

PART 3 PROSPECTUS AND REGISTRATION EXEMPTIONS

Prospectus and registration exemptions

4. (1) The prospectus requirement does not apply to a distribution by a CEDC in an eligible share of its own issue that is or is part of a specified issue to a purchaser if
 - (a) the CEDC has delivered to the Commission its certificate of registration issued under section 13 of the *Small Business Investor Tax Credit Act*, and such certificate has not been revoked under section 16 of the *Small Business Investor Tax Credit Act* or surrendered under section 17 of the *Small Business Investor Tax Credit Act*,

- (b) the CEDC has delivered to the Commission an offering document in compliance with sections 12-17 and section 26, along with the prescribed fee,
 - (c) the Executive Director has issued a letter of non-objection,
 - (d) at the same time or before the purchaser signs the agreement to purchase eligible shares of the CEDC, the CEDC:
 - i. delivers the offering document to the purchaser, and
 - ii. obtains a completed Form 45-106F4 *Risk Acknowledgement*, from the purchaser, and
 - (e) the eligible shares are not sold by, or through, a registrant.
- (2) The dealer registration requirement does not apply to a distribution of a share in the circumstances referred to in subsection (1) if:
- (a) the distribution is made by individuals so described in the offering document, and
 - (b) the CEDC does not provide advice to a purchaser or otherwise recommend or represent:
 - i. that an eligible share is suitable, or
 - ii. any information about the merits of the investment.
- (3) A CEDC is exempt from the requirement under the securities laws of New Brunswick pertaining to investment funds and investment fund managers if
- (a) the CEDC includes in its offering document the following warning in bold type:

“WARNING” Unlike most investment funds, this fund will not be required to comply with the requirements of an investment fund manager provided that the fund complies with Local Rule 45-509 *Community Economic Development Corporations and Associations*. Other investment funds are required to have registered investment fund managers to afford investors a level of protection that is not present in this investment. When investors purchase or own shares in this fund they should be aware that they will not have the protections of the requirements and standards imposed on investment fund managers under New Brunswick securities laws, which include:

 - **meeting experience and education requirements**
 - **complying with investment fund reporting requirements,**

- **employing a chief compliance officer,**
- **maintaining minimum levels of working capital,**
- **maintaining specified levels of insurance or bonding, and**
- **undergoing Commission compliance reviews” and**

(b) the CEDC is in compliance with this Instrument.

(4) A CEDC relying on subsection (1) must retain the signed risk acknowledgment for 8 years after the distribution.

First and subsequent trades

5. The first trade and each subsequent trade of an eligible share of a CEDC is deemed to be a distribution, unless:

- (1) in the case of a corporation, the conditions in subsection 2.5(2) of National Instrument 45-102 *Resale of Securities* are satisfied or the trade is made in accordance with an exemption from the prospectus and registration requirements;
- (2) in the case of an association, the trade is made in accordance with the *Co-operative Associations Act*.

PART 4 LETTER OF NON-OBJECTION

Letter of non-objection

6. (1) The Executive Director must issue a letter of non-objection to an offering document unless, in the opinion of the Executive Director, any of the following apply:
 - (a) it is not in the public interest to do so;
 - (b) the offering document does not meet all the requirements of this Instrument;
 - (c) the offering is not, or will not, be made in compliance with this Instrument.
- (2) On receipt of an offering document, the Executive Director may do any of the following:
 - (a) inquire into any aspect of the offering and the offering document;
 - (b) request delivery of supplemental information before or after determining whether to issue a letter of non-objection;
 - (c) require the inclusion of supplemental information in the offering document before or after issuing a letter of non-objection.

Revocation of letter of non-objection

7. (1) If, after issuing a letter of non-objection, it appears to the Executive Director that the continuation of the offering would be prejudicial to the public interest or that any requirement of this Instrument has not been, or is not being, complied with, the Executive Director may revoke the letter of non-objection.
- (2) The Executive Director shall not revoke the letter of non-objection without giving the CEDC an opportunity to be heard.
- (3) Upon receipt of notice of revocation referred to in subsection (1), the CEDC and any other person trading on its behalf must immediately cease trading shares of the CEDC until the CEDC is notified by the Executive Director that
 - (a) the Executive Director has withdrawn the notice of revocation; or
 - (b) the Tribunal has, by order, determined that it would not be prejudicial to the public interest for the offering to continue.

PART 5 PERMITTED PROMOTIONAL ACTIVITIES

Prohibition on trading

8. Other than provided for in this Part, there must be no trading or activity directly or indirectly in furtherance of trading, in the shares of the CEDC before the Executive Director issues a letter of non-objection to an offering document under section 6.

Permitted activities

9. (1) Before the Executive Director issues a letter of non-objection to an offering document, a promoter may
 - (a) talk individually, or in group situations, with potential security holders to give the potential securityholders a general overview of the offering, including any of the following information:
 - (i) identification of the CEDC,
 - (ii) an indication of the amount of money needed to be raised,
 - (iii) a general description of what use will be made of the money raised,
 - (iv) an outline of the tax consequences,
 - (b) gather the names of potential security holders who may be interested in the offering,

- (c) distribute promotional material or expression of interest forms provided that the promotional material used or distributed includes
 - (i) the disclaimer described in subsection (3),
 - (ii) an endorsement of a director, officer or promoter of the CEDC evidencing the approval of the promotional material, and
 - (iii) no other information other than
 - A. the name of the CEDC
 - B. the location, date and time of any meeting,
 - C. the purpose of the meeting, which must be to determine if there is sufficient interest to proceed with the offering, and
 - D. the contact information respecting the meeting.
- (2) After the Executive Director issues a letter of non-objection to an offering document, a promoter may distribute promotional material or expression of interest forms provided that the promotional material used or distributed includes
 - (a) the disclaimer described in subsection (3),
 - (b) an endorsement of a director, officer or promoter of the CEDC evidencing the approval of the promotional material,
 - (c) the name of the CEDC, and
 - (d) no other information other than
 - (i) the name and contact information of the selling agents,
 - (ii) how to obtain a copy of the offering document,
 - (iii) the price per share,
 - (iv) the individual minimum purchase amount,
 - (v) information regarding the tax credit under the *Small Business Investor Tax Credit Act*, including confirmation that the CEDC complies with all applicable legislation for purchasers to benefit from the tax credit,
 - (vi) potential income tax consequences,
 - (vii) the location, date and time of any meeting, and
 - (viii) in whole or in part, the information in summary form, contained in items 2.2, 7.1 and 8 of the offering document of the CEDC.
- (3) The promotional materials must contain the following disclaimer which must be legible without magnification, or in the case of audibly transmitted promotional material, included audibly in the material:

This Community Economic Development Corporation or Association offering may be a high risk investment. This offering is made through an offering document, which can be obtained through a person authorized to sell the eligible shares. This offering is an exempt offering of eligible shares only in New Brunswick. Investors should read the offering document before making an investment decision.

- (4) The CEDC must deliver a copy of its promotional materials to the Commission no later than 2 business days after the materials are first used.
- (5) The promotional materials, other than radio and television promotional materials, must be distributed to all potential purchasers who have received the offering document.
- (6) The promotional materials must not be made available, used or distributed after the latest permitted closing date of the offering.
- (7) A promoter must not accept any binding commitments or binding expressions of interest, whether oral or written or consideration from any potential security holders before the Executive Director issues a letter of non-objection to the offering document.
- (8) An expression of interest form must contain the following warnings to potential security holders:
 - (a) that they should read and consider the offering document that they will receive with respect to the offering, if the offering does proceed;
 - (b) that they should consult with a professional advisor before deciding to purchase shares under the offering; and
 - (c) that the expression of interest is not a binding commitment to purchase shares under the offering.
- (9) A CEDC may distribute shares under other prospectus exemptions concurrently with the distribution of eligible shares in a specified issue if full details of the concurrent distribution are disclosed in the offering document.

PART 6 THE OFFERING

Directors and officers

10. The directors and officers of the CEDC must be individuals who are suitable to act in such a capacity and whose past conduct does not afford reason to believe that the business of the CEDC will not be conducted fairly, honestly and in good faith.

Potential security holders

11. (1) A CEDC must provide each potential security holder with
 - (a) a copy of all promotional material, the offering document and a subscription agreement; and
 - (b) any additional materials required by the Executive Director.
- (2) A potential security holder can cancel their agreement to purchase the securities by sending a notice to the CEDC by midnight on the 2nd business day after
 - (a) the day the CEDC received the completed subscription agreement;
 - (b) the day the CEDC has notified the purchaser of an amendment to the offering document.

Promotional material

12. An offering document must state that all promotional materials relating to each distribution under the offering document, including those prepared after the date of the offering document, are incorporated by reference into the offering document and are deemed to form part of the offering document.

Form of offering document

13. The required form of offering document is Form 45-509F1.

Financial statements included in the offering document

14. (1) If the CEDC has not completed one financial year or its first financial year end is less than 120 days from the date of the offering document, include an interim financial report of the CEDC as at a date not more than 90 days before the date of the offering document.
- (2) If the CEDC has completed one or more financial years, include the annual financial statements of the CEDC:
 - (a) for the most recently completed financial year, and
 - (b) for the financial year immediately preceding the financial year in paragraph (a), if any.
- (3) If the CEDC has completed one or more financial years, include in the offering document an interim financial report of the CEDC:

- (a) for the most recently completed interim period that ended no more than 90 days prior to the date of the offering document, and
- (b) after the year end date of the financial statements required under subsection (2)(a).

Use of Proceeds

15. All amounts raised under an offering must be used as indicated in the offering document.

Time limitation on offering

16. (1) An offering initially closes on the date specified in the offering document.
- (2) Unless the Executive Director grants an extension under subsection (3), the initial closing date specified in the offering must be a date no later than 90 days after the date the CEDC issued its certificate of registration under section 13 of the *Small Business Investor Tax Credit Act*.
- (3) The Executive Director may grant an extension of the 90 day period on application by the CEDC.
- (4) After the initial closing date, a CEDC may continue to offer shares under the offering document if the Executive Director has issued a letter of non-objection for the subsequent sales and only for such time period as indicated in the letter of non-objection.

Amounts to be held in trust

17. (1) All amounts subscribed under an offering must be held in a designated trust account at a Canadian financial institution until after
- (a) the CEDC meets its minimum offering amount for the initial closing and all conditions of closing have been met, and
 - (b) the initial closing occurs.
- (2) Any amounts subscribed for under an offering made after the initial closing as described in subsection 16(4) must be held in the same manner as in subsection (1) until after
- (a) the CEDC meets its minimum offering amount for the next closing and all the conditions of the next closing have been met, and
 - (b) the next closing occurs.
- (3) The conditions in subsection (2) apply to each subsequent closing.

- (4) The CEDC must return all consideration received promptly to the purchaser if:
 - (a) the CEDC does not meet its minimum offering amount by the applicable closing date, or
 - (b) the purchaser exercises its right, described in subsection 11(2), not to be bound by the completed subscription agreement.

Amendments to the offering document

18. (1) Except as required in this section, no amendments may be made to an offering document after the Executive Director issues a letter of non-objection to the offering document.
- (2) After the Executive Director issues a letter of non-objection to an offering document, the CEDC must deliver an amendment to the offering document with the Commission if
 - (a) the CEDC has not yet met its minimum offering amount, the initial closing has not yet occurred, and any of the following apply:
 - (i) there is a material change in the affairs of the CEDC;
 - (ii) the terms or conditions of the offering are being altered,
 - (iii) additional shares of the same class are to be distributed in addition to the securities previously described in the offering document.
 - (b) the CEDC is still distributing its shares under the offering document after having met its minimum offering amount and having had the initial closing take place, and there is a material change in the affairs of the CEDC.
- (3) An amendment to an offering document must describe the change that resulted in the amendment and receive the written non-objection of the Executive Director.
- (4) An amendment to an offering document must be sent to all subscribers of the specified issue after the Executive Director has issued a non-objection to the amendment.

Statutory rights of action in the event of a misrepresentation

19. An offering document is a prescribed disclosure document for the purposes of section 153.1 of the *Act*.

Report after closing

20. No later than 30 days after the date of each closing of an offering, the CEDC must deliver a completed Form 45-106F1 *Report of Exempt Distribution* to the Executive Director.

PART 7
ONGOING REPORTING REQUIREMENTS

Annual financial statements

21. (1) For the purposes of subsection 89(2) of the *Act*, where a CEDC has met its minimum offering and if the initial closing has occurred, the CEDC must deliver annual financial statements to the Commission.
- (2) The annual financial statements required to be delivered under subsection (1) must be delivered within 140 days from the end of the CEDC's most recently completed financial year.

Copies to security holders

22. The CEDC must make reasonably available to all its security holders a copy of its annual financial statements required to be delivered under subsections 21(2) at the same time as the annual financial statements are delivered to the Commission.

Persons in a special relationship

23. If a CEDC has met its minimum offering, all conditions of closing have been met, and if the initial closing has occurred, the CEDC and every person who would be an insider of the CEDC if the CEDC were a reporting issuer, and every person or company who would be in a special relationship with the CEDC if the CEDC were a reporting issuer, is subject to section 147 of the *Act* and the related provisions of the securities rules to the same extent as if the CEDC were a reporting issuer and the person was an insider of the CEDC or in a special relationship with the CEDC.

Notice of Specified Events

24. The CEDC must make reasonably available to each holder of an eligible security acquired under section 4, a notice of any of the following events in accordance with Form 45-509F2 *Notice of Specified Events*, within 10 days of the occurrence of the event:
- (a) a fundamental change in the nature, or a discontinuation, of the CEDC's business;
 - (b) a significant change to the CEDC's capital structure;
 - (c) a major reorganization, amalgamation or merger involving the CEDC;
 - (d) a significant acquisition or disposition of assets, property or joint venture interests;
 - (e) 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.
25. A CEDC is no longer required to comply with this Part if

- (1) the CEDC delivers to the Executive Director a notification from the Minister of Finance that the CEDC has surrendered its registration or the Minister of Finance has revoked its registration; or
- (2) the CEDC delivers to the Executive Director a statement from the officers of the CEDC certifying all of the following:
 - (a) that the CEDC has fewer than 3 shareholders,
 - (b) that the hold period required by the *Small Business Investor Tax Credit Act* has expired on all shares,
 - (c) that financial statements on which a review has been carried out by an independent accountant in compliance with the review standards as set out in the Handbook and that are dated within 90 days of the delivery have been delivered to the Executive Director,
 - (d) that the CEDC has complied with all the requirements of this Instrument,
 - (e) that shareholders, representing 66.6% or more of shares eligible to be voted have voted in favour of not being required to comply with this Part.

PART 8
ACCOUNTING AND AUDITING STANDARDS

26. (1) A CEDC's annual financial statements do not require a report of an auditor if all of the following apply:
- (a) the security holders are not required by law to appoint an auditor;
 - (b) a general review has been carried out by an independent accountant in compliance with the general review standards as set out in the Handbook;
 - (c) the financial statements are accompanied by a review engagement report as set out in the Handbook.
- (2) For the purposes of this instrument, the financial statements for a CEDC may be prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises or Canadian GAAP applicable to private enterprises as set out in the Handbook.
 - (3) If a CEDC delivers financial statements prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises, it must continue to deliver financial statements prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises.
 - (4) Any use of financial forecasts or projections must be made in accordance with Part 4B of National Instrument 51-102 *Continuous Disclosure Obligations*.

**PART 9
RECORD KEEPING**

27. A CEDC must maintain books and records at its head office to accurately record its financial affairs, client transactions, and the extent of the CEDC's compliance with this Instrument, for a period of 8 years from the date a record is created.

**PART 10
EXEMPTIONS**

Exemptions from this Instrument

28. The Executive Director may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

**PART 11
EFFECTIVE DATE**

Effective Date

29. This Instrument comes into force on 1 April 2016.