



## **REQUEST FOR COMMENTS**

### **Notice and Request for Comment**

Publication of proposed Financial and Consumer Services Commission Local Rule 45-509 *Community Economic Development Corporations and Associations* (Local Rule 45-509).

### **Introduction**

On 31 August 2015, the Financial and Consumer Services Commission (Commission) approved publication in order to obtain comments on proposed Local Rule 45-509.

### **Substance and Purpose of Proposed Local Rule**

To provide a prospectus and registration exemption with conditions for securities issued pursuant to a Government of New Brunswick program allowing for the creation of community economic development corporations in order to facilitate investment in small businesses. As part of that program, amendments to the *Small Business Investor Tax Credit Act* (SBITCA) and Regulations will provide for a tax credit to persons who invest in an eligible business. The program would allow groups of investors to target specific types of business for investment, or create a blind pool to encourage economic development within a defined community.

Consequential amendments are being proposed to Local Rule 11-501 *Fees* which would provide for a \$350 fee for offering documents delivered to the Commission pursuant Local Rule 45-509.

### **Request for Comment**

The Commission seeks comments on the proposed Local Rule 45-509 and the consequential amendments. The comment period ends on 10 November 2015.

In addition, the Department of Finance has, today, published for a 30 day comment period, amendments to the *Regulations* under the SBITC which provide for the tax credit. See [proposed amendments to the New Brunswick Regulation 2003-39 under the Small Business Investor Tax Credit Act](#) for further details.

## **Contents of Annexes**

The following annexes form part of this Notice :

Annex A        Local Rule 45-509 *Community Economic Development Corporations and Associations*

Annex B        Amendments to Financial and Consumer Services Commission Local Rule 11-501 *Fees*

## **How to Provide your Comments**

Comments are to be provided, in writing, by no later than 10 November 2015 to:

Secretary  
Financial and Consumer Services Commission  
85 Charlotte Street, Suite 300  
Saint John, N.B. E2L 2J2  
Telephone:    506-658-3060  
Toll Free:     866-933-2222 (within NB only)  
Fax:            506-658-3059  
E-mail: [secretary@fcnb.ca](mailto:secretary@fcnb.ca)

We cannot keep submissions confidential. A summary of the written comments received during the comment period may be published.

## **Questions**

If you have any questions, please refer them to:

Kevin Hoyt  
Director, Securities  
Financial and Consumer Services Commission  
Tel: 506-643-7691  
Email: [kevin.hoyt@fcnb.ca](mailto:kevin.hoyt@fcnb.ca)

## Annex A



### 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*;

“Canadian GAAP” means generally acceptable accounting principles determined with reference to the Handbook;

“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 business” has the same meaning as in the *Small Business Investor Tax Credit 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, as amended from time to time;

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“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* or 45-509F2 *Simplified Offering Document for Community Economic Development Corporations and Associations*, as applicable;

“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

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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 13-17 and section 28, 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**

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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) the conditions in subsection 2.5(2) of National Instrument 45-102 Resale of Securities are satisfied; or
- (2) the trade is made in accordance with the *Small Business Investor Tax Credit Act and the Small Business Investor Tax Credit Act Regulations*.

## 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;

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- (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 or the *Small Business Investor Tax Credit Act* or the *Small Business Investor Tax Credit Act Regulations* have not been, or are 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,

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- (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
  - (a) 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,
    - (iii) the name of the CEDC, and
    - (iv) no other information other than
      - A. the name and contact information of the selling agents,
      - B. how to obtain a copy of the offering document,
      - C. the price per share,



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- D. the individual minimum purchase amount,
  - E. 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,
  - F. potential income tax consequences,
  - G. the location, date and time of any meeting, and
  - H. in whole or in part, the information in summary form, contained in the offering document of the CEDC in items 2.2, 7.1 and 8.
- (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.

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- (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 reasonable grounds 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 is entitled to provide a CEDC with written notice evidencing the intention of the potential security holder not to be bound by their completed subscription agreement no later than midnight on the 2<sup>nd</sup> 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. (1) Subject to subsection (2), the required form of offering document is Form 45-509F1.  
(2) Where an issuer proposes to raise \$250,000 or less in a single offering, the form of offering document may be Form 45-509F2.

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- (3) An issuer is restricted to using Form 45-509F2 no more than two times in a 12 month period.

### 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).

### Investment limits

15. Where a CEDC uses Form 45-509F2 as its offering document, a purchaser, who is an individual and is not an accredited investor, may invest no more than \$1,500 in a single offering.

### Use of Proceeds

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

### Time limitation on offering

17.
  - (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*.

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- (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

- 18. (1) The CEDC must hold a purchaser's asset separate and apart from the CEDC's own property, in trust for the purchaser, and in the case of cash, in a designated trust account at a Canadian financial institution until after
  - (a) the CEDC meets its minimum offering amount and all conditions of closing have been met, and
  - (b) the initial closing occurs.
- (2) Any amounts received by the CEDC under an offering after the initial closing must be held in the same manner as in subsection (1) until after
  - (a) 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) Despite subsections (1), (2) and (3), the CEDC must return, or cause to return, all consideration promptly to the purchaser if:
  - (a) the CEDC does not meet its minimum offering amount by latter of the dates referred to in subsections (1), (2) and (3).
  - (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

- 19. (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

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- (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

- 20. An offering document is a prescribed disclosure document for the purposes of section 153.1 of the Act.

### Report after closing

- 21. 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

- 22. (1) For the purposes of subsection 89(2) of the Act, where a CEDC has met its minimum offering and has certified to the trustee that all conditions of closing have been met, 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.

### Interim reports

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23. (1) For the purposes of subsection 89(2) of the *Act*, where a CEDC has met its minimum offering amount and has certified to the trustee that all conditions of closing have been met, and if the initial closing has occurred, the CEDC must deliver interim financial reports with the Commission.
- (2) The interim financial reports required to be delivered under subsection (1) must be filed within 60 days from the end of the CEDC's second quarter.

### Copies to security holders

24. The CEDC must make reasonably available to all its security holders a copy of its annual financial statements and second quarter interim report required to be delivered under subsections 22(2) and 23(2) at the same time as the annual financial statements or interim report, as the case may be, are delivered to the Commission.

### Persons in a special relationship

25. 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

26. 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 45-509F5 *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.
27. A CEDC is no longer required to comply with this Part if

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- (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 general review has been carried out by an independent accountant in compliance with the general review standards as set out in the Handbook and that are dated within 90 days of the filing have been filed with 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

- 28.
- (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 files financial statements prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises, it must continue to file financial statements prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises.

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- (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**

29. A CEDC which has delivered an offering document to the Commission under paragraph 4(1)(b) is designated to be a market participant.
30. 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**

31. 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**

32. This Instrument comes into force on ●.



FORM 45-509F1

**OFFERING DOCUMENT FOR COMMUNITY ECONOMIC DEVELOPMENT CORPORATIONS AND ASSOCIATIONS**

**Date:** [Insert the date from the certificate page.]

**The CEDC:**

Name	
Registered office address	
Address of principal business	
Phone #	
Contact person/position	
E-mail address	
Website URL	
Fax #	
Financial year end (month/day)	

**The Offering**

Securities offered	
Price per security	
Minimum subscription amount	
Minimum # of shares offered	
Total proceeds if minimum sold	
Maximum # of shares offered	
Total proceeds if maximum sold	
Minimum # of investors required	
Payment terms	
Proposed closing date(s)	

**Tax Consequences**

State in bold type: **“There are important tax consequences to these securities. See item 6.”**

**Resale restrictions**

State in bold type: **“You are restricted from selling your securities. See item 9”.**

**Purchaser’s rights**

State: “You have 2 business days to cancel your agreement to purchase these securities. If there is a misrepresentation in this offering document, you have the right to sue either for damages or to cancel the agreement. See item 10.”

Include the following statement, in bold type:

**“Neither the Financial and Consumer Services Commission nor the Government of New Brunswick has assessed, reviewed or approved the merits of these shares or reviewed this offering document. This is a risky investment.”**

**Item 1: Use of Available Funds**

**1.1 Funds** – [Instructions: Using the following table, disclose the funds available as a result of the offering. If the CEDC plans to combine additional sources of funding with the available funds from the offering to achieve its principal capital-raising purpose, please provide details about each additional source of funding. ]

The Funds available from the offering are as follows:

		<b>If minimum sold</b>	<b>If maximum sold</b>
A.	Amount to be raised by this offering	\$	\$
B.	Selling commissions and fees	\$	\$
C.	Legal and accounting expenses	\$	\$
D.	Copying and other administrative expenses	\$	\$
E.	Available funds: $E = A - (B+C+D)$	\$	\$
F.	Additional sources of funding required	\$	\$
G.	Total: $G = (E+F)$	\$	\$

**1.2 Use of Available Funds** – [Instructions: Using the following table, provide a detailed breakdown of how the CEDC will use the available funds in order of priority. If the CEDC has a working capital deficiency, disclose the portion, if any, of the available funds to be applied against the working capital deficiency.]

State: The funds raised in the offering will be used as follows:

<b>Description of intended use of available funds listed in order of priority</b>	<b>Assuming min. offering</b>	<b>Assuming max. offering</b>
	\$	\$
	\$	\$
	\$	\$
	\$	\$
<b>Total: Equal to G in the Funds table above</b>	\$	\$

State: The proceeds from the Offering will/will not satisfy the CEDC’s cash requirements for the next 12 months, and it will/will not be necessary to raise additional funds. [Instructions: If applicable, state the source of additional funds, if any.]

**Item 2: Business of [name of the CEDC or other term used to refer to the CEDC]**

- 2.1 Structure** - State the business structure and statute under which the CEDC is incorporated, continued or organized, and the date of incorporation, continuance or organization.
- 2.2 Our Business** – [Instructions: Describe the CEDC's business. The disclosure must provide sufficient information to enable a prospective purchaser to make an informed investment decision. This disclosure may include principal products or services, operations, market, marketing plans and strategies and a discussion of the CEDC’s current and prospective competitors.]
- 2.3 Development of Business** – [Instructions: Describe (generally, in one or two paragraphs) the general development of the CEDC's business over at least its two most recently completed financial years and any subsequent period. Include the major events that have occurred or conditions that have influenced (favourably or unfavourably) the development of the CEDC.]
- 2.4 Dividends and Distributions** – [Instructions: Describe the particulars of the CEDC’s dividend policy. If there are none, so indicate. Include the details of dividends and other distributions paid by the CEDC to its security holders during the last 5 years.]
- 2.5 Long Term Objectives** - Describe each significant event that must occur to accomplish the CEDC’s long term objectives, state the specific time period in which each event is expected to occur, and the costs related to each event.
- 2.6 Short Term Objectives and How We Intend to Achieve Them**
  - (a) Disclose the CEDC's objectives for the next 12 months.
  - (b) Using the following table, disclose how the CEDC intends to meet those objectives for the next 12 months.

What we must do and how we will do it	Target completion date or, if not known, number of months to complete	Our cost to complete
		\$
		\$

**2.7 Insufficient Funds**

If applicable, disclose that the funds available as a result of the offering either may not or will not be sufficient to accomplish all of the CEDC's proposed objectives and there is no assurance that alternative financing will be available. If alternative financing has been arranged, disclose the amount, source and all outstanding conditions that must be satisfied.

**2.8 Material Agreements** - Disclose the key terms of all material agreements to which the CEDC is currently a party, or with a related party.

**Item 3: Interests of Directors, Management and Principal Holders**

**3.1 Compensation and Securities Held** – [Instructions: Using the following table, provide the specified information about each director and officer of the CEDC and each person who, directly or indirectly, beneficially owns or controls 10% or more of any class of voting securities of the CEDC (a “principal holder). If the CEDC has not completed its first financial year, then include any kind of compensation paid since inception.]

Name and municipality of principal residence	Positions held (e.g., director, officer and/or principal holder) and the date of obtaining that position	Compensation paid by CEDC or related party in the most recently completed financial year and the compensation anticipated to be paid in the current financial year	Number, type and percentage of securities of the CEDC held after completion of min. offering	Number, type and percentage of securities of the CEDC held after completion of max. offering

**3.2 Management Experience** – [Instructions: Using the following table, disclose the principal occupations of the directors and executive officers over the past five years. In addition, for each individual, describe any relevant education and experience in a business similar to the CEDC's.]

Name	Principal occupation and related education and experience

**3.3 Management Relationships** - [Instructions: Provide a description of any personal relationships (e.g. related family members, marriage between individuals) that exist between the officers, directors, key personnel and principal security holders. If there are no such personal relationships, so indicate.]

**3.4 *Litigation, Penalties or Sanctions, Cease Trade Orders and Bankruptcy*** – Disclose whether each person listed in item 3.1, or the CEDC, as the case may be:

- (a) has ever, pled guilty to or been found guilty of:
  - (i) a summary conviction or indictable offence under the *Criminal Code* (R.S.C., 1985, c. C-46) of Canada,
  - (ii) a quasi-criminal offence in any jurisdiction of Canada or a foreign jurisdiction,
  - (iii) a misdemeanour or felony under the criminal legislation of the United States of America, or any state or territory therein, or
  - (iv) an offence under the criminal legislation of any other foreign jurisdiction,
- (b) is or has been the subject of an order (cease trade or otherwise), judgment, decree, sanction, or administrative penalty imposed by a government agency, administrative agency, self-regulatory organization, civil court, or administrative court of Canada or a foreign jurisdiction in the last ten years related to his or her involvement in any type of business, securities, insurance or banking activity,
- (c) is or has been the subject of a bankruptcy or insolvency proceeding,
- (d) is a director or executive officer of an issuer that is or has been subject to a proceeding described in paragraphs (a), (b) or (c) above.

**Item 4: Capital Structure**

**4.1 *Capital Structure*** - The following table describes the outstanding securities of the CEDC: [Instructions: Using the following table, provide the required information about outstanding securities of the CEDC (including options, warrants and other securities convertible into shares). If necessary, notes to the table may be added to describe the material terms of the securities.]

Description of security	Number authorized to be issued	Total dollar value and number outstanding as at [a date not more than 30 days prior to the offering document date]	Total dollar value and number outstanding after minimum offering	Total dollar value and number outstanding after maximum offering
<i>(Preferred Shares)</i>				
<i>(Common Shares)</i>				

**4.2 *Prior Sales*** – [Instructions: If the CEDC has issued any shares of the class being offered under the offering document within the last 12 months, complete the following table]

Date of issuance	Type of security issued	Number of securities issued	Price per security	Total funds received

**Item 5: Securities Offered**

**5.1 Terms of Securities-** Describe the material terms of the securities being offered, including:

- (a) voting rights or restrictions on voting,
- (b) rights of redemption,
- (c) dividend rates,
- (d) rights on dissolution, and
- (d) other

**5.2 Subscription Procedure**

- (a) Describe how a purchaser can subscribe for the securities and the method of payment.
- (b) State that the consideration will be held in trust for the purchaser and will become available to the CEDC only after the conditions of closing described below have been met and the Offering has closed.
- (c) The following are conditions of the initial closing of the Offering:
  - (i) the CEDC has received the minimum offering amount of \$\_\_\_\_\_ in cheques or bank drafts that are in the possession of the Trustee;
  - (ii) all material contracts have been signed, and all material consents of third parties have been obtained;
  - (iii) all necessary and required certificates under the *Small Business Investor Tax Credit Act* and its regulations and other applicable laws have been obtained and are current, including:
    - A. a non-objection letter issued by the Executive Director of Securities that has not been subsequently revoked; and
    - B. a certificate of registration that has not lapsed or been revoked by the Minister of Finance;
- (d) at least 3 shareholders have subscribed;
- (e) all subscription funds are in the possession of the Trustee.

**5.3 Failure to Meeting Conditions of Closing**

If the minimum offering amount and all other conditions of the initial closing are not achieved on or before the date specified in item X, and no extension has been granted by the Executive

Director of Securities, the Offering will be withdrawn and all of the proceeds of subscription, without interest, will be returned to the subscribers no later than 30 days after the date that the Offering was to close or before the date specified in item X.

**5.4 Concurrent Offering**

[Instructions: If the CEDC proposes to distribute securities under a prospectus exemption other than through a specified issue, describe the details of such distribution, otherwise, omit this section.]

**Item 6: Canadian Income Tax Considerations**

**6.1** State: "This commentary is of a general nature only and is not intended to be tax advice to any particular investor. You should consult your own professional advisers to obtain advice on the income tax consequences that apply to you."

[Instructions: In addition, *(Add narrative with respect to the significant income tax consequences to investors)*].

*(Provide the name and address of the professional advisors, if any, involved in the preparation of the answer to this section. If no professional advisors have been used, please state "No professional advisors have been used in the preparation of the tax disclosure".)*

**Item 7: Promoters**

7.1 The following persons are authorized to sell shares under the Offering:

Name	Address	Business Phone #	Fax #

**Item 8: Risk Factors**

The following, listed in order of importance, are the risk factors that the CEDC considers to be the most substantial risks to an investor in this offering:

- (a)
- (b)
- (c)
- (d)

(e)

In addition, potential investors should consider the following risk factors before they decide to purchase the shares being offered:

- (f) The shares are speculative in nature. An investment is appropriate only for investors who are prepared to have their money invested for a minimum of 4 years, and who have the capacity to absorb a loss of some or all of their investment and all of their tax credit.
- (g) There is no organized market through which the shares may be sold. Therefore, investors may find it difficult or even impossible to sell their shares.
- (h) There are restrictions on the resale of the Shares. See item X for details.
- (i) The CEDC may not achieve a level of profitability to permit dividends to be paid. Investors should not count on any return from these shares.
- (j) Tax laws may change.
- (k) Investors who redeem their securities before the minimum time period of 4 years will lose some or all of their tax credit.

#### **Item 9: Reporting Obligations**

**9.1** State: "The CEDC will deliver to the Financial and Consumer Services Commission and the Department of Finance, and send to shareholders, annual financial statements and semi-annual interim reports and in certain circumstances, a notice of specified events, the latter of which within 10 days after the date on which the specified event occurs.

[Other instructions: Disclose any other documents required by the CEDC's governing legislation, constating documents, or other documents under which the CEDC is organized, that will be sent to purchasers on an annual or on-going basis.-]

#### **Item 10: Resale Restrictions**

**10.1** [Instructions: State: "Under the *Small Business Investor Tax Credit Act*, a person who disposes of a share in respect of which a tax credit has been allowed within 4 years from the date of purchase is liable to repay the Minister of Finance an amount equal to the tax credits received in respect of the share purchased, including interest, if interest is prescribed by the regulations made under that Act, or a lesser amount that is determined in accordance with the regulations under that Act."]

**10.2** [Instructions: State: "First and subsequent trades by a security holder of eligible shares of the CEDC purchased under this Offering are permitted in the following circumstances:



- (a) a redemption of an eligible share to the CEDC in accordance with section 8 of *the Small Business Investor Tax Credit Regulations*,
- (b) a transfer of an eligible share in accordance with section 9 of the *Small Business Investor Tax Credit Regulations*.

### **Item 11: Purchasers' Rights**

State the following:

“Purchasing this share gives you certain rights, some of which are described below. For information about your rights you should consult a lawyer.

- Two Day Cancellation Right - You can cancel your agreement to purchase these securities. To do so, you must send a notice to us by midnight on the 2nd business day after:
  - (a) the CEDC received the completed subscription agreement;
  - (b) the day the CEDC has notified you of an amendment to the offering document.
- Statutory Rights of Action in the Event of a Misrepresentation - If there is a misrepresentation in this offering document, you have a statutory right to sue:
  - (a) [name of the CEDC] to cancel your agreement to buy these shares, or
  - (b) for damages against [name of the CEDC], every director of the CEDC as of the date of this offering document and every person who signed the offering document.

This statutory right to sue is available to you whether or not you relied on the misrepresentation. However, there are various defences available to the persons or companies that you have a right to sue. In particular, they have a defence if you knew of the misrepresentation when you purchased the securities.

If you intend to rely on the right to sue described in (a) or (b) above, you must do so within strict time limitations. You must commence your action to cancel the agreement within 180 days after the date of the transaction which gave rise to the cause of action. You must commence your action for damages within the earlier of one year after you first had knowledge of the facts giving rise to the cause of action, and 6 years after the date of the transaction that gave rise to the cause of action.

### **Item 12: Promotional Materials**

[Instructions: State the following: “All promotional materials relating to each distribution under this offering document, including those prepared after the date of this offering document, are incorporated by reference into the offering document and are deemed to form part of the offering document. “]

### **Item 13: Financial Statements**

[Instructions: Include in the offering document immediately before the certificate page of the offering document all required financial statements.]

**Item 14: Date and Certificate**

[Instructions: State the following on the certificate page of the offering document:]

**“This offering document does not contain a misrepresentation.”**

“Dated at \_\_\_\_\_, on \_\_\_\_\_ (date)

[Instructions: This certificate must be signed by all of the following:

- the chief executive officer
- the chief financial officer
- on behalf of the board of directors, any 2 directors of the CEDC who are authorized to sign, other than the foregoing

**FORM 45-509F2**  
**SIMPLIFIED OFFERING DOCUMENT FOR COMMUNITY ECONOMIC DEVELOPMENT CORPORATIONS**

**Date:** [Insert the date from the certificate page.]

**The CEDC:**

Name	
Registered office address	
Address of principal business	
Phone #	
Contact person/position	
E-mail address	
Website URL	
Fax #	
Financial year end (month/day)	

**The Offering**

Securities offered	
Price per security	
Minimum subscription amount	
Minimum # of shares offered	
Total proceeds if minimum sold	
Maximum # of shares offered	
Total proceeds if maximum sold	
Minimum # of investors required	
Payment terms	
Proposed closing date(s)	

**Tax Consequences**

State in bold type: **“There are important tax consequences to these securities. See item 6.”**

**Resale restrictions**

State in bold type: **“You are restricted from selling your securities. See item 9”.**

**Purchaser’s rights**

State: “You have 2 business days to cancel your agreement to purchase these securities. If there is a misrepresentation in this offering document, you have the right to sue either for damages or to cancel the agreement. See item 10.”

Include the following statement, in bold type:

**“Neither the Financial and Consumer Services Commission nor the Government of New Brunswick has assessed, reviewed or approved the merits of these shares or reviewed this offering document. This is a risky investment.”**

**Item 1: Use of Available Funds**

- 1.1 Use of Available Funds** – [Instructions: Using the following table, provide a detailed breakdown of how the CEDC will use the available funds in order of priority. If the CEDC has a working capital deficiency, disclose the portion, if any, of the available funds to be applied against the working capital deficiency.]

State: The funds raised in the offering will be used as follows:

Description of intended use of available funds listed in order of priority	Assuming min. offering	Assuming max. offering
	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$

State: The proceeds from the Offering will/will not satisfy the CEDC’s cash requirements for the next 12 months, and it will/will not be necessary to raise additional funds. [Instructions: If applicable, state the source of additional funds, if any.]

**Item 2: Business of [name of the CEDC or other term used to refer to the CEDC]**

- 2.1 Structure** - State the business structure and statute under which the CEDC is incorporated, continued or organized, and the date of incorporation, continuance or organization.
- 2.2 Our Business** – [Instructions: Describe the CEDC's business. The disclosure must provide sufficient information to enable a prospective purchaser to make an informed investment decision. This disclosure may include principal products or services, operations, market, marketing plans and strategies and a discussion of the CEDC’s current and prospective competitors.]
- 2.3 Development of Business** – [Instructions: Describe (generally, in one or two paragraphs) the general development of the CEDC's business over at least its two most recently completed financial years and any subsequent period. Include the major events that have occurred or conditions that have influenced (favourably or unfavourably) the development of the CEDC.]

**Item 3: Interests of Directors, Management and Principal Holders**

**3.1 Compensation and Securities Held** – [Instructions: Using the following table, provide the specified information about each director and officer of the CEDC and each person who, directly or indirectly, beneficially owns or controls 10% or more of any class of voting securities of the CEDC (a “principal holder”). If the CEDC has not completed its first financial year, then include any kind of compensation paid since inception.]

Name and municipality of principal residence	Positions held (e.g., director, officer and/or principal holder) and the date of obtaining that position	Compensation paid by CEDC or related party in the most recently completed financial year and the compensation anticipated to be paid in the current financial year	Number, type and percentage of securities of the CEDC held after completion of min. offering	Number, type and percentage of securities of the CEDC held after completion of max. offering

**3.2 Litigation, Penalties or Sanctions, Cease Trade Orders and Bankruptcy** – Disclose whether each person listed in item 3.1, or the CEDC, as the case may be:

- (a) has ever, pled guilty to or been found guilty of:
  - (i) a summary conviction or indictable offence under the *Criminal Code* (R.S.C., 1985, c. C-46) of Canada,
  - (ii) a quasi-criminal offence in any jurisdiction of Canada or a foreign jurisdiction,
  - (iii) a misdemeanour or felony under the criminal legislation of the United States of America, or any state or territory therein, or
  - (iv) an offence under the criminal legislation of any other foreign jurisdiction,
- (b) is or has been the subject of an order (cease trade or otherwise), judgment, decree, sanction, or administrative penalty imposed by a government agency, administrative agency, self-regulatory organization, civil court, or administrative court of Canada or a foreign jurisdiction in the last ten years related to his or her involvement in any type of business, securities, insurance or banking activity,
- (c) is or has been the subject of a bankruptcy or insolvency proceeding,
- (d) is a director or executive officer of an issuer that is or has been subject to a proceeding described in paragraphs (a), (b) or (c) above.

**Item 4: Capital Structure**

**4.1 Capital Structure** - The following table describes the outstanding securities of the CEDC:  
 [Instructions: Using the following table, provide the required information about outstanding securities of the CEDC (including options, warrants and other securities convertible into shares). If necessary, notes to the table may be added to describe the material terms of the securities.]

Description of security	Number authorized to be issued	Total dollar value and number outstanding as at [a date not more than 30 days prior to the offering document date]	Total dollar value and number outstanding after minimum offering	Total dollar value and number outstanding after maximum offering
<i>(Preferred Shares)</i>				
<i>(Common Shares)</i>				

**Item 5: Securities Offered**

**5.1 Terms of Securities-** Describe the material terms of the securities being offered, including:

- (a) voting rights or restrictions on voting,
- (b) rights of redemption,
- (c) dividend rates,
- (d) rights on dissolution, and
- (d) other

**5.2 Subscription Procedure**

- (a) Describe how a purchaser can subscribe for the securities and the method of payment.
- (b) State that the consideration will be held in trust for the purchaser and will become available to the CEDC only after the conditions of closing described below have been met and the Offering has closed.
- (c) The following are conditions of the initial closing of the Offering:
  - (i) the CEDC has received the minimum offering amount of \$\_\_\_\_\_ in cheques or bank drafts that are in the possession of the Trustee;
  - (ii) all material contracts have been signed, and all material consents of third parties have been obtained;

- (iii) all necessary and required certificates under the *Small Business Investor Tax Credit Act* and its regulations and other applicable laws have been obtained and are current, including:
  - A. a non-objection letter issued by the Executive Director of Securities that has not been subsequently revoked; and
  - B. a certificate of registration that has not lapsed or been revoked by the Minister of Finance;
- (d) at least 3 shareholders have subscribed;
- (e) all subscription funds are in the possession of the Trustee.

**Item 6: Canadian Income Tax Considerations**

**6.1** State: “This commentary is of a general nature only and is not intended to be tax advice to any particular investor. You should consult your own professional advisers to obtain advice on the income tax consequences that apply to you.”

[Instructions: In addition, *(Add narrative with respect to the significant income tax consequences to investors)*].

*(Provide the name and address of the professional advisors, if any, involved in the preparation of the answer to this section. If no professional advisors have been used, please state “No professional advisors have been used in the preparation of the tax disclosure”.)*

**Item 7: Promoters**

7.1 The following persons are authorized to sell shares under the Offering:

Name	Address	Business Phone #	Fax #

**Item 8: Risk Factors**

The following, listed in order of importance, are the risk factors that the CEDC considers to be the most substantial risks to an investor in this offering:

- (a)
- (b)

- (c)
- (d)
- (e)

In addition, potential investors should consider the following risk factors before they decide to purchase the shares being offered:

- (f) The shares are speculative in nature. An investment is appropriate only for investors who are prepared to have their money invested for a minimum of 4 years, and who have the capacity to absorb a loss of some or all of their investment and all of their tax credit.
- (g) There is no organized market through which the shares may be sold. Therefore, investors may find it difficult or even impossible to sell their shares.
- (h) There are restrictions on the resale of the Shares. See item X for details.
- (i) The CEDC may not achieve a level of profitability to permit dividends to be paid. Investors should not count on any return from these shares.
- (j) Tax laws may change.
- (k) Investors who redeem their securities before the minimum time period of 4 years will lose some or all of their tax credit.

#### **Item 9: Reporting Obligations**

- 9.1** State: “The CEDC will deliver to the Financial and Consumer Services Commission and the Department of Finance, and send to shareholders, annual financial statements and semi-annual interim reports and in certain circumstances, a notice of specified events, the latter of which within 10 days after the date on which the specified event occurs.

[Other instructions: Disclose any other documents required by the CEDC’s governing legislation, constating documents, or other documents under which the CEDC is organized, that will be sent to purchasers on an annual or on-going basis.-]

#### **Item 10: Resale Restrictions**

- 10.1** [Instructions: State: “Under the *Small Business Investor Tax Credit Act*, a person who disposes of a share in respect of which a tax credit has been allowed within 4 years from the date of purchase is liable to repay the Minister of Finance an amount equal to the tax credits received in respect of the share purchased, including interest, if interest is prescribed by the regulations made under that Act, or a lesser amount that is determined in accordance with the regulations under that Act.”]



**10.2** [Instructions: State: “First and subsequent trades by a security holder of eligible shares of the CEDC purchased under this Offering are permitted in the following circumstances:

- (a) a redemption of an eligible share to the CEDC in accordance with section 8 of *the Small Business Investor Tax Credit Regulations*,
- (b) a transfer of an eligible share in accordance with section 9 of the *Small Business Investor Tax Credit Regulations*.

### **Item 11: Purchasers' Rights**

State the following:

“Purchasing this share gives you certain rights, some of which are described below. For information about your rights you should consult a lawyer.

- Two Day Cancellation Right - You can cancel your agreement to purchase these securities. To do so, you must send a notice to us by midnight on the 2nd business day after:
  - (a) the CEDC received the completed subscription agreement;
  - (b) the day the CEDC has notified you of an amendment to the offering document.
- Statutory Rights of Action in the Event of a Misrepresentation - If there is a misrepresentation in this offering document, you have a statutory right to sue:
  - (a) [name of the CEDC] to cancel your agreement to buy these shares, or
  - (b) for damages against [name of the CEDC], every director of the CEDC as of the date of this offering document and every person who signed the offering document.

This statutory right to sue is available to you whether or not you relied on the misrepresentation. However, there are various defences available to the persons or companies that you have a right to sue. In particular, they have a defence if you knew of the misrepresentation when you purchased the securities.

If you intend to rely on the right to sue described in (a) or (b) above, you must do so within strict time limitations. You must commence your action to cancel the agreement within 180 days after the date of the transaction which gave rise to the cause of action. You must commence your action for damages within the earlier of one year after you first had knowledge of the facts giving rise to the cause of action, and 6 years after the date of the transaction that gave rise to the cause of action.

### **Item 12: Promotional Materials**

[Instructions: State the following: “All promotional materials relating to each distribution under this offering document, including those prepared after the date of this offering document, are incorporated by reference into the offering document and are deemed to form part of the offering document.”]

**Item 13: Financial Statements**

[Instructions: Include in the offering document immediately before the certificate page of the offering document all required financial statements.]

**Item 14: Date and Certificate**

[Instructions: State the following on the certificate page of the offering document:]

**“This offering document does not contain a misrepresentation.”**

“Dated at \_\_\_\_\_, on \_\_\_\_\_ (date)

[Instructions: This certificate must be signed by all of the following:

- the chief executive officer
- the chief financial officer
- on behalf of the board of directors, any 2 directors of the CEDC who are authorized to sign, other than the foregoing

**Form 45-509F3**  
**Notice of Specified Events**

This is the form required under section 26 of Local Rule 45-509 *Community Economic Development Corporations and Associations* to make available a notice of specified events to holders of securities acquired under section 4 of Local Rule 45-509.

**PART 1      CEDC Name and Address**

*Provide the following information.*

Full Legal Name:

Street Address:

Municipality:

Province:

Postal Code:

Website:

**PART 2      Specified Event**

The event, as described in Part 3, is: *[Select one or more type of event from the list below]*

- a fundamental change in the nature, or a discontinuation, of the CEDC's business
- a significant change to the CEDC's capital structure
- a major reorganization, amalgamation or merger involving the CEDC
- a significant acquisition or disposition of assets, property or joint venture interests;
- 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.

Date on which the event occurred: (dd/mm/yyyy)

**PART 3      Event Description**

Provide a brief description of the event identified in Part 2.

**PART 4      Contact Person**

Give the name, title, business telephone number and email address of a person at the CEDC who can be contacted regarding the event described in Part 3.

Annex B

FINANCIAL AND  
CONSUMER SERVICES  
COMMISSION

regulation • education • protection



COMMISSION DES SERVICES  
FINANCIERS ET DES SERVICES  
AUX CONSOMMATEURS

réglementation • éducation • protection

**Amendments to  
Financial and Consumer Services Commission Local Rule 11-501 Fees**

**1. Local Rule 11-501 Fees is amended by this Instrument.**

**2. The Instrument is amended by adding the following section:**

**“Offering Document for Community Economic Development Corporations**

2.6.1 The fee for an offering document delivered under Local Rule 45-509 *Community Economic Development Corporations and Associations* is \$350.”

**3. This Instrument comes into force on XX.**