

CSA Staff Notice 45-308 (Revised) *Guidance for Preparing and Filing Reports of Exempt Distribution under National Instrument 45-106 Prospectus Exemptions*

First Published April 26, 2012;
Revised June 25, 2015, April 7, 2016, September 29, 2016, July 19, 2018 and October 4, 2018

October 4, 2018

Purpose

Issuers and underwriters that rely on certain prospectus exemptions to distribute securities are required to file a report of exempt distribution on Form 45-106F1 *Report of Exempt Distribution* (the **report**) within a prescribed timeframe set out in National Instrument 45-106 *Prospectus Exemptions* (**NI 45-106**).

Staff (**staff** or **we**) of the Canadian Securities Administrators (**CSA**) have prepared this revised Staff Notice (this **Notice**) to assist issuers, underwriters and their advisors in preparing and filing reports.

This Notice replaces a prior version of this notice issued on July 19, 2018.

This Notice includes the following documents:

- Annex 1 – Tips for Completing and Filing the Report
- Annex 2 – Checklist of Certain Information Requirements in the Report
- Annex 3 – Frequently Asked Questions
- Annex 4 – Transition to the 2016 Report
- Annex 5 – Contact Information of Public Officials regarding Indirect Collection of Personal Information

Background to this Notice

We may from time to time reissue this Notice to respond to additional questions or concerns raised about the completion and filing of reports. The following table sets out the history of this Notice.

Date	Development
October 4, 2018	The Alberta Securities Commission (ASC) repealed and replaced ASC Rule 72-501 <i>Distributions to Purchasers Outside Alberta</i> effective August 31, 2018, which included moving ASC Policy 45-601 <i>Distributions Outside Alberta</i> into Companion Policy 72-501 <i>Distributions to Purchasers Outside Alberta</i> . The response in Question 1 of Annex 3 of this Notice was revised to reflect this change.
July 19, 2018	To further address concerns expressed by foreign dealers conducting offerings into Canada and Canadian institutional investors, on July 19, 2018, the CSA made

Date	Development
	<p>amendments to the report to provide greater clarity and flexibility regarding the certification requirement and to streamline certain information requirements. We are reissuing this Notice in light of these amendments and to provide further clarity on certain existing requirements. Provided all necessary ministerial approvals are obtained, the amendments will come into force on October 5, 2018.</p>
September 29, 2016	<p>In spring and summer 2016, staff became aware of concerns expressed by foreign dealers conducting offerings into Canada, as well as Canadian institutional investors, about the certification requirements in the report and other related issues. In certain instances, Canadian institutional investors were being excluded from participating in foreign offerings into Canada through certain foreign dealers as a result of a perceived change in the risk of personal liability in the report, as well as the more extensive information required in the report.</p> <p>We reissued this Notice in September 2016 to provide:</p> <ul style="list-style-type: none"> • clarification regarding the certification of the report, • guidance on the reasonable steps the underwriter filing the report should undertake to obtain and confirm the required information regarding the issuer, • guidance on the procedures that an issuer or underwriter could implement in order to reasonably confirm that a purchaser meets the conditions for a particular exemption, • guidance on the increased flexibility for completing Schedule 1 for purchasers in certain circumstances who may qualify under more than one paragraph of the definition of “accredited investor”, and • guidance on disclosure of an issuer’s North American Industry Classification Standard (NAICS) code that corresponds to the issuer’s primary business activity where there is ambiguity on the appropriate code.
April 7, 2016	<p>In June 2016, the CSA introduced a new harmonized version of the report set out in Form 45-106F1 <i>Report of Exempt Distribution</i> (i.e. the report, or also referred to in Annex 4 as the 2016 Report). Both investment fund issuers and non-investment fund issuers that distribute securities under certain prospectus exemptions are required to file the report, which replaced both the prior version of Form 45-106F1 <i>Report of Exempt Distribution</i> and Form 45-106F6 <i>British Columbia Report of Exempt Distribution</i> (together, the Prior Reports).</p> <p>We reissued this Notice in April 2016 to reflect the adoption of the report, to provide guidance on the new information requirements set out in the report, and to assist filers to transition to the report.</p>
June 25, 2015	<p>This Notice was revised in June 2015 primarily to reflect the introduction of certain new prospectus exemptions in Ontario.</p>
April 26, 2012	<p>Staff first published this Notice in April 2012 to highlight compliance issues identified in some reports filed. This Notice provided guidance to issuers, underwriters and their advisors for preparing and filing reports.</p>

Annexes to Notice

Annex 1 – Tips for Completing and Filing the Report

Annex 2 – Checklist of Certain Information Requirements in the Report

Annex 3 – Frequently Asked Questions

Annex 4 – Transition to the 2016 Report

Annex 5 – Contact Information of Public Officials regarding Indirect Collection of Personal Information

Questions

Please refer your questions to any of the following:

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