

CSA Staff Notice 45-325

Filing Requirement and Fee Payable for Exempt Distributions involving Fully Managed Accounts

February 7, 2019

Purpose

This notice is intended to clarify when Form 45-106F1 *Report of Exempt Distribution* (**Form 45-106F1**) of National Instrument 45-106 *Prospectus Exemptions* (**NI 45-106**) is required to be filed, and fees paid, for exempt distributions involving fully managed accounts.

Background

In 2016, the Canadian Securities Administrators (the **CSA**) introduced a streamlined and harmonized version of Form 45-106F1 as part of an effort to reduce the compliance burden for issuers and underwriters distributing securities under prospectus exemptions, while ensuring Form 45-106F1 continues to provide securities regulators with the necessary information to facilitate more effective regulatory oversight of the exempt market and improve analysis for policy development purposes.

Among other changes made, the reporting of exempt distributions involving fully managed accounts was simplified to reduce regulatory burden on issuers and underwriters. In all jurisdictions, Form 45-106F1 only requires issuers and underwriters to provide information on the trust company, trust corporation or registered adviser who had purchased securities on behalf of a fully managed account in item 7 and Schedule 1 and no longer requires information about the beneficial owners of the fully managed account.

While Form 45-106F1 has been harmonized, the requirement to file and pay filing fees for Form 45-106F1 continues to be governed by the securities legislation of each CSA jurisdiction.

Reporting requirement for exempt distributions involving fully managed accounts

Issuers and underwriters who rely on the accredited investor prospectus exemption (the **AI Exemption**) in section 2.3 of NI 45-106 to distribute securities are required to file a Form 45-106F1 within a prescribed timeframe.¹ An accredited investor includes:

- a trust company or trust corporation registered or authorized to carry on business under the *Trust and Loan Companies Act* (Canada) or under comparable legislation in a jurisdiction of Canada or a foreign jurisdiction, acting on behalf of a fully managed account managed by the trust company or trust corporation;² and

¹ In Ontario, the accredited investor exemption is set out under subsection 73.3(2) of the *Securities Act* (Ontario).

² See paragraph (p) of the definition of “accredited investor” in section 1.1 of NI 45-106.

- a person acting on behalf of a fully managed account managed by that person, if that person is registered or authorized to carry on business as an adviser or the equivalent under the securities legislation of a jurisdiction of Canada or a foreign issuer.³

Section 2.3(2) of NI 45-106 states that for the purpose of the AI Exemption, a trust company or trust corporation described in paragraph (p) of the definition of “accredited investor” in section 1.1 of NI 45-106 is deemed to be purchasing as principal. Similarly, section 2.3(4) of NI 45-106 states that for the purpose of the AI Exemption, a person described in paragraph (q) of the definition of “accredited investor” in section 1.1 of NI 45-106 is deemed to be purchasing as principal. Instruction 4 of Form 45-106F1 requires issuers and underwriters to provide information on the trust company, trust corporation or registered adviser who had purchased securities on behalf of a fully managed account and not the beneficial owners of the fully managed account.

Filing and Fee Requirements

In accordance with Instruction 1 of Form 45-106F1, if a distribution is made in more than one jurisdiction of Canada, the issuer may complete a single Form 45-106F1 and file it in each jurisdiction of Canada in which the distribution occurs. In order to determine the fee payable in each jurisdiction, please refer to Annex A.

In each jurisdiction other than Manitoba, Québec and Saskatchewan, the requirement to file Form 45-106F1 in respect of a distribution involving a fully managed account is based on the location of the trust company, trust corporation or registered adviser deemed to be purchasing the securities as principal in accordance with section 2.3(2) or 2.3(4) of NI 45-106, as applicable. The requirement to pay a fee in these jurisdictions is triggered by the requirement to file Form 45-106F1. Accordingly, there is no requirement to file Form 45-106F1 or to pay a fee in these jurisdictions based on the location of the beneficial owner of a fully managed account.

In Manitoba and Québec, the requirements to file Form 45-106F1 and pay fees are based on the location of the beneficial owner of a fully managed account. A Form 45-106F1 is not required to be filed in these jurisdictions if only the trust company, trust corporation or registered adviser who had purchased securities on behalf of a fully managed account is located in the jurisdiction and there are no beneficial owners in the jurisdiction. Because Form 45-106F1 does not require issuers to provide information on the beneficial owners of fully managed accounts, the regulators in these jurisdictions require that issuers file an accompanying letter with the Form 45-106F1 stating the gross value of securities distributed to beneficial owners located in those jurisdictions.

In Saskatchewan, the requirement to file Form 45-106F1 and pay a fee is based on the location of the distribution. This could mean that the form should be filed in Saskatchewan if the trust company, trust corporation or registered adviser who had purchased securities on behalf of a fully managed account and/or the beneficial owner of a fully managed account is located in Saskatchewan. The Financial and Consumer Affairs Authority of Saskatchewan has issued blanket relief to waive the filing requirements in respect of a distribution to the beneficial owner of a fully managed account where the trust company, trust corporation or registered adviser who had purchased securities on behalf of a fully managed account is not located in Saskatchewan. As no filing will be required in these cases, no fee is triggered.

³ See paragraph (q) of the definition of “accredited investor” in section 1.1 of NI 45-106.

Questions

Please refer your questions to any of the following:

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