

**Annex B**  
**Summary of comments on CSA Notice and Request for Comment**  
**Proposed Amendments to National Instrument 45-106 *Prospectus and Registration Exemptions* relating to the**  
**Accredited Investor and Minimum Amount Investment Prospectus Exemptions**

Item	Topic/Theme	Summarized comment	CSA Response
A.	Comments on proposed amendment to restrict minimum amount investment prospectus exemption (MA exemption) to non-individual purchasers		
1.	Support for amendment	<p>Many commenters supported the proposal to restrict the MA exemption to non-individuals, for the following reasons:</p> <ul style="list-style-type: none"> <li>• in many cases, such a high investment amount in one product would be unsuitable for an individual who is not already an accredited investor</li> <li>• alternative exemptions, such as the accredited investor exemption (AI exemption), would be available for individual investors</li> <li>• the reduced risk of investors over-concentrating their investment portfolio is well worth the minor reduction in access to capital raising</li> </ul>	The CSA thank the commenters for their support. We have decided to proceed with the proposed amendment as published for comment.
2.	Remove exemption entirely or further restrict it	<p>Some commenters suggested that the CSA should repeal the exemption altogether or that the CSA should replace the current exemption with a test that is not tied to an investment amount.</p> <p>One commenter suggested that an investment of \$150,000 is a poor proxy for sophistication and ability to withstand financial loss. The commenter therefore recommended further amendments to restrict the use of the MA exemption by small companies or family trusts.</p>	The CSA has determined to proceed with the proposed amendment as published. There are certain transactions between non-individual investors where the MA exemption is useful because of its simplicity. The types of problems we have seen with the MA exemption only arise with individual investors – we have not seen the same problems in circumstances where the investor is not an individual, including where the investor is a small company or family trust. For this reason, we do not propose to add further restrictions at this time.
3.	Maintain for investment funds and lower-risk products	Two commenters suggested that the MA exemption should continue to be available to distribute investment funds and lower-risk products to individuals.	The CSA has determined to proceed with the proposed amendment to the MA exemption as published, to apply to all securities. We do not agree that some products are always lower risk than other products.

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4.	Comments against amendment	<p>Some commenters disagreed with the proposal to restrict the MA exemption to non-individual investors for the following reasons:</p> <ul style="list-style-type: none"> <li>• there is not a demonstrable reason to restrict it</li> <li>• for many investors, \$150,000 is a significant amount and, in the commenter’s experience, these investors take due care when choosing to invest that amount in a single investment</li> <li>• the amount demonstrates that the investor has sufficient resources to conduct due diligence when making the investment decision</li> <li>• investors are not forced to invest under this exemption</li> </ul>	<p>The CSA has seen instances where individuals have invested more than is suitable for them under the MA exemption solely because the investor is required to invest a minimum amount of \$150,000 to satisfy the requirements of the exemption. We see less of this concern with other exemptions because the investor may choose the amount they want to invest. Given the relatively small amount of capital raised under this exemption from individuals and the devastating loss suffered by some investors because of this exemption, the CSA has determined to proceed with this amendment.</p>
5.	Holding companies	<p>One commenter asked if the restriction to non-individuals would also apply to holding companies of individuals. The same commenter suggested that the prohibition in section 2.10(2) of NI 45-106 may be unduly restrictive where an investor wants to invest through a holding company.</p>	<p>The proposed amendment will restrict the MA exemption to non-individuals. It will remain available to holding companies, subject to the existing prohibition in subsection 2.10(2). Under subsection 2.10(2), the MA exemption is not available for distributions to an entity if that entity was created or used <i>solely</i> to purchase or hold securities under the MA exemption. We do not agree that the provision in subsection 2.10(2) is unduly restrictive. If the investor has created the holding company for tax and estate planning purposes or to ensure limited liability, then the holding company would not generally be considered to have been created solely for the purpose of relying on this exemption.</p>
<b>B. Comments on amendments to definition of accredited investor</b>			
1.	Support for amendment to add family trusts as a category of accredited investor	<p>Many commenters supported the proposed amendment to include trusts established by accredited investors for their family members as a category of accredited investor. A few commenters suggested we include former spouses and family members of former spouses in the group.</p>	<p>The CSA thanks the commenters for their support. We have revised the family trust category to include former spouses and family members of former spouses.</p>
2.	Support for amendment to allow fully managed accounts to purchase investment funds in	<p>Many commenters supported the proposed amendment in Ontario.</p>	<p>The OSC thanks the commenters for their support. The OSC has determined to proceed with this amendment.</p>

Item	Topic/Theme	Summarized comment	CSA Response
	Ontario under the managed account category of the AI exemption		
3.	Registered individuals	One commenter suggested we revise paragraph (e) of the definition of accredited investor to clarify when a former registrant is excluded from the definition of accredited investor.	We have made the suggested clarification.
4.	Support for no changes to income and asset thresholds for individual accredited investors	Some commenters supported the decision to keep the current income and asset thresholds set out in the definition of accredited investor because of the possible negative impact on capital raising in Canada.	The CSA thanks the commenters for their support.
5.	Review income and asset thresholds periodically	Some commenters suggested that the CSA periodically review the income and asset thresholds for individual investors under the accredited investor definition.	CSA staff will periodically monitor relevant data and developments in other jurisdictions. If circumstances warrant it, the CSA will assess whether to consider changes to the current income and asset thresholds under the AI exemption.
6.	Criticism that income and asset thresholds were not increased	Some commenters stated that the current income and asset thresholds are not a good proxy for an individual investor's capacity to appreciate the risks, costs and potential consequences of a particular investment. One commenter suggested the CSA develop a "sophistication test" similar to that used in the United Kingdom and European Union with requirements for independent verification and educational courses. Another commenter suggested that additional protections should be built into the exemption.	<p>The CSA has determined to retain the current income and asset thresholds for individuals because they provide a cost-effective, objective measure for issuers to distribute securities. During our review of comment letters received on CSA Staff Consultation Note 45-401 <i>Review of Minimum Amount and Accredited Investor Exemptions</i>, we considered alternative approaches to the income and asset thresholds. We were not able to identify an appropriate measure that issuers could use to assess an individual's sophistication based on education, work or investment experience. We had concerns that possible alternative approaches were not objective measures and would be difficult to consistently apply.</p> <p>The CSA will continue to monitor developments in other jurisdictions and if an alternative measure is introduced elsewhere, the CSA will assess whether to consider a similar test for the Canadian exempt market.</p>

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C.	Comments on proposed amendment to accredited investor prospectus exemption (AI exemption) to require individual accredited investors who are not permitted clients to sign Form 45-106F9 <i>Form for Individual Accredited Investors</i> (Form 45-106F9)		
1.	Support for amendment to require individual accredited investors to sign Form 45-106F9	Some commenters supported the proposed amendment to require individual accredited investors to sign Form 45-106F9 because it would add protection for investors with little additional work for issuers. Some of these commenters suggested revisions to clarify which individual accredited investors are required to sign Form 45-106F9. Some commenters also identified procedural difficulties with the proposed Form 45-106F9.	The CSA thanks the commenters for their support. The CSA has determined to proceed with this proposed amendment. We have clarified that the requirement only applies to individuals described in paragraphs (j), (k) and (l) of the definition of accredited investor. We have amended the instructions in Form 45-106F9 to address some of the procedural difficulties identified by commenters.
2.	Comments against amendment	<p>Several commenters were critical of the proposed amendment.</p> <p>Some of these commenters thought the proposed amendments were not necessary because they had not seen problems in connection with the AI exemption. These commenters thought the proposed amendments would increase the time and cost of raising capital.</p> <p>Others of these commenters thought the addition of a risk acknowledgement form would not address the problems associated with the AI exemption, such as investors buying products that are not suitable for them or that they do not understand. Others questioned whether Form 45-106F9 would have any effect on investor behavior.</p>	<p>The CSA has determined to proceed with the proposed amendment in order to address the problem that some individual accredited investors do not understand the risks of investing under the AI exemption or may not in fact qualify as accredited investors. We think Form 45-106F9 will improve investor protection by itemizing the risks associated with products sold under prospectus exemptions (risk of loss, limited liquidity, lack of information and advice) and requiring individual accredited investors to initial beside each risk, increasing the likelihood that investors are aware of the risks. Form 45-106F9 describes, in plain language, the criteria that must be met for an investor to qualify as an accredited investor and requires the investor to initial beside the criteria that applies to him or her.</p> <p>Form 45-106F9 is not intended to replace any existing obligations under securities legislation, including the suitability, know-your-client and know-your-product obligations of registered dealers and advisers when facilitating distributions of securities under prospectus exemptions.</p>
3.	Excluding permitted clients from signing Form 45-106F9	Some commenters expressed support for the CSA's proposal to exclude individuals that satisfy the permitted client test from the requirement to sign Form 45-106F9 because these individual are able to waive suitability advice under National Instrument	The CSA has determined to proceed with the proposal to exclude individual permitted clients from the requirement to sign the Form 45-106F9. We think this is an appropriate balance because permitted clients are

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		<p>31-103 <i>Registration Requirements, Exemptions and Ongoing Registrant Obligations</i> (NI 31-103) and this would lessen the burden on issuers.</p> <p>A couple of commenters disagreed with the proposal to exclude permitted clients either because of difficulties in determining who is a permitted client or because permitted clients should be afforded similar protection to other investors.</p>	<p>able to waive suitability advice under NI 31-103.</p>
4.	Information already in subscription agreements	<p>Several commenters expressed the view that Form 45-106F9 was not necessary because most issuers already include a description of the risks and accredited investor categories in their subscription agreements. These commenters thought Form 45-106F9 was redundant and would add unnecessary duplication and burden.</p> <p>Other commenters suggested that the CSA require the content of Form 45-106F9 be included in subscription agreements or that Form 45-106F9 itself be a required schedule to subscription agreements.</p>	<p>We do not agree that it is sufficient for this information to be included in a subscription agreement. One of the problems we see with the use of the AI exemption is that information relating to the accredited investor categories is often set out in lengthy subscription agreements and is written using the legal definition rather than in accessible language. We think it is necessary that investors receive Form 45-106F9 as a separate document written using plain language.</p>
5.	Which form is required if an accredited investor AI purchases under the OM exemption?	<p>One commenter questioned whether an investor who satisfied the requirements under both the AI exemption and the offering memorandum exemption would be required to complete and sign both Form 45-106F4 and Form 45-106F6.</p>	<p>The issuer is only required to comply with the conditions of one prospectus exemption. If the issuer is relying on the AI exemption, then it must obtain a signed Form 45-106F9 from every individual investor. If the issuer is relying on a different exemption, then the issuer must comply with the conditions under that exemption. Issuers should take care when preparing their exempt distribution reports that they properly identify which prospectus exemption they are using for the distribution to each investor.</p>
D.	<b>Comments on Form 45-106F9 <i>Form for Individual Accredited Investors</i></b>		
1.	Requiring salespersons/finders to sign Form 45-106F9	<p>Several commenters identified concerns with the proposed requirement for salespersons and finders to sign Form 45-106F9. Some of these commenters questioned the instruction that anyone “involved in the sale” complete and sign Form 45-106F9. Others identified that this requirement would add</p>	<p>We have revised Form 45-106F9 so that persons who meet with or provide information to the purchaser are no longer required to sign it. We have clarified that Form 45-106F9 must contain the following information about the person who meets with, or provides</p>

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		<p>significant burden on issuers when raising capital. Some of these commenters suggested that the requirement only apply when a registered dealer or adviser is not facilitating the distribution. One commenter suggested that only salespersons, not issuers, should be required to complete the Form 45-106F9.</p>	<p>information to, the purchaser in connection with the transaction: their name, telephone number, email address and the name of their firm, if registered. We think this is useful information for investors, especially if they have questions after having made the investment. We disagree that issuers (or selling security holders) should not be required to complete Form 45-106F9 because it is the issuer (or selling security holder) that is required to determine if the prospectus exemption is available for purposes of the distribution.</p>
2.	Form 45-106F9 must be uniform across all Canadian jurisdictions	A few commenters requested that the CSA adopt one harmonized form because otherwise it would be inefficient and confusing for inter-jurisdictional financings.	The CSA is adopting one harmonized form.
3.	Additional information should be required in Form 45-106F9	<p>Some commenters suggested that Form 45-106F9 include additional information, including:</p> <ul style="list-style-type: none"> <li>• the specific protections an investor is foregoing because the securities are not being qualified by a prospectus;</li> <li>• whether referral fees were paid</li> <li>• disclosure of any conflicts of interest between issuers and dealers</li> <li>• the percentage that the investment represents of the investor's entire portfolio</li> <li>• disclosure of additional risks if the investor borrowed to make the investment</li> <li>• information about the nature of the issuer, dealer and security</li> </ul>	<p>CSA staff carefully considered the content of Form 45-106F9 when revising it to ensure that it plainly describes the risks associated with investing under the AI exemption regardless of the type of security being distributed under the exemption, the nature of the issuer or the type of salesperson involved in the transaction. CSA staff considered whether disclosure of certain information is already required by registered dealers and advisers and attempted not to duplicate this information in the form.</p>
4.	Statements in Form 45-106F9 do not apply to certain securities or issuers, such as investment funds	Some commenters suggested that some of the statements in Form 45-106F9 do not apply to certain securities or issuers, in particular, statements that the investment is risky or that the investor may never be able to sell the securities being purchased. These commenters thought that these statements overstate the risks associated with investment funds.	<p>We have revised Form 45-106F9 to reflect the risks of investing under prospectus exemptions generally, regardless of the product or issuer or whether a dealer is facilitating the distribution. We do not agree that all investment funds are less risky or that their securities are necessarily more easily liquidated. Some investment funds are not redeemable on demand and there have been recent cases where funds have had to suspend redemptions indefinitely.</p>

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5.	Timing and method of delivery	A few commenters asked that we clarify when and how Form 45-106F9 must be delivered to purchasers, pointing out that it might be more efficient to have the purchaser sign the form <i>after</i> the issuer has accepted the subscription. One commenter noted that, for securities of investment funds sold through FundSERV, there may be no interface between the issuer and the purchaser.	<p>We require the issuer to obtain Form 45-106F9 completed and signed by the investor at the same time or before the individual signs the subscription agreement. We think it is important for investors to know the risks of an investment before making their investment decision and before signing the subscription agreement. In cases where an investor has not completed the documentation properly or at all, then the issuer or dealer should return the entire subscription package to the investor for re-signature.</p> <p>We think investment funds can continue to use FundSERV in the same way they do now because they are already required to ensure that investors meet the terms of the exemption, i.e., are accredited investors.</p>
6.	Retaining Form 45-106F9 for 8 years	Several commenters expressed concern about the requirement to retain a signed copy of Form 45-106F9 for 8 years. Some commenters asked for clarification on whether the form could be retained as an electronic copy.	The CSA requires the person relying on the AI exemption to retain the completed and signed Form 45-106F9 for 8 years because this represents the length of the longest limitation period under Canadian securities legislation. The rule does not specify how the form is retained; electronic retention is acceptable.
7.	Accept digital signatures	Several commenters questioned the requirement that the purchaser sign two copies of Form 45-106F9. These commenters suggested that we allow for digital, pdf or electronic signatures.	We have amended Form 45-106F9 to remove the requirement for “original” signatures. The purchaser must sign the form, but how the form is signed and delivered is left to the person relying on the exemption, subject to any legislation that may apply to electronic signatures.
8.	Application to “suitability-exempt” firms?	One commenter asked how Form 45-106F9 would apply to clients who transact through suitability-exempt firms, for example order-execution only.	If a person is distributing securities under the AI exemption through an execution-only dealer or firm, that person still needs to ensure that the purchaser of the security meets the terms and conditions of the AI exemption. The person relying on the AI exemption will need to ensure the dealer or firm obtains a completed and signed Form 45-106F9 from any purchasers in addition to ensuring it has properly verified that the purchaser is an accredited investor and is purchasing as

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			principal.
E.	<b>Comments on Companion Policy Guidance on verifying accredited investor status (section 1.9)</b>		
1.	Concerns about verifying whether purchasers are accredited investors	Several commenters expressed concern about the guidance in the Companion Policy requiring persons relying on the AI exemption to verify whether the purchaser is an accredited investor. Some of these commenters stated that these were new procedural obligations that would increase costs associated with capital raising. A few of these commenters suggested it should be sufficient for the person relying on the exemption to obtain a signed Form 45-106F9 or a subscription agreement – that no further steps should be necessary to verify that the purchaser meets the conditions of the exemption. Some of the commenters stated that it is current industry practice to solely rely on the representations in subscription agreements.	<p>The person relying on the exemption needs to demonstrate that the conditions of the exemption are met. We have clarified that it is up to that person to determine what reasonable steps it should take to verify the purchaser’s status, based on the particular facts and circumstances. That person may also be required to explain why he or she determined that certain steps were not necessary in the circumstances.</p> <p>Decisions from various Canadian securities regulatory authorities confirm that the person relying on the prospectus exemption has the onus of establishing, and must take reasonable steps to ensure, that the purchaser does in fact meet the terms and conditions of the exemption. The guidance in the Companion Policy reflects these recent decisions.</p>
2.	Investor privacy and personal information	Several commenters expressed concern about the guidance that suggested issuers should gather third party financial information from purchasers to verify that the purchaser is an accredited investor. These commenters stated that this type of financial information is highly sensitive and that purchasers may be reluctant to give it, especially when dealing directly with the issuer, for privacy reasons. Some commenters suggested that asking for third party financial information should only be necessary if the person relying on the exemption questions the truthfulness of the purchaser’s responses.	We have revised the guidance to clarify that third party financial information may only be necessary in certain circumstances.
3.	Timing of verification	One commenter suggested that purchasers may want information about the offering before they are willing to confirm they meet the terms of the exemption. This commenter suggested we revise the guidance to require verification “before the distribution”.	Issuers or selling security holders offering securities under prospectus exemptions that are based on the purchaser meeting certain conditions must take reasonable steps to ensure the offer is made only to persons that qualify under the exemption.



Item	Topic/Theme	Summarized comment	CSA Response
4.	Do both dealer and issuer have to verify investor status?	Several commenters asked for guidance on whether issuers have to do their own verification if a registered dealer is facilitating the distribution. Some of these commenters suggested that if a dealer, with its higher suitability obligation, has determined the purchaser is qualified, then the seller should not have to do anything further.	The person relying on the prospectus exemption, such as the issuer or selling security holder, is required to ensure the terms and conditions of the exemption are met. We have clarified in the guidance that it is up to the person relying on the exemption to determine what steps are reasonable in the circumstances, having considered such factors as how the purchaser was located, how much background information is known about the purchaser and whether the person who meets with, or provides information to, the purchaser is registered.
5.	Support for requiring documentary due diligence and mandating independent verification services	One commenter suggested that the CSA should always require issuers to obtain documentation to verify the purchaser's eligibility under the exemption. This commenter also suggested that the CSA should require, or at least expressly permit, issuers to use third party verification services to ensure purchasers are eligible.	We disagree. We think we have struck an appropriate balance in the guidance by leaving it to the person relying on the exemption to take reasonable steps to verify purchaser eligibility based on the particular circumstances.
6.	Application of guidance to self-directed brokerages	One commenter asked how the guidance applies if investors invest through a self-directed brokerage.	Issuers accepting subscriptions from self-directed brokerage accounts still need to ensure that the investor meets the conditions of the exemption.
<b>F. Comments on Reports of Exempt Distribution (Form 45-106F1 and Form 45-106F6)</b>			
1.	Prioritize harmonizing reporting obligations across Canada	Several commenters expressed concern that Canada has two separate forms for reporting exempt distributions: the Form 45-106F6 in BC and the Form 45-106F1 in all other jurisdictions. These commenters expressed frustration that the CSA did not harmonize the forms and that issuers are required to file reports in multiple jurisdictions about the same transaction. These commenters asked the CSA make it a priority to harmonize the forms and the filing requirements.	The CSA has decided to defer the proposed amendments to the forms of exempt distribution reports.  The CSA will address changes to the report of exempt distribution as a separate CSA project. The CSA recognizes the importance of having harmonized forms.
2.	Additional information requirements	Several commenters questioned whether it was necessary to require additional information in the report of exempt distribution, including: <ul style="list-style-type: none"> <li>• Naming each person being compensated for the distribution</li> </ul>	The CSA has decided to defer the proposed amendments to the forms of exempt distribution reports. The CSA will address changes to the report of exempt distribution as a separate CSA project. We will take these comments into account as part of that

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		<ul style="list-style-type: none"> <li>• Identifying whether the person being compensated is a registrant or an insider of the issuer</li> <li>• identifying all applicable categories of accredited investor that the purchaser qualifies under</li> <li>• Identifying whether the purchaser is a registrant or an insider of the issuer</li> <li>• Naming the beneficial owners of fully managed accounts</li> <li>• Disclosing each Canadian and foreign jurisdiction where purchasers reside</li> </ul> <p>These commenters expressed concern that requiring this additional information would increase the costs and time involved in capital raising. Some of these commenters identified that foreign issuers in particular may decide to exclude Canadian purchasers from their offerings because of these additional requirements. Other commenters were concerned that investors may refuse to provide the additional information due to privacy concerns.</p>	project.
<b>G.</b>	<b>Other comments</b>		
1.	Removal of guidance on isolated trade exemption (section 4.6 of CP)	One commenter identified that the Notice did not highlight the proposed removal of the second paragraph of section 4.6 in the Companion Policy, dealing with the isolated trade exemption. This commenter expressed the view that the CSA should not make this change.	The CSA Notice identified that we were making housekeeping changes resulting from the removal of the dealer registration exemptions (formerly Part 3 of NI 45-106) effective March 27, 2010 to reflect the adoption of NI 31-103 and the business trigger for registration. The change to section 4.6 of the CP reflects the repeal of section 3.30 of NI 45-106.
<b>H.</b>	<b>General comments</b>		
1.	Importance of harmonization	Several commenters stated it is important that the CSA harmonize the prospectus exemptions across Canada as much as possible. These commenters expressed disappointment that further steps were not taken to harmonize NI 45-106 at this time.	We recognize the desirability of harmonizing the prospectus exemptions as much as possible. However, this CSA project focused on only two of the prospectus exemptions in NI 45-106: the AI exemption and the MA exemption, both of which are largely harmonized.
2.	Expand remedies available to investors	A couple of commenters suggested that the CSA should expand the remedies available to investors under prospectus exemptions to include secondary market liability.	We thank the commenters for this suggestion. This is outside the scope of the current project.

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3.	Impose a fiduciary standard on registrants	A couple of commenters suggested that the CSA should impose a fiduciary standard on registrants.	We thank the commenters for this suggestion. This is outside the scope of the current project. The CSA is considering whether such a standard should be imposed as a separate policy project.
4.	Provide more data and transparency about the exempt market and compliance issues in the exempt market	Two commenters suggested that the CSA should make data about the use of prospectus exemptions available to the public. These commenters also suggested that the CSA should be more transparent about compliance issues in the exempt market.	We thank the commenters for this suggestion. The CSA is considering the need to obtain further information about the exempt market as a separate policy project.