

## CSA Notice of Amendments to National Instrument 45-106 *Prospectus Exemptions* relating to Reports of Exempt Distribution

April 7, 2016

### Introduction

The Canadian Securities Administrators (**CSA** or **we**) are making amendments (the **rule amendments**) to National Instrument 45-106 *Prospectus Exemptions* (**NI 45-106**) to introduce a new harmonized report of exempt distribution (the **New Report**).<sup>1</sup> We are also making related changes to Companion Policy 45-106 *Prospectus Exemptions* (**45-106CP**).

We refer to the rule amendments, the New Report and the changes to 45-106CP collectively as the Amendments.

Provided all necessary ministerial approvals are obtained, the Amendments will come into force on June 30, 2016 in all CSA jurisdictions.

### Substance and Purpose

#### *The New Report*

Issuers and underwriters who rely on certain prospectus exemptions to distribute securities are required to file a report of exempt distribution within the prescribed timeframe. Currently, in all CSA jurisdictions except British Columbia, the form of report is Form 45-106F1 *Report of Exempt Distribution* (**Form 45-106F1**). In British Columbia, the form of report is Form 45-106F6 *British Columbia Report of Exempt Distribution* (**Form 45-106F6**, and together with Form 45-106F1, the **Current Reports**).

The Amendments replace the Current Reports with the New Report. The New Report will:

- 1) reduce the compliance burden for issuers and underwriters by having a harmonized report of exempt distribution, and
- 2) provide securities regulators with the necessary information to facilitate more effective regulatory oversight of the exempt market and improve analysis for policy development purposes.

The New Report is set out in Annex B and the changes to 45-106CP are set out in Annex C.

#### *Key features of the New Report*

The New Report will apply in all CSA jurisdictions to both investment fund issuers and non-investment fund issuers that distribute securities under certain prospectus exemptions.

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<sup>1</sup> The Amending Instrument for NI 45-106 in Annex A includes amendments to certain sections of NI 45-106 that were not adopted in one or more CSA jurisdictions. The amendments to those sections will apply only in those CSA jurisdictions where the sections are in force.

The New Report introduces new information requirements, including disclosure of the following:

- additional details about the issuer including its size and primary business activity,
- identities of the directors, executive officers and promoters of certain issuers,<sup>2</sup>
- identities of control persons of certain issuers in a non-public schedule,
- additional details about the securities distributed and, for certain jurisdictions, details about the documents provided in connection with the distribution,
- specific details about the prospectus exemptions relied on, both on an aggregate and per investor basis, and
- details about compensation paid to registrants, connected persons, insiders and employees of the issuer or the investment fund manager involved in the distribution.

For investment fund issuers, the New Report also requires disclosure regarding the size of the fund, the general type of the fund and net proceeds to the fund for the period for which the report is filed.

The New Report provides carve-outs from certain information requirements for:

- investment fund issuers,
- reporting issuers and their wholly owned subsidiaries,
- foreign public issuers and their wholly owned subsidiaries, and
- issuers distributing eligible foreign securities only to permitted clients.

In addition, an issuer is not required to provide certain information in the New Report if the information can be gathered through the issuer's continuous disclosure filings, the issuer's profile on the System for Electronic Document Analysis and Retrieval (**SEDAR**) or a registrant firm's profile on the National Registration Database (**NRD**).

Annex D provides a summary of the new information requirements in the New Report.

## **Background**

The CSA published proposed amendments to NI 45-106 and the New Report for a 60-day comment period on August 13, 2015. The New Report is similar to the version published for comment.

### *Summary of written comments received on the New Report*

The comment period expired on October 13, 2015. We received 19 written submissions. We have considered the comments received and thank all of the commenters for their input. The names of the commenters are contained in Annex E and a summary of their comments, together with our responses, is contained in Annex F. The comment letters can be viewed on the Autorité des marchés financiers website at [www.lautorite.qc.ca](http://www.lautorite.qc.ca) and the Ontario Securities Commission (**OSC**) website at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

In developing the New Report, we also held informal consultations with advisory committees in certain CSA jurisdictions.

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<sup>2</sup> Unlike the version published for comment, the New Report does not require disclosure of information relating to the holdings of the issuer's securities by directors, executive officers, promoters and control persons.

### *Prior proposals*

In 2014, the CSA published two proposals related to the reports of exempt distribution:

- On February 27, 2014, the CSA published for comment proposed amendments to the Current Reports in conjunction with proposed amendments to NI 45-106 relating to the accredited investor and minimum amount investment prospectus exemptions. These proposals proposed to gather additional information related to the category of accredited investor for each purchaser, updated industry categories, and any person being compensated in connection with the distribution, including identifying the purchasers in respect of which the person received compensation.
- On March 20, 2014, Alberta, Saskatchewan, Ontario and New Brunswick published for comment two proposed forms for reporting exempt distributions: (i) proposed Form 45-106F10 *Report of Exempt Distribution For Investment Fund Issuers*, and (ii) proposed Form 45-106F11 *Report of Exempt Distribution For Issuers Other Than Investment Funds*. These proposals were intended to streamline exempt market reporting in applicable jurisdictions and obtain additional information about issuers, registrants and investors to enhance our ability to monitor exempt market activity.

Comments from these prior proposals have also informed the New Report.<sup>3</sup>

### **Summary of Changes Since Publication for Comment**

After considering the written comments received on the New Report and the feedback received during our informal consultations, we have made a number of changes to the New Report from the version that was published for comment.

Annex G contains a summary of changes between the New Report and the version that was published for comment. Some of the notable changes include:

- We removed the requirement for issuers making a distribution in more than one jurisdiction of Canada to file a single report in each Canadian jurisdiction where the distribution has occurred, identifying all purchasers. Notwithstanding this change, issuers may continue to satisfy their obligation to file the report by completing a single report identifying all purchasers, and filing it in each Canadian jurisdiction where the distribution occurs.
- We removed the requirement to provide information about beneficial owners of fully managed accounts where a trust company, trust corporation or registered adviser described in paragraphs (p) or (q) of the definition of “accredited investor” in section 1.1 of NI 45-106 is deemed to be purchasing the securities as principal on behalf of a fully managed account. We only require information about the trust company, trust corporation or registered adviser.
- We removed the proposed requirement to disclose information relating to the holdings of the issuer’s securities by directors, executive officers, promoters and control persons of certain issuers.
- We moved the proposed requirement to disclose information about control persons to a non-public schedule.

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<sup>3</sup> Summaries of the comments received on these prior proposals were included as part of the Notice and Request for Comment on Proposed Amendments to NI 45-106 relating to Reports of Exempt Distribution published on August 13, 2015.

- We changed the transition period available to investment fund issuers that file annually.
- We introduced a requirement for issuers to file Schedules 1 and 2 in .xlsx format using the Excel templates developed by the CSA. The Excel templates, published concurrently with this Notice, are available on the website of each CSA member and at the links below.
  - [Schedule 1 template](#)<sup>4</sup>
  - [Schedule 2 template](#)<sup>5</sup>

In addition to the changes described in Annex G, we have revised the guidance in 45-106CP, which is set out in Annex C.

We do not consider the changes made since the publication for comment to be material and therefore are not publishing the New Report for a further comment period.

## Filing Systems

Issuers are required to file the New Report electronically in all CSA jurisdictions, except certain foreign issuers when filing on SEDAR.

The British Columbia Securities Commission (**BCSC**) is developing a web-based filing system on eServices to accommodate the structured data format of the New Report. Beginning on June 30, 2016, when the New Report is effective, issuers filing in both British Columbia and Ontario will file the New Report with the BCSC and OSC by completing an electronic form on the BCSC's eServices and the OSC's Electronic Filing Portal, respectively.

In all CSA jurisdictions other than British Columbia and Ontario, the New Report will be required to be filed on SEDAR, except by certain foreign issuers.<sup>6</sup> Both the BCSC's eServices and the OSC's Electronic Filing Portal will generate an electronic copy of the completed report, which issuers can then use to file on SEDAR, if required. As noted above, issuers are required to file Schedules 1 and 2 in .xlsx format using the Excel templates developed by the CSA.

We have revised CSA Staff Notice 45-308 (Revised) *Guidance for Preparing and Filing Reports of Exempt Distribution under National Instrument 45-106 Prospectus Exemptions* (**Staff Notice 45-308**), published concurrently with this Notice, to provide guidance on how to complete and file the New Report in the various CSA jurisdictions.

A longer-term CSA project is underway to create a single integrated filing system for reports of exempt distribution that would further reduce the regulatory burden on market participants. The integrated filing system is part of the larger CSA National Systems Renewal Program.

## Transition to New Report

All issuers, other than investment fund issuers filing reports annually, must use the New Report for

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<sup>4</sup> [http://www.securities-administrators.ca/uploadedFiles/Schedule\\_1\\_Form\\_45-106F1\\_En.xlsx](http://www.securities-administrators.ca/uploadedFiles/Schedule_1_Form_45-106F1_En.xlsx)

<sup>5</sup> [http://www.securities-administrators.ca/uploadedFiles/Schedule\\_2\\_Form\\_45-106F1\\_En.xlsx](http://www.securities-administrators.ca/uploadedFiles/Schedule_2_Form_45-106F1_En.xlsx)

<sup>6</sup> See Multilateral CSA Notice of Amendments to National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)* and Multilateral Instrument 13-102 *System Fees for SEDAR and NRD*, published on December 3, 2015.

distributions that occur on or after June 30, 2016, when the Amendments come into force. If an issuer completes a distribution before June 30, 2016, and the deadline to file the report occurs after June 30, 2016, the issuer must file the Current Report. If an issuer completes multiple distributions on dates that occur within a 10-day period beginning before and ending after June 30, 2016, the issuer may file either the Current Report or the New Report to report such distributions.

Investment funds relying on certain prospectus exemptions may file reports of exempt distribution annually, within 30 days after the end of the calendar year. We have provided a transition period to allow investment fund issuers that file annually to file either the Current Report or the New Report for distributions that occur before January 1, 2017. For distributions that occur on or after January 1, 2017, all investment fund issuers filing annually must file the New Report.

Annex H contains further information on the transition to the New Report.

### **Withdrawal and Revision of CSA Staff Notices**

As a result of the Amendments and the replacement of Form 45-106F6 with the New Report, CSA Staff Notice 11-316 *Notice of Local Amendments – British Columbia (Staff Notice 11-316)* is no longer required. Staff Notice 11-316 will be withdrawn effective June 30, 2016.

We are publishing concurrently with this Notice a revised version of Staff Notice 45-308 to reflect the New Report.

### **Local Matters**

Annex I is being published in any local jurisdiction that is making related changes to local securities laws, including local notices or other policy instruments in that jurisdiction.

### **Annexes to Notice**

Annex A – Amending Instrument for National Instrument 45-106 *Prospectus Exemptions*

Annex B – Form 45-106F1 *Report of Exempt Distribution* (New Report)

Annex C – Changes to Companion Policy 45-106 *Prospectus Exemptions*

Annex D – Summary of New Information Requirements

Annex E – List of Commenters

Annex F – Summary of Comments and Responses

Annex G – Summary of Changes to New Report Since Publication for Comment

Annex H – Transition to the New Report

Annex I – Local Matters

## Questions

Please refer your questions to any of the following:

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