

ANNEX B

SUMMARY OF COMMENTS AND CSA RESPONSES

This Annex summarizes the comments we received and our responses to those comments.

No.	Topic	Comments	Responses
General			
1.	General support for proposed amendments	Most commenters expressed support for the proposed amendments. A commenter noted that the proposed amendments address many of the issues they have observed and especially those raised by foreign dealers who underwrite and distribute new securities in Canada. Two commenters noted that the reduced regulatory burden that would result from the implementation of the proposed amendments would facilitate more efficient capital raising in the Canadian exempt market. Another commenter expressed appreciation for the CSA's efforts to be responsive about the unintended effects of the certification requirement and other information requirements in the report.	We acknowledge these comments of support and thank the commenters.
2.	Exempt market oversight	One commenter expressed concern about the CSA's overall regulatory focus relating to the exempt market and suggested that the proposed amendments focus on alleviating regulatory burden for exempt market participants rather than taking action to respond to problems associated with the exempt market.	<p>Monitoring activities related to raising capital in the exempt market, including from retail investors, remains a primary focus of our compliance and oversight programs. The amendments to the report, for the most part, are intended to address concerns in respect of exempt offerings involving Canadian institutional investors.</p> <p>Additionally, the CSA's compliance and oversight programs monitor firms and issuers who rely on prospectus exemptions. Where necessary, guidance is provided to filers to assist</p>

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			them to understand and apply the provisions of these prospectus exemptions and to help them meet their regulatory obligations.
Certification [Item 10]			
3.	Support for proposed certification amendments	One commenter noted that the proposed revised certification wording is a significant improvement over the existing wording in that it expressly recognizes the existence of a due diligence defence and it contains a knowledge qualifier. Another commenter noted that clarifying and introducing greater flexibility with respect to the certification requirements will help alleviate various concerns that dealers have expressed.	We acknowledge these comments of support and thank the commenters.
4.	Clarification that certifying individual is not certifying in his or her personal capacity	Two commenters suggested additional language to further clarify that the individual certifying the report is doing so on behalf of the filer and not in his or her own personal capacity.	The certification already includes language that the certifying individual is certifying “on behalf of” the issuer, underwriter or investment fund manager. Further guidance is provided at item #22 of Annex 3 of CSA Staff Notice 45-308 (<i>Revised) Guidance for Preparing and Filing Reports of Exempt Distribution under National Instrument 45-106 Prospectus Exemptions (CSA Staff Notice 45-308)</i>).
5.	Guidance on reasonable diligence	A commenter suggested that the words “exercise reasonable diligence” be replaced with “made reasonable inquiries with respect to information outside my personal knowledge” to clarify the expectation on the certifying individual’s due diligence investigation regarding information required to complete the report.	The knowledge qualifier is worded to align with the due diligence defence under the securities legislation of most jurisdictions, which provides a defence to liability based on the person or company’s knowledge after exercising reasonable diligence. What constitutes reasonable diligence will depend on the circumstances. For example, guidance is

No.	Topic	Comments	Responses
			provided at item #9.1 of Annex 3 of CSA Staff Notice 45-308 on the reasonable steps an underwriter filing a report should undertake to obtain and confirm the required information regarding the issuer.
6.	Clarification when an authorized agent certifies the report	A commenter asked for clarification on how to fill out the boxes titled "Name of issuer/underwriter/investment fund manager/agent" and "full legal name" where a dealer has engaged a law firm to assist it in preparing and filing the required reports.	We have revised the instructions to clarify the certification in circumstances where the report is being certified by an agent on behalf of the issuer or underwriter. If a law firm is preparing and certifying a report on behalf of the issuer or underwriter, provide the full name of the law firm in the box titled "Name of issuer/underwriter/investment fund manager/agent" and provide the full name of the individual at the law firm certifying the report in the box titled "Full legal name".
7.	Authority of delegation to agent	One commenter suggested the certification be amended to expressly confirm the authority of the agent to act on behalf of and bind the issuer.	Item 10 of the report states that the certification may be delegated only to an agent that has been authorized by an officer or director of the issuer or underwriter. We do not think the proposed amendment is necessary. The authority of an agent to act on behalf of an issuer or underwriter is governed by the relationship between the issuer or underwriter and its agent.

No.	Topic	Comments	Responses
Information Requirements			
8.	Public listing status [Items 5(g) and 6(e)]	One commenter suggested amendments so that the name of the exchange on which the issuer's "equity" securities primarily trade be required. Additionally, the commenter suggested that if only debt securities of the issuer trade on an exchange, it should be allowed to name "any" exchange on which they trade.	<p>With respect to an issuer's equity securities, we have amended the requirement to identify the name of the exchange on which an issuer's securities primarily trade to apply to equity securities only.</p> <p>We recognize that identifying the exchanges on which an issuer's debt securities are listed may be problematic for filers given both the nature of debt and how debt is traded. We have amended the requirement in the report so that filers are not required to provide any exchange information pertaining to an issuer's debt securities.</p>
9.	Support for proposed amendment to allow issuers distributing securities to non-individual permitted clients (NIPC) to indicate this [Schedule 1]	Three commenters were supportive of the proposed amendment to permit filers to select NIPC which, in their view, will reduce a significant compliance burden associated with the report. One commenter supported the proposed amendment, but believed it should apply to all permitted clients, not just non-individuals.	We acknowledge these comments of support and thank the commenters. This amendment is limited to NIPC in order to address concerns in respect of offerings involving Canadian institutional investors.
Other Proposed Amendments			
10.	Support for proposed amendments to reflect Blanket Order Relief	One commenter supported the proposed amendment to subsection f) of Schedule 1 which allows permitted foreign issuers to omit information regarding whether a purchaser is an insider or a registrant.	We acknowledge this comment of support and thank the commenter.

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Other Comments on the Report – Not Directly Related to Proposed Amendments			
11.	Determining jurisdiction of distribution	One commenter suggested that additional guidance be added in the report as to how an issuer is to determine whether a distribution is considered to have taken place in a particular jurisdiction. Another commenter suggested that the report be amended so that the inclusion of information regarding purchasers outside Canada in Item 7 and Schedule 1 is not required under any circumstances, no matter which province the issuer is located in.	Guidance on where the issuer is required to file the report is provided at item #1 of Annex 3 of CSA Staff Notice 45-308. Issuers and underwriters should refer to applicable securities legislation, securities directions and case law to determine whether a distribution has taken place in a local jurisdiction. The suggested amendment is beyond the scope of this project.
12.	Co-issuers	One commenter proposed the adoption of a “primary” issuer concept to address the issues of (1) duplicative reporting, where two or more co-issuers are offering the same security, and (2) inaccurate and incomplete issuer information, where the information collected in Item 5 does not correspond to the information that investors would rely upon when making their investment decision.	We agree with the commenter that in circumstances where two or more issuers distribute a single security, only one report of exempt distribution should be required to be filed for the distribution, and that any one of the co-issuers should be permitted to file the report. We have amended National Instrument 45-106 <i>Prospectus Exemptions</i> to provide that an issuer or underwriter is not required to file a report for a distribution of a security if a report has been filed by another issuer or underwriter for the distribution for the same security. We have also amended Item 3 of the report to require that, in these instances, filers identify the co-issuers of the security distributed.
13.	Benefit of the information being requested is greater than the burden it may impose on filers	Some commenters requested the CSA reconsider some of the required disclosure introduced in the 2016 implementation of the report and questioned whether the benefit of the information requested justifies the burden imposed on filers.	We have streamlined certain information requirements in the report to further alleviate the burden it may impose on filers. Overall, we believe the report strikes an appropriate balance between the information needs of the CSA to support its compliance oversight and policy-

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			making functions and the regulatory burden imposed on filers.
14.	NAICS industry code [Item 5(a)]	Two commenters questioned the meaningfulness and usefulness of the NAICS industry code information requirement, noting that the identification of an issuer's NAICS industry code requires filers to exercise a significant amount of judgment and may result in inconsistency of classification. One of these commenters suggesting revising the instructions to clarify that filers ought to use their best judgment.	<p>Using a comprehensive and standardized industry classification system enables us to better understand exempt market activity and to inform our policy making function as regulators. We continue to believe the NAICS industry code is the most appropriate classification system for the purposes of the report. Based on our review of reports filed to date, we have not observed any significant inconsistencies in the NAICS industry code submitted across filers from similar industries.</p> <p>We have amended item 5(a) to explicitly require filers to provide the issuer's NAICS industry code that in their reasonable judgment most closely corresponds to the issuer's primary business activity. Item #7 of Annex 3 of CSA Staff Notice 45-308 provides guidance that the filer should use its reasonable judgment to determine the NAICS industry code that most closely matches the issuer's primary business activity.</p>
15.	Date of formation [Items 5(e) and 6(c)]	One commenter noted that the exact month and day of formation, which otherwise generally is not required disclosure for a non-reporting issuer, is often very difficult to obtain.	The requirement to provide the exact month and day of formation is consistent with the requirement for issuers that have a SEDAR profile. We understand that this information can be obtained through the issuer, and we believe this information would generally not be unduly difficult to obtain.

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16.	CUSIP number [Items 5(g) and 6(e)]	One commenter noted that many issuers have multiple CUSIP numbers and believed the CUSIP number the CSA requires filers to disclose in these sections is the CUSIP number for the issuer's common shares and not the CUSIP number for the particular securities described in the report.	We do not believe a clarifying instruction is necessary. Items 5(g) and 6(e) ask for the first 6 digits of the issuer's CUSIP number and these 6 digits will be the same for all securities of the issuer.
17.	Size of issuer's assets [Item 5(h)]	One commenter suggested that the requirement to disclose the size of the issuer's assets for its most recent financial year-end be revised to allow the filer to provide the required information based on the most recently available financial statements.	We have amended the instruction to direct filers to select the size of the issuer's assets "based on its most recently available annual financial statements" to provide clarity to issuers who have completed a financial year end but have not yet prepared their annual financial statements.
18.	Net proceeds to the investment fund [Item 7(g)]	One commenter asked that the CSA consider revising the requirements of Item 7(g) because the requirements are burdensome for most alternative fund managers and some issuers consider such data to be highly confidential and commercially sensitive.	Information about the fund on a net proceeds basis is vital to our understanding of investment funds distributing in the exempt market. Also, in certain jurisdictions, the reporting of net proceeds is required as part of the calculation of fees payable for reports of exempt distribution. We understand that fund managers consistently track the purchases and redemptions of their funds. Therefore, we do not believe it is burdensome to report net proceeds.

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19.	Whether the person compensated is a registrant [Item 8(a)]	One commenter suggested that the question “Indicate whether the person compensated is a registrant” be amended to “Indicate whether the person compensated has an NRD number” to better address international dealers who, technically, are not registrants but have an NRD number.	If a person compensated is relying on the “international dealer exemption” or the “international adviser exemption” (as set out in section 8.18 and in section 8.26, respectively, of National Instrument 31-103 <i>Registration Requirements, Exemptions and Ongoing Registrant Obligations</i>), the filer should respond “no” to the first question in Item 8(a) asking whether the person compensated is a registrant but, as these firms are issued an NRD number for tracking purposes, the firm should provide the firm’s NRD number in the third section of Item 8(a).
20.	Residential address of directors, executive officers, promoters and control persons of the issuer [Item 9(c) and Schedule 2, paragraph c)]	One commenter suggested eliminating the requirement to provide residential addresses for directors, executive officers, promoters and control persons of the issuer citing that an issuer may not necessarily have the information available and privacy issues in certain jurisdictions with disclosing residential addresses.	Residential address information has proven an effective means of locating and contacting individuals and is used to support our compliance functions. We believe this information would not be unduly difficult to obtain. Information collected in Schedule 2 is not on the public record of any CSA member. The release of this information through a freedom of information request is governed by freedom of information legislation in place in each CSA jurisdiction.
21.	Purchasers’ secondary given names [Schedule 1, paragraph b)3]	One commenter suggested that purchasers’ secondary given names should only be required to the extent that they are applicable and available.	To the extent that purchasers’ secondary given names are provided to the issuer, they should be disclosed in the report. We have amended the requirement for secondary given names to add the words “(if applicable)”.

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22.	Alberta specific comments	Two comments were received that are specific to Alberta, addressing distributions outside the jurisdiction and additional prospectus exemptions in Alberta.	The comments are outside the scope of this project, and we have referred them to the appropriate staff at the ASC who are currently reviewing Alberta's approach to distributions outside the jurisdiction.