

CSA Notice of Amendments to National Instrument 45-106 *Prospectus Exemptions* and Change to Companion Policy 45-106CP *Prospectus Exemptions* relating to Reports of Exempt Distribution

July 19, 2018

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 amend Form 45-106F1 *Report of Exempt Distribution* (the **Report**). We are also making a related change to Companion Policy 45-106CP *Prospectus Exemptions* (**45-106CP**).

We refer to the Rule Amendments and the change to 45-106CP collectively as the **Revisions**.

Provided all necessary ministerial approvals are obtained, the Revisions will come into force on **October 5, 2018** in all CSA jurisdictions.

The text of the Rule Amendments is contained in Annex C. A blacklined extract of 45-106CP, incorporating the change to 45-106CP, is contained in Annex D. A blacklined version of the Report, incorporating the Rule Amendments, is contained in Annex E.

Substance and Purpose

Issuers and underwriters who rely on certain prospectus exemptions to distribute securities are required to file the Report within the prescribed timeframe.

The Revisions:

- provide greater clarity and flexibility regarding the certification requirement of the Report while still supporting the regulatory objectives of filed Reports being true and complete, and
- streamline certain information requirements to assist filers in completing the Report while still providing us with the information necessary for oversight and policy development.

The Revisions are primarily intended to address concerns expressed by foreign dealers conducting offerings into Canada and Canadian institutional investors about the unintended effects of the certification requirement and other information requirements in the Report on these offerings. However, we believe the Revisions will be beneficial to all filers.

The Revisions also include minor amendments addressing feedback received by CSA staff following the implementation of the Report, including those comments received during the comment period.

Background

The Report came into force in all CSA jurisdictions on June 30, 2016. The Report replaced both the prior version of Form 45-106F1 *Report of Exempt Distribution* and Form 45-106F6 *British Columbia Report of Exempt Distribution*. The Report was intended to:

- 1) reduce the compliance burden for issuers and underwriters by having harmonized reports of exempt distributions, 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.

In the spring and summer of 2016, CSA staff became aware of concerns expressed by foreign dealers conducting offerings into Canada, as well as Canadian institutional investors, about the certification requirements and certain information requirements in the Report. Certain Canadian institutional investors noted that they had been excluded from participating in foreign offerings into Canada in part due to dealers' concerns about the certification of the Report as well as the more extensive information required in the Report.

As a result of these concerns, we provided relief from the requirement to disclose whether a purchaser is a registrant or an insider of the issuer in certain circumstances. This relief was provided by all CSA members, except the Ontario Securities Commission (**OSC**), by issuing blanket orders effective June 30, 2016. In Ontario, this relief was provided through an Ontario-only amendment to NI 45-106 that came into force on July 29, 2016.

We understand that there continued to be difficulties in respect of the certification, creating unintended complications in respect of access by Canadian institutional investors to foreign investment opportunities. On September 29, 2016, CSA staff issued a revised version of CSA Staff Notice 45-308 (Revised) *Guidance for Preparing and Filing Reports of Exempt Distribution under National Instrument 45-106 Prospectus Exemptions* (**CSA Staff Notice 45-308**) that contained new guidance intended to alleviate certain of the concerns raised regarding certification and other matters. We have adopted the Revisions to further address these concerns.

The CSA, other than the British Columbia Securities Commission, published proposed amendments to NI 45-106 relating to the Report (**the 2017 Proposal**) for a 90-day comment period on June 8, 2017. The British Columbia Securities Commission published the 2017 Proposal for a 60-day comment period on October 4, 2017.

Summary of Written Comments Received by the CSA

The comment period expired in all CSA jurisdictions, except British Columbia, on September 6, 2017. We received 6 written submissions. In British Columbia, the comment period expired on December 4, 2017 and no submissions were received. We have considered the comments received and thank all of the commenters for their input. The names of the commenters are contained in Annex A and a summary of their comments, together with our responses, is contained in Annex B. The comment letters can be viewed on the Autorité des marchés financiers website at www.lautorite.qc.ca and the OSC website at www.osc.gov.on.ca.

Summary of Changes to the 2017 Proposal

After considering the written comments received, we have made the following changes to the 2017 Proposal:

- **Certification:** We have revised the instructions to clarify that if the Report is being certified by an agent on behalf of an issuer or underwriter, the name of the agent should be provided in the box titled “Name of issuer/underwriter/investment fund manager/agent” and the information for the agent’s certifying individual should be used to complete all other boxes.
- **North American Industry Classification Standard (NAICS) code:** We have amended Item 5a) of the Report to explicitly request filers to provide the issuer’s NAICS code that in their reasonable judgment most closely corresponds to the issuer’s primary business activity.
- **Public listing status:** In Item 5g) of the Report, we amended the requirement for non-investment fund issuers to identify the name of the exchange on which the issuer’s securities primarily trade, to provide that this requirement only applies to equity securities. Filers are not required to provide any exchange information pertaining to an issuer’s debt securities.
- **Size of assets:** We have amended Item 5h) to direct filers to select the size of the issuer’s assets based on its most recently available annual financial statements.
- **Distribution by co-issuers:** We recognize that there are circumstances where two or more issuers distribute a single security. We have amended NI 45-106 to provide that an issuer or underwriter is not required to file a report for a distribution of securities if a report has been filed by another issuer or underwriter for the distribution of the same security. We have also amended Item 3 of the Report to require that, in these instances, the filer identifies the co-issuers of the security.
- **Purchasers’ secondary given names:** We have amended paragraph b)3 of Schedule 1 to add the words “(if applicable)” to the requirement for purchasers’ secondary given names.

- Cryptocurrencies and cryptocurrency-related assets: Given the increase in the number of offerings in the exempt market by issuers that invest in cryptoassets, we have amended:
 - Item 5a) of the Report to require filers to identify an issuer whose primary business is to invest all or substantially all of its assets in cryptoassets.
 - Item 6b) of the Report to require filers to identify where the type of investment fund that most accurately identifies an investment fund issuer is a cryptoasset investment fund.

We have also amended the list of security codes in the general instructions of the Report to introduce a new security code “DCT” for distributions of securities involving digital coins or tokens. These changes will allow us to more accurately monitor issuers that invest in cryptocurrencies and cryptocurrency-related assets and to identify distributions of securities involving digital coins or tokens.

The Rule Amendments also clarify certain instructions, including updating the table of security codes in the general instructions of the Report and clarifying Item 7f) of the Report relating to the calculation of the number of purchasers.

Provided all necessary ministerial approvals are obtained, all issuers must use the amended Report for any filings submitted on or after October 5, 2018.

Revision of CSA Staff Notice 45-308

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

Local Matters

Annex F includes, where applicable, additional information that is relevant in a local jurisdiction only.

Annexes

This notice contains the following annexes:

Annex A – List of Commenters

Annex B – Summary of Comments and CSA Responses

Annex C – Amendments to National Instrument 45-106 *Prospectus Exemptions*

Annex D – Change to Companion Policy 45-106CP *Prospectus Exemptions*

Annex E – Blackline of Form 45-106F1 *Report of Exempt Distribution* reflecting the Rule Amendments

Annex F – Local Matters

Questions

Please refer your questions to any of the following:

Jo-Anne Matear

Manager, Corporate Finance Branch
Ontario Securities Commission
416-593-2323
jmatear@osc.gov.on.ca

Yan Kiu Chan

Legal Counsel, Corporate Finance Branch
Ontario Securities Commission
416-204-8971
ychan@osc.gov.on.ca

Frederick Gerra

Legal Counsel, Investment Funds and Structured Products
Ontario Securities Commission
416-204-4956
fgerra@osc.gov.on.ca

Victoria Steeves

Senior Legal Counsel, Corporate Finance
British Columbia Securities Commission
604-899-6791
vsteeves@bcsc.bc.ca

Christopher Peng

Legal Counsel, Corporate Finance
Alberta Securities Commission
403-297-4230
christopher.peng@asc.ca

Tony Herdzik

Deputy Director, Corporate Finance
Financial and Consumer Affairs Authority of Saskatchewan
306-787-5849
tony.herdzik@gov.sk.ca

Kristina Beauclair

Securities Analyst, Corporate Finance
Autorité des marchés financiers
514-395-0337 ext: 4397
kristina.beauclair@lautorite.qc.ca

David Mendicino

Senior Legal Counsel, Office of Mergers & Acquisitions
Ontario Securities Commission
416-263-3795
dmendicino@osc.gov.on.ca

Kevin Yang

Senior Research Analyst, Strategy and Operations
Ontario Securities Commission
416-204-8983
kyang@osc.gov.on.ca

Gloria Tsang

Senior Legal Counsel, Compliance and Registrant Regulation Branch
Ontario Securities Commission
416-593-8263
gtsang@osc.gov.on.ca

Jody-Ann Edman

Assistant Manager, Financial Reporting
British Columbia Securities Commission
604-899-6698
jedman@bcsc.bc.ca

Steven Weimer

Team Lead, Compliance, Data & Risk
Alberta Securities Commission
403-355-9035
steven.weimer@asc.ca

Wayne Bridgeman

Deputy Director, Corporate Finance
Manitoba Securities Commission
204-945-4905
wayne.bridgeman@gov.mb.ca

Suzanne Boucher

Senior Analyst, Investment Funds
Autorité des marchés financiers
514-395-0337 ext: 4477
suzanne.boucher@lautorite.qc.ca

Ella-Jane Loomis

Senior Legal Counsel, Securities
Financial and Consumer Services Commission
(New Brunswick)
506-658-2602
ella-jane.loomis@fcnb.ca

Steven D. Dowling

Acting Director
Consumer, Labour and Financial Services Division
Department of Justice and Public Safety
Government of Prince Edward Island
902-368-4551
sddowling@gov.pe.ca

Rhonda Horte

Securities Officer
Office of the Yukon Superintendent of Securities
Government of Yukon
867-667-5466
rhonda.horte@gov.yk.ca

Jeff Mason

Superintendent of Securities
Department of Justice
Government of Nunavut
867-975-6591
jmason@gov.nu.ca

Jack Jiang

Securities Analyst, Corporate Finance
Nova Scotia Securities Commission
902-424-7059
jack.jiang@novascotia.ca

Craig Whalen

Manager of Licensing, Registration and
Compliance
Office of the Superintendent of Securities
Government of Newfoundland and Labrador
709-729-5661
cwhalen@gov.nl.ca

Thomas W. Hall

Superintendent of Securities
Department of Justice
Government of the Northwest Territories
867-767-9305
tom_hall@gov.nt.ca