

## Frequently Asked Questions

### Form 45-106F1 *Report of Exempt Distribution*

#### Filing the report

**1. An issuer whose head office is in Alberta distributes securities to a purchaser resident in Saskatchewan. Where is the issuer required to file the report?**

The issuer must file a report with the Alberta Securities Commission and with the Financial and Consumer Affairs Authority of Saskatchewan.

The issuer must file a report in each jurisdiction where the distribution occurred. To determine if a distribution has occurred in one or more jurisdictions of Canada, consult applicable securities legislation, securities directions and case law.

For example:

- In Alberta, an issuer should consult Alberta Securities Commission Policy 45-601 *Distributions Outside Alberta*.
- In British Columbia, an issuer should consult BC Interpretation Note 72-702 *Distribution of Securities to Persons Outside British Columbia*.
- In New Brunswick, an issuer should consult Companion Policy to Local Rule 72-501 *Distributions of Securities to Persons Outside New Brunswick*.
- In Québec, an issuer should consult *Avis du personnel de l'Autorité des marchés financiers – Règlement 45-106 sur les dispenses de prospectus et d'inscription: Questions fréquemment posées*.

In all cases, a distribution occurs when a distribution is made to a purchaser resident in that jurisdiction. In most cases, a distribution includes a distribution made by an issuer whose head office is in that jurisdiction (or, in the case of an investment fund, an investment fund whose manager's head office is in that jurisdiction), to purchasers resident outside that jurisdiction. A distribution may also occur in a jurisdiction of Canada if the issuer has a significant connection to that jurisdiction.

If an issuer is uncertain as to whether a distribution has occurred in a jurisdiction of Canada, the issuer should file the report in that jurisdiction.

**2. How does a filer file a report for a distribution to purchasers in every CSA jurisdiction?**

Filers are required to file the report electronically in all CSA jurisdictions, except certain foreign issuers when filing on SEDAR. The British Columbia Securities Commission (BCSC) has developed a web-based filing system on eServices to accommodate the structured data format of the report. Filers filing in British Columbia and Ontario will file the report with the BCSC and Ontario Securities Commission (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, filers, except certain foreign issuers, must file the report on SEDAR in accordance with National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)*. Both the BCSC's eServices and the OSC's

Electronic Filing Portal will generate an electronic copy of the completed report, which filers can then file on SEDAR, if required.

Schedule 1 and Schedule 2 of the report must be filed in .xlsx format using the Excel templates developed by the CSA. The Excel templates are available on the website of each CSA member and at the links below.

- [Schedule 1 template](#)<sup>1</sup>
- [Schedule 2 template](#)<sup>2</sup>

**3. [intentionally deleted]**

**4. Is there a transition period available for investment fund issuers that file reports annually?**

Yes, there is a transition period which allows an investment fund issuer filing annually to file either (i) the prior version of Form 45-106F1 *Report of Exempt Distribution* in force on June 29, 2016, or (ii) the new Form 45-106F1 *Report of Exempt Distribution* that came into force on June 30, 2016 (the **2016 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 2016 Report.

Investment funds that file annually are no longer required to file annual reports within 30 days of their financial year-end. Beginning on June 30, 2016, all investment fund issuers filing annually must file within 30 days after the end of the calendar year. This means that all investment funds filing annually will be required to file by January 30, 2017 for distributions that occur before January 1, 2017 (that have not been previously reported).

To provide further clarity on the transition period, please see the examples in Table 2 in Annex 4 of CSA Staff Notice 45-308 *Guidance for Preparing and Filing Reports of Exempt Distribution under National Instrument 45-106 Prospectus Exemptions (CSA Staff Notice 45-308)*.

**4.1 The section in the report under the heading “Notice – Collection and use of personal information” requires the filer to confirm that each individual listed in Schedules 1 and 2 was notified about certain information, including the title of the public official in the local jurisdiction who can answer questions about the security regulatory authority’s or regulator’s indirect collection of personal information. Where can I find the titles of these public officials?**

Please see Annex 5 of CSA Staff Notice 45-308 for the contact information and title of the public official in each local jurisdiction who can answer questions regarding the indirect collection of personal information. This information can also be found on the CSA’s website.

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<sup>1</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>2</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)

## Names and identifiers

### 5. What information should be provided for individuals under family name, first given name and secondary given names in the report?<sup>3</sup>

Family name refers to the individual's last name or surname.

First given name refers to the first name of an individual, used to identify the person from other members of a family, all of whom usually share the same family name.

Secondary given names, often referred to as middle names, refer to all given names of an individual, other than their first given name and family name.

The ordering of family and given names can vary among cultures. Indicate the 'family name', 'first given name' and 'secondary given names' in the appropriate field in the report regardless of the order in which they may be given or traditionally used.

Do not include aliases, nicknames, preferred names, initials or short forms of full names in the name fields of the report.

If two or more individuals have purchased a security as joint purchasers, complete the Schedule 1 Excel template by providing information for each purchaser under the columns for family name, first given name and secondary given names, if applicable, and separating the individuals' names by an ampersand. For example, if Jane Jones and Robert Smith are joint purchasers, indicate "Jones & Smith" in the family name column, and "Jane & Robert" in the first given name column of the Schedule 1 Excel template.

### 6. What is a legal entity identifier (LEI)? Is it necessary to obtain an LEI to complete Item 3 of the report?

An LEI is a globally recognized 20-character alphanumeric code used to identify entities that enter into financial transactions. If an issuer already has an LEI, the filer must provide the LEI in Item 3. If an issuer does not have an LEI, it is not necessary to obtain one to complete the report.

### 7. How does the filer determine an issuer's North American Industry Classification Standard (NAICS) code?

NAICS was developed to classify the domestic activities of businesses within North America, and also covers a wide range of industries that exist outside of North America.

If the issuer has already identified a NAICS code for its business, and the filer is the issuer, then it should use that previously identified code. For example, Canadian businesses that file tax returns with the Canada Revenue Agency should use the same NAICS code that they report on those forms.

If the issuer has not already identified a NAICS code, or if the filer is an underwriter and has not been able to obtain the NAICS code previously identified by the issuer, the filer should use

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<sup>3</sup> Names of individuals are required to be provided in Item 8(a), Items 9(a) and (b), Item 10, Item 11, Schedule 1 and Schedule 2.

[Statistics Canada's NAICS search tool](#)<sup>4</sup> to find a NAICS code that is appropriate for the issuer. An alternative is the [US Census Bureau's NAICS search tool](#).<sup>5</sup>

The online search tools listed above allow the filer to enter keywords that describe the issuer's business, and generate a list of primary business activities containing that keyword and the corresponding NAICS codes. If more than one NAICS code may apply to an issuer, the filer should use its reasonable judgment to choose the one that most closely describes the issuer's primary business activity. Alternatively, the filer may browse a list of NAICS market sectors to find the more detailed industry level descriptions and the appropriate 6-digit code that, in the filer's reasonable judgment, most closely matches the issuer's primary business activity.

Below are some examples of NAICS codes to consider:

Description of Issuer	Keywords searched	Possible NAICS Codes to consider
ABC-ABS Inc. is structured as a special purpose financial vehicle organized for the securitization of pools of receivables and the issuance of marketable fixed-income securities (asset-backed securities)	"special purpose vehicle" or "securitization"	526981 - Securitization vehicles
ABC Minerals operates as a mining and metals company worldwide. It produces copper, nickel, gold, zinc, platinum-group elements and pyrite.	"zinc" or "copper" or "nickel" or "gold"	212233 - Copper-zinc ore mining 212232 - Nickel-copper ore mining 212220 - Gold and silver ore mining
ABC LP is a private equity fund that invests in a portfolio of private companies. The fund will typically acquire a controlling or substantial minority interest in a portfolio of companies.	"investment firm" or "portfolio companies"	526989 - All other miscellaneous funds and financial vehicles 523920 - Portfolio management

## Issuer information

- 8. The issuer distributing securities was formed in 2002 by the completion of a plan of arrangement. Does Item 5(e) of the report require the date(s) of incorporation of the companies that completed the plan of arrangement, or the date of the completion of the plan of arrangement?**

In this example, the filer is not required to provide the incorporation dates of any predecessor entities in Item 5(e), only the date that the issuer was formed by the completion of the plan of arrangement in 2002.

- 9. How does a filer determine the number of employees for Item 5(b) of the report?**

Employees are individuals that are employed directly by the issuer and on the issuer's payroll, including full and part-time employees.

<sup>4</sup> <http://www23.statcan.gc.ca/imdb/p3VD.pl?Function=getVD&TVD=118464>

<sup>5</sup> <http://www.census.gov/eos/www/naics/index.html>

**9.1 What steps should be taken by an underwriter filing a report to obtain the information in Item 5 of the report?**

Where an underwriter is filing the report, the underwriter should take reasonable steps to obtain and confirm the information regarding the issuer set out in Item 5. These reasonable steps may include:

- reviewing the offering document prepared in connection with the distribution of securities,
- reviewing the issuer's public continuous disclosure record, where available,
- reviewing information provided by the issuer's or the underwriter's legal counsel, and
- making inquiries of the issuer.

**Investment fund issuer information**

**10. What do the different investment fund types in Item 6(b) of the report refer to?**

In Item 6(b), an investment fund issuer must select the investment fund type that most accurately describes the issuer based on the following:

- Money Market – An investment fund that invests in cash, cash equivalents and/or short term debt securities, such as government bonds and treasury bills.
- Equity – An investment fund that invests primarily in equity securities of other issuers.
- Fixed Income – An investment fund that invests primarily in fixed income (debt) securities.
- Balanced – An investment fund that invests primarily in a balanced combination of fixed income and equity securities.
- Alternative Strategies – An investment fund that primarily adopts alternative investment strategies, such as short selling, leverage or the use of derivatives, or that invests primarily in alternative asset classes, such as real estate or commodities.
- Other – An investment fund that cannot be classified under one of the above investment fund types. Include a short description of the type of investment fund in the box provided.

**11. When would an investment fund issuer be considered to be primarily invested in other investment funds under Item 6(b) of the report?**

An investment fund is generally considered a 'fund of funds' if a majority of its assets are invested in other funds, under normal market conditions. One factor to consider in determining whether an investment fund issuer is a 'fund of funds' is whether its investment objectives specifically state this as a strategy.

**Distribution details**

**12. What does "located outside of Canada" mean in Item 7 of the report?**

The onus is on an issuer and its counsel to determine where the issuer is located for the purposes of determining where a distribution has occurred, including whether an issuer is located in a jurisdiction of Canada.

The determination is based on the facts and circumstances of each particular distribution. The issuer should consider the following factors:

- where the issuer’s mind and management are primarily located, which may be determined by the location of the issuer’s head office or the residences of the issuer’s key officers and directors,
- where the issuer’s operations are conducted,
- where the issuer administers its business,
- whether any acts in furtherance of a distribution have occurred in a jurisdiction, including active advertisements or solicitations, negotiations, underwriting activities or investor relations activities, and
- where the issuer is incorporated or organized.

The above are examples of the types of factors that an issuer should consider in determining whether it is making a distribution from a jurisdiction, but it is not an exhaustive list.

**13. What dates should be provided as the distribution date under Item 7(b) of the report?**

If the report is being filed for securities distributed only on a single distribution date, provide this distribution date in Item 7(b) as both the start date and end date. For example, if the report is being filed for securities distributed only on July 1, 2016, provide July 1, 2016 as both the start date and end date.

If the report is being filed for securities distributed on more than one distribution date, in Item 7(b) provide the date of the earliest distribution as the start date and provide the date of the last distribution as the end date. A single report can be filed for distributions occurring on multiple dates only if such distributions occur within a 10-day period and the report is filed no later than 10 days after the first distribution date (other than investment funds that file reports on an annual basis).

For example:

- If the report is being filed for securities distributed on July 1, July 4, July 5 and July 7, 2016, in Item 7(b) provide July 1, 2016 as the start date and July 7, 2016 as the end date.
- If the report is being filed for an investment fund issuer that files annually and has distributed securities on a continuous basis from January 1, 2017 to December 31, 2017, in Item 7(b) provide January 1, 2017 as the start date and December 31, 2017 as the end date.

**14. The type of security distributed by the issuer is not on the list of security codes in Instruction 12 of the report. What security code should the filer provide in Item 7(d) of the report?**

The list of security codes in Instruction 12 of the report captures most types of securities distributed under a prospectus exemption triggering the filing of a report in Canada. If the security being distributed is not listed, enter “OTH” (for other) as the security code in Item 7(d) and include a description of the security in the box provided. Examples are provided below.

Security code			CUSIP number (if applicable)	Description of security
N	O	T	555555555	6.26% medium term notes
C	E	R	555555556	Commercial mortgage pass-through certificates
U	B	S		Units comprised of one common share and one-half of one non-transferrable share purchase warrant
O	T	H		Syndicated mortgage interest
O	T	H		Global depository receipt

**15. How does a filer determine the number of unique purchasers for Item 7(f) of the report?**

For the total number of unique purchasers, each purchaser should only be counted once, regardless of whether the issuer distributed different types of securities to that purchaser, distributed securities on different dates to that purchaser and/or relied on multiple prospectus exemptions for such distributions.

As an example, an issuer located in Alberta distributes (at \$10/debenture, \$10/common share):

- 100 debentures to Purchaser A in Alberta in reliance on the accredited investor prospectus exemption
- 100 common shares to Purchaser A in Alberta in reliance on the offering memorandum prospectus exemption
- 100 common shares to Purchaser B in Alberta in reliance on the accredited investor prospectus exemption
- 100 common shares to Purchaser C in Ontario in reliance on the family, friends and business associates prospectus exemption
- 100 debentures to Purchaser D in France in reliance on the accredited investor prospectus exemption

In this example, there are a total of 4 unique purchasers.

The table in Item 7(f) requires a separate line item for:

- each jurisdiction where a purchaser resides,
- each exemption relied on in the jurisdiction where a purchaser resides, if a purchaser resides in a jurisdiction of Canada, and
- each exemption relied on in Canada, if a purchaser resides in a foreign jurisdiction.

Complete the table as follows:

Province or country	Exemption relied on	Number of purchasers	Total amount (Canadian \$)
Alberta	Accredited investor (NI 45-106 s.2.3)	2	2,000
Alberta	Offering memorandum (NI 45-106 s.2.9(2.1))	1	1,000
Ontario	Family, friends and business associates (NI 45-106 s.2.5)	1	1,000
France	Accredited investor (NI 45-106 s.2.3)	1	1,000
<b>Total dollar amount of securities distributed</b>			5,000
<b>Total number of unique purchasers<sup>2</sup></b>		4	

In Schedule 1, create a separate entry for each distribution date, security type and exemption relied on for the distribution to each purchaser. In the example above, this means there must be two separate entries for Purchaser A in Schedule 1: one entry for the distribution of 100 debentures in reliance on the accredited investor prospectus exemption, and a second entry for the distribution of 100 common shares in reliance on the offering memorandum prospectus exemption.

**16. Are marketing materials required to be listed under Item 7(h) of the report?**

Yes, if the securities legislation of Saskatchewan, Ontario, Québec, New Brunswick and Nova Scotia requires marketing materials to be filed with or delivered to the securities regulatory authority or regulator in connection with the distribution under the exemption relied on.

Item 7(h) requires filers to list and provide certain details about offering materials that are required under the exemption relied on to be filed with or delivered to the securities regulatory authority or regulator in connection with the distribution in these jurisdictions. This is a reporting requirement only; the report does not impose any new requirement to deliver or file offering materials.

If marketing materials are required to be filed or delivered under the prospectus exemption relied on for the distribution, the filer must list such materials in Item 7(h). For example, if an issuer makes a distribution to purchasers in Ontario in reliance on the offering memorandum exemption under section 2.9 of National Instrument 45-106 *Prospectus Exemptions (NI 45-106)*, the filer must list marketing materials that are required to be incorporated or deemed to be incorporated by reference into the offering memorandum.

In Ontario only, if the offering materials listed in Item 7(h) are required to be filed with or delivered to the OSC, electronic versions of those offering materials are to be attached to and submitted electronically with the report on the OSC's Electronic Filing Portal (if not previously filed with or delivered to the OSC).

**Compensation information**

**17. How does an issuer report compensation paid to two dealers in connection with the distribution?**

Item 8 of the report must be completed separately for each dealer to whom the issuer provides compensation in connection with the distribution.

In section f(3) of Schedule 1, the filer must indicate which of the two dealers received compensation in connection with the distribution to each purchaser by indicating the firm NRD number of the dealer, or the dealer's full legal name if not a registered firm. The firm NRD number

or name must be consistent with the information provided in Item 8. If neither of the two dealers received compensation in connection with the distribution to a particular purchaser, then section f(3) of Schedule 1 should be left blank for that purchaser.

As noted in the instructions to Item 8(d), the report does not require disclosure of details about internal allocation arrangements with the directors, officers or employees of entities compensated by the issuer.

- 18. The issuer entered into a referral arrangement pursuant to which it pays an ongoing annual referral fee to a third party for so long as the purchaser holds the securities distributed. Is the issuer required to disclose the ongoing referral fee in the report? Is the issuer required to do so each year for so long as it pays the referral fee?**

If the referral fee is paid in connection with a distribution, the filer must report the referral fee in Item 8(d) of the report, by checking the box that indicates a person is receiving deferred compensation in connection with the distribution and describing the terms of the referral arrangement in the box provided.

The filer is not required to report the referral fee every year. If no distributions were made in a particular year that give rise to referral fees being paid, then the referral fee is not required to be reported that year.

- 19. What do the terms “funding portal” and “internet-based portal” refer to in Item 8(a) of the report?**

These terms generally refer to an intermediary that provides an online platform for issuers to offer and sell securities to investors. These include funding portals as defined under Multilateral Instrument 45-108 *Crowdfunding*.

## **Purchaser information**

- 20. The issuer sold shares to a purchaser that instructed that the shares be registered in the name of its investment adviser. What name is the filer required to disclose in Schedule 1 of the report?**

All references to a purchaser in the report are to the beneficial owner of the securities (with the exception of fully managed accounts described below). In this example, the filer should provide the name of the beneficial owner as the purchaser in Schedule 1. The investment adviser in this example is the registered, not the beneficial, owner.

Similarly, if a trust or personal holding corporation purchases securities from an issuer, the trust or corporation is the beneficial owner. The names of the trust beneficiaries or shareholders of the holding corporation are not required.

Beneficial owner information is not required in Schedule 1 where a trust company, trust corporation, or registered adviser is deemed to be purchasing the securities as principal on behalf of a fully managed account and the issuer is relying on the exemption described in paragraph (p) or (q) of the definition of “accredited investor” in section 1.1 of NI 45-106 to issue the securities. In that case, only the name of the trust company, trust corporation or registered adviser should be provided in Schedule 1.

**21. The filer does not have a purchaser’s email address. What is the filer required to disclose in section c(7) of Schedule 1 of the report?**

If the purchaser has not provided an email address to the filer, or the purchaser does not have an email address, the filer may leave section c(7) of Schedule 1 blank for that purchaser.

**21.1 Certain purchasers may qualify as an accredited investor under more than one paragraph of the definition of “accredited investor”. It may not always be clear to the filer which paragraph the purchaser qualifies under for the purpose of a particular distribution. For example, trust companies, trust corporations, registered advisers and registered dealers may be purchasing securities as principal for their own account, and/or may be deemed to be purchasing securities as principal on behalf of a fully managed account. In these circumstances, which paragraph of the definition of “accredited investor” should the filer select when completing Schedule 1?**

If a purchaser is a trust company or a trust corporation, the filer can select paragraphs “(a) and/or (p)” of the definition of “accredited investor” for that purchaser when completing Schedule 1 if the trust company or trust corporation is:

- purchasing as principal for its own account and qualifies as an accredited investor under paragraph (a) of that definition, and/or
- deemed to be purchasing as principal on behalf of a fully managed account and qualifies as an accredited investor under paragraph (p) of that definition.

If a purchaser is a registered adviser or registered dealer, the filer can select paragraphs “(d) and/or (q)” for that purchaser when completing Schedule 1 if the registered adviser or registered dealer is:

- purchasing as principal for its own account and qualifies as an accredited investor under paragraph (d) of that definition, and/or
- deemed to be purchasing as principal on behalf of a fully managed account and qualifies as an accredited investor under paragraph (q) of that definition.

We have updated the Excel template for Schedule 1 to provide these options for filers to select.

**21.2 What steps are sellers expected to take to verify a purchaser’s status?**

The seller of securities is responsible for determining whether the terms and conditions of the prospectus exemption are met. Sellers are reminded of the guidance set out in section 1.9 of Companion Policy 45-106CP *Prospectus Exemptions (45-106CP)* regarding their responsibility for compliance and verifying purchaser status. In particular, paragraph 1.9(4) of 45-106CP describes procedures that a seller could implement in order to reasonably confirm that the purchaser meets the conditions for a particular exemption. Some examples of these steps include:

- establishing policies and procedures to confirm that all parties acting on behalf of the seller understand the conditions that must be satisfied to rely on the exemption, and
- obtaining information that confirms the purchaser meets the criteria in the exemption.

Whether the types of steps are reasonable will depend on the particular facts and circumstances of the purchaser, the offering and the exemption being relied on. For certain purchasers, such as Canadian financial institutions, Schedule III banks and pension funds, it may not be necessary for the seller to reconfirm the purchaser's status for each distribution to that purchaser.

## Certification

### **22. Who is certifying the report?**

Item 10 of the report is a certification by the issuer or underwriter filing the report. The certification must generally be signed by a director or officer of the issuer or underwriter filing the report. Refer to tip 10 in Annex 1 of CSA Staff Notice 45-308 for guidance on the signatory.

In signing the certification, the director or officer certifying the report is doing so on behalf of the issuer or underwriter.

The report states that it is an offence to make a misrepresentation in the report. Securities legislation of a jurisdiction in which the report is filed may impose liability on any person that makes a statement in the report that, in a material respect and at the time and in light of the circumstances under which it is made, is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the statement not misleading. Securities legislation may also impose liability on any director or officer of an issuer or underwriter who authorizes, permits or acquiesces in the filing of such a report, including the individual signing the report for and on behalf of the filer. Such legislation may also provide a defence to liability based on the person or company's knowledge after exercising reasonable diligence. The potential personal liability of directors and officers of the filer is determined by applicable securities legislation and case law.