

## Tips for Completing and Filing Form 45-106F1 *Report of Exempt Distribution*

The following are tips to assist issuers, underwriters and advisors in completing and filing Form 45-106F1 *Report of Exempt Distribution* (the report).

### 1. File the report on time

Filers must file the report in each jurisdiction of Canada where the distribution occurred. The deadline for filing the report is generally 10 days after the distribution. If filing a report for distributions occurring on multiple dates, such distributions must occur within a 10-day period and the filer must file the report no later than 10 days after the first distribution date.

Investment fund issuers relying on certain prospectus exemptions have the option of filing the report on an annual basis, within 30 days of the end of the calendar year. This option is only available for investment fund issuers distributing securities in reliance on the following prospectus exemptions in National Instrument 45-106 *Prospectus Exemptions* (NI 45-106):

- section 2.3 [*Accredited investor*]<sup>1</sup>
- section 2.10 [*Minimum amount investment*]
- section 2.19 [*Additional investment in investment funds*]

### 2. Pay the required fees

Filers must pay the applicable fee in each jurisdiction of Canada in which the report is filed. In order to determine the applicable fee in a particular jurisdiction of Canada, consult the securities legislation of that jurisdiction.

Filing fees payable in a particular jurisdiction are not affected by identifying all purchasers in a single report.

### 3. Complete the issuer information

Item 5 requires certain information about the issuer distributing the securities, where the issuer is not an investment fund.

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.

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<sup>1</sup> This option is also available for investment fund issuers distributing securities in reliance on section 73.3 of the *Securities Act* (Ontario) [*Accredited investor*].

#### **4. Include a complete list of purchasers in the report**

Filers must ensure that Item 7(f) and Schedule 1 include all purchasers that participated in the distribution.

If an issuer located outside of Canada completes a distribution in a jurisdiction of Canada, the filer is required to provide information in the report about purchasers resident in that jurisdiction of Canada only. See Question 12 in Annex 3 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)* for further guidance on issuers located outside of Canada.

If an issuer makes a distribution in more than one jurisdiction of Canada, the filer may complete a single report identifying all purchasers, and file that report in each jurisdiction of Canada in which the distribution occurs.

#### **5. Ensure the information provided in the report and schedules is consistent**

Filers should verify that the information included in the report and schedules is accurate and consistent. In particular, filers should verify the following:

- The information provided in Item 7 about the distribution date, number and type of securities distributed, total dollar amount of securities distributed, number of purchasers in each jurisdiction and prospectus exemptions relied on, must reconcile with the information provided in Schedule 1.
- The identities of persons compensated provided in Item 8 must reconcile with the information provided in Schedule 1 about the persons compensated for each purchaser.
- The information about directors, executive officers and promoters provided in Item 9 must reconcile with the information provided in Schedule 2.

#### **6. Correctly identify the total number of purchasers**

The table in Item 7(f) requires the total number of unique purchasers to which the issuer distributed securities. To determine the total number of unique purchasers, the filer should count each purchaser only once, regardless of whether the issuer distributed different types of securities to that purchaser, on different dates, and/or relied on multiple prospectus exemptions for such distributions.

#### **7. Ensure the purchase price of the securities distributed is correct**

If an issuer is relying on the prospectus exemption in section 2.10 [*Minimum amount investment*] of NI 45-106 for distributions to a purchaser, the purchase price paid by that purchaser must be at least \$150,000 (among other conditions), and the purchase price provided in Item 7 and Schedule 1 must be at least that minimum amount. An issuer is not permitted to distribute securities under this prospectus exemption to a purchaser that is an individual, or to multiple purchasers acting in concert or as a “syndicate” in order to pool separate purchases and reach the \$150,000 minimum.

#### **8. Ensure that a valid prospectus exemption is available**

Not all prospectus exemptions are available in all jurisdictions. An issuer should ensure that a valid prospectus exemption is available for a distribution to each purchaser.

Section 1.9 of Companion Policy 45-106CP *Prospectus Exemptions* describes procedures that an issuer (or 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 issuer (or 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 steps taken 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 issuer (or seller) to reconfirm the purchaser's status for each distribution to that purchaser.

## **9. Disclose all compensation paid in connection with the distribution**

A filer must complete Item 8 for each person to whom the issuer directly provides, or will provide, any compensation in connection with the distribution. Compensation includes cash commissions, securities-based compensation, gifts, discounts or other compensation of a similar nature, paid in connection with a distribution of securities, regardless of the term used to describe the payment. For example, we consider a brokerage fee or finance fee to be compensation in connection with a distribution.

Compensation does not include payments for services incidental to the distribution, such as clerical, printing, legal or accounting services.

Item 8 does not require details about internal allocation arrangements with the directors, officers or employees of an entity compensated by the issuer.

## **10. Date and certify the report**

The report must be certified by the issuer or the underwriter. Item 10 of the report must include the date of the report and the name and signature of the individual signing the report for and on behalf of the issuer or underwriter. This individual must be a director or officer of a corporate issuer or underwriter or, in other cases, an individual who performs functions similar to that of a director or officer (as determined by the issuer or underwriter). For example, if the issuer is a trust, the report may be signed by the issuer's trustee on behalf of the trust. If the issuer is an investment fund, a director or officer of the investment fund manager (or, if the investment fund manager is not a company, an individual who performs similar functions) may sign the report on behalf of the investment fund if the director or officer has been authorized to do so by the investment fund.

A filing agent, such as a law firm, completing the report on an issuer's or underwriter's behalf may not provide the signature required by Item 10 of the report to certify the report on behalf of the issuer or the underwriter, but must provide their contact details in Item 11.

See Question 22 in Annex 3 of CSA Staff Notice 45-308 for further guidance on the certification of the report.