

New Report of Exempt Distribution Form Proposed For Domestic and Foreign Investment Funds

On March 20, 2014, the Canadian Securities Administrators (the "CSA") introduced a proposed new Form 45-106F10 - Report of Exempt Distribution for Investment Fund Issuers (the "**Investment Fund Exempt Trade Report**"). When adopted, domestic and international investment funds (or underwriters who distribute securities of such investment funds) will be required to use the Investment Fund Exempt Trade Report in the provinces of Alberta, New Brunswick, Ontario and Saskatchewan (the "**Subject Provinces**").

The proposed form of Investment Fund Exempt Trade Report significantly expands the disclosure required to be provided by investment funds to securities regulatory authorities in relation to distributions of securities of the investment fund made to investors resident in the Subject Provinces. Set out below is a summary of the proposed reporting changes that will occur as a result of the new Investment Fund Exempt Trade Report if implemented in the proposed form.

Increased Frequency of Reporting

An Investment Fund Exempt Trade Report must be filed in the Subject Province(s) in which the distribution takes place no later than 10 days after the distribution date or alternatively **within 30 days after each calendar quarter in which the investment**

fund has made a distribution of its securities. This represents a change from the current alternative frequency for the filing of the current forms of report of exempt distribution (Form 45-106F1 and Form 45-106F6) which permit reports to be filed no later than 30 days after the end of the investment fund's financial year-end. In Ontario, the Investment Fund Exempt Trade Report will be available as an e-form that is submitted online. In Alberta, New Brunswick and Saskatchewan, the report will have to be filed in paper format. The increased frequency of filing will result in increased filing fees in Ontario payable at the time the e-form is submitted.

Significantly Increased Disclosure Requirements for Investment Funds

The proposed form of Investment Fund Exempt Trade Report would require investment funds to provide significantly more disclosure in relation to the fund than is currently required with Form 45-106F1. The enhanced disclosure includes:

- **Structure of Fund:** The legal structure of the investment fund (Trust, Corporation, Limited Partnership or other) and whether the investment fund is a mutual fund or non-redeemable investment fund (as defined in National Instrument 81-106 – *Investment Fund Continuous Disclosure*).
- **Directors/Executive Officers of Fund:** Provision of the names, titles/positions and jurisdiction of residence for each of the directors and executive officers of the investment fund. For investment funds organized as corporations, this would be the directors and executive officers of the corporation and for investment funds organized as limited partnerships, this would be the directors and executive officers of the general partner. It does not appear that investment funds organized as trusts would be required to complete this section.
- **Type of Fund:** Identification of the type of investment fund making the filing (money market fund, hedge fund or other type of investment fund and whether the investment fund is subject to

either National Instrument 81-102 – *Mutual Funds* or National Instrument 81-104 – *Commodity Pools*.

- **AUM Information:** An indication as to the assets under management of the investment fund as of the date of the report.
- **IFM Information:** Details relating to the investment fund manager of the investment fund including: (i) full legal name; (ii) National Registration Database number; (iii) Address and phone number of head office; and (iv) email address of the investment fund manager's chief executive officer or individual acting in such capacity.
- **Directors/Officers of IFM:** Information relating to the directors and executive officers of the investment fund manager of the investment fund including their full name, title/position with the investment fund manager and jurisdiction of residence.
- **Service Provider Information:** A list of the names and municipality of the principal or head office of the principal service providers to the investment fund including the trustee (if applicable), portfolio manager, sub-portfolio manager (if applicable), custodian, registrar/transfer agent and auditor.
- **Confirmation of Use of Offering Memorandum:** An indication of whether or not an offering memorandum was provided to investors in connection with the distribution and the date of such offering memorandum. In Ontario, a filer will be able to attach an electronic version of the offering memorandum to the e-form of the Investment Fund Exempt Trade Report.
- **Purchaser Information:** A more detailed attachment describing the purchasers, the securities purchased and the exemption each purchaser relied on in acquiring securities of the investment fund. The information to be garnered from each purchaser goes beyond the type of information currently required to be obtained from purchasers, including their age range.
- **Commission/Compensation Information:** A more detailed spreadsheet which requires information about any person or entity receiving compensation in connection with the distribution

of securities by the investment fund will also be required to be submitted.

Conclusion

The proposed form of Investment Fund Report of Exempt Distribution will introduce significant changes to the information provided to securities regulatory authorities by both domestic and foreign domiciled investment funds. It is possible that the information collected by securities regulatory authorities in the Subject Provinces may be used to influence future further regulation of investment funds. If adopted, investment funds may be required to use up to three different forms of reports of exempt distributions in Canada: (i) the Form 45-106F10 in the Subject Provinces; (ii) a Form 45-106F6 in British Columbia; and (iii) the traditional Form 45-106F1 in the remaining provinces and territories of Canada.

Comments on the proposed new Form must be submitted by June 18, 2014.

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a cautionary note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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