

2 BECOME 1: CSA PROPOSES CREATION OF SINGLE EXEMPT DISTRIBUTION REPORTING REGIME

Posted on August 20, 2015

Categories: [Insights](#), [Publications](#)

Overview

Addressing a compliance burden for issuers, the Canadian Securities Administrators ("**CSA**") published proposed amendments ("**Proposed Amendments**") to National Instrument 45-106 *Prospectus Exemptions* (**NI 45-106**) on August 13, 2015. If implemented, the Proposed Amendments will introduce a single, harmonized exempt distribution reporting form (the "Proposed Report") for all provinces and territories. However, it should be noted that the Proposed Report is a give-and-take from the CSA; the new form would require all issuers to disclose additional information not previously required.

Background

NI 45-106 requires issuers that have distributed securities in reliance on certain prospectus exemptions, including the accredited investor, family, friends and business associates, and offering memorandum exemptions, to file a report of exempt distribution in the jurisdiction where the distribution occurred.^[1] The required form of the report is Form 45-106F1 *Report of Exemption Distribution* in all provinces except British Columbia, which uses Form 45-106F6 *British Columbia Report of Exempt Distribution*. This dual reporting regime resulted in duplicative efforts and added expense, particularly for smaller issuers.

The Proposed Amendments will replace Form 45-106F1 and Form 45-106F6 with the Proposed Report – a single report that must be filed in each jurisdiction in which the distribution occurred.

In February and March 2014, there were two prior proposals by certain CSA jurisdictions intended to address similar issues with respect to information gathering and streamlined exempt market reporting. The Proposed Report is informed by these prior proposals and comments received in relation to them.

Proposed Amendments

Issuers other than Investment Funds

The Proposed Report will result in a single, harmonized form that can be filed across Canada. However, the

Proposed Report will now require the disclosure of additional information not required by either of the current forms.

Some of this information is designed to replace previously-required disclosure that could be obtained from SEDAR or the National Registration Database ("NRD") with standardized information, including the firm NRD number for underwriters or registrants being compensated and the issuer's SEDAR profile, Global Legal Entity Identifier System, and CUSIP numbers. To more accurately characterize the issuer's size and industry, the Proposed Form requires the issuer's North American Industry Classification System (NAICS) code that most closely corresponds to its main business activity and the number of employees of the issuer (given as a range). Issuers will be familiar with NAICS codes from their income tax filings. The type of securities distributed must also be described using new three-letter codes.

The Proposed Report requires issuers to list all offering materials they are obligated to file or deliver in connection with the distribution (such as an offering memorandum). This obligation does not impose any new requirements to file or deliver offering documents.

For each investor, issuers will now have to specify the specific section, subsection, and paragraph of the applicable exemption, as well as the name of the person compensated for the distribution made to each purchaser and whether the purchaser is an insider or a registrant. This purchaser information is provided on a confidential basis.

As is currently the case in BC, the Proposed Report will require issuers to disclose the identity of insiders, registrants, or other individuals or entities being compensated as a result of the distribution.

Non-Reporting Issuers

Non-reporting issuers will have to provide information regarding their directors, executive officers, control persons and promoters, including their full residential addresses and details of the securities held by those individuals. Reporting issuers and their wholly owned subsidiaries, investment fund issuers, foreign public issuers and their wholly owned subsidiaries, and issuers distributing eligible foreign securities only to permitted clients are exempt from this disclosure.

Issuers without a SEDAR profile will have to disclose information including date of formation, financial year-end, jurisdictions where they are reporting, stock exchange listings, and size of assets.

Investment Funds

Currently, investment funds relying upon certain prospectus exemptions have the option to report annually within 30 days of their financial year-end instead of the 10 day post- distribution time limit that applies to other

issuers. In order to improve comparability and timeliness of information collected, the Proposed Amendments will also change the reporting deadline for investment funds to be within 30 days after the calendar year-end, i.e. January 30.

Investment fund issuers will also be required to identify their investment fund type, net asset value, date of formation, financial year-end, jurisdictions where they are reporting, and stock exchange listings.

Comment Period

While many issuers will be pleased they no longer have to submit separate reports for BC and rest of Canada, this convenience does come at the price of increased disclosure. The CSA is now seeking comments on the Proposed Amendments, including: whether they strike an appropriate balance between the benefits of collecting additional information and the ensuing compliance burden on issuers and underwriters; whether the standardized reporting mechanisms such as the use of NAICS codes or disclosure of number of employees are appropriate; and whether it is appropriate to have a single form for investment fund and non-investment fund issuers. The deadline for submitting comments to the CSA is October 13, 2015.

by Jason A. Chertin, David Andrews and Ehsan Wahidie, Student-at-Law

[] Issuers with a "substantial connection" to British Columbia must also file a report with the British Columbia Securities Commission, even if no securities were distributed in British Columbia.

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.

© McMillan LLP 2015