

CSA Staff Notice 45-325

Filing Requirement and Fee Payable for Exempt Distributions involving Fully Managed Accounts

February 7, 2019

Purpose

This notice is intended to clarify when Form 45-106F1 *Report of Exempt Distribution* (**Form 45-106F1**) of National Instrument 45-106 *Prospectus Exemptions* (**NI 45-106**) is required to be filed, and fees paid, for exempt distributions involving fully managed accounts.

Background

In 2016, the Canadian Securities Administrators (the **CSA**) introduced a streamlined and harmonized version of Form 45-106F1 as part of an effort to reduce the compliance burden for issuers and underwriters distributing securities under prospectus exemptions, while ensuring Form 45-106F1 continues to provide securities regulators with the necessary information to facilitate more effective regulatory oversight of the exempt market and improve analysis for policy development purposes.

Among other changes made, the reporting of exempt distributions involving fully managed accounts was simplified to reduce regulatory burden on issuers and underwriters. In all jurisdictions, Form 45-106F1 only requires issuers and underwriters to provide information on the trust company, trust corporation or registered adviser who had purchased securities on behalf of a fully managed account in item 7 and Schedule 1 and no longer requires information about the beneficial owners of the fully managed account.

While Form 45-106F1 has been harmonized, the requirement to file and pay filing fees for Form 45-106F1 continues to be governed by the securities legislation of each CSA jurisdiction.

Reporting requirement for exempt distributions involving fully managed accounts

Issuers and underwriters who rely on the accredited investor prospectus exemption (the **AI Exemption**) in section 2.3 of NI 45-106 to distribute securities are required to file a Form 45-106F1 within a prescribed timeframe.¹ An accredited investor includes:

- a trust company or trust corporation registered or authorized to carry on business under the *Trust and Loan Companies Act* (Canada) or under comparable legislation in a jurisdiction of

¹ In Ontario, the accredited investor exemption is set out under subsection 73.3(2) of the *Securities Act* (Ontario).

Canada or a foreign jurisdiction, acting on behalf of a fully managed account managed by the trust company or trust corporation;² and

- a person acting on behalf of a fully managed account managed by that person, if that person is registered or authorized to carry on business as an adviser or the equivalent under the securities legislation of a jurisdiction of Canada or a foreign issuer.³

Section 2.3(2) of NI 45-106 states that for the purpose of the AI Exemption, a trust company or trust corporation described in paragraph (p) of the definition of “accredited investor” in section 1.1 of NI 45-106 is deemed to be purchasing as principal. Similarly, section 2.3(4) of NI 45-106 states that for the purpose of the AI Exemption, a person described in paragraph (q) of the definition of “accredited investor” in section 1.1 of NI 45-106 is deemed to be purchasing as principal. Instruction 4 of Form 45-106F1 requires issuers and underwriters to provide information on the trust company, trust corporation or registered adviser who had purchased securities on behalf of a fully managed account and not the beneficial owners of the fully managed account.

Filing and Fee Requirements

In accordance with Instruction 1 of Form 45-106F1, if a distribution is made in more than one jurisdiction of Canada, the issuer may complete a single Form 45-106F1 and file it in each jurisdiction of Canada in which the distribution occurs. In order to determine the fee payable in each jurisdiction, please refer to Annex A.

In each jurisdiction other than Manitoba, Québec and Saskatchewan, the requirement to file Form 45-106F1 in respect of a distribution involving a fully managed account is based on the location of the trust company, trust corporation or registered adviser deemed to be purchasing the securities as principal in accordance with section 2.3(2) or 2.3(4) of NI 45-106, as applicable. The requirement to pay a fee in these jurisdictions is triggered by the requirement to file Form 45-106F1. Accordingly, there is no requirement to file Form 45-106F1 or to pay a fee in these jurisdictions based on the location of the beneficial owner of a fully managed account.

In Manitoba and Québec, the requirements to file Form 45-106F1 and pay fees are based on the location of the beneficial owner of a fully managed account. A Form 45-106F1 is not required to be filed in these jurisdictions if only the trust company, trust corporation or registered adviser who had purchased securities on behalf of a fully managed account is located in the jurisdiction and there are no beneficial owners in the jurisdiction. Because Form 45-106F1 does not require issuers to provide information on the beneficial owners of fully managed accounts, the regulators in these jurisdictions require that issuers file an accompanying letter with the Form 45-106F1 stating the gross value of securities distributed to beneficial owners located in those jurisdictions.

In Saskatchewan, the requirement to file Form 45-106F1 and pay a fee is based on the location of the distribution. This could mean that the form should be filed in Saskatchewan if the trust company, trust corporation or registered adviser who had purchased securities on behalf of a fully managed account and/or the beneficial owner of a fully managed account is located in Saskatchewan. The Financial and

² See paragraph (p) of the definition of “accredited investor” in section 1.1 of NI 45-106.

³ See paragraph (q) of the definition of “accredited investor” in section 1.1 of NI 45-106.

Consumer Affairs Authority of Saskatchewan has issued blanket relief to waive the filing requirements in respect of a distribution to the beneficial owner of a fully managed account where the trust company, trust corporation or registered adviser who had purchased securities on behalf of a fully managed account is not located in Saskatchewan. As no filing will be required in these cases, no fee is triggered.

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

Frederick Gerra

Senior Legal Counsel, Investment Funds and
Structured Products Branch
Ontario Securities Commission
416-204-4956
fgerra@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

Leslie Rose

Senior Legal Counsel, Corporate Finance
British Columbia Securities Commission
604-899-6654
lrose@bcsc.bc.ca

Sonne Udemgba

Deputy Director, Legal, Securities Division,
Financial and Consumer Affairs Authority of
Saskatchewan
306-787-5879
sonne.udemgba@gov.sk.ca

Yan Kiu Chan

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

Kevin Yang

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

Gabriel Chénard

Senior Policy Analyst, Investment Funds
Autorité des marchés financiers
514 395-0337 ext : 4482
gabriel.chenard@lautorite.qc.ca

Kristina Beauclair

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

Victoria Steeves

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

Wayne Bridgeman

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

Steven Weimer

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

Jack Jiang

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

Renée Dyer

Superintendent of Securities
Office of the Superintendent of Securities
Service NL
709-729-4909
ReneeDyer@gov.nl.ca

Thomas Hall

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

Ella-Jane Loomis

Senior Legal Counsel, Securities
Financial and Consumer Services Commission
(New Brunswick)
506-453-6591
ella-jane.loomis@fcnb.ca

Steven Dowling

Acting Director
Superintendent of Securities
Government of Prince Edward Island
902-368-4551
sddowling@gov.pe.ca

Rhonda Horte

Securities Officer
Office of the Yukon Superintendent of Securities
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

Annex A – Fee payable in each jurisdiction

How to determine the fee payable in each jurisdiction

- **In Alberta:** Please refer to Alberta Securities Commission Rule 13-501 Fees sec.11.
- **In British Columbia:** Please refer to Securities Regulation, B.C. Reg. 196/97, sec. 22, item 16(1).
- **In Manitoba:** Please refer to s.1(2)(z), Schedule A, of the Securities Regulation 491/88R.
- **In New Brunswick:** Please refer to sections 2.5 and 2.19 of Local Rule 11-501.
- **In Newfoundland and Labrador:** Please refer to section 7(2) of the fee schedule approved by s. 143 of the Securities Act.
- **In Nova Scotia:** Please refer to section 24, Appendix A, of Rule 11-508.
- **In Northwest Territories:** Please refer to Securities Fees Regulations R-066-2008 as amended, Schedule, Paragraph 1(p).
- **In Nunavut:** Please refer to Local Rule 31-504, Schedule A, Item (p).
- **In Ontario:** Please refer to Ontario Securities Commission Rule 13-502 *Fees*, Appendix C, Row B2.
- **In Prince Edward Island:** Please refer to the Schedule to the Securities Act.
- **In Québec:** Please refer to section 267(4) of Securities Regulation, CQLR, chapter V-1.1, r. 50. Fees are payable on the gross value of the securities distributed to beneficial owners located in Quebec.
- **In Saskatchewan:** Please refer to Appendix A - Table 1, s. 4(c) of The Securities Regulations.
- **In Yukon:** Please refer to Securities Fee Regulation, (O.I.C. 2009/66), Schedule 1, para. 1(p).