

## 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.<sup>1</sup> 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 Canada or a foreign jurisdiction, acting on behalf of a fully managed account managed by the trust company or trust corporation;<sup>2</sup> and

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

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

- 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.<sup>3</sup>

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 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,

---

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

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](mailto: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](mailto: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](mailto:gtsang@osc.gov.on.ca)

### **Jody-Ann Edman**

Assistant Manager, Financial Reporting  
British Columbia Securities Commission  
604-899-6698  
[jedman@bcsc.bc.ca](mailto:jedman@bcsc.bc.ca)

### **Leslie Rose**

Senior Legal Counsel, Corporate Finance  
British Columbia Securities Commission  
604-899-6654  
[lrose@bcsc.bc.ca](mailto: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](mailto:sonne.udemgba@gov.sk.ca)

### **Yan Kiu Chan**

Legal Counsel, Corporate Finance Branch  
Ontario Securities Commission  
416-204-8971  
[ychan@osc.gov.on.ca](mailto: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](mailto: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](mailto:gabriel.chenard@lautorite.qc.ca)

### **Kristina Beauclair**

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

### **Victoria Steeves**

Senior Legal Counsel, Corporate Finance  
British Columbia Securities Commission  
604-899-6791  
[vsteeves@bcsc.bc.ca](mailto:vsteeves@bcsc.bc.ca)

### **Wayne Bridgeman**

Deputy Director, Corporate Finance  
Manitoba Securities Commission  
204-945-4905  
[wayne.bridgeman@gov.mb.ca](mailto:wayne.bridgeman@gov.mb.ca)

**Steven Weimer**

Team Lead, Compliance, Data & Risk  
Alberta Securities Commission  
403-355-9035  
[steven.weimer@asc.ca](mailto:steven.weimer@asc.ca)

**Jack Jiang**

Securities Analyst, Corporate Finance  
Nova Scotia Securities Commission  
902-424-7059  
[jack.jiang@novascotia.ca](mailto:jack.jiang@novascotia.ca)

**Renée Dyer**

Superintendent of Securities  
Office of the Superintendent of Securities  
Service NL  
709-729-4909  
[ReneeDyer@gov.nl.ca](mailto: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](mailto: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](mailto:ella-jane.loomis@fcnb.ca)

**Steven Dowling**

Acting Director  
Superintendent of Securities  
Government of Prince Edward Island  
902-368-4551  
[sddowling@gov.pe.ca](mailto:sddowling@gov.pe.ca)

**Rhonda Horte**

Securities Officer  
Office of the Yukon Superintendent of Securities  
867-667-5466  
[rhonda.horte@gov.yk.ca](mailto:rhonda.horte@gov.yk.ca)

**Jeff Mason**

Superintendent of Securities  
Department of Justice  
Government of Nunavut  
867-975-6591  
[jmason@gov.nu.ca](mailto: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).