

AUGUST 2015

SECURITIES ALERT

Guidance on completing Form 45-106F1 Report of Exempt Distribution (“F1”)

Top 10 Tips for Success

Securities legislation prohibits issuers and underwriters from distributing securities without a prospectus for which a receipt has been issued. National Instrument 45-106 contains a number of exemptions from this prospectus requirement. Issuers or underwriters relying on certain of these prospectus exemptions must file an F1 in each applicable jurisdiction where the distribution takes place. Some (but not all) of these prospectus exemptions include:

- the accredited investor exemption
- the family, friends and business associates exemption
- the offering memorandum exemption
- the minimum amount investment exemption

The Canadian Securities Administrators recently issued a notice providing guidance on the most common issues observed in their review of F1s filed with them. The following observations will assist issuers, underwriters and their advisors in avoiding similar deficiencies when preparing and filing their F1.

- Use the correct form - The required form for a report of exempt distribution is the F1, except in British Columbia (BC), which introduced a new form of report of exempt distribution, Form 45-106F6 British Columbia Report of Exempt Distribution (“F6”). The filing of the F6 is only accepted in BC. If a distribution occurs in BC and elsewhere, the issuer or underwriter is required to file the F6 in BC and file the F1 in the other applicable jurisdictions. The F6 generally must be filed electronically.
- File the F1 on time - The deadline for filing the F1 is generally 10 days after the distribution.
- Pay the required fee - Issuers or underwriters must pay the applicable fee in each jurisdiction in which a distribution is made, when the report is filed.
- Include a complete list of purchasers -. If distributions are made in more than one jurisdiction, the issuer or underwriter must complete a single F1 identifying all purchasers, including purchasers that reside in the jurisdiction and those that do not, and file that report in each of the jurisdictions in which the distribution is made.
- Reconcile information in the F1 - Information in items 5, 6, and 7 of the F1 must reconcile with the information in Schedule I (see Instruction 5 of the F1).
- Correctly identify the number of purchasers - Item 7 of the F1 requires the total number of purchasers in each jurisdiction to be reported. The number of purchasers refers to the number of investors and not to the number of securities each purchaser purchased.
- Rely on proper and available exemptions - Issuers distributing in more than one jurisdiction should note that not all exemptions are available in all jurisdictions. An issuer or underwriter should indicate in Schedule I the appropriate exemption for each purchaser, including multiple exemptions for the same purchaser in circumstances where



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- the distribution is made in more than one jurisdiction and the same exemption is not available in all of those jurisdictions.
- Disclose all commissions and finder's fees - Item 8 of the F1 requires an issuer or underwriter to disclose compensation received or to be received by any person in connection with the distribution. Compensation includes commissions, discounts or other fees or payments of a similar nature, which result from a distribution of securities, regardless of what the payment is called. For example, a "brokerage fee" or "finance fee" for a syndicated mortgage is compensation in connection with a distribution.
 - Provide complete information regarding convertible or exchangeable securities distributed – including:
 - a description of the underlying security,
 - the terms of conversion or exercise, and
 - any expiry date.
 - Certify the F1 - An issuer or underwriter must include the date and the signature of the person identified as signing the F1 in the certificate section of the F1.

If issuers and underwriters follow these ten suggestions, an uneventful F1 filing should ensue.

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Contact us today and speak with a member of our securities law team.

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