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# SECURITIES ALERT

## Canadian Securities Administrators (“CSA”) Consider Amendments to Form 45-106F1 Report of Exempt Distribution (“F1”)

Comment period ends October 13, 2015

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 (except BC, which requires a different form – Form 45-106F6). 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 CSA recently published proposed amendments (the Proposed Amendments) to National Instrument 45-106 Prospectus Exemptions (NI 45-106) that would introduce a new harmonized F1 report (the “Proposed F1 Report”). For Alberta, Saskatchewan, Ontario and New Brunswick, the Proposed Amendments constitute a republication of the proposals previously published in March 2014. The Proposed F1 Report is intended to replace both the current F1 and the Form 45-106F6 required by BC.

The CSA indicates the Proposed Amendments are intended to:

1. reduce the compliance burden for issuers and underwriters by having one harmonized report of exempt distribution; and
2. provide securities regulators with the necessary information to facilitate more effective regulatory oversight of the exempt market and improve analysis for policy development purposes.

While there is merit to the thought that one harmonized report is better than the current requirement for two (if filing in BC) issuers may find the additional information requirements of the Proposed F1 report enough to offset any reduction in the compliance burden gained through simplified filing.

The Proposed F1 Report requires disclosure of further information that is not currently required in the F1, such as:

- details about the issuer, including its size and primary business activity,
- identities of the directors, executive officers, control persons and promoters of certain issuers,

- details about the securities distributed and, for certain jurisdictions, details about the documents provided in connection with the distribution,
- specific details about the exemptions relied on, both on an aggregate and per investor basis, and
- details about compensation paid to registrants, connected persons, insiders and employees of the issuer involved in the distribution.

Some of the above information will not be required in the Proposed F1 report where it is otherwise available to the public through SEDAR or other public disclosure.

In BC and Ontario, issuers are currently required to file the F1 electronically. The Proposed F1 Report is designed to be filed using the current filing systems available in these provinces. For multi-jurisdiction distributions, CSA is proposing that an issuer will be able to file the Proposed F1 Report by completing the OSC's electronic form and subsequently filing an electronic copy of the report generated by the OSC's system on both BCSC eServices and SEDAR. A longer-term CSA project is underway to create a single integrated filing system for reports of exempt distribution that would further reduce the regulatory burden on market participants. The integrated filing system is part of a larger and separate CSA systems renewal project.

The CSA proposal is now in a 60-day comment period ending on October 13, 2015. In the normal course of events, we would not expect any change to the current F1 or its BC equivalent until late 2015 or early 2016 at the earliest.

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

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