



CSA Change Report of Exempt Distribution

October 10, 2018

- On July 19, the Canadian Securities Administrators (CSA) announced the adoption of [amendments to Form 45-106F1 Report of Exempt Distribution](#) (Report) intended to address concerns expressed by foreign dealers in regards to the Report's certification requirements.
- The amendments [came into force](#) across the country on October 5, 2018.

Changes to Certification Requirements

Under the previous certification requirements, a director or officer of the issuer or underwriter filing the Report had to certify that he or she had read and understood the Report and that the information contained within it was true. As [we discussed in a previous post](#), the CSA proposed changes to the Report's certification requirements last year (the 2017 Proposal) that would (i) allow agents to sign the Report on behalf of the issuer, underwriter or investment fund manager; (ii) remove the warning statement regarding misrepresentations in the Report; and (iii) revise the certification wording to include a knowledge qualifier and recognize the existence of a due diligence defence.

The CSA have essentially adopted the 2017 Proposal in regards to certification requirements, with minor modifications to the instructions in regards to agents certifying the Report.

Changes to Information Requirements

As we previously discussed, a number of changes were also proposed to streamline the information required to be included in the Report. The 2017 Proposal included: (i) requiring filers to provide the name of the exchange on which the issuer's securities primarily trade rather than the names of all exchanges on which the issuer's securities are listed; (ii) only requiring that filers identify one of the exemption categories on which the issuer was relying, rather than having to identify all applicable exemptions; and (iii) amending Schedule 1 to allow issuers to indicate that they are distributing securities to non-individual permitted clients without indicating which category of accredited investor applied to such purchasers.

The final amendments essentially adopt the 2017 Proposal, with a number of additional changes. Changes to the 2017 Proposal include: (i) cryptoassets will now be included as an option when identifying the issuer's primary business activity under Item 5(a) of the Report; (ii) the wording under Item 5(g) of the Report has been changed to state that identification of the exchange on which the issuer's securities primarily trade only applies in the case of *equity* securities and not debt securities; (iii) cryptoassets will now be included as an identification option for investment funds under Item 6(b) of the Report; and (iv) amending National Instrument 45-106 *Prospectus Exemptions* to provide that only one Report is required in the case of co-issuers distributing the same security.

Changes to Related Guidance

In light of the amendments adopted, the CSA have also issued [a revised version of CSA Staff Notice 45-308](#), which provides guidance for preparing and filing the Report. The guidance includes answers to frequently asked questions regarding completion of the Report.

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