



Report of Exempt Distribution Certification and Information Requirements Revisited by the CSA

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The recently harmonized Form 45-106F1 *Report of Exempt Distribution* (Report) is once again in the spotlight as the Canadian Securities Administrators, other than the British Columbia Securities Commission, have published for comment [amendments to the certification and information requirements in the Report](#).

What's Being Proposed?

The bulk of the proposed amendments apply to Item 10 of the Report (the Certification) which requires that a director or officer of the issuer or underwriter filing the Report certify that he or she has read and understood the Report and that the information it contains is true. The proposed amendments to the Certification include:

- Adoption of a **corporate-style signature block**, clarifying that the individual signing the Report is doing so on behalf of the issuer, underwriter, investment fund manager or agent on behalf of whom the Report is being filed and not in his or her personal capacity;
- The **replacement of the capitalized warning statement** regarding misrepresentations contained in the Report with a reminder of the obligation to file the Report; and
- A **newknowledge qualifier** with respect to the information being provide in the Report in recognition of the due diligence defence under securities legislation.

Additional amendments have been proposed in respect of the remainder of the Report and its schedules:

- Filers would only be required to provide the name of the issuer's primary exchange rather than the names of all exchange on which the issuer's securities are listed.
- Only one exemption from the requirement to include information about directors, executive officers and promoters of the issuer would have to be identified, if applicable, as opposed to identifying all applicable exemptions.
- Schedule 1 would be amended to allow issuers to indicate that they are distributing securities to non-individual permitted clients without indicating which category of accredited investor applies to such purchasers.
- The [relief previously granted to certain foreign issuers](#) from the requirement to report whether a purchaser is a registrant and/or an insider of the issuer would be formalized in the Report.

Additional housekeeping amendments are also being proposed.

Background

In [force since June 2016](#), the Report replaced the prior version of Form 45-106F1 *Report of Exempt Distribution* and Form 45-106F6 *British Columbia Report of Exempt Distribution* in an effort to harmonize post-trade disclosure across Canada. Shortly after its adoption, concerns were raised by international market participants regarding certain of the information required by the Report and the Certification. In response to these concerns, relief was granted to foreign issuers from certain of the information requirements in July 2016; however, filers have continued to experience difficulties in respect of the Certification which have impacted access to foreign investment opportunities for Canadian institutional investors.

Further Information

The CSA is seeking comments on the proposed amendments which may be submitted in writing on or before September 6, 2017. For further information, please see [CSA Multilateral Notice and Request for Comment Proposed Amendments to National Instrument 45-106 Prospectus Exemptions relating to Reports of Exempt Distribution](#) (June 8, 2017).

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