



## British Columbia to require more disclosure on private placement purchasers

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On August 11, the British Columbia Securities Commission (BCSC) published [advanced notice](#) that effective October 3, 2011, it will require expanded disclosure about purchasers purchasing securities in the exempt market. Breaking with its counterparts in other Canadian jurisdictions, the BCSC has determined that the need for increased disclosure about the exempt market in British Columbia warrants a “local response.” The BCSC has therefore adopted a [new Form 45-106F6](#) (BC Form) as its own form of report for certain prospectus exempt distributions (private placements) in British Columbia in lieu of the existing form used in all other Canadian jurisdictions ([Form 45-106F1](#)).

The BC Form expands the disclosure that is required under Form 45-106F1 in a number of ways.

- For issuers that are not reporting issuers in any jurisdiction of Canada (private companies), the BC Form requires disclosure of the name, municipality and country of residence for *each insider and promoter of the issuer*, including details regarding their insider or promoter status and total securityholdings in the issuer, as well as the price paid for all securities held by the insider or promoter on the distribution date, including both previously held securities and securities purchased in the distribution subject to the report. This information must be supplied in the main body of the report itself (as opposed to the Schedules) which means it is publicly available in electronic form. For insiders and promoters that are not individuals, disclosure is required in respect of their directors or officers.
- For all issuers, public and private, disclosure is required as to whether purchasers are insiders or registrants, as well as their names and addresses, the number and type of securities purchased, total purchase price paid, exemption relied upon and the date of the distribution.
  - For non-individual purchasers (i.e. corporations, trusts, etc.) this information, including the name and telephone number of their contact person, is included in the body of the report and will be publicly available in electronic form.
  - For purchasers who are individuals, the name, insider or registrant status, number and type of securities purchased, total purchase price paid and distribution date are contained in Schedule I, which information is made available for public inspection at the BCSC’s offices in paper format only. Schedule II, containing the residential

address, telephone number and exemption relied upon for individual purchasers will not be publicly available in either electronic or paper format.

- Information on whether any person receiving compensation (either commission or finders fees) in connection with the distribution is an insider or a registrant will also be required and publicly available.

In addition to expanding the nature of disclosure required, the BC Form differs from existing reporting requirements under Form 45-106F1 in that under Form 45-106F1, the name, address and telephone number of the purchaser (individual and non-individual), as well as the number of securities purchased, purchase price paid and exemption relied upon are contained in Schedule I and is information that is not placed in the public file by any securities regulator. To address privacy concerns, the BCSC has inserted a [provision](#) into [National Instrument 45-106 Prospectus and Registration Exemptions \(NI 45-106\)](#) and [the BC Form itself](#) prohibiting any person from using the information contained in Schedule I for any purpose other than research concerning the issuer for the person's own investment purpose. NI 45-106 will also contain transition provisions to permit the filing of the existing Form 45-106F1 for (i) distributions made in British Columbia between September 23, 2011 and October 3, 2011 (i.e. the ten days preceding the implementation date of the BC Form), and (ii) investment funds making distributions during the financial year in which the BC Form comes into force, provided the form is filed no later than 30 days after the end of that financial year.

Notably for investment funds, the BC Form requires the filer to disclose the jurisdiction(s) where the manager of the investment fund is registered if it is registered in Canada. If the manager is a Canadian registrant, the fund is exempt from providing information regarding the insiders and promoters of the issuer or regarding the purchasers (as described in the first two paragraphs above), regardless of whether the fund is a reporting issuer. Such funds will therefore be exempt from most of the expanded reporting requirements under the BC Form (and be required to provide less disclosure in B.C. as compared to the Form 45-106F1 filed elsewhere), with the BCSC stating that "they have not seen problems in the exempt market involving this category of issuer."

A single harmonized form for reporting private placements has been in place in Canada for a number of years under Form 45-106F1. Effective October 3, 2011, a separate filing on the BC Form will be required for all distributions taking place in British Columbia. Due to the approach taken in the British Columbia securities legislation as to when a distribution takes place in that province, the BC Form will need to be filed not only if purchasers are resident there, but also in respect of all purchasers (in any jurisdiction) where the distribution is made by an issuer with a "significant connection" to British Columbia.

The proposal to expand exempt market reporting in British Columbia was first published for public comment in September of 2010 and received 39 comments. In breaking with its counterparts in other jurisdictions by introducing the enhanced BC Form, the BCSC believes that increasing transparency in the exempt market helps investors by providing them with greater information to assist in conducting due diligence on issuers, thereby levelling the playing field with the insiders and promoters of an issuer. It will be interesting to observe over the coming months whether enhancing disclosure for the benefit of investors will in fact be a disadvantage for those same investors on account of the chilling effect it may have on distributions in British Columbia. Non-reporting issuers in particular, whose insiders and promoters may be sensitive to public disclosure of their ownership interests, may choose to look at other options. While the BCSC did consider the privacy interests of purchasers, concluding that only about 5% of the capital raised in British Columbia would be at risk as a result of the privacy concerns of high-net worth purchasers, it appears not to have turned its attention to the impact on the issuers themselves, who may think twice before extending investment opportunities to *any* British Columbia purchasers. It should be kept in mind, however, that an exempt distribution report on the BC Form and on Form 45-106F1 is only required for distributions effected pursuant to prescribed prospectus exemptions, such as the "accredited investor" and the "\$150,000 minimum investment amount" exemptions. Other exemptions, including the "private issuer" exemption (which private companies may rely on provided they meet the prescribed conditions) are not subject to a post-trade filing requirement.

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