

**Multilateral CSA Notice of Publication and Request for Comment
Proposed Amendments to
National Instrument 45-106 *Prospectus and Registration Exemptions*
Relating to the Offering Memorandum Exemption
and in Alberta, New Brunswick and Saskatchewan,
Reports of Exempt Distribution**

March 20, 2014

Introduction

Each of the Alberta Securities Commission (**ASC**), Autorité des marchés financiers (**AMF**), Financial and Consumer Affairs Authority of Saskatchewan (**FCAA**) and Financial and Consumer Services Commission (New Brunswick) (**FCNB**) (collectively, the **Participating Jurisdictions** or **we**) are publishing for a 90-day comment period proposed amendments (the **Proposed Amendments**) to National Instrument 45-106 *Prospectus and Registration Exemptions* (**NI 45-106**) primarily relating to the current offering memorandum (**OM**) prospectus exemption (**OM Exemption**) in section 2.9 of NI 45-106.

In addition, the ASC, FCAA and FCNB are also publishing for a 90-day comment period, two new proposed forms of report of exempt distribution (**Exempt Distribution Reports**).

The Ontario Securities Commission (**OSC**) is concurrently publishing proposals relating to the OM Exemption and Exempt Distribution Reports.

Staff of the Participating Jurisdictions and the OSC have coordinated their efforts in developing proposals relating to the OM Exemption and, as applicable, the Exempt Distribution Reports.

Although there is a significant degree of alignment among the jurisdictions proposing changes to the OM Exemption, the FCNB and OSC are proposing a somewhat different version than that being proposed by the AMF, ASC and FCAA. Both versions are reflected in the Proposed Amendments published with this Notice. Refer to Annex C to this Notice for more information regarding the FCNB proposal.

The OM Exemption is an exemption designed to facilitate early stage and small business financing. Not surprisingly, this type of financing often tends to be quite local in nature. Consequently, differences in approach among jurisdictions can very appropriately reflect differences in local capital markets. However, harmonized securities regulation continues to be a goal of the members of the CSA and we are therefore interested in public comment on both the relative merits of the different approaches to the OM Exemption and the extent to which harmonization needs to be a priority in this area of securities regulation.

The content of the proposed new Exempt Distribution Reports are harmonized as among the ASC, FCAA, FCNB and OSC; however, in Ontario, the forms will be required to be submitted electronically.

In addition to proposing an OM Exemption and new Exempt Distribution Reports, the OSC's publication also proposes two prospectus exemptions that already exist, although in a somewhat different form, in each of the other CSA jurisdictions, i.e., the family, friends and business associates exemption and the existing security holder exemption.

Although the text of the Proposed Amendments includes the OSC's proposed changes to the family, friends and business associates (**FFBA**) exemption in section 2.5 of NI 45-106, it reflects that the Participating Jurisdictions are not proposing to adopt the OSC's proposed variations to the exemption at this time and are maintaining the current form of FFBA exemption.

Effective March 13, 2014, a harmonized existing security holder exemption, published under Multilateral CSA Notice 45-313 *Prospectus Exemption for Distributions to Existing Security Holders* was adopted in all jurisdictions of the CSA other than the Newfoundland and Labrador and Ontario through local blanket orders or rules. The OSC's proposed existing security holder exemption is very similar to the version existing in the other CSA jurisdictions but does propose some modifications.

We are interested in public comment in respect of the OSC's proposed variations on the FFBA exemption and the existing security holder exemption.

Concurrently with publication of this notice, various members of the CSA, including the Participating Jurisdictions other than the ASC, have published for comment one or more proposed prospectus exemptions and associated dealer registration or dealer registration exemption proposals with respect to securities-based crowdfunding. Although the ASC has not published those proposals, the ASC will be considering the public comment in respect of them.

The text of the Proposed Amendments is in Annex A of this notice and will be available on websites of the Participating Jurisdictions at:

www.albertasecurities.com
www.fcaa.gov.sk.ca
www.fcnb.ca/securities_1.html
www.lautorite.qc.ca

In Alberta, New Brunswick and Saskatchewan, the proposed Reports of Exempt Distribution are also included in Annex A.

Substance and Purpose

Proposed amendments

In Alberta, Québec and Saskatchewan, the Proposed Amendments contemplate the following:

- to limit the risks associated with an investment by a retail investor in illiquid securities, new caps on the aggregate amount that can be sold to any one investor under the OM Exemption in a 12 month period have been proposed:
 - \$10,000 in respect of all investors who are not eligible investors; and

- \$30,000 in respect of investors who are individuals that are not accredited investors and who do not qualify as specified family members, close personal friends or close business associates under the FFBA exemption;
- to provide investors with the same rights of action in respect of all disclosure made in relation to a distribution under the OM Exemption, a requirement that all marketing materials relating to a distribution under an offering memorandum be deemed to form part of an offering memorandum and be required to be incorporated by reference; and
- to provide investors with an opportunity to monitor the use by an issuer of the funds it raises, a requirement that an issuer provide ongoing annual audited financial statements and specified disclosure of its use of proceeds derived from distributions under the OM Exemption.

Reports of exempt distribution

In order to enhance the ability to monitor use of capital-raising prospectus exemptions and the parties involved in them and to better inform their policy-making, the ASC, FCAA and FCNB are proposing two new Exempt Distribution Reports, one in respect of investment funds and one in respect of other issuers. These Exempt Distribution Reports would replace the current Form 45-106F1 *Report of Exempt Distribution (Form 45-106F1)*. The proposed Exempt Distribution Reports are harmonized with the electronic forms being proposed by the OSC.

For distributions under certain exemptions (including the accredited investor and minimum amount exemptions), investment funds currently have the option to report annually within 30 days after their financial year-end instead of within 10 days after a distribution. The ASC, FCAA and FCNB are proposing to increase the alternative frequency of the filing requirement for investment funds from annually to quarterly within 30 days after each calendar quarter. This corresponds with the proposal of the OSC.

Although the ASC and FCAA are proposing to adopt these two new forms of Exempt Distribution Report, to alleviate the potential regulatory burden to an issuer when having to file multiple types of forms in multiple jurisdictions, the ASC and FCAA are proposing to permit, in certain circumstances, for a transitional period, the current Form 45-106F1 to be filed.

Differences from FCNB and OSC proposals

The proposals of the FCNB and OSC in respect of the OM Exemption are very similar to the proposals of the AMF, ASC and FCAA; however, the FCNB and OSC proposals contain certain variations, including:

- that an issuer using the OM Exemption cannot be an investment fund or related to a registrant involved in the offering;
- a different definition of “eligible investor” which contemplates,
 - a change in the net asset test in respect of an individual, and
 - removal of the net income test for non-individuals;

- that an issuer that uses the OM Exemption must provide notice of certain significant events to its security holders, within 10 days of occurrence; and
- a different form of risk acknowledgement which will only be required to be obtained from individuals who are not permitted clients.

The AMF, ASC and FCAA are not proposing to adopt this new form of risk acknowledgement proposed by the FCNB and OSC; however, to avoid requiring issuers to use different forms in different circumstances, the ASC proposes to allow that form to be used in certain circumstances.

Although the AMF, ASC and FCAA are not proposing to adopt the variations to the OM Exemption proposed by the FCNB and OSC, we are interested in feedback in respect of them and will consider the comments in exploring further areas of harmonization.

The OSC is also publishing proposed changes to Companion Policy 45-106CP. The Participating Jurisdictions are not publishing the proposed changes to the companion policy at this time; however, during the comment period we will be considering the OSC's proposed changes with the goal of ultimately publishing a harmonized Companion Policy 45-106CP.

Next steps

We contemplate a two-phased approach to amending the OM Exemption. In this first phase, we propose to change the terms of the prospectus exemption. In the second phase, our goal is that members of the CSA engage in revisiting both the offering memorandum form disclosure requirements and work towards a harmonized risk acknowledgement form.

Background

The Participating Jurisdictions have been reviewing use of the OM Exemption in their respective jurisdictions and have worked with staff of the OSC in developing the Proposed Amendments and, in Alberta, New Brunswick and Saskatchewan, the Exempt Distribution Reports.

Further information regarding the local experience with the OM Exemption in each of Alberta, Québec and Saskatchewan is set out in Annex B to this Notice.

Summary of the Proposed Amendments

A summary of the Proposed Amendments in New Brunswick is set out in Annex C to this Notice. Unless otherwise stated, the following is only a summary of the Proposed Amendments in Alberta, Québec and Saskatchewan.

Eligible investor test

The AMF, ASC and FCAA are not currently proposing a change to the “eligible investor” definition.

Currently, one of the ways an investor can qualify as “eligible investor” is if his or her net assets are at least \$400,000. Based on Statistics Canada data it would appear that if investors are qualifying as “eligible investors” based on a net asset test, there are very few who could do so

without including their principal residence. To reduce the risk to individuals with incomes below \$75,000 mortgaging their homes to invest in exempt market securities, we considered excluding an investor's principal residence from the net asset test and have considered whether, in that case, the net asset threshold should be adjusted.

After further consideration, the AMF, ASC and FCAA determined not to propose excluding principal residence at this time but instead are seeking public feedback on this matter. Factors that influenced that decision include the following:

- the \$30,000 investment cap, discussed below, limits the potential exposure of an investor to a risky investment;
- excluding principal residence may treat investors with similar net worth differently depending upon the types of assets they choose to hold; and
- implications to capital raising.

We anticipate conducting further research and analysis in respect of the implications of excluding principal residence.

Annual limits on distributions to investors

Non-eligible investors

Currently, distributions to investors who do not qualify as “eligible investors” are subject to a \$10,000 limit per distribution¹. The AMF, ASC and FCAA are proposing to revise this requirement so that the limit is not per distribution but rather an aggregate limit that would apply to investments in any issuer by an investor under the OM Exemption in the preceding 12 month period.

Investors will continue to be able to qualify as “eligible investors” on the basis of investment advice from an investment dealer.

The introduction of a 12 month limit as opposed to a per distribution limit is intended to address concerns that the purpose of the \$10,000 cap may, in some cases, be circumvented by non-eligible investors investing in excess of \$10,000 through successive investments in the same or related issuers.

Eligible investors

Currently, there is no limit on the amount that an eligible investor can invest. Based on a review of investments under the OM Exemption in Alberta over a two year period, the median total annual investment by eligible investors under the OM Exemption is less than \$30,000. However, in some cases, investors made very significant investments in a year.

¹ The FCNB and OSC proposals contemplate that this limit would only apply to individuals.

The AMF, ASC and FCAA propose to impose a \$30,000 limit on the amount that can be raised by an issuer from an eligible investor who is *an individual*. The calculation of the \$30,000 would include investments in any issuer by an individual investor under the OM Exemption in the preceding 12 months. A \$30,000 annual investment represents a significant portion of the net income or net assets of an individual that is not an accredited investor.

In calculating this limit, investments made under other prospectus exemptions would not be counted and this limit will not apply to individuals investing under the OM Exemption who would qualify to invest under the accredited investor or FFBA exemption². The limit will also not apply to non-individual eligible investors, such as companies. They will continue to be able to invest an unlimited amount under the OM Exemption.

Marketing materials

The Participating Jurisdictions have proposed that any marketing materials used in connection with a distribution under the OM Exemption be incorporated by reference into the OM so that there is statutory liability for a misrepresentation. We have included a definition of marketing materials in the Proposed Amendments. The AMF, ASC and FCAA have proposed that the marketing materials be filed with securities regulators³.

Ongoing annual disclosure

When the OM Exemption was first being considered for adoption, some form of ongoing financial disclosure requirement was considered. However, we concluded that it was not necessary as we thought most small issuers would be subject to annual financial statement requirements under applicable corporate law. This assumption has proven inaccurate. Many issuers using the OM Exemption are not organized under business corporation's statutes and are not subject to an annual financial statement requirement.

In the absence of financial statements, security holders are unable to assess how the financing proceeds have been used. Accordingly, the Participating Jurisdictions have proposed a requirement that an issuer relying on the OM Exemption prepare annual financial statements within 120 days of its financial year end. We also propose that a discussion of the use of proceeds accompany the financial statements.

This ongoing disclosure would be required to be filed with securities regulators in Alberta, Québec and Saskatchewan and either provided to or made available to security holders, e.g., through a website. Although we are contemplating a filing requirement, because these issuers would not be reporting issuers we will consider keeping them private and are reviewing alternatives in that regard⁴. With respect to making the disclosure available to security holders, we contemplate that an issuer could use a password protected website to give security holders access to the disclosure without making the disclosure generally publicly available. We have

² The FCNB and OSC proposals do not contemplate that an individual who qualifies under the FFBA exemption could exceed the cap under the OM Exemption. However, those individuals could continue to invest under the applicable FFBA exemption.

³ The FCNB and OSC proposals contemplate that these documents be delivered to securities regulatory authorities.

⁴ The FCNB and OSC proposals contemplate that these documents be delivered to securities regulatory authorities.

proposed that this ongoing disclosure requirement continue until the earlier of the issuer (1) becoming a reporting issuer and (2) ceasing to carry on business.

The goal of the AMF, ASC and FCAA in requiring this ongoing disclosure is not to create a quasi-reporting issuer regime. We recognize most users of the OM Exemption are non-reporting issuers and that therefore securities acquired by investors are subject to indefinite resale restrictions and there is very limited ability for a security holder to resell securities in these circumstances. Consequently the rationale for requiring this ongoing disclosure is not to provide security holders with the information on which to make an informed investment decision. We contemplate the ongoing disclosure as a means of introducing accountability to issuers that rely on the OM Exemption with respect to the use of proceeds. It also creates a level playing field so that there is not an incentive to use a non-corporate structure to avoid reporting obligations.

The Participating Jurisdictions have proposed that the annual financial statements be audited and that the issuer be required to comply, as if it were a reporting issuer, with either:

- Part 4.1 of National Instrument 51-102 *Continuous Disclosure Obligations* and National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards* for an issuer that is not an investment fund; or
- in Alberta, Québec or Saskatchewan, National Instrument 81-106 *Investment Fund Continuous Disclosure* for an issuer that is an investment fund⁵.

This means that the annual financial statements will generally be required to be prepared in accordance with International Financial Reporting Standards (**IFRS**). This approach to ongoing financial statement disclosure is consistent with what is required of an issuer when preparing financial statements for inclusion in an OM. Similarly, the requirement to have the ongoing financial statements audited is also consistent with the annual financial statement requirements in the OM form and the requirements under corporate law in some jurisdictions.

We are mindful of the fact that additional continuous disclosure obligations increase the cost of using the OM Exemption, reducing the cost benefit intended to be associated with it. We are interested in public comment on the cost implications of such requirements.

Limits on types of securities

The Participating Jurisdictions propose to restrict the OM Exemption so that it is not available for the distribution of complex securities, i.e., specified derivatives and structured finance products⁶. This reflects the policy objectives of the exemption, i.e., focusing on financing efforts of small businesses and providing retail investors with a simplified plain language disclosure document describing the business and associated risks.

Reports of exempt distribution

The ASC, FCAA and FCNB are proposing to adopt two new forms of Exempt Distribution Report, Form 45-106F10 for investment funds and Form 45-106F11 for other issuers. These proposed Exempt Distribution Reports have been harmonized with the disclosure requirements

⁵ The FCNB and OSC propose to make the exemption unavailable to investment funds.

⁶ The FCNB and OSC contemplate additional restrictions e.g., excluding investment funds.

proposed by the OSC. The mechanism for submitting the information will differ from the OSC as the OSC will require the forms to be filed electronically through the OSC's electronic filing system.

For distributions under certain exemptions (including the accredited investor and minimum amount exemptions), investment funds currently have the option to report annually within 30 days after their financial year-end instead of within 10 days after a distribution. The ASC, FCAA and FCNB are proposing to increase the alternative frequency of the filing requirement for investment funds from annually to quarterly within 30 days after each calendar quarter. This corresponds with the proposal of the OSC.

The ASC and FCAA recognize that the addition of new forms of Exempt Distribution Reports could increase the regulatory burden for issuers conducting distributions in multiple jurisdictions. In order to alleviate this additional burden the ASC and FCAA are proposing for an interim period to accept an Exempt Distribution Report in the current Form 45-106F1 if the distribution is also in a jurisdiction that continues to require Form 45-106F1. We are reviewing whether we can also accept the Form 45-106F6 required to be filed in British Columbia.

The AMF is not proposing at this time to adopt the new forms of Exempt Distribution Reports or to make any changes to the filing deadline for the filing of Exempt Distribution Reports by investment funds. However, the AMF is interested in feedback in respect of these proposals.

In phase 2, we hope to seek further harmonization within the CSA in respect of Exempt Distribution Reports.

Questions on Proposed Amendments

We would appreciate feedback on the Proposed Amendments generally, as well as on the following questions:

1. Under the current framework in Alberta, Québec and Saskatchewan, both individual and non-individual investors are subject to the \$10,000 annual investment limit if they do not meet the definition of an eligible investor. Should non-individual investors, such as companies, be subject to the \$10,000 limit if they do not qualify as an eligible investor? Please explain.
2. Are there circumstances where it would be suitable for an individual eligible investor who is not an accredited investor and not eligible to invest under the FFBA exemption to invest more than \$30,000 per year under the OM Exemption? If so, please describe them.
3. Given the costs associated with doing so, how likely is it that an individual would create a corporation or other entity to circumvent the \$30,000 cap?
4. Investors who do not qualify as eligible investors based on net income or net assets can qualify as eligible investors on the basis of advice from a registered investment dealer. In what circumstances do investors actually seek and receive advice from a registered investment dealer? Does this introduce any complications or difficulties?

5. The eligible investor definition includes persons that have a net income of \$75,000 and persons that have net assets of \$400,000. These income and asset thresholds currently apply equally to individual and non-individual investors, such as companies.
 - a. Should the \$75,000 income threshold only apply to individuals? If so, please explain.
 - b. Should the net asset amount exclude the value of the principal residence for individual investors? If so, should the \$400,000 net asset threshold be lowered as a result?
 - c. Should pensions be included in the net asset test under the OM Exemption? Please provide the basis for your answer.
6. The FCAA would appreciate feedback on whether lawyers and public accountants should continue to be considered “eligibility advisers” in Saskatchewan for purposes of the OM Exemption? Please provide the basis for your opinion.
7. How common is it for an issuer that relies on the OM Exemption to make annual financial statements available to security holders?
 - a. How is this done? Are they delivered?
 - b. Are those financial statements typically audited?
 - c. If the financial statements are not typically audited, is there an auditor involved and, if so, what standard of engagement is typically applied?
 - d. Do issuers that prepared financial statements in accordance with IFRS for inclusion in their OMs typically continue to prepare financial statements in accordance with IFRS or do they transition to generally accepted accounting principles for private enterprises (ASPE)?
 - e. Is it common for security holders to request annual financial statements? Do they request audited financial statements?
 - f. What do you estimate as the annual cost of preparing the proposed audited annual financial statements?
 - g. Do you anticipate that issuers will mail annual financial statements to security holders or place them on a website?
 - h. What do you estimate as the cost of making annual financial statements available to security holders?

8. Under the Proposed Amendments, issuers relying on the OM Exemption would be required to deliver annual financial statements until the issuer either becomes a reporting issuer or ceases to carry on business. Are there other situations when it would be appropriate to no longer require ongoing annual financial statements for such issuers? If so, please describe them.
9. How do issuers relying on the OM Exemption typically communicate with their security holders? Do they maintain websites?
10. Should issuers be permitted to cease providing annual financial statements to their security holders after proceeds of a distribution are fully spent? If so, is there a period of time after which it is reasonable to assume that the proceeds of a distribution under the OM Exemption will have been fully spent?
11. Should non-individual investors (e.g., companies or trusts) be required to sign a risk acknowledgment form? Please explain.
12. Should “permitted clients⁷”, as defined in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Obligations* be required to sign a risk acknowledgement form? Please explain.
13. Should non-redeemable investment funds continue to be permitted to use the OM Exemption?
14. Are there certain types of issuers that should be excluded from using the OM Exemption?
15. Should issuers that are related to registrants that are involved in the sale of the issuer’s securities under the OM Exemption be permitted to continue using the OM Exemption?
16. Currently, most CSA jurisdictions that have an OM Exemption have adopted local blanket orders that permit an issuer to raise up to \$500,000 under the OM Exemption without having to include audited financial statements in the OM. Further, the blanket orders permit the financial statements to be prepared in accordance with ASPE rather than IFRS.
 - (a) Should these blanket orders be continued or revoked? Please provide the basis for your answer.
 - (b) If you believe the blanket orders should be continued, should the same threshold amount be used in determining which issuers are subject to an ongoing annual

⁷ The term permitted client is defined similarly to the term “accredited investor” but imposes higher financial thresholds, for example, in order to qualify as an accredited investor based on assets an individual would require \$1 million in net realizable financial assets. To qualify as a permitted client the individual would require \$5 million in net realizable financial assets.

financial statement requirement or an audit requirement? Please provide the basis for your answer.

Request for comments

We welcome all comments on the Proposed Amendments and the proposed Exempt Distribution Reports.

Please submit your comments in writing on or before **June 18, 2014**. If you are not sending your comments by email, please send a CD containing the submissions (in Microsoft Word format).

Please note that comments received will be made publicly available and posted on the websites of the AMF at www.lautorite.qc.ca and the ASC at www.albertasecurities.com and may be posted on the websites of certain other securities regulatory authorities. You should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

Please **address** your submission as follows:

Alberta Securities Commission
Autorité des marchés financiers
Financial and Consumer Affairs Authority of Saskatchewan

Please **deliver** your comments **only** to the two addresses below. Your comments will be distributed to the other participating jurisdictions.

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Contents of Annexes

The following annexes form part of this Notice:

Annex A – Proposed Amendments to National Instrument 45-106 *Prospectus and Registration Exemptions*, including;

- Form 45-106F10 *Report of Exempt Distribution for Investment Fund Issuers (Alberta, New Brunswick, Ontario and Saskatchewan)*;
- Form 45-106F11 *Report of Exempt Distribution for Issuers Other than Investment Funds (Alberta, New Brunswick, Ontario and Saskatchewan)*; and
- Proposed Form 45-106F13 *Risk Acknowledgement Form For Offering memorandum Investors (New Brunswick And Ontario)*

Annex B – Background – Local experience with OM Exemption

Annex C – Local Matters – New Brunswick

4. Questions

Please refer your questions to any of the following:

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Annex A

Proposed Amendments to National Instrument 45-106 *Prospectus and Registration Exemptions*

1. *National Instrument 45-106 Prospectus and Registration Exemptions is amended by this Instrument.*
2. *Section 1 is amended by replacing the definition of “eligible investor” with the following:*

“eligible investor” means

- (a) except in New Brunswick and Ontario, a person whose
 - (i) net assets, alone or with a spouse, in the case of an individual, exceed \$400 000,
 - (ii) net income before taxes exceeded \$75 000 in each of the 2 most recent calendar years and who reasonably expects to exceed that level in the current calendar year, or
 - (iii) net income before taxes, alone or with a spouse, in the case of an individual, exceeded \$125 000 in each of the 2 most recent calendar years and who reasonably expects to exceed that income level in the current calendar year,
- (a.1) in New Brunswick and Ontario
 - (i) a person, other than an individual, whose net assets exceed \$400 000,
 - (ii) an individual whose net assets, alone or with a spouse, exceed \$250 000, excluding the value of the individual’s primary residence,
 - (iii) an individual whose net income before taxes exceeded \$75 000 in each of the 2 most recent calendar years and who reasonably expects to exceed that income level in the current calendar year, or
 - (iv) an individual whose net income before taxes, alone or with a spouse, exceeded \$125 000 in each of the 2 most recent calendar years and who reasonably expects to exceed that income level in the current calendar year,

- (b) a person of which a majority of the voting securities are beneficially owned by eligible investors, or a majority of the directors are eligible investors,
- (c) a general partnership of which all of the partners are eligible investors,
- (d) a limited partnership of which the majority of the general partners are eligible investors,
- (e) a trust or estate in which all of the beneficiaries or a majority of the trustees or executors are eligible investors,
- (f) an accredited investor,
- (g) a person described in section 2.5(1) [*Family, friends and business associates*], or
- (h) a person that has obtained advice regarding the suitability of the investment and, if the person is resident in a jurisdiction of Canada, that advice has been obtained from an eligibility adviser;

3. ***The Instrument is amended by adding the following section:***

1.1.1 In this Instrument, in Alberta, New Brunswick, Ontario, Québec, and Saskatchewan:

“OM marketing materials” means a written communication, other than an OM standard term sheet, intended for prospective purchasers regarding a distribution of securities under an offering memorandum that contains material facts relating to an issuer, securities or an offering;

“OM standard term sheet” means a written communication intended for prospective purchasers regarding a distribution of securities under an offering memorandum that

- (a) is dated,
- (b) includes the following legend, or words to the same effect, on the first page:

“This document does not provide disclosure of all information required for an investor to make an informed investment decision. Investors should read the offering memorandum, especially the risk factors relating to the securities offered, before making an investment decision.”,

- (c) contains only the following information in respect of the issuer, the securities or the offering:
- (i) the name of the issuer;
 - (ii) the jurisdiction or foreign jurisdiction in which the issuer's head office is located;
 - (iii) the statute under which the issuer is incorporated, continued or organized or, if the issuer is an unincorporated entity, the laws of the jurisdiction or foreign jurisdiction under which it is established and exists;
 - (iv) a brief description of the business of the issuer;
 - (v) a brief description of the securities;
 - (vi) the price or price range of the securities;
 - (vii) the total number or dollar amount of the securities, or range of the total number or dollar amount of the securities;
 - (viii) the names of any agent, finder or other intermediary, whether registered or not, involved with the offering and the amount of any commission, fee or discount payable to them;
 - (ix) the proposed or expected closing date of the offering;
 - (x) a brief description of the use of proceeds;
 - (xi) the exchange on which the securities are proposed to be listed, if any, provided that the OM standard term sheet complies with the requirements of securities legislation for listing representations;
 - (xii) in the case of debt securities, the maturity date of the debt securities and a brief description of any interest payable on the debt securities;
 - (xiii) in the case of preferred shares, a brief description of any dividends payable on the securities;
 - (xiv) in the case of convertible securities, a brief description of the underlying securities into which the convertible securities are convertible;

- (xv) in the case of exchangeable securities, a brief description of the underlying securities into which the exchangeable securities are exchangeable;
 - (xvi) in the case of restricted securities, a brief description of the restriction;
 - (xvii) in the case of securities for which a credit supporter has provided a guarantee or alternative credit support, a brief description of the credit supporter and the guarantee or alternative credit support provided;
 - (xviii) whether the securities are redeemable or retractable;
 - (xix) a statement that the securities are eligible, or are expected to be eligible, for investment in registered retirement savings plans, tax-free savings accounts or other registered plans, if the issuer has received, or reasonably expects to receive, a legal opinion that the securities are so eligible;
 - (xx) contact information for the issuer or any registrant involved, and
- (d) for the purposes of paragraph (c), “brief description” means a description consisting of no more than three lines of text in type that is at least as large as that used generally in the body of the OM standard term sheet;

“related issuer” has the same meaning as in National Instrument 33-105 *Underwriting Conflicts*;

“specified derivative” has the same meaning as in National Instrument 44-102 *Shelf Distributions*;

“structured finance product” has the same meaning as in National Instrument 25-101 *Designated Rating Organizations*..

4. Section 2.5 is replaced with the following:

2.5 (1) Subject to section 2.6 [*Family, friends and business associates - Saskatchewan*] and section 2.6.1 [*Family, friends and business associates - Ontario*], the prospectus requirement does not apply to a distribution of a security to a person who purchases the security as principal and is

- (a) a director, executive officer or control person of the issuer, or of an affiliate of the issuer,

- (b) a spouse, parent, grandparent, brother, sister, child or grandchild of a director, executive officer or control person of the issuer, or of an affiliate of the issuer,
- (c) a parent, grandparent, brother, sister, child or grandchild of the spouse of a director, executive officer or control person of the issuer or of an affiliate of the issuer,
- (d) a close personal friend of a director, executive officer or control person of the issuer, or of an affiliate of the issuer,
- (e) a close business associate of a director, executive officer or control person of the issuer, or of an affiliate of the issuer,
- (f) a founder of the issuer or a spouse, parent, grandparent, brother, sister, child, grandchild, close personal friend or close business associate of a founder of the issuer,
- (g) a parent, grandparent, brother, sister, child or grandchild of a spouse of a founder of the issuer,
- (h) a person of which a majority of the voting securities are beneficially owned by, or a majority of the directors are, persons described in paragraphs (a) to (g), or
- (i) a trust or estate of which all of the beneficiaries or a majority of the trustees or executors are persons described in paragraphs (a) to (g).

(2) No commission or finder's fee may be paid to any director, officer, founder, or control person of an issuer or an affiliate of the issuer in connection with a distribution under subsection (1).

(2.1) In Ontario, no commission, finder's fee, referral fee or similar payment may be paid to any person in connection with a distribution under subsection (1).

[(3) Subsection (1) does not apply to a distribution of a short-term securitized product.]¹

(4) In Ontario, no advertising to solicit purchasers is permitted in connection with a distribution under subsection (1).

¹ The language in subsection (3) was included in proposed amendments to NI 45-106 published on January 23, 2014 relating to short term securitized instruments.

5. *The Instrument is amended by adding the following section:*

2.6.1 (1) In Ontario, section 2.5 [*Family, friends and business associates*] does not apply to a distribution of a security of an issuer unless all of the following are satisfied:

- (a) the issuer is not an investment fund;
- (b) the security is
 - (i) a common share of the issuer,
 - (ii) a non-convertible preference share of the issuer,
 - (iii) a security convertible into securities referred to in subparagraphs (i) or (ii),
 - (iv) a non-convertible debt security of the issuer linked to a fixed or floating interest rate,
 - (v) a unit of an issuer that is a limited partnership, or
 - (vi) a flow-through share under the ITA of the issuer;
- (c) the person making the distribution obtains a signed risk acknowledgement in the required form from a purchaser who is an individual signed by the purchaser and the applicable persons specified in subsection (2).

(2) The following persons are specified for the purpose of paragraph (1)(c):

- (a) an executive officer of the issuer, acting on behalf of the issuer;
- (b) if the distribution is to a purchaser who is a person specified in paragraph 2.5(1)(b) or (c), the director, executive officer or control person of the issuer or an affiliate of the issuer specified in that paragraph;
- (c) if the distribution is to a purchaser who is a person specified in paragraph 2.5(1)(d), the director, executive officer or control person of the issuer or an affiliate of the issuer specified in that paragraph;
- (d) if the distribution is to a purchaser who is a person specified in paragraph 2.5(1)(e), the director, executive officer or control person of the issuer or an affiliate of the issuer specified in that paragraph;
- (e) if the distribution is to a purchaser who is a person, other than a founder of the issuer, specified in paragraph 2.5(1)(f) or (g), the founder of the issuer specified in that paragraph.

(3) The person making the distribution must retain the required form described in paragraph (1)(c) for 8 years after the date of the distribution..

6. Section 2.9 is replaced with the following:

2.9 (1) In British Columbia, Newfoundland and Labrador and Nova Scotia the prospectus requirement does not apply to a distribution by an issuer of a security of its own issue to a purchaser if

- (a) the purchaser purchases the security as principal, and
- (b) at the same time or before the purchaser signs the agreement to purchase the security, the issuer
 - (i) delivers an offering memorandum to the purchaser in compliance with subsections (5) to (13), and
 - (ii) obtains a signed risk acknowledgement from the purchaser in compliance with subsection (15).

(2) In Manitoba, Northwest Territories, Nunavut, Prince Edward Island and Yukon, the prospectus requirement does not apply to a distribution by an issuer of a security of its own issue to a purchaser if

- (a) the purchaser purchases the security as principal,
- (b) the purchaser is an eligible investor or the acquisition cost to the purchaser does not exceed \$10 000,
- (c) at the same time or before the purchaser signs the agreement to purchase the security, the issuer
 - (i) delivers an offering memorandum to the purchaser in compliance with subsections (5) to (13), and
 - (ii) obtains a signed risk acknowledgement from the purchaser in compliance with subsection (15), and
- (d) if the issuer is an investment fund, the investment fund is
 - (i) a non-redeemable investment fund, or
 - (ii) a mutual fund that is a reporting issuer.

(2.1) In Alberta, Québec and Saskatchewan, the prospectus requirement does not apply to a distribution by an issuer of a security of its own issue to a purchaser if all of the following apply:

- (a) the purchaser purchases the security as principal;
- (b) the acquisition cost of all securities acquired by the purchaser under this section in the preceding 12 months does not exceed
 - (i) \$10 000 in the case of a purchaser that is not an eligible investor, and
 - (ii) \$30 000 in the case of an eligible investor who is an individual, excluding a purchaser that is either of the following
 - (A) an accredited investor;
 - (B) a person described in subsection 2.5(1) [*Family, friends and business associates*];
- (c) at the same time or before the purchaser signs the agreement to purchase the security, the issuer
 - (i) delivers an offering memorandum to the purchaser in compliance with subsections (5) to (13), and
 - (ii) obtains a signed risk acknowledgement in compliance with subsection (15) from each purchaser, other than a purchaser who qualifies as a “permitted client” in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;
- (d) the security distributed by the issuer is not either of the following:
 - (i) a specified derivative;
 - (ii) a structured finance product;
- (e) if the issuer is an investment fund, the investment fund is
 - (i) a non-redeemable investment fund, or
 - (ii) a mutual fund that is a reporting issuer.

(2.2) In New Brunswick and Ontario, the prospectus requirement does not apply to a distribution by an issuer of a security of its own issue to a purchaser if all of the following apply:

- (a) the purchaser purchases the security as principal;

- (b) the acquisition cost of all securities acquired by a purchaser who is an individual under this section in the preceding 12 months does not exceed
 - (i) \$10 000 in the case of a purchaser who is not an eligible investor, and
 - (ii) \$30 000 in the case of a purchaser who is an eligible investor, excluding a purchaser that is an accredited investor;
- (c) at the same time or before the purchaser signs the agreement to purchase the security, the issuer
 - (i) delivers an offering memorandum to the purchaser in compliance with subsections (5) to (13), and
 - (ii) obtains a signed risk acknowledgement in compliance with subsection (15) from each purchaser who is an individual, other than an individual who qualifies under paragraph (o) of the definition of “permitted client” in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;
- (d) the security distributed by the issuer is not either of the following:
 - (i) a specified derivative;
 - (ii) a structured finance product;
- (e) the issuer is not either of the following:
 - (i) a related issuer of any registrant involved in a distribution under this subsection;
 - (ii) an investment fund.

(3) In Manitoba, Northwest Territories, Nunavut, Prince Edward Island and Yukon, this section does not apply to a distribution of a security to a person described in paragraph (a) of the definition of “eligible investor” in section 1.1 [*Definitions*] if that person was created, or is used, solely to purchase or hold securities in reliance on the exemption from the prospectus requirement set out in subsection (2).

(3.01) In Alberta, New Brunswick, Ontario, Québec and Saskatchewan, this section does not apply to a distribution of a security to a person described in paragraph (a) or (a.1)(i) of the definition of “eligible investor” in section 1.1 [*Definitions*] if that

person was created, or is used, solely to purchase or hold securities in reliance on the exemption from the prospectus requirement set out in either subsection (2.1) or (2.2).

[(3.1) Subsections (1), (2), (2.1) and (2.2) do not apply to the distribution of a short-term securitized product.]²

(4) No commission or finder's fee may be paid to any person, other than a registered dealer, in connection with a distribution to a purchaser in the Northwest Territories, Nunavut and Yukon under subsection (2).

(5) An offering memorandum delivered under this section must be in the required form.

(5.1) In Alberta, New Brunswick, Ontario, Québec and Saskatchewan an offering memorandum must

- (a) incorporate by reference any OM marketing materials related to a distribution under the offering memorandum, and is deemed to incorporate any OM marketing materials prepared after the date of the offering memorandum and delivered to a prospective purchaser before the termination of the distribution, and
- (b) state that all OM marketing materials relating to each distribution under the offering memorandum, including those prepared after the date of the offering memorandum, are incorporated by reference into the offering memorandum and are deemed to form part of the offering memorandum.

(6) If the securities legislation where the purchaser is resident does not provide a comparable right, an offering memorandum delivered under this section must provide the purchaser with a contractual right to cancel the agreement to purchase the security by delivering a notice to the issuer not later than midnight on the 2nd business day after the purchaser signs the agreement to purchase the security.

(7) If the securities legislation where the purchaser is resident does not provide statutory rights of action in the event of a misrepresentation in an offering memorandum delivered under this section, the offering memorandum must contain a contractual right of action against the issuer for rescission or damages that

- (a) is available to the purchaser if the offering memorandum, or any information or documents incorporated or deemed to be incorporated by reference into the offering memorandum, contains a

² The language in subsection (3.1) was included in proposed amendments to National Instrument 45-106 *Prospectus and Registration Exemptions* published for comment on January 23, 2014 relating to short term securitized products.

misrepresentation, without regard to whether the purchaser relied on the misrepresentation,

- (b) is enforceable by the purchaser delivering a notice to the issuer
 - (i) in the case of an action for rescission, within 180 days after the purchaser signs the agreement to purchase the security, or
 - (ii) in the case of an action for damages, before the earlier of
 - (A) 180 days after the purchaser first has knowledge of the facts giving rise to the cause of action, or
 - (B) 3 years after the date the purchaser signs the agreement to purchase the security,
- (c) is subject to the defence that the purchaser had knowledge of the misrepresentation,
- (d) in the case of an action for damages, provides that the amount recoverable
 - (i) must not exceed the price at which the security was offered, and
 - (ii) does not include all or any part of the damages that the issuer proves does not represent the depreciation in value of the security resulting from the misrepresentation, and
- (e) is in addition to, and does not detract from, any other right of the purchaser.

(8) An offering memorandum delivered under this section must contain a certificate that states the following: "This offering memorandum does not contain a misrepresentation."

(9) If the issuer is a company, a certificate under subsection (8) must be signed

- (a) by the issuer's chief executive officer and chief financial officer or, if the issuer does not have a chief executive officer or chief financial officer, an individual acting in that capacity,
- (b) on behalf of the directors of the issuer, by

- (i) any 2 directors who are authorized to sign, other than the persons referred to in paragraph (a), or
- (ii) all the directors of the issuer, and
- (c) by each promoter of the issuer.

(10) If the issuer is a trust, a certificate under subsection (8) must be signed by

- (a) the individuals who perform functions for the issuer similar to those performed by the chief executive officer and the chief financial officer of a company, and
- (b) each trustee and the manager of the issuer.

(10.1) If a trustee or the manager that is signing the certificate of the issuer is

- (a) an individual, the individual must sign the certificate,
- (b) a company, the certificate must be signed
 - (i) by the chief executive officer and the chief financial officer of the trustee or the manager, and
 - (ii) on behalf of the board of directors of the trustee or the manager, by
 - (A) any two directors of the trustee or the manager, other than the persons referred to in subparagraph (i), or
 - (B) all of the directors of the trustee or the manager,
- (c) a limited partnership, the certificate must be signed by each general partner of the limited partnership as described in subsection (11.1) in relation to an issuer that is a limited partnership, or
- (d) not referred to in paragraphs (a), (b) or (c), the certificate may be signed by any person or company with authority to act on behalf of the trustee or the manager.

(10.2) Despite subsections (10) and (10.1), if the issuer is an investment fund and the declaration of trust, trust indenture or trust agreement establishing the investment fund delegates the authority to do so, or otherwise authorizes an individual or company to do so, the certificate may be signed by the individual or company to whom the authority is delegated or that is authorized to sign the certificate.

(10.3) Despite subsections (10) and (10.1), if the trustees of an issuer, other than an investment fund, do not perform functions for the issuer similar to those performed by the directors of a company, the trustees are not required to sign the certificate of the issuer if at least two individuals who perform functions for the issuer similar to those performed by the directors of a company sign the certificate.

(11) If the issuer is a limited partnership, a certificate under subsection (8) must be signed by

- (a) each individual who performs a function for the issuer similar to any of those performed by the chief executive officer or the chief financial officer of a company, and
- (b) each general partner of the issuer.

(11.1) If a general partner of the issuer is

- (a) an individual, the individual must sign the certificate,
- (b) a company, the certificate must be signed
 - (i) by the chief executive officer and the chief financial officer of the general partner, and
 - (ii) on behalf of the board of directors of the general partner, by
 - (A) any two directors of the general partner, other than the persons referred to in subparagraph (i), or
 - (B) all of the directors of the general partner,
- (c) a limited partnership, the certificate must be signed by each general partner of the limited partnership and, for greater certainty, this subsection applies to each general partner required to sign,
- (d) a trust, the certificate must be signed by the trustees of the general partner as described in subsection (10) in relation to an issuer that is a trust, or
- (e) not referred to in paragraphs (a) to (d), the certificate may be signed by any person or company with authority to act on behalf of the general partner.

(12) If an issuer is not a company, trust or limited partnership, a certificate under subsection (8) must be signed by the persons that, in relation to the issuer, are in a

similar position or perform a similar function to any of the persons referred to in subsections (9), (10), (10.1), (10.2), (10.3), (11) and (11.1).

(13) A certificate under subsection (8) must be true

- (a) at the date the certificate is signed, and
- (b) at the date the offering memorandum is delivered to the purchaser.

(14) If a certificate under subsection (8) ceases to be true after it is delivered to the purchaser, the issuer cannot accept an agreement to purchase the security from the purchaser unless

- (a) the purchaser receives an update of the offering memorandum,
- (b) the update of the offering memorandum contains a newly dated certificate signed in compliance with subsection (9), (10), (10.1), (10.2), (10.3), (11) or (11.1), and
- (c) the purchaser re-signs the agreement to purchase the security.

(15) A risk acknowledgement under subsection (1), (2), (2.1) or (2.2) must be in the required form and an issuer relying on subsection (1), (2), (2.1) or (2.2) must retain the signed risk acknowledgment for 8 years after the distribution.

(16) The issuer must

- (a) hold in trust all consideration received from the purchaser in connection with a distribution of a security under subsection (1), (2), (2.1) or (2.2) until midnight on the 2nd business day after the purchaser signs the agreement to purchase the security, and
- (b) return all consideration to the purchaser promptly if the purchaser exercises the right to cancel the agreement to purchase the security described under subsection (6).

(17) Except in New Brunswick and Ontario, the issuer must file with the securities regulatory authority a copy of an offering memorandum delivered under this section and any update of a previously filed offering memorandum on or before the 10th day after the distribution under the offering memorandum or update of the offering memorandum.

[Note to reader: A similar Ontario requirement to subsection 2.9(17) is provided for in OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions* and in New Brunswick Implementing Instrument 45-802 *Prospectus and Registration Exemptions*.]

(17.1) In Alberta, Québec and Saskatchewan, the issuer must file with the securities regulatory authority a copy of all OM marketing materials required to be incorporated by reference into an offering memorandum filed under subsection (17) either

- (a) if the OM marketing materials are prepared on or before the filing of the offering memorandum, concurrently with the filing of the offering memorandum, or
- (b) if the OM marketing materials are prepared after the filing of the offering memorandum, within 10 days of the OM marketing materials being disclosed to a prospective purchaser.

(17.2) In New Brunswick and Ontario, the issuer must deliver to the securities regulatory authority a copy of all OM marketing materials required to be incorporated by reference into an offering memorandum delivered to the securities regulatory authority pursuant to, in New Brunswick, section 2.3 of New Brunswick Implementing Instrument 45-802 *Prospectus and Registration Exemptions* or, in Ontario, section 5.4 of OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions*, either

- (a) if the OM marketing materials are prepared on or before the delivery of the offering memorandum, concurrently with the delivery of the offering memorandum, or
- (b) if the OM marketing materials are prepared after the delivery of the offering memorandum, within 10 days of the OM marketing materials being disclosed to a prospective purchaser.

(17.3) OM marketing materials required to be filed or delivered under subsection (17.1) or (17.2) must include a cover page clearly identifying the offering memorandum to which they relate.

(17.4) In Alberta, Québec and Saskatchewan, if the issuer is not a reporting issuer and not an investment fund, the issuer must within 120 days from the end of its financial year file and make available to a holder of a security acquired under subsection (2.1), audited annual financial statements of the issuer that comply with the requirements of both of the following, as if the issuer was a reporting issuer:

- (a) section 4.1 of National Instrument 51-102 *Continuous Disclosure Obligations*;
- (b) National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*.

(17.5) In Alberta, Québec and Saskatchewan, if the issuer is not a reporting issuer but is an investment fund, the issuer must within 120 days from the end of its financial

year, file and make available to a holder of a security acquired under subsection (2.1), audited annual financial statements of the issuer that comply with the requirements of National Instrument 81-106 *Investment Fund Continuous Disclosure* as if the issuer was a reporting issuer.

(17.6) In New Brunswick and Ontario, if the issuer is not a reporting issuer, the issuer must within 120 days from the end of its financial year, deliver to the securities regulatory authority and make available to a holder of a security acquired under subsection (2.2) audited annual financial statements of the issuer that comply with the requirements of both of the following, as if the issuer was a reporting issuer:

- (a) section 4.1 of National Instrument 51-102 *Continuous Disclosure Obligations*;
- (b) National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*.

(17.7) The financial statements of an issuer referred to in subsections (17.4) (17.5) and (17.6) must be accompanied by a notice of the issuer disclosing in reasonable detail the use of the aggregate gross proceeds raised by the issuer in all distributions under subsections (2.1) and (2.2).

(17.8) An issuer is not required to provide the notice referred to in subsection (17.7) if it has disclosed in one or more prior notices the use of the aggregate gross proceeds raised by the issuer in all distributions under subsections (2.1) and (2.2).

(17.9) In New Brunswick and Ontario, if the issuer is not a reporting issuer, the issuer must make available to a holder of a security acquired under subsection (2.2) a notice of any of the following events, within 10 days of the occurrence of the event:

- (a) a fundamental change in the nature, or a discontinuation, of the issuer's business;
- (b) a significant change to the issuer's capital structure;
- (c) a major reorganization, amalgamation or merger involving the issuer;
- (d) a take-over bid, issuer bid or insider bid involving the issuer;
- (e) a significant acquisition or disposition of assets, property or joint venture interests;
- (f) changes to the issuer's board of directors or executive officers, including the departure of the issuer's chief executive officer, chief financial officer, chief operating officer or president or persons acting in similar capacities.

(17.10) In New Brunswick and Ontario, an issuer that is not a reporting issuer must continue to provide the disclosure required by subsections (17.6) and (17.9) until the earliest of

- (a) the date the issuer becomes a reporting issuer, or
- (b) the date the issuer ceases to carry on business.

(17.11) In Alberta, Québec and Saskatchewan an issuer that is not a reporting issuer must continue to provide the disclosure required by subsection (17.4) or (17.5), as applicable, until the earliest of

- (a) the date the issuer becomes a reporting issuer, or
- (b) the date the issuer ceases to carry on business.

(17.12) In Ontario, a non-reporting issuer that distributes securities in reliance on the exemption in subsection (2.2) is designated a market participant under the *Securities Act* (Ontario).

(17.13) In New Brunswick, a non-reporting issuer that distributes securities in reliance on the exemption in subsection (2.2) is designated a market participant under the *Securities Act* (New Brunswick).

(18) Repealed. [B.C. Reg. 86/2011, s. (e).].

7. Part 6 is replaced with the following:

6.1 (1) Subject to subsection (2) and section 6.2 [*When report not required*], issuers that distribute their own securities and underwriters that distribute securities they acquired under section 2.33 must file a report if they make the distribution under one or more of the following exemptions:

- (a) section 2.3 [*Accredited investor*];
- (b) section 2.5 [*Family, friends and business associates*];
- (c) subsection 2.9 (1), (2), (2.1) or (2.2) [*Offering memorandum*];
- (d) section 2.10 [*Minimum amount investment*];
- (e) section 2.12 [*Asset acquisition*];
- (f) section 2.13 [*Petroleum, natural gas and mining properties*];

- (g) section 2.14 [*Securities for debt*];
- (h) section 2.19 [*Additional investment in investment funds*];
- (i) section 2.30 [*Isolated distribution by issuer*];
- (j) section 5.2 [*TSX Venture Exchange offering*].

(2) The issuer or underwriter must file the report in the jurisdiction where the distribution takes place no later than 10 days after the distribution.

6.2 (1) An issuer is not required to file a report under section 6.1(1)(a) [*Report of exempt distribution*] for a distribution of a debt security of its own issue or, concurrently with the distribution of the debt security, an equity security of its own issue, to a Canadian financial institution or a Schedule III bank.

(2) Except in Alberta, New Brunswick, Ontario and Saskatchewan, an investment fund is not required to file a report under section 6.1 [*Report of exempt distribution*] for a distribution under section 2.3 [*Accredited investor*], section 2.10 [*Minimum amount*] or section 2.19 [*Additional investment in investment funds*] if the investment fund files the report not later than 30 days after the financial year-end of the investment fund.

(3) In Alberta, New Brunswick, Ontario and Saskatchewan, an investment fund is not required to file a report under section 6.1 [*Report of exempt distribution*] for a distribution under section 2.3 [*Accredited investor*], section 2.10 [*Minimum amount*] or section 2.19 [*Additional investment in investment funds*] if the investment fund files the report not later than 30 days after the end of each calendar quarter..

6.3 (1) The required form of report under section 6.1 [*Report of exempt distribution*] is:

- (a) Form 45-106F1 in all jurisdictions except Alberta, British Columbia, New Brunswick, Ontario and Saskatchewan;
- (b) Form 45-106F6 in British Columbia; and
- (c) in Alberta, New Brunswick, Ontario and Saskatchewan,
 - (i) Form 45-106F10, if the issuer is an investment fund
 - (ii) Form 45-106F11, if the issuer is not an investment fund.

(1.1) Despite paragraph 1(c) in Alberta and Saskatchewan until January 1, 2017, a report required under section 6.1 may be prepared in Form 45-106F1 if the report is in respect of a distribution that the issuer concurrently conducted in a jurisdiction that requires the report to be prepared in that form.

(2) Except in Manitoba, an issuer that makes a distribution under an exemption from a prospectus requirement not provided for in this Instrument is exempt from the requirements in securities legislation to file a report of exempt trade or exempt distribution in the required form if the issuer files a report of exempt distribution in accordance with

- (a) Form 45-106F1, in all jurisdictions except Alberta, British Columbia, New Brunswick, Ontario and Saskatchewan,
- (b) in British Columbia, Form 45-106F6, or
- (c) in Alberta, New Brunswick, Ontario and Saskatchewan,
 - (i) Form 45-106F10, if the issuer is an investment fund, or
 - (ii) Form 45-106F11, if the issuer is not an investment fund.

(3) Despite paragraph (2)(c), in Alberta and Saskatchewan until January 1, 2017, an issuer that makes a distribution under an exemption from a prospectus requirement not provided for in this Instrument may prepare a report in Form 45-106F1 if the issuer concurrently conducted a distribution in a jurisdiction that requires the report to be prepared in that form.

6.4 (1) The required form of offering memorandum under section 2.9³ [*Offering memorandum*] is Form 45-106F2.

(2) Despite subsection (1), a qualifying issuer may prepare an offering memorandum in accordance with Form 45-106F3.

6.5 (1) Except in New Brunswick and Ontario, the required form of risk acknowledgement under subsection 2.9 (15) [*Offering memorandum*] is Form 45-106F4.

(1.1) In New Brunswick and Ontario, the required form of risk acknowledgement under subsection 2.9(15) [*Offering memorandum*] is Form 45-106F13.

(1.2) Despite subsection (1) in Alberta until January 1, 2017, a form required under subsection 2.9(15) in respect of an individual may be prepared in Form 45-106F13 if the issuer concurrently conducts the distribution in a jurisdiction that requires a risk acknowledgment in Form 45-106F13.

(2) In Saskatchewan, the required form of risk acknowledgement under section 2.6 [*Family, friends and business associates*] is Form 45-106F5.

³ Subsection 6.4(1) of the version of National Instrument 45-106 *Prospectus and Registration Exemptions* (NI 45-106) currently in force includes a reference to “section 3.9”. This section was an offering memorandum registration exemption that has been unavailable since March 27, 2010. As part of the proposed amendments to NI 45-106 published for comment on February 27, 2014, the CSA has proposed to delete this referenced. Therefore, we have not included it in this proposal.

(3) In Ontario, the required form of risk acknowledgement under section 2.6.1 [*Family, friends and business associates*] is Form 45-106F12.

6.6 A person must not, directly or indirectly, use the information in Schedule I of a completed Form 45-106F6, in whole or in part, for any purpose other than research concerning the issuer for the person's own investment purpose..

8. *In Alberta, New Brunswick and Saskatchewan, this Instrument is amended by adding the following form:*

PROPOSED FORM 45-106F10
REPORT OF EXEMPT DISTRIBUTION FOR INVESTMENT FUND ISSUERS
(ALBERTA, NEW BRUNSWICK, ONTARIO AND SASKATCHEWAN)

[Notes to reader: This is an illustration of the proposed Form 45-106F10 Report of Exempt Distribution for Investment Fund Issuers. In Alberta, New Brunswick and Saskatchewan, this form will be a paper form. In Ontario, this form will be an e-form.

When creating the final version of the e-form, we will incorporate the use of drop-down menus wherever appropriate in order to make the e-form more “user-friendly” and easier to complete. Pursuant to OSC Rule 11-501 Electronic Delivery of Documents to the Ontario Securities Commission, issuers are required to file the report electronically in Ontario. In certain sections below, we have included notes to the reader to help them understand how the e-form will appear online. These notes do not form part of the form.

In addition to the changes reflected in Form 45-106F10, we are proposing amendments to subsection 6.2(2) of NI 45-106 to increase the alternative frequency of the filing requirement from annually within 30 days after the financial year-end of the investment fund to quarterly within 30 days after each calendar quarter in which there has been a distribution.]

See the instructions contained at the end of this form for assistance in completing the form.

INVESTMENT FUND/UNDERWRITER INFORMATION

ITEM 1 – PARTY COMPLETING THE REPORT

Who is completing this report?

- Investment fund/Investment fund manager on behalf of the investment fund
 Underwriter

Full legal name of investment fund	
Former name if changed since last report	
FundSERV Code	
Date investment fund created <i>(use the date the investment fund first became available to investors)</i> <i>(month/day/year)</i>	
Financial year-end of investment fund <i>(month/day)</i>	
Jurisdiction of organization of investment fund	[Note to reader: In Ontario, the e-form will contain a dropdown menu that will allow the filer to select a jurisdiction. It will also contain an “other” field that will allow the filer to enter the jurisdiction if unavailable in the list.]

If an underwriter is completing this report, also provide the following:

[Note to reader: In Ontario, the e-form will allow you to fill in the information below if “Underwriter” is selected]

Underwriter	
Full legal name of underwriter	
Street address	
City	
Province, territory, state or other equivalent	
Country	
Postal/zip code	
Business telephone number	
Business email address of underwriter’s chief executive officer or individual acting in that capacity	

ITEM 2 – REPORTING ISSUER STATUS AND LISTING STATUS OF THE INVESTMENT FUND

Is the investment fund a reporting issuer in any jurisdiction of Canada?

- Yes
 No

If yes, provide the following information:

Jurisdiction(s) of Canada in which the investment fund is a reporting issuer	[Note to reader: In Ontario, the e-form contains a drop-down menu from which to select the jurisdiction(s) of Canada in which the investment fund is a reporting issuer]
SEDAR profile number	

Is the investment fund listed or traded on an exchange or through another marketplace (as defined in National Instrument 21-101 *Marketplace Operation*)?

- Yes
 No

If yes, provide the following information:

Name all the exchanges or marketplaces that the investment fund is listed or traded on	[Note to reader: In Ontario, the e-form contains a drop-down menu from which to select the names of exchanges or marketplaces and also contains an “other” category in order to identify exchanges or marketplaces not included in the list.]
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ITEM 3 – STRUCTURE OF THE INVESTMENT FUND

Indicate the legal structure of the investment fund by checking the applicable box.

Trust	<input type="checkbox"/>
Corporation or part of a corporation (e.g. class) referable to a separate portfolio of assets (corporate fund)	<input type="checkbox"/>
Limited partnership	<input type="checkbox"/>
Other (describe)	<input type="checkbox"/>

Indicate whether the investment fund is a:¹

Mutual fund	<input type="checkbox"/>
Non-redeemable investment fund	<input type="checkbox"/>

(Note 1 - for the definition of non-redeemable investment fund and related guidance on these terms please refer to section 1.1 of National Instrument 81-106 *Investment Fund Continuous Disclosure* (NI 81-106) and section 1.2 of the Companion Policy 81-106CP to NI 81-106).

ITEM 4 – DIRECTORS AND EXECUTIVE OFFICERS OF THE INVESTMENT FUND

If the investment fund is a corporate fund or a limited partnership, complete the following table by listing the directors and executive officers of the applicable entity as of the date of this report and provide their jurisdiction of residence (i.e. for a corporate fund, list the directors and executive officers of the corporation, and for a limited partnership, list the directors and executive officers of the general partner).

Full legal name of director or executive officer	Title(s) or position(s) at investment fund	Jurisdiction of residence
	-	
	-	

[Note to reader: In Ontario, additional rows can be added in the e-form if needed.]

ITEM 5 – TYPE OF INVESTMENT FUND

Indicate the type of investment fund by checking the appropriate box.

Money market fund	<input type="checkbox"/>
Hedge fund	<input type="checkbox"/>
Other investment fund	<input type="checkbox"/>

Is the investment fund subject to any of the following (check if yes):

National Instrument 81-102 <i>Mutual Funds</i> (NI 81-102)	<input type="checkbox"/>
NI 81-102 and National Instrument 81-104 <i>Commodity Pools</i>	<input type="checkbox"/>

ITEM 6 – SIZE OF THE INVESTMENT FUND

Indicate the size of the investment fund (net asset value) in Canadian dollars as of the date of this report.	(CAN) \$ _____
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ORGANIZATION AND MANAGEMENT DETAILS OF THE INVESTMENT FUND

ITEM 7 – INVESTMENT FUND MANAGER INFORMATION

Complete the following table.

Full legal name of the investment fund manager	
NRD number	
Address of the head office of the investment fund manager	
City	
Province, territory, state or other equivalent	
Country	
Postal/zip code	
Business telephone number of the head office of the investment fund manager	
Business email address of the investment fund manager's chief executive officer or individual acting in that capacity	

ITEM 8 – DIRECTORS AND EXECUTIVE OFFICERS OF THE INVESTMENT FUND MANAGER

Complete the following table by listing the directors and executive officers of the investment fund manager, including the chief compliance officer and ultimate designated person, as of the date of this report and provide their jurisdiction of residence.

Full legal name of director or executive officer	Title(s) or position(s) at investment fund manager	Jurisdiction of residence

[Note to reader: In Ontario, additional rows can be added in the e-form if needed.]

ITEM 9 – PRINCIPAL SERVICE PROVIDERS

Complete the following table by providing the name and municipality of the principal office or head office of each of the other principal service providers to the investment fund, as applicable.

Service Provider	Name	Municipality of principal/head office
Trustee		
Portfolio manager		

Sub-portfolio manager		
Custodian		
Registrar/transfer agent		
Auditor		

DETAILS OF DISTRIBUTION

ITEM 10 – FIRST REPORT

Indicate whether this is the first report of exempt distribution that has been filed for the investment fund.

- Yes
 No

ITEM 11 – DOCUMENTS PROVIDED IN CONNECTION WITH THE DISTRIBUTION

Indicate whether the following document has been provided to investors in connection with the distribution(s):

Offering memorandum:	<input type="checkbox"/> Yes <input type="checkbox"/> No
Date of offering memorandum: <i>(month/day/year)</i>	

[Note to reader: In Ontario, if yes, you will be able to attach an electronic copy of the offering memorandum directly to the e-form.]

ITEM 12 – PURCHASER INFORMATION

Complete Schedule 1 to this report. Schedule 1 is designed to assist in completing the remainder of this report. See “**Instructions for Schedule 1 to Form 45-106F10**” below.
 [Note to reader: In Ontario, Schedule 1 is in the form of an Excel spreadsheet.]

ITEM 13 – DATE OF DISTRIBUTION(S)

State the distribution date. If the report is being filed for securities distributed on more than one distribution date, state the dates of the first and last distribution.

Date(s)	[Note to reader: In Ontario, the e-form contains a calendar from which to select the date(s) of the distribution. There is
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	an option to select a single distribution date or the first and last distribution dates.]
--	---

ITEM 14 – GENERAL INFORMATION ABOUT SECURITIES DISTRIBUTED

For each type of security distributed, provide the following information:

Describe the type of security	[Note to reader: In Ontario, the e-form contains a drop-down menu from which the specific type of security can be selected.]
Total number of securities distributed	
Price of each security (Canadian \$) If the securities are distributed at different prices, list the highest and lowest prices of the securities	[Note to reader: In Ontario, the e-form will have an option to indicate a single price or the highest and lowest price]

[Note to reader: In Ontario, the e-form provides an option for this information to be provided for more than one type of security.]

If a convertible or exchangeable security was distributed, provide the following additional information for each type of convertible or exchangeable security distributed.

Expiry date (if applicable)	[Note to reader: In Ontario, the e-form contains a calendar from which to select the expiry date.]
Exercise price	
Other key terms of the convertible or exchangeable security	
Type of security of the underlying security	[Note to reader: In Ontario, the e-form contains a drop-down menu from which the specific type of security can be selected from a list.]

[Note to reader: In Ontario, the e-form provides an option for this information to be provided for more than one type of convertible or exchangeable security.]

ITEM 15 – AGGREGATE PURCHASER INFORMATION

Complete the following table. Do not include in this table securities issued as payment for commissions or finder's fees disclosed under item 16, below. The information provided in this table must reconcile with the information provided in Schedule 1.

Each Canadian and	Exemption relied	Number of purchasers	Total dollar value
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foreign jurisdiction where purchasers reside (indicate province/territory and/or country)	on ¹		raised from purchasers in the jurisdiction (Canadian \$)
Total number of purchasers			
Total dollar value of distribution(s) in all jurisdictions (Canadian \$)			
Total dollar value of redemptions since last report filed (Canadian \$)²			

[Note to reader: In Ontario, additional rows can be added in the e-form if needed.]

Note 1: If different exemptions were relied on in the same jurisdiction, indicate the number of purchasers in that jurisdiction per exemption.

Note 2: If this is the first report of exempt distribution filed for the investment fund enter all redemptions since the investment fund was created.

ITEM 16 - COMPENSATION

Please indicate whether any of the following parties received compensation in connection with the distribution(s) (check all that apply).

- Registrant
- Finder, other individual or entity (other than a registrant)

If any cash or compensation was paid to a: (i) registrant, or (ii) finder, other individual or entity in connection with the distribution(s), complete Schedule 2 *Commissions and Finders Fees*. Ensure that all compensation paid in connection with the distribution(s) is appropriately reflected in Schedule 2 – see “**Instructions for Schedule 2 to Form 45-106F10**” below. [Note to reader: In Ontario, Schedule 2 is in the form of an Excel spreadsheet.]

ITEM 17 – INDIRECT COLLECTION OF PERSONAL INFORMATION FOR DISTRIBUTIONS (ONTARIO)

If a distribution is made in Ontario to one or more individuals, complete the following.

Notice - Collection and use of personal information

The personal information required under this form is collected on behalf of and used by the securities regulatory authorities or, where applicable, the regulator under the authority granted in securities legislation for the purposes of the administration and enforcement of the securities legislation.

If you have any questions about the collection and use of this information, contact the securities regulatory authority or, where applicable, the regulator in the jurisdiction(s) where the form is filed, at the address(es) listed at the end of this report.

Authorization of indirect collection of personal information for distributions in Ontario

Were any securities distributed to individuals?

Yes

No

[Note to reader: The following confirmation will only be required to be completed if there was a distribution of securities to an individual.]

The attached Schedule 1 may contain personal information of purchasers and details of the distribution(s). The information in Schedule 1 will not be placed on the public file of any securities regulatory authority or, where applicable, regulator. However, freedom of information legislation in certain jurisdictions may require the securities regulatory authority or, where applicable, regulator to make this information available if requested.

The investment fund/investment fund manager/underwriter hereby confirms that each purchaser listed in Schedule 1 of this report who is resident in Ontario:

- (a) has been notified by the investment fund/investment fund manager/underwriter of the delivery to the Ontario Securities Commission of the information pertaining to the purchaser as set out in Schedule 1,
 - (i) that this information is being collected by the Ontario Securities Commission under the authority granted to it in securities legislation,
 - (ii) that this information is being collected for the purposes of the administration and enforcement of the securities legislation of Ontario, and
 - (iii) of the title, business address and business telephone number of the public official in Ontario, as set out in this report, who can answer questions about the Ontario Securities Commission's indirect collection of the information, and
- (b) has authorized the indirect collection of the information by the Ontario Securities Commission.

The investment fund/investment fund manager/underwriter confirms the above.

[Note to reader: In Ontario, this box must be checked for the e-form to be submitted.]

ITEM 18 - CERTIFICATE

I am submitting this form as agent for the [investment fund/investment fund manager/underwriter] and have been authorized to do so. By checking this box, I certify that the [investment fund/investment fund manager/underwriter] provided me with all of the information on this form.

By completing the information in the table below, I certify to the securities regulatory authority that:

- I have read this form and understand the questions, and
- All of the information provided on this form is true and complete

Name of [investment fund/investment fund manager/underwriter]: _____

Provide the full legal name, title, telephone number and email of person certifying this report:

Full legal name	
Title	
Business telephone number	
Business address	
Business email address of individual	

Provide the signature of the individual certifying this report.

Signature	<i>[Note to reader: In Ontario, the e-form will require insertion of an electronic signature here]</i>
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Date: _____

[Note to reader: In Ontario, the e-form contains a calendar from which to select the date of the report.]

IT IS AN OFFENCE TO MAKE A MISREPRESENTATION IN THIS REPORT

ITEM 19 – CONTACT PERSON REGARDING CONTENT OF REPORT

Provide the following information for the individual who may be contacted with respect to any questions regarding the contents of this report, if different than the individual certifying the report above.

Same as individual certifying the report

Name	
Title	
Organization	
Business telephone number	
Business address	
Business email address of individual	

SCHEDULE 1 TO FORM 45-106F10

[Note to reader: The following describes the information that would be required to be provided in Schedule 1 to Form 45-106F10. In Ontario, Schedule 1 will be filed in the form of an Excel spreadsheet. When creating the final version of the schedule, Ontario will incorporate the use of drop-down menus wherever appropriate in order to make this e-form more “user-friendly” and easier to complete]

The information in this schedule will not be placed on the public file of any securities regulatory authority or, where applicable, regulator. However, freedom of information legislation in certain jurisdictions may require the securities regulatory authority or, where applicable, regulator to make this information available if requested.

General information

- Investment fund/ Investment fund manager/Underwriter name
- Date Form 45-106F10 filed

Purchaser information (to be provided for each purchaser)

- Individual (Y/N)
- First name
- Last name
- Company name
- Address
- Telephone number
- Email address
- Province
- Country
- Age range if an individual (18 to 25 years, 26 to 34 years, 35 to 49 years, 50 to 64 years, 65 to 79 years, 80 years and older)

Information about securities purchased (to be provided for each distribution)

- Number
- Type
- Total purchase price (CAD \$)
- Date of distribution (month/day/year)

Information about exemption relied on (to be provided for each distribution)

[Note to reader: In Ontario, the e-form contains a drop-down menu for each exemption that could be relied on]

- Section
- Subsection
- Paragraph

Other information (to be provided if applicable)

- Offering memorandum (if exemption is available for investment fund)
 - Category of “eligible investor”
- Family, friends and business associates (if exemption is available for investment fund)
 - Person at issuer with whom purchaser has relationship (name and title)
- Registrant information
 - NRD number of registrant (if applicable)

SCHEDULE 2 TO FORM 45-106F10

[Note to reader: The following describes the information that would be required to be provided in Schedule 2 to Form 45-106F10. In Ontario, Schedule 2 will be filed in the form of an Excel spreadsheet. When creating the final version of the schedule, Ontario will incorporate the use of drop-down menus wherever appropriate in order to make this e-form more “user-friendly” and easier to complete.]

Information about registrants or finders

- Is person or entity being compensated a (i) registrant, or (ii) finder, other individual or entity (other than a registrant)
- Is person or entity being compensated the investment fund, the investment fund manager, an affiliate or associate of the investment fund manager, or a director, officer or employee of any of them
- If registrant, NRD number, registration category, affiliated registered firm (if registered individual), and NRD number of affiliated registered firm (if registered individual)

General information – firms

- Firm name
- Street
- City, province, country
- Postal code
- Email address

General information – individuals

- First name
- Last name
- Street
- City, province, country
- Postal code
- Email address

Form of Compensation

- Cash
 - Amount (CAD \$)
- Securities

- Number
- Type
- Price per security
- Exemption relied on
- Date of distribution (month/day/year)
- Total dollar value (include the value of any securities and cash, added together, in CAD \$)

Information about other fees paid to registrants

- If registrant, finder's fees paid to registrant
- If registrant, broker fees paid to registrant

Other information

- Description of terms (where applicable)

INSTRUCTIONS

Instructions for Form 45-106F10:

1. **Filing instructions in Ontario** – File this report in Ontario through the online e-form available at www.osc.gov.on.ca.
2. **Filing instructions in Alberta, New Brunswick and Saskatchewan** – File this report and the applicable fee at the following addresses:

Alberta Securities Commission
Suite 600, 250 – 5th Street SW
Calgary, Alberta T2P 0R4
Telephone: (403) 297-6454
Toll free in Canada: 1-877-355-0585
Facsimile: (403) 297-2082

Financial and Consumer Services Commission (New Brunswick)
85 Charlotte Street, Suite 300
Saint John, New Brunswick E2L 2J2
Telephone: (506) 658-3060
Toll free: 1-866-933-2222
Facsimile: (506) 658-3059

Financial and Consumer Affairs Authority of Saskatchewan
Suite 601 – 1919 Saskatchewan Drive
Regina, Saskatchewan S4P 4H2
Telephone: (306) 787-5879
Facsimile: (306) 787-5899

[Note to reader: The Alberta Securities Commission is considering various options to provide issuers with a means of electronically submitting Form 45-106F10 and the related Schedules 1 and 2.]

3. **Payment of filing fee in Ontario** – Refer to Appendix C – Activity Fees of OSC Rule 13-502 *Fees* for the applicable filing fee. The filing fee must be paid at the time that the e-form is submitted.
4. **Payment of filing fee (other than in Ontario)** – In order to determine the applicable fee, consult the securities legislation of each jurisdiction in which a distribution is made.
5. **Filing instructions if distributions made in more than one jurisdiction** – Refer to the securities legislation in each jurisdiction where the distribution is made to determine which form(s) of report of exempt distribution is/are required or permitted to be filed. The report should identify all purchasers in each of the jurisdictions in which the distribution is made. Filing fees associated with the filing of the reports are not affected by identifying all purchasers in a single report.
6. **Date of information in report** – Unless otherwise indicated in the report, provide the information as of the date of the report.
7. **Jurisdiction of distribution** – A “distribution” includes distributions made to purchasers resident in the local jurisdiction. A “distribution” may also occur if the issuer of the securities is located in or has a significant connection to the jurisdiction. Consult securities legislation in the particular jurisdiction for guidance on when an issuer is considered to be located in or have a significant connection to that jurisdiction.
8. **References to purchaser** – References to a purchaser in this report are to the beneficial owner of the securities. If a trust company or a registered adviser has purchased on behalf of a fully managed account under subsections 2.3(2) and (4) of National Instrument 45-106 *Prospectus Exemptions* (NI 45-106), give information about both the trust company or registered adviser and the beneficial owner of the fully managed account.
9. **Currency** – All dollar amounts are in Canadian dollars.
10. **Aggregate information in item 15** –
 - (1) Do not include in this table securities issued as payment for commissions or finder’s fees disclosed in Schedule 2.
 - (2) The information in this table should be included for each Canadian and foreign jurisdiction where purchasers of the securities reside.
 - (3) If different exemptions were relied on in the same jurisdiction, indicate the number of purchasers in that jurisdiction per exemption.

11. **Reconciliation of information** – The information provided in response to items 13, 14 and 15 must reconcile with the information provided in Schedule 1 of Form 45-106F10.

Instructions for Schedule 1 to Form 45-106F10:

12. **Public disclosure of information** – The information in Schedule 1 will not be placed on the public file of any securities regulatory authority or, where applicable, regulator. However, freedom of information legislation in certain jurisdictions may require the securities regulatory authority or, where applicable, regulator to make this information available if requested.
13. **Exclusion of securities as payment for commissions or finder's fees** - Do not include in Schedule 1 any securities issued as payment for commissions or finder's fees as disclosed in Schedule 2 of this report.
14. **Age range of purchaser** – If the purchaser is an individual identify which of the following age ranges applies to the purchaser: 18-25, 26-34, 35-49, 50-64, 65-79, 80+.
15. **Reference to exemption relied on** - When identifying the exemption relied on, refer to the specific subsection of NI 45-106. For example, if relying on the exemption in section 2.10 [*Minimum Amount Investment*], the column should state "2.10(1)". For exemptions that require the purchaser to meet certain characteristics, such as the exemption in section 2.3 [*Accredited investor*], also state the specific paragraph that applies to the purchaser. If the purchaser qualifies under multiple paragraphs, state all paragraphs that apply. For example, when relying on section 2.3 [*Accredited investor*], if the purchaser qualifies under paragraph (j) of the definition of accredited investor in section 1.1, the section column should show "2.3(1) – (j)". If the purchaser qualifies under both paragraphs (j) and (k), the column should show "2.3(1) – (j), (k)".

It is not necessary to list the exemption, if any, relied on in the securities legislation of a securities regulatory authority that provides a similar exemption to that provided in NI 45-106. For example, if an issuer relies on the exemption in section 73.3(2) under the *Securities Act* (Ontario) for a distribution in Ontario, it can identify the exemption relied on in the table as the accredited investor exemption in section 2.3(1) of NI 45-106.

Instructions for Schedule 2 to Form 45-106F10:

16. **Reference to compensation** - Complete Schedule 2 by providing information for each person who has received or who will receive compensation in connection with the distribution(s). Compensation includes commissions, discounts or other fees or payments of a similar nature. Do not include payments for services incidental to the distribution, such as clerical, printing, legal or accounting services.

17. **Information regarding convertible or exchange securities issued as compensation** - If the securities being issued as compensation are or include convertible or exchangeable securities, such as warrants or options, please add sufficient details under the column “Description of Terms” in Schedule 2 to describe the terms of the convertible or exchangeable securities, including the term and exercise price. Do not include the exercise price of any convertible or exchangeable security in the total dollar value of the compensation unless the securities have been converted or exchanged.

Questions

Refer any questions to:

Securities Regulatory Authorities and Regulators

Alberta Securities Commission
Suite 600, 250 – 5th Street SW
Calgary, Alberta T2P 0R4
Telephone: (403) 297-6454
Toll free in Canada: 1-877-355-0585
Facsimile: (403) 297-2082

Financial and Consumer Services Commission (New Brunswick)
85 Charlotte Street, Suite 300
Saint John, New Brunswick E2L 2J2
Telephone: (506) 658-3060
Toll free in Canada: 1-866-933-2222
Facsimile: (506) 658-3059

Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8
Telephone: (416) 593- 8314
Toll free in Canada: 1-877-785-1555
Facsimile: (416) 593-8122
Public official contact regarding indirect collection of information: Inquiries Officer

Financial and Consumer Affairs Authority (Saskatchewan)
Suite 601 – 1919 Saskatchewan Drive
Regina, Saskatchewan S4P 4H2
Telephone: (306) 787-5879
Facsimile: (306) 787-5899

9. *In Alberta, New Brunswick and Saskatchewan, this Instrument is amended by adding the following form:*

PROPOSED FORM 45-106F11
REPORT OF EXEMPT DISTRIBUTION FOR ISSUERS OTHER THAN
INVESTMENT FUNDS (ALBERTA, NEW BRUNSWICK, ONTARIO AND
SASKATCHEWAN)

[Notes to reader: This is an illustration of the proposed Form 45-106F11 *Report of Exempt Distribution for Issuers other than Investment Funds*. In Alberta, New Brunswick and Saskatchewan, this form will be a paper form. In Ontario, this form will be an e-form.

When creating the final version of the e-form, we will incorporate the use of drop-down menus wherever appropriate in order to make the e-form more “user-friendly” and easier to complete. Pursuant to OSC Rule 11-501 Electronic Delivery of Documents to the Ontario Securities Commission, issuers are required to file the report electronically in Ontario. In certain sections below, we have included notes to the reader to help them understand how the e-form will appear online. These notes do not form part of the form.]

See the instructions contained at the end of this form for assistance in completing the form.

ITEM 1 – PARTY COMPLETING THE REPORT

Who is completing this report?

- Issuer
 Underwriter

ITEM 2 – UNDERWRITER INFORMATION (IF APPLICABLE)

If an underwriter is completing this report, provide the following information:

Underwriter	
Full legal name of underwriter	
Street address	
City	
Province, territory, state or other equivalent	
Country	
Postal/zip code	
Business telephone number	

Business email address of underwriter's chief executive officer or individual acting in that capacity	
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ITEM 3 – ISSUER INFORMATION

3.1 Name of issuer and parent

Provide the following information:

Full legal name of issuer	
Former "Issuer Full Legal Name" if changed since last report	
Full legal name of parent of issuer (if applicable)	

3.2 Contact information for issuer

Provide the following information regarding the issuer's head office and contact information:

Street address	
City	
Province, territory, state or other equivalent	
Country	
Postal/zip code	
Business telephone number	
Business email address of issuer's chief executive officer or individual acting in that capacity	

3.3 Other information regarding the issuer

3.3.1 Size of issuer and financial year-end

Provide the following information:

Year of formation of issuer (<i>month/day/year</i>)	
Issuer's date of financial year-end (<i>month/day</i>)	
Approximate number of employees of the issuer at the time of the distribution	[Note to reader: In Ontario, the e-form will contain a drop-down menu with the following ranges: <ul style="list-style-type: none">• 1-9• 10-49• 50-99• 100 to 499• 500 or more.]

3.3.2 Reporting issuer status of the issuer

Is the issuer a reporting issuer in any jurisdiction of Canada at the time of the distribution?

- Yes
 No

If yes, provide the following information:

Jurisdiction(s) of Canada in which the issuer is a reporting issuer	
Issuer's SEDAR profile number	

3.3.3 Listing(s) of securities of the issuer

Is any class of securities of the issuer listed or traded on an exchange or through another marketplace (as defined in National Instrument 21-101 *Marketplace Operation*)?

- Yes
 No

If yes, provide the following information:

Name(s) of all the exchanges or marketplaces on which securities of the issuer are listed or traded	[Note to reader: In Ontario, the e-form contains a drop-down menu from which to select the names of major Canadian and international exchanges or marketplaces. The
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	drop-down menu also contains an “other” category in order to identify exchanges or marketplaces not included in the list.]
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3.3.4 Primary industry of the issuer

Indicate the primary industry in which the issuer operates. Further explanation of the industry in which the issuer operates can be provided in the space at the end of this item.

Financial services

- Financial services – mortgage investment company
- Financial services – insurance company
- Financial services – banks & trusts
- Financial services – securitization conduits
- Financial services – private equity/venture capital
- Financial services – other (describe): _____

Mining and other resource industries

- Mining – exploration/development
- Mining – production
- Oil and gas
- Forestry
- Agriculture

Real estate

- Real estate/land development
- Real estate investment trust

Other industries

- Bio-technology/pharmaceutical/health care
- Utilities/power generation
- Pipelines
- Media/communications/entertainment
- Industrial products
- Transportation & infrastructure
- Technology/clean technology
- Consumer products & merchandising
- Education

Other

- Capital pool company
- Government
- Charity/not-for-profit
- Other (describe): _____

Further explanation of primary industry in which the issuer operates (optional): _____

3.3.5 Directors, executive officers, control persons and promoters of the issuer

Provide the following information for each director, executive officer, control person and promoter of the issuer at the time of the distribution:

Full legal name of director, executive officer, control person or promoter	Title(s) or position(s) at issuer	Jurisdiction of residence

[Note to reader: In Ontario, additional rows can be added in the e-form if needed.]

ITEM 4 – INFORMATION ABOUT THE DISTRIBUTION

4.1 Date of distribution

State the distribution date. If the report is being filed for securities distributed on more than one distribution date, state the dates of the first and last distributions.

Date(s): _____

[Note to reader: In Ontario, the e-form contains a calendar from which to select the date(s) of the distribution. There is an option to select a single distribution date or the first and last distribution dates.]

4.2 Type of security(ies) distributed

4.2.1 General information about securities distributed

For each type of security distributed, provide the following information:

Type of security	<input type="checkbox"/> Equity and other securities
	<input type="checkbox"/> Debt

	<input type="checkbox"/> Derivatives [Note to reader: In Ontario, the e-form contains a drop-down menu under each of these categories from which the specific type of security can be selected.]
Total number of securities distributed	
Price of each security (in Canadian \$) If securities are distributed at different prices, list the highest and lowest prices of the securities.	[Note to reader: In Ontario, the e-form will have an option to indicate a single price or the highest and lowest prices.]

[Note to reader: In Ontario, the e-form provides an option for this information to be provided for more than one type of security.]

4.2.2 Additional information about convertible or exchangeable securities distributed

If a convertible or exchangeable security was distributed, provide the following additional information for each type of convertible or exchangeable security distributed:

Expiry date (month/day/year)	[Note to reader: In Ontario, the e-form contains a calendar from which to select the expiry date.]
Exercise price	
Other key terms of the convertible or exchangeable security	
Type of security of the underlying security	<input type="checkbox"/> Equity and other securities <input type="checkbox"/> Debt <input type="checkbox"/> Derivatives [Note to reader: In Ontario, the e-form contains a drop-down menu under each of these categories from which the specific type of security can be selected.]

[Note to reader: In Ontario, the e-form provides an option for this information to be provided for more than one type of convertible or exchangeable security.]

4.3 Documents provided in connection with the distribution

Indicate whether any of the following documents (offering materials) have been provided to investors in connection with the distribution:

Offering memorandum:	<input type="checkbox"/> Yes <input type="checkbox"/> No
Date of offering memorandum: <i>(month/day/year)</i>	

Presentations or other marketing materials:	<input type="checkbox"/> Yes <input type="checkbox"/> No
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[Note to reader: In Ontario, the information in the table below and related offering materials will be required to be provided as part of the electronic filing of this report.]

If you responded “yes” to either of the above, attach an electronic copy of any offering materials that have not been previously filed with the Ontario Securities Commission. If the offering materials have been previously filed with the Ontario Securities Commission, state the date(s) on each of the offering materials and the date(s) on which they were previously filed.

Details of previously filed offering materials:

Type of Document	Amendment (y/n)	Date of offering materials (see Note 1)	Date filed with securities regulatory authority

[Note to reader: In Ontario, the e-form contains a calendar from which to select the date of filing and the option to add rows if needed.]

Note 1: Indicate either the date of the offering materials or the date of the offering memorandum to which the offering materials relate.

4.4 Exemptions relied on, purchasers and capital raised

4.4.1 Aggregated purchaser information

Complete the following table. Do not include in this table securities issued as payment for commissions or finder’s fees discussed under section 4.5 of this report. The information provided in this table must reconcile with the information provided in Schedule 1.

Each jurisdiction where purchasers under the distribution reside (includes jurisdictions of Canada as well as foreign jurisdictions)	Exemption(s) relied on (see Note 2)	Number of purchasers	Total dollar value raised from purchasers (in Canadian \$)
Total number of purchasers			
Total dollar value of distribution(s) in all jurisdictions (in Canadian \$)			

[Note to reader: In Ontario, additional rows can be added in the e-form if needed.]

Note 2: If different exemptions were relied on in the same jurisdiction, indicate the number of purchasers in that jurisdiction for each exemption.

4.4.2 Information regarding each purchase

Complete Schedule 1 to this report - see “**Instructions for Schedule 1 to Form 45-106F11**” below.

[Note to reader: In Ontario, Schedule 1 is in the form of an Excel spreadsheet.]

4.5 Involvement of registrants, insiders and finders

4.5.1 Involvement of registrants, insiders and finders

Please indicate whether any of the following parties received compensation from the issuer in connection with the distribution (check all that apply).

- Registrant
- Insider
- Finder, other individual or entity (other than a registrant or insider)

4.5.2 Compensation

If any cash or other compensation was paid to a: (i) registrant, (ii) insider, or (iii) finder, other individual or entity in connection with the distribution, complete Schedule 2 *Commissions and Finders Fees*. Ensure that all compensation paid by the issuer in connection with the distribution is appropriately reflected in Schedule 2 – see “**Instructions for Schedule 2 to Form 45-106F11**” below.

[Note to reader: In Ontario, Schedule 2 is in the form of an excel spreadsheet.]

ITEM 5 – INDIRECT COLLECTION OF PERSONAL INFORMATION FOR DISTRIBUTIONS (ONTARIO)

If a distribution is made in Ontario to one or more individuals, complete the following.

Notice - Collection and use of personal information

The personal information required under this form is collected on behalf of and used by the securities regulatory authorities or, where applicable, the regulator under the authority granted in securities legislation for the purposes of the administration and enforcement of the securities legislation.

If you have any questions about the collection and use of this information, contact the securities regulatory authority or, where applicable, the regulator in the jurisdiction(s) where the form is filed, at the address(es) listed at the end of this report.

Authorization of indirect collection of personal information for distributions in Ontario

Were any securities distributed to individuals?

Yes

No

[Note to reader: The following confirmation will only be required to be completed if there was a distribution of securities to an individual.]

The attached Schedule 1 may contain personal information of purchasers and details of the distribution(s). The information in Schedule 1 will not be placed on the public file of any securities regulatory authority or, where applicable, regulator. However, freedom of information legislation in certain jurisdictions may require the securities regulatory authority or, where applicable, regulator to make this information available if requested.

The issuer/underwriter hereby confirms that each purchaser listed in Schedule 1 of this report who is resident in Ontario:

- (a) has been notified by the issuer/underwriter of the delivery to the Ontario Securities Commission of the information pertaining to the purchaser as set out in Schedule 1,
- (i) that this information is being collected by the Ontario Securities Commission under the authority granted to it in securities legislation,
 - (ii) that this information is being collected for the purposes of the administration and enforcement of the securities legislation of Ontario, and
 - (iii) of the title, business address and business telephone number of the public official in Ontario, as set out in this report, who can answer questions about the Ontario Securities Commission's indirect collection of the information, and
- (b) has authorized the indirect collection of the information by the Ontario Securities Commission.

The issuer/underwriter confirms the above.

[Note to reader: In Ontario, this box must be checked for the e-form to be submitted.]

ITEM 6 – CERTIFICATE

6.1 Authorization to submit form and certification

I am submitting this form as agent for the [issuer/underwriter] and have been authorized to do so. By checking this box, I certify that the [issuer/underwriter] provided me with all of the information on this form.

By completing the information in the table below, I certify to the securities regulatory authority that:

- I have read this form and understand the questions, and
- all of the information provided on this form is true and complete.

Provide the following information regarding the individual certifying the report:

Full legal name	
Title	
Organization (name of issuer or underwriter, as applicable)	
Business telephone number	
Business address	
Business email address of individual	

Provide the signature of the individual certifying this report:

Signature	[Note to reader: In Ontario, the e-form will require insertion of an electronic signature here.]
-----------	--

Date: _____

[Note to reader: In Ontario, the e-form contains a calendar from which to select the date of the report.]

IT IS AN OFFENCE TO MAKE A MISREPRESENTATION IN THIS REPORT

6.2 Contact person regarding content of report

Provide the following information for the individual who may be contacted with respect to any questions regarding the contents of this report, if different than the individual certifying the report above.

Same as individual certifying the report.

Name	
Title	
Organization (name of issuer or underwriter, as applicable)	
Business telephone number	
Business address	
Business email address of individual	

SCHEDULE 1 TO FORM 45-106F11

[Note to reader: The following describes the information that would be required to be provided in Schedule 1 to Form 45-106F11. In Ontario, Schedule 1 will be filed in the form of an Excel spreadsheet. When creating the final electronic version of the schedule in Ontario, we will incorporate the use of drop-down menus wherever appropriate in order to make this schedule more “user-friendly” and easier to complete.]

The information in this schedule will not be placed on the public file of any securities regulatory authority or, where applicable, regulator. However, freedom of information legislation in certain jurisdictions may require the securities regulatory authority or, where applicable, regulator to make this information available if requested.

General information

- Issuer/ underwriter name
- Date Form 45-106F11 filed

Purchaser information (to be provided for each purchaser)

- Individual (Y/N)
- First name
- Last name (Company name)
- Address
- Telephone number
- Email address
- Province
- Country
- Age range if an individual (18 to 25 years, 26 to 34 years, 35 to 49 years, 50 to 64 years, 65 to 79 years, 80 years and older)

Information about securities purchased (to be provided for each distribution)

- Number
- Type
- Total purchase price (CAD \$)
- Date of distribution (month/day/year)

Information about exemption relied on (to be provided for each distribution)

[Note to reader: In Ontario, the e-form contains a drop-down menu for each exemption that could be relied on.]

- Section
- Subsection
- Paragraph

Other information (to be provided if applicable)

- Offering memorandum
 - Category of "eligible investor"
- Family, friends and business associates
 - Person at issuer with whom purchaser has relationship (name and title)
- Registrant information
 - NRD number of registrant (if applicable)

SCHEDULE 2 TO FORM 45-106F11

[Note to reader: The following describes the information that would be required to be provided in Schedule 2 to Form 45-106F11. In Ontario, Schedule 2 will be filed in the form of an Excel spreadsheet. When creating the final electronic version of the schedule in

Ontario, we will incorporate the use of drop-down menus wherever appropriate in order to make this schedule more “user-friendly” and easier to complete.]

Information about insiders, registrants or finders

- Indicate if person being compensated is: (i) a registrant, (ii) an insider of the issuer or (iii) a finder, other individual or entity (other than a registrant or insider)
- Relationship to issuer [Note to reader: In Ontario, the e-form contains a drop-down menu of sub-categories, including “Other – explain”, to further specify the nature of the relationship of the person being compensated to the issuer.]
- If registrant, NRD number, registration category, affiliated registered firm (if registered individual) and NRD number of affiliated registered firm (if registered individual)

General information – firms

- Company name
- Street
- City, province, country
- Postal code
- Email address

General information – individuals

- First name
- Last name
- Street
- City, province, country
- Postal code
- Email address

Form of Compensation

- Cash
 - Amount (CAD \$)
- Securities
 - Number
 - Type
 - Price per security
 - Exemption relied on
 - Date of distribution (month/day/year)
- Total dollar value (include the value of any securities and cash, added together, in CAD \$)

Information about other fees paid to registrants

- If registrant, finder's fees paid to registrant
- If registrant, broker fees paid to registrant

Other information

- Description of terms (where applicable)

INSTRUCTIONS

Instructions for Form 45-106F11

1. **Filing instructions in Ontario** – File this report in Ontario through the online e-form available at www.osc.gov.on.ca.
2. **Filing instructions (other than Ontario)** – File this report and the applicable fee at the following address(es) as applicable:

Alberta Securities Commission
Suite 600, 250 - 5th Street SW
Calgary, Alberta T2P 0R4
Telephone: (403) 297-6454
Toll free in Canada: 1-877-355-0585
Facsimile: (403) 297-2082

Financial and Consumer Services Commission (New Brunswick)
85 Charlotte Street, Suite 300
Saint John, New Brunswick E2L 2J2
Telephone: (506) 658-3060
Toll free: 1-866-933-2222
Facsimile: (506) 658-3059

Financial and Consumer Affairs Authority of Saskatchewan
Suite 601 - 1919 Saskatchewan Drive
Regina, Saskatchewan S4P 4H2
Telephone: (306) 787-5879
Facsimile: (306) 787-5899

[Note to reader: The Alberta Securities Commission is considering various options to provide issuers with a means of electronically submitting Form 45-106F11 and the related Schedules 1 and 2.]

3. **Payment of filing fee in Ontario** – Refer to Appendix C – Activity Fees of OSC Rule 13-502 *Fees* for the applicable filing fee. The filing fee must be paid at the time that the e-form is submitted.
4. **Payment of filing fee (other than in Ontario)** - In order to determine the applicable fee, consult the securities legislation of each jurisdiction in which a distribution is made.
5. **Filing instructions if distributions made in more than one jurisdiction** – Refer to the securities legislation in each jurisdiction where the distribution is made to

determine which form(s) of report of exempt distribution is/(are) required or permitted to be filed. The report should identify all purchasers in each of the jurisdictions in which the distribution is made. Filing fees associated with the filing of the reports are not affected by identifying all purchasers in a single report.

6. **Date of information in report** - Unless otherwise indicated in the report, provide the information as of the date of the report.
7. **Jurisdiction of distribution** – A “distribution” includes distributions made to purchasers resident in the local jurisdiction. A “distribution” may also occur if the issuer of the securities is located in or has a significant connection to the jurisdiction. Consult securities legislation in the particular jurisdiction for guidance on when an issuer is considered to be located in or to have a significant connection to that jurisdiction.
8. **Multiple distributions** – One report may be used for multiple distributions occurring within 10 days of each other provided the report is filed on or before the 10th day following the first of such distributions.
9. **References to purchaser** – References to a purchaser in this report are to the beneficial owner of the securities. If a trust company or a registered adviser has purchased on behalf of a fully managed account under subsections 2.3(2) and (4) of National Instrument 45-106 *Prospectus Exemptions* (NI 45-106), give information about both the trust company or registered adviser and the beneficial owner of the fully managed account.
10. **Currency** – All dollar amounts are in Canadian dollars.
11. **Aggregate information in item 4.4.1** –
 - (1) Do not include in this table securities issued as payment for commissions or finder’s fees disclosed in Schedule 2.
 - (2) The information in this table should be included for each Canadian and foreign jurisdiction where purchasers of the securities reside.
 - (3) If different exemptions were relied on in the same jurisdiction, indicate the number of purchasers in that jurisdiction per exemption.
12. **Reconciliation of information** – The information provided in response to Item 4.4.1 must reconcile with the information provided in Schedule 1 of Form 45-106F11.

Instructions for Schedule 1 to Form 45-106F11

13. **Public disclosure of information** - The information in Schedule 1 will not be placed on the public file of any securities regulatory authority or, where applicable, regulator. However, freedom of information legislation in certain jurisdictions may

require the securities regulatory authority or, where applicable, regulator to make this information available if requested.

14. **Exclusion of securities as payment for commissions or finder's fees** – Do not include in Schedule 1 any securities issued as payment for commissions or finder's fees as disclosed in Schedule 2 of this report.
15. **Age range of purchaser** - If the purchaser is an individual, identify which of the following age ranges applies to the purchaser: 18-25, 26-34, 35-49, 50-64, 65-79, or 80+.
16. **Reference to exemption relied on** – When identifying the exemption relied on, refer to the specific subsection of NI 45-106. For example, if relying on the exemption in section 2.10 [*Minimum Amount Investment*], the column should state "2.10(1)". For exemptions that require the purchaser to meet certain characteristics, such as the exemption in section 2.3 [*Accredited investor*] or section 2.5 [*Family, friends and business associates*], also state the specific paragraph that applies to the purchaser. If the purchaser qualifies under multiple paragraphs, state all paragraphs that apply. For example, when relying on section 2.3 [*Accredited investor*], if the purchaser qualifies under paragraph (j) of the definition of accredited investor in section 1.1, the section column should show "2.3(1) – (j)". If the purchaser qualifies under both paragraphs (j) and (k), the column should show "2.3(1) – (j), (k)".

It is not necessary to list the exemption, if any, relied on in the securities legislation of a securities regulatory authority that provides a similar exemption to that provided in NI 45-106. For example, if an issuer relies on the exemption in section 73.3(2) under the *Securities Act* (Ontario) for a distribution in Ontario, it can identify the exemption relied on in the table as the accredited investor exemption in section 2.3(1) of NI 45-106.
17. **Information required where reliance on the offering memorandum exemption** – If the purchaser qualifies under the exemption in section 2.9 of NI 45-106 [*Offering memorandum*], specify the category of "eligible investor" of the purchaser based on parts (a) to (h) of the definition of "eligible investor".
18. **Information required where reliance on the family, friends and business associates exemption** – If the purchaser qualifies under the exemption in section 2.5 of NI 45-106 [*Family, friends and business associates*], specify the name and title of the individual at the issuer with whom the purchaser has the applicable relationship.
19. **Reports filed under subsection 6.1(1)(j) [*TSX Venture Exchange offering*] of NI 45-106 in Alberta** – For reports filed under subsection 6.1(1)(j) [*TSX Venture Exchange offering*] of NI 45-106 in Alberta, New Brunswick or Saskatchewan the table in Schedule 1 only needs to list the total number of purchasers by jurisdiction instead of including the name, residential address and email address of each purchaser.

Instructions for Schedule 2 to Form 45-106F11

20. **Reference to compensation** – Complete Schedule 2 by providing information for each person who has received or who will receive compensation in connection with the distribution(s). Compensation includes commissions, discounts or other fees or payments of a similar nature. Do not include payments for services incidental to the distribution, such as clerical, printing, legal or accounting services.
21. **Information regarding convertible or exchange securities issued as compensation** – If the securities being issued as compensation are or include convertible or exchangeable securities, such as warrants or options, please add sufficient details under the column “Description of Terms” in Schedule 2 to describe the terms of the convertible or exchangeable securities, including the term and exercise price. Do not include the exercise price of any convertible or exchangeable security in the total dollar value of the compensation unless the securities have been converted or exchanged.

Questions

Refer any questions to:

Securities Regulatory Authorities and Regulators

Alberta Securities Commission
Suite 600, 250 – 5th Street SW
Calgary, Alberta T2P 0R4
Telephone: (403) 297-6454
Toll free in Canada: 1-877-355-0585
Facsimile: (403) 297-2082

Financial and Consumer Services Commission (New Brunswick)
85 Charlotte Street, Suite 300
Saint John, New Brunswick E2L 2J2
Telephone: (506) 658-3060
Toll free in Canada: 1-866-933-2222
Facsimile: (506) 658-3059

Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8
Telephone: (416) 593- 8314
Toll free in Canada: 1-877-785-1555
Facsimile: (416) 593-8122

Public official contact regarding indirect collection of information: Inquiries Officer

Financial and Consumer Affairs Authority (Saskatchewan)
Suite 601 - 1919 Saskatchewan Drive
Regina, Saskatchewan S4P 4H2
Telephone: (306) 787-5879
Facsimile: (306) 787-5899

PROPOSED FORM 45-106F13
RISK ACKNOWLEDGEMENT FORM FOR OFFERING MEMORANDUM INVESTORS (NEW BRUNSWICK AND
ONTARIO)

WARNING TO INVESTORS

TO BE COMPLETED BY THE PURCHASER:

1. Acknowledgement of risk
I acknowledge that this is a risky investment. I could lose all of the \$_____ [<i>insert amount being invested, including any amounts you have agreed to pay in the future</i>] I invest.
I understand that I may never be able to sell these securities and I will be provided with less disclosure than public companies are required to provide to their investors. [<i>Instruction: Delete if issuer is a reporting issuer.</i>]
I acknowledge that, because I am purchasing this investment under a prospectus exemption, I will not have the benefit of protections under securities law for investments made under a prospectus.
I understand that borrowing money to invest increases the risk of my investment because I will be responsible for repaying the borrowed money and any interest owing even if I lose all the money I invest.
First and last name (please print):
Signature:
Date:

2. What I am buying
Number and type of securities:
Name of issuer:
I understand that \$_____ of my total investment is being paid to the salesperson as a fee or commission.
Initial by the purchaser:

3. How I qualify to buy these securities and the investment limits that I am subject to	
I confirm that I am qualified to buy these securities because one of the following applies:	Purchaser's initials
A. I am an accredited investor because [<i>check all applicable boxes</i>]:	

<ul style="list-style-type: none"> <input type="checkbox"/> Either alone or with my spouse, I own cash and securities worth more than \$1 million, less any related debt. <input type="checkbox"/> My net income before taxes was more than \$200,000 in each of the 2 most recent calendar years and I expect it to exceed \$200,000 in this calendar year. (The amount of net income can be found in your personal income tax form.) <input type="checkbox"/> My net income before taxes combined with my spouse's was more than \$300,000 in each of the 2 most recent calendar years and I expect our combined net income to exceed \$300,000 in this calendar year. (The amount of net income can be found in your personal income tax form.) <input type="checkbox"/> Either alone or with my spouse, I own net assets (being my total assets, including real estate, less my total debt) worth more than \$5 million. 	
<p>B. I am an eligible investor because <i>[check all applicable boxes]</i>:</p> <ul style="list-style-type: none"> <input type="checkbox"/> My net income before taxes was more than \$75,000 in each of the 2 most recent calendar years and I expect it to exceed \$75,000 in this calendar year. (The amount of net income can be found in your personal income tax form.) <input type="checkbox"/> My net income before taxes combined with my spouse's was more than \$125,000 in each of the 2 most recent calendar years and I expect our combined net income to exceed \$125,000 in this calendar year. (The amount of net income can be found in your personal income tax form.) <input type="checkbox"/> Either alone or with my spouse, I own net assets (being my total assets, including real estate <u>other than my primary residence</u>), less my total debt) worth more than \$250,000. <input type="checkbox"/> I have obtained advice regarding the suitability of this investment and, if I am a resident of Ontario, I obtained that advice from an investment dealer. <input type="checkbox"/> I am <i>[check all applicable boxes]</i>: <ul style="list-style-type: none"> <input type="checkbox"/> a director of the issuer or an affiliate of the issuer <input type="checkbox"/> an executive officer of the issuer or an affiliate of the issuer <input type="checkbox"/> a control person of the issuer or an affiliate of the issuer <input type="checkbox"/> a founder of the issuer <input type="checkbox"/> I am a family member (either directly or through the spouse of the person listed below), a close personal friend or a close business associate of a person who is <i>[check all applicable boxes]</i>: <ul style="list-style-type: none"> <input type="checkbox"/> a director of the issuer or an affiliate of the issuer <input type="checkbox"/> an executive officer of the issuer or an affiliate of the issuer <input type="checkbox"/> a control person of the issuer or an affiliate of the issuer <input type="checkbox"/> a founder of the issuer <p>I acknowledge that, as an eligible investor, I cannot invest more than \$30,000 during this calendar year in investments made under the offering memorandum exemption. I confirm that, after taking into account my investment of \$_____ today in this issuer, I have not exceeded my investment limit.</p>	
<p>C. I am not an accredited investor or an eligible investor.</p>	

<p>I acknowledge that I cannot invest more than \$10,000 during this calendar year in investments made under the offering memorandum exemption. I confirm that, after taking into account my investment of \$_____ today in this issuer, I have not exceeded my investment limit.</p>	
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TO BE COMPLETED BY THE ISSUER: *[Instruction: The issuer must complete this section before delivering to the purchaser.]*

4. How to contact the issuer
Name and address of issuer:
First and last name of contact person:
Phone number:
Email address:
Signature of executive officer of issuer:

TO BE COMPLETED BY THE PERSON INVOLVED IN SELLING THESE SECURITIES: *[Instruction: Any person involved in selling these securities (which may involve meeting with or providing information to the purchaser) must complete this section by answering “yes” or “no” and filling in their contact information before delivering to the purchaser.]*

5. Who is selling these securities?	Yes/No
I am registered with _____ (insert name of registered firm).*	
I am a director, officer or employee of the issuer.	
I am not registered with a securities regulator and generally not qualified to provide investment advice.	
First and last name (please print):	
Signature:	
Date:	
Phone number:	
Email address:	

**Persons in the business of selling securities or offering investment advice are generally required to be registered with their provincial securities regulator, unless they have an exemption. A purchaser can check the seller’s registration status and history at the following website: www.aretheyregistered.ca.*

Form Instructions:

- This form must be presented to purchasers on no more than two double-sided pages, with items 1 to 4 appearing on the first double-sided page.*
- The purchaser, issuer and salesperson (if any) must sign 2 copies of this form. Each of the purchaser and the issuer must receive an originally signed copy of this form. The issuer is required to keep a copy of this form for 8 years after the distribution. If a salesperson has signed this form, the salesperson may choose to keep a copy for their records. The salesperson must ensure that the purchaser and the issuer receive originally signed copies.*

10. This Instrument comes into force on ●.

Annex B

Background – Local Experience with OM Exemption

Alberta

Over the last three years, ASC Corporate Finance compliance staff has conducted a review of various OMs filed with the ASC under the OM Exemption. In addition, ASC staff conducted a detailed review of purchaser-level information from Exempt Distribution Reports filed in respect of distributions under the OM Exemption.

As a result of the reviews conducted, staff made a number of observations regarding how the OM Exemption was being used. ASC staff also considered Statistics Canada data regarding income and net worth information and compared that against what was observed in respect of use of the OM Exemption to better understand how the exemption was being used. The observations and statistical information were considered against the policy goals for the OM Exemption and gave rise to consideration of a number of possible changes to the OM Exemption. This review also resulted in recommendations regarding changes in the data required to be reported on Exempt Distribution Reports.

Some of the recommendations that developed out of this review are reflected in the Proposed Amendments. Other recommendations are contemplated to be addressed in a second phase. Recommendations that we contemplate addressing in a second phase relate primarily to disclosure enhancements to the form of offering memorandum. We also hope to address harmonized form requirements in respect of risk acknowledgements and Exempt Distribution Reports. Other possible changes, including some of those concurrently being proposed by the OSC, have been or are being considered.

Some observations about use of the OM Exemption in Alberta

The following summarizes some of the observations by ASC staff on use of the OM Exemption in Alberta.

- The OM Exemption is the second most frequently used “capital-raising” prospectus exemption in Alberta (41% of distributions in 2012 were made under the OM Exemption) although the value of the securities distributed (\$0.5 billion in 2012) was 3.8% of the total.
- The exemption is used almost exclusively by non-reporting issuers.
- 77% of the 287 issuers raising money in Alberta in 2011 and 2012 under the OM Exemption were Alberta-based.
- In 2011 and 2012, there was approximately \$824 million raised by 223 Alberta-based issuers under the OM Exemption. Approximately 155 or 70% of issuers self-reported their industry category as real estate or mortgage-investment corporations (MIC). These real estate and MIC issuers raised 76% of the total amounts raised by Alberta-based issuers under the OM Exemption.

- Of the purchasers under the OM Exemption in 2011 and 2012:
 - 90.5% were individuals;
 - 5.9% were corporations;
 - 1.7% were limited partnerships; and
 - 1.6% were trusts.

- Approximately 61% of the individual investors made at least one purchase in an amount **greater than \$10,000**, suggesting, assuming compliance, that they qualified as “eligible investors”. These purchases represented approximately 90% of the total value of purchases by individuals.

- Approximately 39% of the individual investors purchased in amounts **not exceeding \$10,000**. These individuals may or may not be eligible investors.

- The average size of an investment by an *individual* investor (assumed to be an “eligible investor” because of an investment of more than \$10,000) in 2011 and 2012 was approximately \$45,700 and \$47,900 respectively, while the median was approximately \$26,200 and \$27,500 respectively. (These amounts were higher for non-individuals.) Approximately 24% of eligible investors purchased more than \$50,000 and approximately 8% purchased more than \$100,000 per year. The following is a further breakdown of the total number of individuals that invested in 2011 or 2012 \$50,000 or more in a single year under the OM Exemption:
 - 1773 individuals invested between \$50,000 and \$99,999;
 - 816 individuals invested between \$100,000 and \$249,999;
 - 122 individuals invested between \$250,000 and \$499,999; and
 - 26 individuals invested in excess of \$500,000.

- The ASC has received numerous complaints from investors that have invested significant amounts under the OM Exemption and incurred significant losses.

- While approximately 68.7% of individuals made only a single investment over 2011 to 2012, the following % of individuals made multiple purchases:
 - 20% made 2;
 - 5.6% made 3; and
 - 5.8% made 4 or more.

- Where individuals made multiple purchases, their average and median investment, not surprisingly, increased as well.

- Of investors who only invested in amounts of less than \$10,000 (and may be non-eligible investors) 10% in 2011 and 17% in 2012 made repeat purchases resulting in their total investment exceeding \$10,000. Typically the total investment was less than \$25,000 but approximately 111 investors who invested less than \$10,000 per distribution invested in total from \$25,000 to \$100,000 within a calendar year.

- There are a few issuer groups raising the majority of the funds under the OM Exemption in Alberta. Some of these large issuers have “in-house” exempt market dealers selling the securities on their behalf.

Some Observations regarding Exempt Distribution Reports filed in Alberta

- Approximately 47% of Exempt Distribution Reports filed in 2011 and 2012 were filed late.
- The current form of Exempt Distribution Report provides limited information, creating monitoring challenges.

Coordination with the OSC

ASC staff were aware that the OSC was considering adoption of an OM Exemption and ASC staff therefore shared its observations on the use of the OM Exemption in Alberta with OSC staff. ASC and OSC staff also shared their respective recommendations regarding the OM Exemption and Exempt Distribution Reports and efforts were made to coordinate the recommendations and our respective publications for comment.

Québec

AMF staff has been reviewing use of the OM Exemption for the past few years and has not found significant problems with it in Québec. The AMF has found that the OM Exemption is not as widely used by its market participants as other capital raising prospectus exemptions. Some concerns that had been identified are reflected in the changes made to the Exempt Distribution Reports published in the CSA’s February 27, 2014 Notice of Publication.

From a policy perspective, the AMF shares most of the recommendations made by the ASC staff following their review of the OM Exemption in Alberta and has worked closely with staff of the other CSA jurisdictions in drafting changes to the OM Exemption.

Although the AMF is not publishing the proposed Exempt Distribution Reports, these are areas that it has considered and is interested in feedback in respect of them. Following receipt of feedback on the Proposed Amendments and the concurrent FCNB and OSC proposal, the AMF anticipates actively participating in the further review of the OM Exemption in phase 2.

Saskatchewan

FCAA staff have also been reviewing use of the OM Exemption locally over the past few years and have participated in the development of CSA and local notices outlining concerns with use of the OM Exemption.

Annex C

Local Matters – New Brunswick

The FCNB is also publishing for a 90-day comment period proposed amendments (the **Proposed Amendments**) to National Instrument 45-106 *Prospectus and Registration Exemptions* (NI 45-106) which, if adopted, would introduce

- changes to the existing offering memorandum (**OM**) prospectus exemption (**OM Exemption**) in section 2.9 of NI 45-106,
- two new forms of reports of exempt distribution (**Exempt Distribution Reports**), and
- amendments to New Brunswick Local Rule 45-802 *Implementing National Instrument 45-106 Prospectus and Registration Exemptions* (Local Rule 45-802).

The Ontario Securities Commission (**OSC**) is concurrently publishing proposals with respect to the adoption of certain prospectus exemptions including a proposal to adopt an OM Exemption and new Exempt Distribution Reports. The FCNB is proposing the same model as the OSC (**Proposed NB Amendments**). Reference can be made to the OSC Notice and the FCNB welcomes any comments provided to the OSC including responses to specific questions asked in that notice respecting the Proposed Amendments.

Substance and purpose

The Proposed NB Amendments contemplate the following:

- Place caps on the aggregate amount that can be sold to any one individual investor under the OM Exemption in a 12 month period:
 - \$10,000 in respect of investors who are individuals that are not eligible investors; and
 - \$30,000 in respect of investors who are individuals that are eligible investors but do not meet the definition of an accredited investor.

Currently, New Brunswick does not impose limits on the amounts an investor can invest under the OM Exemption.

- Adopt a net asset test in the definition of eligible investor to exclude the value of the individual's principal residence.
- To provide investors with the same rights of action in respect of all disclosure made in relation to a distribution under the OM Exemption, we have proposed that all marketing materials relating to a distribution under an offering memorandum be deemed to form part of an offering memorandum and be required to be incorporated by reference.
- To provide investors with an opportunity to monitor the use by an issuer of the funds it raises, we have proposed that a non-reporting issuer be required to provide ongoing annual audited financial statements and specified disclosure of its use of proceeds derived from distributions under the OM Exemption.

We have proposed that the annual financial statements be audited and comply with section 4.1 of NI 51-102 and NI 42-107, as though the issuer were a reporting issuer. This will generally require the ongoing financial statements to be prepared in accordance with International Financial Reporting Standards, which is consistent with what is required when preparing financial statements for inclusion in an OM.

Currently, New Brunswick Blanket Order 52-502 permits issuers using Form 45-106F2 to prepare financial statements in accordance with GAAP applicable to private enterprises (**Private Enterprise GAAP**). The FCNB contemplates amending the blanket order to permit New Brunswick based issuers to use Private Enterprise GAAP for the ongoing financial disclosure where the issuer has used Private Enterprise GAAP in its OM.

- Prohibit the use of the OM Exemption by an investment fund or an issuer related to the registrant involved in the offering.
- Restrict the OM Exemption so that it is not available for the distribution of complex securities such as derivatives and securitized products.
- To enhance our ability to monitor use of capital-raising prospectus exemptions, we propose to adopt two new Exempt Distribution Reports, one in respect of investment funds and one in respect of other issuers.
- Consequential amendments to Local Rule 45-802 to require delivery of certain offering memoranda to the FCNB.

Questions

We would appreciate feedback on the Proposed Amendments generally, as well as comments and responses to questions contained in the CSA multilateral notice and in the OSC publication. In addition, we have the following specific requests for comment:

17. Should New Brunswick restrict the amount an investor can invest under the OM Exemption? Does this restrict capital raising opportunities in New Brunswick? Does this enhance investor protection?
18. Should New Brunswick prohibit the use of the OM Exemption by investment funds? Please explain your reasoning.

Request for comments

We welcome all comments on the Proposed Amendments. Please refer to the CSA Multilateral Notice for instructions on how to make comments. For comments on New Brunswick specific amendments and the questions above:

Please submit your comments in writing on or before **June 18, 2014**. If you are not sending your comments by email, please send a CD containing the submissions (in Microsoft Word format).

Please **address** your submission as follows:
Financial and Consumer Services Commission (New Brunswick)

Please **deliver** your comments to:

Susan Powell

Deputy Director, Securities

85 Charlotte Street, Suite 300

Saint John, NB E2L 2J2

susan.powell@fcnb.ca



AMENDMENTS TO RULE 45-802 IMPLEMENTING NATIONAL INSTRUMENT 45-106 –
PROSPECTUS AND REGISTRATION EXEMPTIONS, COMPANION POLICY 45-106CP, FORMS
45-106F1, 45-106F2, 45-106F3, 45-106F4 and 45-106 F5

1 *New Brunswick Rule 45-802 Implementing National Instrument 45-106 – Prospectus and Registration Exemptions, Companion Policy 45-106CP, Forms 45-106F1, 45-106F2, 45-106F3, 45-106F4 and 45-106F5 is amended by this Instrument.*

2 *Part 2 is amended:*

(a) in section 2.1 by repealing paragraph c;

(b) in section 2.3

(i) by substituting "in the sections of NI 45-106" with "in the following sections of NI 45-106:

- | | |
|---------------------------|---|
| a. 2.5(2)
exemption; | <i>Family friends and business associates</i> |
| b. 2.3(2) | <i>Accredited investor;</i> |
| c. 2.9(3) | <i>Offering memorandum;</i> |
| d. 2.10(2) | <i>Minimum amount investment;</i> |
| e. 2.12(2) | <i>Asset acquisition;</i> |
| f. 2.13(2)
properties; | <i>Petroleum, natural gas and mining</i> |
| g. 2.14 (2) | <i>Securities for debt;</i> |
| h. 2.19 (2) | <i>Additional investment in investment funds;</i> |
| i. 2.30(2) | <i>Isolated trade by issuer;</i> |
| j. 5.2 | <i>TSX Venture offering."; and</i> |

(ii) by substituting "listed in subsections 2.1(a)-(j), the issuer shall file with the Commission" with "the issuer shall deliver to the Commission";

4 *This instrument comes into force on ●.*