Exempt Distribution Reporting Requirements for Investment Funds: What's New this Year?

October 28, 2019

Managers of investment funds that have issued securities to Canadian residents during 2019 under certain prospectus exemptions should circle **Monday, January 30, 2020** in red ink on their compliance calendars. This is the deadline for investment funds to file a Report of Exempt Distribution, using Form 45-106F1 and the accompanying Schedule, without penalty for private placements completed between January 1, 2019 and December 31, 2019.

A fund must file such a report for the full calendar year of 2019 by January 30, 2020 if it has issued securities to investors using any of the following prospectus exemptions set out in **National Instrument 45-106 *Prospectus Exemptions*** and section 73.3 of the *Securities Act* (Ontario): (i) the accredited investor, (ii) minimum purchase amount, or (iii) additional investment in investment funds, and it has not filed a Report of Exempt Distribution within 10 days of each such trade.

Although the required forms and schedules have not changed this year, **there are two new regulatory developments that will likely increase the time it will take to prepare for and carry out the filings for 2019.**

New filing requirements for fully managed account investors

On February 7, 2019, the Canadian Securities Administrators (CSA) published CSA Staff Notice 45-325 *Filing Requirement and Fee Payable for Exempt Distributions involving Fully Managed Accounts* (the CSA Notice), which can be found here. In the CSA Notice, the securities regulators of Québec and Manitoba have clarified their views that the requirement to file Form 45-106F1 with respect to purchases under paragraph (p) or (q) of the definition of "accredited investor" is based on the location of the beneficial owner of a fully managed account. Where the trust company, trust corporation or registered adviser is resident outside of these two provinces, the Form 45-106F1 should continue to be prepared and filed as in previous years, including details of the trust company, trust corporation or registered adviser only in the Form 45-106F1 and Schedule 1. If beneficial owners of fully managed accounts that were involved in an exempt distribution reside in either of Manitoba or Québec, the securities regulators of

these provinces require that issuers file a separate side letter indicating the aggregate amount of securities distributed through the managed account to beneficial owners located in the province, and pay filing fees related to such purchases. If the trust company, trust corporation or registered adviser who purchased securities on behalf of a fully managed account is located in Manitoba or Québec, but no beneficial owners of fully managed accounts reside in such jurisdictions, there is no requirement to file a Form 45-106F1.

In each jurisdiction, other than Manitoba and Québec, the requirement to file Form 45-106F1 in respect of an exempt distribution involving a fully managed account continues to be based on the location of the trust company, trust corporation or registered adviser deemed to be purchasing the securities as principal.

The securities regulator in Saskatchewan explained in the CSA Notice that it agrees with the regulatory theory behind the position of the Manitoba and Québec regulators: trades in Saskatchewan are occurring when Saskatchewan residents set up a managed account with a trust company, trust corporation or registered adviser located in another jurisdiction, but have issued a blanket exemption which brings Saskatchewan laws into line with the other CSA jurisdictions.

New requirement to file through BCSC eServices in B.C.

Effective September 30, 2019, BC Instrument 13-502 *Electronic Filing of Reports of Exemption Distribution* has been amended to require **all** reports of exempt distribution to be filed in British Columbia via the BCSC eServices portal. These filings may no longer be filed with the BCSC in paper format. This change applies to both Canadian and foreign issuers.

How BLG can assist you

Borden Ladner Gervais LLP has extensive experience assisting issuers, managers and exempt market dealers in understanding regulatory requirements as they relate to private placements and the exempt markets. Our securities law clerks and paralegals are experts on the complexities of SEDAR and other electronic filing systems. We would be pleased to assist you with understanding the requirements relating to Form 45-106F1 (and the Schedules) and how they apply to you.

Based on our experience with assisting clients with the January exempt distribution reports over the past few years, we urge you not to underestimate the work involved in preparing the requisite filings **and to commence pulling together the information as soon as possible (ideally in December or the first week of January).** The burdens associated with the filings this year will be likely exacerbated by the regulatory developments listed in this Bulletin.

Some tips for completing these documents:

- Issuers must file a Form 45-106 and accompanying Schedules for **each** applicable investment fund.

- The Schedules must be completed and filed in Excel format.
- Fillable versions of Form 45-106F1 and Schedules can be found here, but note that Form 45-106F1 filings for Ontario must be completed using the Ontario Securities Commission (**OSC**) electronic filing portal (which can be found here), and that filings for British Columbia must be completed using the BCSC eServices portal (which can be found here). Form 45-106F1 submissions filed in jurisdictions other than Ontario and British Columbia must be filed via SEDAR. All of these filings take time, given the fees payable and the different systems to be used and the volumes associated with these filings.
- Non-Canadian issuers must use the OSC and BCSC's online filing portals to file Form 45-106F1 and the Schedules, and can file in the remaining jurisdictions by forwarding paper copies.
- SEDAR profiles and BCSC eServices profiles will need to be created for any new funds and existing funds that have not previously filed a Form 45-106F1 on SEDAR or the BCSC eServices portal, as applicable. As the creation of profiles on SEDAR and the BCSC eServices portal typically take at least 24-48 hours, we highly recommend that these profiles be set up ahead of time.

If you have not done so already, we encourage you to contact your BLG lawyer as soon as possible if you would like us to make the 2019 filings for your fund on your behalf so that we can work with you to ensure that the Forms and Schedules are completed and filed on a timely and efficient basis by the January 30, 2020 deadline. Regulatory filing fees will also be payable and we can assist you in calculating those fees.

As we pointed out in our June 11, 2019 Bulletin, the CSA have also instituted a new security measure for filings on SEDAR. Subject to certain exemptions, for filings made on your behalf by a third party, the CSA will ask for verification that the third party (*i.e.*, BLG) is authorized to make the filing on your behalf. This will also increase the time associated with the work to carry out your filings.

Please contact your lawyer in BLG's Securities, Capital Markets and Public Companies Group, including BLG's Investment Management Group, any of the leaders of these groups, or any of the following lawyers for more information about how we can assist you or if you would like any more information about the regulatory developments in Canada and how they may affect your private placements or exempt offerings.

By

Rebecca A. Cowdery, Sarah Gardiner

Expertise

Investment Management, Capital Markets

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 800 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2026 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.