Happy New Year — With New Regulatory Deadlines! Exempt Trade Reports Due for Filing by Investment Funds: January 30, 2017

January 11, 2017

The start of every new year brings with it the excitement of new beginnings and the prospect of new challenges. 2017 is no exception — at least on the Canadian securities regulatory front, with hotly anticipated significant new developments and regulatory deadlines.

The first new regulatory deadline is fast approaching — **Monday, January 30, 2017** is the final day that a Report of Exempt Distribution (Form 45-106F1) can be filed (without penalty) by investment funds who have distributed securities to investors using specified prospectus exemptions set out in National Instrument 45-106 *Prospectus Exemptions* and section 73.3 of the *Securities Act* (Ontario):

- Accredited investor
- Minimum purchase amount
- Additional investment in investment funds.

Investment funds, like other issuers, have the option of filing Reports of Exempt Distribution within 10 days after a distribution, but many investment funds choose to file the Reports on an annual basis as has been permitted for many years under NI 45-106 in respect of exempt distributions in reliance on the above-noted prospected exemptions. 2017 is the first year that investment funds must file the Reports within 30-days of the calendar year end (previously the Reports were to be filed within 30 days of the funds' financial year end).

2017 is also the first year that these Reports **must** be filed on SEDAR in respect of distributions to residents of all provinces, other than Ontario and British Columbia. Reports of exempt trades to residents of Ontario must continue to be filed electronically using the OSC's electronic filing portal, while annual Reports of exempt trades to residents of British Columbia must continue to be sent in paper format to the British Columbia Securities Commission. Note that Reports of Exempt Distribution filed within 10 days of a distribution must be filed electronically in British Columbia using BCSC eServices.

And while Reports of Exempt Distribution must be made, and fees paid, within the applicable time deadlines, investment funds that are non-Canadian issuers are not required to file the Reports on SEDAR and must therefore file the Reports in paper to the applicable securities regulatory authority except Ontario, where the Reports must continue to be filed using the OSC's electronic filing portal.

Investment funds may continue to file Reports of Exempt Distribution for 2016 issuances of securities using the "old" Report of Exempt Distribution. They also have the option of filing the Reports using the new Form 45-106F1 *Report of Exempt Distribution*, but if this option is chosen, managers should note that the new Form requires significantly more detailed information about purchasers and the nature of the investment funds issuing the securities. For any distributions carried out on or after January 1, 2017, the new Form must be used (and filed on or before the 30-day deadline in January 2018). This means that managers should become familiar with the new Form to understand what additional information they need to collect from investors and provide about the specific funds issuing the securities.

It will be necessary for funds and their managers to complete the required Report (using either the "old" or the "new" Form) as soon as possible, so that the applicable fees can be calculated and drawn from bank accounts, and SEDAR profiles created (unless the funds already have SEDAR profiles). Once that is complete, the Reports and the fees can be paid through SEDAR, in addition to the OSC electronic filing portal and in paper format (in B.C.), as required, on or before the deadline.

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. We would be pleased to assist you with understanding the requirements and how they apply to you.

We urge you to contact your usual lawyer at BLG as soon as possible if you would like us to make the 2017 filings (for 2016) on your behalf, so that we can work with you to ensure that the SEDAR and other filings are made on a timely and efficient basis by the January 30 deadline.

Please see our Securities and Capital Markets Bulletins for an explanation of the regulatory developments in the exempt markets over the past few years, including *Increased Complexities for Exempt Market Filings in Canada Effective May 24, 2016* January 2016.

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

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