Calling all Fund Managers: January 30, 2018 is Closer Than You Think!

December 07, 2017

Managers of investment funds that have issued securities to Canadian residents during 2017 under certain prospectus exemptions should circle Tuesday, January 30, 2018 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,without penalty, for private placements completed between January 1, 2017 and December 31, 2017. If a fund 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, then the fund must file such a report for all of calendar 2017 by January 30, 2018.

This is the first year that investment funds must use the new Form 45-106F1 (which will be publicly available) and the new Schedule 1 (which will be confidential). Schedule 1 must be completed and filed in the mandated Excel format.

CSA Staff Notice 45-308 (revised) *Guidance for Preparing and Filing Reports of Exempt Distribution under National Instrument 45-106 Prospectus Exemptions* published in September 2016 provides some guidance for completing these documents. Managers proposing to undertake these filings themselves for their funds should also be aware that in June 2017, the Canadian Securities Administrators published proposed amendments to Form 45-106F1 and Schedule 1 [CSA Multilateral Notice and Request for Comment *Proposed Amendments to National Instrument 45-106 Prospectus Exemptions relating to Reports of Exempt Distribution*] that provide more clarity on certain items in the Form and the Schedule. Some of this clarity is applicable now, at least in Ontario.

Managers should note that the new Form 45-106F1 and Schedule 1 require significantly more detail about each investment fund and each investor in the fund.Given that more detailed information is required and this is the first time most investment funds will be using the new Form 45-106F1 and Schedule 1, we anticipate that these documents will require more time to complete and to verify their accuracy.It is not too early to start doing this now. Each applicable item of Form 45-106F1 and the Schedule should be read carefully to determine the meaning of the terms used and what information the regulators expect funds to provide.

Some tips for completion of these documents:

- One Form 45-106F1 and accompanying Schedule 1 must be filled out for *each* applicable investment fund.
- The Form 45-106F1 and Schedule 1 for each investment fund must be used to disclose all distributions made by the investment fund in all applicable provinces and territories, broken down by province, by investor and by date.
- Schedule 1 must be completed and filed in Excel format. A PDF version will not be accepted.
- For Canadian funds, the Form 45-106F1 must be filed electronically using the OSC's electronic filing portal in Ontario, electronically using BCSC eServices or in paper in British Columbia, and on SEDAR in the remaining provinces and territories.
- SEDAR profiles will need to be created for any new funds that were created in the 2017 calendar year and for funds that issued securities in 2017 (but did not file on SEDAR in 2016). As this takes additional time, we recommend that the SEDAR profile be set up ahead of time.

Investment funds that are non-Canadian issuers must file the Form 45-106F1 and Schedule 1 on the OSC's electronic filing portal in Ontario, and in paper in the remaining jurisdictions.

Please Contact Us

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 how they apply to you.

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 2017 filings for your funds 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, 2018 deadline. Fees will also be payable and we can assist you in those calculations.

For more information about regulatory developments in Canada and how they may affect your private placements or exempt offerings, please contact any of the lawyers below or a member of the BLG's Securities and Capital Markets Group, including BLG's Investment Management Group.

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