New Streamlined Report of Exempt Distribution: January 30, 2019 Deadline For Funds

November 22, 2018

On October 5, 2018, amendments to National Instrument 45-106 *Prospectus Exemptions* (NI 45-106) and its Companion Policy (the Amendments) came into force. The Amendments are intended to streamline **Form 45-106F1**, the Report of Exempt Distribution, which must be filed following a distribution of securities in reliance on certain prospectus exemptions set out in NI 45-106 and section 73.3 of the *Securities Act* (Ontario). The new Form 45-106F1 must be used on and after October 5, 2018 by all issuers, whether investment funds or otherwise.

The Amendments include the following changes, among others:

- **Certification**: If authorized to do so, an agent may now certify Form 45-106F1 on behalf of an investment fund.
- **Non-individual permitted clients**: Issuers distributing securities to non-individual permitted clients who purchased under the accredited investor exemption (section 2.3 of NI 45-106) no longer need to specify which category of accredited investor applies to those purchasers in the Schedule 1 accompanying Form 45-106F1 – instead, "NIPC" can be selected.
- **Securities regulators' contact details**: Contact details for the various securities regulators set out at the end of Form 45-106F1 have changed. These changes may necessitate updates to subscription agreements or other disclosure documents of issuers in which they have provided these contact details to individual purchasers.
- **Cryptoassets/digital coins**: "Cryptoassets" has been added to the selection of investment fund types and other issuers' primary business in Form 45-106F1. A number of new security codes have also been added, including for digital coins or tokens. This will allow the Canadian Securities Administrators (CSA) to monitor issuers that invest in cryptocurrencies and cryptocurrency-related assets as well as to identify distributions of securities involving digital coins or tokens.
- **NAICS code**: Non-investment fund issuers may now provide a North American Industry Classification Standard (NAICS) code that in their "reasonable judgment" most closely corresponds to the issuer's primary business activity.
- **Publicly-listed issuers**: Publicly-listed issuers need now only provide the exchange where their securities primarily trade.

- **Joint purchasers**: Joint purchasers may be treated as one purchaser for the purposes of Form 45-106F1. In Schedule 1, both individuals' names should be listed and separated with an ampersand.

Fillable versions of Form 45-106F1 and Schedules can be found here, but note that Form 45-106F1 must be completed using the OSC's on-line form for Ontario, which can be found here.

CSA Staff Notice 45-308 (revised) *Guidance for Preparing and Filing Reports of Exempt Distribution under National Instrument 45-106 Prospectus Exemptions* published on October 4, 2018 provides updated guidance for completing Form 45-106F1 and accompanying Schedules.

Proposed Filing Changes for Investment Funds in British Columbia

The British Columbia Securities Commission (the **BCSC**) recently published proposed amendments to British Columbia Instrument 13-502 *Electronic filing of reports of exempt distribution*. The proposed amendments are **not** expected to be in force before January 30, 2019, and are not expected to affect report of the exempt distribution filings for distributions in British Columbia during the year ended December 31, 2018.

If the proposed amendments are adopted, managers of investment funds with distributions in British Columbia will be required to submit annual Form 45-106F1 filings electronically through the BCSC eServices system. Currently, investment funds have the option of filing Form 45-106F1 either electronically through BCSC eServices or in paper format. If the proposed amendments are adopted, managers should be prepared for this change before the January 2020 filing deadline. We will continue to monitor the status of the proposed amendments.

Filing Deadline Reminder — Investment Funds

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.

Managers of investment funds that have issued securities to Canadian residents during 2018 under any of the accredited investor, minimum purchase amount or additional investment in investment funds prospectus exemptions set out in NI 45-106 or section 73.3 of the *Securities Act* (Ontario) should mark **Wednesday, January 30, 2019** on their calendars. This is the deadline for these investment funds to file Form 45-106F1 (using the new form) (and the schedules), without penalty, for private placements under those prospectus exemptions occurring between January 1, 2018 and December 31, 2018.

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 2018 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, 2019 deadline. Regulatory filing fees will also be payable and we can assist you in calculating those fees.

Please contact your lawyer in BLG's Securities and Capital Markets 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 more information about the regulatory developments in Canada and how they may affect your private placements or exempt offerings.

By

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