

Chapter 5

Rules and Policies

5.1.1 Ontario Amending Instrument for National Instrument 45-106 Prospectus Exemptions

ONTARIO AMENDMENT INSTRUMENT AMENDING NATIONAL INSTRUMENT 45-106 *PROSPECTUS EXEMPTIONS*

July 7, 2016

Making of Amendment Instrument

On June 30, 2016, amendments to National Instrument 45-106 *Prospectus Exemptions* (**NI 45-106**) came into force in Ontario and all other CSA jurisdictions.¹ The amendments introduced a new harmonized report of exempt distribution, Form 45-106F1 *Report of Exempt Distribution* (**Form 45-106F1**).

On June 22, 2016, the Commission approved, for Ontario purposes only, an amendment instrument (the **Amendment Instrument**) that will amend NI 45-106 under the *Securities Act* (Ontario) (the **Act**). The securities regulatory authorities in other CSA jurisdictions have issued blanket orders to address the subject matter of the Amendment Instrument. See Annex A of this Notice for the text of the Amendment Instrument.

Delivery of Amendment Instrument to Minister

The Commission delivered the Amendment Instrument to the Minister of Finance on July 5, 2016. If the Minister approves the Amendment Instrument within 60 days, it will come into force 15 days after the Amendment Instrument is approved.

Substance and Purpose of Amendment Instrument

Schedule 1 of Form 45-106F1 requires issuers and underwriters to identify whether a purchaser is a registrant or an insider of the issuer. This requirement is found at clauses (f)1 and (f)2 of Schedule 1, respectively.

The Amendment Instrument (Annex A to this Notice) amends Form 45-106F1 to provide an exemption from the requirement to disclose whether a purchaser is a registrant or an insider of the issuer if one or more of the following apply:

- (a) the issuer is a foreign public issuer;²
- (b) the issuer is a wholly owned subsidiary of a foreign public issuer;³
- (c) the issuer is distributing eligible foreign securities only to permitted clients.⁴

This relief aligns with the exemptions already provided to certain foreign issuers in Item 9 and Schedule 2 of Form 45-106F1.

The purpose of the exemption is to address concerns expressed by foreign issuers and dealers conducting offerings into Canada about the requirement to determine whether a purchaser is a registrant or an insider of the issuer, as those terms are defined under Canadian securities law.

Authority for Amendment Instrument

The following provisions of the Act provide us with authority to make the Amendment Instrument: paragraphs 143(1)7, 13, 20, 30.1, 30.2, 31, 35, 40, 44, 45, 46, 49 and 56.

In addition, paragraphs 143.2(5)(b) and (c) of the Act permit us to make the Amendment Instrument without publishing it for comment.

¹ It is expected that the amendments to NI 45-106 will come into force in Saskatchewan but not on June 30, 2016.

² "Foreign public issuer" is defined in Part B1 of Form 45-106F1.

³ Guidance on what is a wholly owned subsidiary of a foreign public issuer is provided in Item 9 of Form 45-106F1.

⁴ "Eligible foreign security" and "permitted client" are defined in Part B1 of Form 45-106F1.

Questions

Please refer your questions to:

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**ANNEX A
NATIONAL INSTRUMENT 45-106 PROSPECTUS EXEMPTIONS
ONTARIO AMENDMENT INSTRUMENT**

1. ***Form 45-106F1 Report of Exempt Distribution of National Instrument 45-106 Prospectus Exemptions is amended in Ontario by this Instrument.***
2. ***Schedule 1 of Form 45-106F1 is amended by adding the following below the heading “f) Other information” and before “1. Is the purchaser a registrant? (Y/N)”:***

In Ontario, clauses (f)1. and (f)2. do not apply if one or more of the following apply:

 - (a) *the issuer is a foreign public issuer;*
 - (b) *the issuer is a wholly owned subsidiary of a foreign public issuer;*
 - (c) *the issuer is distributing eligible foreign securities only to permitted clients.*
3. This Instrument comes into force 15 days after it is approved by the Minister if it is approved by the Minister not more than 60 days after it is delivered to the Minister.