

1.1.2 OSC Staff Notice 45-713 – Reports of Exempt Distribution – Compliance with Filing Requirements

OSC Staff Notice 45-713 – *Reports of Exempt Distribution – Compliance with Filing Requirements* is reproduced on the following internally numbered pages. Bulletin pagination resumes at the end of the Staff Notice.

This page intentionally left blank

REPORTS OF EXEMPT DISTRIBUTION COMPLIANCE WITH FILING REQUIREMENTS

OSC Staff Notice 45-713

November 21, 2013

Purpose of notice

We have prepared this notice to provide guidance on filing reports of exempt distribution (Reports) under National Instrument 45-106 – *Prospectus and Registration Exemptions* (NI 45-106)¹. In particular, we wish to remind issuers, underwriters and their advisors of:

- the importance of filing Reports and applicable filing fees on time, and
- recent changes to the applicable filing fees.

Background of exempt market and importance of Reports

One of the key principles of Ontario securities law is that securities may not be distributed unless a prospectus is filed with and received by the OSC. Only in limited circumstances may securities be distributed without a prospectus. This is typically referred to as an “exempt distribution” that occurs in the “exempt market”.

NI 45-106 includes a number of exemptions from the prospectus requirement under which exempt distributions may be made. Issuers, including investment funds, and underwriters are required to report exempt distributions made in reliance on certain of those prospectus exemptions, including the accredited investor and minimum amount investment exemptions.

Exempt market activity is significant. Based on Reports filed with the OSC, approximately \$104 billion was raised in the exempt market in Ontario in 2012. Approximately one-third of this amount was raised by issuers other than investment funds².

¹ The guidance in this staff notice also applies to reports of exempt distribution required to be filed under OSC Rule 45-501 - *Ontario Prospectus and Registration Exemptions*. Part 6 of that Rule requires that issuers file a report of exempt distribution on or before the 10th day after a distribution in the form prescribed in Form 45-501F1.

² This data reflects purchases but not redemptions of investment fund securities. The data for distributions of investment fund securities reflects distributions to both individual and institutional investors of both public and private investment fund securities.

Importance of Reports

Reports are our primary source of information about activity in the exempt market. They include information about the issuer, the underwriter (if any), the distribution, commissions and finders' fees and the investors.

This information provides us with a more comprehensive understanding of activity in the exempt market, helps us to effectively oversee that market, and informs any future changes we may recommend to the exempt market regulatory regime. As a result, it is important that complete and accurate Reports are filed with the OSC in a timely manner.

Snapshot of requirements to file Reports

Topic	Reminder regarding requirement
Requirement to file a Report	A Report must be filed in connection with a distribution made in reliance on certain prospectus exemptions, including the accredited investor and minimum amount investment exemptions (see Part 6 of NI 45-106).
Form of Report	<p>In Ontario, the prescribed form of Report under NI 45-106 is Form 45-106F1 (see section 6.3 of NI 45-106). Reports can be filed either in paper form or online using the e-form available at: https://eforms2.osc.gov.on.ca/exemptdistribution/ProcessFormsServlet?action=open&filename=45-106F1CF.xfdl&mode=html</p> <p>On October 31, 2013, the OSC published OSC Rule 11-501 - <i>Electronic Delivery of Documents to the Ontario Securities Commission</i> in final form and, subject to Ministerial approval, it will come into effect on February 19, 2014. The rule contemplates mandatory electronic filing of certain documents, including Reports. Electronic filing is a convenience to filers and allows for the efficient collection and use of information by the OSC. Electronic filing will:</p> <ul style="list-style-type: none">• streamline the submission process and regulatory burden for market participants in Ontario,• improve our data analysis, compliance and enforcement capabilities by requiring more reports in a machine-readable format, and• reduce the effort and time required to process and analyze the documents, allowing the Commission to focus resources on more substantive matters.

Topic	Reminder regarding requirement
Deadline for filing Report	<p>A Report must be filed no later than 10 days after a distribution (see subsection 6.1(2) of NI 45-106). An investment fund relying on the accredited investor, minimum amount investment or additional investment in investment funds exemption may instead file a Report no later than 30 days after its financial year end (see subsection 6.2(2) of NI 45-106).</p> <p>A Report in paper form is considered to be filed when it is received in our office. A Report that uses the e-form is considered to be filed when the e-form has been successfully submitted online to the OSC. A payment is considered to have been made when it is received in our office. If the deadline for filing a Report falls on a Saturday, Sunday, or another day when the OSC is not open, the deadline is the next day the OSC is open.</p>
One Report for multiple distributions	<p>One Report may be used for multiple distributions that occur within 10 days of each other provided the Report is filed on or before the 10th day following the first of those distributions. Distributions that occur over periods longer than 10 days must be split into two or more Reports to meet this requirement (see Instruction 4 to Form 45-106F1).</p>
Filing fee	<p>A \$500 fee must be filed with each Report by the deadline (see section 4.1 and section B of Appendix C of OSC Rule 13-502 – <i>Fees</i> (OSC Rule 13-502)).</p>
Late filing fee	<p>If a Report is filed after the deadline, a late fee of \$100 per business day applies, up to a maximum of \$5,000 per fiscal year of an issuer for all of the issuer’s Reports together with reports of exempt distribution required under OSC Rule 45-501 – <i>Ontario Prospectus and Registration Exemptions</i> (OSC Rule 45-501) (see section 4.3 and section A.1 of Appendix D of OSC Rule 13-502).</p>

Summary of changes to filing fees and late filing fees applicable to Reports

Recent changes to OSC Rule 13-502 became effective on April 1, 2013. The following table summarizes the recent changes in filing fees and late filing fees applicable to filing Reports.

Previous Requirements	Amended Requirements
<p>An activity fee of \$500 for filing a Report was required to be paid by issuers other than those that paid, or in the case of an investment fund, whose investment fund manager paid, participation fees.</p>	<p>Now, an activity fee of \$500 is required to be paid with each Report filed, regardless of whether an issuer (reporting or non-reporting), or in the case of an investment fund, the fund’s investment fund manager, paid a participation fee. The activity fee is intended to reflect the average cost to the OSC of reviewing Reports (see section 4.1 and section B of Appendix C of OSC Rule 13-502).</p>

Previous Requirements	Amended Requirements
<p>Only reporting issuers were subject to a late fee when a Report was filed after the deadline.</p> <p>The maximum late fee of \$5,000 per fiscal year was an aggregate fee that applied to the late filing of several documents (such as financial statements, annual information forms, participation fee forms, Reports, etc.).</p>	<p>Now, all issuers (reporting and non-reporting) are subject to a late fee when a Report is filed after the deadline.</p> <p>The fee for a late Report is \$100 per business day, up to a maximum of \$5,000 per fiscal year of an issuer. This maximum fee now only applies to Reports, and reports of exempt distribution under OSC Rule 45-501, and is in addition to any other late fees that may be charged in connection with other documents (see section 4.3 and section A.1 of Appendix D of OSC Rule 13-502).</p>

Questions

Questions may be referred to:

<p>Jo-Anne Matear, Manager Corporate Finance Branch Tel: 416.593.2323 Email: jmatear@osc.gov.on.ca</p>	<p>Moses Seer, Administrative Support Clerk Corporate Finance Branch Tel: 416.593.3684 Email: mseer@osc.gov.on.ca</p>
<p>Lisa Piebalgs, Accountant Corporate Finance Branch Tel: 416.593.8147 Email: lpiebalgs@osc.gov.on.ca</p>	<p>Rick Whiler, Senior Accountant Corporate Finance Branch Tel: 416.593.8127 Email: rwhiler@osc.gov.on.ca</p>
<p>Shaill Bahuguna, Administrative Support Clerk Investment Funds Branch Tel: 416.593.3678 Email: sbahuguna@osc.gov.on.ca</p>	