

## Annex C-3

### Blackline of Proposed Amendments to Part 5 of Companion Policy 45-106CP *Prospectus and Registration Exemptions*

#### PART 5 – FORMS

##### 5.1 Report of Exempt Distribution

###### (1) Requirement to file

An issuer that has distributed a security of its own issue under any of the prospectus exemptions listed in section 6.1 of NI 45-106 is required to file ~~Form 45-106F1 Report of Exempt Distribution~~ [a report of exempt distribution](#), on or before the 10th day after the distribution. Alternatively, if an underwriter distributes securities acquired under section 2.33 of NI 45-106, either the issuer or the underwriter may complete and file the form. If there is a syndicate of underwriters, the lead underwriter may file the form on behalf of the syndicate or each underwriter may file a form relating to the portion of the distribution it was responsible for.

The required form of report is Form 45-106F1 Report of Exempt Distribution in all jurisdictions except British Columbia. In British Columbia, the required form of report is Form 45-106F6 British Columbia Report of Exempt Distribution.

In determining if it is required to file a report in a particular jurisdiction, the issuer or underwriter should consider the following questions:

- (a) Is there a distribution in the jurisdiction? (Please refer to the securities legislation of the jurisdiction for guidance, if any, on when a distribution occurs in the jurisdiction.)
- (b) If there is a distribution in the jurisdiction, what exemption from the prospectus requirement is the issuer relying on for the distribution of the security?
- (c) Does the exemption referred to in paragraph (b) trigger a reporting requirement? (Reports of exempt distribution are required for distributions made in reliance on the prospectus exemptions listed in section 6.1 of NI 45-106.)

A distribution may occur in more than one jurisdiction. In this case, the issuer is required to file a single report in each Canadian jurisdiction where the distribution has occurred, except British Columbia. The report will set out all distributions in each Canadian jurisdiction, except British Columbia.

If the distribution occurs in British Columbia and another jurisdiction, the issuer is required to complete both Form 45-106F6 British Columbia Report of Exempt Distribution and Form 45-106F1 Report of Exempt Distribution in connection with the distribution. The issuer is required to

[file Form 45-106F6 with the British Columbia Securities Commission and file Form 45-106F1 in the other applicable jurisdictions.](#)

(2) Access to information

The securities legislation of several provinces requires that information filed with the securities regulatory authority or, where applicable, the regulator under such securities legislation, be made available for public inspection during normal business hours except for information that the securities regulatory authority, or where applicable, the regulator,

- (a) believes to be personal or other information of such a nature that the desirability of avoiding disclosure thereof in the interest of any affected individual outweighs the desirability of adhering to the principle that information filed with the securities regulatory authority or the regulator, as applicable, be available to the public for inspection,
- (b) in Alberta, considers that it would not be prejudicial to the public interest to hold the information in confidence, and
- (c) in Québec, considers that access to the information could result in serious prejudice.

Based on the above mentioned provisions of securities legislation, the securities regulatory authorities or regulators, as applicable, have determined that the information listed in Form 45-106F1 *Report of Exempt Distribution*, Schedule I (“Schedule I”) discloses personal or other information of such a nature that the desirability of avoiding disclosure of this personal information outweighs the desirability of making the information available to the public for inspection. In addition, in Alberta, the regulator considers that it would not be prejudicial to the public interest to hold the information listed in Schedule I in confidence. In Québec, the securities regulatory authority considers that access to Schedule I by the public in general could result in serious prejudice and consequently, the information listed in Schedule I will not be made publicly available.

(3) Filings in British Columbia

For filings made in British Columbia, issuers are required to file Form 45-106F~~4~~6 and pay the fees associated with that filing electronically using BCSC e-services. This requirement only applies to Form 45-106F~~4~~6 filings that are required to be made within 10 days of the distribution. It does not apply to Form 45-106F~~4~~6 filings made annually by investment funds under section 6.2(2) of NI 45-106. Please refer to BC Instrument 13-502 *Electronic Filing of Reports of Exempt Distribution* for further information.

## 5.2 Forms required under the offering memorandum exemption

NI 45-106 designates two forms of offering memorandum. The first, Form 45-106F2, is for non-qualifying issuers and the second, Form 45-106F3, can only be used by qualifying issuers (as defined in NI 45-106).

The required form of risk acknowledgment under sections 2.9(1), 3.9(1), 2.9(2) and 3.9(2) of NI 45-106 is Form 45-106F4.

### **5.3 Real estate securities**

Certain jurisdictions impose alternative or additional disclosure requirements in relation to the distribution of real estate securities by offering memorandum. Refer to securities legislation in the jurisdictions where securities are being distributed.

### **5.4 Risk Acknowledgement Form Respecting Close Personal Friends and Close Business Associates – Saskatchewan**

In Saskatchewan, a risk acknowledgment is also required under section 2.6(1) of NI 45-106 (and under section 3.6(1)) if the person intends to rely upon the “family, friends and business associates exemption” in section 2.5 (or in section 3.5) of NI 45-106, which is based on a relationship of close personal friendship or close business association. The form of risk acknowledgment required in these circumstances is Form 45-106F5.