

Annex C
Proposed Changes to 45-106CP

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 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.

~~If the distribution occurs in British Columbia and one or more other jurisdictions, 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 in jurisdictions other than British Columbia

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 Schedule 1 and Schedule 2 of 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~~ these schedules in confidence. In Québec, the securities regulatory authority considers that access to ~~Schedule I~~ these schedules by the public in general could result in serious prejudice and consequently, the information listed in ~~Schedule I~~ these schedules will not be made publicly available.

(3) Filings in British Columbia Form 45-106F1 Report of Exempt Distribution

For filings made in British Columbia, issuers are required to file Form ~~45-106F1~~ 45-106F1 and pay the fees associated with that filing electronically using BCSC ~~e-services~~ Services. This requirement only applies to filings that are required to be made within 10 days of the distribution. It does not apply to filings made annually by investment funds under subsection 6.2(2) of NI 45-106. Please refer to BC Instrument 13-502 *Electronic Filing of Reports of Exempt Distribution* for further information.

For filings made in Ontario, issuers are required to file Form 45-106F1 electronically through the OSC’s Electronic Filing Portal and pay the applicable fees. The electronic filing requirement applies to all issuers that file Form 45-106F1 including investment fund issuers that file annually in accordance with subsection 6.2(2) of NI 45-106. Please see OSC Rule 11-501 *Electronic Delivery of Documents to the Ontario Securities Commission* and OSC Rule 13-502 *Fees* for further information.