

**CSA Notice of
Amendments to
National Instrument 45-106 *Prospectus and Registration Exemptions*
Relating to the Accredited Investor and
Minimum Amount Investment Prospectus Exemptions**

February 19, 2015

Introduction

The Canadian Securities Administrators (**CSA** or **we**) are adopting amendments to National Instrument 45-106 *Prospectus and Registration Exemptions* (NI 45-106) relating to the accredited investor and minimum amount investment prospectus exemptions (the Rule Amendments). We are modifying and replacing Companion Policy 45-106CP *Prospectus and Registration Exemptions* with Companion Policy 45-106CP *Prospectus Exemptions* (the modified Companion Policy) to provide more guidance on how to verify whether potential purchasers satisfy the conditions of particular prospectus exemptions and to reflect the repeal of Part 3 of NI 45-106.

We are making consequential amendments to a number of instruments to reflect the repeal of Part 3 of NI 45-106 and the change in the title of NI 45-106 from *Prospectus and Registration Exemptions* to *Prospectus Exemptions* (the Consequential Amendments). We are also making consequential changes (the Consequential Changes) to a number of policies to reflect the change in title.

We refer to the Rule Amendments, Consequential Amendments, modified Companion Policy and Consequential Changes collectively as the Amendments.

Provided all necessary ministerial approvals are obtained, the Amendments will come into force on **May 5, 2015**. In Ontario, the Amendments will come into force on the later of May 5, 2015 and the day on which subsection 12(2) of Schedule 26 of the *Budget Measures Act, 2009* is proclaimed in force.

Substance and Purpose

The Rule Amendments and modified Companion Policy are intended to address concerns that:

- some individual investors may not understand the risks of investing under the accredited investor prospectus exemption (the AI exemption) or may not in fact qualify as accredited investors
- the threshold of \$150,000 in the minimum amount investment prospectus exemption (the MA exemption) may not be a proxy for sophistication or ability to withstand financial loss for individual investors and may encourage over-concentration in one investment for an investor who is an individual.

The Rule Amendments also amend the definition of accredited investor in Ontario to allow fully managed accounts to purchase investment fund securities under the managed account category of the AI exemption, as is already permitted in other Canadian jurisdictions.

Background

The AI exemption and the MA exemption have historically been premised on the investor having one or more of

- a certain level of sophistication
- the ability to withstand financial loss
- the financial resources to obtain expert advice
- the incentive to carefully evaluate the investment given its size.

The AI exemption and the MA exemption provide cost-effective objective measures for issuers to distribute securities to raise capital or for other purposes. However, the thresholds for individuals to qualify as accredited investors have not been changed or adjusted for inflation since they were originally set¹.

The CSA conducted a broad review of the AI exemption and the MA exemption because of investor protection concerns highlighted by the financial crisis in 2007-2008. As part of our broad review, CSA staff reviewed and considered the following information:

- 110 comment letters received on CSA Staff Consultation Note 45-401 *Review of Minimum Amount and Accredited Investor Exemptions*
- feedback received during consultation sessions held across Canada
- data relating to the exempt market and the use of the capital raising prospectus exemptions gathered from reports of exempt distribution filed in the participating jurisdictions for distributions in 2011
- data compiled from Statistics Canada on Canadian income levels
- input from compliance and enforcement staff about complaints and investigations involving the use of these exemptions
- decisions resulting from enforcement proceedings of securities regulatory authorities involving the exemptions
- guidance issued by CSA members on establishing accredited investor status.

Following our broad review, on February 27, 2014 the CSA published for comment the following proposed amendments to NI 45-106 (the Proposed Amendments):

- The MA exemption would be available only for distributions to non-individuals,
- The AI exemption would be amended to:
 - require individual accredited investors, except those who meet the permitted client test under National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103), to complete and sign a new risk acknowledgement form,

¹ The Securities and Exchange Commission originally set the thresholds for individuals to qualify as accredited investors in 1982; the CSA adopted similar thresholds in the early 2000s. The current threshold of \$150,000 for the MA exemption was originally set in 1987.

- require any salesperson or finder to complete and sign the new risk acknowledgement form,
- include family trusts established by an accredited investor for his or her family in the definition of accredited investor, and
- in Ontario, allow fully managed accounts to purchase investment fund securities under the managed account category of the AI exemption, harmonizing with the rest of the CSA.
- The Companion Policy 45-106CP would be modified to provide additional guidance on steps persons relying on the AI exemption should take to verify accredited investor status.
- The report of exempt distribution (Form 45-106F1 and, in BC, Form 45-106F6) would be amended to require additional information from issuers, including identifying the category of accredited investor of each purchaser and providing more information on any person being compensated in connection with the distribution.
- Housekeeping amendments resulting from the removal of the dealer registration exemptions in Part 3 of NI 45-106 effective March 27, 2010.

Summary of Written Comments Received by the CSA

During the comment period, we received submissions from 28 commenters. We have considered the comments received and thank all of the commenters for their input. The names of commenters are contained in Annex A of this notice and a summary of their comments, together with our responses, are contained in Annex B of this notice.

Summary of Changes to the Proposed Amendments

After considering the comments received, we have made some revisions to the Proposed Amendments that were published for comment. Those revisions are reflected in the Amendments we are publishing concurrently with this notice. As these changes are not material, we are not republishing the Amendments for a further comment period.

The key changes from the Proposed Amendments are as follows:

- We have clarified that the categories of individual accredited investor who must sign the risk acknowledgement form are those individuals set out in paragraphs (j), (k) and (l) of the definition of “accredited investor”.
- We have revised Form 45-106F9 *Form for Individual Accredited Investors* to make it easier for persons using the AI exemption to complete and for investors to understand.
- We have removed the requirement for salespersons and finders to sign Form 45-106F9.
- We have clarified and reorganized the guidance in the modified Companion Policy on practices for verifying whether purchasers meet the conditions of certain exemptions, including not only the AI exemption, but also the private issuer prospectus exemption, the family, friends and business associates prospectus exemption and, in some jurisdictions, the eligible investor definition under the offering memorandum prospectus exemption.
- We have provided additional guidance in the modified Companion Policy on the meaning of close personal friend and close business associate.
- We have deferred making amendments to the report of exempt distribution. We will

address changes to the report of exempt distribution as a separate CSA project.

Consequential Amendments

National Amendments

We are making consequential amendments to the following instruments to reflect the repeal of Part 3 of NI 45-106 on March 27, 2010 and the change in the title of NI 45-106 from *Prospectus and Registration Exemptions* to *Prospectus Exemptions*:

- Multilateral Instrument 11-102 *Passport System*
- Multilateral Instrument 13-102 *System Fees for SEDAR and NRD*
- National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*
- Multilateral Instrument 32-102 *Registration Exemptions for Non-Resident Investment Fund Managers*
- National Instrument 33-105 *Underwriting Conflicts*
- National Instrument 41-101 *General Prospectus Requirements*
- National Instrument 45-102 *Resale of Securities*
- National Instrument 51-102 *Continuous Disclosure Obligations*
- National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*
- National Instrument 62-103 *The Early Warning System and Related Take-Over and Insider Reporting Issues*
- Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids*

We are also making consequential changes to the following policies to reflect the change in title of NI 45-106 from *Prospectus and Registration Exemptions* to *Prospectus Exemptions*:

- Companion Policy 11-102CP *Passport System*
- National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions*
- Companion Policy 23-103 *Electronic Trading and Direct Electronic Access to Marketplaces*
- Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations*
- Companion Policy 45-102CP *Resale of Securities*
- Companion Policy 51-105CP *Issuers Quoted in the U.S. Over-the-Counter Markets*

Local Matters

Annex F is being published in any local jurisdiction that is making related changes to local securities laws, including local notices or other policy instruments in that jurisdiction. It also includes any additional information that is relevant to that jurisdiction only.

The Ontario Securities Commission (OSC) will amend NI 45-106, National Instrument 45-102 *Resale of Securities* and OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions* (OSC Rule 45-501) to reflect the anticipated coming into force of certain amendments to the *Securities Act* (Ontario). A more detailed explanation of these proposed local amendments is

available on the OSC website (www.osc.gov.on.ca). The OSC's local amendments to NI 45-106 are reflected in the amending instrument and blacklined version of NI 45-106 in Annex C2.

Contents of Annexes

The following annexes form part of this CSA Notice:

Annex A	List of Commenters
Annex B	Summary of Comments and CSA Responses
Annex C1	Amendments to National Instrument 45-106 <i>Prospectus and Registration Exemptions</i>
Annex C2	Blackline of amended National Instrument 45-106 <i>Prospectus Exemptions</i>
Annex C3	Form 45-106F9 <i>Form for Individual Accredited Investors</i>
Annex D1	Companion Policy 45-106CP <i>Prospectus Exemptions</i>
Annex D2	Blackline of changes to Companion Policy 45-106CP <i>Prospectus and Registration Exemptions</i>
Annex E1	Amendments to National Instrument 51-102 <i>Continuous Disclosure Obligations</i>
Annex E2	Amendments to Specified Instruments
Annex E3	Changes to Specified Policies
Annex F	Local Matters

Annex C2 reflects the Rule Amendments described in this Notice, the local amendments being made in Ontario as described in "Local Matters" above and the amendments being made to NI 45-106 relating to the short-term debt prospectus exemption and introducing a short-term securitized products prospectus exemption, published today in a separate notice. Annexes D1 and D2 also reflect changes made to the Companion Policy in connection with the introduction of a short-term securitized products prospectus exemption.

Questions

Please refer your questions to any of the following:

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