

This version of CSA Staff Notice 45-308 (Revised) *Guidance for Preparing and Filing Reports of Exempt Distribution under National Instrument 45-106 Prospectus Exemptions* highlights certain changes made to the notice on September 29, 2016 that address certification and other matters referred to on page 2 of the notice. These changes were made in response to comments raised by foreign dealers conducting offerings into Canada, and Canadian institutional investors. Other minor changes have also been made to the notice to provide greater clarification on certain aspects of the guidance. This version does not highlight all of the changes made to the previously published notice and, in particular, it does not highlight any of the minor enhancements and corrections.



**CSA Staff Notice 45-308 (Revised)**  
*Guidance for Preparing and Filing  
 Reports of Exempt Distribution under  
 National Instrument 45-106 Prospectus Exemptions*

First Published April 26, 2012, revised June 25, 2015, April 7, 2016 and September 29, 2016

**September 29, 2016**

**Purpose**

Issuers and underwriters that rely on certain prospectus exemptions to distribute securities are required to file a report of exempt distribution on Form 45-106F1 *Report of Exempt Distribution* (the **report**) within a prescribed timeframe set out in National Instrument 45-106 *Prospectus Exemptions* (**NI 45-106**).

Staff (**staff** or **we**) of the Canadian Securities Administrators (**CSA**) have prepared this Staff Notice (this **Notice**) to assist issuers, underwriters and their advisors in preparing and filing reports.

This Notice includes the following documents:

- Annex 1 – Tips for Completing and Filing the Report
- Annex 2 – Checklist of Information Requirements introduced in the 2016 Report
- Annex 3 – Frequently Asked Questions
- Annex 4 – Transition to the 2016 Report
- Annex 5 – Contact Information of Public Officials regarding Indirect Collection of Personal Information

**Background to this Notice**

This Notice replaces a prior version of this notice issued on April 7, 2016. We may from time to time reissue this Notice to respond to additional questions or concerns raised about the completion and filing of reports. The following table sets out the history of this Notice.

Date	Development
April 26, 2012	Staff first published this Notice in April 2012 to highlight compliance issues identified in some reports filed. This Notice provided guidance to issuers, underwriters and their advisors for preparing and filing reports.

Date	Development
June 25, 2015	This Notice was revised in June 2015 primarily to reflect the introduction of certain new prospectus exemptions in Ontario.
April 7, 2016	<p>In June 2016, the CSA introduced a new harmonized version of the report set out in Form 45-106F1 <i>Report of Exempt Distribution</i> (the <b>2016 Report</b>). Both investment fund issuers and non-investment fund issuers that distribute securities under certain prospectus exemptions are required to file the 2016 Report, which replaced both the prior version of Form 45-106F1 <i>Report of Exempt Distribution</i> and Form 45-106F6 <i>British Columbia Report of Exempt Distribution</i> (together, the <b>Prior Reports</b>).</p> <p>We reissued this Notice in April 2016 to reflect the adoption of the 2016 Report, and to provide guidance on the new information requirements set out in the 2016 Report as well as the transition to the 2016 Report.</p>
September 29, 2016	<p>In spring and summer 2016, staff became aware of concerns expressed by foreign dealers conducting offerings into Canada, as well as Canadian institutional investors, about the certification requirements in the 2016 Report and other related issues. In certain instances, Canadian institutional investors were being excluded from participating in foreign offerings into Canada through certain foreign dealers as a result of a perceived change in the risk of personal liability in the 2016 Report, as well as the more extensive information required in the 2016 Report.</p> <p>As a result of these concerns, we provided relief from the requirement to disclose whether a purchaser is a registrant or an insider of the issuer in certain circumstances. This relief was provided by all CSA members, except Ontario, by issuing blanket orders effective June 30, 2016. In Ontario, the relief was provided through an Ontario-only amendment instrument that came into force on July 29, 2016.</p> <p>We understand that there have continued to be difficulties in respect of the certification, creating unintended complications in respect of access by institutional investors to foreign investment opportunities. Staff are re-issuing this guidance to alleviate certain of the concerns raised regarding certification and other matters.</p> <p>We continue to seek input on the issue and will consider additional steps to address the concerns.</p> <p>This Notice includes:</p> <ul style="list-style-type: none"> <li>• clarification regarding the certification of the report,</li> <li>• guidance on the reasonable steps the underwriter filing the report should undertake to obtain and confirm the required information regarding the issuer,</li> <li>• guidance on the procedures that an issuer or underwriter could implement in order to reasonably confirm that a purchaser meets the conditions for a particular exemption,</li> <li>• guidance on the increased flexibility for completing Schedule 1 for purchasers in certain circumstances who may qualify under more than one paragraph of the definition of “accredited investor”, and</li> <li>• guidance on disclosure of an issuer’s North American Industry Classification Standard (NAICS) code that corresponds to the issuer’s primary business activity where there is ambiguity on the appropriate code.</li> </ul>

## **Annexes to Notice**

Annex 1 – Tips for Completing and Filing the Report

Annex 2 – Checklist of Information Requirements introduced in the 2016 Report

Annex 3 – Frequently Asked Questions

Annex 4 – Transition to the 2016 Report

Annex 5 – Contact Information of Public Officials regarding Indirect Collection of Personal Information

## **Questions**

Please refer your questions to any of the following:

### **Jo-Anne Matear**

Manager, Corporate Finance Branch  
Ontario Securities Commission  
416-593-2323  
jmatear@osc.gov.on.ca

### **David Mendicino**

Senior Legal Counsel, Corporate Finance Branch  
Ontario Securities Commission  
416-263-3795  
dmendicino@osc.gov.on.ca

### **Kevin Yang**

Senior Research Analyst, Strategy and Operations  
Ontario Securities Commission  
416-204-8983  
kyang@osc.gov.on.ca

### **Frederick Gerra**

Legal Counsel, Investment Funds and Structured  
Products  
Ontario Securities Commission  
416-204-4956  
fgerra@osc.gov.on.ca

### **Lina Creta**

Senior Accountant, Compliance and Registrant  
Regulation Branch  
Ontario Securities Commission  
416-593-8963  
lcreta@osc.gov.on.ca

### **Victoria Steeves**

Senior Legal Counsel, Corporate Finance  
British Columbia Securities Commission  
604-899-6791  
vsteeves@bcsc.bc.ca

### **Jody-Ann Edman**

Assistant Manager, Financial Reporting  
British Columbia Securities Commission  
604-899-6698  
jedman@bcsc.bc.ca

### **Christopher Peng**

Legal Counsel, Corporate Finance  
Alberta Securities Commission  
403-297-4230  
christopher.peng@asc.ca

### **Steven Weimer**

Team Lead, Compliance, Data & Risk  
Alberta Securities Commission  
403-355-9035  
steven.weimer@asc.ca

**Tony Herdzik**

Deputy Director, Corporate Finance  
Financial and Consumer Affairs Authority of  
Saskatchewan  
306-787-5849  
tony.herdzik@gov.sk.ca

**Georgia Koutrikas**

Analyst, Corporate Finance  
Autorité des marchés financiers  
514-395-0337 ext: 4393  
georgia.koutrikas@lautorite.qc.ca

**Ella-Jane Loomis**

Senior Legal Counsel, Securities  
Financial and Consumer Services Commission  
(New Brunswick)  
506-658-2602  
ella-jane.loomis@fcnb.ca

**Jack Jiang**

Securities Analyst, Corporate Finance  
Nova Scotia Securities Commission  
902-424-7059  
jack.jiang@novascotia.ca

**John O'Brien**

Superintendent of Securities  
Office of the Superintendent of Securities  
Government of Newfoundland and Labrador  
709-729-4909  
JohnOBrien@gov.nl.ca

**Thomas W. Hall**

Superintendent of Securities  
Department of Justice  
Government of the Northwest Territories  
867-767-9305  
tom\_hall@gov.nt.ca

**Wayne Bridgeman**

Deputy Director, Corporate Finance  
Manitoba Securities Commission  
204-945-4905  
wayne.bridgeman@gov.mb.ca

**Suzanne Boucher**

Senior Analyst, Investment Funds  
Autorité des marchés financiers  
514-395-0337 ext: 4477  
suzanne.boucher@lautorite.qc.ca

**Kevin G. Redden**

Director, Corporate Finance  
Nova Scotia Securities Commission  
902-424-5343  
kevin.redden@novascotia.ca

**Steven D. Dowling**

Acting Director  
Consumer, Labour and Financial Services Division  
Department of Justice and Public Safety  
Government of Prince Edward Island  
902-368-4551  
sddowling@gov.pe.ca

**Rhonda Horte**

Securities Officer  
Office of the Yukon Superintendent of Securities  
Government of Yukon  
867-667-5466  
rhonda.horte@gov.yk.ca

**Jeff Mason**

Superintendent of Securities  
Department of Justice  
Government of Nunavut  
867-975-6591  
jmason@gov.nu.ca

**ANNEX 1**  
**Tips for Completing and Filing the Report**

The following are tips to assist issuers, underwriters and advisors in completing and filing the report.

**1. File the report on time**

Filers must file the report in each jurisdiction of Canada where the distribution occurred. The deadline for filing the report is generally 10 days after the distribution. If filing a report for distributions occurring on multiple dates, such distributions must occur within a 10-day period and the filer must file the report no later than 10 days after the first distribution date.

Investment fund issuers relying on certain prospectus exemptions have the option of filing the report on an annual basis, within 30 days of the end of the calendar year. This option is only available for investment fund issuers distributing securities in reliance on the following prospectus exemptions in NI 45-106:

- section 2.3 [*Accredited investor*]<sup>1</sup>
- section 2.10 [*Minimum amount investment*]
- section 2.19 [*Additional investment in investment funds*]

**2. Pay the required fees**

Filers must pay the applicable fee in each jurisdiction of Canada in which the report is filed. In order to determine the applicable fee in a particular jurisdiction of Canada, consult the securities legislation of that jurisdiction.

Filing fees payable in a particular jurisdiction are not affected by identifying all purchasers in a single report.

**3. Complete the issuer information**

Item 5 requires certain information about the issuer distributing the securities, where the issuer is not an investment fund.

Where an underwriter is filing the report, the underwriter should take reasonable steps to obtain and confirm the information regarding the issuer set out in Item 5. These reasonable steps may include:

- reviewing the offering document prepared in connection with the distribution of securities,
- reviewing the issuer's public continuous disclosure record, where available,
- reviewing information provided by the issuer's or the underwriter's legal counsel, and
- making inquiries of the issuer.

**4. Include a complete list of purchasers in the report**

Filers must ensure that Item 7(f) and Schedule 1 include all purchasers that participated in the distribution.

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<sup>1</sup> This option is also available for investment fund issuers distributing securities in reliance on section 73.3 of the *Securities Act* (Ontario) [*Accredited investor*].

If an issuer located outside of Canada completes a distribution in a jurisdiction of Canada, the filer is required to provide information in the report about purchasers resident in that jurisdiction of Canada only. See Question 12 in Annex 3 for further guidance on issuers located outside of Canada.

If an issuer makes a distribution in more than one jurisdiction of Canada, the filer may complete a single report identifying all purchasers, and file that report in each jurisdiction of Canada in which the distribution occurs.

## **5. Ensure the information provided in the report and schedules is consistent**

Filers should verify that the information included in the report and schedules is accurate and consistent. In particular, filers should verify the following:

- The information provided in Item 7 about the distribution date, number and type of securities distributed, total dollar amount of securities distributed, number of purchasers in each jurisdiction and prospectus exemptions relied on, must reconcile with the information provided in Schedule 1.
- The identities of persons compensated provided in Item 8 must reconcile with the information provided in Schedule 1 about the persons compensated for each purchaser.
- The information about directors, executive officers and promoters provided in Item 9 must reconcile with the information provided in Schedule 2.

## **6. Correctly identify the total number of purchasers**

The table in Item 7(f) requires the total number of unique purchasers to which the issuer distributed securities. To determine the total number of unique purchasers, the filer should count each purchaser only once, regardless of whether the issuer distributed different types of securities to that purchaser, on different dates, and/or relied on multiple prospectus exemptions for such distributions.

## **7. Ensure the purchase price of the securities distributed is correct**

If an issuer is relying on the prospectus exemption in section 2.10 [*Minimum amount investment*] of NI 45-106 for distributions to a purchaser, the purchase price paid by that purchaser must be at least \$150,000 (among other conditions), and the purchase price provided in Item 7 and Schedule 1 must be at least that minimum amount. An issuer is not permitted to distribute securities under this prospectus exemption to a purchaser that is an individual, or to multiple purchasers acting in concert or as a “syndicate” in order to pool separate purchases and reach the \$150,000 minimum.

## **8. Ensure that a valid prospectus exemption is available**

Not all prospectus exemptions are available in all jurisdictions. An issuer should ensure that a valid prospectus exemption is available for a distribution to each purchaser.

Section 1.9 of Companion Policy 45-106CP *Prospectus Exemptions (45-106CP)* describes procedures that an issuer (or seller) could implement in order to reasonably confirm that the purchaser meets the conditions for a particular exemption. Some examples of these steps include:

- establishing policies and procedures to confirm that all parties acting on behalf of the issuer (or seller) understand the conditions that must be satisfied to rely on the exemption, and
- obtaining information that confirms the purchaser meets the criteria in the exemption.

Whether the steps taken are reasonable will depend on the particular facts and circumstances of the purchaser, the offering and the exemption being relied on. For certain purchasers, such as Canadian financial institutions, Schedule III banks and pension funds, it may not be necessary for the issuer (or seller) to reconfirm the purchaser's status for each distribution to that purchaser.

## **9. Disclose all compensation paid in connection with the distribution**

A filer must complete Item 8 for each person to whom the issuer directly provides, or will provide, any compensation in connection with the distribution. Compensation includes cash commissions, securities-based compensation, gifts, discounts or other compensation of a similar nature, paid in connection with a distribution of securities, regardless of the term used to describe the payment. For example, we consider a brokerage fee or finance fee to be compensation in connection with a distribution.

Compensation does not include payments for services incidental to the distribution, such as clerical, printing, legal or accounting services.

Item 8 does not require details about internal allocation arrangements with the directors, officers or employees of an entity compensated by the issuer.

## **10. Date and certify the report**

The report must be certified by the issuer or the underwriter. Item 10 of the report must include the date of the report and the name and signature of the individual signing the report for and on behalf of the issuer or underwriter. This individual must be a director or officer of a corporate issuer or underwriter or, in other cases, an individual who performs functions similar to that of a director or officer (as determined by the issuer or underwriter). For example, if the issuer is a trust, the report may be signed by the issuer's trustee on behalf of the trust. If the issuer is an investment fund, a director or officer of the investment fund manager (or, if the investment fund manager is not a company, an individual who performs similar functions) may sign the report on behalf of the investment fund if the director or officer has been authorized to do so by the investment fund.

A filing agent, such as a law firm, completing the report on an issuer's or underwriter's behalf may not provide the signature required by Item 10 of the report to certify the report on behalf of the issuer or the underwriter, but must provide their contact details in Item 11.

See Question 22 in Annex 3 for further guidance on the certification of the report.

## ANNEX 2

### Checklist of Information Requirements introduced in the 2016 Report

The new information requirements introduced in the 2016 Report are listed in the checklist below. The checklist is designed to assist filers in gathering the required information to complete the report.

<b>All issuers</b>	<ul style="list-style-type: none"><li><input type="checkbox"/> Most recent previous legal name (if issuer's name has changed in last 12 months)</li><li><input type="checkbox"/> Website of issuer (if issuer has one) and underwriter (if underwriter has one and is not a registrant)</li><li><input type="checkbox"/> Legal entity identifier (if issuer has one)</li><li><input type="checkbox"/> Firm NRD number for underwriter</li><li><input type="checkbox"/> CUSIP numbers of securities distributed (if applicable)</li><li><input type="checkbox"/> Details about the distribution (number of purchasers and total amount raised) by jurisdiction and prospectus exemption relied on</li><li><input type="checkbox"/> List of (and if required to be filed with or delivered to the Ontario Securities Commission, electronic copies of) all offering materials required to be filed with or delivered to the securities regulatory authority or regulator for distributions in Saskatchewan, Ontario, Québec, New Brunswick or Nova Scotia</li><li><input type="checkbox"/> NRD number of registrant compensated (if applicable)</li><li><input type="checkbox"/> Whether person compensated facilitated distribution through funding portal or internet-based portal</li><li><input type="checkbox"/> Description of terms of any deferred compensation</li><li><input type="checkbox"/> Relationship of person compensated to issuer or investment fund manager (connected with issuer or investment fund manager/insider/director or officer/employee/none of the above)</li></ul> <p><b>Schedule 1 (non-public)</b></p> <ul style="list-style-type: none"><li><input type="checkbox"/> Email address of purchaser (if provided by purchaser)</li><li><input type="checkbox"/> Specific prospectus exemption relied on to distribute securities to each purchaser<sup>2</sup></li><li><input type="checkbox"/> Identification of whether purchaser is a registrant or insider<sup>3</sup></li><li><input type="checkbox"/> Name of person compensated for the distribution for each purchaser</li></ul>
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<sup>2</sup> Refer to question 21.1 in Annex 3 for additional guidance.

<sup>3</sup> Relief was provided 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,
- (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.

This relief was provided by all CSA members, except Ontario, by issuing blanket orders effective June 30, 2016. In Ontario, the relief was provided through an Ontario-only amendment instrument that came into force on July 29, 2016.



<p><b>Non-investment fund issuers</b></p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> NAICS industry code<sup>4</sup></li> <li><input type="checkbox"/> Stage of operations for issuers in mining industry (exploration/development/production)</li> <li><input type="checkbox"/> Areas of asset holdings for issuers involved in investment activities (mortgages/real estate/commercial/business debt/consumer debt/private companies)</li> <li><input type="checkbox"/> Number of employees (within a range)</li> <li><input type="checkbox"/> SEDAR profile number (if issuer has one)</li> </ul> <p>If issuer does not have a SEDAR profile number:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Date of formation</li> <li><input type="checkbox"/> Financial year-end</li> <li><input type="checkbox"/> Jurisdictions of Canada where reporting</li> <li><input type="checkbox"/> CUSIP number (if issuer has one)</li> <li><input type="checkbox"/> Name of exchanges where publicly listed</li> <li><input type="checkbox"/> Size of assets (within a range)</li> </ul>
<p><b>Investment fund issuers</b></p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> NRD number of investment fund manager</li> <li><input type="checkbox"/> Website of investment fund manager (if investment fund manager does not have a firm NRD number and has a website)</li> <li><input type="checkbox"/> Type of investment fund (money market/equity/fixed income/balanced/alternative strategies/other)</li> <li><input type="checkbox"/> Date of formation</li> <li><input type="checkbox"/> Financial year-end</li> <li><input type="checkbox"/> Jurisdictions of Canada where reporting</li> <li><input type="checkbox"/> CUSIP number (if issuer has one)</li> <li><input type="checkbox"/> Name of exchanges where publicly listed</li> <li><input type="checkbox"/> Net asset value (within a range) and date of calculation</li> <li><input type="checkbox"/> Net proceeds by jurisdiction</li> </ul>
<p><b>Issuers that are not any of the following:</b></p> <ul style="list-style-type: none"> <li>• <b>investment fund issuers</b></li> <li>• <b>reporting issuers and their wholly owned subsidiaries</b></li> <li>• <b>foreign public issuers and their wholly owned subsidiaries</b></li> <li>• <b>issuers distributing eligible foreign securities only to permitted clients</b></li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Names, titles and locations of directors, executives officers and promoters <ul style="list-style-type: none"> <li><input type="checkbox"/> If a promoter is not an individual, this information is also required for the directors and executive officers of the promoter</li> </ul> </li> </ul> <p><b>Schedule 2 (non-public)</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Business email address and telephone number of issuer's CEO</li> <li><input type="checkbox"/> Residential addresses of directors, executives officers, promoters and control persons that are individuals <ul style="list-style-type: none"> <li><input type="checkbox"/> If a promoter or control person is not an individual, this information is required for the directors and executive officers of the promoter and control person.</li> </ul> </li> <li><input type="checkbox"/> If control person is not an individual: <ul style="list-style-type: none"> <li><input type="checkbox"/> Organization or company name</li> <li><input type="checkbox"/> Province or country of business location</li> </ul> </li> </ul>

<sup>4</sup> Refer to question 7 in Annex 3 for additional guidance.

**ANNEX 3**  
**Frequently Asked Questions**

**Filing the report**

**1. An issuer whose head office is in Alberta distributes securities to a purchaser resident in Saskatchewan. Where is the issuer required to file the report?**

The issuer must file a report with the Alberta Securities Commission and with the Financial and Consumer Affairs Authority of Saskatchewan.

The issuer must file a report in each jurisdiction where the distribution occurred. To determine if a distribution has occurred in one or more jurisdictions of Canada, consult applicable securities legislation, securities directions and case law.

For example:

- In Alberta, an issuer should consult Alberta Securities Commission Policy 45-601 *Distributions Outside Alberta*.
- In British Columbia, an issuer should consult BC Interpretation Note 72-702 *Distribution of Securities to Persons Outside British Columbia*.
- In New Brunswick, an issuer should consult Companion Policy to Local Rule 72-501 *Distributions of Securities to Persons Outside New Brunswick*.
- In Québec, an issuer should consult *Avis du personnel de l'Autorité des marchés financiers – Règlement 45-106 sur les dispenses de prospectus et d'inscription: Questions fréquemment posées*.

In all cases, a distribution occurs when a distribution is made to a purchaser resident in that jurisdiction. In most cases, a distribution includes a distribution made by an issuer whose head office is in that jurisdiction (or, in the case of an investment fund, an investment fund whose manager's head office is in that jurisdiction), to purchasers resident outside that jurisdiction. A distribution may also occur in a jurisdiction of Canada if the issuer has a significant connection to that jurisdiction.

If an issuer is uncertain as to whether a distribution has occurred in a jurisdiction of Canada, the issuer should file the report in that jurisdiction.

**2. How does a filer file a report for a distribution to purchasers in every CSA jurisdiction?**

Filers are required to file the report electronically in all CSA jurisdictions, except certain foreign issuers when filing on SEDAR. The British Columbia Securities Commission (**BCSC**) has developed a web-based filing system on eServices to accommodate the structured data format of the report. Filers filing in British Columbia and Ontario will file the report with the BCSC and Ontario Securities Commission (**OSC**) by completing an electronic form on the BCSC's eServices and the OSC's Electronic Filing Portal, respectively.

In all CSA jurisdictions other than British Columbia and Ontario, filers, except certain foreign issuers, must file the report on SEDAR in accordance with National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)*. Both the BCSC's eServices and the OSC's Electronic Filing Portal will generate an electronic copy of the completed report, which filers can then file on SEDAR, if required.

Schedule 1 and Schedule 2 of the report must be filed in .xlsx format using the Excel templates developed by the CSA. The Excel templates are available on the website of each CSA member and at the links below.

- [Schedule 1 template](#)<sup>5</sup>
- [Schedule 2 template](#)<sup>6</sup>

**3. [intentionally deleted]**

**4. Is there a transition period available for investment fund issuers that file reports annually?**

Yes, there is a transition period which allows an investment fund issuer filing annually to file either the Prior Report or the 2016 Report for distributions that occur before January 1, 2017. For distributions that occur on or after January 1, 2017, all investment fund issuers filing annually must file the 2016 Report.

Investment funds that file annually are no longer required to file annual reports within 30 days of their financial year-end. Beginning on June 30, 2016, all investment fund issuers filing annually must file within 30 days after the end of the calendar year. This means that all investment funds filing annually will be required to file by January 30, 2017 for distributions that occur before January 1, 2017 (that have not been previously reported).

To provide further clarity on the transition period, please see the examples in Table 2 in Annex 4.

**4.1 The section in the report under the heading “Notice – Collection and use of personal information” requires the filer to confirm that each individual listed in Schedules 1 and 2 was notified about certain information, including the title of the public official in the local jurisdiction who can answer questions about the security regulatory authority’s or regulator’s indirect collection of personal information. Where can I find the titles of these public officials?**

Please see Annex 5 for the contact information and title of the public official in each local jurisdiction who can answer questions regarding the indirect collection of personal information. This information can also be found on the CSA’s website.

**Names and identifiers**

**5. What information should be provided for individuals under family name, first given name and secondary given names in the report?<sup>7</sup>**

Family name refers to the individual’s last name or surname.

First given name refers to the first name of an individual, used to identify the person from other members of a family, all of whom usually share the same family name.

<sup>5</sup> [http://www.securities-administrators.ca/uploadedFiles/Schedule\\_1\\_Form\\_45-106F1\\_En.xlsx](http://www.securities-administrators.ca/uploadedFiles/Schedule_1_Form_45-106F1_En.xlsx)

<sup>6</sup> [http://www.securities-administrators.ca/uploadedFiles/Schedule\\_2\\_Form\\_45-106F1\\_En.xlsx](http://www.securities-administrators.ca/uploadedFiles/Schedule_2_Form_45-106F1_En.xlsx)

<sup>7</sup> Names of individuals are required to be provided in Item 8(a), Items 9(a) and (b), Item 10, Item 11, Schedule 1 and Schedule 2.

Secondary given names, often referred to as middle names, refer to all given names of an individual, other than their first given name and family name.

The ordering of family and given names can vary among cultures. Indicate the ‘family name’, ‘first given name’ and ‘secondary given names’ in the appropriate field in the report regardless of the order in which they may be given or traditionally used.

Do not include aliases, nicknames, preferred names, initials or short forms of full names in the name fields of the report.

If two or more individuals have purchased a security as joint purchasers, complete the Schedule 1 Excel template by providing information for each purchaser under the columns for family name, first given name and secondary given names, if applicable, and separating the individuals’ names by an ampersand. For example, if Jane Jones and Robert Smith are joint purchasers, indicate “Jones & Smith” in the family name column, and “Jane & Robert” in the first given name column of the Schedule 1 Excel template.

**6. What is a legal entity identifier (LEI)? Is it necessary to obtain an LEI to complete Item 3 of the report?**

An LEI is a globally recognized 20-character alphanumeric code used to identify entities that enter into financial transactions. If an issuer already has an LEI, the filer must provide the LEI in Item 3. If an issuer does not have an LEI, it is not necessary to obtain one to complete the report.

**7. How does the filer determine an issuer’s North American Industry Classification Standard (NAICS) code?**

NAICS was developed to classify the domestic activities of businesses within North America, and also covers a wide range of industries that exist outside of North America.

If the issuer has already identified a NAICS code for its business, and the filer is the issuer, then it should use that previously identified code. For example, Canadian businesses that file tax returns with the Canada Revenue Agency should use the same NAICS code that they report on those forms.

If the issuer has not already identified a NAICS code, or if the filer is an underwriter and has not been able to obtain the NAICS code previously identified by the issuer, the filer should use [Statistics Canada’s NAICS search tool](#)<sup>8</sup> to find a NAICS code that is appropriate for the issuer. An alternative is the [US Census Bureau’s NAICS search tool](#).<sup>9</sup>

The online search tools listed above allow the filer to enter keywords that describe the issuer’s business, and generate a list of primary business activities containing that keyword and the corresponding NAICS codes. If more than one NAICS code may apply to an issuer, the filer should use its reasonable judgment to choose the one that most closely describes the issuer’s primary business activity. Alternatively, the filer may browse a list of NAICS market sectors to find the more detailed industry level descriptions and the appropriate 6-digit code that, in the filer’s reasonable judgment, most closely matches the issuer’s primary business activity.

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<sup>8</sup> <http://www23.statcan.gc.ca/imdb/p3VD.pl?Function=getVD&TVD=118464>

<sup>9</sup> <http://www.census.gov/eos/www/naics/index.html>

Below are some examples of NAICS codes to consider:

Description of Issuer	Keywords searched	Possible NAICS Codes to consider
ABC-ABS Inc. is structured as a special purpose financial vehicle organized for the securitization of pools of receivables and the issuance of marketable fixed-income securities (asset-backed securities)	"special purpose vehicle" or "securitization"	526981 - Securitization vehicles
ABC Minerals operates as a mining and metals company worldwide. It produces copper, nickel, gold, zinc, platinum-group elements and pyrite.	"zinc" or "copper" or "nickel" or "gold"	212233 - Copper-zinc ore mining 212232 - Nickel-copper ore mining 212220 - Gold and silver ore mining
ABC LP is a private equity fund that invests in a portfolio of private companies. The fund will typically acquire a controlling or substantial minority interest in a portfolio of companies.	"investment firm" or "portfolio companies"	526989 - All other miscellaneous funds and financial vehicles 523920 - Portfolio management

### Issuer information

- 8. The issuer distributing securities was formed in 2002 by the completion of a plan of arrangement. Does Item 5(e) of the report require the date(s) of incorporation of the companies that completed the plan of arrangement, or the date of the completion of the plan of arrangement?**

In this example, the filer is not required to provide the incorporation dates of any predecessor entities in Item 5(e), only the date that the issuer was formed by the completion of the plan of arrangement in 2002.

- 9. How does a filer determine the number of employees for Item 5(b) of the report?**

Employees are individuals that are employed directly by the issuer and on the issuer's payroll, including full and part-time employees.

- 9.1 What steps should be taken by an underwriter filing a report to obtain the information in Item 5 of the report?**

Where an underwriter is filing the report, the underwriter should take reasonable steps to obtain and confirm the information regarding the issuer set out in Item 5. These reasonable steps may include:

- reviewing the offering document prepared in connection with the distribution of securities,
- reviewing the issuer's public continuous disclosure record, where available,
- reviewing information provided by the issuer's or the underwriter's legal counsel, and
- making inquiries of the issuer.

## Investment fund issuer information

### 10. What do the different investment fund types in Item 6(b) of the report refer to?

In Item 6(b), an investment fund issuer must select the investment fund type that most accurately describes the issuer based on the following:

- Money Market – An investment fund that invests in cash, cash equivalents and/or short term debt securities, such as government bonds and treasury bills.
- Equity – An investment fund that invests primarily in equity securities of other issuers.
- Fixed Income – An investment fund that invests primarily in fixed income (debt) securities.
- Balanced – An investment fund that invests primarily in a balanced combination of fixed income and equity securities.
- Alternative Strategies – An investment fund that primarily adopts alternative investment strategies, such as short selling, leverage or the use of derivatives, or that invests primarily in alternative asset classes, such as real estate or commodities.
- Other – An investment fund that cannot be classified under one of the above investment fund types. Include a short description of the type of investment fund in the box provided.

### 11. When would an investment fund issuer be considered to be primarily invested in other investment funds under Item 6(b) of the report?

An investment fund is generally considered a ‘fund of funds’ if a majority of its assets are invested in other funds, under normal market conditions. One factor to consider in determining whether an investment fund issuer is a ‘fund of funds’ is whether its investment objectives specifically state this as a strategy.

## Distribution details

### 12. What does “located outside of Canada” mean in Item 7 of the report?

The onus is on an issuer and its counsel to determine where the issuer is located for the purposes of determining where a distribution has occurred, including whether an issuer is located in a jurisdiction of Canada.

The determination is based on the facts and circumstances of each particular distribution. The issuer should consider the following factors:

- where the issuer’s mind and management are primarily located, which may be determined by the location of the issuer’s head office or the residences of the issuer’s key officers and directors,
- where the issuer’s operations are conducted,
- where the issuer administers its business,
- whether any acts in furtherance of a distribution have occurred in a jurisdiction, including active advertisements or solicitations, negotiations, underwriting activities or investor relations activities, and
- where the issuer is incorporated or organized.

The above are examples of the types of factors that an issuer should consider in determining whether it is making a distribution from a jurisdiction, but it is not an exhaustive list.

**13. What dates should be provided as the distribution date under Item 7(b) of the report?**

If the report is being filed for securities distributed only on a single distribution date, provide this distribution date in Item 7(b) as both the start date and end date. For example, if the report is being filed for securities distributed only on July 1, 2016, provide July 1, 2016 as both the start date and end date.

If the report is being filed for securities distributed on more than one distribution date, in Item 7(b) provide the date of the earliest distribution as the start date and provide the date of the last distribution as the end date. A single report can be filed for distributions occurring on multiple dates only if such distributions occur within a 10-day period and the report is filed no later than 10 days after the first distribution date (other than investment funds that file reports on an annual basis).

For example:

- If the report is being filed for securities distributed on July 1, July 4, July 5 and July 7, 2016, in Item 7(b) provide July 1, 2016 as the start date and July 7, 2016 as the end date.
- If the report is being filed for an investment fund issuer that files annually and has distributed securities on a continuous basis from January 1, 2017 to December 31, 2017, in Item 7(b) provide January 1, 2017 as the start date and December 31, 2017 as the end date.

**14. The type of security distributed by the issuer is not on the list of security codes in Instruction 12 of the report. What security code should the filer provide in Item 7(d) of the report?**

The list of security codes in Instruction 12 of the report captures most types of securities distributed under a prospectus exemption triggering the filing of a report in Canada. If the security being distributed is not listed, enter “OTH” (for other) as the security code in Item 7(d) and include a description of the security in the box provided. Examples are provided below.

Security code			CUSIP number (if applicable)	Description of security
N	O	T	555555555	6.26% medium term notes
C	E	R	555555556	Commercial mortgage pass-through certificates
U	B	S		Units comprised of one common share and one-half of one non-transferrable share purchase warrant
O	T	H		Syndicated mortgage interest
O	T	H		Global depository receipt

**15. How does a filer determine the number of unique purchasers for Item 7(f) of the report?**

For the total number of unique purchasers, each purchaser should only be counted once, regardless of whether the issuer distributed different types of securities to that purchaser, distributed securities on different dates to that purchaser and/or relied on multiple prospectus exemptions for such distributions.

As an example, an issuer located in Alberta distributes (at \$10/debenture, \$10/common share):

- 100 debentures to Purchaser A in Alberta in reliance on the accredited investor prospectus exemption
- 100 common shares to Purchaser A in Alberta in reliance on the offering memorandum prospectus exemption
- 100 common shares to Purchaser B in Alberta in reliance on the accredited investor prospectus exemption
- 100 common shares to Purchaser C in Ontario in reliance on the family, friends and business associates prospectus exemption
- 100 debentures to Purchaser D in France in reliance on the accredited investor prospectus exemption

In this example, there are a total of 4 unique purchasers.

The table in Item 7(f) requires a separate line item for:

- each jurisdiction where a purchaser resides,
- each exemption relied on in the jurisdiction where a purchaser resides, if a purchaser resides in a jurisdiction of Canada, and
- each exemption relied on in Canada, if a purchaser resides in a foreign jurisdiction.

Complete the table as follows:

Province or country	Exemption relied on	Number of purchasers	Total amount (Canadian \$)
Alberta	Accredited investor (NI 45-106 s.2.3)	2	2,000
Alberta	Offering memorandum (NI 45-106 s.2.9(2.1))	1	1,000
Ontario	Family, friends and business associates (NI 45-106 s.2.5)	1	1,000
France	Accredited investor (NI 45-106 s.2.3)	1	1,000
<b>Total dollar amount of securities distributed</b>			5,000
<b>Total number of unique purchasers<sup>2</sup></b>		4	

In Schedule 1, create a separate entry for each distribution date, security type and exemption relied on for the distribution to each purchaser. In the example above, this means there must be two separate entries for Purchaser A in Schedule 1: one entry for the distribution of 100 debentures in reliance on the accredited investor prospectus exemption, and a second entry for the distribution of 100 common shares in reliance on the offering memorandum prospectus exemption.

#### 16. Are marketing materials required to be listed under Item 7(h) of the report?

Yes, if the securities legislation of Saskatchewan, Ontario, Québec, New Brunswick and Nova Scotia requires marketing materials to be filed with or delivered to the securities regulatory authority or regulator in connection with the distribution under the exemption relied on.

Item 7(h) requires filers to list and provide certain details about offering materials that are required under the exemption relied on to be filed with or delivered to the securities regulatory authority or regulator in connection with the distribution in these jurisdictions. This is a reporting requirement only; the report does not impose any new requirement to deliver or file offering materials.



If marketing materials are required to be filed or delivered under the prospectus exemption relied on for the distribution, the filer must list such materials in Item 7(h). For example, if an issuer makes a distribution to purchasers in Ontario in reliance on the offering memorandum exemption under section 2.9 of NI 45-106, the filer must list marketing materials that are required to be incorporated or deemed to be incorporated by reference into the offering memorandum.

In Ontario only, if the offering materials listed in Item 7(h) are required to be filed with or delivered to the OSC, electronic versions of those offering materials are to be attached to and submitted electronically with the report on the OSC's Electronic Filing Portal (if not previously filed with or delivered to the OSC).

## Compensation information

### **17. How does an issuer report compensation paid to two dealers in connection with the distribution?**

Item 8 of the report must be completed separately for each dealer to whom the issuer provides compensation in connection with the distribution.

In section f(3) of Schedule 1, the filer must indicate which of the two dealers received compensation in connection with the distribution to each purchaser by indicating the firm NRD number of the dealer, or the dealer's full legal name if not a registered firm. The firm NRD number or name must be consistent with the information provided in Item 8. If neither of the two dealers received compensation in connection with the distribution to a particular purchaser, then section f(3) of Schedule 1 should be left blank for that purchaser.

As noted in the instructions to Item 8(d), the report does not require disclosure of details about internal allocation arrangements with the directors, officers or employees of entities compensated by the issuer.

### **18. The issuer entered into a referral arrangement pursuant to which it pays an ongoing annual referral fee to a third party for so long as the purchaser holds the securities distributed. Is the issuer required to disclose the ongoing referral fee in the report? Is the issuer required to do so each year for so long as it pays the referral fee?**

If the referral fee is paid in connection with a distribution, the filer must report the referral fee in Item 8(d) of the report, by checking the box that indicates a person is receiving deferred compensation in connection with the distribution and describing the terms of the referral arrangement in the box provided.

The filer is not required to report the referral fee every year. If no distributions were made in a particular year that give rise to referral fees being paid, then the referral fee is not required to be reported that year.

### **19. What do the terms "funding portal" and "internet-based portal" refer to in Item 8(a) of the report?**

These terms generally refer to an intermediary that provides an online platform for issuers to offer and sell securities to investors. These include funding portals as defined under Multilateral Instrument 45-108 *Crowdfunding*.

## Purchaser information

**20. The issuer sold shares to a purchaser that instructed that the shares be registered in the name of its investment adviser. What name is the filer required to disclose in Schedule 1 of the report?**

All references to a purchaser in the report are to the beneficial owner of the securities (with the exception of fully managed accounts described below). In this example, the filer should provide the name of the beneficial owner as the purchaser in Schedule 1. The investment adviser in this example is the registered, not the beneficial, owner.

Similarly, if a trust or personal holding corporation purchases securities from an issuer, the trust or corporation is the beneficial owner. The names of the trust beneficiaries or shareholders of the holding corporation are not required.

Beneficial owner information is not required in Schedule 1 where a trust company, trust corporation, or registered adviser is deemed to be purchasing the securities as principal on behalf of a fully managed account and the issuer is relying on the exemption described in paragraph (p) or (q) of the definition of “accredited investor” in section 1.1 of NI 45-106 to issue the securities. In that case, only the name of the trust company, trust corporation or registered adviser should be provided in Schedule 1.

**21. The filer does not have a purchaser’s email address. What is the filer required to disclose in section c(7) of Schedule 1 of the report?**

If the purchaser has not provided an email address to the filer, or the purchaser does not have an email address, the filer may leave section c(7) of Schedule 1 blank for that purchaser.

**21.1 Certain purchasers may qualify as an accredited investor under more than one paragraph of the definition of “accredited investor”. It may not always be clear to the filer which paragraph the purchaser qualifies under for the purpose of a particular distribution. For example, trust companies, trust corporations, registered advisers and registered dealers may be purchasing securities as principal for their own account, and/or may be deemed to be purchasing securities as principal on behalf of a fully managed account. In these circumstances, which paragraph of the definition of “accredited investor” should the filer select when completing Schedule 1?**

If a purchaser is a trust company or a trust corporation, the filer can select paragraphs “(a) and/or (p)” of the definition of “accredited investor” for that purchaser when completing Schedule 1 if the trust company or trust corporation is:

- purchasing as principal for its own account and qualifies as an accredited investor under paragraph (a) of that definition, and/or
- deemed to be purchasing as principal on behalf of a fully managed account and qualifies as an accredited investor under paragraph (p) of that definition.

If a purchaser is a registered adviser or registered dealer, the filer can select paragraphs “(d) and/or (q)” for that purchaser when completing Schedule 1 if the registered adviser or registered dealer is:

- purchasing as principal for its own account and qualifies as an accredited investor under paragraph (d) of that definition, and/or

- deemed to be purchasing as principal on behalf of a fully managed account and qualifies as an accredited investor under paragraph (q) of that definition.

We have updated the Excel template for Schedule 1 to provide these options for filers to select.

## **21.2 What steps are sellers expected to take to verify a purchaser's status?**

The seller of securities is responsible for determining whether the terms and conditions of the prospectus exemption are met. Sellers are reminded of the guidance set out in section 1.9 of 45-106CP regarding their responsibility for compliance and verifying purchaser status. In particular, paragraph 1.9(4) of 45-106CP describes procedures that a seller could implement in order to reasonably confirm that the purchaser meets the conditions for a particular exemption. Some examples of these steps include:

- establishing policies and procedures to confirm that all parties acting on behalf of the seller understand the conditions that must be satisfied to rely on the exemption, and
- obtaining information that confirms the purchaser meets the criteria in the exemption.

Whether the types of steps are reasonable will depend on the particular facts and circumstances of the purchaser, the offering and the exemption being relied on. For certain purchasers, such as Canadian financial institutions, Schedule III banks and pension funds, it may not be necessary for the seller to reconfirm the purchaser's status for each distribution to that purchaser.

## **Certification**

### **22. Who is certifying the report?**

Item 10 of the report is a certification by the issuer or underwriter filing the report. The certification must generally be signed by a director or officer of the issuer or underwriter filing the report. Refer to tip 10 in Annex 1 for guidance on the signatory.

In signing the certification, the director or officer certifying the report is doing so on behalf of the issuer or underwriter.

The report states that it is an offence to make a misrepresentation in the report. Securities legislation of a jurisdiction in which the report is filed may impose liability on any person that makes a statement in the report that, in a material respect and at the time and in light of the circumstances under which it is made, is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the statement not misleading. Securities legislation may also impose liability on any director or officer of an issuer or underwriter who authorizes, permits or acquiesces in the filing of such a report, including the individual signing the report for and on behalf of the filer. Such legislation may also provide a defence to liability based on the person or company's knowledge after exercising reasonable diligence. The potential personal liability of directors and officers of the filer is determined by applicable securities legislation and case law.

**ANNEX 4**  
**Transition to the 2016 Report**

This Annex provides further guidance on whether the Prior Report or the 2016 Report should be filed.

**Issuers other than investment funds filing annually**

All issuers and underwriters, other than investment fund issuers filing reports annually, must use the 2016 Report for distributions that occur on or after June 30, 2016. If an issuer completes a distribution before June 30, 2016, and the deadline to file the report occurs after June 30, 2016, the filer must file the Prior Report. If an issuer completes multiple distributions on dates that occur within a 10-day period beginning before and ending after June 30, 2016, the filer may file either the Prior Report or the 2016 Report to report such distributions.

Please see the examples in Table 1 below for further clarity on the report that should be filed.

<b>TABLE 1: FILING THE 2016 REPORT</b>			
	<b>Distribution period covered by report</b>	<b>Filing deadline<sup>10</sup></b>	<b>Report required</b>
<b>Issuer 1</b>	June 20, 2016 to June 29, 2016	June 30, 2016	Prior Report
<b>Issuer 2</b>	June 21, 2016 to June 30, 2016	July 1, 2016	Prior Report <u>or</u> 2016 Report
<b>Issuer 3</b>	June 27, 2016	July 7, 2016	Prior Report
<b>Issuer 4</b>	June 28, 2016 to July 1, 2016	July 8, 2016	Prior Report <u>or</u> 2016 Report
<b>Issuer 5</b>	June 30, 2016 to July 8, 2016	July 10, 2016 <sup>11</sup>	2016 Report
<b>Issuer 6</b>	July 4, 2016	July 14, 2016	2016 Report
<b>Issuer 7</b>	July 5, 2016 to July 14, 2016	July 15, 2016	2016 Report

<sup>10</sup> The report must be filed no later than 10 days after the first distribution in the report.

<sup>11</sup> If the filing deadline falls on a Saturday, Sunday or another day when the CSA member with which the report being filed is closed, the deadline is the next day on which the CSA member is open.

### Investment fund issuers that file annually

Investment funds relying on certain prospectus exemptions may file reports of exempt distribution annually, within 30 days after the end of the calendar year. We have provided a transition period to allow investment fund issuers that file annually to file either the Prior Report or the 2016 Report for distributions that occur before January 1, 2017. For distributions that occur on or after January 1, 2017, all investment fund issuers filing annually must file the 2016 Report.

Please see the examples in Table 2 for further clarity on the report that should be filed.

TABLE 2: TRANSITION PERIOD FOR INVESTMENT FUND ISSUERS THAT REPORT ANNUALLY							
	Financial year-end	2016		2017		2018	
		Filing deadline	Report required	Filing deadline	Report required	Filing deadline	Report required
<b>Investment Fund Issuer 1</b>	Dec 31	Jan 30, 2016	Prior Report - For distributions completed between Jan 1, 2015 and Dec 31, 2015	Jan 30, 2017	Prior Report <u>or</u> 2016 Report - For distributions completed between Jan 1, 2016 and Dec 31, 2016	Jan 30, 2018	2016 Report - For distributions completed between Jan 1, 2017 and Dec 31, 2017
<b>Investment Fund Issuer 2</b>	Apr 30	May 30, 2016	Prior Report - For distributions completed between May 1, 2015 and Apr 30, 2016	Jan 30, 2017	Prior Report <u>or</u> 2016 Report - For distributions completed between May 1, 2016 and Dec 31, 2016	Jan 30, 2018	2016 Report - For distributions completed between Jan 1, 2017 and Dec 31, 2017
<b>Investment Fund Issuer 3</b>	May 31	Jun 30, 2016	Prior Report - For distributions completed between Jun 1, 2015 and May 31, 2016	Jan 30, 2017	Prior Report <u>or</u> 2016 Report - For distributions completed between Jun 1, 2016 and Dec 31, 2016	Jan 30, 2018	2016 Report - For distributions completed between Jan 1, 2017 and Dec 31, 2017

**TABLE 2: TRANSITION PERIOD FOR INVESTMENT FUND ISSUERS THAT REPORT ANNUALLY**

	Financial year-end	2016		2017		2018	
		Filing deadline	Report required	Filing deadline	Report required	Filing deadline	Report required
<b>Investment Fund Issuer 4</b>	Jun 30	N/A	N/A	Jan 30, 2017	Prior Report <u>or</u> 2016 Report - For distributions completed between Jul, 1 2015 and Dec 31, 2016	Jan 30, 2018	2016 Report - For distributions completed between Jan 1, 2017 and Dec 31, 2017
<b>Investment Fund Issuer 5</b>	Sept 30	N/A	N/A	Jan 30, 2017	Prior Report <u>or</u> 2016 Report - For distributions completed between Oct 1, 2015 and Dec 31, 2016	Jan 30, 2018	2016 Report - For distributions completed between Jan 1, 2017 and Dec 31, 2017

**ANNEX 5**

**Contact Information of Public Officials regarding Indirect Collection of Personal Information**

**Alberta Securities Commission**

Suite 600, 250 – 5th Street SW  
Calgary, Alberta T2P 0R4  
Telephone: (403) 297-6454  
Toll free in Canada: 1-877-355-0585  
Facsimile: (403) 297-2082  
Public official contact regarding indirect collection of information: FOIP Coordinator

**British Columbia Securities Commission**

P.O. Box 10142, Pacific Centre  
701 West Georgia Street  
Vancouver, British Columbia V7Y 1L2  
Inquiries: (604) 899-6854  
Toll free in Canada: 1-800-373-6393  
Facsimile: (604) 899-6581  
Email: FOI-privacy@bcsc.bc.ca  
Public official contact regarding indirect collection of information: FOI Inquiries

**The Manitoba Securities Commission**

500 – 400 St. Mary Avenue  
Winnipeg, Manitoba R3C 4K5  
Telephone: (204) 945-2561  
Toll free in Manitoba 1-800-655-5244  
Facsimile: (204) 945-0330  
Public official contact regarding indirect collection of information: Director

**Financial and Consumer Services Commission (New Brunswick)**

85 Charlotte Street, Suite 300  
Saint John, New Brunswick E2L 2J2  
Telephone: (506) 658-3060  
Toll free in Canada: 1-866-933-2222  
Facsimile: (506) 658-3059  
Email: info@fcnbc.ca  
Public official contact regarding indirect collection of information: Chief Executive Officer and Privacy Officer

**Government of Newfoundland and Labrador**

**Financial Services Regulation Division**

P.O. Box 8700  
Confederation Building  
2nd Floor, West Block  
Prince Philip Drive  
St. John's, Newfoundland and Labrador A1B 4J6  
Attention: Director of Securities  
Telephone: (709) 729-4189  
Facsimile: (709) 729-6187  
Public official contact regarding indirect collection of information: Superintendent of Securities

**Government of the Northwest Territories  
Office of the Superintendent of Securities**

P.O. Box 1320

Yellowknife, Northwest Territories X1A 2L9

Telephone: (867) 767-9305

Facsimile: (867) 873-0243

Public official contact regarding indirect collection of information: Superintendent of Securities

**Nova Scotia Securities Commission**

Suite 400, 5251 Duke Street

Duke Tower

P.O. Box 458

Halifax, Nova Scotia B3J 2P8

Telephone: (902) 424-7768

Facsimile: (902) 424-4625

Public official contact regarding indirect collection of information: Executive Director

**Government of Nunavut**

**Department of Justice**

Legal Registries Division

P.O. Box 1000, Station 570

1st Floor, Brown Building

Iqaluit, Nunavut X0A 0H0

Telephone: (867) 975-6590

Facsimile: (867) 975-6594

Public official contact regarding indirect collection of information: Superintendent of Securities

**Ontario Securities Commission**

20 Queen Street West, 22<sup>nd</sup> Floor

Toronto, Ontario M5H 3S8

Telephone: (416) 593- 8314

Toll free in Canada: 1-877-785-1555

Facsimile: (416) 593-8122

Email: [exemptmarketfilings@osc.gov.on.ca](mailto:exemptmarketfilings@osc.gov.on.ca)

Public official contact regarding indirect collection of information: Inquiries Officer

**Prince Edward Island Securities Office**

95 Rochford Street, 4th Floor Shaw Building

P.O. Box 2000

Charlottetown, Prince Edward Island C1A 7N8

Telephone: (902) 368-4569

Facsimile: (902) 368-5283

Public official contact regarding indirect collection of information: Superintendent of Securities

**Autorité des marchés financiers**

800, Square Victoria, 22<sup>e</sup> étage

C.P. 246, Tour de la Bourse

Montréal, Québec H4Z 1G3

Telephone: (514) 395-0337 or 1-877-525-0337

Facsimile: (514) 873-6155 (For filing purposes only)

Facsimile: (514) 864-6381 (For privacy requests only)

Email: [financementdesocietes@lautorite.qc.ca](mailto:financementdesocietes@lautorite.qc.ca) (For corporate finance issuers);

[fonds\\_dinvestissement@lautorite.qc.ca](mailto:fonds_dinvestissement@lautorite.qc.ca) (For investment fund issuers)

Public official contact regarding indirect collection of information: Secrétaire générale



**Financial and Consumer Affairs Authority of Saskatchewan**

Suite 601 - 1919 Saskatchewan Drive

Regina, Saskatchewan S4P 4H2

Telephone: (306) 787-5842

Facsimile: (306) 787-5899

Public official contact regarding indirect collection of information: Director

**Government of Yukon**

**Department of Community Services**

Office of the Superintendent of Securities

307 Black Street

Whitehorse, Yukon Y1A 2N1

Telephone: 867-667-5466

Facsimile: (867)393-6251

Email: securities@gov.yk.ca

Public official contact regarding indirect collection of information: Superintendent of Securities