

## Corporate Securities

June 29, 2016

### Changes to Canadian Reporting Requirements for Private Placements in Canada to Become Effective June 30, 2016

A new nationally harmonized form of exempt distribution report for issuers and underwriters who rely on certain prospectus exemptions to distribute securities in Canada on a private placement basis will come into force on June 30, 2016. Amendments to National Instrument 45-106 *Prospectus Exemptions* (NI 45-106) (the “**Amendments**”), including the Amended Report 45-106F1 *Report of Exempt Distribution* (the “**Amended Report**”) have been made to implement the new reporting requirement.

#### Highlights of the Amendments

The Amendments are intended to harmonize the trade reporting regime across Canada. The Amended Report must be filed in all provinces and territories where a distribution has taken place. It will replace the reporting forms currently used in Canada (Form 45-106F6 in British Columbia and Form 45-106F1 in the rest of Canada). Issuers other than investment funds must start using the Amended Report as of June 30. Investment funds can elect to continue to use the existing forms until January 1, 2017, after which they must use the Amended Report.

Relative to the existing form of exempt distribution report, the Amended Report requires disclosure of a significant amount of additional information about the issuer, its insiders, the securities distributed, the purchasers, the prospectus exemptions relied on and any compensation the issuer paid in connection with the distribution. If the issuer is an investment fund, the Amended Report also requires a number of new disclosures about the fund itself. The additional information required by the Amended Report will place

additional administrative burdens on issuers and dealers, particularly in private placements with significant numbers of subscribers.

As is the case with the existing forms, the Amended Report must include a summary table that sets out the number of purchasers and the total amount raised in each province and territory of Canada and other foreign jurisdictions. However, if an issuer located outside of Canada completes a distribution in a Canadian jurisdiction, the issuer must only provide information about purchasers resident in Canada. This is a welcome change as foreign issuers have not typically been enthusiastic about having to disclose non-Canadian components of a larger foreign offering simply because one or more purchasers was Canadian.

The Amended Report expressly requires an officer or director of the dealer or issuer submitting the report to assume personal responsibility for certifying its accuracy. Given much of the information in the Amended Report (such as information relating to purchasers) is often outside the issuer’s knowledge, it may be difficult to identify an officer or director of the issuer who will be willing to provide the required certification of Canadian sales information. Directors and officers of dealers may be equally hesitant to assume responsibility for certifying the information in the Amended Report, much of which will relate to matters within the issuer’s knowledge. Issuers and dealers will need to develop protocols for determining who will certify the information in the Amended Report, and how responsibility for its accuracy will be allocated as between the dealer and the issuer.

Consistent with current requirements, the Amended Report must generally be filed within 10 days of the distribution date to which it relates. Investment funds will continue to have the option to file the reports on an annual basis (but within 30 days of the calendar year end rather than the funds’ fiscal year end as is currently the case).

# Goodmans<sup>LLP</sup> Update

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Further information with respect to the Amended Report can be found in:

- *CSA Staff Notice 45-308 (Revised) Guidance for Preparing and Filing Reports of Exempt Distribution under National Instrument 45-106 Prospectus Exemptions*, and
- *Multilateral CSA Staff Notice 13-323 Frequently Asked Questions about Making Exempt Market Offering and Disclosure Filings on SEDAR*.

## **Conclusion**

The process of assembling the information required for the Amended Report and identifying a responsible director or officer to certify the information is expected to present a number of challenges to exempt distributions in Canada until a uniform market practice develops. In the interim, issuers and dealers should prepare well in advance of the applicable deadlines to determine how they will gather the required information, prepare the report and certify its contents.

Please contact any member of our Corporate Securities Group to discuss the Amended Report or the implications of the Amendments.