

Corporate Securities Law

June 20, 2017

Proposed Changes Aimed at Simplifying Reporting Requirements for Private Placements in Canada

The Canadian Securities Administrators (“CSA”) recently published for comment proposed amendments to National Instrument 45-106 *Prospectus Exemptions* (“NI 45-106”) that would amend the form used by issuers and underwriters to report distributions of securities in Canada on a private placement basis. The amendments are designed to simplify the disclosure requirements of the form and address perceived risks associated with the requirement for individual representatives of issuers or dealers to certify the information included in the form.

Background

Form 45-106F1 *Report of Exempt Distribution* (“Form 45-106F1”) underwent significant changes in June 2016, requiring filers to provide substantially more information regarding private placements, including 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.

Following implementation of those changes, Canadian institutional investors and foreign dealers expressed a number of concerns about the revised form, including the administrative burden of gathering the information required to complete the form and the potential for personal liability on the part of the individual certifying the information included in the form.

The CSA attempted to address some of these concerns by providing exemptive relief from certain disclosure requirements and issuing revised guidance to assist issuers and dealers in preparing and filing the revised form.

Highlights of the Proposed Amendments

The proposed amendments seek to further address these concerns by clarifying the certification requirement of Form 45-106F1 and simplifying the disclosure requirements of Form 45-106F1.

Changes to Certification Requirement

The proposed amendments would amend the certification requirement of Form 45-106F1 by:

- clarifying that the individual certifying the report is doing so on behalf of the issuer or underwriter (and not in their personal capacity);
- requiring the individual to certify that the information provided in the report is “true and, to the extent required, complete” (rather than “true”) and to include a knowledge qualifier (based on reasonable diligence) with respect to this certification;
- allowing authorized agents (e.g., law firms or other filing agents) to sign the certification on behalf of the issuer or underwriter; and
- removing the bold all-caps statement that it is an offence to make a misrepresentation and replacing this statement with a reminder of the obligation to file the report.

These changes are expected to address the concerns expressed by market participants regarding the perceived risk to individuals certifying the Form 45-106F1.

Goodman's Update

Changes to Disclosure Requirements

The proposed amendments would amend the disclosure requirements of Form 45-106F1 in a number of important respects, including by:

- requiring filers to provide the name of the exchange on which the issuer's securities primarily trade (rather than all exchanges);
- allowing issuers to list any one category of exemption from the requirement to provide certain information regarding its directors, officers and promoters, rather than requiring issuers to list all applicable categories; and
- removing the requirement to disclose which paragraph of the definition of "accredited investor" in NI 45-106 applies to non-individual "permitted clients".

These changes will streamline the process for completing a Form 45-106F1, particularly for distributions of eligible foreign securities only to permitted clients in Canada.

The British Columbia Securities Commission did not publish the proposed amendments for comment, but it is anticipated that it will do so in the near future after obtaining the necessary approvals.

Comments on the proposed amendments must be submitted to the CSA by September 6, 2017.

Please contact any member of our Corporate Securities Group to discuss the proposed amendments.