

## Legal update

### New Canadian reporting requirements for investment funds in effect June 30

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#### June 2016

#### Asset and wealth management

New rules will come into force on June 30, 2016, that will affect the reporting of private placement transactions by investment funds.

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#### One harmonized form

Effective June 30, 2016, there will be one form of trade report (New Form 45-106F1) to be filed with all Canadian securities regulators where a distribution of securities occurs in reliance on certain prospectus exemptions. Currently Form 45-106F1 must be filed in all Canadian jurisdictions except British Columbia, where a Form 45-106F6 must be filed. A harmonized form is welcomed but investment funds and their managers should be aware that more information about both the investor and the fund will be required.

In all Canadian jurisdictions other than British Columbia and Ontario, issuers (except certain foreign issuers) will file New Form 45-106F1 on SEDAR. Subject to the next sentence, the securities regulators in British Columbia and Ontario will require New Form 45-106F1 to be filed through the applicable regulator's Web-based filing system. It is important to note, however, that investment funds reporting annually in British Columbia must do so by paper filing the New Form 45-106F1 with the regulator in that province.

The harmonized form is intended to reduce the compliance burden on investment funds and other issuers while at the same time providing Canadian securities regulators with additional information to assist them in regulating the Canadian exempt market. Investment funds issuers should consider what additional procedures need to be introduced to collect and verify such information, recognizing that such information will need to be certified by an officer or director of the investment fund manager (IFM).

#### More information required

Additional information must be collected to complete the New Form 45-106F1. Key new information includes:

- **The category of accredited investor the purchaser falls within.** There are currently 24 categories of accredited investor, ranging from Canadian financial institutions to companies meeting certain asset criteria, to high-net-worth individuals. While subscription agreements generally identify the category the investor falls within, this information will now be required to be included in the trade report. The relevant dates to determine the status of the accredited investor will be during the period of discussions regarding the purchase of

securities and as at the date of purchase. Investment funds and their dealers will need to ensure they have safeguards in place to reaffirm at all relevant times an investor's accredited investor status.

- **New Form 45-106F1 must disclose whether the purchaser is an “insider” of the issuer.** Insiders include directors, officers and 10% voting shareholders of the issuer. Investment funds and their dealers may also wish to request such information directly from the investor. Such information is provided in a schedule to the form, which will not be made public.
- **The registrant status of the purchaser.** If a purchaser is a “registrant” under Canadian securities laws, this fact must be disclosed.
- **The registrant status of the investment fund manager.** If the IFM is a “registrant” under Canadian securities laws, this fact and the IFM's NRD number in Canada must be disclosed.

The following additional information regarding an investment fund issuer must also be disclosed in the New Form 45-106F1:

- legal entity identifier of the investment fund, if any;
- the type of investment fund that most accurately identifies the issuer;
- date of formation and financial year-end of the investment fund issuer;
- Canadian reporting issuer status of the investment fund;
- name of exchange on which an investment fund is listed and its CUSIP number, if applicable;
- the net asset value (NAV) of the investment fund (based on prescribed ranges) and the date of the NAV calculation;
- net proceeds to the investment fund from the distribution by each Canadian and foreign jurisdiction;
- e-mail address of each purchaser (if provided by the purchaser);
- in the event of a change of name of the investment fund in the last 12 months, the fund's prior legal name;
- NRD number for the registrant dealer being compensated (if applicable) and the IFM;
- details of the website of the investment fund (if the fund has one) and the IFM (if the IFM does not have a firm NRD number and has a website);
- list of all offering materials required to be filed with or delivered to the Canadian securities regulators (only applicable in Saskatchewan, Ontario, Quebec, New Brunswick or Nova Scotia);
- name of the person provided with any compensation in connection with the distribution and disclosure as to whether the person being compensated facilitated the distribution through a funding portal or Internet-based portal; and
- description of the terms of any deferred compensation and the relation of the person being compensated to the investment fund or to the investment fund manager.

## Investment funds as a “fund of funds”

New Form 45-106F1 will require an investment fund issuer to disclose whether it invests primarily in other investment funds. Generally, an investment fund is considered a “fund of funds” if a majority of its assets are invested in other funds under normal market conditions. The investment fund issuer should consider whether its investment objectives specifically state this as a strategy when determining whether it is a “fund of funds.”

All dollar amounts disclosed in the New Form 45-106F1 must be in Canadian dollars. If the distribution is made or compensation paid in a foreign currency, then the distribution/compensation value must be converted into Canadian dollars using the Bank of Canada daily noon exchange rate as of the distribution date. If the daily noon exchange rate is not available, the most recent closing exchange rate available before the distribution date should be used.

For investment funds in continuous distribution, currency values should be converted into Canadian dollars using the Bank of Canada’s average daily noon exchange rate for the distribution period covered by the New Form 45-106F1.

## Transition period

Investment funds, which are permitted to file annually within 30 days after the end of their financial years, may in reporting distributions that occur before January 1, 2017, use either the Form 45-106F1 in force on June 29, 2016, or the New Form 45-106F1. For distributions that occur on or after January 1, 2017, the New Form 45-106F1 must be used.

## Certification

A significant new requirement is the certification of the filing by a director or officer of the IFM authorized by the IFM. If the IFM is not a corporate entity, an individual who performs similar functions to a director or officer may certify the filing. This requirement may result in an individual certifying a filing containing information of which he or she does not have personal knowledge. Procedures will need to be in place to provide the necessary comfort to such certifying individuals.

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