

## Legal update

### CSA releases guidance regarding exempt distributions filings involving fully managed accounts

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#### Asset and wealth management

The Canadian Securities Administrators (CSA) recently issued Staff Notice 45-325, which provides information and guidance aimed at clarifying timing, fees and other procedural matters relating to filing Form 45-106F1 Report of Exempt Distribution (Form 45-106F1) for exempt distributions involving fully managed accounts.

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#### Background

The CSA introduced a harmonized version of Form 45-106F1 in 2016. Reporting obligations for exempt distributions involving fully managed accounts were simplified in all jurisdictions by dispensing with the requirement to provide information about beneficial owners of fully managed accounts. However, the requirement to provide information about the trust company, trust corporation or registered adviser who had purchased securities on behalf of the fully managed account was maintained.

#### Reporting obligations – exempt distributions involving fully managed accounts

Investment funds that rely on the accredited investor prospectus exemption of National Instrument 45-106 Prospectus Exemptions to distribute securities are required to file a Form 45-106F1 on or before January 30th of each year. For the purposes of the accredited investor exemption, the following are accredited investors and are deemed to be purchasing as principal:

- a trust company or trust corporation registered or authorized to carry on business under the *Trust and Loan Companies Act* (Canada) or under comparable legislation in a jurisdiction of Canada or a foreign jurisdiction, acting on behalf of a fully managed account managed by the trust company or trust corporation; and
- a person acting on behalf of a fully managed account managed by that person, if that person is registered or authorized to carry on business as an adviser or the equivalent under the securities legislation of a jurisdiction of Canada or a foreign issuer.

Accordingly, Instruction 4 of Form 45-106F1 requires investment funds to provide information on the trust company, trust corporation or registered adviser who had purchased securities on behalf of a fully managed account but not information on the beneficial owners of the fully managed account.

## Multi-jurisdictional procedural matters relating to filing Form 45-106F1 and paying fees

In accordance with Instruction 1 of Form 45-106F1, if a distribution is made in more than one jurisdiction of Canada, the investment fund may complete a single Form 45-106F1 and file it in each jurisdiction of Canada in which the distribution occurs.

In each jurisdiction other than Manitoba, Quebec and Saskatchewan, the filing requirements for Form 45-106F1 in respect of a distribution involving a fully managed account are based on the location of the trust company, trust corporation or registered adviser deemed to be purchasing the securities as principal. The requirement to pay fees in these jurisdictions is driven by the requirement to file the Form 45-106F1. Therefore there is no requirement to pay a fee in any of these jurisdictions as a function of the location of the beneficial owner of a fully managed account.

Conversely, in Manitoba and Quebec the requirement to file Form 45-106F1 and pay the required fees is based on the location of the beneficial owner of the fully managed account (rather than the location of the principal, as above). Accordingly, a Form 45-106F1 need not be filed in Manitoba or Quebec if only the trust company, trust corporation or registered adviser is located in Manitoba or Quebec, provided no beneficial owners of a managed account are located therein. Since Form 45-106F1 does not require investment funds to provide information on the beneficial owners of fully managed accounts, the regulators in these jurisdictions require that investment funds file an accompanying letter with the Form 45-106F1 stating the gross value of securities distributed to beneficial owners located in those jurisdictions.

Lastly, in Saskatchewan the requirement to file Form 45-106F1 and pay the required fees is based on the location of the distribution. This could mean that the form should be filed in Saskatchewan if the trust company, trust corporation or registered adviser who had purchased securities on behalf of a fully managed account and/or the beneficial owner of a fully managed account is located in Saskatchewan. The Financial and Consumer Affairs Authority of Saskatchewan has issued blanket relief to waive the filing requirements in respect of a distribution to the beneficial owner of a fully managed account where the trust company, trust corporation or registered adviser who had purchased securities on behalf of a fully managed account is not located in Saskatchewan. As no filing will be required in these cases, no fee is triggered.

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