

## OSC Staff Notice Introduction of Electronic Report of Exempt Distribution on Form 45-106F1

OSC Staff Notice 45-708  
June 21, 2012

Staff of the Ontario Securities Commission (OSC) want to notify issuers, underwriters and their advisers that an electronic version (the E-form) of Form 45-106F1 *Report of Exempt Distribution* is being made available on the OSC website as of today. Issuers and underwriters that are required to prepare and file a report of exempt distribution on Form 45-106F1 (the Report) may now choose to prepare and file the Report using the E-form, instead of in paper format.

At this time, filing the Report electronically is voluntary, although we anticipate moving towards mandatory electronic filings in the future. Filers may continue to prepare and send in the paper version of the Report. However, we encourage filers to use the E-form whenever possible, as we anticipate that it will be faster and more efficient.

### Report of exempt distribution (Form 45-106F1)

Section 6.1 of National Instrument 45-106 *Prospectus and Registration Exemptions* (NI 45-106) requires:

- issuers that distribute their own securities, and
- underwriters that distribute securities they acquired under section 2.33 of NI 45-106 (acting as underwriter)

to file a Report if a distribution is made in reliance on certain specified prospectus exemptions. The Report must be filed no later than 10 days after the distribution. In certain cases, investment funds are permitted to file the Report no later than 30 days after the financial year-end of the investment fund.

The exemptions that require the filing of a Report include some of the most commonly used prospectus exemptions in Ontario, including the accredited investor exemption (section 2.3) and the minimum amount investment exemption (section 2.10). The Report contains key information, including the name of the issuer or underwriter that distributed the securities, the exemption(s) relied on to effect the distribution, the type of securities that were distributed and detailed purchaser information. Until now, the Report was only available in paper format in Ontario.

### Introducing an electronic version of the Report

The exempt market is a significant part of Ontario's capital markets. The total amount of capital raised through exempt distributions reported to the OSC in 2011 was approximately \$142.9 billion. Approximately \$86.5 billion of that amount was raised in Ontario. Information contained in filed Reports provides the OSC with insight into this exempt market activity, which would otherwise not be readily available. Having reliable information on exempt distributions is an important tool which may be used to inform the OSC's policy making initiatives.

Every year, thousands of Reports are filed with the OSC. Our goal in providing an E-form is to both make it easier for filers to prepare and file the Report, and also to facilitate the OSC's ability to review the data contained in the Report.

Obtaining the data electronically will make it possible for us to search and sort the data more efficiently and improve the quality of the data we receive.

The information required to be included in the Report has not changed and no new reporting requirements are being added at this time.

## Training sessions

We plan to hold public training sessions on preparing and filing the E-form. These sessions will be open to anyone and will be most useful to those responsible for preparing the Report. There are two sessions currently scheduled, as follows:

- Friday July 20, 2012 from 1:00 to 2:30 p.m.
- Wednesday July 25, 2012 from 1:00 to 2:30 p.m.

If you are interested in attending one of these sessions, please contact us at [E-formtraining@osc.gov.on.ca](mailto:E-formtraining@osc.gov.on.ca) by Friday, July 6, 2012 to register.

## Answers to key questions about the E-form

We have attached to this notice a list of questions and answers on preparing and filing the E-form. Note also that the OSC is concurrently publishing, along with this notice, a staff notice (OSC Staff Notice 45-709) on tips for preparing and filing the Report. For more detailed guidance on how to comply with the requirements of the Report, see this OSC Staff Notice.

## Questions

Questions about how to file the Report may be directed to either Moses Seer or Shaill Bahuguna. Questions about the requirements in NI 45-106 relating to Reports may be referred to Frederick Gerra or Elizabeth Topp.

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## Questions about the electronic report of exempt distribution on Form 45-106F1

### 1. Where can I find a link to the E-form?

A link to the E-form can be found on the Ontario Securities Commission (OSC) website at [www.osc.gov.on.ca](http://www.osc.gov.on.ca), under the “Frequently Used Forms” section of the website.

### 2. If I am required to pay an activity fee when I submit the E-form, how would I do this?

Please mail a cheque to the OSC referencing the confirmation number that you receive when you electronically submit the E-form. The cheque should be made payable to the “Ontario Securities Commission” and mailed to:

**Ontario Securities Commission**

Suite 1903, Box 55  
20 Queen Street West  
Toronto, Ontario M5H 3S8

For the amount of the fee payable, please refer to OSC Rule 13-502 *Fees*.

### 3. How do I save a copy of the E-form once I have started entering the required information?

Click on the “Save” button located on the upper right hand corner of the E-form to save a copy at any time. When you first save the E-form you will be prompted to enter an e-mail address where a link to the saved form will be sent. The link to the saved E-form will remain active for 10 days. You can print a copy or e-mail the link to others for review.

### 4. What if an error was made in the E-form I submitted?

You must file an amended E-form by selecting Amended Submission on the Start page and reference the confirmation number that you received when you submitted your Initial Submission when prompted.

## 5. How do I sign and certify the E-form?

If you are an officer who is authorized on behalf of the issuer or underwriter to certify that the statements made in the E-form are true, fill in the information on the Certificate page at the end of the E-form and provide your name, title and signature in the appropriate fields.

If you are an agent (i.e. law firm) authorized to submit the E-form on behalf of the person signing the E-form, fill in their information on the Certificate page at the end of the E-form, then check the box to indicate you are authorized to complete and file the E-form on behalf of the person signing the E-form and provide your name and title. Please ensure that you have obtained appropriate authority from the issuer or underwriter to complete and submit the E-form.

## 6. Can I provide the Schedule 1 in any document format, including Word or Excel?

Schedule 1 includes specific information about each purchaser that acquired securities in the exempt distribution. We have provided an Excel spreadsheet that can be used for this purpose. Providing a separate spreadsheet will enable filers to save the spreadsheet to their computer and work on it separately from the E-form. This will be useful where there is a large number of purchasers to include in the schedule. In order for us to be able to review and sort the data provided in the Schedule 1, it needs to be in a consistent format. Therefore, at this time, we can only accept the Schedule 1 in the Excel template provided.

## 7. Why are there two versions of the E-form?

One version is for non-investment fund issuers and the other version is for investment fund issuers reporting exempt distributions as required by section 6.1 of National Instrument 45-106 *Prospectus and Registration Exemptions*. As non-investment fund issuers and investment fund issuers generally have different filing deadlines for the Report (either 10 days after the distribution for non-investment fund issuers, or in the case of investment fund issuers, up to 30 days after the fund's financial year-end) and different distribution models, providing two versions of the E-form will make it easier for issuers, underwriters and their advisers to file the Report and should also allow OSC staff the ability to better collect the data from each respective segment of the market.

## 8. Can I file the E-form with other jurisdictions?

Currently the E-form is available in Ontario only. The only other jurisdiction that currently accepts electronic filing of the Report is British Columbia, however the B.C. system works differently. In addition, B.C. has a separate form of report of exempt distribution on Form 45-106F6 *British Columbia Report of Exempt Distribution* which is different from the E-form.

## 9. Do I have to use the E-form to file Reports?

Filing the Report using the E-form is voluntary at this time. We strongly encourage issuers and underwriters to use the E-form as it should make the filing process faster and more efficient. It will also assist the OSC in compiling data on the exempt market. We anticipate moving towards mandatory electronic filing in the future.

## 10. What is the deadline for filing the E-form?

Reports are due no later than 10 days after the distribution date. In certain cases, Investment Funds may file the Report not later than 30 days after the financial year-end of the fund. See Part 6 of NI 45-106 for information about filing deadlines.

You may submit the E-form electronically at any time of the day. E-forms submitted and received by the OSC by 11:59 p.m. on the day that they are due will be considered to be filed on time. Ensure that you allow sufficient time for the E-form and any related attachments (such as Schedule 1) to be uploaded and received by the OSC's server.