

Multilateral CSA Staff Notice 13-323
Frequently Asked Questions About Making Exempt Market Offering and Disclosure Filings on SEDAR

April 21, 2016

Purpose

This notice has been prepared to assist issuers who will be required to make exempt market offering and disclosure filings on the System for Electronic Document Analysis and Retrieval (SEDAR).

This notice sets out a number of frequently asked questions relating to these filings. We may from time to time issue an updated version of this notice to reflect additional frequently asked questions or concerns.

Frequently Asked Questions

1. When does it become mandatory to make the exempt market filings on SEDAR and which jurisdictions have adopted the use of SEDAR for these filings?

Effective May 24, 2016¹ certain exempt market offering and disclosure filings set out in Question #3 (**exempt market filings**) will be required to be made on SEDAR instead of in paper format, except by certain foreign issuers (see Question #15). This requirement will apply in all Canadian jurisdictions, except for British Columbia and Ontario (the **participating jurisdictions**).

The exempt market filings can be filed on SEDAR on a voluntary basis until Friday, May 20, 2016. If the filings are made voluntarily on SEDAR, they do not also need to be filed in paper format.

2. How does an issuer make an exempt market filing in British Columbia and Ontario?

An issuer will not be permitted to make an exempt market filing on SEDAR with the British Columbia Securities Commission (BCSC) or the Ontario Securities Commission (OSC). An issuer must use [BCSC eServices](#) to file in British Columbia and the OSC's [Electronic Filing Portal](#) to file in Ontario. A longer-term project is underway to create a single integrated filing system for exempt market filings across Canada.

3. Which exempt market filings will be required to be filed on SEDAR and what will be their access level and required filing format?

Currently, the types of exempt market filings that will be required to be filed on SEDAR on or after May 24, 2016, along with their respective SEDAR access level and required filing

¹ Subject to ministerial approvals

format, are provided in the table below. Some of the filings listed below do not apply in some of the participating jurisdictions.

Exempt Market Filing Type	SEDAR Access Level²	Required Filing Format
Form 45-106F1 <i>Report of Exempt Distribution</i> (including the related schedules)		
Report of exempt distribution (excluding Schedules 1 and 2)	Auto-public	PDF*
Schedule 1 of the report of exempt distribution	Private non-public	XLSX*
Schedule 2 of the report of exempt distribution (intended to be in force on June 30, 2016)	Private non-public	XLSX*
Material required to be filed or delivered under section 2.9 <i>Offering memorandum</i> of NI 45-106 <i>Prospectus Exemptions</i> (NI 45-106)		
Offering memorandum (OM)	Auto-public	PDF
OM marketing materials	Auto-public	PDF
Annual financial statements	Private	PDF
Notice of use of proceeds	Private	PDF
Notice of change in year-end	Private	PDF
Material required to be filed or delivered under Start-up Crowdfunding prospectus and registration exemptions		
Form 5 <i>Report of Exempt Distribution</i> (excluding Schedule 1)	Auto-public	PDF*
Schedule 1 of Form 5 <i>Report of Exempt Distribution</i>	Private non-public	XLSX*
Offering document	Auto-public	PDF
Material required to be filed or delivered by an issuer under MI 45-108 <i>Crowdfunding</i>		
Offering document	Auto-public	PDF

²There are three SEDAR access levels: (1) Auto-public – public immediately, displays on SEDAR.com within 15 minutes; (2) Private – initially private, but if the regulator marks it public, it will display on SEDAR.com within 15 minutes, (3) Private non-public – will remain private, never displays on SEDAR.com.

Although the documents with a “Private” access level identified above could be marked public by the regulator to display on SEDAR.com, the participating jurisdictions do not anticipate marking them public to be displayed on SEDAR.com.

Other distribution materials	Auto-public	PDF
Annual financial statements	Private	PDF
Notice of use of proceeds	Private	PDF
Disclosure document delivered to subscribers under section 37.2 of the <i>Securities Regulation</i> (Québec) ³	Private	PDF
Financial statements of “mutual funds in the jurisdiction” as defined in National Instrument 81-106 <i>Investment Funds Continuous Disclosure</i>	Private	PDF

*CSA templates will be available for these filing types (see Question #8)

4. Is an offering memorandum made public on SEDAR?

The only offering memoranda or offering documents that will be required to be made public on SEDAR, are offering memoranda or offering documents filed in accordance with section 2.9 *Offering memorandum* of NI 45-106 or the crowdfunding prospectus exemptions. These prospectus exemptions permit an issuer that meets the requirements to distribute securities to the general public. In addition, these documents are already publicly available upon request from the participating jurisdictions. While the method of access to these documents will change due to required filing on SEDAR, the public availability of the documents will not change. The greater access to public information will improve fairness in the market.

Documents that are used in conjunction with other prospectus exemptions and that are not listed in the table in Question #3, are not required to be filed on SEDAR. For example, issuers often prepare an information document or memorandum for investors when relying on section 2.3 *Accredited investor* of NI 45-106. This information document or memorandum is not required to be filed on SEDAR, except when filing in Québec under section 37.2 of the *Securities Regulation* (Québec), which filing would remain private.

5. How do I keep the confidential purchaser information in the schedules of the report of exempt distribution private on SEDAR?

A report of exempt distribution is divided into two sections i) the body of the report, which is generally public information, and ii) the schedules of the report, which contain personal information that is confidential.⁴ Since the schedule information is kept confidential, a filer will need to detach the schedules from the body of the report of exempt distribution and file them with a separate access level on SEDAR that allows the schedule information to remain private.

³ On April 7, 2016, the Autorité des marchés financiers published for a 30-day comment period a Draft *Regulation to amend the Securities Regulation*. The proposed amendment would revoke section 37.2 of *Securities Regulation*.

⁴ The information in the schedules will not be placed on the public file of any securities regulatory authority or regulator. However, freedom of information legislation may require the securities regulatory authority or regulator to make this information available if requested.

The filer will be prompted by the SEDAR system to acknowledge that it has removed the schedules from the report of exempt distribution prior to filing the main body of the report at the public access level. The system will not accept such filings until the filer acknowledges this removal. This required acknowledgement is intended to assist filers in complying with their obligation to protect the personal information from an unauthorized and mistaken public disclosure of the schedules on the SEDAR website. The SEDAR system will also provide a pop-up warning message, once the document has been uploaded to the report of exempt distribution filing type, that notifies the filer that the schedules must be filed separately because they contain sensitive personal information and that failure to do so will result in this information being made public.

6. What if I file personal information under a filing type that has a public access level by mistake?

If a filer identifies that it has inadvertently made confidential information public, it should inform any one of the jurisdictions where the filing was made as soon as possible and the filing will be made private upon notification.

7. How does an issuer file a report of exempt distribution for a distribution to purchasers in every CSA jurisdiction?

Beginning June 30, 2016

Effective June 30, 2016⁵ all CSA jurisdictions will adopt a new harmonized report of exempt distribution (the **New Report**).⁶ The BCSC is developing a web-based filing system on eServices to accommodate the structured data format of the New Report. Issuers filing in British Columbia and Ontario will file the New Report with the BCSC and OSC by completing an electronic form on the BCSC's eServices and the OSC's Electronic Filing Portal, respectively.

In all CSA jurisdictions other than British Columbia and Ontario, issuers, except certain foreign issuers, will be required to file the New Report on SEDAR. Both the BCSC's eServices and the OSC's Electronic Filing Portal will generate an electronic PDF copy of the completed report, which issuers can then use to file on SEDAR.

Schedule 1 and Schedule 2 of the New Report must be filed in XLSX format using the Excel templates developed by the CSA (see Question #8).

Between May 24, 2016 – June 29, 2016

Until the New Report is implemented, issuers will file the existing report of exempt distribution (the **Current Report**) with the OSC by completing an electronic form on the OSC's Electronic Filing Portal. The OSC's Electronic Filing Portal will generate an

⁵ In all CSA jurisdictions, a transition period to the New Report is available for investment fund issuers that file reports annually. For information about the transition period, see Annex H of the CSA Notice described in footnote #6 below.

⁶ See CSA Notice of Amendments to National Instrument 45-106 *Prospectus Exemptions* relating to Reports of Exempt Distribution, published on April 7, 2016.

electronic PDF copy of the completed report, which issuers can then use to file on SEDAR. Issuers will be required to file Schedule 1 of the Current Report in XLSX format on SEDAR. The participating jurisdictions have prepared a template in XLSX format to assist issuers in completing the Schedule 1 of the Current Report (see Question #8).

Until the New Report is implemented, issuers will need to continue completing Form 45-106F6 *British Columbia Report of Exempt Distribution* for applicable distributions in BC and file it using [BCSC eServices](#).

8. Are there required templates that an issuer must use when filing a report of exempt distribution on SEDAR?

Available Templates

Current Report and Form 5

The participating jurisdictions have created templates to assist issuers in preparing and filing the Current Report (as defined in Question #7) and Form 5 *Report of Exempt Distribution* (**Form 5**). These templates include PDF fillable forms for the body of the reports and Excel templates in XLSX format for the schedules of the reports and can be accessed at http://www.sedar.com/sedar/sedar_en.htm until June 30, 2016. Beginning June 30, 2016, the templates for the Current Report and Form 5 will only be hosted on the CSA website at http://www.securities-administrators.ca/industry_resources.aspx?id=1464.

New Report

The CSA has also created Excel templates in XLSX format for Schedule 1 and Schedule 2 of the New Report (as defined in Question #7) and intends to have a PDF fillable form for the body of the New Report available before the New Report becomes effective on June 30, 2016. The templates of the New Report will also be hosted on the CSA website at http://www.securities-administrators.ca/industry_resources.aspx?id=1464.

Mandatory Templates Beginning June 30, 2016

Before June 30, 2016, the use of the CSA templates is not mandatory. However, beginning June 30, 2016, an issuer must use the following CSA templates when filing the respective report on SEDAR:

- Excel templates for Schedule 1 and Schedule 2 of the New Report
- Excel template for Schedule 1 of Form 5

The use of the other available templates continues not to be mandatory on or after June 30, 2016.

9. How do I make a filing on SEDAR?

In order to make a filing on SEDAR, an issuer can either: (a) become a SEDAR subscriber and make the filing itself or (b) hire a filing agent to make the filing.

- a) Becoming a SEDAR subscriber currently involves:

- i. downloading and reading the information outlined in the [SEDAR Information Package](#), which includes the necessary forms and information;
- ii. completing and signing SEDAR Form 1 – *Application for SEDAR Filing Services*;
- iii. signing SEDAR Form 2 – *Filing Service Subscriber’s Agreement*;
- iv. returning SEDAR Form 1 and SEDAR Form 2 to the SEDAR Filing Service Contractor; and
- v. downloading and installing the SEDAR desktop client software at no charge.

To download the SEDAR desktop client software, the filer would need internet access and a computer that meets the minimum hardware and software requirements set out in the [SEDAR Installation Guide](#).

Training sessions on how to make filings on SEDAR are also offered on a periodic basis. For information about the training sessions, including how to register, visit http://www.sedar.com/sedar/sedar_en.htm or send an email to csacrm@cgi.com.

b) Hiring a filing agent

Filing agents include law firms, financial printers, trust companies acting as transfer agents and registrars and other service providers. To obtain a list of filing agents, please email EMFonSEDAR-Support@csa-acvm.ca or contact the CSA Service Desk at 1-800-219-5381.

10. How do I make an electronic payment on SEDAR?

If there is a fee payable to a securities regulatory authority in connection with a filing made on SEDAR, the fee is paid electronically through SEDAR using an electronic data interchange account (**EDI account**). An issuer making an exempt market filing on SEDAR that has an associated fee would need to either retain a filing agent to make the required electronic payment or open an EDI account to make the electronic payment directly. A list of the various financial institutions through which an EDI account can be opened is available here ([List of contacts at EDI Compliant Financial Institutions](#)) and on the SEDAR website.

11. Is there a cost to become a SEDAR subscriber or use a filing agent?

There is currently no charge to become a SEDAR subscriber or to maintain a SEDAR subscription. However, an issuer that chooses to become a SEDAR subscriber and make its own filings would need to invest the time to learn how to use the SEDAR system. In addition, there would be a cost to set up and maintain an EDI account, through a financial institution.

If an issuer uses a filing agent to make filings and/or the electronic fee payment, the filing agent will charge the issuer for their filing services.

Issuers that make a limited number of exempt market filings will likely find it more convenient and/or cost effective to hire a filing agent rather than becoming a SEDAR subscriber and setting up and maintaining an EDI account.

12. Are there any SEDAR system fees for exempt market filings?

Each report of exempt distribution will be subject to a \$25 SEDAR system fee. This fee will apply to both reporting and non-reporting issuers that file a report of exempt distribution on SEDAR and will be in addition to the filing fees that issuers currently pay when filing a report of exempt distribution in each applicable jurisdiction. The \$25 SEDAR system fee will not apply to filings made before May 24, 2016 (see Question #1). No other type of exempt market filing will be subject to a SEDAR system fee.

13. What type of SEDAR profile should I create to make an exempt market filing?

Either an Investment Fund Issuer profile or an Other Issuer profile must be created, depending on the type of issuer, unless the issuer already has a SEDAR profile. The Investment Fund Issuer profile is generally used by an issuer that is a mutual fund, whereas the Other Issuer profile is generally used by all other types of issuers. Refer to the [SEDAR Filer Manual](#) for more information. Issuers are not permitted to use the Other Filer profile when making exempt market filings on SEDAR.

If an issuer already has an Other Issuer or Investment Fund Issuer profile, because the issuer is a reporting issuer for example, the issuer should make the exempt market filing under its existing profile and should not create a new profile.

14. If I cease to be a reporting issuer can I use my existing profile to continue to make exempt market filings?

Yes. When an issuer ceases to be a reporting issuer it should first update the “Reporting Jurisdictions” field on its SEDAR profile to be “Ceased Reporting”. This step will ensure that the ceased reporting status is transferred to its SEDI Issuer Profile Supplement. The issuer should then change the “Reporting Jurisdictions” field on its SEDAR profile to be “Non-reporting Issuer”, which will allow the non-reporting issuer to make exempt market filings under its existing profile.

15. Are foreign issuers required to make their exempt market filings on SEDAR?

A foreign issuer that falls within the definition of “foreign issuer (SEDAR)”, as defined in NI 13-101 *System for Electronic Document Analysis and Retrieval* (SEDAR) (NI 13-101), is not required to make electronic filings on SEDAR. The amendments to NI 13-101 will not change a foreign issuer’s filing requirements. It may continue to file its exempt market filings in paper format in the participating jurisdictions. However, a foreign issuer can elect to be subject to NI 13-101 and make its filings, including exempt market filings, on SEDAR. This election is made by completing and filing a SEDAR Form 5 *Notice of Election by Foreign Issuer (SEDAR)* with the securities regulatory authority in each applicable jurisdiction.

16. Why have exempt market filings on SEDAR?

Using SEDAR provides benefits to issuers, including:

- enabling issuers to make filings in multiple jurisdictions through a single electronic system;
- allowing both reporting and non-reporting issuers to have their filings, including exempt market filings, in one location under a SEDAR profile, while still maintaining confidential treatment of sensitive investor information; and
- allowing issuers to verify the accuracy and completeness of their filing record without having to make an information request to the applicable jurisdictions.

Also the participating jurisdictions collectively receive thousands of exempt market filings each year from both reporting and non-reporting issuers. Providing exempt market filings in paper format limits their ability to analyze the information in the documents and increases the administrative burden of handling the filings. Also, receiving the filing in paper format impacts the timeliness and ease with which they can make public the publicly available information in the filings.

Questions

Please refer your questions to any of the following:

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<p><i>Manitoba Securities Commission</i> Wayne Bridgeman Deputy Director, Corporate Finance 204-945-4905 wayne.bridgeman@gov.mb.ca</p>	<p><i>Financial and Consumer Services Commission (New Brunswick)</i> Alex Wu Senior Securities Officer 506-643-7695 alex.wu@fcnb.ca</p>