

Canadian securities regulators announce changes to accredited investor and minimum amount exemptions in NI 45-106

Ontario also introduces new friends, family and business associates exemption



The Canadian Securities Administrators (CSA) [announced yesterday](#) that they have adopted a number of important changes to National Instrument 45-106 *Prospectus and Registration Exemptions (NI 45-106)* to address investor protection concerns, facilitate capital raising and further harmonize these exemptions. Subject to necessary ministerial approvals, these changes are expected to take effect **May 5, 2015**.



The following are the changes that may affect your operations:

1. Individual accredited investors (other than individuals who are permitted clients) will generally be required to complete and sign a “risk acknowledgement form” (Form 45-106F9) that describes among other things the risks of investing in the exempt market (e.g., risk of loss, limited liquidity, and lack of information and advice) and information about any salesperson involved in the trade. These forms will need to be retained for 8 years.
2. The Ontario carve-out for investment funds will be removed from the managed account category in the definition of accredited investor (paragraph (q) of the definition). Accordingly, portfolio managers in Ontario will now be able to purchase units of private investment funds for their fully managed accounts, as they are able to do so in other Canadian jurisdictions. This change will allow retail investors in Ontario to invest in private investment funds through their managed accounts for the first time.
3. A new category of accredited investor (paragraph (w) of the definition) will be introduced to treat family trusts established by accredited investors for the benefit of their families as accredited investors.
4. The minimum investment amount exemption (i.e., the exemption for purchases of at least \$150,000 of securities of a single issuer) will no longer be available for distributions to individual investors (i.e., only distributions to non-individuals will be permitted).
5. New Companion Policy guidance has been added with respect to the steps that need to be taken by issuers and other sellers (sellers) to verify a purchaser qualifies as an accredited investor, when relying on the accredited investor exemption, or close personal friend/close business associate when relying on the friends, family and business associates exemption. This guidance is applicable to sellers that wish to rely on these prospectus exemptions. (Registered firms are also subject to their “know-your-client” and suitability obligations.)

Of note, the CSA has indicated that it will not be sufficient for a seller to simply accept representations in a subscription agreement or initials on a new investor form in order to identify a purchaser as an accredited investor unless the seller has taken reasonable steps to verify the representations. As an example, the CSA expects a seller to ask questions about a purchaser’s net income or financial assets or net assets, if relying on those categories of the accredited investor definition.

In addition, in a [related notice](#), the Ontario Securities Commission (the **OSC**) announced that it was introducing a prospectus exemption for the distribution of securities to directors, executive officers, control persons or founders of an issuer as well as certain family members, close personal friends and close business associates of such persons (the **FFBA Exemption**) in Ontario. This exemption is generally similar to the existing FFBA exemption available in other jurisdictions but with some important differences, including a restriction that limits the exemption to non-investment funds, and a requirement for a risk disclosure form (Form 45-106F12).

The OSC had [previously announced on February 5, 2015](#) that it was proceeding with amendments to OSC Rule 45-501 that give effect to the proposals for an “existing securityholder” exemption. These amendments came into force on February 11, 2015.

In terms of the CSA’s proposals in relation to the Offering Memorandum (OM) exemption and proposals for a new regulatory framework to facilitate crowdfunding, the OSC stated in a [related “Backgrounder” notice](#), that the participating CSA jurisdictions collectively received over 900 comment letters regarding the OM exemption and approximately 45 comment letters regarding the crowdfunding regime. CSA staff are reviewing the comments and intend to publish the OM exemption and the crowdfunding regime either in final form or, if warranted, for a second comment period, in summer 2015.

Finally, in a welcome move, the OSC announced in the Backgrounder that the proposals to introduce new forms of the report of exempt distribution for use in Ontario, Alberta, New Brunswick and Saskatchewan (proposed Forms 45-106F10 and 45-106F11), and to accelerate the filing requirement for the report for investment fund distributions from annually to quarterly, are now being considered as a separate CSA initiative. CSA staff are working to harmonize reporting obligations to the extent possible and anticipate publishing the forms for a second comment period in spring 2015.

As a result of these changes, issuers and registered firms will likely need one or more of their compliance and client disclosure documents to be updated (including offering memoranda, subscription agreements, investment management agreements, and policies and procedures manuals), and should begin this process immediately to be ready for the **May 5 effective date**. If you require assistance with these updates, please contact a member of our [Regulatory Compliance Group](#) or our [Investment Funds Group](#).

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