



## National Instrument 45-106 Prospectus and Registration Exemptions

### May 5th, 2015 Amendments Frequently Asked Questions



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April 2, 2015



## About Us

- Primarily represent investment fund managers, portfolio managers, dealers, private and public entities, and investors
- Three practice pillars
  - Regulatory Compliance
  - Investment Funds
  - Corporate Finance
- Offices in Toronto and Montreal

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## Overview

- The Canadian Securities Administrators (CSA) announced that they have adopted important changes to **National Instrument 45-106 Prospectus and Registration Exemptions** (NI 45-106)
- To be renamed **National Instrument 45-106 Prospectus Exemptions**
- Subject to necessary ministerial approvals, these changes are expected to take effect **May 5, 2015**
- The changes affect all fund managers, portfolio advisers and dealers, among others

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## Why are the changes relevant to me?

- The distribution of securities, including fund units, requires a prospectus **or** an exemption from the prospectus requirements
- Amendments affect the two most common prospectus exemptions used to distribute fund securities: **the accredited investor** and **minimum amount exemptions**
- If you are unaware and use an exemption improperly, you may be making an illegal distribution
- If your documents are out of date, it may be a **red flag for a regulatory audit**

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## Who is an accredited investor (AI)?

- No change to income or asset thresholds
- But the definition of AI has been expanded
- Accredited investor in Ontario now includes (finally) a fully managed account purchasing securities of an investment fund
  - New category means that a portfolio adviser with discretion over a client's account can now buy fund units in Ontario for that client
  - **New category to be used with caution!**
  - Don't forget suitability obligations

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## Any more good news about accredited investors?

- Expanded to family trusts established by an accredited investor if
  - majority of trustees are AI and
  - all beneficiaries are specified family members

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## But I've heard the exemptions will make it harder to sell. Is that true?

- The AI exemption will now require individual investors in paragraphs (j), (k) and (l) of the definition to sign a "risk acknowledgement form"
- The minimum amount exemption will no longer be available to individual investors
- Can still sell additional units to original \$150K purchasers
- Ontario accredited investor exemption is found in the Act, not the Rule

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## Anything else I need to know?

- New family, friends and business associates exemption available in Ontario
- But **not available for investment funds**
- Future prospectus exemption changes are expected soon (e.g., offering memorandum exemption and crowdfunding)

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## What needs to happen before May 5?

- Subscription Agreements
- Offering Memoranda
- Compliance Manual
- Potentially
  - Limited Partnership Agreement or Declaration of Trust
  - Investment Management Agreements

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## How can AUM Law help me?

- Document review on a fixed fee basis to deal with amendments
- General update of offering documents
- Going forward, compliance assessments

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