

SECURITIES LAW UPDATE

September 2011

New Form of Report of Exempt Distribution takes effect in British Columbia October 3, 2011

Effective October 3, 2011, issuers reporting B.C. exempt distributions (private placements) will need to complete and file a separate new form of report, Form 45-106F6 – *British Columbia Report of Exempt Distribution* (the New Form). The New Form will require issuers to provide more disclosure to the market regarding the purchasers, insiders, registrants and promoters.

In particular, non-reporting issuers other than investment funds managed by fund managers registered in Canada (Exempt Funds), will be required to disclose: (i) the names, municipalities and countries of residence of their insiders and promoters; (ii) the number and types of securities controlled or owned by such insiders and promoters, including securities purchased in the exempt distribution being reported; and (iii) the total price paid for all of the securities owned or controlled by such insiders and promoters, including securities purchased in the exempt distribution being reported. In addition, all issuers other than Exempt Funds must indicate whether the purchasers of securities in a private placement are registrants or insiders of the issuer. For insiders and promoters that are not individuals (i.e. corporations, trusts, etc.), disclosure is required in respect of their directors or officers. This information must be supplied in the main body of the report itself (as opposed to the Schedules), which means it is publicly available in electronic form.

Consistent with the current form of report of exempt distribution, all issuers, public and private, are required to disclose whether purchasers are insiders or registrants, as well as their names

and addresses, the number and type of securities purchased, total purchase price paid, exemption relied upon and the date of the distribution. However, for non-individual purchasers this information, including the name and telephone number of their contact person, is included in the body of the report and will be publicly available in electronic form.

For purchasers who are individuals, the name, insider or registrant status, number and type of securities purchased, total purchase price paid and distribution date are contained in Schedule I, which information is made available for public inspection at the office of the British Columbia Securities Commission (BCSC) in paper format only. Schedule II, containing the residential address, telephone number and exemption relied upon for individual purchasers will not be publicly available in either electronic or paper format. Information on whether any person receiving compensation (either commission or finders fees) in connection with the distribution is an insider or a registrant will continue to be required and publicly available.

To address privacy concerns, the BCSC has imposed a prohibition on any person from using the information contained in Schedule I for any purpose other than research concerning the issuer for the person's own investment purpose.

If a private placement is reportable in British Columbia and also in one or more other Canadian jurisdictions, the issuer must file the New Form with the British Columbia Securities Commission (BCSC) and file the existing Form 45-106F1 in the other applicable jurisdictions. The types of

exempt distributions that are reportable continue to be governed by Part 6 of NI 45-106 and include, among others, private placements made in reliance on the exemptions for accredited investors, family, friends and business associates, offering memorandum and minimum investment amount. Such distributions are reportable in British Columbia if (i) the relevant securities are sold to purchasers resident in British Columbia or (ii) the issuer has a significant connection to British Columbia.

Issuers will want to understand the additional disclosure requirements under the New Form before making placements in British Columbia. Subscription agreements and other related documentation should be reviewed to ensure it captures all information necessary to fulfill these new reporting requirements.

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