

Multilateral CSA Notice
Request for Comment Proposed Amendments to
National Instrument 13-101 *System for Electronic Document*
Analysis and Retrieval (SEDAR)
and Multilateral Instrument 13-102 *System Fees for*
SEDAR and NRD

June 30, 2015

Introduction

The members of the Canadian Securities Administrators (the **CSA**), except for the Ontario Securities Commission (**OSC**) and the British Columbia Securities Commission (**BCSC**) (the **participating jurisdictions** or **we**), are publishing for a 60-day comment period proposed amendments to National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)* (**NI 13-101**) and Multilateral Instrument 13-102 *System Fees for SEDAR and NRD* (the **proposed amendments**).

The proposed amendments would require the following documents (the **exempt market filings**), which exist or are proposed under prospectus exemptions, to be filed in electronic format on SEDAR in accordance with NI 13-101 in the participating jurisdictions:

- Form 45-106F1 *Report of Exempt Distribution*;
- the offering memorandum and any other document, such as financial statements or marketing materials, that may be required in the future to be filed or delivered under section 2.9 [*Offering memorandum*] of National Instrument 45-106 *Prospectus Exemptions* (**NI 45-106**);
- in Saskatchewan, Manitoba, Québec, New Brunswick and Nova Scotia, the offering document and Form 5 – *Start-up Crowdfunding – Report of Exempt Distribution* under the Start-up Crowdfunding Prospectus and Registration Exemptions and the offering document, distribution materials, financial statements and notices under proposed Multilateral Instrument 45-108 - *Crowdfunding* (together the **crowdfunding exemptions**);
- in Québec, any disclosure document delivered to subscribers under section 37.2 of the *Securities Regulation* (Québec).¹

The proposed amendments would also impose a SEDAR system fee of \$25 per filing of a report of exempt distribution prepared in accordance with either Form 45-106F1 *Report of Exempt Distribution* or Form 5 – *Start-up Crowdfunding – Report of Exempt Distribution* (a **report of**

¹ Section 37.2 of *Securities Regulation* (Québec) requires that, when a distribution is made pursuant to an exemption, any disclosure document delivered to subscribers, even if such document is not required by the *Securities Act* (Québec) or the Regulations, be filed without delay with the Autorité des marchés financiers, unless it has previously been filed.

exempt distribution). This fee would be in addition to any filing fee required in the participating jurisdictions.

We expect the proposed amendments to be adopted in each of the participating jurisdictions either as an amendment to a rule or as an amendment to a regulation.

Background

Issuers that rely on certain prospectus exemptions, including those listed in section 6.1 of NI 45-106 (such as section 2.3 [*Accredited investor*] and section 2.9 [*Offering memorandum*] (the **OM exemption**)), are generally required to file in each jurisdiction where the distribution takes place a report of exempt distribution no later than 10 days² after the distribution. Also, issuers that rely on the OM exemption must file a copy of the offering memorandum (**OM**) within 10 days after the distribution under the OM. Similar filing requirements are provided under the crowdfunding exemptions.

In Québec, when a distribution is made pursuant to an exemption, any disclosure document delivered to subscribers, even if such document is not required by the *Securities Act* (Québec) or the Regulations, is required to be filed without delay unless it has previously been filed.

Currently, the participating jurisdictions collectively receive thousands of exempt market filings each year from both reporting and non-reporting issuers. These exempt market filings are currently filed in paper format, which limits our 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 we can make public the publicly available information in the filings. As a result, the participating jurisdictions are proposing that exempt market filings be made on SEDAR.

Using SEDAR will provide 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.

SEDAR Filings

Making filings on SEDAR

In order to make a filing on SEDAR, an issuer could either become a SEDAR subscriber and make the filing itself or hire a filing agent to make the filing. Filing agents include law firms,

² An issuer is not subject to the 10 day filing deadline if it qualifies for one of the exceptions listed in section 6.2 of NI 45-106.

financial printers, trust companies acting as transfer agents and registrars and other service providers.

Becoming a SEDAR subscriber currently involves:

1. downloading and reading the information outlined in the [SEDAR Information Package](#), which includes the necessary forms and information;
2. completing and signing SEDAR Form 1 – *Application for SEDAR Filing Services*;
3. signing SEDAR Form 2 – *Filing Service Subscriber’s Agreement*;
4. returning SEDAR Form 1 and SEDAR Form 2 to the SEDAR Filing Service Contractor; and
5. 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](#). These requirements would include a computer with one of the following operating systems:

- Microsoft Windows XP Professional,
- Microsoft Windows 7 Professional (32 or 64-bit), or
- Microsoft Windows Vista Business (32-bit).

Currently, the SEDAR desktop client software cannot be installed on a computer with Microsoft Windows 8 or newer operating systems since they are not supported. Mac computers are also not supported. The CSA is currently reviewing options to address this issue.

Making electronic payments 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. To obtain a list of filing agents, please contact the CSA IT Systems Office at EMFonSEDAR-Support@csa-acvm.ca. 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.

Cost to an issuer to make a filing on SEDAR

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 would 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.

System fees for exempt market filings on SEDAR

Each report of exempt distribution would be subject to a \$25 SEDAR system fee. The system fee would be offset by a reduction in the administrative cost for the issuer to file the exempt market filing in paper format in each participating jurisdiction in which the distribution occurs.

Access levels for exempt market filings on SEDAR

A report of exempt distribution is divided into two sections: the body of the report, which is generally public information; and, Schedule 1 of the report, which includes personal information about each investor, which is generally confidential information. Since the information on Schedule 1 is generally kept confidential, a filer will need to detach Schedule 1 from the body of the report of exempt distribution and file it with a separate access level on SEDAR that allows the Schedule 1 information to remain private.

Currently, SEDAR documents can be set to one of the following access levels:

- Auto-public – public immediately, displays on SEDAR.com within 15 minutes;
- Private – initially private, but if/when the principal regulator marks it public, it will display on SEDAR.com within 15 minutes; and
- Private non-public – will remain private, never displays on SEDAR.com.

It is anticipated that the exempt market filings will have the following access levels on SEDAR:

Filing	Access Level
Report of exempt distribution, excluding Schedule 1	Auto-public
Schedule 1 of the report of exempt distribution	Private non-public
Offering memorandum	Auto-public
Disclosure document (Section 37.2 of <i>Securities Regulation</i> in Québec)	Private
Offering document, distribution materials, financial statements and notices (crowdfunding exemptions)	Private

The SEDAR website will provide clear instructions that filers must remove Schedule 1, which contains sensitive personal information, prior to filing the main body of the report of exempt distribution at the “auto-public” access level. The filer will also be prompted by the SEDAR system to acknowledge that it has removed Schedule 1 from the report of exempt distribution prior to making such a filing at the “auto-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 of investors from an unauthorized and mistaken public disclosure of a Schedule 1 on the SEDAR website.

Format of documents filed on SEDAR

We plan to require the body and/or the Schedule 1 of the report of exempt distribution to be prepared using a specific template provided by the CSA and to be filed in a specific format, such

as PDF, XML or CSV. Requiring the use of specific templates and formats will enable the participating jurisdictions to receive the information in the report of exempt distribution in a manner that can be more easily analyzed. The proposed amendments to NI 13-101 will permit the participating jurisdictions to mandate the form and manner in which the report of exempt distribution is filed and the specific templates that must be used.

Making exempt market filings in non-participating jurisdictions

An issuer will not be permitted to make an exempt market filing on SEDAR with the BCSC or the OSC. An issuer must use [BCSC eServices](#) to file in British Columbia and the OSC's [Electronic Filing Portal](#) to file in Ontario.

Foreign issuers

A foreign issuer that falls within the definition of “foreign issuer (SEDAR)”, as defined in NI 13-101, is not required to make electronic filings on SEDAR. The proposed amendments 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.

Request for comments

We welcome your comments on the proposed amendments. To allow for sufficient review, we are providing you with 60 days to comment.

Please submit your comments in writing on or before **August 31, 2015**. If you are not sending your comments by email, please send a CD containing the submissions (in Microsoft Word format).

Please note that comments received will be made publicly available and posted on the websites of the Autorité des marchés financiers at www.lautorite.qc.ca and the Alberta Securities Commission at www.albertasecurities.com and may be posted on the websites of certain other securities regulatory authorities. You should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

Where to send your comments

Please **address** your submission as follows:

Alberta Securities Commission
Autorité des marchés financiers
Financial and Consumer Affairs Authority of Saskatchewan
Financial and Consumer Services Commission (New Brunswick)
Manitoba Securities Commission
Nova Scotia Securities Commission

Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

Please **deliver** your comments **only** to the two addresses below. Your comments will be distributed to the other participating jurisdictions.

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Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22^e étage
C.P. 246, tour de la Bourse
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Fax : 514-864-6381
E-mail: consultation-en-cours@lautorite.qc.ca

Contents of Annexes

The following annexes form part of this Notice:

Annex A – Proposed Amendments to National Instrument 13-101 *System for Electronic Document Analysis and Retrieval* (SEDAR)

Annex B – Proposed Amendments to Multilateral Instrument 13-102 *System Fees for SEDAR and NRD*

Questions

Please refer your questions to any of the following:

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For questions regarding obtaining the services of a filing agent or the SEDAR software, please refer your questions to:

EMFonSEDAR-Support@csa-acvm.ca

ANNEX A

Proposed amendments to National Instrument 13-101 System for Electronic Document Analysis and Retrieval (SEDAR)

1. National Instrument 13-101 System for Electronic Document Analysis and Retrieval (SEDAR) is amended by this instrument.

2. Section 2.2 is amended by adding the following:

- (1.1) Except in British Columbia and Ontario, an electronic filer that is required to file Form 45-106F1 *Report of Exempt Distribution* must file that report in the form and manner and using the templates specified in the SEDAR Filer Manual.
- (1.2) In Saskatchewan, Manitoba, Québec, New Brunswick and Nova Scotia, an electronic filer that is required to file a Form 5 – *Start-up Crowdfunding – Report of Exempt Distribution* must file that report in the form and manner and using the templates specified in the SEDAR Filer Manual..

3. Appendix A – Mandated Electronic Filings is amended by adding the following:

(a) to section I Mutual Fund Issuers:

D. Exempt Market Offerings and Disclosure

- 1. Form 45-106F1 *Report of Exempt Distribution* Alta, Sask, Man, Que, NB, PEI, NS, Nfld, YK, NWT, NU
- 2. Material required to be filed or delivered under section 2.9 of National Instrument 45-106 *Prospectus Exemptions* Alta, Sask, Man, Que, NB, PEI, NS, Nfld, YK, NWT, NU
- 3. Disclosure document delivered to subscribers under section 37.2 of the *Securities Regulation* (Québec) Que

(b) to section II Other Issuers (Reporting/Non-reporting):

E. Exempt Market Offerings and Disclosure

- 1. Form 45-106F1 *Report of Exempt Distribution* Alta, Sask, Man, Que, NB, PEI, NS, Nfld, YK, NWT, NU

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| 2. | Material required to be filed or delivered under section 2.9 of National Instrument 45-106 <i>Prospectus Exemptions</i> | Alta, Sask, Man, Que, NB, PEI, NS, Nfld, YK, NWT, NU |
| 3. | Disclosure document delivered to subscribers under section 37.2 of the <i>Securities Regulation</i> (Québec) | Que |
| 4. | Form 5 – <i>Start-up Crowdfunding – Report of Exempt Distribution</i> and offering document required to be filed or delivered under the start-up crowdfunding prospectus and registration exemptions | Sask, Man, Que, NB, NS |
| 5. | Offering document, distribution materials, financial statements and notices required to be filed or delivered by an issuer under Multilateral Instrument 45-108 <i>Crowdfunding</i> | Sask, Man, Que, NB, NS |
4. This Instrument comes into force on ●.

ANNEX B

**Proposed amendments to
Multilateral Instrument 13-102 System fees for SEDAR and NRD**

1. *Multilateral Instrument 13-102 System fees for SEDAR and NRD is amended by this instrument.*
2. *Appendix B – Other SEDAR System Fees (Section 4) is amended by adding the following:*

22	Investment fund issuers/ exempt market offerings and disclosure	Form 45-106F1 <i>Report of Exempt Distribution</i>	\$25.00	-
23	Other issuers/ exempt market offerings and disclosure	Form 45-106F1 <i>Report of Exempt Distribution</i>	\$25.00	-
24	Other issuers/ exempt market offerings and disclosure	Form 5 – <i>Start-up Crowdfunding – Report of Exempt Distribution</i>	\$25.00	-

3. This Instrument comes into force on ●.

