

**Multilateral CSA Notice of 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***

December 3, 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**), have adopted amendments to each of the following:

- 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* (**MI 13-102**),

(collectively, the **Amendments**).

Provided all necessary ministerial approvals are obtained, the Amendments will come into force on **May 24, 2016** (the **effective date**).

The Amendments will be adopted in each of the participating jurisdictions either as an amendment to a rule or as an amendment to a regulation.

Substance and purpose

The substance and purpose of the Amendments is to provide an interim electronic filing solution to issuers for exempt market filings (as defined below). The interim solution will eventually be replaced by a national electronic filing system that accommodates exempt market filings in all CSA jurisdictions. A nominal fee will be charged on reports of exempt distribution for cost recovery purposes.

Background

The Amendments will 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, notices and certain other documents under Multilateral Instrument 45-108 *Crowdfunding*¹ (together the **crowdfunding exemptions**); and
- in Québec, a disclosure document delivered to subscribers required to be filed under section 37.2 of the *Securities Regulation* (Québec).²

The Amendments would also impose a SEDAR system fee of \$25 per filing of a report of exempt distribution, including a report of exempt distribution prepared in accordance with Form 45-106F1 *Report of Exempt Distribution* or Form 5 – *Start-up Crowdfunding – Report of Exempt Distribution*. This fee would be in addition to any filing fee required in the participating jurisdictions.

On June 30, 2015, we published a Notice and Request for Comment relating to the Amendments (the **June 2015 Publication**) in which we proposed requiring electronic filing of the exempt market filings, as set out above.

Summary of written comments received by the CSA

The comment period for the June 2015 Publication ended on August 31, 2015. We received submissions from 6 commenters. We considered the comments received and thank all of the commenters for their input. The names of commenters are contained in Annex A of this notice and a summary of their comments, together with our responses, is contained in Annex B of this notice.

Summary of changes to the June 2015 Publication

After considering the comments received on the June 2015 Publication, we have decided to proceed with our proposal to require exempt market filings to be made on SEDAR substantially as described in our June 2015 Publication. However, we have made revisions to the SEDAR system to reduce the risk of confidential information inadvertently being made public at the time of the filing and to change the access level on SEDAR for documents filed under the crowdfunding exemptions.

¹ In Saskatchewan, MI 45-108 is being published for a second comment period. It has been adopted in Manitoba, New Brunswick, Nova Scotia, Ontario and Québec.

² 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.

Confidential information & SEDAR

In the June 2015 Publication, we described the filing of the report of exempt distribution as follows:

The 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.

As a result of the comments received, we have modified SEDAR to further reduce the risk of confidential information inadvertently being made public by the filer. The modifications include:

1. adding a pop-up warning message, once the document has been uploaded to the report of exempt distribution filing type, that notifies the filer that Schedule 1 must be filed separately because it contains sensitive personal information and that failure to do so will result in this information being made public; and
2. requiring the filer to acknowledge that Schedule 1 has been removed from the report of exempt distribution before the filer is able to submit the filing. We have made this feature more interactive so that it is not merely a tick-the-box exercise.

The filer will receive one additional general warning message reminding them of their obligation to comply with privacy laws when submitting filings on SEDAR that the filer will need to acknowledge before the filing will be accepted and made public.

Notwithstanding the safeguards that have been put in place, if a filer still includes confidential information in a public filing, the filer can notify staff at a securities regulatory authority in one of the participating jurisdictions and staff will assist the filer by making this filing private.

Access level for Crowdfunding documents

In the June 2015 Publication, we indicated that the offering document and distribution materials relating to the crowdfunding exemptions would have a private access level on SEDAR. However, in order to provide consistent access level to all public information, we intend to make the offering document and distribution materials relating to the crowdfunding exemption publicly available on SEDAR.

Voluntary filing period

The participating jurisdictions will issue blanket orders to allow issuers to electronically file certain exempt market filings in advance of the effective date. A copy of the applicable blanket order is included in Annex D. The blanket order will take effect on December 7, 2015.

Between December 7, 2015 and May 24, 2016, there will be no SEDAR system fee for voluntarily filing exempt market filings on SEDAR.

For additional information and considerations relating to making filings and electronic payments on SEDAR, please see the Multilateral CSA Notice that accompanied the June 2015 Publication. An updated version of the SEDAR filer manual is available on the SEDAR website at www.sedar.com.

To obtain a list of filing agents or for questions regarding the SEDAR software, please refer your questions to:

EMFonSEDAR-Support@csa-acvm.ca

Contents of Annexes

The following annexes form part of this CSA Notice:

Annex A	List of Commenters
Annex B	Summary of Comments and Responses
Annex C1	Amendments to NI 13-101
Annex C2	Amendments to MI 13-102

Questions

Please refer your questions to any of the following:

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ANNEX A

List of Commenters

	Commenter	Date
1.	The Canadian Advocacy Council for Canadian CFA Institute Societies (CAC)	August 28, 2015
2.	National Exempt Market Association (NEMA)	August 28, 2015
3.	McDougall Gauley LLP	August 31, 2015
4.	Davies Ward Phillips & Vineberg LLP	August 31, 2015
5.	Stikeman Elliott LLP	August 31, 2015
6.	Private Capital Markets Association of Canada (PCMA)	August 31, 2015

ANNEX B

**Summary of Comments and Responses
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***

No.	Subject	Summarized Comment	Response
General Comments			
1	<i>Support for the proposals</i>	<p>We received six comment letters. Two commenters strongly support the proposals. Two commenters support a move to electronic filing in principle but do not support the proposal in its current form. One commenter does not oppose the idea of electronic filings but does not support the proposal in its current form. Two commenters specifically supported the carve-out in respect of exempt market filing requirements for foreign issuers.</p> <p>One commenter noted that, given the cost of public issuance of securities, more issuers are looking to private markets to raise capital. Accordingly, the availability of offering documents on a commonly used website will assist in providing information to potential investors, as well as allow investors to compare and contrast various issuers more efficiently. The commenter believes that this will “level the playing field” among investors.</p> <p>One commenter supports CSA efforts to improve the ease with which investors can access and search a database of information relating to non-reporting issuers in a way that is similar to reporting issuers. The commenter believes that SEDAR, as a known industry tool, is suitable for this purpose. The commenter also supports the proposal on the grounds that:</p> <ul style="list-style-type: none">• it will allow both reporting and non-reporting issuers to make filings, including exempt market filings, available in multiple jurisdictions through a single system,	We acknowledge the comments.

No.	Subject	Summarized Comment	Response
		<ul style="list-style-type: none"> • it will allow issuers to verify the accuracy of their filing record without having to make an information request to applicable jurisdictions, • investors will have improved access to information about non-reporting issuers, • other issuers could gain insight into competitors' business and money raising practices which could lead to innovation, • securities regulatory authorities would have improved access to information regarding market practices, and • securities industry professionals would have greater access to information for education, comparison, research and related purposes. 	
2	<p><i>Comments on efficiency and whether streamlining will be achieved</i></p>	<p>All commenters noted that if the proposal is given effect, it will result in three different exempt market filing platforms among British Columbia, Ontario and the other jurisdictions. All commenters noted that harmonization across all jurisdictions would be preferable to a fragmented system. Five commenters noted that the existence of multiple platforms will likely work against the CSA's goal of streamlining exempt market filing requirements.</p> <p>One commenter suggested that the CSA undertake a cost benefit analysis of expanding either British Columbia or Ontario's system to accommodate all exempt market filings.</p> <p>Three commenters noted that the SEDAR platform is antiquated and not compatible with modern operating systems.</p> <p>One commenter noted that SEDAR will not meet the long-term needs of the industry.</p> <p>One commenter noted that the proposed amendments should not be made until SEDAR software is made compatible with modern</p>	<p>A longer-term CSA project is underway to create a single integrated filing system for exempt market filings that would further reduce regulatory burden on market participants. The integrated filing system will be part of the larger CSA systems renewal project.</p> <p>Expanding SEDAR to include exempt market filings is an interim step until the CSA's integrated filing system is in place. The participating jurisdictions have evaluated electronic filing alternatives and determined that using SEDAR is the best option due to its current availability in each jurisdiction and the relatively</p>

No.	Subject	Summarized Comment	Response
		<p>operating systems and that limiting SEDAR access to those who use older operating systems could cause difficulty for a large number of issuers and their advisers. The commenter went on to state that although SEDAR is a known commodity in the industry, its use should not be extended to a new subset of issuers.</p> <p>One commenter noted that, given the difficulty of obtaining SEDAR access due to its lack of compatibility with newer operating systems, issuers may require the services of a third-party SEDAR filer and that situations may then arise where issuers are unable to make timely filings resulting in a default of compliance obligations.</p> <p>One commenter indicated that the current approach to exempt market filings in British Columbia and Ontario seemed more sensible and appropriate. The commenter noted that a similar national regime would be preferable to compelling issuers to create and maintain a SEDAR profile. The commenter stated that the approach in British Columbia and Ontario strikes the correct balance between confidentiality concerns and regulatory oversight of the exempt market. The commenter went on to voice support for an exempt market filing regime that would allow issuers to file reports of exempt distribution only in their principal jurisdiction.</p> <p>Two commenters noted that the proposal will result in added time and expense of requiring a non-reporting issuer to create and maintain a SEDAR profile.</p> <p>One commenter does not see the utility of compelling a non-reporting issuer to create a SEDAR profile solely for the purpose of filing reports of exempt distribution, particularly if exempt distributions are isolated events. The commenter stated that at best, the proposal represents an additional cost of doing business to issuers that use the exempt market and at worst, sensitive information will become too</p>	<p>low cost and time to implement.</p> <p>The CSA is considering options to address the current SEDAR software compatibility issue.</p> <p>We acknowledge that a certain level of time and expense will be required to file on SEDAR. These costs will be offset by the costs required to make the filings in paper format. The creation of a SEDAR profile is a one-time event and the time and cost required to maintain the profile thereafter are minimal.</p> <p>We acknowledge that there will be different filing systems in the participating jurisdictions, British Columbia and Ontario. However, we are of the view that adding the exempt market filings to SEDAR to allow issuers to file in all participating jurisdictions simultaneously will be an improvement over the current paper filing requirement.</p>

No.	Subject	Summarized Comment	Response
		<p>easily accessible to competitors and the issuer will decide to forego Canada as a viable market in which to raise funds.</p>	
3	<p><i>Comments on privacy and sensitive information</i></p>	<p>Four commenters expressed concerns in relation to greater public accessibility of private or potentially sensitive information.</p> <p>One commenter noted that it is vital that investors’ personal information be protected. The commenter stated that the acknowledgement by the issuer that personal information has been removed should be clear and more than simply a “tick the box” exercise.</p> <p>One commenter noted that in the case that investors’ personal information is mistakenly posted, a mechanism to remove incorrectly posted information would be useful.</p> <p>The commenter also noted that in devising a new filing regime, public access to documents should be substantially similar across jurisdictions. Specifically, public access to documents filed pursuant to NI 13-101 should be no greater than materials filed in British Columbia or Ontario. The commenter noted that a failure to do so may result in reluctance of issuers to extend offerings into certain jurisdictions.</p> <p>It is the view of one commenter that offering memoranda should be kept “private” on SEDAR. The commenter stated that a simple search on SEDAR could give competitors access to highly sensitive information. The commenter also stated that a requirement of publicly accessible offering memorandum may significantly impact the ability of private equity fund issuers to raise funds, as the issuers may be prevented from including material information in their offering memoranda due to confidentiality obligations. This would ultimately be to the detriment of exempt market investors.</p>	<p>We acknowledge the comments.</p> <p>The participating jurisdictions believe that sufficient safeguards will be present on SEDAR to assist filers in complying with their obligation to protect the personal information of investors from an unauthorized and mistaken public disclosure. These will include (1) clear instructions and a warning on SEDAR to remove the sensitive personal information prior to filing the main body of the report of exempt distribution and (2) a requirement for the filer to acknowledge that it has removed such information before the system will accept such filings. If a filer identifies that it has inadvertently made confidential information public, it can contact one of the participating jurisdictions and the filing will be made private upon notification.</p>

No.	Subject	Summarized Comment	Response
		<p>One commenter noted that its primary concern is regarding section 37.2 of the <i>Securities Regulation</i> pursuant to the <i>Securities Act</i> (Québec). The commenter noted that under the proposed amendments, any document required to be filed under 37.2 could be made public at any time at the discretion of the principal regulator. The commenter noted that the scope of 37.2 is broad and includes “any disclosure document delivered to subscribers [in connection with a distribution made pursuant to an exemption], even if such document is not required by the Act or the Regulations”. The commenter noted that documents filed under 37.2 often contain confidential, proprietary and commercially sensitive financial and strategic information. Disclosure of such information could be highly prejudicial to the issuer. In addition, many issuers have made the strategic decision to remain private and the ability to keep sensitive, commercial information private may be a key aspect of strategy and operations. The commenter believes that the risk of sensitive information becoming public will incentivize some issuers to refrain from making offerings in certain jurisdictions and ultimately, it is potential investors who will suffer. The commenter also noted that issuers may make proactive applications under section 296 of the <i>Securities Act</i> (Québec) in order to prevent certain documents from becoming public. Regulators would then be required to undertake an in-depth review of these applications, resulting in an increased regulatory burden.</p>	<p>The participating jurisdictions wish to clarify that the only offering memoranda that will be required to be made public on SEDAR, are offering memoranda filed in accordance with section 2.9 [<i>Offering memorandum</i>] of NI 45-106 (the OM exemption). This prospectus exemption permits an issuer that meets the requirements to distribute securities to the general public.</p> <p>The exempt market filings that will be made public on SEDAR are filings that are already publicly available upon request from the participating jurisdictions. While the method of access to those documents would change due to required filing on SEDAR, the public availability of the documents will not change. The participating jurisdictions believe that greater access to public information will improve fairness in the market.</p> <p>The Autorité des marchés financiers (Québec) will not</p>

No.	Subject	Summarized Comment	Response
			change the access level for the disclosure documents filed under section 37.2 of the <i>Securities Regulation</i> (Québec) and these documents will not be publicly available on SEDAR.com. The method to access these documents will not change due to the required filing on SEDAR.
4	<i>Comment on the quality of information on SEDAR over time</i>	One commenter noted that public filings on SEDAR become stale over time and that SEDAR does not allow those public filings to be removed. The commenter is concerned that exempt market filings may only provide potential investors with a “snapshot in time” of a non-reporting issuer and that such filings may quickly become dated and eventually misleading to potential investors. The commenter suggested that such filings should be “Private non-public” or a mechanism should be made available for documents to be removed after a certain amount of time has passed. The commenter also suggested posting a warning to investors that the information contained in filings may no longer be accurate or relevant.	SEDAR Terms of Use stipulates that investors should not assume that documents available on SEDAR.com are error-free, timely, accurate or complete. Issuers that distribute securities under a prospectus exemption that would require the filing of a public disclosure document on SEDAR, would be required under that exemption to provide investors with current information before completing a distribution. Investors should not need to rely on stale information to make an investment decision.
5	<i>Comments on the system fee</i>	One commenter directly addressed the proposed system fee, stating that it is nominal and the commenter has no issue with the fee in light	We acknowledge the comment.

No.	Subject	Summarized Comment	Response
		of the benefits of having this information made available.	
6	<i>Comments on policy</i>	<p>One commenter noted that requiring that an offering memorandum of an exempt market issuer be made publicly available seems inconsistent with policy considerations underpinning the exempt market. The commenter noted that the ability of a limited group of investors to make investments on a prospectus-exempt basis is premised on the grounds that such investors do not need the same level of regulatory protection. The commenter stated that requiring public disclosure of offering memoranda in the same manner as prospectuses appears inconsistent with the above premise. Further, the commenter noted that it may confuse investors, who, based on the public nature of the documents, may believe that they will be afforded the same rights and protections as investors in a prospectus offering.</p>	<p>The participating jurisdictions wish to clarify that the only offering memoranda that will be required to be made public on SEDAR, are offering memoranda filed in accordance with the OM exemption. This prospectus exemption permits an issuer that meets the requirements to distribute securities to the general public. Under the OM exemption an issuer is also required to obtain a signed risk acknowledgement from each investor. The risk acknowledgement form outlines some of the key inherent risks of purchasing a non-prospectus qualified security.</p>

ANNEX C1

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. *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 <i>Report of Exempt Distribution</i> | 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 <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 |

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

E. Exempt Market Offerings and Disclosure

- | | |
|---|--|
| 1. Form 45-106F1 <i>Report of Exempt Distribution</i> | 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 <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 *Crowdfunding* Sask, Man, Que, NB, NS

4. This Instrument comes into force on May 23, 2016.

ANNEX C2

**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. *The following section is added to Part 2 – SEDAR System Fees:*

4.1 System fees for filings that do not require a principal regulator – (1) A person or company making a filing of the type described in Column B of Appendix C, and of the category referred to in Column A of that Appendix, must pay the system fee specified in Column C of that Appendix. The system fee is payable to, and allocated among, the securities regulatory authorities with whom the filing is required under National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)*..

3. *Section 8 is amended by adding “4.1,” after “4,”.*

4. *The following appendix is added:*

*Appendix C – Other SEDAR System Fees
(for filings that do not require a principal regulator)*

(Section 4.1)

Item	Column A Category of Filing	Column B Type of Filing	Column C System Fee Payable
1	Investment fund issuers/ exempt market offerings and disclosure	Report of Exempt Distribution	\$25.00
2	Other issuers/ exempt market offerings and disclosure	Report of Exempt Distribution	\$25.00

5. This Instrument comes into force on May 24, 2016.