

PUBLICATION

Exempt Market and Private Lending Update

March 17, 2015

Amendments to NI 45-106 - Exempt Market and Private Lending Update

Within the next few months, some very significant legislative changes will be made to the accredited investor and minimum amount investment prospectus exemptions contained within National Instrument 45-106 (NI 45-106). These changes will fundamentally alter the way in which capital is raised under these exemptions and should be carefully considered by issuers using the exemptions to raise capital in the exempt market. Effective May 5, 2015:

1. Individual accredited investors must complete and sign a new risk acknowledgement form (Form 45-106F9).
2. The guidance in the Companion Policy to NI 45-106 is being amended to clarify whether purchasers meet the conditions of certain exemptions, including the private issuer exemption, the family, friends and business associates exemption and whether purchasers meet the definition of “eligible investor” under the offering memorandum exemption.
3. The minimum amount investment exemption will be available only to corporations, partnerships and trusts, not individual investors.

It is important for issuers, dealers and their salespeople to understand the impacts of these changes on the current form of subscription agreement. All references to the accredited investor exemption and minimum amount investment exemption in subscription agreements will need to be amended as of May 5, 2015.

To prepare for these changes, please contact any member of our Private Lending Group. We can work with your team to ensure you are compliant with the new legislation before May 5th.