Annex A

LISTED ISSUER FINANCING EXEMPTION

Summary of Comments and Responses from July 28, 2021 publication

Commenter	Abbreviation
The Canadian Advocacy Council of CFA Societies Canada	CAC
Canadian Foundation for Advancement of Investor Rights	FAIR
Davies Ward Phillips & Vineberg LLP	Davies
DuMoulin Black	DuMoulin
Forooghian+Co	F+C
Investment Industry Association of Canada	IIAC
McMillan LLP	McMillan
Philip Anisman	Anisman
Prospectors & Developers Association of Canada	PDAC
TMX Group Limited	TMX

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Support for the Listed Issuer Financing Listed Issuer Financing Exemption		
1.	Six commenters support the Listed Issuer Financing Exemption. Their reasons included: • It would provide listed issuers with a more efficient capital	We thank the commenters for their support and input.

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	raising method. • It recognizes the challenges small-cap issuers face in raising small amounts of capital, including disproportionately high financing costs compared to the amount being raised. • It is an important step forward in utilizing the benefits of a robust continuous disclosure record with a non-prescriptive form of offering document for more efficient and useful information delivery to investors. • It would provide retail investors with a greater choice of investments available in the primary public market. • It acknowledges that the closed system has complexity and expense that weighs disproportionately on smaller issuers, which comprise the vast majority of the Canadian market (approximately 89% of reporting issuers have a market capitalization below $1 billion). • It strikes an appropriate balance between investor protection objectives and increased market efficiency and capital formation opportunities. • It recognizes that retail investors participate in the much larger secondary market. The Listed Issuer Financing Listed Issuer Financing Exemption would benefit retail investors by having the issuer certify that there are no undisclosed material facts. • Applying a seasoning period to securities distributed under the Listed Issuer Financing Exemption makes sense, given that, in order to use the exemption, issuers must have been reporting for 12 months, be in compliance with their continuous and timely disclosure obligations, and certify that all material facts have been disclosed at the time of offering.	
2.	Some commenters who supported the Listed Issuer Financing Exemption, suggested certain changes be made to better	We have considered all the changes suggested by the

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	balance the tension between fostering fair, efficient and vibrant capital markets and investor protection, including: • Removing the requirement that the issuer have sufficient funds to meet its requirements for 12 months as it would be inconsistent with the milestone capital raising approach taken by many junior issuers. In many cases, junior issuers will raise just enough money to fund a particular business milestone, in hopes that they will be able to raise funds at a higher valuation after completing that milestone. • Removing the requirement that the issuer be a reporting issuer for 12 months because it is an unnecessary barrier given the rigid process for an issuer to become listed and a reporting issuer. • Removing the restriction on use of proceeds to allow issuers to allocate proceeds from the offering to significant acquisitions or restructuring transactions provided the issuer provides sufficient detail about the proposed use of proceeds to enable reasonable investors to make an investment decision, including disclosure of risks. • Limiting the Listed Issuer Financing Exemption to small issuers.	commenters. We have not made these suggested changes for the following reasons: • As this exemption allows listed issuers to distribute securities directly to retail investors, we believe it is appropriate to align some of the conditions to those that apply when using a prospectus, such as having sufficient resources for 12 months of operations. • As this exemption allows a listed issuer to distribute securities on the basis of its continuous disclosure record, we think it is necessary that the issuer have an established continuous disclosure record for at least 12 months. • If a listed issuer is considering a transaction that will transform its business, such as a significant acquisition or restructuring transaction, then its continuous disclosure record will not provide sufficient information for an informed investment decision. In such cases, these issuers should either file a prospectus or use a different prospectus exemption. • One of the reasons for the Listed Issuer Financing Exemption is to address the disproportionate costs of raising smaller amounts of capital through a prospectus. This applies regardless of the size of the issuer.
3.	One commenter suggested that the CSA provide guidance regarding how to apply discounts to market price when setting the price of securities distributed under the Listed Issuer Financing Listed Issuer Financing Exemption, particularly to alleviate the potential impact on share prices.	We acknowledge the comment. We note that exchanges may consider similar factors when applying discounts to market price for distributions under the Listed Issuer Financing Exemption that they currently apply to pricing prospectus offerings.

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Concerns with the Listed Issuer Financing Exemption		
4.	Four commenters submitted that the CSA should not proceed with the Listed Issuer Financing Exemption. Their reasons included: • It introduces substantial new risks to market integrity and investor protection that may undermine confidence in the integrity of the capital markets. • It would reduce the number of prospectus offerings conducted by smaller issuers resulting in lack of sufficient safeguards to ensure adequate investor protection typically associated with prospectus offerings including underwriter due diligence, auditor's review, and regulatory review. • It would allow distributions to potentially unsophisticated and unqualified investors without a risk acknowledgement, any measures designed as a proxy for gauging suitability or at least the ability to withstand loss of entire investment, prospectus level liability, and a requirement that information be delivered to the investor. • It does not require the involvement of a registered dealer with know your client and know your product obligations to ensure the investment is suitable for the investor. • It would be available to issuers at the riskier end of the issuer spectrum. • As the securities are free trading, it could increase the risk of fraud, indirect distributions (backdoor underwriting) and more "pump and dump" schemes. • It relies on an issuer's continuous disclosure record, but there is no certainty that the issuer's continuous disclosure is comprehensive and robust or that investors review it given the findings of the recent research report titled "Canada Investor Quantitative Report – Research Findings"	We have considered the concerns raised by the commenters and have determined to proceed with the Listed Issuer Financing Exemption with the following changes to increase investor protection and address the commenters' concerns: • Imposing primary offering liability and remedies in the event of a misrepresentation following the model used in the offering memorandum exemption in most jurisdictions • Requiring enhanced risk disclosure about obtaining advice from a registered dealer on the front page of the offering document • Requiring issuers to notify investors of the availability of the offering document in the news release and in any communications with potential investors • Limiting the type of securities that can be distributed under the Listed Issuer Financing Exemption to securities retail investors are familiar with, being listed securities and warrants or units convertible into listed securities • Restricting issuers that were shell companies in the past 12 months from using the Listed Issuer Financing Exemption • In order to increase our ability to oversee use of the Listed Issuer Financing Exemption and monitor for abusive transactions, we will require issuers to file a report of exempt distribution within ten days of the distribution, including the purchaser information in Schedule 1. Our data shows that issuers raising smaller amounts of capital (less than $10 million) rarely use a prospectus to do so, instead relying on prospectus exemptions that do not require any prescribed disclosure. We anticipate the Listed Issuer Financing Exemption may result in improved disclosure from such issuers.

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	dated July 2021 commissioned by Broadridge Investor Communications Corporation. • It does not recognize the importance the rigorous review process and robust disclosure requirements under the prospectus regime play in supporting the secondary market by assuring the quality of secondary market disclosure and appropriate pricing of both primary offerings and secondary market trading.	The Listed Issuer Financing Exemption would allow distributions to retail investors, who are already able to purchase these securities on the secondary market based on the issuer's continuous disclosure record. By purchasing directly from the issuer under the Listed Issuer Financing Exemption, the investor will be able to receive sweetener warrants, a discount to market price and enjoy additional protections, such as primary offering liability. Like most other prospectus exemptions, the Listed Issuer Financing Exemption does not require a dealer to be involved; however, it also does not provide an exemption from the dealer registration requirement. We expect dealers may be involved in many of these offerings to some degree and if a dealer is involved, it would have to comply with its know your client and know your product obligations. Issuers that conduct their own offerings will, as they do now, have to consider whether they are in the business of trading, triggering the registration requirement. We considered adding some of the protections that apply in other prospectus exemptions, such as the offering memorandum exemption as well as crowdfunding exemptions under Multilateral Instrument 45-108 *Crowdfunding*. However, those exemptions are rarely (if ever) used by reporting issuers. Some of the protections included in those exemptions are intended to address the risks associated with investing in non-reporting issuers. We do not think those protections are necessary in an exemption developed for use by listed issuers, where retail investors are already able to purchase the securities on an exchange on the basis of the listed issuer's continuous disclosure and able to resell those securities immediately. Finally, we note that following adoption of the Listed Issuer

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		Financing Exemption, CSA staff in certain jurisdictions intend to conduct reviews on a post-distribution basis to understand how issuers are using the Listed Issuer Financing Exemption and ensure they are complying with the conditions. CSA staff also conduct continuous disclosure reviews of issuers on an ongoing basis. As noted in CSA Staff Notice 51-312 (Revised) *Harmonized Continuous Disclosure Review Program*, staff use various tools to target those issuers that are most likely to have deficiencies in their disclosure. Some jurisdictions may include reliance on the Listed Issuer Financing Exemption as a selection criterion for such reviews.
5.	Two commenters expressed concern that accredited investors may insist on investing under the Listed Issuer Financing Exemption in order to avoid the restricted period required under the accredited investor exemption. One of those commenters thought this may undermine one of the objectives of the Listed Issuer Financing Exemption: to expand the pool of new capital available to listed issuers. This commenter also noted that accredited investors may focus their investments only on issuers that are able to use the Listed Issuer Financing Exemption, thus impeding the capital raising of other issuers. The commenter suggested the CSA conduct research on the potential negative impact of the Listed Issuer Financing Exemption on the ability to raise capital by issuers from accredited investors.	We acknowledge the comments. We recognize that accredited investors may want to participate in offerings under the Listed Issuer Financing Exemption, just as they already participate in prospectus offerings, in order to purchase freely tradable securities. The Listed Issuer Financing Exemption is intended to be an additional capital raising tool for listed issuers to use as they choose, whether to attract accredited investors or retail. Investors consider many factors when making an investment decision; those intending a long-term investment may prefer the greater pricing discounts associated with hold periods, while others may prefer more flexibility associated with free-trading securities. We note that exchanges may consider similar factors when applying discounts to market price for distributions under the Listed Issuer Financing Exemption that they currently apply for pricing prospectus offerings.
6.	One commenter recommended that the Listed Issuer Financing	We acknowledge the comment. To address this concern, we

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	Exemption should be limited to issuers that have been vetted by the CSA as opposed to those that are only vetted by the stock exchanges, such as, by reverse take-over transactions. For example, it is possible for a private company to go public by RTO with a listed shell company that has been a reporting issuer for at least 12 months and immediately rely on the exemption to raise capital.	have restricted issuers that were a shell in the past 12 months from using the Listed Issuer Financing Exemption.
7.	One commenter was concerned that, although the Listed Issuer Financing Exemption would not be available if the issuer intends to use the proceeds for a significant acquisition or restructuring transaction, this would not prevent an issuer from using the proceeds of the offering for that purpose after the offering is complete. It would be challenging to prove the issuer's intention at the time of the offering.	It is the responsibility of issuers, with the assistance of their advisers, to ensure they are complying with the conditions of exemptions from the prospectus requirement when distributing securities without a prospectus. The Listed Issuer Financing Exemption is not available if the issuer plans to allocate any of its available funds towards a significant acquisition or restructuring transaction. In addition, the issuer is required to represent in the prescribed offering document that it will not allocate proceeds from the offering to a significant acquisition or restructuring transaction. An issuer that allocates funds from the distribution towards such transactions will have made an illegal distribution; in addition, the issuer will have made a misrepresentation that is subject to the same statutory liability as for primary offerings.
Responses to specific questions:		
1. The total dollar amount that an issuer can raise using the Listed Issuer Financing Exemption would be subject to the following thresholds: *a) the greater of 10% of an issuer's market capitalization and $5,000,000* *b) the maximum total dollar limit of $10,000,000* *c) a 100% dilution limit.* *Are all of these thresholds appropriate, or should we consider other thresholds?*		
8.	Two commenters thought the thresholds were reasonable in the circumstances, but recommended the CSA revisit them periodically to ensure they remain appropriate. One of these	We have considered the commenters' suggestions and made the following changes to the thresholds:

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	commenters suggested that issuers be allowed to increase the limits by 10% if the issuer first obtains shareholder approval to do so. The other commenter supported increasing the $5 million threshold. A number of commenters recommended that the CSA review the Listed Issuer Financing Exemption after a certain period of time (such as 12 to 18 months) to consider whether the thresholds are appropriate and ensure its goals and objectives are being met. Another commenter agreed with the thresholds in (a) and (b) but was concerned that the dilution threshold in (c) did not provide adequate protection for current shareholders. This commenter suggested a lower dilution limit within 25% to 50% initially, with possible adjustment to higher amounts over time, subject to the CSA monitoring the impact that offerings at the upper dilution range have on issuer volumes and market valuations, post transaction. Another commenter disagreed with the proposed thresholds because they would allow smaller issuers to double their market capitalization in any 12-month period and suggested that the Listed Issuer Financing Exemption only be available to issuers that have listed securities with an aggregate market value above $10 million. One commenter proposed a different method for calculating the aggregate market value of an issuer's listed securities: either a volume-weighted average price (either 5- or 20-day) or a 20-day simple average (e.g., section 1.11 of National Instrument 62-104 *Take-Over Bids and Issuer Bids*) in order to smooth out daily volatility in an issuer's share price.	• Reduced the allowed dilution to 50% of the issuer's market capitalization • Adjusted the method for calculating the aggregate market value of an issuer's listed securities
2. In order for the CSA to measure and monitor the use of the Listed Issuer Financing Exemption, we propose that issuers would be required to		

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file a report of exempt distribution within 10 days of the distribution date, as with most capital raising prospectus exemptions. However, issuers would not be required to provide the detailed confidential purchaser information required in Schedule 1. We are not proposing to require the completion of the purchaser-specific disclosure required under Schedule 1 because there are no limitations on the types of investors who may purchase under the exemption and we do not expect to require this information.		
(a) Are there other elements of the report of exempt distribution that we should consider relaxing for distributions under the exemption? *(b) Would the requirement to file the report of exempt distribution in connection with the use of the exemption be unduly onerous in these circumstances? If so, why?*		
9.	Five commenters responded to our questions about the report of exempt distribution. Of those five, two supported our proposal to continue to require the report but without requiring Schedule 1, which contains detailed information about purchasers. These commenters submitted that completing Schedule 1 is the most onerous part of filing the report. Requiring the report would be consistent with other prospectus exemptions and assist regulators to gather information in real time. One commenter recommended that we require the full report of exempt distribution, including Schedule 1. This commenter submitted that it would facilitate the CSA's monitoring of the use of the Listed Issuer Financing Exemption in order to detect and address potential abuse. Two commenters submitted that the report of exempt distribution should not be required in connection with use of the Listed Issuer Financing Exemption because it is unduly burdensome. These commenters submitted that the information in the report could easily be disclosed in a news release or MD&A.	We have considered all commenters' views and have determined to require issuers to report use of the Listed Issuer Financing Exemption by filing a report of exempt distribution within 10 days of the distribution, *including* the purchaser information in Schedule 1. This information is necessary in order for us to fully monitor use of the Listed Issuer Financing Exemption and to quickly identify potential abusive transactions.
(c) Should we consider an alternative means of reporting distributions under the exemption, such as including disclosure in an existing		

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continuous disclosure document, such as Management's Discussion and Analysis or a specific form or report that is filed on SEDAR? *(d) If alternative reporting is provided, what information should issuers be required to disclose, in addition to the following:* • *the number and type of securities distributed,* • *the price at which securities are distributed,* • *the date of the distribution, and* • *the details of any compensation paid by the issuer in connection with the distribution and the identity of the compensated party?* *(e) If alternative reporting is provided, how frequently should reporting be required?*		
10.	Three commenters suggested alternative ways of reporting, including: news release, MD&A, simple form or report filed on SEDAR. These same commenters responded to our question about frequency of alternative reporting, suggesting a news release after the closing, a news release at launch and closing together with next period MD&A disclosure, and just annual MD&A reporting. Two commenters suggested additional information if we required an alternative form of reporting, including: disclosure of intended use of proceeds and identifying any investor who reached the 10% holding threshold similar to what is required under the early warning system.	We acknowledge the comments. We have determined to require a report of exempt distribution, *including* the purchaser information in Schedule 1, in order to allow us to most effectively monitor use of the Listed Issuer Financing Exemption.
3. For jurisdictions that already charge capital market participation fees, would the imposition of an additional filing fee for a report of exempt distribution under the Listed Issuer Financing Exemption discourage use of the exemption?		
11.	All three commenters who responded to our question on participation fees recommended against charging additional fees, for the following reasons: • Without purchaser names, it will not take as many resources to administer the Listed Issuer Financing Exemption	We acknowledge the comments. The usual fees associated with filing a report of exempt distribution will apply. We will not impose additional fees in connection with this filing.

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	• Additional fees would discourage use of the Listed Issuer Financing Exemption	
Other comments in connection with reports of exempt distribution		
12.	One commenter requested that the information in Form 45-106F1 be made more easily publicly searchable than the existing functionality allows. This would benefit a variety of capital markets stakeholders.	We acknowledge the comment. This is outside the scope of the project.
13.	Two commenters recommended the CSA closely supervise the use of the Listed Issuer Financing Exemption given the potential for misuse and abuse, including indirect distributions.	We acknowledge the comment. We have decided to require issuers to file a report of exempt distribution, *including* the purchaser information in Schedule 1, when relying on the Listed Issuer Financing Exemption in order to support staff's ability to monitor its use and identify potentially abusive transactions.
4. We propose that the securities eligible to be distributed under the Listed Issuer Financing Exemption would be limited to listed equity securities, units consisting of a listed equity security and a warrant exercisable into a listed equity security, or securities, such as subscription receipts, that are convertible into a unit consisting of a listed equity security and a warrant. These are securities that most investors would be familiar with and which are easier for an investor to understand. This list would allow for the Listed Issuer Financing Exemption to be used to distribute convertible debt. Are there reasons we should exclude convertible debt from the exemption?		
14.	Five commenters responded to the question about whether to exclude convertible debt from the exemption. Two commenters said issuers should *not* be permitted to distribute convertible debt under the Listed Issuer Financing Exemption, for the following reasons: • Most investors are familiar with listed equity securities and warrants where the rights do not vary significantly amongst issuers. • Convertible debt could have multiple variables, including interest rate, maturity, mandatory and optional conversion features, which make them more complex.	Because the Listed Issuer Financing Exemption would allow distributions to retail investors, we have determined to limit the type of securities allowed to be distributed under the Listed Issuer Financing Exemption to listed equity securities and warrants exercisable into listed equity securities, as well as units containing equity securities and warrants exercisable into listed equity securities. We agree with the commenters that these securities are likely more familiar to retail investors and more likely to be offered by smaller issuers. This will result in issuers being unable to use the Listed Issuer Financing Exemption to distribute convertible debt or subscription receipts. However, even without this change, we

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	• The disclosure typically required in connection with a convertible debt offering, such as comprehensive risk factors, may not be adequately covered by the short offering document under the Listed Issuer Financing Exemption. Three commenters thought that issuers should be permitted to distribute convertible debt under the Listed Issuer Financing Exemption. Their reasons included: • The types of securities offered under the Listed Issuer Financing Exemption should reflect the common types of securities used by small issuers. • Convertible debt and similar instruments can be an effective means of raising capital for pre-revenue companies and should be included in the Listed Issuer Financing Exemption. One of these commenters noted that, in their experience, smaller issuers did not typically offer convertible debt. Another of these commenters highlighted the need to ensure the dilution threshold is calculated on a fully converted basis.	think it unlikely that issuers would have been able to issue subscription receipts under this exemption given the restrictions on using the proceeds of the distribution for significant acquisitions and restructuring transactions.
5. We designed the Listed Issuer Financing Exemption contemplating that it would be used, from time to time, for discrete private placements, with a single closing date. Do you expect issuers would want to use the exemption to provide continuous, non-fixed price offerings as well? If so, what changes would be necessary to permit continuous distributions under the exemption? Do you see any concerns with permitting continuous distributions?		
15.	Four commenters responded to our questions about allowing continuous, non-fixed price offerings. One commenter did not see any concerns with allowing continuous distributions under the Listed Issuer Financing Exemption as it may enable greater flexibility to issuers in generating market interest and completing an offering. This	We acknowledge the comments. In order to limit the possible complexity of the Listed Issuer Financing Exemption and to keep it as straightforward as possible for the types of issuers we expect to use it, we have determined not to make adjustments to allow for non-fixed price offerings.

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	commenter suggested that issuers be required to publicly disclose the anticipated size and offering period at the time the offering is launched as well as on closing. Another commenter cautioned against allowing the Listed Issuer Financing Exemption to be used for continuous non-fixed price offerings, due to challenges in completing post-offering reports and maintaining accurate disclosure during the offering period. Two commenters did not expect that issuers would want to use the Listed Issuer Financing Exemption to provide continuous, non-fixed price offerings. In one commenter's experience, smaller issuers do not typically conduct these types of offerings. The other commenter thought the proposed maximum dollar amount of $10 million may not be significant enough to justify the costs associated with preparing supplemental disclosures.	
6. Over the last several years, the CSA has tried to address various capital raising challenges by introducing a number of streamlined prospectus exemptions targeted to reporting issuers with listed equity securities, including the existing security holder exemption and the investment dealer exemption. The use of these exemptions has been limited. We have heard from market participants that the existence of these rarely used prospectus exemptions may contribute to the complexity of the exempt market regime. If we adopt the proposed Listed Issuer Financing Exemption, should we consider repealing any of these other exemptions?		
16.	Four commenters were against repealing any of the prospectus exemptions currently available. Their reasons included: • Some of the exemptions were adopted in the midst of a relatively bearish market cycle and may be used more extensively if market conditions change. • Although some exemptions may be infrequently used, they provide issuers with optionality, which can be important when raising capital. Two of these commenters recommended a broad, holistic	After considering the comments received, we have determined to retain all existing prospectus exemptions in order to allow for greater flexibility for issuers.

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	review of the exempt market regime, including considering the policy reasons of each exemption and usage across different financing conditions, to determine what systemic changes are most effective to streamline the regime. One of these commenters submitted that it is the piecemeal manner in which the different exemptions have been introduced that has caused confusion and complexity, not the exemptions themselves. One commenter thought that rarely used exemptions should be repealed to reduce the complexity of the exempt market regime.	
7. Investment dealers and exempt market dealers may participate in an offering under the proposed Listed Issuer Financing Exemption; however, there is no requirement for dealer or underwriter involvement. In addition, no exemption from the registration requirement is provided for acts related to distributions under the exemption, so any persons in the business of trading in securities will require registration or an available registration exemption for any activities undertaken in connection with distributions under the exemption. *(a) If adopted, do you anticipate that issuers would involve a dealer in offerings under the exemption?*		
17.	Four commenters responded to our specific questions about dealer involvement in offerings under the Listed Issuer Financing Exemption. The responses were varied. One commenter did not anticipate issuers would involve dealers in offerings under the Listed Issuer Financing Exemption because it is increasingly rare for dealers to be involved in financings of less than $5 million or $10 million gross proceeds. Another commenter thought that dealers would be involved in offerings under the Listed Issuer Financing Exemption, but expected that it may take time for the nature of that involvement to evolve given the limits on the amount that can	We acknowledge the comments. We recognize that there is a variety of ways that issuers may conduct offerings under the Listed Issuer Financing Exemption. We have retained that flexibility, but added some additional protections to increase investor protection, as discussed above.

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	be raised. Another commenter thought many issuers would involve a dealer but other issuers may conduct their own offerings. One commenter expected that many issuers may not need the assistance of dealers while others may involve dealers in order to gain access to investors. In particular, smaller issuers without a wide following may benefit from the involvement of smaller dealers who would be able to assist in locating investors.	
(b) If not, how do you expect issuers will conduct their offerings, for example, via their own website?		
18.	Responses to this question were varied. One commenter expects issuers will conduct offerings under the Listed Issuer Financing Exemption in the same manner as they currently conduct non-brokered offerings under other exemptions. Another commenter expected issuers would conduct offerings through their websites, specialized offering portals and dealers. This commenter thought it possible that a "ticketing" type sales document may develop in coordination with transfer agents or dealers, but expected that initially the Listed Issuer Financing Exemption would resemble a private placement subscription process using an agreement. One commenter expected that hybrid models may evolve over times and that although it is possible that issuers may conduct offerings independently, it is likely that market dealers would be involved to some degree. Another commenter recommended that the CSA consider ways to incentivize financial institutions to participate in such offerings, as it may facilitate better market access for issuers.	We acknowledge the comments. Parties involved in offerings under the Listed Issuer Financing Exemption would need to assess whether they are in the business of trading securities triggering the registration requirement using the existing guidance in 45-106CP and Companion Policy 31-103CP (31-103CP).

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Comments about issuers conducting their own offerings under the Listed Issuer Financing Exemption		
19.	One commenter recommended that the CSA provide additional guidance on whether an issuer that makes multiple small distributions over a period of time without the involvement of a dealer could be considered to be in the business of trading securities and required to be registered as a dealer. It would be helpful to provide additional guidance to issuers on any maximum thresholds in this regard. Another commenter recommended close regulatory supervision of issuers conducting their own offerings because these offerings would not benefit from dealer review of the issuer's continuous disclosure record and contents of the offering document. Without these controls investors are left in a potentially more vulnerable situation dealing directly with the issuer, with less expert and liability concerned eyes trained on the offering.	We acknowledge the comments. We have determined to keep the Listed Issuer Financing Exemption flexible to allow issuers to conduct their offerings as they choose, whether through a dealer or on their own. We have not provided an exemption from the registration requirement. Issuers conducting their own offerings will need to consider whether they are in the business of trading securities triggering the registration requirement using the existing guidance in 45-106CP and 31-103CP.
8. We propose that distributions under the Listed Issuer Financing Exemption would be subject to secondary market liability and provide original purchasers with a contractual right of rescission against the issuer. We propose secondary market liability because the exemption is premised on the reporting issuer's continuous disclosure and limited to distributions of listed equity securities that are traded on the secondary market. Although the exemption provides for the distribution of freely tradeable securities to any class of purchaser, similar to a prospectus offering, the quantum of liability is more limited than it would be for a prospectus offering.		
(a) Does the proposed liability regime (secondary market liability and contractual right of rescission) provide appropriate incentives for accurate and complete disclosure and adequate investor protection?		
20.	Two commenters thought the proposed liability regime would provide appropriate incentives for issuers to provide accurate and complete disclosure under the Listed Issuer Financing Exemption. One of these commenters submitted that issuers' fiduciary duties and need to earn investor and market trust are	We acknowledge the comments. After considering the comments, we have determined to impose primary offering liability and remedies in the event of a misrepresentation following the model used in the offering memorandum exemption.

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	the main incentives to provide accurate and complete disclosure. One commenter defined "prospectus-level liability" to mean (a) an issuer's certification that its offering documents make full, true and plain disclosure of all material facts and (b) the statutory remedies available to purchasers in the primary market. That commenter submitted that a "no misrepresentation" or "full and true disclosure of material facts" would be adequate and strikes an appropriate balance, particularly if accompanied with primary market statutory liability.	We have not changed the certification requirement, which is that the offering document, together with any document filed for at least 12 months before the date of the offering document, contains disclosure of all material facts and does not contain a misrepresentation.
21.	Four commenters did not think the proposed liability regime would provide appropriate incentives for issuers to provide accurate and complete disclosure. These commenters recommended imposing prospectus-level liability. Their reasons included: • The significant information asymmetry between issuers and investors means investors already take on significantly more risk when buying securities directly from the issuer. • The proportionate liability and liability limits under secondary market liability regime make it rarely worthwhile for a security holder to bring action against a smaller issuer for misrepresentation. • There is no reason why investors under the Listed Issuer Financing Exemption should not have the same rights as other investors who purchase securities directly from an issuer. • Not imposing prospectus-level liability may allow issuers to be unfairly enriched. One commenter provided an example that demonstrated how little an issuer's maximum liability would be in a class action for	We acknowledge the comments. We have determined to impose primary offering liability.

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	damages, showing that purchasers would not even be able to recover half their investment and likely less because they would have to share with secondary market purchasers. One commenter recommended that prospectus-level liability should also be applied to the issuer's continuous disclosure record at the time of the offering in order to ensure that the issuer has sufficient incentive to ensure full, true and plain disclosure.	
(b) Would imposing prospectus-level liability impact the objectives of the exemption?		
22.	Two commenters expected that imposing prospectus-level liability may work against the objectives of the Listed Issuer Financing Exemption. One commenter thought that imposing a "full, true and plain" disclosure standard may significantly diminish use of the Listed Issuer Financing Exemption, but recommended that the disclosure standard of "no misrepresentation" be accompanied with primary market statutory liability. One commenter did not think imposing prospectus level liability would have a significant adverse impact on the Listed Issuer Financing Exemption.	We acknowledge the comments. We have determined to impose primary offering liability.
23.	One commenter did not agree that applying prospectus-level liability would increase underwriter due diligence costs; so long as issuers have a robust and complete continuous disclosure record and the offering document does not disclose any new material facts, it should be possible to use an offering document that is shorter and less expensive to prepare than a short form prospectus. This commenter also noted that costs would be kept low because there would be no requirement to prepare PIFs and obtain expert and auditor consents because	We acknowledge the comments. We have determined to impose primary offering liability.

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	the disclosure is not incorporated by reference into the offering document.	
(c) Would the absence of statutory liability for dealers lead to lower standards of disclosure?		
24.	Two commenters thought the absence of statutory liability on dealers would not lead to lower standards of disclosure because dealers and issuers would still have liability risk and face potential civil action from investors if proper disclosure was not provided. One of these commenters expected that dealers would continue to perform thorough due diligence to make sure there are no misrepresentations in offering documents. One commenter thought that imposing liability on dealers is investor-friendly and in the interests of the integrity of the capital markets. This commenter thought that the dealer liability is an important mechanism in ensuring the quality of an issuer's continuous disclosure record and offering document. This commenter thought underwriter liability together with prospectus-level liability for issuers are important safeguards against fraud and abuse and support confidence in our markets.	We acknowledge the comments. We have determined to impose primary offering liability against the issuer and, in most jurisdictions, any officers that sign the offering document and the issuer's directors. As with most other prospectus exemptions, we have decided not to impose statutory liability on dealers. We expect registered dealers will still perform due diligence on the issuer and its disclosure in order to meet the dealer's suitability obligations under securities legislation, which includes requirements to know-your-client and know-your-product. Registered dealers may also be subject to common law liability and reputational risk in connection with their participation in a private placement.
25.	A number of commenters expressed concern about the possible absence of registered dealers in connection with offerings under the Listed Issuer Financing Exemption. One commenter thought that it was the absence of registered dealers that would lead to lower standards of disclosure rather than the absence of statutory liability for dealers. One commenter noted that financings conducted by issuers without the benefit of registrant due diligence are often non-compliant. The cost of conducting appropriate due diligence on the issuer and investor will largely negate the cost savings	We acknowledge the comments. We have determined to impose primary offering liability and remedies against the issuer and, in most jurisdictions, any officers who certify the offering document and the issuer's directors. As with most other prospectus exemptions, we will not require the offering to be conducted by a registered dealer. The issuer and its agents will need to consider whether they are in the business of trading and required to be registered using the guidance provided in 45-106CP and 31-103CP, as is the case with

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	anticipated by the Listed Issuer Financing Exemption.	other prospectus exemptions.
(d) Is the requirement for the issuer to enter into an agreement with purchasers (in order to provide contractual right of rescission) unduly burdensome?		
26.	Four commenters responded to this question, with a range of responses. One commenter thought it would not be unduly burdensome, expecting standard form contracts to be developed quickly with minimal costs to issuers. Two commenters thought that this requirement would be challenging and burdensome and encouraged the CSA to find an alternative means of achieving the same policy goal. One of these commenters suggested that subscription agreements would not be necessary if statutory liability were imposed instead.	We acknowledge the comments. Since we have determined to impose primary offering liability, this question is no longer relevant.
Other comments		
27.	One commenter recommended that, if the CSA were to adopt the Listed Issuer Financing Exemption, it should be accompanied by a monitoring program. Public knowledge that offerings under the Listed Issuer Financing Exemption would be closely reviewed by the CSA might help to deter abuse.	Following adoption of the Listed Issuer Financing Exemption, CSA staff in certain jurisdictions intend to conduct reviews on a post-distribution basis to understand how issuers are using the Listed Issuer Financing Exemption and ensure they are complying with the conditions. CSA staff also conduct continuous disclosure reviews of issuers on an ongoing basis. As noted in CSA Staff Notice 51-312 (Revised) *Harmonized Continuous Disclosure Review Program*, staff use various tools to target those issuers that are most likely to have deficiencies in their disclosure.
28.	The Listed Issuer Financing Exemption implies that the CSA is reconsidering the closed system and the regulatory disclosure	We acknowledge the comment. This is out of scope of this

Number	Comment	Response
	system in current securities legislation but the CSA Notice does not discuss the implications of this change. Before adopting the Listed Issuer Financing Exemption, the CSA should hold a full public discussion of the current system and the revisions to it that are implied by the Listed Issuer Financing Exemption. One commenter recommended that the CSA examine holistically the costs and benefits of changing the closed system with a view to developing a new regime which better meets the needs of Canadian capital markets. This commenter suggests that the Listed Issuer Financing Exemption could serve as a basis for a modified integrated disclosure system combined with a more robust continuous disclosure review program. But the commenter also recognized that rethinking the closed system would be a monumental task.	project.