

QUESTIONS TO ASK BEFORE USING CERTAIN PROSPECTUS EXEMPTIONS

You cannot sell or otherwise distribute securities without either a prospectus or a [prospectus exemption](#). To rely on an exemption, you must meet its specific terms and conditions, and you may be required to file documents with the BCSC. You should also keep records to show you relied on that exemption properly.

People often misunderstand what they need to do to rely properly on the prospectus exemptions for a “[private issuer](#)”, an “[accredited investor](#)”, and “[family, friends, and business associates](#)” (especially for a “close personal friend” and “close business associate”) from [National Instrument 45-106 Prospectus Exemptions](#) (NI 45-106).

This checklist asks you to think about **some** of the issues that come up when you rely on these prospectus exemptions. It is **not** meant to cover every situation. It is **not** instructions. This checklist is **for information only**, so if you have any questions about what it or your answers mean, you should get professional legal advice.



If distributing securities relying on any prospectus exemption:

- Do I fully understand the terms and conditions of the prospectus exemption?
 - Can I explain the terms and conditions to an investor?
- If anyone else is helping me sell the securities, how am I ensuring that they fully understand the terms and conditions of the prospectus exemption and can explain those to an investor?
- How will I confirm that each investor meets the requirements for the prospectus exemption?
 - What am I doing so that the investor understands the information sought from them, and is being truthful?
- What records will I collect or keep to show that I confirmed that each investor met the requirements for the prospectus exemption?
 - How will I safeguard these records for 7 years, as required by law (section 57.7 of the *Securities Act*)?



If relying on the Private Issuer exemption (in section 2.4 of NI 45-106):

- How many investors will own the securities after this distribution, including owning them beneficially?
 - Will that be more than 50 investors, excluding employees and former employees?
- Has the company ever distributed securities to any person who does not fall under one of the categories under section 2.4(2) of NI 45-106?
- Will I be offering the securities to any person I do not already know?
 - If yes, who else managing the company knows the person?



If relying on the Accredited Investor exemption (in section 2.3 of NI 45-106), or distributing a security to any “accredited investor” under the Private Issuer exemption (section 2.4(2)(i) of NI 45-106):

- Do I understand the part of the definition of “accredited investor” (in section 1.1 of NI 45-106) that applies to each investor?
- What will I do to ensure that each investor meets that part of the definition of “accredited investor”?
 - What information will I ask each investor to provide me?
 - How will I verify that information is accurate and up-to-date?
 - Am I relying on more than just a standard representation or initial besides a category on a subscription agreement?

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If selling a security to any “close personal friend” under the “Family, Friends, and Business Associates” exemption (section 2.5(1)(d) of NI 45-106):

- Who is the investor “close personal friends” with at the company?
 - Someone managing the company?
 - Am I confident that the investor is not just “a friend of a friend” or mere acquaintance?
- How many “close personal friends” is each person at company selling securities to?
 - How many “close personal friends” have been sold shares previously?
- For each “close personal friend”:
 - How long have they known the person managing the company?
 - Long enough to assess that person’s capabilities and trustworthiness, and obtain information from that person about the investment?
 - How often do they meet with or communicate with the person managing the company?
 - Are they connected with the person managing the company only through social media, or membership of the same club, organization, association, or religious group? (If so, the BCSC would not consider that to be enough for them to be “close personal friends”.)



If selling a security to any “close business associate” under the “Family, Friends, and Business Associates” exemption (section 2.5(1)(e) of NI 45-106), can I answer the same questions about them as written above for a “close personal friend”?



Will investors be restricted from reselling securities they buy under the prospectus exemption (under [National Instrument 45-102 Resale of Securities](#))?

- Do the investors know about any such restrictions?
- How will the company prevent the transfer of securities that are under restrictions?



When will the sale or other distribution of securities begin and end?

- Will I be able to complete a [Form 45-106F1 Report of Exempt Distribution](#) (if required, such as by section 6.1 of NI 45-106)?
- Will I be able to file that Report of Exempt Distribution on [SEDAR+](#) with 10 days?
- Have I reviewed [CSA Staff Notice 45-308 Guidance for Preparing and Filing Reports of Exempt Distribution under National Instrument 45-106 Prospectus Exemptions \(Revised\)](#)?



Have I carefully read and do I understand:

- [NI 45-106](#) and especially [Companion Policy 45-106CP Prospectus Exemptions](#)?
- The BCSC’s webpages about [Raising Capital in Private Markets](#) and [Private & Early Stage Businesses](#)?

TO LEARN MORE ABOUT THIS TOPIC, VISIT: [PRIVATE AND EARLY STAGE BUSINESSES](#)



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