

CSA Notice of Amendments to National Instrument 45-106 *Prospectus Exemptions* to introduce the Listed Issuer Financing Exemption

September 8, 2022

Introduction

The Canadian Securities Administrators (the **CSA** or **we**) are amending National Instrument 45-106 *Prospectus Exemptions* (**NI 45-106**) to introduce a new prospectus exemption available to reporting issuers that are listed on a Canadian stock exchange (the **Listed Issuer Financing Exemption**). We are also making consequential amendments to National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)* (**NI 13-101**) and National Instrument 45-102 *Resale of Securities* (**NI 45-102**) (the amendments to NI 45-106, NI 13-101 and NI 45-102 are collectively referred to as the **Amendments**).

We are also making changes to Companion Policy 45-106CP (**45-106CP**).

Provided all necessary ministerial approvals are obtained, the Amendments and the changes to 45-106CP will come into effect on **November 21, 2022**.

Details of the Amendments are outlined in Annexes A through F of this notice and will also be available on websites of CSA jurisdictions, including:

www.lautorite.qc.ca

www.albertasecurities.com

www.bcsc.bc.ca

nssc.novascotia.ca

www.fcnc.ca

www.osc.ca

www.fcaa.gov.sk.ca

mbsecurities.ca

Substance and Purpose

The Listed Issuer Financing Exemption will provide a more efficient method of capital raising for reporting issuers that have securities listed on a Canadian stock exchange and that have filed all timely and periodic disclosure documents required under Canadian securities legislation.

The exemption relies on the issuer's continuous disclosure record, as supplemented with a short offering document, and will allow these issuers to distribute freely tradeable listed equity securities to the public. Issuers will generally be limited to raising the greater of \$5,000,000 or 10% of the issuer's market capitalization to a maximum total dollar amount of \$10,000,000. In order to use the exemption, the issuer must have been a reporting issuer in a jurisdiction of Canada for at least 12 months.

Under the exemption, issuers, and in some jurisdictions, the executives signing the offering document and the issuer's directors will be subject to statutory liability if the offering document contains a misrepresentation.

The offering document will not be reviewed by CSA staff before use.

Background

One of the fundamental pillars of securities legislation is that an issuer distributing a security must file and obtain a receipt for a prospectus. The prospectus must contain full, true and plain disclosure of all material facts relating to the securities being offered. Investors who purchase securities under a prospectus are provided certain statutory rights.

The short form prospectus regime was designed to facilitate efficient capital raising for reporting issuers while providing investors with all the protections of a prospectus, including statutory rights of withdrawal, rescission and damages. However, the CSA has heard from many stakeholders that the time and cost to prepare a short form prospectus may be an impediment to capital raising, particularly for smaller issuers.¹

The CSA undertook a project to consider alternative prospectus offering models that included research of alternative regimes in foreign jurisdictions, targeted consultations with market participants, a general survey of issuers listed on Canadian exchanges, a targeted survey of costs associated with short form prospectus offerings, and analysis of data on all prospectus and private placement offerings by issuers listed on Canadian exchanges.²

Following this work, the CSA developed the Listed Issuer Financing Exemption, a prospectus exemption for small offerings that, although available to all issuers, would benefit smaller issuers more specifically. The Listed Issuer Financing Exemption recognizes the comprehensive continuous disclosure regime for reporting issuers, supported by certification requirements and secondary market liability, and the fact that any investor can acquire securities of a reporting issuer on the secondary market solely on the basis of the issuer's continuous disclosure.

Summary of Written Comments Received by the CSA

On July 28, 2021, the CSA published the Listed Issuer Financing Exemption for a 90-day comment period. During the comment period, we received submissions from 10 commenters. Six commenters supported the exemption and four commenters did not support the exemption.

We have considered the comments received and thank the commenters for their input. After considering the comments, we made some changes to the exemption to increase investor protection, as described below.

The commenters' names and a summary of their comments, together with our responses, are contained in Annex A to this notice.

¹ For example, several commenters on CSA Consultation Paper 51-404 *Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers* expressed support for an alternative prospectus offering model for reporting issuers.

² See CSA Notice and Request for Comment – Proposed Amendments to National Instrument 45-106 *Prospectus Exemptions* to introduce the Listed Issuer Financing Exemption, published on July 28, 2021, for more details about the CSA project to consider alternative offering systems.

Summary of Changes made since Publication for Comment

We have revised the Listed Issuer Financing Exemption to impose primary offering statutory liability against the issuer, and in some jurisdictions, the officers that sign the offering document and the issuer's directors.

We have also changed the exemption by:

- Restricting certain issuers from using the exemption, including investment funds and issuers that are or had been within the preceding 12 months capital pool companies, special purpose acquisition companies, or growth acquisition companies.
- Reducing the dilution limit on distributions using the exemption (in combination with all other distributions using the exemption in the previous 12 months) from 100% to 50% of the issuer's outstanding securities, as of the date that is 12 months before the date of the news release.
- Limiting the type of securities that can be distributed using the exemption to securities that investors are familiar with (i.e., listed equity securities and units consisting of listed equity securities and warrants convertible into listed equity securities).
- Requiring that the news release announcing an offering using the exemption include the following statement:

There is an offering document related to this offering that can be accessed under the issuer's profile at www.sedar.com and at [include website address and provide link, if the issuer has a website]. Prospective investors should read this offering document before making an investment decision.

- Requiring that the offering document contain the following cover page statement:
This offering may not be suitable for you and you should only invest in it if you are willing to risk the loss of your entire investment. In making this investment decision, you should seek the advice of a registered dealer.
- Requiring that the offering document be signed by the chief executive officer and chief financial officer of the issuer.
- Requiring that the Form 45-106F1 *Report of Exempt Distribution* filed in connection with distributions using the exemption include a completed Schedule 1 with purchaser information.

As we do not consider these changes to be material changes, we are not republishing the Amendments for a further comment period.

Local Matters

Annex F is being published in any local jurisdiction that is proposing related changes to local securities laws, including local notices or other policy instruments in that jurisdiction. It may also include additional information that is relevant to that jurisdiction only.

Contents of Annexes

The following annexes form part of this CSA Notice:

Annex A:	Summary of Comments and Responses
Annex B:	Amendments to National Instrument 45-106 <i>Prospectus Exemptions</i> , including new Form 45-106F19 <i>Listed Issuer Financing Document</i>
Annex C:	Changes to Companion Policy 45-106CP
Annex D:	Amendments to National Instrument 13-101 <i>System for Electronic Document Analysis and Retrieval (SEDAR)</i>
Annex E:	Amendments to National Instrument 45-102 <i>Resale of Securities</i>
Annex F:	Local Matters – Ontario

Questions

Please refer your questions to any of the following:

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