



Canadian Securities  
Administrators

Autorités canadiennes  
en valeurs mobilières

## 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](http://www.lautorite.qc.ca)  
[www.albertasecurities.com](http://www.albertasecurities.com)  
[www.bcsc.bc.ca](http://www.bcsc.bc.ca)  
[nssc.novascotia.ca](http://nssc.novascotia.ca)  
[www.fcnb.ca](http://www.fcnb.ca)  
[www.osc.ca](http://www.osc.ca)  
[www.fcaa.gov.sk.ca](http://www.fcaa.gov.sk.ca)  
[mbsecurities.ca](http://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.<sup>1</sup>

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.<sup>2</sup>

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.

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<sup>1</sup> 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.

<sup>2</sup> 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.

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.

### **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](http://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:

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

## Questions

Please refer your questions to any of the following:

<p><b>Larissa Streu</b> Senior Legal Counsel, Corporate Finance British Columbia Securities Commission 604-899-6888 <a href="mailto:lstreu@bcsc.bc.ca">lstreu@bcsc.bc.ca</a></p>	<p><b>Leslie Rose</b> Senior Legal Counsel, Corporate Finance British Columbia Securities Commission 604-899-6654 <a href="mailto:rose@bcsc.bc.ca">rose@bcsc.bc.ca</a></p>
<p><b>David Surat</b> Manager (Acting), Corporate Finance Ontario Securities Commission 416-593-8052 <a href="mailto:dsurat@osc.gov.on.ca">dsurat@osc.gov.on.ca</a></p>	<p><b>Jessie Gill</b> Senior Legal Counsel, Corporate Finance Ontario Securities Commission 416-593-8114 <a href="mailto:jessiegill@osc.gov.on.ca">jessiegill@osc.gov.on.ca</a></p>
<p><b>Tracy Clark</b> Senior Legal Counsel Alberta Securities Commission 403-355-4424</p>	<p><b>Gillian Findlay</b> Senior Legal Counsel Alberta Securities Commission 403-297-3302</p>

<a href="mailto:Tracy.Clark@asc.ca">Tracy.Clark@asc.ca</a>	<a href="mailto:Gillian.Findlay@asc.ca">Gillian.Findlay@asc.ca</a>
<p><b>Ella-Jane Loomis</b>  Senior Legal Counsel, Securities  Financial and Consumer Services  Commission (New Brunswick)  506-453-6591  <a href="mailto:ella-jane.loomis@fcnb.ca">ella-jane.loomis@fcnb.ca</a></p>	<p><b>Diana D'Amata</b>  Senior Regulatory Advisor  Autorité des marchés financiers  514-395-0337, ext. 4386  <a href="mailto:diana.damata@lautorite.qc.ca">diana.damata@lautorite.qc.ca</a></p>
<p><b>Heather Kuchuran</b>  Director, Corporate Finance  Financial and Consumer Affairs Authority of  Saskatchewan, Securities Division  306-787-1009  <a href="mailto:Heather.kuchuran@gov.sk.ca">Heather.kuchuran@gov.sk.ca</a></p>	<p><b>Patrick Weeks</b>  Acting Deputy Director, Corporate Finance  The Manitoba Securities Commission  Securities Division  204-945-3326  <a href="mailto:patrick.weeks@gov.mb.ca">patrick.weeks@gov.mb.ca</a></p>
<p><b>Abel Lazarus</b>  Director, Corporate Finance  Nova Scotia Securities Commission  902-424-6859  <a href="mailto:abel.lazarus@novascotia.ca">abel.lazarus@novascotia.ca</a></p>	

## Annex A

**LISTED ISSUER FINANCING EXEMPTION****Summary of Comments and Responses from July 28, 2021 publication**

<b>Commenter</b>	<b>Abbreviation</b>
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

<b>Number</b>	<b>Comment</b>	<b>Response</b>
<b><i>Support for the Listed Issuer Financing Listed Issuer Financing Exemption</i></b>		
1.	Six commenters support the Listed Issuer Financing Exemption. Their reasons included: <ul style="list-style-type: none"> <li>It would provide listed issuers with a more efficient capital</li> </ul>	We thank the commenters for their support and input.

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	<p>raising method.</p> <ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> <li>• It would provide retail investors with a greater choice of investments available in the primary public market.</li> <li>• 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).</li> <li>• It strikes an appropriate balance between investor protection objectives and increased market efficiency and capital formation opportunities.</li> <li>• It recognizes that retail investors participate in the much larger secondary market. The Listed Issuer Financing Exemption would benefit retail investors by having the issuer certify that there are no undisclosed material facts.</li> <li>• 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.</li> </ul>	
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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	<p>balance the tension between fostering fair, efficient and vibrant capital markets and investor protection, including:</p> <ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> <li>• 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.</li> <li>• Limiting the Listed Issuer Financing Exemption to small issuers.</li> </ul>	<p>commenters.</p> <p>We have not made these suggested changes for the following reasons:</p> <ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> <li>• 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.</li> <li>• 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.</li> </ul>
3.	<p>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 Exemption, particularly to alleviate the potential impact on share prices.</p>	<p>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.</p>



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<b><i>Concerns with the Listed Issuer Financing Exemption</i></b>		
4.	<p>Four commenters submitted that the CSA should not proceed with the Listed Issuer Financing Exemption. Their reasons included:</p> <ul style="list-style-type: none"> <li>• It introduces substantial new risks to market integrity and investor protection that may undermine confidence in the integrity of the capital markets.</li> <li>• 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.</li> <li>• 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.</li> <li>• 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.</li> <li>• It would be available to issuers at the riskier end of the issuer spectrum.</li> <li>• As the securities are free trading, it could increase the risk of fraud, indirect distributions (backdoor underwriting) and more “pump and dump” schemes.</li> <li>• 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”</li> </ul>	<p>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:</p> <ul style="list-style-type: none"> <li>• Imposing primary offering liability and remedies in the event of a misrepresentation following the model used in the offering memorandum exemption in most jurisdictions</li> <li>• Requiring enhanced risk disclosure about obtaining advice from a registered dealer on the front page of the offering document</li> <li>• Requiring issuers to notify investors of the availability of the offering document in the news release and in any communications with potential investors</li> <li>• 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</li> <li>• Restricting issuers that were shell companies in the past 12 months from using the Listed Issuer Financing Exemption</li> <li>• 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.</li> </ul> <p>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.</p>

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	<p>dated July 2021 commissioned by Broadridge Investor Communications Corporation.</p> <ul style="list-style-type: none"> <li>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.</li> </ul>	<p>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.</p> <p>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.</p> <p>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 <i>Crowdfunding</i>. 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.</p> <p>Finally, we note that following adoption of the Listed Issuer</p>

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		<p>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) <i>Harmonized Continuous Disclosure Review Program</i>, 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.</p>
5.	<p>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.</p> <p>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.</p>	<p>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.</p> <p>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.</p>
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.
<b>Responses to specific questions:</b>		
<p>1. The total dollar amount that an issuer can raise using the Listed Issuer Financing Exemption would be subject to the following thresholds:</p> <ul style="list-style-type: none"> <li>a) the greater of 10% of an issuer's market capitalization and \$5,000,000</li> <li>b) the maximum total dollar limit of \$10,000,000</li> <li>c) a 100% dilution limit.</li> </ul> <p>Are all of these thresholds appropriate, or should we consider other thresholds?</p>		
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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	<p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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 <i>Take-Over Bids and Issuer Bids</i>) in order to smooth out daily volatility in an issuer's share price.</p>	<ul style="list-style-type: none"> <li>• Reduced the allowed dilution to 50% of the issuer's market capitalization</li> <li>• Adjusted the method for calculating the aggregate market value of an issuer's listed securities</li> </ul>
<p><i>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</i></p>		

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		<p><i>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.</i></p>
	<p><i>(a) Are there other elements of the report of exempt distribution that we should consider relaxing for distributions under the exemption?</i></p> <p><i>(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?</i></p>	
<p>9.</p>	<p>Five commenters responded to our questions about the report of exempt distribution.</p> <p>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.</p> <p>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.</p> <p>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&amp;A.</p>	<p>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, <i>including</i> 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.</p>
		<p><i>(c) Should we consider an alternative means of reporting distributions under the exemption, such as including disclosure in an existing</i></p>

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<p><i>continuous disclosure document, such as Management’s Discussion and Analysis or a specific form or report that is filed on SEDAR?</i></p> <p><i>(d) If alternative reporting is provided, what information should issuers be required to disclose, in addition to the following:</i></p> <ul style="list-style-type: none"> <li>• <i>the number and type of securities distributed,</i></li> <li>• <i>the price at which securities are distributed,</i></li> <li>• <i>the date of the distribution, and</i></li> <li>• <i>the details of any compensation paid by the issuer in connection with the distribution and the identity of the compensated party?</i></li> </ul> <p><i>(e) If alternative reporting is provided, how frequently should reporting be required?</i></p>		
10.	<p>Three commenters suggested alternative ways of reporting, including: news release, MD&amp;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&amp;A disclosure, and just annual MD&amp;A reporting.</p> <p>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.</p>	<p>We acknowledge the comments. We have determined to require a report of exempt distribution, <i>including</i> the purchaser information in Schedule 1, in order to allow us to most effectively monitor use of the Listed Issuer Financing Exemption.</p>
<p><i>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?</i></p>		
11.	<p>All three commenters who responded to our question on participation fees recommended against charging additional fees, for the following reasons:</p> <ul style="list-style-type: none"> <li>• Without purchaser names, it will not take as many resources to administer the Listed Issuer Financing Exemption</li> </ul>	<p>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.</p>

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	<ul style="list-style-type: none"> <li>Additional fees would discourage use of the Listed Issuer Financing Exemption</li> </ul>	
<i>Other comments in connection with reports of exempt distribution</i>		
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, <i>including</i> 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.
<p><i>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?</i></p>		
14.	<p>Five commenters responded to the question about whether to exclude convertible debt from the exemption.</p> <p>Two commenters said issuers should <i>not</i> be permitted to distribute convertible debt under the Listed Issuer Financing Exemption, for the following reasons:</p> <ul style="list-style-type: none"> <li>Most investors are familiar with listed equity securities and warrants where the rights do not vary significantly amongst issuers.</li> <li>Convertible debt could have multiple variables, including interest rate, maturity, mandatory and optional conversion features, which make them more complex.</li> </ul>	<p>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.</p> <p>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</p>



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Number	Comment	Response
	<ul style="list-style-type: none"> <li>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.</li> </ul> <p>Three commenters thought that issuers should be permitted to distribute convertible debt under the Listed Issuer Financing Exemption. Their reasons included:</p> <ul style="list-style-type: none"> <li>The types of securities offered under the Listed Issuer Financing Exemption should reflect the common types of securities used by small issuers.</li> <li>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.</li> </ul> <p>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.</p>	<p>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.</p>
	<p><i>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?</i></p>	
15.	<p>Four commenters responded to our questions about allowing continuous, non-fixed price offerings.</p> <p>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</p>	<p>We acknowledge the comments.</p> <p>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.</p>

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Number	Comment	Response
	<p>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.</p> <p>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.</p> <p>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.</p>	
<p><i>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?</i></p>		
16.	<p>Four commenters were against repealing any of the prospectus exemptions currently available. Their reasons included:</p> <ul style="list-style-type: none"> <li>• 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.</li> <li>• Although some exemptions may be infrequently used, they provide issuers with optionality, which can be important when raising capital.</li> </ul> <p>Two of these commenters recommended a broad, holistic</p>	<p>After considering the comments received, we have determined to retain all existing prospectus exemptions in order to allow for greater flexibility for issuers.</p>

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Number	Comment	Response
	<p>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.</p> <p>One commenter thought that rarely used exemptions should be repealed to reduce the complexity of the exempt market regime.</p>	
<p><i>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.</i></p> <p><i>(a) If adopted, do you anticipate that issuers would involve a dealer in offerings under the exemption?</i></p>		
17.	<p>Four commenters responded to our specific questions about dealer involvement in offerings under the Listed Issuer Financing Exemption.</p> <p>The responses were varied.</p> <p>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.</p> <p>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</p>	<p>We acknowledge the comments.</p> <p>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.</p>

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Number	Comment	Response
	<p>be raised.</p> <p>Another commenter thought many issuers would involve a dealer but other issuers may conduct their own offerings.</p> <p>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.</p>	
<p><i>(b) If not, how do you expect issuers will conduct their offerings, for example, via their own website?</i></p>		
<p>18.</p>	<p>Responses to this question were varied.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p>	<p>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).</p>

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Number	Comment	Response
<i>Comments about issuers conducting their own offerings under the Listed Issuer Financing Exemption</i>		
19.	<p>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.</p> <p>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.</p>	<p>We acknowledge the comments.</p> <p>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.</p> <p>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.</p>
<p><i>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.</i></p>		
<p><i>(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?</i></p>		
20.	<p>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</p>	<p>We acknowledge the comments.</p> <p>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.</p>

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Number	Comment	Response
	<p>the main incentives to provide accurate and complete disclosure.</p> <p>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.</p>	<p>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.</p>
21.	<p>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:</p> <ul style="list-style-type: none"> <li>• The significant information asymmetry between issuers and investors means investors already take on significantly more risk when buying securities directly from the issuer.</li> <li>• 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.</li> <li>• 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.</li> <li>• Not imposing prospectus-level liability may allow issuers to be unfairly enriched.</li> </ul> <p>One commenter provided an example that demonstrated how little an issuer’s maximum liability would be in a class action for</p>	<p>We acknowledge the comments. We have determined to impose primary offering liability.</p>

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	<p>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.</p> <p>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.</p>	
<p><i>(b) Would imposing prospectus-level liability impact the objectives of the exemption?</i></p>		
22.	<p>Two commenters expected that imposing prospectus-level liability may work against the objectives of the Listed Issuer Financing Exemption.</p> <p>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.</p> <p>One commenter did not think imposing prospectus level liability would have a significant adverse impact on the Listed Issuer Financing Exemption.</p>	<p>We acknowledge the comments. We have determined to impose primary offering liability.</p>
23.	<p>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</p>	<p>We acknowledge the comments. We have determined to impose primary offering liability.</p>

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Number	Comment	Response
	the disclosure is not incorporated by reference into the offering document.	
<i>(c) Would the absence of statutory liability for dealers lead to lower standards of disclosure?</i>		
24.	<p>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.</p> <p>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.</p>	<p>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.</p> <p>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.</p>
25.	<p>A number of commenters expressed concern about the possible absence of registered dealers in connection with offerings under the Listed Issuer Financing Exemption.</p> <p>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.</p> <p>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</p>	<p>We acknowledge the comments.</p> <p>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.</p> <p>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</p>



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Number	Comment	Response
	anticipated by the Listed Issuer Financing Exemption.	other prospectus exemptions.
<i>(d) Is the requirement for the issuer to enter into an agreement with purchasers (in order to provide contractual right of rescission) unduly burdensome?</i>		
26.	<p>Four commenters responded to this question, with a range of responses.</p> <p>One commenter thought it would not be unduly burdensome, expecting standard form contracts to be developed quickly with minimal costs to issuers.</p> <p>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.</p>	We acknowledge the comments. Since we have determined to impose primary offering liability, this question is no longer relevant.
<b>Other comments</b>		
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) <i>Harmonized Continuous Disclosure Review Program</i> , 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

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	<p>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.</p> <p>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.</p>	<p>project.</p>

**ANNEX B**

**THE MANITOBA SECURITIES COMMISSION**  
**MSC Rule No. 2022-7**  
(Section 149.1, The Securities Act)

**AMENDMENTS TO**  
**NATIONAL INSTRUMENT 45-106**  
**PROSPECTUS EXEMPTIONS**

**The text box in this Instrument located above section 5A.2 does not form part of this Instrument.**

*1. National Instrument 45-106 Prospectus Exemptions is amended by this Instrument.*

*2. Section 1.1 is amended by adding the following after the definition of “marketplace”:*

**“market price”** means, for securities of a class for which there is a published market,

(a) except as provided in paragraph (b),

(i) if the published market provides a daily closing price, the average of the daily closing price of securities of that class on the published market for each of the trading days on which there was a daily closing price falling not more than 20 trading days immediately before the day as of which the market price is being determined, or

(ii) if the published market does not provide a daily closing price, but provides only the highest and lowest daily prices of securities of the class traded, the average of the averages of the highest and lowest daily prices of securities of the class on the published market for each of the trading days on which there were highest and lowest daily prices falling not more than 20 trading days immediately before the day as of which the market price is being determined, or

(b) if trading of securities of the class on the published market has occurred on fewer than 10 of the immediately preceding 20 trading days, the average of the following amounts established for each of the 20 trading days immediately before the day as of which the market price is being determined:

(i) the average of the closing bid and closing ask prices for each day on which there was no trading;

(ii) if the published market

(A) provides a closing price of securities of that class on the published market for each day that there was trading, the closing price, or

(B) provides only the highest and lowest prices, the average of the highest and lowest prices of securities of that class on the published market for each day that there was trading;.

*3. Section 1.1 is amended by adding the following after the definition of “publicly accountable enterprise”:*

**“published market”** means, for a class of securities, a marketplace on which the securities are traded, if the prices at which they have been traded on that marketplace are regularly

- (a) disseminated electronically, or
- (b) published in a newspaper or business or financial publication of general and regular paid circulation;.

4. *Part 1 is amended by adding the following after section 1.8:*

**Interpretation of “market price”**

**1.9** For the purpose of the definition of “market price”, if there is more than one published market for a security and

(a) only one of the published markets is in Canada, the market price is determined solely by reference to that market,

(b) more than one of the published markets are in Canada, the market price is determined solely by reference to the published market in Canada on which the greatest volume of trading in the particular class of securities occurred during the 20 trading days immediately before the day as of which the market price is being determined, and

(c) none of the published markets are in Canada, the market price is determined solely by reference to the published market on which the greatest volume of trading in the particular class of securities occurred during the 20 trading days immediately before the day as of which the market price is being determined..

5. *Section 2.1 is amended in subsection (1) by deleting the definitions of “market price” and “published market”.*

6. *Section 2.1 is amended by deleting subsection (2).*

7. *Section 2.1 is amended in subparagraphs (3)(b)(ii) and (iii) by deleting “, in Québec,”.*

8. *The Instrument is amended by adding the following part after Part 5:*

PART 5A - LISTED ISSUER FINANCING EXEMPTION

**Interpretation**

**5A.1 (1)** In this Part,

“**listed equity security**” means a security of a class of equity securities of an issuer listed for trading on an exchange recognized by a securities regulatory authority in a jurisdiction of Canada;

“**restructuring transaction**” has the same meaning as in National Instrument 51-102 *Continuous Disclosure Obligations*;

“**secondary market liability provisions**” means the provisions of securities legislation set out in Appendix D opposite the name of the local jurisdiction.

**5A.1(2)** For the purpose of this Part, the aggregate market value of an issuer’s listed equity securities is calculated by multiplying the total number of listed equity securities outstanding, by the market price.

**5A.1(3)** For the purpose of this Part, “**cash equivalents**” has the same meaning as in the Handbook.

**Refer to Appendix E of National Instrument 45-102 *Resale of Securities*. First trades are subject to a seasoning period on resale.**

**Listed issuer financing exemption**

**5A.2** The prospectus requirement does not apply to a distribution by an issuer of a security of the issuer's own issue if all of the following apply:

- (a) the issuer is a reporting issuer and has been a reporting issuer in at least one jurisdiction of Canada for the 12 months immediately before the date that the issuer files the news release referred to in paragraph (k);
- (b) the issuer has listed equity securities;
- (c) the issuer is not, or during the 12 months immediately before the date the issuer files the news release referred to in paragraph (k) the issuer or any person or company with whom the issuer completed a restructuring transaction was not, either of the following:
  - (i) an issuer whose operations have ceased;
  - (ii) an issuer whose principal asset is cash, cash equivalents, or its exchange listing, including, for greater certainty, a capital pool company, a special purpose acquisition company, a growth acquisition corporation or any similar person or company;
- (d) the issuer is not an investment fund;
- (e) the issuer has filed all periodic and timely disclosure documents that it is required to have filed under each of the following:
  - (i) applicable securities legislation;
  - (ii) an order issued by the regulator or securities regulatory authority;
  - (iii) an undertaking to the regulator or securities regulatory authority;
- (f) the issuer does not allocate the available funds as disclosed in item 9 of the completed form referred to in paragraph (k) to the following:
  - (i) an acquisition that is a significant acquisition under Part 8 of National Instrument 51-102 *Continuous Disclosure Obligations*;
  - (ii) a restructuring transaction;
  - (iii) any other transaction for which the issuer seeks approval of any security holder;
- (g) on the date of the issuance of the news release referred to in paragraph (k), the total dollar amount of the distribution, combined with the dollar amount of all other distributions made by the issuer under this section during the 12 months immediately before the date of the news release, will not, assuming completion of the distribution, exceed the greater of the following:
  - (i) \$5 000 000;

- (ii) 10% of the aggregate market value of the issuer's listed securities, on the date the issuer issues the news release announcing the offering, to a maximum of \$10 000 000;
- (h) the distribution, combined with all other distributions made by the issuer under this section during the 12 months immediately before the date of the issuance of the news release referred to in paragraph (k), will not result in an increase of more than 50% in the issuer's outstanding listed equity securities, as of the date that is 12 months before the date of the news release;
- (i) at the time of the distribution, the issuer reasonably expects that the issuer will have available funds to meet its business objectives and liquidity requirements for a period of 12 months following the distribution;
- (j) the security being distributed is either of the following:
  - (i) a listed equity security;
  - (ii) a unit consisting of a listed equity security and a warrant convertible into a listed equity security;
- (k) before soliciting an offer to purchase, the issuer
  - (i) issues and files a news release that
    - (A) announces the offering, and
    - (B) includes 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](http://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.";
  - (ii) files a completed Form 45-106F19 *Listed Issuer Financing Document*;
  - (iii) if the issuer has a website, posts the completed form referred to in subparagraph (ii) on its website;
- (l) the completed form referred to in paragraph (k) is filed before soliciting an offer to purchase and no later than 3 business days after the date of the form;
- (m) the completed form referred to in paragraph (k), together with any document filed under securities legislation in a jurisdiction of Canada on or after the earlier of the date that is 12 months before the date of the document and the date that the issuer's most recent audited annual financial statements were filed, contains disclosure of all material facts relating to the securities being distributed under this section and does not contain a misrepresentation;
- (n) in Québec, the completed form referred to in paragraph (k) is prepared in French or French and English.

### **Material changes during distribution**

**5A.3** If an issuer issues a news release announcing its intention to make a distribution under section 5A.2 and a material change occurs in respect of the issuer before the completion of the distribution, the issuer must cease the distribution until the issuer

- (a) complies with National Instrument 51-102 *Continuous Disclosure Obligations* in connection with the material change,
- (b) files an amendment to the completed form filed under paragraph 5A.2(k), and

(c) issues and files a news release that states that an amendment to the completed form referred to in paragraph 5A.2(k) addressing the material change has been filed.

#### **Additional requirements**

**5A.4(1)** An issuer must

(a) take reasonable steps to ensure that a prospective purchaser is aware of the means of accessing the completed form referred to in paragraph 5A.2(k), and

(b) include the statement referred to in clause 5A.2(k)(i)(B) in any initial written communication with a prospective purchaser.

**5A.4(2)** An issuer must close the distribution referred to in section 5A.2 no later than the 45th day after the date the issuer issues and files the news release referred to in paragraph 5A.2(k).

#### **Special application – Alberta, British Columbia, New Brunswick and Québec**

**5A.5(1)** In Alberta, a document that purports or appears to be completed in accordance with Form 45-106F19 *Listed Issuer Financing Document* and is filed with respect to a distribution referred to in section 5A.2 is a prescribed offering document for purposes of section 204 of the *Securities Act* (Alberta).

**5A.5(2)** In British Columbia, a document that purports or appears to be completed in accordance with Form 45-106F19 *Listed Issuer Financing Document* and is filed with respect to a distribution referred to in section 5A.2 is a prescribed disclosure document for purposes of section 132.1 of the *Securities Act* (British Columbia).

**5A.5(3)** In New Brunswick, a document that purports or appears to be completed in accordance with Form 45-106F19 *Listed Issuer Financing Document* and is filed with respect to a distribution referred to in section 5A.2 is an offering memorandum for purposes of section 150 of the *Securities Act* (New Brunswick).

**5A.5(4)** In Québec, a document that purports or appears to be completed in accordance with Form 45-106F19 *Listed Issuer Financing Document* and is filed with respect to a distribution referred to in section 5A.2 is a document authorized by the Autorité des marchés financiers for use in lieu of a prospectus.

#### **Core document**

**5A.6(1)** A document that purports or appears to be completed in accordance with Form 45-106F19 *Listed Issuer Financing Document* and is filed with respect to a distribution referred to in section 5A.2 is a “core document” pursuant to the secondary market liability provisions.

**5A.6(2)** For greater certainty, in British Columbia, documents that purport or appear to be completed in accordance with Form 45-106F19 *Listed Issuer Financing Document* and are filed with respect to a distribution referred to in section 5A.2 are a prescribed class of documents for the purpose of the definition of “core document” under section 140.1 of the *Securities Act* (British Columbia)..

9. Subsection 6.1(1) is amended by:

(a) replacing “.” with “;” in paragraph (j), and

(b) adding the following paragraph:

(k) section 5A.2 [Listed issuer financing exemption]..

10. Form 45-106F15 Rights Offering Circular for Reporting Issuers is amended in section 18 by replacing the table with the following:

		Assuming minimum offering or stand-by commitment only	Assuming 15% of offering	Assuming 50% of offering	Assuming 75% of offering	Assuming 100% of offering
A	Amount to be raised by this offering	\$	\$	\$	\$	\$
B	Selling commissions and fees	\$	\$	\$	\$	\$
C	Estimated offering costs (e.g., legal, accounting, audit)	\$	\$	\$	\$	\$
D	Available funds: $D = A - (B+C)$	\$	\$	\$	\$	\$
E	Working capital as at most recent month end (deficiency)	\$	\$	\$	\$	\$
F	Additional sources of funding	\$	\$	\$	\$	\$
G	Total: $G = D+E+F$	\$	\$	\$	\$	\$

11. The following form is added after Form 45-106F18 Supplementary Offering Memorandum Disclosure for Syndicated Mortgages:

**Form 45-106F19**  
**Listed Issuer Financing Document**

**INSTRUCTIONS**

**1. Overview of the offering document**

This is the form an issuer must use as the offering document for a distribution under section 5A.2 of the Instrument. In these instructions, the form is also referred to as the “offering document.”

The objective of the offering document is to provide information about the offering.

Present information in the offering document using a question-and-answer format.

**2. Incorporating information by reference**

Do not incorporate information into the offering document by reference.

**3. Plain language**

Use plain, easy to understand language in preparing the offering document. Avoid technical terms but if they are necessary, explain them in a clear and concise manner.



**4. Format**

Except as otherwise stated, use the questions presented in this form as headings in the offering document. To make the document easier to understand, present information in tables.

**5. Date of information**

Unless this form indicates otherwise, present the information in this form as of the date of the offering document.

**6. Forward-looking information**

If the issuer discloses forward-looking information in the offering document, the issuer must comply with Part 4A.3 of National Instrument 51-102 *Continuous Disclosure Obligations*.

**PART 1 SUMMARY OF OFFERING**

**1. Basic disclosure about the distribution**

On the cover page, state the following with the bracketed information completed:

“Offering Document under the Listed Issuer Financing Exemption [Date]  
[Name of Issuer]”

**2. Details of the offering**

On the cover page, state the following in bold:

**“What are we offering?”**

Provide the following details about the offering:

- (a) the type and number of securities the issuer is offering, and a description of all significant attributes of the securities;
- (b) the offering price;
- (c) the minimum and maximum amount of securities that the issuer may offer;
- (d) whether the offering may close in one or more closings and the date by which the offering is expected to close (if known);
- (e) the exchange and quotation system, if any, on which the securities are listed, traded or quoted;
- (f) the closing price of the issuer’s securities on the most recent trading day before the date of the offering document.

**3. Required statement**

On the cover page, state the following in bold with the bracketed information completed:

***“No securities regulatory authority or regulator has assessed the merits of these securities or reviewed this document. Any representation to the contrary is an offence. 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.*”**

[Name of issuer] is conducting a listed issuer financing under section 5A.2 of National Instrument 45-106 *Prospectus Exemptions*. In connection with this offering, the issuer represents the following is true:

- The issuer has active operations and its principal asset is not cash, cash equivalents or its exchange listing.
- The issuer has filed all periodic and timely disclosure documents that it is required to have filed.
- The total dollar amount of this offering, in combination with the dollar amount of all other offerings made under the listed issuer financing exemption in the 12 months immediately before the date of this offering document, will not exceed [Insert the greater of \$5 000 000 and the amount that is equal to 10% of the issuer’s market capitalization, to a maximum of \$10 000 000].
- The issuer will not close this offering unless the issuer reasonably believes it has raised sufficient funds to meet its business objectives and liquidity requirements for a period of 12 months following the distribution.
- The issuer will not allocate the available funds from this offering to an acquisition that is a significant acquisition or restructuring transaction under securities law or to any other transaction for which the issuer seeks security holder approval.”

## **PART 2 SUMMARY DESCRIPTION OF BUSINESS**

### **4. Summary description of business**

State the following in bold:

**“What is our business?”**

Provide a brief summary of the business the issuer carries on or intends to carry on.

### **5. Recent developments**

State the following in bold:

**“Recent developments”**

Provide a brief summary of key recent developments involving or affecting the issuer.

### **6. Material facts**

If there is a material fact about the securities being distributed that has not been disclosed elsewhere in this offering document or in any other document filed since the date that is the earlier of the date that is 12 months before the date of this offering document and the date that the issuer’s most recent audited annual financial statements were filed, disclose that material fact.

### **7. Business objectives and milestones**

State the following in bold:

**“What are the business objectives that we expect to accomplish using the available funds?”**

State the business objectives that the issuer expects to accomplish using the available funds disclosed under item 8. Describe each significant event that must occur for the business objectives described to be accomplished and state the specific period in which each event is expected to occur and the cost related to each event.

**PART 3 USE OF AVAILABLE FUNDS**

**8. Available funds**

State the following in bold:

**“What will our available funds be upon the closing of the offering?”**

Using the following table, disclose what the issuer’s available funds will be after the offering. If the issuer plans to combine additional sources of funding with the offering proceeds to achieve its principal purpose for raising capital, provide details about each additional source of funding.

If there has been a significant decline in working capital since the most recently audited annual financial statements, explain the decline.

		Assuming minimum offering only	Assuming 100% of offering
A	Amount to be raised by this offering	\$	\$
B	Selling commissions and fees	\$	\$
C	Estimated offering costs (e.g., legal, accounting, audit)	\$	\$
D	Net proceeds of offering: $D = A - (B+C)$	\$	\$
E	Working capital as at most recent month end (deficiency)	\$	\$
F	Additional sources of funding	\$	\$
G	Total available funds: $G = D+E+F$	\$	\$

**9. Use of available funds**

State the following in bold:

**“How will we use the available funds?”**

Using the following table, provide a detailed breakdown of how the issuer will use the available funds. Describe in reasonable detail each of the principal purposes, with approximate amounts.

Description of intended use of available funds listed in order of priority	Assuming minimum offering only	Assuming 100% of offering
	\$	\$
	\$	\$
Total: Equal to G in the available funds in item 8	\$	\$

*Instructions:*

1. *If the issuer will use more than 10% of available funds to reduce or retire indebtedness and the indebtedness was incurred within the 2 preceding years, describe the principal purposes for which the indebtedness was used. If the creditor is an insider, associate or affiliate of the issuer, identify the creditor and the nature of the relationship to the issuer and disclose the outstanding amount owed.*
2. *If the issuer will use more than 10% of available funds to acquire assets, describe the assets. If known, disclose the particulars of the purchase price being paid for or being allocated to the assets or categories of assets, including intangible assets. If the vendor of the asset is an insider, associate or affiliate of the issuer, identify the vendor and nature of the relationship to the issuer, and disclose the method used to determine the purchase price.*
3. *If any of the available funds will be paid to an insider, associate or affiliate of the issuer, disclose in a note to the table the name of the insider, associate or affiliate, the relationship to the issuer, and the amount to be paid.*
4. *If the issuer will use more than 10% of available funds for research and development of products or services,*
  - a. *describe the timing and stage of research and development that management anticipates will be reached using the funds,*
  - b. *describe the major components of the proposed programs the issuer will use the available funds for, including an estimate of anticipated costs,*
  - c. *state if the issuer is conducting its own research and development, is subcontracting out the research and development or is using a combination of those methods, and*
  - d. *describe the additional steps required to reach commercial production and an estimate of costs and timing.*
5. *If the issuer's most recently filed audited annual financial statements or interim financial report included a going concern note, disclose that fact and explain how this offering is anticipated to address any uncertainties that affect the decision on whether a going concern note is included in your next annual financial statements.*

**10. Use of funds from previous financings**

State the following in bold:

**“How have we used the other funds we have raised in the past 12 months?”**

Provide a comparison, in tabular form, of disclosure the issuer previously made about how the issuer would use available funds or proceeds from any financing in the past 12 months, an explanation of the variances, and the impact of the variances, if any, on the issuer’s ability to achieve its business objectives and milestones.

**PART 4 FEES AND COMMISSIONS**

**11. Involvement of dealers or finders and their fees**

State the following in bold:

**“Who are the dealers or finders that we have engaged in connection with this offering, if any, and what are their fees?”**

If any dealer, finder or other person has or will receive any compensation (e.g., commission, corporate finance fee or finder’s fee) in connection with the offering, provide the following information to the extent applicable:

- a) the name of the dealer, finder, or other person;
- b) a description of each type of compensation and the estimated amount to be paid for each type;
- c) if a commission is being paid, the percentage that the commission will represent of the gross proceeds of the offering (assuming both the minimum and maximum offering);
- d) details of any broker’s warrants or agent’s option (including number of securities under the warrants or option, exercise price and expiry date);
- e) if any portion of the compensation will be paid in securities, details of the securities (including number, type and, if options or warrants, the exercise price and expiry date).

**12. Dealer conflicts**

If the issuer has engaged a dealer in connection with the offering, state the following in bold with the bracketed information completed:

**“Does [identify dealer(s)] have a conflict of interest?”**

If disclosure is required under National Instrument 33-105 *Underwriting Conflicts*, include that disclosure.

**PART 5 PURCHASERS’ RIGHTS**

**13. Purchasers’ rights**

State the following in bold with the bracketed information completed:

**“Rights of Action in the Event of a Misrepresentation**

**If there is a misrepresentation in this offering document, you have a right**

- a) to rescind your purchase of these securities with [*insert name of issuer or other term used to refer to the issuer*], or
- b) to damages against [*insert name of issuer or other term used to refer to the issuer*] and may, in certain jurisdictions, have a statutory right to damages from other persons.

These rights are available to you whether or not you relied on the misrepresentation. However, there are various circumstances that limit your rights. In particular, your rights might be limited if you knew of the misrepresentation when you purchased the securities.

If you intend to rely on the rights described in paragraph (a) or (b) above, you must do so within strict time limitations.

You should refer to any applicable provisions of the securities legislation of your province or territory for the particulars of these rights or consult with a legal adviser.”

## **PART 6        ADDITIONAL INFORMATION**

### **14.    Additional information**

State the following in bold:

**“Where can you find more information about us?”**

State that a security holder can access the issuer’s continuous disclosure at [www.sedar.com](http://www.sedar.com). If applicable, provide the issuer’s website address.

## **PART 7        DATE AND CERTIFICATE**

### **15.    Certificate**

Include the following statement in bold with the bracketed information completed:

**“This offering document, together with any document filed under Canadian securities legislation on or after [*insert the date which is the earlier of the date that is 12 months before the date of this offering document and the date that the issuer’s most recent audited annual financial statements were filed*], contains disclosure of all material facts about the securities being distributed and does not contain a misrepresentation.”**

### **16.    Date and signature**

Provide the signature, date of the signature, name and position of the chief executive officer and chief financial officer of the issuer..

12. This Instrument comes into force on November 21, 2022.

13. In Saskatchewan, despite section 12, if this Instrument is filed with the Registrar of Regulations after November 21, 2022, this Instrument comes into force on the day on which it is filed with the Registrar of Regulations.

## ANNEX C

### CHANGES TO COMPANION POLICY 45-106CP *PROSPECTUS EXEMPTIONS*

1. *Companion Policy 45-106CP Prospectus Exemptions is changed by this Document.*
2. *Part 3 Capital Raising Exemptions is changed by adding, after section 3.11, the following:*

#### **3.12 Listed issuer financing exemption**

##### (1) Issuer eligibility

The listed issuer financing exemption in section 5A.2 of NI 45-106 provides an exemption from the prospectus requirement for reporting issuers that have securities listed on an exchange recognized by a securities regulatory authority in a jurisdiction of Canada. The exemption is intended to allow an issuer to raise limited amounts of capital from any person based on the issuer's continuous disclosure filings. For this reason, the issuer must have been a reporting issuer in at least one jurisdiction of Canada for at least 12 months preceding the offering. In addition, the issuer must have filed all periodic and timely disclosure documents it is required to have filed.

In addition to the listing requirement, under paragraph 5A.2(c), the exemption cannot be used by an issuer whose operations have ceased or whose principal asset is cash, cash equivalents or its exchange listing. Further, under paragraph 5A.2(f), the exemption is not available to an issuer that intends to allocate its available funds to complete a significant acquisition, a restructuring transaction or any other transaction for which it seeks security holder approval. The purpose of these requirements is to ensure that an issuer using the exemption has an operating business that is already described in the issuer's current disclosure. If an issuer is intending to raise capital to finance a significant acquisition or a restructuring transaction by distributing securities to retail investors, we would expect the issuer to use the prospectus regime in order to ensure potential purchasers have full, true and plain disclosure about the intended use of proceeds.

##### (2) Listed equity securities

Under the listed issuer financing exemption, the issuer is restricted to offering listed equity securities and units consisting of listed equity securities and warrants convertible into listed equity securities. The exemption cannot be used for the distribution of subscription receipts, special warrants, or convertible debentures.

##### (3) Sufficient available funds and minimum offering amount

There is no requirement to have a minimum offering amount under the listed issuer financing exemption. However, if, following completion of the offering, the issuer will

not have sufficient available funds to meet the issuer's business objectives and liquidity requirements for a period of 12 months, the issuer must set a minimum offering amount such that, following completion of the distribution, the issuer will have sufficient available funds to meet its business objectives and liquidity requirements for a period of 12 months.

#### (4) Filing of Form 45-106F19 *Listed Issuer Financing Document*

Before soliciting purchasers under the listed issuer financing exemption, the issuer must file both the news release announcing the distribution and the completed Form 45-106F19 *Listed Issuer Financing Document* (Form 45-106F19). The issuer must file these documents with the regulator or securities regulatory authority in each jurisdiction where the offering is being conducted, even if the issuer is not a reporting issuer in that jurisdiction.

#### (5) Material facts and material changes

The issuer must ensure that the information provided to the purchaser in the completed Form 45-106F19 and certain of the issuer's continuous disclosure discloses all material facts about the securities being offered and does not contain a misrepresentation. The continuous disclosure that is subject to this requirement is any document filed by the issuer under Canadian securities legislation on or after the date which is the earlier of (i) the date that is 12 months prior to the date of the issuer's completed Form 45-106F19, and (ii) the date that the issuer's most recent audited annual financial statements were filed.

Under securities legislation, a "material fact" in respect of a security issued or proposed to be issued is generally defined as a fact that would reasonably be expected to have a significant effect on the market price or value of the security. Issuers should refer to section 4.3 of National Policy 51-201 *Disclosure Standards* for examples of the type of events or information that may be material.

Section 5A.3 of NI 45-106 requires that, in the event that a material change occurs in the business of the issuer after filing the news release announcing the offering and before completion of the distribution, the issuer must cease the distribution until, amongst other things, it has amended the Form 45-106F19 and issued a news release stating that the Form 45-106F19 has been amended. The issuer is also required to comply with its obligations under Part 7 of NI 51-102. Material change is defined in Canadian securities legislation.

#### (6) Liability for misrepresentation

If a completed Form 45-106F19 contains a misrepresentation, purchasers of securities distributed under the listed issuer financing exemption have either a right to rescind their purchase of the securities or a right to damages against the issuer and, in certain jurisdictions, a right to damages from other persons. We remind issuers that they are required to certify that the Form 45-106F19, together with any document filed by the



issuer under Canadian securities legislation on or after the date which is the earlier of the date that is 12 months before the date of the completed Form 45-106F19 and the date that the issuer's most recent audited annual financial statements were filed, contains disclosure of all material facts about the securities being offered and does not contain a misrepresentation. If any of the issuer's disclosure filed during this period contains a misrepresentation, then the certification is also a misrepresentation. The issuer would also be liable to any purchasers on the secondary market for the misrepresentation under secondary market liability provisions in Canadian securities legislation.

#### (7) Materials to be filed after distribution

Within 10 days of distributing securities under the listed issuer financing exemption, the issuer must file a report of exempt distribution in Form 45-106F1 *Report of Exempt Distribution* in every jurisdiction in which a distribution has been made. See section 5.1 of this Companion Policy for more information about filing a report of exempt distribution.

#### (8) Backdoor underwriting

Securities distributed under the listed issuer financing exemption are not subject to resale restrictions under National Instrument 45-102 *Resale of Securities*. An issuer can use the exemption to distribute securities to anyone; the exemption is not limited to a particular class of investor.

In securities legislation, the definition of distribution includes any transaction or series of transactions involving a purchase and sale or a repurchase and resale in the course of or incidental to a distribution. In Québec, the definition of distribution is broad enough to include these transactions.

In cases where the exemption is used to distribute securities to one purchaser or to a small group of related purchasers and those purchasers immediately resell the securities in the secondary market, it may appear that the purchasers did not have a *bona fide* intention to invest in the issuer. The distribution under the exemption and the subsequent resale may be considered in substance a single distribution. In order to comply with securities legislation, the subsequent purchasers should have the benefit of the issuer's completed Form 45-106F19 and the rights provided under the exemption.

In addition, purchasers that purchase with an intention to immediately resell the securities in the secondary market should consider the definition of underwriter in securities legislation and whether they are required to be registered. Section 1.7 of this Companion Policy provides guidance on the expectations on underwriters when purchasing securities under prospectus exemptions with a view to immediately resell (or distribute) those securities.

#### (9) Registration business trigger for trading and advising

The listed issuer financing exemption does not require the purchaser to have purchased the securities through a dealer. The exemption is an exemption from the prospectus

requirement only; it does not provide an exemption from the dealer registration requirement.

An issuer conducting its own offering using the exemption should consider whether it, or any selling agents the issuer uses, may be required to be registered. See section 1.6 of this Companion Policy. Companion Policy 31-103CP gives guidance to issuers on how to apply the registration business trigger.

(10) Use of registered dealer in an offering under the listed issuer financing exemption

An issuer may engage a registered investment dealer or exempt market dealer to assist in the issuer's offering under the listed issuer financing exemption.

Exempt market dealers are permitted to facilitate distributions under the exemption because it is a prospectus-exempt distribution. However, once the distribution is complete, an exempt market dealer cannot facilitate resale of the securities because this activity is trading in listed securities contrary to subparagraph 7.1(2)(d)(ii) of NI 31-103.

(11) Role of registrant in an offering under the listed issuer financing exemption

A registrant involved in a distribution of securities under the exemption must comply with its registrant obligations, including know your client, know your product and suitability determination. We expect all registrants to be aware of other CSA guidance on registrant obligations with respect to know your client, know your product and suitability, and identify and respond to conflicts of interest.

(12) In Saskatchewan, a Form 45-106F19 that is filed with respect to a distribution referred to in section 5A.2 of NI 45-106 is designated an offering memorandum under securities legislation and triggers rights of action in Saskatchewan.

### **3.13 Preparing the Form 45-106F19**

#### Numbering system and general guidance

The numbering of this section corresponds to the numbering of Parts and Items in Form 45-106F19.

#### Instructions, Item 1 *Overview of the offering document*

When preparing Form 45-106F19, issuers should keep in mind that it is meant to be a concise, easy to understand disclosure document. Generally, we do not expect it to be longer than about 5 pages.

#### Part 1, Item 2 *Details of the offering*

Item 2 of Part 1 of Form 45-106F19 requires details about the offering, including the date by which the offering is expected to close (if known). We remind issuers that under

subsection 5A.4(2) of NI 45-106, the final closing of the offering must occur no later than 45 days after the date the issuer issues and files the news release announcing the offering.

### Part 1, Item 3 Required statement

Item 3 of Part 1 of Form 45-106F19 requires the issuer to state certain representations. The issuer and its management must ensure that the representations are true and will continue to be true until the closing of the offering as they are conditions to using the exemption.

### Part 2, Item 6 Material facts

Item 6 of Part 2 of Form 45-106F19 requires disclosure of any material fact about the securities being distributed that has not already been disclosed in the Form 45-106F19 or in any other document filed by the issuer during the specified period. See subsection 3.12(5) for guidance on material facts.

If a person or company beneficially owns, or controls or directs, directly or indirectly, voting securities carrying 10% or more of the voting rights attached to any of the issuer's voting securities, that information may be a material fact under securities legislation. If the issuer has not disclosed information about the person or company during the 12 months immediately before the date of the Form 45-106F19, the issuer should consider including disclosure of the following for any such person or company:

- (a) the person or company's name,
- (b) the number or amount of securities beneficially owned, controlled or directed by the person or company, and
- (c) the number or amount of securities of the issuer of any class to be beneficially owned, controlled or directed by the person or company after the distribution, and the percentage that number or amount represents of the total securities of the issuer that are outstanding.

### Part 3, Item 8 Available funds

Item 8 of Part 3 of Form 45-106F19 requires the issuer to provide an explanation if there has been a significant decline in working capital since the issuer's most recently audited annual financial statements. Working capital is the issuer's current assets (as of the most recent month end) less the issuer's current liabilities (as of the most recent month end).

We would consider a significant decline to include a change in the working capital that results in material uncertainty regarding the issuer's going concern assumption, or a change in the working capital balance from positive to deficiency.

Item 8 of Part 3 of Form 45-106F19 requires the issuer to complete a table disclosing the amount and source of the funds available to the issuer after completion of the offering. It is a condition of the listed issuer financing exemption that an issuer cannot close the

offering using the exemption unless, on completion of the offering, the issuer reasonably expects it will have sufficient available funds to meet its business objectives and liquidity requirements for a period of 12 months. This means that the total dollar amount the issuer discloses in row G under the column “*Assuming minimum offering only*”, or under the column “*Assuming 100% of offering*” in the table, if the minimum offering is the entire offering, must be sufficient to meet the issuer’s business objectives (as disclosed in item 7 of Part 2 of Form 45-106F19) and liquidity requirements for a period of 12 months.

#### Part 3, Item 9 *Use of available funds*

Item 9 of Part 3 of Form 45-106F19 requires the issuer to disclose how it will use the available funds identified in item 8. Under the terms of the listed issuer financing exemption, the issuer cannot allocate any of the available funds towards an acquisition that is a significant acquisition under Part 8 of NI 51-102, a restructuring transaction as such term is defined in NI 51-102, or any other transaction for which the issuer seeks approval of any security holder.

#### Part 5, Item 13 *Purchasers’ rights*

Item 13 of Part 5 of Form 45-106F19 requires the issuer to provide mandated disclosure about purchasers’ rights under the listed issuer financing exemption. See subsection 3.12(6) for a description of these rights under Canadian securities legislation.

#### Part 7, Item 15 *Certificate*

Item 15 of Part 7 of Form 45-106F19 requires the issuer to certify that the Form, together with the issuer’s continuous disclosure filings made on or after the date which is the earlier of the date that is 12 months prior to the date of the Form and the date that the issuer’s most recent audited annual financial statements were filed, contains disclosure of all material facts about the securities being distributed and does not contain a misrepresentation.

We remind issuers that purchasers under the listed issuer financing exemption have statutory rights in the event of a misrepresentation in the issuer’s Form 45-106F19 or in the issuer’s continuous disclosure filed in the specified period.

In addition, we remind issuers and their executives that they are also liable to purchasers in the secondary market for the disclosure in the Form 45-106F19 under secondary market liability provisions..

3. These changes become effective on November 21, 2022.

**ANNEX D**

**THE MANITOBA SECURITIES COMMISSION**  
**MSC Rule No. 2022-8**  
(Section 149.1, The Securities Act)

**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. Subsection II.E “Exempt Market Offerings and Disclosure” of Appendix A is amended by adding the following:*

*7. Offering document required to be filed or delivered by an issuer under section 5A.2 of National Instrument 45-106 Prospectus Exemptions.*

*3. This Instrument comes into force on November 21, 2022.*

*4. In Saskatchewan, despite section 3, if this Instrument is filed with the Registrar of Regulations after November 21, 2022, this Instrument comes into force on the day on which it is filed with the Registrar of Regulations.*

**ANNEX E**

**THE MANITOBA SECURITIES COMMISSION  
MSC Rule No. 2022-9  
(Section 149.1, The Securities Act)**

**AMENDMENTS TO  
NATIONAL INSTRUMENT 45-102 *RESALE OF SECURITIES***

1. *National Instrument 45-102 Resale of Securities is amended by this Instrument.*
2. *Appendix E is amended by adding, after “section 2.42 [Conversion, exchange or exercise – security of a reporting issuer] for a security being traded in the circumstances referred to in clause (b) of subsection 2.42 (1);” the following paragraph:*
  - section 5A.2 [Listed Issuer Financing Exemption]; .
3. This Instrument comes into force on November 21, 2022.
4. In Saskatchewan, despite section 3, if this Instrument is filed with the Registrar of Regulations after November 21, 2022, this Instrument comes into force on the day on which it is filed with the Registrar of Regulations.