

## CSA Notice and Request for Comment

### Proposed Amendments to National Instrument 45-106 *Prospectus Exemptions* to introduce the Listed Issuer Financing Exemption

July 28, 2021

#### Introduction

The Canadian Securities Administrators (the **CSA** or **we**) are publishing for a 90 day comment period proposed amendments to 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 publishing consequential amendments to National Instrument 13-101 *System for Electronic Document Analysis and Retrieval* (**NI 13-101**) and National Instrument 45-102 *Resale of Securities* (**NI 45-102** and, collectively with the proposed amendments to NI 45-106 and NI 13-101, the **Proposed Amendments**).

We are also publishing for comment proposed changes to Companion Policy 45-106CP (**45-106CP**).

If adopted, the Proposed Amendments would create a new capital raising method for reporting issuers listed on a Canadian stock exchange.

The text of the Proposed Amendments is contained in Annexes A through E 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

We are proposing the Listed Issuer Financing Exemption to 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 proposed exemption relies on the issuer's continuous disclosure record, as supplemented with a short offering document, and would allow these issuers to distribute freely tradeable listed equity securities to the public. Issuers would 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 for at least 12 months.

The offering document would be a "core document" under Canadian securities legislation, forming part of the issuer's continuous disclosure record for purposes of secondary market civil liability. In the event of a misrepresentation in the offering document or in the issuer's continuous disclosure record for a prescribed period, purchasers under the Listed Issuer Financing Exemption would have the same rights of action under secondary market civil liability as purchasers on the secondary market. In addition, purchasers under the exemption would have a contractual right of rescission against the issuer for a period of 180 days following the distribution in the event of a misrepresentation. The offering document would 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.

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.

In CSA Consultation Paper 51-404 *Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers*, staff noted we were considering whether conditions were right to revisit the merits of an alternative prospectus offering model for reporting issuers. In the comment period, we heard support from several commenters for this project, as well as some support for alternative prospectus concepts previously proposed, but not implemented, such as the Integrated Disclosure System (IDS)<sup>1</sup> and Continuous Market Access (CMA)<sup>2</sup>.

As a result of the responses to CSA Consultation Paper 51-404, in early 2018<sup>3</sup> the CSA undertook a research project on potential alternative offering models. That project 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

---

<sup>1</sup> In 2000, the CSA published for comment a concept proposal called Integrated Disclosure System (IDS). Under the IDS, reporting issuers would have been required to provide investors with more comprehensive and timely continuous disclosure by using an abbreviated offering document integrating the reporting issuer's disclosure base.

<sup>2</sup> In 2002, the British Columbia Securities Commission published for comment a proposal on a system called Continuous Market Access (CMA). This regime was designed to replace the existing prospectus regime. CMA provided reporting issuers with access to markets by disclosing the offering in a press release. No offering document was required, but reporting issuers were subject to an enhanced continuous disclosure regime and the obligation to disclose all material information about the reporting issuer.

<sup>3</sup> See CSA Staff Notice 51-353 *Update on CSA Consultation Paper 51-404 Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers*.

short form prospectus offerings, and analysis of data on all prospectus and private placement offerings conducted in 2017 by issuers listed on Canadian exchanges.

What we found from our market consultations and research of public offering regimes in Europe, Australia and the United States, is that our prospectus regime generally works well for larger offerings and that it strikes a good balance between issuer disclosure requirements and investor protection. However, we heard that for smaller offerings (that is, under \$10 million), the system can be onerous, the costs associated with preparing a prospectus can be prohibitive, and that dealers have limited interest in smaller offerings. Consequently, issuers are not as inclined to access public markets for smaller offerings.

The MiG Report data for 2020 illustrates that smaller issuers are much less likely to use prospectuses than larger issuers. In 2020, TSX Venture Exchange-listed reporting issuers raised \$1.9 billion by way of prospectus as compared to \$4.5 billion by way of private placement. In contrast, Toronto Stock Exchange-listed reporting issuers raised \$19.4 billion by way of prospectus as compared to only \$10 billion by way of private placement<sup>4</sup>. Data from FP Advisor also suggests that most short form prospectuses are filed to raise greater than \$10 million. In the five year period from 2016 to 2020, of the 657 short form prospectus offerings by issuers listed on a Canadian exchange, 44 prospectuses (7%) raised \$5 million or less, 95 prospectuses (14%) raised between \$5-\$10 million and 518 prospectuses (79%) raised greater than \$10 million through the sale of equity securities<sup>5</sup>.

During our consultations, we heard that the costs of completing a short form prospectus offering are a barrier for issuers who want to raise smaller amounts of capital. Issuers cited underwriter and legal costs as the most significant expenditures. Our costs survey also showed that the costs of a prospectus offering were disproportionate to the amounts raised.

To respond to this reality, we propose creating 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.

We think the Listed Issuer Financing Exemption would

- reduce the cost of accessing public markets;
- allow smaller issuers access to public markets and retail investors;
- provide retail investors with a greater choice of investments available in the primary public markets;
- result in better and more current disclosure in the market for those smaller issuers that previously only used the private placement system; and

---

<sup>4</sup> The MiG Report, Toronto Stock Exchange and TSX Venture Exchange, December 2020.

<sup>5</sup> Based on FP Advisor, New Issues - Financial Post Data as of June 11, 2021 and OSC Calculations. Data represents Canadian dollar-denominated short form prospectus offerings for equity securities completed between 2016 and 2020 (excluding offerings under the base shelf system).

- provide an incentive for all issuers raising smaller amounts of capital to do so by public offering instead of by private placement.

We have developed this proposal with our mission in mind: increasing market efficiency while ensuring investor protection.

### Summary of the proposed Listed Issuer Financing Exemption

The Listed Issuer Financing Exemption is subject to the following key conditions:

	<b>Condition</b>	<b>Rationale</b>
<b>Qualifications</b>	<p>The issuer must have</p> <ul style="list-style-type: none"> <li>• securities listed on a Canadian stock exchange</li> <li>• been a reporting issuer for 12 months in at least one jurisdiction in Canada</li> <li>• filed all timely and periodic disclosure documents as required under the continuous disclosure requirements in Canadian securities legislation</li> <li>• active business operations</li> </ul>	<ul style="list-style-type: none"> <li>• Ensures oversight of pricing and discounts</li> <li>• Recognizes comprehensive continuous disclosure regime for reporting issuers</li> <li>• Limits use to issuers who have established a continuous disclosure record and are in compliance with their continuous disclosure filing requirements</li> <li>• Limits use of the exemption to only those issuers that have a business</li> </ul>
<b>Total dollar amount</b>	<p>The total dollar amount that an issuer may raise using the exemption during any 12 month period may not exceed:</p> <ul style="list-style-type: none"> <li>• the greater of \$5 million or 10% of the aggregate market value of the issuer’s listed equity securities, to a maximum total dollar amount of \$10 million; or</li> <li>• 100% dilution</li> </ul>	<ul style="list-style-type: none"> <li>• Connecting scaled limits on the total amount that can be raised to market capitalization restricts issuers from unduly diluting their shareholders</li> <li>• Addresses comments received that we need a two-tiered approach with significantly fewer requirements for smaller offerings</li> <li>• Limits the impact on the short form prospectus system as the majority of issuers using short form prospectuses raise more than \$10 million</li> <li>• The limitation on the amount raised will restrict an issuer from using the exemption for larger transactions that may involve a significant change in the issuer’s business</li> </ul>

	<b>Condition</b>	<b>Rationale</b>
<b>Type of offering document</b>	<p>The issuer must prepare and file a short offering document, proposed new Form 45-106F* <i>Listed Issuer Financing Document</i>, containing prescribed disclosure highlighting:</p> <ul style="list-style-type: none"> <li>• any new developments in the issuer’s business,</li> <li>• the issuer’s financial condition, including confirmation that the issuer will have sufficient funds to last 12 months after the offering,</li> <li>• how proceeds from the current offering will be used, and</li> <li>• how proceeds from any other offering in the previous 12 months were actually used</li> </ul>	<ul style="list-style-type: none"> <li>• Recognizes that investors may be more likely to read a brief document that contains the key information necessary for making an investment decision than a much longer prospectus</li> <li>• For venture issuers that do not currently use the short form prospectus system, results in better and more current disclosure to the market than if they used other prospectus exemptions</li> </ul>
<b>Liability</b>	<ul style="list-style-type: none"> <li>• The issuer must certify that the offering document, together with the continuous disclosure of the issuer for the past 12 months, contains disclosure of all material facts about the issuer or the securities being distributed and does not contain a misrepresentation</li> <li>• The offering document would be prescribed as a “core document” in the issuer’s continuous disclosure record, subject to statutory secondary market civil liability in the event of a misrepresentation</li> <li>• Purchasers under the exemption would have two options for recourse in the event of a misrepresentation: <ul style="list-style-type: none"> <li>• rights of action under secondary market civil liability</li> <li>• a contractual right of rescission against the issuer</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Ensures the quality and reliability of the disclosure in the offering document and in the issuer’s continuous disclosure</li> <li>• Secondary market civil liability puts purchasers under the Listed Issuer Financing Exemption on the same footing as investors in the secondary market</li> <li>• Having a contractual right of rescission against the issuer ensures the issuer is not unfairly enriched as a result of its misrepresentation</li> <li>• Addresses the concern that applying primary liability would increase underwriter due diligence costs and result in a much longer offering document, defeating our intention to provide a more efficient means of capital raising for issuers having an up-to-date continuous disclosure record</li> </ul>

	<b>Condition</b>	<b>Rationale</b>
<b>Restriction on use of proceeds</b>	<ul style="list-style-type: none"> <li>Exemption not available if the issuer is planning to use the proceeds for a significant acquisition or restructuring transaction, such that the issuer would be required to provide additional financial statements under prospectus rules</li> </ul>	<ul style="list-style-type: none"> <li>Restricts use of the exemption in situations where greater disclosure and scrutiny may be required</li> </ul>
<b>Type of securities</b>	<ul style="list-style-type: none"> <li>Securities must be listed equity securities or securities convertible into listed equity securities</li> <li>Subscription receipts may be issued if not used in connection with a significant acquisition, restructuring transaction or other type of transaction that would require security holder approval</li> </ul>	<ul style="list-style-type: none"> <li>Exemption is meant to mirror investors' ability to purchase securities on the secondary market without a hold period</li> <li>Exemption is limited to listed equity securities that are easier for investors to understand and that have the benefit of a market valuation</li> </ul>
<b>Resale restrictions</b>	<ul style="list-style-type: none"> <li>Securities would not be subject to a hold period</li> </ul>	<ul style="list-style-type: none"> <li>No hold period necessary as the issuer is required to disclose all material facts at time of offering</li> <li>Addresses comments from stakeholders that the hold period continues to be a deterrent for private placement investment</li> </ul>
<b>Underwriter/registrant involvement</b>	<ul style="list-style-type: none"> <li>While investment dealers and exempt market dealers may participate, there is no requirement for an underwriter to be involved</li> <li>No registration exemption</li> </ul>	<ul style="list-style-type: none"> <li>Will reduce cost of offerings</li> <li>Market participants noted that issuers will likely use dealers for larger offerings and to reach new investors</li> <li>Dealers would have to satisfy their obligations, including suitability (KYC and KYP), to place clients in the offering</li> </ul>
<b>Report of exempt distribution</b>	<ul style="list-style-type: none"> <li>The issuer would be required to report use of the exemption by filing a Form 45-106F1 <i>Report of Exempt Distribution</i></li> <li>The issuer would not be required to complete Schedule 1</li> </ul>	<ul style="list-style-type: none"> <li>Report will allow us to obtain structured data on the offering including type and amount of securities issued and any dealer or finder involvement</li> <li>Purchaser information not necessary where there are no</li> </ul>

	<b>Condition</b>	<b>Rationale</b>
	– Confidential Purchaser Information.	<p>limits on the type of investor that may participate</p> <ul style="list-style-type: none"> <li>• Not requiring purchaser information will reduce the administrative burden for the issuer</li> </ul>

**Consequential Amendments**

*National Instruments*

We propose to make the following housekeeping amendments to the rights offering exemption in NI 45-106 to correct:

- subparagraphs 2.1(3)(b)(ii) and (iii), such that issuers must have filed all periodic and timely disclosure required by any order issued by, or undertaking made to, the regulator or securities regulatory authority; and
- the calculation of total funds available required in the use of available funds table in section 18 of Form 45-106F15 *Rights Offering Circular for Reporting Issuers*.

We propose to consequentially amend NI 45-102 to add the proposed Listed Issuer Financing Exemption to Appendix E Seasoning Period Trades, which would mean securities issued under the exemption would be subject to a seasoning period. Given one of the conditions to use of the proposed exemption is that the issuer must have been a reporting issuer for 12 months, this means that, for practical purposes, no hold period will apply to the securities.

We also propose to amend NI 13-101 to include the new form of offering document in the list of required filings.

**Local Matters**

Annex E is being published in Ontario.

**Request for Comments**

We welcome your comments on the Proposed Amendments and the changes to 45-106CP. In addition to any general comments you may have, we also invite comments on the following specific questions.

1. Under the Proposed Amendments, the total dollar amount that an issuer can raise using the Listed Issuer Financing Exemption would be subject to the following thresholds:
  - (a) the greater of 10% of an issuer’s market capitalization and \$5,000,000
  - (b) the maximum total dollar limit of \$10,000,000
  - (c) a 100% dilution limit.

Are all of these thresholds appropriate, or should we consider other thresholds?

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 file a report of exempt distribution within 10 days of the distribution date, as with most capital raising prospectus exemptions. However, issuers would not be required to provide the detailed confidential purchaser information required in Schedule 1. We are not proposing to require the completion of the purchaser-specific disclosure required under Schedule 1 because there are no limitations on the types of investors who may purchase under the exemption and we do not expect to require this information.
  - (a) Are there other elements of the report of exempt distribution that we should consider relaxing for distributions under the exemption?
  - (b) Would the requirement to file the report of exempt distribution in connection with the use of the exemption be unduly onerous in these circumstances? If so, why?
  - (c) Should we consider an alternative means of reporting distributions under the exemption, such as including disclosure in an existing continuous disclosure document, such as Management's Discussion and Analysis or a specific form or report that is filed on SEDAR?
  - (d) If alternative reporting is provided, what information should issuers be required to disclose, in addition to the following:
    - the number and type of securities distributed,
    - the price at which securities are distributed,
    - the date of the distribution, and
    - the details of any compensation paid by the issuer in connection with the distribution and the identity of the compensated party?
  - (e) If alternative reporting is provided, how frequently should reporting be required?
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?
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?

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?
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?
7. Investment dealers and exempt market dealers may participate in an offering under the proposed Listed Issuer Financing Exemption; however, there is no requirement for dealer or underwriter involvement. In addition, no exemption from the registration requirement is provided for acts related to distributions under the exemption, so any persons in the business of trading in securities will require registration or an available registration exemption for any activities undertaken in connection with distributions under the exemption.
  - (a) If adopted, do you anticipate that issuers would involve a dealer in offerings under the exemption?
  - (b) If not, how do you expect issuers will conduct their offerings, for example, via their own website?
8. We propose that distributions under the Listed Issuer Financing Exemption would be subject to secondary market liability and provide original purchasers with a contractual right of rescission against the issuer. We propose secondary market liability because the exemption is premised on the reporting issuer's continuous disclosure and limited to distributions of listed equity securities that are traded on the secondary market. Although the exemption provides for the distribution of freely tradeable securities to any class of purchaser, similar to a prospectus offering, the quantum of liability is more limited than it would be for a prospectus offering.
  - (a) Does the proposed liability regime provide appropriate incentives for issuers to provide accurate and complete disclosure under the exemption and adequate investor protection or should we consider imposing prospectus level liability?
  - (b) Some of the key objectives of the exemption include reducing the costs to an issuer of accessing the public markets and providing investors with a briefer document that they are more likely to read. Would imposing prospectus-level liability impact the objectives of the exemption?
  - (c) Would the absence of statutory liability for dealers lead to lower standards of disclosure?

- (d) One of the conditions of the exemption is that the issuer must provide a contractual right of rescission in the agreement to purchase the security with the purchaser. Would a requirement for the issuer to enter into an agreement with purchasers be unduly burdensome?

Please submit your comments in writing on or before **October 26, 2021**.

Address your submission to all of the CSA as follows:

British Columbia Securities Commission  
Alberta Securities Commission  
Financial and Consumer Affairs Authority of Saskatchewan  
Manitoba Securities Commission  
Ontario Securities Commission  
Autorité des marchés financiers  
Financial and Consumer Services Commission (New Brunswick)  
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island  
Nova Scotia Securities Commission  
Office of the Superintendent of Securities, Service NL  
Northwest Territories Office of the Superintendent of Securities  
Office of the Yukon Superintendent of Securities  
Superintendent of Securities, Nunavut

Deliver your comments only to the addresses below. Your comments will be distributed to the other participating CSA.

Larissa Streu  
Senior Legal Counsel, Corporate Finance  
British Columbia Securities Commission  
P.O. Box 10142, Pacific Centre  
701 West Georgia Street  
Vancouver, British Columbia V7Y 1L2  
Fax: 604-899-6581  
[lstreu@bcsc.bc.ca](mailto:lstreu@bcsc.bc.ca)

Me Philippe Lebel  
Corporate Secretary and Executive Director, Legal Affairs  
Autorité des marchés financiers  
Place de la Cité, tour Cominar  
2460, boulevard Laurier, bureau 400  
Québec (Québec) G1V 5C1  
Fax : 514-864-8381  
[consultation-en-cours@lautorite.qc.ca](mailto:consultation-en-cours@lautorite.qc.ca)

We cannot keep submissions confidential because securities legislation in certain provinces requires publication of the written comments received during the comment period. All comments received will be posted on the websites of each of the Alberta Securities Commission at

www.albertasecurities.com, the Autorité des marchés financiers at www.lautorite.qc.ca and the Ontario Securities Commission at www.osc.gov.on.ca. Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

## Contents of Annexes

The following annexes form part of this CSA Notice:

<b>Annex A:</b>	Proposed amendments to National Instrument 45-106 <i>Prospectus Exemptions</i> , including new Form 45-106F* <i>Listed Issuer Financing Exemption Offering Document</i>
<b>Annex B:</b>	Proposed changes to Companion Policy 45-106CP
<b>Annex C:</b>	Proposed amendments to National Instrument 13-101 <i>System for Electronic Document Analysis and Retrieval (SEDAR)</i>
<b>Annex D:</b>	Proposed amendments to National Instrument 45-102 <i>Resale of Securities</i>
<b>Annex E:</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:lrose@bcsc.bc.ca">lrose@bcsc.bc.ca</a></p>
<p><b>David Surat</b> Senior Legal Counsel, 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 <a href="mailto:Tracy.Clark@asc.ca">Tracy.Clark@asc.ca</a></p>	<p><b>Gillian Findlay</b> Senior Legal Counsel Alberta Securities Commission 403-297-3302 <a href="mailto:Gillian.Findlay@asc.ca">Gillian.Findlay@asc.ca</a></p>
<p><b>Ella-Jane Loomis</b> Senior Legal Counsel, Securities</p>	<p><b>Diana D’Amata</b></p>

<p>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>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>Wayne Bridgeman</b> Deputy Director, Corporate Finance The Manitoba Securities Commission, Securities Division 204-945-4905 <a href="mailto:wayne.bridgeman@gov.mb.ca">wayne.bridgeman@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

### PROPOSED 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 in subparagraph (o) of the definition of “accredited investor” by deleting “, in Québec,”.*
3. *Section 2.1 is amended in subparagraphs (3)(b)(ii) and (iii) by deleting “, in Québec,”.*
4. *The Instrument is amended by adding the following part after Part 5:*

#### **PART 5A: LISTED ISSUER FINANCING EXEMPTION**

##### **Interpretation**

**5A.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;

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

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

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

**5A.2 (1)** 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 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 (j);
- (b) the issuer has a class of securities listed for trading on an exchange recognized by a securities regulatory authority in a jurisdiction of Canada;
- (c) the issuer’s operations have not ceased or its principal asset is not cash or cash equivalents, or its exchange listing;

- (d) the issuer has filed all periodic and timely disclosure documents that it is required to have filed by 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;
- (e) at the time of the distribution, the issuer does not plan to use the proceeds from the distribution towards
  - (i) an acquisition that is a significant acquisition under Part 8 of National Instrument 51-102 *Continuous Disclosure Obligations*;
  - (ii) a restructuring transaction as such term is defined in National Instrument 51-102 *Continuous Disclosure Obligations*;
  - (iii) any other transaction that requires approval of any security holder under the corporate law of the jurisdiction in which the issuer is incorporated or continued, any requirement of the exchange on which the issuer's listed equity securities are listed for trading, or the issuer's constating documents;
- (f) 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 issuance of the news release referred to in paragraph (j), will not 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 total dollar amount of \$10,000,000;
- (g) 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 (j), will not result in an increase of more than 100% of the number, or, in the case of debt, of the principal amount, of the issuer's issued and outstanding securities, as of the date that is 12 months before the date of the news release;
- (h) at the time of the distribution, the issuer reasonably expects that, on completion of the distribution, the issuer will have sufficient available funds to meet its business objectives and all liquidity requirements for a period of 12 months;

- (i) the securities being distributed are any of the following:
  - (i) a listed equity security;
  - (ii) a unit consisting of a listed equity security and a warrant;
  - (iii) a security convertible into a listed equity security or a unit consisting of a listed equity security and a warrant;
- (j) before soliciting an offer to purchase from a purchaser, the issuer
  - (i) issues and files a news release that
    - (A) announces the offering; and
    - (B) states that a purchaser can access the offering document for the distribution under the issuer's profile on SEDAR+ and on the issuer's website, if the issuer has a website;
  - (ii) files a completed Form 45-106F[x] *Listed Issuer Financing Document*;
  - (iii) if the issuer has a website, posts the completed Form 45-106F[x] *Listed Issuer Financing Document* to its website;
- (k) the completed Form 45-106F[x] *Listed Issuer Financing Document* referred to in paragraph (j) is filed before soliciting an offer to purchase and no later than 3 business days after the date of the form;
- (l) the completed Form 45-106F[x] *Listed Issuer Financing Document* referred to in paragraph (j), 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 about the issuer and the securities being distributed under this section and does not contain a misrepresentation;
- (m) in Québec, the completed Form 45-106F[x] *Listed Issuer Financing Document* is prepared in French or French and English;
- (n) the agreement to purchase the security contains the contractual right of rescission referred to in subsection (3);
- (o) the distribution ends no later than the 45<sup>th</sup> day after the issuer issues the news release referred to in paragraph (j).

(2) For the purposes of subparagraph (1)(f)(ii), the aggregate market value of an issuer's listed securities is calculated by multiplying the total number of listed securities outstanding, by the closing price of the listed securities on the exchange in Canada on which the class of listed securities is principally traded.

(3) For the purposes of paragraph (1)(n), the contractual right of rescission in the agreement to purchase the security must provide for all of the following:

- (a) that the purchaser may exercise the right if the Form 45-106F[x] Listed Issuer Financing Document filed under paragraph (1)(j) contains a misrepresentation;
- (b) that the purchaser may exercise the right without regard to whether the purchaser relied on the misrepresentation;
- (c) that the purchaser may exercise the right by delivering a notice to the issuer within a period that is no less than 180 days after the purchaser signs the agreement to purchase the security;
- (d) that the purchaser is entitled in connection with the rescission to a full refund of all consideration paid to the issuer on the acquisition of the security;
- (e) that the right is in addition to, and does not detract from, any other right the purchaser has under the law.

#### **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 the affairs of the issuer before the completion of a 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 previously filed Form 45-106F[x] *Listed Issuer Financing Document*, and
- (c) issues and files a news release that states that an amendment to the Form 45-106F[x] *Listed Issuer Financing Document* addressing the material change has been filed.

#### **Listed issuer financing exemption – civil liability for secondary market disclosure**

**5A.4(1)** The secondary market liability provisions apply to the acquisition of an issuer's security pursuant to the exemption from the prospectus requirement set out in section 5A.2.

(2) A document that purports or appears to be completed in accordance with Form 45-106F[x] *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.

(3) For greater certainty, in British Columbia,

- (a) purchases of securities under a distribution referred to in section 5A.2 are a prescribed class of acquisitions under paragraph 140.2(b) of the Securities Act (British Columbia); and
- (b) documents that purport or appear to be completed in accordance with 45-106F[x] *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)..

5. *Subsection 2.42 is amended in paragraphs (2)(a) and (b) by deleting “, in Québec,”.*

6. *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*].

7. *Section 6.3 is amended by adding the following subsection:*

(3) Despite subsection (1), an issuer is not required to complete Schedule 1 of Form 45-106F1 in connection with a distribution made under section 5A.2 [*Listed issuer financing exemption*].

8. *Form 45-106F1 Report of Exempt Distribution is amended in Schedule 1, under the heading “INSTRUCTIONS FOR SCHEDULE 1”, by adding the following instruction as the last paragraph:*

**“Reports filed under paragraph 6.1(1)(k) [*Listed issuer financing exemption* ] – For reports filed under paragraph 6.1(1)(k) [*Listed issuer financing exemption*] of NI 45-106, the issuer is not required to complete Schedule 1.”.**

9. *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: $G = D+E+F$	\$	\$	\$	\$	\$

10. *The following form is added after Form 45-106F[x]:*

**Form 45-106F[x]**  
**Listed Issuer Financing Document**

**INSTRUCTIONS**

**1. Overview of the offering document**

This Form 45-106F[x] *Listed Issuer Financing Document* is the form of offering document you must use for a distribution under subsection 5A.2(1) of National Instrument 45-106 *Prospectus Exemptions*. In this form it is referred to as the “offering document”.

In this form, the issuer is sometimes also referred to as “you”.

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

Prepare the offering document using a question-and-answer format.

**2. Incorporating information by reference**

You must 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 you disclose forward-looking information in the offering document, you 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**

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**

State the following in bold:

#### **“What are we offering?”**

Provide the following details about the offering:

- (a) the type and number of securities you are offering, and a description of all significant attributes of the securities,
- (b) the offering price,
- (c) the minimum and maximum amount of securities that you 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(s) and quotation system(s), if any, on which the securities are listed, traded or quoted, and
- (f) the closing price of your securities on the most recent trading day before the date of the offering document.

### **3. Required statement**

State in bold, at the bottom of the cover page, the information referred to in paragraphs (a) and (b), with the bracketed information completed:

- (a) Representations:

***“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.*”**

**[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, we represent the following is true:**

- **We have active operations and our principal asset is not cash or cash equivalents or our exchange listing.**
- **We have filed all periodic and timely disclosure documents that we are 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 either “\$5,000,000” or the**

amount that is equal to 10% of your market capitalization, to a maximum total dollar amount of \$10,000,000].

- We will not close this offering unless we reasonably believe we have raised sufficient funds to meet our business objectives and all liquidity requirements for a period of 12 months.
- We will not allocate proceeds from this offering to an acquisition that is a “significant acquisition” or “restructuring transaction” under securities law or to any other transaction that requires security holder approval”.

(b) Certification:

**“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 issuer and the securities being distributed and does not contain a misrepresentation.”**

## **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 you carry on or intend 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 issuer or 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 you expect 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 time 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 the available funds after the offering. If you plan to combine additional sources of funding with the offering proceeds to achieve your 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 those changes.

		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 you 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 you will use more than 10% of available funds to reduce or retire indebtedness and the indebtedness was incurred within the two 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 you 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 you 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 you will use the available funds for, including an estimate of anticipated costs,*
  - c. *state if you are conducting your own research and development, are subcontracting out the research and development or are 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 your 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 you previously made about how you were going to 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 your ability to achieve your 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 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 you have engaged a dealer in connection with the offering, state the following in bold:

**“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:

“If you purchase the securities distributed under this offering document from the issuer, you will have certain rights, some of which are described below. For advice about your rights, you should consult a lawyer.

If there is a misrepresentation in this offering document and you purchased securities from us under the listed issuer financing exemption, you have a contractual right to rescind your agreement to buy these securities.

The contractual right to rescind the agreement to buy the securities is available to you whether or not you relied on the misrepresentation.

If you intend to rely on the contractual right of rescission, you must exercise that right within strict time limitations. You must notify us of your intention to exercise your right to rescind the agreement within [state the period that is 180 days or greater, as set out in the purchase agreement] after you signed the agreement to purchase the securities.

In addition to this contractual right, you also have secondary market civil liability rights set out in securities legislation in Canada if there is a misrepresentation in this offering document or in any document filed by the issuer on or after [state the date that is the earlier of the date that is 12 months prior to the date of this offering document and the date that the issuer’s most recent audited annual financial statements were filed.]”

## **PART 6      ADDITIONAL INFORMATION**

### **14.    Additional information**

State the following in bold:

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

Provide the SEDAR+ website address and state that a security holder can access the issuer’s continuous disclosure from that site. If applicable, provide the issuer’s website address..

11. This instrument comes into force on \*.

## Annex B

### PROPOSED 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 the following section:*

#### **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(1)(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(1)(e), the exemption is not available to an issuer that intends to use the proceeds from the offering to complete a significant acquisition, a restructuring transaction or any other transaction that requires 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, securities convertible into listed equity securities, such as warrants, or securities convertible into units comprised of listed equity securities and warrants, such as special warrants or subscription receipts. However, a distribution of subscription receipts that are convertible only upon the issuer completing a significant acquisition, a restructuring transaction or any other transaction that requires security holder approval under corporate law, exchange requirements or the issuer's constating documents, would not be permitted under paragraph 5A.2(1)(e).

##### (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 all 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 all liquidity requirements for a period of 12 months.

(4) Filing of Form 45-106F[x] *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 45-106F[x] *Listed Issuer Financing Document* (Form 45-106F[x]). 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 45-106F[x] and certain of the issuer's continuous disclosure discloses all material facts about the issuer and 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 45-106F[x], 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 45-106F[x] and issued a news release stating that the Form 45-106F[x] 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 45-106F[x] contains a misrepresentation, purchasers of securities distributed under the listed issuer financing exemption have a contractual right of rescission against the issuer. We remind issuers that they are required to certify on the

first page of Form 45-106F[x] that it, 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 45-106F[x] and the date that the issuer's most recent audited annual financial statements were filed, contains disclosure of all material facts about the issuer and 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, providing purchasers under the listed issuer financing exemption a contractual right to rescind their agreement to purchase the securities.

The issuer would also be liable under secondary market liability provisions in Canadian securities legislation, both to any purchasers on the secondary market as well as to purchasers under the listed issuer financing exemption.

#### (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.

Subsection 6.3(3) of NI 45-106 provides an exemption from the requirement to complete Schedule 1 [*Confidential purchaser information*] of Form 45-106F1 for distributions made under the listed issuer financing exemption.

#### (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 45-106F[x] 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. 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.

### **3.13 Preparing the Form 45-106F[x]**

#### Numbering system and general guidance

The numbering of this section corresponds to the numbering of Parts and Items in Form 45-106F[x].

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

When preparing Form 45-106F[x], 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 45-106F[x] requires details about the offering, including the date by which the offering is expected to close (if known). We remind issuers that under paragraph 5A.2(1)(o) of NI 45-106, the final closing of the offering must occur no later than the day that is 45 days after the date the issuer issues and files the news release announcing the offering.

Part 1, Item 3 *Required statement, paragraph (a) Representations*

Item 3 of Part 1 of Form 45-106F[x] requires the issuer to state certain representations. The issuer and its management must ensure that the representations in paragraph (a) are true and will continue to be true until the closing of the offering as they are conditions to using the exemption.

Part 1, Item 3 *Required statement, paragraph (b) Certification*

Item 3 of Part 1 of Form 45-106F[x] 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 45-106F[x] and the date that the issuer's most recent audited annual financial statements were filed, contains disclosure of all material facts about the issuer and securities being distributed and does not contain a misrepresentation.

We remind issuers that purchasers under the listed issuer financing exemption have contractual rights of rescission in the event of a misrepresentation in the issuer's Form 45-106F[x] or in the issuer's continuous disclosure filed in the specified period.

In addition, we remind issuers and their executives that they are liable under secondary market liability provisions for the disclosure in the Form 45-106F[x], both to purchasers under the exemption and to purchasers in the secondary market.

Part 2, Item 6 *Material facts*

Item 6 of Part 2 of Form 45-106F[x] requires disclosure of any material fact about the issuer or the securities being distributed that has not already been disclosed in the Form 45-106F[x] 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 45-106F[x], 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 45-106F[x] 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 45-106F[x] 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 all 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 45-106F[x]) and all liquidity requirements for a period of 12 months.

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

Item 9 of Part 3 of Form 45-106F[x] 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 proceeds from the distribution 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 that requires approval of any security holder under corporate law, any exchange requirement or the issuer's constating documents.

### Part 5, Item 13 Purchasers' rights

Item 13 of Part 5 of Form 45-106F[x] 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 contractual rights and rights under secondary market liability in Canadian securities legislation.

3. These changes become effective on \*.

**Annex C**

**PROPOSED 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 \*.

## Annex D

### PROPOSED 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 [\*].