

New Prospectus Exemption for Listed Issuers

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On September 8, 2022, the Canadian Securities Administrators [announced](#) amendments to [National Instrument 45-106 Prospectus Exemptions](#), which introduce the Listed Issuer Financing Exemption (the “Exemption”), a new prospectus exemption expected to come into effect on November 21, 2022. By relying on issuers’ continuous disclosure record and a simplified disclosure document, the Exemption is anticipated to reduce the regulatory burden and associated costs of certain financings for reporting issuers listed on Canadian stock exchanges.

Qualification Criteria

To qualify for the Exemption, an issuer must:

1. be a reporting issuer and have been a reporting issuer in at least one jurisdiction of Canada for the 12 months immediately before the date of the news release announcing the financing;
2. have listed equity securities on a recognized exchange in Canada;
3. have active business operations (e.g., its operations have not ceased, and it is not a capital pool company or special purpose acquisition company) and not have recently completed a restructuring transaction with a person or company that did not have active business operations;
4. not be an investment fund;
5. have filed all timely and periodic disclosure documents as required under applicable Canadian securities laws; and
6. reasonably expect that it will have available funds to meet its business objectives and liquidity requirements for a period of 12 months following the distribution.

Offering Parameters

The Exemption will only apply to offerings within the following parameters:

1. The total dollar amount of the distribution, combined with all other distributions under the Exemption during the 12 months immediately preceding the news release announcing the distribution, must not:

- a) exceed the greater of (i) \$5 million, or (ii) 10% of the issuer's listed equity securities, to a maximum of \$10 million; or
 - b) 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 announcing the distribution.
2. The security being distributed must be a listed equity security or a unit consisting of a listed equity security and a warrant exercisable to acquire a listed equity security.
 3. The issuer must not allocate the available funds to (i) a significant acquisition (as defined in Part 8 of [National Instrument 51-102 Continuous Disclosure Obligations](#)), (ii) a restructuring transaction, or (iii) any other transaction for which the issuer seeks approval of any security holder.

Disclosure Requirements

To rely on the Exemption, an issuer must meet the following disclosure requirements:

1. The issuer must issue and file a news release that announces the offering and contains prescribed language,¹ and the issuer must close the financing within 45 days of such news release.
2. The issuer must file a completed Form 45-106F19 *Listed Issuer Financing Document* (the "Form"), which is the streamlined disclosure document for the Exemption, in accordance with the following requirements:
 - a) the Form must be filed before soliciting an offer to purchase and no later than three business days after the date of the Form;
 - b) if the issuer has a website, the Form must be posted on its website, and the issuer must take reasonable steps to ensure that prospective purchasers are aware of the means of accessing the Form; and
 - c) the Form, together with all documents filed under Canadian securities laws within the earlier of (i) 12 months before the date of the Form and (ii) the date that the issuer's most recent audited annual financial statements were filed, must disclose all material facts relating to the securities being distributed under the Exemption and must not contain a misrepresentation.
3. The issuer must include prescribed language¹ in any initial written communication with a prospective purchaser.
4. The issuer must file a Form 45-106F1 *Report of Exempt Distribution* disclosing information related to the financing and the purchasers within 10 days of the distribution.

¹ Prescribed language: "There is an offering document related to this offering that can be accessed under the issuer's profile at www.sedar.com and at [*include website address and provide link, if the issuer has a website*]. Prospective investors should read this offering document before making an investment decision."



These streamlined disclosure requirements should provide listed issuers that qualify for the Exemption a more efficient avenue of financing for smaller capital raises, enabling them to issue freely-tradeable securities (subject to certain restrictions) with reduced regulatory hurdles.

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