

# CLIENT ALERT

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## THE LISTED ISSUER FINANCING EXEMPTION

by Lipika Singh and Andre G. Poles

The Canadian Securities Administrators (“CSA”) recently made it easier and more cost-effective for issuers listed on a Canadian stock exchange to raise the greater of \$5MM or 10% of the issuer’s market capitalization, up to a maximum of \$10MM.

The *Listed Issuer Financing Exemption*, effective November 21, 2022, was designed by the CSA to provide listed issuers, especially smaller issuers, with another alternative when accessing the capital markets without the cost and time to prepare a short. This new exemption eases the burden on listed issuers by anchoring investor protection in the issuer’s continuous disclosure filings, a news release, and a small offering document (the *Listed Issuer Financing Document* – Form 45-106F19) as opposed to the lengthier prospectus, which requires a dealer to be engaged and conduct the diligence process before it can sign the prospectus certificate. Issuers relying on this exemption can offer the securities through a dealer, although it is not required. Issuers conducting their own offerings under this exemption should carefully ensure their distribution plan complies with existing securities rules about dealer registration requirements.

Due to the heavy reliance on the issuer’s continuous disclosure record, the listed issuer financing exemption is only available to reporting issuers that have been listed for at least 12 months preceding the date of the offering and have filed all required periodic and timely disclosure documents. Any issuer whose principal asset is cash, cash equivalents, or its exchange listing (i.e., a capital pool company, a special purpose acquisition company, or a growth acquisition corporation) cannot use this new exemption.

In addition to complying with its ongoing obligations relating to material non-public information, before soliciting offers to purchase, an issuer relying on this exemption must:

1. Issue and file a news release announcing the offering and providing prospective investors with information on where to access the related offering document.
2. File a completed Form 45-106F19 (*Listed Issued Financing Document*). The completed form must be filed no later than three business days after the date of the form.
3. Post the completed Form 45-106F19 on the issuer’s website if it has one.

The securities issued under this exemption must be either a listed equity security<sup>1</sup> or a unit consisting of a listed equity security and a warrant convertible into a listed equity security. The issuer must close the distribution no later than the 45<sup>th</sup> day after the date

<sup>1</sup>“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.

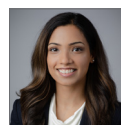
on which the issuer filed the news release. If a material change occurs after the issuer has filed a news release, but before the distribution is complete, the issuer must immediately cease the distribution until it is in compliance with its obligations under National Instrument 51-102 (*Continuous Disclosure Obligations*), an amendment to the completed Form 45-106F19 has been filed, and a further news release stating an amendment to the completed form has been filed.

There is no minimum offering amount under the exemption, but the issuer must have sufficient funds available to meet its business objectives and liquidity requirements for 12 months following the completion of the distribution. An issuer can raise the greater of \$5MM or 10% of the issuer’s market capitalization on the date of the news release, up to a maximum of \$10MM, so long as when combined with all other distributions made under this exemption during the 12 months before the date of issuance, the distribution does not result in an increase of more than 50% in the issuer’s outstanding listed securities, as of the date that is 12 months before the date of the news release.

Securities distributed under the listed issuer financing exemption, subject to having obtained applicable exchange approvals, have the advantage of being freely tradeable and can be distributed to anyone as they are not subject to resale restrictions under National Instrument 45-102 (*Resale of Securities*). While there is no restriction on who can invest in securities made available under this prospectus exemption, an issuer cannot allocate the proceeds collected under this exemption to complete a significant acquisition, a restructuring transaction, or any other transaction for which it seeks security holder approval. The CSA still expects issuers to use the prospectus regime, where capital is raised for material transactions to ensure prospective investors have full, true, and plain disclosure about the intended use of proceeds.

The newly listed issuer financing exemption provides a less expensive and quicker alternative to short-form or shelf prospectuses and furthers the CSA’s objective of facilitating efficient capital raising.

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