

LISTED ISSUER FINANCING EXEMPTION: CANADIAN SECURITIES ADMINISTRATORS INTRODUCE AMENDMENTS TO FACILITATE CAPITAL RAISING WITH A FOCUS ON SMALL REPORTING ISSUERS

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The Canadian Securities Administrators (the “**CSA**”) [announced the introduction of a prospectus exemption](#) which will be available to reporting issuers as of November 21, 2022 (the “**Listed Issuer Financing Exemption**”).

The Listed Issuer Financing Exemption seeks to provide a more efficient and cost-effective method of capital raising for reporting issuers that have securities listed on a Canadian stock exchange and are compliant with disclosure requirements under Canadian securities legislation. The Listed Issuer Financing Exemption will allow eligible issuers to raise limited amounts of capital from the public based on the issuers’ existing continuous disclosure record, by filing an “Offering Document” in connection with the offering. The securities issued to the public pursuant to the Listed Issuer Financing Exemption will be freely tradeable listed securities.

The Listed Issuer Financing Exemption is described in more detail below.

Issuer Eligibility

The Listed Issuer Financing Exemption is only available for reporting issuers that:

- have been a reporting issuer for at least 12 months prior to the date of the news release announcing the offering;
- have equity securities listed on a recognized stock exchange in Canada;
- have filed all required disclosure documents;
- have an active operating business and whose principal asset is not cash during the preceding 12 months (which excludes capital pool companies, special purpose acquisition companies and growth acquisition companies from being eligible); and
- are not investment funds.

The issuer must also 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 made under the Listed Issuer Financing Exemption.

Offering Requirements and Limitations

Only listed equity securities or units consisting of listed equity securities and warrants convertible into listed equity securities are permitted to be distributed under the Listed Issuer Financing Exemption. Additionally, as of the date of the news release announcing the offering, the total dollar amount of such offering, when combined with all other distributions made under the Listed Issuer Financing Exemption during the preceding 12 months, must not exceed the greater of: (i) CDN\$5,000,000; and (ii) 10% of the issuer's market capitalization as of the date of the news release, to a maximum of CDN\$10,000,000. The distribution, when combined with all other distributions made under the Listed Issuer Financing Exemption during the last 12 months immediately prior to the date of the issuance of the news release, must 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 prior to the news release). Additionally, an offering made in reliance on the Listed Issuer Financing Exemption must close within 45 days of the issuance and filing of the news release announcing the offering.

The proceeds of an offering made under the Listed Issuer Financing Exemption cannot be used for certain transactions, being significant acquisitions under Part 8 of National Instrument 51-102 *Continuous Disclosure Obligations* ("**NI 51-102**"), restructuring transactions, or any other transaction for which the issuer seeks security holder approval.

Disclosure Requirements

The issuer must issue and file a news release announcing the offering, with such news release containing certain prescribed language (the "**Offering News Release**"). The issuer must also file a completed Form 45-106F19 *Listed Issuer Financing Document* (the "**Offering Document**") with the applicable securities regulatory authorities or regulators. The Offering Document contains key information about the offering, the securities being offered, the issuer's use of available funds and the applicable purchasers' rights. The Offering Document must be filed no later than three business days after the date of the Offering Document. Prior to soliciting offers to purchase, the issuer must have, prepared, filed and issued the Offering News Release; and prepared and filed the completed Offering Document on SEDAR. Within ten 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 each jurisdiction in which a distribution has been made.

It is worth noting that both the chief executive officer and chief financial officer of the issuer must certify that the Offering Document, together with all documents filed under Canadian securities laws within the earlier of: (i) 12 months before the date of the Offering Document; and (ii) the date of the issuer's most recent audited

annual financial statements, disclose all material facts relating to the securities being distributed, and does not contain a misrepresentation.

Where an issuer has issued an Offering News Release and a material change occurs prior to the completion of the offering, the issuer must cease the distribution until it complies with NI 51-102 in connection with the material change and files an amendment to the Offering Document.

Liability for Misrepresentation

If the Offering Document contains a misrepresentation, purchasers of securities issued pursuant to the Listed Issuer Financing Exemption will have either a right to rescind their purchase of securities or a right to damages against the issuer (and in certain jurisdictions, against other persons). In addition, the issuer will be liable to purchasers under the secondary market liability regime if there is a misrepresentation in the issuer's continuous disclosure documents filed during the applicable period referred to in the issuer's certificate.

Conclusion

The CSA's introduction of the Listed Issuer Financing Exemption seeks to respond to the financing needs of smaller issuers in a more (cost) efficient manner than the current exemptions provide for, while maintaining investor protection.

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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