

Section 1

Identification questions submitted via e-form through the CSA website

October 21, 2026 - Delivered via e-form through the CSA website

Publication title

Proposed Amendments to National Instrument 45-106 Prospectus Exemptions relating to the Listed Issuer Financing Exemption

Comment addressed to participating jurisdictions:

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

Identification

Instrument Number:

45-106

Publication Date:

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Email:

[REDACTED]

Place of residence:

Ontario, CA

Are you commenting on behalf of an organization?

Yes

Organization Name:

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Section 2

Questions answered via e-form through the CSA website

General Comments

Please see attached letter (in replacement of originally uploaded document).

Section 3

Uploaded documents via e-form through the CSA website

The uploaded document continues on the next page

October 21, 2026

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WITHOUT PREJUDICE

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

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Dear Sir/Mesdames,

Re: CSA Notice and Request for Comment – Proposed Amendments to National Instrument 45-106 Prospectus Exemptions Relating to the Listed Issuer Financing Exemption

We are pleased to provide the following comments in response to the CSA Notice and Request for Comment (the “**Notice**”) published by the Canadian Securities Administrators (the “**CSA**”) on July 23, 2026 with respect to proposed amendments to National Instrument 45-106 Prospectus Exemptions, including Form 45-106F19 Listed Issuer Financing Document, and proposed changes

to Companion Policy 45-106CP Prospectus Exemptions (collectively, the “**Proposed Amendments**”).

We thank you for the opportunity to comment on the Proposed Amendments. This letter represents the general comments of certain individual members of the Securities and Capital Markets practice group at Borden Ladner Gervais LLP (“**BLG**”). Our comments are not those of BLG generally or any client of the firm. Our comments are being submitted without prejudice to any position taken or that might be taken in the future by BLG on our own behalf or on behalf of any client.

Where our comments respond to specific questions posed in the Notice, we have included the text of the question for ease of reference. Capitalized terms used in this letter that are not defined have the meanings attributed to them in the Notice.

Part A – General Comments

We are generally supportive of the Proposed Amendments and their objective of facilitating capital raising by listed reporting issuers while balancing investor protection and regulatory burden. We support codifying the principal relief reflected in Coordinated Blanket Order 45-935 *Exemptions from Certain Conditions of the Listed Issuer Financing Exemption* (the “**Blanket Order**”) as well as extending the exemption to qualifying successor issuers, simplifying the certificate date, permitting marketed offerings to proceed before the offering price is fixed, and extending the closing period from 45 days to 60 days. We have also suggested some further amendments to the exemption in this submission in hopes of maximizing the utility of this very helpful capital raising tool.

The increased use of the listed issuer financing exemption following the Blanket Order supports a flexible, proportionate and nationally harmonized framework. The exemption is most useful when it permits eligible reporting issuers to access capital promptly while relying on their continuous disclosure record and a concise offering document. Conditions that are uncertain, duplicative or difficult to apply at the outset of a financing may undermine that objective without a commensurate investor protection benefit.

Our principal recommendations are that the CSA: (i) increase the dilution limit from 50% to 100% and provide greater flexibility in the related calculations; (ii) permit limited pre-marketing to accredited investors prior to the commencement of an offering (similar to the rules governing any other private placement); (iii) change the SEDAR+ filing requirements such that the Form 45-106F19 offering document (the “**Form**”) may be filed same day rather than prior to solicitations commencing; (iv) eliminate the issuer website-posting condition so it does not delay time-sensitive solicitation; (v) replace the 12-month liquidity expectation with a six-month period; (vi) clarify that the liquidity condition requires only a reasonable expectation at the time of the offering and is not a regulatory assurance of future financial condition; and (vii) permit the offering price to be omitted without requiring an expected price range in the announcing news release.

Part B – Response to CSA Questions

1(a). Do you think the proposal to modify the sufficiency of funds condition, combined with enhanced disclosure in the offering document, addresses the concerns raised?

Revising the sufficiency of funds condition such that an issuer must only reasonably expect to have available funds to meet its short-term liquidity requirements is a positive change that will partially address the concerns raised. However, in our view, a 12-month condition risks moving beyond investor disclosure and into regulatory risk management of an issuer's financing strategy. Short-term liquidity is better defined with reference to a six-month period.

The condition should remain a reasonable-expectation test assessed when the offering is made. Liquidity may change after an offering for reasons that could not reasonably have been anticipated. That subsequent change should not call into question the issuer's original reliance on the exemption. Management must have a reasonable basis for its expectation when the offering proceeds, and investors should receive clear disclosure of the assumptions, uncertainties and risks relevant to that expectation.

Recommendation: Replace the current 12-month period with a six-month period. Clarify that the test is based on the issuer's reasonable expectation at the time of the offering, is not a CSA assessment of business viability, and is not invalidated solely because circumstances change after the offering.

1(b). Is there additional disclosure regarding an issuer's financial condition that should be required under the exemption?

We do not recommend significant additional disclosure requirements. The proposed amendments to Form already require detailed disclosure where the issuer's financial statements include, or may next include, material uncertainties relating to going concern. Additional prescriptive requirements could make the offering document longer and more costly without necessarily improving its usefulness.

The Form could instead require a concise statement of: (i) the period over which management reasonably expects available funds to satisfy liquidity requirements; (ii) the material assumptions underlying that conclusion; and (iii) any material financing source included in available funds that is subject to a condition precedent. The disclosure should make clear that a reasonable expectation is not a guarantee and may be affected by future events.

Recommendation: Use focused, principles-based disclosure tied to the issuer's six-month liquidity assessment rather than adding a broader checklist of financial condition disclosure.

1(c). Do you think a better alternative would be to shorten the current condition to a period of less than 12 months? Would a 6-month period be more appropriate?

Yes. We support shortening the current condition to six months. A six-month period would provide an objective and understandable threshold while better reflecting the financing cycles and near-

term milestones of smaller issuers. It would reduce the risk that the condition prevents a financing even where the offering document fully discloses the issuer's liquidity position, financing needs and related risks.

Recommendation: Replace the 12-month condition with a six-month reasonable-expectation test. Confirm that the issuer is not required to guarantee liquidity throughout that period and that the assessment is made using facts and reasonable assumptions available when the offering proceeds.

1(d). Should the CSA consider removing the sufficiency of funds condition altogether, or does the fact that retail investors may be solicited under the exemption justify retaining this condition?

We recognize the rationale for retaining a proportionate condition because the issuer is actively soliciting investors. However, the condition should remain limited and should not become a substantive regulatory judgment about whether an issuer should raise capital or how management should manage liquidity risk. Full disclosure of the issuer's risks, financial condition, use of proceeds and reasonable liquidity assumptions is the more appropriate investor protection mechanism.

Recommendation: Retain a six-month reasonable-expectation condition, while clarifying that it is not a regulatory determination of viability, does not guarantee future liquidity and does not require funding of all longer-term business objectives.

2(a). Should the exemption permit the distribution of convertible debentures that are convertible into listed equity securities?

We are supportive of this proposal. We are aware of a number of issuers with interest in issuing convertible debentures pursuant to the LIFE exemption. Convertible debentures are a familiar capital-raising instrument and may provide issuers and investors with useful flexibility, particularly where market conditions make an immediate equity financing less attractive. Excluding them unnecessarily limits the exemption's practical utility.

Recommendation: Expand the exemption to include convertible debentures convertible into listed equity securities, subject to focused plain-language disclosure and proportionate conditions.

2(b). Are retail investors sufficiently familiar with convertible debentures or are they too complicated to be considered under the exemption?

Convertible debentures can be more complex than common shares or units, but that complexity can be addressed through concise, prominent and standardized disclosure. Relevant features include principal amount, interest rate, maturity, conversion price or formula, redemption rights, security and ranking, events of default, and any right to force conversion or repayment in securities.

Recommendation: Add a tailored Form schedule for convertible debentures, including a plain-language summary of conversion mechanics, dilution, ranking, repayment and key risks.

2(c)(i). If convertible debentures are permitted, should additional conditions be imposed, including conditions relating to issuance price, interest rate and conversion terms?

Baseline conditions may be appropriate where they align with applicable exchange requirements, but the exemption should not create a duplicative or more restrictive pricing regime. Interest rate, maturity and conversion price are commercial terms that vary with market conditions and issuer circumstances.

Recommendation: Require compliance with applicable exchange policies and disclosure of material terms. Avoid separate CSA caps or floors unless a specific concern is not addressed by exchange review and disclosure.

2(c)(ii). Should securities issuable on conversion be excluded from the 50% dilution calculation if the debentures are not convertible within 60 days after closing?

All convertible securities should be excluded from the dilution calculation, irrespective of them being convertible within 60 days after closing, as discussed further below.

Recommendation: Exclude underlying securities, subject to proportionate anti-avoidance language.

3(a). Is the dilution limit in the Proposed Amendments appropriate?

The dilution limit and its related calculations have proven challenging to apply in practice, particularly for smaller issuers. The interaction between the 50% dilution limit, the capital-raising limit and the applicable market value calculation can prevent issuers from taking full advantage of the exemption even where the nominal financing limits would otherwise permit a larger offering. Notably, the dilution limit appears far and away to create the greatest hurdle for Canadian issuers looking to undertake a LIFE offering. It in essence negates any utility offered by the larger dollar limit thresholds in the Blanket Order, frustrating the ability for smaller issuers (or even mid-cap issuers) to raise capital anywhere close to the \$25 million threshold.

In addition, the market value formula used for the purpose of determining the aggregate market value of securities under the LIFE exemption has proven problematic. Market-based calculations can be particularly problematic for thinly traded issuers. The 20-day volume-weighted average price or similar market price measure may be volatile, may not reflect the price at which meaningful capital can be raised and adds operational complexity at the outset of a time-sensitive transaction. Capacity can also be difficult to determine where prior offerings, warrants, convertible securities, share consolidations or other capitalization changes must be taken into account.

Recommendation: Reconsider and simplify the dilution framework so it is readily calculable, predictable and does not unduly constrain smaller issuers by increasing the

dilution limit from 50% to 100% of the issuer's listed equity securities. The aggregate market value calculation should be based on the closing price on the trading day before the announcement of the offering and not a 20-day VWAP.

3(b). If not, what other dilution limits should the CSA consider and why?

In addition to increasing the dilution limit from 50% to 100% of the issuer's listed equity securities, we recommend excluding all convertible securities (warrants/convertible debentures) from the calculation. Based on our experience, we have found that many issuers already exclude convertible securities from the calculation by including a 60-day restriction on exercise of convertible securities and so excluding all convertible securities should not significantly impact the LIFE Exemption but would simplify the offering mechanics of issuers.

Recommendation: Exclude all convertible securities, regardless of when they become exercisable, from the dilution limit calculation.

4. Should issuers be required to include the expected range of the offering price in the news release announcing the offering?

No. We support expressly permitting an issuer to omit, or “bullet”, the offering price in the initial offering document for a marketed offering. We do not support requiring the announcing news release to include an expected price range. Before bookbuilding, that range may not be reasonably determinable and may quickly become stale as market conditions and investor demand develop. A required range could constrain price discovery, create avoidable amendment obligations and reduce the practical benefit of allowing the price to be omitted.

Investor protection can be achieved by requiring an amended offering document containing the final price and related information to be filed promptly once pricing is determined and before a purchaser enters into a binding purchase agreement. The news release can state clearly that the price has not yet been determined and that an amended offering document will be filed.

Recommendation: Remove the expected price-range requirement. Permit the price to be omitted from the initial offering document, provided the news release states that pricing remains undetermined and the amended offering document is filed before any binding purchase agreement, and in any event no later than the second business day after pricing.

Part C – Additional Comments

Strict Timelines, SEDAR+ Filing and Website Posting

We have encountered practical difficulties with the strict sequencing requirements under the LIFE exemption, including the requirement that issuers not solicit an offer to purchase securities in the offering until it has filed the announcement news release and offering document on SEDAR+.

These difficulties are acute in cross-border marketed offerings. For example, a Vancouver-based issuer may need to contact prospective investors in Europe immediately after the Canadian market

closes because the European business day is already advanced. At that moment, the announcing news release and offering document may have been filed or transmitted for filing but may not yet appear on the issuer's website. Requiring website posting before solicitation may therefore delay legitimate marketing during a narrow window without materially improving investor access to the filed disclosure. Having the Form offering document posted on an issuer's website also creates issues under applicable U.S. securities laws. As such, it is our view that website posting should not be a condition of the exemption at all. SEDAR+ is the public filing platform, and a news release can direct investors to the filed offering document.

In addition to removing the website posting requirement, we recommend amending the LIFE exemption such that SEDAR+ filing of the offering document and news release is only required to be made same day as the launch of the offering, not in advance of solicitations. The only condition of solicitation should be that a news release announcing the offering has been issued. We note that this sequencing aligns with the approach taken under other offering frameworks. For traditional private placements, issuers and underwriters can solicit orders upon announcement, without any prior filings.

Recommendation: Remove website and SEDAR+ posting of the offering document as a condition precedent to solicitation, provided that the issuer has news released the offering and the offering document is posted to SEDAR+ same day. The news release should serve as the trigger to permit solicitation. Eliminate the issuer website-posting condition so it does not delay time-sensitive solicitation.

Pre-Marketing to Accredited Investors

To better support the ability of issuers to complete a successful LIFE offering, we recommend permitting issuers and dealers to pre-market LIFE offerings confidentially to a limited number of institutional and other accredited investors prior to announcement. This pre-marketing is extremely useful for determining the best offering terms and ultimately resulting in a successful transaction. This approach aligns with the accredited investor exemption where issuers are permitted to market the offering confidentially to those who qualify as accredited investors and do not risk a failed transaction.

Recommendation: Permit confidential pre-marketing of LIFE offerings to accredited investors prior to the news release announcing the offering.

Other Streamlining Amendments

We support extending the closing period from 45 days to 60 days. The continuing requirement to amend the offering document following a material change addresses the risk of stale disclosure.

We also support permitting successor issuers to use the exemption where the predecessor reporting issuer satisfies the prescribed reporting history. The Companion Policy should include an example confirming how reporting history, prior distributions and dilution apply following a qualifying reorganization.

* * * * *

Thank you for the opportunity to comment on the Proposed Amendments. Please do not hesitate to contact any of the undersigned if you have any questions with respect

Sincerely,

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