

REGULATION TO AMEND REGULATION 45-106 RESPECTING PROSPECTUS EXEMPTIONS

Securities Act

(chapter V-1.1, s. 331.1, par. (1), (3), (8), (11), (32.1) and (34))

1. Section 1.1 of Regulation 45-106 respecting Prospectus Exemptions (chapter V-1.1, r. 21) is amended by replacing, in paragraph (o) of the definition of the expression “accredited investor”, the words “or, in Québec,” with the words “, except in Québec, or”.
2. Section 2.1 of the Regulation is amended by replacing, in subparagraphs (ii) and (iii) of subparagraph (b) of paragraph (3), the words “or, in Québec,” with the words “, except in Québec, or”.
3. Section 2.42 of the Regulation is amended by replacing, in subparagraphs (a) and (b) of paragraph (2), the words “or, in Québec,” with the words “, except in Québec, or”.
4. The Regulation is amended by inserting, after section 5.3, the following part:

“PART 5A LISTED ISSUER FINANCING EXEMPTION

5A.1. Interpretation

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.

5A.2. Listed issuer financing exemption

Refer to Appendix E of Regulation 45-102 respecting Resale of Securities (chapter V-1.1, r. 20) First trades are subject to a seasoning period on resale.

This text box does not form part of this Regulation and has no official status.

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, except in Québec, or securities regulatory authority;

(iii) an undertaking to the regulator, except in Québec, 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 Regulation 51-102 respecting Continuous Disclosure Obligations (chapter V-1.1, r. 24);

(ii) a restructuring transaction as such term is defined in Regulation 51-102 respecting 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:

(a) a listed equity security;

(b) a unit consisting of a listed equity security and a warrant;

(c) 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];
- (iii) if the issuer has a website, posts the completed Form 45-106F[x] to its website;
- (k) the completed Form 45-106F[x] 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] 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] 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 45th 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] 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.

5A.3. Material changes during distribution

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 Regulation 51-102 respecting Continuous Disclosure Obligations (chapter V-1.1, r. 24) in connection with the material change,
- (b) files an amendment to the previously filed Form 45-106F[x], and

(c) issues and files a news release that states that an amendment to the Form 45-106F[x] addressing the material change has been filed.

5A.4. Listed issuer financing exemption – civil liability for secondary market disclosure

(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] 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 (R.S.B.C. 1996, c. 418); and

(b) documents that purport or appear to be completed in accordance with Form 45-106F[x], 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.”.

5. Section 6.1 of the Regulation is amended by adding, after subparagraph (j) of paragraph (1), the following:

“(k) section 5A.2.”.

6. Section 6.3 of the Regulation is amended by adding, after paragraph (2), the following:

“(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.”.

7. Form 45-106F1 of the Regulation is amended by adding, in Schedule 1 and after the fourth paragraph under the title “**INSTRUCTIONS FOR SCHEDULE 1**”, the following:

“**Reports filed under paragraph 6.1(1)(k)** – For reports filed under paragraph 6.1(1)(k) of Regulation 45-106 respecting Prospectus Exemptions, the issuer is not required to complete Schedule 1.”.

8. Form 45-106F15 of the Regulation is amended, in part 3:

(1) by replacing, in item 18, 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	\$	\$	\$	\$	\$

”;

(2) by replacing, wherever they appear in the French text of items 19 and 20, the words “d’espèces ou de quasi-espèces” with the words “de trésorerie ou d’équivalents de trésorerie”.

9. The Regulation is amended by adding, after Form 45-106F[x], the following:

**“FORM 45-106F[x]
LISTED ISSUER FINANCING DOCUMENT**

INSTRUCTIONS

1. Overview of the offering document

This Form 45-106F[x] is the form of offering document you must use for a distribution under subsection 5A.2(1) of Regulation 45-106 respecting Prospectus Exemptions (chapter V-1.1, r. 21). 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 Regulation 51-102 respecting Continuous Disclosure Obligations (chapter V-1.1, r. 24).

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 Regulation 45-106 respecting 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 Regulation 33-105 respecting Underwriting Conflicts (chapter V-1.1, r. 11), 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.”.

10. This Regulation comes into force on (*indicate here the date of coming into force of this Regulation*).