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NEWS

CSA Introduces New Prospectus Exemption: The Listed Issuer Financing Exemption

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On September 8, 2022, the Canadian Securities Administrators ("CSA") introduced a new proposed prospectus exemption available to reporting issuers that are listed on a Canadian stock exchange. The Listed Issuer Financing Exemption (the "Exemption") is designed to allow reporting issuers easier access to equity financing from public markets. The Exemption is intended to reduce regulatory burden and streamline the disclosure process by relying on the reporting issuer's previously filed continuous disclosure documents. Securities issued under this Exemption will become freely tradeable upon issuance. Subject to receiving ministerial approval, the Exemption and corresponding amendments to applicable national instruments will become effective on November 21, 2022.

The Listed Issuer Financing Exemption: Requirements and Limitations

The Exemption reduces the regulatory burden of having to prepare a prospectus. Instead, reporting issuers can rely on previously filed disclosure documents to raise capital along with a short offering document.

To qualify for the Exemption, an issuer must:

- Be a reporting issuer in Canada for at least 12-months and have its securities listed on a recognized stock exchange
- Have all periodic and timely disclosure documents filed as required
- Have an active business and principal assets cannot be in cash or cash equivalent, or an exchange listing
- File Form 45-106F1 in each jurisdiction where a distribution has occurred
- Prepare an offering document in the prescribed form (Form 45-106F19) and issue a corresponding news release.

The Exemption is subject to the following limitations:

- The total dollar value of a distribution under the new Exemption (combined with any other distributions under the same Exemption within the last 12-months) cannot exceed:
  - The greater of either $5 million dollars or 10% of the issuer's market capitalization, up to a maximum of $10 million; or result in an increase of more then 50% of the issuer's outstanding listed equity securities calculated to a period of 12-months prior to the date of the news release.
- Issuers cannot be investment funds or issuers that are or have been capital pool companies, special

purpose acquisition companies, or growth acquisition companies within the preceding 12 months
- Funds raised are subject to limitations on use, excluded uses include significant acquisitions and restructurings
- Securities qualifying under the exemption are limited to listed equity securities and units consisting of listed equity securities and warrants convertible into listed equity securities

Liability

The offering document will not be reviewed by the CSA but the CSA is imposing statutory liability on the issuer for any misrepresentations in the offering document.

Form 45-106F19 must also contain prescribed language that provides specific investor protections including the right to rescind the purchase and the right to damages in the event of a misrepresentation.

Summary

The Exemption removes some of the regulatory burdens that accompany prospectus preparation. The Exemption will likely be a more cost-effective way for smaller reporting issuers to access public markets. The Exemption achieves these goals by allowing reporting issuers to rely on previously filed continuous disclosure documents and a short offering document as opposed to preparing a full prospectus. It is worth repeating that the burden of liability shifts more to the issuer as the offering documents will not reviewed by the CSA.

One of the greatest advantages to this is that the securities offered under the Exemption become freely tradable equity securities.

McLeod Law' Securities and Capital Market's Group is happy to assist or answer questions related to the Listed Issuer Financing Exemption.