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VIA EMAIL

November 18, 2021

British Columbia Securities Commission
701 West Georgia Street
P.O. Box 10142, Pacific Centre
Vancouver, BC V7Y 1L2

Attention: Larissa M. Streu, Senior Legal Counsel, Corporate Finance
Leslie Rose, Senior Legal Counsel, Corporate Finance
Michael Moretto, Deputy Director, Corporate Disclosure

Dear Sirs / Mesdames:

Re: Comments on Proposed Amendments to National Instrument 45-106 Prospectus Exemptions to introduce the Listed Issuer Financing Exemption

We are writing in response to your email on October 27, 2021 requesting comments on the Canadian Securities Administrators' notice published on July 28, 2021 proposing to adopt a new prospectus exemption, the Listed Issuer Financing Exemption (the "[Notice](#)"). We provide the following comments to the British Columbia Securities Commission (the "**BCSC**").

General Comments

As a general comment we are extremely supportive of the proposal and believe that this new exemption will make it easier for small reporting issuers to access capital in Canada. Allowing smaller reporting issuers to raise capital quickly and without having a hold period on the shares, without the time and cost associated with a prospectus, is a positive addition to the regulatory framework.

Barriers to issuers utilizing the Listed Issuer Financing Exemption Comments

We think the following three conditions to accessing the Listed Issuer Financing Exemption, as proposed, will likely be a barrier to issuers utilizing the Listed Issuer Financing Exemption and should be reconsidered:

1. **The issuer must have sufficient funds to last 12 months after the offering.** Required disclosure:
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.

Comments: The conditions associated with the Listed Issuer Financing Exemption, including maximum total dollar amount, suggest that it is intended for use by junior issuers. Junior issuers typically raise funds not to last a specific time frame, but rather to fund a particular business milestone and associated G&A. In many cases, junior issuers will raise just enough money to fund that milestone, in hopes that by completing the milestone the issuer will be able to raise funds at a higher valuation (and with less dilution to shareholders) after completing the milestone. The condition that sufficient funds be raised to last 12 months would be inconsistent with that approach.

We suggest that this condition be replaced with a requirement to “comply or explain”, whereby issuers are permitted to either make the above statement or, if the issuer does not expect to have sufficient funds to last 12 months, disclose the number of months it does expect to last and its expectations as to how additional funds may be obtained.

2. **Restriction on use of proceeds.** Required disclosure: *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”.*

Comments: We suggest that, instead of prohibiting use of the Listed Issuer Financing Exemption to raise funds for these purposes, the exemption should require disclosure of the significant acquisition or restructuring transaction in sufficient detail to enable reasonable investors to make an investment decision, including disclosure of risks.

3. **The issuer must have been a reporting issuer for 12 months.**

Comments: Considering the rigid process for a company to become listed and a reporting issuer we find this requirement to be an unnecessary barrier. It contradicts the objective of this proposal to benefit small issuers as they are often looking to grow and raise more capital within the first 12 months of becoming a reporting issuer.

Question 1 Comments

Questions 1: *Under the Proposed Amendments, the total dollar amount that an issuer can raise using the Listed Issuer Financing Exemption would be subject to the following thresholds:*

(a) the greater of 10% of an issuer’s market capitalization and \$5,000,000

(b) the maximum total dollar limit of \$10,000,000

(c) a 100% dilution limit.

Are all of these thresholds appropriate, or should we consider other thresholds?

Comments: We would be supportive of increasing the limits on how much an issuer can raise pursuant to the exemption as we are unsure of the policy rationale for imposing a \$5 million limit.

Question 6 Comments

Question 6: *Over the last several years, the CSA has tried to address various capital raising challenges by introducing a number of streamlined prospectus exemptions targeted to reporting issuers with listed equity securities, including the existing security holder exemption and the investment dealer exemption. The use of these exemptions has been limited. We have heard from market participants that the existence of these rarely used prospectus exemptions may contribute to the complexity of the exempt market regime. If we adopt the proposed Listed Issuer Financing Exemption, should we consider repealing any of these other exemptions?*

Comments: We agree and believe that rarely-used exemptions should be repealed to reduce the complexity of the market regime.

Please do not hesitate to contact the undersigned should you have any questions relating to any of the foregoing.

Yours truly,

DuMOULIN BLACK LLP

Per:



Jason T. Sutherland*

Per:



David Gunasekera*

Per:



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* practicing through a law corporation