PROSPECTORS & DEVELOPERS ASSOCIATION OF CANADA | ASSOCIATION CANADIENNE DES PROSPECTEURS ET ENTREPRENEURS

October 21, 2026

Me Philippe Lebel
Corporate Secretary and Executive Director, Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour PwC
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Québec, QC G1V 5C1

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

The Prospectors & Developers Association of Canada (PDAC) is the leading voice of the mineral exploration and development industry, representing over 9,000 individual and corporate members in Canada and around the world, and our work is focused on fostering a competitive, responsible, and sustainable mineral industry. Materially, mineral issuers account for more than a third of all companies listed on Canadian exchanges, roughly half of the equity raised in Canada in 2024 and 2025, and the sector will likely be the most impacted by the proposed changes.

PDAC supports the proposed amendments to National Instrument 45-106 *Prospectus Exemptions* (the Proposed Amendments) that codify Coordinated Blanket Order 45-935 *Exemptions from Certain Conditions of the Listed Issuer Financing Exemption* and introduce additional changes to the exemption. Our members are predominantly smaller listed issuers that depend on efficient, recurring access to capital that this exemption was designed to provide.

Extending the closing period from 45 to 60 days, satisfying Item 5 of Form 45-106F19 by cross-referencing previously filed documents, a simplified certificate, and inclusion of successor issuers are all welcome changes that reduce the practical burden of using the exemption without compromising investor access to information.

We recommend:

- CSA should apply a fixed 6-month period test for all issuers. However, if the decision is to move forward with the milestone test, CSA must clarify how to administer this test and assess ‘sufficiency of funds’.

We support:

- Permitting convertible debentures provided that related conditions only apply to the specific debenture offerings.
- Excluding debentures convertible beyond 60 days post-closing from the dilution calculation.
- A maximum dilution limit of 50%.
- No disclosure regarding an expected price range.

Please see Annex A for our response to consultation questions.

We appreciate the steps CSA is taking to improve access to capital, particularly for smaller listed issuers and welcome the opportunity to provide additional background on our comments and recommendations. Please contact me at jkilleen@pdac.ca for any follow up engagement.

Sincerely,

Jeff Killeen

Senior Director, Policy & Programs
Prospectors & Developers Association of Canada (PDAC)

CC:

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 of 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

ANNEX A: RESPONSES TO CONSULTATION QUESTIONS

Responses to Questions 1a) and 1c):

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

1c) 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?

Streamlining the listed issuer financing exemption (LIFE), modifying the sufficiency of funds condition and enhancing disclosure in the offering document are acutely important to PDAC members as it can make the exemption more accessible to small issuers. However, the guidance in proposed section 3.12(3) of the Companion Policy is ambiguous in its practical application with respect to the meaning of *"the issuer would need to have available funds to achieve its next significant milestone"*.

Due to the ambiguity noted above, **we recommend** that CSA simplify the approach and apply a single fixed 6-month period to all issuers.

A non-revenue generating mineral exploration company can budget a 6-month period with higher accuracy versus 12-month forecasts as exploration results, input prices and financing conditions can change quickly. We think that a 6-month reporting period coupled with the enhanced financial disclosure in the Proposed Amendments is sufficient for investors.

However, should CSA move forward with a milestone standard for pre-revenue issuers, **we recommend** that the following three aspects are addressed.

i. Clarify the definition of 'achieving a milestone'

Proposed section 3.12(3) states that an issuer without revenue *"needs to have available funds to achieve its next significant milestone"* but does not specify what is required to achieve such a milestone. One interpretation suggests an issuer must have sufficient funds to meet its ongoing obligations until the milestone is reached. Another suggests the issuer must also have sufficient funds to conduct all activities associated with the milestone.

Because section 3.12(3) effectively requires an issuer to establish a minimum offering amount, the two interpretations produce materially different results. For example, an exploration company that plans a $1,000,000 drill program over six months, with general and administrative (G&A) costs of $50,000 per month, would need to raise a minimum of $300,000 under the first interpretation and $1,300,000 under the second. In our view, the first interpretation is correct. The rule refers only to short-term liquidity requirements, which we understand to mean G&A costs and other ongoing obligations. The second interpretation would, in substance, reinstate the "business objectives" requirement that the amendment is intended to remove.

We recommend that CSA confirm that the condition requires an issuer to have sufficient funds to meet its ongoing obligations until its next significant milestone, rather than to fully fund the activity associated with that milestone.

ii. Anchor the "next significant milestone" to planned work programs

The term "next significant milestone" is undefined, and the guidance does not indicate how that milestone will be determined. For an exploration issuer, the next milestone could be a drill program, a Mineral Resource estimate, a permit, or a Preliminary Economic Assessment, each of which may differ substantially in cost and duration. Conversely, a milestone could be defined so narrowly that the condition offers little protection to investors. An issuer raising funds in a weak market could, for example, treat the filing of its next interim financial statements as its next significant milestone, and still need to return to market within months.

Listed issuers already prepare and disclose planned work programs through their continuous disclosure record and, where applicable, current technical reports.

We recommend that CSA confirm that an issuer may identify a significant milestone within a planned work program as disclosed in its continuous disclosure record assessed at the time of closing.

iii. Define the meaning and threshold of revenue

We note three ambiguities.

First, the phrase "revenue arising in the course of ordinary activities" is not defined in the Proposed Amendments or the Proposed Changes. It appears to draw on IFRS 15, which defines revenue by reference to an entity's ordinary activities but does not define ordinary activities itself, leaving the boundary between revenue and other income to be determined on the facts of each issuer.

Second, the guidance contains no materiality qualifier, unlike the "significant revenue from operations" concept in National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102), so any incidental amount would appear to move an issuer into the revenue-generating branch.

Third, no reference period is specified, so it is unclear whether revenue must have been generated in the most recent financial year or at any time.

We recommend that CSA define revenue for this purpose, specify the applicable reference period, and introduce a materiality qualifier consistent with the concept in NI 51-102.

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

We think that level of proposed disclosure is sufficient.

Proposed Paragraph 0.1 of Item 9 would apply to an issuer whose most recently filed financial statements disclosed material going concern uncertainty, or whose financial condition has since declined enough that its next financial statement could include one. The issuer would have to explain how the offering is expected to address the uncertainty, analyze its ability to continue as

a going concern, discuss various matters relating to unused arranged financing, and disclose related risk factors.

Proposed Item 9.1 largely carries forward the business objectives and milestones disclosure currently required by Item 7 of Part 2, which the Proposed Amendments repeal, plus a requirement for an issuer to analyze the ability to generate sufficient funds to accomplish each of its business objectives.

In our view, this disclosure, together with the existing requirements of the form, is sufficient to inform investors about an issuer's financial condition. Further requirements would add length to what is intended to be a succinct document. Notably, the Proposed Changes to the Companion Policy delete the guidance in section 3.13 indicating that the offering document is not expected *"to be longer than about 5 pages."* This omission is concerning as it signals an expectation that offering documents will grow substantially beyond the original intent.

We recommend that disclosure regarding an issuer's financial condition does not expand beyond what is proposed in the amendment suite. In addition, CSA should retain guidance regarding the anticipated maximum length of related documents that is commensurate with the original intent of the exemption.

1d) Since retail investors are able to purchase the same securities offered under the exemption on an exchange without the additional disclosure provided under the exemption, should we 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 recommend retaining the sufficiency of funds condition.

In our view, retaining the condition strikes an appropriate balance between facilitating capital raising by listed issuers and protecting investors, particularly retail investors that may be less aware of the impacts that share dilution associated with an offering may have on a securities future market value.

2a) Should we expand the exemption to permit the distribution of convertible debentures that are convertible into listed equity securities?

We support permitting the distribution of convertible debentures only for Fully Convertible Debentures (FCDs); 100% debt and interest is converted into listed equity securities. Such convertible debt can be an effective means of raising capital for pre-revenue companies as interest can be serviced through delivery of common shares. FCDs are also a simpler form of debenture that can more easily be factored into an equity purchase by retail investors.

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

In our view, retail investors are sufficiently familiar with FCDs for the purpose of the exemption. The exemption already permits units comprising a listed equity security and a warrant. A warrant requires an investor to understand optionality, exercise pricing, expiry and the dilutive effect of exercise, and a conversion feature requires an understanding of the same concepts. While convertible debentures add terms relating to the debt component, these are not materially more sophisticated than the terminology investors already navigate in a unit offering.

2c) If we were to expand the exemption to allow for convertible debentures:

i) should we impose additional conditions such as those required by the exchanges including those related to the issuance price, the interest rate, and the terms of conversion of the convertible debentures? If so, what conditions would be appropriate?

We do not recommend imposing additional conditions on convertible debentures distributed under the exemption.

As the question itself recognizes, the Canadian exchanges already impose requirements relating to the issuance price, interest rate and conversion terms of convertible debentures. Replicating these requirements in the instrument would create parallel regimes that could diverge as exchange policies are updated, requiring further amendments to restore alignment.

We recommend continued reliance on exchange oversight, supported by disclosure of the terms of the debentures in the offering document.

ii) should securities issuable on conversion of convertible debentures be excluded from the 50% dilution calculation if the debentures are not convertible within 60 days after the closing?

We support excluding securities issuable on conversion of convertible debentures from the 50% dilution calculation where the debentures are not convertible within 60 days after closing. This is consistent with the treatment of warrants under the Proposed Amendments, and the rationale is the same: the dilution limit is directed at the immediate dilutive effect of an offering, and securities that cannot be issued within 60 days after closing do not contribute to it.

Without such an exclusion, the dilution limit would substantially restrict the usefulness of the expansion. At the share prices typical of junior issuers, even a modest principal amount can convert into many shares, so counting conversion shares would quickly exhaust the 50% limit and leave little room for the offering itself. While we recognize that, as noted in our response to question 3(a), the dilution limit is an important constraint for smaller issuers, the exclusion we support would be no broader than the one CSA has already accepted for warrants.

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

We consider the dilution limit in the Proposed Amendments to be appropriate.

The exemption offers no mechanism, such as a pre-emptive right, through which existing shareholders can maintain their proportional interest, and a shareholder who does not participate is diluted in proportion to the size of the offering. In its 2021 notice proposing the exemption, CSA explained that tying the amount that can be raised to market capitalization restricts issuers from unduly diluting their shareholders, and that limiting the amount raised prevents use of the exemption for larger transactions that may involve a significant change in the issuer's business. The dilution limit serves the same purpose.

The Proposed Amendments substantially increase the dollar limits relative to the exemption as introduced. While the 20% of aggregate market value component preserves a proportional element, it applies only to issuers with an aggregate market value above $125 million. Below that level, the fixed $25 million floor governs. For smaller issuers, the 50% dilution limit is therefore the only constraint under the exemption that scales with issuer size, which in our view is a further reason to maintain it at its current level.

For the same reason, and as noted in our responses to questions 1(c) and 2(c)(ii), other conditions of the exemption should not be designed in a way that pushes smaller issuers against the dilution limit.

4) We propose to allow the omission of the offering price in the offering document if certain conditions are met. These conditions would include that the news release announcing the offering must include the expected range of the offering price and that the issuer must file an amendment to the offering document by the 2nd business day after the date the offering price is determined. Should issuers be required to include the expected range of the offering price in the news release announcing the offering?

We recommend there should be no requirement for issuers to include an expected range of the offering price in the news release announcing the offering.

For issuers with limited trading liquidity, publishing an anticipated price range before an offering price is established may distort market valuations, particularly where the public float is small. Announcing a range that would be wide enough to accommodate possible price fluctuations in advance of an offering would provide investors with limited benefits, while a narrow range may require the issuer to revise an offering if conditions change. Issuers should be able to set the offering price in response to marketing and engagement with existing and prospective investors without being tied to a range announced in advance.

In our view, the investor protection objective is met by proposed paragraph 5A.2(2)(b), under which the issuer must file the amended offering document on the earlier of the date the purchaser enters into an agreement to purchase and the second business day after the offering price is determined. No purchaser enters into an agreement without the offering price, and the amended offering document provides a clear and accessible record of the final price.