September 22, 2026

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

Submitted via the Canadian Securities Administrators (CSA) consultation page

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

FAIR Canada is pleased to provide comments in response to the above-referenced Consultation.

FAIR Canada is a national, independent, non-profit organization known for balanced and thoughtful commentary on public policy matters. Our work includes advancing the rights of investors and financial consumers in Canada through:

- Informed policy submissions to governments and regulators
- Relevant research focused on retail investors
- Public outreach, collaboration, and education
- Proactive identification of emerging issues.[1]

A. Introduction

The CSA introduced the listed issuer financing exemption (LIFE) to facilitate access to capital for smaller reporting issuers through a simplified financing mechanism. Because the exemption permits broad retail investor participation using a streamlined disclosure document, changes that expand its availability or relax existing safeguards require careful scrutiny. The Consultation raises important concerns about the adequacy of disclosure, the complexity of securities distributed under the exemption, and the potential for dilution. Each of these issues bears directly on whether

[1] Visit www.faircanada.ca for more information.

retail investors can understand the risks they are assuming and whether the exemption continues to strike an appropriate balance between facilitating capital formation and protecting investors.

Improved transparency is essential to assessing that balance. To enable stakeholders to provide more informed input on LIFE, the CSA should strengthen data collection and public reporting on its use and outcomes. The Consultation reports substantial growth in the use of the exemption following Coordinated Blanket Order 45-935 *Exemptions from Certain Conditions of the Listed Issuer Financing Exemption*. However, fundraising data alone does not show whether the exemption is producing appropriate outcomes for retail investors. The CSA should assess LIFE not only by the amount of capital raised, but also by indicators such as:

- Repeat LIFE financings
- Intervals between financings
- Milestone achievement
- Actual versus anticipated use of proceeds
- Cumulative dilution
- Subsequent insolvencies or restructurings
- Issuers with going-concern uncertainty
- Retail participation by distribution channel
- Investor complaints
- Dispute resolution outcomes and
- Litigation.

Finally, LIFE should be considered within the broader exempt market framework. Retail investors may already be exposed to securities distributed under other prospectus exemptions, such as the accredited investor exemption and the family, friends and business associates exemption. Before further expanding access to prospectus-exempt capital raising, the CSA should consider the cumulative effect of these exemptions on retail investors. This is particularly important where proposed changes may increase exposure to complex securities, illiquid investments, repeated financings, or issuers in a more precarious financial position. This broader assessment is important to ensure that incremental changes to individual exemptions do not, over time, erode core investor protections in the exempt market.

Below, we respond to each Consultation question and comment on the proposal to expand LIFE to successor issuers.

B. Responses to Consultation Questions

Question 1(a): Currently, the sufficiency of funds condition requires that an issuer reasonably expect to have available funds to meet its business objectives and liquidity requirements for a period of 12 months following the distribution. We have heard that many smaller issuers cannot use the exemption as they are unable to raise sufficient funds to meet this condition. Do you think the proposal to modify the sufficiency of funds condition, combined with enhanced disclosure in the offering document, addresses the concerns raised?

FAIR Canada recognizes that small venture issuers[2] may be in a pre-revenue stage and unable to demonstrate sufficient funds to meet all their business objectives over a 12-month period. In that respect, the CSA's proposal to modify the sufficiency-of-funds condition may make LIFE more accessible to issuers with legitimate capital needs that cannot meet the current test.

However, the existing test serves an important investor protection function. It is tied to an issuer's ability to fund operations and pursue its business plan over a meaningful period and therefore provides some assurance that the issuer has a minimum degree of financial resilience. Replacing that test with a "next significant milestone" standard could materially lower that threshold. In particular, it could enable issuers to access retail capital even where substantial uncertainty remains beyond the identified milestone. This concern is especially acute if the next significant milestone may be only a few months away, after which the issuer could quickly face renewed liquidity pressures and require additional financing. As a result, investors may fund an issuer to reach a milestone but remain exposed to a high likelihood of near-term financing risk, dilution, or insolvency.

If the CSA proceeds with a "next significant milestone" standard, the Companion Policy should provide guidance on what constitutes a "significant milestone." Otherwise, an issuer may characterize relatively modest operational achievements as significant milestones to satisfy the condition. A significant milestone should be material to the issuer's business plan, objectively identifiable, and sufficiently important to the issuer's development or financing prospects.

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

Yes. The effectiveness of the proposed "next significant milestone" standard will depend heavily on the quality of the disclosure to investors. Disclosure should enable investors to understand not only what milestone the financing is intended to achieve, but also the financial assumptions, risks, and limitations associated with it. The offering document should disclose:

- The specific milestone being relied upon
- Why the milestone is significant to the issuer's business plan
- The estimated cost of achieving the milestone
- The expected timeframe for achievement
- The key assumptions underlying management's assessment
- Whether the financing is expected to fully fund the milestone
- The issuer's expected cash runway following completion of the financing
- Whether additional financing is expected to be required

[2] "Venture issuers" has the meaning set out in National Instrument 51-102 - *Continuous Disclosure Obligations*. In general terms, it refers to an issuer whose securities are listed only on the TSX Venture Exchange, the ordinary tier of the Canadian Securities Exchange, or another recognized junior market, rather than on a senior exchange such as the Toronto Stock Exchange.

- The anticipated purpose and timing of any future financing and
- The consequences if the milestone is delayed or not achieved.

The CSA should also require disclosure of the issuer's prior use of LIFE financings, including:

- The milestones previously disclosed to investors
- Whether those milestones were achieved
- Whether costs exceeded expectations
- Whether additional financing was required and
- The cumulative dilution resulting from those financings.

This information would enhance accountability and allow investors to assess management's track record in meeting previously disclosed objectives. It would also help investors evaluate whether the issuer has a pattern of relying on repeated LIFE financings to address short-term liquidity needs rather than advancing a clear, sustainable business plan.

For issuers participating in the semi-annual reporting pilot project, the offering document should provide additional context about the currency and reliability of the issuer's financial information. In particular, it should disclose the date of the most recent financial statements and describe any material developments since those statements were filed, including any significant changes in liquidity, financing needs or business prospects.

Question 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?

No. FAIR Canada does not believe that shortening the current sufficiency-of-funds condition to a six-month period would be the better approach. At this time, and without more complete data on retail investor participation and outcomes under LIFE, we believe the CSA should retain the 12-month requirement.

For pre-revenue venture issuers, a properly structured milestone-based standard may be more meaningful than a fixed-period approach, provided it is supported by clear guidance and robust disclosure. The key investor protection issue is whether investors can understand what the financing is expected to achieve, how much it will cost, how long it is expected to take, whether additional financing will likely be required, and what risks could prevent the milestone from being achieved.

We believe that a properly structured, milestone-based standard should be available only to pre-revenue venture issuers. In our view, a venture exchange listing signals to investors that an issuer is likely a higher-risk investment than one listed on a senior exchange.[3]

[3] We understand that this correlation is not perfect. Staff of the CSA members who are working on this project should consider our comments on the following CSA Consultation, which we expect to submit later this fall: CSA Consultation Paper 51-406 – *Modernizing the Regulation of Public Companies*.

Question 1(d): 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?

FAIR Canada does not support eliminating the sufficiency-of-funds condition altogether. The fact that retail investors may already purchase an issuer's securities in the secondary market does not make secondary market trading equivalent to a LIFE financing.

In the secondary market, investors purchase securities from existing shareholders, and the issuer receives no proceeds from the transaction. Those investors are trading for reasons unrelated to providing capital to the issuer, including price movements, portfolio rebalancing, liquidity, or speculation.

By contrast, a LIFE financing involves the issuer actively soliciting investors to provide new capital directly to the issuer through the issuance of new securities. In that context, investors are not only deciding whether the security is an attractive investment at the offered price given the dilutive effect of the offering; they are also being asked to provide capital to fund operations, address liquidity needs, or pursue a stated business objective. This makes the issuer's financial condition and use of proceeds central to the investment decision.

The sufficiency-of-funds condition is therefore an important investor protection safeguard in LIFE financings. It helps ensure that an issuer seeking capital from retail investors has a reasonable basis to believe the financing will achieve its stated purpose, rather than merely provide short-term relief from immediate financial pressure. Without this condition, investors could be exposed to issuers that remain unable to fund their operations or advance their business plans shortly after the offering.

The liability framework governing LIFE offerings reinforces the importance of the sufficiency-of-funds condition. Because LIFE offerings are primary-market distributions, investors have a statutory remedy for misrepresentations in the offering document. That remedy is most effective when investors receive sufficient disclosure to assess the issuer's representations and identify potential misrepresentations. If material information is omitted, investors may be unable to exercise their statutory rights effectively. The sufficiency-of-funds condition therefore supports the effectiveness of the liability regime by requiring disclosure that is important to an informed investment decision.

Question 2(a) – Convertible Debentures: Should the exemption be expanded to permit the distribution of convertible debentures that are convertible into listed equity securities?

FAIR Canada does not support expanding LIFE to permit the distribution of convertible debentures to retail investors.

LIFE was designed as a streamlined means of distributing relatively straightforward securities, namely, listed equity securities and units comprising listed equity securities and warrants. Expanding the exemption to include more complex securities would represent a significant departure from that policy rationale. Convertible debentures are complex instruments that combine features of both debt and equity and require investors to assess a broader range of features and risks. These include:

- The issuer's ability to pay interest and principal
- The ranking and security of the debenture
- Maturity and redemption terms
- Conversion prices and adjustment provisions
- Issuer call or forced-conversion rights
- The liquidity of the debenture
- Default risk and
- Potential dilution upon conversion.

These features may be difficult for many retail investors to fully assess based on the streamlined disclosure under LIFE.

The CSA notes that the original decision not to include convertible debt under LIFE reflected concerns about product complexity and the need for more comprehensive risk disclosure. Those concerns remain valid. The principal rationale now offered for including it is that dealers believe convertible debentures could assist issuers in raising capital and appeal to certain investors. Although capital formation is an important objective, the fact that a security may be useful to issuers or attractive to some investors is not, on its own, sufficient justification for expanding a retail-facing prospectus exemption to include more complex products.

If the CSA decides to permit convertible debentures under LIFE, it should consider limiting their distribution to investors receiving advice from a registered dealer and advisor where the know-your-client (KYC), know-your-product (KYP), and suitability obligations apply.

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

Convertible debentures are not sufficiently straightforward for distribution to retail investors under LIFE. Convertible debentures combine elements of debt and equity, but the risks and potential returns depend heavily on the specific contractual terms. Retail investors may focus on the interest rate and the potential opportunity to convert into shares without fully appreciating the range of factors that determine the investment's actual risk profile, including:

- The issuer's credit and default risk
- Whether the debt is secured, unsecured or subordinated
- Whether a liquid market exists for the debenture
- The circumstances in which conversion is permitted or required
- The effect of conversion-price adjustments

- The possibility that conversion will never be economically attractive
- The issuer's ability to redeem or force conversion and
- The dilution that may result if the securities are converted.

These features make convertible debentures significantly more complex than the listed equity securities and simple equity units currently permitted under LIFE. FAIR Canada's investor focus group research reinforces this concern. It found that most participants struggled to understand investment terminology and documentation and felt overwhelmed by the amount of information available.[4] These difficulties may make it especially challenging for retail investors to understand the detailed contractual terms of convertible debentures, including how conversion rights, redemption provisions, ranking, and maturity operate and interact to affect the investment's risks and potential returns.

Given that LIFE relies on a simplified disclosure document and is available to retail investors, expanding it to include more complex securities could increase the risk of investors purchasing products whose features and risks they do not fully understand.

Question 2(c)(i): If the exemption is expanded to permit convertible debentures, should the CSA impose additional conditions, including conditions related to the issuance price, interest rate and conversion terms? If so, what conditions would be appropriate?

Yes. If the CSA proceeds with the expansion despite the concerns noted above, the CSA should impose an additional condition: distributions of convertible debentures to retail investors should be limited to advisory accounts where the KYC, KYP, and suitability obligations apply, so that a registered dealer must assess whether the investment is appropriate for the investor.

Question 2(c)(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 closing?

No. Securities issuable on conversion should be included in the dilution calculation regardless of when they are convertible. Investors should receive a complete and accurate picture of the maximum potential dilutive impact of the financing.

A 60-day restriction postpones dilution but does not eliminate it. Excluding the underlying shares could materially understate the economic dilution created by an offering. It may also encourage issuers to structure conversion dates to fall just beyond the 60-day period to avoid the dilution limit.

The dilution calculation should reflect the maximum number of listed equity securities that may reasonably become issuable under the terms of the debentures. Where the number depends on

[4] FAIR Canada, Focus Groups – Understanding Canadian Investors, January 2024.

future market prices or adjustment provisions, the issuer should disclose the potential dilution under a reasonable range of scenarios.

More fundamentally, excluding securities that may become issuable shortly after the 60-day period undermines the purpose of the dilution limit. The limit is intended to protect investors from excessive dilution arising from financings conducted under a simplified disclosure regime. That objective is not served if economically dilutive securities are excluded solely because they cannot be converted quickly.

The same reasoning also calls into question the exclusion in the proposed amendments of shares issuable under warrants that are not convertible within 60 days after closing. The relevant issue for investors is the reasonably foreseeable economic dilution resulting from the financing, not only the dilution that can occur immediately after closing.

Question 3(a) – Dilution: Is the dilution limit in the proposed amendments appropriate?

FAIR Canada supports maintaining the 50% dilution limit. A financing that permits the issuance of securities representing up to 50% of an issuer's outstanding listed equity securities over a 12-month period already allows for substantial dilution. Any further relaxation of that limit would require strong evidence that the existing threshold unduly restricts appropriate capital formation and that any additional investor-protection risks would be adequately addressed.

The CSA should ensure that dilution is assessed comprehensively. A narrow calculation could understate the true economic impact of the financing on existing shareholders. The calculation should include:

- Shares issued under all LIFE offerings during the applicable period
- Shares issuable under warrants
- Shares issuable under convertible debentures or other convertible securities, if permitted
- Securities issued through related or concurrent financings and
- Any other securities that are economically part of the same capital-raising transaction.

We are also concerned about the cumulative effect of serial LIFE financings. An issuer could complete several offerings over a relatively short period, each aimed at meeting short-term liquidity needs or achieving the next milestone, while exposing existing shareholders to recurring dilution. To enable investors to assess this risk, the offering document should disclose:

- Dilution from the current offering
- Cumulative dilution from LIFE offerings over the preceding 24 months
- Maximum potential dilution from outstanding warrants and convertible securities
- The number and timing of prior LIFE financings and
- The effect of the offering on the percentage ownership of an existing shareholder.

Question 3(b): If the proposed dilution limit is not appropriate, what other dilution limits should the CSA consider and why?

We consider the proposed dilution limit appropriate and do not recommend raising it. Before considering any change, the CSA should publish information about how the current limit has operated, including:

- The number of issuers approaching or reaching the limit
- The number of repeat LIFE financings
- Cumulative dilution over 12-, 24- and 36-month periods
- The prevalence of going-concern uncertainty among repeat issuers
- The use of warrants and other convertible securities
- Subsequent share consolidations and
- Outcomes for retail investors.

Without this information, it is difficult to assess whether the existing limit unduly constrains appropriate capital formation or serves as an important safeguard against excessive dilution.

Question 4 - Omission of the offering price: The CSA proposes to allow the offering price to be omitted from the offering document if certain conditions are met. These conditions include requiring the news release announcing the offering to state the expected offering-price range and requiring an amended offering document after the price is determined. Should issuers be required to include the expected offering-price range in the announcing news release?

Yes. If the CSA permits an issuer to omit the final offering price from the initial offering document, the announcing news release should be required to contain a reasonably expected price range. This requirement would improve transparency during the marketing period and help ensure that investors are not asked to consider an offering without sufficient information about its economic terms. The price range gives investors important preliminary information, including the likely discount to the market price, the number of securities that may be issued, the potential dilution, and the expected proceeds to be raised.

FAIR Canada supports the CSA's proposal to require an amended offering document containing the final offering price by the earlier of the date on which the purchaser enters into an agreement to purchase and the second business day after the price is determined. However, additional safeguards are warranted. If the final offering price falls outside the announced range, the issuer should be required to issue another news release and file an amended offering document. In addition, the announced range should be sufficiently narrow to provide meaningful information to investors and not so broad as to undermine the purpose of the disclosure requirement.

C. Successor Issuers

Under the proposed amendments, a successor issuer may rely on LIFE if it acquired substantially all of its business from a person or company that was a reporting issuer in a Canadian jurisdiction for the preceding 12 months. In effect, the proposal allows the successor to meet LIFE's 12-month reporting history requirement by relying on the predecessor's disclosure record, even though that record may not provide a sufficient basis for investor decision-making.

A restructuring or reverse takeover could fundamentally change an issuer's business, operations, management, strategy, financial condition, or risk profile. In those circumstances, the predecessor's disclosure history may provide limited insight into the issuer in which investors are being asked to invest.

The CSA should consider additional safeguards where a transaction has materially transformed the issuer. For example, successors could be required to demonstrate continuity of the underlying business and risk profile, or provide enhanced disclosure explaining how the transaction has changed the issuer. This would help ensure that investors purchasing under LIFE receive relevant, meaningful disclosure.

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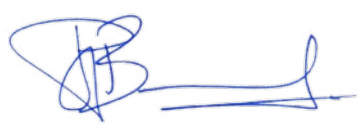
Thank you for considering our comments on this critical issue. As investor advocates, we appreciate the opportunity to share our perspective and help shape policies that put investors first. We welcome ongoing dialogue and collaboration with the CSA and other stakeholders to build fair, transparent, efficient, and resilient capital markets for all Canadians. If you would like to discuss our submission further, please reach out; we are committed to working together to support better outcomes for investors.

Sincerely,



Jean-Paul Bureaud
President, CEO and Executive Director
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