WeirFoulds LLP

# WeirFoulds Securities Law Updates: Concise, Informative Updates on Certain Securities Law Developments in the Canadian Marketplace as of End of Year 2025.

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Our coverage is succinct and targeted to cover the needs of issuers and their advisors. For more detailed information on our service offerings, please visit us online at www.weirfoulds.com.

Recent developments include:

- An easing on the requirements to conduct an initial public offering.
- Financing exemptions for large and established issuers.
- An update in the quarterly financial statement filing requirements for venture issuers.
- Supreme Court comments on the disclosure of material changes.

**EASING OF IPO REQUIREMENTS**

Since 2021 the Canadian and U.S. financial landscapes have experienced a significant decline in initial public offerings ("**IPO**") alongside a corresponding increase in privatizations. These shifts have led the Canadian Securities Administrators (the "**CSA**") to establish more supportive conditions to incentivize public offerings and expand the total number of public issuers in the form of three coordinated blanket orders introduced on April 17, 2025.

The three blanket orders are:

1. Coordinated Blanket Order 41-930 – Exemptions from Certain Prospectus and Disclosure Requirements ("**Blanket Order #1**");

2. Coordinated Blanket Order 45-930 – Prospectus Exemption for New Reporting Issuers ("**Blanket Order #2**"); and

3. Coordinated Blanket order 45-933 – Exemption from the Investment Limit under the Offering Memorandum Prospectus Exemption to Exclude Reinvestment Amounts ("**Blanket Order #3**")

**Blanket Order #1**

Blanket Order #1 provides specific exemptions/admittances with regard to prospectus and disclosure requirements to alleviate the financial and administrative burdens on issuers, particularly smaller companies and startups. Such exemptions include:

- an exemption from including third-year historical financial and operating statements in IPO prospectuses, and certain

information circulars and material change reports; and
- standard term sheets and marketing materials used during the waiting period between the preliminary and final prospectuses can now include specific pricing information (such as the price and number of securities), provided the issuer issues a corresponding news release and the pricing information is derived from the preliminary prospectus.

**Blanket Order #2**

Blanket Order #2 creates a prospectus exemption for new reporting issuers, making it easier for them to raise additional capital in the 12 months following an underwritten IPO. It enables eligible issuers to distribute securities without a prospectus up to the lower of $100,000,000 or 20% of the issuers market value. To use this exemption, issuers must issue a news release and provide an offering document that details the business objectives, use of proceeds, and material facts. This offering document must also grant investors a contractual right to cancel the purchase within two days and a right of action for damages or recission in the event of a misrepresentation.

**Blanket Order #3**

Blanket Order #3 offers time-limited relief regarding the investment limits associated with the offering memorandum prospectus exemption found at Section 2.9 of National Instrument 45-106 *Prospectus Exemptions*. Blanket Order #3 stipulates that the reinvestment proceeds from a disposition does not count toward the annual $100,000 investment limit for an individual. To qualify for this relief, the investor must receive advice from a registered dealer or advisor confirming that the reinvestment and any new investments under the exemption remain suitable for them.

**CAPITAL RAISING EXEMPTIONS FOR WELL-KNOWN SEASONED ISSUERS**

On November 28, 2025, CSA released amendments to National Instrument 44-102 *Shelf Distributions* (the "**Amendments**") to establish a permanent regime benefiting Well-Known Seasoned Issuers ("**WKSIs**"). The Amendments reduce regulatory burdens for large, established issuers and aligns Canadian filing timelines more closely with those in the U.S.

The Amendments streamline the capital-raising process by allowing qualifying issuers to file a final base shelf prospectus and receive a deemed receipt without a preliminary filing or regulatory review; omit certain information, such as the total dollar amount of securities being raised; maintain a receipt that is effective for 37 months, subject to annual confirmation of WKSI eligibility.

Additionally, the Amendments made changes regarding WKSI status eligibility. They reduced the time an issuer must have been a reporting issuer in Canada (from three years to 12 months). They noted that issuers are disqualified from WKSI status if they have convictions for more serious offences like fraud, bribery, or insider trading, or if they have faced securities related sanctions in the last three years.

The Amendments also include but are not limited to the following: issuers may rely on information from the System for Electronic Disclosure by Insiders (SEDI) or early warning reports to determine the issuer's qualifying public equity; personal information forms (PIFs) only need to be delivered upon request rather than at the time of filing a WKSI base shelf prospectus; issuers are no longer required to issue a news release when withdrawing a WKSI prospectus; and to support cross-border offerings under the Multijurisdictional Disclosure System (MJDS), principal regulators will issue clearance notifications on request to help issuers qualify for sale in the U.S.

**SEMI-ANNUAL FINANCIAL REPORTING FOR VENTURE ISSUERS**

The CSA has introduced a multi-year pilot that allows eligible venture issuers to voluntarily switch from quarterly reporting to semi-

annual financial reporting. This project, implemented through Coordinated Blanket Order 51-933 *Exemptions to Permit Semi-Annual Reporting for Certain Venture Issuers*, aims to reduce the burden and high costs smaller companies face when preparing quarterly financial statements and Management's Discussion and Analyses (MD&A).

To qualify for this exemption, an issuer must meet several criteria:

- the issuer must be listed on the TSXV or the CSE and must have been a reporting issuer in Canada for at least 12 months. It cannot be listed in U.S. marketplaces;
- the issuer's annual revenue must not exceed $10 million;
- the issuer must have filed all required disclosure documents and, with the last 12 months, must not have been subject to significant securities-related penalties or cease trade orders lasting longer than 30 days; and
- the issuer must disseminate a news release specifying which interim period will be the first to follow the semi-annual format.

The CSA accepted comments on this program until December 2025 and anticipates that it will come into force in March of 2026.

**THE SUPREME COURTS COMMENTS ON DISCLOSURES OF MATERIALITY**

In the case of *Lundin Mining Corp. v. Markowich**[1]***, released on November 28, 2025, the Supreme Court of Canada ("**SCC**") clarified the definition of "material change" regarding timely disclosure obligations for public issuers. The decision emphasizes a flexible, purposive, and "investor-friendly" approach to securities law to ensure a level playing field between issuers and investors.

*Case Context and Legal Conflict*

The case originated from two geotechnical incidents at Lundin Mining's Candelaria mine in 2017, localized pit wall instability and a significant rockslide. Although these events represented minor disturbances to annual production, their eventual disclosure, alongside a 20% reduction in production guidance, caused a 16% drop in share price.

The plaintiff, a shareholder of the mining company, sought leave for a secondary market claim, arguing Lundin failed to disclose "forthwith" a material change in the company's "business operations or capital" (per the definition of "material change" in section 1.1 of the *Securities Act* (Ontario)). The lower court denied the plaintiff's claim i.e. that a material change had occurred. The lower court defined "change" as a shift in the company's "position, course or direction". However, the Ontario Court of Appeal, and the SCC later rejected the lower court's view.

*Guidance on "Material Change"*

The SCC identified three principal guideposts for identifying material change:

1. Broad and Contextual interpretation: the term must be read broadly to fulfill the purpose of continuous disclosure, which is to mitigate informational asymmetries.

2. Purposive Reading: A "change" does not necessarily need to be "important" or "substantial" in itself to qualify; qualifiers should not divert attention from the disclosure regime's objectives.

3. Ordinary Commercial Sense: The terms "business operations or capital" should be understood in practical, commercial terms regarding how a company carries out its operations and structures its capital.

The SCC notes that issuers are generally expected to "err on the side of disclosing new developments sooner rather than later"[2]

while also emphasizing that not every internal development need be disclosed.

*Distinguishing "Material Fact" from "Material Change"*

The SCC highlighted that while both concepts anchor proper disclosure, they serve different functions. Material Fact is essentially static, that is, it captures an issuer's situation at a specific point in time. Material Change, on the other hand, dynamic. It requires a comparison of the issuer's affairs at two different points in time and typically arises from internal developments rather than external circumstances.

Ultimately, materiality remains the "essential filter" requiring immediate disclosure only if the change would reasonably be expected to influence market value or investor decisions.

***The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.***

[1] 2025 SCC 39.

[2]Supra note 1 at para 79.

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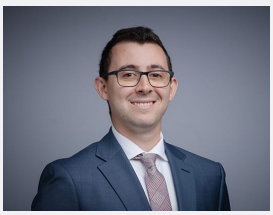

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