

Capital Raising Exemptions



This guide provides information about the most commonly used prospectus exemptions available to raise equity capital in New Brunswick. This is a general overview. For specific guidance, obtain professional advice from a securities lawyer.

Exemptions

The Commission recognizes that the prospectus requirements, which serve to protect the investing public, are not always necessary. Therefore, the Commission provides exemptions, which relieve a person from prospectus obligations in certain circumstances.

These exemptions can be used:

- to start a company
- to reward employees
- to raise money to finance the development of a business
- to reorganize a business
- to sell a business

Securities law

There is a common misconception that securities laws only apply to companies listed on a stock exchange. The truth is securities laws apply to any issuer of securities, incorporated or unincorporated, including those not listed on a stock exchange.

This misconception results in many start-up and early-stage companies unintentionally breaking the law. This material will provide a general understanding of securities laws.

There are two basic requirements for trading and advising in securities:

Registration

Every person who is in the business of trading or advising in securities or acting as an advisor must be registered with the Commission. Registration helps protect investors because the Commission will only register firms and individuals if they are properly qualified and meet certain standards.

Prospectus

Every person who distributes new securities must disclose certain information to potential investors in the form of a prospectus. The prospectus disclosure ensures that investors receive sufficient information to allow them to make an informed investment decision.

New Brunswick securities law prohibits making misrepresentations or conducting unfair practices when trading in securities.

Capital raising exemptions

These exemptions are highly harmonized across Canada and may allow a person to sell to an investor in another province in a similar manner as in New Brunswick.

Other exemptions may be available to you. Please refer to National Instrument 45-106 *Prospectus Exemptions* (NI 45-106) for additional information.

Private Issuer

If you have already formed a company, limited partnership, trust or co-operative association, you probably relied on the private issuer exemption without even knowing it.

After forming your organization, you may need additional financing in order to continue your operations. By using the private issuer exemption, you can issue securities to start a business and you can sell securities in any amount without any required disclosure documents, provided these trades are only to specified purchasers and your securities are owned by no more than 50 persons. Please see subsection 2.4(2) of NI 45-106 for a detailed list of specified purchasers.

The private issuer exemption requires restrictions to be in place, which limit the ability to transfer ownership of the securities. Check with a qualified securities lawyer to confirm that the securities qualify for the exemption.

Crowdfunding Exemption

Using this exemption allows businesses to sell securities, through the use of a portal (website), to anyone in New Brunswick and other participating jurisdictions within the following limits. There are two crowdfunding exemptions available:

Start-up Crowdfunding exemption:

- An issuer group can raise \$250,000 per campaign, and can offer two campaigns per year
- Individual investors can invest up to \$1,500 per campaign

Crowdfunding exemption:

- An issuer group can raise \$1.5 million within a 12-month period
- An individual (non-accredited investor) can invest up to \$2,500 per distribution, but cannot exceed \$10,000 for all distributions in the same calendar year
- An accredited investor can invest up to \$25,000 per distribution, but cannot exceed \$50,000 for all distributions in the same calendar year
- In the case of a purchaser that is a permitted client, there are no limitations

The portal must provide information to the Commission about who they are and whether they will operate using either NI 45-110 *Start-Up Crowdfunding Registration and Prospectus Exemptions* or MI 45-108 *Crowdfunding*. Their head office must be located in Canada, and the majority of directors must reside in Canada.

These exemptions apply only to equity crowdfunding; they do not apply to donation-based crowdfunding (like Kickstarter or Indiegogo) or other crowdfunding models.

Family, Friends and Business Associates

Under this exemption, you can sell securities in any amount without providing any required disclosure documents to founders, family, close personal friends or close business associates. There is no limit on the number of purchasers or the amount of money that can be raised using this exemption. However, if you use this exemption to sell to a large number of purchasers, the Commission may question whether all of the purchasers are really family, close personal friends or close business associates. Refer to subsection 2.5(1) of NI 45-106.

Accredited Investor

This exemption allows you to sell securities to an accredited investor in any amount without providing any required disclosure documents about the issuer.

There is no limit on the number of purchasers or the amount that can be raised using the accredited investor exemption. Visit our website for the list of requirements to be an accredited investor; refer to subsection 2.3(1) of NI 45-106.

Persons relying on the accredited investor exemption must take steps to verify accredited investor status. Certain categories of individual accredited investors must sign the 45-106F9 *Form for Individual Accredited Investors*. If applicable, this risk acknowledgment form must be completed by both the issuer of the securities and the purchaser, and must include the specific category of accredited investor of each purchaser.

Employee, Executive Officer, Director and Consultant

This exemption permits an issuer to sell securities in any amount without providing any required disclosure documents to its employees, executive officers, directors or consultants, provided the purchaser is buying the security voluntarily.

This means that the purchaser has not been persuaded to buy the security due to a promise that he or she will be, or will continue to be, employed, appointed or engaged by the issuer.

Please see subsection 2.24(1) of NI 45-106 for more details on this exemption.

Offering Memorandum

The Offering Memorandum exemption allows an issuer to issue its securities to anyone, regardless of their relationship, wealth or the amount of securities purchased. Depending on how much money you are going to raise, the requirements differ.

An offering memorandum is a complex legal document that gives rise to significant legal obligations on the part of the issuer, as well as any individual agent who certifies the document on behalf of the issuer. Like other important legal documents, it should be drafted with the assistance of an experienced securities lawyer who has a thorough understanding of the business of the issuer.

For more information, see our publication [Offering Memorandum Exemption](#).

Interested in raising capital to support a local (New Brunswick) project? For more information, visit FCNB.ca/CEDC.

Important information

Filing Requirements

With the exception of the private issuer and the employee, director, officer and consultant exemption, each time an issuer uses any of the exemptions listed in this material. Issuers are now required to file the Form 45-106F1 *Report of Exempt Distribution* electronically on SEDAR+ no later than 10 days after the distribution. SEDAR+ is the System for Electronic Data Analysis and Retrieval.

Restrictions

There may be restrictions on commissions and finder's fees. Please refer to NI 45-106 for further details.

Telephone Solicitations

Section 57 of the *Securities Act* prohibits calls to residences and telephone solicitations in certain instances.

Advertising

Most prospectus exemptions do not prohibit the use of advertising or finders to solicit purchasers. However, you must ensure that you do not violate the presumption that the relationship required for the exemption exists. For example, you shouldn't need to advertise to solicit a friend because a close relationship — the key ingredient for the use of this exemption — should already exist.

For more information on all of the above points, please refer to Part 3 of the Companion Policy to NI 45-106 and Part 1 of the Companion Policy to NI 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103).

The issuer of any security under these exemptions may also need to comply with dealer registration requirements. More details can be found in section 1.3 of the Companion Policy to NI 31-103.

Your questions answered

Do I need to be registered with the Commission?

If you are not in the business of trading or advising in securities, you do not need to be registered with the Commission.

Individuals must register if they trade, underwrite or advise on behalf of a registered dealer or advisor. Individuals and/or firms must register if they are:

- In the business of trading or advising
- Holding themselves out as being in the business of trading or advising
- Acting as an underwriter, or as an investment fund manager

If raising capital to finance your business is not your primary business, you may not be required to register. Please refer to section 1.3 of the Companion Policy to NI 31-101.

Do I need to give a prospectus to an investor and file one with the Commission?

Not if you rely on one or more of the exemptions listed in this material to sell your securities. You do not have to apply to the Commission to use any of these exemptions, but you do have to ensure that you meet all of the conditions of the exemption, including certain reporting requirements, or you may be breaking securities laws.

Resale restrictions

If you issue or sell securities using any of these exemptions, the securities may be subject to resale restrictions. This means that the securities cannot be resold by the purchaser unless certain requirements are met. This includes keeping the securities for a specific period of time, often referred to as a seasoning period or restricted period. The rules and additional guidance on resale restrictions can be found in NI 45-102 *Resale of Securities*.

If you are a private issuer, the securities that you issue or sell are also subject to restrictions on transfer — outlined in the private issuer's articles, memorandum, bylaws or a shareholders' agreement. Generally, this means that the purchasers must obtain approval from the private issuer's board of directors before selling the securities.

If the purchaser has claimed the Small Business Investment Tax Credit, they are also subject to holding requirements that are distinct and separate from those listed above.

It is a good idea to have each purchaser sign a purchase agreement for the securities.

The purchase agreement should set out the number of securities bought, the amount paid for the securities and the relationship of the purchaser to the issuer or whether the purchaser is an accredited investor as defined in the exemption.

Industry terms

Issuer

A person, who has issued or proposes to issue a security.

Offering Memorandum

There are two types of offering memoranda specified under securities laws: non-qualifying issuers (Form 45-106F2) and qualifying issuers (Form 45-106F3). Review NI 45-106 on our website for more information about these forms and offering memoranda.

Person

Includes an individual, corporation, partnership, unincorporated association, unincorporated syndicate, unincorporated organization, trust and a trustee, executor, administrator or other legal representative.

Prospectus

A comprehensive document that discloses all material information about the issuer and the securities being sold.

Risk Acknowledgement Form

A clear, blunt statement of the risks associated with investing in securities when they are sold under an exemption. See Form 45-106F4 and Form 45-106F9.

Security

A defined term under the *Securities Act* which includes common and preferred shares, options, warrants and other convertible instruments, debentures, notes and other instruments of indebtedness, limited partnership units, certificates of shares or interest in a trust, estate or association, and investment contracts.

Regulatory instruments

You will find the National Instruments and the Companion Policies referenced in this material on the Commission's website:

fcnb.ca/en/securities/regulatory-instruments