

**July 26, 2016**

## **Introduction**

The Alberta Securities Commission (**ASC**) is moving forward with two initiatives designed to facilitate capital-raising for small- and medium-sized enterprises on terms tailored to deliver appropriate safeguards for investors.

To facilitate small, local financings by Alberta-based start-up businesses, the ASC has implemented ASC Rule 45-517 *Prospectus Exemption for Start-up Businesses* (**Start-up Business Exemption** or **ASC Rule 45-517**), including

- Form 45-517F1 *Start-up Business Offering Document*; and
- Form 45-517F2 *Start-up Business Risk Acknowledgment*.

Companion Policy 45-517 *Prospectus Exemption for Start-up Businesses* has also been adopted.

In addition, certain consequential amendments to National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)* (**NI 13-101**) have been implemented.

The Start-up Business Exemption is available immediately.

To facilitate multijurisdictional crowdfunding offerings in Canada, the ASC is proposing, under a separate notice, to adopt Multilateral Instrument 45-108 *Crowdfunding* (**MI 45-108**) and has consequently published it for a 30-day comment period. If MI 45-108 is adopted, issuers could use it to distribute securities through an online funding portal in any of the jurisdictions in which it has been adopted. MI 45-108 would facilitate somewhat larger financing needs.

## **Substance and Purpose of the Start-up Business Exemption**

The Start-up Business Exemption is available for distributions of securities by Alberta issuers seeking to raise funds from Alberta investors. The Start-up Business Exemption is a prospectus exemption designed to respond to the issues we have heard in respect of the difficulties small and start-up issuers encounter when trying to address very modest financing needs. It is also designed to address associated investor protection concerns. It can be used by issuers that wish to raise funds in a traditional manner, for example, through their contacts in the community or through a traditional registered dealer. It can also be used by issuers to crowdfund and raise funds via an online funding portal that is registered as a dealer.

For issuers, the Start-up Business Exemption is designed to be a simpler and less costly capital raising alternative. For investors, the exemption is designed to clearly convey and limit the risks that can be associated with an investment in an early-stage business.

We have heard that in the case of some small, early-stage businesses the costs of using the offering memorandum prospectus exemption (the **OM exemption**) in National Instrument 45-106 *Prospectus Exemptions* can be high relative to the limited funds sought to be raised. ASC Rule 45-517 is intended to address the funding gap that may exist prior to an issuer being able to cost effectively use the OM exemption or other capital raising exemptions.

Although some commenters have urged adoption of a crowdfunding regime, and ASC Rule 45-517 does accommodate crowdfunding in Alberta, we have also heard from constituents in the Alberta market that are not necessarily interested in raising capital online. For example, we understand that the principals of some business enterprises in rural communities, people who are not in the business of dealing in securities, may, through companies or cooperatives, seek to raise funds for their enterprises through their contacts in their local communities. A unique aspect of ASC Rule 45-517 is that it also facilitates these more traditional type of financing efforts.

The key conditions of the Start-up Business Exemption are as follows:

- The issuer must be an “eligible issuer” i.e., the head office of the issuer must be located in Alberta or a corresponding jurisdiction.
- The issuer can only distribute “eligible securities” i.e., the securities must be either common shares, non-convertible preference shares, securities convertible into common shares or non-convertible preference shares, non-convertible debt securities linked to a fixed or floating interest rate, limited partnership units or investment shares that are non-convertible preference shares issued by a cooperative under the *Cooperatives Act* (Alberta).
- The issuer must prepare an offering document in the required form, which includes certain information about its business, its management and the offering, including how it intends to use the funds raised, and the minimum offering amount.
- The issuer, including other members of its “issuer group”, cannot raise in aggregate more than \$250,000 per distribution. The issuer group is also limited to two start-up business distributions in a calendar year.
- The aggregate lifetime amount that an issuer group can raise under all start-up business distributions is \$1,000,000.
- Generally, the maximum amount that an issuer can accept as a subscription from an investor in a start-up business distribution is \$1,500. However, if a **registered dealer** provides the investor advice that the investment is suitable to the investor, the maximum subscription from that investor is \$5,000.

- The offering must close within 90 days.
- If the distribution is made through a funding portal the portal must be a registered dealer.
- The issuer must provide purchasers with a 48 hour period in which to cancel their agreement to purchase securities.
- The issuer must provide each investor with a specified form clearly explaining certain risks of investing and must obtain an acknowledgment from each investor that they have read and understood the contents of that form.

ASC Rule 45-517 does not include a registration exemption. If a person or company is in the business of dealing in securities in Alberta, including as a funding portal, they will be required to comply with the registration requirement.

## Background

On October 19, 2015 the ASC and the Nunavut securities regulatory authority published Multilateral Instrument 45-109 *Prospectus Exemption for Start-up Businesses* for comment (the **2015 Proposal**). The Nunavut securities regulatory authority is not proceeding with the 2015 Proposal, accordingly it has been renamed ASC Rule 45-517.

On May 14, 2015, some securities regulatory authorities in Canada<sup>1</sup>, adopted local blanket orders that provide both registration and prospectus exemptions which allow start-ups and early-stage companies to conduct very small crowdfunding offerings (the **Start-up Crowdfunding Blanket Orders**). On January 25, 2016 certain members of the CSA<sup>2</sup>, adopted MI 45-108 which provides a prospectus exemption for financings conducted through an online funding portal and sets out an alternative regime for registering portals in a special registration category; i.e., as a “restricted dealer funding portal”.

At the time of publishing the 2015 Proposal for comment, we considered both of these initiatives. We designed ASC Rule 45-517 to coordinate to the extent possible with the Start-up Crowdfunding Blanket Orders. Further, we anticipated permitting a concurrent distribution under ASC Rule 45-517 and MI 45-108 pending that instrument becoming finalized. Our intention was to help facilitate a concurrent distribution under ASC Rule 45-517 and one of the other crowdfunding models.

We have since revised our approach. Although the Start-up Business Exemption is similar in many respects to the prospectus exemption in the Start-up Crowdfunding Blanket Orders, it is tailored to respond to the Alberta capital market. Most significantly, it does not include a

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<sup>1</sup> The jurisdictions that adopted Start-up Crowdfunding Blanket Orders are British Columbia, Manitoba, Nova Scotia, New Brunswick, Quebec and Saskatchewan. [Multilateral CSA Notice 45-316 *Start-up Crowdfunding Registration and Prospectus Exemptions*]

<sup>2</sup> The jurisdictions that have adopted MI 45-108 are Manitoba, Nova Scotia, New Brunswick, Ontario, Quebec and Saskatchewan.

registration exemption; it is not limited to financings conducted through an online portal; and it imposes a lifetime limit on the amount that can be raised.

We did not include a registration exemption because we had investor protection concerns with respect to our ability to oversee an unregistered portal. Further, we understand registered portals are already operating in Alberta and so the need for a registration exemption was not clear. We also note that being registered as a dealer may prove to be a more viable business model as it will permit a portal to offer securities pursuant to various prospectus exemptions. We believe the lifetime limit continues to be appropriate. The Start-up Business Exemption does not require the same degree of disclosure as other exemptions, such as MI 45-108 or the OM exemption. The rationale is to assist small and early stage issuers to raise initial capital. We believe that an issuer that has raised \$1,000,000 should have sufficient resources to be able to use other capital raising exemptions. The Start-up Business Exemption is available to address very modest capital raising requirements by Alberta issuers and, in response to feedback we heard in Alberta, permits funds to be raised from Alberta investors with or without a funding portal.

The Start-up Business Exemption is drafted to facilitate a distribution in both Alberta and one or more of the jurisdictions that have adopted the Start-up Crowdfunding Blanket Orders. This was contemplated as a possibility when publishing the 2015 Proposal. However, the Start-up Crowdfunding Blanket Orders do not contemplate a distribution by an Alberta issuer or a distribution that occurs under ASC Rule 45-517. Accordingly, our understanding is that a multijurisdictional distribution under ASC Rule 45-517 and a Start-up Crowdfunding Blanket Order is not possible.

To facilitate multijurisdictional crowdfunding offerings, we propose to adopt MI 45-108 and, to that end, have published it for comment for 30 days. We believe that MI 45-108 will provide small- and medium-sized enterprises in Alberta with another option for raising funds across Canada. Given that we are proposing to adopt MI 45-108, ASC Rule 45-517 does not contemplate a concurrent distribution under MI 45-108. The feedback we received suggested that this approach was too complicated.

If adopted, MI 45-108 will require somewhat more disclosure to be provided to investors and will provide added investor protection relative to the Start-up Business Exemption and correspondingly, will provide access to larger amounts of capital.

We have reviewed the crowdfunding models that exist in Canada and elsewhere and we believe that the revised approach will best address the circumstances of the Alberta capital market. We will continue to evaluate new developments and consider possible changes and improvements.

### **Summary of the comments received**

The comment period on the 2015 Proposal ended on December 18, 2015. During that period we received nine written submissions in response to the publication. We also received a variety of additional feedback in other venues. We thank everyone who provided comments. A list of names of those that provided written commenters on the 2015 Proposal and a summary of the comments received, together with Staff responses, are provided in Appendix A of this Notice.

### Summary of changes to ASC Rule 45-517

As outlined in Appendix A, much of the feedback on publication suggested increasing harmonization with other crowdfunding models in Canada. We reviewed this feedback and re-considered certain provisions of ASC Rule 45-517 in an effort to increase harmonization across regimes while addressing the investor protection concerns that existed in respect of the Alberta capital market. The key changes we have made to ASC Rule 45-517 are listed below.

- The 2015 Proposal required issuers to file a completed report of exempt distribution in a new form specific to the 2015 Proposal. We received feedback that having another variation on the report of exempt distribution form may be confusing to the market. We have revised ASC Rule 45-517 to require a Form 45-106F1 *Report of Exempt Distribution* to be filed to report an exempt distribution under ASC Rule 45-517.
- We have added a restriction such that an issuer group can raise no more than \$250,000 per start-up business distribution and can conduct no more than two start-up business distributions in a calendar year. To encourage issuers that have raised more than \$1,000,000 under ASC Rule 45-517 to move onto exemptions that provide investors with greater disclosure, we have maintained the \$1,000,000 lifetime limit on the aggregate funds an issuer group can raise under start-up business distributions.
- The 2015 Proposal included a provision which would permit an issuer that was conducting a multi-jurisdictional distribution that was expected to occur *principally* outside Alberta to prepare and file in Alberta the form of offering document, risk acknowledgment and report of exempt distribution required under the terms of a corresponding exemption. If a corresponding exemption becomes available, ASC Rule 45-517 would permit the use of the form of offering document and risk acknowledgment specified in a corresponding jurisdiction to be used for *all* multi-jurisdictional distributions. Certain supplementary conditions would apply but only in respect of Alberta investors, for example, Alberta investors would be required to receive the form of risk acknowledgment prescribed under ASC Rule 45-517.

**Alberta Securities Commission Blanket Order 45-515 *Exemption from Certain Financial Statement Requirements of Form 45-106F2 Offering Memorandum for Non-Qualifying Issuers* (the OM Blanket Order)**

The OM Blanket Order provides relief from certain financial statement requirements. On publication of the 2015 Proposal we sought comment on whether issuers would anticipate relying on the OM Blanket Order if ASC Rule 45-517 were to become available. We received feedback that it would be unlikely that an issuer would undertake an offering under the OM exemption relying on the OM Blanket Order and would likely prefer an ASC Rule 45-517 distribution. Accordingly, the OM Blanket Order will not be extended and will be allowed to expire by its terms in December 2016.

**Contents of Annexes**

- Annex A List of commenters and summary of comments received on proposed Multilateral Instrument 45-109 *Prospectus Exemption for Start-up Businesses*
- Annex B Alberta Securities Commission Rule 45-517 *Prospectus Exemption for Start-up Businesses*
- Annex C Alberta Securities Commission Companion Policy 45-517 *Prospectus Exemption for Start-up Businesses*
- Annex D Form 45-517F1 *Start-up Business Offering Document*
- Annex E Form 45-517F2 *Start-up Business Risk Acknowledgment*
- Annex F Amendments to National Instrument 13-101 *SEDAR*

**Questions**

Please refer your questions to the following:

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## ANNEX A

### **List of commenters and summary of comments received on proposed Multilateral Instrument 45-109 *Prospectus Exemption for Start-up Businesses* (the 2015 Proposal)**

#### **List of Commenters**

- Craig Asano, Founder and Executive Director, National Crowdfunding Association of Canada
- Ungad Chadda, Senior Vice President, Toronto Stock Exchange and John McCoach, President, TSX Venture Exchange
- Susan Copland, Director, Investment Industry Association of Canada
- Sandi K Gilbert, Founder & CEO, SeedUps Canada
- Neil Gross, Canadian Foundation for Advancement of Investor Rights
- Brian Kosack, Vice Chair, Geoffrey Ritchie, Director & Executive Member, and Peter-Paul Van Hoeken, Director Private Capital Markets Association of Canada
- Don Pare
- Craig Skauge, President, National Exempt Market Association
- Michael Thom, Chair, Canadian Advocacy Council for Canadian CFA Institute Societies

#### **Summary of Comments**

We received nine comment letters from a variety of market participants, including industry advocacy groups and professional service providers. The following is a summary of the main issues discussed in the comment letters as well as our response to those issues.

##### **1. Necessity of an additional prospectus exemption**

Commenters were split with respect to whether an additional prospectus exemption is necessary, some questioned whether a funding gap for start-up businesses does in fact exist, and if it does whether the gap was significant enough to justify the creation of a new exemption. Others felt strongly that there is a funding gap for small and early-stage businesses and that some type of prospectus exemption targeted towards this gap would be beneficial for the market.

Staff have heard various concerns regarding the lack of an appropriate prospectus exemption for early-stage businesses. We appreciate that the lack of capital raising avenues may be a

significant issue for small businesses and start-up companies and therefore it is our understanding that there is a necessity for ASC Rule 45-517.

## **2. Harmonization across all CSA jurisdictions**

Commenters emphasized the need for harmonization of prospectus exemptions across jurisdictions. There was a concern expressed that differences between models, however slight, may add confusion and complexities to the capital raising process. Without harmonization commenters suggested that it may not be economically feasible for issuers to attempt to raise capital under the proposed exemption as they will incur significant burdens attempting to navigate through multiple exemptions in order to raise capital across Canada.

Commenters recommended that if the ASC were to proceed with the 2015 Proposal they should consider all efforts to harmonize with MI 45-108 and include further guidance on how a concurrent offering could be completed.

We have made considerable efforts to harmonize ASC Rule 45-517 with the Start-up Crowdfunding Blanket Orders in place in certain other CSA jurisdictions. However, it is our understanding that under the terms of the Start-up Crowdfunding Blanket Orders it is not possible to conduct a multi-jurisdictional distribution that involves Alberta.

The ASC is proposing to adopt MI 45-108. Please see the ASC notice dated July 26, 2016 for further details.

## **3. Registration requirement**

Generally, commenters did not support the requirement that a portal be fully registered as a dealer. There was concern that a dealer would be uninterested in facilitating distributions under the proposal given the limits on offering amount, limits on investment, and the resources a dealer would have to expend in order to raise small amounts of capital from a large number of investors.

One commenter supported the requirement for a portal to be registered but suggested that there are difficulties with respect to the due diligence a dealer has to complete in order to satisfy its know-your-product (**KYP**), know-your-client (**KYC**) and suitability obligations. They recommended that a dealer be required to facilitate a distribution under the proposed exemption but supported the idea of the dealer not having to satisfy its KYP, KYC and suitability obligations. Another commenter recommended that portals be required to be registered as a 'restricted dealer' as required under MI 45-108.

Although commenters did appreciate the various risks involved without a registration requirement, they felt that requiring a fully registered dealer was too onerous and not the right balance between investor protection concerns and promotion of a fair and efficient capital market.



We considered the possibility of introducing a registration exemption in ASC Rule 45-517 but ultimately concluded that it was not appropriate for the Alberta market, due to concerns with oversight of the portal.

We acknowledge that it is unlikely a portal would obtain registration merely to conduct offerings under ASC Rule 45-517; however we note that some portals are already operating in Alberta without relief from the registration requirement and in compliance with the various requirements under National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103). We understand that despite the relief in other jurisdictions, registration as an exempt market dealer may be developing as the preferred alternative as it would allow the portal to operate not just for these very small financings but also for financings, for example, under the OM or accredited investor exemptions.

As outlined in the notice proposing adoption of MI 45-108, we contemplate that if MI 45-108 is adopted as a rule in Alberta, restricted dealer funding portals would be permitted to also participate in respect of the distribution of securities under ASC Rule 45-517.

#### **4. Investor protection concerns**

Commenters stressed various investor protection concerns given that a high proportion of investors participating under the proposed exemption would likely have limited financial literacy, risk tolerance and ability to withstand the loss of their investment.

We appreciate the various investor protection concerns outlined by commenters. These concerns, while reasonable, are not specific to ASC Rule 45-517 but are concerns relevant to crowdfunding and exempt market transactions generally. We have worked to address investor protection concerns through various requirements in the prospectus exemption, including with respect to limits on investment and additional risk warnings. Further, we will require all dealers to be registered.

#### **5. Investment limits**

Generally, commenters agreed that the higher investment limits should only be available where a dealer is involved. We received one comment that suggested there should be no investment limits where a registered dealer is involved.

We received mixed feedback on the investment limits without a registered dealer. One commenter suggested the limit be decreased to \$500 per offering, while others suggested it should be raised to be somewhere between \$5,000 and \$10,000.

We received comments that there should be annual investment limits (as opposed to, or including, the limits on investment per offering). One commenter questioned the value of having an investment limit per offering instead of an annual investment limit, as an annual investment may allow an issuer to raise its required capital from a single offering.

Two commenters were proponents of the best interests standard, suggesting that investment, or investment at a higher threshold, should only be permitted where a registrant has an obligation to act in the client's best interest. We also received one comment that there should be a mechanism to verify aggregate investment limits in lieu of relying on self-certification.

We appreciate the arguments both for and against the investment limits included in ASC Rule 45-517. The investment limits remain unchanged from publication, these limits are aligned with those under the Start-up Crowdfunding Blanket Orders and we anticipate that these are the right balance between investor protection and fostering an efficient capital market. We will be monitoring the investments made under ASC Rule 45-517 distributions and should it become necessary we will revisit our approach to these limits.

## **6. Offering limit and lifetime limit**

We received feedback that the offering limit should be raised, one commenter suggested it should be harmonized with the limit under MI 45-108 (i.e., \$1.5 million). Another commenter suggested that the lifetime limit be raised to an amount between \$5 million and \$10 million, while two other commenters felt the lifetime limit of \$1 million was appropriate.

We intend for ASC Rule 45-517 to be used only for very small financings and for a limited time. ASC Rule 45-517 was created in response to a perceived funding gap for small businesses, the rule seeks to breach this gap; however, once issuers have raised \$1,000,000 they should be in a position to provide their investors with the more significant disclosure required under various other prospectus exemptions. Issuers hoping to raise in excess of \$1,000,000 may rely on other exemptions, including, if ultimately adopted, MI 45-108.

## **7. Management of a large number of securityholders**

We sought comment on whether managing a potentially large number of securityholders would render the proposed exemption impractical. Generally, commenters felt that with the assistance of technology, managing a large number of investors would be a non-issue. There was some concern that record keeping and tracking of investors, especially in the event of a multi-jurisdictional distribution may pose practical problems and potentially reduce compliance with the requirements of the proposed exemption.

We thank the commenters for their feedback.

## **8. *ASC Blanket Order 45-515 Exemption from certain financial statement requirements of Form 45-106F2 Offering Memorandum for Non-Qualifying Issuers***

We sought comment on whether issuers would be likely to use Blanket Order 45-515 if the proposed MI 45-109 was adopted. We received mixed feedback, two commenters felt there would be no need for Blanket Order 45-515 whereas one commenter felt it should remain in place.

We thank the commenters for their feedback; we are proposing to let Blanket Order 45-515 expire by its terms in December 2016.

## **9. Financial Statements**

We received various recommendations with respect to how financial statements should be treated under the proposed exemption. Some commenters felt that there should be a threshold for financial statement requirements, or that the financial statement disclosure should be aligned with either MI 45-108 or the OM exemption.

We thank the commenters for their feedback. We have given consideration to how meaningful financial statements from small businesses and early stage companies will be for investors. Further, we have considered the costs associated with preparation of financial statements relative to the limited amounts that can be raised under ASC Rule 45-517. ASC Rule 45-517 does not require that financial statements be provided; however, if they are provided they must be in compliance with securities laws. We note that issuers may be required to prepare financial statements under corporate laws or for other purposes.

## **10. Ongoing disclosure**

We received various recommendations with respect to what, if any, ongoing disclosure issuers should be required to provide under the proposed exemption. Generally, commenters felt that some form of ongoing disclosure should be provided, for example, unaudited financial statements and a notice of proceeds describing the use of funds. One commenter felt that the requirement to provide audited or reviewed financial statements would be a significant expense to start-up businesses and of limited value to an investor given the early stage of the issuer.

Purchasers under ASC Rule 45-517 are required to read and accept a risk acknowledgment form which clearly warns the investor that they will not be provided with any ongoing information. While we strongly encourage issuers to communicate with securityholders, and expect that doing so may assist them with future capital raises, ASC Rule 45-517 does not prescribe ongoing disclosure. The lack of ongoing disclosure requirements is one of the features of ASC Rule 45-517 which will hopefully provide a more cost effective way for small businesses to raise capital. We note that the addition of the \$250,000 per distribution offering limit will mean that issuers that endeavour to raise in excess of this amount or otherwise conduct successive distributions will be required to provide updated disclosure with respect to how they have used funds previously raised.

## **11. Marketing materials**

We sought comment on whether marketing materials should be required to be filed with regulators pursuant to the proposed exemption. Commenters were split on this issue. Some felt that marketing materials should be required to be filed while others felt that this would pose a practical problem given that marketing content would be non-static and online, through social media, video content or otherwise.

We thank the commenters for their feedback. We appreciate that requiring marketing materials to be filed may pose a significant practical problem given the predicted online nature of potential ASC Rule 45-517 distributions. Accordingly, we will not be imposing such a condition in the rule but will continue to monitor this issue. ASC Rule 45-517 imposes clearly worded requirements with respect to all disclosure provided to potential investors, requiring it to be fair and balanced and not misleading.

### **12. Multi-jurisdictional distributions**

We sought comment regarding what jurisdictions an issuer in Alberta would be seeking to raise capital. We received feedback that issuers would likely look to raise capital across Canada, specifically in addition to Alberta, in British Columbia, Saskatchewan and Ontario.

As mentioned above, we have sought to further harmonize ASC Rule 45-517 with the Start-up Crowdfunding Blanket Orders; however, it is our understanding that it is not possible under the terms of the Start-up Crowdfunding Blanket Orders to conduct a distribution in Alberta.

We are proposing to adopt MI 45-108 and, to that end are concurrently publishing it for comment.

### **13. Risk acknowledgment**

Commenters were generally in favour of the proposed form of risk acknowledgment. It was described as adequately identifying the potential risks to investors.

We thank the commenters for their feedback.

**ANNEX B****ALBERTA SECURITIES COMMISSION RULE 45-517  
PROSPECTUS EXEMPTION FOR START-UP BUSINESSES****Definitions**

1. Terms defined in National Instrument 14-101 *Definitions* have the same meaning in this Rule.

2. In this Rule

“corresponding exemption” means a prospectus exemption that is substantially similar to this Rule;

“corresponding jurisdiction” means a jurisdiction of Canada that has adopted a corresponding exemption;

“eligible issuer” means an issuer that is not an investment fund or reporting issuer in a jurisdiction of Canada and is not subject to reporting obligations similar to those of a reporting issuer in a foreign jurisdiction;

“deliver” when used in relation to a purchaser includes the document being made reasonably available through the facilities of a funding portal provided that the funding portal requires the purchaser to acknowledge having read the document;

“eligible security” means any of the following:

- (a) a common share;
- (b) a non-convertible preference share;
- (c) a security convertible into a security referred to in (a) or (b);
- (d) a non-convertible debt security linked to a fixed or floating interest rate;
- (e) a unit of a limited partnership;
- (f) an investment share that is a non-convertible preference share issued by a cooperative organized under the *Cooperatives Act* (Alberta);

“founder” has the meaning ascribed to it in National Instrument 45-106 *Prospectus Exemptions*;

“issuer group” means an issuer together with each of the following:

- (a) each affiliate of the issuer;
- (b) each other issuer that is either of the following:
  - (i) that is engaged in a common enterprise with the issuer or with an affiliate of the issuer;
  - (ii) that has a founder that is a founder of the issuer;

“minimum offering amount” means the minimum amount required to be raised by an issuer conducting a start-up business distribution which amount can include funds raised under either the start-up business distribution or a concurrent distribution under one or more other exemptions from the prospectus requirement;

“offering document” means a completed Form 45-517F1 *Start-up Business Offering Document*;

“principal” means a promoter, director, officer or control person;

“registered dealer” means a dealer registered as an exempt market dealer or an investment dealer under National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;

“risk acknowledgment” means a completed Form 45-517F2 *Start-up Business Risk Acknowledgment*;

“start-up business distribution” means a distribution under this Rule or a corresponding exemption.

### **Prospectus exemption**

- 3. (1)** The prospectus requirement does not apply to a distribution by an issuer of a security of its own issue provided all of the following apply:
- (a) each security distributed by the issuer is an eligible security;
  - (b) the issuer is an eligible issuer;
  - (c) the head office of the issuer is located in Alberta or a corresponding jurisdiction;
  - (d) the aggregate funds raised in the start-up business distribution together with all funds raised by members of the issuer group in prior start-up business distributions does not exceed \$1 000 000;

- (e) at the same time or before the purchaser signs the agreement to purchase the security, the issuer or, if the issuer has retained a registered dealer in respect of the distribution, the dealer
    - (i) delivers to the purchaser an offering document that complies with sections 4, 5, and 8, and
    - (ii) obtains a risk acknowledgment from the purchaser which evidences that the purchaser has read and understood the contents of that form;
  - (f) the issuer provides to the purchaser a contractual right to withdraw the purchaser's offer to purchase the security which right can be exercised by the purchaser delivering a notice to the issuer or, if the issuer has retained a registered dealer in respect of the distribution, the dealer within 48 hours of the later of
    - (i) the purchaser's subscription, and
    - (ii) an amended offering document being delivered to the purchaser;
  - (g) the acquisition cost of the securities acquired by the purchaser does not exceed \$1 500;
  - (h) the aggregate funds raised in any start-up business distribution by the issuer group does not exceed \$250 000;
  - (i) not more than one other start-up business distribution in aggregate, has been conducted by any members of the issuer group in the current calendar year;
  - (j) no commission, fee or other amounts are paid to the issuer group or any of their principals, employees or agents with respect to the distribution;
  - (k) any person or company acting or proposing to act as an intermediary in connection with the start-up business distribution of securities through an online platform to an Alberta purchaser is a registered dealer.
- (2) Despite paragraph 3(1)(g), if a registered dealer provides the purchaser with positive suitability advice in respect of the acquisition, the maximum acquisition cost of the securities acquired by a purchaser in a start-up business distribution is \$5 000.

### **Offering document**

4. The offering document must contain a certificate signed by a person authorized to sign on behalf of the issuer stating that the offering document does not contain a statement that, in a material respect and at the time and in light of the circumstances in which it is made, is misleading or untrue and does not fail to state a fact that is required to be stated or that is necessary to make a statement not misleading.

5. If prior to the closing of the distribution the certificate referred to in section 4 ceases to be true, the issuer must amend the offering document and must not accept a purchaser's subscription unless the purchaser has been provided with the amendment to the offering document.

### **Other offering materials**

6. The issuer must not make available to a purchaser under section 3 any material that purports to describe the business and affairs of the issuer that has been prepared primarily for delivery to and review by a prospective purchaser so as to assist the prospective purchaser to make an investment decision if the material is not balanced and fair or contains a statement that, in a material respect and at the time and in light of the circumstances in which it is made is misleading or untrue and it does not state a fact that is required to be stated or that is necessary to make a statement not misleading.
7. The issuer must not make available to a purchaser its financial statements unless the financial statements are prepared in accordance with one of the following:
  - (a) Canadian GAAP applicable to publicly accountable enterprises;
  - (b) Part II of the Handbook applied to an issuer as if it were a private enterprise and the financial statements consolidate any subsidiaries and account for any significantly influenced investees and joint ventures using the equity method.

### **Minimum offering amount**

8. An issuer conducting a distribution under section 3, must specify in the offering document a minimum offering amount.
9. If a distribution under section 3 is withdrawn or if the issuer does not raise the minimum offering amount by the 90<sup>th</sup> day after the earlier of the date that the offering document is (i) first delivered to a purchaser and (ii) made publicly available on a funding portal, the issuer must
  - (a) return or cause to be returned, all funds to each purchaser, and
  - (b) notify each purchaser or cause each purchaser to be notified that the funds have been returned.

### **Purchase confirmation**

10. Within 30 days after the closing of the distribution, the issuer must deliver or cause to be delivered to each purchaser a confirmation setting out each of the following:
  - (a) the date of the subscription and the closing of the distribution;
  - (b) the quantity and description of the security purchased;



- (c) the price per security paid by the purchaser;
- (d) the total commission, fee and any other amounts paid by the issuer to a dealer in respect of the start-up business distribution.

### **Registered dealers**

- 11. A registered dealer that participates in a distribution under section 3 must promptly deliver to each purchaser the offering document.
- 12. A registered dealer must not participate in a distribution under section 3 if the issuer is a connected issuer or a related issuer, as defined in National Instrument 33-105 *Underwriting Conflicts*.

### **Filings**

- 13. On or before the 30<sup>th</sup> day after the closing of the start-up business distribution, the issuer must file each of the following:
  - (a) a completed Form 45-517F1 *Start-up Business Offering Document*;
  - (b) a completed Form 45-106F1 *Report of Exempt Distribution*.

### **Multi-jurisdictional distributions**

- 14. Despite subsection 3(e) and section 13, an issuer that is conducting a start-up business distribution under this Rule, and is permitted to concurrently conduct the start-up business distribution under a corresponding exemption in a corresponding jurisdiction may do any of the following:
  - (a) prepare its offering document in accordance with the form of offering document prescribed under the corresponding exemption provided that in respect of each purchaser in Alberta
    - (i) the disclosure in the offering document together with any other material, is fair and balanced and the description of the business in the offering document provides sufficient information for an investor to make an informed investment decision,
    - (ii) if the offering document contains forward-looking information, as defined in Appendix A to Form 45-517F1, the issuer complies with instruction 8 of that Form,
    - (iii) if financial statements are provided, the financial statements comply with sections 6 and 7 of this Rule, and
    - (iv) the offering document contains a certificate that states

*This offering document does not contain a statement that, in a material respect and at the time and in light of the circumstances in which it is made, is misleading or untrue and it does not fail to state a fact that is required to be stated or that is necessary to make a statement not misleading.*

- (b) in respect of purchasers outside of Alberta, obtain a risk acknowledgment form in accordance with the form of risk acknowledgment prescribed under the corresponding exemption;
- (c) complete its report of exempt distribution in accordance with the form of report of exempt distribution prescribed under the corresponding exemption.

*Note: At the time of implementation of this Rule, it is not possible to conduct a multi-jurisdictional distribution concurrently under this Rule and a corresponding exemption as it is not permitted under the laws of any other jurisdiction.*

### **Books and records**

- 15.** An issuer that distributes securities under section 3 must maintain at its head office, books and records in respect of the distribution of securities under section 3 that demonstrate that it has complied with this Rule.
- 16.** A registered dealer that participates in a start-up business distribution must maintain at its head office, books and records to accurately record the client transactions and to demonstrate compliance with this Rule.
- 17.** The books and records required under sections 15 and 16 must be maintained for a period of eight years from the date the record is created.

### **Resale restrictions**

- 18.** The first trade of a security acquired under section 3 is subject to section 2.5 of National Instrument 45-102 *Resale of Securities*.

### **Designated offering memorandum**

- 19.** An offering document used for a distribution under section 3, including all amendments to that document, is designated to be an offering memorandum under Alberta securities laws.

### **Effective date**

- 20.** This Rule comes into force on July 19, 2016.

**ANNEX C****COMPANION POLICY 45-517  
*PROSPECTUS EXEMPTION FOR START-UP BUSINESSES*****PART 1  
GENERAL COMMENTS****1. Application**

Alberta Securities Commission Rule 45-517 *Prospectus Exemption for Start-up Businesses* (ASC Rule 45-517 or the Rule) has been adopted by the Alberta Securities Commission (ASC).

**2. No registration exemption**

ASC Rule 45-517 provides an exemption from the prospectus requirement. It is designed to facilitate capital raising by start-up or early stage businesses while still providing appropriate investor protection. It does not provide an exemption from the requirement that a person or company who is a dealer must be registered. Accordingly, a person or company acting as a dealer in respect of a distribution of securities under ASC Rule 45-517, will need to comply with the registration requirement. A condition of the prospectus exemption is that a person or company that acts or proposes to act as an intermediary in a distribution of securities under this Rule through an online platform, must be registered as an exempt market dealer or investment dealer under National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*.

**3. Purpose**

The purpose of this Companion Policy is to help users of ASC Rule 45-517 understand how the ASC interprets certain provisions of the Rule. This Companion Policy includes explanations, discussion and examples of the application of various parts of ASC Rule 45-517.

**4. Multi-jurisdictional distributions**

ASC Rule 45-517 is available to Alberta issuers seeking to raise capital from Alberta investors. It may only be used by an issuer in a corresponding jurisdiction for a multi-jurisdictional distribution if permitted under the securities legislation in each jurisdiction in which the distribution occurs, i.e., in the jurisdiction of the issuer and the investor.

## 5. Raising money under ASC Rule 45-517

An issuer wishing to raise funds can use the prospectus exemption in ASC Rule 45-517 in three ways:

- to raise money through an online funding portal (provided that the portal is in compliance with the registration requirement e.g., registered as an exempt market dealer);
- to raise money through a dealer (provided the dealer is in compliance with the registration requirement e.g., registered as an exempt market dealer or investment dealer) that will solicit investment and distribute securities through traditional distribution channels; or
- to raise money through the issuer's principal's own network of contacts (provided that they are not in the business of trading securities such that the dealer registration requirement is triggered).

## 6. Suitability for issuers

Before commencing a distribution under ASC Rule 45-517 issuers should consider whether it is appropriate for their purposes. Issuers should assess whether they have the resources to comply with the requirements under the Rule and estimate if they have the financial and other resources necessary to manage a great number of security holders.

If the distribution is successful, the founders of the issuer may have to give up part of the ownership of the issuer to investors. The issuer will be accountable to its investors. Investors will likely expect to be informed about successes and failures of the issuer's business. The issuer may have to spend time and money to maintain contact with investors.

Within 30 days after the closing of a distribution, the issuer must file a report of exempt distribution, in the required form, with the ASC. There is a fee associated with the filing of this report.<sup>1</sup>

An issuer that relies on ASC Rule 45-517 will likely no longer be considered a "private issuer" under National Instrument 45-106 *Prospectus Exemptions* (NI 45-106) and, as such, will likely not be able to rely on the "private issuer" prospectus exemption for future distributions of securities. As a consequence, other prospectus exemptions will need to be considered and if relied upon, a report of exempt distribution with the associated fee will likely be required in respect of each future distribution.

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<sup>1</sup> For example, as at the date of this Companion Policy, in Alberta, the minimum fee for filing a report of exempt distribution is \$120.

ASC Rule 45-517 is not available to reporting issuers. Reporting issuers are companies that are required to make continuous disclosure to the public of their business activities including by filing financial statements and other documents as required by securities legislation.

Relying on ASC Rule 45-517 will not make an issuer a “reporting issuer” under securities laws; however, by increasing the number of its shareholders, the issuer may become subject to certain reporting requirements under applicable corporate law. For example, under business corporations legislation an issuer is typically required to hold an annual meeting of its shareholders and is required to distribute an information circular, containing certain specified information, where it solicits proxies from more than a specified number of shareholders, e.g., more than 15. Also under business corporations legislation an issuer will often be required to deliver audited annual financial statements to shareholders, unless the shareholders unanimously resolve to dispense with the appointment of an auditor. With a large number of public shareholders obtaining such a resolution is probably not realistic.

## **PART 2 INTERPRETATION**

### **7. Distribution limit**

The maximum that can be raised in any one distribution under ASC Rule 45-517 is \$250 000. An issuer group is permitted to conduct up to two distributions in a calendar year. The lifetime limit also applies such that the aggregate funds raised by the issuer group through all start-up business distributions must be less than \$1 000 000.

### **8. Lifetime limit**

Issuers using ASC Rule 45-517 are subject to a \$1 000 000 lifetime limit on the amount that they can raise under ASC Rule 45-517 and a corresponding exemption. In calculating the \$1 000 000 all funds ever raised by the issuer and other members of the “issuer group” under ASC Rule 45-517 or a corresponding exemption are included.

ASC Rule 45-517 is intended to serve the funding gap that may exist prior to an issuer being able to cost effectively use the offering memorandum prospectus exemption in NI 45-106 (the OM Exemption). Once an issuer group has raised \$1 000 000 under start-up business distribution(s) we think it should be in a position to prepare financial statements and comply with the requirements of the OM Exemption.

The term issuer group is defined in ASC Rule 45-517 and includes the issuer, each affiliate of the issuer and any other issuer that is engaged in a common enterprise with the issuer or who has a founder that is also a founder of the issuer. The term “founder” is defined in NI 45-106. It includes a requirement that, at the time of the distribution of a security the person be actively

involved in the business of the issuer. Accordingly, a person who takes the initiative in founding, organizing or substantially reorganizing the business of the issuer within the meaning of the definition but subsequently ceases to be actively engaged in the day to day operations of the business of the issuer would no longer be a “founder” for the purposes of ASC Rule 45-517, regardless of the person’s degree of prior involvement with the issuer or the extent of the person’s continued ownership interest in the issuer.

If a founder remains actively engaged with two separate businesses both of which are seeking to rely on ASC Rule 45-517, where (i) the businesses are truly separate enterprises, and (ii) the founder can demonstrate they possess adequate resources to dedicate to each business, the ASC would consider an application for exemptive relief allowing the two businesses to not be grouped together as the same issuer group.

## **9. Investment limits**

ASC Rule 45-517 includes various limits on the amount that can be raised from any particular investor. If a registered dealer is *not* involved, for example, if an issuer accesses investors through its own network of contacts, without using a portal, no investor can invest more than \$1 500 in a single investment. As issuers are restricted to conducting no more than two start-up business distributions in a calendar year, no investor would be able to invest more than \$3 000 per issuer group in the same calendar year under all start-up business distributions.

If an issuer retains a registered dealer to access investors, whether through a portal or through traditional channels, the investment limits can be somewhat higher. Where a registered dealer provides positive suitability advice regarding an investor’s investment, recommending that the investment is suitable for the investor, then the investor can invest up to \$5 000 in a single investment. Again, issuers are restricted to conducting no more than two start-up business distributions in a calendar year, accordingly, no investor would be able to invest more than \$10 000 per issuer group in the same calendar year under all start-up business distributions.

Registered dealers are subject to know-your-product, know-your-client and suitability requirements, accordingly, if the registered dealer provides positive suitability advice, recommending that an investment is suitable for an investor, a somewhat higher investment limit is permitted. The higher investment limit allows issuers access to greater capital but is intended to still protect investors by safeguarding them from investments that are not suitable for them.

## **10. Concurrent distributions**

An issuer can raise money using other prospectus exemptions concurrently with conducting a start-up business distribution. Other prospectus exemptions are found in NI 45-106. The funds raised under other prospectus exemptions can serve to reach the minimum offering amount stated in the offering document.

For example, NewTech Co's goal is to raise a minimum offering amount of \$75 000. They used a funding portal that is registered as an exempt market dealer. They raised \$65 000 through the funding portal from several investors under ASC Rule 45-517. At the same time, Rebecca, an "accredited investor" as defined in NI 45-106 (e.g., annual net income of over \$200 000 for the last few years), wants to invest \$10 000 in NewTech Co. under the accredited investor exemption. NewTech Co. cannot use ASC Rule 45-517 to sell to Rebecca since Rebecca wants to invest more than is permitted under ASC Rule 45-517. However, Rebecca qualifies as an accredited investor so NewTech Co. can sell to Rebecca under the accredited investor exemption. Together, the \$65 000 from the distribution under ASC Rule 45-517 and the \$10 000 raised under the accredited investor exemption meet the minimum offering amount. NewTech Co can ask the funding portal to release the \$65 000 raised as soon as the withdrawal period has expired for all start-up business distribution investors.

#### **11. No commissions or fees**

ASC Rule 45-517 prohibits payment of a commission, fee or similar payment to the issuer group or any of their promoters, directors, officers, control persons or founders in connection with a distribution under the Rule. This is intended to alleviate concerns related to potential conflicts of interest. However, this is not intended to deny payments to persons or companies for compensation for their services to an issuer in preparing materials in connection with a distribution under the Rule, such as accounting or legal fees.

#### **12. Amendments to the offering document**

The information contained in the offering document must be kept up to date throughout the duration of the start-up business distribution. If the information in the offering document contains any information that becomes, in a material respect, misleading or untrue at the time and in light of the circumstances in which it is made, the issuer must amend the offering document as soon as practicable and deliver the new version to investors. An updated version of the offering document does not need to be provided to investors under prior start-up business distributions that have been completed.

Investors will have 48 hours from being notified of the amendment to cancel their agreement to purchase the securities. Investors who want to withdraw their investment during this time must notify the issuer or dealer, depending on who they purchased their securities through.

In determining whether an offering document must be updated, an issuer must consider the materiality of the change in circumstances. Materiality is a matter of judgment to be made in light of the circumstances, taking into account both qualitative and quantitative factors, assessed in respect of the issuer as a whole. Consider whether a hypothetical investor, broadly representative of investors generally and acting reasonably, would be likely to be influenced, in making an investment decision to buy a security of an issuer, by an item of information or an

aggregate of items of information. If so, then that item of information, or aggregate of items, is “material” in respect of that issuer. An item that is immaterial alone may be material in the context of other information, or may be necessary to give context to other information.

### **PART 3 FORMS**

#### **13. Offering document**

Issuers are responsible for preparing the offering document to be provided to investors to enable them to make a decision whether to invest in the issuer’s securities. An offering document delivered under ASC Rule 45-517 must be prepared by using Form 45-109F1 *Start-up Business Offering Document*. The issuer must provide information for each of the items in the Form.

#### **14. Risk acknowledgment**

The issuer must obtain a signed risk acknowledgment from each investor prior to the investor signing the agreement to purchase any securities. A risk acknowledgment obtained under ASC Rule 45-517 must be in the form prescribed by Form 45-109F2 *Start-up Business Risk Acknowledgment*. All risk acknowledgments must evidence that the investor has read and understood the matters set out in the form.

### **PART 4 CLOSING OF THE DISTRIBUTION**

#### **15. Achieving the minimum offering amount**

If the minimum offering amount has been raised within the determined time period, the issuer can proceed to close the distribution. The issuer will issue the securities and instruct the dealer, if any, to release the funds. However, in all cases, the issuer must not access funds until the withdrawal period for each investor under a start-up business distribution has expired.

#### **16. Report of exempt distribution**

Within 30 days after the closing of any distribution under ASC Rule 45-517, the issuer must file a completed report of exempt distribution with the ASC. The report of exempt distribution must be in Form 45-106F1 *Report of Exempt Distribution*.

#### **17. Filing of offering document**

Within 30 days after the closing of a distribution under ASC Rule 45-517, the issuer must file the offering document, including all applicable amendments, with the ASC.



**18. Filing on the System for Electronic Document and Analysis and Retrieval (SEDAR)**

The report of exempt distribution and offering document must be filed electronically through SEDAR, in accordance with National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)*. The Canadian Securities Administrators (CSA) has information regarding the SEDAR filing requirements. Please see:

CSA Staff Notice 13-323 *Frequently Asked Questions About Making Exempt Market Offering and Disclosure Filings on SEDAR*

CSA website on *Report of Exempt Distribution*

**ANNEX D****FORM 45-517F1****START-UP BUSINESS OFFERING DOCUMENT****GENERAL INSTRUCTIONS:**

- (1) An offering document prepared using this Form can only be used for a distribution of securities under Alberta Securities Commission Rule 45-517 Prospectus Exemption for Start-up Businesses (the Rule).*
- (2) This offering document and all amendments to it must be filed with the Alberta Securities Commission through the System for Electronic Document Analysis and Retrieval (SEDAR) in accordance with National Instrument 13-101 System for Electronic Document Analysis and Retrieval (SEDAR), no later than the 30th day after the closing of the distribution.*
- (3) This offering document must be certified by an individual authorized to act on behalf of the issuer.*
- (4) Draft this offering document so that it is easy to read and understand. Be concise and use clear, plain language. Avoid technical terms.*
- (5) Conform as closely as possible to the format set out in this Form. Address the items in the order set out below. No variation of headings, numbering or information set out in the Form is allowed and all are to be displayed as shown.*
- (6) Refer to Appendix A of this Form for definitions of terms used in this Form.*
- (7) The offering document must be provided to each investor before the investor signs the agreement to purchase the security. If the information contained in this offering document becomes untrue or misleading the offering document must be amended and investors must be given the amended offering document before their subscription can be accepted.*
- (8) If any forward-looking information (as defined in Appendix A) that could reasonably be expected to be material to an investor's decision to invest is included in the offering document identify it and include proximate to the identification of it
  - a. reasonable cautionary language identifying material factors that could cause actual results to differ materially from a conclusion, forecast or projection in the forward-looking information,**

- b. *state that the issuer believes it has a reasonable basis for drawing the conclusions or making the forecasts and projections set out in the forward-looking information, and*
- c. *state in bold type:*

***The forecasts and predictions of an early-stage business are difficult to objectively analyze or confirm. Forward-looking statements represent the opinion of the issuer only and may not prove to be reasonable.***

## **Item 1: RISKS OF INVESTING**

- 1.1** Include the following statement on the first page of the offering document, in bold type:

**“No securities regulatory authority or regulator has assessed, reviewed or approved the merits of these securities or reviewed this offering document. Any representation to the contrary is an offence. This is a risky investment.”**

## **Item 2: THE ISSUER**

- 2.1** Provide the following information for the issuer:

- (a) Full legal name as it appears in the issuer’s organizing documents,
- (b) Head office address,
- (c) Telephone,
- (d) Fax, and
- (e) Website URL.

*Guidance: The organizing documents are the issuer’s articles of incorporation, limited partnership agreement or other similar documents.*

- 2.2** Identify an officer, employee or agent of the issuer who is able to answer questions from investors and any security regulatory authority or regulator. Provide the following contact information for that individual:

- (a) Full legal name (first name, middle name and last name),
- (b) Position held with the issuer,
- (c) Business address,
- (d) Business telephone,

- (e) Fax, and
- (f) Business e-mail.

### Item 3: BUSINESS OVERVIEW

3.1 Briefly explain, in a few lines, the issuer's business and why the issuer is raising funds.

Include the following statement, in bold type:

**“A more detailed description of the issuer’s business is provided below.”**

### Item 4: MANAGEMENT

4.1 Provide the information in the following table for each promoter, founder, director, officer and control person of the issuer:

*Guidance: The definitions of the terms “promoter”, “founder”, “director”, “officer” and “control person” can be found in Appendix A of this Form.*

Full legal name municipality of residence and position at issuer	Principal occupation for the last five years	Expertise, education, and experience that is relevant to the issuer's business	Number and type of securities of the issuer owned	Date securities were acquired and price paid for the securities	Percentage of the issuer's securities held as of the date of this offering document

4.2 For the issuer and for each person or company listed in item 4.1, state whether they:

- (a) have ever, pled guilty to or been found guilty of:
  - (i) a summary conviction or indictable offence under the *Criminal Code* (R.S.C., 1985, c. C-46) of Canada,
  - (ii) a quasi-criminal offence in any jurisdiction of Canada or a foreign jurisdiction,
  - (iii) a misdemeanour or felony under the criminal legislation of the United States of America, or any state or territory therein, or
  - (iv) an offence under the criminal legislation of any other foreign jurisdiction,

- (b) is or have been the subject of an order (cease trade or otherwise), judgment, decree, sanction, or administrative penalty imposed by a government agency, administrative agency, self-regulatory organization, civil court, or administrative court of Canada or a foreign jurisdiction in the last ten years related to his or her involvement in any type of business, securities, insurance or banking activity,
- (c) is or has been the subject of a bankruptcy or insolvency proceeding,
- (d) is a director or executive officer of an issuer that is or has been subject to a proceeding described in paragraphs (a), (b) or (c) above.

For each person or company listed in this item, provide details on the time, nature and outcome of any, and all, proceedings.

*Guidance: The definitions of the terms “executive officer” and “quasi-criminal offence” can be found in Appendix A of this Form.*

#### **Item 5: START-UP BUSINESS DISTRIBUTION**

- 5.1** Provide the name of any dealer the issuer is using to conduct its start-up business distribution.
- 5.2** List the name of all the jurisdictions where the issuer intends to raise funds.

*Guidance: The distribution can only be made in jurisdictions that provide applicable exemptions or otherwise in compliance with applicable securities legislation in such jurisdictions..*

- 5.3** Provide the following information with respect to the start-up business distribution:
  - (a) the minimum offering amount that must be raised;
  - (b) the date by which the issuer must raise the minimum offering amount (which cannot be later than 90 days after the date this offering document is first made available to an investor); and
  - (c) the dates of each amendment, if any, made to this offering document, and a description of each amendment.

*Guidance: The date in (a) does not change as a result of amending an offering document.*

- 5.4** State the type of eligible securities offered.

*Guidance: Only “eligible securities” as defined in the Rule can be distributed under the Rule.*

**5.5** The eligible securities offered provide the following rights (choose all that apply):

- Voting rights,
- Dividends or interests (describe any right to receive dividends or interest),
- Rights on dissolution,
- Conversion rights (describe what each security is convertible into),
- Other (describe the rights).

*Guidance: This information is usually found in the organizing documents referred to in Item 6.3.*

**5.6** Provide a brief summary of any other material restrictions or conditions that attach to the eligible securities being offered, such as tag-along, drag along or pre-emptive rights.

*Guidance: The restrictions or conditions to be described here are generally found in shareholder's agreements or limited partnership agreements. The definitions of the terms "tag-along right", "drag along right", and "pre-emptive right" can be found in Appendix A of this Form.*

**5.7** In a table, provide the following information:

	Total amount (\$)	Total number of eligible securities issuable
Minimum offering amount		
Maximum offering amount		
Price per eligible security		

*Guidance: The total number of eligible securities issuable multiplied by the offering price per security should equal the minimum or maximum offering amount, as applicable. The maximum offering amount cannot exceed \$250,000 and cannot, including all other start-up distributions ever conducted by the issuer and other members of the issuer group (as defined in the Rule) exceed \$1,000,000. The minimum offering amount stated in this offering document may be satisfied with funds that are available to the issuer that are raised under other prospectus exemptions.*

- 5.8** State whether investors are each required to make a minimum investment. If so, state the minimum investment.

*Guidance: The issuer has the option to set a minimum investment amount per investor. This amount cannot be over \$1,500 if there is no registered dealer involved. If a registered dealer provides positive suitability advice to an investor, the maximum amount of the subscription that can be accepted from that investor is \$5,000.*

*If the issuer has not set a minimum investment amount, state that.*

## **Item 6: ISSUER'S BUSINESS**

- 6.1** Describe the issuer's business. Provide sufficient details about the issuer's industry and operations for an investor to understand the issuer's business and its plans and make an informed investment decision.

*Guidance: The information provided must be balanced and fair and not misleading or untrue. It should not over-emphasize the positive and downplay the negative. If the issuer has future hopes or goals but the reasonableness of those hopes or goals cannot yet be appropriately analyzed or assessed or, given the stage of development of the business, there can be little or no assurance that the hopes or goals are achievable, the risks associated with being able to achieve those hopes or goals should be made clear.*

*Enough details should be provided so an investor can clearly understand the issuer's business, what it does and intends to do. Consideration should be given to addressing the following:*

- *Does or will the issuer build, design or develop something? Sell something produced by others? Provide a service?*
- *Does the issuer have business premises from which it can operate its business?*
- *How many employees does the issuer have? Need?*
- *Has the issuer entered any contracts that are important to its business?*
- *Has the issuer conducted any operations yet?*
- *Are there factors that make the issuer's business different from its competitors?*
- *What milestones has the issuer already reached e.g., developed a prototype, signed a distribution agreement, leased premises, obtained a bank loan or other significant financing?*
- *What milestones does the issuer hope to achieve in the next couple years e.g., Complete testing? Find a manufacturer? Commence a marketing campaign? Buy inventory? What is the proposed timeline for achieving each of the milestones?*

- *What are the major hurdles that the issuer expects to face in achieving its milestones?*
  - *If the issuer is offering shares or similar securities to investors, is there a long-term hope or goal that would provide an “exit-opportunity” for investors e.g., the issuer hopes to eventually become a reporting issuer? Be bought out/taken over by a larger company. (NOTE: It is a breach of securities laws to state that an issuer will be or will apply to be traded on an exchange or quoted on a quotation and trade reporting system.)*
  - *How are the funds raised from this financing expected to help the issuer advance its business and achieve one or more of the milestones?*
- 6.2** Describe the legal structure of the issuer (e.g., corporation, partnership, trust, unincorporated sole proprietor) and indicate the jurisdiction where the issuer is incorporated or organized.
- 6.3** Indicate where the issuer’s articles of incorporation, limited partnership agreement, shareholder agreement or similar document are available to investors.
- 6.4** Indicate which statement(s) best describe the issuer’s operations (select all that apply):
- Has never conducted operations,
  - Is in the development stage,
  - Is currently conducting operations,
  - Has shown profit in the last financial year.
- 6.5** Describe the number and type of securities of the issuer outstanding as at the date of the offering document. If there are securities outstanding other than the eligible securities being offered, please describe those securities.
- 6.6** If the issuer is providing financial statements to investors, state that fact.
- (a) If the financial statements have not been audited, state in bold type:
- The financial statements have not been audited.**
- (b) Unless the financial statements are prepared in accordance with Canadian generally accepted accounting principles applicable to publicly accountable enterprises, state in bold type:
- The financial statements have not been prepared using Canadian generally accepted accounting principles (GAAP) for publicly accountable enterprises and are not comparable to financial statements**



**using Canadian GAAP for publicly accountable enterprises. They may not be suitable for your purposes.**

*Guidance: The issuer is not required to provide financial statements to investors in connection with a start-up business distribution. The issuer can choose to make financial statements available to investors; however, if financial statements are provided they must comply with sections 6 and 7 of the Rule.*

*If financial statements are included in the offering document, they must be filed with the offering document and must be prepared in accordance with the requirements of National Instrument 52-107 Acceptable Accounting Principles and Auditing Standards.*

## **Item 7: USE OF FUNDS**

### **Prior Funds**

**7.1** Provide information on all funds previously raised by the issuer (including from its promoters, founders, directors, officers and control persons) and how they have been used by the issuer. Include enough details so an investor can clearly understand:

- How much money the issuer has already raised?
- How the issuer raised it?
- What prospectus exemption(s) was/were used?
- How has that money been used?

If the issuer has not previously raised funds, state this fact.

### **Funds from this Start-Up Business Distribution**

**7.2** Using the following table, provide a detailed breakdown of how the issuer will use the funds from this start-up business distribution. Provide enough details to allow investors to make a reasoned investment decision.

If any of the funds will be paid directly or indirectly to a promoter, founder, director, officer or control person of the issuer, disclose in a note to the table the name of the person or company, the relationship to the issuer and the amount. If more than 10% of the available funds will be used by the issuer to pay debt and the issuer incurred the debt within the two preceding financial years, describe why the debt was incurred.

Description of intended use of funds listed in order of priority	Total amount (\$)	
	Assuming minimum offering amount	Assuming maximum offering amount

**Item 8: PREVIOUS START-UP BUSINESS DISTRIBUTIONS**

**8.1** If the issuer or any member of the issuer group has conducted a start-up business distribution in the past five years, state the following:

- (a) the full legal name of the issuer that made the distribution,
- (b) the name of any dealer used, and
- (c) whether the distribution successfully closed, was withdrawn by the issuer or did not close because the minimum offering amount was not reached and the date on which each of these, as applicable, occurred.

*Guidance: The term “issuer group” is defined in the Rule.*

**8.2** If a promoter, founder, director, officer or control person of the issuer has been a promoter, founder, director, officer or control person of any issuer that has conducted a start-up business distribution in the past five years, state the following:

- (a) the full legal name of the issuer that made the distribution,
- (b) the name of any dealer used, and
- (c) whether the distribution successfully closed, was withdrawn by the issuer or did not close because the minimum offering amount was not reached and the date on which each of these, as applicable, occurred.

**Item 9: COMPENSATION PAID TO DEALER**

**9.1** If any commission, fee or other payment is expected to be paid by the issuer to any dealer in connection with the start-up business distribution,

- (a) for each type of commission, fee or other payment, describe it and state the estimated amount to be paid; and
- (b) if a commission is expected to be paid, indicate the percentage that the commission will represent of the gross proceeds of the offering (assuming both the minimum and maximum offering).

*Guidance: Fees payable to the dealer should be mutually agreed between the dealer and the issuer prior to distributing the offering document.*

## **Item 10: RISK FACTORS**

- 10.1** Describe **in order of importance**, starting with the most important, the main risks of investing in the issuer’s business for the investors. Explain the risks of investing in the issuer for the investor in a meaningful way, avoiding overly general or “boilerplate” disclosure. Disclose both the risk and the factual basis for it. Risks can relate to the issuer’s business, its stage of development, its lack of management experience, its limited financial resources, the industry, the extent of competition, its clients, etc.

*Guidance: The disclosure must be fair and balanced and not misleading or untrue. Issuers may indicate how the business plans to mitigate these risks, but should not de-emphasize the risks by including excessive caveats or conditions.*

If the securities being distributed are to pay interest, dividends or distributions and the issuer does not have the financial resources to make such payments, (other than from the sale of securities) state in bold type:

**“We do not currently have the financial resources to pay [interest, dividends or distributions] to investors. There is no assurance that we will ever have the financial resources to do so.”**

## **Item 11: REPORTING OBLIGATIONS**

- 11.1** Describe the nature and frequency of any disclosure of information the issuer intends to provide to investors after the closing of the distribution and explain how investors can access this information.

*Guidance: Setting out a reporting plan will generally be important to investors. As it will create an expectation by investors, ensure it is realistic and achievable. Reporting does not have to be complex or costly. Reporting can be through a website, newsletters, social media sites, email and mailings. Reporting might involve identifying milestones that have been met, confirming how investors’ money was used, identifying material changes to the business, discussing future plans and providing financial statements.*

- 11.2** If the issuer is required by corporate legislation, its constating documents (e.g., articles of incorporation or bylaws) or otherwise to provide either or both of annual financial statements or an information circular/proxy statements to its security holders, state that fact.

*Guidance: Corporate legislation in many jurisdictions requires issuers with more than a specified number of shareholders to prepare and disseminate audited annual financial statements. Further, such issuers may be required to hold annual meetings of*

*shareholders and provide certain specified disclosure in an information circular. Refer to applicable corporate law.*

## **Item 12: RESALE RESTRICTIONS**

**12.1** Include the following statement, in bold type:

**“The securities you are purchasing are subject to resale restrictions. They can only legally be resold to a very limited number of people. You may never be able to resell the securities.”**

## **Item 13: INVESTORS’ RIGHTS**

**13.1** Include the following statement, in bold type:

**“*Two-day cancellation right* – if you agree to make an investment, you have a short period in which to change your mind and cancel your agreement. To do so, you must send a notice to the issuer, or if the issuer has retained a dealer in respect of the distribution, to the dealer within 48 hours of the later of (a) your subscription, and (b) an amended offering document being delivered to you.**

***Right of action in the event of a misrepresentation* – if there is a misrepresentation in the offering document, including all amendments to that document, you have a statutory right to sue (a) the issuer to cancel your agreement or (b) the issuer, its directors, and each individual who has signed the offering document for damages.**

**This right to sue is available to you whether or not you relied on the misrepresentation. However, there are various defences available to the persons or companies that you have a right to sue. In particular, they have a defence if you knew of the misrepresentation when you purchased the securities.**

**If you intend to rely on these rights, you must do so within strict time limits. An action to cancel your agreement must be commenced no more than 180 days from the day of the transaction giving rise to the cause of action. An action for damages must be within the lesser of (a) 180 days from the day that the plaintiff first had knowledge of the facts giving rise to the cause of action, and (b) 3 years from the day of the transaction giving rise to the cause of action.”**

## **Item 14: DATE AND CERTIFICATE**

**14.1** Include the following statement, in bold type:

**This offering document does not contain a statement that, in a material respect and at the time and in light of the circumstances in which it is made, is misleading or**

**untrue and it does not fail to state a fact that is required to be stated or that is necessary to make a statement not misleading.**

- 14.2** The offering document must be dated, certified and signed by an individual authorized to sign on behalf of the issuer, as follows:

Certified as of: [State the date on which the certification is made]

By: [State the name of the individual who certifies the statement]

Title: [State the title of the individual with the issuer]

Signature: [Include signature of the authorized individual].

*Guidance: This certificate can only be signed by a person authorized to sign on behalf of the issuer.*

- 14.3** If the offering document is signed electronically, include the following statement, in bold type:

**“I acknowledge that I am signing this offering document electronically and agree that this is the legal equivalent of my handwritten signature.”**

**Appendix A**

“control person” means

- (a) a person or company who holds a sufficient number of the voting rights attached to all outstanding voting securities of an issuer to affect materially the control of the issuer, and if a person or company holds more than 20% of the voting rights attached to all outstanding voting securities of an issuer, the person or company is deemed, in the absence of evidence to the contrary, to hold a sufficient number of the voting rights to affect materially the control of the issuer, or
- (b) each person or company in a combination of persons or companies acting in concert by virtue of an agreement, arrangement, commitment or understanding, who holds in total a sufficient number of the voting rights attached to all outstanding voting securities of an issuer to affect materially the control of the issuer, and if a combination of persons or companies holds more than 20% of the voting rights attached to all outstanding voting securities of an issuer, the combination of persons or companies is deemed, in the absence of evidence to the contrary, to hold a sufficient number of the voting rights to affect materially the control of the issuer;

“director” means

- (a) a member of the board of directors of a company or an individual who performs similar functions for a company, and
- (b) with respect to a person that is not a company, an individual who performs functions similar to those of a director of a company;

“drag-along right” is a right designed to protect a majority shareholder, a drag-along right enables a majority shareholder to force minority shareholders to join in the sale of a company, by giving the minority shareholders the same price, terms, and conditions as any other seller;

“executive officer” means, for an issuer, an individual who is

- (a) a chair, vice-chair or president,
- (b) a vice-president in charge of a principal business unit, division or function including sales, finance or production, or
- (c) performing a policy making function in respect of the issuer;

“forward-looking information” means disclosure regarding possible events, conditions or financial performance that is based on assumptions about the future economic conditions and courses of action, and includes future-oriented financial information with respect to prospective results of operations, financial position or cash flows that is presented either as a forecast or a projection;

“founder” means, in respect of an issuer, a person who,

- (a) acting alone, in conjunction, or in concert with one or more persons, directly or indirectly, takes the initiative in founding, organizing or substantially reorganizing the business of the issuer, and
- (b) at the time of the distribution or trade is actively involved in the business of the issuer;

“officer” with respect to an issuer, means

- (a) a chair or vice-chair of the board of directors, a chief executive officer, chief operating officer, chief financial officer, president, vice-president, secretary, assistant secretary, treasurer, assistant treasurer or general manager,
- (b) an individual who is designated as an officer under a bylaw or similar authority of the issuer or registrant, or
- (c) an individual who performs functions for a person or company similar to those normally performed by an individual referred to in subclause (a) or (b);

“pre-emptive right” is the right of existing shareholders to acquire new shares issued by the issuer, it can allow existing shareholders to maintain their proportional ownership of the issuer, preventing stock dilution;

“promoter” means

- (a) a person or company, acting alone or in conjunction with one or more other persons or companies or a combination of them, that, directly or indirectly, takes the initiative in founding, organizing or substantially reorganizing the business of the issuer, or
- (b) a person or company that, directly or indirectly, receives in consideration of services or property, or both,
  - a. 10% or more of any class of securities of the issuer, or

- b. 10% or more of the proceeds from the sale of any class of securities of a particular issue,

in connection with the founding, organizing or substantial reorganizing of the business of the issuer, but does not include a person or company that receives securities or proceeds solely

- (i) as underwriting commissions, or
- (ii) in consideration of property transferred to the issuer,

if that person or company does not otherwise take part in founding, organizing or substantially reorganizing the business;

“quasi-criminal offence” includes offences under the *Income Tax Act* (R.S.C. 1985, c. 1 (5<sup>th</sup> Suppl.)), the *Immigration and Refugee Protection Act* (R.S.C., 2001, c. 27) and the tax, immigration, drugs, firearms, money laundering or securities legislation of any province or territory of Canada or of a foreign jurisdiction; and

“tag-along right” is a contractual obligation used to protect minority shareholders, the right assures that if the majority shareholder sells his stake, minority shareholders have the right to join and sell their securities on the same terms and conditions as would apply to the majority shareholder.



## ANNEX E

## FORM 45-517F2

**START-UP BUSINESS RISK ACKNOWLEDGMENT**

Issuer Name: \_\_\_\_\_

Type of Security Offered: \_\_\_\_\_

**WARNING!**  
**BUYER BEWARE: This investment is risky.**  
**Don't invest in this business unless you can afford to lose all the money you invest.**

	Yes	No
<b>1. Risk acknowledgment</b>		
<p><b><u>Risk of loss</u></b> – You are buying “securities” (e.g., shares, units, notes or debentures) of a start-up business. A high percentage of start-up businesses fail or do not survive.</p> <p>Do you understand that this is a risky investment and that you could lose all the money you invest?</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p><b><u>Income risk</u></b> – If the securities you are buying are supposed to provide interest, a dividend or a similar return you should consider whether the business has a reasonable prospect of making the income necessary to make those payments.</p> <p>Do you understand that you may not receive any income, such as dividends or interest, on this investment?</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p><b><u>Liquidity risk</u></b> – The securities you are buying cannot be legally resold except in very limited circumstances. If you want to sell the securities, you may not be able to find a buyer.</p> <p>Do you understand that you may never be able to sell the securities?</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p><b><u>Lack of information</u></b> – You are buying securities of a business that is not a “reporting issuer”. After making an investment you may receive little or no information about the business or your investment.</p> <p>Do you understand that you may not be provided with any ongoing information about the issuer and/or this investment?</p>	<input type="checkbox"/>	<input type="checkbox"/>

## 2. No review or approval

**No approval** – No securities regulatory authority or regulator has reviewed or approved this offering.

Do you understand that this investment has not been reviewed or approved in any way by a securities regulator?



## 3. Investor's signature

**I have read this Risk Acknowledgement and the Issuer's Offering Document.**

**Investor's Name:** *[Instructions: Investor to print/type first and last name:]*

\_\_\_\_\_

**Investor's Signature:** *[Instructions: Delete if the distribution is being conducted online]*

\_\_\_\_\_

**Electronic signature:** *[Instructions: Delete if the distribution is **not** being conducted online]*

By clicking the [I confirm] button, I acknowledge that I am signing this form electronically and agree that this is intended as the legal equivalent of my handwritten signature. The date of my electronic signature is the same as my acknowledgement.

## 4. Additional information

**You have 48 hours to cancel your purchase by sending a notice to the issuer or dealer, depending on who you bought your securities through.**

**Issuer's Contact Information:** *[Instructions: Provide email address or fax number for a contact person at the issuer where investors can send their notice. Describe any other manner for investors to cancel their purchase.]*

**Dealer's Contact Information:** *[Instructions: If the sale is through a portal or if a dealer is otherwise involved, provide email address or fax number for the dealer/portal where investors can send their notice. Describe any other manner for investors to cancel their purchase.]*

**If you want more information about Alberta securities regulation, go to [www.albertasecurities.com](http://www.albertasecurities.com). The Alberta Securities Commission does not provide advice on investment.**

**ANNEX F****Amendments to  
National Instrument 13-101 System for Electronic Document Analysis  
and Retrieval (SEDAR)**

1. *National Instrument 13-101 System for Electronic Document Analysis and Retrieval (SEDAR) is amended by this instrument.*
2. *Appendix A – Mandated Electronic Filings is amended by adding the following*  
  
*to section II Other Issuers (Reporting/Non-reporting), under E. Exempt Market Offerings and Disclosure:*
  6. Offering document required to be filed or delivered under ASC Rule 45-517 *Prospectus Exemption for Start-up Businesses* Alta
3. This Instrument comes into force on July 19, 2016.