

Note: [01 Mar 2021] – The following is a consolidation of ASC Rule 45-511. It incorporates the changes to this document that came into effect on March 1, 2021. This consolidation is provided for your convenience and should not be relied on as authoritative.

ALBERTA SECURITIES COMMISSION RULE 45-511 LOCAL PROSPECTUS EXEMPTIONS AND RELATED REQUIREMENTS

Part 1: Definitions

1.1 In this rule

“Act” means the *Securities Act*, R.S.A. 2000, c. S-4, as amended;

“jurisdiction” or “jurisdiction of Canada” means a province or territory of Canada;

“permitted client” has the same meaning as in section 1.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;

“prospectus requirement” means the requirement in the Act that prohibits a person or company from distributing a security unless a preliminary prospectus and a prospectus for the security have been filed and the Executive Director has issued receipts for them;

“qualifying issuer” has the same meaning as in section 1.1 of National Instrument 45-106 *Prospectus Exemptions*;

“qualified syndicated mortgage” means a syndicated mortgage that satisfies all of the following:

- (a) the syndicated mortgage secures a debt obligation on property that satisfies all of the following:
 - (i) it is used primarily for residential purposes;
 - (ii) it includes no more than four units;
 - (iii) it includes no more than one unit that is used for non-residential purposes;
- (b) the syndicated mortgage does not secure a debt obligation incurred for the construction or development of property;
- (c) at the time the syndicated mortgage is arranged, the amount of the debt it secures, together with all other debt secured by mortgages on the property that have priority over, or the same priority as, the syndicated mortgage, assuming in all cases that the maximum amounts of any such mortgages are fully drawn, does not exceed 80 per cent of the fair market value of the property relating to the mortgage, excluding any value that may be attributed to proposed or pending development of the property;

- (d) the syndicated mortgage cannot be subordinated to future financing without the consent of each lender;
- (e) there is no existing agreement that requires the lenders of the syndicated mortgage to consent to future subordination of the syndicated mortgage;
- (f) no person or company has the ability to consent to future subordination of the syndicated mortgage on behalf of the lenders of the syndicated mortgage without obtaining the consent of each lender;

“registration requirement” means the requirement in the Act that prohibits a person or company from acting as a dealer, adviser or investment fund manager unless the person or company is registered in accordance with Alberta securities laws;

“syndicated mortgage” means a mortgage in which two or more persons participate, directly or indirectly, as a lender in a debt obligation that is secured by the mortgage.

1.2 Unless defined in this rule, terms defined in section 1 of the Act apply.

Part 2: Local Prospectus Exemptions

2.1 *Rural Utilities Act and Cooperatives Act*

The prospectus requirement does not apply to a distribution of

- (a) a voting security of a corporation to which the *Rural Utilities Act* applies,
- (b) membership shares, including member loans deemed to be membership shares as defined in the *Cooperatives Act*, issued by a cooperative to which that Act applies, if the aggregate acquisition cost for membership shares and member loans
 - (i) for the first 18 months following incorporation is not greater than \$10 000 per member and not more than \$1000 of that amount is attributable to membership shares, and
 - (ii) in any subsequent year is not greater than
 - (A) \$5000 for cooperatives with 100 members or less, or
 - (B) \$2500 for cooperatives with more than 100 members, or
- (c) investment shares as defined in the *Cooperatives Act*, issued by a cooperative to which that Act applies, other than a cooperative under Division 1 or 4 of Part 18 of that Act, if
 - (i) the investment shares are purchased only by members of the cooperative who have been members of the cooperative for at least 12 months before the share purchase, and

- (ii) the aggregate acquisition cost to the members in any one year is not greater than
 - (A) \$10 000 for cooperatives with 100 members or less, or
 - (B) \$5000 for cooperatives with more than 100 members.

2.2 Qualified syndicated mortgages

The prospectus requirement does not apply to a distribution of a qualified syndicated mortgage on real property in a jurisdiction of Canada by a person or company that is registered or licensed, or exempted from registration or licensing, under legislation governing mortgage brokers in Alberta.

2.3 Syndicated mortgages distributed to permitted clients

- (1) The prospectus requirement does not apply to a distribution of a syndicated mortgage on real property in a jurisdiction of Canada to a permitted client by a person or company that is registered or licensed, or exempted from registration or licensing, under legislation governing mortgage brokers in Alberta.
- (2) The first trade in a security acquired under subsection (1) is a distribution.

Part 3: Local Requirements Related to Prospectus Exemptions

3.1 Unusual effort to prepare market

For the purposes of sections 2.5(2)5, 2.6(3)3 and 2.8(2)3 of National Instrument 45-102 *Resale of Securities*, an unusual effort to prepare the market or to create a demand for securities takes place if one or more of the following activities is engaged in by or on behalf of the vendor of the securities

- (a) the dissemination to prospective purchasers of material soliciting orders to purchase, unless the material consists only of a letter or communication identifying the securities being sold and advising that they are available for sale, which letter or communication may comprise or be accompanied by a document the content of which is prescribed by Alberta securities laws and has been filed under the Act,
- (b) the formation of a selling group or any similar arrangement to coordinate the efforts of more than one registrant to effect a sale of the securities,
- (c) the commencement of any transaction or series of transactions, plan or other arrangement to manipulate or adjust the market price of the securities, other than price stabilization activities
 - (i) reasonably necessary for the maintenance of an orderly market, and

- (ii) not going beyond what is accepted in the market where those activities occur,
- (d) any sales effort that
 - (i) is illegal or improper by the standards of the market in which it is made, or
 - (ii) involves the communication of false or misleading information,
- (e) the making of a sale to a purchaser with whom the vendor is not dealing at arm's length in order to put the purchaser in a position to resell the securities free of legal constraints to which the vendor was subject,
- (f) in the case of sales made as described in section 2.8(1) of National Instrument 45-102 *Resale of Securities* where there is a market for the securities, the making of a sale other than
 - (i) a sale made
 - (A) in the market in which securities of the particular class are customarily traded, and
 - (B) in a manner customary in that market,
 - or
 - (ii) a sale made under an exemption from the prospectus requirement and the registration requirement.

3.2 Extraordinary commission or consideration

For the purposes of sections 2.5(2)6, 2.6(3)4 and 2.8(2)4 of National Instrument 45-102 *Resale of Securities*, an extraordinary commission or consideration is paid in respect of a trade if the trade is effected

- (a) on an agency basis and the aggregate compensation paid to the registrant through whom the securities are sold is greater than that which is customary in agency transactions of similar size involving similar securities in the relevant market,
- (b) through an exchange or other market in which it is customary for registrants to trade on an agency basis but the securities are instead sold by the vendor to another registrant acting as principal if the sale was prearranged to avoid the operation of paragraph (a), or
- (c) through the sale of the securities by the vendor to a registrant and the excess of the then market value of the particular securities over the price paid is greater than

that which is customary in principal transactions of similar size involving similar securities in the relevant market.

3.3 Registrants registered outside Alberta

For the purposes of sections 3.1 and 3.2, if a transaction is effected in another jurisdiction, “registrant” means a person or company registered to trade in securities in that jurisdiction.

3.4 Offering memorandum for minimum amount investment exemption

- (1) Subject to subsection (3), any document purporting to describe the business and affairs of the issuer and prepared for review by prospective purchasers to assist in making an investment decision in respect of securities being sold that is delivered to a purchaser in respect of a distribution made in reliance on the prospectus exemption in section 2.10 of National Instrument 45-106 *Prospectus Exemptions*, under an offering that commenced on or after September 14, 2005, is designated to be an offering memorandum.
- (2) If a document is designated to be an offering memorandum under subsection (1)
 - (a) the offering memorandum must
 - (i) be prepared in accordance with Form 45-106F2 *Offering Memorandum for Non-Qualifying Issuers*, or, in the case of a qualifying issuer, in accordance with Form 45-106F3 *Offering Memorandum for Qualifying Issuers*, and comply with subsections 2.9 (8) to (14) of National Instrument 45-106 *Prospectus Exemptions*, or
 - (ii) include
 - (A) the certificate required by subsections 2.9(8) to (14) of National Instrument 45-106 *Prospectus Exemptions*, and
 - (B) a statement describing the rights of action provided by section 204 of the Act and the time limits specified by section 211 of the Act in which an action to enforce a right under section 204 must be commenced, and
 - (b) the issuer must
 - (i) deliver a copy of the offering memorandum to the purchaser not later than when the purchaser signs the agreement to purchase the security, and
 - (ii) comply with section 2.9(17) of National Instrument 45-106 *Prospectus Exemptions*,

- (3) Subsection (1) does not apply if the document delivered is a document the content of which is prescribed by Alberta securities laws, and that has been filed under Alberta securities laws.

3.5 Prohibited Representation in Offering Memorandum

No person or company shall make any representation that the Alberta Securities Commission has in any way reviewed or passed upon the merits of the securities offered under an offering memorandum or a document designated to be an offering memorandum under section 3.4(1).

3.6 Effective Date

This Rule comes into force on June 4, 2010.

[as amended on March 1, 2021]