

Multilateral CSA Notice of Implementation *Alberta and Saskatchewan Orders 45-539 Small Business Financing*

September 1, 2021

Introduction

The securities regulatory authorities in Alberta (ASC) and Saskatchewan (the FCAA) (together, the **participating jurisdictions** or **we**) have each adopted a prospectus exemption (the **Exemption**) entitled *Small Business Financing* that allows small businesses in the participating jurisdictions to raise up to \$5,000,000 from purchasers in those jurisdictions through a streamlined financing process. The Exemption is provided under:

- ASC Blanket Order 45-539 *Small Business Financing*;
- the FCAA General Order 45-539 *Small Business Financing*.

The Exemption is available effective as of the date of this Notice.

In connection with implementation of the Exemption, the ASC will repeal ASC Rule 45-517 *Prospectus Exemption for Start-Up Businesses (Rule 45-517)*. The repeal of Rule 45-517 will be effective on November 24, 2021. Annex A to this Notice contains the repeal of Rule 45-517.

Substance and Purpose

The Exemption provides, on an interim, three-year basis, a new prospectus exemption to further facilitate the capital raising efforts of start-ups and other small businesses in the participating jurisdictions, while still providing appropriate investor protection. It allows a business in the participating jurisdictions to raise up to \$5,000,000 from the general public in those provinces, using a simple, streamlined offering document with tiered offering and investment limits depending on whether Specified Financial Statements (defined below) are provided to purchasers. Investment limits also vary based on a purchaser's income and whether they have received positive suitability advice from a Registered Dealer (defined below).

The Exemption has been designed to respond to the challenges faced by start-ups and other small businesses when trying to address modest financing needs. It is particularly intended to address the financing challenges of small local businesses that, while they may generate returns for investors and provide jobs, do not currently have the profile or growth prospects to attract the interest of venture capitalists or public capital markets. In Alberta, it is also intended to respond to and codify discretionary exemptive relief that has been sought by Alberta cooperatives and corporations in small towns and rural communities to help finance local projects.

We have published the “Small Business Financing Guide” (the **Guide**) to assist issuers in understanding the requirements under the Exemption.

Summary of the Exemption

The Exemption provides issuers with a head office in Alberta or Saskatchewan an additional prospectus exemption to facilitate distributions to purchasers in the participating jurisdictions on the conditions described below:

1. The issuer must not be a reporting issuer or an investment fund.
2. The securities distributed are restricted to one or more of the following securities of the issuer:
 - (a) common shares;
 - (b) preference shares;
 - (c) debt securities, other than securitized products or structured finance products;
 - (d) units of a limited partnership;
 - (e) membership shares or investment shares issued by a cooperative organized under the *Cooperatives Act* (Alberta); or
 - (f) securities convertible or exchangeable into any of the above, such as warrants or convertible debentures.
3. The issuer must provide purchasers with an offering document in the form specified in Form 45-539F1 *Small Business Offering Document* (the **Offering Document**). The Offering Document will constitute an offering memorandum under securities legislation, providing purchasers with additional rights of action in the event of a misrepresentation in the Offering Document.
4. If the Issuer Group¹ raises less than \$1,500,000 under the Exemption in a 12-month period (not including investments by purchasers who are qualified to invest under one of the other

¹ Defined in the Exemption as “an issuer together with each of the following (a) each person or company that is an 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.”

prospectus exemptions contemplated in the Exemption²) (a **Tier 1 Raise**) financial statements are not required to be provided with the Offering Document.³

5. If the Issuer Group raises more than \$1,500,000 under the Exemption in a 12-month period (not including investments by purchasers who are qualified to invest under another Specified Exemption) (a **Tier 2 Raise**) financial statements are required to be provided with the Offering Document, however:
 - (a) rather than providing financial statements prepared in accordance with generally accepted accounting principles (**GAAP**) for publicly accountable enterprises, the issuer may provide financial statements prepared in accordance with Canadian GAAP for private enterprises, provided that any subsidiaries are consolidated and any significantly influenced investees and joint ventures are accounted for using the equity method; and
 - (b) rather than providing audited annual financial statements, the issuer may provide annual financial statements that have been subject to a review engagement by a chartered professional accountant;

(together, the **Specified Financial Statements**).
6. The Offering Document must specify a minimum offering amount that must be raised which should reflect at least the minimum needed to achieve the issuer's objectives as specified in the Offering Document. If the issuer does not raise the minimum offering amount by the 120th day after the date that the Offering Document is first delivered to a purchaser, the issuer must return all funds to each purchaser.
7. To address a purchaser's ability to withstand loss, the Exemption includes the following investment limits:
 - (a) for a Tier 1 Raise, the maximum that a purchaser (who would not qualify to invest under another Specified Exemption) could invest in the Issuer Group in a 12-month period is
 - (i) \$2,500, or
 - (ii) if the purchaser is a Minimum Income Investor⁴ or if the purchaser has obtained advice from a Registered Dealer⁵ that the investment is suitable for the purchaser, \$10,000;

² Investments by persons or companies who qualify to invest under the accredited investor exemption, the family, friend and business associate exemption, the foreign investor exemption, and the self-certified investor exemption (the **Specified Exemptions**) are not included in calculating whether an issuer has reached the \$1.5M or \$5M offering limits. However, those amounts can be included in assessing whether an issuer has raised the minimum offering.

³ Note that in the absence of a voting trust or other agreement, issuers that rely on the Exemption may be subject to corporate law or other requirements to prepare and send audited annual financial statements to their shareholders on an annual basis.

- (b) for a Tier 2 Raise, the maximum that a purchaser (who would not qualify to invest under another Specified Exemption) could invest in the Issuer Group in a 12-month period is
- (i) \$5,000, or
 - (ii) if the purchaser is a MII or if the purchaser has obtained advice from a Registered Dealer that the investment is suitable for the purchaser, \$20,000.
8. The aggregate lifetime maximum that an Issuer Group can raise under the Exemption from purchasers who would not qualify to invest under another Specified Exemption is \$5,000,000.
9. Prior to investing, the issuer must obtain from each purchaser a completed enhanced risk acknowledgement as specified by Form 45-539F2 *Small Business Risk Acknowledgement*.
10. For a Tier 2 Raise, the issuer must file with the applicable securities regulator(s) an undertaking as specified by Form 45-539F3 *Small Business Undertaking* (the **Undertaking**) to deliver annually its annual financial statements and a Form 45-106F16 *Notice of Use of Proceeds* and make them reasonably available to each holder of a security distributed under the Exemption. The annual financial statements may be Specified Financial Statements.
11. On or before the 30th day after the closing of a distribution under the Exemption, the issuer must in each participating jurisdiction in which the distribution occurred file
- (a) a completed Offering Document;
 - (b) if applicable, the Undertaking; and
 - (c) a completed Form 45-106F1 *Report of Exempt Distribution* together with the applicable fee.

Securities issued under the Exemption will be subject to typical resale restrictions, which will continue indefinitely until the issuer becomes a reporting issuer. Accordingly, until that time, securities can only be resold under another prospectus exemption or under a prospectus.

The Exemption is an exemption from Alberta and Saskatchewan securities legislation and not the laws of other jurisdictions. It cannot be relied on for the distribution of securities into other

⁴ A “**Minimum Income Investor**” or “**MII**” is defined in the Exemption and refers, generally, to those having had for the last two years’ annual net income in excess of \$75,000 or \$125,000 with their spouse and, in the case of non-individuals, generally to persons or companies that are controlled by a MII.

⁵ A “**Registered Dealer**” means a dealer registered as an exempt market dealer or an investment dealer under securities legislation.

jurisdictions. In addition, it does not provide an exemption from the dealer registration requirement or any other provision of securities legislation.

Comments received and changes made

We published the proposed Exemption for comment on March 25, 2021 under CSA Multilateral Notice and Request for Comment Proposed Order 45-539 *Small Business Financing*. Four comment letters were received during the comment period and additional comments were solicited and received during a webinar and roundtables held during the comment period.

Those comments and our responses to them are summarized in **Schedule A** to this Notice.

We thank all of the commenters for their input. In response to the comments we have made a number of changes to the Exemption from the version published for comment, the most material of which are summarized below:

1. We have changed the investment limits to allow for the higher investment amounts contemplated for MIIs to also be available for purchasers who have received positive suitability advice from a Registered Dealer. Although we had initially anticipated that Registered Dealers would not be involved in financings under the Exemption, we received feedback that it is possible that Registered Dealers may participate and that the investment limits should be higher when Registered Dealers provide positive suitability advice to purchasers.
2. We have streamlined the Offering Document to remove some minor duplicative and unnecessary language. We generally anticipate that issuers relying on the Exemption will not have complicated businesses or structures. However, in response to concerns about the level of disclosure required under GAAP for private enterprises (ASPE) for issuers providing the Specified Financial Statements, we have added a requirement for certain disclosure of transfers of interests in real property to related parties.
3. We have published the Guide in response to feedback that use of the Exemption will largely depend on the simplicity and accessibility of the Exemption. In the Guide, we have attempted to provide a plain language overview of the Exemption and to address many of the questions that we have heard that issuers may have when they are using or contemplating using the Exemption.
4. We have amended the Exemption to prevent its use by issuers for 'blind pools'. Issuers that are intending to use the proceeds of the distribution to invest in, merge with, amalgamate with or acquire a business must either:
 - plan to direct at least 50% of the proceeds to an identified person or company and have provided the disclosure specified by Item 4(3) of the Offering Document, or

- be a Collective Investment Vehicle⁶ and have provided the supplementary disclosure specified in Schedule A to the Offering Document.⁷
5. In response to feedback, we have changed the deadline for filing the Offering Document, the Undertaking (if required) and Form 45-106F1 *Report of Exempt Distribution* from 10 days following the closing of the distribution to 30 days following the closing of the distribution.

Questions

If you have any questions in respect of the Exemption, please contact any of the following:

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⁶ Defined in the Exemption as “an issuer whose primary purpose is to invest money provided by its security holders in a portfolio of securities.” This definition mirrors the definition in the proposed amendments that were published on September 17, 2020 in CSA Notice and Request for Comment Proposed Amendments to National Instrument 45-106 *Prospectus Exemptions* and Proposed Changes to Companion Policy 45-106CP *Prospectus Exemptions* (the **OM Amendments**), as had been suggested by a commenter.

⁷ This supplementary disclosure is a streamlined version of the disclosure that has been proposed in the OM Amendments for Collective Investment Vehicles.

Schedule A

Summary of Comments: CSA Multilateral Notice and Request for Comment Proposed Order 45-539 *Small Business Financing*

We received 4 comment letters during the comment period and additional comments were solicited and received during a webinar and roundtables held during the comment period. Full comment letters are available here: <https://www.albertasecurities.com/securities-law-and-policy/-/media/5AE52337A46A4B609DEDDE339022D280.ashx>.

Set out below is a summary of the comments received and responses.

Theme	Comments	Staff Response
General support /opposition	<p>Most commenters supported an exemption for capital raising for small businesses. Some suggested the Exemption may be used as an alternative to bank financing and to help underserved businesses, including neighbourhood and local businesses and early start-ups. Some suggested that uptake may be slow at first, but as awareness of the Exemption grows, it will be highly beneficial.</p> <p>Two commenters questioned whether the Exemption was needed since start-up crowdfunding may serve this space and whether it would expose investors to increased risks.</p> <p>One commenter said it was unclear what issuer and investor base the Exemption is targeting.</p>	<p>N/A</p> <p>The Tier 1 Raise contemplated in the Exemption is very similar to start-up crowdfunding in National Instrument 45-110 <i>Start-Up Crowdfunding Registration and Prospectus Exemptions (NI 45-110)</i> but reflects the fact that the offering is most likely to be made by principals of the issuer rather than a crowdfunding portal. It is intended to respond to comments that we have heard that some issuers are hesitant to use start-up crowdfunding for various reasons. In addition, we have heard that small businesses may need to raise more than \$1,500,000. This Exemption provides additional flexibility by permitting a raise up to \$5,000,000 if the specified financial statements are provided.</p> <p>We have attempted to clarify the target issuers and investors in the Notice accompanying the Exemption.</p>

Theme	Comments	Staff Response
Educating the public	<p>Many commenters encouraged continued education on the part of the regulator, lawyers, accountants and business support services to inform entrepreneurs about the Exemption.</p>	<p>We agree. The ASC conducted a webinar on May 4, 2021 to enhance awareness of the proposal and distributed information about the exemption to 350+ members of the small business community. Following implementation, we plan to do a number of seminars and outreach initiatives to assist in getting the word out about the existence of the Exemption.</p> <p>In addition, we have published an accompanying guide that provides answers to questions that may arise when businesses are relying on or considering relying on the Exemption.</p>
Fundraising limits	<p>Many commenters stated that the \$1.5M and \$5M fundraising limits were sufficient for the types of businesses that will likely rely on the Exemption. They also stated that most businesses will not likely reach the \$1.5M or \$5M limits unless they also seek funds from investors that qualify under other prospectus exemptions such as the accredited investor and friends, family and close business associates exemptions.</p> <p>One commenter suggested raising the \$1.5M limit to \$2M where the specified financial statements are not provided.</p>	<p>Given the risks associated with early-stage private equity investment and the general support for the limits proposed, we propose to retain the limits.</p> <p>The \$1.5M offering limit aligns with the limit in NI 45-110. This is appropriate since the disclosure contemplated in NI 45-110 is similar to that proposed in the Exemption (in a Tier 1 Raise when the specified financial statements are not provided).</p>
\$ limit for investors	<p>Most of the commenters expressed some concern over the investor limits.</p> <p>Recommendations included:</p> <ul style="list-style-type: none"> • Raising the limit for non-MIIIs from \$2500 to \$3500 • Raising the limit for all investors in situations where a registrant provides suitability advice • Including a liquid asset test for MIIIs with the same or less than the net asset test for eligible investors under the offering memorandum exemption (i.e., \$400,000). Suggests a \$200,00 liquid asset requirement, but notes that it would be better to have dealers do suitability assessments <p>One commenter supported the individual investor limits in the absence of a registrant being involved.</p>	<p>Given the risks associated with early-stage private equity investment, we propose to generally retain the limits and have not added a liquid assets test to allow an investor to qualify as an MII.</p> <p>We had initially heard that registered dealers would likely not be involved with these financings. However, in response to feedback, we propose to allow the higher investment limits available to MIIIs to also be available to investors who have received suitability advice from a registrant.</p>

Theme	Comments	Staff Response
	<p>Additional comments respecting the limits included:</p> <ul style="list-style-type: none"> • Small investor limits will create risk for retail investors since quality entrepreneurs will have no interest in using the Exemption due to the large number of shareholders that would be required to raise substantial amounts • Number of investors required to reach fundraising limits is too high • Having numerous shareholder can be problematic for small businesses who need to manage their cap table and preparing subscription documents for many shareholders is challenging. A large number of shareholders may also foreclose venture capital interest 	<p>We have heard that it is unlikely that businesses will reach the \$1.5M or \$5M fundraising limits solely through investments from the general public and, as such, will likely have investors that are not bound by the investment limits in the Exemption (e.g., investments will also be from accredited investors and those who qualify under the family, friends and business associates exemption). In addition, the Guide provides guidance on purchasers investing together as a syndicate, which is a tool that may be employed to address the concern about investees having large numbers of shareholders.</p> <p>The Guide also provides guidance on the challenges that may be faced by having a large numbers of shareholders.</p> <p>We believe that efforts by market participants to automate elements of the security subscription process may help to alleviate some of the challenges involved with raising small amounts from numerous investors.</p>
<p>Concerns with Form 45-539F1 Small Business Offering Document (the Offering Document)</p>	<p>Commenters were generally supportive of the need for a certain level of disclosure but concerns were raised over the cost of the preparation of the Offering Document, its utility, and the interpretation of the required disclosures by investors and issuers.</p> <p>Recommendations/comments respecting the Offering Document included:</p> <ul style="list-style-type: none"> • Implementing a questionnaire to aid in completing the Offering Document. Reinforcing the need for plain language disclosure and making it clear that legalese is not expected or required • Providing clear and prominent registrant or finder’s fee disclosure upfront on face page • Providing more guidance on forward-looking information similar to that provided in the offering memorandum • Suggesting a more limited disclosure document similar to an accredited investor deck, including business plan, management, pro form, use of funds, risk disclosure form, term sheet and sub 	<p>The information required in the Offering Document for the Exemption generally aligns with the categories of disclosure required in NI 45-110, with some additional detail required. The additional detail is similar to certain disclosure required in an offering memorandum that we determined was appropriate given the possibility of raising up to \$5M under the Exemption. We have employed the more “plain language” format of NI 45-110 in hopes that it will assist issuers in completing the Offering Document.</p> <p>We have also provided an optional fillable form of Offering Document in hopes that it may prove more user friendly. Fee disclosure has been highlighted in the Offering Document. The Guide also provides answers to some questions that may arise while completing the Offering Document, including guidance on forward-looking information and use of plain language.</p> <p>The Offering Document format already requires a warning to</p>

Theme	Comments	Staff Response
	<p>docs</p> <ul style="list-style-type: none"> Using a prescribed form of Offering Document may lull investors into a false sense of security through them assuming there has been regulatory review Suggesting a requirement that some financial information be required in the Offering Document where financial statements are not required 	<p>indicate that no securities regulatory authority or regulator has reviewed the Offering Document. In addition, the required risk acknowledgement includes a warning that no government or securities regulatory authority has reviewed, evaluated or endorsed the Offering Document or the merits of these securities or the truthfulness or adequacy of the disclosure in the Offering Document.</p> <p>We do not propose to mandate that financial information be included in the Offering Document but issuers may want to provide certain financial information and issuers will be required to certify that any such information does not contain a misrepresentation.</p>
<p>Concerns with the financial statement requirements</p>	<p>Some commenters expressed approval of the financial statement requirements but some expressed concerns over the cost of preparation and their utility to investors.</p> <p>One commenter noted the “demonstrated issues” with the use of ASPE, including potential for stale information with respect to valuation data.</p> <p>Recommendations/comment respecting the financial statements included:</p> <ul style="list-style-type: none"> Suggesting a requirement to specify that the chartered professional accountant performing the review of the specified financial statements be independent Agreed that non-audited financial statements could mitigate costs and allow issuers to preserve relationship with smaller accounting firms outside financial centers, however, questioned utility to investors and does not believe in extending the period for requiring filing of ongoing financial statements Disagreed with financial statements as a requirement given their limited utility to the average person, but depending on public 	<p>We believe that the specified financial statements require disclosure that is appropriate for the early stage of businesses that we anticipate will be using the Exemption. We have added a requirement for certain disclosure of transfers of interests in real property to related parties. We anticipate monitoring use of the Exemption to determine whether there are any gaps in disclosure that may be problematic from an investor protection perspective. We will also monitor the progress of the OM Amendments and, if implemented, will consider an amendment to the Exemption to add the proposed new disclosures required for “real estate activities.”</p> <p>Independence is already a requirement of The Canadian Standard for Review Engagements (CSRE) 2400, <i>Engagements to Review Historical Financial Statements</i>. We have included a reference to the independence requirement in the Guide.</p> <p>For ongoing disclosure of financial statements, we have revised the Exemption so that the issuer must file annual financial statements (where required) until 3 financial years from the date of the distribution.</p>

Theme	Comments	Staff Response
	<p>education it could be useful to investors in the future</p> <ul style="list-style-type: none"> • Suggesting only including financial statements if they are relevant and ongoing. Suggesting that issuers be required to disclose financial statements for a period of time after the money is raised, perhaps 3 years of ongoing reporting 	
<p>Use by syndicates or special purpose vehicles</p>	<p>One commenter suggested harmonizing the definition of “collective investment vehicles” in the Exemption with the OM Amendments.</p> <p>Three commenters commented on the use of special purpose vehicles/syndication and simple agreements for future equity (SAFEs):</p> <ul style="list-style-type: none"> • Consider how the Exemption will be used with syndication • Exemption should be available for special purpose vehicles and SAFEs <p>Two commenters commented on the use of capital pool companies and blind pools:</p> <ul style="list-style-type: none"> • One suggested that if capital pool companies are contemplated, additional guidance should be provided to level playing field • One did not believe blind pools or similar business models should be barred or limited for issuer relying on the Exemption 	<p>The use of syndicates or special purpose vehicles is contemplated in three scenarios:</p> <p>(i) issuers that are raising money without a specific business objective, commonly known as "blind pools" or "blank checks"</p> <p>(ii) issuers that are raising money with the intention of investing in a single, predetermined business; and</p> <p>(iii) issuers that are collective investment vehicles, raising money to invest in multiple, predetermined businesses.</p> <p>We have revised the Exemption to prohibit its use in scenario (i). However, we have included guidance that staff may be willing to recommend discretionary exemptive relief in circumstances where the issuer undertakes to comply with certain conditions that would ensure that investors receive comprehensive disclosure about the contemplated transaction (e.g., funds raised held in trust until a business is invested in, merged with, amalgamated with, or acquired; a shareholders’ meeting is held to seek "majority of the minority" approval of the transaction).</p> <p>For scenario (ii), we have provided guidance in the Guide to explain the possibility of employing the Exemption when the additional disclosure contemplated in Item 4(3) of Form 45-539F1 is included.</p> <p>For scenario (iii), we have revised the Exemption to require additional disclosure similar to what is contemplated for collective investment vehicles in the OM Amendments. We have also revised the Exemption to harmonize the definition of “collective investment vehicles” with the OM Amendments.</p>

Theme	Comments	Staff Response
		<p>With regard to SAFEs, we have included guidance in the Guide that they may qualify as Eligible Securities that may be distributed under the Exemption.</p>
<p>Miscellaneous</p>	<p>Additional suggestions and comments made by the commenters included:</p> <ul style="list-style-type: none"> • Requested that ASC/FCAA consider adopting an accountability framework for regularized review of issuer and investor outcomes, with initial public report 2 years following implementation • Requested guidance on how the minimum offering amount would be determined, whether it is required, and whether the 120 day period relates to when the Offering Document is delivered to a potential or actual purchaser • Suggested commensurate relief from KYP requirements for distributions of securities of smaller issuers • Suggested an annual filing of Form 45-106F1 for all exempt distributions 	<p>We anticipate monitoring the use of the Exemption and will consider the suggestion.</p> <p>We have added guidance in the Guide on determining the minimum offering amount and how the 120 day period is calculated.</p> <p>The proposal relating to know your product is outside of the scope of this prospectus exemption. We will consider the comment in the context of other initiatives being explored.</p> <p>We understand that the suggestion for an annual filing has been made in relation to the offering memorandum exemption which permits continuous distributions and which is often used by investment funds. This Exemption is not available to investment funds and financings must be closed within 120 days. It is not clear why an annual filing would be recommended in these circumstances. However, we have modified the filing deadline to permit 30 days rather than 10 days.</p> <p>We have provided additional guidance in the Guide about changes to the use of proceeds and the circumstances where this could be considered a misrepresentation.</p>

Theme	Comments	Staff Response
	<ul style="list-style-type: none">• Cautioned against potential misrepresentation in the notice of use of proceeds when start-ups pivot their business plans • Concerned about difficulty in monitoring annual and lifetime investment limits without KYC or registrants to review investments for clients • Two commenters recommended changes to the 10-day filing window for SEDAR filing the Offering Document and Form 45-106F1:<ul style="list-style-type: none">○ Suggested 30 days to file or alternative filing options such as direct submission○ Suggested 21 or 30 day filing window	<p>Fundraising amounts must be reported to the ASC/the FCAA on Form 45-106F1. To assist in tracking investment limits, we have included guidance in the Guide to suggest that the issuer indicate in Form 45-106F1 whether investors qualify for a higher investment amount and how they do so.</p> <p>The window for filing has been changed to 30 days following the distribution.</p>

ANNEX A

**REPEAL OF
ALBERTA SECURITIES COMMISSION RULE 45-517 PROSPECTUS EXEMPTION
FOR START-UP BUSINESSES**

- 1. Alberta Securities Commission Rule 45-517 Prospectus Exemption for Start-Up Businesses is repealed by this Instrument.*
2. This Instrument comes into force on November 24, 2021.