

## **Multilateral CSA Notice of Amendments to Alberta and Saskatchewan Orders 45-538 *Self-Certified Investor Prospectus Exemption***

**July 28, 2022**

### **Introduction**

The Alberta Securities Commission (ASC) and the Financial and Consumer Affairs Authority of Saskatchewan (FCAA) (together, **the participating jurisdictions** or **we**) have amended a prospectus exemption entitled *Self-Certified Investor Prospectus Exemption* provided under:

- ASC Blanket Order 45-538 *Self-Certified Investor Prospectus Exemption*;
- FCAA General Order 45-538 *Self-Certified Investor Prospectus Exemption*

(together, the **Orders**).

### **Background**

The Orders were originally adopted on March 31, 2021 to help facilitate the capital raising efforts of businesses in the participating jurisdictions. The prospectus exemption is intended to allow purchasers in the participating jurisdictions who do not meet the financial thresholds or other criteria required to qualify as an accredited investor<sup>1</sup> to invest alongside accredited investors provided they self-certify that they meet other criteria intended to demonstrate their financial and investment knowledge. The Orders allow issuers in the participating jurisdictions to distribute securities to "self-certified investors" in the participating jurisdictions (the **Exemption**).

One of the goals of the Exemption is for a self-certified investor to be treated in a generally similar manner to an accredited investor. Since adoption, we have continued to gather feedback on the Exemption. We have been made aware of elements of the Orders that do not further this goal, and result in unintended and unnecessary constraints. As a result of the feedback, we have amended the Orders. We believe that the amendments to the Orders will reduce barriers to use of the Exemption while still protecting investors.

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

<sup>1</sup> The term "accredited investor" is defined in National Instrument 45-106 Prospectus Exemptions and includes various specified institutions and wealthy individuals. In the case of individuals, the definition contemplates annual net income in excess of \$200,000, net assets of at least \$5,000,000 or net realizable financial assets of at least \$1,000,000.

## Summary of the Amendments

Amendments to the Orders broaden the Exemption to allow:

- the distribution of securities to a self-certified investor, not only by an issuer, but also by an existing security holder (similar to the resale provisions in the accredited investor exemption); and
- the distribution of securities to a special purpose vehicle (**SPV**), without subjecting the SPV to the same investment limits imposed on individuals and other non-individual entities under the Exemption, provided all of the following conditions apply (a **Qualifying SPV**):
  - all of the owners of interests, direct, indirect or beneficial, except the voting securities required by law to be owned by the directors, are accredited investors and self-certified investors;
  - the SPV distributes its securities to self-certified investors in compliance with the Exemption;
  - self-certified investors have not contributed in aggregate more than 25% of the total funds invested in the SPV.

Blacklines showing the amendments to the Orders in both Alberta and Saskatchewan are included as Schedule A and Schedule B, respectively. In addition, when the Orders were originally adopted, we published an accompanying notice that provided guidance on use of the Exemption. We have revised that guidance in order to reflect the amendments and have included it as Schedule C.

## Rationale for the Amendments

The Exemption was conceived of as a financing tool and originally only referred to distributions by an issuer. This resulted in the Exemption not being able to be utilized for a resale by an existing security holder. To more closely align the Exemption with the accredited investor exemption, which is available to both issuers and resellers of securities, we have revised the Exemption to refer to sellers generally.

We have expanded the Exemption such that a Qualifying SPV will not be subject to investment limits when it makes an investment. We understand that the use of an SPV to facilitate investment in small businesses is a common practice for early stage investments. Previously, an SPV relying on the Exemption to make an investment would be subject to an investment limit in the aggregate of not more than \$10,000 per issuer per calendar year and not more than \$30,000 across all issuers per calendar year. No such limit exists for a Qualifying SPV under the amended Exemption. This change to the Exemption will better allow self-certified investors to participate alongside accredited investors in investment opportunities facilitated through an SPV.

These amendments expand possible use of the Exemption while protecting investors.

### Feedback and Questions

The amended Exemption is meant to be responsive to concerns raised by market participants about the ability to rely on the Orders. We continue to explore ways to enhance access to capital for businesses while providing appropriate investor protection. We will continue consider feedback and the need for further enhancements.

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

<p>Tonya Fleming Manager, Innovation in Finance (InnoFin), Corporate Finance, ASC 403.297.2930 <a href="mailto:tonya.fleming@asc.ca">tonya.fleming@asc.ca</a></p>	<p>Heather Kuchuran Director, Corporate Finance, Securities Division, FCAA 306.787.1009 <a href="mailto:heather.kuchuran@gov.sk.ca">heather.kuchuran@gov.sk.ca</a></p>
<p>Meg Hiles Legal Counsel, Innovation in Finance (InnoFin), Corporate Finance, ASC 403.355.9027 <a href="mailto:meg.hiles@asc.ca">meg.hiles@asc.ca</a></p>	<p>Mobolanle Depo-Fajumo Legal Counsel, Securities Division, FCAA 306.798.3381 <a href="mailto:mobolanle.depofajumo2@gov.sk.ca">mobolanle.depofajumo2@gov.sk.ca</a></p>

**Schedule A**

**Blackline Reflecting the Amendments - Alberta**

**ALBERTA SECURITIES COMMISSION  
BLANKET ORDER 45-538**

**Citation: Self-Certified Investor Prospectus Exemption, 2021 ABASC 38     Date: 20210330**

**Definitions**

1. Terms defined in the *Securities Act* (Alberta) (the **Act**) or National Instrument 14-101 *Definitions* have the same meaning in this Blanket Order.

2. In this Blanket Order:

"Accredited Investor" has the meaning ascribed to it in National Instrument 45-106 *Prospectus Exemptions*;

"Acknowledgement" means a document in the form specified in Annex 2 *Acknowledgement* to this Blanket Order;

"Corresponding Exemption" means ~~an~~ [Financial and Consumer Affairs Authority of Saskatchewan General Order 45-538 Self-Certified Investor Prospectus Exemption and any](#) order or ruling of another securities regulatory authority or securities regulator in Canada that provides an exemption from the prospectus requirement that is substantially similar to this Blanket Order;

"Listed Issuer Investment" means the distribution of a security where both of the following apply

- (a) the issuer has a class of equity security currently listed and posted for trading on the TSX Venture Exchange, the Toronto Stock Exchange, the Canadian Securities Exchange or Neo Exchange Inc. and is not in default of the periodic and timely disclosure requirements applicable to it as a reporting issuer, and
- (b) the purchaser has received advice regarding the suitability of the investment from a person or company, registered under securities legislation in the jurisdiction of the purchaser, that is qualified in the circumstances to provide such advice;

"Participating Jurisdiction" means Alberta and Saskatchewan and each other jurisdiction of Canada that adopts a Corresponding Exemption;

"Private Issuer" has the meaning ascribed to it in National Instrument 45-106 *Prospectus Exemptions*;

"Qualifying Criteria" means the criteria specified in Schedule A *Qualifying Criteria* to Annex 2 *Acknowledgement* to this Blanket Order, as amended from time to time;

"Self-Certified Investor" means a person or company that has completed the Acknowledgement and has solemnly declared a Statutory Declaration, as contemplated in subsection 3(e) of this Blanket Order;

"SPV" means an entity formed as a special purpose vehicle in which investors invest with a view to investing in one or more other issuers;

"Seller" means the person or company distributing a security;

"Statutory Declaration" means a completed statutory declaration in the form specified in Annex 1 *Statutory Declaration* to this Blanket Order.

### **Blanket Order**

3. The Commission orders under section 213 of the Act that the prospectus requirement in section 110 of the Act does not apply to a distribution of securities ~~by an issuer~~ provided all of the following apply:
  - (a) the head office of the issuer is located in a Participating Jurisdiction;
  - (b) except in the case of a Listed Issuer Investment,
    - (i) the aggregate acquisition cost of the securities of the issuer acquired by the purchaser under this Blanket Order or a Corresponding Exemption in the calendar year does not exceed \$10 000, and
    - (ii) the purchaser represents to the ~~issuer~~Seller in the subscription or purchase agreement that the aggregate acquisition cost of the securities of all issuers acquired by the purchaser in the calendar year under this Blanket Order or a Corresponding Exemption, other than a Listed Issuer Investment, does not exceed \$30 000;
  - (c) in the case of a distribution by an issuer, the distribution to the purchaser is made concurrently with a distribution to an Accredited Investor ~~and~~;
    - (c.1) the purchaser is provided access to substantially the same information about the securities being distributed as ~~is~~would be provided to ~~the~~an Accredited Investor;
  - (d) the purchaser purchases as principal;
  - (e) at or before the time the purchaser signs the agreement to purchase the securities, the ~~issuer~~Seller obtains from the purchaser a completed Statutory Declaration, that is dated within 36 months of the distribution and to which is attached a completed Acknowledgement in which the purchaser has completed both
    - (i) Part A confirming that the purchaser meets the Qualifying Criteria, and

- (ii) Part B confirming that the purchaser has read and understood each of the acknowledgements in that part;
- (f) the ~~issuer~~Seller does not know and would not reasonably be expected to know that the statements made by the purchaser in the Acknowledgement or the representation referred to in section 3(b)(ii) of this Blanket Order are false;
- (g) in the case of a distribution by an issuer that is not a Private Issuer, the issuer, on or before the 10<sup>th</sup> day after the closing of the distribution, files a completed Form 45-106F1 *Report of Exempt Distribution*, together with the applicable fee;
- (h) the ~~issuer~~Seller retains a copy of the Statutory Declaration and Acknowledgement for 8 years after the distribution.

### **Special Purpose Vehicle Investment**

3.1 The Commission orders under section 213 of the Act that the prospectus requirement in section 110 of the Act does not apply to a distribution of securities to an SPV provided all of the following apply:

- (a) all of the owners of interests, direct, indirect or beneficial, except the voting securities required by law to be owned by directors, are Accredited Investors and Self-Certified Investors;
- (b) the SPV distributes its securities to Self-Certified Investors in compliance with this Blanket Order or a Corresponding Exemption;
- (c) Self-Certified Investors have not contributed in aggregate more than 25% of the total funds invested in the SPV.

### **Resale restrictions**

4. The Commission, considering that it would not be prejudicial to the public interest to do so, orders under section 144(2) of the Act that the first trade of a security acquired under section 3 or 3.1 is subject to section 2.5 of National Instrument 45-102 *Resale of Securities*.

### **Executive Director authorization**

5. The Commission, under section 22(4) of the Act, hereby authorizes the Executive Director to amend from time to time Schedule A *Qualifying Criteria* to Annex 2 *Acknowledgement* of this Blanket Order to specify such other designations, education, experience and financial requirements that the Executive Director determines demonstrate financial or investment education and experience generally comparable to that specified by the Commission in this Blanket Order.

**Effective date and expiry date**

This Blanket Order ~~comes into force on March 31~~ is varied effective July 28, 2021 and expires on April 1, 2024.

**For the Commission:**

*"original signed by"*

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Tom Cotter  
Vice-Chair

*"original signed by"*

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Kari Horn  
Vice-Chair



**Annex 1 to Blanket Order 45-538 Self-Certified Investor Prospectus Exemption  
(Order 45-538)  
Statutory Declaration**

**CANADA** }  
Province of *[insert Participating Jurisdiction]* }

**I, *[insert name of declarant]* do solemnly declare that:**

1. *[If an individual]* I am resident at *[insert physical address in Alberta or Saskatchewan or other Participating Jurisdiction, if applicable, as defined in Order 45-538]*.

*[For a non-individual]* I am an authorized signatory of *[insert name of entity]* (the **Purchaser**) which has its head office at *[insert physical address in Alberta or Saskatchewan or other Participating Jurisdiction, if applicable, as defined in Order 45-538]*.

2. *[If an individual]* I have, of my own choice and volition, truthfully completed Part A of the attached Acknowledgement for the purpose of being considered a Self-Certified Investor (as defined in Order 45-538).

*[For a non-individual]* I am an authorized signatory of the Purchaser and have, of my own choice and volition, on behalf of the Purchaser, truthfully completed Part A of the attached Acknowledgement for the purpose of the Purchaser being considered a Self-Certified Investor (as defined in Order 45-538).

3. I have read and understood Part B of the attached Acknowledgement.

**I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath, and by virtue of the *Canada Evidence Act*.**

**DECLARED** before me at *[insert municipality and province]*.

Dated: *[insert date]*

\_\_\_\_\_  
Name of Declarant *[print]*

\_\_\_\_\_  
Name of Notary Public or  
Commissioner for Oaths\* *[print]*

\_\_\_\_\_  
Signature of Declarant

\_\_\_\_\_  
Signature of Notary Public or Commissioner  
for Oaths\* **[seal]**

\_\_\_\_\_  
If Declarant is the authorized signatory of the  
Purchaser, state the Declarant's title

\_\_\_\_\_  
Expiry Date of Commission:

**\*Note: A statutory declaration intended for use outside of the jurisdiction in which it is made must be signed by a Notary Public.**

**Annex 2 to Blanket Order 45-538 Self-Certified Investor Prospectus Exemption**

***Acknowledgement***

**Part A – Confirmation of Qualifying Criteria in Schedule A**

*Instruction: All capitalized terms used in this Acknowledgement but not defined in it have the meaning ascribed to them in Blanket Order 45-538 Self-Certified Investor Prospectus Exemption (Order 45-538).*

*Instruction: In the case of a purchaser that is an individual, include the following statement:*

I [*insert name of purchaser*] meet one or more of the Qualifying Criteria as set out in the attached **Schedule A** and wish to be considered a Self-Certified Investor under Order 45-538.

In particular, I certify that I meet the Qualifying Criteria specified in paragraph \_\_\_\_ [*insert relevant paragraph(s) number from Schedule A*] of Schedule A.

*Instruction: In the case of a purchaser that is not an individual, include the following statement:*

I am an authorized signatory of [*insert name of the purchaser*] (**Purchaser**). The Purchaser wishes to be considered a Self-Certified Investor under Order 45-538. I certify on behalf of the Purchaser that [*select at least one of the following*]:

<b>Initials</b>	
	The majority of owners of interests of the Purchaser, direct, indirect or beneficial, except the voting securities required by law to be owned by directors, are Accredited Investors or meet the Qualifying Criteria as set out in the attached Schedule A.
	The majority of directors of the Purchaser are either Accredited Investors or meet the Qualifying Criteria as set out in the attached Schedule A.
	The investor is a trust, established or settled by an individual that meets the Qualifying Criteria, as set out in the attached Schedule A and the trust was established for the benefit of such individual's spouse, former spouse, or a parent, grandparent, brother, sister, child or grandchild of the individual or of that individual's spouse or former spouse

## Part B – Investment Acknowledgements

***Instruction: To qualify as a Self-Certified Investor you must read the following and confirm your understanding of each of the statements relating to the risks of investing.***

***If you do not understand the risks of investing, do not complete this form. You do not qualify as a Self-Certified Investor.***

### 1. You will not have the rights you would have under a prospectus

Securities legislation generally requires that an issuer trying to raise money through the sale of securities provide investors with a comprehensive disclosure document called a prospectus in order that investors can make an informed decision about whether or not to buy those securities.

The accuracy of a prospectus is typically required to be certified by the CEO, CFO and two directors of the issuer and any underwriter involved in the sale. Investors who buy under a prospectus have certain special rights under securities legislation, including a two day right to cancel their investment for any reason, and a right to sue either to get their money back or for damages if there is a misrepresentation in the prospectus. A right to sue for damages is available not just against the issuer but also against the other parties that sign the prospectus. These rights are special in that an investor is not required to prove they relied on the misrepresentation in making their investment decision.

As an investor under a prospectus exemption you will not have the special rights afforded to an investor under a prospectus. However, in Saskatchewan, you will have a statutory right to sue either to get your money back or for damages if there is a misrepresentation in an offering memorandum provided to you.

	Yes or No?
Have you read and understood the above information?	

### 2. You will need to seek out the information needed to make an informed investment decision

An issuer trying to raise money through the sale of securities under a prospectus is required to provide you with comprehensive disclosure in the prospectus, providing "full, true and plain disclosure of all material facts relating to the securities being distributed". Some examples of required information includes,

- details of the securities being offered for sale, including the rights they provide you, e.g., voting rights, rights to convert or exchange (including conversion prices or formulas and exercise periods), any limitations on redemption rights, as well as similar details on other outstanding securities;
- details on how the proceeds of the offering will be used, including any fees and commissions, information on payments to be made to related parties, and details on any funds to be used to repay outstanding indebtedness;

- the key business objectives and milestones,
- a description of material risks to the business e.g., environmental or other liabilities, significant litigation, competition, lack of management experience, regulatory approvals needed, and cash flow and other financial challenges,
- information about management and directors e.g., education, experience, compensation, and security holdings.

You will not receive a prospectus. You will need to consider whether you otherwise have access to all the important information necessary to make an informed investment decision and, if not, take steps to obtain that information before investing. You should not invest if you do not have the information needed to make an informed investment decision.

	Yes or No?
Have you read and understood the above information?	

### 3. You may not have the benefit of audited financial statements

An issuer selling securities under a prospectus is required to provide investors with audited annual financial statements. The audit provides certain independent assurance with respect to the financial information presented.

As an investor under a prospectus exemption you may not be provided with audited financial statements and if any financial information is provided you may have no independent assurance with respect to it. You will need to determine whether audited financial statements are important to your investment decision and whether you will require that these be provided before investing.

	Yes or No?
Have you read and understood the above information?	

### 4. You will need to assess the reliability of financial projections and other forward-looking information and the reasonability of any assumptions

Securities legislation does not generally require that issuers provide financial projections and other forward-looking information in a prospectus. However, because of the potential unreliability of this type of information, if it is provided, to establish a defence to liability an issuer would generally need to provide cautionary language that

- indicates that actual results may vary from the forward looking information,
- states the material factors or assumptions used to develop forward-looking information, and
- identifies material risk factors that could cause actual results to differ materially from the forward-looking information.

Securities legislation imposes liability for misrepresentations but, in respect of financial outlooks and future-oriented financial information, provides a defence where the information specified

above is provided and the underlying assumptions are reasonable in the circumstances e.g., made only for a period that can be reasonably estimated.

As an investor under a prospectus exemption you will need to assess whether the assumptions and risk factors underlying any financial outlooks and future-oriented financial information are sufficiently clear and whether forward-looking information provided seems reasonable.

	Yes or No?
Have you read and understood the above information?	

**5. You may need to conduct your own investigation (or due diligence) to understand the nature of the investment, the business and the associated risks**

In a prospectus offering, the special liability that directors and management have creates an incentive for them to ensure that the prospectus contains full, true and plain disclosure. Similarly, the special liability that applies to any underwriters (the dealers that either sell the securities as agent for the company, or buy the securities from the company with a view to reselling them to the public) typically incentivizes them to conduct due diligence, i.e., investigate or review information about the issuer and its principals to try and identify material risks and confirm, "to the best of their knowledge, information and belief" the information in the prospectus.

If there is no underwriter or similar party conducting this due diligence, it will be very important for you to consider these matters yourself to determine whether or not to invest and to understand the risks. If you have little or no experience in conducting due diligence, you are strongly encouraged to seek training in conducting due diligence and/or seek assistance from qualified professionals before investing.

**(a) You will need to investigate to understand the terms of the security you buy and how they are affected by other securities that are outstanding or that may be issued**

Examples of some of the factors that you should consider include:

- the number and type of securities outstanding and the prices at which they were sold as compared to the price at which the securities are being now offered and the development of the issuer's business since the prior offering(s); and
- the rights associated with other outstanding securities as set out in the issuer's articles of incorporation, any shareholder agreement, escrow, voting trust or similar agreements (e.g., special voting rights, preferential rights to dividends or distributions, preferential rights to the issuer's assets in the case of a liquidation, preferential rights to disclosure, rights to convert, exchange or redeem securities, or rights to participate in future financings) and the implications of these rights to you and your investment.

	Yes or No?
Have you read and understood the above information?	

**(b) You will need to investigate to understand the issuer's business**

Examples of some of the factors that you should consider include:

- the issuer's financial position, including by reviewing and assessing any historical financial information and assessing the reasonableness of any financial projections;
- agreements material to the issuer's business (e.g., key employment agreements, key supplier agreements, major sales agreements, insurance contracts);
- the experience, qualifications and character of management and key employees and dependence on certain personnel;
- the issuer's organizational structure, its governance, and internal controls;
- the compensation, benefits and other payments to executives, employees and any related parties.

<b>Have you read and understood the above information?</b>	<b>Yes or No?</b>
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**(c) You will need to investigate to understand the material risks**

Examples of some of the factors that you should consider include:

- the material risks related to the business (e.g., competition, lack of experience, inadequate funds);
- material assets and the rights and risks related to those assets (e.g., title to assets, status of leases, extent of intellectual property protections, existence of required governmental, regulatory or other approvals); and
- indebtedness, environmental liabilities and existing or potential litigation.

<b>Have you read and understood the above information?</b>	<b>Yes or No?</b>
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**6. You may not receive investment advice from a qualified salesperson**

If you invest under a prospectus, the issuer selling its securities will have typically retained one or more registered dealers to sell the securities to you. A registered dealer is required to understand the securities that they are selling and will often have conducted certain analysis and review of the business. An individual employed by a registered dealer is typically required to have certain investment education and training and is required to collect information from you to understand your financial and other circumstances, risk profile, investment objectives and time horizon and use that information to assess whether an investment is suitable for you.

You may be investing in circumstances where there is no registered dealer involved. If that is the case, you will need to assess for yourself whether or not the investment is suitable for you having regard to factors such as:

- your financial and personal circumstances, investment objectives and time horizon;
- the tax implications of the investment in your particular financial circumstances;
- your other investments, e.g., whether your investments are sufficiently diversified and not overly concentrated in a particular company, or industry or geographical area or heavily concentrated in high risk or illiquid investments;
- the significantly increased risk associated with borrowing to invest; and
- the prospect of some of your investments being a failure and how much risk you are prepared to take and how much money you can afford to lose.

A person who is recommending an investment to you who is not registered under securities legislation may not have any expertise or qualifications to provide investment advice. They may have a conflict of interest that incentivizes them to encourage you to invest. (Seek information on commissions or other payments being paid.) Even if that person is independent, experienced and knowledgeable, their circumstances, risk tolerance and objectives may be very different than your own. An investment that is good for them may not be good for you.

You can check to see whether a person is registered under securities legislation here: <http://www.aretheyregistered.ca/>

	Yes or No?
Have you read and understood the above information?	

## 7. You may not receive ongoing information about your investment

If you were to invest under a prospectus, the issuer you invested in would be or would become a reporting issuer (public company) and would be obligated under securities legislation to continue to provide disclosure about its business including such as

- audited annual financial statements and managements discussion and analysis;
- quarterly interim financial statements and management's discussion and analysis;
- news releases announcing material changes such as relating to changes in directors and executives, significant acquisitions or dispositions, significant liabilities or litigation, material contracts and loss of significant contracts;
- board composition and governance policies; and
- executive compensation disclosure.

If you invest in an issuer that is not a reporting issuer, the issuer may have no obligation under securities legislation to provide you with any ongoing information. Consequently, you will need to determine what ongoing reporting you want from the issuer and negotiate by contract to obtain it. You will need to consider the possibility that the issuer fails to continue to provide you with that information and what rights you have under that contract and whether they can be effectively enforced.

	Yes or No?
Have you read and understood the above information?	

## 8. You will be restricted from reselling your securities

If you invest under a prospectus, the securities you acquire are typically able to be immediately resold in the secondary market e.g., on an exchange. Because you are investing under a prospectus exemption, your ability to resell them is limited.

If you acquire securities of a reporting issuer (public company) under a prospectus exemption, you are typically subject to resale restrictions for a period of four months during which you can generally only realistically resell them under a prospectus exemption.

If you acquire securities of an issuer that is not a reporting issuer (i.e., not a public company), under a prospectus exemption, you will typically be subject to resale restrictions that continue **indefinitely**. Unless the issuer becomes a reporting issuer, securities legislation prohibits you from reselling those securities except under another prospectus exemption or under a prospectus.

Further, even if you can comply with securities legislation, there will be no market to help identify parties that might be interested in buying the securities from you. It may not be possible to find a willing buyer. You may not be able to sell your investment quickly – or at all.

<b>Have you read and understood the above information?</b>	<b>Yes or No?</b>
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## 9. You may not be able to realize a return on your investment. You could lose all the money invested

Statistics indicate that many early stage businesses fail. You could lose your investment. However, even if a business you invest in is successful, you will need to consider how you will realize any return from your investment. If you buy securities, such as common shares, of a non-reporting issuer you will need to identify whether there is a realistic “exit strategy” for you, an opportunity to sell your securities and potentially obtain a return and whether the timing of that potential opportunity aligns with your investment time horizon.

If the issuer is not a reporting issuer, there is no assurance that it will ever become one and even if it does, that could take many years. There is also no assurance that the issuer will be acquired by another entity. You could be forced to hold the securities indefinitely.

If you are buying debt securities or preferred shares, consider whether the issuer has a realistic prospect of being able to pay you the interest, dividends or yield that is offered and what rights you will have if they default on such payments or do not declare dividends. If you buy redeemable securities, consider whether the issuer has a realistic prospect of being able to redeem the securities. Consider the limitations on or conditions to your ability to redeem.

<b>Have you read and understood the above information?</b>	<b>Yes or No?</b>
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## 10. You may have difficulty valuing your investment

If you acquire securities, such as common shares, under a prospectus, the issuer will be a reporting issuer (public company) and the securities will typically be available for resale on a secondary market. In the case of a mutual fund, the securities will typically be redeemable on demand based on the net asset value, which is required to be calculated and disclosed on an ongoing basis. This publicly available information helps to establish a value for the business. If you acquire securities under a prospectus exemption, and the issuer is not a reporting issuer, you will likely not have this type of information. It may be difficult to establish a value for the business or the securities.

Have you read and understood the above information?	Yes or No?
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## 11. Selling securities under a prospectus exemption doesn't mean misleading statements or unfair practices are allowed. Be alert for fraud and scams

Securities legislation prohibits parties selling securities from making statements that they know or reasonably ought to know are, in any material respect, and at the time and in light of the circumstances in which they are made, misleading or untrue or do not state a fact that is required to be stated or that is necessary to make a statement made not misleading, where one would reasonably expect that statement to have a significant effect on the market price or value of a security.

Securities legislation also prohibits unfair practices in connection with the sale of securities, such as unreasonable pressure to buy, sell or hold or imposing harsh, oppressive or excessively one-sided terms.

Although you are seeking to invest under a prospectus exemption, these prohibitions against misleading statements and unfair practices still apply to the parties selling you securities. They are not exempted from these fundamental provisions.

Scammers may disappear with your money. It is important to protect your money by being alert to the signs of investment fraud and scams **before** you invest. See <https://www.securities-administrators.ca>

Have you read and understood the above information?	Yes or No?
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## 12. Except in the case of a Listed Issuer Investment, there are limits on the value of securities that can be sold to you as a Self-Certified Investor

Except in the case of a Listed Issuer Investment (described below) ~~an issuer in which you invest~~ Seller is not permitted to accept a subscription or purchase from you if the aggregate acquisition

cost of the securities of the issuer acquired by you as a Self-Certified Investor in the calendar year exceeds \$10,000. Further, except in the case of a Listed Issuer Investment (described below) the ~~issuer~~Seller is required to obtain a representation from you in the subscription or purchase agreement that the aggregate acquisition cost of the securities of all issuers acquired by you in the calendar year as a Self-Certified Investor, other than a Listed Issuer Investment, does not exceed \$30,000.

The term Listed Issuer Investment is defined in Order 45-538. Generally, it refers to an investment in an issuer that has a class of equity security currently listed and posted for trading on the TSX Venture Exchange, the Toronto Stock Exchange, the Canadian Securities Exchange or Neo Exchange Inc. and the issuer is not in default of the periodic and timely disclosure requirements applicable to it as a reporting issuer, provided that you receive advice regarding the suitability of the investment from a person or company, registered under securities legislation who is qualified in the circumstances to provide such advice.

Have you read and understood the above information?	Yes or No?
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**I understand that there is a risk that [I / the Purchaser] could lose the entire investment and [I / the Purchaser] should not invest more than [I / it] can afford to lose.**

Dated: [*insert date*]

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Self-certified investor's name

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Signature

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Name and title of authorized signatory of a non-individual

**Schedule A**  
***Qualifying Criteria***

**to Annex 2 Acknowledgement**

[as published effective March 31, 2021]

1. Holds a CFA or Chartered Financial Analyst Charter from the CFA Institute or any predecessor or successor organization.
2. Holds the CIM or Chartered Investment Manager designation from the Canadian Securities Institute, a Division of Moody's Analytics Global Education (Canada) Inc. or any predecessor or successor organization.
3. Holds the CBV or Chartered Business Valuator designation from the CBV Institute or any predecessor or successor organization.
4. Holds a CPA or Chartered Professional Accountant designation from CPA Canada.
5. Holds a CIWM or Certified International Wealth Manager Designation from the Canadian Securities Institute, a Division of Moody's Analytics Global Education (Canada) Inc. or any predecessor or successor organization.
6. Was admitted to practice law in a jurisdiction of Canada and at least 1/3 of the individual's practice has involved providing advice in respect of financings involving private or public distributions of securities or mergers and acquisition transactions.
7. Holds a ~~Masters~~Master of Business Administration degree, focused on finance, from a university in Canada or from an accredited university in a foreign jurisdiction.
8. Holds an undergraduate degree in Finance or holds an undergraduate degree in Business or Commerce with a major or specialization in finance or investment, from a university in Canada or from an accredited university in a foreign jurisdiction.
9. Meets at least one of the examination criteria specified in (a) below, provided that the purchaser also meets at least one of the income requirements set out in (b) below:
  - (a) has passed the examination or examinations identified in (i) or (ii), below
    - (i) the Canadian Securities Course Exam administered by the Canadian Securities Institute, a Division of Moody's Analytics Global Education (Canada) Inc., or any predecessor or successor organization, or
    - (ii) both the Series 7 Exam administered by Financial Industry Regulatory Authority in the United States of America or any predecessor or successor organization and the New Entrants Exam administered by the Canadian

Securities Institute, a Division of Moody's Analytics Global Education (Canada) Inc., or any predecessor or successor organization, and

- (b) the purchaser meets at least one of the following:
  - (i) had net income before taxes exceeding \$75 000 in each of the 2 most recent calendar years and reasonably expects to exceed that income level in the current calendar year, or
  - (ii) had net income before taxes with a spouse, exceeding \$125 000 in each of the 2 most recent calendar years and reasonably expects to exceed that income level in the current calendar year.

**Schedule B**

**Blackline Reflecting the Amendments - Saskatchewan**

**General Order 45-538**  
**Self-Certified Investor Prospectus Exemption**

**In the Matter of**  
***The Securities Act, 1988***

**Order**

**WHEREAS** the Financial and Consumer Affairs Authority of Saskatchewan (the **FCAA**) has assigned to the Executive Director of the Securities Division, FCAA (the **Executive Director**) the power to make exemption orders under the provision of *The Securities Act, 1988* (the **Act**) including orders of general application;

**AND WHEREAS** section 58 of the Act requires that a prospectus relating to the distribution of a security has been filed and the Executive Director has issued a receipt for it;

**AND WHEREAS** National Instruments have been adopted as regulations in Saskatchewan under *The Securities Commission (Adoption of National Instruments) Regulations* that allow for certain exemptions from the prospectus requirement in section 58 of the Act;

**AND WHEREAS** FCAA Securities Division staff (**Staff**) has applied to the Executive Director for an Order pursuant to section 160 of the Act that the prospectus requirement in section 58 of the Act does not apply to certain distributions of securities by an issuer as outlined below;

**AND WHEREAS** terms defined in the Act, National Instrument 14-101 *Definitions* ([NI 14-101](#)), National Instrument 45-102 *Resale of Securities* (**NI 45-102**) and National Instrument 45-106 *Prospectus Exemptions* (**NI 45-106**) have the same meaning in this Order;

**AND WHEREAS** in this Order:

“**Accredited Investor**” has the meaning ascribed to it in NI 45-106;

“**Acknowledgement**” means a document in the form specified in Appendix 2 *Acknowledgement* to this Order;

“**Corresponding Exemption**” means ~~an~~ [Alberta Securities Commission Blanket Order 45- 538 Self-Certified Investor Prospectus Exemption](#) and any order or ruling of another securities regulatory authority or securities regulator in Canada that provides an exemption from the prospectus requirement that is substantially similar to this Order;

“**Listed Issuer Investment**” means the distribution of a security where both of the following apply

- (a) the issuer has a class of equity security currently listed and posted for trading on the TSX Venture Exchange, the Toronto Stock Exchange, the Canadian Securities Exchange or Neo Exchange Inc. and is not in default of the periodic and timely disclosure requirements applicable to it as a reporting issuer, and
- (b) the purchaser has received advice regarding the suitability of the investment from a person or company, registered under securities legislation in the jurisdiction of the purchaser, that is qualified in the circumstances to provide such advice;

“**Participating Jurisdiction**” means Alberta and Saskatchewan and each other jurisdiction of Canada that adopts a Corresponding Exemption;

“**Private Issuer**” has the meaning ascribed to it in NI 45-106;

“**Qualifying Criteria**” means the criteria specified in Schedule A *Qualifying Criteria* to Appendix 2 to this Order, as amended from time to time;

“**Self-Certified Investor**” means a person or company that has completed the Acknowledgement and has solemnly declared a Statutory Declaration, as contemplated in subsection 1(e) of this Order; and

“**Seller**” means the person or company distributing a security;

“**SPV**” means an entity formed as a special purpose vehicle in which investors invest with a view to investing in one or more other issuers;

“**Statutory Declaration**” means a completed statutory declaration in the form specified in Appendix 1 *Statutory Declaration* to this Order;.

**AND WHEREAS** it has been represented to the Executive Director that:

- (a) A new additional prospectus exemption has the potential to further facilitate the capital raising efforts of businesses in Saskatchewan by allowing purchasers who do not currently meet the financial thresholds or other criteria required to qualify as an accredited investor to invest alongside accredited investors; provided the purchaser meets other criteria intended to demonstrate the purchaser’s financial and investment

knowledge;

- (b) Staff understands that the securities regulatory authority or regulator in Alberta intends to issue a rule, instrument or blanket order providing equivalent exemptions from the securities law of its respective jurisdiction;

**AND WHEREAS** the Executive Director is of the opinion that it would not be prejudicial to the public interest to make this Order;

**IT IS ORDERED** under section 160 of the Act:

1. The prospectus requirement in section 58 of the Act does not apply to a distribution of securities ~~by an issuer~~ provided all of the following apply:
- (a) the head office of the issuer is located in a Participating Jurisdiction;
  - (b) except in the case of a Listed Issuer Investment,
    - (i) the aggregate acquisition cost of the securities of the issuer acquired by the purchaser under this Order or a Corresponding Exemption in the calendar year does not exceed \$10,000, and
    - (ii) the purchaser represents to the ~~issuer~~Seller in the subscription or purchase agreement that the aggregate acquisition cost of the securities of all issuers acquired by the purchaser in the calendar year under this Order or a Corresponding Exemption, other than a Listed Issuer Investment, does not exceed \$30,000;
  - (c) in the case of a distribution by an issuer, the distribution to the purchaser is made concurrently with a distribution to an Accredited Investor ~~and~~;
  - (c.1) the purchaser is provided access to substantially the same information about the securities being distributed as ~~is~~would be provided to ~~the~~an Accredited Investor;
  - (d) the purchaser purchases as principal;
  - (e) at or before the time the purchaser signs the agreement to purchase the securities, the ~~issuer~~Seller obtains from the purchaser a completed Statutory Declaration, that is dated within 36 months of the distribution and to which is attached a completed Acknowledgement in which the purchaser has completed both:
    - (i) Part A confirming that the purchaser meets the Qualifying Criteria, and
    - (ii) Part B confirming that the purchaser has read and understood each of the acknowledgements in that part;
  - (f) the ~~issuer~~Seller does not know and would not reasonably be expected to know



that the statements made by the purchaser in the Acknowledgement or the representation referred to in section 1(b)(ii) of this Order are false;

- (g) in the case of a distribution by an issuer that is not a Private Issuer, the issuer, on or before the 10<sup>th</sup> day after the closing of the distribution, files a completed Form 45-106F1 *Report of Exempt Distribution*, together with the applicable fee; and
- (h) the ~~issuer~~Seller retains a copy of the Statutory Declaration and Acknowledgement for 8 years after the distribution;

**Special Purpose Vehicle Investment**

2. The prospectus requirement in section 58 of the Act does not apply to a distribution of securities to an SPV provided all of the following apply:

- (a) all the owners of interests, direct, indirect or beneficial, except the voting securities required by law to be owned by directors are Accredited Investors and Self-Certified Investors,
- (b) the SPV distributes its securities to Self-Certified Investors in compliance with this Order or a Corresponding Exemption,
- (c) Self-Certified Investors have not contributed in aggregate more than 25% of the total funds invested in the SPV.

**Resale Restrictions**

3. ~~(†)~~The first trade of a security acquired under ~~this~~ section 1 or 2 or a Corresponding Exemption is subject to section 2.5 of NI 45-102 Resale of Securities.

4. ~~2.~~This Order ~~comes into effect on March 31~~ is amended effective July 28, 2021~~2022~~ and expires on April 1, 2024.

Dated July 25, 2022

~~Dated March 31, 2021.~~

~~“Dean Murrison”~~

\_\_\_\_\_  
Dean Murrison Executive Director, Securities  
Division Financial and Consumer Affairs  
Authority of Saskatchewan

Dated March 31, 2021  
Amended July 28, 2022

5  
Annex 1 to General Order 45-538 Self-Certified Investor Prospectus Exemption  
**Statutory Declaration**

CANADA }  
Province of *[insert Participating Jurisdiction]* }

**I, *[insert name of declarant]* do solemnly declare that:**

1. *[If an individual]* I am resident at *[insert physical address in Alberta or Saskatchewan or other Participating Jurisdiction, if applicable, as defined in General Order 45-538]*.

*[For a non-individual]* I am an authorized signatory of *[insert name of entity]* (the **Purchaser**) which has its head office at *[insert physical address in Alberta or Saskatchewan or other Participating Jurisdiction, if applicable, as defined in General Order 45-538]*.

2. *[If an individual]* I have, of my own choice and volition, truthfully completed Part A of the attached Acknowledgement for the purpose of being considered a Self-Certified Investor (as defined in General Order 45-538).

*[For a non-individual]* I am an authorized signatory of the Purchaser and have, of my own choice and volition, on behalf of the Purchaser, truthfully completed Part A of the attached Acknowledgement for the purpose of the Purchaser being considered a Self-Certified Investor (as defined in General Order 45-538).

3. I have read and understood Part B of the attached Acknowledgement.

**I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath, and by virtue of the *Canada Evidence Act*.**

**DECLARED** before me at *[insert municipality and province]*.

Dated: *[insert date]*

---

Name of Declarant *[print]*

---

Name of Notary Public or Commissioner for Oaths\* *[print]*

---

Signature of Declarant

---

Signature of Notary Public or Commissioner for Oaths\* **[seal]**

---

If Declarant is the authorized signatory of the Purchaser, state the Declarant's title

---

Expiry Date of Commission:

**\*Note: A statutory declaration intended for use outside of the jurisdiction in which it is made must be signed by a Notary Public.**

**Annex 2 to General Order 45-538 Self-Certified Investor Prospectus Exemption  
Acknowledgement**

**Part A – Confirmation of Qualifying Criteria in Schedule A**

*Instruction: All capitalized terms used in this Acknowledgement but not defined in it have the meaning ascribed to them in General Order 45-538 Self-Certified Investor Prospectus Exemption (General Order 45-538).*

*Instruction: In the case of a purchaser that is an individual include the following statement:*

I [*insert name of purchaser*] meet one or more of the Qualifying Criteria as set out in the attached **Schedule A** and wish to be considered a Self-Certified Investor under General Order 45-538.

In particular, I certify that I meet the Qualifying Criteria specified in paragraph \_\_\_\_\_ [*insert relevant paragraph(s) number from Schedule A*] of Schedule A.

*Instruction: In the case of a purchaser that is not an individual include the following statement:*

I am an authorized signatory of [*insert name of the purchaser*] (**Purchaser**). The Purchaser wishes to be considered a Self-Certified Investor under General Order 45-538. I certify on behalf of the Purchaser that [*select at least one of the following*]:

<b>Initials</b>	
	The majority of owners of interests of the Purchaser, direct, indirect or beneficial, except the voting securities required by law to be owned by directors, are Accredited Investors or meet the Qualifying Criteria as set out in the attached Schedule A.
	The majority of directors of the Purchaser are either Accredited Investors or meet the Qualifying Criteria as set out in the attached Schedule A.
	The investor is a trust, established or settled by an individual that meets the Qualifying Criteria, as set out in the attached Schedule A and the trust was established for the benefit of such individual's spouse, former spouse, or a parent, grandparent, brother, sister, child or grandchild of the individual or of that individual's spouse or former spouse.

**Part B – Investment Acknowledgements**

*Instruction: To qualify as a Self-Certified Investor you must read the following and confirm your understanding of each of the statements relating to the risks of investing.*

*If you do not understand the risks of investing, do not complete this form. You do not qualify as a Self-Certified Investor.*

**1. You will not have the rights you would have under a prospectus.**

Securities legislation generally requires that an issuer trying to raise money through the sale of securities provide investors with a comprehensive disclosure document called a prospectus in order that investors can make an informed decision about whether or not to buy those securities.

The accuracy of a prospectus is typically required to be certified by the CEO, CFO and two directors of the issuer and any underwriter involved in the sale. Investors who buy under a prospectus have certain special rights under securities legislation, including a two day right to cancel their investment for any reason and a right to sue either to get their money back or for damages if there is a misrepresentation in the prospectus. A right to sue for damages is available not just against the issuer but also against the other parties that sign the prospectus. These rights are special in that an investor is not required to prove they relied on the misrepresentation in making their investment decision.

As an investor under a prospectus exemption you will not have the special rights afforded to an investor under a prospectus. However, in Saskatchewan, you will have a statutory right to sue either to get your money back or for damages if there is a misrepresentation in an offering memorandum provided to you.

	<b>Yes or No?</b>
<b>Have you read and understood the above information?</b>	

**2. You will need to seek out the information needed to make an informed investment decision**

An issuer trying to raise money through the sale of securities under a prospectus is required to provide you with comprehensive disclosure in the prospectus, providing "full, true and plain disclosure of all material facts relating to the securities being distributed". Some examples of required information includes,

- details of the securities being offered for sale, including the rights they provide you, e.g., voting rights, rights to convert or exchange (including conversion prices or formulas and exercise periods), any limitations on redemption rights, as well as similar details on other outstanding securities;

- details on how the proceeds of the offering will be used including any fees and commissions, information on payments to be made to related parties, and details on any funds to be used to repay outstanding indebtedness;
- the key business objectives and milestones;
- a description of material risks to the business e.g., environmental or other liabilities, significant litigation, competition, lack of management experience, regulatory approvals needed, and cash flow and other financial challenges; and
- information about management and directors e.g., education, experience, compensation, and security holdings.

You will not receive a prospectus. You will need to consider whether you otherwise have access to all the important information necessary to make an informed investment decision and, if not, take steps to obtain that information before investing. You should not invest if you do not have the information needed to make an informed investment decision.

	<b>Yes or No?</b>
<b>Have you read and understood the above information?</b>	

**3. You may not have the benefit of audited financial statements.**

An issuer selling securities under a prospectus is required to provide investors with audited annual financial statements. The audit provides certain independent assurance with respect to the financial information presented.

As an investor under a prospectus exemption you may not be provided with audited financial statements and if any financial information is provided you may have no independent assurance with respect to it. You will need to determine whether audited financial statements are important to your investment decision and whether you will require that these be provided before investing.

	<b>Yes or No?</b>
<b>Have you read and understood the above information?</b>	

**4. You will need to assess the reliability of financial projections and other forward- looking information and the reasonability of any assumptions**

Securities legislation does not generally require that issuers provide financial projections and other forward-looking information in a prospectus. However, because of the potential unreliability of this type of information, if it is provided, to establish a defence to liability an issuer would generally need to provide cautionary language that

- indicates that actual results may vary from the forward-looking information;
- states the material factors or assumptions used to develop forward-looking information; and

- identifies material risk factors that could cause actual results to differ materially from the forward-looking information.

Securities legislation imposes liability for misrepresentations but, in respect of financial outlooks and future-oriented financial information provides a defence where the information specified above is provided and the underlying assumptions are reasonable in the circumstances e.g., made only for a period that can be reasonably estimated.

As an investor under a prospectus exemption you will need to assess whether the assumptions and risk factors underlying any financial outlooks and future-oriented financial information are sufficiently clear and whether forward-looking information provided seems reasonable.

	Yes or No?
<b>Have you read and understood the above information?</b>	

**5. You may need to conduct your own investigation (or due diligence) to understand the nature of the investment, the business and the associated risks**

In a prospectus offering, the special liability that directors and management have creates an incentive for them to ensure that the prospectus contains full, true and plain disclosure. Similarly, the special liability that applies to any underwriters (the dealers that either sell the securities as agent for the company, or buy the securities from the company with a view to reselling them to the public) typically incentivizes them to conduct due diligence, i.e., investigate or review information about the issuer and its principals to try and identify material risks and confirm, "to the best of their knowledge, information and belief" the information in the prospectus.

If there is no underwriter or similar party conducting this due diligence, it will be very important for you to consider these matters yourself to determine whether or not to invest and to understand the risks. If you have little or no experience in conducting due diligence, you are strongly encouraged to seek training in conducting due diligence and/or seek assistance from qualified professionals before investing.

**(a) You will need to investigate to understand the terms of the security you buy and how they are affected by other securities that are outstanding or that may be issued.**

Examples of some of the factors that you should consider include:

- the number and type of securities outstanding and the prices at which they were sold as compared to the price at which the securities are being now offered and the development of the issuer's business since the prior offering(s); and
- the rights associated with other outstanding securities as set out in the issuer's articles of incorporation, any shareholder agreement, escrow, voting trust or similar agreements (e.g., special voting rights, preferential rights to dividends or distributions, preferential rights to

the issuer's assets in the case of a liquidation, preferential rights to disclosure, rights to

convert, exchange or redeem securities, or rights to participate in future financings) and the implications of these rights to you and your investment.

	<b>Yes or No?</b>
<b>Have you read and understood the above information?</b>	

**(b) You will need to investigate to understand the issuer's business.**

Examples of some of the factors that you should consider include:

- the issuer's financial position, including by reviewing and assessing any historical financial information and assessing the reasonableness of any financial projections;
- agreements material to the issuer's business (e.g., key employment agreements, key supplier agreements, major sales agreements, insurance contracts);
- the experience, qualifications and character of management and key employees and dependence on certain personnel;
- the issuer's organizational structure, its governance, and internal controls; and
- the compensation, benefits and other payments to executives, employees and any related parties.

	<b>Yes or No?</b>
<b>Have you read and understood the above information?</b>	

**(c) You will need to investigate to understand the material risks**

Examples of some of the factors that you should consider include:

- the material risks related to the business (e.g., competition, lack of experience, inadequate funds);
- material assets and the rights and risks related to those assets (e.g., title to assets, status of leases, extent of intellectual property protections, existence of required governmental, regulatory or other approvals); and
- indebtedness, environmental liabilities and existing or potential litigation.

	<b>Yes or No?</b>
<b>Have you read and understood the above information?</b>	

**6. You may not receive investment advice from a qualified salesperson**

If you invest under a prospectus, the issuer selling its securities will have typically retained one or more registered dealers to sell the securities to you. A registered dealer is required to understand the securities that they are selling and will often have conducted certain analysis and review of the business. An individual employed by a registered dealer is typically required to have certain investment education and training and is required to collect information from you to understand your financial and other circumstances, risk profile, investment objectives and time horizon and use that information to assess whether an investment is suitable for you.

You may be investing in circumstances where there is no registered dealer involved. If that is the case, you will need to assess for yourself whether or not the investment is suitable for you having regard to factors such as

- your financial and personal circumstances, investment objectives and time horizon;
- the tax implications of the investment in your particular financial circumstances;
- your other investments, e.g., whether your investments are sufficiently diversified and not overly concentrated in a particular company, or industry or geographical area or heavily concentrated in high risk or illiquid investments;
- the significantly increased risk associated with borrowing to invest; and
- the prospect of some of your investments being a failure and how much risk you are prepared to take and how much money you can afford to lose.

A person who is recommending an investment to you who is not registered under securities legislation may not have any expertise or qualifications to provide investment advice. They may have a conflict of interest that incentivizes them to encourage you to invest. (Seek information on

commissions or other payments being paid.) Even if that person is independent, experienced and knowledgeable, their circumstances, risk tolerance and objectives may be very different than your own. An investment that is good for them may not be good for you.

You can check to see whether a person is registered under securities legislation here:

<http://www.aretheyregistered.ca/>

	<b>Yes or No?</b>
<b>Have you read and understood the above information?</b>	

**7. You may not receive ongoing information about your investment**

If you were to invest under a prospectus, the issuer you invested in would be or would become a reporting issuer (public company) and would be obligated under securities legislation to continue to provide disclosure about its business including such as



- audited annual financial statements and managements discussion and analysis;
- quarterly interim financial statements and management’s discussion and analysis;
- news releases announcing material changes such as relating to changes in directors and executives, significant acquisitions or dispositions, significant liabilities or litigation, material contracts and loss of significant contracts;
- board composition and governance policies; and
- executive compensation disclosure.

If you invest in an issuer that is not a reporting issuer, the issuer may have no obligation under securities legislation to provide you with any ongoing information. Consequently, you will need to determine what ongoing reporting you want from the issuer and negotiate by contract to obtain it. You will need to consider the possibility that the issuer fails to continue to provide you with that information and what rights you have under that contract and whether they can be effectively enforced.

	<b>Yes or No?</b>
<b>Have you read and understood the above information?</b>	

**8. You will be restricted from reselling your securities**

If you invest under a prospectus, the securities you acquire are typically able to be immediately resold in the secondary market e.g., on an exchange. Because you are investing under a prospectus exemption, your ability to resell them is limited.

If you acquire securities of a reporting issuer (public company) under a prospectus exemption, you are typically subject to resale restrictions for a period of four months during which you can generally only realistically resell them under a prospectus exemption.

If you acquire securities of an issuer that is not a reporting issuer (i.e., not a public company), under a prospectus exemption, you will typically be subject to resale restrictions that continue **indefinitely**. Unless the issuer becomes a reporting issuer, securities legislation prohibits you from reselling those securities except under another prospectus exemption or under a prospectus.

Further, even if you can comply with securities legislation, there will be no market to help identify parties that might be interested in buying the securities from you. It may not be possible to find a willing buyer. You may not be able to sell your investment quickly – or at all.

	<b>Yes or No?</b>
<b>Have you read and understood the above information?</b>	

**9. You may not be able to realize a return on your investment. You could lose all**

**the money invested.**

Statistics indicate that many early stage businesses fail. You could lose your investment. However, even if a business you invest in is successful, you will need to consider how you will realize any return from your investment. If you buy securities, such as common shares, of a non-reporting issuer you will need to identify whether there is a realistic “exit strategy” for you, an opportunity to sell your securities and potentially obtain a return and whether the timing of that potential opportunity aligns with your investment time horizon.

If the issuer is not a reporting issuer, there is no assurance that it will ever become one and even if it does, that could take many years. There is also no assurance that the issuer will be acquired by another entity. You could be forced to hold the securities indefinitely.

If you are buying debt securities or preferred shares, consider whether the issuer has a realistic prospect of being able to pay you the interest, dividends or yield that is offered and what rights you will have if they default on such payments or do not declare dividends. If you buy redeemable securities, consider whether the issuer has a realistic prospect of being able to redeem the securities. Consider the limitations on or conditions to your ability to redeem.

	<b>Yes or No?</b>
<b>Have you read and understood the above information?</b>	

**10. You may have difficulty valuing your investment.**

If you acquire securities, such as common shares, under a prospectus, the issuer will be a reporting issuer (public company) and the securities will typically be available for resale on a secondary market. In the case of a mutual fund, the securities will typically be redeemable on demand based on the net asset value, which is required to be calculated and disclosed on an ongoing basis. This publicly available information helps to establish a value for the business. If you acquire securities under a prospectus exemption, and the issuer is not a reporting issuer, you will likely not have this type of information. It may be difficult to establish a value for the business or the securities.

	<b>Yes or No?</b>
<b>Have you read and understood the above information?</b>	

**11. Selling securities under a prospectus exemption doesn't mean misleading statements or unfair practices are allowed. Be alert for fraud and scams.**

Securities legislation prohibits parties selling securities from making statements that they know or reasonably ought to know are, in any material respect, and at the time and in light of the circumstances in which they are made, misleading or untrue or do not state a fact that is required to be stated or that is necessary to make a statement made not misleading, where one would reasonably expect that statement to have a significant effect on the market price or value of a security.

Securities legislation also prohibits unfair practices in connection with the sale of securities, such as unreasonable pressure to buy, sell or hold or imposing harsh, oppressive or excessively one-sided terms.

Although you are seeking to invest under a prospectus exemption, these prohibitions against misleading statements and unfair practices still apply to the parties selling you securities. They are not exempted from these fundamental provisions.

Scammers may disappear with your money. It is important to protect your money by being alert to the signs of investment fraud and scams **before** you invest. See <https://www.securities-administrators.ca>

	<b>Yes or No?</b>
<b>Have you read and understood the above information?</b>	

**12. Except in the case of a Listed Issuer Investment, there are limits on the value of securities that can be sold to you as a Self-Certified Investor.**

Except in the case of a Listed Issuer Investment (described below) ~~an issuer in which you invest~~, a Seller is not permitted to accept a subscription or purchase from you if the aggregate acquisition cost of the securities of the issuer acquired by you as a Self-Certified Investor in the calendar year exceeds \$10,000.

Further, except in the case of a Listed Issuer Investment (described below) the ~~issuer~~ Seller is required to obtain a representation from you in the subscription or purchase agreement that the aggregate acquisition cost of the securities of all issuers acquired by you in the calendar year as a Self-Certified Investor, other than a Listed Issuer Investment, does not exceed \$30,000.

The term Listed Issuer Investment is defined in General Order 45-538. Generally, it refers to an investment in an issuer that has a class of equity security currently listed and posted for trading on the TSX Venture Exchange, the Toronto Stock Exchange, the Canadian Securities Exchange or Neo Exchange Inc. and the issuer is not in default of the periodic and timely disclosure requirements applicable to it as a reporting issuer, provided that you receive advice regarding the suitability of the investment from a person or company, registered under securities legislation who is qualified in the circumstances to provide such advice.

	<b>Yes or No?</b>
<b>Have you read and understood the above information?</b>	

**I understand that there is a risk that [I / the Purchaser] could lose the entire investment and [I / the Purchaser] should not invest more than [I / it] can afford to lose.**

Dated: *[insert date]*

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Self-Certified Investor's name

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Signature

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Name and title of authorized signatory of a non-individual

[Annex 2 to General Order 45-538 Self Certified Investor Prospectus Exemption](#)

**Schedule A**

***Qualifying Criteria***

1. Holds a CFA or Chartered Financial Analyst Charter from the CFA Institute or any predecessor or successor organization.
2. Holds the CIM or Chartered Investment Manager designation from the Canadian Securities Institute, a Division of Moody's Analytics Global Education (Canada) Inc. or any predecessor or successor organization.
3. Holds the CBV or Chartered Business Valuator designation from the CBV Institute or any predecessor or successor organization.
4. Holds a CPA or Chartered ~~Public~~Professional Accountant designation from CPA Canada.
5. Holds a CIWM or Certified International Wealth Manager Designation from the Canadian Securities Institute, a Division of Moody's Analytics Global Education (Canada) Inc. or any predecessor or successor organization.
6. Was admitted to practice law in a jurisdiction of Canada and at least 1/3 of the individual's practice has involved providing advice in respect of financings involving private or public distributions of securities or mergers and acquisition transactions.
7. Holds a ~~Masters~~Master of Business Administration degree, focused on finance, from a university in Canada or from an accredited university in a foreign jurisdiction.
8. Holds an undergraduate degree in Finance or holds an undergraduate degree in Business or Commerce with a major or specialization in finance or investment, from a university in Canada or from an accredited university in a foreign jurisdiction.
9. Meets at least one of the examination criteria specified in (a) below, provided that the purchaser also meets at least one of the income requirements set out in (b) below:
  - (a) has passed the examination or examinations identified in (i) or (ii), below
    - (i) the Canadian Securities Course Exam administered by the Canadian Securities Institute, a Division of Moody's Analytics Global Education (Canada) Inc., or any predecessor or successor organization, or
    - (ii) both the Series 7 Exam administered by Financial Industry Regulatory Authority in the United States of America or any predecessor or successor organization and the New Entrants Exam administered by the Canadian Securities Institute, a Division of Moody's Analytics Global Education (Canada) Inc., or any predecessor or successor organization,

|

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and

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(b) the purchaser meets at least one of the following:

(i) had net income before taxes exceeding ~~\$75,000~~75,000 in each of the 2 most recent calendar years and reasonably expects to exceed that income level in the current calendar year, or

(ii) had net income before taxes with a spouse, exceeding ~~\$125,000~~125,000 in each of the 2 most recent calendar years and reasonably expects to exceed that income level in the current calendar year.

## **Schedule C**

### **Guidance for Use of the Exemption**



## Substance and Purpose

The Exemption provides, on an interim three-year basis expiring March 31, 2024, a prospectus exemption to further facilitate the capital raising efforts of businesses in the participating jurisdictions. It is intended to allow purchasers in the participating jurisdictions who do not meet the financial thresholds or other criteria required to qualify as an accredited investor<sup>2</sup> to participate in private placements alongside accredited investors provided that they meet other criteria intended to demonstrate the purchaser's financial and investment knowledge.

Limits apply to the amount of investment that can be accepted from an investor except (1) in the case of investments in certain listed issuers, where the investor has received suitability advice from a registered dealer or other specified registrant, and (2) for investments made by certain special purpose vehicles (SPV).

Consistent with the approach taken with accredited investors, the Exemption does not require the use of a particular form of offering document but instead requires that for a distribution by an issuer, there be a concurrent distribution to an accredited investor. Whether a distribution of securities is made by an issuer or in a resale of securities, the amendment to the Exemption makes clear that a self-certified investor must be provided access to substantially the same information about the securities being distributed as would be provided to an accredited investor.

One of the goals of the Exemption is to help facilitate the growth of the angel investor<sup>3</sup> ecosystem and the financing of early stage businesses in emerging industries. However, the Exemption may also be of interest to listed issuers, further facilitating their capital raising efforts by private placement.

## Summary of the Exemption

The Exemption provides an additional prospectus exemption to facilitate distributions to purchasers in the participating jurisdictions on the conditions described below.

1. Recognizing that a self-certified investor will not have the income or assets of an accredited investor, to address an investor's ability to withstand loss, the Exemption includes investment limits, unless the distribution is (1) a "Listed Issuer Investment" (defined below) or (2) to a "Qualifying SPV" (defined below).
  - (a) the aggregate acquisition cost of the securities of the issuer acquired by the purchaser under the Exemption in the calendar year, does not exceed \$10,000, and

<sup>2</sup> The term "accredited investor" is defined in National Instrument 45-106 *Prospectus Exemptions* and includes various specified institutions and wealthy individuals. In the case of individuals, the definition contemplates annual net income in excess of \$200,000, net assets of at least \$5,000,000 or net realizable financial assets of at least \$1,000,000.

<sup>3</sup> Angel investors are typically high net worth or net income individuals that would qualify as "accredited investors". They will often invest in early stage businesses that are not yet at the stage of development to attract venture capital investment. They may invest individually or invest together with other angel investors through special purpose vehicles, e.g., corporations or limited partnerships, created to invest in a single business.

- (b) the purchaser represents to the person or company distributing the security (the **Seller**) in the subscription or purchase agreement that, after giving effect to the distribution, the aggregate acquisition cost of the securities of all issuers acquired by the purchaser in the calendar year under the Exemption, other than a Listed Issuer Investment, does not exceed \$30,000.
2. In the case of a distribution by an issuer, the distribution to the purchaser is made concurrently with a distribution to an accredited investor.
  3. The purchaser must be provided access to substantially the same information about the securities being distributed as would be provided to an accredited investor (whether in a distribution by an issuer or in a resale of securities).
  4. The Seller must obtain from the purchaser a statutory declaration substantially in the form specified in Annex 1 to the Exemption (**Statutory Declaration**), dated within 36 months of the distribution, to which is attached a completed self-certified investor acknowledgement (**Acknowledgement**) substantially in the form specified in Annex 2 to the Exemption, including
    - (i) a completed Part A confirming that the purchaser meets the self-certified investor Qualifying Criteria (defined below), and
    - (ii) a completed Part B confirming that the purchaser has read and understood each of the acknowledgements in that part.

The self-certified investor Qualifying Criteria are set out in Schedule A to Annex 2. In summary, they reference an individual that meets any of the following:

- (a) holds a CFA Charter from the CFA Institute,
- (b) holds a CIM designation from the Canadian Securities Institute (**CSI**),
- (c) holds a CBV designation from the CBV Institute,
- (d) holds a CPA designation in a jurisdiction of Canada from CPA Canada,
- (e) holds a CIWM designation from the CSI,
- (f) was admitted to practice law in a jurisdiction of Canada and at least 1/3 of the individual's practice has involved providing advice respecting financings involving public or private distributions of securities or mergers and acquisitions,
- (g) holds an MBA, focused on finance from a university in Canada or from an accredited university in a foreign jurisdiction,

- (h) holds an undergraduate degree in Finance or an undergraduate degree in Business or Commerce with a major or specialization in finance or investment, from a university in Canada or an accredited university in a foreign jurisdiction, or
- (i) has passed the Canadian Securities Course (or both the Series 7 Exam from the Financial Industry Regulatory Authority in the U.S. and the New Entrants Exam from the CSI) and meets certain minimum income requirements being, \$75,000 net income in each of the last 2 years and reasonably expects to exceed that income level in the current year (or \$125,000 when combined with a spouse)

(the **Qualifying Criteria**).

In the case of a purchaser that is not an individual, Part A of the Acknowledgement requires that at least one of the following apply:

- (a) the majority of owners of interests of the purchaser, direct, indirect or beneficial, except the voting securities required by law to be owned by directors, are accredited investors or meet the Qualifying Criteria;
- (b) the majority of directors of the purchaser are accredited investors or meet the Qualifying Criteria, or
- (c) the purchaser is a trust, established or settled by an individual that meets the Qualifying Criteria, which trust was established for the benefit of that individual's spouse, former spouse, or a parent, grandparent, brother, sister, child or grandchild of the individual or that individual's spouse or former spouse.

A "Listed Issuer Investment" refers to a distribution where both of the following conditions apply:

- (a) the issuer
  - has a class of equity security currently listed and posted for trading on the TSX Venture Exchange, the Toronto Stock Exchange, the Canadian Securities Exchange or Neo Exchange Inc., and
  - is not in default of the periodic and timely disclosure requirements applicable to it as a reporting issuer; and
- (b) the purchaser has received advice regarding the suitability<sup>4</sup> of the investment from a person or company, registered under securities legislation in the jurisdiction of the purchaser, that is qualified in the circumstances to provide such advice.

<sup>4</sup> Under securities legislation, before a registered dealer accepts an order or recommends to a client the purchase, sale, exchange or holding of a security, it must ensure that the action is suitable for the client. To provide advice about the suitability of an investment, the dealer must comply with its know-your-client and know-your-product obligations under securities legislation.

We understand that the use of an SPV to facilitate investment in small businesses is a common practice for early stage investments. The Exemption allows the distribution of securities to an SPV, without subjecting the SPV to investment limits (a **Qualifying SPV**), provided that all of the following conditions apply:

1. All of the owners of interests, direct, indirect or beneficial, except the voting securities required by law to be owned by the directors, are accredited investors and self-certified investors.
2. The SPV distributes its securities to self-certified investors in compliance with the Exemption.
3. Self-certified investors have not contributed in aggregate more than 25% of the total funds invested in the SPV.

## **Guidance on using the Exemption**

### **(a) Statutory Declaration and Acknowledgement**

For a distribution to a self-certified investor, the Seller must obtain a fully completed Statutory Declaration and a completed Acknowledgement from each self-certified investor. The Statutory Declaration can be relied upon by the issuer for multiple distributions that occur within 36 months of the date it was declared.

In the case of a distribution to a Qualifying SPV, there is no requirement for the Seller to obtain the Statutory Declaration or Acknowledgement from the Qualifying SPV.

We do not generally expect the Seller or the notary public or commissioner for oaths who signs the Statutory Declaration to take steps to independently confirm the statements in the Acknowledgement.

If a registered dealer is involved in the distribution, the dealer will need to comply with its obligations, including respecting know-your-client, know-your-product and suitability. We do not generally intend for the registered dealer to need to take any additional steps beyond those obligations to confirm the statements made in the Acknowledgement.

The know-your-client obligation requires the dealer to accurately determine, among other things, the investor's

- current financial situation,
- investment knowledge,
- investment objectives and time horizon,
- risk tolerance, and
- investment portfolio composition and risk level.

The know-your-product obligation requires the dealer to understand the structure and features and assess the risks of the product.

A suitability determination entails ensuring that the product is suitable for the client using the results of the know-your-client and know-your-product processes.

The Statutory Declaration, having the same force and effect as an oath made under the *Canada Evidence Act* (Canada) is intended to be sufficient evidence that:

- the purchaser meets the self-certified investor Qualifying Criteria; and
- the purchaser has actually read and understood the stated investment risks and considerations and signed of their own volition.

As an anti-avoidance measure, we have specified that the Exemption would not be available if the Seller knows or would reasonably be expected to know that the Statutory Declaration is false.

**(b) Purchaser's representations**

Except for a Listed Issuer Investment we expect each Seller to obtain from each purchaser (other than a Qualified SPV) a representation in the subscription or purchase agreement that the aggregate acquisition cost of the securities of all issuers acquired in the calendar year by the purchaser under the Exemption (other than Listed Issuer Investments) does not exceed \$30,000.

Provided that the Seller does not know or would not reasonably be expected to know that that representation is false, we do not expect that the Seller would need to take additional steps to independently verify the amount a purchaser has invested in other issuers.

**(c) Listed Issuer Investments – required suitability advice**

A Seller that intends to treat a distribution as a Listed Issuer Investment should take steps to confirm that suitability advice has been obtained by each self-certified investor. We have not prescribed what steps the Seller must take. Some of the different ways that a Seller may be able to satisfy itself that this condition has been met include:

- have the investor represent in the subscription or purchase agreement that the investor received suitability advice. To satisfy its obligation, the Seller should ensure this representation is informed and brought to the attention of, and confirmed by, the investor. A representation that the investor needs to initial or that is proximate to the signature block of the agreement is more likely to be noticed by the investor than one found in the middle of the subscription or purchase agreement;
- ask the investor to specifically identify in the subscription or purchase agreement the name of the registrant that provided the suitability advice. If the Seller has concerns that the investor does not understand what suitability advice is or whether the investor received the advice from a registrant, the Seller should then independently verify with the registrant; or
- for brokered private placements, obtain a representation from the registered dealer that all investors have received suitability advice.

If a Seller that intends to treat a distribution as a Listed Issuer Investment has any reason to believe that an investor has not received suitability advice from a registrant, the Seller should not accept the subscription or purchase.

**(d) Listed Issuer Investments - not in default**

In order to constitute a Listed Issuer Investment that is not subject to the investment limits, the issuer must be listed on one of the stock exchanges in Canada specified in the Exemption. In addition, the issuer cannot be, at the time of the distribution, in default in the filing of its continuous disclosure documents.

**(e) No registration exemption**

The Exemption is only an exemption from the prospectus requirement. It does not provide an exemption from the registration requirement.<sup>5</sup>

**(f) Obligations of registered dealers**

If a registered dealer or other registrant is involved with the distribution of securities under the Exemption, the registrant's typical obligations and responsibilities e.g., relating to know-your-client, know-your-product, suitability, and conflicts of interest, will continue to apply.

In the case of a Seller that wishes to treat a distribution as a Listed Issuer Investment, it will be necessary for a registrant to provide suitability advice to each self-certified investor. The suitability advice must be from a registrant qualified to provide suitability advice in the circumstances.

**(g) Use of an SPV**

The Exemption allows a self-certified investor to be treated in a generally similar manner to an accredited investor. Accredited investors are permitted to invest together through an SPV in order to further invest into a business. Self-certified investors, together with accredited investors, may do the same. For the purpose of the Exemption, an SPV may make an investment as either (1) a non-individual self-certified investor or (b) a Qualifying SPV.

*Investments by an SPV that is a Non-Individual Self-Certified Investor*

An SPV is a non-individual self-certified investor if one of the following applies:

1. The majority of owners of interests, direct or indirect or beneficial, except the voting securities required by law to be owned by directors, are accredited investors or meet the Qualifying Criteria; or
2. The majority of directors are either accredited investors or meet the Qualifying Criteria.

An SPV that is a non-individual self-certified investor must complete the Statutory Declaration and the Acknowledgment when it is making an investment. Investment limits apply to a non-individual self-certified investor.

*Investments by a Qualifying SPV*

An SPV is a Qualifying SPV if all of the following applies:

1. All of the owners of interest, direct, indirect or beneficial, except the voting securities required by law to be owned by directors, are accredited investors and self-certified investors;

<sup>5</sup> For distributions in Alberta only, see ASC Blanket Order 31-536 *Small Business Finder's Exemption*.

2. The SPV distributes its securities to self-certified investors in compliance with the Exemption;
3. Self-certified investors have not contributed in aggregate more than 25% of the funds invested in the SPV.

A Qualifying SPV is not required to complete the Statutory Declaration and the Acknowledgement when it is making an investment. Investment limits do not apply to a Qualifying SPV.

#### *SPVs Accepting Investments from Self-Certified Investors*

An SPV (including a Qualifying SPV) that is accepting an investment from a self-certified investor must ensure that the investor completes the Statutory Declaration and the Acknowledgment. The distribution of securities by an SPV to a self-certified investor is subject to the conditions of the Exemption, including investment limits.

See also “Sales to self-certified investors by private issuers” and “Reports of exempt distribution” below.

#### **(h) Sales to self-certified investors by private issuers**

To maintain its status as a “private issuer”, a private issuer must meet certain conditions, including having not more than 50 security holders (not including non-convertible debt or securities held by current or former employees) and can only distribute its securities to the list of permitted investors specified in subsection 2.4(2) of National Instrument 45-106 *Prospectus Exemptions*. That list includes parties such as close personal friends and family of the principals of the private issuer, accredited investors, and persons or companies that are "not the public".

Assuming they meet the other conditions of the private issuer exemption, private issuers are permitted to distribute securities to accredited investors without affecting their status as a private issuer. Similarly, we intend that a private issuer could distribute securities to a self-certified investor or an SPV without losing its status as a private issuer.

A private issuer that sells securities to anyone that is not on the prescribed list of permitted investors would lose its private issuer status. We understand that maintaining private issuer status is of significant importance to early stage issuers.

In order to allow self-certified investors to invest in private issuers alongside accredited investors, whether directly or through an SPV, without impairing the issuer's private issuer status, and having regard to the investment and financial knowledge required to qualify as a self-certified investor and the information required to be made available to a self-certified investor, the participating jurisdictions would not object to:

- a self-certified investor (whether an individual or not an individual, i.e. an SPV, a corporation, a cooperative or a trust) being considered "not the public", such that an investment by a self-certified investor would not by itself prevent the issuer from otherwise being considered a "private issuer";

- a Qualifying SPV being considered “not the public”, such that an investment by a Qualifying SPV would not by itself prevent the issuer from otherwise being considered a “private issuer”.

Note however, that under subclause 2.4(1)(b)(ii) of National Instrument 45-106 *Prospectus Exemptions*, absent any discretionary exemptive relief, if an entity is created solely to purchase or hold securities of an issuer, then each beneficial owner or beneficiary of the entity would be required to be separately counted towards the 50 security holder limit. This could limit the number of investors (whether self-certified investors or otherwise) that are able to participate in an SPV.

**(i) Reports of exempt distribution**

Reliance on the Exemption requires the filing of a Form 45-106F1 *Report of Exempt Distribution*, together with the accompanying fee, within 10 days of the distribution, unless the issuer is a “private issuer” or a reseller. See also “Sales to self-certified investors by private issuers” above.

Reliance on the Exemption should be reported on Form 45-106F1 and confidential purchaser information should be reported on Form 45-106F1, Schedule 1 by either listing the purchaser as a self-certified investor or a Qualifying SPV under the Exemption.

**Saskatchewan - Designated offering memorandum**

In Saskatchewan, any document that provides information about the business or affairs of an issuer that has been prepared primarily for delivery to and review by a prospective purchaser to assist the prospective purchaser in making an investment decision about securities being sold in a distribution under the Exemption, including all amendments to that document, is designated to be an offering memorandum under securities legislation in Saskatchewan, unless that document is an annual report, interim report, information circular, take-over bid circular, issuer bid circular or prospectus. This means that, in Saskatchewan, there will be statutory rights of action for any misrepresentation in any offering document. Any offering memorandum provided will need to be filed with the FCAA.