

**ALBERTA SECURITIES COMMISSION
BLANKET ORDER 45-539**

Citation: Re Small Business Financing, 2021 ABASC 140

Date: 20210901

Definitions

1. Unless otherwise defined in this Blanket Order, terms defined in the *Securities Act* (Alberta) (the **Act**), have the same meaning in this Blanket Order. In particular, the terms "Alberta securities laws", "company", "control", "director", "distribution", "investment fund", "issuer", "misrepresentation", "officer", "person", "reporting issuer", "security", and "subsidiary" have the meanings ascribed in the Act.

2. In this Blanket Order:

"Accredited Investor" means an accredited investor as defined in section 1.1 [*Definitions*] of NI 45-106;

"Affiliate" means in respect of an issuer, another issuer if

- (a) one of them is the subsidiary of the other; or
- (b) each of them is controlled by the same person or company.

"Collective Investment Vehicle" means an issuer whose primary purpose is to invest money provided by its security holders in a portfolio of securities;

"Corresponding Exemption" means Financial and Consumer Affairs Authority of Saskatchewan General Order 45-539 *Small Business Financing* 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;

"Eligible Security" means any of the following securities of an issuer:

- (a) a common share;
- (b) a preference share;
- (c) a debt security other than a securitized product as defined in section 1.1 [*Definitions*] of NI 45-106 or a structured finance product as defined in section 1.1 [*Definitions*] of National Instrument 25-101 *Designated Rating Organizations*;
- (d) a unit of a limited partnership;
- (e) a membership share or investment share issued by a cooperative organized under the *Cooperatives Act* (Alberta);

(f) a security convertible or exchangeable into a security referred to in (a) to (e);

"Family & Friends Investor" means a person or company described in either section 2.5 [*Family, friends and business associates*] or section 2.6 [*Family, friends and business associates - Saskatchewan*] of NI 45-106;

"Foreign Investor" means a person or company outside of Alberta, to whom a distribution may be made under ASC Rule 72-501 *Distributions to Purchasers Outside Alberta*;

"Founder" means a founder as defined in section 1.1 [*Definitions*] of NI 45-106;

"Issuer Group" means an issuer together with each of the following:

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

"Minimum Income Investor" or "MII" means

- (a) a person or company whose net income before taxes meets at least one of the following:
 - (i) exceeded \$75 000 in each of the 2 most recent calendar years and who reasonably expects to exceed that income level in the current calendar year; or
 - (ii) with a spouse exceeded \$125 000 in each of the 2 most recent calendar years and who reasonably expects to exceed that income level in the current calendar year;
- (b) a person or company of which a majority of the voting securities are beneficially owned by MIIs or Accredited Investors or of which a majority of the directors are MIIs or Accredited Investors;
- (c) a general partnership of which all of the partners are MIIs or Accredited Investors;
- (d) a limited partnership of which a majority of the directors of the general partner are MIIs or Accredited Investors;
- (e) a trust or estate in which all of the beneficiaries or a majority of the trustees or executors are MIIs or Accredited Investors;

"NI 45-106" means National Instrument 45-106 *Prospectus Exemptions*;

"Offering Document" means an offering document that complies with Form 45-539F1 *Small Business Offering Document*;

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

"Registered Dealer" means a dealer registered as an exempt market dealer or an investment dealer under securities legislation;

"Risk Acknowledgement" means a risk acknowledgement that complies with Form 45-539F2 *Small Business Risk Acknowledgement*;

"Self-Certified Investor" means a person or company described in ASC Blanket Order 45-538 *Self-Certified Investor Prospectus Exemption* or Financial and Consumer Affairs Authority of Saskatchewan General Order 45-538 *Self-Certified Investor Prospectus Exemption*;

"Undertaking" means an undertaking that complies with Form 45-539F3 *Small Business Undertaking*.

Blanket Order

3. The Commission, considering that it would not be prejudicial to the public interest to do so, 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) a majority of the directors and officers of the issuer, collectively, as a group, are located in Canada;
 - (c) the issuer is not a reporting issuer or an investment fund;
 - (d) each security distributed is an Eligible Security of the issuer's own issue;
 - (e) unless the issuer has provided the disclosure specified by Item 4(3) of the Offering Document or the issuer is a Collective Investment Vehicle and the issuer has provided the supplementary disclosure specified in Schedule A to the Offering Document, the issuer
 - (i) has operations other than to identify and evaluate assets or a business with a view to completing an investment in, merger with, amalgamation with or acquisition of a business, or a purchase of the securities of one or more other issuers; and

- (ii) does not intend to use the proceeds of the distribution to invest in, merge with, amalgamate with or acquire a business, or to purchase securities of one or more other issuers;
- (f) the aggregate proceeds raised under this Blanket Order or a Corresponding Exemption, by the issuer and members of its Issuer Group, from persons or companies who are not Accredited Investors, Family & Friend Investors, Foreign Investors, or Self-Certified Investors does not exceed \$5 000 000;
- (g) at or before the time a purchaser signs the subscription agreement, the issuer
 - (i) delivers to the purchaser an Offering Document that complies, as applicable, with paragraphs 3(k), (m) and (n) of this Blanket Order; and
 - (ii) obtains from the purchaser a Risk Acknowledgement;
- (h) the issuer does not know and has no reasonable basis to believe that the statements made by the purchaser in the Risk Acknowledgement are false;
- (i) if the issuer has not included in the Offering Document the additional financial disclosure described in Schedule B of the Offering Document, the aggregate acquisition cost to the purchaser of all securities of the Issuer Group acquired under this Blanket Order or a Corresponding Exemption in the preceding 12 months, other than a purchaser that is an Accredited Investor, Family & Friends Investor, Foreign Investor, or Self-Certified Investor does not exceed
 - (i) \$2 500; or
 - (ii) \$10 000 if either the purchaser
 - (A) is a MII or
 - (B) has obtained advice from a Registered Dealer that the investment is suitable for the purchaser;
- (j) if the issuer has included in the Offering Document the additional financial disclosure described in Schedule B of the Offering Document, the aggregate acquisition cost to the purchaser of all securities of the Issuer Group acquired under this Blanket Order or a Corresponding Exemption in the preceding 12 months, other than a purchaser that is an Accredited Investor, Family & Friends Investor, Foreign Investor, or Self-Certified Investor does not exceed
 - (i) \$5 000; or
 - (ii) \$20 000 if either the purchaser
 - (A) is a MII or

- (B) has obtained advice from a Registered Dealer that the investment is suitable for the purchaser;

Offering Document

- (k) the Offering Document provided to a purchaser contains a certificate signed by a person authorized to sign on behalf of the issuer stating that the Offering Document does not contain a misrepresentation;

Other offering materials and advertisements

- (l) no advertising or material made available to a purchaser that purports to describe the business and affairs of the issuer and that has been prepared primarily for delivery to and review by a prospective purchaser so as to assist the prospective purchaser to make an investment decision contains a misrepresentation;

Financial statements

- (m) if the aggregate funds raised in the distribution under this Blanket Order, together with the aggregate funds raised by members of the Issuer Group under this Blanket Order or a Corresponding Exemption in the preceding 12 months, exceeds \$1 500 000, not including funds from persons or companies who are Accredited Investors, Family & Friend Investors, Foreign Investors, or Self-Certified Investors the issuer
 - (i) includes in the Offering Document, the financial statements specified in Schedule B of the Offering Document; and
 - (ii) undertakes as described in the Undertaking to deliver annually its annual financial statements and a notice of proceeds;

Minimum offering amount

- (n) the Offering Document specifies a minimum offering amount that must be raised, which amount may include in the calculation funds raised under other exemptions from the prospectus requirement;
- (o) the subscription agreement provides that if a distribution under this Blanket Order is withdrawn or if the issuer does not raise the specified minimum offering amount by the 120th day after the date that an offering document is first delivered to a purchaser, the issuer will, as soon as reasonably possible,
 - (i) return all funds to each purchaser; and
 - (ii) notify each purchaser that the funds have been returned;

Filings

- (p) on or before the 30th day after the closing of the distribution, the issuer files each of the following:
 - (i) a completed Offering Document as required by paragraph 3(g)(i);
 - (ii) if applicable, the Undertaking required by paragraph 3(m)(ii); and
 - (iii) a completed report as specified by Form 45-106F1 *Report of Exempt Distribution*, together with the applicable fee.

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 a Corresponding Exemption is subject to section 2.5 of National Instrument 45-102 *Resale of Securities*.

Designated offering memorandum

- 5. The Commission, considering that it would not be prejudicial to the public interest to do so, orders under section 10 of the Act that an offering document used for a distribution under this Blanket Order, including all amendments to that document, is designated to be an offering memorandum under Alberta securities laws.

Financial Statements

- 6. The Commission, considering that it would not be prejudicial to the public interest to do so, orders under section 213 of the Act that an Offering Document used for a distribution under this Blanket Order that complies with the requirements of this Blanket Order, including Schedule B of the Offering Document is exempt from paragraphs 3.2(1)(a), and 3.2(1)(b) and subparagraph 3.11(1)(f)(ii) of National Instrument 52-107 *Acceptable Auditing Principles and Auditing Standards*.
- 7. The Commission, considering that it would not be prejudicial to the public interest to do so, orders under subsection 221(5) of the Act that any financial statements or notices of proceeds delivered pursuant to the undertaking referenced in paragraph 3(m)(ii) be held in confidence.

Effective date

- 8. This Blanket Order comes into force on September 1, 2021.

Approved by resolution at the Meeting of the Members of the Alberta Securities Commission on August 11, 2021.