

## Multilateral CSA Notice of Amendments to Alberta and Saskatchewan Orders 45-539 *Small Business Financing*

**August 1, 2024**

The securities regulatory authorities in Alberta (**ASC**) and Saskatchewan (the **FCAA**) (together, the **participating jurisdictions** or **we**) have each amended a prospectus exemption (the **Exemption**) entitled *Small Business Financing* provided under:

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

(together, the **Orders**).

The Orders were originally adopted on September 1, 2021 on an interim, three-year basis, and were set to expire on September 1, 2024. The Orders have each been amended to remove this expiry date.

The amendment is effective as of September 1, 2024.

Further details on the Exemption can be found at **Schedule A** to this Notice.

### Questions

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

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## Schedule A

### Further Information on the Exemption

#### Substance and Purpose

The *Small Business Financing* prospectus exemption or the Exemption allows small businesses in the participating jurisdictions to raise up to \$5,000,000 from purchasers in those jurisdictions through a streamlined financing process.

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

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

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

#### Summary of the Exemption

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

1. The issuer must not be a reporting issuer or an investment fund.
2. The securities distributed are restricted to one or more of the following securities of the issuer:
  - (a) common shares;
  - (b) preference shares;

- (c) debt securities, other than securitized products or structured finance products;
  - (d) units of a limited partnership;
  - (e) membership shares or investment shares issued by a cooperative organized under the *Cooperatives Act* (Alberta);
  - (f) securities convertible or exchangeable into any of the above, such as warrants or convertible debentures; or
  - (g) shares in the capital of a co-operative organized or continued pursuant to *The Cooperatives Act, 1996* (Saskatchewan), or *The New Generation Co operatives Act, 1999* (Saskatchewan).
3. The issuer must provide purchasers with an offering document in the form specified in Form 45-539F1 *Small Business Offering Document* (the **Offering Document**). The Offering Document will constitute an offering memorandum under securities legislation, providing purchasers with additional rights of action in the event of a misrepresentation in the Offering Document.
4. If the Issuer Group<sup>1</sup> raises less than \$1,500,000 under the Exemption in a 12-month period (not including investments by purchasers who are qualified to invest under one of the other prospectus exemptions contemplated in the Exemption<sup>2</sup>) (a **Tier 1 Raise**) financial statements are not required to be provided with the Offering Document.<sup>3</sup>
5. If the Issuer Group raises more than \$1,500,000 under the Exemption in a 12-month period (not including investments by purchasers who are qualified to invest under another Specified Exemption) (a **Tier 2 Raise**) financial statements are required to be provided with the Offering Document, however:
- (a) rather than providing financial statements prepared in accordance with generally accepted accounting principles (**GAAP**) for publicly accountable enterprises, the issuer may provide financial statements prepared in accordance with Canadian GAAP for private enterprises, provided that any subsidiaries are consolidated and any significantly influenced investees and joint ventures are accounted for using the equity method; and

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<sup>1</sup> Defined in the Exemption as “an issuer together with each of the following (a) each person or company that is an affiliate of the issuer; (b) each other issuer that is either of the following: (i) that is engaged in a common enterprise with the issuer or with an affiliate of the issuer; (ii) that has a founder that is a founder of the issuer.”

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

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

- (b) rather than providing audited annual financial statements, the issuer may provide annual financial statements that have been subject to a review engagement by a chartered professional accountant;

(together, the **Specified Financial Statements**).

6. The Offering Document must specify a minimum offering amount that must be raised which should reflect at least the minimum needed to achieve the issuer's objectives as specified in the Offering Document. If the issuer does not raise the minimum offering amount by the 120<sup>th</sup> day after the date that the Offering Document is first delivered to a purchaser, the issuer must return all funds to each purchaser.
7. To address a purchaser's ability to withstand loss, the Exemption includes the following investment limits:
  - (a) for a Tier 1 Raise, the maximum that a purchaser (who would not qualify to invest under another Specified Exemption) could invest in the Issuer Group in a 12-month period is
    - (i) \$2,500, or
    - (ii) if the purchaser is a Minimum Income Investor<sup>4</sup> or if the purchaser has obtained advice from a Registered Dealer<sup>5</sup> that the investment is suitable for the purchaser, \$10,000;
  - (b) for a Tier 2 Raise, the maximum that a purchaser (who would not qualify to invest under another Specified Exemption) could invest in the Issuer Group in a 12-month period is
    - (i) \$5,000, or
    - (ii) if the purchaser is a MII or if the purchaser has obtained advice from a Registered Dealer that the investment is suitable for the purchaser, \$20,000.
8. The aggregate lifetime maximum that an Issuer Group can raise under the Exemption from purchasers who would not qualify to invest under another Specified Exemption is \$5,000,000.

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

<sup>5</sup> A "**Registered Dealer**" means a dealer registered as an exempt market dealer or an investment dealer under securities legislation.

9. Prior to investing, the issuer must obtain from each purchaser a completed enhanced risk acknowledgement as specified by Form 45-539F2 *Small Business Risk Acknowledgement*.
10. For a Tier 2 Raise, the issuer must file with the applicable securities regulator(s) an undertaking as specified by Form 45-539F3 *Small Business Undertaking* (the **Undertaking**) to deliver annually its annual financial statements and a Form 45-106F16 *Notice of Use of Proceeds* and make them reasonably available to each holder of a security distributed under the Exemption. The annual financial statements may be Specified Financial Statements.
11. On or before the 30<sup>th</sup> day after the closing of a distribution under the Exemption, the issuer must in each participating jurisdiction in which the distribution occurred file
  - (a) a completed Offering Document;
  - (b) if applicable, the Undertaking; and
  - (c) a completed Form 45-106F1 *Report of Exempt Distribution* together with the applicable fee.

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

The Exemption is an exemption from Alberta and Saskatchewan securities legislation and not the laws of other jurisdictions. It cannot be relied on for the distribution of securities into other jurisdictions. In addition, it does not provide an exemption from the dealer registration requirement or any other provision of securities legislation.