

November 10, 2021

Introduction

The Alberta Securities Commission (ASC) has adopted a dealer registration exemption (the **Exemption**) under ASC Blanket Order 31-536 *Alberta Small Business Finder's Exemption*. The Exemption allows a Finder who meets certain conditions to intermediate the sale of the securities of an Alberta Small Business Issuer (defined below) under certain prospectus exemptions.

The Exemption is effective November 10, 2021 and will expire on November 11, 2024.

The ASC is revoking the current ASC Blanket Order 31-505 *Registration Exemption for Trades in Connection with Certain Prospectus-Exempt Distributions* (**Blanket Order 31-505, also referred to as the Northwestern Exemption**) effective on May 11, 2022.

Substance and Purpose

The ASC understands that start-up and small businesses are an important part of Alberta's provincial economy, serving as key contributors to employment, quality of life and income within communities. We recognize that although the size of these capital raisings are not traditionally supported by registered dealers, they can be assisted by Finders who may have close friends, family and business associates in the community that wish to invest in these types of opportunities. It was through this lens that we reviewed Blanket Order 31-505 and the current exemptions from the prospectus requirement to design a more targeted exemption from the dealer registration requirement for finders.

Comments received and changes made

We published the proposed Exemption for comment on March 25, 2021 under ASC Notice and Request for Comment Proposed Revocation of ASC Blanket Order 31-505 *Registration Exemption for Trades in Connection with Certain Prospectus-Exempt Distributions* and Replacement with Proposed ASC Blanket Order 31-536 *Alberta Small Business Finder's Exemption*. Five comment letters were received during the comment period and additional comments were solicited and received during a webinar and roundtables held during the comment period. Those comments and our responses to them are summarized in **Schedule A** to this Notice.

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

1. We previously proposed that a Finder had to be an individual. We received a number of comments that individuals may set up a wholly owned company, either alone, or with their spouse, for tax or estate planning purposes. Based on the comments received we have changed the Exemption to permit the Finder to be a wholly owned company of a person and/or their spouse.
2. There was some confusion about whether or not a Finder could advertise. We have modified the wording found in the Exemption to clarify that a Finder can only solicit prospective purchasers with whom they have a substantial pre-existing relationship. Since soliciting includes advertising, Finders can only advertise to prospective purchasers with whom they have a substantial pre-existing relationship. In the case where an Alberta Small Business Issuer (defined below) advertises the offering, and identifies prospective purchasers, the Finder should not be soliciting these prospective purchasers unless they have a substantial pre-existing relationship with any of these prospective purchasers.
3. We originally included a restriction on the use of the proposed Exemption when a Finder had certain relationships with a prospective purchaser, such as having been their financial planner, insurance agent or mortgage broker. We were advised by commenters that this requirement would be overly restrictive, especially in smaller communities. We acknowledged this concern and, as a result, we have revised the restriction to preclude a Finder that previously provided services as a registrant to the purchaser from relying on the Exemption.
4. In response to comments received, we have made a number of changes to the Risk Acknowledgement Form to be completed by the purchaser. We have simplified the form to focus on the relationship of the purchaser with the Finder. In addition, we have amended the Finder's Information Report to include a section to be completed if the Finder is a company.
5. The Exemption now contains a sunset provision indicating the order will expire on November 11, 2024. We will monitor the use of the Exemption and make a determination at that time about whether or not to continue with the Exemption.

Summary of the Exemption

A summary of the material aspects of the Exemption are as follows:

- (a) Which issuers can Finders act for?
 - A Finder relying on this Exemption can only act for an **Alberta Small Business Issuer**, which means an issuer
 - with its head office in Alberta raising money from Alberta purchasers; and

- that has not raised in aggregate more than \$5,000,000 under the Specified Distributions
- (b) When can a Finder participate as a salesperson in a financing?
- A Finder can participate in sales under the following Specified Distributions:
 - Section 2.3 [accredited investor] of National Instrument 45-106 *Prospectus Exemptions*;
 - Section 2.9 [offering memorandum] of National Instrument 45-106 *Prospectus Exemptions*;
 - Section 2.10 [minimum amount investment] of National Instrument 45-106 *Prospectus Exemptions*;
 - section 2.4(2)(ii) [private issuer to an accredited investor] or 2.4(2)(1) [a private issuer to a person or company that is not the public] National Instrument 45-106 *Prospectus Exemption*;
 - ASC Blanket Order 45-538 *Self-Certified Investor Prospectus Exemption*; and
 - ASC Blanket Order 45-539 *Small Business Financing*.
(Specified Distributions).
 - A Finder can receive compensation from the Alberta Small Business Issuer for sales under a Specified Distribution. The Finder is required to disclose the details of the compensation received from the Alberta Small Business Issuer in relation to each purchaser's purchase in the Risk Acknowledgement Form provided to the purchaser.
- (c) Who can be a Finder?
- A Finder can be an individual, defined in the *Securities Act* (Alberta) as a natural person, or a company in respect of which the only registered shareholders and beneficial shareholders are an individual and the individual's spouse, alone or together.
 - The Finder cannot be a party registered under securities legislation in Canada or a foreign jurisdiction.
 - The Finder cannot previously provided services as a registrant to the purchaser.
 - The Finder cannot be a "bad actor" e.g., subject to a court or regulatory sanction relating to fraud, theft, deceit or misrepresentation.

The "bad actor" provision is based on a similar provision found in National Instrument 45-110 *Start-up Crowdfunding Registration and Prospectus Exemptions*.

(d) What can't a Finder do?

- The Finder cannot represent to the purchaser that the security being traded is a suitable investment for the purchaser.
- The Finder cannot hold or have access to any of the purchaser's assets.
- The Finder cannot sell to a prospective purchaser unless they have a "substantial pre-existing relationship" with them.
- The Finder cannot directly or indirectly solicit prospective purchasers other than persons or companies with whom they have a "substantial pre-existing relationship".

We have included the soliciting restrictions based on our understanding that a Finder is often a person who has close business contacts or close personal friends and family who may be willing to participate in private placements. The factors we will consider in assessing whether a Finder has a substantial pre-existing relationship with the purchaser are analogous to those factors outlined with respect to the family, friends and business associates prospectus exemption found in section 2.5 of National Instrument 45-106 *Prospectus Exemptions* and the Companion Policy to National Instrument 45-106 *Prospectus Exemptions*. Additional guidance can be found in ASC Notice 45-703 dated November 28, 2017 *Report on the Use of the Family, Friends and Business Associates Prospectus Exemption*.

(e) What documentation and filings are required?

- The Finder must obtain, prior to the purchaser entering an agreement to purchase a security under a Specified Distribution, a signed Risk Acknowledgment Form in the form appended to the Exemption.
- On or before the 10th day following the Specified Distribution the Finder must electronically file a Finder's Information Report that contains current contact information for the Finder.

The Finder's Information Report is found at <https://albertasecurities.com/online-forms/Alberta-Small-Business-Finders-Exemption>. A Finder is not required to file a new Finder's Information Report with each new financing if the contents of the report remain current. However, if there are any changes to a previously filed Finder's Information Report an updated report must be filed on or before the 10th day following a Specified Distribution.

Transition Period

The Exemption will replace Blanket Order 31-505; however, we have included a six month transition period before the revocation of Blanket Order 31-505 is effective. The six month period will allow Finders that are currently relying on the dealer registration exemption contained in Blanket Order 31-505 a transition period in which to complete private placements that are in progress.

After May 11, 2022 an unregistered Finder that triggers the registration requirement will need to rely on the Exemption. Finders that wish to rely on the Exemption will need to make the new required filing under it. Previous filings made by Finders under Blanket Order 31-505 will not transfer to the Exemption.

Questions

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

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Schedule A

Summary of Comments: ASC Notice and Request for Comment Proposed Revocation of ASC Blanket Order 31-505 Registration Exemption for Trades in Connection with Certain Prospectus-Exempt Distributions and Replacement with Proposed ASC Blanket Order 31-536 Alberta Small Business Finder's Exemption.

We received 5 comment letters during the comment period and additional comments were solicited and received during a webinar and roundtables held during the comment period. Full comment letters are available here: <https://www.albertasecurities.com/-/media/ASC-Documents-part-1/Regulatory-Instruments/2021/03/5953578-v1-ASC-Notice-re-31-505.ashx>.

Set out below is a summary of the comments received, responses to the questions asked and staff's responses.

Theme	Comments	Staff Response
General support /opposition	<p>Most commenters supported a registration exemption for capital raising for small businesses. The commenters were happy to see that we had identified the difficulties that small businesses have in raising capital.</p> <p>One commenter believes that an opportunity has been missed to work within the existing regulatory framework to allow for a more flexible approach to capital raising under National Instrument 31-103 <i>Registration Requirements, Exemptions and Ongoing Registrant Obligations (NI 31-103)</i> that would allow registrants who work with small business to raise capital. Nonetheless the commenter noted that any regulatory reform in the area is better than no action.</p> <p>One commenter was adamantly opposed to a watered down Northwestern Exemption allowing unsophisticated sales people to convince unsophisticated investors to invest in highly risky investments. The commenter proposed instead that exempt market dealers (EMDs) administer the program. Under this program EMDs would be subject to the Know Your Client requirements under NI 31-103 and with investments under \$10,000 EMDs wouldn't be required to perform suitability.</p>	<p>N/A</p> <p>We acknowledge the comment made and, as recognized by the commenter, note that changes to NI 31-103 would be a much longer project and would need to involve the Canadian Securities Administrators (CSA). The Exemption will assist Alberta Small Business Issuers in a more timely manner.</p> <p>We have made a number of changes, as discussed in the Notice, to build in further limits on the Exemption. As noted above, any changes to NI 31-103 would involve a significantly longer process.</p> <p>The Exemption now contains a sunset provision whereby the Exemption will expire on November 11, 2024. We will monitor the use of the Exemption and make a determination at that time about whether or not to continue with the Exemption.</p>

Theme	Comments	Staff Response
<p>Question 1: To what extent do you anticipate that this registration exemption would be relied on by Alberta businesses? Specifically, is the requirement that a Finder can only work with an Alberta issuer that has not raised in aggregate more than \$5,000,000 under any prospectus exemption contained in the Proposed Blanket Order an appropriate limit?</p>	<p>The commenters views on the \$5,000,000 cap were mixed. Two commenters felt the cap was too low with a suggestion of \$10,000,000. One commenter felt that the \$5,000,000 cap was too high and suggested a cap between \$1,000,000 to \$2,000,000.</p>	<p>After considering the comments received, we have decided to retain the \$5,000,000 limit.</p>
<p>Question 2: We have a number of provisions to address investor protection including:</p> <ul style="list-style-type: none"> a. limiting Finders to natural persons; b. disqualifying a bad actor from being a Finder; c. not allowing Finders to hold or have access to the purchaser's assets; d. building into the risk acknowledgment form a requirement for the Finder to provide the amount of compensation to be received from the issuer; e. prohibiting advertising; and f. not allowing Finders to have previously provided financial services to the purchaser. <p>Are there any other investor protection measures that would be appropriate?</p>	<p>We did not receive any further investor protections measures for inclusion.</p>	<p>We reviewed the provision based on all the comments received and have made a number of the changes to the Exemption which are discussed in the Notice.</p>

Theme	Comments	Staff Response
<p>Question 3: We understand limiting Finders to individuals would prevent a Finder from using a personal holding company. Is this a concern that needs to be addressed?</p>	<p>We received several comments requesting that we consider adding companies that are wholly owned by individuals relying on the Exemption or with the individual's spouse. The commenters noted that many individuals use personal holding companies for many reasons including for tax and estate planning.</p>	<p>Based on the comments received, we have expanded the Exemption to cover personal holding companies.</p>
<p>Question 4: We have clarified the requirement that a Finder cannot have previously provided financial services to the purchaser by listing the types of relationships as follows:</p> <ul style="list-style-type: none"> a. a registrant, other than in connection with a Specified Distribution; b. a financial planner, providing advice about how to make financial plans having regard to a person's tax, personal or financial situation; c. an insurance agent offering insurance products; d. a mortgage broker providing mortgage services; or e. a similar financial services relationship. <p>Are there any other relationships that should be added to this list? What about other relationships of trust, such as a clergy member?</p>	<p>We did not receive any further recommendations for financial service relationships that should be included. We did receive a response that the CSA regulates conflicts of interest between investors and registrants involving registrants who are in a position of influence relative to an investor. It was unclear to the commenter how Finders will make such a determination and believes this requirement introduces too much uncertainty into the exemption. By requiring a substantial pre-existing relationship between and investor and Finder the exemption increases the likelihood of having such a conflict of interest.</p>	<p>The Exemption is based on our understanding that Finders have relationships in the community and, based on those relationships, they are able to help Alberta Small Business Issuers raise funds. We wanted to ensure that Finders are only selling to purchasers with which they have a substantial pre-existing relationship. We have provided further information on what we mean by substantial pre-existing relationship in the Notice. The Exemption means that Finders are not subject to the requirements under NI 31-103 including the conflicts provisions. We have clarified in the Risk Acknowledgement Form completed by the purchaser that the Finder does not owe a duty of care to the purchaser.</p>
<p>Question 5: Is a 6 month transition period before the revocation of Blanket Order 31-505 sufficient to complete</p>	<p>We received one comment which supported the transition period.</p>	<p>We have maintained a six month transition period in the Exemption.</p>

Theme	Comments	Staff Response
private placements that are in progress?		
Section 5(c) of the Exemption – Bad Actor	<p>We received support for including the requirement that a Finder cannot be a bad actor.</p> <p>We also received the following queries;</p> <ul style="list-style-type: none"> ▪ How will the bad actor provision be enforced? ▪ Is there an expectation that an Alberta Small Business Issuer would make a reasonable investigation of the Finder? 	<p>The ASC will monitor the use of the Exemption. However, reliance on the Exemption, similar to other exemptions from the registration requirement, requires the party relying on the exemption to ensure that they meet the requirements.</p> <p>We would expect that Alberta Small Business Issuers would take reasonable steps to ensure that the Finder meets the requirements of the Exemption.</p>
Section 5(e) of the Exemption restriction on advertising	<p>A number of commenters asked us to reconsider the advertising restriction as the intent of the Exemption is to assist Alberta Small Business Issuers in raising capital and the Finder should be able to use all tools available to them.</p> <p>We also received a comment that section 5(e) (currently section 6(f) in the Exemption) appears to limit prospective purchasers, who the Finder has a substantial pre-existing relationship with, from approaching the Finder to participate in a financing.</p> <p>A number of commenters asked for clarification on the term substantial pre-existing relationship found in section 5(e) (currently sections 6(e) and 6(f)) of the Exemption).</p>	<p>In response to the comments we have revised the Exemption. We have revised section 6(e) (previously section 5(e) in the Exemption published for comment) to state that the Finder can only trade with a prospective purchaser with whom they have a substantial pre-existing relationship. We have added section 6(f) to set out that a Finder can only, directly or indirectly, solicit prospective purchaser with whom they have a substantial pre-existing relationship. A Finder can reach out to solicit a prospective purchaser with advertising as long as the prospective purchaser is one with whom they have a substantial pre-existing relationship. In the case where a prospective purchaser, who the Finder has a substantial pre-existing relationship with, contacts the Finder about a financing the Finder will not be precluded from relying on the Exemption.</p> <p>The purpose of this requirement is to ensure that Finders only solicit prospective purchasers with whom they have a</p>

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		<p>substantial pre-existing relationship. Such relationships would include close friends, close family and close business associates.</p> <p>The factors we will consider in assessing whether a Finder has a substantial pre-existing relationship with the purchaser are analogous to those factors outlined with respect to the close family, friends and business associates prospectus exemption found in section 2.5 of National Instrument 45-106 <i>Prospectus Exemptions</i> and the Companion Policy to National Instrument 45-106 <i>Prospectus Exemptions</i> and related guidance found in ASC Notice 45-703 dated November 28, 2017 <i>Report on the Use of the Family, Friends and Business Associates Prospectus Exemption</i>.</p>
<p>Section 5(g) of the Exemption – previously provided financial services to the purchaser</p>	<p>We received a number of comments on the provision prohibiting a party from relying on the Exemption if they previously provided financial services to the prospective purchaser. There were concerns that this provision would:</p> <ul style="list-style-type: none"> ▪ Limit the number of people who could be Finders especially in smaller communities. ▪ Allow registrants to participate because of the carve out contained in the section. 	<p>Based on the comments received, we have revised the Exemption. We had originally included restrictions that Finders could not have certain relationships with a prospective purchasers. Such relationships included financial planner, insurance agent or mortgage broker. We were advised by commenters that this would be overly restrictive especially in smaller communities. In response to this comment, we have removed the above restrictions.</p> <p>The carve out for a registrant in connection with a Specified Distribution, which was previously contained in section 5(g) of the Exemption published for comment, has been removed. This provision was carried over from Blanket Order 31-505. Under the Exemption, a Finder cannot currently be a registrant or have previously provided</p>

Theme	Comments	Staff Response
		services as a registrant to the purchaser.
Miscellaneous	<p>Additional suggestions and comments made by the commenters included:</p> <ul style="list-style-type: none"> ▪ It was unclear whether the Finder has a duty of care obligation to the investor under this Exemption. ▪ Comments to simplify the Risk Acknowledgement Form. ▪ Finders should disclose all compensation received from the Alberta Small Business Issuer not just cash compensation. Often securities received by the Finder are, as significant as, or more significant, than the cash compensation received. 	<p>The Exemption provides an exemption from the requirements that typically apply to dealers, including the duty of care obligation in section 75.2 of the <i>Securities Act</i> (Alberta). We have included in the Risk Acknowledgement Form a statement that the Finder does not owe the purchaser a duty of care.</p> <p>We have simplified the form by combining some of the items and removing others.</p> <p>In response to this comment we have added a requirement in the Risk Acknowledgement Form for the Finder to disclose all compensation, including cash and securities, received from the Alberta Small Business Issuer.</p>