

**General Order 45-539**  
**Small Business Financing**

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

**Order**

**WHEREAS** Securities Division staff (**Staff**) of the Financial and Consumer Affairs Authority of Saskatchewan (the **FCAA**) has applied to the FCAA for an Order pursuant to section 160 of *The Securities Act, 1988* (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** 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 Act including orders of general application;

**AND WHEREAS** terms defined in the Act, National Instrument 14-101 *Definitions*, National Instrument 25-101 *Designated Rating Organizations (NI 25-101)*, National Instrument 45-102 *Resale of Securities (NI 45-102)*, National Instrument 45-106 *Prospectus Exemptions (NI 45-106)* and National Instrument 52-107 *Acceptable Auditing Principles and Auditing Standards (NI 52-107)* have the same meaning in this Order;

**AND WHEREAS** in this Order:

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

“**Affiliate**” means an “affiliate” as defined in section 1.3 [*Affiliate*] of NI 45-106;

“**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**” the Alberta Securities Commission 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 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 NI 25-101;
- (d) a unit of a limited partnership;
- (e) a security convertible or exchangeable into a security referred to in (a) to (d);

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

**“Foreign Investor”** means a person or company outside of Saskatchewan, to whom a distribution may be made under the FCAA General Order 72-901 *Trades to Purchasers Outside of Saskatchewan*;

**“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;

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

**“Participating Jurisdiction”** means Saskatchewan and Alberta 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 Saskatchewan securities laws;

**“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 the FCAA General Order 45-538 *Self-Certified Investor Prospectus Exemption* or the Alberta Securities Commission Order 45-538 *Self-Certified Investor Prospectus Exemption*;

**“Undertaking”** means an undertaking that complies with Form 45-539F3 *Small Business Undertaking*;

**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 while still providing appropriate investor protection;

- (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. that 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) 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 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 1(k), 1(m) and 1(n) of this 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 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 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 Order, together with the aggregate funds raised by members of the Issuer Group under this 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 Order is withdrawn, or if the issuer does not raise the specified minimum offering amount by the 120<sup>th</sup> 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 30<sup>th</sup> day after the closing of the distribution, the issuer files each of the following:
  - (i) a completed Offering Document as required by paragraph 1(g)(i);
  - (ii) if applicable, the Undertaking required by paragraph 1(m)(ii), and

- (iii) a completed report as specified by Form 45-106F1 *Report of Exempt Distribution*, together with the applicable fee;

Resale restrictions

- (q) the first trade of a security acquired under this Order is subject to section 2.5 [Restricted Period] of NI 45-102;
2. that an Offering Document used for a distribution under this Order that complies with the requirements of this 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 NI 52-107; and
  3. This Order comes into effect on September 1, 2021 and expires on September 1, 2024.

Dated September 1, 2021.



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