



2024 Saskatchewan Capital Market Consultation Report

FINANCIAL AND CONSUMER AFFAIRS AUTHORITY





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Executive Summary

The Financial and Consumer Affairs Authority of Saskatchewan (FCAA) Capital Raising Consultation Project promotes the FCAA's strategic goal of establishing and supporting effective rules for Saskatchewan's marketplace and the FCAA's strategic initiative to consult with Saskatchewan capital markets participants. The project considers approaches to make it easier for businesses to raise debt or equity securities in Saskatchewan while maintaining appropriate investor protection.

The FCAA hosted two in-person consultations in May of 2023, conducted in Regina and Saskatoon, and one virtual consultation. Consultation participants included lawyers, registrants, business owners, accountants, corporate officers, and board members. Over 50 participants were invited from a broad range of backgrounds and interests, including startups, angel investors, portfolio managers, commodity market participants, academics, First Nations, chambers of commerce, accountants, lawyers, and issuers. Ultimately, over 20 invitees participated in the in-person and virtual consultations.

This report, which is based on the feedback we received from participants at the consultations, has been broken down into themes comprising five general categories:

1. Utilization and Administration of Prospectus Exemptions
2. Investor Education and Expansion of Saskatchewan's Investment Culture
3. Promotion and Expansion of Investment Opportunities
4. Crowdfunding and Alternative Investment Pathways
5. Investment Landscape: Challenges and International Approaches

This consultation discussed the state of capital markets. Participants provided the FCAA with knowledge about market trends and the effect of regulatory changes. Participants also generally explained that capital was scarce and hard to attract. This may be more of a challenge than merely reforming exemptions. The feedback we received from participants spoke to their perception that capital raising could benefit by improving Saskatchewan's investment culture and promoting investor education. We also heard, for this reason, that they raise most of their capital outside of the province, often from British Columbia and Alberta.



Introduction

The FCAA Capital Raising Consultation Project promotes the FCAA's strategic goal of establishing and supporting effective rules for Saskatchewan's marketplace and the FCAA's strategic initiative to consult with Saskatchewan capital markets participants to identify improvements to the capital raising framework, including potential new capital raising exemptions.

During consultations in May of 2023, conducted in Regina, Saskatoon, and virtually, the FCAA invited a diverse group of capital market participants and heard about obstacles and challenges they are experiencing related to securities regulation. The prospectus exemptions discussed, upon which the report focuses, largely result from feedback we heard from consultation participants. The FCAA thanks the diverse range of stakeholders in Saskatchewan who volunteered to participate in the Capital Raising Consultation Project.

Disclaimer: *The discussion of exemptions in this report is of a general nature. For particular circumstances or applications of the law to specific facts, consult a qualified professional.*

1. Utilization and Administration of Capital Raising Prospectus Exemptions

The prospectus is central to ensuring proper disclosure of information so that investors can make informed investment decisions. There are exemptions from the prospectus requirement. Much of the discussion during the capital market consultations focused on feedback we received from consultation participants about the usage and design of prospectus exemptions. Note that discussions during the consultation generally did not relate to registration exemptions.

Prospectus exemptions are generally designed to increase the efficiency with which capital can be raised in permitted circumstances while at the same time maintaining investor protection. Securities regulators in Canada, including the FCAA, have long recognized the importance of ready access to capital markets.

These exemptions allow companies to issue or sell their securities without a prospectus. The goal of these exemptions is normally to simplify the capital raising process and reduce associated costs where the prospectus is not required in the circumstances of the case to ensure investor protection.



CAPITAL RAISING PROSPECTUS EXEMPTIONS

We heard that many capital raising exemptions are not being used frequently, other than the accredited investor exemption. We heard that it could be a combination of difficulty in attracting small investors or a lack of sophistication by potential investors.

We also heard that capital market participants and advisors in Saskatchewan face challenges in promoting the use of key prospectus exemptions, although the accredited investor exemption was reported to be widely used. The broad use of the accredited investor exemption comports with our internal data.

To provide context for this discussion, it can be noted that securities rules are substantially harmonized across provincial regulators with respect to exemptions. National Instrument 45-106 *Prospectus Exemptions* (NI 45-106) includes key capital raising exemptions from the prospectus requirement:

- **Accredited Investor Exemption:** This exemption allows trade of securities to accredited investors without a prospectus, including individuals and entities with high net worth or income.
- **Private Issuer Exemption:** Private issuers, defined as companies with fewer than 50 non-employee shareholders, can distribute securities to their directors, employees, accredited investors, certain family members and non-public investors, in relation to the issuer, without a prospectus.
- **Family, Friends, and Business Associates Exemption (FFBA):** This exemption allows a company to distribute securities without a prospectus to directors, officers, founders, family members, close personal friends, and close business associates of the issuer.
- **Offering Memorandum Exemption:** Companies can distribute securities using an offering memorandum (a document that outlines the terms of the investment) instead of a prospectus.
- **Minimum Investment Exemption:** This exemption applies where a non-individual investor commits a sizable sum in cash (at least \$150,000) in a single transaction with one issuer.

Of these exemptions, we heard that the accredited investor exemption was well-defined and useful, while other exemptions were used less frequently. The overall popularity of the accredited investor exemption likely stems from its flexibility and the reduced regulatory burdens it offers. Capital can also be raised from a small pool of investors.



Participants suggested several ways to increase utilization of these exemptions during the consultations: these include embarking on educational campaigns to increase uptake and awareness of these exemptions among potential investors; making efforts to change the investment culture in Saskatchewan; simplifying compliance and application processes; or partnering with market participants to promote these exemptions.

ACCREDITED INVESTOR EXEMPTION (AI EXEMPTION)

We heard that small businesses will often rely on the accredited investor exemption. We also heard that the accredited investor exemption was simple and clear to use and worked well overall.

The accredited investor exemption features prominently in capital raising in Saskatchewan. Our recent data shows that the accredited investor exemption is the most relied upon exemption by a significant margin.

The accredited investor exemption is defined in NI 45-106. This exemption lists entities and individuals who qualify as accredited investors. The categories include financial institutions, registered advisers, and registered dealers. It also includes government bodies, pension funds, and individuals meeting certain high net-worth or income requirements. The rules are designed to ensure that only investors who can bear the economic risks associated with the investment can utilize the AI Exemption.

Subject to certain exceptions, it is generally necessary for investors to complete a risk acknowledgment when the AI Exemption is used to sell securities. This means that, before making an investment, the investor must acknowledge the risks involved. Filings for the AI Exemption include the report of exempt distribution, which we heard can be somewhat cumbersome, but based on utilization of the exemption, it does not appear to be a major impediment to uptake.

PRIVATE ISSUER EXEMPTION

We heard that the private issuer exemption is helpful and cost-effective. We heard that it may be beneficial to raise the limit of 50 investors under the private issuer exemption to 100. We also heard that it is the easiest and lowest-cost way to raise capital.

The exemption can be utilized by private issuers, as defined in section 2.4 of NI 45-106, to raise capital from up to 50 investors. Investors must have a specific connection to the issuer. These are outlined in subsection 2.4(2) of NI 45-106. They include directors, officers, or employees of the issuer. It also includes accredited



investors and close family members of those individuals along with close personal friends and business associates. Also included are non-public investors as it relates to the issuer. This exemption relieves issuers from some reporting requirements in permitted circumstances; however, this does not imply freedom from regulation.

Investors relying on the private issuer exemption may also include current security holders of the issuer. Accredited investors are also permitted. Accredited investors must meet certain income, asset, or financial knowledge thresholds.

The private issuer exemption is intended to provide protection for investors because they will have access to information by virtue of their direct connection to the issuer. The close connection is intended to avoid persons being taken advantage of and to provide a degree of protection.

Because raising the limit would lead to a lack of harmonization between Saskatchewan and other provinces, increasing the 50-investor limit is not presently contemplated. Differing rules across Canadian jurisdictions can confuse investors and issuers. An increased limit is also likely to reduce investor protection. Uniform guidelines aid understanding and efficiency. It is also possible that a unified framework will attract more investment in Saskatchewan.

OFFERING MEMORANDUM EXEMPTION

We heard that preparing an offering memorandum is expensive and complicated. Engaging professional advice, spending considerable time obtaining accurate information, and ensuring that disclosure is neither false nor misleading may all contribute to these expenses.

A review of the work of the CSA Corporate Finance Steering Committee – Exempt Market Analysis Working Group demonstrates that the offering memorandum has consistently in recent years witnessed lower utilization compared to the accredited investor or minimum amount exemptions. This result is perhaps not surprising: the offering memorandum must be prepared for an issuance, and it is a document detailing rather extensive information about the issuer and its business. In contrast, the accredited investor exemption does not require such extensive disclosures, making it traditionally a more affordable and popular option.

As participants noted, the offering memorandum is potentially available to a broad set of investors. Under section 2.9 of NI 45-106, non-eligible investors can invest up to \$10,000 per year. Eligible investors can invest up to \$30,000, or \$100,000 with suitable advice. Issuers must provide an offering memorandum detailing the business, operations, management, financial matters, and investment risks and terms.



The offering memorandum, however, was one of the most frequently relied upon exemptions for 2022 in Saskatchewan. Consultation participants observed that the offering memorandum was a useful but expensive option.

LISTED ISSUER EXEMPTION

We heard that the listed issuer exemption was working well. It offers a potentially cheaper and quicker capital-raising option for listed Canadian companies. We note that we have not yet seen broad utilization of this exemption at the provincial level. The listed issuer exemption rules came into effect on November 21, 2022. We received some feedback that it may come to be used often.

Given that the listed issuer exemption is new, the following basic attributes can be observed. A prospectus is not required. The existing continuous disclosure record is relied upon, and a short offering document supplements it. The offering limit under the listed issuer exemption is the greater of \$5 million or 10% of the issuer's market capitalization to a limit of \$10 million. This limit includes all distributions under the exemption in the past 12 months.

FINDERS' EXEMPTION

The Northwest Exemption (GO 45-918) was a conditional registration exemption in Western Canada which exempted "finders" who earned fees for introducing investors to companies seeking funds from the registration requirements of NI 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligation*.

The attractiveness of the exemption resulted from the fact that it allowed finders to operate without needing to be registered as dealers in appropriate circumstances. The exemption was only applicable in the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, and the territories of Nunavut, the Yukon, and the Northwest Territories.

However, in 2019, the exemption was revoked because concerns were raised about investors not benefiting from a registrant's due diligence or suitability advice. The concern in this case was that this could potentially expose investors to increased risks. The exemption also did not generate significant uptake in Saskatchewan.



MODIFICATIONS TO RESALE RESTRICTIONS IN NATIONAL INSTRUMENT 45-102 *RESALE OF SECURITIES* (NI 45-102)

We heard that it would be beneficial if the resale restrictions in NI 45-102 were relaxed such that shares would be freely tradable without either a restricted or seasoning period.

Existing rules limit secondary trading of securities in certain circumstances. NI 45-102 contains two key concepts: the "restricted period" and the "seasoning period." Sales of securities on the secondary market are generally deemed to be a "distribution" unless the requirements of NI 45-102 are met.

The "restricted period" is a four-month timeframe during which the resale of securities issued under certain prospectus exemptions, such as the accredited investor or offering memorandum exemption, are limited. The "seasoning period," on the other hand, is a four-month waiting period that looks to the status of the issuer as a reporting issuer before securities can be resold.

Because these rules are designed to support the functioning of the closed system and are harmonized throughout Canada, reexamination of the rules is not currently being contemplated.

2. Investor Education and Expansion of Saskatchewan Investment Culture

During the Capital Market Consultation, we heard from many commenters that investor education should be improved in Saskatchewan. We also heard that work needs to be done with respect to Saskatchewan's investment culture or mindset. We heard that Saskatchewan investors may have less appetite to take on risk than investors in some other parts of the country.

SELF-CERTIFICATION AND THE SELF-CERTIFIED INVESTOR PROSPECTUS EXEMPTION

We heard that it may be desirable to have a form exam relating to financial knowledge that would permit more investors to invest where they are not accredited or otherwise permitted to participate in certain investments. We heard that an online course (short, simple, and half-day) that allows self-certification, perhaps up to an annual investment limit, would increase the attractiveness of self-certification. We heard that certain professionals, such as doctors and dentists,



should be added to the list of persons eligible to rely on the self-certified investor prospectus exemption.

The Self-Certified Investor Prospectus Exemption found in Exemption Order 45-538 *Self-Certified Investor Prospectus Exemption* allows Alberta and Saskatchewan-based issuers to distribute securities to self-certified investors. These self-certified investors typically possess specific professional designations or education levels, such as CFA, CPA, CBV, CIM, or a finance-focused MBA. Also included are Canadian lawyers with a third of their practice in financing or merger transactions. Despite not meeting the financial criteria for accredited investors, self-certified individuals can participate in exempt distributions alongside accredited investors. They are, however, restricted to a \$10,000 maximum investment per issuer and aggregate investments of \$30,000 in a year.

INVESTOR EDUCATION

We heard that it will be beneficial to better promote and explain exemptions to investors to generate more comfort with investing. We also heard that financial literacy should be improved. Participants observed that possible approaches to increase the use of exemptions by Saskatchewan investors could include seminars, webinars, mentorship programs, publications, or simulations. Participants also noted that hosting educational seminars can help investors and issuers to better understand exemptions that are available. Such seminars could also be web-based (live or prerecorded).

Participants stated that mentorship may also be possible by connecting novice investors with experienced ones. Some of the commenters were of the view that publications or targeted social media approaches could be used to increase awareness of the capital market exemptions available in Saskatchewan. There was also some suggestion of developing an investor and issuer simulation online tool.

IMPROVING INVESTMENT CULTURE

We heard that we need more capital investing in Saskatchewan. We heard that Saskatchewan residents do not generally have an investment mindset or culture – a trend which is different from other jurisdictions.

We heard that historically it has generally been easier to raise money outside Saskatchewan. We heard that Saskatchewan needs investor education as well as education for entrepreneurs. We also heard that educational institutions should be involved in educating the investing public. Some of the participants noted that older generations of investors tend to have trouble with complex documentation associated with investing.



3. Promotion and Expansion of Investment Opportunities

What are the benefits of prospectus exemptions if they are not widely understood or used? What can be done to generate more capital investment in Saskatchewan? These were themes that we heard in our Capital Market Consultation.

BETTER PROMOTION OF CAPITAL EXEMPTIONS

We heard that it would be desirable for there to be more promotion and awareness of existing capital raising prospectus exemptions. There are several pathways by which such promotion could be conducted. We have already discussed some of these themes in the section on investor education, but they are expanded upon here.

As noted earlier, seminars could be hosted for businesses and investors that explain investment concepts and available exemptions. Experienced investors could guide less experienced ones through mentorship arrangements. Publications can also play a significant role.

Collaborations with universities and business schools could be useful. This could prepare future investors and entrepreneurs. It could also increase their comfort level with prospectus exemptions.

ALLOWING NON-ACCREDITED INVESTORS TO PARTICIPATE IN INVESTMENTS

We heard that it may be desirable to allow non-accredited investors to participate by 'riding along on coat tails' of accredited investors who are investing. To illustrate, a proportion of an offering could be made to non-accredited investors with limits on the amount they invest or some other restrictions.

There are a number of concerns with such an approach, particularly from an investor protection perspective. Like accredited investors, non-accredited investors may face the risk of total loss. Non-accredited investors are often less able to bear such risks. In addition, the lack of fulsome disclosure associated with exempt securities may leave non-accredited investors, who may lack investment knowledge, with insufficient information as a result of which they may not be in a position to make informed investment decisions.



WHETHER TO PERMIT SYNDICATIONS

We heard that we should consider the rules pertaining to investment syndicates, where, for example, investors are unable to meet the requirements of the accredited investor exemption.

We discussed the minimum amount investment exemption (MA Exemption) which sets a threshold, ensuring that only investors with substantial financial capacity can participate. We noted that this exemption does not allow syndication. We discussed the risk that permitting syndication for purposes of meeting the eligibility criteria for use of the MA Exemption may expose investors who are less capable of bearing loss to risk of loss. We also discussed the risk allowing syndication can result in a situation where syndicates may dilute direct communications with the issuer thereby leaving investors with less information to make informed investment decisions.

CAPITAL RAISING DIALOGUE

We heard that an annual meeting (potentially hosted virtually) with market participants to gauge their views on issues around capital raising would be beneficial. Participants suggested that the annual meeting should be attended by industry stakeholders, particularly lawyers, accountants, officers, registrants, and those who are actively involved or interested in capital markets.

4. Crowdfunding and Alternative Investment Approaches

We heard that crowdfunding may not be fully utilized because it creates concerns that there are too many shareholders with which management must interact, each having small values invested. We also heard that the crowdfunding exemption lacks the simplicity and sophistication of the accredited investor exemption and has therefore not been particularly popular. We also heard that crowdfunding is too costly, complicated, and generally not beneficial for entrepreneurs.

The rules governing crowdfunding are found in NI 45-110 *Start-Up Crowdfunding Registration and Prospectus Exemptions*. Utilization has been relatively low. Our internal research has shown that crowdfunding has not proven particularly popular as a method of raising capital. It falls significantly behind the accredited investor and offering memorandum exemptions. Consequently, comments that are critical of crowdfunding are not particularly surprising given that crowdfunding is not a popular form of funding for startups and other entrepreneurs in Saskatchewan.



EXEMPT MARKET DEALERS

We heard that exempt market dealers generally preferred to distribute safer products. We also heard that there are few exempt market dealers in Saskatchewan, and the exempt market is much less robust than that of Alberta.

Exempt market dealers (EMDs) sell securities not qualified for public distribution, also known as private placements. They deal with exempt securities and specific investor categories. Accredited investors and eligible investors under the offering memorandum exemption fall under these categories. EMDs must meet 'know your client' and 'suitability' obligations. These rules ensure clients' investments align with their financial goals. EMDs must maintain transparency with clients about investment risks. They must keep accurate financial records and submit annual audited statements. EMDs need a registered, experienced, and qualified Chief Compliance Officer.

During the consultation, we undertook to survey EMDs operating in Saskatchewan and collect more data about them. This survey was conducted in the winter of 2024. We found that EMDs worked significantly with technology, real estate, energy, mining and financial services industries. EMDs indicated that capital raises under \$250,000 dominated (55%+ of the total), but capital raises in excess of \$10,000,000 constituted approximately 18% of distributions.

5. Investment Landscape: Challenges and International Approaches

CHALLENGES RAISING CAPITAL POST-COVID

We heard that, as a result of the Covid-19 pandemic, raising capital has become much more difficult, including in the angel investor market, and this should not be viewed as a regulatory problem.

There is evidence that small businesses suffered significantly in the early phases of the pandemic, amid a broader market downturn. It was reported that startup venture capital investment dropped off as a result of the pandemic. A 2021 Harvard Business Review article noted that “[w]ell-capitalized startups have weathered the storm better than cash-poor community businesses”. The Organization for Economic Co-operation and Development flagged the fact that business startups were in a precarious position as a result of the pandemic.



AI AND BLOCKCHAIN

We also heard that artificial intelligence, social media, and blockchain technologies were affecting the investing landscape. The FCAA supports technological change and financial innovation provided that appropriate investor protections are in place. Investors will typically have greater access to information online and it may be easier to track and manage investments using online tools or apps. However, on a cautionary note, the FCAA has increasingly witnessed residents of the province falling victim to scams involving online trading crypto platforms.

Possible deployments of AI in the future may include analyzing regulatory requirements and automation of aspects of compliance, thereby lowering costs for capital raising. It will be unsurprising if regulators and market participants increasingly integrate AI into future practices. There are also ongoing discussions by market participants of algorithmic trading and digital currencies. Regulators are investigating developments likely to arise as a result of technological change.

Concluding Remarks

This FCAA Capital Raising Consultation Project promotes the FCAA's strategic goal of establishing and supporting effective rules for Saskatchewan's marketplace and the FCAA's strategic initiative to consult with Saskatchewan capital markets participants to identify improvements to the capital raising framework, including potential new capital raising exemptions.

The FCAA's Capital Raising Consultation Project seeks to advance business capital formation by considering approaches to make it easier for businesses to raise debt or equity securities in Saskatchewan while maintaining appropriate investor protection.

The FCAA always welcomes thoughts and ideas on how capital market regulation can be improved.

Recommendations

We are aware of the burden associated with the report of exempt distribution, and although this is a national instrument, we will raise this concern with the Canadian Securities Administrators (CSA). It is important to maintain harmonization, but also draw attention to any undue burden that may be created.



With respect to the self-certified investor exemption, this is currently under review, and staff are participating in a process with the goal of making it more useful, including evaluating which investors should be eligible to participate.

Saskatchewan has also recently passed a general order that improves the EMD process: *General Order 31-930 Exemption to allow Exempt Market Dealer Participation in Selling Groups in Offerings of Securities under a Prospectus*. Subject to terms and conditions outlined in GO 31-930, the Order provides an exemption to exempt market dealers from the restrictions in subsection 7.1(2)(d) of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Requirements* that prohibit them from acting as a dealer in a distribution of securities made under a prospectus.

In 2024, the Ontario Securities Commission (OSC) announced several new initiatives under the OSC TestLab program, aimed at enhancing capital access for early-stage businesses in Ontario, including an extension of the self-certified investor prospectus exemption, a dealer registration exemption, and a streamlined reporting of distributions. The FCAA is monitoring these developments in respect of capital markets.

We also heard that investors and small issuers potentially lacked information about the specific exemptions and how capital raising worked in the province. To this end, the FCAA is contemplating an online investment tool to make this information more accessible.

With respect to addressing investors' confidence and engagement in investing, the FCAA plans further outreach to investors through speaking engagements and other mediums. For example, we plan to work with women's groups and are participating in the CSA Taskforce on Indigenous Peoples in the Capital Market. The FCAA strategic plan specifically contemplates collaborative relationships with organizations and groups representing specific communities.

Additionally, since the consultation with respect to *General Order 45-539 Small Business Financing*, the FCAA has permitted co-operatives to use the exemption.