



GENERAL ORDER 45-504

Offering Memorandum Prospectus Exemption

In the Matter of
The Securities Act, 1988

ORDER

WHEREAS staff of the Securities Division (“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*, SS 1988-89, c.S-42.2 (the “Act”) that the prospectus requirement in section 58 of the Act does not apply to certain distributions of securities by certain issuers 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 provisions of the Act including orders of general application;

AND WHEREAS terms defined in the Act, National Instrument 14-101 *Definitions*, National Instrument 45-106 *Prospectus Exemptions (NI 45-106)*, and National Instrument 45-102 *Resale of Securities (NI 45-102)*, have the same meaning in this Order, unless otherwise defined in this Order;

AND WHEREAS in this Order:

“**Authority**” means Financial and Consumer Affairs Authority of Saskatchewan;

“**Collective Investment Vehicle**” means either of the following:

- (a) an investment fund;
- (b) any other issuer, the primary purpose of which is to invest money provided by its security holders in a portfolio of securities other than securities of subsidiaries of the issuer;

“**Exemption**” means the offering memorandum prospectus exemption outlined in this Order;

“**Form 45-106F1**” means Form 45-106F1 *Report of Exempt Distribution* pursuant to NI 45-106;

“**Form 45-106F2**” means modified Form 45-106F2 *Offering Memorandum for Non-Qualifying Issuers*, attached as Annex 1 to this Order;

“**Form 45-106F3**” means Form 45-106F3 *Offering Memorandum for Qualifying Issuers*, pursuant to NI 45-106;

“**Form 45-106F4**” means modified Form 45-106F4 *Risk Acknowledgement*, attached as Annex 2 to this Order;

“**Form 45-106F16**” means Form 45-106F16 *Notice of Use of Proceeds*, pursuant to NI 45-106

“**Form 45-106F18**” means modified Form 45-106F18 *Supplemental Offering Memorandum Disclosure for Syndicated Mortgages*, attached as Annex 3 to this Order;

“**OM**” means Offering Memorandum;

“**Order**” means this General Order 45-504;

“**Material Contract**” means any contract that an issuer or any of its subsidiaries is a party to that is material to the issuer;

“**Real Estate Activities**” means activities, the primary purpose of which is to generate for security holders income or gain from the lease, sale or other disposition of real property but, for greater certainty, does not include any of the following:

- (a) activities in respect of a “mineral project”, as defined in National Instrument 43-101 *Standards of Disclosure for Mineral Projects*;
- (b) “oil and gas activities” as defined in National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*;

“**Related Party**” means any of the following:

- (a) a director, officer, promoter, or control person of an issuer;
- (b) in regard to an individual referred to in paragraph (a), a child, parent, grandparent, sibling or other relative living in the same residence;
- (c) in regard to an individual referred to in paragraph (a) or (b), the individual’s spouse;
- (d) an insider of an issuer;
- (e) a person controlled by a person referred to in paragraphs (a) to (d), or controlled by a person referred to in paragraphs (a) to (d) acting jointly or in concert with another person;
- (f) in the case of a person referred to in paragraph (a) or (d) that is not an individual, a person that, alone or together with one or more persons acting jointly or in concert, controls that person;

“**Required Form**” means the prescribed form pursuant to Part B, Part C and Part D of this Order and includes any of the following:

- (a) Form 45-106F1;
- (b) Form 45-106F2;

- (c) Form 45-106F3;
- (d) Form 45-106F4;
- (e) Form 45-106F18.

AND WHEREAS it has been represented to the Executive Director that:

- (a) An additional offering memorandum prospectus exemption has the potential to further facilitate the capital raising efforts of businesses in Saskatchewan while still providing appropriate investor protection; and
- (b) Provided all necessary ministerial approvals are obtained, securities regulatory authority in other jurisdictions in Canada intend to provide equivalent exemptions from the securities law of each 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 that:

PART A – Offering Memorandum Exemption

1. The prospectus requirement in section 58 of the Act does not apply to a distribution by an issuer of a security of the issuer's own issue provided all the following apply:
 - (a) the purchaser purchases the security as principal,
 - (b) the acquisition cost of all securities acquired by a purchaser who is an individual under this Exemption in the preceding 12 months does not exceed the following amounts:
 - (i) in the case of a purchaser that is not an eligible investor, \$10 000;
 - (ii) in the case of a purchaser that is an eligible investor, \$30 000;
 - (iii) in the case of a purchaser that is an eligible investor and that received advice from a portfolio manager, investment dealer or exempt market dealer that the investment is suitable, \$100 000,
 - (c) at the same time or before the purchaser signs the agreement to purchase the security, the issuer:
 - (i) delivers an offering memorandum to the purchaser in compliance with sections 7 to 23, and
 - (ii) obtains a signed risk acknowledgement from the purchaser in compliance with section 25, and

- (d) the security distributed by the issuer is not either of the following:
- (i) a specified derivative;
 - (ii) a structured finance product.
2. The prospectus exemption described in this Order is not available to an issuer that is an investment fund, unless the issuer is a non-redeemable investment fund, or a mutual fund that is a reporting issuer.
 3. The investment limits described in subparagraphs (1)(b)(ii) and (iii) do not apply if the purchaser is:
 - (a) an accredited investor, or
 - (b) a person described in subsection 2.5(1) [*Family, friends and business associates*] of NI 45-106.
 4. The Exemption does not apply to a distribution of a security to a person that was created, or is used, solely to purchase or hold securities in reliance on the exemption from the prospectus requirement set out in section 1.
 5. The Exemption does not apply to a distribution of a short-term securitized product.
 6. [Intentionally left blank].
 7. An offering memorandum delivered under this Exemption must be in the Required Form.
 8. An offering memorandum delivered under this Exemption:
 - (a) must incorporate by reference, by way of a statement in the offering memorandum, OM marketing materials related to each distribution under the offering memorandum and delivered or made reasonably available to a prospective purchaser before the termination of the distribution, and
 - (b) is deemed to incorporate by reference OM marketing materials related to each distribution under the offering memorandum and delivered or made reasonably available to a prospective purchaser before the termination of the distribution.
 9. A portfolio manager, investment dealer or exempt market dealer must not distribute OM marketing materials unless the OM marketing materials have been approved in writing by the issuer.
 10. An offering memorandum delivered under this Exemption must provide the purchaser with a contractual right to cancel the agreement to purchase the security by delivering a notice to the issuer not later than midnight on the 2nd business day after the purchaser signs the agreement to purchase the security.
 11. If the securities legislation where the purchaser is resident does not provide statutory rights of action in the event of a misrepresentation in an offering memorandum delivered under

this Exemption, the offering memorandum must contain a contractual right of action against the issuer for rescission or damages that:

- (a) is available to the purchaser if the offering memorandum, or any information or documents incorporated or deemed to be incorporated by reference into the offering memorandum, contains a misrepresentation, without regard to whether the purchaser relied on the misrepresentation,
 - (b) is enforceable by the purchaser delivering a notice to the issuer:
 - (i) in the case of an action for rescission, within 180 days after the purchaser signs the agreement to purchase the security, or
 - (ii) in the case of an action for damages, before the earlier of
 - (A) 180 days after the purchaser first has knowledge of the facts giving rise to the cause of action, or
 - (B) 3 years after the date the purchaser signs the agreement to purchase the security,
 - (c) is subject to the defence that the purchaser had knowledge of the misrepresentation,
 - (d) in the case of an action for damages, provides that the amount recoverable:
 - (i) must not exceed the price at which the security was offered, and
 - (ii) does not include all or any part of the damages that the issuer proves does not represent the depreciation in value of the security resulting from the misrepresentation, and
 - (e) is in addition to, and does not detract from, any other right of the purchaser.
12. An offering memorandum delivered under this Exemption must contain a certificate that states the following:
- “This offering memorandum does not contain a misrepresentation.”**
13. If the issuer is a company, a certificate under section 12 must be signed
- (a) by the issuer’s chief executive officer and chief financial officer or, if the issuer does not have a chief executive officer or chief financial officer, an individual acting in that capacity,
 - (b) on behalf of the directors of the issuer, by:
 - (i) any 2 directors who are authorized to sign, other than the persons referred to in paragraph (a), or
 - (ii) all the directors of the issuer, and

- (c) by each promoter of the issuer.
14. If the issuer is a trust, a certificate under section 12 must be signed by:
- (a) the individuals who perform functions for the issuer similar to those performed by the chief executive officer and the chief financial officer of a company, and
 - (b) each trustee and the manager of the issuer.
15. If a trustee or the manager that is signing the certificate of the issuer is:
- (a) an individual, the individual must sign the certificate,
 - (b) a company, the certificate must be signed
 - (i) by the chief executive officer and the chief financial officer of the trustee or the manager, and
 - (ii) on behalf of the board of directors of the trustee or the manager, by
 - (A) any two directors of the trustee or the manager, other than the persons referred to in subparagraph (i), or
 - (B) all of the directors of the trustee or the manager,
 - (c) a limited partnership, the certificate must be signed by each general partner of the limited partnership as described in section 19 in relation to an issuer that is a limited partnership, or
 - (d) not referred to in paragraphs (a), (b) or (c), the certificate may be signed by any person or company with authority to act on behalf of the trustee or the manager.
16. Despite section 14 and 15, if the issuer is an investment fund and the declaration of trust, trust indenture or trust agreement establishing the investment fund delegates the authority to do so, or otherwise authorizes an individual or company to do so, the certificate may be signed by the individual or company to whom the authority is delegated or that is authorized to sign the certificate.
17. Despite section 14 and 15, if the trustees of an issuer, other than an investment fund, do not perform functions for the issuer similar to those performed by the directors of a company, the trustees are not required to sign the certificate of the issuer if at least two individuals who perform functions for the issuer similar to those performed by the directors of a company sign the certificate.
18. If the issuer is a limited partnership, a certificate under section 12 must be signed by
- (a) each individual who performs a function for the issuer similar to any of those performed by the chief executive officer or the chief financial officer of a company, and
 - (b) each general partner of the issuer.

19. If a general partner of the issuer is:
- (a) an individual, the individual must sign the certificate,
 - (b) a company, the certificate must be signed
 - (i) by the chief executive officer and the chief financial officer of the general partner, and
 - (ii) on behalf of the board of directors of the general partner, by
 - (A) any two directors of the general partner, other than the persons referred to in subparagraph (i), or
 - (B) all of the directors of the general partner,
 - (c) a limited partnership, the certificate must be signed by each general partner of the limited partnership and, for greater certainty, this section applies to each general partner required to sign,
 - (d) a trust, the certificate must be signed by the trustees of the general partner as described in section 14 in relation to an issuer that is a trust, or
 - (e) not referred to in paragraphs (a) to (d), the certificate may be signed by any person or company with authority to act on behalf of the general partner.
20. If an issuer is not a company, trust or limited partnership, a certificate under section 12 must be signed by the persons that, in relation to the issuer, are in a similar position or perform a similar function to any of the persons referred to in section 13, 14, 15, 16, 17, 18 and 19.
21. An issuer must not make a misrepresentation in its offering memorandum.
22. If a material change with respect to the issuer occurs after the certificate under section 12 or 24 is signed, and before the issuer accepts an agreement to purchase the security from the purchaser, the issuer must amend the offering memorandum to reflect the material change and deliver the amended offering memorandum to the purchaser.
23. An issuer must not deliver an offering memorandum under this Exemption unless the offering memorandum contains sufficient information to enable a reasonable purchaser to make an informed investment decision.
24. An issuer that amends its offering memorandum must include in the amended offering memorandum a newly dated certificate signed in compliance with section 13, 14, 15, 16, 17, 18, 19 and 20, as applicable.
25. A risk acknowledgement under this Exemption must be in the Required Form in Part C and an issuer relying on this Exemption must retain the signed risk acknowledgment for 8 years after the distribution.
26. The issuer must:

- (a) hold in trust all consideration received from the purchaser in connection with a distribution of a security under this Exemption until midnight on the 2nd business day after the purchaser signs the agreement to purchase the security, and
 - (b) return all consideration to the purchaser promptly if the purchaser exercises the right to cancel the agreement to purchase the security described under section 10.
- 27. An issuer must file a copy of an offering memorandum delivered under this Exemption and any amended offering memorandum on or before the 10th day after the distribution under the offering memorandum or the amended offering memorandum.
- 28. An offering memorandum or amended offering memorandum filed under this Exemption must be in a format that allows for the searching of words electronically using reasonably available technology.
- 29. The issuer must file with the Authority a copy of all OM marketing materials required or deemed to be incorporated by reference into an offering memorandum delivered under this Exemption,
 - (a) if the OM marketing materials are prepared on or before the filing of the offering memorandum, concurrently with the filing of the offering memorandum, or
 - (b) if the OM marketing materials are prepared after the filing of the offering memorandum, within 10 days of the OM marketing materials being delivered or made reasonably available to a prospective purchaser.
- 30. OM marketing materials filed under section 29 must include a cover page clearly identifying the offering memorandum to which they relate.
- 31. Section 32 to 45 apply to issuers that rely on this Exemption and that are not reporting issuers in any jurisdiction of Canada.
- 32. An issuer must, within 120 days after the end of each of its financial years, deliver annual financial statements to the Authority and make them reasonably available to each holder of a security acquired under section 1.
- 33. Despite section 32, as applicable, if an issuer is required to file, deliver or make reasonably available annual financial statements for a financial year that ended before the issuer distributed securities under this Exemption for the first time, those annual financial statements must be filed, on or before the later of
 - (a) the 60th day after the issuer first distributes securities under section 1, and
 - (b) the deadline in section 32, as applicable, to file, deliver or make reasonably available the annual financial statements.
- 34. The annual financial statements of an issuer referred to in section 32 must include:
 - (a) a statement of comprehensive income, a statement of changes in equity, and a statement of cash flows for

- (i) the most recently completed financial year, and
 - (ii) the financial year immediately preceding the most recently completed financial year, if any,
- (b) a statement of financial position as at the end of each of the periods referred to in paragraph (a),
- (c) in the following circumstances, a statement of financial position as at the beginning of the financial year immediately preceding the most recently completed financial year:
- (i) the issuer discloses in its annual financial statements an unreserved statement of compliance with IFRS, and
 - (ii) the issuer
 - (A) applies an accounting policy retrospectively in its annual financial statements,
 - (B) makes a retrospective restatement of items in its annual financial statements, or
 - (C) reclassifies items in its annual financial statements,
- (d) in the case of the issuer's first IFRS financial statements, the opening IFRS statement of financial position at the date of transition to IFRS, and
- (e) notes to the annual financial statements.
35. If the annual financial statements referred to in section 34 present the components of profit or loss in a separate income statement, the separate income statement must be displayed immediately before the statement of comprehensive income referred to in section 34.
36. The annual financial statements referred to in section 34 must be audited.
37. Despite section 36, for the first annual financial statements of an issuer referred to in section 32, comparative information relating to the preceding financial year is not required to be audited if it has not been previously audited.
38. Any period referred to in section 34 that has not been audited must be clearly labelled as unaudited.
39. If an issuer decides to change its financial year end by more than 14 days, it must deliver to the Authority and make reasonably available to each holder of a security acquired under section 1, a notice containing the information set out in section 40 as soon as practicable and, in any event, no later than the earlier of:
- (a) the deadline, based on the issuer's old financial year end, for the next annual financial statements referred to in section 32, and

- (b) the deadline, based on the issuer's new financial year end, for the next annual financial statements referred to in section 32.
40. The notice referred to in section 39 must state:
- (a) that the issuer has decided to change its financial year end,
 - (b) the reason for the change,
 - (c) the issuer's old financial year end,
 - (d) the issuer's new financial year end,
 - (e) the length and ending date of the periods, including the comparative periods, of the annual financial statements referred to in section 32 for the issuer's transition year and its new financial year, and
 - (f) the filing deadline for the annual financial statements for the issuer's transition year.
41. If a transition year is less than 9 months in length, the issuer must include as comparative financial information to its annual financial statements for its new financial year:
- (a) a statement of financial position, a statement of comprehensive income, a statement of changes in equity, a statement of cash flows, and notes to the financial statements for its transition year,
 - (b) a statement of financial position, a statement of comprehensive income, a statement of changes in equity, a statement of cash flows, and notes to the financial statements for its old financial year,
 - (c) in the following circumstances, a statement of financial position as at the beginning of the old financial year:
 - (i) the issuer discloses in its annual financial statements an unreserved statement of compliance with IFRS, and
 - (ii) the issuer
 - (A) applies an accounting policy retrospectively in its annual financial statements,
 - (B) makes a retrospective restatement of items in its annual financial statements, or
 - (C) reclassifies items in its annual financial statements, and
 - (d) in the case of the issuer's first IFRS financial statements, the opening IFRS statement of financial position at the date of transition to IFRS.
42. A transition year must not exceed 15 months.

43. An SEC issuer satisfies sections 39 and 41 if:
- (a) it complies with the requirements of U.S. laws relating to a change of fiscal year, and
 - (b) it delivers a copy of all materials required by U.S. laws relating to a change in fiscal year to the Authority at the same time as, or as soon as practicable after, they are filed with or furnished to the SEC and, in any event, no later than 120 days after the end of its most recently completed financial year.
44. The financial statements of an issuer referred to in section 32 must be accompanied by a notice of the issuer disclosing in reasonable detail the use of the aggregate gross proceeds raised by the issuer under this Exemption in accordance with Form 45-106F16 unless the issuer has previously disclosed the use of the aggregate gross proceeds in accordance with Form 45-106F16.
45. An issuer is required to make the disclosure required respectively by sections 32 and 44 until the earliest of:
- (a) the date the issuer becomes a reporting issuer in any jurisdiction of Canada, and
 - (b) the date the issuer ceases to carry on business.
46. For the purposes of sections 47, 49, 52 and 53 a qualified appraiser is independent of an issuer if there is no circumstance that, in the opinion of a reasonable person aware of all the relevant facts, could interfere with the qualified appraiser's judgment regarding the preparation of an appraisal for a property.
47. This Exemption does not apply to a distribution of a syndicated mortgage by an issuer unless, at the same time or before the issuer delivers an offering memorandum to the purchaser in accordance with section 1, the issuer delivers to the purchaser an appraisal of the property subject to the syndicated mortgage that:
- (a) is prepared by a qualified appraiser who is independent of the issuer,
 - (b) includes a certificate signed by the qualified appraiser stating that the appraisal is prepared in accordance with the standards and the code of ethics established or endorsed by the professional association of which the qualified appraiser is a member,
 - (c) provides the appraised fair market value of the property subject to the syndicated mortgage, without considering any proposed improvements or proposed development, and
 - (d) provides the appraised fair market value of the property as at a date that is within 6 months preceding the date that the appraisal is delivered to the purchaser.
48. An issuer of a syndicated mortgage relying on this Exemption must not make a representation of, or give an opinion as to, the value of a property subject to the syndicated mortgage in any communication related to the distribution under the exemption, unless the issuer has a reasonable basis for that value.

49. If an issuer of a syndicated mortgage relying on this Exemption discloses in any communication related to the distribution under the exemption any representation of, or opinion as to, the value of a property subject to the syndicated mortgage, other than the appraised fair market value disclosed in the appraisal referred to in section 47, the issuer must also disclose in that communication,
- (a) with equal or greater prominence as the representation or opinion, the appraised fair market value referred to in section 47,
 - (b) the material factors or assumptions used to determine the representation or opinion, and
 - (c) whether or not the representation or opinion was determined by a qualified appraiser who is independent of the issuer.
50. The issuer must file a copy of an appraisal delivered under section 47 with the Authority concurrently with the filing of the offering memorandum.
51. Section 52 does not apply to an issuer unless all of the following apply:
- (a) the issuer is relying on section 1;
 - (b) the issuer is engaged in Real Estate Activities;
 - (c) one or both of the following apply:
 - (i) the issuer proposes to acquire an interest in real property from a Related Party and a reasonable person would believe that the likelihood of the issuer completing the acquisition is high;
 - (ii) except in its financial statements contained in the offering memorandum, the issuer discloses in the offering memorandum a value for an interest in real property.
52. An issuer must, at the same time or before the issuer delivers an offering memorandum to the purchaser under section 1, deliver to the purchaser an appraisal of the interest in real property referred to in paragraph 51(c) to which all of the following apply:
- (a) the appraisal is prepared by a qualified appraiser that is independent of the issuer;
 - (b) the appraisal includes a certificate signed by the qualified appraiser stating that the appraisal is prepared in accordance with the standards and the code of ethics established or endorsed by the professional association of which the qualified appraiser is a member;
 - (c) the appraisal provides the appraised fair market value of the interest in real property without considering any proposed improvements to or proposed development of the interest;
 - (d) the appraised fair market value referred to in paragraph (c) is as at a date that is within 6 months preceding the date that the appraisal is delivered to the purchaser.

53. If an issuer relying on this Exemption is engaged in Real Estate Activities, the issuer must not disclose in any communication related to the distribution a representation of, or opinion as to, a value for an interest in real property referred to in paragraph 51(c), other than the appraised fair market value disclosed in the appraisal referred to in section 52, unless the issuer has a reasonable basis for that value.
54. If an issuer relying on this Exemption is engaged in Real Estate Activities, and discloses in any communication related to the distribution a representation of, or opinion as to, a value for an interest in real property referred to in paragraph 51(c), other than the appraised fair market value disclosed in the appraisal referred to in section 52, the issuer must also disclose in that communication,
- (a) with equal or greater prominence as the representation or opinion, the appraised fair market value referred to in section 52,
 - (b) the material factors or assumptions used to determine the representation or opinion, and
 - (c) whether or not the representation or opinion was determined by a qualified appraiser who is independent of the issuer.
55. An issuer must file a copy of any appraisal delivered under section 52 concurrently with the filing of the offering memorandum or any amended offering memorandum or, if the appraisal is produced after the filing of the offering memorandum or any amended offering memorandum, on or before the 10th day after the first distribution for which the appraisal was required to be delivered to a purchaser.

Part B - Required Form of Offering Memorandum

56. The required form of offering memorandum under this Exemption is Form 45-106F2.
57. Despite section 56, a qualifying issuer may prepare an offering memorandum in accordance with Form 45-106F3.
58. Despite sections 56 and 57, an offering memorandum for the distribution of a syndicated mortgage under this Exemption must be prepared in accordance with Form 45-106F2 and Form 45-106F18.
59. An issuer that is engaged in Real Estate Activities must supplement its offering memorandum with Schedule 1 of Form 45-106F2 *Offering Memorandum for Non-Qualifying Issuers*, unless the offering memorandum is prepared under section 57.
60. An issuer that is a Collective Investment Vehicle must supplement its offering memorandum with Schedule 2 of Form 45-106F2 *Offering Memorandum for Non-Qualifying Issuers*, unless the offering memorandum is prepared under section 57.

Part C - Required Form of Risk Acknowledgement

61. The required form of risk acknowledgement under this Exemption is Form 45-106F4.

62. The required form of risk acknowledgement for individual investors includes Schedule 1 *Classification of Investors Under the Offering Memorandum Exemption* and Schedule 2 *Investment Limits for Investors Under the Offering Memorandum Exemption* to Form 45-106F4.

Part D - Report of Exempt Distribution

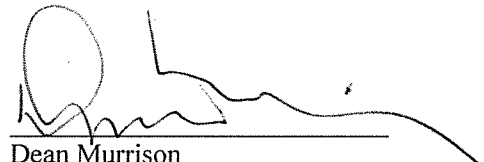
63. Within 10 days of distributing securities under the Exemption, the issuer must file a report of exempt distribution in Form 45-106F1 *Report of Exempt Distribution* in every jurisdiction of Canada in which a distribution has been made.

Part E - Resale of Securities

64. The first trade of a security acquired under the Exemption is subject to section 2.5 of NI 45-102 *Resale of Securities*.

IT IS FURTHER ORDERED that this Order comes into effect on March 8, 2023 and will expire on the earlier of the date on which this Order is revoked; or the date on which *The Securities Commission (Adoption of National Instruments) (NI 45-106) Amendment Regulations, 2023* that addresses substantially the same subject matter as this Order come into force.

Dated March 8, 2023.



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