

## Small Business Financing Guide (revised)

First Published September 1, 2021; Revised July 25, 2023

The purpose of the Small Business Financing Guide (this **Guide**) is to assist start-ups and other small businesses (**Issuer**) intending to raise funds by relying on the exemption from the prospectus requirement entitled *Small Business Financing (Small Business Exemption)*<sup>1</sup>, which is available to businesses headquartered in Alberta or Saskatchewan, or in a jurisdiction with a Corresponding Exemption (as defined in the Order) raising up to \$5,000,000<sup>2</sup> from purchasers in those provinces. The Small Business Exemption is targeted at small local businesses that do not currently have the profile or growth prospects to attract the interest of venture capitalists or public capital markets. It permits Issuers to raise money from purchasers who are part of the general public, who would not qualify to invest under one of the other prospectus exemptions commonly relied on by small businesses such as the accredited investor or the family, close personal friends and business associates exemptions.

In this Guide, “**regulator**” or “**we**” means the Alberta Securities Commission (**ASC**) or the Financial and Consumer Affairs Authority of Saskatchewan (the **FCAA**).

In the Small Business Exemption, several terms are used that are defined in securities legislation. To assist Issuers, we have included certain definitions in Annex A –*Local Definitions* of this Guide (**Annex A**). Although similar, the terms defined and included in Annex A differ between Alberta and Saskatchewan. Please refer to the applicable Annex A.

### *What exemptions from legal obligations does the Small Business Exemption provide?*

Issuers seeking to raise capital by issuing securities must file a prospectus (a comprehensive disclosure document that includes financial statements) with the regulator of each of the jurisdictions of Canada where its business and potential purchasers are located or rely on an exemption from the prospectus requirement under securities law in each of the applicable jurisdictions.

The prospectus requirement can be costly for start-ups and early stage businesses. There are a number of exemptions from the prospectus requirement that Issuers can use to raise capital. However, many of these exemptions require a fairly comprehensive disclosure document and/or limit the types of purchasers that can invest. The securities regulatory authorities in Alberta and Saskatchewan have created the Small Business Exemption to allow Issuers to raise money from the general public, without filing a prospectus.

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<sup>1</sup> The Small Business Exemption is provided for under Alberta Securities Commission Blanket Order 45-539 *Small Business Financing*, the Financial and Consumer Affairs Authority of Saskatchewan General Order 45-539 *Small Business Financing* (together, the **Order**) or under a Corresponding Exemption as defined in the Order.

<sup>2</sup> All references to dollar limits in this Guide (including both fundraising limits and investment limits) include amounts raised under the Small Business Exemption and any Corresponding Exemption (as defined in the Order). However, amounts raised from purchasers who would qualify to invest under one of the Specified Exemptions (as defined below) do not need to be included in calculating the offering limits.

Issuers relying on the Small Business Exemption must prepare an abbreviated disclosure document, in Form 45-539F1 *Small Business Offering Document (Offering Document)*, and for raises under \$1,500,000 in a 12-month period, this disclosure document does not require financial statements. For raises above \$1,500,000 in a 12-month period, the Offering Document must include financial statements but they may be prepared in accordance with a modified regulatory standard and are not required to be audited if they have been subject to a review engagement by a chartered professional accountant (see “*Does an Issuer need to include financial statements in the Offering Document?*” below).

The Small Business Exemption provides an exemption from the prospectus requirement. It does not provide an exemption from the dealer registration requirement or any other requirement of securities legislation.

### ***What should an Issuer consider before launching an offering under the Small Business Exemption?***

Before launching an offering under the Small Business Exemption, an Issuer should consider whether it best suits its purposes. Consider whether the Issuer has the resources to comply with the Small Business Exemption and to manage a potentially large number of security holders.

In particular, the Issuer may want to:

- evaluate the availability of other sources of funding,
- assess whether it is willing to invest the time and effort needed to prepare and run an offering under the Small Business Exemption,
- determine the type and characteristics of securities that will be sold, and
- determine the number of securities to be sold and at what price.

Issuers should also carefully consider the effect of raising capital by issuing securities. There are primarily two types of securities that small businesses will use: debt instruments, such as non-convertible debt securities linked to an interest rate, and equities, such as common shares. Both types of securities are permitted under the Small Business Exemption. While debt is essentially a loan from a purchaser to an Issuer, equity provides holders with certain ownership rights in the Issuer. Accordingly, if a distribution that involves the sale of shares (or other equity) is successful, the Founders or other individuals with an economic interest in the Issuer may have to give up part of the ownership of the Issuer to purchasers. Under corporate law, purchasers that purchase equity securities in an Issuer may have certain rights to participate in key decisions relating to the management of the Issuer. Purchasers may also want to be informed about successes and failures of the Issuer’s business. Issuers that raise more than \$1,500,000 in a 12-month period have certain ongoing reporting requirements (see “*Does the Issuer need to provide information to the purchasers following the distribution?*” below). The Issuer will have to spend time and money for this ongoing reporting and to maintain any other contact with purchasers as may be desired.

### ***Which Issuers can use the Small Business Exemption?***

The Small Business Exemption is only available to Issuers that have a head office in Alberta or Saskatchewan or in a jurisdiction that has a Corresponding Exemption as defined in the Order.

The Small Business Exemption is not available to reporting issuers (public companies). Reporting issuers are required to provide significant ongoing public disclosure of their business activities by filing financial statements and other documents required by securities laws. These types of Issuers are considered to be more established than the start-up or early stage Issuers that are anticipated to use the Small Business Exemption.

The Small Business Exemption is also not available to investment funds. The definition of investment fund is included in Annex A. Generally, an investment fund is an Issuer whose primary purpose is to invest money provided by its security holders in one or more other persons or companies.<sup>3</sup>

If the proceeds of the distribution are intended to be used by the Issuer to invest in, merge with, amalgamate with or acquire a business, or to purchase securities of one or more other Issuers, the Small Business Exemption is not available unless either (i) the Issuer has provided the disclosure specified by Item 4(3) of the Offering Document about that other business or (ii) the Issuer is a collective investment vehicle<sup>4</sup> and the Issuer has provided the additional disclosure specified in Schedule A *Additional Disclosure Requirements for an Issuer that is a Collective Investment Vehicle* to the Offering Document (see “*Can purchasers invest together as a syndicate, with the Issuer relying on the Small Business Exemption?*”, “*Can the Issuer use the Small Business Exemption if it intends to invest in multiple businesses, none of which will receive 50% or more of the proceeds raised?*”, and “*Can the Issuer use the exemption to raise money for a blind pool?*” below).

### ***Will an Issuer that relies on the Small Business Exemption lose its “private issuer” status? Will it become a reporting issuer?***

An Issuer that relies on the Small Business Exemption will likely no longer be considered a “private issuer” under National Instrument 45-106 *Prospectus Exemptions (NI 45-106)* either because it has sold securities to people or companies that are not included on the list of permitted investors for a private issuer as set out in NI 45-106 (i.e., investors that are the general public) or because it exceeds the 50 security holder limit.<sup>5</sup> As such, it will likely not be able to rely on the “private issuer” prospectus exemption for future distributions of securities. As a consequence, other prospectus exemptions will need to be considered and if relied upon, a Form 45-106F1 *Report of Exempt Distribution (Form 45-106F1)* with the associated fee will likely be required in respect of each future distribution.

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<sup>3</sup> Refer to Part 1 in the companion policies to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations (NI 31-103)* and National Instrument 81-106 *Investment Fund Continuous Disclosure*, which provide useful guidance regarding what constitutes an investment fund.

<sup>4</sup> A “**Collective Investment Vehicle**” is an Issuer that is raising money to invest in a portfolio of businesses (see the definition in the Order).

<sup>5</sup> To maintain its status, a private issuer must meet certain conditions, including having not more than 50 security holders (not including non-convertible debt or securities held by current or former employees) and can only distribute its securities to the list of permitted investors specified in subsection 2.4(2) of NI 45-106. That list includes parties such as close personal friends, close business associates and specified family members of the principals of the private issuer, as well as accredited investors, and persons or companies that are “not the public”.

Relying on the Small Business Exemption will not make an Issuer a “reporting issuer” under securities laws; however, by increasing the number of its shareholders, the Issuer may become subject to certain reporting requirements under applicable corporate law. For example, under business corporations legislation an Issuer is typically required to hold an annual meeting of its shareholders and is required to distribute an information circular, containing certain specified information, where it solicits proxies from more than a specified number of shareholders, e.g., more than 15. Also under business corporations legislation an Issuer will often be required to deliver audited annual financial statements to shareholders, unless the shareholders unanimously resolve to dispense with the appointment of an auditor. Unless a voting trust or similar arrangement is used, with a large number of public shareholders obtaining such a resolution is probably not realistic.

### *Does an Issuer need to be registered as a dealer to sell its securities?*

Only Issuers that are “in the business” of trading in respect of securities are required to be registered as dealers. The companion policy to NI 31-103 provides guidance on what it means to be “in the business” of trading securities.

Issuers are not required to hire a dealer to sell their securities. Many businesses with an active non-securities business raise money by issuing their own securities without themselves being considered to be “in the business” of trading securities and triggering the requirement to be registered as a dealer. However, there are some circumstances where the Issuer of securities might itself be subject to the dealer registration requirement as a result of, among other things, the following:

- the Issuer offers its securities for sale on an ongoing or continuous basis,
- the Issuer employs or contracts individuals to perform activities similar to those performed by a registrant (i.e., registered dealers and any person or company registered or required to be registered (such as adviser, an individual registered representative of a dealer or adviser or an investment fund manager),
- the Issuer’s business is the sale of securities (e.g., it raises money to invest in a portfolio of assets or securities).

If an Issuer hires a third party to find purchasers for it and help trade its securities, the person or company hired will often be considered to be in the business of trading securities (i.e., a dealer). Unless there is an exemption available, that dealer will be required to be registered as a dealer in each jurisdiction in which they will be in the business of trading securities.

For distributions in Alberta only, ASC Blanket Order 31-536 *Small Business Finder's Exemption (BO 31-536)*, if adopted, may in some circumstances provide an exemption from the dealer registration requirement.

### *How can an Issuer use the Small Business Exemption?*

An Issuer wishing to raise funds can use the Small Business Exemption in the following ways:

- to raise money through the Issuer’s principal’s own network of contacts (provided that they are not in the business of trading securities such that the dealer registration requirement is triggered),
- to raise money through a dealer (provided the dealer is in compliance with the registration requirement e.g., registered as an exempt market dealer or investment dealer) that will solicit investment and distribute securities through traditional distribution channel, and
- in Alberta, in certain circumstances, from a finder under BO 31-536.

It is technically possible for the Issuer to raise funds under the Small Business Exemption through an online funding portal, however, the portal would need to be registered as a dealer and the offering would need to be restricted to purchasers in Alberta and Saskatchewan. Issuers interested in using an online funding portal would likely wish to consider a crowdfunding offering under National Instrument 45-110 *Start-up Crowdfunding Registration and Prospectus Exemptions*<sup>6</sup> (NI 45-110), which provides both a prospectus exemption and, if certain conditions are met, a registration exemption for the online funding portal.

### *How does the Small Business Exemption differ from start-up crowdfunding?*

For raises less than \$1,500,000 in a 12-month period, the Small Business Exemption is very similar to NI 45-110, but reflects the fact that the offering is most likely to be made by principals of the Issuer rather than an online crowdfunding portal. In addition, the Small Business Exemption provides flexibility by permitting a raise up to \$5,000,000 if the Specified Financial Statements are provided (see “*Does an Issuer need to include financial statements in the Offering Document?*” below).

The Small Business Exemption was created in response to feedback we received that not all Issuers wish to conduct online financings and that, in some cases, their financing needs exceed the limits contemplated under NI 45-110.

### *What information is required in the Offering Document?*

An Issuer must include all the information required by the Offering Document form. This form requires the Issuer to disclose basic information about the business and the offering, how it will use the money, and the relevant risks of the business or project. The Issuer must provide enough detail in the Offering Document about the business for a purchaser to clearly understand what the Issuer does or intends to do. The Offering Document must not contain a misrepresentation. If after an Offering Document is sent to a prospective purchaser, circumstances change such that the Offering Document is no longer accurate and contains a misrepresentation, the Issuer cannot accept a subscription from a purchaser unless a revised Offering Document has been provided.

The Offering Document should be prepared so that it is easy to read and understand. An Issuer should be concise, use clear, plain language and avoid technical or legal terms. If technical or legal terms are necessary, the Issuer should provide definitions.

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<sup>6</sup> Subject to the required approvals, NI 45-110 will come into effect on September 21, 2021.

For additional details on the Offering Document, including instructions on how to prepare it, please refer to the instructions provided within the Offering Document form. In an effort to simplify the process of developing the Offering Document, we have created a fillable form in a question and answer format, which an Issuer may elect to use.

### *Can an Issuer include projections or other forward-looking information in the Offering Document?*

The definition of forward-looking information is included in Annex A. It includes information such as projected sales or anticipated contracts. If any forward-looking information that could reasonably be expected to be material to a purchaser's decision to invest is included in the Offering Document, it is important for the Issuer to identify it and include:

- reasonable cautionary language identifying material factors that could cause actual results to differ materially from the conclusion, forecast or projection in the forward-looking information,
- the assumptions or material factors used to develop the forward-looking information, and
- a statement that the Issuer believes it has a reasonable basis for drawing the conclusions or making the forecasts and projections set out in the forward-looking information.

### *Does an Issuer need to include financial statements in the Offering Document?*

If an Issuer raises \$1,500,000<sup>7</sup> or less in a 12-month period under the Small Business Exemption, it is not required to provide financial statements. If an Issuer raises more than that amount, it is required to provide financial statements but:

- they may be prepared in accordance with a modified regulatory standard that is based on Canadian generally accepted accounting principles (**GAAP**) applicable to private enterprises (but with subsidiaries being consolidated and any significantly influenced investees and joint ventures being accounted for using the equity method), and
- the annual financial statements would not be required to be audited if they have been subject to a review engagement by a chartered professional accountant

(the **Specified Financial Statements**).

The Issuer may amend its Offering Document during an offering to add the Specified Financial Statements if it wishes to raise more than \$1,500,000 or raise more funds from each purchaser (see “*What is the maximum amount that can be raised?*” and “*What is the maximum amount an Issuer can raise from each purchaser?*” below).

Even if the Issuer is not required to provide financial statements or financial information, it can choose to make this information available to purchasers. Many purchasers use financial information to assess and compare investment opportunities and may be reluctant to invest in a business that does not provide this information.

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<sup>7</sup> Amounts raised from purchasers who would qualify to invest under one of the Specified Exemptions (as defined below) do not need to be included in calculating the offering limits.

If an Issuer voluntarily chooses to provide financial statements to purchasers, the financial statements must:

- comply with Schedule B *Financial Statement Instructions* to the Offering Document form, and
- be included in the Offering Document.

As with any information provided to purchasers, the financial statements and financial information provided should not be misleading.

If an Issuer engages an accountant to provide a review of the annual financial statements, the accountant is required to conduct the review in accordance with the Canadian Standard for Review Engagements (CSRE) 2400, *Engagements to Review Historical Financial Statements*, which contains several ethical requirements, including that the accountant conducting the review be independent.

Although an audit is not required, if an Issuer chooses to have its annual financial statements audited rather than subject to a review, the audit firm chosen to conduct the audit need not have entered into a participation agreement with the Canadian Public Accountability Board (**CPAB**). If the audit firm does not participate in CPAB's oversight program, this must be disclosed as specified in the Offering Document form.

There may be financial statement requirements outside securities laws. For example, corporate legislation in some jurisdictions may require Issuers to prepare and provide audited annual financial statements to their shareholders. To determine whether these requirements apply, Issuers can refer to applicable corporate law and consult their legal advisers.

### ***Does an Issuer need to disclose information about the principals of the Issuer?***

Yes, the Offering Document must include certain details about the residency, principal occupation, expertise and security holdings of each Founder, director, officer and control person of the Issuer. We have included the definitions of “Founder”, “director”, “officer” and “control person” in Annex A.

### ***What is the maximum amount that can be raised?***

An Issuer can raise up to \$1,500,000 in the 12-month period before closing of the distribution under the Small Business Exemption, subject to an aggregate lifetime maximum of \$5,000,000. If an Issuer provides the Specified Financial Statements (see “*Does an Issuer need to include financial statements in the Offering Document?*” above), the lifetime limit also applies such that the aggregate funds raised by the Issuer Group (as defined in the Order) through the Small Business Exemption must be less than \$5,000,000.

Funds raised from purchasers who would qualify to invest under certain Specified Exemptions, as described below, are not counted for the purpose of determining whether an Issuer has reached the maximum permitted to be raised under the Small Business Exemption.

This maximum amount applies to the Issuer, together with any related Issuers in its Issuer Group. The term “**Issuer Group**” is defined broadly and includes the Issuer, each affiliate of the Issuer and any other Issuer that is engaged in a common enterprise with the Issuer or who has a Founder that is also a Founder<sup>8</sup> of the Issuer.

If a Founder remains actively engaged with two separate businesses, both of which are seeking to rely on the Small Business Exemption, where (i) the businesses are truly separate enterprises, and (ii) the Founder can demonstrate they possess adequate resources to dedicate to each business, the regulator would consider an application for exemptive relief allowing the two businesses to not be grouped together as the same Issuer Group.

Funds raised from purchasers who would qualify to invest under any of the following specified prospectus exemptions (the **Specified Exemptions**) do not have to be included in calculating the \$1,500,000 or \$5,000,000 offering limits:

- the accredited investor exemption (e.g., purchasers with annual net income of over \$200,000 for the last few years),
- the family, close personal friends and business associates exemption,
- the foreign investor exemption, and
- the self-certified investor exemption.<sup>9</sup>

### *Does an Issuer need to disclose a minimum amount that must be raised and how is that amount determined?*

The Issuer must disclose in the Offering Document the minimum amount needed to be raised to enable it to close the distribution (see “*How does an Issuer close the distribution?*” below). The minimum amount should reflect the amount the Issuer will need to accomplish its business goals as detailed in its disclosure of its proposed use of funds.

### *What types of securities can an Issuer offer when relying on the Small Business Exemption?*

An Issuer can only use the Small Business Exemption to distribute common shares, preferred shares, debt securities (but not securitized products or a structured finance products), units of a limited partnership, and membership shares or investment shares issued by a cooperative organized under the *Cooperatives Act* (Alberta) and securities convertible or exchangeable into any of those such as warrants, options or simple agreements for future equity (SAFEs).

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<sup>8</sup> The term “Founder” includes a requirement that, at the time of the distribution of a security the person be actively involved in the business of the Issuer. Accordingly, a person who takes the initiative in founding, organizing or substantially reorganizing the business of the Issuer within the meaning of the definition but subsequently ceases to be actively engaged in the day to day operations of the business of the Issuer would no longer be a “Founder” for the purposes of the Small Business Exemption, regardless of the person’s degree of prior involvement with the Issuer or the extent of the person’s continued ownership interest in the Issuer.

<sup>9</sup> Definitions of purchasers who qualify to invest under the Specified Exemptions (i.e., accredited investors, family & friend investors, foreign investors, and self-certified investors) are included in Annex A.

*Are there any time limitations for completing an offering under the Small Business Exemption?*

As noted above, the Offering Document must indicate a minimum dollar amount that has to be raised before the offering can close. The Issuer has up to 120 days to raise the minimum amount. The 120 days starts on the date the Issuer's Offering Document is first delivered to a purchaser.

If the minimum amount is not reached, the Issuer must return all the money raised to the purchasers and notify each purchaser that the funds have been returned.

*What is the maximum amount an Issuer can raise from each purchaser?*

When the Specified Financial Statements are not provided, the maximum investment an Issuer can accept from a purchaser (who does not qualify to invest under one of the Specified Exemptions as defined above) is \$2,500 in a 12-month period. However, this amount can be increased to \$10,000 if the purchaser has sufficient net income to qualify as a "Minimum Income Investor"<sup>10</sup> or has been advised by a registered dealer that the investment is suitable.<sup>11</sup>

When the Specified Financial Statements are provided, the maximum investment an Issuer can accept from a purchaser is \$5,000 in a 12-month period. However, this amount can be increased to \$20,000 if the purchaser is a Minimum Income Investor or has been advised by a registered dealer that the investment is suitable.

*How can the Issuer confirm that a purchaser qualifies as a Minimum Income Investor or has received suitability advice from a registered dealer?*

The Issuer must obtain a signed risk acknowledgement from each purchaser before the purchaser signs an agreement to purchase any securities. The risk acknowledgement must comply with Form 45-539F2 *Small Business Risk Acknowledgement (Form 45-539F2)*. The Issuer must ensure that the purchaser has indicated in Form 45-539F2 whether they are a Minimum Income Investor, have received suitability advice from a registered dealer, or are eligible to invest under one of the Specified Exemptions.

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<sup>10</sup> See the definition of "Minimum Income Investor" in the Order.

<sup>11</sup> Under securities legislation, before a registered dealer accepts an order or recommends to a client the purchase, sale, exchange or holding of a security, it must ensure that the action is suitable for the client. To provide advice about the suitability of an investment, the dealer must comply with its know-your-client and know-your-product obligations under securities legislation. The know-your-client obligation requires the dealer to accurately determine, among other things, the investor's

- current financial situation,
- investment knowledge,
- investment objectives and time horizon,
- risk tolerance, and
- investment portfolio composition and risk level.

The know-your-product obligation requires the dealer to understand the structure and features and assess the risks of the product. A suitability determination entails ensuring that the product is suitable for the client using the results of the know-your-client and know-your-product processes.

To ensure that each purchaser reads Form 45-539F2 and it is not completed in advance by the Issuer or salesperson, Form 45-539F2 must be completed by the purchaser (other than the sections specifically identified as being required to be completed by the Issuer) and the Issuer must not have reason to believe it is untrue. If the purchaser indicates that they are a Minimum Income Investor or they have received suitability advice from a registered dealer and the Issuer has reason to believe that is untrue, the Issuer cannot permit the purchaser to invest the higher investment amounts.

The completed Form 45-539F2 is not required to be provided to the ASC or the FCAA but the Issuer should retain it for a reasonable period following the distribution in order to demonstrate compliance if required.

*Can purchasers invest together as a syndicate, with the Issuer relying on the Small Business Exemption?*

We have heard some concern from small businesses that the Small Business Exemption could result in Issuers having a significant numbers of security holders and that this could create certain complications e.g., Issuers with a large number of security holders may become less appealing investment or acquisition targets.

It is possible for purchasers to invest in a small business together, through a syndicate. The syndicate would require a prospectus exemption to issue securities and the underlying small business would similarly require a prospectus exemption. The Small Business Exemption could be used in each instance.

If at the time of the distribution the Issuer/syndicate has identified a business (the **Investee**) to which it will direct at least 50% of the proceeds raised under the Small Business Exemption in the preceding 12 month period, the Issuer may use the Small Business Exemption to create the syndicate if the Offering Document provides certain disclosure for the Investee as if the Investee were the Issuer preparing the Offering Document.<sup>12</sup> A separate Offering Document may also be required by the Investee in order for the syndicate to invest in the Investee.

*Can the Issuer use the Small Business Exemption if it intends to invest in multiple businesses, none of which will receive 50% or more of the proceeds raised?*

It is possible for a collective investment vehicle to employ the Small Business Exemption. However, the Issuer cannot be an investment fund. The Issuer would be required to provide the additional disclosure relating to the Issuer's investment objectives, certain details of persons involved in the selection and management of the investments, information regarding the portfolio, and the performance of the portfolio. These additional disclosures are detailed in Schedule A *Additional Disclosure Requirements for an Issuer that is a Collective Investment Vehicle* to the Offering Document.

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<sup>12</sup> See the disclosure required at Item 4(3) of the Offering Document form.

### *Can the Issuer use the exemption to raise money for a blind pool?*

As noted above, the use of the Small Business Exemption is not permitted by Issuers that are raising money without a specific business objective that plan to use the proceeds of the distribution to invest in, merge or amalgamate with or acquire a business that has not been described in the Issuer's Offering Document or where the Issuer has not provided the disclosure for a collective investment vehicle. However, staff of the ASC or the FCAA may be willing to recommend discretionary exemptive relief in circumstances where the Issuer undertakes to comply with conditions that would ensure that purchasers receive comprehensive disclosure about the contemplated transaction and that there are other adequate investor protections (e.g., funds raised held in trust until a business is invested in, merged with, amalgamated with, or acquired and a shareholders' meeting is held to seek "majority of the minority" approval of the transaction). Applications for discretionary exemptive relief are reviewed on a case-by-case basis and whether relief will be granted will depend on the facts and circumstances of the Issuer's case.<sup>13</sup>

### *What if a purchaser changes their mind?*

Purchasers have the right to withdraw their investment within two business days following the purchaser signing an agreement to acquire the securities. To exercise this right of withdrawal, a purchaser must deliver a notice to the Issuer not later than midnight on the second business day after the purchaser signs the agreement to acquire the securities. The Issuer must return the funds to a purchaser who exercises this right.

### *Do purchasers' funds have to be held in trust?*

The Offering Document specifies that an Issuer must hold a purchaser's funds in trust (separate and apart from its operating funds) for a period of time at least equivalent to the purchaser's two-day cancellation right. Because an Issuer is required to return a purchaser's funds if the minimum offering is not reached, an Issuer should not use a purchaser's funds until both

- the two-day cancellation period has expired, and
- the minimum offering has been attained.

### *What if the information in the Offering Document is not, or is no longer, accurate?*

The Issuer must certify that the Offering Document does not contain a misrepresentation.

A misrepresentation means:

- a statement of material fact that is not true, or

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<sup>13</sup> For information on how to apply for discretionary exemptive relief in Alberta, see the answer to the question "None of the exemptions work for me: Applying for a discretionary exemption" in the Q&A on the ASC's website here: <https://www.albertasecurities.com/small-business/intro-to-raising-capital-using-prospectus-exemptions>.

- omitting a material fact that is required or necessary to be stated to prevent a statement in the Offering Document from being false or misleading in the circumstances in which it was made.

To avoid misrepresentations, the information contained in the Offering Document may need to be updated. If during the course of an offering the Offering Document is no longer accurate and contains a misrepresentation, the Issuer must amend the Offering Document and deliver the new version to purchasers as soon as practicable and before accepting a subscription.

In determining whether an Offering Document must be updated, an Issuer must consider the materiality of the change in circumstances. Materiality is a matter of judgment to be made in light of the circumstances, taking into account both qualitative and quantitative factors, assessed in respect of the Issuer as a whole. Consider whether a hypothetical purchaser, broadly representative of purchasers generally and acting reasonably, would be likely to be influenced, in making an investment decision to buy a security of an Issuer, by an item of information or an aggregate of items of information. If so, then that item of information, or aggregate of items, is “material” in respect of that Issuer. An item that is immaterial alone may be material in the context of other information, or may be necessary to give context to other information.

#### *What if a purchaser purchases securities when the Offering Document contained a misrepresentation?*

Securities laws in Alberta and Saskatchewan provide purchasers with a statutory right to sue for damages or rescission (to unwind or reverse the purchase) in cases where an Offering Document contains a misrepresentation. These claims may be made against the Issuer and the directors and other persons that signed the Offering Document.

This statutory right to sue is available whether or not the purchaser relied on the misrepresentation. However, there may be various defenses available. In particular, a defense may be available if the purchaser knew of the misrepresentation when he or she purchased the securities.

#### *How does an Issuer close the distribution?*

If the minimum offering amount has been raised within the 120-day maximum offering period, the Issuer can proceed to “close the distribution”, subject to the two-day cancellation right. The Issuer will issue the securities (e.g., issue share certificates and update its shareholder registry) and release the purchasers' funds from trust. An Issuer can continue raising additional funds up to the maximum amount indicated in the Offering Document provided it closes the offering within the 120-day maximum offering period.

The Issuer should make note of the date on which it closes the offering because certain filings must be completed within 30 days of the closing. If an Issuer has multiple closings, multiple filings (and multiple fees) may be necessary.

*Does the Issuer need to provide information to the purchasers following the distribution?*

If an Issuer raises more than \$1,500,000 in a 12-month period under the Small Business Exemption from purchasers who would not qualify to invest under a Specified Exemption, in accordance with the Order the Issuer is required to file with in each participating jurisdiction in which the distribution occurred an undertaking as specified by Form 45-539F3 *Small Business Undertaking (Form 45-539F3)* to annually file with the ASC, or deliver to the FCAA their annual financial statements and a Form 45-106F16 *Notice of Use of Proceeds (Form 45-106F16)* and make them reasonably available to each holder of a security distributed under the Small Business Exemption. We would consider financial statements to be reasonably available to security holders if delivered in paper or electronic format or if purchasers are notified when they are posted on the Issuer's publicly available website.

As with the financial statements provided in the Offering Document, these annual financial statements need not be audited if subject to a review engagement and could be prepared using a modified regulatory standard that is based on Canadian GAAP applicable to private enterprises (but with subsidiaries being consolidated and any significantly influenced investees and joint ventures being accounted for using the equity method). The requirement to deliver annual financial statements and a Form 45-106F16 will continue for the three financial years following the distribution.

*What documents have to be filed with or delivered to securities regulator(s) after the closing?*

The Offering Document, a Form 45-106F1 and, if applicable, a Form 45-539F3 must be filed in each participating jurisdiction in which the distribution occurred no later than the 30th day after the closing of the distribution, together with the accompanying fee (if applicable). In Item 7(f) of Form 45-106F1, the Issuer must state the total dollar amount of securities distributed and the number of purchasers for each jurisdiction where a purchaser resides and for each exemption relied on in Canada for that distribution. The table requires a separate line item for (i) each jurisdiction where a purchaser resides (ii) each exemption relied on in the jurisdiction where a purchaser resides, if a purchaser resides in a jurisdiction of Canada (e.g., accredited investor, family, close personal friends and business associates, etc.), and (iii) each exemption relied on in Canada, if a purchaser resides in a foreign jurisdiction.

An Issuer that sells securities to a purchaser that qualifies to invest under a Specified Exemption may report the sale as being under the Small Business Exemption, if the Issuer has complied with that exemption, e.g., provided the purchaser with the Offering Document and obtained a Form 45-539F2. Alternatively, the Issuer may report the transaction as being under the accredited investor exemption, or other Specified Exemption provided that the Issuer has complied with the terms of that exemption, e.g., obtained a Form 45-106F4 *Risk Acknowledgement* from the purchaser.

As noted above, Issuers may also be required to deliver to the applicable securities regulator(s) annual financial statements and a Form 45-106F16 on an annual recurring basis (see “*Does the Issuer need to provide information to the purchasers following the distribution?*” above).

Most of the documents required to be filed with, or delivered to the applicable securities regulator(s) must be submitted electronically through SEDAR+ in accordance with National Instrument 13-103 *System for Electronic Data Analysis and Retrieval+* (SEDAR+), however, the Offering Document and Form 45-539F3 must be filed by email in Saskatchewan. Please refer to the following table which summarizes the required methods of filing/delivery for each document to securities regulatory authority in Alberta and Saskatchewan.

<b><u>Summary of Document Filing/Delivery Instructions</u></b>		
<b>Document</b>	<b>Alberta Instructions</b>	<b>Saskatchewan Instructions</b>
Offering document and any amendments (Form 45-539F1)	File via SEDAR+ category “Exempt Market Offerings and Disclosure” using filing type “Start-up Business”	File via email to corpfin@gov.sk.ca
Report of Exempt Distribution (Form 45-106F1)	File via SEDAR+ category “Exempt Market Offerings and Disclosure” using filing type “Report of Exempt Distribution (NI 45-106)”	File via SEDAR+ category “Exempt Market Offerings and Disclosure” using filing type “Report of Exempt Distribution (NI 45-106)”
Small Business Undertaking (Form 45-539F3)	File via SEDAR+ category “Exempt Market Offerings and Disclosure” using filing type “Start-up Business” and the document type “Other”	File via email to corpfin@gov.sk.ca
Annual Financial Statements	File via SEDAR+ category “Exempt Market Offerings and Disclosure” using filing type “Annual Financial Statements – Non-Reporting Issuers”	Deliver via SEDAR+ category “Exempt Market Offerings and Disclosure” using filing type “Annual Financial Statements – Non-Reporting Issuers”
Notice of use of proceeds (Form 45-106F16)	File via SEDAR+ category “Exempt Market Offerings and Disclosure” using filing type “Notice of Use of Proceeds”	Deliver via SEDAR+ category “Exempt Market Offerings and Disclosure” using filing type “Notice of Use of Proceeds”

***What if the Issuer has to pivot their business and utilize funds in a way that is different from that contemplated in the Offering Document?***

We have heard that small businesses may have to pivot their business in order to remain viable and, as such, the disclosure in the Offering Document of how the Issuer intends to use the available funds may no longer be accurate. An Issuer may include disclosure in the Offering Document that funds may be reallocated, but this does not entitle the Issuer to open-ended use of the funds. The funds should only be reallocated for sound business reasons. Generally, those business reasons would have something to do with the stated business of the Issuer.

Issuers must ensure that prospective purchasers are provided accurate and complete information with respect to how the Issuer intends to use the available funds. Failure to do so can result in a claim for misrepresentation or fraud against the Issuer, the directors of the Issuer and other persons that signed the Offering Document (see “*What if a purchaser purchases securities when the Offering Document contained a misrepresentation?*” above).

Issuers should carefully consider the appropriateness of any reallocation, including having regard to the fact that the directors and officers of an Issuer generally have a duty to act honestly and in good faith with a view to the best interests of the Issuer and to exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

**For more information, contact:**

Alberta

Alberta Securities Commission  
Telephone: 403-297-6454 Toll-Free: 1-977-355-0585  
Email: [new.economy@asc.ca](mailto:new.economy@asc.ca)  
Website: [www.albertasecurities.com](http://www.albertasecurities.com)

Saskatchewan

Financial and Consumer Affairs Authority of Saskatchewan  
Securities Division  
Telephone: 306-787-5879  
Email: [exemptions@gov.sk.ca](mailto:exemptions@gov.sk.ca)  
Website: [www.fcaa.gov.sk.ca](http://www.fcaa.gov.sk.ca)

## ANNEX A – Local Definitions

**As at the date of the Order, the following terms have the meanings referenced below. The definitions are provided for convenience only. Refer to applicable securities legislation.**

**"accredited investor"** has the meaning ascribed in National Instrument 45-106 *Prospectus Exemptions (NI 45-106)*;

*Guidance: Accredited Investor is defined in NI 45-106 as*

- "(i) except in Ontario, a Canadian financial institution, or a Schedule III bank,*
- (ii) except in Ontario, the Business Development Bank of Canada incorporated under the Business Development Bank of Canada Act (Canada),*
- (iii) except in Ontario, a subsidiary of any person referred to in paragraphs (i) or (ii), if the person owns all of the voting securities of the subsidiary, except the voting securities required by law to be owned by directors of that subsidiary,*
- (iv) except in Ontario, a person registered under the securities legislation of a jurisdiction of Canada as an adviser or dealer,*
- (v) an individual registered under the securities legislation of a jurisdiction of Canada as a representative of a person referred to in paragraph (iv),*
- (v.1) an individual formerly registered under the securities legislation of a jurisdiction of Canada, other than an individual formerly registered solely as a representative of a limited market dealer under one or both of the Securities Act (Ontario) or the Securities Act (Newfoundland and Labrador),*
- (vi) except in Ontario, the Government of Canada or a jurisdiction of Canada, or any crown corporation, agency or wholly owned entity of the Government of Canada or a jurisdiction of Canada,*
- (vii) except in Ontario, a municipality, public board or commission in Canada and a metropolitan community, school board, the Comité de gestion de la taxe scolaire de l'île de Montréal or an intermunicipal management board in Québec,*
- (viii) except in Ontario, any national, federal, state, provincial, territorial or municipal government of or in any foreign jurisdiction, or any agency of that government,*
- (ix) except in Ontario, a pension fund that is regulated by the Office of the Superintendent of Financial Institutions (Canada), a pension commission or similar regulatory authority of a jurisdiction of Canada,*
- (x) an individual who, either alone or with a spouse, beneficially owns financial assets having an aggregate realizable value that, before taxes but net of any related liabilities, exceeds \$1 000 000,*
- (x.1) an individual who beneficially owns financial assets having an aggregate realizable value that, before taxes but net of any related liabilities, exceeds \$5 000 000,*
- (xi) an individual whose net income before taxes exceeded \$200 000 in each of the 2 most recent calendar years or whose net income before taxes combined with that of a spouse exceeded \$300 000 in each of the 2 most recent calendar years and who, in either case, reasonably expects to exceed that net income level in the current calendar year,*
- (xii) an individual who, either alone or with a spouse, has net assets of at least \$5 000 000,*
- (xiii) a person, other than an individual or investment fund, that has net assets of at least \$5 000 000 as shown on its most recently prepared financial statements,*

- (xiv) *an investment fund that distributes or has distributed its securities only to*
  - (a) *a person that is or was an accredited investor at the time of the distribution,*
  - (b) *a person that acquires or acquired securities in the circumstances referred to in sections 2.10 [Minimum amount investment], or 2.19 [Additional investment in investment funds], or*
  - (c) *a person described in paragraph (a) or (b) that acquires or acquired securities under section 2.18 [Investment fund reinvestment],*
- (xv) *an investment fund that distributes or has distributed securities under a prospectus in a jurisdiction of Canada for which the regulator or, in Québec, the securities regulatory authority, has issued a receipt,*
- (xvi) *a trust company or trust corporation registered or authorized to carry on business under the Trust and Loan Companies Act (Canada) or under comparable legislation in a jurisdiction of Canada or a foreign jurisdiction, acting on behalf of a fully managed account managed by the trust company or trust corporation, as the case may be,*
- (xvii) *a person acting on behalf of a fully managed account managed by that person, if that person is registered or authorized to carry on business as an adviser or the equivalent under the securities legislation of a jurisdiction of Canada or a foreign jurisdiction,*
- (xviii) *a registered charity under the Income Tax Act (Canada) that, in regard to the trade, has obtained advice from an eligibility adviser or an adviser registered under the securities legislation of the jurisdiction of the registered charity to give advice on the securities being traded,*
- (xix) *an entity organized in a foreign jurisdiction that is analogous to any of the entities referred to in paragraphs (i) to (iv) or paragraph (ix) in form and function,*
- (xx) *a person in respect of which all of the owners of interests, direct, indirect or beneficial, except the voting securities required by law to be owned by directors, are persons that are accredited investors,*
- (xxi) *an investment fund that is advised by a person registered as an adviser or a person that is exempt from registration as an adviser,*
- (xxii) *a person that is recognized or designated by the securities regulatory authority or, except in Ontario and Québec, the regulator as an accredited investor; or*
- (xxiii) *a trust established by an accredited investor for the benefit of the accredited investor's family members of which a majority of the trustees are accredited investors and all of the beneficiaries are the accredited investor's spouse, a former spouse of the accredited investor or a parent, grandparent, brother, sister, child or grandchild of that accredited investor, of that accredited investor's spouse or of that accredited investor's former spouse;*

**"Alberta securities laws"** has the meaning ascribed in the *Securities Act (Alberta) (the Act)*;

*Guidance: Alberta securities laws is defined in the Act as "this Act, the regulations and any decisions made by the Commission or the Executive Director and any extra-provincial securities laws adopted or incorporated by reference under section 211.4."*

**"company"** has the meaning ascribed in the Act;

*Guidance: company is defined in the Act as "any corporation, incorporated association, incorporated syndicate or other incorporated organization."*

**"control"** has the meaning ascribed in the Act;

*Guidance: according to the Act, "a person or company is considered to control another person or company if the person or company, directly or indirectly, has the power to direct the management and policies of the other person or company by virtue of (a) the ownership or direction of voting securities of the other person or company, (b) a written agreement or trust instrument, (c) being the general partner or controlling the general partner of the other person or company, or (d) being the trustee of the other person or company."*

**"control person"** has the meaning ascribed in the Act;

*Guidance: control person is defined in the Act as*

- "(i) a person or company who holds a sufficient number of the voting rights attached to all outstanding voting securities of an issuer to affect materially the control of the issuer, and if a person or company holds more than 20% of the voting rights attached to all outstanding voting securities of an issuer, the person or company is deemed, in the absence of evidence to the contrary, to hold a sufficient number of the voting rights to affect materially the control of the issuer, or*
- (ii) each person or company in a combination of persons or companies acting in concert by virtue of an agreement, arrangement, commitment or understanding, who holds in total a sufficient number of the voting rights attached to all outstanding voting securities of an issuer to affect materially the control of the issuer, and if a combination of persons or companies holds more than 20% of the voting rights attached to all outstanding voting securities of an issuer, the combination of persons or companies is deemed, in the absence of evidence to the contrary, to hold a sufficient number of the voting rights to affect materially the control of the issuer."*

**"director"** has the meaning ascribed in the Act;

*Guidance: director is defined in the Act as "a director of a company or an individual performing a similar function or occupying a similar position for a company or for any other person."*

**"distribution"** has the meaning ascribed in the Act;

*Guidance: according to the Act, when used in relation to trading in securities, a distribution means*

- "(i) a trade in securities of an issuer that have not been previously issued,*
- (ii) a trade by or on behalf of an issuer in previously issued securities of that issuer that have been redeemed or purchased by or donated to that issuer,*
- (iii) a trade in previously issued securities of an issuer from the holdings of a control person,*
- (iv) a trade by or on behalf of an underwriter in securities that were acquired by that underwriter, acting as underwriter, prior to February 1, 1982 if those securities continue on February 1, 1982 to be owned by or for that underwriter, so acting,*
- (v) a distribution referred to under the regulations,*
- (vi) a trade or an intended trade deemed to be a distribution under section 144(2), or*
- (vii) a transaction or series of transactions involving a purchase and sale or a repurchase and resale in the course of or incidental to a distribution referred to in subclauses (i) to (v)."*

**"family & friends investor"** means a person or company described as "family, friends and business associates" in subsections 2.5 and 2.6 of NI 45-106;

*Guidance: family, friends and business associates is defined in NI 45-106 as*

- "(i) a director, executive officer or control person of the issuer, or of an affiliate of the issuer,*
- (ii) a spouse, parent, grandparent, brother, sister, child or grandchild of a director, executive officer or control person of the issuer, or of an affiliate of the issuer,*
- (iii) a parent, grandparent, brother, sister, child or grandchild of the spouse of a director, executive officer or control person of the issuer or of an affiliate of the issuer,*
- (iv) a close personal friend of a director, executive officer or control person of the issuer, or of an affiliate of the issuer,*
- (v) a close business associate of a director, executive officer or control person of the issuer, or of an affiliate of the issuer,*
- (vi) a Founder of the issuer or a spouse, parent, grandparent, brother, sister, child, grandchild, close personal friend or close business associate of a Founder of the issuer,*
- (vii) a parent, grandparent, brother, sister, child or grandchild of a spouse of a Founder of the issuer,*
- (viii) a person of which a majority of the voting securities are beneficially owned by, or a majority of the directors are, persons described in paragraphs (i) to (vii), or*
- (ix) a trust or estate of which all of the beneficiaries or a majority of the trustees or executors are persons described in paragraphs (i) to (vii)."*

**"foreign investor"** has the meaning ascribed in the Order;

*Guidance: Founder is defined in the Order as "a person or company outside of Canada, to whom a distribution may be made under ASC Rule 72-501 Distributions to Purchasers Outside Alberta or FCAA General Order 72-901 Trades to Purchasers Outside of Saskatchewan."*

**"founder"** has the meaning ascribed in the Order;

*Guidance: founder is defined in NI 45-106 as "in respect of an issuer, a person [or company] who,*

- (i) acting alone, in conjunction, or in concert with one or more persons or companies, directly or indirectly, takes the initiative in founding, organizing or substantially reorganizing the business of the issuer; and*
- (ii) at the time of the distribution or trade is actively involved in the business of the issuer."*

**"forward-looking information"** has the meaning ascribed in the Act;

*Guidance: forward-looking information is defined in the Act as "disclosure regarding possible events, conditions or financial performance that is based on assumptions about future economic conditions and courses of action, and includes future-oriented financial information with respect to prospective financial performance, financial position or cash flows that is presented either as a forecast or a projection." National Instrument 51-102 Continuous Disclosure Obligations describes "future-oriented financial information" as one type of forward-looking information, one presented in the format of a historical financial statement.*

**"investment fund"** has the meaning ascribed in the Act;

*Guidance: investment fund is defined in the Act as "a mutual fund or a non-redeemable investment fund" which terms are each defined in the Act as*

**"mutual fund means**

- (i) *an issuer whose primary purpose is to invest money provided by its security holders and whose securities entitle the holder to receive on demand, or within a specified period after demand, an amount computed by reference to the value of a proportionate interest in the whole or in part of the net assets, including a separate fund or trust account, of the issuer, or*
  - (ii) *an issuer that is designated as a mutual fund under section 10 or in accordance with the regulations,*
- but does not include an issuer, or class of issuers, that is designated under section 10 not to be a mutual fund."*

**"non-redeemable investment fund means**

- (i) *an issuer*
    - (A) *whose primary purpose is to invest money provided by its security holders,*
    - (B) *that does not invest*
      - (I) *for the purpose of exercising or seeking to exercise control of an issuer, other than an issuer that is a mutual fund or a non-redeemable investment fund, or*
      - (II) *for the purpose of being actively involved in the management of any issuer in which it invests, other than an issuer that is a mutual fund or a non-redeemable investment fund,*
- and*
- (C) *that is not a mutual fund, or*
  - (ii) *an issuer that is designated as a non-redeemable investment fund under section 10 or in accordance with the regulations, but does not include an issuer, or class of issuers, that is designated under section 10 not to be a non-redeemable investment fund."*

**"issuer"** has the meaning ascribed in the Act;

*Guidance: issuer is defined in the Act as "a person or company that (i) has outstanding securities, (ii) is issuing securities, or (iii) proposes to issue securities". The term "person" is defined in the Act as an individual, partnership, unincorporated association, unincorporated syndicate, unincorporated organization, trust, trustee, executor, administrator or other legal representative" and "company" is defined in the Act as "any corporation, incorporated association, incorporated syndicate or other incorporated organization."*

**"misrepresentation"** has the meaning ascribed in the Act;

*Guidance: misrepresentation is defined in the Act as "(i) an untrue statement of a material fact, or (ii) an omission to state a material fact that is required to be stated, or (iii) an omission to state a material fact that is necessary to be stated in order for a statement to be misleading" and "material fact" is defined ascribed in the Act as "when used in relation to securities issued or proposed to be issued, means a fact that would reasonably be expected to have a significant effect on the market price or value of the securities."*

**"officer"** has the meaning ascribed in the Act;

*Guidance: with respect to an issuer, officer is defined in the Act as*

- (i) *a chair or vice-chair of the board of directors, a chief executive officer, chief operating officer, chief financial officer, president, vice-president, secretary, assistant secretary, treasurer, assistant treasurer or general manager,*

- (ii) *an individual who is designated as an officer under a bylaw or similar authority of the issuer or registrant, or*
- (iii) *an individual who performs functions for a person or company similar to those normally performed by an individual referred to in (i) or (ii)."*

**"person"** has the meaning ascribed in the Act;

*Guidance: person is defined in the Act as "an individual, partnership, unincorporated association, unincorporated syndicate, unincorporated organization, trust, trustee, executor, administrator or other legal representative."*

**"promoter"** has the meaning ascribed in the Act;

*Guidance: promoter is defined in the Act as*

- "(i) a person or company, acting alone or in conjunction with one or more other persons or companies or a combination of them, that, directly or indirectly, takes the initiative in founding, organizing or substantially reorganizing the business of the issuer, or*
- (ii) a person or company that, directly or indirectly, receives in consideration of services or property, or both,*
  - (A) 10% or more of any class of securities of the issuer, or*
  - (B) 10% or more of the proceeds from the sale of any class of securities of a particular issue,*

*in connection with the founding, organizing or substantial reorganizing of the business of the issuer, but does not include a person or company that receives securities or proceeds solely*
  - (C) as underwriting commissions, or*
  - (D) in consideration of property transferred to the issuer,*

*if that person or company does not otherwise take part in founding, organizing or substantially reorganizing the business."*

**"reporting issuer"** has the meaning ascribed in the Act;

*Guidance: reporting issuer is defined in the Act as "an issuer*

- (i) that has issued voting securities on or after October 1, 1967 in respect of which a prospectus was filed and a receipt for it obtained under a predecessor of this Act or in respect of which a securities exchange take-over bid circular was filed under a predecessor of this Act,*
- (ii) that has (A) filed a prospectus for which the Executive Director has issued a receipt under this Act, or (B) filed a securities exchange take-over bid circular under this Act on or before June 1, 1999,*
- (iii) any of whose securities have been at any time since February 1, 1982 listed and posted for trading on an exchange recognized under section 62 by the Commission regardless of when the listing and posting for trading commenced,*
- (iv) that has exchanged its securities with another issuer or with the holders of the securities of that other issuer in connection with an amalgamation, merger, reorganization, arrangement, take-over bid or similar transaction if one of the parties to the amalgamation, merger, reorganization, arrangement, take-over bid or similar transaction was a reporting issuer at the time of the amalgamation, merger, reorganization, arrangement, take-over bid or similar transaction;*

- (v) *that is declared, deemed or designated to be a reporting issuer pursuant to any other provision of Alberta securities laws."*

**"reverse takeover"** has the meaning ascribed in National Instrument 51-102 *Continuous Disclosure Obligations (NI 51-102)*;

*Guidance: reverse takeover is defined in NI 51-102 as*

- "(i) a reverse acquisition, which has the same meaning as in Canadian GAAP applicable to publicly accountable enterprises; or*
- (ii) a transaction where an issuer acquires a person or company by which the securityholders of the acquired person or company, at the time of the transaction, obtain control of the issuer, where, for purposes of this paragraph, "control" has the same meaning as in Canadian GAAP applicable to publicly accountable enterprises."*

**"security"** has the meaning ascribed in the Act;

*Guidance: security is defined in the Act to include*

- "(i) any document, instrument or writing commonly known as a security;*
- (ii) any document constituting evidence of title to or interest in the capital, assets, property, profits, earnings or royalties of any person or company;*
- (iii) any document constituting evidence of an interest in an association of legatees or heirs;*
- (iv) any document constituting evidence of an option, subscription or other interest in or to a security;*
- (v) any bond, debenture, note or other evidence of indebtedness, share, stock, unit, unit certificate, participation certificate, certificate of share or interest, preorganization certificate or subscription other than*
  - (A) a contract of insurance issued by an insurance company, or*
  - (B) an evidence of deposit issued by a financial institution;*
- (vi) any agreement under which the interest of the purchaser is valued for purposes of conversion or surrender by reference to the value of a proportionate interest in a specified portfolio of assets other than a contract issued by an insurance company that provides for payment at maturity of an amount of not less than 3/4 of the premiums paid by the purchaser for a benefit payable at maturity;*
- (vii) any agreement under which money received will be repaid or treated as a subscription to shares, stock, units or interests at the option of the recipient or of any person or company;*
- (viii) any certificate of share or interest in a trust, estate or association;*
- (ix) any profit-sharing agreement or certificate;*
- (x) any certificate of interest in an oil, natural gas or mining lease, claim or royalty voting trust certificate;*
- (xi) any oil or natural gas royalties or leases or fractional or other interest in them;*
- (xii) any collateral trust certificate;*
- (xiii) any income or annuity contract not issued by an insurance company;*
- (xiv) any investment contract;*
- (xv) any document constituting evidence of an interest in a scholarship or educational plan or trust;*

*(xvi) a derivative or class of derivatives designated to be a security pursuant to an order made under section 10, whether or not any of them relate to an issuer or proposed issuer, but does not include anything designated not to be a security pursuant to an order under section 10 or a security or class of securities prescribed not to be a security."*

**"self-certified investor"** has the meaning ascribed in the Order;

*Guidance: self-certified investor is defined in the Order as "a person or company described in ASC Blanket Order 45-538 Self-Certified Investor Prospectus Exemption or FCAA General Order 45-538 Self-Certified Investor Prospectus Exemption."*

*Self-certified investor is defined in ASC Blanket Order 45-538 Self-Certified Investor Prospectus Exemption or FCAA General Order 45-538 Self-Certified Investor Prospectus Exemption as "a person or company that has completed the Acknowledgement and has solemnly declared a Statutory Declaration, as contemplated in subsection 3(e) of [BO 45-538]."*

**"subsidiary"** has the meaning ascribed in the Act;

*Guidance: subsidiary is defined in the Act as "an issuer that is controlled by one or more other issuers."*