

General Order 45-538
Self-Certified Investor Prospectus Exemption

In the Matter of
The Securities Act, 1988

Order

WHEREAS the Financial and Consumer Affairs Authority of Saskatchewan (the **FCAA**) has assigned to the Executive Director of the Securities Division, FCAA (the **Executive Director**) the power to make exemption orders under the provision of *The Securities Act, 1988* (the **Act**) including orders of general application;

AND WHEREAS section 58 of the Act requires that a prospectus relating to the distribution of a security has been filed and the Executive Director has issued a receipt for it;

AND WHEREAS National Instruments have been adopted as regulations in Saskatchewan under *The Securities Commission (Adoption of National Instruments) Regulations* that allow for certain exemptions from the prospectus requirement in section 58 of the Act;

AND WHEREAS FCAA Securities Division staff (**Staff**) has applied to the Executive Director for an Order pursuant to section 160 of the Act that the prospectus requirement in section 58 of the Act does not apply to certain distributions of securities by an issuer as outlined below;

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

AND WHEREAS in this Order:

“**Accredited Investor**” has the meaning ascribed to it in NI 45-106;

“**Acknowledgement**” means a document in the form specified in Appendix 2 *Acknowledgement* to this Order;

“Corresponding Exemption” means an order or ruling of another securities regulatory authority or securities regulator in Canada that provides an exemption from the prospectus requirement that is substantially similar to this Order;

“Listed Issuer Investment” means the distribution of a security where both of the following apply

- (a) the issuer has a class of equity security currently listed and posted for trading on the TSX Venture Exchange, the Toronto Stock Exchange, the Canadian Securities Exchange or Neo Exchange Inc. and is not in default of the periodic and timely disclosure requirements applicable to it as a reporting issuer, and
- (b) the purchaser has received advice regarding the suitability of the investment from a person or company, registered under securities legislation in the jurisdiction of the purchaser, that is qualified in the circumstances to provide such advice;

“Participating Jurisdiction” means Alberta and Saskatchewan and each other jurisdiction of Canada that adopts a Corresponding Exemption;

“Private Issuer” has the meaning ascribed to it in NI 45-106;

“Qualifying Criteria” means the criteria specified in Schedule A *Qualifying Criteria* to Appendix 2 to this Order, as amended from time to time;

“Self-Certified Investor” means a person or company that has completed the Acknowledgement and has solemnly declared a Statutory Declaration, as contemplated in subsection 1(e) of this Order; and

“Statutory Declaration” means a completed statutory declaration in the form specified in Appendix 1 *Statutory Declaration* to this Order;

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

- (a) A new additional prospectus exemption has the potential to further facilitate the capital raising efforts of businesses in Saskatchewan by allowing purchasers who do not currently meet the financial thresholds or other criteria required to qualify as an accredited investor to invest alongside accredited investors; provided the purchaser meets other criteria intended to demonstrate the purchaser’s financial and investment knowledge;
- (b) Staff understands that the securities regulatory authority or regulator in Alberta intends to issue a rule, instrument or blanket order providing equivalent exemptions from the securities law of its respective jurisdiction;

AND WHEREAS the Executive Director is of the opinion that it would not be prejudicial to the public interest to make this Order;

IT IS ORDERED under section 160 of the Act:

1. The prospectus requirement in section 58 of the Act does not apply to a distribution of securities by an issuer provided all of the following apply:
 - (a) the head office of the issuer is located in a Participating Jurisdiction;
 - (b) except in the case of a Listed Issuer Investment,
 - (i) the aggregate acquisition cost of the securities of the issuer acquired by the purchaser under this Order or a Corresponding Exemption in the calendar year does not exceed \$10,000, and
 - (ii) the purchaser represents to the issuer in the subscription agreement that the aggregate acquisition cost of the securities of all issuers acquired by the purchaser in the calendar year under this Order or a Corresponding Exemption, other than a Listed Issuer Investment, does not exceed \$30,000;
 - (c) the distribution to the purchaser is made concurrently with a distribution to an Accredited Investor and the purchaser is provided access to substantially the same information about the securities being distributed as is provided to the Accredited Investor;
 - (d) the purchaser purchases as principal;
 - (e) at or before the time the purchaser signs the agreement to purchase the securities, the issuer obtains from the purchaser a completed Statutory Declaration, that is dated within 36 months of the distribution and to which is attached a completed Acknowledgement in which the purchaser has completed both:
 - (i) Part A confirming that the purchaser meets the Qualifying Criteria, and
 - (ii) Part B confirming that the purchaser has read and understood each of the acknowledgements in that part;
 - (f) the issuer does not know and would not reasonably be expected to know that the statements made by the purchaser in the Acknowledgement or the representation referred to in section 1(b)(ii) of this Order are false;

- (g) in the case of an issuer that is not a Private Issuer, the issuer, on or before the 10th day after the closing of the distribution, files a completed Form 45-106F1 *Report of Exempt Distribution*, together with the applicable fee; and
 - (h) the issuer retains a copy of the Statutory Declaration and Acknowledgement for 8 years after the distribution;
 - (i) The first trade of a security acquired under this section or a Corresponding Exemption is subject to section 2.5 of NI 45-102
2. This Order comes into effect on March 31, 2021 and expires on April 1, 2024.

Dated March 31, 2021.

“Dean Murrison”

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

Annex 1 to General Order 45-538 Self-Certified Investor Prospectus Exemption

Statutory Declaration

CANADA }

Province of *[insert Participating Jurisdiction]* }

I, *[insert name of declarant]* do solemnly declare that:

1. *[If an individual]* I am resident at *[insert physical address in Alberta or Saskatchewan or other Participating Jurisdiction, if applicable, as defined in General Order 45-538]*.

[For a non-individual] I am an authorized signatory of *[insert name of entity]* (the **Purchaser**) which has its head office at *[insert physical address in Alberta or Saskatchewan or other Participating Jurisdiction, if applicable, as defined in General Order 45-538]*.

2. *[If an individual]* I have, of my own choice and volition, truthfully completed Part A of the attached Acknowledgement for the purpose of being considered a Self-Certified Investor (as defined in General Order 45-538).

[For a non-individual] I am an authorized signatory of the Purchaser and have, of my own choice and volition, on behalf of the Purchaser, truthfully completed Part A of the attached Acknowledgement for the purpose of the Purchaser being considered a Self-Certified Investor (as defined in General Order 45-538).

3. I have read and understood Part B of the attached Acknowledgement.

I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath, and by virtue of the *Canada Evidence Act*.

DECLARED before me at *[insert municipality and province]*.

Dated: *[insert date]*

Name of Declarant *[print]*

Name of Notary Public or Commissioner for Oaths* *[print]*

Signature of Declarant

Signature of Notary Public or Commissioner for Oaths* [seal]

If Declarant is the authorized signatory of the Purchaser, state the Declarant's title

Expiry Date of Commission:

***Note: A statutory declaration intended for use outside of the jurisdiction in which it is made must be signed by a Notary Public.**

Annex 2 to General Order 45-538 Self-Certified Investor Prospectus Exemption

Acknowledgement

Part A – Confirmation of Qualifying Criteria in Schedule A

Instruction: All capitalized terms used in this Acknowledgement but not defined in it have the meaning ascribed to them in General Order 45-538 Self-Certified Investor Prospectus Exemption (General Order 45-538).

Instruction: In the case of a purchaser that is an individual include the following statement:

I [*insert name of purchaser*] meet one or more of the Qualifying Criteria as set out in the attached **Schedule A** and wish to be considered a Self-Certified Investor under General Order 45-538.

In particular, I certify that I meet the Qualifying Criteria specified in paragraph ____ [*insert relevant paragraph(s) number from Schedule A*] of Schedule A.

Instruction: In the case of a purchaser that is not an individual include the following statement:

I am an authorized signatory of [*insert name of the purchaser*] (**Purchaser**). The Purchaser wishes to be considered a Self-Certified Investor under General Order 45-538. I certify on behalf of the Purchaser that [*select at least one of the following*]:

Initials	
	The majority of owners of interests of the Purchaser, direct, indirect or beneficial, except the voting securities required by law to be owned by directors, are Accredited Investors or meet the Qualifying Criteria as set out in the attached Schedule A.
	The majority of directors of the Purchaser are either Accredited Investors or meet the Qualifying Criteria as set out in the attached Schedule A.
	The investor is a trust, established or settled by an individual that meets the Qualifying Criteria, as set out in the attached Schedule A and the trust was established for the benefit of such individual's spouse, former spouse, or a parent, grandparent, brother, sister, child or grandchild of the individual or of that individual's spouse or former spouse.

Part B – Investment Acknowledgements

Instruction: To qualify as a Self-Certified Investor you must read the following and confirm your understanding of each of the statements relating to the risks of investing.

If you do not understand the risks of investing, do not complete this form. You do not qualify as a Self-Certified Investor.

1. You will not have the rights you would have under a prospectus.

Securities legislation generally requires that an issuer trying to raise money through the sale of securities provide investors with a comprehensive disclosure document called a prospectus in order that investors can make an informed decision about whether or not to buy those securities.

The accuracy of a prospectus is typically required to be certified by the CEO, CFO and two directors of the issuer and any underwriter involved in the sale. Investors who buy under a prospectus have certain special rights under securities legislation, including a two day right to cancel their investment for any reason and a right to sue either to get their money back or for damages if there is a misrepresentation in the prospectus. A right to sue for damages is available not just against the issuer but also against the other parties that sign the prospectus. These rights are special in that an investor is not required to prove they relied on the misrepresentation in making their investment decision.

As an investor under a prospectus exemption you will not have the special rights afforded to an investor under a prospectus. However, in Saskatchewan, you will have a statutory right to sue either to get your money back or for damages if there is a misrepresentation in an offering memorandum provided to you.

	Yes or No?
Have you read and understood the above information?	

2. You will need to seek out the information needed to make an informed investment decision

An issuer trying to raise money through the sale of securities under a prospectus is required to provide you with comprehensive disclosure in the prospectus, providing "full, true and plain disclosure of all material facts relating to the securities being distributed". Some examples of required information includes,

- details of the securities being offered for sale, including the rights they provide you, e.g., voting rights, rights to convert or exchange (including conversion prices or formulas and exercise periods), any limitations on redemption rights, as well as similar details on other outstanding securities;

- details on how the proceeds of the offering will be used including any fees and commissions, information on payments to be made to related parties, and details on any funds to be used to repay outstanding indebtedness;
- the key business objectives and milestones;
- a description of material risks to the business e.g., environmental or other liabilities, significant litigation, competition, lack of management experience, regulatory approvals needed, and cash flow and other financial challenges; and
- information about management and directors e.g., education, experience, compensation, and security holdings.

You will not receive a prospectus. You will need to consider whether you otherwise have access to all the important information necessary to make an informed investment decision and, if not, take steps to obtain that information before investing. You should not invest if you do not have the information needed to make an informed investment decision.

	Yes or No?
Have you read and understood the above information?	

3. You may not have the benefit of audited financial statements.

An issuer selling securities under a prospectus is required to provide investors with audited annual financial statements. The audit provides certain independent assurance with respect to the financial information presented.

As an investor under a prospectus exemption you may not be provided with audited financial statements and if any financial information is provided you may have no independent assurance with respect to it. You will need to determine whether audited financial statements are important to your investment decision and whether you will require that these be provided before investing.

	Yes or No?
Have you read and understood the above information?	

4. You will need to assess the reliability of financial projections and other forward-looking information and the reasonability of any assumptions

Securities legislation does not generally require that issuers provide financial projections and other forward-looking information in a prospectus. However, because of the potential unreliability of this type of information, if it is provided, to establish a defence to liability an issuer would generally need to provide cautionary language that

- indicates that actual results may vary from the forward-looking information;
- states the material factors or assumptions used to develop forward-looking information; and
- identifies material risk factors that could cause actual results to differ materially from the forward-looking information.

Securities legislation imposes liability for misrepresentations but, in respect of financial outlooks and future-oriented financial information provides a defence where the information specified above is provided and the underlying assumptions are reasonable in the circumstances e.g., made only for a period that can be reasonably estimated.

As an investor under a prospectus exemption you will need to assess whether the assumptions and risk factors underlying any financial outlooks and future-oriented financial information are sufficiently clear and whether forward-looking information provided seems reasonable.

	Yes or No?
Have you read and understood the above information?	

5. You may need to conduct your own investigation (or due diligence) to understand the nature of the investment, the business and the associated risks

In a prospectus offering, the special liability that directors and management have creates an incentive for them to ensure that the prospectus contains full, true and plain disclosure. Similarly, the special liability that applies to any underwriters (the dealers that either sell the securities as agent for the company, or buy the securities from the company with a view to reselling them to the public) typically incentivizes them to conduct due diligence, i.e., investigate or review information about the issuer and its principals to try and identify material risks and confirm, "to the best of their knowledge, information and belief" the information in the prospectus.

If there is no underwriter or similar party conducting this due diligence, it will be very important for you to consider these matters yourself to determine whether or not to invest and to understand the risks. If you have little or no experience in conducting due diligence, you are strongly encouraged to seek training in conducting due diligence and/or seek assistance from qualified professionals before investing.

- (a) You will need to investigate to understand the terms of the security you buy and how they are affected by other securities that are outstanding or that may be issued.**

Examples of some of the factors that you should consider include:

- the number and type of securities outstanding and the prices at which they were sold as compared to the price at which the securities are being now offered and the development of the issuer's business since the prior offering(s); and
- the rights associated with other outstanding securities as set out in the issuer's articles of incorporation, any shareholder agreement, escrow, voting trust or similar agreements (e.g., special voting rights, preferential rights to dividends or distributions, preferential rights to the issuer's assets in the case of a liquidation, preferential rights to disclosure, rights to convert, exchange or redeem securities, or rights to participate in future financings) and the implications of these rights to you and your investment.

	Yes or No?
Have you read and understood the above information?	

(b) You will need to investigate to understand the issuer's business.

Examples of some of the factors that you should consider include:

- the issuer's financial position, including by reviewing and assessing any historical financial information and assessing the reasonableness of any financial projections;
- agreements material to the issuer's business (e.g., key employment agreements, key supplier agreements, major sales agreements, insurance contracts);
- the experience, qualifications and character of management and key employees and dependence on certain personnel;
- the issuer's organizational structure, its governance, and internal controls; and
- the compensation, benefits and other payments to executives, employees and any related parties.

	Yes or No?
Have you read and understood the above information?	

(c) You will need to investigate to understand the material risks

Examples of some of the factors that you should consider include:

- the material risks related to the business (e.g., competition, lack of experience, inadequate funds);
- material assets and the rights and risks related to those assets (e.g., title to assets, status of leases, extent of intellectual property protections, existence of required governmental, regulatory or other approvals); and
- indebtedness, environmental liabilities and existing or potential litigation.

	Yes or No?
Have you read and understood the above information?	

6. You may not receive investment advice from a qualified salesperson

If you invest under a prospectus, the issuer selling its securities will have typically retained one or more registered dealers to sell the securities to you. A registered dealer is required to understand the securities that they are selling and will often have conducted certain analysis and review of the business. An individual employed by a registered dealer is typically required to have certain investment education and training and is required to collect information from you to understand your financial and other circumstances, risk profile, investment objectives and time horizon and use that information to assess whether an investment is suitable for you.

You may be investing in circumstances where there is no registered dealer involved. If that is the case, you will need to assess for yourself whether or not the investment is suitable for you having regard to factors such as

- your financial and personal circumstances, investment objectives and time horizon;
- the tax implications of the investment in your particular financial circumstances;
- your other investments, e.g., whether your investments are sufficiently diversified and not overly concentrated in a particular company, or industry or geographical area or heavily concentrated in high risk or illiquid investments;
- the significantly increased risk associated with borrowing to invest; and
- the prospect of some of your investments being a failure and how much risk you are prepared to take and how much money you can afford to lose.

A person who is recommending an investment to you who is not registered under securities legislation may not have any expertise or qualifications to provide investment advice. They may have a conflict of interest that incentivizes them to encourage you to invest. (Seek information on

commissions or other payments being paid.) Even if that person is independent, experienced and knowledgeable, their circumstances, risk tolerance and objectives may be very different than your own. An investment that is good for them may not be good for you.

You can check to see whether a person is registered under securities legislation here:

<http://www.aretheyregistered.ca/>

	Yes or No?
Have you read and understood the above information?	

7. You may not receive ongoing information about your investment

If you were to invest under a prospectus, the issuer you invested in would be or would become a reporting issuer (public company) and would be obligated under securities legislation to continue to provide disclosure about its business including such as

- audited annual financial statements and managements discussion and analysis;
- quarterly interim financial statements and management’s discussion and analysis;
- news releases announcing material changes such as relating to changes in directors and executives, significant acquisitions or dispositions, significant liabilities or litigation, material contracts and loss of significant contracts;
- board composition and governance policies; and
- executive compensation disclosure.

If you invest in an issuer that is not a reporting issuer, the issuer may have no obligation under securities legislation to provide you with any ongoing information. Consequently, you will need to determine what ongoing reporting you want from the issuer and negotiate by contract to obtain it. You will need to consider the possibility that the issuer fails to continue to provide you with that information and what rights you have under that contract and whether they can be effectively enforced.

	Yes or No?
Have you read and understood the above information?	

8. You will be restricted from reselling your securities

If you invest under a prospectus, the securities you acquire are typically able to be immediately resold in the secondary market e.g., on an exchange. Because you are investing under a prospectus exemption, your ability to resell them is limited.

If you acquire securities of a reporting issuer (public company) under a prospectus exemption, you are typically subject to resale restrictions for a period of four months during which you can generally only realistically resell them under a prospectus exemption.

If you acquire securities of an issuer that is not a reporting issuer (i.e., not a public company), under a prospectus exemption, you will typically be subject to resale restrictions that continue **indefinitely**. Unless the issuer becomes a reporting issuer, securities legislation prohibits you from reselling those securities except under another prospectus exemption or under a prospectus.

Further, even if you can comply with securities legislation, there will be no market to help identify parties that might be interested in buying the securities from you. It may not be possible to find a willing buyer. You may not be able to sell your investment quickly – or at all.

	Yes or No?
Have you read and understood the above information?	

9. You may not be able to realize a return on your investment. You could lose all the money invested.

Statistics indicate that many early stage businesses fail. You could lose your investment. However, even if a business you invest in is successful, you will need to consider how you will realize any return from your investment. If you buy securities, such as common shares, of a non-reporting issuer you will need to identify whether there is a realistic “exit strategy” for you, an opportunity to sell your securities and potentially obtain a return and whether the timing of that potential opportunity aligns with your investment time horizon.

If the issuer is not a reporting issuer, there is no assurance that it will ever become one and even if it does, that could take many years. There is also no assurance that the issuer will be acquired by another entity. You could be forced to hold the securities indefinitely.

If you are buying debt securities or preferred shares, consider whether the issuer has a realistic prospect of being able to pay you the interest, dividends or yield that is offered and what rights you will have if they default on such payments or do not declare dividends. If you buy redeemable securities, consider whether the issuer has a realistic prospect of being able to redeem the securities. Consider the limitations on or conditions to your ability to redeem.

	Yes or No?
Have you read and understood the above information?	

10. You may have difficulty valuing your investment.

If you acquire securities, such as common shares, under a prospectus, the issuer will be a reporting issuer (public company) and the securities will typically be available for resale on a secondary market. In the case of a mutual fund, the securities will typically be redeemable on demand based on the net asset value, which is required to be calculated and disclosed on an ongoing basis. This publicly available information helps to establish a value for the business. If you acquire securities under a prospectus exemption, and the issuer is not a reporting issuer, you will likely not have this type of information. It may be difficult to establish a value for the business or the securities.

	Yes or No?
Have you read and understood the above information?	

11. Selling securities under a prospectus exemption doesn't mean misleading statements or unfair practices are allowed. Be alert for fraud and scams.

Securities legislation prohibits parties selling securities from making statements that they know or reasonably ought to know are, in any material respect, and at the time and in light of the circumstances in which they are made, misleading or untrue or do not state a fact that is required to be stated or that is necessary to make a statement made not misleading, where one would reasonably expect that statement to have a significant effect on the market price or value of a security.

Securities legislation also prohibits unfair practices in connection with the sale of securities, such as unreasonable pressure to buy, sell or hold or imposing harsh, oppressive or excessively one-sided terms.

Although you are seeking to invest under a prospectus exemption, these prohibitions against misleading statements and unfair practices still apply to the parties selling you securities. They are not exempted from these fundamental provisions.

Scammers may disappear with your money. It is important to protect your money by being alert to the signs of investment fraud and scams **before** you invest. See <https://www.securities-administrators.ca>

	Yes or No?
Have you read and understood the above information?	

12. Except in the case of a Listed Issuer Investment, there are limits on the value of securities that can be sold to you as a Self-Certified Investor.

Except in the case of a Listed Issuer Investment (described below) an issuer in which you invest is not permitted to accept a subscription from you if the aggregate acquisition cost of the securities of the issuer acquired by you as a Self-Certified Investor in the calendar year exceeds \$10,000. Further, except in the case of a Listed Issuer Investment (described below) the issuer is required to obtain a representation from you in the subscription agreement that the aggregate acquisition cost of the securities of all issuers acquired by you in the calendar year as a Self-Certified Investor, other than a Listed Issuer Investment, does not exceed \$30,000.

The term Listed Issuer Investment is defined in General Order 45-538. Generally, it refers to an investment in an issuer that has a class of equity security currently listed and posted for trading on the TSX Venture Exchange, the Toronto Stock Exchange, the Canadian Securities Exchange or Neo Exchange Inc. and the issuer is not in default of the periodic and timely disclosure requirements applicable to it as a reporting issuer, provided that you receive advice regarding the suitability of the investment from a person or company, registered under securities legislation who is qualified in the circumstances to provide such advice.

	Yes or No?
Have you read and understood the above information?	

I understand that there is a risk that [I / the Purchaser] could lose the entire investment and [I / the Purchaser] should not invest more than [I / it] can afford to lose.

Dated: *[insert date]*

Self-Certified Investor's name

Signature

Name and title of authorized signatory of a non-individual

Annex 2 to General Order 45-538 *Self Certified Investor Prospectus Exemption*

Schedule A *Qualifying Criteria*

1. Holds a CFA or Chartered Financial Analyst Charter from the CFA Institute or any predecessor or successor organization.
2. Holds the CIM or Chartered Investment Manager designation from the Canadian Securities Institute, a Division of Moody's Analytics Global Education (Canada) Inc. or any predecessor or successor organization.
3. Holds the CBV or Chartered Business Valuator designation from the CBV Institute or any predecessor or successor organization.
4. Holds a CPA or Chartered Public Accountant designation from CPA Canada.
5. Holds a CIWM or Certified International Wealth Manager Designation from the Canadian Securities Institute, a Division of Moody's Analytics Global Education (Canada) Inc. or any predecessor or successor organization.
6. Was admitted to practice law in a jurisdiction of Canada and at least 1/3 of the individual's practice has involved providing advice in respect of financings involving private or public distributions of securities or mergers and acquisition transactions.
7. Holds a Masters of Business Administration degree, focused on finance, from a university in Canada or from an accredited university in a foreign jurisdiction.
8. Holds an undergraduate degree in Finance or holds an undergraduate degree in Business or Commerce with a major or specialization in finance or investment, from a university in Canada or from an accredited university in a foreign jurisdiction.
9. Meets at least one of the examination criteria specified in (a) below, provided that the purchaser also meets at least one of the income requirements set out in (b) below:
 - (a) has passed the examination or examinations identified in (i) or (ii), below
 - (i) the Canadian Securities Course Exam administered by the Canadian Securities Institute, a Division of Moody's Analytics Global Education (Canada) Inc., or any predecessor or successor organization, or
 - (ii) both the Series 7 Exam administered by Financial Industry Regulatory Authority in the United States of America or any predecessor or successor organization and the New Entrants Exam administered by the Canadian Securities Institute, a Division of Moody's Analytics Global Education (Canada) Inc., or any predecessor or successor organization, and

- (b) the purchaser meets at least one of the following:
 - (i) had net income before taxes exceeding \$75 000 in each of the 2 most recent calendar years and reasonably expects to exceed that income level in the current calendar year, or
 - (ii) had net income before taxes with a spouse, exceeding \$125 000 in each of the 2 most recent calendar years and reasonably expects to exceed that income level in the current calendar year.