

**IN THE MATTER OF
THE SECURITIES ACT, 1988**

AND

**IN THE MATTER OF
General Order 45-539
*Small Business Financing***

**AMENDMENT AND RESTATEMENT OF EXEMPTION ORDER
(Subsection 158(4) of *The Securities Act, 1988*)**

WHEREAS the Financial and Consumer Affairs Authority of Saskatchewan (FCAA) issued an order dated September 1, 2021, General Order 45-539 *Small Business Financing* pursuant to section 160 of *The Securities Act, 1988* to help facilitate the capital raising efforts of small businesses (**Previous Order**);

AND WHEREAS the Previous Order was issued on a three-year basis and is set to expire on September 1, 2024;

AND WHEREAS the FCAA has determined that it is not prejudicial to the public interest to issue an order that amends and restates the Previous Order to amend the Previous Order to permit co-operatives that comply with the terms of GO 45-539 to raise capital by issuing securities without a full prospectus.

IT IS ORDERED pursuant to subsection 158(4) of the Act that the Previous Order be amended and restated as follows:

General Order 45-539
Small Business Financing

In the Matter of
The Securities Act, 1988

Order

WHEREAS Securities Division staff (**Staff**) of the Financial and Consumer Affairs Authority of Saskatchewan (the **FCAA**) has applied to the FCAA for an Order pursuant to section 160 of *The Securities Act, 1988* (the **Act**) that the prospectus requirement in section 58 of the Act does not apply to certain distributions of securities by an issuer as outlined below;

AND WHEREAS the FCAA has assigned to the Executive Director of the Securities Division, FCAA (the **Executive Director**) the power to make exemption orders under the provision of the Act including orders of general application;

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

AND WHEREAS in this Order:

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

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

"**Collective Investment Vehicle**" means an issuer whose primary purpose is to invest money provided by its security holders in a portfolio of securities;

"Corresponding Exemption" the Alberta Securities Commission Order 45-539 Small Business Financing and any order or ruling of another securities regulatory authority or securities regulator in Canada that provides an exemption from the prospectus requirement that is substantially similar to this Order;

"Eligible Security" means any of the following securities of an issuer:

- (a) a common share;
- (b) a preference share;
- (c) a debt security other than a "securitized product" as defined in section 1.1 [Definitions] of NI 45-106 or a "structured finance product" as defined in section 1.1 [Definitions] of NI 25-101;
- (d) a unit of a limited partnership;
- (e) a security convertible or exchangeable into a security referred to in (a) to (d);
- (f) a share in the capital of a co-operative organized or continued pursuant to *The Co-operatives Act, 1996* (Saskatchewan), or *The New Generation Co-operatives Act, 1999* (Saskatchewan).

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

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

"Founder" means a "founder" as defined in section 1.1 [Definitions] of NI 45-106;

"Issuer Group" means an issuer together with each of the following:

- (a) each person or company that is an Affiliate of the issuer;
- (b) each other issuer that is either of the following:

- (i) that is engaged in a common enterprise with the issuer or with an Affiliate of the issuer;
- (ii) that has a Founder that is a Founder of the issuer;

"Minimum Income Investor" or "MII" means

- (a) a person or company whose net income before taxes meets at least one of the following:
 - (i) exceeded \$75,000 in each of the 2 most recent calendar years and who reasonably expects to exceed that income level in the current calendar year; or
 - (ii) with a spouse exceeded \$125,000 in each of the 2 most recent calendar years and who reasonably expects to exceed that income level in the current calendar year;
- (b) a person or company of which a majority of the voting securities are beneficially owned by MIIs or Accredited Investors or of which a majority of the directors are MIIs or Accredited Investors;
- (c) a general partnership of which all of the partners are MIIs or Accredited Investors;
- (d) a limited partnership of which a majority of the directors of the general partner are MIIs or Accredited Investors;
- (e) a trust or estate in which all of the beneficiaries or a majority of the trustees or executors are MIIs or Accredited Investors;

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

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

"Registered Dealer" means a dealer registered as an exempt market dealer or an investment dealer under Saskatchewan securities laws;

"Risk Acknowledgement" means a risk acknowledgement that complies with Form 45-539F2 Small Business Risk Acknowledgement;

"Self-Certified Investor" means a person or company described in the FCAA General Order 45-538 Self-Certified Investor Prospectus Exemption or the Alberta Securities Commission Order 45-538 Self-Certified Investor Prospectus Exemption;

"Undertaking" means an undertaking that complies with Form 45-539F3 Small Business Undertaking;

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

- (a) A new additional prospectus exemption has the potential to further facilitate the capital raising efforts of businesses in Saskatchewan while still providing appropriate investor protection;
- (b) Staff understands that the securities regulatory authority or regulator in Alberta intends to issue a rule, instrument or blanket order providing equivalent exemptions from the securities law of its respective jurisdiction;

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

IT IS ORDERED under section 160 of the Act:

- 1. that the prospectus requirement in section 58 of the Act does not apply to a distribution of securities by an issuer provided all of the following apply:
 - (a) the head office of the issuer is located in a Participating Jurisdiction;
 - (b) a majority of the directors and officers of the issuer, collectively, as a group, are located in Canada;
 - (c) the issuer is not a reporting issuer or an investment fund;
 - (d) each security distributed is an Eligible Security of the issuer's own issue;

- (e) unless the issuer has provided the disclosure specified by Item 4(3) of the Offering Document or the issuer is a Collective Investment Vehicle and the issuer has provided the supplementary disclosure specified in Schedule A to the Offering Document, the issuer
 - (i) has operations other than to identify and evaluate assets or a business with a view to completing an investment in, merger with, amalgamation with or acquisition of a business, or a purchase of the securities of one or more other issuers, and
 - (ii) does not intend to use the proceeds of the distribution to invest in, merge with, amalgamate with or acquire a business, or to purchase securities of one or more other issuers;
- (f) the aggregate proceeds raised under this Order or a Corresponding Exemption, by the issuer and members of its Issuer Group, from persons or companies who are not Accredited Investors, Family & Friend Investors, Foreign Investors, or Self-Certified Investors does not exceed \$5,000,000;
- (g) at or before the time a purchaser signs the subscription agreement, the issuer
 - (i) delivers to the purchaser an Offering Document that complies, as applicable, with paragraphs 1(k), 1 (m) and 1 (n) of this Order, and
 - (ii) obtains from the purchaser a Risk Acknowledgement;
- (h) the issuer does not know and has no reasonable basis to believe that the statements made by the purchaser in the Risk Acknowledgement are false;
- (i) if the issuer has not included in the Offering Document the additional financial disclosure described in Schedule B of the Offering Document, the aggregate acquisition cost to the purchaser of all securities of the Issuer Group acquired under this Order or a Corresponding Exemption in the preceding 12 months, other than a purchaser that is an Accredited Investor, Family & Friends Investor, Foreign Investor, or Self-Certified Investor does not exceed

(i) \$2,500, or

(ii) \$10,000 if either the purchaser

(A) is a MII, or

(B) has obtained advice from a Registered Dealer that the investment is suitable for the purchaser;

(j) if the issuer has included in the Offering Document the additional financial disclosure described in Schedule B of the Offering Document, the aggregate acquisition cost to the purchaser of all securities of the Issuer Group acquired under this Order or a Corresponding Exemption in the preceding 12 months, other than a purchaser that is an Accredited Investor, Family & Friends Investor, Foreign Investor, or Self-Certified Investor does not exceed

(i) \$5,000, or

(ii) \$20,000 if either the purchaser

(A) is a MII, or

(B) has obtained advice from a Registered Dealer that the investment is suitable for the purchaser;

Offering Document

(k) the Offering Document provided to a purchaser contains a certificate signed by a person authorized to sign on behalf of the issuer stating that the Offering Document does not contain a misrepresentation;

Other offering materials and advertisements

(l) no advertising or material made available to a purchaser that purports to describe the business and affairs of the issuer and that has been prepared primarily for delivery to and review by a prospective purchaser so as to assist the prospective purchaser to make an investment decision contains a misrepresentation;

Financial statements

- (m) if the aggregate funds raised in the distribution under this Order, together with the aggregate funds raised by members of the Issuer Group under this Order or a Corresponding Exemption in the preceding 12 months, exceeds \$1,500,000 not including funds from persons or companies who are Accredited Investors, Family & Friend Investors, Foreign Investors, or Self-Certified Investors the issuer
 - (i) includes in the Offering Document, the financial statements specified in Schedule B of the Offering Document, and
 - (ii) undertakes as described in the Undertaking to deliver annually its annual financial statements and a notice of proceeds;

Minimum offering amount

- (n) the Offering Document specifies a minimum offering amount that must be raised, which amount may include in the calculation funds raised under other exemptions from the prospectus requirement;
- (o) the subscription agreement provides that if a distribution under this Order is withdrawn, or if the issuer does not raise the specified minimum offering amount by the 120th day after the date that an offering document is first delivered to a purchaser, the issuer will, as soon as reasonably possible,
 - (i) return all funds to each purchaser, and
 - (ii) notify each purchaser that the funds have been returned;

Filings

- (p) on or before the 30th day after the closing of the distribution, the issuer files each of the following:
 - (i) a completed Offering Document as required by paragraph 1 (g)(i);
 - (ii) if applicable, the Undertaking required by paragraph I (m)(ii), and

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

Resale restrictions

- (q) the first trade of a security acquired under this Order is subject to section 2.5 [Restricted Period] of NI 45-102;
2. that an Offering Document used for a distribution under this Order that complies with the requirements of this Order, including Schedule B of the Offering Document, is exempt from paragraphs 3.2(1)(a) and 3.2(1)(b) and subparagraph 3.11(l)(f)(ii) of NI 52-107; and
 3. This Order comes into effect on September 1, 2021, and expires on September 1, 2024.

Dated September 1, 2021
Amended May 1, 2024



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