

Note: [31 Oct 2016] – The following is a consolidation of ASC Rule 45-517. It incorporates the amendments to this document that came into effect on October 31, 2016. This consolidation is provided for your convenience and should not be relied on as authoritative.

**ALBERTA SECURITIES COMMISSION RULE 45-517
PROSPECTUS EXEMPTION FOR START-UP BUSINESSES**

Definitions

1. Terms defined in National Instrument 14-101 *Definitions* have the same meaning in this Rule.

2. In this Rule

“corresponding exemption” means a prospectus exemption that is substantially similar to this Rule;

“corresponding jurisdiction” means a jurisdiction of Canada that has adopted a corresponding exemption;

“eligible issuer” means an issuer that is not an investment fund or reporting issuer in a jurisdiction of Canada and is not subject to reporting obligations similar to those of a reporting issuer in a foreign jurisdiction;

“deliver” when used in relation to a purchaser includes the document being made reasonably available through the facilities of a funding portal provided that the funding portal requires the purchaser to acknowledge having read the document;

“eligible security” means any of the following:

- (a) a common share;
- (b) a non-convertible preference share;
- (c) a security convertible into a security referred to in (a) or (b);
- (d) a non-convertible debt security linked to a fixed or floating interest rate;
- (e) a unit of a limited partnership;
- (f) an investment share that is a non-convertible preference share issued by a cooperative organized under the *Cooperatives Act* (Alberta);

“founder” has the meaning ascribed to it in National Instrument 45-106 *Prospectus Exemptions*;

“issuer group” means an issuer together with each of the following:

- (a) each 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 offering amount” means the minimum amount required to be raised by an issuer conducting a start-up business distribution which amount can include funds raised under either the start-up business distribution or a concurrent distribution under one or more other exemptions from the prospectus requirement;

“offering document” means a completed Form 45-517F1 *Start-up Business Offering Document*;

“principal” means a promoter, director, officer or control person;

“registered dealer” means a dealer registered as an exempt market dealer or an investment dealer under National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;

“restricted dealer funding portal” means a person or company that

- (a) is registered in the category of restricted dealer under National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*,
- (b) is authorized under the terms and conditions of its restricted dealer registration to distribute securities under this Rule,
- (c) acts or proposes to act as an intermediary in a distribution of eligible securities through an online platform under this Rule,
- (d) is not registered in any other registration category,
- (e) is not an affiliate of another registered dealer, registered adviser, or registered investment fund manager, and
- (f) in connection with a distribution under this Rule, complies with section 12.1;

“risk acknowledgment” means a completed Form 45-517F2 *Start-up Business Risk Acknowledgment*;

“start-up business distribution” means a distribution under this Rule or a corresponding exemption.

Prospectus exemption

- 3. (1)** The prospectus requirement does not apply to a distribution by an issuer of a security of its own issue provided all of the following apply:
- (a) each security distributed by the issuer is an eligible security;
 - (b) the issuer is an eligible issuer;
 - (c) the head office of the issuer is located in Alberta or a corresponding jurisdiction;
 - (d) the aggregate funds raised in the start-up business distribution together with all funds raised by members of the issuer group in prior start-up business distributions does not exceed \$1 000 000;
 - (e) at the same time or before the purchaser signs the agreement to purchase the security, the issuer or, if the issuer has retained a dealer in respect of the distribution, the dealer
 - (i) delivers to the purchaser an offering document that complies with sections 4, 5, and 8, and
 - (ii) obtains a risk acknowledgment from the purchaser which evidences that the purchaser has read and understood the contents of that form;
 - (f) the issuer provides to the purchaser a contractual right to withdraw the purchaser’s offer to purchase the security which right can be exercised by the purchaser delivering a notice to the issuer or, if the issuer has retained a dealer in respect of the distribution, the dealer within 48 hours of the later of
 - (i) the purchaser’s subscription, and
 - (ii) an amended offering document being delivered to the purchaser;
 - (g) the acquisition cost of the securities acquired by the purchaser does not exceed \$1 500;
 - (h) the aggregate funds raised in any start-up business distribution by the issuer group does not exceed \$250 000;
 - (i) not more than one other start-up business distribution in aggregate, has been conducted by any members of the issuer group in the current calendar year;

- (j) no commission, fee or other amounts are paid to the issuer group or any of their principals, employees or agents with respect to the distribution;
 - (k) any person or company acting or proposing to act as an intermediary in connection with the start-up business distribution of securities through an online platform to an Alberta purchaser is a registered dealer or a restricted dealer funding portal.
- (2) Despite paragraph 3(1)(g), if a registered dealer provides the purchaser with positive suitability advice in respect of the acquisition, the maximum acquisition cost of the securities acquired by a purchaser in a start-up business distribution is \$5 000.

Offering document

- 4. The offering document must contain a certificate signed by a person authorized to sign on behalf of the issuer stating that the offering document does not contain a statement that, in a material respect and at the time and in light of the circumstances in which it is made, is misleading or untrue and does not fail to state a fact that is required to be stated or that is necessary to make a statement not misleading.
- 5. If prior to the closing of the distribution the certificate referred to in section 4 ceases to be true, the issuer must amend the offering document and must not accept a purchaser's subscription unless the purchaser has been provided with the amendment to the offering document.

Other offering materials

- 6. The issuer must not make available to a purchaser under section 3 any material that purports to describe the business and affairs of the issuer 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 if the material is not balanced and fair or contains a statement that, in a material respect and at the time and in light of the circumstances in which it is made is misleading or untrue and it does not state a fact that is required to be stated or that is necessary to make a statement not misleading.
- 7. The issuer must not make available to a purchaser its financial statements unless the financial statements are prepared in accordance with one of the following:
 - (a) Canadian GAAP applicable to publicly accountable enterprises;
 - (b) Part II of the Handbook applied to an issuer as if it were a private enterprise and the financial statements consolidate any subsidiaries and account for any significantly influenced investees and joint ventures using the equity method.

Minimum offering amount

8. An issuer conducting a distribution under section 3, must specify in the offering document a minimum offering amount.
9. If a distribution under section 3 is withdrawn or if the issuer does not raise the minimum offering amount by the 90th day after the earlier of the date that the offering document is (i) first delivered to a purchaser and (ii) made publicly available on a funding portal, the issuer must
 - (a) return or cause to be returned, all funds to each purchaser, and
 - (b) notify each purchaser or cause each purchaser to be notified that the funds have been returned.

Purchase confirmation

10. Within 30 days after the closing of the distribution, the issuer must deliver or cause to be delivered to each purchaser a confirmation setting out each of the following:
 - (a) the date of the subscription and the closing of the distribution;
 - (b) the quantity and description of the security purchased;
 - (c) the price per security paid by the purchaser;
 - (d) the total commission, fee and any other amounts paid by the issuer to a dealer in respect of the start-up business distribution.

Dealers

11. A dealer that participates in a distribution under section 3 must promptly deliver to each purchaser the offering document.
12. A dealer must not participate in a distribution under section 3 if the issuer is a connected issuer or a related issuer, as defined in National Instrument 33-105 *Underwriting Conflicts*.
- 12.1 (1) A restricted dealer funding portal that participates in a distribution under section 3 must comply with subsections 21(b), 21(c) and 21(d) and Division 3: *Additional requirements, restricted dealer funding portal* of Multilateral Instrument 45-108 *Crowdfunding* as if it were conducting a distribution under that instrument.
- (2) In applying subsection (1), references to “crowdfunding prospectus exemption” in Multilateral Instrument 45-108 *Crowdfunding* mean the exemption from the prospectus requirement in section 3 of this Rule.

Filings

13. On or before the 30th day after the closing of the start-up business distribution, the issuer must file each of the following:
- (a) a completed Form 45-517F1 *Start-up Business Offering Document*;
 - (b) a completed Form 45-106F1 *Report of Exempt Distribution*.

Multi-jurisdictional distributions

14. Despite subsection 3(e) and section 13, an issuer that is conducting a start-up business distribution under this Rule, and is permitted to concurrently conduct the start-up business distribution under a corresponding exemption in a corresponding jurisdiction may do any of the following:
- (a) prepare its offering document in accordance with the form of offering document prescribed under the corresponding exemption provided that in respect of each purchaser in Alberta
 - (i) the disclosure in the offering document together with any other material, is fair and balanced and the description of the business in the offering document provides sufficient information for an investor to make an informed investment decision,
 - (ii) if the offering document contains forward-looking information, as defined in Appendix A to Form 45-517F1, the issuer complies with instruction 8 of that Form,
 - (iii) if financial statements are provided, the financial statements comply with sections 6 and 7 of this Rule, and
 - (iv) the offering document contains a certificate that states

This offering document does not contain a statement that, in a material respect and at the time and in light of the circumstances in which it is made, is misleading or untrue and it does not fail to state a fact that is required to be stated or that is necessary to make a statement not misleading.;
 - (b) in respect of purchasers outside of Alberta, obtain a risk acknowledgment form in accordance with the form of risk acknowledgment prescribed under the corresponding exemption;
 - (c) complete its report of exempt distribution in accordance with the form of report of exempt distribution prescribed under the corresponding exemption.

Note: At this time, it is only possible to conduct a multi-jurisdictional distribution concurrently under this Rule and the corresponding exemptions in British Columbia (BC Instrument 45-535 Start-up Crowdfunding Registration and Prospectus Exemptions) and Saskatchewan (General Order 45-929 Start-up Crowdfunding Registration and Prospectus Exemptions).

Books and records

15. An issuer that distributes securities under section 3 must maintain at its head office, books and records in respect of the distribution of securities under section 3 that demonstrate that it has complied with this Rule.
16. A dealer that participates in a start-up business distribution must maintain at its head office, books and records to accurately record the client transactions and to demonstrate compliance with this Rule.
17. The books and records required under sections 15 and 16 must be maintained for a period of eight years from the date the record is created.

Resale restrictions

18. The first trade of a security acquired under section 3 is subject to section 2.5 of National Instrument 45-102 *Resale of Securities*.

Designated offering memorandum

19. An offering document used for a distribution under section 3, including all amendments to that document, is designated to be an offering memorandum under Alberta securities laws.

Effective date

20. This Rule comes into force on July 19, 2016.

[as amended on October 31, 2016]