
CSA Multilateral Notice and Request for Comment

Proposed Order 45-539 *Small
Business Financing*



Brief overview of the proposal

ASC and the Financial and Consumer Affairs Authority of Saskatchewan (FCAA) have published [Proposed Order 45-539 Small Business Financing](#) for comment which would serve (if implemented) to:

- Streamline the financing process for start-up and small businesses in AB and SK
- Allows businesses to raise up to **\$5,000,000** from investors in AB and SK using a simple offering document with two tiers of offering and investment limits depending on whether specified financial statements are provided to investors
- Allows businesses to raise money from the general public (i.e., people and companies who would not qualify to invest under another specified prospectus exemption, such as the accredited investor exemption)

While still providing appropriate investor protection

Purpose of the proposed exemption

- Respond to the challenges faced by start-ups and other small businesses when trying to raise money
 - ❖ Preparing audited financial statements in accordance with GAAP for publicly accountable enterprises
 - ❖ Cannot yet attract the interest of VC or public capital markets
 - ❖ In AB, respond to and codify discretionary exemptive relief that has been sought by AB coops and corporations in small towns and rural communities to help finance local projects
- Provide a tool for small business to graduate to higher financing amounts as they grow their business and have the means to provide additional financial information to investors



Detailed summary of proposed exemption

Offering document

- Issuer is required to provide investors with a simple, streamlined offering document containing prescribed information as set out in **Form 45-539F1 Small Business Offering Document**
 - fillable form available in Q&A format
- Based off the offering memorandum format but streamlined certain disclosures and uses more plain language
- Not required to be provided in advance to the ASC or the FCAA but filed electronically through SEDAR within 10 days following the distribution, together with a **Form 45-106F1 Report of Exempt Distribution** reporting on the distribution



Detailed summary of proposed exemption

Financial statement requirements

TIER 1 - Issuer group raises no more than **\$1,500,000** in a 12-month period = no financial statements required

TIER 2 - Issuer group raises in excess of **\$1,500,000** in a 12-month period = issuer required to provide investors with an offering document that contains the **specified financial statements**

Specified financial statements

- Prepared in accordance with 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)
- Annual financial statements not required to be audited if they have been subject to a review engagement by a certified public accountant*

Issuer group (any of)

- The issuer
- An affiliate of the issuer
- An issuer that is engaged in a common enterprise with the issuer or with an affiliate of the issuer
- An issuer whose business is founded or organized by a person or company who founded or organized the issuer

*Note that in the absence of a voting trust or other agreement, issuers that rely on the proposed exemption may be subject to corporate law or other requirements to prepare and send audited annual financial statements to their shareholders on an annual basis

Detailed summary of proposed exemption

Offering and investment limits

TIER 1 If the specified financial statements are <u>not provided</u>	TIER 2 If the specified financial statements <u>are provided</u>
<ul style="list-style-type: none">➤ Maximum that an issuer group could raise in a 12-month period = \$1,500,000, subject to a lifetime limit of \$5,000,000 (from investors who would not qualify to invest under another specified exemption)➤ Maximum that an investor (who would not qualify to invest under another specified exemption) could invest in the issuer group in a 12-month period is:<ul style="list-style-type: none">• \$2,500, or• if the investor is a minimum income investor or "MII," \$10,000	<ul style="list-style-type: none">➤ Issuer group could raise up to the aggregate lifetime maximum of \$5,000,000 (from investors who would not qualify to invest under another specified exemption)➤ Maximum that an investor (who would not qualify to invest under another specified exemption) could invest in the issuer group in a 12-month period is:<ul style="list-style-type: none">• \$5,000, or• if the investor is a minimum income investor or "MII," \$20,000

Detailed summary of proposed exemption

Specified exemption and minimum income investor

Specified exemption (any of the)

- Accredited investor exemption
- Close family, friend and business associate exemption
- Foreign investor exemption
- Self-certified investor exemption



Minimum income investor or "**MII**"

- Generally, those having had for the last two years annual net income in excess of **\$75,000** or **\$125,000 with their spouse**
- In the case of non-individuals, generally persons or companies that are controlled by a MII

No asset test as with the offering memorandum exemption

Detailed summary of proposed exemption

Ongoing reporting



TIER 1 - No ongoing financial statement requirements*

TIER 2 - Issuer required to deliver an undertaking as specified by **Form 45-539F3 Small Business Undertaking** to deliver annually their annual financial statements and a **Form 45-106F16 Notice of Use of Proceeds** and make them reasonably available to each holder of a security distributed under the proposed exemption

- Annual financial statement can be **specified financial statements***

*Note that in the absence of a voting trust or other agreement, issuers that rely on the proposed exemption may be subject to corporate law or other requirements to prepare and send audited annual financial statements to their shareholders on an annual basis.

Detailed summary of proposed exemption

Investor protections

Several conditions designed to off-set risks to investors:

- Each investor must complete an enhanced risk acknowledgement form in the format of **Form 45-539F2 Small Business Risk Acknowledgement**
- Aggregate lifetime limit of \$5,000,000 on the amount that an issuer group can raise
- Capping the amount that can be invested and potentially lost with differing limits depending on an investor's income level and whether or not **specified financial statements** are provided



Detailed summary of proposed exemption

Other key elements



Other key elements of the proposed exemption include the following:

- Issuer's head office must be in AB or SK
- Issuer must not be a reporting issuer or an investment fund
- Does not permit continuous distributions (i.e., offerings must be completed within 120 days and if the minimum offering is not raised, funds must be returned to investors)
- Securities distributed are restricted to one or more of the following securities of the issuer:
 - common shares
 - preference shares
 - debt securities, other than securitized products or structured finance products;
 - units of a limited partnership
 - membership shares or investment shares issued by a cooperative organized under the Cooperatives Act (Alberta)
 - securities convertible or exchangeable into any of the above, such as warrants or convertible debentures
- Securities issued under the proposed exemption would be subject to the standard resale restrictions, which would continue indefinitely until the issuer becomes a reporting issuer

Request for comments

We welcome your comments on all aspects of the proposed exemption

The comment period for the proposed Order 45-539 *Small Business Financing* will remain open until the end of day May 7, 2021.

➤ Please send your comments to new.economy@asc.ca

Thank you for joining us!



Questions?

Thank You

