Self-Certified Investor Prospectus Exemption

AB & SK Blanket Order 45-538

✓ Adopted: March 31, 2021
✓ Varied: July 28, 2022
✓ Expires: April 1, 2024
Background

➤ Government of Alberta has promoted a diversified economy through technology and innovation
  • Growing and innovative companies go through many stages of capital raising, including issuing securities

➤ ASC Consultation Paper 11-701 *Energizing Alberta’s Capital Market* was published in June 2019
  • Market feedback led to the ASC initiating the self-certified investor prospectus exemption
Self-certified investor exemption

- Small and growing businesses often raise capital through relationships (friends and family) and from “angel” investors (accredited investors).
- Individual accredited investors qualify based on an income or net asset test ($200K/$1M). They are deemed “wealthy enough to afford the loss.”
- In 2021, accredited investors provided $11.1 billion of capital to Alberta-based businesses through prospectus-exempt offerings.
- Accredited investors have access to private market investment opportunities that other individuals do not. Allowing self-certified investors to participate “democratizes” investing.
Some investors do not meet the accredited investor criteria but have certain financial acumen because of their relevant knowledge/education.

The self-certified investor exemption was adopted in Alberta and Saskatchewan on a “test” basis, expiring April 2024.

Recently, Ontario also adopted a self-certified investor exemption on a “test” basis, also expiring April 2024. It is only available for use by Ontario companies raising capital from Ontario-based investors.

AB, SK and ON may decide to extend provincial exemptions beyond April 2024; jurisdictions may harmonize through an amendment to National Instrument 45-106 Prospectus Exemptions; or the exemption may no longer be offered.
Self-certified investor exemption (cont’d)

- The exemption allows self-certified investors to be treated in a “generally similar manner” to accredited investors and invest alongside them.

- In Alberta, a self-certified investor can invest directly into a private business (via a capital raise by the business also being offered to accredited investors) or by investing in a “special purpose vehicle (SPV)” that then invests in private businesses.

- There are no investment limits applied when a self-certified individual invests into a company that is listed on a Canadian stock exchange, so long as the investor receives “suitability” advice.

- There are no investment limits applied when certain SPVs invest into a private company.
Who can be a self-certified investor?

- **Individual investor**
  - A person who meets the **qualifying criteria**, as defined in the exemption

- **Non-individual investor**
  - For example: a trust, corporation, cooperative or a SPV where:
    - **Majority** of owners or directors are accredited investors or meet self-certified investor qualifying criteria
    - If a trust, established by an individual that meets the qualifying criteria for the benefit of specified family members
“Certification” by the investor

- Investor must complete a Statutory Declaration (valid for 36 months)
  - Solemnly declare, before a notary or commissioner for oaths, residency in AB or SK, the truth of the attached acknowledgement

- Acknowledgement
  - Confirmation of financial or investment knowledge *qualifying criteria*
  - Confirmation of having read and understood statement relating to the risk of investing
  - Aware that company must obtain a representation in the subscription agreement that investor’s aggregate annual investment is within the investment limits*
    *unless a “Listed Issuer Investment”

- Issuer must not know or reasonably suspect that the Statutory Declaration is false
Individual self-certified investors must meet specified qualifying criteria

- Chartered Financial Analyst (CFA)
- Chartered Investment Manager (CIM)
- Chartered Business Valuator (CBV)
- Chartered Public Accountant (CPA)
- Certified International Wealth Manager (CIWM)
- Admitted to practice law and 1/3 practice involves securities distribution or M&A

- Master of Business Administration (MBA), focused on finance
- Business/Commerce degree, finance or investment specialization
- Passed Canadian Securities Course exam or passed both Series & New Entrants exam AND minimum net income $75K or $125K with spouse
Capital raising from self-certified investors

- **Concurrent distribution to accredited Investors**
  - When a company is selling securities to accredited investors, they may concurrently sell securities to self-certified investors
  - A least one accredited investor must be involved, a company cannot sell securities to only self-certified investors using this prospectus exemption

- **No specified offering document**
  - Like the accredited investor exemption there is no specified offering document; however, a self-certified investor must receive substantially the same info as would be provided to an accredited investor

- **The self-certified investor must purchase as principal**
Investment limits

- With limited exceptions, there are investment limits applicable to self-certified investors
  - A self-certified investor cannot (using this exemption) invest more than $10K in any one company and $30K in aggregate annually
  - Company accepting the investment from a self-certified investor must obtain a representation in the subscription agreement regarding the $30K annual limit
  - Listed issuer investments are excluded from this calculation

- Exceptions
  - Limits do not apply in the case of a “listed issuer investment” or a “qualifying SPV”
What is a listed issuer investment?

**Means a distribution where:**

1. The issuer has equity listed on a Canadian exchange
2. The issuer is not in default of reporting issuer disclosure requirements
3. The purchaser has received suitability advice from a person or company, registered under securities legislation, that is qualified in the circumstances to provide such advice
For a listed issuer investment, there are no investment limits placed on the investor.

Could expand the pool of potential investors in a private placement context.

Prior listed issuer investments are not included in calculating the financial limits when an investor subsequently invests into other non-listed issuers.

If a self-certified investor invested $40K into a listed issuer investment and then wanted to invest $10K into a non-reporting/non-listed issuer, that is acceptable under the exemption.

This $40K does not count towards the $10/30K financial limits.
An SPV may be used to receive investments from accredited and self-certified investors to then collectively further invest in a business.

Investment limits do not apply to a distribution of securities to a “qualifying” SPV.

- All of the owners of interests – direct, indirect or beneficial – are accredited investors and self-certified investors.
  - At least one accredited investor must be an owner.

The SPV distributes its securities to self-certified investors in compliance with the exemption.

- The individual/non-individual investors who invest into the SPV fall under the investment limit restrictions and other requirements.

Self-certified investors have not contributed, in aggregate, more than 25% of the total funds invested in the SPV.

- 75%+ of the investment in the SPV must be from accredited investors.
The “qualifying” SPV concept was part of the recent amendments to the self-certified investor exemption. It was not practical to restrict SPVs (that had themselves complied with the self-certified investor prospectus exemption) to then be restricted to $10k/30k investment limits in the businesses into which they are investing.

No Statutory Declaration is required from a qualifying SPV. When a qualifying SPV invests into a business, no further statutory declaration is required. All self-certified investors who invest in a qualifying SPV have previously provided a statutory declaration.
Resale and private issuers

- Securities distributed using the self-certified exemption have typical resale restrictions
  - For a reporting issuer – 4 months; for a non-reporting issuer – indefinite, except under another prospectus exemption or under a prospectus.

- The self-certified prospectus exemption was recently amended to allow for resale by existing security holders
  - More closely aligns with the accredited investor exemption. In compliance with the exemption, an accredited investor can sell to a self-certified investor and self-certified investors can sell to each other.
Final points

- File Form 45-106F1 *Report of Exempt Distribution* on or before the 10th day after closing of the distribution
- *Currently, there is no reporting requirement for a “private issuer”*

- The Statutory Declaration & Acknowledgement collected from self-certified investors is not filed with the ASC, but should be kept on file, to be produced if requested
Final points (cont’d)

- **Private issuers**
  - To meet the private issuer exemption you must not have more than 50 security holders, and can only sell to a list of permitted investors, including persons or companies that are “not the public”
  - Self-certified investors are considered “not the public”
    - Self-certified investors, including SPVs, do not, by themselves, prevent an issuer from being considered a private issuer
    - Note that the number of investors in the qualifying SPV counts towards the 50 security holders number
Questions?
Contact us

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