

# *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.



**\$11,100,000,000**

# Self-certified investor exemption (cont'd)

- 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



# Listed issuer investments (cont'd)

- 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

# Qualifying SPV

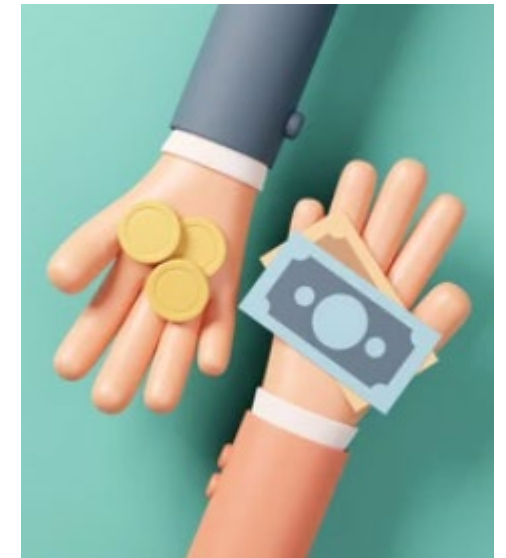
- An SPV may be used to receive investments from accredited and self-certified investors to then collectively further invest in a business
- Investment limits do not apply to a distribution of securities to a “qualifying” SPV
  - All of the owners of interests – direct, indirect or beneficial – are accredited 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***

# Qualifying SPV (cont'd)

- 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

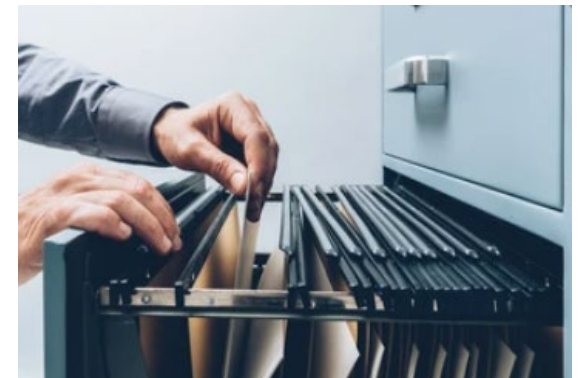
- Securities distributed using the self-certified exemption have typical resale restrictions
  - For a reporting issuer – 4 months; for a non-reporting issuer – indefinite, except under another prospectus exemption or under a prospectus.
- The self-certified prospectus exemption was recently amended 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 10<sup>th</sup> 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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