

Proposed prospectus exemption for self-certified investors in Alberta and Saskatchewan

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On November 20, 2020, the Alberta Securities Commission and the Financial and Consumer Affairs Authority of Saskatchewan (together, the **Regulators**) published a notice (the **Notice**) and request for comments on a new proposed prospectus exemption for self-certified investors (the **Self-Certified Investor Exemption**). The Self-Certified Investor Exemption is being proposed as a blanket order on a three-year interim basis for securities distributed by issuers in Alberta and Saskatchewan to investors in those provinces.

The Self-Certified Investor Exemption is aimed at increasing issuers' access to capital by allowing investments from investors with a requisite level of education and certain financial and investing experience. It is also aimed at investors who do not fall under the accredited investor exemption, but who have certain educational and professional experience which mitigate the Regulators' investor protection concerns. The Regulators have proposed the Self-Certified Investor Exemption to address the economic hardships Alberta and Saskatchewan are facing because of the COVID-19 pandemic by promoting growth of the angel investor group in such provinces. A copy of the Notice is available on the Alberta Securities Commission [website](#).

Summary of the Self-Certified Investor Exemption

The Regulators' proposal aims to balance access to capital with investor protection. Because self-certified investors may not necessarily meet the income or assets tests prescribed by the accredited investor (as defined in National Instrument 45-106 – *Prospectus Exemptions*) exemption, the Self-Certified Investor Exemption limits such investors' exposure to loss by capping the amount they can invest. Self-certified investors would be permitted to invest up to \$10,000 in a single issuer and up to \$30,000 in aggregate in a 12-month period. Additionally, self-certified investors must be provided with substantially the same information that is provided to an accredited investor in any concurrent offering and the investor must provide the issuer with a statutory declaration dated within 24 months of the offering attesting that the investor has completed the self-certified investor statement and acknowledgement in the form attached to the Notice (the **Statement and Acknowledgement**).

One of the following factors must be true and attested to in the statutory declaration provided by the investor to the issuer in order to rely on the Self-Certified Exemption.

An investor that is an individual must:

- hold a CFA designation;
- hold a CPA designation in a jurisdiction in Canada;
- be admitted to practice law in a jurisdiction of Canada and the investor's practice has involved being significantly engaged in providing advice respecting public or private financings or mergers and acquisition transactions; or
- hold, from an accredited university, a masters of business administration with a focus on finance or a degree in finance.

An investor that is not an individual must:

- have a majority of owners, direct, indirect or beneficial, except the voting securities required by law to be owned by directors, who are accredited investors or meet the self-certified investor criteria;
- have a majority of directors who are accredited investors or meet the self-certified investor criteria; or
- be a trust, established or settled by an individual that meets the self-certified investor criteria, which trust was established for the benefit of that individual's spouse, or parent, grandparent, brother, sister, child or grandchild of the individual or that individual's spouse or former spouse.

The Self-Certified Investor Exemption is not available if the issuer knows or would reasonably be expected to know that a statutory declaration is false. This does not mean, however, that the issuer, the notary public or the commissioner for oaths in respect of the statutory declaration must take independent steps to confirm educational or professional experience of an investor. The purpose of the statutory declaration is to confirm that the investor has read and understands the investment risks and has signed the Statement and Acknowledgement of their own volition.

Implications

The Regulators expect that the Self-Certified Investor Exemption will facilitate access to capital for issuers in Alberta and Saskatchewan by increasing the prospectus exempt pool of investors available to them. It is anticipated that access to capital will be balanced against the need to protect investors by:

- limiting investment amounts for self-certified investors in a 12-month period,
- requiring certain educational or professional experience in order to qualify as a self-certified investor, and
- requiring a statutory declaration from self-certified investors attesting to such qualifications and to the investor's understanding of investment risks and considerations as outlined in the Statement and Acknowledgement.

The Self-Certified Investor Exemption will only apply issuers in Alberta and Saskatchewan distributing securities to investors in these provinces. The Regulators will monitor the use of the exemption during the three year interim period in which the blanket order is proposed to be implemented and will consider whether any modifications are needed as well as whether the exemption should become permanent.

Comments on the proposed Self-Certified Investor Exemption run until December 23, 2020. The Regulators are requesting comments on, among other things, appropriate investment amount thresholds and other relevant financial, investment or educational experience that should qualify investors under the Self-Certified Investor Exemption.

This bulletin is general information only, not legal advice. Please contact any member of our [Business Law Group](#) if you would like us to assist you in the process of providing comments to the Regulators or if you have any questions.