



CSA Multilateral Notice and Request for Comment 45-327 *Proposed Prospectus Exemption for Self-Certified Investors*

November 20, 2020

Introduction

The Alberta Securities Commission (ASC) and the Financial and Consumer Affairs Authority of Saskatchewan (FCAA) (together, **staff** or **we**) are publishing for comment proposed text for local blanket orders, which if adopted would provide a new prospectus exemption entitled *Prospectus Exemption For Self-Certified Investors (Proposed Blanket Order)* intended to be available to Alberta and Saskatchewan issuers distributing securities in either or both of Alberta and Saskatchewan.

The comment period is open until **December 23, 2020**. The Proposed Blanket Order is attached as Annex A to this Notice.

Substance and Purpose

If adopted the Proposed Blanket Order would provide, on an interim, three-year basis, a new additional prospectus exemption for use by Alberta and Saskatchewan businesses to further facilitate their capital raising efforts, permitting them to distribute securities to investors in those provinces, provided that:

- the investor signs a statutory declaration attesting to having completed a Self-Certified Investor Statement and Acknowledgement respecting
 - having certain financial education or experience, and
 - having read and understood a specified summary of investment risks and considerations; and
- the amount invested under the exemption by that investor in the last 12 months in the issuer does not exceed \$10,000 and in all issuers does not exceed \$30,000.

One of the goals of the exemption is to allow self-certified investors to invest alongside “accredited investors”¹ in our provinces and to help facilitate the growth of the angel investor² ecosystem.

¹ The term “accredited investor” is defined in National Instrument 45-106 *Prospectus Exemptions* and includes various specified institutions and wealthy individuals. In the case of individuals, the definition contemplates annual net income in excess of \$200,000, net assets of at least \$5,000,000 or net realizable financial assets of at least \$1,000,000.

To address investor protection concerns, the conditions of the proposed exemption are intended to ensure that a self-certified investor understands the relevant financial and investing considerations. Recognizing that a self-certified investor will not have the income or assets of an accredited investor, to address an investor's ability to withstand loss, the proposed exemption includes a limit on the amount that can be invested in a 12 month period in the issuer and in aggregate.

Using a blanket order to provide a new prospectus exemption allows us to take a faster, more flexible approach to pursuing regulatory initiatives. Implementing the blanket order on an interim basis reflects the pilot project nature of this exemption, allowing us to test this proposed new form of capital formation and pursue innovation in regulation.

Background

(a) General

Many factors are having serious impacts on our capital markets and economies. Efforts are being taken by various parties to both strengthen and adapt and to expand and diversify our provincial economies. As securities regulators, we support these efforts by ensuring appropriate securities regulation that while protecting investors, fosters a vibrant capital market that facilitates access to capital by businesses and investment opportunities for investors. Our goal is to find the right balance, appropriately protecting investors, without unduly burdening the businesses trying to raise capital to build and grow.

To that end, the we are seeking comment on a proposed new prospectus exemption that would, similar to the existing accredited investor prospectus exemption, permit Alberta and Saskatchewan issuers to distribute securities to persons or companies in Alberta and Saskatchewan without a specified offering document³. Although we do not propose to mandate a particular offering document, we propose to require that the purchaser be provided with the same information made available to accredited investors in a concurrent offering.

To reduce the risk of loss to a self-certified investor, we have proposed that the maximum investment in any one issuer in a 12 month period would be \$10,000, but to facilitate diversification, would allow aggregate investments in a 12 month period of up to \$30,000. We anticipate that individuals that qualify as accredited investors would continue to invest as such and that this exemption would primarily be used for sales to investors who do not qualify as accredited investors.

In the face of the current economic situation in Alberta, market participants have urged us to take prompt action to pursue regulatory initiatives that can facilitate access to capital while

² Angel investors are typically high net worth or net income individuals that would qualify as "accredited investors". They will often invest in early stage businesses that are not yet at the stage of development to attract venture capital investment. They may invest individually or invest together with other angel investors through special purpose vehicles, e.g., corporations or limited partnerships, created to invest in a single business.

³ We propose to treat self-certified investors similarly to accredited investors. In Saskatchewan, this means certain statutory rights of action would apply in the event of a misrepresentation in an offering document.

adequately protecting investors. Saskatchewan faces similar economic concerns and Saskatchewan capital market participants may also benefit from this exemption. Accordingly, subject to review of comments and necessary approvals, we are proposing to adopt this exemption on a faster-track basis as a blanket order rather than through the typical rule-making process.

(b) ASC *Energizing Alberta's Capital Market Initiatives*

For the ASC, the Proposed Blanket Order flows from ASC Consultation Paper 11-701 *Energizing Alberta's Capital Market (11-701)*⁴, in which the ASC consulted on a number of ideas that might help better facilitate access to capital while still adequately addressing investor protection. One of the ideas⁵ explored was expanding the accredited investor prospectus exemption. The accredited investor exemption allows businesses to raise money through the sale of securities to institutions and wealthy individuals without having to use a prescribed offering document.

One of the key pillars of securities regulation is of course that investors be provided with sufficient information about a proposed investment so that they can make an informed decision regarding whether or not to invest. However, securities legislation recognizes that there are circumstances where, having regard to economic efficiencies and competing policy considerations, the protections of a prospectus are not necessary e.g., ability to withstand loss, a relationship of trust or alternative disclosure.

In connection with the consultations on 11-701 ASC staff heard that another rationale for providing an exemption could be the education or experience of an investor. It was suggested that the definition of "accredited investor" be expanded to include investors who had obtained certain education or experience and who self-certified, attesting to the sufficiency of their education and experience. Commenters encouraged the use of clear objective standards.

Summary of the Proposed Blanket Order

The Proposed Blanket Order would provide Alberta and Saskatchewan issuers a prospectus exemption under securities legislation in our jurisdictions for a distribution to an Alberta or Saskatchewan purchaser provided that:

- 1) the purchaser's aggregate investment in the issuer under the self-certified investor exemption in the prior 12 month period, after giving effect to the distribution, is not more than \$10,000;
- 2) the purchaser represents to the issuer that, after giving effect to the distribution, the purchaser will not have invested more than \$30,000, in aggregate, in the prior 12 month period, under the self-certified investor exemption;

⁴ https://www.albertasecurities.com/-/media/ASC-Documents-part-1/Regulatory-Instruments/2019/06/5466593-_-Consultation_Paper_Energizing_Alberta_s_Capital_Market.ashx

⁵ Other initiatives are also being pursued. For example, the ASC website has recently been updated to include new more plainly worded content to help small businesses and their advisors navigate the securities regulatory requirements when raising capital through the sale of securities. <https://www.albertasecurities.com/small-business>.

- 3) the purchaser is provided access to substantially the same information about the issuer as is provided to an accredited investor in any concurrent offering;
- 4) the purchaser, in the case of an individual, provides the issuer with a statutory declaration substantially in the form specified in Appendix 1 to the Proposed Blanket Order (the Statutory Declaration), dated within 24 months of the distribution, attesting that the purchaser has completed, read and understood the Self-Certified Investor Statement and Acknowledgement, in the form attached as Appendix 2 to the Proposed Blanket Order, including that at least one of the following is true
- a. the purchaser holds a CFA designation,
 - b. the purchaser holds a CPA designation in a jurisdiction of Canada,
 - c. the purchaser was admitted to practice law in a jurisdiction of Canada and the purchaser's practice has involved being significantly engaged in providing advice respecting public or private financings or mergers and acquisition transactions,
 - d. the purchaser holds from an accredited university an MBA with a focus on finance or a degree in finance;

(the **Self-Certified Investor Criteria**)

- 5) the purchaser, in the case of a purchaser that is not an individual, provides the issuer with a Statutory Declaration dated within 24 months of the distribution, signed by an authorized signatory of the purchaser, attesting that the purchaser has read and understood the Self-Certified Investor Statement and Acknowledgement in the form attached as Appendix 2 to the Blanket Order, including that at least one of the following is true:
- a. the majority of owners of interests of the purchaser, direct, indirect or beneficial, except the voting securities required by law to be owned by directors, are accredited investors or meet the Self-Certified Investor Criteria;
 - b. the majority of directors of the purchaser are accredited investors or meet the Self-Certified Investor Criteria,
 - c. the purchaser is 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, former spouse, or a parent, grandparent, brother, sister, child or grandchild of the individual or that individual's spouse or former spouse.

As an anti-avoidance measure, we propose that the exemption would not be available if the issuer knows or would reasonably be expected to know that the statutory declaration is false. However, we do not expect either the issuer or the notary public or commissioner for oaths who signs the statutory declaration to take steps to independently confirm the educational or

experience qualifications of a person or company that proposes to attest a statutory declaration. The statutory declaration, having the same force and effect as an oath made under the *Canada Evidence Act* (Canada) should be sufficient. The statutory declaration is intended to provide independent confirmation that the investor has actually read and understood the statement of investment risks and considerations and signed it of their own volition.

Next Steps

This is an initiative of only the ASC and FCAA and, if adopted, the exemption would be available only for distributions of securities in Alberta and Saskatchewan.

Assuming that the Proposed Blanket Order is adopted by the ASC and FCAA, we intend to monitor the use of the exemption during the interim period to assess it and will consider whether or not to continue it permanently and whether any modifications are appropriate.

Our colleagues within the Canadian Securities Administrators (CSA) have expressed interest in being kept apprised of the comments we receive and information on the use of the Proposed Blanket Order and we anticipate sharing that information with them.

Request for Comments and Questions

We invite comment on all aspects of the Proposed Blanket Order. In particular, we would like to receive feedback in respect of the following questions:

1. To what extent do you anticipate that this prospectus exemption would be relied on by businesses in Alberta or Saskatchewan?
2. In setting the limits on investment, we considered that a policy rationale for the accredited investor exemption is ability to withstand loss. Investors investing under the proposed exemption are likely not accredited investors and can be assumed to have annual income of less than \$200,000. Are the limits of \$10,000 in any one issuer in a 12 month period and \$30,000 in all issuers in a 12 month period appropriate in ensuring that an investor has the ability to withstand the loss of the investment? Are other conditions necessary to address investor protection concerns?
3. Are there other factors that an investor should acknowledge they understand in the Self-Certified Investor Statement and Acknowledgement?
4. The exemption focuses on financial and investment education and experience. Are there other designations or courses that would provide an investor with relevant financial and investment education and should be included e.g., the chartered investment management designation? Please explain.
5. In the ASC consultations, some parties suggested that we should include persons with experience or education that is not of a financial or investment nature but that is relevant to the industry in which they propose to invest. For example, it was suggested that we allow a

young professional with a computer science degree to invest in a software technology company or an individual with a petroleum engineering designation to invest in an oil and gas company. However, others raised concerns that those type of educational criteria would not adequately address investor protection concerns as the investor may not appreciate the financial or investment considerations important to investing.

- a. Are there other education or experience qualifications that we should consider? Please explain.
 - b. What other conditions might help to ameliorate the risks that the investor may not appreciate the financial and investment considerations?
6. The proposed exemption contemplates lawyers but only where their practice has involved being significantly engaged in providing financing or mergers and acquisitions advice. As worded, the requirement is a subjective assessment by the lawyer. Should objective criteria be provided e.g., percentage of practice and/or years of practising? If so, what minimum level of experience is appropriate?
7. One of the goals of the proposed self-certified investor exemption would be to help facilitate the development of the angel investor entrepreneurial community. Although angel investors may invest directly into early-stage businesses, we understand that angel investors will often invest on a syndicated basis, forming a special purpose vehicle, such as a limited partnership or corporation, in which they will invest and then that special purpose vehicle will invest in an early-stage business. The proposed self-certified investor exemption could facilitate direct investment into a business or a special purpose vehicle. However, the distribution of securities of an early stage business to a special purpose vehicle also requires reliance on a prospectus exemption. We understand that these financings are often conducted under the private issuer exemption, which allows the distribution of securities to a number of specified parties, including accredited investors. We understand that the special purpose vehicle is often treated as an accredited investor because all the owners of interests (except voting securities required to be owned by directors) are accredited investors. This option would seem not to be available for a special purpose vehicle where one or more of the owners of interests were self-certified investors.
- a. Would this issue be adequately addressed by providing guidance that the ASC and FCAA would not object to an issuer relying on s.2.4(2)(1) of National Instrument 45-106 *Prospectus Exemptions*, i.e., the prong of the private issuer exemption that permits a distribution to a person or company that is “not the public”, provided that the special purpose vehicle is predominantly owned by accredited investors e.g., at least 80% of the funds contributed to the special purpose vehicle were contributed by accredited investors?
 - b. Are there other alternatives that would better address this issue?
 - c. If we were to adopt the proposal outlined in 7a., a Form 45-106F1 *Report of Exempt Distribution* would be required for the sale of securities to the self-certified investor. Would this be a significant deterrent to distributing securities to self-certified investors given that private issuers do not otherwise have reporting obligations to securities

regulators? Given our interest in tracking use of this exemption, could we address this issue by requiring only a very simple letter reporting on use, which could be filed by email?

Submitting comments

We welcome your comments on the Proposed Blanket Order. Please submit your comments in writing on or before **Wednesday, December 23, 2020**. Comments can be submitted either

By e-mail to New.Economy@asc.ca or

By hard copy to the attention of:

Cathy Tearoe
Senior Legal & Policy Counsel
Alberta Securities Commission
Suite 600, 250 – 5th Street SW
Calgary, AB T2P 0R4

Please note that comments received will be made publicly available and will be posted on the ASC’s website at www.albertasecurities.com. **Accordingly, you should not include personal information directly in comments.** It is important that you state on whose behalf you are making the submission.

Questions

If you have any questions on the Proposed Blanket Order, please contact any of the following:

Denise Weeres Director, New Economy Alberta Securities Commission 403.297.2930 denise.weeres@asc.ca	Cathy Tearoe Senior Legal & Policy Counsel, New Economy Alberta Securities Commission 403.355.9027 cathy.tearoe@asc.ca
Tom Graham Director, Corporate Finance Alberta Securities Commission 403.297.5355 tom.graham@asc.ca	Timothy Robson Manager, Legal, Corporate Finance Alberta Securities Commission 403.355.6297 timothy.robson@asc.ca
Heather Kuchuran Director, Corporate Finance, Securities Division Financial and Consumer Affairs Authority of Saskatchewan 306.787.1009 heather.kuchuran@gov.sk.ca	

ANNEX A TO MULTILATERAL NOTICE 45-327

TEMPLATE BLANKET ORDER 45-5XX
PROSPECTUS EXEMPTION FOR SELF-CERTIFIED INVESTORS

[Recitals as applicable]

Definitions

1. Terms defined in the *Securities Act* (■) (the **Act**), National Instrument 14-101 *Definitions*, or National Instrument 45-106 *Prospectus Exemptions* have the same meaning in this [Blanket/General Order].

Order

2. The [Securities Regulatory Authority], considering that it would not be prejudicial to the public interest to do so, orders under section [213 ASA /83 SSA] of the Act that the prospectus requirement in section [110 ASA /58 SSA] of the Act does not apply to a distribution by an issuer provided all of the following apply:
 - a) the head office of the issuer is located in Alberta or Saskatchewan;
 - b) the aggregate acquisition cost of the securities of the issuer acquired by the purchaser under this Blanket Order in the prior 12 months does not exceed \$10 000;
 - c) the purchaser represents to the issuer that the aggregate acquisition cost of the securities of all issuers acquired by the purchaser under this Blanket Order in the prior 12 months does not exceed \$30 000;
 - d) the purchaser is provided access to substantially the same information about the securities being distributed as is provided to an accredited investor in connection with any concurrent distribution;
 - e) the purchaser purchases as principal, provided that a trust is deemed to be purchasing as principal;
 - f) at or before the time the purchaser signs the agreement to purchase the securities, the issuer obtains from the purchaser a statutory declaration substantially in the form specified in Appendix 1 to this Blanket Order, dated within 24 months of the distribution, attesting that the purchaser has completed, read and understood the Self-Certified Investor Statement and Acknowledgement, in the form specified in Appendix 2 to this Blanket Order,
 - g) the issuer does not know and would not reasonably be expected to know that the statutory declaration is false;

- h) on or before the 10th day after the closing of the distribution, the issuer files a completed Form 45-106F1 *Report of Exempt Distribution*, together with the applicable fee; and
- i) the issuer retains the sworn statutory declaration for 8 years after the distribution.

Resale restrictions

- 3. The [Securities Regulatory Authority], considering that it would not be prejudicial to the public interest to do so, orders under section [144(2) ASA/SSA] of the Act that the first trade of a security acquired under section 2 is subject to section 2.5 of National Instrument 45-102 *Resale of Securities*.

Saskatchewan - Designated offering memorandum

- 4. In Saskatchewan, any document that provides information about the business or affairs of an issuer that has been prepared primarily for delivery to and review by a prospective purchaser to assist the prospective purchaser in making an investment decision about securities being sold in a distribution under this Order, including all amendments to that document, is designated to be an offering memorandum under securities legislation in Saskatchewan, unless that document is an annual report, interim report, information circular, take-over bid circular, issuer bid circular or prospectus.

Effective date

- 5. This [Blanket/General] Order comes into force on ■ 2021 and expires on ■, 2024.

**Annex 1 to Blanket Order 45-5XX
Statutory Declaration**

CANADA }
Province of [Alberta/Saskatchewan]}

I, _____ [insert name of declarant] do solemnly declare that:

1. I [*or if signed for a non-individual, the entity's name*] am resident at [*or for a non-individual has its head office at*] _____
[insert address in Alberta or Saskatchewan] .
2. I have, of my own choice and of my own volition, fully completed the attached Self-Certified Investor Statement and Acknowledgement for the purpose of being recognized as a Self-Certified Investor under securities legislation in either or both of Alberta and Saskatchewan.
3. I have read and understood the attached Self-Certified Investor Statement and Acknowledgement.

I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath, and by virtue of the *Canada Evidence Act*.

DECLARED before me at _____ [insert municipality and province].

Dated: _____

Print name of Declarant

Print name of Notary Public or
Commissioner for Oaths

If Declarant is not an individual state
name and title of authorized signatory

Signature of Notary Public or [seal]
Commissioner for Oaths*

Signature of Declarant

Expiry Date of Commission:

*Note: A statutory declaration intended for use outside of the province in which it is taken must be signed by a Notary Public.

**Annex 2 to Blanket Order 45-5XX
Self-Certified Investor
Statement and Acknowledgement**

Instruction: In the case of a purchaser that is not an individual state:

I am an authorized signatory of the purchaser _____ [insert name of the purchaser]. The purchaser wishes to be recognized as a Self-Certified Investor under securities legislation in either or both of Alberta and Saskatchewan. I certify on behalf of the purchaser that [select at least one of the following]:

Initials	
	The majority of owners of interests of the purchaser, direct, indirect or beneficial, except the voting securities required by law to be owned by directors, are accredited investors (as defined in National Instrument 45-106 <i>Prospectus Exemptions</i>) or meet the Self-Certified Investor Criteria as set out in the table below
	The majority of directors of the purchaser are accredited investors (as defined in National Instrument 45-106 <i>Prospectus Exemptions</i>) or meet the Self-Certified Investor Criteria as set out in the table below
	The investor is a trust, established or settled by an individual that meets the criteria for a Self-Certified Investor, as set out in the table below and the trust was established for the benefit of the such individual's spouse, former spouse, or a parent, grandparent, brother, sister, child or grandchild of the individual or that individual's spouse or former spouse

Instruction: In the case of a purchaser that is an individual state:

I _____ [insert name of purchaser] meet one or more of the Self-Certified Investor Criteria as set out in the table below and wish to be recognized as a Self-Certified Investor under securities legislation in either or both of Alberta and Saskatchewan

Instruction: In the case of all purchasers, complete the following:

Self-Certified Investor Criteria			
<i>Provide the date and institutional information for the statement that applies to you and then initial the statement. (You may complete and initial more than one statement.)</i>	Date of designation/ admission/ graduation	Name of granting institution	Your initials
I [or in the case of a non-individual, an owner or director of the purchaser or the settlor of a trust that is the purchaser] hold(s) a Chartered Financial Analyst designation from the CFA Institute			
I [or in the case of a non-individual, an owner or director of the purchaser or the settlor of a trust that is the purchaser] hold(s) a Certified Public Accountant designation from CPA Canada .			

I [or in the case of a non-individual, an owner or director of the purchaser or the settlor of a trust that is the purchaser] was admitted to practice law in a jurisdiction of Canada and a significant aspect of my legal practice involves or has involved providing advice respecting public or private financings or mergers and acquisition transactions			
I [or in the case of a non-individual, an owner or director of the purchaser or the settlor of a trust that is the purchaser] hold(s) from an accredited university, either a Masters of Business Administration degree, focused on finance, or a degree in finance			

Instruction: To qualify as a Self-Certified Investor you must read the following and confirm your understanding of each of the statements with respect to the risks of investing.

If you do not understand the risks of investing, do not complete this form.

1. Reliance on an exemption from the prospectus requirement and rights

Securities legislation generally requires that a business trying to raise money through the sale of securities provide investors with a comprehensive disclosure document called a prospectus in order that investors can make an informed decision about whether or not to buy those securities.

The accuracy of prospectus is typically required to be certified by CEO, CFO and two directors of the issuer and any underwriter involved in the sale. Investors who buy under a prospectus have certain additional rights, including a two day right to cancel their investment for any reason, a right to sue either to get their money back or for damages if there is a misrepresentation in the prospectus. This right to sue is available not just against the business but also the other parties that sign the prospectus. This special right to sue also removes the requirement to prove that the investor relied on the misrepresentation in making their investment decision.

As an investor under a prospectus exemption you will not have the special rights afforded to an investor under a prospectus. However, in Saskatchewan, you will have a statutory right to sue either to get your money back or for damages if there is a misrepresentation in the offering document.

Have you read and understood the above information?	Yes or No?

2. Information needed to make investment decision

A business trying to raise money through the sale of securities under a prospectus is required to provide investors with disclosure of all material facts relating to the securities including significant prescribed information.

Since you will not receive a prospectus you will need to consider whether you otherwise have access to all the important information necessary to make an informed investment decision and, if not, take steps to seek to obtain that information before investing.

Examples of information that you would typically receive with a prospectus and would typically assist in making an informed investment decision include:

- a details of the securities being offered for sale, including the rights they provide you;
- information about outstanding securities and the prices at which securities were issued;
- details on how the proceeds of the offering will be used including any fees and commissions, payments to be made to related parties or to repay outstanding indebtedness;
- the business objectives and key milestones, including when those are anticipated to occur and the costs to achieve them;
- for businesses that have not achieved significant revenues, a breakdown of expenditures including those relating to research and development and general and administrative expenses;
- information on any bankruptcies, insolvencies, criminal or regulatory proceedings involving the business or any of its principals;
- a description of any actual or anticipated significant litigation or liabilities;
- details of any significant contracts;
- if the money being raised is to acquire an asset or other business, information about that asset or other business, including how the purchase price was determined and any relationship between the parties;
- information about the directors, executives and key employees of the issuer, including for each their principal occupation, their prior relevant experience and education, the amount of time they will work for the business and their security holdings in the business;
- the compensation paid and to be paid to directors and executives and any outstanding indebtedness;
- the relevant experience of the audit committee and the business' corporate governance policies; and
- significant risk factors relating to the business such as cash flow and liquidity problems, limited experience of the management, risks inherent to the business, environmental and health risks, reliance on key personnel, regulatory constraints, and economic and political considerations.

Have you read and understood the above information?	Yes or No?

3. Audited financial statements

A business trying to raise money through the sale of securities under a prospectus is required to provide investors with audited annual financial statements. The audit of the financial statements provides certain independent assurance with respect to the financial information presented.

As an investor under a prospectus exemption you may not be provided with audited financial statements and if any financial information is provided you may have no independent assurance with respect to it. You will need to determine whether audited financial statements are important to your investment decision and whether you will require that these be provided before investing.

Have you read and understood the above information?	Yes or No?

4. Financial projections and other forward-looking information

Securities legislation does not generally require that businesses provide financial projections and other forward-looking information in a prospectus. Because of the potential unreliability of this type of information, cautionary language is required in a prospectus to

- indicate that actual results may vary from the forward looking information,
- state the material factors or assumptions used to develop forward looking information,
- identify material risk factors that could cause actual results to differ materially from the forward-looking information, and
- state the business’ policy for updating forward-looking information.

In the context of a prospectus, securities legislation generally prohibits financial outlooks and future-oriented financial information unless they are based on assumptions that are reasonable in the circumstances and for a period that can be reasonably estimated. As an investor under a prospectus exemption you will need to assess whether the assumptions and risk factors underlying any financial outlooks and future-oriented financial information are sufficiently clear and whether forward-looking information provided seems reasonable.

Have you read and understood the above information?	Yes or No?

5. No registered dealer or qualified advice

If you invest under a prospectus, the business selling its securities will have typically retained one or more registered dealers to sell the securities to you. A registered dealer is required to understand the securities that they are selling and will often have conducted certain analysis and review of the business. A registered dealer is typically required to meet certain proficiency requirements in order to provide you with advice. The registered dealer is required to collect information from you to understand your financial and other circumstances, risk tolerance, investment objectives and time horizon and, having regard to that information, assess whether an investment is suitable for you.

You may be investing in circumstances where there is no registered dealer involved. If that is the case, you will need to assess for yourself whether or not the investment is suitable for you, having regard to factors such as

- your financial and other circumstances, risk tolerance, investment objectives and time horizon;
- your other investments, e.g., whether your investments are overly concentrated in a particular area such as an industry or geographical area;
- the prospect of some of your investments being a failure and how much risk you are prepared to take and how much money you can afford to lose.

Other parties that may recommend an investment to you may not have any expertise or qualifications. They may have a conflict of interest that incentivizes them to encourage you to invest. Even if they are independent, experienced and knowledgeable investors, their circumstances, risk tolerance and objectives may be very different than your own. An investment that is good for them may not be good for you.

Have you read and understood the above information?	Yes or No?

6. Ongoing disclosure

If you were to invest under a prospectus, the business would be or become a reporting issuer (public company) and would be obligated under securities legislation to continue to provide information about its business including such as

- audited annual financial statements and managements discussion and analysis;
- quarterly interim financial statements and management’s discussion and analysis;
- news releases announcing material changes such as relating to changes in directors and executives, significant acquisitions or dispositions, significant liabilities or litigation, material contracts and loss of significant contracts;
- board composition and governance policies; and
- executive compensation disclosure.

If you invest in a business that is not a reporting issuer, the business may have no obligation under securities legislation to provide you with any ongoing information.

Consequently, you will need to determine what ongoing reporting you want from the business and negotiate by contract to obtain it. You will need to consider the possibility that the business fails to continue to provide you with that information and what rights you have under that contract and whether they can be effectively enforced.

Have you read and understood the above information?	Yes or No?

7. Restrictions on ability to resell securities

If you invest under a prospectus, the securities you acquire are typically able to be immediately resold in the secondary market e.g., on an exchange.

You are seeking to invest under a prospectus exemption. If you acquire securities of a reporting issuer (public company) under a prospectus exemption, you are typically subject to resale restrictions for a period of four months. Practically, that generally means you cannot resell those securities except under another prospectus exemption for that four month period.

If you acquire securities of a business that is not a reporting issuer (i.e., not a public company) under a prospectus exemption, you will typically be subject to resale restrictions that continue indefinitely. That means that unless the business becomes a reporting issuer, securities legislation prohibits you from reselling those securities except under another prospectus exemption or under a prospectus.

Further, even if you can comply with securities legislation, there will be no market to help identify parties that might be interested in buying the securities from you. It may not be possible to find a willing buyer.

8. Realizing a return on your investment

Many early stage businesses fail. You could lose your investment. However, even if a business you invest in is successful, you will need to determine how you will realize any return. If you buy securities, such as common shares, of a non-reporting issuer you will need to identify whether there is a realistic “exit strategy” for you, an opportunity to sell your securities and potentially obtain a return and whether the timing of that potential opportunity aligns with your investment time horizon.

If the business is not a reporting issuer, there is no assurance that it will ever become one and even if it does, that could take many years. There is no assurance that the business will be acquired by another entity. You could be forced to hold the securities for many years, potentially indefinitely.

If you are buying debt securities, you will need to consider whether the business has a realistic prospect of being able to pay you the interest or yield that is offered and what rights you will have if they default on such payments.

If you buy redeemable securities, you will need to consider whether the business has a realistic prospect of being able to redeem the securities if at a future date you have a need to redeem. You will also need to consider the limitations on or conditions to your ability to redeem.

Have you read and understood the above information?	Yes or No?

9. Valuation issues

If you acquire securities such as common shares under a prospectus, the issuer will be a reporting issuer (public company) and the securities will typically be available for resale on a secondary market. In the case of a mutual fund, the securities will typically be redeemable on demand based on the net asset value, which is required to be calculated and disclosed on an ongoing basis.

INCLUDES COMMENT LETTERS RECEIVED

If you acquire securities such as common shares under a prospectus exemption and the business is not a reporting issuer, there will be no secondary market to use to assess the value of the securities. In the case of an investment fund, there may be no legal obligation for the fund to disclose its net asset value and there may be restrictions on your ability to redeem.

It may be difficult to establish a value for the business or the securities.

Have you read and understood the above information?	Yes or No?

10. No misleading statements or unfair practices

Securities legislation prohibits parties selling securities from making statements that they know or reasonably ought to know are, in any material respect, and at the time and in light of the circumstances in which they are made, misleading or untrue or do not state a fact that is required to be stated or that is necessary to make a statement made not misleading, where one would reasonably expect that statement to have a significant effect on the market price or value of a security.

Securities legislation also prohibits unfair practices in connection with the sale of securities, such as unreasonable pressure to buy, sell or hold or imposing harsh, oppressive or excessively one-sided terms.

Although you are seeking to invest under a prospectus exemptions, these prohibitions still apply to the parties selling you securities. They are not exempted from these fundamental provisions.

Have you read and understood the above information?	Yes or No?

I understand that there is a risk that [I / the purchaser] could lose the entire investment and [I / the purchaser] should not invest more than [I / it] can afford to lose.

I confirm that when investing as a Self-Certified Investor, [I do / the purchaser does] not intend to invest in any 12 month period,

- **more than \$10,000 in any one issuer, or**
- **more than \$30,000 in all issuers.**

Dated: _____

Name (printed): _____

Signature: _____

*If signing for a corporation or other non-individual entity, also include the title of the authorized signatory.

From: [Brad Clark](#)
To: [New Economy](#)
Subject: Proposed Prospectus Exemption for Self-Certified Investors
Date: December 23, 2020 06:11:58 PM

EXTERNAL EMAIL

Dear Denise and the New Economy Division,

We appreciate the opportunity to provide comment on the Proposed Prospectus Exemption for Self-Certified Investors proposed by the ASC. We are whole-heartedly supportive of this proposal and believe it will benefit our startup communities, province, and economy. There are many individuals who are experienced in the financial world, and in fact many advise clients on investing but are unable to invest themselves due to the income thresholds of the current accredited investor rules. We welcome this proposal as a great opportunity for the ASC and Alberta to learn more about investing in this space.

Our comments, support and suggestions are below in response to your request.

1. One of Startup TNT's purposes is to promote angel investing in the startup community. This has to date been done by educating accredited investors who have never angel invested before about the risks and benefits of angel investing. With the new Proposed Blanket Order, we will be able to expose a new group of individuals to angel investing. The individuals understand financial risks and by angel investing could provide expertise to the startup community in a more meaningful way. We think this will be a great benefit to the individuals to expand their portfolio alongside other investors and support the Alberta startup community. We anticipate significant interest in this new self-certification.
2. At the Startup TNT Investment Summit, investors will invest \$5,000 in an angel investor syndicated holding company, which invests in a startup selected by the investors. Being able to invest smaller amounts in more companies is of benefit to the investors allowing for portfolio diversification mitigates risk of loss compared to having a few large investments. We agree with the individual investment limit in protecting investors from risk of loss. The annual limit of \$30,000 does not contemplate if an individual were to save up for a number of years and then have a very active year in angel investing. Perhaps a cumulative total of \$120,000 over four years instead of the \$30,000 annual limit would allow more flexibility.
3. We believe that the self-certified investors should make the same acknowledgements as accredited investors.
4. We believe there are several other designations that should be included. A broader list of financial designations are listed on the Investment Funds Institute of Canada website (<https://investorcentre.ific.ca/financial-designations/>) and additionally we suggest including the Chartered Business Valuators designation (<https://cbvinstitute.com/>). Holders of these designations would be assisting clients with investment and financial decisions with regularity and therefore would have a robust understanding of the risks of investing as they advise clients. We believe having a list of designations, similar to choosing an amount of income, provides certainty to companies raising capital on a persons status. We believe this approach is a great start but we believe moving to a specific angel investing course required prior to self certifying would be more effective. Many of the designations are quite rigorous to obtain where are more streamlined course may be able to impact the education necessary for less time and cost.
5. We believe having investors with different backgrounds evaluating investments helps mitigate risks in ways beyond financial risk. For example, a computer engineer or a scientist would have a better assessment of the risk of commercialization than an accountant. In that way,

we believe allowing individuals of different backgrounds to participate in angel investing will protect other investors and mitigate the risk of loss. Prior to participating, an individual without the financial background should gain the necessary education to understand the risks of making investments at this stage of company. The same education is needed by accredited investors who have never angel invested before. For accredited investors we organize an experiential learning program on angel investing as part of the Startup TNT Investment Summit. This program or another standardized course could be used to ensure investors have the knowledge needed prior to making investment into this unique space and allow for broader backgrounds than financial focused individuals.

6. No comment.
7. A) We agree with allowing a certain threshold of self-certified investors to participate into a syndication without requiring additional filings or exemptions. Having experienced angel investors invest alongside newer angel investors helps mitigate the risk of loss for the new angel investor. This is something we promote at the Startup TNT Investment Summit. We believe this outcome is achieved even in a situation where there are only two investors (one experienced and one inexperienced) thus perhaps even a threshold of 50% could be reasonable.
C) There are a number of administrative burdens that come with raising money and taking on investors that companies look to mitigate so they can focus on running their business. For example, many companies look to have a small number of investors who invest larger amount to streamline communications and administration with investors. If an administrative burden was placed on a company who raised investment from a self-certified investor, then we believe its likely that most companies would avoid self-certified investors unless unsuccessful raising capital otherwise. This frustrates the purpose of the Proposed Blanket Order and could have the consequence of self-selecting riskier investments for self-certified investors. A simple letter or e-mail filed with the ASC would not be administratively burdensome to the company but allow for tracking of the exemption. It is our hope that with more data the ASC can continue to adjust and refine the Proposed Blanket Order.

We believe the ASC is making a great step in supporting our startup communities, our province and helping diversify our economy. We appreciate the opportunity to comment and would welcome further discussion.

Keep well.

Brad Clark
Director | Startup TNT

[LinkedIn](#) | [TNT Website](#) | [TNT Discord](#)





December 23, 2020

Via Email To: New.Economy@asc.ca

Cathy Tearoe
Senior Legal & Policy Counsel
Alberta Securities Commission
Suite 600, 250-5th Street SW
Calgary, AB. T2P 0R4

Dear Sirs/Mesdames:

**Re: Request for Comment - CSA Multilateral Notice and Request for Comment 45-327
Proposed Prospectus Exemption for Self-Certified Investors**

The Private Capital Markets Association of Canada (“PCMA”) is pleased to provide our comments in connection with Canadian Securities Administrators (“CSA”) Multilateral Notice and Request for Comment 45-327 *Proposed Prospectus Exemptions for Self-Certified Investors* (the “**Proposed Exemption**”) as set out below.

About the PCMA

The PCMA is a not-for-profit association founded in 2002 as the national voice of the exempt market dealers (**EMDs**), issuers and industry professionals in the private capital markets across Canada.

The PCMA plays a critical role in the private capital markets by:

- assisting hundreds of dealer and issuer member firms and individual dealing representatives to understand and implement their regulatory responsibilities;
- providing high-quality and in-depth educational opportunities to the private capital markets professionals;
- encouraging the highest standards of business conduct amongst its membership across Canada;
- increasing public and industry awareness of private capital markets in Canada;

- being the voice of the private capital markets to securities regulators, government agencies and other industry associations and public capital markets;
- providing valuable services and cost-saving opportunities to its member firms and individual dealing representatives; and
- connecting its members across Canada for business and professional networking.

Additional information about the PCMA is available on our website at www.pcmacanada.com.

GENERAL COMMENTS

We believe the Proposed Exemption is a positive step by the Alberta Securities Commission (the “ASC”) and the Financial and Consumer Affairs Authority of Saskatchewan (the “Sponsoring Commissions”) to address the need for capital formation in their respective Provinces.

In June 2019, the ASC published *Consultation Paper 11-701 Energizing Alberta’s Capital Market* (the “ASC Consultation Paper”).

In our response to the ASC Consultation Paper, the PCMA supported the concept of Self-Certified Investors.¹ The PCMA recommended that the ASC should permit certain eligible individuals to self-certify they are a sophisticated investor, as they do in the United Kingdom, which the PCMA submits should satisfy the definition of an “accredited investor” (“AI”), but without any investment limits.

The PCMA notes the Sponsoring Commissions have taken a more conservative approach than the United States Securities and Exchange Commission (the “SEC”) and created what amounts to be an “Associate AI” category, with investment limits and restrictions. The PCMA believes the four types of groups that would be allowed to self-certify (*i.e.*, CFAs, CPAs, MBAs, and certain types of lawyers) under the Proposed Exemption is far too limiting to have any real impact to widen the pool of investors and increase investments within the jurisdictions of the Sponsoring Commissions.

The PCMA believes it is simpler for the Sponsoring Commissions to add the categories of sophisticated investors, as set out in the Proposed Exemption, to the definition of AI as has been done by the SEC. The PCMA recommends that changes are made on a national basis in the efforts of maintaining jurisdictional harmony, which reduces regulatory burden for registrants.

The PCMA’s comments on questions from the Sponsoring Commissions regarding the Proposed Exemption are set out below.

¹ See the PCMA’s comment letter included in the ASC Consultation Paper at: https://www.albertasecurities.com/-/media/ASC-Documents-part-1/Regulatory-Instruments/2019/06/5466593--Consultation_Paper_Energizing_Alberta_s_Capital_Market.ashx

SPECIFIC RESPONSES

1. To what extent do you anticipate that this prospectus exemption would be relied on by businesses in Alberta or Saskatchewan?

PCMA Response

The PCMA believes this initiative is helpful and will be relied upon by businesses in Alberta and Saskatchewan, however, to what extent is truly unknown at this time in the absence of data.

We recommend that the Sponsoring Jurisdictions obtain data from the Chartered Financial Analysts Institute, the Chartered Professional Accountants Association of Canada, the Law Societies across Canada and Canadian Universities who offer MBA programs to determine the universe of possibly impacted individuals and more narrowly on those who currently reside [or have a home address] in the Sponsoring Jurisdictions.

Absent data to demonstrate and measure the statistical effectiveness of policy initiatives such as the Proposed Amendments, the PCMA is concerned that this initiative may only create the illusion of enhanced capital access without the desired impact/result.

The PCMA respectfully suggests that the CSA and/or the regulators in each jurisdiction provide quantifiable strategic objectives that it believes will increase access to capital so that the public can reasonably evaluate the efficacy of policy proposals. The PCMA believes that evidence-based regulation should be relied upon to avoid overreliance on anecdotal evidence from both industry and investor groups.

2. In setting the limits on investment, we considered that a policy rationale for the accredited investor exemption is ability to withstand loss. Investors investing under the proposed exemption are likely not accredited investors and can be assumed to have annual income of less than \$200,000. Are the limits of \$10,000 in any one issuer in a 12 month period and \$30,000 in all issuers in a 12 month period appropriate in ensuring that an investor has the ability to withstand the loss of the investment? Are other conditions necessary to address investor protection concerns?

PCMA Response

The PCMA submits that it is in the public interest to see the risk-based analysis the Sponsoring Commissions considered in determining the prescribed investment limits. We note that the limits appear to be similar to those involving eligible and non-eligible investors under the Offering Memorandum Exemption (the “**OM Exemption**”) set out in Section 2.9 of National Instrument 45-106 – *Prospectus Exemptions* (“**NI 45-106**”) that do not involve a registrant.

The Sponsoring Commissions suggest that the only policy rationale for the accredited investor exemption set out in Section 2.3 of NI 45-106 (the “**AI Exemption**”) is the ability to withstand financial loss. This is inconsistent with the long-standing policy of investor sophistication being

one of two primary rationales for establishing the AI Exemption, the other being investor capacity to withstand loss.

The PCMA believes there is insufficient discussion in the Proposed Exemption that explains how withstanding financial loss impacts a Self-Certified Investor differently than an AI. The PCMA would welcome such analysis by the Sponsoring Commissions to provide a more meaningful response.

However, the PCMA notes that such analysis was provided by the SEC in its August 20, 2020 press release in connection with its modernization of the AI exemption as set out below:

“Historically, the Commission has stated that the accredited investor definition is “intended to encompass those persons whose financial sophistication and ability to sustain the risk of loss of investment or fend for themselves render the protections of the Securities Act’s registration process unnecessary.”^[7] Prior to the adoption of these final rules, in the case of individuals, the accredited investor definition has used wealth—in the form of a certain level of income or net worth—as a proxy for financial sophistication. However, as stated in the Proposing Release, we do not believe wealth should be the sole means of establishing financial sophistication of an individual for purposes of the accredited investor definition. Rather, the characteristics of an investor contemplated by the definition can be demonstrated in a variety of ways. These include the ability to assess an investment opportunity—which includes the ability to analyze the risks and rewards, the capacity to allocate investments in such a way as to mitigate or avoid risks of unsustainable loss, or the ability to gain access to information about an issuer or about an investment opportunity—or the ability to bear the risk of a loss.^[8] Accordingly, the final rules create new categories of individuals and entities that qualify as accredited investors irrespective of their wealth, on the basis that such investors have demonstrated the requisite ability to assess an investment opportunity”.

Based on the foregoing, investor sophistication should be enough. The PCMA believes that adding prescribed investment limits is unnecessary and counter-productive to the spirit of the Proposed Exemption, which is to increase capital formation. As previously stated, the PCMA believes the types of investors contemplated under the Proposed Exemption should be AIs and if the definition of an AI is updated accordingly, there would be no need for this exemption.

The PCMA notes that the Crowdfunding Exemption has, in its members’ opinion, been a failure in light of the time, money and resources that have been expended on this exemption to make it work; particularly since the investment limits are too small to have any investor interest or meaningful impact on capital raising. The PCMA is equally concerned that the Sponsoring Commissions may be doing the same thing again and imposing undue constraints making the Proposed Exemption unviable.

Notwithstanding the foregoing, although the PCMA does not support investment limits, if they are to be prescribed, they should be *the greater of* (a) the amounts identified in the Proposed Exemption or (b) 10% of a Self-Certified Investor’s “net assets” (as defined in NI 45-106).

The PCMA also notes that the Proposed Exemption is silent on whether registrants can sell securities to individuals who qualify under the Proposed Exemption. Clarity on this would be appreciated by PCMA members. We also believe the intermediation of a registrant should negate the requirement of any prescribed investment limits since registrants have suitability obligations under applicable securities law.

3. Are there other factors that an investor should acknowledge they understand in the Self-Certified Investor Statement and Acknowledgement?

PCMA Response

The Self-Certified Investor Statement and Acknowledgement is extremely comprehensive to the point of having too much information and over-disclosure. The PCMA believes that the most important information is set out in bold at the bottom of the proposed form with the words “*I understands that there is a risk that [I / the purchaser] could lose the entire investment that [I / the purchaser] should not invest more than [I / it] can afford to lose.*”

Notwithstanding, the PCMA believe the Acknowledgement is unnecessary and the types of investors, as set out in the Proposed Exemption, should be included in the definition of AI where no such Acknowledgement is required.

4. The exemption focuses on financial and investment education and experience. Are there other designations or courses that would provide an investor with relevant financial and investment education and should be included e.g., the chartered investment management designation? Please explain.

PCMA Response

Yes, the Sponsoring Commissions should consider other designations and courses. The PCMA recommends that criteria should be clearly set out to provide full transparency and understanding of the requirements. This allows the appropriate bodies and organizations to make a full submission on behalf of their members.

From a policy perspective, the PCMA believes that certain professional certifications and designations or other credentials provide a reliable indication that an investor has a sufficient level of financial sophistication to participate in investment opportunities that do not have the additional protections provided by applicable securities law.

The PCMA believes relying solely on financial thresholds as an indication of financial sophistication is suboptimal. It unduly restricts access to investment opportunities for individuals whose knowledge and experience render them capable of evaluating the merits and risks of a prospective investment in a private offering, irrespective of their personal wealth.

Certain of these individuals may have fewer financial resources and, as a result, be less able to bear the financial risk of private investments. However, the PCMA believes a suitability determination includes the size of the investment. The professional judgement of the dealing

representative, combined with the professional credentials and experience of the investor, should enable these investors to assess investment opportunities and appropriately allocate capital based on their individual circumstances.

Accordingly, the Sponsoring Commissions should be able to designate qualifying professional certifications, designations, and other credentials with such designation to be based upon consideration of all the facts pertaining to a particular certification, designation, or credential.

The SEC's changes/modernization to the AI definition, provides a non-exclusive list of attributes that it will consider in determining which professional certifications and designations or other credentials qualify a natural person under its AI definition.

These attributes (which should be posted on the website of each Sponsoring Commission) should include the following:

- i. the certification, designation, or credential arises out of an examination or series of examinations administered by a self-regulatory organization or other industry body or accredited educational institution;
- ii. the examination or series of examinations is designed to reliably and validly demonstrate an individual's comprehension and sophistication in the areas of securities and investing;
- iii. persons obtaining such certification, designation, or credential can reasonably be expected to have sufficient knowledge and experience in financial and business matters to evaluate the merits and risks of a prospective investment;
- iv. an indication that an individual holds the certification or designation is made publicly available by the relevant self-regulatory organization or other industry body; and
- v. the individual is in good-standing with the self-regulatory organization or other industry body or accredited educational institution that issued the certification, designation, or credential.

Given the evolving nature of market and industry practices, the PCMA believes this approach will provide the Sponsoring Commissions with flexibility to re-evaluate previously designated certifications, designations, or credentials if they change over time, and also to designate other certifications, designations, or credentials if new certifications, designations, or credentials develop or are identified that are consistent with the specified criteria that the Sponsoring Commissions determine are appropriate.

The PCMA has generally made the same recommendations to the ASC in its comment letter involving ASC Consultation Paper, however, this should be applied to changes to the AI definition since the PCMA does not support carving out an "Associate AI" category under the Proposed Exemption.

5. In the ASC consultations, some parties suggested that we should include persons with experience or education that is not of a financial or investment nature but that is relevant to the industry in which they propose to invest. For example, it was suggested that we allow a young professional with a computer science degree to invest in a software technology company or an individual with a petroleum engineering designation to invest in an oil and gas company. However, others raised concerns that those type of educational criteria would not adequately address investor protection concerns as the investor may not appreciate the financial or investment considerations important to investing.

a. Are there other education or experience qualifications that we should consider? Please explain.

b. What other conditions might help to ameliorate the risks that the investor may not appreciate the financial and investment considerations?

PCMA Response

- (a) Yes, see the PCMA response to Question #4 above.
- (b) The Self Certified Investor Statement and Acknowledgement is very detailed and requires signatures in multiple places so we believe the risk is very low that an investor may not appreciate the financial and investment considerations involving their investments. Where a dealing representative is involved in the transaction, the suitability requirements of NI 31-103 provide additional investor protection.

6. The proposed exemption contemplates lawyers but only where their practice has involved being significantly engaged in providing financing or mergers and acquisitions advice. As worded, the requirement is a subjective assessment by the lawyer. Should objective criteria be provided e.g., percentage of practice and/or years of practising? If so, what minimum level of experience is appropriate?

PCMA Response

A lawyer in the Sponsoring Jurisdictions is not prohibited by any law or regulation from advising their clients on the use of the exemption, irrespective of their years of practice. Accordingly, such lawyers should be expected to have the sophistication necessary to make their own determination.

Nonetheless, the subjective elements of what it means to be “*significantly engaged in providing financing or mergers and acquisitions advice*” may be a barrier to use by conservative lawyers who are unsure of its meaning. Given that it is a self-assessment without objective qualification, the PCMA recommends this wording be replaced by “sufficiently experienced”, as it more clearly aligns with the subjectiveness of the Proposed Exemption.

7. One of the goals of the proposed self-certified investor exemption would be to help facilitate the development of the angel investor entrepreneurial community. Although

angel investors may invest directly into early-stage businesses, we understand that angel investors will often invest on a syndicated basis, forming a special purpose vehicle, such as a limited partnership or corporation, in which they will invest and then that special purpose vehicle will invest in an early-stage business.

The proposed self-certified investor exemption could facilitate direct investment into a business or a special purpose vehicle. However, the distribution of securities of an early stage business to a special purpose vehicle also requires reliance on a prospectus exemption.

We understand that these financings are often conducted under the private issuer exemption, which allows the distribution of securities to a number of specified parties, including accredited investors.

We understand that the special purpose vehicle is often treated as an accredited investor because all the owners of interests (except voting securities required to be owned by directors) are accredited investors. This option would seem not to be available for a special purpose vehicle where one or more of the owners of interests were self-certified investors.

a. Would this issue be adequately addressed by providing guidance that the ASC and FCAA would not object to an issuer relying on s.2.4(2)(l) of National Instrument 45-106 *Prospectus Exemptions*, i.e., the prong of the private issuer exemption that permits a distribution to a person or company that is “not the public”, provided that the special purpose vehicle is predominantly owned by accredited investors e.g., at least 80% of the funds contributed to the special purpose vehicle were contributed by accredited investors?

b. Are there other alternatives that would better address this issue?

c. If we were to adopt the proposal outlined in 7a., a Form 45-106F1 Report of Exempt Distribution would be required for the sale of securities to the self-certified investor. Would this be a significant deterrent to distributing securities to self-certified investors given that private issuers do not otherwise have reporting obligations to securities regulators? Given our interest in tracking use of this exemption, could we address this issue by requiring only a very simple letter reporting on use, which could be filed by email?

PCMA Response

Re Question #7(a) – If Self Certified Investors can invest under the Proposed Exemption, then there should be no requirement that they cannot be part of a special purpose vehicle that includes both Self-Certified Investors and AIs.

Re Question #7(c) – The PCMA believes there should be no Report of Trade involving sales to Self-Certified Investors when the issuer is a private issuer. The issue of “private issuers” using

the Proposed Exemption is more complex than set out above. If it is the CSA’s intention that a Self-Certified Investor will be ultimately included in the definition of AI, then we recognize the benefit of a simple letter report by private issuers. As previously stated, a Self-Certified Investor should be included in the definition of AI and you are now encountering the very issues we are concerned about involving this Proposed Exemption involving “Associate AIs”

ADDITIONAL COMMENTS

Statutory Declaration – The PCMA submits that the requirement to have a Statutory Declaration signed is unnecessary. This is contrary to the Government’s burden reduction initiatives and a deterrent and impediment to the use of the Proposed Exemption. Requiring a statutory declaration will (i) create cost to the investor that is disproportionate to the proposed limits, (ii) prejudice investors in rural and smaller markets without ready access to a significant number of lawyers and notaries, and (iii) inhibit market trends to allow for electronic completion of investment documents.

It is unclear why the Sponsoring Commissions have taken the position that an investor’s signature is to be treated as untrustworthy or unreliable unless they have sworn it before a lawyer or notary. The PCMA notes that a statutory declaration is not the same as a requirement for independent legal advice (which itself would be inappropriate) and expect this requirement will have a dampening effect on the use of the Proposed Exemption and have little or no impact on capital raising.

Closing Remarks

The PCMA would like to thank to the Sponsoring Commissions for soliciting feedback from various stakeholders.

* * * *

We thank you for considering our submissions and we would be pleased to respond to any questions or meet with you to discuss our comments.

Yours truly,

PCMA COMMENT LETTER COMMITTEE MEMBERS

“*Brian Koscak*”
Chair of Advocacy Committee &
Executive Committee Member

“*David Gilkes*”
Co-Chair of Compliance Committee
& Executive Committee Member

cc: PCMA Board of Directors



December 21, 2020

VIA EMAIL

Alberta Securities Commission
Suite 600, 250 – 5th Street SW
Calgary, AB T2P 0R4
New.Economy@asc.ca

Dear Sirs/Mesdames:

Re: CSA Multilateral Notice and Request for Comment 45-327 Proposed Prospectus Exemption for Self-Certified Investors (the “Proposed Exemption”)

The Canadian Advocacy Council of CFA Societies Canada¹ (the “CAC”) appreciates the opportunity to provide the following comments on the Proposed Exemption.

We understand the Proposed Exemption is intended to be available to issuers in Alberta and Saskatchewan who distribute securities to investors in those provinces as an alternative to the accredited investor exemption, or for those who do not yet qualify as such. We believe it is important for this intention to be made clear in the wording of the Blanket Order, such that issuers and any registrants who are located in Alberta or Saskatchewan and involved in an offering do not mistakenly believe they can sell securities under this Proposed Exemption to investors in other jurisdictions. While the proposed form of statutory declaration includes a statement that the investor is a resident of either Alberta or Saskatchewan, a similar statement could be included as a specific requirement of the proposed Blanket Order as well.

The notice explaining the Proposed Exemption states that it is not intended that the issuer take steps to independently confirm the education or experience qualification of persons attesting to the foregoing in a statutory declaration. While that is a departure from the usual burden placed on issuers to ensure that an exemption from the

¹ The CAC is an advocacy council for CFA Societies Canada, representing the 12 CFA Institute Member Societies across Canada and over 18,000 Canadian CFA charterholders. The council includes investment professionals across Canada who review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital markets in Canada. Visit www.cfacanada.org to access the advocacy work of the CAC.

CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organization is a champion of ethical behavior in investment markets and a respected source of knowledge in the global financial community. Our aim is to create an environment where investors' interests come first, markets function at their best, and economies grow. There are more than 177,600 CFA charterholders worldwide in 165 markets. CFA Institute has nine offices worldwide and there are 160 local member societies. For more information, visit www.cfainstitute.org.



prospectus requirement is available, we agree that a statutory declaration could suffice for the time being. However, to the extent that a registrant is involved in the distribution, we believe it is important that it be clearly stated that the statutory declaration does not abrogate the registrant's KYC, KYP or suitability obligations. Presumably, part of the dealer's responsibility would be to ensure that the individual qualifies for the exemption under the stated criteria as part of his or her suitability obligations. It is important that the self-certification not become a "check-the-box" exercise on the part of proposed investors, and dealers should bear some responsibility for ensuring the accuracy of the self-certification. If there are ramifications to inaccurate statements, those ramifications should extend to the registrants facilitating the issue.

While the investor may have the credentials to make them aware of the general risk characteristics of an investment, that same investor may not have a proven ability to withstand the loss of part or all of their investment in the issuer. Therefore, it will be crucial for registrants to confirm as part of the KYC and suitability assessments that any investor utilizing the Proposed Exemption is not investing using borrowed funds beyond their ability to repay should the investment prove either worthless or illiquid. Registrants should also ensure that all relevant concentration limits are not exceeded.

We appreciate that many of the risks described in the Self-Certified Investment Statement and Acknowledgement (the "Certificate") are detailed and written plainly and concisely. We support the required acknowledgement after the explanation of each risk. While the Certificate requires an investor to state that they do not *intend* (emphasis added) to invest more than \$10,000 in the issuer in the last 12 months or more than \$30,000 in all issuers, we think it is equally important they certify that at the time of investment they have not breached, and will not as a result of the investment breach, these thresholds.

While we applaud the initiative shown by the ASC and FCAA in advancing this initiative, we strongly support harmonizing prospectus exemptions across Canada for ease of use by investors and issuers and to reduce the possibility of regulatory arbitrage across jurisdictions. Once the Proposed Exemption is in place for a suitable length of time and data is gathered on both its use and compliance with its terms, and it is clear that investors have not been disadvantaged, we would encourage the ASC and the FCAA to work with their counterparts in other jurisdictions to expand the Proposed Exemption across Canada. It might then be possible in a future policy project to expand the Proposed Exemption in the initial two jurisdictions even further by considering other professional designations and professional experience of persons who can understand the relevant financial and investing considerations of a particular investment, as noted further in our response below to the specific questions posed.

It will be important for the ASC and FCAA to monitor the use of the Proposed Exemption closely, such that any issues can be corrected and avoided during the initial pilot project in a timely manner. We believe proactive audit sweeps around the use of



the Proposed Exemption, as well as registrant and issuer education on the conditions for its use, will help prevent many potential problems from occurring.

Our feedback in respect of select questions posed follow.

1. To what extent do you anticipate that this prospectus exemption would be relied on by businesses in Alberta or Saskatchewan?

We anticipate that the Proposed Exemption would be used by start-ups and emerging businesses in Alberta and Saskatchewan to sell securities to professional colleagues, friends and acquaintances of promoters and officers/directors of the issuer who are unable to purchase securities under an existing prospectus exemption. We believe many of these investors might be just shy of the requisite income or financial asset threshold to qualify as accredited investors. We would encourage the ASC and FCAA to engage in proactive outreach efforts to the angel investor, venture capital, and start-up business ecosystems (that vary by industry sector) to build awareness of this exemption and the positive impact that it may have on the capital-raising ambitions for new and emerging businesses in these provinces.

2. In setting the limits on investment, we considered that a policy rationale for the accredited investor exemption is ability to withstand loss. Investors investing under the proposed exemption are likely not accredited investors and can be assumed to have annual income of less than \$200,000. Are the limits of \$10,000 in any one issuer in a 12-month period and \$30,000 in all issuers in a 12-month period appropriate in ensuring that an investor has the ability to withstand the loss of the investment? Are other conditions necessary to address investor protection concerns?

As the aggregate issuer limits are equivalent to what is permitted for eligible investors to purchase securities using the offering memorandum prospectus exemption in Alberta and Saskatchewan, we believe the limits are reasonable.

3. Are there other factors that an investor should acknowledge they understand in the Self-Certified Investor Statement and Acknowledgement?

Item 8 of the Certificate references the fact that for non-reporting issuers, the prospective investor could be forced to hold the securities for many years, potentially indefinitely. We think it is important that this statement be highlighted even more by separating out the reference, bolding it and using plain language (i.e. This investment may remain illiquid for a very long time, potentially more than 10 years, and in some cases, even indefinitely). It can also be stated that illiquidity is a heightened risk for the types of issuers likely to utilize the Proposed Exemption.



In addition, we believe that a few additional disclosure items should be added to the Certificate. In particular, the Certificate does not mention the risk of not obtaining (and understanding) tax disclosure regarding the potential tax impact of the investment. For example, early stage and start up issuers might well be structured as limited partnerships, such that allocations may be made to limited partners without any cash distributions with which to pay the tax, or there could be other circumstances of phantom gains. The lack of tax disclosure could be highlighted as a specific item of information that would be provided in a prospectus under Item 2 – Information needed to make investment decision, and/or Item 5 - No registered dealer or qualified advice, or under its own category. The specific risk that the tax consequences of the investment could be materially adverse to the purchaser should be stated explicitly as a risk.

As noted above, we remain concerned that investors should not be permitted to invest using the Proposed Exemption with excessive borrowed funds, and that should be explicitly confirmed in the statutory declaration.

4. The exemption focuses on financial and investment education and experience. Are there other designations or courses that would provide an investor with relevant financial and investment education and should be included e.g., the chartered investment management designation? Please explain.

As noted in our response above, we believe regulators should monitor the use of the Proposed Exemption before it is expanded either geographically to other Canadian jurisdictions, or to other investors. However, we would be pleased in the future to consider whether there are other educational avenues or areas of study, such as economics, applied mathematics, business strategy or entrepreneurship, coupled with professional experience related to public or private financings or mergers and acquisition transactions, which could be seen as equivalent in specific circumstances.

7. One of the goals of the proposed self-certified investor exemption would be to help facilitate the development of the angel investor entrepreneurial community. Although angel investors may invest directly into early-stage businesses, we understand that angel investors will often invest on a syndicated basis, forming a special purpose vehicle, such as a limited partnership or corporation, in which they will invest and then that special purpose vehicle will invest in an early-stage business. The proposed self-certified investor exemption could facilitate direct investment into a business or a special purpose vehicle. However, the distribution of securities of an early stage business to a special purpose vehicle also requires reliance on a prospectus exemption. We understand that these financings are often conducted under the private issuer exemption, which allows the distribution of securities to a number of specified parties, including accredited investors. We understand that the special purpose vehicle is often treated as an accredited investor because all the owners of interests (except voting securities required to be owned by directors) are accredited investors. This option would



seem not to be available for a special purpose vehicle where one or more of the owners of interests were self-certified investors.

a. Would this issue be adequately addressed by providing guidance that the ASC and FCAA would not object to an issuer relying on s.2.4(2)(l) of National Instrument 45-106 Prospectus Exemptions, i.e., the prong of the private issuer exemption that permits a distribution to a person or company that is “not the public”, provided that the special purpose vehicle is predominantly owned by accredited investors e.g., at least 80% of the funds contributed to the special purpose vehicle were contributed by accredited investors?

We have some concerns with respect to interpreting the “not the public” prong of the private issuer exemption such that it would automatically include a vehicle that is predominately owned by accredited investors. While allowing this type of investment syndication could assist issuers in raising capital from these groups, it would lead to disharmonizing the use of the private issuer exemption in other jurisdictions, or even in Alberta and Saskatchewan in other circumstances that do not involve the Proposed Exemption. Issuers utilizing the private issuer exemption directly may be required to take a narrower view of the meaning of “not the public”, providing an unfair advantage to issuers utilizing the Proposed Exemption in the manner set out above. In addition, encouraging syndications for the purpose of investing in this manner may, depending on the circumstances, also raise additional questions such as whether the special purpose vehicle could be considered an investment fund under applicable securities legislation.

Concluding Remarks

We thank you for the opportunity to provide these comments. We would be happy to address any questions you may have and appreciate the time you are taking to consider our points of view. Please feel free to contact us at cac@cfacanada.org on this or any other issue in future.

(Signed) *The Canadian Advocacy Council of
CFA Societies Canada*

**The Canadian Advocacy Council of
CFA Societies Canada**

From: [REDACTED]
Subject: Response to Request for Comment
Date: December 23, 2020 at 10:11:31 AM MST
To: New.Economy@asc.ca

Hello,

I've read the proposed changes to allow for Angel investors to become Self-Certified if they hold professional designations including CFA, CPA, MBA Finance.

I agree with most of what is proposed however I believe that this list should also include CMCs, BComm, LLB and all MBA degrees and designations. CMC is an internationally recognized professional designation and most have decades of business advisory experience. BComm and MBAs have been trained specifically in business and finance and most lawyers have been trained in corporate law. All should be able to assess risk appropriately.

The second recommendation is to increase the low amount being allowed to invest. \$10k per issuer up to \$30k per year is not enough to entice me to invest. It seems silly that I can gamble hundreds of thousands away at a casino but I can't invest more than \$10k in a business unless I'm accredited. I suggest adding a zero. \$100k per investment with no maximum per year.

Most women are not accredited investors and we are left out of really great investing opportunities due to the restrictive nature of these rules. If we have the money to invest, are trained and acknowledge the risks, we should be able to invest as much of our own capital as we see fit. We don't need protection from ourselves. Friends and Family rounds of financing are not appropriate for most due to the risky nature of the investments. I would never take friends and family money in my ventures as their risk profile does not match my early stage ventures. They are middle class, teachers and grandparents with little or no investing acumen and limited funds.

Our ecosystem desperately needs more capital investment at the Angel stage and more eligible Angel investors, especially women.

Thank you for allowing me the opportunity to express my thoughts and for your willingness to listen to industry.

I wish you all the warmest holiday season!

Cara Wolf

Cara Wolf MBA CMC
Founder & CEO
Ammolite Analytx



www.ammoliteanalytx.com



On Dec 23, 2020, at 10:21 AM, Cara Wolf wrote:

Hello again,

One more point to consider is the impact that multiple early stage investors have on a start-up in terms of recruiting and managing all of the tiny investments. This is very hard on start-ups as it take the same amount of time to recruit and mange larger investors and these companies should be focussing on growing and scaling their business as opposed to providing investor relations at the tiny investment stage.

Thanks again,
Cara

From: Cara Wolf
Sent: December 31, 2020 11:22 AM
To: New Economy <New.Economy@asc.ca>
Subject: Re: Response to Request for Comment

EXTERNAL EMAIL

Hello, last comment. The objective is to increase the pool of capital for start-ups and scaling companies. The current rules are too restrictive. If you reduce these thresholds more people would be accredited. For example reducing the limit of \$1MM in cash and securities to \$500k would allow more people to be eligible. Salary requirements of \$200K could be reduced to \$100k. More people would be eligible as well as if you allow real estate holdings to count (\$5MM is way out of reach for most). Then you could keep all the same governance in place and increase the size of the capital pool without adding excessive risk to investors.

Kind regards,
Cara



December 21, 2020

VIA EMAIL

Alberta Securities Commission
Suite 600, 250 – 5th Street SW
Calgary, Alberta T2P 0R4
Email: New.Economy@asc.ca

Attention: Cathy Tearoe
Senior Legal & Policy Counsel

Dear Sirs/Mesdames:

Re: CSA Multilateral Notice and Request for Comment 45-327 – *Proposed Prospectus Exemption for Self-Certified Investors*

Toronto Stock Exchange and TSX Venture Exchange (each, an “**Exchange**” and collectively, the “**Exchanges**”) welcome the opportunity to comment on the request for comments entitled “CSA Multilateral Notice and Request for Comment 45-427 – *Proposed Prospectus Exemptions for Self-Certified Investors*” published on November 20, 2020 (“**Request for Comments**”) by the Alberta Securities Commission (the “**ASC**”) and the Financial and Consumer Affairs Authority of Saskatchewan (“**FCAA**”) regarding a prospectus exemption that would allow issuers in Alberta and Saskatchewan to distribute securities to investors that self-certify that they have certain financial education or experience and that they have read and understood a summary of risks and considerations, subject to certain investment limits (the “**Proposed Exemption**”).

We recognize the importance of the exempt market for Canada, and are committed, along with the Canadian Securities Administrators (“**CSA**”) and other industry participants, to ensuring that the exempt market is fair to investors while providing the necessary opportunity for issuers to raise needed capital in a timely and cost-efficient manner. Both TSX Venture and TSX-listed issuers rely heavily on private placements as a source of financing, and the Exchanges recognize the importance of the exempt market to their listed issuers.

We support initiatives that have the goal of facilitating capital formation for listed issuers and leveling the playing field for all investors, retail and institutional, and we applaud the ASC and other CSA members’ efforts in this regard. The Exchanges believe that the Proposed Exemption is an additional tool that may result in tangible benefits to listed issuers and their investors and ultimately, to the Canadian capital market, by fostering capital raising.

The Exchanges recognize that the Proposed Exemption appropriately balances investor protection concerns with the necessary opportunity for issuers to raise capital by requiring investors to complete a statement and acknowledgement regarding their financial education and experience, and confirming that they have read and understood a specified summary of investment risks and considerations. We also recognize that the Proposed Exemption balances

investor protection concerns by limiting the amount an investor may invest under the Proposed Exemption in a 12-month period. We are supportive of these measures.

The Exchanges continue to strongly support the harmonization of prospectus exemptions across all Canadian jurisdictions and we are hopeful that the Proposed Exemption will benefit all market participants, regardless of the jurisdiction of their lead regulator. As with other exemptions aimed at facilitating capital raising through the exempt market, we strongly encourage the other members of the CSA to work together with the ASC and FCAA to implement prospectus exemptions in a coordinated manner.

Thank you for the opportunity to comment on the Request for Comments and on the Proposed Exemption. Should you wish to discuss any of the comments with us in more detail, we would be pleased to respond.

Yours truly,

"Loui Anastasopoulos"

Loui Anastasopoulos
President Capital Formation and TSX Trust

From: [Chad Saunders](#)
To: [New Economy](#)
Cc: [Michael Robinson](#)
Subject: Request for Comment 45-327
Date: December 14, 2020 09:45:03 PM

EXTERNAL EMAIL

Thank you for making available the CSA Multilateral Notice and Request for Comment 45-327 on Proposed Prospectus Exemption for Self-Certified Investors. I really like this idea and offer the following comments:

1. The criteria for an accredited investor is based upon assets and free cash flow but for self-certified investors it appears to be based upon having specific credentials. It seems a bit paternalistic to say that 'rich' people can invest without training while 'poor' people need special training. I am supportive of education and training for all but it might be better to build the criteria for self-certified investors upon assets and free cash flow that parallels accredited investors. Presumably, the main concern is that self-certified investors do not make investments that if the investment goes very poorly it does not place the individual in a dire financial situation. If the only control mechanisms are the investment amount cap or education then that would really not provide this protection. For example, someone with amazing credentials that makes a reasonable investment decision can still have the investment go poorly but if they don't have sufficient assets/cash then even a small investment would be highly detrimental since they can't really afford to lose that money. This is similar to an entrepreneurial startup that goes out of business in the best year of sales by not managing cash flow properly to be able to pay their bills.
2. Credentials are great and I can see the relevance of the Certified Financial Analyst for this type of investment but it is not clear how the CPA, law degree, finance degree or finance MBA necessarily prepares individuals for adequately addressing personal entrepreneurial investment decisions. That is, I can anticipate situations where all of these credentials could be completed without ever dealing with analyzing the types of entrepreneurial investment opportunities envisioned by this initiative.
3. I like the idea of having the investor sign off on a checklist before making the investment but the investment amounts seem highly restrictive. I think some of the checklist could really replace the credentials to assist with pointing to key areas of concern for these types of investments and have them sign off they they are comfortable that they have done the due diligence needed. This could include highlighting the typical due diligence that would be completed so that if they are better informed.

My understanding of this initiative is to make more capital available in the market and to build the pool of future angel investors and accredited investors while minimizing the risks to the self-certified investors. From that perspective, I think setting the investment amount as some percentage of assets of investment would be a better

way of accomplishing this risk reduction (similar to the mechanism used by banks to determine financial health for a loan) and then combine that with some sort of (optional) self-certified investment course and/or mentorship program that pairs self-certified investors with angels and/or accredited investors. I think that approach would reduce the risk profile while building a stronger entrepreneurial investment ecosystem.

Thank you.

Chad~

—

Chad Saunders, MBA, PhD, ICD.D

Assistant Professor

Entrepreneurship & Innovation, Haskayne School of Business

Adjunct Appointments with Departments of Medicine and Community Health Sciences

Academic Coordinator, Embedded Certificate in Entrepreneurial Thinking

eHealth Services and Strategy Lead, Ward of 21st Century (w21c.org), Cumming School of Medicine

University of Calgary



From: [Chris Weinhaul](#)
To: [New Economy](#)
Subject: Great topic angle investments
Date: December 20, 2020 06:03:37 PM

EXTERNAL EMAIL

28,000 CPA members in AB * \$10,000 = potentially \$280,000,000 a year new angle money.
Good start.

CPAs will be seeing new opportunities coming their way fairly quickly. But look Neo just took down \$50M this last week, this makes \$280M look like pocket change.

More broadly, there needs to be an acceleration of investment and with that acceleration will come more winners and more losers. The Silicon Valley already has reached the self sustaining investment acceleration and is going so fast(ie it's seeking new investments) silicone valley is sucking everything into its orbit, starving local opportunities all over the world and preventing new ventures from staying in their original communities.

Angles invest within 10miles

VCs invest within 100 miles

Silicone Valley will invest if you move there.

1. Structurally the problem are;

Investment rules and regulations are too cumbersome and to legal.

2. We do not teach investment at the lower education levels so that broadly people understand investment even in their own RRSP, TFSA, mortgage, credit cards etc.

Our local authorities act as traffic cops to protect investors and limit access to capital by new ventures. These traffic cops act like we know what they are saying and understand the legal nuance of investments.

In reality a CPA or MBA really has special power to I stand the investment or their own personal financial risk. I could be an MBA is a marketing major. I could be a CPA that does payroll tax; nothing about investment loss.

The tech guy that knows the subject area will potentially know if the idea actually works.
Or the teacher will know if the new teaching tools will work.

Companies need both subject area experts and knowledgeable business managers. Investors can't be expected to know both. This is where limited their risk to \$10k coming in.

Quick search, the cheapest MBA is \$5k online.

I like of idea of expanding investment in our local people in our local communities.

I like that people will invest in their neighbour.

I would like investment be a core topic in the early education system so all Albertians can be

financially successful broadly.

Structurally how much old oil money is sitting in AB not being invested in new ventures?
How do we unleash that money?

How do we make it exciting and worth while for people to take a financial risk on their neighbour?

How do we teach both investors and innovators broadly to manage a financial transaction that keeps everyone safe? My answer is education on both sides and easy to understand regulations with less legal terms (keep it simple)

Here is another idea:

Have a KIVA like program in AB. Absolutely no cost investment exchange where people can request investment in small amounts and people can invest up to \$500 over 2 years or \$1000 over 5 yrs for all Albetians. We need to allow people the opportunity to try and experience investing. We need people experience a loss to learn.

Thanks

Chris Weinhaupl
[REDACTED]

[REDACTED]



December 23, 2020

Cathy Tearoe
Senior Legal & Policy Counsel
Alberta Securities Commission
Suite 600, 250 – 5th Street SW
Calgary, AB T2P 0R4

Dear Ms. Tearoe:

Re: Canadian Securities Administrators (CSA) Multilateral Notice 45-327, *Proposed Prospectus Exemption for Self-Certified Investors*

Thank you for the opportunity to comment on CSA Multilateral Notice 45-327, *Proposed Prospectus Exemption for Self-Certified Investors* which was published for comment on November 20, 2020 for local blanket orders, which if adopted would provide a new prospectus exemption entitled *Prospectus Exemption For Self-Certified Investors (Proposed Blanket Order)* intended to be available to Alberta and Saskatchewan issuers distributing securities in either or both of Alberta and Saskatchewan. We appreciate the opportunity to be a part of the CSA's reform process and to contribute to these important developments.

The Proposed Blanket Order will expand the angel investor¹ ecosystem on an interim, three-year basis, to self-certified investors through an additional prospectus exemption for use by Alberta and Saskatchewan businesses to facilitate their capital raising efforts, permitting them to distribute securities to investors in those provinces, provided that the investor signs a statutory declaration attesting to having completed a Self-Certified Investor Statement and Acknowledgement related to financial education or experience requirements, investment risks and considerations, and subject to specific investment limits over the last 12 month period. A stated goal of the exemption

¹ Angel investors are typically defined as high net worth or net income individuals that would qualify as "accredited investors". They will often invest in early-stage companies that are not yet at the stage of development to attract institutional investors, such as venture capitalists. They may invest individually or invest together with other angel investors through special purpose vehicles, e.g., corporations or limited partnerships, created to invest in a single business. Recently, NACO has expanded the definition of "angel investor" to include individuals that put their capital at risk in the early-stage ecosystem, which includes individuals that invest as limited partners (LPs) in angel funds, and/or venture capital funds.



is to allow self-certified investors to invest alongside “accredited investors”² in Alberta and Saskatchewan to facilitate growth of the angel investor ecosystem.

As CEO of the National Angel Capital Organization (**NACO**), I have a special appreciation for the important role that our provincial securities regulators play in protecting Canadian investors, particularly as a lawyer member of the Ontario Bar with experience having worked on secondment in the Corporate Finance Branch of the Ontario Securities Commission (**OSC**). For over 20 years, NACO has represented Canada’s angel investors with a growing membership that includes more than 4000 angel investors and 40 angel groups. Over the past decade, NACO’s angel members have invested over \$1 billion into more than 1500 Canadian companies. Our work to expand access to capital in Canada includes an [Annual Report on Angel Investing in Canada](#) published in partnership with Innovation, Science and Economic Development Canada (ISED), which has data that was referenced in ASC Consultation Paper 11-701 *Energizing Alberta’s Capital Market (11-701)*.³

Overview

We commend the Alberta Securities Commission (**ASC**) and the Financial and Consumer Affairs Authority of Saskatchewan (**FCAA**) for your leadership in taking steps to mobilize capital for entrepreneurs through the proposed prospectus exemption for self-certified investors. We recognize that this undertaking is part of a broader initiative to contribute to Canada’s economic recovery by strengthening, adapting, expanding, and diversifying our provincial economies. Importantly, this endeavour is taking place within the CSA’s mandate to ensure appropriate securities regulation that protects investors and fosters a vibrant capital market.

Generally, we are supportive of the intent of the Proposed Blanket Order and we recognize the CSA’s significant efforts and difficult task in striking a balance between investor protection and reducing the burden of raising capital for entrepreneurs. To meaningfully contribute to Canada’s economic recovery, both non-accredited and accredited investors should be well-positioned to make informed and sustainable investment decisions. In striving to achieve an appropriate balance between protecting investors without unduly burdening the businesses trying to raise

² The term “accredited investor” defined in National Instrument 45-106 Prospectus Exemptions includes various specified institutions and wealthy individuals. The definition contemplates individuals with annual net income in excess of \$200,000, net assets of at least \$5,000,000 or net realizable financial assets of at least \$1,000,000.

³ <https://www.albertasecurities.com/-/media/ASC-Documents-part-1/Regulatory-Instruments/2019/06/5466593- - Consultation Paper Energizing Alberta's Capital Market.aspx>

capital to build and grow, we encourage a reevaluation of the fundamental assumptions underlying the accredited investor exemption. After careful consideration and review, we have identified several areas of opportunity in relation to this proposed exemption. Our comments in some cases are broader in scope than the Proposed Blanket Order, with a view to informing the policy objectives of the CSA. As it relates to the Proposed Blanket Order, we specifically recommend additional review of the financial, investment education, and experience requirements.

Angel investors are the primary source of early-stage funding for young companies, putting their own capital at risk in local communities and spurring job creation. Angel investors play a crucial role in the startup ecosystem, facilitating follow-on investment from venture capital firms and institutional lenders and providing mentorship, access to client networks and invaluable guidance to scaling companies. We applaud this initiative to enable more Canadians to join the angel investment community.

The Accredited Investor Standard

The current “accredited investor” standard is generally informed by two key policy rationales, particularly that wealth is a reasonable proxy for sophistication and that individuals with high net worth or annual income can sustain the loss of their investment. When viewed through the lens of the CSA’s broader initiative to strengthen, expand, and diversify our provincial economies, these rationales are flawed.

While relatively high annual income and net worth may increase the ability of a prospective investor to bear the loss of their investment, where those investments are uninformed (particularly as it relates to due diligence, valuation, and diversification within the early-stage asset class) investors are highly likely to lose their investment or experience illiquidity over an extended period of time. When investors suffer losses that could have otherwise been avoided through appropriate education, mentorship, or training (for ease of reference, referred to as “**avoidable losses**”) that capital evaporates from the early-stage ecosystem and additional capital allocations to other potentially higher-calibre businesses become less likely. As angel investing is a relationship-oriented activity, avoidable losses suffered by one investor can have a ripple effect, discouraging other prospective investors from supporting viable businesses. As a result, informed investing preserves the integrity of the angel investor ecosystem, which is critical to the growth and diversification of Canada’s economy.



The current standard overlooks the role of diversification in protecting investors against the risk of loss. A diversified but non-accredited investor with a net worth of \$900,000 is not permitted to invest even 1% of her or his portfolio into early stage companies, yet an “accredited investor” with a net worth of \$1,100,000 could potentially invest 100% of that money into a single startup and lose her or his entire life savings. Next, the elderly, in some cases a vulnerable population, may lack both financial sophistication and loss-bearing capacity, meet the current standard’s wealth metrics, and yet best practices suggest that as an investor grows older, they should tilt their portfolio towards assets with lower risk and greater liquidity. By failing to consider the role of diversification in mitigating risk and conflating wealth and income thresholds with sophistication and ability to sustain loss, accredited investors under the current definition are exposed to losses that could be avoided through education, mentorship, or training.

Professional Designations are a Systemic Barrier

The Proposed Blanket Order’s focus on financial and investment credentials does not take into consideration the systemic barriers that impact access to higher education and creates an inequitable barrier to participation in the angel investor ecosystem. Angel investing can lead to economic opportunity for both the investor and entrepreneur and should not be limited to those who have obtained a professional designation such as those listed in the proposal. Many of our country’s most impactful angel investors are former entrepreneurs themselves who did not pursue professional designations, yet have years of experience building and scaling businesses.

Recommendation 1

To minimize the impact of systemic barriers, we recommend additional review of the financial, investment education, and experience requirements in the Proposed Blanket Order. Targeted angel investment education combined with accredited angel group membership should be considered (as an alternative credential) to ensure the Self-Certified Investor criteria is inclusive.

Investment Limits to Protect Non-Accredited Investors

We support investment limits to protect non-accredited investors from loss stemming from any one company. However, to ensure the Proposed Blanket Order achieves its intended purpose in contributing to economic growth, while reducing the risk of loss to self-certified investors, we recommend that the maximum investment in any one company in a 12 month period be set to \$25,000, but to facilitate diversification, that aggregate investments be allowed in a 12 month



period of up to \$100,000. The proposed maximums are otherwise too low and self-certified investors may lose access to high quality companies, thereby being exposed to the risks inherent within lower quality investment opportunities and a lack of diversification.

Recommendation 2

We recommend that the maximum investment in any one issuer in a 12 month period be set to \$25,000 and the aggregate investments in a 12 month period be set to \$100,000.

Recommendation 3

We recommend a diversification acknowledgement be added to the proposed Self-Certified Investor Statement in the form of acknowledgement on awareness of the benefits of diversification within both a broadly diversified portfolio, and within the angel asset-class itself (including through fund investments).

Sustainability of the Angel Investor Ecosystem

In addition, the current proposal assumes that a familiarity with investment and finance decreases the risk associated with angel investing. The challenge with this assumption is that if incorrect, we risk losing new investors who may exit the ecosystem if they make poor investment decisions and suffer otherwise avoidable losses. Assessing the growth and return potential of a pre-revenue, early-stage company is challenging even for seasoned angel investors. As a result, NACO in collaboration with Ryerson University developed a robust training program in 2017 to fortify the education and skill set of its angel investor members and increase the sustainability of investment outcomes. NACO has an online educational curriculum available on-demand to educate prospective investors on best practices, diversification, due diligence and valuation.

An adequate level of *angel investor training* is critical to minimizing the risk of avoidable losses for new investors, regardless of their professional designations. While the CFA/CPA designations and university level credentials including a Master of Business Administration (**MBA**) and Juris Doctor (**JD**), are reasonable proxies for general sophistication, the sustainability of the angel investor ecosystem requires more targeted education. Otherwise, as a country we risk losing a generation of investors and the capital they can bring to help diversify, expand, and grow our provincial economies.



Recommendation 4

We recommend an educational acknowledgement be added to the proposed Self-Certified Investor Statement in the form of an acknowledgement on awareness of the availability of training, education and best practices of investing within the angel asset-class.

The risks associated with angel investing can be further decreased through affiliation with an accredited fund or angel group. A combination of angel investor training and participation in a fund or angel group can de-risk the investment and increase the likelihood of an investor remaining engaged in the ecosystem. NACO is well-positioned to administer the accreditation of angel groups and angel funds, while either NACO, the Canadian Venture Capital and Private Equity Association (**CVCA**) or the Business Development Bank of Canada (**BDC**, which invests in venture capital funds) could assist in the accreditation of venture capital funds.

In closing, we would like to thank the Alberta Securities Commission and the Financial and Consumer Affairs Authority of Saskatchewan for your leadership in endeavouring to expand the angel investor ecosystem. We welcome future opportunities to contribute to these important developments, particularly in helping the CSA to strike an appropriate balance between protecting investors and increasing access to capital for Canada's entrepreneurs to drive meaningful economic growth in communities across the country.

Yours very truly,

National Angel Capital Organization



Claudio Rojas JD, MBA
CEO
crojas@nacocanada.com



Appendix A: Biography of Claudio Rojas

Claudio Rojas is Chief Executive Officer of the National Angel Capital Organization (NACO). As CEO, he leads Canada's only nation-wide industry association for both angel investors and incubators and accelerators. For over twenty years, NACO has provided intelligence, best practices, tools and resources to unlock capital and mentorship for Canada's entrepreneurs. NACO members have invested over \$1 billion into more than 1500 entrepreneurial companies.

As a lawyer and corporate finance professional with a specialization in complex areas of intersection between law and finance, Claudio has published a manuscript on corporate governance in the University of British Columbia Law Review, a top ranking peer-reviewed law journal. His primary research interest is in the integration of legal and economic analysis, with particular emphasis on the impact of ownership structure and governance on economic efficiency.

Claudio holds a Juris Doctor (JD) from Western University, Master of Business Administration (MBA) from the Ivey Business School, has achieved all three levels of the Chartered Financial Analyst (CFA) examinations, is a practitioner member of the European Corporate Governance Institute, and is a practicing lawyer member of the Bar of Ontario, Canada.

From: [Colin @ Fuse42](mailto:Colin@Fuse42)
To: [New Economy](#)
Subject: Allowing new Angel Investors
Date: December 23, 2020 09:26:42 AM
Attachments: [image001.png](#)
[image002.png](#)

EXTERNAL EMAIL

Hi ASC:

We run a business accelerator in Alberta focusing on entrepreneurs who are solving the SDG's out of the UN. Our investments are diversified across many companies and are only \$5000. Opening the accredited investor list to include more people would be important and relevant for us.

Please include our petition in this important initiative.

Thank you.

Colin.

Colin Christensen



[REDACTED]
St. Albert, Alberta Canada



From: [Dana Smits](#)
To: [New Economy](#)
Subject: Prospectus Exemption For Self-Certified Investors
Date: December 23, 2020 10:32:18 AM

EXTERNAL EMAIL

Hello, I wanted to take the time to indicate my strong support for the Prospectus Exemption For Self-Certified Investors. I am a CPA and assist technology companies with raising capital. I work with a number of potential investors who would qualify as Self-Certified investors and wholeheartedly believe they have the technical and financial understanding to evaluate and select investments. At the amounts proposed, a loss is unlikely to have a significant impact on a self-identified investor's portfolio, however upside potential is strong, and the impact of an influx of capital from those who are slowly working towards becoming accredited investors would provide a significant boost to startups in Alberta and Saskatchewan. Thank you for proposing this change, and I hope to see it go through.

Merry Christmas to you all.

Dana Smits
Director, ScaleUp & Capital Access
Alberta Innovates

From: [David Crombie](#)
To: [New Economy](#)
Subject: Comments on ASC Blanket Order Proposal.
Date: December 23, 2020 11:28:18 AM
Attachments: [PastedGraphic-2.tiff](#)

EXTERNAL EMAIL

1. The New SEC regulations issued last week seem close to what you are suggesting. I assume that you will have read those.
2. Why are we not including BC and Ontario. We always seem to be making extra work.

David Crombie
Chairman
Bridge Gap Renewables inc.
www.bridgegaprenewables.com



December 17th, 2020

To: Cathy Tearoe
Senior Legal & Policy Counsel
Alberta Securities Commission

**RE: CSA Multilateral Notice and Request for Comment 45-327 Proposed Prospectus
Exemption for Self-Certified Investors**

Dear Cathy Tearoe,

On behalf of the Invest Alberta Corporation (IAC), I appreciate the opportunity to comment in support of the Alberta Securities Commission's (ASC) proposed prospectus exemption for self-certified investors. As we work to grow and diversify Alberta's economy, access to capital will be critical to fostering start-ups and emerging sectors. The proposed expansion of eligibility for certified investors to those with an advanced understanding of finance is a prudent way to help provide needed capital to Alberta businesses.

As Canada's most entrepreneurial province, Albertans are leveraging their skills to start their own companies. These start-ups often require non-traditional sources of capital as they are yet to have a reliable history of revenue and are too small to access capital markets. Due to these barriers, many start-ups are unable to access the capital needed to grow. By expanding eligibility to investors with relevant education, the proposed changes will help foster angel investors, who provide capital to start-ups unable to access traditional sources. Through the proposed changes, more investors will be able to support start-ups, helping to grow and innovate Alberta's economy.

The proposed changes are in line with Invest Alberta's goals of reducing barriers to investment and making Alberta a more business friendly environment. By expanding access to capital, and making Alberta an even more attractive destination for investors, the proposed changes support Invest Alberta's efforts to promote investment in the province.

To strengthen the proposed prospectus exemption, I'd recommend ASC expands the eligible education and designations. The exemption should include investors with Bachelors of Commerce, Finance or Accounting from accredited universities. These degrees provide investors with relevant financial and investment education needed to appreciate potential risk. Additionally, I recommend expanding the eligible designations to include those licensed to sell securities, specifically Chartered Investment Managers (CIM). This accreditation demonstrates the necessary proficiency and experience in securities. The proposed annual limits on the expanded eligibility, \$10,000 in a single business and to a total investment of \$30,000 in all entities, provides the necessary regulation to reduce the risk of loss. Additionally, the eligible investors should be permitted to engage in crowdfunding through rule MI 45-108, while still following the same proposed limits. By further expanding the eligibility, start-ups will have a larger community of investors to seek the needed capital to grow.

Thank you again for the opportunity to comment in support of your (ASC) proposed prospectus and provide some recommendations. Please do not hesitate to reach out if you have any questions.

Best regards,



David Knight Legg
Chief Executive Officer
Invest Alberta Corporation

From: Derrick Hunter
Sent: December 7, 2020 10:24 AM
To: Denise Weeres
Subject: RE: AB & SK seeking input on proposed new capital raising initiative

EXTERNAL EMAIL

Hi Denise

I circulated this information to my employees, many of whom are in their mid-30s, financially educated and basically in the business of reviewing investment opportunities on a full-time basis. They get frustrated because some are not deemed accredited despite holding CFAs and many years experience in security analysis.

Some comments from them:

- “I think this is a move in the right direction but is still too restrictive on who can invest. The maximums are fair as most people (even CFAs, CPAs, Lawyers and MBAs) don’t have \$30k to invest annually.
- The definition for potential investors under the self-certified investor statement needs to be greatly expanded. How about making individuals assess their own risk through a questionnaire? Or answering a question regarding understanding of the risks involved? As it stands (CFAs, CPAs, Lawyers and MBAs) eliminates some of us from being able to invest independently at the angel stage where we are more than qualified to do so.
- The definition for potential investors should at least be expanded to those with a university degree in Business, Engineering, medicine, dentistry etc.. You could also include work experience as a criteria?
- If the goal is to expand the pool of capital available then it needs to be expanded well beyond the proposal. Right now you will add maybe 10,000 new investors of which 2% will actually invest?
- Agree about the maximums. I’d like to see anyone (not just those completing professional designations) be able to test in to the AI exemption, but that’s much more difficult to facilitate. To be honest, I think the proposal as is will be a huge improvement.
- Yeah I lean the same way. I’d want the maximums higher, maybe only increasing the cumulative amount so it encourages diversification?
- I’d also argue that those who have the knowledge should have a way to get exempted. Maybe passing CSC could be added?

- Regardless this is a big step. Now we need the OSC and BCSC to get on board. I might formally submit comments.

Just some thoughts.

On balance, I think it's a bit crazy that we allow wealth managers and exempt market dealers to sell garbage to the uneducated but don't allow financially savvy people that are not AI's to participate in private deals.

Best
Derrick

From: Elliot Bridgewater
Sent: November 20, 2020 10:39 AM
To: Denise Weeres
Cc: Travis Inlow; Seth Leon; Paul Cabaj ; Bill Oemichen
Subject: Re: AB & SK seeking input on proposed new capital raising initiative

EXTERNAL EMAIL

Thanks Denise,

I think this is an exciting and positive proposal. I am wondering though, if the purpose of the proposed exemption is to open the door to knowledgeable investors that do not fit the definition of accredited investors, the specific criteria of self-certification seems unnecessarily restricted to professionals (financial analysts, accountants, securities lawyers, and MBA grads). Does this not unnecessarily exclude large portions of the public that are prudent investors but do not have professional designations?

I'm wondering if there is an available online course, or one that could be developed, that would meet the 'certain financial education or experience', such that this exemption could be more broadly available to those knowledgeable individuals that do not have a professional degree, or MBA, but have invested time in educating themselves. Has anyone broken down the relevant financial education to its constituent components?

For instance, McGill offers this course to the public: <https://www.mcgillpersonalfinance.com/>

Or, this workshop promoted by the Government of Canada, developed by the OSC: <https://www.canada.ca/en/financial-consumer-agency/services/financial-basics.html>

Would it be possible to expand upon this workshop to meet the educational sufficiency requirements?

Best regards,

Elliot

From: [Eric Martin](#)
To: [New Economy](#)
Subject: Proposed prospectus exemption for Self-Certified Investors
Date: December 23, 2020 12:44:48 PM

EXTERNAL EMAIL

Hello,

I have reviewed the multilateral notice 45-327 and have a few comments and have listed them according to your formatted questions.

1. I am in support of this great initiative and I anticipate a strong positive response from entrepreneurial and investor communities.
2. I think the max investment amounts are too low. I proposed an increase to 25k in 12 months which does not exceed a total of 50k. This provides additional autonomy and is based on the criteria proposed for those that would be eligible. This cohort is knowledgeable, financially astute and often more conservative in their approach.
3. nothing else to add.
4. I think the CPA, CFA and MBA are reasonable. however, there are exceptional non-finance MBA's that would equally support new businesses and should be included.
5. You could consider a 'mentor' like relationship as part of the criteria for non-CFA, CPA and MBA investors. This could function as an endorsement/reference of the individual for the sole purposes of supporting their commitment to behave with integrity and ethics and can be considered as part of their commitment to complete due diligence, and also adds a level of credibility.
6. nothing to add.
7. In terms of the SPV considerations, I think new investors under this provision would and should be allowed to invest in this manner. This reduces risk to the new investor and is a great alternative to direct startup early investments. Furthermore, It may be difficult for new investors to invest in more established startups, because there is incentive to reduce the total number of investors with small cheque sizes.

Regards,
Eric Martin
COO, PulseMedica



pulsemedica.com

From: [Geoff](#)
To: [New Economy](#)
Subject: Comments on the Proposed Blanket Order: Prospectus Exemption For Self-Certified Investors
Date: December 24, 2020 01:29:03 AM

EXTERNAL EMAIL

TO: Cathy Tearoe, Senior Legal & Policy Counsel, Alberta Securities Commission

This email is in response to the request for comments regarding the *Prospectus Exemption For Self-Certified Investors* (Proposed Blanket Order). Please permit me to offer some comments on the proposed Blanket Order, specifically related to its explicit goal to “help facilitate the growth of the angel investor ecosystem.” I offer these comments in my capacity as someone who studies equity risk capital investment and the angel market.

First, I acknowledged that this initiative is novel and as such, somewhat ‘experimental’; to be run on an interim 3-year basis, which could allow sufficient time to generate enough evidence to show whether the level of uptake by self-certified investors is increasing the level and flow of risk capital to Alberta and Saskatchewan businesses, while controlling for counter-factual effects, etc. Whether the goal of increasing the level of risk capital has positive economic outcomes, including returns to angels, is an important question.

The fundamental rationale for angel investing, from both investor and government perspectives, is predicated on the generation of positive returns; where successful investment exits stimulate further angel activity, release risk capital for new investments, recycle investor and entrepreneurial talent in the region, etc. However, our research, and that of others, identifies poor returns to angels. One question that arises, in terms of angel returns, relates to “is it worth it”? Given the overall distribution of returns and the disproportionate influence of the rare black swan investments, it appears that angel investors need to build a significant portfolio of investments to be reasonably sure of making an overall acceptable return. While the ‘professionalization’ of angel investing through angel groups has allowed for more syndication of investments and portfolio ‘risk-spreading,’ few angel groups can manage sufficiently large investment portfolios.

The *Prospectus Exemption For Self-Certified Investors* document highlights at the outset the statutory declaration requirements and investor’s ability to withstand loss, which recognizes the high level of risk that these investors will take on, despite the relatively modest size of investment. One question is whether self-certified investors will become more investment-active, invest small amounts across a number of investments, but the Blanket Order sets investment limits in this regard. Another question is whether self-certified investors, as ‘passive investors’ can benefit from co-investing with more established, experienced investors

who will typically lead an investment, and how this might be structured. It should be pointed out that angels have increasingly become 'cradle to grave' investors - from start-up to exit – which has lengthened angel investor's holding periods and seen angels make more follow-on investments in existing portfolio companies, rather than in new (to them) companies. This has implications for self-certified investors to follow their investment and realize a return on their investment.

The proposed Blanket Order implies that there is insufficient investment capital available to businesses in the region, but does not discuss to any degree the issue of shortage of investable equity capital deals. One of the debatable assertions that myself and some colleagues have made is that the predominance of supply-side policy prescriptions, through co-investment schemes, tax incentives or direct investment (e.g. government VC funds) have leveraged inappropriate finance provision to support artificial demand, resulting in low risk capital returns. While public funding may result in more bad deals getting funded by less experienced or less active angels, there is still no objective way to identify a priori the outlier winners in the early stage risk capital market. This is the problem of deadweight investments, which tie up capital and other ecosystem resources. Improving the effective justified demand for angel investment from high-growth potential investable business ventures would be enabled by focusing attention on investment readiness programs. This identifies one of the challenges of drawing in a pool of inexperienced investors who themselves would benefit from *investor*-readiness programs. One of the benefits to investee companies is not simply the investment from experienced angels, but also their commercial and entrepreneurial skills, their networks, industry contacts, etc.

In summary, while the Blanket Order has the potential to 'open up' angel investing to a significant additional population, one outcome may be a number of unhappy unsophisticated investors. For a self-certified investor, the loss of a \$30k investment may not be 'insignificant'. While the stimulation of new investors into the market can be seen as a positive, effort should be made to support and develop these investors through investment mentoring and co-investing support (e.g. with assistance from the National Angel Capital Association (NACO), etc.) if the angel investor ecosystem is to be developed at the grass-roots. What truly stimulates angel investor ecosystem growth is increased levels of successful exits.

Regards,

Geoff Gregson

FAIR

Canadian Foundation *for*
Advancement *of* Investor Rights
Fondation canadienne *pour* l'avancement
des droits *des* investisseurs

December 23, 2020

Cathy Tearoe
Senior Legal & Policy Counsel
Alberta Securities Commission
Suite 600, 250 – 5th Street SW
Calgary, AB T2P 0R4

Delivered via email: New.Economy@asc.ca

Re: CSA Multilateral Notice and Request for Comment 45-327 – Proposed Prospectus Exemption for Self-Certified Investors

FAIR Canada is pleased to provide comments on the proposed local blanket order of the Alberta Securities Commission (ASC) and the Financial and Consumer Affairs Authority of Saskatchewan (FAA) published on November 20, 2020.

FAIR Canada is a national, independent charitable organization dedicated to being a catalyst for the advancement of the rights of investors and financial consumers in Canada. As a voice of the Canadian investor and financial consumer, FAIR Canada advances its mission through outreach and education on public policy issues, policy submissions to government and regulators, and proactive identification of emerging issues and other initiatives.¹

Fundamental Concerns

We have two fundamental concerns with the approached proposed in the draft blanket order.

First, to the extent there is no concurrent distribution under the Accredited Investor exemption, the issuer relying on the proposed blanket order does not appear to have to provide any information to an investor about the securities being distributed.

Second, the blanket order does not limit the use of the exemption to only reporting issuers. In other words, the exemption could be used by companies that provide no public information about their business, operations, or financial condition.

¹ Visit www.faircanada.ca for more information

Taken together, the net effect is that securities could be offered to the public based solely on the fact that an investor belongs to a certain class and is willing to sign the proposed declaration and self-certification forms.

In our view, these two concerns pose significant risks to investors and extend the scope of the exemption too far. We believe the exemption should be limited to reporting issuers only, and investors should be provided with relevant information about the offering prior to making their decision, and at least similar to what would be provided to an accredited investor.

Other concerns

Class of investors - We generally agree with the approach of using financial and investment education and experience as a reasonable proxy for identifying an investor who, because of being more knowledgeable and sophisticated than the average investor, does not require the full protections typically afforded by the regulatory framework. We question, however, whether the class as proposed is appropriate.

In our view, apart from perhaps those individuals who are full certified financial planners, or those who are licensed to work in the industry as dealer or adviser representatives, the parameters of who would be entitled to rely on this exemption is too broad. This is not to suggest that CPAs, lawyers, MBA, or graduates with a degree in finance are not sophisticated professionals in their respective areas – they are. However, that experience does not always equate to being a sophisticated investor. We believe the criteria should be more closely aligned to actual investment experience.

We also note that the criteria do not require the individual investor to be currently working in the area of their designation. For example, one only needs to hold a CPA designation to qualify, as opposed to be working as a CPA or have a minimum years or level of experience as a CPA. As a further example, someone may have obtained an MBA in finance but gained experience in a completely different and unrelated discipline, yet still be eligible to rely on the exemption.

Our concerns are heightened by the fact that behavioural research shows that individual investors tend to be over-confident about their level of investment knowledge and literacy. In fact, many Canadians believe their level of investment literacy is above average, while studies show the opposite. In short, the reliance on self-certification, even for this class of investors, poses risks. Stated differently, while the proposal should facilitate access to capital, in our view it does not adequately address the investor protection concerns for this community of investors.

Ability to withstand loss – We are surprised that part of the rationale for justifying this type of exemption is based on the ability of an investor to be able to withstand the loss of their entire investment. Yet the proposal does not include any other factor to suggest why losing either \$10,000 or \$30,000 in any 12-month period would be bearable for this class of investor. While we appreciate the monetary caps are intended to minimize potential losses, the amounts may still

represent significant investments beyond an investor's ability to withstand loss. This is particularly true given that over the proposed three-year pilot phase of the proposed blanket order, an investor could have invested a total of \$90,000 based on very little information or actual related investment experience.

We thank you for the opportunity to provide our comments and views in this submission. We welcome its public posting. Please be advised that we intend to make our submission public by posting it to the FAIR Canada website. We would be pleased to discuss our submission with the ASC and FCAA should you have questions or require further explanation of our views on these matters. Please contact Jean-Paul Bureaud, Executive Director, at JP.Bureaud@FAIRCanada.ca

Sincerely,



Jean-Paul Bureaud,
Executive Director
FAIR Canada | Canadian Foundation for Advancement of Investor Rights



PROSPECTORS &
DEVELOPERS
ASSOCIATION
OF CANADA

December 23, 2020

Sent via email: New.Economy@asc.ca

Alberta Securities Commission
Suite 600, 250 – 5th Street
SW Calgary, AB T2P 0R4

Re: Comments on a new proposed prospectus exemption for self-certified investors (45-327)

Dear Sir/Madam,

As the leading voice of Canada's mineral exploration and development community, the Prospectors & Developers Association of Canada (PDAC) works on behalf of its over 7,200 members to ensure Canada remains the top global jurisdiction for conducting mineral exploration and development activities. PDAC's strategic goals include advocating for regulatory and policy frameworks that support the competitiveness of the mineral sector, and for regulatory reforms that reduce the cost of capital raising in Canada.

Securing access to new capital investment is becoming increasingly difficult for the mineral industry, particularly for junior exploration companies. From 2011-2019, mineral sector financings on Canadian stock exchanges nearly halved, and funding specifically for exploration mirrored this decline. The past decade has also been characterized by a significant shift in equity funding for the Canadian mineral industry, from public offerings to private placements, and the proportion of funds sourced via public offerings has dropped from nearly 70% in 2013 to only 30% in 2019. Private placements have had to fill the void and given these largely restrict participation to accredited investors and current shareholders, the shift has resulted in a narrowing of the industry's investor base and an overall decline in investment for mineral exploration.

Given that mineral exploration companies typically generate no revenue and require new investment to remain a viable business, the current state of investor engagement with the industry is deeply concerning to PDAC and its members. Internal industry pressures, such as increasing remoteness of activities and expanded stakeholder engagement have not only made mineral exploration more complex but has also led to increased operating costs and development timelines. As such, identifying effective ways to improve efficiency in public disclosure and regulatory compliance are welcomed.

PDAC is encouraged by Alberta and Saskatchewan proposal for a *Prospectus Exemption For Self-Certified Investors* as it presents the opportunity to broaden the potential accredited investor base for junior mineral exploration and mining companies, without adding complexity or costs. PDAC would encourage other Provinces to make similar considerations and to work to cooperatively develop exemption criteria that can be harmonized across all jurisdictions in Canada.

Regarding the currently proposed investment limits, feedback from the PDAC Securities committee has been unanimous in stating that the total allowable amount invested on a per annum basis should be increased from \$30,000 to at least \$50,000 as it would not appreciably change the level of risk for



PROSPECTORS &
DEVELOPERS
ASSOCIATION
OF CANADA

OSC Staff Notice 11-784 Submission
March 1, 2019

the average investor. A similar proportional increase to the maximum allowable investment for a single issuer should also be considered. Regarding professional experience and appropriate designations, PDAC suggests that individuals who have successfully completed the Canadian Securities Course could be considered as an acceptable designation. Other professional designations such as professional engineers (P.ENG) and professional geologists (P.GEO) should also be acceptable for participating in a prospectus exemption for self-certified investors, provided their professional experience directly relates to an issuers sector of operation.

PDAC greatly values and looks forward to the opportunity to participate in future consultations regarding development and implementation of a *Prospectus Exemption For Self-Certified Investors* in Alberta and Saskatchewan, as well as other regions in Canada. Please feel free to contact me if you have any questions on the comments above and if any other information would be useful in completing development of this new financing mechanism.

Sincerely,

A handwritten signature in blue ink, appearing to read "JKilleen".

Jeff Killeen
Director, Policy & Programs
Prospectors & Developers Association of Canada (PDAC)

From: [Jim Surbey](#)
To: [New Economy](#)
Subject: Self Certified Investors - Proposed 45-327
Date: December 13, 2020 10:37:05 AM

EXTERNAL EMAIL

I totally support this kind of initiative and believe that it is long overdue.

Unfortunately, I believe that it is complicated enough that Investors that are not “accredited” may not find it easy to use and that the financial limits are pitifully small. I think more reasonable limits would be \$50k and \$100k.

Sent from my iPad

From: [John Monroe](#)
To: [New Economy](#)
Subject: Proposed Prospectus Exemption for self certified Investors
Date: December 8, 2020 04:06:34 PM

EXTERNAL EMAIL

I am writing on my own behalf to comment on the proposed blanket order allowing self-certified investors to purchase certain securities they may not have the right to purchase at present.

I welcome the loosening of the regulations to allow smaller investors greater access to new issues. However I think these changes are still overly restrictive.

Requirement for Statutory Declaration

The proposal requires a purchaser to complete a statutory declaration every two years certifying that they qualify as a self-certified investor. I understand no such declaration is required of accredited investors. This requirement adds an unnecessary cost and paper burden to those wishing to qualify. If an investor can claim accredited investor status due to income or portfolio size without a statutory declaration, why require it of those claiming self-certified status? Why require it to be renewed after two years? Income and portfolio size can change, so someone who qualifies as an accredited investor one year may not the next, while someone qualifying due to education or professional status will very rarely lose that status.

\$10,000 limit

In my view the \$10,000 limit for investments in one issuer is too low. Ideally investors should be allowed to decide for themselves what level of investment they are comfortable with. I put a not insignificant amount of research into a company before I make an investment, and that time may not be well spent if I am restricted to a \$10,000 investment. Investors with portfolios in the hundreds of thousands of dollars may feel they are still adequately diversified investing over \$10,000 in one company. Many investors with portfolios worth well under \$1 million can maintain reasonable diversification with individual investments worth over \$10,000.

\$30,000 limit

The above comments also apply to the \$30,000 limit. Knowledgeable investors with portfolios in the hundreds of thousands of dollars may feel comfortable investing over \$30,000 in a diversified portfolio of smaller businesses. They can certainly already do that through mutual funds, but those mutual funds usually have excessive fees.

Many of the companies using a prospectus exemption are already listed on a stock exchange. No limits apply to any investors making purchases of existing stock on a stock exchange. Investors wish to purchase new issues in such companies because there is either a slight price advantage or because there are tax advantages when such shares are sold as flow through shares. Smaller investors have for years been denied the advantages of investing in such new issues because they do not qualify as accredited investors. Flow through shares are often packaged into mutual funds which any investor can buy, but the fees attached to such funds make them prohibitive. If an investor can put \$50,000 or \$100,000 into such a fund, he or she should be able to do so directly into 5 or 10 separate companies, which would offer the same level of diversification, be more liquid, and not come with associated fees of 10% or more.

National Regulator

Although it is not the purpose of this consultation, I will say a few words in favour of establishing one national securities regulator. Requiring businesses to register and pay fees to up to 13 different provincial and territorial regulators adds unnecessary red tape to smaller businesses looking to raise capital. As a result, some do not bother registering in smaller jurisdictions, which reduces the number of options available to investors in those jurisdictions. I am pleased to see Alberta and Saskatchewan co-operating in this initiative, but it would have been better coming from all 13 jurisdictions.

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Many of the companies using a prospectus exemption are already listed on a stock exchange. No limits apply to any investors making purchases of existing stock on a stock exchange. Investors wish to purchase new issues in such companies because there is either a slight price advantage or because there are tax advantages when such shares are sold as flow through shares. Smaller investors have for years been denied the advantages of investing in such new issues because they do not qualify as accredited investors. Flow through shares are often packaged into mutual funds which any investor can buy, but the fees attached to such funds make them prohibitive. If an investor can put \$50,000 or \$100,000 into such a fund, he or she should be able to do so directly into 5 or 10 separate companies, which would offer the same level of diversification, be more liquid, and not come with associated fees of 10% or more.

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Thanks for the opportunity to comment on this proposed Order. We continue to actively support the work the ASC does in trying to create an environment in which capital is available to our promising new, and old, companies. We are submitting these comments on behalf of our technology platform, DealPoint, which is also trying to foster an efficient, safe and productive capital ecosystem.

Overall, we support this 45-327 initiative. It is simple in design, would appear to be easy to work within and/or understand, and does not place any significant new regulatory "overburden" on potential users in the form of paperwork.

Given its current (proposed) limitation on who, as an investor, can use it, we do wonder if it will significantly expand the tent. There are just 4 potential users of this exemption. Two, maybe 3, are accounting related, and 1 is a limited scope legal member. This does not seem to enlarge the tent so much as it possible. If we are doing it, let's do it. So why not expand the proposed group to include Drs., Dentists, Teachers and Entrepreneurs etc. Generally speaking, people that are wise enough to manage their own money and determine if an investment suits them. Angels-in-training. This is alongside the safeguards (risk warnings etc.) or circuit breakers (investment limits, experienced co-participants) you have proposed be part of the Order. Perhaps even some form of "test", without creating the aforementioned overburden, or delay the implementation of this Order, which we believe is needed now. We would suggest that this be a wait-and-see provision. Let's see adoption first, and then stress test any weak places. If too many "unqualified" investors are accessing the tent, then it could be tweaked. And as you know we are working on a form of educated investor with NACO.

As for safeguards, we think the limits should be \$25,000 and \$75,000 (rather than 10,000 and 30,000 respectively). This Order might suffer from lack of use from ineffectiveness if the limits are so low that raising money becomes a grind. There are not enough people in these two provinces to really raise any meaningful capital from a narrow band of new players (ie the proposed group of 4) AND low ceiling cap rates.

The point raised in Clause 7 is worth some comment. We see the ability to use an SPV as critical importance to these capital raises for many reasons. So it is important that such a method be incorporated into this Order. This includes the GP/LLP and central tenet Unit structure which is typically a part of SPV use. You have touched on it with 7 (a). These new accredited-like investors should be allowed to come in through an SPV arrangement (including being LP's) as long as the majority (we suggest 60%) of others are accredited or Angels or similar.



The51 Ventures Inc.
Calgary, Alberta

December 22, 2020

Via email: New-Economy@asc.ca

Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Attention: Cathy Tearoe, Senior Legal & Policy Counsel

RE: CSA Multilateral Notice and Request for Comment 45-327
Proposed Prospectus Exemption for Self-Certified Investors (the “**Proposed Blanket Order**”)

The 51 Ventures Inc. (“**The51**”) is pleased to provide comments in connection with the Proposed Blanket Order as set out below.

The51 is a Financial Feminist™ platform where investors, entrepreneurs and those who aspire to be, come together for democratized access to women-led capital for women-led businesses—to build mutual wealth and social/environmental impact, share knowledge and experiences, and become influential investors, innovators and consumers. Additional information is available at [The51](https://www.the51.ca).

The51 is committed to broadening participation in capital markets and the economy as a whole, particularly to advance economic activity and diversification of Canada’s prairie provinces. This cannot be accomplished without full participation of all genders. In that respect, a significant shift is underway. By 2026, women in Canada will control close to HALF of all accumulated financial wealth, a significant increase vs. last decade when such was closer to one-third [source: IPC Private Wealth]. Therefore, on the path to controlling 50% of the wealth, women need to strive to be equal in all matters financial, including early stage investing opportunities—hence the term financial feminism.

The prairies are built on pioneering entrepreneurial-minded people and entrepreneurs are more critical than ever for our economic future. Unlocking 51% (women) of the population—including their financial and intellectual capital—is key. Recent studies indicate that women-led businesses outperform male counterparts, by up to as much as 63% [Source: Boston Consulting Group, First Round Capital]. Yet for the early-stage venture style companies relevant to this Proposed Blanket Order, women founders continue to struggle to receive venture financing. As seen in CrunchBase’s December 21, 2020 report, venture investment in women has dropped from 2.8% in 2019, to 2.3% in 2020 - levels not seen since 2014.

Building from a group of committed women who directly, or as co-investors, invested almost \$7M in future-fit innovative women-led founders, The51 Ventures launched its inaugural venture fund in September 2020. Unique within Canada, the fund’s accredited investors are 90% women, with 30% being new to venture investing. To ensure democratized access, the fund offers investment via a three-year subscription starting at \$5100/year, coupled with an investor membership to provide practical hands-on investing education and co-investment opportunities.

The51 has unlocked a new investor group and one that is highly qualified. The predominantly women accredited investors include bankers, lawyers, engineers, private equity fund managers, board directors, doctors, teachers and serial entrepreneurs. They know the risks of early stage investing and have taken on the opportunity because they are committed to investing in the world they want as business leaders and influential consumers. The51’s investors are applying their capital and expertise across sectors to unlock the potential of 51% of the population, in all its diversity, towards mutual value creation and social/environmental impact.

But so much more is possible. According to the OECD’s 2019 report *Under Pressure: The Squeezed Middle Class*, millennials are significantly less likely to be middle class than previous generations. The result is a growing proportion of the population that is less likely to meet the accredited investor eligibility criteria. Not only are the incomes of these individuals more limited, but under current regulations their opportunity to invest and build wealth is also restricted. The compounding effect of decreased incomes, investment opportunities, and returns paints a challenging future. There is a risk that the existing wealth will remain in the hands of few and the next generation will not have similar opportunities. This will lead to the disproportionate growth of businesses and wealth.

Hence, The51 is more than a venture fund for accredited investors, but a financial feminist platform. With a community of over 9000, The51 includes many aspiring founders and investors to whom we provide programming to enhance financial and investing acumen. For example, to provide a well-curated education for aspiring investors, The51 recently partnered with the University of Calgary and Canadian Women’s Foundation to co-create the Financial Feminism Investing Lab, that will launch in early 2021.

The51 is committed to providing both a vehicle for venture investment and investing education infrastructure, ensuring democratised opportunities and confidence for women. If we are to change the statistics of entrepreneurial investment in women – all women including BIWOC, LGBTQ2+ and disabled—then full-scale systemic change is required. The51 is driving that change by providing a new financial platform for investors, entrepreneurs and financial feminists. Additionally, The51 has implemented a community council to ensure equity, diversity and inclusion across capital participation, investment opportunities and The51 portfolio.

From this backdrop, The51 is pleased to provide comments on the Proposed Blanket Order for Self-Certified Investors - first general comments, followed by perspectives on the specific questions of the Proposed Blanket Order.

General Comments

Our view is that a large contingent of capital is sitting on the sidelines, not yet being deployed in the Canadian market for the benefit of Canadians. The proposal is a good step forward that balances expertise and risk. We applaud the leadership of Alberta and Saskatchewan and encourage continued engagement with other jurisdictions so that they may also benefit from expanded investor eligibility, while at the same time providing clarity for issuers through the burden reduction that comes from a Canadian harmonization of rules.

We suggest that the proposal go further to permit a larger group of investors, beyond accredited investors and those self-certified, to invest at thresholds that still manage their risk. We are supportive of lifting the Eligible Investor definition from 45-106 *Prospectus* Exemptions [i.e. person whose net assets (alone or with a spouse) exceed \$400000; or net income



before taxes exceeded \$75000 in each of the two most recent calendar years and who reasonably expects to exceed that income level in the current calendar year; or net income before taxes (alone or with a spouse) exceeded \$125000 in each of the two most recent calendar years and who reasonably expects to exceed that income level in the current calendar year) to further enable potential investors meeting those criteria to invest in the private market at restricted dollar amounts. We feel this would meet the investor protection concerns of the ASC and FCAA, while enabling individuals with less experience or wealth to gain investing experience in an appropriate and controlled way. This would lead to greater knowledge and participation as these individuals build their wealth, invest in emerging companies of interest (particularly those that are local) and make investments that align with their social/environmental values.

Responses to Specific Questions:

For ease of reference, the questions are included below in *italics*.

1. *To what extent do you anticipate that this prospectus exemption would be relied on by businesses in Alberta or Saskatchewan?*

We anticipate that to the extent this exemption was both available and known to the eligible groups, it would be utilized. For example, The51 Ventures Fund I (given its accessible investing level of \$5100/year for 3 years) had significant interest from non-accredited investors. Key to making such a vehicle cost-effective and scalable is reliance on a technology platform to both manage the risk and reduce the administrative burden.

2. *In setting the limits on investment, we considered that a policy rationale for the accredited investor exemption is ability to withstand loss. Investors investing under the proposed exemption are likely not accredited investors and can be assumed to have annual income of less than \$200,000. Are the limits of \$10,000 in any one issuer in a 12-month period and \$30,000 in all issuers in a 12-month period appropriate in ensuring that an investor has the ability to withstand the loss of the investment? Are other conditions necessary to address investor protection concerns?*

We agree with the establishment of a dollar limit maximum for investors not meeting the accredited investor threshold. This is felt to be a reasonable tool to limit potential loss by investors earning less than \$200,000 per annum, or with financial assets below \$1,000,000. It is not felt that additional conditions are required to address protection concerns as investors are expected to possess sufficient financial knowledge to evaluate the appropriateness of the investment for themselves. Further, Annex 2 to the Proposed Blanket Order provides detail with respect to risks of investments offered under a prospectus exemption.



3. *Are there other factors that an investor should acknowledge they understand in the Self-Certified Investor Statement and Acknowledgement?*

While Annex 2 to the Proposed Blanket Order provides detail with respect to the exemption and its related risks, a simplified risk acknowledgement similar to that proposed under Annex E of Proposed Form 45-110F2 is suggested for individual offerings. A simplified checklist is felt to provide better clarity in a more efficient and effective manner.

4. *The exemption focuses on financial and investment education and experience. Are there other designations or courses that would provide an investor with relevant financial and investment education and should be included e.g., the chartered investment management designation? Please explain.*

Yes, it is reasonable to expect that individuals possessing other designations with a focus on investing, financial planning, estate planning, or insurance have sufficient understanding to assess the appropriateness of investments and risk of loss for themselves. Such designations enable individuals to provide investment and financial advice to others. Hence, it does not seem appropriate that they would be excluded from this Proposed Blanket Order.

Encompassing these designations within the Proposed Blanket Order would be consistent with the inclusion of holders of an MBA with a focus on finance or degree in finance.

Examples of designations that we suggest should be considered, given they have financial education prerequisites and experience requirements, include:

- PFP – Personal Financial Planner
- CFP – Certified Financial Planner
- CBV – Chartered Business Valuator
- CIM – Chartered Investment Management
- CIWM – Certified International Wealth Manager
- FICB – Fellow of Institute of Bankers
- TEP – Trust and Estate Practitioner
- MTI – Estate and Trust Professionals
- FMA – Financial Management Advisor
- DMS – Derivatives Market Specialist
- CLU – Chartered Life Underwriter

We would also suggest that individuals completing early stage investment programming, such as offered via The51, could be included in this exemption.

Our recommended approach would be an addition of a row in the Self-Certified Investor Criteria table of Annex 2 to the Proposed Blanket Order, with the requirement to input such other qualifying designation.



5. *In the ASC consultations, some parties suggested that we should include persons with experience or education that is not of a financial or investment nature but that is relevant to the industry in which they propose to invest. For example, it was suggested that we allow a young professional with a computer science degree to invest in a software technology company or an individual with a petroleum engineering designation to invest in an oil and gas company. However, others have raised concerns that those type of educational criteria would not adequately address investor protection concerns as the investor may not appreciate the financial or investment considerations important to investing.*

- a. *Are there other education or experience qualifications that we should consider? Please explain.*
- b. *What other conditions might help to ameliorate the risks that the investor may not appreciate the financial and investment considerations?*

In principle we agree with further expansion of the Proposed Blanket Order beyond individuals with specific financial education and experience to a point. We would suggest that individuals would need to have a minimum 7 years of experience in a business environment where they have been exposed to business risk, economics and the like, accompanied by a relevant degree and/or business/commerce degree. We would suggest that additional work is required to develop a suitable framework.

6. *The proposed exemption contemplates lawyers but only where their practice has involved being significantly engaged in providing financing or mergers and acquisitions advice. As worded, the requirement is a subjective assessment by the lawyer. Should objective criteria be provided e.g., percentage of practice and/or years of practising? If so, what minimum level of experience is appropriate?*

We would be supportive of adding objective criteria to the self-assessment of a lawyer that has been significantly engaged in providing financing or M&A advice. In general, lawyers have significant education but may not yet have significant experience if they are accessing the exemption as opposed to qualifying as an accredited investor. We would recommend at least three years experience to accompany the use of this self-certification.

7. *One of the goals of the proposed self-certified investor exemption would be to help facilitate the development of the angel investor entrepreneurial community. Although angel investors may invest directly into early-stage businesses, we understand that angel investors will often invest on a syndicated basis, forming a special purpose vehicle, such as a limited partnership or corporation, in which they will invest and then that special purpose vehicle will invest in an early-stage business. The proposed self-certified investor exemption could facilitate direct investment into a business or a special purpose vehicle. However, the distribution of securities of an early stage business to a special purpose vehicle also requires reliance on a prospectus exemption, which allows the distribution of securities to a number of specified parties, including accredited investors. We*



understand that the special purpose vehicle is often treated as an accredited investor because all of the owners of interests (except voting securities required to be owned by directors) are accredited investors. This option would seem not to be available for a special purpose vehicle where one or more of the owners of interests were self-certified investors.

- a. *Would this issue be adequately addressed by providing guidance that the ASC and FCAA would not object to an issuer relying on s2.4(2)(l) of National Instrument 45-106 Prospectus Exemptions, i.e., the prong of the private issuer exemption that permits a distribution to a person or company that is “not the public”, provided that the special purpose vehicle is predominantly owned by accredited investors e.g., at least 80% of the funds contributed to the special purpose vehicle were contributed by accredited investors?*

This is prudent as a starting point for this Proposed Blanket Order. Given that the dollar limit maximum per self-certified investor is proposed to be significantly less than an accredited investor may invest, having < 20% of the special purpose vehicle available to self-certified investors would still enable a significant number of self-certified investors to invest.

- b. *Are there other alternatives that would better address this issue?*

An alternative could be to allow for a group of predominantly non-accredited investors to rely upon the advice of an advisory panel for the purpose of investing. This has shown effective in practice with specialized investment funds and for start-up companies. There could be further requirements around such an advisory panel requiring the majority of membership to be accredited investors with prior investing experience.

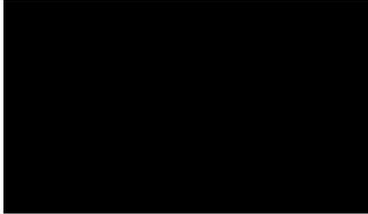
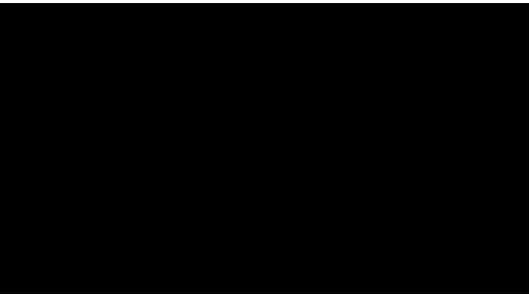
- c. *If we were to adopt the proposal outlined in 7a., a Form 45-106F1 Report of Exemption Distribution would be required for the sale of securities to the self-certified investor. Would this be a significant deterrent to distributing securities to self-certified investors given that private issuers do not otherwise have reporting obligations to securities regulators? Given our interest in tracking use of this exemption, could we address this issue by requiring only a very simple letter reporting on use, which could be filed by email?*

The requirement to file a Form 45-106F1 is felt to be a significant deterrent to accessing the Proposed Blanket Order. The level of detail required of the form is significant and the instructions may be confusing to parties not familiar with the requirement as they would not be required to comply with other components of 45-106. We understand and are supportive of the desire of the ASC and FCAA to collect data with respect to use of the exemption. Our suggestion would be a simple form that notes the number of individuals and total dollar raise under the Proposed Blanket Order. If the ASC and FCAA desire more detailed information, we would suggest simplifying form 45-106F1 for this express purpose.



Concluding Comments

We greatly appreciate the initiative of the ASC and the FCAA in taking these steps to broaden participation in the capital markets for individuals who are knowledgeable and experienced. We see this as a first step to democratizing access and diversifying both participation and the economy in unison. We are supportive of this Proposed Blanket Order becoming a National Instrument and applicable to all Canadian jurisdictions.



From: katheleen eva

Date: November 20, 2020 at 5:36:14 PM MST

Subject: Exemption Addition - 45-327 Proposed Prospectus Exemption for Self-Certified Investors

To: Denise Weeres

EXTERNAL EMAIL

Hi Denise,

My name is Katheleen Eva and I'm contacting you regarding the 45-327 Proposed Prospectus Exemption for Self-Certified Investors. I'm not currently living in either Alberta or Saskatchewan, but most of my family is in Alberta - and I don't know where I'll be in the future so I thought I would reach out and encourage the exemption.

One clause I believe should be added is for individuals who are currently working in an investor role at an institutional venture capital fund. It seems silly that individuals who have experience, are trained, and are paid to manage early-stage investments should be unable to 'self-certify' in the same manner as those with professional finance-related degrees.

I'm speaking as someone on an investment team at an institutional vc, who has a bachelor's in neuroscience (and not one of the mentioned degrees). Just a suggestion! Hopefully it helps someone, potentially myself one day.

Kind Regards,
Katheleen Eva

Kenmar Associates**Via** email

November 27, 2020

Cathy Tearoe Senior Legal & Policy Counsel
Alberta Securities Commission Suite 600,
250 – 5th Street SW
Calgary, AB T2P 0R4
e-mail New.Economy@asc.ca

CSA Multilateral Notice and Request for Comment 45-327 Proposed Prospectus Exemption for Self-Certified Investors

<https://www.albertasecurities.com/securities-law-and-policy/-/media/3AD3635045B34EB99FDC008AC9C886E7.ashx>

Kenmar Associates appreciates the opportunity to comment on the Proposed exemption.

Kenmar Associates is an Ontario-based privately-funded organization focused on investor education via on-line research papers hosted at www.canadianfundwatch.com. Kenmar also publishes *the Fund OBSERVER* on a monthly basis discussing investor protection issues primarily for investment fund investors. An affiliate, Kenmar Portfolio Analytics, assists, on a no-charge basis, harmed investors and/or their counsel in filing investor complaints and restitution claims.

We can appreciate why the ASC wishes to pursue this type of exemption .We believe the required Self -certification form does a good job at informing potential clients what they are signing up for. We do however have some comments.

It should be made clear that the applicant is a current holder in good standing of the applicable credentialing body.

If a non-registered dealer is involved then OBSI would not be available to the client if a complaint were to arise.

Risk tolerance should be replaced by risk profile

The selling party should be required to effect due diligence of the information provided

Rather than set a timeline as a 12 month interval, we recommend the use of calendar year to avoid errors

Signing the form should not relieve the seller of KYC/ suitability obligations

We think liquidity risk is well articulated but the seller should still be required to effect a risk capacity analysis (required by CFR)

Kenmar Associates

The form should be available in English and French

You might want to mention any tax related issues e.g. RRSP eligibility

As we understand it, the transaction would be subject to CFR Rules

The seller should be trained in how to identify vulnerable investors. Seniors, retirees and new Canadians could be target clients under this exemption.

Disclosure under this exemption should be written in plain language and with a minimum font size

Where bold type is used, you might want to put it in dark red

Signing the Form would not cause the client to lose any legal rights if the disclosures are false, misleading, incorrect or incomplete.

Any commissions paid for effecting the transaction should be disclosed as should any conflicts-of-interests.

It is not clear how the \$30K 12 month cap will be regulated or enforced.

We hope this input is useful to the Commission.

Permission is granted for public posting.

If there are any questions regarding this Comment letter, we would be most pleased to meet with you.

Ken Kivenko P.Eng. (retired), President
Kenmar Associates

From: [Kevin Dahl](#)
To: [New Economy](#)
Subject: RE Feedback on Prospectus Exemption For Self-Certified Investors
Date: December 21, 2020 11:32:14 AM

EXTERNAL EMAIL

To whom it may concern,

I wanted to provide some feedback on the proposed blanket order that was circulated on Nov. 20, 2020.

I have spent my entire professional career working in and around startups. Through my 20 years of experience, I have always thought there were opportunities to expand the ability of non accredited investors to participate in this type of investment, so I was very excited to see that this is being contemplated for AB and SK.

I believe that the right safeguards have been included to protect the investor - while opening up this type of risk tolerant investment vehicle to a new audience.

My only criticism - a change I would like to see - is the removal of the requirement around CFA/CPA/Legal or MBA. (Or at least including a Bachelor of Commerce degree as part of this requirement.)

I have a BCOMM and through my years of experience in the startup space, I can tell you I have seen more term sheets and real world deal structures than any MBA student would see during their studies. Why then, would I not be allowed to participate under this new self-certified investor exemption?

As many successful startup founders will say - they don't like hiring MBA's because they lack the real world business sense that comes from actually building companies in the wild. Why then would this be a relevant criteria for this exemption?

I'm not trying to make this all about me - I truly believe that there is likely a VERY HIGH number of people like me who have the knowledge and ability to take advantage of this exemption, but will be excluded. I'm in my 40's, with 20 years of startup experience, and have gotten to the point where this exemption would actually allow me to add to the capital pool available to startup founders.

In my opinion, rather than making the decision based on a degree that is likely a poor indication of an individual's true ability to understand the deal structure they are investing into, why not create a program that could be taken by all self certified investors to ensure they are up to speed with the latest investment trends/structures/learnings?

Again - I really applaud the direction this exemption is going - but I feel like there is a significant percentage of the market who you will be excluding by having these designations as a requirement to self certify.

Sincerely,

Kevin

--

Kevin Dahl



INCLUDES COMMENT LETTERS RECEIVED

INCLUDES COMMENT LETTERS RECEIVED

From: [REDACTED]
To: [New Economy](#)
Subject: CSA Multilateral Notice and Request for Comment 45-327
Date: December 23, 2020 11:55:45 AM
Attachments: [5904595 CSA Multilateral Notice 45-327.pdf](#)

EXTERNAL EMAIL

Hi,

I would like to voice my support for the attached proposal that has been circulating for commentary. I feel that implementing this proposal will greatly contribute to growing the prairie start-up ecosystem by enabling qualified individuals to invest into early stage non-IPO companies.

Thank you,

Logan Downing



December 22, 2020

Via ASC website: New.Economy@asc.ca

Re: Comment on Prospectus Exemption For Self-Certified Investors (Proposed Blanket Order)

The Canadian Securities Institute (CSI) is pleased to submit its comments on the ASC (Alberta) and FCAA (Saskatchewan) proposed blanket order.

CSI is a leading provider of accredited financial services proficiency learning solutions in Canada. We offer courses and examinations for securities, mutual funds and insurance licensing purposes and a broad range of specialized certificates and designations.

CSI generally supports Alberta and Saskatchewan's effort to facilitate capital raising. We will focus our comments on educational requirements for the self-certified investor criteria.

Expanding requirements to include the Canadian Securities Course (CSC)

By capping the amount that can be invested under this exemption and by requiring investors to have a minimum level of understanding of the product and risk involved, the proposal attempts to balance investor protection while facilitating capital raising.

The list of potential professions and accreditations proposed that would meet the criteria is acceptable but we believe is somewhat limiting.

We suggest that to expand the number of potential investors that could take advantage of the opportunity to invest in exempt securities the Canadian Securities Course (CSC) be deemed an acceptable educational requirement.

The CSC comprises the major component of the IIROC/CSA proficiency requirement for Registered Representatives (Investment Advisors) under the oversight of IIROC and is also recognized as a requirement (in CSA NI-31-103) for those seeking mutual fund representative and exempt market representative licensing.

The course is roughly 175-200 hours of learning and requires passing two proctored examinations. The course has been completed by hundreds of thousands of individuals over

the past 50 years. In addition to being a licensing course and the de-facto entry requirement for individuals entering the financial services industry, it is also taken by many individuals who want to learn much more about investing.

Key topics covered in the CSC include:

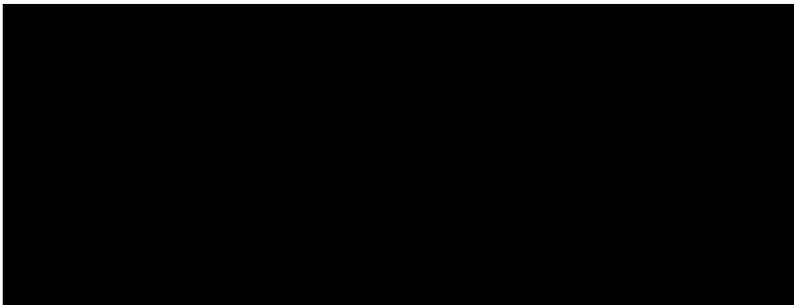
- Canadian securities industry and the regulatory environment
- Market and economic events impacting investment performance
- Understanding and analyzing corporate financial statements
- Financial instruments including fixed income, equities, derivatives, mutual funds and exchange traded funds
- Alternative products including hedge funds and alternative mutual funds (also known as liquid alts)
- Company, industry and market performance/analysis
- Portfolio management process and asset allocation
- Setting financial goals and the financial planning process
- Fee-based accounts and taxation
- Ethics and industry standards of conduct
- Institutional marketplace

The CSC provides a robust foundation for understanding and appreciating the benefits and risks of a broad range of investment products. While traditionally it has focused on listed products, in the past few years, information on alternative products such as hedge funds and liquid-alts has been expanded. CSI has already planned to add to its existing coverage of private equity in the 2021 CSC course update.

In conclusion we believe expanding the list of acceptable educational/experiential requirements to include the Canadian Securities Course will allow a greater number of investors to participate in this initiative while maintaining investor protection.

We look forward to discussing this proposal further at your convenience.

Regards,



From: [Matt Knight](#)
To: [New Economy](#)
Subject: Re: CSA Multilateral Notice and Request for Comment 45-327
Date: December 23, 2020 08:43:33 AM

EXTERNAL EMAIL

Hi,

In regards to the above request for comment, specifically the following questions please find my feedback:

1. I do think that businesses would use the prospectus exemption. It would both marginally increase the funds raised but it would also 'legitimize' some of the investments. i.e. I don't believe all people investing are accredited today.
2. \$10,000 and \$30,000 are reasonable for many people.
3. Specific risk criteria for that business or start up (i.e. similar to the risk disclosure under Reg A+)
4. I would open it up to include any accredited MBA - not just a degree in finance. The exposure/knowledge that your average MBA grad would have in finance/investment should be higher than an undergrad in finance.
5. Unsure about this one. I agree that subject matter expertise nor legal experience builds financial awareness or risk. I feel the criteria should be easy to verify. i.e. MBA from an accredited university is easy to verify. A lawyer with x experience and y standing and focus on z are much more grey.
7. I have less experience in syndicates, but this looks reasonable. 90% of funds may even make sense.

Regards,

Matt Knight, MBA

Co-Founder For Hire, Joust Strategy
Mentor, MacEwan Venture Lab
Co-Founder, Polar Park Brewing Co. Ltd.
Co-Founder, Provincial Brands Ltd.

Entrepreneurship**Scurfield Hall, Room 468**

Telephone: (403) 220-8476

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Email: michael.robinson@haskayne.ucalgary.ca

inquire@haskayne.ucalgary.ca

To: Denise Weeres, Director, New Economy, ASC**Date:** December 21, 2020**From:** Michael Robinson**Re:** Comments on CSA Multilateral Notice 45-327 (Self-Certified Investors)

The purpose of this memo is to provide you with feedback on the CSA Multilateral Notice 45-327: Proposed Prospectus Exemption for Self-Certified Investors. The following provides my replies to the specific questions.

- (1) During my earlier research of ASC exempt filings, it was noted that many AI investors would make investments of under \$10,000. From this information, I infer that there is a willingness among investors to provide amounts of \$10,000 or less to private Alberta corporations.

I believe that this exemption will significantly increase the pool of capital available as only a small percentage of Albertans qualify as Accredited Investors. Allowing financially educated investors who do not meet the AI test will allow early-career individuals to learn about the private equity market with a reasonable amount of risk and as those individuals advance through their career they will be more willing to invest in this market whether or not they eventually qualify as an AI investor.

- (2) I believe that the investment amounts and potential losses identified in the proposed exemption are reasonable for potential qualifying investors. I would suggest that you may want to consider some sort of required educational training for new investors using this exemption to ensure that they at a minimum understand the investment terms, processes and risks associated with investing in the exempt market.
- (3) The Self-Certified Investment Statement and Acknowledgement is quite comprehensive and for someone who understands the terms is appropriate. A concern I have is that someone may self-certify who thinks they understand what the terms mean, but who really does not understand. An example would be the discussion of the outstanding securities of the issuer. Those securities may have liquidation preferences or anti-dilution protection that is not available to the class of shares that the investor is purchasing and as such will put the investor in a relatively poor position in the event of a down-round of financing or a liquidation event.

In addition, the whole issue of shareholder agreements, which are not allowed with respect to publicly traded securities, may create a governance structure in which the investor does not have the same voting rights and information rights as other investors. This is a poorly

understood aspect of private equity investments and I believe that some minimum level of required education should be provided so that potential investors have a better understanding of their particular risks.

- (4) Perhaps a B. Comm with specialized investment knowledge. For example, at the Haskayne School we have our Calgary Portfolio Management Trust (CPMT) program which has been running for over 20 years and provides hands on investment training for students. In addition, the Haskayne School earlier this year started offering the UCeed program which allows B. Comm and MBA students to make investments into private equity securities using a pool of capital provided by the University of Calgary.
- (5) I believe that without sufficient educational training, perhaps post-degree, a university graduate with a degree that is not in business may understand the technology of the corporation, but cannot make an informed judgement about the quality of the corporation's governance, its management personnel, its marketing, etc. Even worse, that individual may not even realize that those factors are something that should be considered when making an investment decision. To overcome this risk, some sort of specialized training program could be developed that would involve both academic and practical knowledge perhaps augmented with case studies.
- (6) I have no real comments on the suitability of legal professionals to invest in the private market. I do note that private equity investing is a highly specialized market and even a lawyer with extensive M&A experience with respect to public firms may not be fully aware of the private market. I recently offered a private equity governance course and found that many seasoned public markets directors had no, or limited, understanding of the nuances of governance in a private equity situation.
- (7) I am not really knowledgeable about the issues with respect to special purpose vehicles. I wonder if some sort of bulletin board system, along the lines of AngellList for angel investors, could be developed to allow potential investors to learn about investment opportunities using this proposed exemption.

I do believe that allowing investors to make mistakes and learn early in their career in the private market place can increase their ability to be effective later in their career. When I first moved to Calgary, I invested in a few private firms using the FFBA exemption and lost money every time. Based on that experience I sought to learn more (that was when I decided to take a 3-year leave from the University of Calgary to work in the VC industry) and at this stage of my career I am much more comfortable making investments in early-stage corporations. Allowing someone to make limited investments early in their career, and then to learn from that experience can be valuable. Again, I come back to the idea that it might be worthwhile to think of some way of adding an educational component to this process so that fewer mistakes are made by these investors up front, and their learning is accelerated.

Thank you, and please let me know if you have any questions.

Michael

From: [Miguel Palacios](#)
To: [New Economy](#)
Cc: [REDACTED]
Subject: A comment on 45-327
Date: December 23, 2020 03:56:17 PM

EXTERNAL EMAIL

A comment regarding CSA Multilateral Notice and Request for Comment 45-327

From:

KJ Choi, Associate Professor of Finance, Haskayne School of Business, University of Calgary
Yrjo Koskinen, Professor of Finance, Haskayne School of Business, University of Calgary
Miguel Palacios, Associate Professor of Finance, Haskayne School of Business, University of Calgary
Gordon Sick, Emeritus Professor of Finance, Haskayne School of Business, University of Calgary

We applaud the initiative to improve the regulation allowing Alberta and Saskatchewan issuers to distribute securities among a wider pool of investors. Access to capital allows entrepreneurs and innovators to test new ideas, new business models, and new technologies, some of which will drive growth and prosperity in the Province. Expanding the pool of capital available for these entrepreneurs is therefore of critical importance. Allowing investors with fewer resources to participate in a wider range of investment opportunities is also a laudable goal at a time in which their limited alternatives include lending at record-low interest rates, or investing in public companies, which represent only a small subset of all investment opportunities.

We believe investor protection should be improved through education, as a complement to wealth and income tests. Concretely, we suggest CSA pave the way for allowing *anyone* to become an accredited investor, as long as they demonstrate knowledge about investments in lightly-regulated capital markets, their rights and responsibilities as investors, the risks they face, as well as the suitability of taking such risks. The reasons behind this suggestion are:

- a. Using wealth or income as the only condition for being able to participate in an economic activity is exclusionary. In the past, wealth and income were conditions to vote; they are no longer. We argue they should not be a condition for investments either. In general, they should not be a condition for any legal activity in a free society.
- b. The modern solution for activities that are potentially dangerous for the individual or for society is knowledge and accreditation. This is how we deal with the risk involved in driving, in performing medical procedures, and a myriad of other activities (some of which should arguably not need a license). Investing in early ventures is indeed risky, and education is an appropriate way to manage that risk.
- c. For individuals who wish to participate in risky investments, a path to becoming an accredited investor should exist. This path should be based on demonstrating knowledge in the pertinent areas involved in determining the suitability of investing in early ventures. The ideal body to determine the required areas of knowledge in Alberta is the Alberta Securities Commission.
- d. Multiple education degrees and certifications exist today that provide the required knowledge, or certify that someone possesses such knowledge, to make decisions about the appropriateness and riskiness of investments. Among degrees one can easily include are Business and Commerce undergraduate degrees, Masters in Business Administration, and Juris Doctor degrees, particularly if they have an emphasis in finance. Among accreditations, Chartered Professional Accountants and Chartered Financial Analysts also possess relevant knowledge to make decisions about investments. We believe these degrees and certifications go *beyond* the required knowledge for responsibility evaluating

early-venture investments and therefore should exceed the threshold required to become an Accredited Investor. However, to be consistent, for a particular degree to be considered as accreditation enough in lieu of an Accredited Investor knowledge certification, (as in part C above), it should demonstrate that it exceeds the required knowledge as stipulated by the body determining the required areas of knowledge.

Our suggestion could be implemented in the current proposal by including a point in numeral 4):

- e. The purchaser has obtained a certification, as defined by the CSA [or appropriate regulatory body], that demonstrates general financial knowledge required to evaluate the suitability of investing in risky early ventures.

Below we comment on several questions posed by CSA for comment. Our comments on these questions follow one underlying idea: the basis for becoming an Accredited Investor should not be based on wealth or income, but rather on knowledge. The CSA, or each Province's relevant securities commission, should determine the areas of knowledge required for obtaining such certification, and the conditions under which such certification can be obtained. Several of the qualifications included in the current proposal probably *exceed* the required knowledge to evaluate risky investments, and therefore should be enough to become an Accredited Investor.

With the previous statements in mind, we now comment on question 2 (Conditions to address investor protection concerns), question 4 (should other degrees or certifications be included), question 5 (should other types of education be included), and question 6 (should lawyers be included).

2. In Setting the limits on investment, we considered that a policy rationale for the accredited investor exemption is ability to withstand loss. Investors investing under the proposed exemption are likely not accredited investors and can be assumed to have annual income of less than \$200,000. Are the limits of \$10,000 in any one issuer in a 12 month period and \$30,000 in all issuers in a 12 month period appropriate in ensuring that an investor has the ability to withstand the loss of the investment? Are other conditions necessary to address investor protection concerns?

Comment: A better way to measure the ability to sustain a loss is to limit the investment to a percentage of wealth or income. For practical mark-to-market reasons, that might have to be measured by investments in public securities. Our suggestion in this comment is that individuals are allowed to invest up to 10% of their mark-to-market net financial wealth (subtracting debt), or 10% of their income.

Ultimately these limits should not apply when an investor has accredited knowledge about the suitability and risk involved with early-stage investments.

4. The exemption focuses on financial and investment education and experience. Are there other designations or courses that would provide an investor with relevant financial and investment education and should be included e.g., the chartered investment management designation? Please explain.

Comment: A Bachelor of Commerce, particularly with a finance concentration, should also provide an investor with the relevant financial and investment education. Other certifications potentially do as well. Yet, the heart of our comment is that the appropriate body should list the areas of knowledge required to evaluate the suitability of investment in early ventures.

5. In the ASC consultations, some parties suggested that we should include persons with experience or education that is not of a financial or investment nature but that is relevant to the industry in which they propose to invest. For example, it was suggested that we allow a young professional with a computer science degree to invest in a software technology company or an individual with a petroleum engineering designation to invest in an oil and gas company. However, others raised concerns that those type of educational criteria would not adequately address investor protection concerns as the investor may not appreciate the financial or investment considerations important to investing.

- A. Are there other education or experience qualifications that we should consider? Please explain.
- B. What other conditions might help to ameliorate the risks that the investor may not appreciate the financial and investment considerations?

Comment: Individuals with knowledge of particular areas, such as computer science, might or might not have the pertinent financial knowledge required to evaluate the appropriateness of assuming risk in a particular endeavor. We therefore suggest that ASC only includes qualifications that provided the required financial knowledge. More generally, and addressing point B, we suggest that ASC determines areas of financial knowledge an individual should have shown to possess in order to become an Accredited Investor, regardless of their other qualifications.

6. The proposed exemption contemplates lawyers but only where their practice has involved being significantly engaged in providing financing or mergers and acquisitions advice. As worded, the requirement is a subjective assessment by the lawyer. Should objective criteria be provided e.g., percentage of practice and/or years of practising? If so, what minimum level of experience is appropriate?

Comment: Consistent with our previous comments, we suggest that ASC determines areas of financial knowledge an individual should have shown to possess in order to become an Accredited Investor, regardless of other qualifications, such as experience in law.

From: [Mike Riou](#)
To: [New Economy](#)
Subject: Request for comment 45-327 - response
Date: December 23, 2020 02:30:10 PM

EXTERNAL EMAIL

Hello,

Please consider these my personal comments regarding the CSA Multilateral Notice and Request for Comment 45-327.

Questions:

1. I believe this prospectus exemption would be relied on heavily in both Provinces. There are many early stage companies that are in need of and raising capital in both Alberta and Saskatchewan.
2. From a practical perspective, I agree that limits to investment in one issuer as well as all issuers over 12 months would be reasonable. The actual amount of these limits may require further consideration.

Perhaps setting an annual limit overall and not regulating the individual investments may be more beneficial. For example, many companies raising capital have minimums on investment that may be \$10,000, \$25,000, \$50,000, or \$100,000. Eliminating the individual limitation of \$10,000 would allow the investor under the exemption to invest in a wider range of opportunities - for example investing in a company that has a minimum \$25,000 investment. In addition, many companies that are raising capital from external investors are trying to limit and minimize the number of investors on the capitalization table. Allowing a \$20,000 or \$30,000 investment under this exemption could significantly reduce the number of investors required to raise the required capital.

3. This answer will be in conjunction with my suggestion for #4. I think a specific education program for Angel Investing should be mandatory for this category of investor, which would be part of the checklist for the Statement and Acknowledgement.
4. I believe specific training and coursework around Angel Investing should be developed and used as criteria in lieu of, or as criteria in addition to the existing proposed education and professional criteria. Angel investing in and of itself is a very emotional and seductive world in which most professionals - even accounting or finance education is not prepared for. General business education such as a Bachelor's degree or MBA do provide a background of business fundamentals which should be a first step.

A course in Angel Investing prepared by groups such as NACO, other Angel Investing groups, or a group such as Startup TNT that provide a methodology would be more effective in preparing the potential investor for the risk involved in this category of investing. Investment strategies, due diligence processes, investment vehicles, risk factors including startup failure rates would be in the proposed curriculum.

5. Individuals with specific backgrounds do have an advantage over the general public in terms of the industry domain the issuer is operating in. However, 80% of startups fail because of product-market fit. In short, the best technology may not make a good business, or a weakness in the business side of a company may not be enough to compensate for a strong technology.

- a. As indicated in #4, a specific course in Angel Investing along with a technical background would make a significant difference.
- b. Investment exposure and education in early stage companies would be most impactful.

6. Experience obtained by a lawyer in M&A can vary significantly, and may not completely expose them to the risks associated with early stage companies. For example, participating on a team for an M&A deal of \$100M does not provide a lawyer with insights as to the inherent challenges that an early stage company may face as they attempt to grow - product market fit, technology development, cash management, and team development.

This category would also benefit for a specialized course in early stage investing, if this category is needed at all.

7. a) Providing an opportunity for self-certified investors to participate in a special purpose vehicle would be an excellent avenue for developing an Angel Investor community, increasing experience with investment, and enabling smaller investment amounts (such as \$5,000). The smaller amounts would enable a greater degree of diversification, as many issuers have investment minimums that may force the investor to reduce the number of investments that are made.

In terms of ownership of special purpose vehicles, 50% ownership by accredited investors would provide the same results as 80% indicated in the notice.

7. b) As mentioned in a), reducing the 80% accredited investor ownership to 50% would be sufficient.

7. c) Minimizing the amount of documentation and reporting should be the goal of a new program. The issuer should be diligent in collecting the Statement and Acknowledgement letter from the self-certified investor with the intention of keeping in their records. Issuer reporting to the ASC should not be a requirement of this program. The majority of issuers will adhere to any rules voluntarily. Those that do not adhere would behave the same with or without reporting requirements.

Mike Riou

Mike Riou

Vario Ventures Inc.



From: [Neil Vande Bunte](#)
To: [New Economy](#)
Subject: Support for proposal
Date: December 22, 2020 06:28:54 PM

EXTERNAL EMAIL

Good day,

I wanted to voice my support for the ASC proposal to allow CPA/CFA/MBA holders to invest in what historically would require being an accredited investor.

Holders of these designations should have a thorough understanding of the risk profiles of these types of investments, and a very clear self assessment reminding them of such risks should suffice.

Alberta startups need to thrive as we diversify our economy. This proposal will allow fresh capital, likely from a younger and more diverse demographic, to participate in supporting our entrepreneurs.

Cheers,

Neil V



From: [Philip Doublet](#)
To: [New Economy](#)
Cc: [Philip Doublet](#)
Subject: Prospectus Exemption For Self-Certified Investors
Date: December 23, 2020 12:24:05 PM

EXTERNAL EMAIL

Good morning:

Please accept this email as an indication of my support for ***a new prospectus exemption entitled Prospectus Exemption For Self-Certified Investors.***

In addition to the below-listed Self-Certified Investor Criteria noted in the document:

- a. the purchaser holds a CFA designation,
- b. the purchaser holds a CPA designation in a jurisdiction of Canada,
- c. the purchaser was admitted to practice law in a jurisdiction of Canada and the purchaser's practice has involved being significantly engaged in providing advice respecting public or private financings or mergers and acquisition transactions,
- d. the purchaser holds from an accredited university an MBA with a focus on finance or a degree in finance;

I would also like to recommend that the following be added. To me, directly related investment experience in relevant financings should carry at least as much, if not more, weight than designations:

- e. the purchaser has at least ten (10) years of experience in investing in private equity financings, and has personally invested at least than \$50,000 in such financings within the last ten (10) years.

I believe adopting this new exemption would provide an overall benefit to the small business/start-up ecosystem and ultimately create more wealth, more jobs and more opportunities for Albertans.

Best regards,

Philip Doublet, P.Eng.

DMC Doublet Management Consulting Ltd.
- Helping growth-stage companies grow

Philip J. Doublet, P.Eng.
www.linkedin.com/in/philipdoublet
www.doublet.ca



From: [Rakesh Saraf](#)
To: [New Economy](#)
Subject: Self-certified Investors
Date: November 20, 2020 11:39:57 AM

EXTERNAL EMAIL

my 2/c's on this subject:

Can these certification tests not be linked to Education, ie specialized education like CFA etc? Why does it have to be just a financial assets test. Or a combination of both, but the financial assets threshold number needs to be a lower than the regular test based purely on financial assets.

Cheers
RS

Rakesh Saraf





INVESTMENT INDUSTRY ASSOCIATION OF CANADA
ASSOCIATION CANADIENNE DU COMMERCE DES VALEURS MOBILIÈRES

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Susan Copland, LLB, BComm
Managing Director
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December 23, 2020

Cathy Tearoe
Senior Legal & Policy Counsel
Alberta Securities Commission
Suite 600, 250 – 5th St. SW
Calgary, AB T2P-0R4

New.Economy@asc.ca

Dear Ms. Tearoe:

Re: CSA Multilateral Notice 45-327 Proposed Prospectus Exemption for Self-Certified Investors (the “Proposed Exemption”)

The Investment Industry Association of Canada (the “IIAC” or the “Association”) appreciates the opportunity to comment on the Proposed Exemption. The IIAC supports regulatory efforts to facilitate capital raising in Canada, and the Proposed Exemption can, with certain adjustments assist in this objective.

Although the impetus for the Proposed Exemption arose out of the ASC’s “Energizing Alberta’s Capital Market” initiative, a similar proposal, supported by the IIAC, was the subject of consultation under the Ontario Capital Markets Modernization Taskforce. It is appropriate that the Proposed Exemption be applicable across all Canadian jurisdictions given the national nature of the capital markets, and the interest among major Canadian regulators to provide investment opportunities uniformly to Canadian investors.

- 1. To what extent do you anticipate that this prospectus exemption would be relied on by businesses in Alberta or Saskatchewan?**

Although the objective of the Proposed Exemption, which is to expand the existing prospectus exemption regime to provide access to a broader investor base with sufficient knowledge and expertise to mitigate risk, is appropriate and would be of significant interest to businesses, the nature of the criteria is likely to overlap with those already eligible to invest using the accredited investor exemption. Investors with the prescribed designations and experience are likely to be

INCLUDES COMMENT LETTERS RECEIVED

employed in positions where they would meet the income and/or asset tests required to be considered an accredited investor. As such, it is unlikely that the availability of the Proposed Exemption will have a material effect on the number or types of investors available to invest in eligible issuers in Alberta or Saskatchewan. Although it may be somewhat helpful, the Proposed Exemption is likely to be of limited value.

2. **In setting the limits on investment, we considered that a policy rationale for the accredited investor exemption is ability to withstand loss. Investors investing under the proposed exemption are likely not accredited investors and can be assumed to have annual income of less than \$200,000. Are the limits of \$10,000 in any one issuer in a 12 month period and \$30,000 in all issuers in a 12 month period appropriate in ensuring that an investor has the ability to withstand the loss of the investment? Are other conditions necessary to address investor protection concerns?**

As noted above, given the significant educational and experience requirements for qualification, we would expect that those that meet the criteria will be employed in positions that would put them in the accredited category, and therefore able to withstand investment losses. As such, the investment limits are not likely necessary. If however, the criteria is expanded beyond these highly skilled, and likely highly compensated professionals, it may be appropriate, in certain circumstances, to impose limits.

Notwithstanding the characteristics of the individual investors, the lower limit of \$10,000 should be reconsidered. For many financing transactions, particularly those of a significant size, a minimum investment amount is required, as issuers and intermediaries seek to minimize the paperwork and administration that results from having significant numbers of small investors. Given that this minimum investment requirement is generally significantly higher than \$10,000, the Proposed Exemption would be of limited value to issuers and investors. We suggest that in order realistically to allow such investors to participate, the maximum investment per issuer be increased to \$20,000, and the aggregate limit be increased to \$40,000.

We also suggest that if the investment is facilitated through an investment dealer, the maximum investment not be applicable, as the investment process would be subject to know-your-client and suitability requirements imposed under securities law. This would, in effect, expand the Investment Dealer exemption, available in Alberta, Saskatchewan, British Columbia, Manitoba and New Brunswick, to situations where the issuer is not listed on a Canadian exchange.

3. **Are there other factors that an investor should acknowledge they understand in the Self-Certified Investor Statement and Acknowledgement?**

The Investor Statement and Acknowledgement is very comprehensive.

4. **The exemption focuses on financial and investment education and experience. Are there other designations or courses that would provide an investor with relevant financial and investment education and should be included e.g., the chartered investment management designation? Please explain.**

We agree that the Proposed Exemption should be expanded to include designations and courses that would provide an investor with relevant financial and investment education, such as the CIM designation. It may be useful to consider including the courses required for qualification as an investment registrant, without requiring the individual to actually be a registrant or former registrant as required under the accredited investor exemption. Consistent with the Ontario Modernization Taskforce Consultation, we recommend increasing the criteria to also include those individuals who have completed relevant proficiency requirements, such as the Canadian Securities Course Exam; the Exempt Market Products Exam; or those who have passed the Series 7 Exam and the New Entrants Course Exam (as defined in NI 31-103).

5. **In the ASC consultations, some parties suggested that we should include persons with experience or education that is not of a financial or investment nature but that is relevant to the industry in which they propose to invest. For example, it was suggested that we allow a young professional with a computer science degree to invest in a software technology company or an individual with a petroleum engineering designation to invest in an oil and gas company. However, others raised concerns that those type of educational criteria would not adequately address investor protection concerns as the investor may not appreciate the financial or investment considerations important to investing.**
 - a. **Are there other education or experience qualifications that we should consider? Please explain.**
 - b. **What other conditions might help to ameliorate the risks that the investor may not appreciate the financial and investment considerations?**

We support the concept of allowing persons with relevant educational or professional qualifications to invest in the industry in which they have expertise. We recommend that the criteria be restricted to professional designations, such as engineers, geologists, and those with educational qualifications to adequately assess the technology and/or managerial capability of the issuer rather than general degrees with a specialty. In such situations, we recommend that unless the investment is made through an investment dealer with know-your-client and suitability obligations, the maximum yearly investment amounts of \$20,000 per issuer and \$40,000 aggregate apply.

6. **The proposed exemption contemplates lawyers but only where their practice has involved being significantly engaged in providing financing or mergers and acquisitions advice. As worded, the requirement is a subjective assessment by the lawyer. Should objective criteria be provided e.g., percentage of practice and/or years of practicing? If so, what minimum level of experience is appropriate?**

Criteria, such as percentage of practice is difficult to firmly ascertain, and may vary year to year. The criteria to qualify for the Proposed Exemption should be clear and able to be objectively confirmed.

7. **One of the goals of the proposed self-certified investor exemption would be to help facilitate the development of the angel investor entrepreneurial community. Although angel investors**

may invest directly into early-stage businesses, we understand that angel investors will often invest on a syndicated basis, forming a special purpose vehicle, such as a limited partnership or corporation, in which they will invest and then that special purpose vehicle will invest in an early-stage business. The proposed self-certified investor exemption could facilitate direct investment into a business or a special purpose vehicle. However, the distribution of securities of an early-stage business to a special purpose vehicle also requires reliance on a prospectus exemption. We understand that these financings are often conducted under the private issuer exemption, which allows the distribution of securities to a number of specified parties, including accredited investors. We understand that the special purpose vehicle is often treated as an accredited investor because all the owners of interests (except voting securities required to be owned by directors) are accredited investors. This option would seem not to be available for a special purpose vehicle where one or more of the owners of interests were self-certified investors.

- a. **Would this issue be adequately addressed by providing guidance that the ASC and FCAA would not object to an issuer relying on s.2.4(2)(l) of National Instrument 45-106 Prospectus Exemptions, i.e., the prong of the private issuer exemption that permits a distribution to a person or company that is “not the public”, provided that the special purpose vehicle is predominantly owned by accredited investors e.g., at least 80% of the funds contributed to the special purpose vehicle were contributed by accredited investors?**

This accommodation, allowing 20% of would provide investors with more flexibility in how they invest, and may allow issuers to have increased access to special purpose vehicles by allowing a certain portion of self-certified investors to participate. We do not believe this creates any investor protection issues.

- b. **Are there other alternatives that would better address this issue?**
- c. **If we were to adopt the proposal outlined in 7a., a Form 45-106F1 Report of Exempt Distribution would be required for the sale of securities to the self-certified investor. Would this be a significant deterrent to distributing securities to self-certified investors given that private issuers do not otherwise have reporting obligations to securities regulators? Given our interest in tracking use of this exemption, could we address this issue by requiring only a very simple letter reporting on use, which could be filed by email?**

We do not have direct information on this issue and private investors’ concerns with reporting to regulators.

Thank you for considering our comments. If you have any questions, please don’t hesitate to contact me.

Yours sincerely,

INCLUDES COMMENT LETTERS RECEIVED





BY EMAIL TO: New.Economy@asc.ca

December 24, 2020

Cathy Tearoe
Senior Legal & Policy Counsel
Alberta Securities Commission
Suite 600, 250-5th Street SW
Calgary, AB. T2P 0R4

Dear Sirs/Mesdames:

Re: Request for Comment - CSA Multilateral Notice and Request for Comment 45-327 Proposed Prospectus Exemption for Self-Certified Investors

The Ontario Mortgage Investment Corporation Association (“**ONMICA**”) is pleased to provide our comments in connection with Canadian Securities Administrators (“**CSA**”) Multilateral Notice and Request for Comment 45-327 *Proposed Prospectus Exemptions for Self-Certified Investors* (the “**Proposed Exemption**”).

About ONMICA

ONMICA is an association of mortgage investment corporations, mortgage funds and other mortgage investment entities (“**MIEs**”) as well as registrants, including exempt market dealers (“**EMDs**”) and mutual fund dealers who operate in the MIE space. There are currently 33 ONMICA members who collectively have approximately \$3.9 billion of gross assets under administration.

ONMICA’s purpose is to:

- facilitate the exchange of information and ideas between members
- present a unified voice to regulators and other stakeholders to protect the specific interests of our industry
- set and uphold industry standards for ethics and professionalism
- act as an advocacy group for the MIE community dealing primarily with securities regulators (such as the Ontario Securities Commission) to further their understanding of the business of MIEs and advance the regulation of capital raising which is fair, simple, and specific to our industry
- raise the profile and understanding of MIEs in the minds of both investors and capital raising industry participants
- assist the members of our organization with advice, problem solving and professional referrals

Membership criteria includes that the member firm’s primary source of income is derived from being, or managing, an MIE whose securities are distributed through an entity registered by the Ontario Securities Commission, and who conducts business in an ethical and professional manner that positively reflects on the industry.

ONMICA is a staunch proponent of strong regulation that provides protection to investors and helps maintain the integrity of Ontario’s capital markets while balancing regulatory burdens and costs.

Additional information about ONMICA is available on our website at www.onmica.com.

General Comments

We support the intent behind the Proposed Exemption as a positive step by the Alberta Securities Commission (the “ASC”) and the Financial and Consumer Affairs Authority of Saskatchewan (together with the ASC, the “Commissions”) to address the need for capital formation in their respective provinces. Our reservations are with implementation: we believe that the Self Certified Investor should not be a new, stand-alone prospectus exemption; rather the Self Certified Investor should be included in the Accredited Investor Exemption set out in section 2.3 of National Instrument 45-106 – *Prospectus Exemptions* (the “Accredited Investor Exemption”).

We are concerned that the Proposed Exemption is being considered by the Commissions outside of any CSA initiative involving expanding the definition of “accredited Investor” where investment limits should be determined based on suitability when a dealer is involved rather than a ‘one-size fits all’ approach. Although ONMICA is an Ontario-based organization, we have conferred with MIEs/MICs who carry on business in Alberta and Saskatchewan who share our views. As an industry, we continue to press CSA members, including the Ontario Securities Commission, to adopt the concept underlying the Proposed Exemption, with the modifications discussed below.

We urge the Commissions, and all CSA members, to implement the recommendations of the Ontario Government’s *Capital Markets Modernization Taskforce Consultation Report dated July 2020*, and introduce additional accredited investor categories (including those in the Proposed Self-Certified Investor Group), as set out below.

14. Introduce Additional Accredited Investor (AI) categories

- In 2019, 90.5 per cent of capital raised under prospectus exemptions was raised through the use of the AI exemption. The current definition of AI includes individuals who meet specific income and net financial asset thresholds. Although these criteria may be indicative of one’s ability to withstand potential market losses, they are not necessarily correlated with one’s sophistication or ability to understand investments.
- **Discussion:** The Taskforce proposes to expand the AI definition to those individuals who have completed relevant proficiency requirements, such as the Canadian Securities Course Exam; the Exempt Market Products Exam; the CFA Charter or; who have passed the Series 7 Exam and the New Entrants Course Exam (as defined in NI 31-103). If an individual meets the requisite proficiency standard in order to be able to recommend an investment product to other investors, the individual should be able to make a similar investment decision for himself or herself. Adding criteria based on existing educational proficiency would provide greater investment opportunities

for individuals who already have the sophistication required for investment decisions and can adequately quantify the risk of potential investments.

- See: <https://d2khazk8e83rdv.cloudfront.net/books/mof-capital-markets-modernization-taskforce-report-en-2020-07-09.pdf>

We note that the United States Securities and Exchange Commission recently expanded its definition of “accredited investor” to include those who have certain financial sophistication, and that there are no prescribed investment limits imposed on such accredited investors. With the imposition of investment limits, the Proposed Exemptions take a different approach, which we consider to be misguided.

Simply, ONMICA believes that the four types of groups that would be allowed to self-certify (*i.e.*, CFAs, CPAs, MBAs, and certain types of lawyers) under the Proposed Exemption (the “**Proposed Self Certified Investor Group**”) should rightly be added to an expanded definition of accredited investor.

SPECIFIC ONMICA RESPONSES

1. To what extent do you anticipate that this prospectus exemption would be relied on by businesses in Alberta or Saskatchewan?

ONMICA Response

We do not believe that many (if any) MIE/MIC issuers will rely on the Proposed Exemption due to the investment limits and, as stated above, those individuals eligible to invest under the Proposed Exemption should be included in the list of Accredited Investors, without investment limits.

We note that the Commissions were silent on how the exemption would work if registrants were involved. ONMICA believes that if registrants are involved, there should be no prescribed investment limits since registrants are, or will be, subject to their regulatory obligations to act honestly, fairly and in good faith and, acting in the clients’ best interests involving conflicts of interest coming into effect in mid 2021 and putting the client’s interest first for suitability determinations, coming into effect at end of 2021.

The Commissions have provided no data on the number of MBAs, CFAs, CA and licensed lawyers with an emphasis in financings and mergers and acquisitions present in Alberta and Saskatchewan, so as to provide some idea of the possible universe of eligible investors who could invest under the Proposed Exemption if it became law. Further research is recommended to be undertaken by the Commissions and should be shared with the public. This information would be helpful in answering the question asked in this Request for Comment.

Moreover, we suggest that the Commissions work with SROs, industry associations and regulatory bodies to have this question directly asked to its members and stakeholders. This would be the best feedback the Commissions could receive and we strongly recommend such further action by the Commissions.

2. In setting the limits on investment, we considered that a policy rationale for the accredited investor exemption is ability to withstand loss. Investors investing under the proposed exemption are likely not accredited investors and can be assumed to have annual income of less than \$200,000. Are the limits of \$10,000 in any one issuer in a 12 month period and \$30,000 in all issuers

in a 12 month period appropriate in ensuring that an investor has the ability to withstand the loss of the investment? Are other conditions necessary to address investor protection concerns?

ONMICA Response

The Commissions have not explained the basis for including investment limits, let alone why they recommended those particular thresholds.

There should be no prescribed limits whatsoever, whether as set out in the Proposed Exemption, or whether those identified investors under the Proposed Exemption are made part of the Accredited Investor Exemption, which is our strong preference. ONMICA believes that the Proposed Self Certified Investor Group are educated and understand the risks of investing and do not require the protections necessary for non-accredited “retail” investors.

The policy basis for the Proposed Exemption is investor sophistication, which the Commissions have themselves acknowledged. This is a separate stand-alone policy rationale and should be considered apart from an investor’s ability to withstand a financial loss, in whole or in part. To conflate the two concepts as being inherent to the definition of an accredited investor, is, we submit, incorrect. An investor can be very knowledgeable and sophisticated and have little room to absorb financial loss. Similarly, a person with very considerable economic capacity to absorb financial loss can be a naïve, inexperienced investor. In our submission, both classes of person should be qualified to be accredited investors; the first on the basis that they have the knowledge and sophistication to look after themselves and the second on the basis that persons of financial means have access to professional advisors who can supply the knowledge and sophistication that they lack. At the end of the day, the accredited investor exemption is a carve out from the presumption that there is an asymmetric information advantage available to the issuer vis a vis the investor and securities regulation must step in to protect investors.

As the SEC stated in its August 20, 2020 press release in connection with its modernization of the AI exemption,

*“Historically, the Commission has stated that the accredited investor definition is “intended to encompass those persons whose financial sophistication and ability to sustain the risk of loss of investment or fend for themselves render the protections of the Securities Act’s registration process unnecessary.”^[7] Prior to the adoption of these final rules, in the case of individuals, the accredited investor definition has used wealth—in the form of a certain level of income or net worth—as a proxy for financial sophistication. However, as stated in the Proposing Release, we do not believe wealth should be the sole means of establishing financial sophistication of an individual for purposes of the accredited investor definition. Rather, the characteristics of an investor contemplated by the definition can be demonstrated in a variety of ways. **These include the ability to assess an investment opportunity—which includes the ability to analyze the risks and rewards, the capacity to allocate investments in such a way as to mitigate or avoid risks of unsustainable loss, or the ability to gain access to information about an issuer or about an investment opportunity—or the ability to bear the risk of a loss.**^[8] Accordingly, the final rules create new categories of individuals and entities that qualify as accredited investors irrespective of their wealth, on the basis that such investors have demonstrated the requisite ability to assess an investment opportunity”.*

ONMICA believes limits are inappropriate and counter-productive to the spirit of the Proposed Exemption which is to increase capital formation.

3. Are there other factors that an investor should acknowledge they understand in the Self-Certified Investor Statement and Acknowledgement?

ONMICA Response

ONMICA believes the Acknowledgement is unnecessary and too long to be meaningful. We believe the Proposed Self Certified Investor Group should be included in the definition of “accredited investors”, and hence there should be no Acknowledgement.

If there must be an Acknowledgement, it should not be required to be notarized since this unduly burdensome. Moreover, no such notarization is required under any other prospectus exemption. This step is inconsistent with the burden reduction initiatives currently undertaken by the Governments of Alberta and Saskatchewan. Many notaries, including lawyers, may not wish to sign the Statutory Declaration form out of a concern that somehow they are responsible for ascertaining whether a member of the Proposed Self Certified Investor Group has the requisite qualifications/standing.

4. The exemption focuses on financial and investment education and experience. Are there other designations or courses that would provide an investor with relevant financial and investment education and should be included e.g., the chartered investment management designation? Please explain.

ONMICA Response

Yes, the Commissions should consider other designations and courses, such as actuaries; however, ONMICA recommends that criteria should be clearly set out to provide full transparency and understanding of the requirements. This allows the appropriate bodies and organizations to make submissions on behalf of their members.

From a policy perspective, ONMICA believes that certain professional certifications and designations or other credentials provide a reliable indication that an investor has a sufficient level of financial sophistication to participate in investment opportunities that do not have the additional protections provided by applicable securities law.

ONMICA believes that relying solely on financial thresholds as an indication of financial sophistication is suboptimal, in part because it may unduly restrict access to investment opportunities for individuals whose knowledge and experience render them capable of evaluating the merits and risks of a prospective investment in a private offering, irrespective of their personal wealth.

While certain of these individuals may have fewer financial resources and, as a result, be less able to bear the financial risk of private investments, ONMICA believes that their professional credentials and experience should enable these investors to assess investment opportunities, appropriately allocate capital based on their individual circumstances, including whether to reallocate investment capital

between private investments and other equivalent-sized investments, and otherwise make appropriately informed decisions regarding their financial interests, including their ability to bear the financial risk.

Accordingly, the Commissions should be able to designate qualifying professional certifications, designations, and other credentials with such designation to be based upon consideration of all the facts pertaining to a particular certification, designation, or credential. By way of example, the SEC’s changes/modernization to the AI definition provides a non-exclusive list of attributes that it considers in determining which professional certifications and designations or other credentials qualify a natural person under its AI definition.

Given the evolving nature of market and industry practices, ONMICA believes this approach will provide the Commissions with flexibility to re-evaluate previously designated certifications, designations, or credentials if they change over time, and also to designate other certifications, designations, or credentials if new certifications, designations, or credentials develop or are identified that are consistent with the specified criteria that the Sponsoring Commissions determine are appropriate.

5. In the ASC consultations, some parties suggested that we should include persons with experience or education that is not of a financial or investment nature but that is relevant to the industry in which they propose to invest. For example, it was suggested that we allow a young professional with a computer science degree to invest in a software technology company or an individual with a petroleum engineering designation to invest in an oil and gas company. However, others raised concerns that those type of educational criteria would not adequately address investor protection concerns as the investor may not appreciate the financial or investment considerations important to investing.

a. Are there other education or experience qualifications that we should consider? Please explain.

b. What other conditions might help to ameliorate the risks that the investor may not appreciate the financial and investment considerations?

ONMICA Response

Yes, please see our response to Question #4 above.

We understand your concerns about educational criteria, and accordingly, ONMICA believes investors should be allowed write an Accredited Investor Course and, if they pass with a threshold passing grade, they would be an accredited investor. The same could apply to adding to members of the Proposed Self Certified Investor Group, which could include mortgage brokers and life insurance agents who deal with investing in connection with segregated funds.

6. The proposed exemption contemplates lawyers but only where their practice has involved being significantly engaged in providing financing or mergers and acquisitions advice. As worded, the requirement is a subjective assessment by the lawyer. Should objective criteria be provided e.g., percentage of practice and/or years of practising? If so, what minimum level of experience is appropriate?

ONMICA Response

No, objective criteria should not be added for lawyers who have the sophistication to make their own determination and bear the risk of loss and reward.

7. One of the goals of the proposed self-certified investor exemption would be to help facilitate the development of the angel investor entrepreneurial community. Although angel investors may invest directly into early-stage businesses, we understand that angel investors will often invest on a syndicated basis, forming a special purpose vehicle, such as a limited partnership or corporation, in which they will invest and then that special purpose vehicle will invest in an early-stage business.

The proposed self-certified investor exemption could facilitate direct investment into a business or a special purpose vehicle. However, the distribution of securities of an early stage business to a special purpose vehicle also requires reliance on a prospectus exemption.

We understand that these financings are often conducted under the private issuer exemption, which allows the distribution of securities to a number of specified parties, including accredited investors.

We understand that the special purpose vehicle is often treated as an accredited investor because all the owners of interests (except voting securities required to be owned by directors) are accredited investors. This option would seem not to be available for a special purpose vehicle where one or more of the owners of interests were self-certified investors.

a. Would this issue be adequately addressed by providing guidance that the ASC and FCAA would not object to an issuer relying on s.2.4(2)(I) of National Instrument 45-106 *Prospectus Exemptions*, i.e., the prong of the private issuer exemption that permits a distribution to a person or company that is “not the public”, provided that the special purpose vehicle is predominantly owned by accredited investors e.g., at least 80% of the funds contributed to the special purpose vehicle were contributed by accredited investors?

b. Are there other alternatives that would better address this issue?

c. If we were to adopt the proposal outlined in 7a., a Form 45-106F1 Report of Exempt Distribution would be required for the sale of securities to the self-certified investor. Would this be a significant deterrent to distributing securities to self-certified investors given that private issuers do not otherwise have reporting obligations to securities regulators? Given our interest in tracking use of this exemption, could we address this issue by requiring only a very simple letter reporting on use, which could be filed by email?

ONMICA Response

Re Question #7(a) – If Self Certified Investors can invest under the Proposed Exemption, then there should be no requirement that they cannot be part of a special purpose vehicle that includes both Self-Certified Investors and AIs.

Re Question #7(b) – No comment.

Re Question #7(c) – ONMICA believes there should be no Report of Trade involving sales to Self-Certified Investors. However, if members of Proposed Self Certified Investor Group are added to the accredited investor definitions, then adding such questions to the Report of Trade is encouraged and welcome for the collection of statistical data.

Closing Remarks

ONMICA would like to thank the Commissions for soliciting feedback from various stakeholders.

* * * *

We thank you for considering our submissions and we would be pleased to respond to any questions or meet with you to discuss our comments.

Yours truly,

ONMICA COMMENT LETTER COMMITTEE MEMBERS

“Diana Soloway”

“Ricky Dogon”

“Susan Han”

“Sergiy Shchavyelyev”

“Anisa Lancione”

“Brian Koscak”

cc: ONMICA Regulatory Committee

From: [Tim Lynn](#)
To: [New Economy](#)
Cc: [Zack Storms](#)
Subject: CSA 45-327 Comments
Date: December 23, 2020 11:59:38 PM

EXTERNAL EMAIL

Hi Denise and team,

Thanks again for chatting the other week, really great to get to know you and your passion for helping the community, as is evidenced by your work on this proposal.

As is proposed, this looks to be a marvelous addition. To answer your questions as proposed in the document, see below:

1. This would likely be relied upon by startups and other companies that cannot afford an OM. These individuals would likely qualify as Eligible Investors, and so the slice of the Venn diagram where people who are Eligible Investors but cannot invest in exempt market products is (as far as I understand) those without an OM. The type of company who would be raising but not have an OM in place would likely be the smaller ones, i.e. earlier funds and startups. This would be a great help to the angel community – Startup TNT has encountered a number of individuals who would like to invest (largely in the professional services community given our network) but are unable to under the current legislation. With this proposed legislation, we could unlock a wave of ‘junior’ angels to the community, eager to help both with capital and, more importantly, their subsequent vested interest.
2. On this topic I’m definitely more *laissez faire* than what is proposed. An individual can go and speculate on weekly options without being even an eligible investor, let alone have years and years of professional experience. Furthermore, these individuals are presumably early-career folks with high income potential. These folks have the financial capability with their lifetime earnings capacity to take outsized risks early in their investing lifetime. To arbitrarily limit it to \$30k/year when this is the time for them to take outsized risks, and especially when much worse investing options are out there (options as described above, Venture listed penny stocks, straight-up gambling). Furthermore, because of the subset of the population that would qualify under this rule, they presumably have the financial knowledge and acumen to make prudent investing decisions and have the professional/social access to portfolio management advice. All that to say, would suggest that the limits are, at best, as strict as I would go, and would ideally relax/release limits.
3. Presumably the same factors that are in Form 45-106F9 would be wise to have them acknowledge. Explicit understanding of how much is at risk (all of it) and that they’ve got the very real potential to never see this money again would be a wise sobriety check at the time of investment.

The CAIA (alternative investment) designation would presumably land in the middle of

4. the fairway for this sort of thing.
5. Most individuals I know in the finance community do not have an MBA because B.Comm programs in Canada are very strong. Frankly, three to four years of B.Comm results in more credits of courses than two years of an MBA. A number of folks in the finance community (particularly in investment banking and private equity) are B.Comm graduates without a CFA. It would be prudent to include B.Comm Finance/Accounting graduates as well, potentially with a work experience restriction (akin to the work experience requirement for CFA).

In addition, there are a number of individuals who own businesses that do not qualify as an AI, but have solid financial/business expertise. Recognizing the significant murkiness of this topic, it would be extremely challenging to include in this iteration of the proposed legislation, however a topic that has been brought up by a number of potential investors that I have been introduced to to-date.
6. Not a topic area that I am proficient enough in to be able to comment.
7. (a): This seems to suggest that a maximum of 20% of the funds could be provided by these 'junior' angels and 80% would need to come from the real AIs. The restriction isn't clear to me as to why that number is used, however this is better than what is currently available, so would take it if offered the two options. However, if the % is open for debate, I wonder why the 20% restriction is in place.

It would presumably be challenging (but definitely not impossible, just an administrative challenge) to ensure the 80% mark. If you have a \$200k syndicate, then that would mean only \$40k could be from these individuals. For that level of impact, the tracking and reporting while recruiting (to ensure that a syndicate is not over that number, but yet working to bring more people into the community for the greatest impact) would be a challenge.

Because \$5-10k cheques are not attractive on cap tables, deals at the angel stage are typically syndicated through a simple holdco (minimum investments into startups are typically \$15k or more). If this restriction is in-place, a group of professionals could not simply get together and syndicate \$100k between 20 friends and invest into a company, even though they would qualify if they could simply write the cheques on their own (which they cannot because the issuer doesn't want that small of a cheque in their company for a multitude of reasons).

(b): Simply allowing the exemption to include this class of investor (without the % threshold) would be spectacular as an alternative. I'm not versed enough in the rationale as to why this isn't a possibility to be able to come up with another alternative.

(c): A few comments on the topic of deterrents to using this exemption:

 - The proposal is that, if you take a <\$10k cheque from somebody, that you'd have to fill out an 8-page form and file it with the ASC? I can't imagine that startups would go out of their way to raise capital from somebody if this was the case, as people are generally allergic to these sorts of 'scary looking form' things and it would have a 'boogiemana' aroma in the startup scene. People simply wouldn't raise from them, notwithstanding the issues around syndication and max \$10k cheque size.
 - A group of accredited investors, casually coming together, forming a holdco

SPV, and shipping money to a startup though that vehicle, likely wouldn't go out of their way to attract the attention of the Commission in order to get a four-figure cheque or two.

- There's a perceived downside of reporting anything to the Commission – if you optionally report something, there's zero upside. The best possible case is that you did everything right and you don't get bothered. If you do something wrong, fines, administrative headache, potentially worse. To do all this for a four-figure cheque or two (given the 20% of the total funds maximum) seems like an interesting proposition that not many would execute on.
- Finally, reading between the lines a bit, it reads that the investor would need to get their affirmation sworn in front of a commissioner for oaths/notary. This is another administrative burden that would further alienate potential investors. Not only would the syndicate not want them involved (because ASC paperwork) but also now the investor has to pay somebody to sign a document to say that they have a law degree or a designation (which is very easily searchable on a registered online database). Seems like an unnecessary step.
- Making it an email instead of an eight-page form would be help, but the above is a series of reasons beyond the simplicity of the reporting requirement that would make this a challenge for widespread adoption.

All this to say, I appreciate your work on this, and would be glad to work alongside the ASC and the FCAA to trial this in the market in 2021. Happy to demonstrate this tangibly in the marketplace and jump through hoops in order for us all to take the steps necessary to get to a properly open market, which I imagine is the eventual goal of this exercise.

Again, really appreciate all of your work, and more than happy to discuss any/all of this in further detail at any time.

Cheers,

Tim Lynn

Co-Organizer | Startup TNT

[LinkedIn](#) | [TNT Website](#) | [TNT Discord](#)



From: [Travis Dahl](#)
To: [New Economy](#)
Subject: Proposed Prospectus Exemption for Self-Certified Investors
Date: December 23, 2020 01:55:01 PM
Attachments: [Fuse42accelerator-drk-2_copy.png](#)

EXTERNAL EMAIL

Hello,

I'm writing in support of this Proposed Prospectus Exemption for Self-Certified Investors. As an organization, we are gearing up to work with investors on a relatively small scale and have experience working with investors in the Alberta/Saskatchewan ecosystem. This gives us a perspective on the value that this interaction creates to both early-stage entrepreneurs as well as to investors in the angel-investing space. By opening the opportunities to highly-skilled people who currently don't qualify as accredited investors, we are opening doors to create a more equitable and accessible ecosystem that is more fair for everyone involved.

I feel that this prospectus is a thoughtful plan to address the potential risks present for angel investors and the smaller tolerance for said risk by non-accredited investors in the AB/SK ecosystem. But simultaneously opening the door for great opportunities that have typically been closed to all but those who are already successful and have substantial assets. It's difficult for me to say how much of an impact this will have on the innovation ecosystem in the Prairies, but we may be pleasantly surprised as there are incredible developments in our region that could result from this. Add this to the fact that investors often become advisors and these highly skilled personnel would be extremely valuable to the success of these companies.

I understand the consideration for risk tolerance to be a key consideration under this proposal. While these professionals that would qualify under this exemption are human beings that are fallible like the rest of us, the qualifications stated would perform the diligence to ensure that these people have a high level of training specifically where it counts for determining the risk, and that they are taking responsibility for their decision to make such an investment.

Regarding other professionals that don't fall under the CFA, CPA, MBA certifications, it's my opinion that someone who has related experience in the industry in question should be able to qualify as well. The concerns around risk are understandable, however it is very easy for these same people to invest in public markets into companies that they may know nothing about, without ever speaking to anyone in the company, and having no understanding of the industry. In Canada we are generally free to choose our directions in life and have equal opportunity as others, and I feel investing should be no different. That said, I do agree with having some restrictions to ensure that the potential investor has at least some knowledge of the industry. Much like accredited angel investors and given the financial restrictions proposed, a \$10,000 loss could be painful, but for most professionals in the Prairies, this is not an amount that one should be unable to recover from. Possibly a 3rd party credit check could be something that would help assess the suitability for a particular investor to pursue a project.

Overall, I think this is a great proposal and I look forward to hearing the final decision. For any questions, I can be available to answer as best I can.

INCLUDES COMMENT LETTERS RECEIVED

Travis Dahl
COO, Co-Founder

[REDACTED]
Fuse42.ca



From: [Zack Storms](#)
To: [New Economy](#)
Subject: Comments on Proposed Prospectus Exemption for self-certified investors
Date: December 20, 2020 11:50:59 PM
Attachments: [Outlook-dwxpair3.png](#)

EXTERNAL EMAIL

Hello Denise and the New Economy team,

I'm really excited about these proposed changes!

I am an accredited investor and have been participating as an Active Angel for the past 5 years in Alberta. I'm making these comments on behalf of myself only. They are my personal opinions.

I believe strongly that if we want to create a vibrant, entrepreneurial angel investment community we need to work harder to recruit the 30-something professionals that are perfectly capable of making sound investment decisions but don't yet qualify as accredited.

I have personally invested in over 20 Angel deals. This year alone I played a leading role organizing Angel Syndicates for 8 Alberta Startups totaling over \$1 million in aggregate through the Startup TNT Investment Summit I and II ([website](#)). These events provide hands-on training for both entrepreneurs and new investors and are just the type of place for the newly proposed self-certified investors to get some much needed experience in the angel space.

Generally, I'm in favor of the proposal moving forward as is, however I will address a few key points as I believe that it is imperative that SPVs and Angel Syndicates are included as part of this exemption and I also believe the choice of education background could be expanded.

I'll offer my opinion on all requested comments

1. I think rule changes like this will catalyze significant more investment, in the long term, than an investor tax credit could ever hope to achieve. This rule change will enable young, energetic, and enthusiastic professionals to get into the angel space at an early age. And with the appropriate community to support them, these people will grow into the leading investor in our community over the next 20 years. We need more long-term thinking like this.
2. I think the investment limits are reasonable. You could consider putting in some financial thresholds as well since a 22 year old graduate with a finance degree and massive student debt appears to qualify under this scenario. Something like \$75k/yr

income and \$250,000 net worth would limit it to actual young professionals in their late twenties to early forties, exactly who we want participating. Something similar to the existing 'eligible investor' numbers

3. I think they can acknowledge basically the same terms accredited investors acknowledge
4. At this point, I'm not sure if changing the types of degrees makes sense. Personally, I think anyone with a PhD and/or MBA + basic financial thresholds is sophisticated enough to understand what they are getting into. Long-term, I'd love to see a us migrate towards a 'Angel Investing Certification' that literally anyone could obtain by passing some courses and obtaining certain experiences, like for example, participating in an active deal screening process with other Accredited investors
5. If the goal here is to use this as a relatively limited test, then I'm not sure it is worth expanding the education requirements. By limiting them to financial designations, you have picked something you can justify and stand by. It becomes awkward and vague as you start expanding. Why allow an engineer but not a non-finance MBA? Really, what all new investors need, is the opportunity to understand the industry of angel investing before they jump in. I would consider letting any MBA participate rather than only finance majors. To be honest the financial questions at this stage are very basic and one does not need an advanced understanding of finance to realize the risk/reward profile of these investments. Most accredited investors are simply successful human beings from all backgrounds. Which is why I would consider changing the self-certification status to 'Any advanced degree + \$75k annual income + \$250K in networth). Otherwise, I would recommend leaving it the finance degrees for now as a test while leaving the door open to additional ways to self-certify in the future.
6. It becomes arbitrary at some point and I think it is ok to let the lawyer self-identify
7. This is a very important question for the Angel community. Also, I firmly believe the Angel community can and should play a determinant role in diversifying our economy and building out a resilient, vibrant economic engine for our province. Therefore, this rule absolutely needs to apply to Angel Syndicates. Option 7-a seems adequate to me. Would the investee company need to file anything? That always scares off these companies when they have new filing obligations. I'm not sure the appropriate threshold, but as the organizer of a syndicate this now becomes one more thing I have to worry about. I think a number like 70% or 75% makes sense. for 7-C, would only the SPV have to file the form or would the startup receiving the funds have to file it too? Simple Letter sent by email sounds like an elegant solution given that the SPV will have other basic matters to attend to like filing annual returns and the like.

I'm happy to discuss any of my above points with the ASC in more detail if they would like.

Zack

INCLUDES COMMENT LETTERS RECEIVED

Zack Storms

Co-Organizer | Startup TNT



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