

PROSPECTUS EXEMPTION FOR START-UP BUSINESSES

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To facilitate small, local financings by Alberta-based start-up businesses, the Alberta Securities Commission (the "**ASC**") has implemented ASC Rule 45-517 *Prospectus Exemption for Start-up Businesses* (the "**Start-up Business Exemption**" or "**ASC Rule 45-517**").

The Start-up Business Exemption was implemented to address the funding gap that certain small, early-stage businesses may experience if they are unable to cost effectively use the offering memorandum prospectus exemption or other capital raising exemptions. It can be used by issuers that wish to raise funds through their own contacts or through a traditional registered dealer. It can also be used by issuers to crowdfund and raise funds via an online funding portal, if that funding portal is registered as a dealer.

Key Elements of the Start-Up Business Exemption

Eligibility Restrictions

The Start-up Business Exemption is available for distributions of securities by Alberta issuers seeking to raise funds from Alberta investors. The issuer cannot be an investment fund or reporting issuer in any jurisdiction of Canada. The head office of the issuer must be located in Alberta or a jurisdiction which has adopted a corresponding exemption.^[1] In addition, under the exemption, the issuer can only distribute common shares, non-convertible preference shares, securities convertible into common shares or non-convertible preference shares, non-convertible debt securities linked to a fixed or floating interest rate, limited partnership units, or investment shares that are non-convertible preference shares issued by a cooperative under the *Cooperatives Act* (Alberta).

While the Start-up Business Exemption permits multi-jurisdictional offerings using the exemption, it is not currently possible to do so as this exemption is not yet permissible under the laws of any other jurisdiction in Canada.

Disclosure Requirements

In order to use the Start-up Business Exemption, the issuer must prepare an offering document in the required form, which includes certain information about its business, its management and the offering, including how it

intends to use the funds raised, and the minimum offering amount. This form does not require the same degree of disclosure as other prospectus exemptions. In addition, financial statements are not required to be disclosed and there is no requirement to provide ongoing disclosure to investors.

Capital Raising Limits

The issuer, including other members of its "issuer group", cannot raise in aggregate more than \$250,000 per distribution. The issuer group is also limited to two start-up business distributions in a calendar year and an aggregate lifetime amount under all start-up business distributions of \$1,000,000.

The term "issuer group" includes the issuer, each affiliate of the issuer and any other issuer that is engaged in a common enterprise with the issuer or who has a founder that is also a founder of the issuer. The term "founder" includes a requirement that the person be actively involved in the business of the issuer at the time of the distribution of a security. Accordingly, a person who takes the initiative in founding, organizing or substantially reorganizing the business of the issuer but subsequently ceases to be actively engaged in the day to day operations of the business of the issuer would no longer be a "founder" for the purposes of ASC Rule 45-517, regardless of the person's degree of prior involvement with the issuer or the extent of the person's continued ownership interest in the issuer.

If a founder remains actively engaged with two separate businesses both of which are seeking to rely on the Start-up Business Exemption, where (i) the businesses are truly separate enterprises, and (ii) the founder can demonstrate they possess adequate resources to dedicate to each business, the ASC would consider an application for exemptive relief allowing the two businesses to not be grouped together as the same issuer group.

The Start-up Business Exemption prohibits payment of a commission, fee or similar payment to the issuer group or any of their promoters, directors, officers, control persons or founders in connection with a distribution under the exemption.

Requirements Concerning Investors

Generally, the maximum amount that an issuer can accept as a subscription from an investor in a start-up business distribution is \$1,500; however, if a registered dealer provides the investor advice that the investment is suitable to the investor, the maximum subscription from that investor is \$5,000.

The issuer must provide each investor with a specified form clearly explaining certain risks of investing and must obtain an acknowledgment from each investor that they have read and understood the contents of that form. The Start-up Business Exemption also requires the issuer to provide purchasers with a 48-hour period in which the purchaser may cancel their agreement to purchase securities.

Closing and Filing Requirements

An offering under the Start-up Business Exemption must close within 90 days following which the issuer must file the offering document and a report of exempt distribution.

We would be happy to assist with any questions relating to the Start-up Business Exemption or how to proceed with a distribution under this exemption.

by Will Van Horne and Jason Haley

1. Currently no other jurisdiction in Canada has adopted a corresponding exemption.

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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