

# Securities Law Bulletin

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## Alberta's New Exemptions for Startup Businesses

**By: Rebecca Kacaba and Timothy Jones\***

In a welcome development for Alberta-based startups and small businesses, the Alberta Securities Commission (the “ASC”) has adopted a new rule – *Prospectus Exemption for Start-up Businesses* (ASC Rule 45-517, adopted July 19, 2016). The rule is designed to streamline small, local investment rounds for startups and high-growth companies, while still providing appropriate investor protection.

Although this exemption is currently only relevant to Alberta-based issuers and investors, it may be a bellwether of future efforts in other jurisdictions, as the nation’s securities regulators continue to investigate ways to increase the agility of capital-raising efforts by early-stage startups and high-growth companies.

Distributions made under Rule 45-517 do not require an accompanying prospectus. Instead, in order to rely on this exemption, the issuer must prepare an offering document that provides information about its business, its management, and the nature and purpose of the offering. However, there is no requirement to disclose financial statements or provide continuous disclosure to investors. Distributions may be made via registered online funding portals, registered dealers or through the issuer’s own efforts, meaning the rule is not limited to web-based fundraising platforms.

Only Alberta-based issuers are eligible to rely on Rule 45-517. Further, the issuer may not be a reporting issuer in any Canadian jurisdiction. Investors subscribing to distributions made under the rule must also be Alberta-based.

In addition to these geographical limitations, distributions made under this exemption are also limited in size. The

maximum amount that can be raised per distribution is \$250,000, with a total of two distributions available per year under this exemption and a lifetime cap for the issuer’s corporate family of \$1 million. Further, each distribution can raise a maximum of \$1,500 in subscriptions per investor, unless the investor receives advice from a registered dealer (in which case the maximum subscription amount is \$5,000).

From a policy perspective, some commentators, including the National Crowdfunding Association of Canada, consider these maximums to be too low for the needs of high-growth Alberta companies. Another potential downside is that distributions under the startup exemption may preclude future reliance on the private issuer exemption. Finally, although the exemption theoretically allows for multi-jurisdictional offerings, this will not be possible in practice until other Canadian securities regulators adopt it. As a result, the exemption fulfils a certain niche capital raising from the local community and is best suited for early bootstrapping efforts outside of friends and family.

Larger-scale solutions for Alberta companies will be provided if and when the ASC adopts Multilateral Instrument 45-108 – Crowdfunding (“MI 45-108”), the crowdfunding exemption currently available in Ontario and other participating jurisdictions.<sup>1</sup>

Regardless, Rule 45-517 is a welcome announcement for Alberta startups, continuing a national trend towards increasing flexibility for capital raising by small and high-growth companies and allowing a broader pool of Canadians to invest in early-stage businesses.

<sup>1</sup> MI 45-108 was recently published for comment in Alberta. The comment period closed August 25, 2016.

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