



Canadian Securities  
Administrators

Autorités canadiennes  
en valeurs mobilières

## CSA Notice and Request for Comment

### Proposed National Instrument 45-110 *Start-up Crowdfunding Registration and Prospectus Exemptions*

February 27, 2020

#### Introduction

We, the Canadian Securities Administrators (the **CSA** or **we**), are publishing the following for a 90-day comment period expiring on May 27, 2020:

- Proposed National Instrument 45-110 *Start-up Crowdfunding Registration and Prospectus Exemptions* (the **Instrument**);
- Proposed Start-up Crowdfunding Guide for Businesses (the **Guide for Businesses**);
- Proposed Start-up Crowdfunding Guide for Funding Portals (the **Guide for Funding Portals**).

Collectively, the Guide for Businesses and the Guide for Funding Portals are referred to as the **Guides** in this Notice.

We are also proposing consequential amendments to National Instrument 45-102 *Resale of Securities* and National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)* (the **consequential amendments**).

We are issuing this Notice to solicit comments on the Instrument, the consequential amendments and the Guides. We welcome all comments on this publication and have also included specific questions in the Comments section.

This Notice is also available on the following websites of CSA jurisdictions:

[www.lautorite.qc.ca](http://www.lautorite.qc.ca)

[www.bcsc.bc.ca](http://www.bcsc.bc.ca)

[www.albertasecurities.com](http://www.albertasecurities.com)

[www.osc.gov.on.ca](http://www.osc.gov.on.ca)

[nssc.novascotia.ca](http://nssc.novascotia.ca)

[www.fcaa.gov.sk.ca](http://www.fcaa.gov.sk.ca)

[www.fcnb.ca](http://www.fcnb.ca)

[www.mbsecurities.ca](http://www.mbsecurities.ca)

## Background

Securities crowdfunding is an emerging way for businesses, particularly start-ups and early stage issuers, to raise capital. With securities crowdfunding, a business raises funds through the Internet by issuing securities (such as shares or debt instruments) to many people. This form of financing is intended to provide an alternative source of capital to non-reporting issuers at an earlier stage of development.

On May 14, 2015, the securities regulatory authorities of British Columbia, Saskatchewan, Manitoba, Québec, New Brunswick and Nova Scotia adopted substantially harmonized registration and prospectus exemptions that allow start-ups and early stage issuers to raise capital in these jurisdictions under a tailored framework for securities crowdfunding. On October 2, 2019, the securities regulatory authority of Alberta adopted a substantially harmonized registration and prospectus exemption (the securities regulatory authorities in British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick and Nova Scotia collectively being the **blanket order jurisdictions**). The blanket order jurisdictions implemented the registration and prospectus exemptions by way of local blanket orders, as amended from time to time<sup>1</sup> (the **start-up crowdfunding blanket orders**).

Since the adoption of the start-up crowdfunding blanket orders and as of December 31, 2019:

- 11 funding portals have relied on the registration exemption under the start-up crowdfunding blanket orders in order to establish platforms;
- 1 registered dealer has facilitated start-up crowdfunding distributions;
- A total of 70 distributions have been completed in reliance on the prospectus exemption under the start-up crowdfunding blanket orders by 62 different issuers;
- The aggregate proceeds of all distributions made under the start-up crowdfunding blanket orders is \$3,470,754 (\$4,709,919 including the amounts raised with other prospectus exemptions as part of the same crowdfunding offering);
- The average investment amount per investor for distributions made in reliance of the start-up crowdfunding blanket orders is \$734.

In addition to the start-up crowdfunding blanket orders, two other securities crowdfunding regimes were adopted by CSA jurisdictions:

- Multilateral Instrument 45-108 *Crowdfunding (MI 45-108)* came into force on January 25, 2016 in Saskatchewan, Manitoba, Ontario, Québec, New Brunswick and Nova Scotia. Alberta adopted MI 45-108 on February 22, 2017. To date, no funding portal has registered as a restricted dealer under MI 45-108 and there has been no use of the regime.

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<sup>1</sup> For example, please refer to Multilateral CSA Notice 45-317 *Amendments to Start-up Crowdfunding Registration and Prospectus Exemptions* and Multilateral CSA Notice 45-319 *Amendments to Start-up Crowdfunding Registration and Prospectus Exemptions*.

- Alberta Securities Commission Rule 45-517 *Prospectus Exemption for Start-up Businesses* (ASC Rule 45-517) came into force on July 19, 2016. ASC Rule 45-517 is similar to the start-up crowdfunding blanket orders but does not provide an exemption from the registration requirement and does not require the use of a funding portal. As of December 31, 2019, there has been limited use of ASC Rule 45-517, with 6 distributions raising in aggregate \$130,650.

In addition, a number of firms registered as exempt market dealers and restricted dealers have launched online funding portals that facilitate crowdfunding through existing prospectus exemptions such as the offering memorandum and accredited investor exemptions under National Instrument 45-106 *Prospectus Exemptions* (**NI 45-106**).

We have heard from market participants that a harmonized regulatory framework tailored for securities crowdfunding available across Canada would foster the use of securities crowdfunding as an alternative for start-ups and early stage issuers to raise capital.

### **Substance and Purpose of the Instrument**

The CSA have proposed the Instrument to improve the harmonization of the regulatory framework for securities crowdfunding by start-ups and early stage issuers.

Although the Instrument shares key features with the start-up crowdfunding blanket orders, we have made targeted amendments to improve the effectiveness of crowdfunding as a capital raising tool for start-ups and early stage issuers, while maintaining adequate investor protection. In the blanket order jurisdictions, the Instrument will replace the start-up crowdfunding blanket orders.

A comparative chart of the key differences between the Instrument and the start-up crowdfunding blanket orders is provided in Annex A.

### **Summary of the Instrument**

The Instrument provides:

- an exemption from the prospectus requirement (the **start-up crowdfunding prospectus exemption**) that allows a non-reporting issuer to distribute eligible securities through an online funding portal; and
- an exemption from the dealer registration requirement (the **start-up crowdfunding registration exemption**) for funding portals that facilitate online distributions by issuers relying on the start-up crowdfunding prospectus exemption.

*Start-up crowdfunding prospectus exemption*

The start-up crowdfunding prospectus exemption is available to issuers that meet a number of conditions, including:

- the distribution of, and payment for, the security is facilitated through a funding portal that is relying on the start-up crowdfunding registration exemption or operated by an exempt market dealer or investment dealer;
- the aggregate gross proceeds raised by the issuer group<sup>2</sup> during the 12-months before the closing of the start-up crowdfunding distribution does not exceed \$1,000,000;
- each purchaser invests no more than \$2,500 or, if the purchaser has obtained advice from a registered dealer that such investment is suitable for the purchaser, \$5,000;
- the issuer prepares an offering document disclosing information about the business and the start-up crowdfunding distribution and makes it available to each purchaser through the funding portal's platform;
- the closing of the start-up crowdfunding distribution does not occur unless the issuer raises the minimum offering amount stated in the offering document within the 90-day period after the date the offering document is made available on the funding portal's platform; and
- the issuer provides the purchaser with a two-day contractual right to withdraw from an agreement to purchase the security by delivering a notice to the funding portal.

The issuer is not required to provide financial statements to investors in connection with a start-up crowdfunding distribution. No continuous disclosure requirements are tied to the start-up crowdfunding prospectus exemption.

The prospectus exemption is not available if the issuer intends to use the proceeds of the distribution to invest in, merge with, amalgamate with, or acquire an unspecified business. Investors in issuers that propose raising capital for these purposes are better protected in regimes other than start-up crowdfunding, such as the TSX Venture Exchange capital pool company program.

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<sup>2</sup> The issuer group means, in respect of an issuer, any of the issuer, an affiliate of the issuer, an issuer that is engaged in a common enterprise with the issuer or with an affiliate of the issuer, and an issuer whose business is founded or organized by a person or company who founded or organized the issuer.

*Start-up crowdfunding registration exemption*

The start-up crowdfunding registration exemption is available to funding portals that meet a number of conditions, including:

- at least 30 days prior to the first date the funding portal facilitates a start-up crowdfunding distribution in a jurisdiction, the funding portal delivers to the securities regulatory authority or regulator in each jurisdiction a completed Form 45-110F3 Funding Portal Information and, for each principal of the funding portal, a completed Form 45-110F4 Portal Individual Information;
- the funding portal or any of its principals must not be, or have been, the subject of certain proceedings in the last 10 years as specified in the Instrument, including claims related to fraud, theft, breach of trust, illegal distributions, or allegations of similar conduct;
- the funding portal holds each purchaser's assets separate and apart from the funding portal's own property, in trust for the purchaser, and in the case of cash, in a designated trust account at a Canadian financial institution;
- the funding portal provides the necessary disclosures (such as the issuer's offering document and any amendments) and obtains the necessary risk acknowledgement from purchasers under the Instrument in connection with a distribution of eligible securities;
- the funding portal is not registered under securities legislation; and
- the funding portal does not:
  - provide advice to a purchaser about the merits of the investment or otherwise recommend or represent that an eligible security is suitable, or
  - receive a commission, fee or other similar payment from a purchaser under a start-up crowdfunding distribution.

A funding portal cannot rely on the start-up crowdfunding registration exemption if it is insolvent. A funding portal relying on the start-up crowdfunding registration exemption must deliver to the securities regulatory authority or regulator in each jurisdiction a completed Form 45 110F5 *Annual Working Capital Certification* within 10 days of each calendar year-end. As part of its obligation to deliver a completed Form 45 110F5 *Annual Working Capital Certification*, the funding portal must certify that it has sufficient working capital to continue its operations for at least the next 12 months. If the funding portal becomes insolvent or discontinues operations, it must promptly notify the securities regulatory authority or the regulator, and any purchasers for which it holds assets, of the process the funding portal will use to return the assets to these purchasers.

Under the Instrument, a firm registered in the category of exempt market dealer or investment dealer may operate a funding portal that facilitates the distribution of securities under the start-up crowdfunding prospectus exemption provided that it meets the requirements set out in the Instrument.

### **Guide for Businesses and Guide for Funding Portals**

The purpose of the Guides is to assist funding portals and issuers in understanding the requirements under the Instrument.

The Guide for Businesses provides information in a plain-language, Q&A format that issuers should consider when conducting a start-up crowdfunding distribution.

The Guide for Funding Portals provides information that businesses that intend to conduct funding portal activities should consider, including considerations applicable to funding portals relying on the start-up crowdfunding registration exemption and those operated by registered dealers.

We expect the Guides to be published as a CSA staff notice with the final Instrument.

### **Extension of the Start-up Crowdfunding Blanket Orders**

The start-up crowdfunding blanket orders are scheduled to expire on May 13, 2020. The blanket order jurisdictions are publishing an amendment to their local blanket order concurrently with this Notice so that the blanket orders will remain available until the Instrument is available, if adopted.

### **Local Matters**

An annex is being published in each local jurisdiction that is making related changes to local securities laws, including local notices or other policy instruments in that jurisdiction. It also includes any additional information that is relevant to that jurisdiction only.

### **Publication**

The Instrument, the consequential amendments and the Guides are published together with this Notice.

### **Comments**

In addition to your comments on all aspects of the Instrument, the Guides and the consequential amendments, the CSA also seek specific feedback on the following questions:

1. We are considering repealing MI 45-108 because there has been no use of this regime. We also note that the adoption of the Instrument may reduce the need for market participants to rely on MI 45-108. Do you think MI 45-108 should be maintained? If so, please explain why.

2. We recognize the need to provide a balance in the Instrument between investor protection and streamlined, light-touch requirements for capital raising in the spirit of crowdfunding.

The Instrument contemplates individual investment limits of \$2,500 for each purchaser and \$5,000 for each purchaser, if the purchaser has obtained advice from a registered dealer that such investment is suitable for the purchaser. We recognize there may be need for greater flexibility in capital raising and continue to consider whether to increase the individual investment limit to one or more of the following:

- (a) \$5,000 for each purchaser;
- (b) \$10,000 for each purchaser, if the purchaser has obtained advice from a registered dealer that such investment is suitable for the purchaser; and
- (c) a number in between those currently in the Instrument, and those mentioned above.

What would be an appropriate individual investment limit? Please explain and identify the investor protections you think support that amount.

3. Additionally, the Instrument contemplates a limit on aggregate proceeds raised by the issuer group during the 12-month period of \$1,000,000. We recognize there may be need for greater flexibility in capital raising and continue to consider whether to increase the offering limit to one of the following:

- (a) \$1,500,000; or
- (b) a number in between \$1,000,000 and \$1,500,000.

What would be an appropriate offering limit? Please explain and identify the investor protections you think support that amount.

4. Under the Instrument, issuers, and in some jurisdictions, the directors and executives signing the offering document will be subject to statutory liability if the offering document provided to the investor contains a misrepresentation. The purpose of statutory liability is to make recovery of damages easier for investors in the event of a misrepresentation in the offering document. We have heard that some issuers view statutory liability as potentially increasing the regulatory burden of using the start-up crowdfunding prospectus exemption. We also recognize that claims of misrepresentation by a purchaser may be unlikely given the low investment limits under the Instrument. Overall, we think that any added regulatory burden is balanced against the additional capital raising opportunities provided by the Instrument.

Do you think that statutory liability for misrepresentation in the offering document will deter start-ups and early stage issuers from raising capital using the Instrument? Is any deterrent justified when it appears unlikely that claims for misrepresentations will be made?

5. The definition of “eligible securities” is limited to:

- common shares,
- non-convertible preference shares,
- securities, such as warrants, subscription receipts and simple agreements for future equity (or SAFEs), convertible into common shares or non-convertible preference shares,
- non-convertible debt securities linked to a fixed or floating interest rate, and
- units of a limited partnership.

The definition of “eligible security” was intended to reflect the type of securities a start-up or early stage issuers would likely be selling and to ensure that the exemption was not used to sell more complex securities, such as asset-backed securities and structured products. Are there other types of securities that it would be appropriate to include in the definition of “eligible security” (e.g. trust units, co-operatives member shares or other)? If so, what other type of securities and why?

Please provide your comments in writing by **May 27, 2020**.

We cannot keep submissions confidential because securities legislation in certain provinces requires publication of a summary of the written comments received during the comment period. In addition, all comments received will be posted on the websites of each of the Alberta Securities Commission at [www.albertasecurities.com](http://www.albertasecurities.com), the Autorité des marchés financiers at [www.lautorite.qc.ca](http://www.lautorite.qc.ca) and the Ontario Securities Commission at [www.osc.gov.on.ca](http://www.osc.gov.on.ca). Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

Thank you in advance for your comments.

Please address your comments to each of the following:

Alberta Securities Commission  
Autorité des marchés financiers  
British Columbia Securities Commission  
Financial and Consumer Services Commission (New Brunswick)  
Financial and Consumer Affairs Authority of Saskatchewan  
Manitoba Securities Commission  
Nova Scotia Securities Commission  
Nunavut Securities Office  
Ontario Securities Commission  
Office of the Superintendent of Securities, Newfoundland and Labrador  
Office of the Superintendent of Securities, Northwest Territories  
Office of the Yukon Superintendent of Securities  
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

Please send your comments **only** to the following addresses. Your comments will be forwarded to the remaining jurisdictions:

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## Contents of Annexes

This notice contains the following annexes:

- Annex A - Key differences between the registration and prospectus exemptions under Proposed National Instrument 45-110 *Start-up Crowdfunding Registration and Prospectus Exemptions* and the Start-up Crowdfunding Registration and Prospectus Blanket Orders
- Annex B – Local Matters (Ontario only)
- Annex C – Proposed National Instrument 45-110 *Start-up Crowdfunding Registration and Prospectus Exemptions*
- Annex D – Proposed Form 45-110F1 *Offering Document*
- Annex E – Proposed Form 45-110F2 *Risk Acknowledgement*
- Annex F – Proposed Form 45-110F3 *Funding Portal Information*
- Annex G – Proposed Form 45-110F4 *Portal Individual Information*
- Annex H – Proposed Form 45-110F5 *Annual Working Capital Certification*
- Annex I – CSA Staff Notice 45-XXX *Guidance for using the start-up crowdfunding registration and prospectus exemptions*
- Annex J – Proposed Amendments to National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)*
- Annex K – Proposed Amendments to National Instrument 45-102 *Resale of Securities*

## Questions

Please refer your questions to any of:

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ANNEX A

**Key differences between the registration and prospectus exemptions under Proposed National Instrument 45-110 *Start-up Crowdfunding Registration and Prospectus Exemptions* and the Start-up Crowdfunding Blanket Orders**

Key theme	Start-up crowdfunding blanket orders	Instrument
<b>Maximum aggregate proceeds that can be raised by the issuer group under the prospectus exemption</b>	\$250,000 per distribution, up to two times in a calendar year.	\$1,000,000 during the 12 months before the closing of the offering.
<b>Maximum investment amount per person per distribution under the prospectus exemption</b>	<ul style="list-style-type: none"> <li>• \$1,500; or</li> <li>• in British Columbia, Alberta and Saskatchewan, \$5,000, provided that the purchaser has obtained advice from a registered dealer that such investment is suitable for the purchaser</li> </ul>	<ul style="list-style-type: none"> <li>• \$2,500; or</li> <li>• \$5,000, provided that the purchaser has obtained advice from a registered dealer that such investment is suitable for the purchaser</li> </ul>
<b>Confirmation by the regulator before a funding portal starts to facilitate distributions</b>	<p>The funding portal cannot facilitate distributions until the regulator confirms in writing receipt of:</p> <ul style="list-style-type: none"> <li>• a duly completed funding portal information form;</li> <li>• a duly completed individual information form for each principal of the funding portal; and</li> <li>• such other documents and information as may be requested by the regulator.</li> </ul>	<p>The funding portal must deliver the required forms at least 30 days before facilitating distributions. There is no requirement for the regulator’s written confirmation. However, a funding portal may not rely on the start-up crowdfunding registration exemption if, within 30 days of receiving the funding portal information form, the regulator has notified the funding portal, it or any of its principals has been notified by the regulator that its process and procedure for handling of purchasers’ funds does not satisfy the conditions of the Instrument.</p>

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<b>Key theme</b>	<b>Start-up crowdfunding blanket orders</b>	<b>Instrument</b>
<b>Bad actor disqualification</b>	Not applicable.	A funding portal cannot rely on the start-up crowdfunding registration exemption if it or any of its principals is or has been the subject of certain proceedings in the last 10 years related to a claim based in whole or in part on various conduct such as fraud, theft, breach of trust, or allegations of similar conduct.
<b>Funding portals financial resources certification</b>	Not applicable.	On an annual basis, the funding portal must certify that it has sufficient working capital to continue its operations for at least the next 12 months by delivering a completed funding portal information form or Form 45-110F5 <i>Annual Working Capital Certification</i> .
<b>Liability in the event the offering document contains misrepresentations</b>	There is no statutory liability under securities law. The blanket orders do not require the issuer to provide contractual rights to purchasers. Purchasers may have rights under common law or civil law.	The issuer is subject to statutory liability similar to the offering memorandum exemption under section 2.9 of NI 45-106.
<b>Investment in an unspecified business</b>	No restrictions.	The start-up crowdfunding prospectus exemption is not available to issuers who intend to use the proceeds of the distribution to invest in, merge with or acquire an unspecified business.
<b>Report of exempt distribution form</b>	Except in British Columbia, issuers must use Form 5 – <i>Start-up Crowdfunding – Report of distribution</i> . In British Columbia, issuers must use Form 45-106F1 <i>Report of Exempt Distribution</i> .	Issuers must use Form 45-106F1 <i>Report of Exempt Distribution</i> .
<b>Expiry date</b>	The orders were initially set to expire on May 13, 2020. The start-up crowdfunding blanket orders will be extended to remain available until the Instrument is available, if adopted.	The Instrument has no expiry date.

**ANNEX B**

**Local Matters**

There are no local matters for Alberta to consider at this time.

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ANNEX C

**PROPOSED NATIONAL INSTRUMENT 45-110  
START-UP CROWDFUNDING REGISTRATION AND PROSPECTUS EXEMPTIONS**

**PART 1  
DEFINITIONS AND INTERPRETATION**

**Definitions**

**1. (1) In this Instrument**

“affiliate” means, in respect of an issuer, another issuer if (a) one of the issuers is the subsidiary of the other, or (b) each of the issuers is controlled by the same person or company;

“crowdfunding distribution” means a distribution under the exemption from the prospectus requirement in this Instrument;

“eligible security” means any of the following:

- (a) a common share;
- (b) a non-convertible preference share;
- (c) a security convertible into a security referred to in paragraph (a) or (b);
- (d) a non-convertible debt security linked to a fixed or floating interest rate;
- (e) a unit of a limited partnership;

“exempt market dealer” means a person or company registered in the category of exempt market dealer;

“founder” means a person or company who,

- (a) in respect of an issuer or a funding portal, acting alone, in conjunction, or in concert with one or more persons or companies, directly or indirectly, takes the initiative in founding, organizing or substantially reorganizing the business of the issuer or funding portal, as applicable, and
- (b) in respect of an issuer, at the time of the distribution or trade, is actively involved in the business of the issuer;

“funding portal” means a person or company that facilitates or proposes to facilitate a crowdfunding distribution through a web-based or application-based platform;

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“investment dealer” means a person or company registered in the category of investment dealer;

“issuer group” means, in respect of an issuer, any of the following:

- (a) the issuer;
- (b) an affiliate of the issuer;
- (c) any other issuer if either of the following conditions is satisfied:
  - (i) it is engaged in a common enterprise with the issuer or with an affiliate of the issuer;
  - (ii) its business is founded or organized by a person or company who founded or organized the issuer;

“minimum offering amount” means, with respect to a crowdfunding distribution, the minimum amount disclosed in an issuer’s completed Form 45-110F1 *Offering Document*;

“principal” means, with respect to a funding portal or an issuer, a founder, director, officer or control person;

“subsidiary” means an issuer that is controlled directly or indirectly by another issuer and includes a subsidiary of that subsidiary.

- (2) For the purpose of this Instrument, a person (first person) is considered to control another person (second person) if
  - (a) the first person beneficially owns or directly or indirectly exercises control or direction over securities of the second person carrying votes which, if exercised, would entitle the first person to elect a majority of the directors of the second person, unless that first person holds the voting securities only to secure an obligation,
  - (b) the second person is a partnership, other than a limited partnership, and the first person holds more than 50% of the interests of the partnership, or
  - (c) the second person is a limited partnership and the general partner of the limited partnership is the first person.

**Special Rules – Alberta, British Columbia, Ontario, Québec and Saskatchewan**

- 2. (1) In Alberta, a completed Form 45-110F1 *Offering Document* relied on under this Instrument is designated to be an offering memorandum under securities legislation.
- (2) In British Columbia, a completed Form 45-110F1 *Offering Document* required to be made available to a purchaser under the exemption from the prospectus requirement in this

Instrument is a prescribed disclosure document for purposes of section 132.1 of the *Securities Act* (British Columbia).

- (3) In Ontario, an issuer that distributes securities in reliance on the exemption in section 5 is prescribed as a market participant under the *Securities Act* (Ontario).
- (4) In Saskatchewan, a completed Form 45-110F1 *Offering Document* relied on under this Instrument is an offering memorandum under securities legislation.
- (5) In Québec,
  - (a) a completed Form 45-110F1 *Offering Document* and a completed Form 45-110F2 *Risk Acknowledgement* made available to purchasers in accordance with this Instrument must be drawn up in French only or in French and English;
  - (b) a funding portal that has relied on the exemption in section 3 is a market participant determined by regulation for the purpose of section 151.1.1 of the *Securities Act* (chapter V-1.1); and
  - (c) a completed Form 45-110F1 *Offering Document* and materials that are made available to purchasers in accordance with this Instrument are documents authorized by the Autorité des marchés financiers for use in lieu of a prospectus.

## PART 2 EXEMPTION FROM THE DEALER REGISTRATION REQUIREMENT

### Exemption from dealer registration requirement

3. (1) A funding portal is exempt from the dealer registration requirement if the following apply:
- (a) the funding portal is not registered under securities legislation in any jurisdiction of Canada;
  - (b) the funding portal does not advise a purchaser about the merits of an investment or recommend or represent that an eligible security is a suitable investment for the purchaser;
  - (c) the funding portal does not receive a commission, fee or other similar payment from a purchaser;
  - (d) the funding portal only facilitates or proposes to facilitate crowdfunding distributions;
  - (e) at least 30 days before the first date the funding portal facilitates a crowdfunding distribution, the funding portal delivered to the securities regulatory authority or regulator all of the following documents:

- (i) a completed Form 45-110F3 *Funding Portal Information* for the funding portal certified by an authorized individual of the funding portal;
  - (ii) a completed Form 45-110F4 *Portal Individual Information* for each principal of the funding portal that contains a certification signed by that principal;
- (f) the funding portal has its head office in Canada;
- (g) the funding portal has policies and procedures reasonably designed to prevent a person or company from accessing its platform unless the person or company acknowledges that the person or company is accessing a platform of a funding portal that:
- (i) is not a registered dealer under securities legislation in any jurisdiction of Canada, and
  - (ii) will not, and is not authorized to, provide advice about
    - (A) the suitability of any security for investment by the person or company, or
    - (B) the merits of any investment;
- (h) the following is disclosed on the funding portal's platform:
- (i) a statement that the funding portal is not registered in any capacity under securities legislation in any jurisdiction of Canada and is relying on the exemption in this Instrument from the dealer registration requirement;
  - (ii) a statement that the funding portal will hold each purchaser's assets
    - (A) separate and apart from the funding portal's own property,
    - (B) in trust for the purchaser, and
    - (C) in the case of cash, in a designated trust account at a Canadian financial institution; and
  - (iii) the policies and procedures that the funding portal will follow for notifying each purchaser if the funding portal becomes insolvent or discontinues operations, and how the funding portal will return the assets to the purchaser;
- (i) the funding portal holds each purchaser's assets
- (i) separate and apart from the funding portal's own property,
  - (ii) in trust for the purchaser, and

- (iii) in the case of cash, in a designated trust account at a Canadian financial institution;
- (j) the funding portal has policies and procedures for handling funds, in relation to a crowdfunding distribution, sufficient to provide reasonable assurance that the funding portal will comply with the conditions at paragraph 3(1)(i);
- (k) the funding portal does not close a crowdfunding distribution on its platform unless the funding portal receives, through the funding portal's platform, payment for the distribution of each eligible security from the purchaser of such security;
- (l) when an issuer provides the funding portal with its completed Form 45-110F1 *Offering Document* and a Form 45-110F2 *Risk Acknowledgement*, the funding portal has policies and procedures reasonably designed to make these documents available to each purchaser through its platform;
- (m) the funding portal has policies and procedures to prevent a purchaser from subscribing to a crowdfunding distribution unless the purchaser first completes the Form 45-110F2 *Risk Acknowledgement* and confirms that the purchaser has read and understands the issuer's completed Form 45-110F1 *Offering Document*;
- (n) the funding portal has policies and procedures for promptly notifying each purchaser of an issuer's crowdfunding distribution of
  - (i) any amendment to that issuer's completed Form 45-110F1 *Offering Document*, and
  - (ii) the purchaser's right to withdraw from the agreement to purchase the security by delivering a notice to the funding portal under paragraph 5(1)(j);
- (o) the funding portal has policies and procedures to return all funds to a purchaser within five business days of receiving a withdrawal notification under paragraph 5(1)(j) from the purchaser;
- (p) if an issuer has not raised the minimum offering amount by the 90<sup>th</sup> day after the issuer's completed Form 45-110F1 *Offering Document* is first made available on the funding portal's platform, or if an issuer notifies the funding portal that it is withdrawing its crowdfunding distribution, then no later than five business days after such occurrence, the funding portal
  - (i) notifies the issuer, and each purchaser of that issuer's crowdfunding distribution, that funds have been returned or are in the process of being returned, and
  - (ii) takes reasonable steps to return, or cause to be returned, all funds to each purchaser of that issuer's crowdfunding distribution;

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- (q) if each two-day period in paragraph 5(1)(j) has elapsed, then the funding portal
    - (i) releases, or causes to be released, all funds due to the issuer at the closing of the distribution, and
    - (ii) no later than fifteen days after the closing of the distribution
      - (A) notifies each purchaser that the funds have been released to the issuer, and
      - (B) provides the issuer with all information required to comply with the issuer's obligations in paragraph 5(2)(b);
  - (r) neither the funding portal, nor any of its principals, is or has been the subject of an order, judgment, decree, sanction, or administrative penalty imposed by, or has entered into a settlement agreement with, a government agency, administrative agency, self-regulatory organization, civil court, or administrative court in the last 10 years related to a claim based in whole or in part on fraud, theft, deceit, misrepresentation, conspiracy, breach of trust, breach of fiduciary duty, insider trading, unregistered trading, illegal distributions, failure to disclose material facts or changes, or allegations of similar conduct;
  - (s) neither the funding portal, nor any of its principals, is or has been a principal of an entity that is or has been subject to an order, judgment, decree, sanction, administrative penalty or a settlement agreement described in paragraph 3(1)(r);
  - (t) the funding portal has policies and procedures to promptly notify the securities regulatory authority or the regulator, and any purchasers for which it holds assets, of the process the funding portal will use to return the assets to these purchasers, in the event that the funding portal becomes insolvent or discontinues operations; and
  - (u) the funding portal is not insolvent.
- (2) A funding portal relying on the exemption in subsection 3(1) must:
- (a) maintain, for a period of eight years from the date a record is created, books and records at its head office that accurately record its financial affairs and client transactions, and demonstrate the extent of the funding portal's compliance with this Instrument;
  - (b) notify the securities regulatory authority or regulator of each change to the information previously submitted in a document referred to in paragraph 3(1)(e) by delivering an amendment to the document no later than 30 days after the change;
  - (c) take reasonable steps to confirm that the majority of the directors of the funding portal ordinarily reside in Canada;

- (d) disclose on its platform, for each principal of the funding portal, the full legal name, municipality and jurisdiction of residence, business mailing and email address and business telephone number of each principal of the funding portal;
- (e) take reasonable steps to confirm that the head office of an issuer is in Canada before allowing that issuer to post a crowdfunding distribution on the funding portal's platform;
- (f) not allow a person or company to access the funding portal's platform unless the person or company acknowledges that the person or company is accessing a platform of a funding portal that:
  - (i) is not a registered dealer under securities legislation in any jurisdiction of Canada, and
  - (ii) will not, and is not authorized to, provide advice about
    - (A) the suitability of any security for investment by the person or company, or
    - (B) the merits of any investment;
- (g) not close a crowdfunding distribution on its platform unless the funding portal has made the applicable Form 45-110F1 *Offering Document* and Form 45-110F2 *Risk Acknowledgement* available to each purchaser through the funding portal's platform;
- (h) not close a crowdfunding distribution on its platform unless each purchaser completes the Form 45-110F2 *Risk Acknowledgement* and confirms that the purchaser has read and understands the issuer's completed Form 45-110F1 *Offering Document*;
- (i) upon receiving notice from an issuer that the issuer has amended its completed Form 45-110F1 *Offering Document*, promptly notify each purchaser of that issuer's crowdfunding distribution of
  - (i) the amendment; and
  - (ii) the purchaser's right to withdraw from the agreement to purchase the security by delivering a notice to the funding portal under paragraph 5(1)(j);
- (j) return all funds to a purchaser within five business days of receiving a withdrawal notification under paragraph 5(1)(j) from that purchaser;
- (k) deliver to the securities regulatory authority or regulator a completed Form 45-110F5 *Annual Working Capital Certification* within 10 days of the calendar year-end; and

- (l) upon becoming insolvent or discontinuing operations, promptly notify the securities regulatory authority or the regulator, and any purchasers for which it holds assets, of the process the funding portal will use to return the assets to these purchasers.

**PART 3  
REGISTERED PORTALS**

4. (1) If an investment dealer or exempt market dealer operates a funding portal, the dealer must:
- (a) not close a crowdfunding distribution on its platform unless the dealer receives, through the funding portal's platform, payment for the distribution of each eligible security from the purchaser of such security;
  - (b) take reasonable steps to confirm that the head office of an issuer is in Canada before allowing that issuer to post a crowdfunding distribution on the funding portal's platform;
  - (c) not close a crowdfunding distribution on its platform unless the funding portal has made the applicable Form 45-110F1 *Offering Document* and Form 45-110F2 *Risk Acknowledgement* available to each purchaser through the funding portal's platform;
  - (d) not close a crowdfunding distribution on its platform unless each purchaser completes the Form 45-110F2 *Risk Acknowledgement* and confirms that the purchaser has read and understands the issuer's completed Form 45-110F1 *Offering Document*;
  - (e) upon receiving notice from an issuer that the issuer has amended its completed Form 45-110F1 *Offering Document*, promptly notify each purchaser of that issuer's crowdfunding distribution of
    - (i) the amendment, and
    - (ii) the purchaser's right to withdraw from the agreement to purchase the security by delivering a notice to the funding portal not later than midnight on the 2<sup>nd</sup> business day after the funding portal provides notice of the amendment;
  - (f) return all funds to a purchaser within five business days of receiving a withdrawal notification under paragraph 5(1)(j) from that purchaser;
  - (g) upon an issuer not raising the minimum offering amount by the 90<sup>th</sup> day after the issuer's completed Form 45-110F1 *Offering Document* is first made available on the funding portal's platform, or an issuer notifying the funding portal that it is withdrawing its crowdfunding distribution, no later than five business days after such occurrence

- (i) notify the issuer, and each purchaser of that issuer's crowdfunding distribution, that funds have been returned or are in the process of being returned, and
- (ii) take reasonable steps to return, or cause to be returned, all funds to each purchaser of that issuer's crowdfunding distribution;
- (h) after each two-day period in paragraph 5(1)(j) has elapsed
  - (i) release, or cause to be released, all funds due to the issuer at the closing of the distribution, and
  - (ii) no later than fifteen days after the closing of the distribution
    - (A) notify each purchaser that the funds have been released to the issuer, and
    - (B) provide the issuer with all information required to comply with the issuer's obligations in paragraph 5(2)(b); and
- (i) not allow a person or company to access the funding portal's platform, unless the person or company has acknowledged that the person or company is accessing a platform that
  - (i) is operated by an investment dealer or an exempt market dealer, as applicable, and
  - (ii) will provide advice about the suitability of the eligible security.

#### **PART 4**

### **EXEMPTION FROM PROSPECTUS REQUIREMENT FOR ISSUERS**

#### **Exemption from prospectus requirement for issuers**

- 5. (1)** An issuer is exempt from the prospectus requirement in respect of a crowdfunding distribution if the following apply:
- (a) the distribution of and payment for the security is facilitated through a funding portal that is
    - (i) relying on the exemption set out in subsection 3(1), or
    - (ii) operated by an exempt market dealer or investment dealer;
  - (b) the purchaser purchases the security as principal;
  - (c) the issuer is not a reporting issuer in any jurisdiction of Canada or the equivalent in any foreign jurisdiction;
  - (d) the issuer is not an investment fund;

- (e) the issuer has its head office in Canada;
- (f) the security distributed is an eligible security of the issuer's own issue;
- (g) the aggregate gross proceeds raised by the issuer group in reliance on this section during the 12-month period before the closing of the crowdfunding distribution does not exceed \$1 000 000;
- (h) the issuer has completed a Form 45-110F1 *Offering Document* and provided it to the funding portal;
- (i) the crowdfunding distribution ends no later than the 90<sup>th</sup> day after the date the issuer's completed Form 45-110F1 *Offering Document* is made available on the funding portal's platform;
- (j) the issuer includes in the subscription agreement a term that the purchaser may withdraw from the agreement to purchase the security by delivering a notice of withdrawal to the funding portal not later than midnight on the 2<sup>nd</sup> business day after:
  - (i) the day on which the purchaser enters into the agreement, and
  - (ii) the day on which the funding portal notifies the purchaser of an amendment to the issuer's completed Form 45-110F1 *Offering Document*;
- (k) the issuer's completed Form 45-110F1 *Offering Document* discloses how the issuer intends to use the funds raised and the minimum offering amount required to close the crowdfunding distribution;
- (l) the issuer does not close the crowdfunding distribution until the issuer has raised the minimum offering amount stated in the issuer's completed Form 45-110F1 *Offering Document* either through subscriptions to the crowdfunding distribution or any concurrent distribution under one or more other exemptions from the prospectus requirement provided the funds are unconditionally available to the issuer;
- (m) no concurrent crowdfunding distribution is made by any member of the issuer group for the same purposes as described in the issuer's completed Form 45-110F1 *Offering Document*;
- (n) no commission, fee or similar payment is paid by the issuer to the issuer group, or any principal, employee or agent of a member of the issuer group with respect to the crowdfunding distribution;
- (o) no principal of the issuer group is a principal of the funding portal;

- (p) the issuer does not distribute to any one purchaser securities valued at more than
  - (i) subject to subparagraph (ii), \$2 500 or
  - (ii) if the purchaser has obtained advice from a registered dealer that the investment is suitable for the purchaser, \$5 000; and
- (q) the issuer does not intend to use the proceeds of the crowdfunding distribution to invest in, merge with, amalgamate with or acquire a business, or to purchase securities of one or more other issuers, that is not identified in the issuer's completed Form 45-110F1 *Offering Document*.

(2) An issuer relying on subsection 5(1) must

- (a) if the issuer becomes aware that its completed Form 45-110F1 *Offering Document* is not accurate, promptly
  - (i) advise the funding portal that the issuer's Form 45-110F1 is not accurate,
  - (ii) amend the Form 45-110F1 so that it is no longer inaccurate, and
  - (iii) provide the amended Form 45-110F1 to the funding portal;
- (b) within 30 days after the closing of the crowdfunding distribution, deliver to each purchaser
  - (i) a confirmation setting out the following:
    - (A) the date of subscription and the closing of the crowdfunding distribution;
    - (B) the quantity and description of the eligible security purchased;
    - (C) the price per eligible security paid by the purchaser;
    - (D) the total commissions, fees and any similar payments paid by the issuer to the funding portal in respect of the crowdfunding distribution; and
  - (ii) a copy of the issuer's completed Form 45-110F1 *Offering Document*.

**Filing of distribution materials**

6. An issuer that distributes a security under this Instrument must file both of the following documents no later than the 30th day after the closing of the crowdfunding distribution:
- (a) the completed Form 45-110F1 *Offering Document*;

- (b) a report of exempt distribution in accordance with Form 45-106F1 *Report of Exempt Distribution* of National Instrument 45-106 *Prospectus Exemptions*.

**PART 5  
EXEMPTION**

**Exemption**

7. (1) Subject to subsection (2), the securities regulatory authority or regulator may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.
- (2) Despite subsection (1), in Ontario, only the regulator may grant an exemption.
- (3) Except in Alberta and Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction.

**PART 6  
COMING INTO FORCE**

**Coming into force**

8. (1) This Instrument comes into force on ●.
- (2) In Saskatchewan, despite subsection (1), if these regulations are filed with the Registrar of Regulations after [insert date], these regulations come into force on the day on which they are filed with the Registrar of Regulations.

ANNEX D

PROPOSED FORM 45-110F1  
**OFFERING DOCUMENT**

**GENERAL INSTRUCTIONS:**

(1) *This offering document is to be provided to your funding portal, which must make it available on its online platform. This offering document must not contain a misrepresentation. A misrepresentation means an untrue statement of material fact or an omission to state a material fact that is required to be stated, or necessary to prevent a statement that is made from being false or misleading in the circumstances in which it was made. If the information contained in this offering document is no longer accurate and contains a misrepresentation, you must immediately notify the funding portal, amend the offering document and provide the new version to the funding portal.*

(2) *An issuer relying on the start-up crowdfunding prospectus exemption must file this offering document, and all amendments to it, in the jurisdictions where the issuer has made a crowdfunding distribution, as well as in the province or territory where the issuer's head office is located.*

*The offering document is required to be filed no later than the 30th day after the closing of the distribution.*

(3) *This offering document must be completed and certified by an authorized individual on behalf of the issuer.*

(4) *Draft this offering document so that it is easy to read and understand. Be concise and use clear, plain language. Avoid technical terms.*

(5) *Conform as closely as possible to the format set out in this form. Address the items in the order set out below. No variation of headings, numbering or information set out in the form is allowed and all are to be displayed as shown.*

**Item 1: RISKS OF INVESTING**

1.1 Include the following statement, in bold type:

**“No securities regulatory authority or regulator has assessed, reviewed or approved the merits of these securities or reviewed this offering document. Any representation to the contrary is an offence. This is a risky investment.”**

- 1.2 Include the following statement, in bold type, if the issuer provides forward-looking statements:

**“The forecasts and predictions of an early-stage business are difficult to objectively analyze or confirm. Forward-looking statements represent the opinion of the issuer only and may not prove to be reasonable.”**

**Item 2: THE ISSUER**

- 2.1 Provide the following information for the issuer:

- (a) Full legal name as it appears in the issuer’s articles of incorporation, limited partnership agreement or other organizing documents, as the case may be,
- (b) Head office address,
- (c) Telephone,
- (d) Email address, and
- (e) Website URL.

*Instructions: The head office is generally where the people managing the issuer, including the CEO, maintain their offices. This may be the same as, or different from, the registered office address, depending on the legal structure of the issuer. The address of the head office should be a physical address and not a post office (P.O.) box.*

- 2.2 Provide the following information for a contact person of the issuer who is able to answer questions from purchasers and the securities regulatory authority or regulator:

- (a) Full legal name (first name, middle name and last name),
- (b) Position held with the issuer,
- (c) Business address,
- (d) Business telephone, and
- (e) Email address.

**Item 3: ISSUER’S BUSINESS**

- 3.1 Describe the issuer’s business. Provide details about the issuer’s industry and operations. Provide enough details for an investor to clearly understand what the issuer does or intends to do.

*Instructions:*

*(1) Consider the following:*

- *Does or will the issuer build, design or develop something? Sell something produced by others? Provide a service? What makes the issuer's business special and different from other competitors in the industry?*
- *What milestones has the issuer already reached and hopes to achieve in the next couple years? E.g., Complete testing? Find a manufacturer? Commence a marketing campaign? Buy inventory? What is the proposed timeline for achieving each of the milestones?*
- *What are the major hurdles that the issuer expects to face in achieving its milestones?*
- *How are the funds raised from this financing expected to help the issuer advance its business and achieve one or more of the milestones?*
- *Has the issuer entered any contracts that are important to its business?*
- *Has the issuer conducted any operations yet?*
- *Where does the issuer see its business in three, five and ten years?*
- *What are the issuer's future plans and hopes for its business and how does it plan to get there?*
- *What is the issuer's management experience in running a business or in the same industry?*
- *Does the issuer have business premises from which it can operate its business?*
- *How many employees does the issuer have? Need?*

*(2) An issuer describing its business must not refer to a measure of financial performance, financial position or cash flow in the offering document unless (i) the issuer has made financial statements available for the most recently completed financial year, and (ii) the measure referred to in the offering document is an amount presented in the financial statements or is reconciled to an amount presented in the financial statements.*

3.2 Describe the legal structure of the issuer and indicate the jurisdiction where the issuer is incorporated or organized.

*Instructions: Indicate whether the issuer is a corporation, a limited partnership, a general partnership or other. Also, indicate the province, territory or state where the issuer is incorporated or organized.*

- 3.3 Indicate where the issuer's articles of incorporation, limited partnership agreement, shareholder agreement or similar document are available for purchasers to review.

*Instruction: You may provide online access to these documents for investors.*

- 3.4 Indicate which statement(s) best describe the issuer's operations (select all that apply):

- Has never conducted operations,
- Is in the development stage,
- Is currently conducting operations,

- 3.5 Indicate whether the issuer has financial statements available. If yes, include the following statement, in bold type:

**“Information for purchasers: If you receive financial statements from an issuer conducting a crowdfunding distribution, you should know that those financial statements have not been provided to or reviewed by a securities regulatory authority or regulator. They are not part of this offering document. You should also consider seeking advice of an accountant or an independent financial adviser about the information in the financial statements.”**

*Instructions:*

(1) *Any financial statements made available in connection with the start-up crowdfunding distribution must be prepared in accordance with Canadian GAAP. These financial statements must present the issuer's results of operations for its most recently completed financial year.*

(2) *If an auditor has issued an auditor's report on the financial statements, they must be included with the financial statements. If the financial statements were not audited, the issuer must label the financial statements as unaudited.*

- 3.6 Describe the number and type of securities of the issuer outstanding as at the date of the offering document. If there are securities outstanding other than the eligible securities being offered, please describe those securities.

**Item 4: MANAGEMENT**

4.1 Provide the information in the following table for each founder, director, officer and control person of the issuer:

Full legal name, municipality of residence and position at issuer	Principal occupation for the last five years	Expertise, education, and experience that is relevant to the issuer's business	Number and type of securities of the issuer owned	Date securities were acquired and price paid for the securities	Percentage of the issuer's securities held as of the date of this offering document

4.2 Provide the name of the person involved and details on the time, nature and the outcome of the proceedings for each of the persons listed in item 4.1 and the issuer who, as the case may be:

- (a) has ever, pled guilty to or been found guilty of:
  - (i) a summary conviction or indictable offence under the *Criminal Code* (R.S.C., 1985, c. C-46) of Canada,
  - (ii) a quasi-criminal offence in any jurisdiction of Canada or a foreign jurisdiction,
  - (iii) a misdemeanour or felony under the criminal legislation of the United States of America, or any state or territory therein, or
  - (iv) an offence under the criminal legislation of any other foreign jurisdiction,
- (b) is or has been the subject of an order (cease trade or otherwise), judgment, decree, sanction, or administrative penalty imposed by, or has entered into a settlement agreement with, a government agency, administrative agency, self-regulatory organization, civil court, or administrative court of Canada or a foreign jurisdiction in the last ten years related to:
  - (i) the person's involvement in any securities, insurance or banking activity, or
  - (ii) a claim based in whole or in part on fraud, theft, deceit, misrepresentation, conspiracy, breach of trust, breach of fiduciary duty, insider trading, unregistered trading, illegal distributions, failure to disclose material facts or changes, or allegations of similar conduct,

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- (c) is or has been the subject of an order, judgment, decree, sanction or administrative penalty imposed by a discipline committee, professional order or administrative court of Canada or a foreign jurisdiction in the last ten years related to any professional misconduct,
- (d) is or has ever been the subject of a bankruptcy or insolvency proceeding,
- (e) is a director, officer, founder or control person of an entity that is or has been subject to a proceeding described in paragraphs (a), (b), (c) or (d) above.

*Instructions: A quasi-criminal offence includes offences under the Income Tax Act (R.S.C. 1985, c. 1 (5th Suppl.)), the Immigration and Refugee Protection Act (R.S.C., 2001, c. 27) or the tax, immigration, drugs, firearms, money laundering or securities legislation of any province or territory of Canada or foreign jurisdiction.*

**Item 5: CROWDFUNDING DISTRIBUTION**

5.1 Provide the name of the funding portal the issuer is using to conduct its crowdfunding distribution. If the issuer is using a funding portal that is operated by a registered dealer, it must also provide the name of the registered dealer.

*Instruction: The offering document can only be posted on one funding portal.*

5.2 Indicate all the jurisdictions (Canadian provinces and territories) where the issuer intends to raise funds and make this offering document available.

- |   |  |   |
|---|--|---|
| <input type="checkbox"/> Alberta          | <input type="checkbox"/> Newfoundland and Labrador | <input type="checkbox"/> Ontario              |
| <input type="checkbox"/> British Columbia | <input type="checkbox"/> Northwest Territories     | <input type="checkbox"/> Prince Edward Island |
| <input type="checkbox"/> Manitoba         | <input type="checkbox"/> Nova Scotia               | <input type="checkbox"/> Québec               |
| <input type="checkbox"/> New Brunswick    | <input type="checkbox"/> Nunavut                   | <input type="checkbox"/> Saskatchewan         |
|   |  | <input type="checkbox"/> Yukon                |

5.3 Provide the following information with respect to the crowdfunding distribution:

- (a) the date before which the issuer must have raised the minimum offering amount for the closing of the distribution (no later than 90 days after the date this offering document is first made available on the funding portal); and
- (b) the date(s) and description of any amendment(s) made to this offering document, if any.

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*Instruction: An amendment to the offering document cannot modify the date in (a).*

5.4 Indicate the type of eligible securities offered.

- Common shares
- Non-convertible preference shares
- Securities convertible into common shares
- Securities convertible into non-convertible preference shares
- Non-convertible debt linked to a fixed interest rate
- Non-convertible debt linked to a floating interest rate
- Limited partnership units

5.5 The securities offered have the following rights, restrictions and conditions:

- Voting rights
- Dividends or interests (describe any right to receive dividends or interest)
- Rights on dissolution
- Conversion rights (describe what each security is convertible into)
- Tag-along rights
- Drag-along rights
- Pre-emptive rights
- Other (describe the rights).

*Instructions: This information is usually found in the organizing documents referred to in item 3.3.*

5.6 Provide a brief summary of any other material restrictions or conditions that attach to the eligible securities being offered, such as tag-along, drag along or pre-emptive rights.

*Instructions: The restrictions and conditions to be described here are generally found in by-laws, shareholder's agreements or limited partnership agreements.*

5.7 In a table, provide the following information:

	Total amount (\$)	Total number of securities issuable
Minimum offering amount		
Maximum offering amount		
Price per security		

5.8 Indicate the minimum investment amount per purchaser, or if the issuer has not set a minimum investment amount, state that.

5.9 Include the following statement, in bold type:

**“Note: The minimum offering amount stated in this offering document may be satisfied with funds that are unconditionally available to [insert name of issuer] that are raised using other prospectus exemptions.”**

**Item 6: USE OF FUNDS**

6.1 Provide the following information on the funds previously raised by the issuer:

- (a) The amount of funds previously raised;
- (b) How the issuer raised those funds;
- (c) If the funds were raised by issuing securities, the prospectus exemption that the issuer relied on to issue those securities; and
- (d) How the issuer used those funds.

If the issuer has not previously raised funds, state this fact.

6.2 Using the following table, provide a detailed breakdown of how the issuer will use the funds from this crowdfunding distribution. If any of the funds will be paid directly or indirectly to a founder, director, officer or control person of the issuer, disclose in a note to the table the name of the person, the relationship to the issuer and the amount. If more than 10% of the available funds will be used by the issuer to pay debt and the issuer incurred the debt within the two preceding financial years, describe why the debt was incurred.

Description of intended use of funds listed in order of priority	Assuming minimum offering amount	Assuming maximum offering amount

**Item 7: PREVIOUS CROWDFUNDING DISTRIBUTIONS**

7.1 For each crowdfunding distribution in which the issuer group and each founder, director, officer and control person of the issuer group have been involved in the past five years, provide the information below:

- (a) the full legal name of the issuer that made the distribution,
- (b) the name of the funding portal, and
- (c) whether the distribution successfully closed, was withdrawn by the issuer or did not close because the minimum offering amount was not reached and the date on which any of these occurred.

*Instruction: Provide the information for all previous crowdfunding distributions involving the issuer group and each founder, director, officer and control person of the issuer group, even if the previous crowdfunding distribution was made by an issuer that is not part of the issuer group.*

**Item 8: COMPENSATION PAID TO FUNDING PORTAL**

Provide a description of each commission, fee and any other amounts expected to be paid by the issuer to the funding portal for this crowdfunding distribution and the estimated amount to be paid. If a commission is being paid, indicate the percentage that the commission will represent of the gross proceeds of the offering assuming both the minimum and maximum offering amount.

**Item 9: RISK FACTORS**

9.1 Describe in order of importance, starting with the most important, the risk factors material to the issuer that a reasonable investor would consider important in deciding whether to buy the issuer's securities.

9.2 If the securities being distributed are to pay interest, dividends or distributions and the issuer does not have the financial resources to make such payments, (other than from the sale of securities) state in bold type:

**“We do not currently have the financial resources to pay [interest, dividends or distributions] to investors. There is no assurance that we will ever have the financial resources to do so.”**

**Item 10: REPORTING OBLIGATIONS**

- 10.1 Describe the nature and frequency of any disclosure of information the issuer intends to provide to purchasers after the closing of the distribution and explain how purchasers can access this information.
- 10.2 If the issuer is required by corporate legislation, its constating documents (e.g., articles of incorporation or by-laws) or otherwise to provide either or both of annual financial statements or an information circular/proxy statements to its security holders, state that fact.
- 10.3 If the issuer is aware, after making due inquiries, of any existing voting trust agreement among certain shareholders of the issuer, provide the information below:
- (a) the number of shareholders party to the agreement,
  - (b) the percentage of voting shares of the issuer subject to the agreement,
  - (c) the name of the person acting as a trustee,
  - (d) whether the trustee has been granted any additional powers, and
  - (e) whether the agreement is limited to a specified period of time.

**Item 11: RESALE RESTRICTIONS**

- 11.1 Include the following statement, in bold type:

**“The securities you are purchasing are subject to a resale restriction. You may never be able to resell the securities.”**

**Item 12: PURCHASERS’ RIGHTS**

- 12.1 Include the following statement, in bold type:

**“Rights of Action in the Event of a Misrepresentation**

**If there is a misrepresentation in this offering document, you have a right to sue:**

- (a) [name of issuer or other term used to refer to issuer] to cancel your agreement to buy these securities, or**
- (b) for damages against [name of issuer or other term used to refer to issuer] and may, in certain jurisdictions, have the statutory right to sue other persons.**

**This right to sue is available to you whether or not you relied on the misrepresentation. However, there are various defenses available to the persons or companies that you have a right to sue. In particular, they have a defense if you knew of the misrepresentation when you purchased the securities.**

**If you intend to rely on the rights described in (a) or (b) above, you must do so within strict time limitations.**

**Two-day cancellation right**

**You can cancel your agreement to purchase these securities. To do so, you must send a notice to the funding portal not later than midnight on the second business day after you enter into the agreement. If there is an amendment to this offering document, you can cancel your agreement to purchase these securities by sending a notice to the funding portal not later than midnight on the second business day after the funding portal provides you notice of the amendment.”**

**Item 13: DATE AND CERTIFICATE**

13.1 Include the following statement, in bold type:

**“This offering memorandum does not contain a misrepresentation.”**

13.2 Provide the signature, date of the signature, name and position of the authorized individual certifying this offering document.

13.3 If this offering document is signed electronically, include the following statement, in bold type:

**“I acknowledge that I am signing this offering document electronically and agree that this is the legal equivalent of my handwritten signature.”**

ANNEX E

PROPOSED FORM 45-110F2  
RISK ACKNOWLEDGEMENT

Issuer Name:

Type of Eligible Security offered:

**WARNING!**

**BUYER BEWARE: This investment is risky.**

**Don't invest unless you can afford to lose all the money you pay for this investment.**

	Yes	No
<b>1. Risk acknowledgment</b>		
<b>Risk of loss</b> – Do you understand that this is a risky investment and that you may lose all the money you pay for this investment?	<input type="checkbox"/>	<input type="checkbox"/>
<b>No income</b> – Do you understand that you may not earn any income, such as dividends or interest, on this investment?	<input type="checkbox"/>	<input type="checkbox"/>
<b>Liquidity risk</b> – Do you understand that you may never be able to sell this investment?	<input type="checkbox"/>	<input type="checkbox"/>
<b>Lack of information</b> – Do you understand that you may not be provided with any ongoing information about the issuer and/or this investment?	<input type="checkbox"/>	<input type="checkbox"/>
<b>2. No approval and no advice</b> <i>[Instructions: Delete “no advice” if the funding portal is operated by a registered dealer.]</i>		
<b>No approval</b> – Do you understand that this investment has not been reviewed or approved in any way by a securities regulator?	<input type="checkbox"/>	<input type="checkbox"/>
<b>No advice</b> – Do you understand that you will not receive advice about your investment? <i>[Instructions: Delete if the funding portal is operated by a registered dealer.]</i>	<input type="checkbox"/>	<input type="checkbox"/>

INCLUDES COMMENT LETTERS RECEIVED

	Yes	No
<b>3. Limited legal rights</b>		
<p><b>Limited legal rights</b> – Do you understand that you will not have the same rights as if you purchased under a prospectus or through a stock exchange?</p> <p>If you want to know more, you may need to seek professional legal advice.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<b>4. Purchaser’s acknowledgement</b>		
<p><b>Investment risks</b> – Have you read this form and do you understand the risks of making this investment?</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p><b>Offering document</b> – Has an offering document relating to this investment been made available to you on the funding portal?</p> <p>The offering document contains important information about this investment. If you have not read the offering document or if you do not understand the information in it, you should not invest. You should retain a copy of the offering document for your records.</p> <p>Have you read and do you understand the information in the offering document?</p>	<input type="checkbox"/>	<input type="checkbox"/>
<b>First and last name:</b>		
<p><b>Electronic signature:</b> By clicking the [I confirm] button, I acknowledge that I am signing this form electronically and agree that this is the legal equivalent of my handwritten signature. I will not at any time in the future claim that my electronic signature is not legally binding. The date of my electronic signature is the same as my acknowledgement.</p>		
<b>5. Additional information</b>		
<ul style="list-style-type: none"> <li>▪ <b>You have two days to cancel your purchase by sending a notice to the funding portal at:</b> <i>[Instructions: Provide email address where purchasers can send their notice. Describe any other manner for purchasers to cancel their purchase.]</i></li> <li>▪ <b>If you want more information about your local securities regulation, go to <a href="http://www.securities-administrators.ca">www.securities-administrators.ca</a>.</b> Securities regulators do not provide advice on investment.</li> <li>▪ <b>To check if the funding portal is operated by a registered dealer, go to <a href="http://www.aretheyregistered.ca">www.aretheyregistered.ca</a></b> <i>[Instructions: Delete if the funding portal is not operated by a registered dealer.]</i></li> </ul>		

**ANNEX F**

**PROPOSED FORM 45-110F3  
FUNDING PORTAL INFORMATION**

**GENERAL INSTRUCTIONS:**

*Complete and deliver this form with any attachments and all corresponding Forms 45-110F4 Portal Individual Information to the securities regulatory authority or regulator of each of the jurisdictions where the funding portal facilitates or intends to facilitate a crowdfunding distribution.*

*For information on how to submit the form and other information relevant to funding portals, please refer to the Start-up Crowdfunding Guide for Funding Portals available on the website of the securities regulatory authority or regulator of the jurisdictions.*

**FUNDING PORTAL INFORMATION**

1. Provide the following information regarding the funding portal:

- (a) Full legal name of the funding portal as it appears on the funding portal’s organizing documents;
- (b) Name that the funding portal will be operating under;
- (c) Website URL;
- (d) Telephone;
- (e) E-mail address;
- (f) Head office address;
- (g) Jurisdiction where the head office is located (check).

- |   |  |   |
|---|--|---|
| <input type="checkbox"/> Alberta          | <input type="checkbox"/> Newfoundland and Labrador | <input type="checkbox"/> Ontario              |
| <input type="checkbox"/> British Columbia | <input type="checkbox"/> Northwest Territories     | <input type="checkbox"/> Prince Edward Island |
| <input type="checkbox"/> Manitoba         | <input type="checkbox"/> Nova Scotia               | <input type="checkbox"/> Québec               |
| <input type="checkbox"/> New Brunswick    | <input type="checkbox"/> Nunavut                   | <input type="checkbox"/> Saskatchewan         |
|   |  | <input type="checkbox"/> Yukon                |

INCLUDES COMMENT LETTERS RECEIVED

2. Provide the following information regarding the contact person for the funding portal:

- (a) Full legal name (first name, middle name and last name);
- (b) Business address;
- (c) Telephone;
- (d) E-mail address.

3. Provide the following information regarding each founder, director, officer and control person of the funding portal. If necessary, use an attachment signed and dated by the authorized individual certifying this form. Please refer to the *Start-up Crowdfunding Guide for Funding Portals* available on the website of the securities regulatory authority or regulator of the jurisdictions for the meaning of “founder”, “director”, “officer” and “control person”.

- (a) Full legal name (first name, middle name and last name);
- (b) Position(s) held.

4. Indicate each jurisdiction where the funding portal is delivering this form. The funding portal must deliver this form in each jurisdiction where it facilitates or intends to facilitate crowdfunding distributions.

- |   |  |   |
|---|--|---|
| <input type="checkbox"/> Alberta          | <input type="checkbox"/> Newfoundland and Labrador | <input type="checkbox"/> Ontario              |
| <input type="checkbox"/> British Columbia | <input type="checkbox"/> Northwest Territories     | <input type="checkbox"/> Prince Edward Island |
| <input type="checkbox"/> Manitoba         | <input type="checkbox"/> Nova Scotia               | <input type="checkbox"/> Québec               |
| <input type="checkbox"/> New Brunswick    | <input type="checkbox"/> Nunavut                   | <input type="checkbox"/> Saskatchewan         |
|   |  | <input type="checkbox"/> Yukon                |

5. Provide the date the funding portal expects to begin to facilitate crowdfunding distributions in the jurisdictions named in item 4 above.

6. If the funding portal is already relying on National Instrument 45-110 *Start-up Crowdfunding Registration and Prospectus Exemptions* in any jurisdiction, provide the name(s) of the jurisdiction(s) and the date the Funding Portal Information Form was delivered to the securities regulatory authority or regulator.

## LEGAL STRUCTURE AND CONSTATING DOCUMENTS

7. Indicate the legal structure of the funding portal.
- Sole proprietorship
  - Partnership
  - Limited partnership (Provide the name of the general partner)
  - Corporation
  - Other (Specify)
8. Attach the funding portal's organizing documents, for example, the funding portal's articles and certificate of incorporation, any articles of amendments, partnership agreement or declaration of trust. If the funding portal is a sole proprietorship, provide a copy of the registration of trade name. The attachment must be signed and dated by the authorized individual certifying this form.
9. Attach a chart showing the funding portal's structure and ownership. At a minimum, include all parents, affiliates and subsidiaries. Include the name of the person or company, and class, type, amount and voting percentage of ownership of the firm's securities. The attachment must be signed and dated by the authorized individual certifying this form.

## BUSINESS ACTIVITIES

10. Provide a description of following:
- (a) the proposed business activities of the funding portal;
  - (b) the marketing strategy of the funding portal;
  - (c) the target issuers, including their sectors;
  - (d) the key risks you identify in operating your funding portal.

## CRIMINAL DISCLOSURE

11. Has the funding portal ever been found guilty, pleaded no contest to, or been granted an absolute or conditional discharge from:
- (a) a summary conviction or indictable offence under the *Criminal Code* (R.S.C., 1985, c. C-46) (Canada),

- (b) a quasi-criminal offence in any jurisdiction of Canada or a foreign jurisdiction,
- (c) a misdemeanour or felony under the criminal legislation of the United States of America, or any state or territory therein, or
- (d) an offence under the criminal legislation of any other foreign jurisdiction.

Yes  No

If yes, provide complete details in an attachment signed and dated by the authorized individual certifying this form, including the circumstances, relevant dates, names of the parties involved and final disposition, if known. Consider all time periods.

*Instructions: A quasi-criminal offence includes offences under the Income Tax Act (R.S.C. 1985, c. 1 (5th Suppl.)), the Immigration and Refugee Protection Act (R.S.C., 2001, c. 27) or the tax, immigration, drugs, firearms, money laundering or securities legislation of any province or territory of Canada or foreign jurisdiction.*

12. Are there any outstanding or stayed charges against the funding portal alleging a criminal offence that was committed?

Yes  No

If yes, provide complete details in an attachment signed and dated by the authorized individual certifying this form, including the circumstances, relevant dates, names of the parties involved and final disposition, if known. Consider all time periods.

**CIVIL DISCLOSURE**

13. Has the funding portal been the subject of an order (cease trade or otherwise), judgment, decree, sanction, or administrative penalty imposed by, or has entered into a settlement agreement with, a government agency, administrative agency, self-regulatory organization, civil court, or administrative court of Canada or a foreign jurisdiction in the last 10 years related to a claim based in whole or in part on fraud, theft, deceit, misrepresentation, conspiracy, breach of trust, breach of fiduciary duty, insider trading, unregistered trading, illegal distributions, failure to disclose material facts or changes, or allegations of similar conduct in Canada or a foreign jurisdiction related to its involvement in any type of securities, derivatives, insurance or banking activity.

Yes  No

If yes, provide complete details in an attachment signed and dated by the authorized individual certifying this form, including the circumstances, relevant dates, names of the parties involved and final disposition, if known. Consider all time periods.

14. Are there currently any outstanding civil actions alleging fraud, theft, deceit, misrepresentation, or similar misconduct against the funding portal?

Yes  No

If yes, provide complete details in an attachment signed and dated by the authorized individual certifying this form, including the circumstances, relevant dates, names of the parties involved and final disposition, if known. Consider all time periods.

#### **PROCESS AND PROCEDURE FOR HANDLING OF FUNDS**

15. Provide details and attach in an attachment that is signed and dated by the authorized individual certifying this form the relevant documents on the process and procedure for handling all funds in relation to the crowdfunding distribution in a designated trust account at a Canadian financial institution, including:

- (a) the name of the Canadian financial institution the funding portal will use with the designated trust account number;
- (b) the names of the signatories on this account and their role with the funding portal;
- (c) details of how the funds held in this account will be separate and apart from the funding portal's own property;
- (d) a copy of the trust agreement, or details surrounding the establishment of this account. If the funding portal does not have a trust agreement or an account, please explain;
- (e) details regarding how funds will flow:
  - i. from purchasers to the funding portal's account;
  - ii. from the funding portal's account to the issuer in the event that the crowdfunding distribution closes; and
  - iii. from the funding portal's account back to the purchasers in the event that the crowdfunding distribution does not close or the purchaser has exercised their right of withdrawal.

## COLLECTION AND USE OF INFORMATION

The information required under this form is collected, used and disclosed by the securities regulatory authority or, where applicable, regulator of the jurisdictions under the authority granted in securities legislation for the purposes of the administration and enforcement of the securities legislation.

By submitting this form, the funding portal:

- acknowledges that the securities regulatory authority or regulator may collect personal information about the individuals referred to in this form or information about the funding portal,
- confirms that the individuals referred to in this form have been notified that their personal information is disclosed on this form, the legal reason for doing so, how it will be used and who to contact for more information, and
- consents to the posting on the website of the securities regulatory authority or regulator of:
  - i. the name that the funding portal will be operating under,
  - ii. the website address for the funding portal, and
  - iii. the funding portal's reliance on a dealer registration exemption.

If you have any questions about the collection and use of this information, contact the securities regulatory authority or regulator in any jurisdiction in which this form is delivered. Contact information is listed at the end of this form.

## CERTIFICATION

By signing this form, the funding portal:

- undertakes to comply with all of the applicable conditions set out in National Instrument 45-110 *Start-up Crowdfunding Registration and Prospectus Exemptions*;
- certifies that its platform is complete, ready for viewing in a test environment and designed to comply with the applicable conditions set out in National Instrument 45-110 *Start-up Crowdfunding Registration and Prospectus Exemptions*;
- certifies that it has sufficient financial resources to continue its operations for at least the next 12 months; and

- acknowledges that the securities regulatory authority or regulator of a jurisdiction may access the books and records relating to the carrying on of its activities and may conduct a compliance review.

On behalf of the funding portal, I certify that the statements made in this form including any attachments are true and complete.

Full legal name of  
funding portal:

\_\_\_\_\_

Signature of  
authorized individual:

\_\_\_\_\_

Date:

\_\_\_\_\_

Print name of  
authorized individual:

\_\_\_\_\_

Position held:

\_\_\_\_\_

Telephone:

\_\_\_\_\_

E-mail:

\_\_\_\_\_

**IT IS AN OFFENCE TO MAKE A MISREPRESENTATION IN THIS FORM**

INCLUDES COMMENT LETTERS RECEIVED

**Contact information:**

<p><b>Alberta</b> The Alberta Securities Commission Suite 600, 250-5th Street SW Calgary, Alberta T2P 0R4 Telephone: 403-297-6454 E-mail: registration@asc.ca www.asc.ca</p>	<p><b>Nova Scotia</b> Nova Scotia Securities Commission Suite 400, 5251 Duke Street Halifax, Nova Scotia B3J 1P3 Telephone: 902-424-7768 Toll free in Nova Scotia: 1-855-424-2499 E-mail: nssc.crowdfunding@novascotia.ca nssc.novascotia.ca</p>
<p><b>British Columbia</b> British Columbia Securities Commission P.O. Box 10142, Pacific Centre 701 West Georgia Street Vancouver, British Columbia V7Y 1L2 Telephone: 604-899-6854 Toll free in Canada: 1-800-373-6393 E-mail: portal@bcsc.bc.ca www.bcsc.bc.ca</p>	<p><b>Ontario</b> Ontario Securities Commission 20 Queen Street West, 22<sup>nd</sup> Floor Toronto, Ontario M5H 3S8 Toll free: 1-877-785-1555 E-mail: inquiries@osc.gov.on.ca www.osc.ca OSC Electronic Filing Portal <a href="https://eforms1.osc.gov.on.ca/e-filings/generic/form.do?token=ec7a3cb6-d86d-419d-9c11-flfebe403cb6">https://eforms1.osc.gov.on.ca/e-filings/generic/form.do?token=ec7a3cb6-d86d-419d-9c11-flfebe403cb6</a></p>
<p><b>Manitoba</b> The Manitoba Securities Commission 500 - 400 St Mary Avenue Winnipeg, Manitoba R3C 4K5 Telephone: 204-945-2548 Toll free in Manitoba: 1-800-655-2548 E-mail: exemptions.msc@gov.mb.ca www.mbsecurities.ca</p>	<p><b>Québec</b> Autorité des marchés financiers Direction de l'encadrement des intermédiaires 800, rue du Square-Victoria, 4th floor P.O. Box 246, Tour de la Bourse Montréal, Québec H4Z 1G3 Telephone: 514-395-0337 Toll free in Québec: 1-877-525-0337 E-mail: financement-participatif@lautorite.qc.ca www.lautorite.qc.ca</p>
<p><b>New Brunswick</b> Financial and Consumer Services Commission 85 Charlotte Street, Suite 300 Saint John, New Brunswick E2L 2J2 Toll free: 1-866-933-2222 E-mail: emf-md@fcnb.ca www.fcnb.ca</p>	<p><b>Saskatchewan</b> Financial and Consumer Affairs Authority of Saskatchewan Securities Division Suite 601 – 1919 Saskatchewan Drive Regina, Saskatchewan S4P 4H2 Telephone: 306-787-5645 E-mail: registrationfcaa@gov.sk.ca www.fcaa.gov.sk.ca</p>

**ANNEX G**

**PROPOSED FORM 45-110F4  
PORTAL INDIVIDUAL INFORMATION**

**GENERAL INSTRUCTIONS:**

*Complete and deliver this form with any attachments and the corresponding Form 45-110F3 Funding Portal Information to the securities regulatory authority or regulator of each jurisdiction where the funding portal facilitates or intends to facilitate a crowdfunding distribution.*

*The information provided on this form should be specific to the individual certifying this form.*

*For information on how to submit the form and other relevant information, please refer to the Start-up Crowdfunding Guide for Funding Portals available on the website of the securities regulatory authority or regulator of the jurisdictions.*

**FUNDING PORTAL INFORMATION**

1. Provide the full legal name of the funding portal as it appears on the funding portal’s organizing documents.
2. Provide the name that the funding portal will be operating under.
3. Indicate the position(s) you hold with the funding portal.

**INDIVIDUAL INFORMATION**

4. Full legal name:

---

First name	Middle name(s)	Last name
------------	----------------	-----------

5. Are you currently, or have you ever been, known by any name(s) other than your full legal name stated above, for example nicknames or names due to marriage?

Yes        No   

If yes, provide details.

INCLUDES COMMENT LETTERS RECEIVED

6. Telephone and e-mail address:

Residential:	( )	Mobile:	
Business:	( )	E-mail:	

7. Provide all residential addresses for the past five years starting with your current residential address.

Number, street, city, province, territory or state, country and postal/ZIP code	From		To	
	MM	YYYY	MM	YYYY

8. If you are not a resident of Canada, you must have one address for service of process in Canada and provide the following information:

Name of agent for service:	
Name of contact person:	
Address for service:	
Telephone:	

9. Date and place of birth:

Date of birth			Place of birth		
MM	DD	YYYY	City	Province/Territory/State	Country

10. Country of citizenship: \_\_\_\_\_

11. Are you currently or have you ever been registered or licensed in any capacity with any Canadian securities regulatory authority or regulator, or with any other professional or regulatory entity?

Yes  No

If yes, provide your licence/ registration type, name of the entity, and the start date and ending date, if applicable:

12. Have you ever been dismissed for cause by an employer from a position following allegations that you:

- (a) violated any statutes, regulations, rules or standards of conduct;
- (b) failed to appropriately supervise compliance with any statutes, regulations, rules or standards of conduct; or
- (c) committed fraud or the wrongful taking of property, including theft?

Yes  No

If yes, provide complete details in an attachment signed and dated by the authorized individual certifying this form, including the circumstances, relevant dates, names of the parties involved and final disposition, if known. Consider all time periods.

**CRIMINAL DISCLOSURE**

13. Have you ever been found guilty, pleaded no contest to, or been granted an absolute or conditional discharge from:

- (a) a summary conviction or indictable offence under the *Criminal Code* (R.S.C., 1985, c. C-46) (Canada),
- (b) a quasi-criminal offence in any jurisdiction of Canada or a foreign jurisdiction,
- (c) a misdemeanour or felony under the criminal legislation of the United States of America, or any state or territory therein, or
- (d) an offence under the criminal legislation of any other foreign jurisdiction.

Yes  No

INCLUDES COMMENT LETTERS RECEIVED

If yes, provide complete details in an attachment signed and dated by the authorized individual certifying this form, including the circumstances, relevant dates, names of the parties involved and final disposition, if known. Consider all time periods.

*Instructions: A quasi-criminal offence includes offences under the Income Tax Act (R.S.C. 1985, c. 1 (5th Suppl.)), the Immigration and Refugee Protection Act (R.S.C., 2001, c. 27) or the tax, immigration, drugs, firearms, money laundering or securities legislation of any province or territory of Canada or foreign jurisdiction.*

14. Are there any outstanding or stayed charges against you alleging a criminal offence that was committed?

Yes  No

If yes, provide complete details in an attachment signed and dated by the authorized individual certifying this form, including the circumstances, relevant dates, names of the parties involved and final disposition, if known. Consider all time periods.

15. To the best of your knowledge, are there any outstanding or stayed charges against any entity of which you were, at the time the criminal offence was alleged to have taken place, a founder, director, officer or control person?

Yes  No

If yes, provide complete details in an attachment signed and dated by the authorized individual certifying this form, including the circumstances, relevant dates, names of the parties involved and final disposition, if known. Consider all time periods.

16. To the best of your knowledge, has any entity, when you were a founder, director, officer or control person, ever been found guilty, pleaded no contest to or been granted an absolute or conditional discharge from a criminal offence that was committed?

Yes  No

If yes, provide complete details in an attachment signed and dated by the authorized individual certifying this form, including the circumstances, relevant dates, names of the parties involved and final disposition, if known. Consider all time periods.

**CIVIL DISCLOSURE**

17. Have you or an entity of which you are or were a founder, director, officer or control person been the subject of an order (cease trade or otherwise), judgment, decree, sanction, or administrative penalty imposed by, or entered into a settlement agreement with, a government agency, administrative agency, self-regulatory organization, civil court, or administrative court of Canada or a foreign jurisdiction in the last 10 years related to a claim based in whole or in part on fraud, theft, deceit, misrepresentation, conspiracy, breach of trust, breach of fiduciary duty, insider trading, unregistered trading, illegal distributions, failure to disclose material facts or changes, or allegations of similar conduct in Canada or a foreign jurisdiction related to your involvement in any type of securities, derivatives, insurance or banking activity.

Yes  No

If yes, provide complete details in an attachment signed and dated by the authorized individual certifying this form, including the circumstances, relevant dates, names of the parties involved and final disposition, if known. Consider all time periods.

18. Are there currently any outstanding civil actions alleging fraud, theft, deceit, misrepresentation, or similar misconduct against you or an entity of which you are or were a founder, director, officer or control person?

Yes  No

If yes, provide complete details in an attachment signed and dated by the authorized individual certifying this form, including the circumstances, relevant dates, names of the parties involved and final disposition, if known. Consider all time periods.

**COLLECTION AND USE OF PERSONAL INFORMATION**

The personal information required under this form is collected, used and disclosed by the securities regulatory authority or, where applicable, regulator of the jurisdictions under the authority granted in securities legislation for the purposes of the administration and enforcement of the securities legislation.

By submitting this form, you consent to the collection, use and disclosure of this personal information by the securities regulatory authority or regulator of each jurisdiction and any police records, records from other government or non-governmental regulators or self-regulatory organizations, credit records and employment records about you that the securities regulatory

authority or regulator may need to determine the completeness of the information submitted in this form and compliance with the conditions of the start-up crowdfunding registration and prospectus exemptions. The securities regulatory authority or regulator may contact government and private bodies or agencies, individuals, corporations and other organizations for information about you.

If you have any questions about the collection and use of this information, contact the securities regulatory authority or regulator of any jurisdiction in which this form is delivered. Contact information is listed at the end of this form.

**CERTIFICATION**

By submitting this form, I:

- certify that the statements made in this form including any attachments are true and complete, and
- agree to be subject to the securities legislation of each jurisdiction of Canada where I have submitted this form. This includes the jurisdiction of any tribunals or any proceedings that relate to my activities as a founder, director, officer or control person of a funding portal under applicable securities legislation.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
 Print name: \_\_\_\_\_  
 Position held: \_\_\_\_\_

**IT IS AN OFFENCE TO MAKE A MISREPRESENTATION IN THIS FORM**

INCLUDES COMMENT LETTERS RECEIVED

**Contact information:**

<p><b>Alberta</b> The Alberta Securities Commission Suite 600, 250-5th Street SW Calgary, Alberta T2P 0R4 Telephone: 403-297-6454 E-mail: registration@asc.ca www.asc.ca</p>	<p><b>Nova Scotia</b> Nova Scotia Securities Commission Suite 400, 5251 Duke Street Halifax, Nova Scotia B3J 1P3 Telephone: 902-424-7768 Toll free in Nova Scotia: 1-855-424-2499 E-mail: nssc.crowdfunding@novascotia.ca nssc.novascotia.ca</p>
<p><b>British Columbia</b> British Columbia Securities Commission P.O. Box 10142, Pacific Centre 701 West Georgia Street Vancouver, British Columbia V7Y 1L2 Telephone: 604-899-6854 Toll free in Canada: 1-800-373-6393 E-mail: portal@bcsc.bc.ca www.bcsc.bc.ca</p>	<p><b>Ontario</b> Ontario Securities Commission 20 Queen Street West, 22<sup>nd</sup> Floor Toronto, Ontario M5H 3S8 Toll free: 1-877-785-1555 E-mail: inquiries@osc.gov.on.ca www.osc.ca OSC Electronic Filing Portal <a href="https://eforms1.osc.gov.on.ca/e-filings/generic/form.do?token=ec7a3cb6-d86d-419d-9c11-flfebe403cb6">https://eforms1.osc.gov.on.ca/e-filings/generic/form.do?token=ec7a3cb6-d86d-419d-9c11-flfebe403cb6</a></p>
<p><b>Manitoba</b> The Manitoba Securities Commission 500 - 400 St Mary Avenue Winnipeg, Manitoba R3C 4K5 Telephone: 204-945-2548 Toll free in Manitoba: 1-800-655-2548 E-mail: exemptions.msc@gov.mb.ca www.mbsecurities.ca</p>	<p><b>Québec</b> Autorité des marchés financiers Direction de l'encadrement des intermédiaires 800, rue du Square-Victoria, 4<sup>th</sup> floor P.O. Box 246, Tour de la Bourse Montréal, Québec H4Z 1G3 Telephone: 514-395-0337 Toll free in Québec: 1-877-525-0337 E-mail: financement-participatif@lautorite.qc.ca www.lautorite.qc.ca</p>
<p><b>New Brunswick</b> Financial and Consumer Services Commission 85 Charlotte Street, Suite 300 Saint John, New Brunswick E2L 2J2 Toll free: 1-866-933-2222 E-mail: emf-md@fcnbc.ca www.fcnbc.ca</p>	<p><b>Saskatchewan</b> Financial and Consumer Affairs Authority of Saskatchewan Securities Division Suite 601 – 1919 Saskatchewan Drive Regina, Saskatchewan S4P 4H2 Telephone: 306-787-5645 E-mail: registrationfcaa@gov.sk.ca www.fcaa.gov.sk.ca</p>

**ANNEX H**

**PROPOSED FORM 45-110F5  
ANNUAL WORKING CAPITAL CERTIFICATION**

The funding portal certifies that it has sufficient working capital to continue its operations for at least the next 12 months.

On behalf of the funding portal, I certify that the statement made in this form is true and complete.

Full legal name of  
funding portal:

\_\_\_\_\_

Signature of the chief  
executive officer,  
chief financial officer  
or functional  
equivalent:

Date:

\_\_\_\_\_

Print name of  
individual:

\_\_\_\_\_

Position held:

\_\_\_\_\_

Telephone:

\_\_\_\_\_

E-mail:

\_\_\_\_\_

**IT IS AN OFFENCE TO MAKE A MISREPRESENTATION IN THIS FORM**

INCLUDES COMMENT LETTERS RECEIVED



Canadian Securities  
Administrators

Autorités canadiennes  
en valeurs mobilières

## CSA Staff Notice 45-XXX

### *Guidance for using the start-up crowdfunding registration and prospectus exemptions*

#### XX, 202X

The Canadian Securities Administrators (CSA) have implemented National Instrument 45-110 *Start-up Crowdfunding Registration and Prospectus Exemptions* to provide a further option for start-ups and early stage businesses to raise capital using securities crowdfunding (the **prospectus exemption**).

Staff (**staff** or **we**) of the CSA have prepared this Staff Notice (this **Notice**) to assist issuers with raising capital using the prospectus exemption and businesses proposing to operate a funding portal to facilitate the use of the prospectus exemption.

This Notice includes the following documents:

- Appendix 1 – Proposed Start-up Crowdfunding Guide for Businesses
- Appendix 2 – Proposed Start-up Crowdfunding Guide for Funding Portals

#### Questions

Please refer your questions to any of the following:

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INCLUDES COMMENT LETTERS RECEIVED

## Appendix 1

### Start-up Crowdfunding Guide for Businesses

Crowdfunding is a process through which an individual or a business can raise money from a large number of people, typically through the Internet. The objective is usually to raise sufficient funds in order to carry out a specific project. There are different types of crowdfunding, such as by donation, pre-selling of products or through selling shares or other securities. This guide discusses securities crowdfunding.

#### *Securities crowdfunding*

Securities crowdfunding involves a business raising money by issuing securities (such as shares) to many people through the Internet using a funding portal. This type of crowdfunding must comply with the securities laws of the provinces and territories where the business and potential investors are located.

#### *Legal obligations*

In Canada, trading of securities is subject to legal obligations. For example, a business seeking to raise capital by issuing securities must file a prospectus (a comprehensive disclosure document that includes financial statements) with the securities regulator of each of the provinces and territories where its business and its potential investors are located or have an exemption from the prospectus requirement under securities law.

These obligations can be costly for start-ups and early stage businesses. There are a number of exemptions from the prospectus requirement that businesses can use to conduct securities crowdfunding in Canada. However, these exemptions require a fairly comprehensive disclosure and/or limit the types of investors that can invest. Canadian securities regulators have created a streamlined system to allow start-ups and small businesses (**issuers**) to raise small amounts of money from the general public using securities crowdfunding, without filing a prospectus or preparing financial statements (start-up prospectus exemption).

Instead, the issuer prepares an abbreviated disclosure document that does not require financial statements.

Under securities law in Canada, a business that intends to operate a funding portal, e.g., creating a website that brings together buyers and sellers of securities, must typically be registered as a dealer with the securities regulator. However, if the funding portal restricts itself to certain activities, it is permitted to facilitate trades of those securities without having to register as a dealer (**start-up registration exemption**). In this guide, we refer to the start-up prospectus exemption and the start-up registration exemption as the “**start-up crowdfunding exemptions**” or “**start-up crowdfunding**.”

The purpose of this guide is to assist issuers intending to raise funds by relying on the start-up prospectus exemption. In this guide, “regulator” means the applicable provincial securities regulator or regulatory authority.

## How Start-up Crowdfunding Works



In order to raise funds using the start-up prospectus exemption, issuers must prepare and post an offering document on a funding portal’s crowdfunding website. Investors will then be able to read about the offering and decide whether to invest. Before investing, investors will have to confirm that they have read the offering document and understand that the investment is risky.

### *When should an issuer consider start-up crowdfunding?*

Before launching a start-up crowdfunding campaign, the management of the issuer will want to:

- evaluate other sources of funding, such as a loan from a financial institution,
- assess whether they are willing to invest the time and effort needed to prepare and run a start-up crowdfunding campaign,
- determine the type and characteristics of securities that will be sold,
- determine the number of securities to be sold and at what price, and
- assess if they have the capabilities to manage a greater number of security holders.

If a start-up crowdfunding campaign that involves the sale of shares (or other equity) is successful, the founders of the issuer may have to give up part of the ownership of the issuer to investors. Investors may want to be informed about successes and failures of the issuer’s business. Management of the issuer should assess whether they are willing to spend the time and effort to maintain contact with investors.

The start-up prospectus exemption is not available to reporting issuers (public companies). Reporting issuers are required to provide ongoing public disclosure of their business activities by filing financial statements and other documents required by securities laws. These types of issuers are considered to be more established than the start-up or early stage issuers that are permitted to use start-up crowdfunding.

In addition, the start-up prospectus exemption is not available to issuers that are raising money without a specific business objective, commonly known as “blind pools”. If the proceeds of the distribution are intended to be used by the issuer to invest in, merge or amalgamate with or acquire a business that has not been described in the issuer’s offering document, then the issuer will need to raise capital using methods other than the start-up prospectus exemption.

#### *Where is start-up crowdfunding available?*

The start-up prospectus exemption is available to issuers that have a head office in Canada.

If an issuer wants to raise funds using start-up crowdfunding in a particular province or territory, the funding portal must be permitted to operate in that particular province or territory (see “*Where can I find out more information on whether a funding portal is able to operate?*”, below).

#### *What is the maximum amount that can be raised? How often can an issuer raise money using start-up crowdfunding?*

An issuer can raise up to \$1,000,000 in the 12-month period before closing of the distribution. It may complete as many distributions per calendar year as fits their business objectives.

For instance, if an issuer has already raised \$250,000 on June 1 and \$300,000 on December 31 using the start-up crowdfunding exemption, it can still raise up to \$450,000 at any point before May 31 of the following year under that exemption.

This maximum amount applies to the issuer, together with any of related issuers in its issuer group. The “**issuer group**” has a broad meaning. In addition to the issuer, it also includes any affiliates of the issuer (e.g. related companies) and any other issuer that is engaged in a common enterprise with the issuer or an affiliate, or whose business is founded or organized by the same person or company who founded or organized the issuer.

#### *Does the issuer have to distribute common shares in a start-up crowdfunding offering?*

The securities offered in a start-up crowdfunding offering must be among those permitted by the start-up prospectus exemption. An issuer can use start-up crowdfunding to distribute common shares, but it can also distribute non-convertible preference shares, non-convertible debt securities linked to a fixed or floating interest rate, or units of a limited partnership.

The issuer can also issue securities that convert into common shares or non-convertible preference shares. These securities may include certain types of warrants, options or simple agreements for future equity.

It is up to the issuer to decide what type of security helps it best achieve its growth and development goals.

*Are there any time limitations for completing a crowdfunding offering?*

The offering document must indicate a minimum dollar amount that has to be raised before the offering can close. The issuer has a maximum of 90 days to raise the minimum amount, starting on the day the issuer's offering document is first made available to investors through the funding portal's website.

Investors will send the funds for their investment to the funding portal. The funding portal will then hold the money in trust. Before releasing the funds to the issuer, the following must have occurred:

- the issuer has secured the minimum amount of the offering and has decided to complete the offering; and
- the time for exercise of all withdrawal rights have expired (see "What if an investor changes their mind?", below).

If the minimum amount is not reached, or the start-up crowdfunding campaign is withdrawn, the funding portal must return all the money to the investors.

*Can an issuer or group of related issuers conduct more than one start-up crowdfunding at once?*

No. An issuer group cannot have more than one start-up crowdfunding campaign running at the same time or on different funding portals for the same purpose. The issuer group must wait until the first campaign has ended before launching a second one.

*What is the maximum amount an issuer can raise from each investor?*

The maximum investment an issuer can accept from an investor is \$2,500 per start-up crowdfunding distribution. However, this amount can be increased to \$5,000 if the investor has obtained advice from a registered dealer that the investment is suitable for the investor.

The issuer may require a minimum amount per investor, but this amount cannot be over \$2,500 if there is no registered dealer involved.

**Launching a Start-up Crowdfunding Campaign**

Once an issuer has determined that it will launch a start-up crowdfunding campaign, it will need to prepare an offering document and choose a funding portal to post its offering document. Issuers are required to prepare the offering document using Form 45-110F1 *Offering Document*.

### *What is a funding portal?*

A funding portal is a website that brings buyers and sellers together by listing start-up crowdfunding campaigns on its website and facilitating the payment of the purchase price from the investor to the issuer. The funding portal has a number of responsibilities, including:

- posting the issuer's offering document;
- providing a risk warning form to potential investors;
- holding all investor funds in trust until the issuer is permitted to close the distribution; and
- returning funds to investors, without deduction, if the issuer does not reach its minimum funding target or if the issuer withdraws the start-up crowdfunding campaign.

Funding portals will generally charge issuers for hosting a start-up crowdfunding campaign on its website.

### *What types of funding portals are available?*

There are two types of funding portals that may facilitate start-up crowdfunding in Canada:

- funding portals that are operated by registered dealers (e.g. investment dealers or exempt market dealers) that must provide advice to investors on whether the investment is suitable to the investor, and
- funding portals that are operated by persons relying on the start-up registration exemption and that are prohibited from providing suitability advice

An issuer has the choice of which type of funding portal to use for its start-up crowdfunding campaign.

A funding portal should be able to confirm to the issuer that it can provide certain services necessary for start-up crowdfunding, including that it will make the offering document and risk warnings available to the investor through its website.

### *Where can I find out information on whether a funding portal is able to operate?*

The Canadian Securities Administrators maintain a list of funding portals currently permitted to operate in one or more jurisdictions of Canada. The issuer may check this list to determine whether the funding portal is authorized to operate in jurisdictions that it proposes to conduct start-up crowdfunding.

In addition, the issuer may want to evaluate other aspects of the funding portal's business, such as finding out about the individuals operating the funding portal, how it handles the funds collected from investors, and what fees it will charge the issuer for posting its start-up crowdfunding offering document.

### *What information needs to be in the offering document?*

An issuer must include all the information required by Form 45-110F1 *Offering Document*. This form requires the issuer to disclose basic information about the business and the offering, how it will use the money and the relevant risks of the business or project. The issuer must disclose the minimum amount needed to be raised to accomplish the issuer's business goals. The issuer must provide enough detail in the offering document about the business for an investor to clearly understand what the issuer does or intends to do.

If the issuer raises funds in Québec, the offering document and the risk acknowledgement form must be made available to investors in Québec in French or in French and English.

For additional details on the offering document, including instructions on how to prepare this document, please refer to Form 45-110F1 *Offering Document*.

### *Do I need to include financial statements in the offering document?*

The issuer is not required to provide financial statements to investors in connection with a start-up crowdfunding distribution.

However, the issuer can choose to make financial statements available to investors. For example, many investors use financial statements to assess and compare investment opportunities and may be reluctant to invest in a business that does not provide this type of information. In addition, if an issuer chooses to disclose a measure of financial performance (such as sales or expenses), financial position (such as amount of equipment or debt) or cash flow in the offering document, it must make financial statements available for the most recently completed financial year. The measure referred to in the offering document must be an amount presented in the financial statements or be reconciled to an amount presented in the financial statements.

If the issuer chooses to make financial statements available to investors, it must:

- prepare these financial statements in accordance with Canadian generally accepted accounting principles;
- present the issuer's results of operations for its most recently completed financial year; and
- include the statement provided in item 3.5 in Form 45-110F1 *Offering Document*.

As with any information provided to investors, the financial statements should not be misleading.

The issuer can post the financial statements on its website for the convenience of its investors. **However, if an issuer includes financial statements in its offering document or provides a link to the financial statements in the offering document, there will likely be an obligation under securities laws to prepare the financial statements using Canadian generally accepted accounting principles for publicly accountable enterprises.**

There may be other requirements outside securities laws. For example, corporate legislation in some jurisdictions may require issuers to prepare and disseminate audited annual financial statements to their shareholders. Further, such issuers may be required to hold annual meetings of shareholders and provide certain specified disclosure in an information circular. To ascertain

whether these requirements apply, issuers can refer to applicable corporate law and consult their legal advisers.

*Do I need to disclose information about myself or other principals of the issuer?*

The issuer must include in the offering document certain details about the residency, principal occupation, expertise and securityholdings of each founder, director, officer and control person.

**Director:** An individual occupying the position of director with the issuer or another person acting in a similar capacity.

**Officer:** Includes the CEO, president, a vice-president, corporate secretary, general manager or any other individual who performs functions of officer for the issuer. If the issuer is a limited partnership, information should also be provided for the officers of the general partner.

**Founder:** A person who, acting along, in conjunction, or in concert with one or more persons, directly or indirectly, take the initiative in founding, organizing or substantially reorganizing the business of the issuer and at the time of the start-up crowdfunding distribution is actively involved in the business of the issuer.

**Control person:** A person that holds more than 20% of the voting rights, alone or with other persons acting in concert, is generally considered a control person of the issuer.

*Does the issuer need to provide information to the investor following the crowdfunding campaign?*

Canadian securities laws do not require that the issuer report to investors, but investors will want to be kept informed. The issuer should disclose to investors in the offering document whether and, if so, how it intends to keep investors informed about the business and their investment. Reporting can be through newsletters, social media sites, email, financial statements or similar documents.

*What if an investor changes their mind?*

Investors have the right to withdraw their investment within two business days following either:

- the investor's subscription; or
- the funding portal notifying the investor of an amendment to the issuer's offering document.

To exercise this right of withdrawal, an investor must deliver a notice to the funding portal not later than midnight on the 2<sup>nd</sup> business day after the investor's subscription or notification of the amendment, as applicable. The funding portal must return the funds to an investor who exercises this right, without any deduction, within five business days after receiving notice of the withdrawal.

*What if the information in the offering document is not, or is no longer, accurate?*

The issuer must certify that the offering document does not contain a **misrepresentation**.

A misrepresentation means:

- a statement of material fact that is not true, or
- omitting a material fact that is required or necessary to be stated to prevent a statement in the offering document from being false or misleading in the circumstances in which it was made.

The information contained in the offering document may need to be updated during the start-up crowdfunding campaign. If the circumstances of the issuer have changed such that the offering document is no longer accurate and contains a misrepresentation, the issuer must:

- immediately advise the funding portal of this fact; and
- amend the offering document and send the new version to the funding portal as soon as practicable.

The funding portal is required to post the new version of the offering document on its website and promptly notify investors about the amendment. Providing an amended offering document gives an investor the opportunity to withdraw their investment (see “*What if an investor changes their mind?*” above).

The offering document does not need to be updated after the start-up crowdfunding campaign is over.

*What if an investor purchases securities when the offering document contained a misrepresentation?*

Securities laws in all provinces and territories of Canada provide investors with a **statutory right to sue for damages (typically limited to the amount paid for the securities) or rescission (to unwind or reverse the purchase)** in cases where an offering document contains a misrepresentation. These claims may be made against the issuer and in a number of provinces and territories, the directors and other persons that signed the offering document.

This statutory right to sue is available whether or not the investor relied on the misrepresentation. However, there may be various defenses available. In particular, a defense may be available if the investor knew of the misrepresentation when he or she purchased the securities.

**Completing a Start-up Crowdfunding Campaign**

Once the minimum offering amount has been collected, the issuer may choose to “close the offering” by issuing the securities to investors. However, the issuer must wait until each investor’s 2-day withdrawal period has expired.

An issuer can continue raising additional funds up to the maximum amount indicated in the offering document provided it closes the offering within the 90-day maximum offering period. The issuer must disclose in the offering document what it intends to do with any extra funds raised above the minimum amount.

At the closing of the offering, the funding portal will release the funds raised to the issuer. The issuer should make note of the date on which it closes the offering because certain filings and deliveries must be completed within a certain number of days of the closing.

*Can an issuer use another prospectus exemption to meet the minimum amount?*

Although an issuer cannot have more than one start-up crowdfunding campaign running at the same time, the issuer can raise funds using other prospectus exemptions during a start-up crowdfunding campaign. For example, the issuer may issue securities to an accredited investor. Other prospectus exemptions, such as the accredited investor exemption, are found in securities laws, including National Instrument 45-106 Prospectus Exemptions. The funds raised under other prospectus exemptions can be counted towards the minimum offering amount if those funds are unconditionally available to the issuer. This would not trigger the requirement for the issuer to amend the offering document.

If an issuer raises funds under other prospectus exemptions, it must comply with the conditions of both the start-up crowdfunding exemptions and the other exemption(s). An issuer should seek professional advice if it has any questions regarding compliance.

**After the closing**

*What documents have to be filed with securities regulators?*

The offering document and a Form 45-106F1 Report of Exempt Distribution must be filed with the regulator in each jurisdiction where investors are located no later than 30 days after the closing of the distribution. For example, if the issuer has raised money in Québec and Nova Scotia, the offering document and report of exempt distribution must be filed with the Autorité des marchés financiers and the Nova Scotia Securities Commission.

In addition, the offering document and report of exempt distribution must be filed with the regulator of the jurisdiction where the issuer's head office is located, even if no investors were located in this jurisdiction.

When filing the offering document, the issuer must include all copies of the offering document including any amended versions.

**[Note to industry: this section will also include instructions to assist issuers with filing the offering document and report of exempt distribution]**

*Confirmation notice to investors*

Within 30 days after the closing of the offering, the issuer must send a copy of the offering document and a confirmation notice to each investor who purchased securities with the following information:

- the date of subscription and the closing date of the distribution;
- the quantity and description of securities purchased;
- the price paid per security;
- the total commission, fee and any other amounts paid by the issuer to the funding portal in respect of the start-up crowdfunding distribution.

The issuer may choose to have the funding portal send this information to investors if the funding portal platform has this capability.

**For more information contact:**

For more information, please contact the following:

Alberta	Alberta Securities Commission Telephone: 403-355-4151 E-mail: <a href="mailto:inquiries@asc.ca">inquiries@asc.ca</a> Website: <a href="http://www.albertasecurities.com">www.albertasecurities.com</a>
British Columbia	British Columbia Securities Commission Telephone: 604-899-6854 or 1-800-373-6393 Email: <a href="mailto:inquiries@bcsc.bc.ca">inquiries@bcsc.bc.ca</a> Website: <a href="http://www.bcsc.bc.ca">www.bcsc.bc.ca</a>
Saskatchewan	Financial and Consumer Affairs Authority of Saskatchewan Securities Division Telephone: 306-787-5645 E-mail: <a href="mailto:exemptions@gov.sk.ca">exemptions@gov.sk.ca</a> Website: <a href="http://www.fcaa.gov.sk.ca">www.fcaa.gov.sk.ca</a>
Manitoba	The Manitoba Securities Commission Toll free in Manitoba: 1-800-655-2548 E-mail: <a href="mailto:exemptions.msc@gov.mb.ca">exemptions.msc@gov.mb.ca</a> Website: <a href="http://www.msc.gov.mb.ca">www.msc.gov.mb.ca</a>
Ontario	Ontario Securities Commission Toll free: 1-877-785-1555 E-mail: <a href="mailto:inquiries@osc.gov.on.ca">inquiries@osc.gov.on.ca</a> Website: <a href="http://www.osc.ca">www.osc.ca</a>

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Website: [www.fcnb.ca](http://www.fcnb.ca)

Nova Scotia

Nova Scotia Securities Commission  
Toll free in Nova Scotia: 1-855-424-2499  
E-mail: [nssc.crowdfunding@novascotia.ca](mailto:nssc.crowdfunding@novascotia.ca)  
Website: [www.nssc.novascotia.ca](http://www.nssc.novascotia.ca)

INCLUDES COMMENT LETTERS RECEIVED

## Appendix 2

### Start-up Crowdfunding Guide for Funding Portals

#### Introduction and purpose

The purpose of this guide is to assist funding portals that facilitate or intend to facilitate distributions under National Instrument 45-110 *Start-up Crowdfunding Registration and Prospectus Exemptions* (NI 45-110). This guide is intended both for funding portals that rely on the registration exemption in NI 45-110 (an exempt funding portal) and those operated by registered dealers.

This guide describes:

- the requirements that apply to funding portals, and
- how a crowdfunding distribution under NI 45-110 works, including an overview of the responsibilities of an issuer of which the funding portal should be aware.

#### What is securities crowdfunding?

Securities crowdfunding involves a business raising money by issuing securities (such as shares) to many people through the Internet using a funding portal. This type of crowdfunding must comply with the securities laws of the provinces and territories where the business and potential purchasers are located.

#### Legal obligations for securities crowdfunding

In Canada, trading of securities is subject to legal obligations. For example, a person or company that operates a funding portal to facilitate securities crowdfunding offerings must be registered in each province or territory where it is carrying on this business, or rely on an exemption from the registration requirement under securities laws. Similarly, a business seeking to raise capital by issuing securities must file a prospectus with the securities regulators or regulatory authorities of each province or territory (the regulators) in which it intends to sell its securities, or have an exemption from the prospectus requirements under securities laws.

These obligations, however, can be costly for start-ups and early stage issuers. There are a number of exemptions from the prospectus requirement that businesses can use to conduct securities crowdfunding in Canada. However, these exemptions require fairly comprehensive disclosure and/or limit the types of investors that can invest. Canadian securities regulators have created a streamlined system to allow start-ups and small businesses to raise small amounts of money from the general public using securities crowdfunding, without filing a prospectus or preparing financial statements.

NI 45-110 provides additional new exemptions tailored to start-up and early stage issuers to facilitate securities crowdfunding and make it easier for them to raise money by issuing securities. NI 45-110 allows:

- a start-up or early stage issuer to raise relatively small amounts of capital from the general public by distributing securities to purchasers without filing a prospectus or lengthy offering document and, significantly, without needing to prepare financial statements (the start-up prospectus exemption), and
- a funding portal to facilitate the distribution of those securities without having to register as a dealer (the start-up registration exemption), although a funding portal can be operated by a registered dealer.

Under NI 45-110, all issuers intending to conduct a start-up crowdfunding offering must use a funding portal.

### *Types of funding portals under NI 45-110*

This section describes some of the key characteristics of funding portals operated by registered dealers, and exempt funding portals.

- **Funding portals operated by registered dealers:** Registered dealers generally are required to fulfil certain obligations including know-your-client, know-your-product, and, before accepting an order to buy or sell securities from a client, determining whether that purchase or sale is suitable for the client. Funding portals operated by registered dealers must also meet these obligations. Funding portals operated by registered dealers are allowed to facilitate distributions of securities under the start-up prospectus exemption, and other prospectus exemptions. In addition, a purchaser may make a larger investment in an offering conducted through a funding portal operated by a registered dealer.
- **Exempt funding portals:** Exempt funding portals rely on the start-up registration exemption. They are not required to register provided they meet the conditions of the start-up registration exemption, including the filing of certain documents with the regulators. The requirements on exempt funding portals are different from the obligations placed on registered dealers. For example, exempt funding portals are not allowed to provide advice and are only allowed to facilitate distributions that rely on the start-up prospectus exemption.

### **Operating requirements for exempt funding portals**

A person or company operating a funding portal does not have to register as a dealer if they meet all conditions of the start-up registration exemption. The responses to the following questions further detail many of these conditions of the start-up registration exemption. You should refer to NI 45-110 for the complete list of the conditions that exempt funding portals must follow.

*Are there any restrictions on who may operate an exempt funding portal?*

A funding portal may not rely on the start-up registration exemption if it or any of its founders,<sup>1</sup> directors, officers or control persons<sup>2</sup> (principals), or any entity it or its principals has been the principal of has had a judgment, sanction or similar order imposed against it based on fraud, theft, breach of trust, insider trading, or allegations of similar conduct.

The funding portal must not be registered with the regulators. As well, it must have its head office in Canada and the majority of its directors must be Canadian residents.

*What must an exempt funding portal do for an issuer seeking to conduct a crowdfunding raise?*

**Make the necessary disclosures available on its website.** An issuer looking to raise capital using the start-up prospectus exemption must provide the funding portal an offering document that meets the conditions of the exemption. The exempt funding portal must post the issuer's offering document on its website. It is intended that posting the document on the exempt funding portal's website will satisfy any requirement to deliver the offering document to a purchaser that may apply under securities legislation.

A funding portal can carry out reviews of issuers before making their offering documents available on its website to protect the funding portal's own interests or reputation.

**Confirm the issuer's location.** The exempt funding portal must take reasonable measures to confirm that the head office of the issuer is in Canada. For instance, reviewing the incorporating or governing documents may be a reasonable step to confirm the issuer's head office.

*What must an exempt funding portal do for purchasers?*

**Obtain the necessary acknowledgements before a purchaser can access the website.** An exempt funding portal must not allow entry to its website until the purchaser acknowledges that they are entering the website of a funding portal that (i) is not operated by a registered dealer under Canadian securities legislation, and (ii) will not provide advice about the suitability or the merits of any investment.

For further information on the mechanics of the acknowledgement, please see the section in this guide entitled *Pop-up Acknowledgement*.

**Not provide advice or recommendations.** An exempt funding portal must not tell purchasers an investment is suitable for them or otherwise discuss the merits of an investment.

This means the funding portal cannot tell a purchaser that the securities offered are a good investment or that the purchaser should make an investment. The funding portal must refrain from

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<sup>1</sup> A person or company who founded, organized or significantly reorganized the funding portal is generally considered to be a founder.

<sup>2</sup> A person or company who holds a sufficient number of voting rights to control the funding portal or who holds more than 20% of the voting rights of the funding portal is generally considered a control person of the funding portal.

saying or doing anything that might lead a purchaser to think that they should buy the securities because the securities somehow meet their investment needs or objectives.

However, the funding portal can give factual information about the securities. For example, it may tell purchasers the information set out in the offering document about the features of the securities, the risks generally of investing, how start-up crowdfunding works, and other items of a general, factual nature.

**Confirm purchaser status.** An exempt funding portal can only facilitate a distribution for a purchaser residing in a province or territory where the funding portal meets the conditions of the start-up registration exemption, including having delivered documents to the regulator in that jurisdiction (see *Delivery Requirements for Exempt Funding Portals* below). Accordingly, the exempt funding portal should take reasonable measures to ensure that the purchaser is a resident of a province or territory in which the exempt funding portal is permitted to operate. These reasonable measures may include requiring the purchaser to indicate its address in Canada, including the province or territory of residence before allowing a subscription for securities.

**Obtain the necessary risk acknowledgement before receiving funds.** Before taking a purchaser's subscription, an exempt funding portal must ensure that purchasers confirm online that they have read and understood the offering document and risk warning available on the exempt funding portal.

#### *What requirements do exempt funding portals have for handling funds?*

The exempt funding portal must ensure that a purchaser's payment for securities through its platform is received only by the exempt funding portal, and no one else. The exempt funding portal must hold purchasers' assets separate from the exempt funding portal's property, in trust for the purchaser and, in the case of cash, at a Canadian financial institution.

#### *What must the exempt funding portal disclose about itself on its website?*

The exempt funding portal must prominently display the following information on its website:

- the full legal name, municipality and jurisdiction of residence, business mailing and e-mail address, and business telephone number of each principal of the exempt funding portal,
- that the exempt funding portal is relying on the start-up registration exemption,
- that the exempt funding portal will hold purchasers' assets separate from the funding portal's property, in trust for the purchaser and, in the case of cash, at a Canadian financial institution, and
- the process the exempt funding portal will use to notify purchasers if it becomes insolvent or discontinues operations, and how the exempt funding portal will return the purchasers' assets it is holding to those purchasers.

For instance, clearly displaying this information on one page of the website that is easily accessible (such as a main tab in a drop-down menu) would generally be acceptable.

### *What other requirements do exempt funding portals have?*

**Only facilitate start-up crowdfunding distributions under NI 45-110.** The exempt funding portal must not facilitate the distribution of securities to purchasers under prospectus exemptions other than the start-up prospectus exemption. A funding portal that intends to facilitate crowdfunding distributions under other prospectus exemptions (e.g. the accredited investor exemption and the offering memorandum exemption) would need to apply for registration as a dealer.

**Not receive compensation directly from a purchaser.** The exempt funding portal must not receive a commission or fee from a purchaser.

**Maintain records.** The exempt funding portal must keep its books and records, including its compliance procedures, at its head office for eight years from the date a record is created.

### **Delivery requirements for exempt funding portals**

Attached as Appendix A to this guide is a checklist that includes some of the delivery and timing requirements for exempt funding portals.

### *What steps must occur before a funding portal can rely on the start-up registration exemption?*

At least 30 days before it intends to start operating in reliance on the start-up registration exemption, the funding portal must deliver the following documents to the regulator of each jurisdiction of Canada in which it intends to solicit investors:

- 1) a completed Form 45-110F3 *Funding Portal Information* (funding portal information form),
- 2) completed Forms 45-110F4 *Portal Individual Information* (individual information form) for each principal of the funding portal, and
- 3) the applicable supporting documents (see below).

The regulators will review these documents during the 30-day waiting period and may notify the funding portal, for example, if:

- the documents the funding portal delivered are incomplete, or
- the policies and procedures for handling funds in relation to a start-up crowdfunding distribution described in the funding portal information form and supporting documents does not satisfy the conditions of the start-up exemption.

If the funding portal receives such notification, it has not satisfied the conditions of the start-up registration exemption and cannot operate as an exempt funding portal. If this occurs, the funding portal must file amended documents with the regulators and wait a 30 day period from the date the revised documents are filed before operating.

### *What supporting documents are required?*

The funding portal information form and individual information form must include the following supporting documents:

- organizing documents such as articles and certificate of incorporation or partnership agreement,
- a chart showing the funding portal's structure and ownership that, at a minimum, includes all parents, affiliates and subsidiaries, as well as the full list of securityholders (including number and type of securities held) of the funding portal,
- details and relevant documents describing the funding portal's process and procedure for handling funds relating to a start-up crowdfunding offering, including:
  - the name of the Canadian financial institution the funding portal will use, together with the designated trust account number,
  - the name of the signatories on this account and their role with the funding portal,
  - a description of how the funds held in this account will be kept separate and apart from the funding portal's own property,
  - a copy of the trust agreement for the funding portal's trust account with a Canadian financial institution or details surrounding the establishment of this account, or, if there is no trust agreement or trust account, an explanation why,
  - how funds will flow from: (i) the purchasers to the account; (ii) the funding portal's trust account to the issuer in the event that the offering closes; and (iii) the trust account back to the purchasers' bank accounts if the offering does not close, or the purchaser has exercised their right of withdrawal (for further information please see the section in this guide entitled *What rights do purchasers have before the start-up crowdfunding distribution closes?*), and
- attachments providing the relevant details sought if the answer to any of questions 11 to 14 of the funding portal information form or questions 11 to 18 of an individual information form is "Yes".

The requirements around the flow of purchaser funds are fundamental to the start-up registration exemption. The regulators may assess if the funding portal complies with these requirements, as well as the other conditions of the start-up crowdfunding exemption, in future compliance exams.

### *How do I deliver the funding portal information form and individual information forms?*

The funding portal must deliver the forms and documents by e-mail to the regulator in each jurisdiction where the funding portal intends to facilitate start-up crowdfunding distributions. For example, a funding portal with a head office in Saskatchewan that intends to seek funds from purchasers in all jurisdictions of Canada must deliver the forms and documents described in this guide to the Financial and Consumer Affairs Authority of Saskatchewan and the regulators in all of the other jurisdictions of Canada.

*Are there any required filings after an exempt funding portal has started operating?*

After it has started operating, the exempt funding portal must:

- 1) certify, within ten days of a calendar year-end, that it has sufficient working capital to continue its operations for at least the next 12 months (See “Working Capital Certification” below), and
- 2) deliver, within 30 days of a change to any of the information in the funding portal information form or individual information forms, the updated funding portal information form and/or individual forms as applicable.

*Working Capital Certification*

An exempt funding portal is required to certify to the regulator that it has sufficient working capital to operate for the next 12 months:

- in the completed funding portal information form, and
- in the completed Form 45-110F5 *Annual Working Capital Certification* (working capital certification) that needs to be delivered within ten days of a calendar year-end.

**For example:** an exempt funding portal delivers the completed funding portal information form (which includes a form of the working capital certification) on May 31, 2021. The funding portal ensures that it complies with all the conditions of the start-up registration exemption and begins to facilitate distributions on June 30, 2021.

- The exempt funding portal must then deliver a working capital certification between December 31, 2021 and January 10, 2022, in order to meet the requirements to operate as an exempt funding portal after January 10, 2022.
- If the exempt funding portal delivers its working capital certification on January 4, 2021, it will need to deliver its next working capital certification between December 31, 2021 and January 10, 2022, in order to meet the requirements to operate as an exempt funding portal after January 10, 2022.

A funding portal’s working capital is calculated based on current assets less current liabilities. The terms “current assets” and “current liabilities” are defined under Canadian GAAP. Current assets generally include assets such as cash, accounts receivable, inventory and other assets that can be realised, sold or consumed within a year. Current liabilities generally include accounts payable, wages, taxes, and the portion of debt to come due within a year.

Good practices for compliance with this condition include:

- Keeping documentation that is regularly maintained to ensure effective monitoring; and
- Establishing, maintaining and applying a system of controls and supervision sufficient to ensure the accuracy of the documents, including financial statements, used to support the funding portal's assessment of working capital.

#### *Updated Funding Portal Information Form and/or Individual Information Forms*

If a change occurs and the information in the forms and documents delivered to a regulator are no longer up-to-date, the exempt funding portal must update the information by delivering a new form or document setting out the change. These updated forms must be provided within thirty days of the change. Failure to deliver these updated forms on time means that the funding portal has not satisfied the conditions of the start-up registration exemption and cannot rely on the exemption.

**For example:** if management at an exempt funding portal changes on July 1, 2021, an updated funding portal information form, as well as an individual information form for each new officer, must be delivered to the regulators by July 31, 2021.

#### **Assessing compliance for funding portals**

Failure to comply with the conditions of NI 45-110 or other securities law requirements is a serious offence that could prevent the funding portal from being able to rely on the start-up registration exemption and expose the funding portal's principals to sanctions. The regulators may conduct compliance reviews on funding portals, including exempt funding portals, to ensure that they comply with the requirements. Funding portals relying on the start-up registration exemption should be prepared to provide documents supporting their compliance with the conditions of the start-up registration exemption.

Funding portals will also be subject to various other laws beyond securities law (e.g. anti-money laundering and privacy laws). We encourage funding portals to consult a lawyer for advice.

#### **Funding portals operated by registered dealers**

Registered exempt market dealers and investment dealers are allowed to operate start-up funding portals, provided that they:

- meet their existing registration obligations under securities legislation (including the know-your-client, know-your-product and suitability obligations owed to purchasers, and disclosure of all fees charged to purchasers in accordance with relationship disclosure requirements under National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*),
- meet the requirements in NI 45-110 for portals that rely on the start-up registration exemption that still apply to registered dealers (see the section entitled "What are the requirements in NI 45-110 that apply to funding portals operated by registered dealers, as well as to exempt funding portals?" below),
- confirm to issuers that the funding portal is being operated by a registered dealer, and

- prompt any person entering the funding portal’s website to acknowledge that the funding portal is operated by a registered dealer that will provide suitability advice. For more information on the mechanics of this acknowledgement, please see the section of this guide entitled *Pop-Up Acknowledgement*.

An exempt market dealer or investment dealer that wants to operate a start-up funding portal is required to report changes in their business activities by completing and delivering Form 33-109F5 *Change of Registration Information* and updating information previously reported in Form 33-109F6 *Firm Registration* to include operating a start-up funding portal.

*What are the requirements in NI 45-110 that apply to funding portals operated by registered dealers, as well as to exempt funding portals?*

Registered dealers operating funding portals must meet the conditions set out in section 4 of NI 45-110 (which also apply to exempt funding portals). These include requirements to:

- ensure that a purchaser’s payment for securities through the funding portal’s platform is received only by the funding portal, and no one else,
- take reasonable measures to ensure the head office of the issuer is in Canada,
- make available the issuers’ offering documents and risk warnings on its website, and
- ensure, before it takes a purchaser’s subscription, that the purchaser has confirmed they have read and understood the offering document and risk warning available on the funding portal.

*Are there different restrictions (e.g. investment limits) placed on start-up crowdfunding distributions facilitated by registered dealers?*

An offering conducted through a funding portal operated by a registered dealer is permitted to facilitate a larger investment. Typically, a purchaser may invest up to \$2,500 under the start-up prospectus exemption. However, purchasers can purchase up to \$5,000 if the registered dealer has determined that the investment is suitable for the purchaser.

**“Pop-up” Acknowledgement**

The start-up crowdfunding exemptions require purchasers to acknowledge certain information before entering the platform of a funding portal (pop-up acknowledgement). A platform may include the funding platform’s website or app. This requirement does not distinguish between where or how the purchaser enters the funding portal’s platform. As a result, funding portals must design their platform so that purchasers acknowledge the required information regardless of whether those purchasers enter the platform through the funding portal’s home page or through another page.

The funding portal should also manage the risk that potential purchasers are visiting the funding portal’s platform using a shared computer, tablet, or other mobile device. In other words, multiple people in a household may be entering the funding portal’s website at different times using the same device. As a result, the funding portal should consider designing their platform so that the

pop-up acknowledgement reappears each time the purchaser's internet browser or app is closed and re-opened.

We expect the pop-up acknowledgement to appear in the following circumstances:

<p>The pop-up acknowledgement should appear upon the first and every subsequent time a person enters a funding portal's platform. This means that after opening their internet browser or app:</p> <ul style="list-style-type: none"><li>(a) If a person lands on any page of a funding portal's platform (home page or other page) the pop-up acknowledgement should appear.</li><li>(b) If the person clicks "I acknowledge" and then immediately closes out of their browser, when the person goes back to any page on a funding portal's platform, the pop-up acknowledgement should appear. The result is that the same person will have to click on "I acknowledge" to go back into the funding portal's platform regardless of the fact that they had just been to that platform.</li></ul>
<p>The pop-up acknowledgement should appear regardless of a person's entry point to the platform (home page or other page). For example:</p> <ul style="list-style-type: none"><li>(c) If a person were to search the name of the funding portal and finds a link to the funding portal's platform, the link would take the person to the funding portal's home page and a pop-up acknowledgement would appear.</li><li>(d) If a person were to browse directly to the funding portal's issuer-offering page from an external link, the link would take the person to issuer's page on the funding portal's platform and a pop-up acknowledgement would appear.</li></ul>
<p>Once a person clicks "I acknowledge" and enters the funding portal's platform, they can navigate from page to page within the website without the re-appearance of the pop-up acknowledgement.</p>

### How does a start-up crowdfunding distribution work?

Issuers are responsible for preparing an offering document that complies with Form 45-110F1 *Offering Document*. In particular, the offering document must indicate the minimum amount necessary to close a start-up crowdfunding distribution. Issuers provide the offering document to the funding portal to post online. Purchasers read the offering document and decide whether or not to invest.

Before accepting an investment, the funding portal collects personal information on the purchaser, including the province or territory where the purchaser resides. The funding portal also obtains confirmation that the purchaser has read and understood the offering document and the risks described in Form 45-110F2 *Risk Acknowledgement Form*.

An issuer cannot close a distribution unless it has raised the minimum amount set out in its offering document and each purchaser's right to withdraw has expired. At the closing:

- the issuer distributes shares or other eligible securities to purchasers, and
- the funding portal releases funds to the issuer.

No later than 15 days following the closing of the distribution, the funding portal notifies purchasers that the funds have been released to the issuer, and provides the issuer with the following information on each purchaser:

- full name,
- address,
- telephone number,
- e-mail address,
- number of securities purchased, and
- total purchase price.

Using this information, no later than 30 days following the closing of the distribution, the issuer files Form 45-106F1 *Report of Exempt Distribution* (the report of exempt distribution) with the regulators. When providing purchaser information to the issuer, funding portals may use the spreadsheet of Schedule 1 of the report of exempt distribution. Please refer to the *Start-up Crowdfunding Guide for Businesses* for more information on the issuer's filing requirements.

As well, no later than 30 days following the closing of the distribution, the issuer sends a confirmation to each purchaser that includes:

- the date of the purchaser's subscription and the closing date,
- the number of securities purchased and a description of the securities purchased,
- the price per security paid,
- the total commission, fee and any other amounts paid by the issuer to the funding portal in respect of the distribution, and
- instructions on how the purchaser can access the offering document.

While the obligation is on the issuer to provide this information to purchasers, we expect that the issuer will arrange for the funding portal to provide this information on its behalf.

If the issuer withdraws its start-up crowdfunding offering or does not raise the minimum amount within 90 days after the funding portal posts the offering document online, all the funds must be returned to purchasers within five business days. No deductions are permitted. The funding portal must also send a notice to the issuer and each purchaser confirming that the funds have been returned to purchasers.

The funding portal may send notices to purchasers and issuers by e-mail.

#### *When must an offering document be amended?*

From the time it is posted online until the closing or withdrawal of the offering, an issuer must amend its offering document if the information it contains is no longer accurate and contains a misrepresentation. This could be the case if, for example, an issuer wants to change the price of the securities or the minimum or maximum offering amount. The issuer must send the amended version to the funding portal for posting on the funding portal's website. The funding portal must promptly notify purchasers about the amendment.

*Can a funding portal facilitate a start-up crowdfunding distribution for itself or for related parties?*

A funding portal cannot act in a start-up crowdfunding distribution if one of its principals is also a principal of the issuer group. The issuer group means the issuer, an affiliate of the issuer, and any other issuer that is engaged in a common enterprise with the issuer or an affiliate, or whose business is founded or organized by the same person or company who founded or organized the issuer.

*What rights do purchasers have before the start-up crowdfunding distribution closes?*

Purchasers have the right to withdraw their investment up to midnight, two business days following:

- the purchaser's subscription, and
- any notice the funding portal sends to the purchaser of an amendment to the offering document.

**For example:** a funding portal posts an offering document on July 1, 2021 and a purchaser subscribes on July 5, 2021. The funding portal then notifies the purchaser of amendments to the offering documents on July 14, 2021 and July 28, 2021. The purchaser then has the right to withdraw its investment during the following time periods:

- up to midnight, July 7, 2021 (two business days from subscription),
- between July 14, 2021 and midnight, July 16, 2021 (two business days from the first amendment), and
- between July 28, 2021 and midnight, July 30, 2021 (two business days from the second amendment).

The funding portal must give purchasers the opportunity to exercise this right. The purchaser exercises the right of withdrawal by notifying the funding portal. The funding portal must return the funds to a purchaser who exercises this right, without any deduction, within five business days after the notice.

*Does an issuer have to provide financial statements?*

Under the start-up prospectus exemption, issuers are not required to provide financial statements to purchasers with the offering document.

If an issuer wants to make its financial statements available to purchasers, it can place a hyperlink on the funding portal leading to the financial statements. However, the hyperlink should not appear in the offering document unless the issuer wants the financial statements to form part of it. Please refer to the *Start-Up Crowdfunding Guide for Businesses* for more information on potential reporting requirements relating to making financial statements a part of the issuer's offering document. It should be noted that if an issuer makes its financial statements available to purchasers, those financial statements have to be prepared in accordance with Canadian GAAP.

### For more information

For more information, please contact the following:

British Columbia	British Columbia Securities Commission Telephone: 604-899-6854 or 1-800-373-6393 Email: <a href="mailto:inquiries@bcsc.bca">inquiries@bcsc.bca</a> Website: <a href="http://www.bcsc.bc.ca">www.bcsc.bc.ca</a>
Alberta	Alberta Securities Commission Telephone: 403-355-4151 E-mail: <a href="mailto:inquiries@asc.ca">inquiries@asc.ca</a> Website: <a href="http://www.albertasecurities.com">www.albertasecurities.com</a>
Saskatchewan	Financial and Consumer Affairs Authority of Saskatchewan Securities Division Telephone: 306-787-5645 E-mail: <a href="mailto:exemptions@gov.sk.ca">exemptions@gov.sk.ca</a> Website: <a href="http://www.fcaa.gov.sk.ca">www.fcaa.gov.sk.ca</a>
Manitoba	The Manitoba Securities Commission Toll free in Manitoba: 1-800-655-2548 E-mail: <a href="mailto:exemptions.msc@gov.mb.ca">exemptions.msc@gov.mb.ca</a> Website: <a href="http://www.mbsecurities.ca/">http://www.mbsecurities.ca/</a>
Ontario	Ontario Securities Commission Toll free: 1-877-785-1555 E-mail : <a href="mailto:inquiries@osc.gov.on.ca">inquiries@osc.gov.on.ca</a> Website: <a href="http://www.osc.ca">www.osc.ca</a>
Québec	Autorité des marchés financiers Direction du financement des sociétés Toll free in Québec: 1-877-525-0337 E-mail: <a href="mailto:financement-participatif@lautorite.qc.ca">financement-participatif@lautorite.qc.ca</a> Website: <a href="http://www.lautorite.qc.ca">www.lautorite.qc.ca</a>
New Brunswick	Financial and Consumer Services Commission Toll free: 1-866-933-2222 E-mail: <a href="mailto:emf-md@fcnb.ca">emf-md@fcnb.ca</a> Website: <a href="http://www.fcnb.ca">www.fcnb.ca</a>
Nova Scotia	Nova Scotia Securities Commission Toll free in Nova Scotia: 1-855-424-2499 E-mail: <a href="mailto:nssc.crowdfunding@novascotia.ca">nssc.crowdfunding@novascotia.ca</a> Website: <a href="http://nssc.novascotia.ca">nssc.novascotia.ca</a>

*The information in this Guide is for educational purposes only and does not constitute legal advice.*

*If any information in this Guide is inconsistent with NI 45-110 Start-up Crowdfunding Registration and Prospectus Exemptions, please follow the instrument and the related forms.*

Published \*\*.

INCLUDES COMMENT LETTERS RECEIVED

Appendix A

Checklist for Exempt Funding Portals

**Documents required to be delivered to the regulators before a funding portal can rely on the start-up registration exemption:**

- A completed Form 45-110F3 *Funding Portal Information* (portal information form), with the following documents attached, signed and dated by the authorized individual certifying the portal information form:
  - The funding portal’s organizing documents (Item 8 of the portal information form)
  - A chart showing the funding portal’s structure and ownership (Item 9 of the portal information form)
  - Details and the relevant documents on the process and procedure for handling all funds relating to a start-up crowdfunding offering (Item 15 of the portal information form)
  - If any of the answers to questions 11 to 14 of the portal information form is “Yes”, complete details pertaining to such matters
- Completed Forms 45-110F4 *Portal Individual Information* (individual information form) for each principal of the funding portal, with the following documents attached to each individual information form:
  - If any of the answers to questions 11 to 18 of an individual information form is “Yes”, complete details pertaining to such matters; except for attachments pertaining to question 11, these attachments must be signed and dated by the authorized individual certifying the individual information form.

**Date the funding portal has delivered a completed portal information form and individual information forms, with necessary attachments, to the regulators: \_\_\_\_\_**

**Date the funding portal may begin operations if it has not received a notification from the regulator that it is not allowed to rely on the start-up registration exemption (30 days from the date the funding portal delivered the completed portal information form and individual information forms, with necessary attachments, to the regulators): \_\_\_\_\_**

INCLUDES COMMENT LETTERS RECEIVED

**Documents required to be delivered to the regulators after an exempt funding portal has started operations:**

- A completed Form 45-110F5 *Annual Working Capital Certification* (working capital certification) within ten (10) days of each calendar year-end that the funding portal intends to continue operating.

**Note: the working capital certification requires exempt funding portals to certify they have sufficient working capital to operate for at least the next 12 months.**

**We consider an exempt funding portal to have sufficient working capital if its current assets are equal or greater than its current liabilities. The terms “current assets” and “current liabilities” are defined under Canadian GAAP. Current assets generally include assets such as cash, accounts receivable, inventory and other assets that can be realised, sold or consumed within a year. Current liabilities generally include accounts payable, wages, taxes, and the portion of debt to come due within a year.**

**Good practices for compliance with this condition include:**

- **Keeping documentation that is regularly maintained to ensure effective monitoring; and**
  - **Establishing, maintaining and applying a system of controls and supervision sufficient to ensure the accuracy of the documents, including financial statements, used to support the funding portal’s assessment of working capital.**
- Updated portal information forms or individual information forms if there is a change to any of the information previously provided in these forms, within 30 days of the change.

ANNEX J

PROPOSED AMENDMENTS TO  
NATIONAL INSTRUMENT 13-101 *SYSTEM FOR ELECTRONIC DOCUMENT  
ANALYSIS AND RETRIEVAL (SEDAR)*

1. *Appendix A of National Instrument 13-101 System for Electronic Analysis and Retrieval (SEDAR) is amended by adding, in section II “Other Issuers (Reporting/Non-reporting)” and after section 6 of item E “Exempt Market Offerings and Disclosure”, the following:*
  7. Offering document required to be filed or delivered by an issuer under National Instrument 45-110 *Start-up Crowdfunding Registration and Prospectus Exemptions*. Alta, Sask, Man, Que, NB, PEI, NS, Nfld, YK, NWT, NU
2. This Instrument comes into force on [●].

ANNEX K

PROPOSED AMENDMENTS TO  
NATIONAL INSTRUMENT 45-102 *RESALE OF SECURITIES*

1. *National Instrument 45-102 Resale of Securities is amended by this Instrument.*
2. *Appendix D is amended by adding, before the title “Transitional and Other Provisions”, the following paragraph:*
  3. Except in Manitoba, the exemption from the prospectus requirement in section 5 [Exemption from Prospectus Requirement for Issuers] of National Instrument 45-110 *Start-up Crowdfunding Registration and Prospectus Exemptions*.
3. This Instrument comes into force on [•].



Mr. Alexander Morsink  
Managing Director and UDP  
Equivesto Canada Inc.  
3001-1 Adelaide Street East  
Toronto, Ontario M5E 0A2

July 13, 2020

Me Philippe Lebel  
Corporate Secretary and Executive Director, Legal Affairs  
Autorité des marchés financiers  
Place de la Cité, tour Cominar  
2640, boulevard Laurier, bureau 400  
Québec (Québec) G1V 5C1

The Secretary  
Ontario Securities Commission  
20 Queen Street West, 22nd Floor  
Toronto, Ontario M5H 3S8 Fax:

To:

Alberta Securities Commission  
Autorité des marchés financiers  
British Columbia Securities Commission  
Financial and Consumer Services Commission (New Brunswick)  
Financial and Consumer Affairs Authority of Saskatchewan  
Manitoba Securities Commission  
Nova Scotia Securities Commission  
Nunavut Securities Office  
Ontario Securities Commission  
Office of the Superintendent of Securities, Newfoundland and Labrador  
Office of the Superintendent of Securities, Northwest Territories  
Office of the Yukon Superintendent of Securities  
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

Re: CSA Notice and Request for Comment  
Proposed National Instrument 45-110: Start-up Crowdfunding Registration and Prospectus  
Exemptions (the "Proposed Instrument")

Thank you for the opportunity to comment on the Proposed Instrument.

Equivesto Canada Inc. (Equivesto) is an exempt market dealer recently registered in Ontario that has been established in order to operate an equity crowdfunding portal. As an exempt market dealer, Equivesto will conduct due diligence on issuers offering their securities through its portal as well as suitability assessments for prospective investors.



Equivesto welcomes the Canadian Securities Administrators' effort to harmonize regulation of start-up equity crowdfunding through the Proposed Instrument. While many equity crowdfunding offerings are directed at local investors, the associated issues are of interest to investors in multiple jurisdictions. The goal of keeping legal and regulatory costs low for issuers raising small amounts makes it important that there be one uniform set of rules across jurisdictions. Simply having one instrument with all the rules in it reduces the burden of those coming to the market for the first time.

Equivesto wishes to comment on two of the questions raised in the request for comments, individual investment limits and limits on the amount raised in a calendar.

### **Individual investment limits**

The Proposed Instrument would limit the investment by an investor in any one issue to \$2,500 or \$5,000 if the investor has obtained advice from a registered dealer that the investment is suitable.

Equivesto suggests that the investment limit for an investor who receives suitability advice from a registered dealer should be \$10,000.

The two-tiered investment limit is similar in approach to the investment limits under the offering memorandum exemption in section 2.9 of National Instrument 45-106: *Prospectus Exemptions* for eligible investors receiving suitability advice from a registered dealer. In that instrument the investment limit for a non-eligible investor is \$10,000 in five jurisdictions<sup>1</sup>, and effectively \$10,000 provided the investor is an individual and invests in only one issue under the exemption in a calendar year in six jurisdictions<sup>2</sup>.

Equivesto recognizes that there are differences in the disclosure regimes between the Proposed Instrument and National Instrument 45-106, such as the lack of a requirement for audited financial statements. Equivesto suggests that the differences support the low investment limit for an investor not receiving suitability advice, but that the involvement of a registered dealer provides a level of investor protection at least equal to and probably higher than that provided to a non-eligible investor under National Instrument 45-106 that receives no suitability advice. We therefore suggest that a \$10,000 investment limit is appropriate.

### Total raise amounts

The Proposed Instrument proposes a limit of \$1,000,000 on the amount an issuer can raise using the crowdfunding exemption and requests comments on whether the limit should be higher.

Equivesto suggests that a two-tier approach would be appropriate for the issuer limit.

The limit on the amount of a raise is based on investor protection considerations. Under the exemption, an unregistered portal can sell securities based on an offering document prepared by the issuer. While there are bases on which an entity may be disqualified from acting as a funding portal, the lack of a registration requirement means that there is no "fit and proper" review of a funding portal and its principals like there is for registered firms.

Equivesto suggests that where the offering is being made through a registered dealer that is subject to the requirements of National Instrument 31-103: Registration Requirements, Exemptions and Ongoing

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<sup>1</sup> Manitoba, Northwest Territories, Nunavut, Prince Edward Island and Yukon

<sup>2</sup> Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan



Registrant Obligations, there is additional layer of investor protection that we suggest supports a higher offering limit. We suggest that a limit of \$2,000,000 would be appropriate where the offering is made through a portal operated by a registered dealer. The issuer will continue to benefit from the lower costs of crowdfunding while investors receive the greater protections offered by a registered dealer.

We also suggest that where there is a higher limit on the amount invested it is important that the instrument include statutory liability for a misrepresentation in the offering document. We suggest that such a provision will not deter issuers, but will make them careful about their disclosure obligations.

#### **Instruments Offered**

The Proposed Instrument lists the types of securities that can be offered through crowdfunding. The commentary notes the goal of keeping crowdfunding offerings to straightforward securities and preventing the offering of more complex instruments such as asset-back securities and structured products.

Equivesto agrees with the objective of the definition of “eligible securities” and the notion that there may be other types of securities that would meet the objective of the definition. In general, we suggest that the objectives of the Proposed Instrument can be met without limiting the types of securities based on the corporate form.

We suggest that this could be accomplished through a general definition of “eligible securities” that captures the purpose of the Proposed Instrument, such as “instruments providing direct equity or debt capital to an operating business” with specific examples such as those listed in the Proposed Instrument. This would enable the sale of similar instruments such as trust units where there is a different corporate form than foreseen by the instruments.

We suggest that it would also be appropriate to specifically exclude some types of issuers such as investment funds, blind pools, asset-backed securities and structured products because they do not fit with the purposes of the Proposed Instruments.

Respectfully submitted

Alexander Morsink  
Managing Director and UDP



July 13, 2020

Alberta Securities Commission  
Autorité des marchés financiers  
British Columbia Securities Commission  
Financial and Consumer Services Commission (New Brunswick)  
Financial and Consumer Affairs Authority of Saskatchewan  
Manitoba Securities Commission  
Nova Scotia Securities Commission  
Nunavut Securities Office  
Ontario Securities Commission  
Office of the Superintendent of Securities, Newfoundland and Labrador  
Office of the Superintendent of Securities, Northwest Territories  
Office of the Yukon Superintendent of Securities  
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

In care of:

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Corporate Secretary and Executive Director, Legal Affairs  
Autorité des marchés financiers  
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and

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20 Queen Street West, 22nd Floor  
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**Subject: Proposed National Instrument 45-110 Start-up Crowdfunding Registration and Prospectus Exemptions (NI 45-110)**

Dear Regulators:

Thank you for the opportunity to provide comments and help refine the Proposed National Instrument (45-110). Co-operatives and Mutuals Canada welcomes the opportunity that this instrument will afford, to support capitalization and facilitate external financing opportunities. As you may be aware, Co-operative enterprises are present in almost every industry and serve a diversity of needs and markets ranging from housing, health and home care, funeral services, energy transportation, high-speed cable/internet services and much more. In order to meet their financing needs, co-operatives often secure debt financing, trade credit and funding from other sources however, they can also facilitate equity investment

though membership shares (usually at par value) and a class of non-voting investment shares that are used to raise capital for business growth.<sup>1</sup>

Our comments are in relation to the [Canada Cooperatives Act](#) and the sector in general, but we strongly encourage the various regulators to examine and consider the potential impact of the instrument according to their provincial and territorial jurisdictions, and the related co-operative legislation<sup>2</sup>.

### **About Co-operatives**

Co-operatives are enterprises based on the values of self-help, self-responsibility, democracy, equality, equity and solidarity. In the tradition of their founders, co-operative members believe in the ethical values of honesty, openness, social responsibility and caring for others. Combined, financial and non-financial co-operative businesses represent 3.4% of Canada's GDP, almost 200,000 jobs<sup>3</sup>, and have twice the survival rate of traditional businesses<sup>4</sup>.

One of the key principles by which co-operatives put their values into practice is Member Economic Participation, however this is usually not sufficient in terms of financing. As research has demonstrated<sup>5</sup>, more co-operatives request external funding (64.9%) than for all SMEs (47.1%).

### **About Co-operatives and Mutuels Canada (CMC)**

CMC is the national/bilingual apex organization with a mandate to support the development of Canada's national ecosystem of 8,000 small, mid-sized and large co-operative businesses. Our members are Canada's largest financial and non-financial co-operatives and mutuels, provincial/territorial co-operative associations, and national sector federations. In addition to representing some of the largest employers in their respective provinces and territories, CMC also provides a voice to the 99.1% of active non-financial co-operatives that are small and medium-sized enterprises (SME)<sup>6</sup>.

### **General Observations<sup>7</sup>**

It is important to note that in general, a membership share may not increase in value. It can usually only be redeemed by the co-op at its par value. Some legislation allows for investment shares (non-par value) to members and/or non-members. It should also be noted that:

- As per share capital corporations, a member's ownership is limited to the amount of the membership shares he or she holds.
- As opposed to share capital corporations, a member is entitled to only one vote at a general meeting, regardless of the number of membership shares he or she holds.

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<sup>1</sup> Government of Canada, [SME Profile: Financing and Growth of Co-operatives in Canada, 2017](#),

<sup>2</sup> Government of Canada, [Information Guide on Co-operatives](#)

<sup>3</sup> [Karaphillis, G., Duguid, F, Economic Impact of the Co-operative Sector in Canada, 2019](#)

<sup>4</sup> [Government of Canada, Co-operatives Secretariat, "Co-operatives: Solutions to 21st Century Challenges", 2011](#)

<sup>5</sup> Government of Canada, [2017 Survey on the Financing and Growth of Small and Medium Sized Enterprises](#) and [SME Profile: Financing and Growth of Co-operatives in Canada, 2017](#),

<sup>6</sup> Government of Canada, ["Financial and non-financial statistics on Canadian non-financial co-operatives"](#), 2019

<sup>7</sup> The observations reflect content available in the Government of Canada's [Information Guide on Co-operatives](#)

- Directors of the co-operative are elected by members. The articles of the co-operative may permit investment shareholders to elect directors by reason of a condition that has been fulfilled, or a fixed number or a percentage of the directors
- Holders of investment shares have restricted voting rights
- Co-operative legislation may limit or prohibit the payment of interest on share capital and Not-for-profit corporations cannot issue dividends or payments of capital to members.
- Surpluses may be paid into the reserve and/or to members in the form of patronage returns proportional to the business done by each member with the co-operative.
- Holders of members shares have meeting requirements (annual, special etc.) but there can also be meetings of investment shareholders.
- Dividends on any membership share are limited to the maximum percentage fixed in the articles.
- Instead of generating a profit for investors, co-operatives try to provide services to their members at the lowest possible cost. In general, the surplus (gross income less expenses) generated through business operations is either reinvested in the organization or is redistributed to the members in the form of patronage refunds. Patronage refunds are calculated in proportion to a member's use of the services provided by the co-operative, not the amount they have invested in the co-operative.
- In general, members can voluntarily withdraw from a co-operative and be redeemed for membership shares or amounts owed to the members
- Member shares are typically the first source of capital in a co-operative. Some provincial legislation may determine the dollar value of a co-op share (e.g. 10 dollars), but the co-op's by-laws will then determine the minimum number of \$10 shares each member must purchase, so as to meet the capital requirements for start-up. Member shares establish co-ownership of the enterprise and grant one vote per member.
- Preferred shares are sometimes issued by co-operatives—both to members and/or non-members—although this type of share does not offer title of co-ownership or voting privilege as does a member share.
- Investment shares are now allowed by most co-operative legislation, and they can be issued to members and non-members, sometimes only made available to members. The co-operative can then allocate a portion of its surplus as dividends on those shares. Investment shares generally do not confer voting privilege, and the legislation may place a limit on the percentage of share capital that can be held by non-members.

In response to the questions posed on pages 6 through 8:

1. Repealing MI 45-108. We take no position on this matter.
2. Individual investment limits: As it pertains to shares in a co-operative, we support the proposed higher limits of \$5,000 for each purchaser, or \$10,000 if the purchaser has received suitability advice from a registered dealer. This cap would need to be kept in mind as part of the share

offering through the instrument, as the value of some co-operative member and investment shares are significantly different and may exceed the limit. Please note that co-operative share structures and governance practices offer other safeguards and that co-operatives usually serve the needs of a specific community or like-minded group. This instrument could likely increase the number of new stakeholders who are members or investors, that share those goals and common enterprise mindset. In addition, and due to their legal ownership and governance structure, co-operative enterprises cannot be controlled by foreign interests.

3. Offering limit. We support the higher offering limit proposed in 45-110 (\$1,500,000), but would prefer to see the cap eliminated altogether. Although it seems contradictory to the instrument's crowdfunding purpose, it remains a notional amount and could mitigate the participation of potential investors in financing opportunities.
4. Statutory liability for misrepresentations in offering document. We do not feel that this is required due to the other investor protection measures. It may actually act as a disincentive for potential Directors, who are usually deemed to exercise their powers and discharge their duties in good faith, as well as act honestly, with a view to the best interests of the co-operative.<sup>8</sup>
5. Definition of "eligible securities". We recommend that the instrument be structured to allow for co-operative member shares and investment shares, in order to permit investors to participate in the growth and financing of co-operatives, that have been part of Canada's marketplace for over a century. Although these are somewhat similar in purpose to the traditional publicly traded shares, they come with different rights and expectations which should be reflected in both the reference documents of the instrument and the offering documents.

#### Other Comments

6. Prohibition on capital raising for investments in an unspecified business. This restriction is a significant concern to Co-operatives and Mutuels Canada and we recommend that it be eliminated altogether. Investors, and in particular the growing community of Impact Investors and social impact funds, are usually familiar with co-operatives. In collaboration with sector leaders, innovative and locally-focused solutions such as [Community Investment Co-operatives](#) and co-operative real-estate ventures ([Union Sustainable Co-operative](#) for example) are emerging. It is our understanding that this prohibition would prevent such initiatives from raising capital through the instrument and therefore limit their growth and impact potential.
7. There is a great opportunity to improve, leverage and disseminate this instrument through the [Investment Readiness Program](#) (IRP) ecosystem, which is part of the Government of Canada's Social Innovation/Social Finance Strategy. In particular, Co-operatives and Mutuels Canada recommends that the regulators engage with the IRP programs' identified financial partners, as well as the [National Impact Investment Practitioners' Table](#), in order to seek out their advice and expertise.

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8

We welcome steps taken to expand the range of capital raising options for co-operatives and other forms of businesses and look forward to the anticipated expansion of crowdfunding opportunities.

Sincerely,

André Beaudry  
Executive Director  
Co-operatives and Mutuels Canada



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Date: 27 May 2020

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To:

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British Columbia Securities Commission  
Financial and Consumer Services Commission (New Brunswick)  
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Office of the Superintendent of Securities, Newfoundland and Labrador  
Office of the Superintendent of Securities, Northwest Territories  
Office of the Yukon Superintendent of Securities  
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward  
Island

Re:

CSA Notice and Request for Comment  
Proposed National Instrument 45-110 Start-up Crowdfunding Registration and  
Prospectus Exemptions

## NCFA SUBMISSION TO CSA ON PROPOSED HARMONIZED RULES FOR START-UP SECURITIES CROWDFUNDING

The Canadian Securities Administrators (CSA) are seeking comments on proposed harmonized rules for start-up securities crowdfunding by 27 May 2020.

The National Crowdfunding and Fintech Association of Canada (NCFA) welcomes this initiative. The following addresses the specifics of the proposed rules, but please see our previous submissions on crowdfunding in Canada on our website in the advocacy section for more details – <https://ncfacanada.org/advocacy/>.

### 1. Harmonization

NCFA has argued for many years that CSA crowdfunding rules are unduly constraining, and this enhanced harmonization will enable a greater use of crowdfunding across Canada, help to fill a funding gap, and allow more retail investors to invest in businesses whose purpose they support.

### 2. Impact of the pandemic on fundraising

Today, early stage Ventures are the most likely not to get funded as they lack established relationships with banks (including BDC) and they have been amongst the hardest hit by the pandemic. Many VC funds are moving towards growth equity (later stage) investing and foreign investors mainly invest at later stages.

### 3. Funding cap

While the maximum total amount that could be raised by a business under the crowdfunding prospectus exemption per year would increase from \$500,000 to \$1 million, we continue to support a much higher amount of \$5 million (and that a broader range of companies be able to participate). In the US, where Reg CF has shown reasonable success, proposed SEC changes to Reg CF include increasing the maximum raise from \$1 million US to \$5 million. In the result, “the industry is poised to take off”. See – <https://crowdfundcapitaladvisors.com/downloads/regulation-crowdfunding-4-years-in-review/> and <https://www.sec.gov/news/press-release/2020-55>.

We note the 60% success rate in 2019 mentioned in the above US report, and the failure of the researchers to find any evidence of fraud. Unfortunately, so far as we are aware, similar data is not collected in Canada.

We also note that the US is joining other jurisdictions to enable a higher raise, for example:

- in Australia: companies can raise AUD 5M (<https://ncfacanada.org/5-million-equity-crowdfunding-extended-to-private-companies/>)
- in the UK and Germany: companies can raise €8M (<https://www.crowdfundinsider.com/2018/07/135781-uk-government-ups-crowdfunding-without-prospectus-to-e8-million-matching-germany/>).

### 4. Investor cap

While we welcome the proposal to increase the maximum investment an investor can make in a distribution to \$2,500 (from \$1,500), with a higher limit of \$5,000 if the purchaser obtains advice from a registered dealer, again we think the limit should be higher.

The investor cap should be raised to at least \$5,000 per distribution, or \$10,000 a positive suitability determination by a registered dealer. The commission may also consider implementing a maximum investment value per calendar year across all distributions such as \$50,000 maximum per calendar year for an eligible investor.

What little data we have in Canada shows that the success rate of crowdfunded start-ups is relatively high (compared to all start-ups) and that investors, if educated about crowdfunding, welcome the opportunity to invest directly in ideas that they can connect with. In other jurisdictions, crowdfunding is an important source of start-up capital.

We need to make start-up capital easier to access in Canada and to make the system more competitive with other jurisdictions:

- UK does not have an investor cap
- In Australia, retail investors can invest up to 10,000 AUD per year
- In Germany, there is a limit of 10,000 EUR per investment for private individuals, but they cannot invest more than double their monthly net income
- 90% of the US States which have adopted or are considering adopting an intrastate crowdfunding exemption have chosen either \$5,000 or \$10,000 per single investment, unless the investor is accredited.

Eligible investors should be able to invest up to \$100,000 with a positive suitability determination by a registered dealer

Accredited investors should be able to invest without caps (as they may already invest an unlimited amount under the accredited investor exemption).

The commission should consider expanding the accredited investor exemption definition to allow a category of ‘qualified accredited investors’ that any individual can qualify if they pass a formal test, such as the Canadian Securities Course (CSC) or equivalently demonstrate the knowledge and ability to accept risks involved. This would encourage more qualified Canadians to participate in private capital markets and be inline with [similar initiatives in the U.S.](#)

### **5. Working capital certification**

A funding portal relying on the start-up crowdfunding registration exemption must deliver to the regulator in each jurisdiction a completed Form 45 110F5 Annual Working Capital Certification within 10 days of each calendar year-end. The portal must certify that it has sufficient working capital to continue its operations for at least the next 12 months. If the funding portal becomes insolvent or discontinues operations, it must promptly notify the securities regulatory authority or the regulator, and any purchasers for which it holds assets, of the process the portal will use to return the assets to these purchasers.

While a portal must be and remain solvent to operate, we believe that maintaining a 12 month capital requirement for crowdfunding dealers and funding portal registrants would be challenging especially given the pressure of small margins and the impact of COVID-19 now and for the foreseeable future.

### **6. Statutory liability**

Under the Instrument, issuers, and in some jurisdictions, the directors and executives signing the offering document will be subject to statutory liability if the offering document provided to the investor contains a misrepresentation.

Due to the more limited resources of smaller issuers, this provision should only apply where the aggregate proceeds exceed \$1.5 Million.

#### **7. Eligible securities**

These are: a common share; a non-convertible preference share; a security convertible into a common or a preference share; a non-convertible debt security linked to a fixed or floating interest rate; and a unit of a limited partnership.

- We would like to suggest that convertible preference shares be considered eligible securities within this instrument.
- Units of a trust should also be included as eligible securities.

#### **8. Sunset clause**

The absence of an expiry date in the instrument will enhance certainty for market participants.

#### **9. Repeal of MI 45-108**

MI 45-108 should be repealed.

#### **10. Reports of Exempt Distribution**

The regulator should consider fee reduction for filing reports of exempt distributions - these can add up to around \$1,500 per raise which is a significant fee particularly for a smaller issuer. One potential way to manage this would be to allow registered dealers and funding portals to file reports of exempt distributions in batches (ie. once a quarter) and only pay a single fee per batch of transactions.

#### **11. Peer-to-Peer Lending**

The securities regime should contemplate a separate set of requirements for non-convertible loans made between a borrower and lenders. In other jurisdictions, such a transaction comes with a much lighter regulatory burden which is important for it to be feasible for a peer-to-peer lending market to exist.

Specifically, no offering document should be required to be prepared by a borrower where the transaction taking place is a simple loan made between lenders and a borrower - rather the loans should be made under a standard form loan agreement facilitated by a platform. In order to minimize burden on the borrower, the platform should be required to undertake certain due diligence on the borrower and determine an interest rate, loan amount and repayment structure - the borrower would thereby only be required to execute a loan agreement in order to transact in this capacity.

The current proposed regime would result in adverse selection bias as only borrowers that are less creditworthy would be likely to go to the lengths required under the crowdfunding regime as there are currently other options in the market to raise capital that are less burdensome for the borrower such as private lenders.

## 12. General comments

NCFA continues to ask for government support to ensure the Canadian fintech sector is not being held back and remains competitive with international comparators such as in the UK and US including:

- Improved data collection-analysis and reporting transparency. The lack of basic data (mirroring what is happening with respect to Coronavirus) is a recurring theme that requires a solution. NCFA is willing to collaborate with any government to help develop and provide a solution;
- Allow advertising and general solicitation;
- Consider bad actor check on management and beneficial shareholders (shared database);
- Provide (funding for) ongoing education;
- Take advantage of proven tax and other incentives;
- Be proactive and champion innovation;
- And maintain a public list of [only active operating](#) funding portals and registrants with a regular check of their operating status combined with a definition of ‘active’ portals (ie., >1 capital raise in the proceeding 12 months).

See select NCFA submissions:

[NCFA meeting with OSC - briefing notes](#) on Aug 24, 2017

[NCFA submission to Ontario Minister of Finance: Urgent Need for Regulatory Change \(report | summary\)](#) on Oct 18 2017

[NCFA meeting with BCSC - briefing notes](#) on Aug 15, 2017

[NCFA Response to ASC Request for comments 45-108](#) on Sep 9, 2018

On behalf of NCFA

Craig Asano

Executive Director and CEO

(416) 618-0254

### About NCFA

The National Crowdfunding & Fintech Association (NCFA Canada) is a financial innovation ecosystem that provides education, market intelligence, industry stewardship, networking and funding opportunities and services to thousands of community members and works closely with industry, government, partners, and affiliates to create a vibrant and innovative fintech and funding industry in Canada.

For more information, please visit: [ncfacanada.org](http://ncfacanada.org)



## 45-110 Proposed National Instrument 45-110 Start-up Crowdfunding Registration and Prospectus Exemptions [CSA Notice and Request for Comment]

### Vested Technology Comments on CSA Proposed National Instrument 45-110

**Vested Technology Corp.** is a British Columbia based equity crowdfunding portal that provides private start-up companies a platform on which they can raise funds via crowdfunding.

Vested has raised over \$1.6 Million in funds for over 40 companies, in over 4,700 online transactions since 2016, utilizing the crowdfunding exemption.

Vested Technology Corp. ("Vested") welcomes most of the changes to the crowdfunding rules as proposed by the Canadian Securities Administrators on February 27, 2020 with comment below.

Please see our comments below with respect to specific items in the proposed Instrument.

- Enhanced harmonization will enable a greater use of crowdfunding across Canada, help to fill a funding gap, and allow more retail investors to support small businesses. Harmonizing the rules across all Provinces in Canada will also streamline the crowdfunding process.
- While the maximum total amount that could be raised by a business under the crowdfunding prospectus exemption per year would increase from \$500,000 to \$1 million, we support a much higher amount (and that a broader range of companies be able to participate). Other countries that have adopted crowdfunding, such as the UK, Australia and the U.S., have higher crowdfunding limits (ranging from \$5M AUS to €8M) and their programs are gaining significant traction within the capital markets.
- Cross border crowdfunding with other International jurisdictions should be considered, such as in the UK.
- While we welcome the proposal to increase the maximum investment an investor can make in a distribution to \$2,500 (from \$1,500), with a higher limit of \$5,000 if the purchaser obtains advice from a registered dealer, again we think the limit should be higher.

The investor cap should be raised to \$5,000 per distribution, or \$10,000 with advice.

Accredited investors should be able to invest without caps utilizing the crowdfunding portal (as they may already invest an unlimited amount under the accredited investor exemption).

- MI 45-108 should be repealed.

Sincerely,

David Patterson, CEO  
David Brook, COO

Vested Technology Corp.



COMMUNITY IMPACT  
INVESTMENT COALITION

OF BRITISH COLUMBIA

17 June, 2020

Alberta Securities Commission

Autorité des marchés financiers

British Columbia Securities Commission

Financial and Consumer Services Commission (New Brunswick)

Financial and Consumer Affairs Authority of Saskatchewan

Manitoba Securities Commission

Nova Scotia Securities Commission

Nunavut Securities Office

Ontario Securities Commission

Office of the Superintendent of Securities, Newfoundland and Labrador

Office of the Superintendent of Securities, Northwest Territories

Office of the Yukon Superintendent of Securities

Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

In care of:

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Dear Sirs/Mesdames:

**Re: Proposed National Instrument 45-110 Start-up Crowdfunding Registration and Prospectus Exemptions (NI 45-110)**

Thank you for the opportunity to provide comments on NI45-110, the consequential amendments and the Guides (as defined in the Request for Comments dated February 27, 2020). Our comments are directed at the anticipated impact of these changes on capital raising, specifically by Investment Co-operatives incorporated under the *Cooperative Association Act* (BC).

Our Coalition works very closely with the British Columbia Co-op Association (BCCA). The BCCIIC and BCCA recently shared call with the BC Securities Commission staff to discuss the proposed NI 45-110 and it was recommended we provide a public comment. After this call, BCCIIC and BCCA representatives discussed their potential recommendations. With confirmation from the BCCIIC membership and BCCA, our Coalition's recommendations remain united with BCCAs. There is no material change in between our recommendations and those of the BCCA's submission on June 1, 2020, hence the same language below.

#### **About the BCCIIC**

The BC Community Impact Investment Coalition brings together co-ops and other groups from across BC to build a movement for local ethical investing that benefits rural and urban communities.

Members are involved in raising capital in their own communities to invest in local businesses and projects that provide a financial return to their members while also creating social, economic and environmental impacts for their communities.

All of our members are trying to build sustainable and diversified local economies. We believe in buying and investing locally for the future resilience of our communities. We would like to repatriate some of the \$5.1 Billion (2015 Stats Canada) in investments made by BC residents each year that go into stocks, shares and mutual funds outside of our province, and redirect this into local investments for community benefits.

#### **General Observations**

In British Columbia, co-ops seeking to raise capital can do so under the dealer registration and prospectus exemptions which are available to all issuers. In addition, they may issue securities under the dealer registration and prospectus exemptions set out in BC Instrument 45-530, *Exemptions for securities issued by a cooperative association* (BCI 45-530).

Under that exemption, BC co-ops can issue an unlimited number of membership shares, subject to a limit of \$5,000 per member. BC co-ops may also issue investment shares under BCI 45-530, provided that all the following conditions are met:

1. the co-op has no more than 150 members;
2. the purchaser has been a member of the co-op for at least 12 months or, if the coop has not been incorporated for 12 months, from inception; and
3. before the issuance, the issuer receives confirmation that the total investment of the purchaser in the co-op will be no more than \$5,000, including any membership shares held by the purchaser.

In a number of other Canadian jurisdictions, other local exemptions apply to facilitate capital raising by co-operatives.

### Co-operatives

Co-ops are democratic organizations, owned and operated by their members for the benefit of those members. Like companies and other business corporations, they issue shares and use the capital raised thereby to pursue their activities. They differ from companies in some important ways, as follows:

1. Each member of a co-op has one vote, regardless of the number of shares they may hold. There is no such thing as a majority shareholder capable of overriding the votes of other shareholders. This voting structure makes a co-op a very unattractive vehicle for fraud, and offers protection against oppression of minority shareholders.
2. On ceasing to be a member, shareholders are entitled to have their shares redeemed within a time period set out in the Rules of the co-op (similar to the Articles of a company) or, if the Rules do not set a time, immediately and unconditionally. These redemption rights afford a degree of investor protection not commonly found in company shares.
3. A BC Co-op is limited in the number of outside directors it may have. At least 80% of the directors must be members or representatives of corporate members. This means that the interests of those directors are aligned with those of the co-op's member investors.
4. Members typically receive limited return on investment in the form of dividends. Coops pay patronage dividends based upon the amount of business the member has done with the co-op. Although holders of investment shares and member shares may receive dividends, holders of those shares do not typically anticipate significant returns by way of dividends.
5. The rules of a co-op typically require the directors to set aside a portion of its profits as reserves to address contingencies.
6. A co-op has, in its Memorandum of Association, stated purposes which it must pursue.

Co-ops are uniquely structured to support local economies, address local needs and help keep capital local. While interest in the co-op model is riding high -in reflection of the many needs faced by communities- raising capital for co-ops is a challenge. The requested changes are a practical way of unleashing local capital to serve local communities.

### Questions Posed in the CSA Notice

Our responses to the questions posed in the Notice (on pp.6-8) are as follows:

1. Repealing MI 45-108. We take no position on this matter.
2. Individual investment limits: We support the proposed higher limits of \$5,000 for each purchaser, or \$10,000 if the purchaser has received suitability advice from a registered dealer. Co-operatives are typically structured as vehicles for individuals in a community to pool their resources for a common enterprise; they are not seeking to raise small amounts of capital from large numbers of investors who have no other connection. A low threshold per investor would make this exemption unattractive to most co-ops, as they would probably choose to rely on other exemptions instead. We believe that the other protections contained in the 45-110, such as the provision of an offering document and the requirement that funds be held in trust for a two day cooling off period, are sufficient to protect investors.
3. Offering limit. We support the higher offering limit proposed in 45-110 (\$1,500,000), if the CSA is not prepared to eliminate or raise this cap. In British Columbia the cost of real estate, in particular, makes it difficult to undertake much in the way of business projects with less than \$1,500,000. If there is an appropriate limit per investor, a cooling off period, a disclosure document, and a regulated funding portal, we see no reason why the limit on aggregate proceeds should be low. Those protections will reduce the risk to each investors, and it is difficult to see that investors will be better protected by such an offering limit. If it is too difficult to raise equity, businesses may fail due to lack of capital. That is not in the best interests of investors. We suggest that a higher limit is preferable, or no limit at all.

4. Statutory liability for misrepresentations in offering document. We think this adds little to the other investor protection measures, due to the low probability that investors will pursue such remedies. Genuinely fraudulent or careless directors will not be deterred, but honest directors may be apprehensive.
5. Definition of “eligible securities”. We submit that this should be expanded to include the two types of shares which may be issued by BC Co-ops: member shares and investment shares. Member shares are analogous to common shares in a company, while investment shares typically have the attributes of preferred shares. There is absolutely no principled reason for excluding these from the list of eligible securities. As noted earlier, they have redemption rights (when held by members) which are not commonly available in respect of other securities. These shares are typically very straightforward in their rights and restrictions; they are not complex securities which are difficult for investors to understand. Member shares, in particular, are very straightforward because a co-op may only have one class of member shares, and each member is entitled to one vote regardless of the number of membership shares they hold. It is not possible for a co-op to create multiple member share classes with different voting rights and entitlements.

#### Other Comments

6. Prohibition on capital raising for investments in an unspecified business. We submit that this restriction is unnecessary. Investors are adequately protected by the existing regulation of investment funds. This prohibition would render the proposed 45-110 unusable for community investment co-ops (CICs), which are established so that members can pool their resources in order to provide a range of business supports and investment in a number of local businesses. These CICs are careful to operate as venture capital organizations, taking an active mentorship role with respect to the businesses they support. We submit that they should be able to use this exemption where appropriate. We can see no principled reason to exclude them from this form of capital raising specifically.

We welcome steps taken to expand the range of capital raising options for Investment Co-ops and other forms of businesses, and look forward to the anticipated expansion of crowdfunding opportunities.

Yours sincerely,

Eden Yesh, BC Community Impact Investment Coalition Chair  
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May 20, 2020

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From: James S. Hershaw CFA MBA BSC

The following comments are personal opinions and do not reflect opinions of organizations that the author has consulting roles with. The expertise for these opinions is drawn from over 30 years of capital markets experience including a current role as Director Capital Markets & Chief Compliance Officer of Crowdmatrix. (Profile available on Linked In)

Crowdmatrix is a registered Exempt Market Dealer and has developed automated KYC and client onboarding systems for exempt investments.

### Comments on Proposed NI 45-110 Startup Crowdfunding Registration and Prospectus Exemptions

*"I skate to where the puck is going to be, not where it has been" Wayne Gretzky*

#### Connecting Curated Issuers with Qualified Investors

##### Introduction:

As a long-standing capital markets participant, registrant and entrepreneur I have contributed input to areas of our economy and society that makes Canada a better place. When Canada prospers, we all prosper. As such, both directly and indirectly through associations, I have provided input and consulting on the evolution of capital markets, Canadian Crowdfunding regulations, and related digital infrastructure and businesses. Specifically, I was a member of the OSC SME Committee that examined ways to assist Canadian businesses to raise capital which included the introduction of the Ontario NI 45-108 Crowdfunding regulations.

It is important to look at the brief history of Crowdfunding and network theory in the context of newly created digital networks and software systems that have attempted to forge new pathways to connect curated Issuers with qualified Investors.

This CSA consultation paper highlights the lack of success in Canada building new digital business models based on the various provincial “Crowdfunding” regulations. Meanwhile in other parts of the internet economy Canadian network platforms are creating new business models and services with substantial utility and valuation. Harmonization of provincial regulations is a minimum goal particularly from a global competitiveness perspective, but this is a small part of the answer.

The new fuel of the 21<sup>st</sup> century is data and how it is harnessed. Canada must build next generation of national capital markets digital infrastructure to achieve policy goals ranging from economic growth to enforcing FINTRAC’s Anti Money Laundering (AML) mandate. Efficient data access and analysis of Issuers capital structures, financial reporting and business model assumptions allow vibrant capital markets. Efficient tools are necessary to allow Capital Market Registrants to efficiently fulfill Know Your Client (KYC) and Know Your Product (KYP) responsibilities within sustainable business models. All stakeholders including Registrants, professional advisors, and qualified Canadian and global investors must be able to easily access valid data on the next generation of emerging Canadian Issuers.

Canadian Investors are also a critical dataset for capital markets. Shareholder records systems are a dated with disparate systems utilizing the Canadian Depository System (CDS), transfer agents, independent legal shareholder registers and even spreadsheets. Strategic integration at the national level for the next generation of systems will create new business models and greater efficiency for all Canadian Issuers and Investors.

“Crowdfunding” through online discount brokerage platforms have successfully operated for over 20 years. Canadians can easily access and invest in SEDAR filing Canadian reporting Issuers. Secondary markets for public companies and ETFs have allowed discretionary access to all investors (Accredited and Non-Accredited) to the broadest range of Issuers. There needs to be the same simple investors access to primary funding rounds as there is with secondary trading markets.

The network of SEDAR Reporting Issuers of companies, funds and trusts (est. 10,000 Issuers x 10,000,000 Canadian Investors) are the most appropriate and profitable focus of CSA Registrants. This network can be significantly expanded with new digital infrastructures.

It is encouraging to see the SEDAR renewal project has been initiated, but there appears to a lack of ambition in the goals, technology, governance structure, branding and ownership participation of this important Canadian database. It was discouraging to see only nine NI 13-101 consultation responses where provided in July 2019 on the SEDAR renewal project. There has not been a public plan, pitch deck or disclosure document that outlines the detailed scope of SEDAR renewal project. As a minimum the CSA should disclose detailed plans that can be evaluated by all stakeholders. Crowd-sourced innovation may surprise on the upside. SEDAR collects data for the core part of the Canadian economy. If this meta-data within SEDAR was in a format for new user applications, the SEDAR governance entity would likely have a multi-billion dollar valuation.

The SEDAR renewal project does provide an aspirational template to create a new alternative Canadian **Qualified Issuer Database (QID)**. QID would serve a verified data source for the next level of 100,000 Canadian Issuers (below the 10,000 SEDAR Reporting Issuers) that seek to access capital and strategic

investors. The QID companies would then have a pathway to potentially graduate to SEDAR Reporting Issuer status. The QID proposal is included with this consultation because this new reporting database may be an important efficiency catalyst to allow Canadian Crowdfunding to achieve widespread success.

The annual budgets of capital markets securities regulators, related associations and related federal regulators are an estimated \$1 Billion per year. The value of the public regulatory stack, systems and databases are very significant. The connected networks of all the stakeholders are critical to the functioning of the Canadian capital markets. It is important that these combined Canadian regulatory public assets and budgets are optimized to reflect the Canadian economy of 2030 and beyond. The resources are available to develop a visionary plan.

This response expands on the specific questions in this NI 45-110 Consultation. The current NI 45-110 proposal, even if harmonized, does not seem ambitious enough to achieve intended results. NI 45-110 may even be a regulatory failure like the MI 45-108 regulations. The initial part of this response discusses more ambitious policy goals with some rationale. The final Annex A answers question 1 -5 of the Consultation paper.

#### **Summary Recommendations:**

##### **1. Level 1 - Startup Issuers (Increase Private Exemption from 50 to 100 Investors)**

Startup Issuers that cannot provide financial statements are not likely to be appropriate Issuer clients (for Capital Market Registrants under CSA jurisdiction) to provide curation, due diligence and Know Your Product (KYP) services. Startup Issuers are an important group of entrepreneurial Issuers that needs to be allowed to develop but not necessarily under rule-based CSA oversight.

The term **Startup Crowdfunding Registration and Prospectus Exemptions (NI 45-110)**, with emphasis on **Startup**, may be a misleading term to include in any type of CSA order or exemption as it may imply that Registrant organizations (EMD, Investment Dealer or Regulators) have completed an appropriate due diligence, capitalization structure and valuation review.

The proposed NI 45-110 is a reasonable attempt to harmonize existing provincial crowdfunding regulations, but it still has many of the same regulatory rules as the existing Crowdfunding exemptions that have not produced any significant interest as a business model or evidence that any significant funds will be raised for Canadian companies. It would be useful if the noted 11 funding portals that have relied on the start-up exemption provided insights on experience to date and potential for the future.

Rather than restricting Startup Issuer funding innovation we should encourage new approaches that are not governed by CSA oversight. We should allow funding networks more flexibility while meeting Know Your Client (KYC) and AML goals. This will allow a broader range of Canadian investors and stakeholders to participate in the earliest stage ecosystem if they wish to assume the properly disclosed risk.

As an alternative to CSA oversight, the earliest stage Startup Issuers should be allowed to seek up to 100 investors (currently 50 limit) using the private issuer exemption. More analysis is required but the 100 investor limit would be across all security tranches for each Issuer's capitalization structure.

These Startup Issuers should be able to use different strategies to obtain a maximum of 100 investors. This includes direct online investor processing systems and virtual and live investor events that are profiled and linked directly to Issuer's websites, email and text communications. Private access automated KYC and subscription form digital signature systems must be linked directly to the Issuer's communications. These automated investor processing systems will form a key part of the Issuer's start-up strategy to collect and verify the initial 100 investors. Third party KYC review of these initial investors can be completed by compliance specialists.

The Issuer's executive management and directors will explain the investment merits of the offering and assume all disclosure liabilities. The Issuer must obtain appropriate legal and compliance services to certify that any final securities title is valid, and that all Investors (Individual and Corporate) meet FINTRAC AML KYC regulations and fit into an appropriate Accredited Investor exemption.

FINTRAC would have the federal mandate to investigate any Canadian Issuer to ensure that AML KYC and appropriate disclosures are achieved. A recent emphasis by FINTRAC on possible AML non-compliance for real estate companies suggests that it is companies with less than 100 shareholders that need this type of oversight. Federal oversight mandates already exist through business registration numbers and HST registration that are necessary to establish legitimate Canadian companies.

CSA Registrants may choose to provide advisory consulting services to these earliest stage Startup Issuers but not under the full mandate or responsibility of a CSA Registrant.

## 2. **Level 2 – Qualified Issuers (Create a new Issuer reporting category)**

Qualified Issuers (QI) will be a new voluntary regulated category and reporting system like SEDAR Reporting Issuers. Qualified Issuers will have established all the necessary Startup Issuer foundational steps including valid incorporation and federal registrations, have multiple arms-length investors, established financial and CRA tax reporting systems, pass FINTRAC Anti Money Laundering (AML) standards through Canadian bank account certification and have a curated business plan.

These Qualified Issuer curation steps will allow CSA Registrants to efficiently apply all the latest digital platform crowdfunding and network strategies (both current and envisioned). These new CSA Registrant systems can then provide capital and strategic investors with Registrant compensation in the form of cash, stock, warrants, carry or any other structure.

The SEDAR model with an estimated 10,000 Reporting Issuers provides a template for Qualified Issuers. New processes, databases and network models must be created to efficiently manage the next level of an estimated 100,000 Canadian Qualified Issuers.

## 3. **Create a Canadian Qualified Issuer Database (QID).**

The QID will draw on the experiences of the SEDAR model but be more comprehensive and under federal jurisdiction with input / oversight of FINTRAC for AML, Canada Revenue Agency (CRA) for

taxation and Canadian banks. The structure of ownership and fees for QID will be innovative to ensure there are incentives for these Qualified Issuers to participate in this new reporting system. Registration with QID will be part of the growth path for emerging Issuers. These Canadian Qualified Issuers may have necessary certifications to be allowed as TSFA and RRSP investments. QID would be a foundational reporting structure for possible blockchain (or future equivalent) based Issuers. QID will be an appropriate curated Issuer database for CSA Registrants to target as clients.

The QID may provide a pathway for smaller real estate development companies that do not seek SEDAR Reporting Issuer status but may need a broader range of investors to provide capital for local projects. Other examples of QID companies are likely in all parts of the private sector economy.

QID would be designed to utilize the latest search, analysis and possible Artificial Intelligence systems. QID companies will be able to enable optional privacy switches to restrict access to certain filings. Other innovative QID features will be developed based on user requirements and state of art technology.

#### 4. **Level 3 – Reporting Issuers (SEDAR)**

Reporting Issuers on SEDAR are typically the primary focus of Capital Market Registrants. Audited financials and continuous disclosure are a higher burden but are appropriate as these Issuers can utilize the full array of Capital Market services and strategies. The SEDAR renewal project should ensure that this database is designed for capital market services of 2030 and beyond with greater integration with FINTRAC, CRA, Canadian Banks and global online reporting systems. There may also be greater use of blockchain (or future equivalent) securitization systems that attract global investors.

Details on the proposed SEDAR renewal project should be the subject of widespread public consultation and be open to the widest range of innovation on fees structures and ownership incentives.

#### 5. **Create a new Individual Investor (II) Prospectus Exemption (Maximum investment of \$5000)**

All Canadians regardless of net worth, income or qualifications should have the right to participate in the widest range of investments with simple \$5000 limit. This will allow more strategic Non-Accredited Investors to participate in Startup Issuers and any other type of financing. The **Individual Investor** prospectus exemption category is simple and can then be added to any offering documents for any Issuer that seek to raise funds with or without the assistance of a Registrant. It would be at the discretion of Issuers if they wish to include the Individual Investor prospectus exemption on subscription forms.

#### 6. **Create a new Qualified Accredited Investor (QAI) Prospectus Exemption**

Accredited investor exemptions have been created as a policy for individual investor protection. There are many sophisticated non-accredited investors that should be allowed to qualify as an

Accredited Investor by demonstrating expertise through personal education, testing and certification. This new Qualified Accredited Investor prospectus exemption will be attainable by a larger number of Canadians. The rules on beneficial ownership of corporations and trusts will also allow for Qualified Accredited Investors in the shareholding structure.

Canadian investors have a wide range of individual circumstances to assess the merits of investments. There are not any individual barriers to open an online discount brokerage account which can access a wide range of investments.

Any Canadian should be allowed to qualify and maintain a Qualified Accredited Investor exemption if they complete designated online education tests and complete standard KYC / AML authentication steps.

Completing the Canadian Securities Course (or equivalent) with annual updates would demonstrate knowledge and an interest in participating in a wider range of alternative exempt investments. This would allow any Canadian to achieve unrestricted Accredited Investor status. A greater number of active participants will improve the quality and liquidity of Canadian exempt capital markets.

The existing Accredited Investor categories based on wealth and income would remain.

#### 7. **Create a new Verified Accredited Investor Database (VAID)**

A national voluntary **Verified Accredited Investor Database (VAID)** would verify all existing Accredited Investors in Canada. This would include existing Accredited Investor categories and the proposed new Qualified Accredited Investor.

The VAID would allow efficient communication with privacy consent of investment offerings on digital Crowdfunding platforms. Accredited Investors (Individual and Corporate) by categories of net worth and income will also be encouraged with direct incentives to join and maintain the VAID status to allow efficient access to the broadest range of investments. VAID status will be universal, private and can be efficiently used by many types of financial services companies with greater reliability.

It is estimated if the VAID was created, the active existing Qualified Accredited Investor population in Canada might expand from 400,000 to 4,000,000 by 2030. Canadians born in the 2000 or later will be very proficient at online education and may well be one of the most proficient, informed and active Canadian investor groups in history. Low interest rates will require a much greater need to understand alternative investments when traditional bank accounts likely provide zero interest savings.

The network effect of the VAID with consent access to the investment offerings should not be underestimated. There are many ways that private sector capital market participants and other related service providers can leverage the common benefits of the VAID and QID. VAID and QID could potentially be a Canadian network effect of (4,000,000 x 100,000).

The VAID database can only be effective if it is created under a federal regulated mandate. It will belong to all Canadians. This type of Accredited Investor verification will also be useful with the future growth of regulated blockchain (or a future equivalent) based global markets.

The proposed Qualified Accredited Investor prospectus exemption also provides aspirational merit-based access to every Canadian compared to the existing Accredited Investor categories that discriminates based on wealth and income.

## **History of Investment Crowdfunding**

### **Crowdfunding 2010**

The term crowdfunding (for investments) came into popular use around 2010 when Angelist was formed. It was in response to the 2008/9 financial crisis and recession that caused politicians and advocates to find more efficient ways to support and finance smaller companies

The concept of network platform business model expanded into many sectors of the economy. Angelist, in the heart of Silicon Valley wealth, stood out as syndicated technology investment platform that captured interest of venture capitalists, and traditional capital market participants. In response politicians and government responded with studies and consultations that were initiated by the SEC and the OSC around 2012 and resulted in existing Crowdfunding regulations introduced in the US and Canada in 2016.

It is important to realize that in the past decade the actual digital infrastructure has become significantly easier and less expensive to build with each passing year. This technology innovation continued to accelerate with the mobile app boom that started around 2010 and the subsequent wave of blockchain based and other fintech models that continue to evolve. The resulting global network effects are growing at an exponential rate.

However, the ability to build inexpensive digital infrastructure does not necessarily translate into successful business models. Indeed, the incumbent regulated capital market systems are still very resilient, competitive and successful.

The Cannabis industry used traditional capital market methods and regulations to create a new business sector, successfully raised an estimated \$20 billion and created 100s of new companies without any new fintech systems including crowdfunding. The Cannabis sector did not use larger institutional capital pools for funding and in the early stages was funded primarily by retail investors. The Cannabis boom did utilize advances in investor relations communications technologies and early adoption and market liquidity leverage through ETFs that indirectly assisted many large financings.

### **Crowdfunding 2020**

The results of the past 10 years of securities Crowdfunding consultation and regulatory development in Canada has been disappointing. The amount of funds and companies assisted by these new regulations has been insignificant.

The lack of federal harmonization for Crowdfunding regulations is a unique Canadian problem (vs global competitors) that must be resolved if Canadian regulators are going to keep up with the pace of digital capital markets change. Harmonization is only one issue, what is really needed is to look to where the

Canadian capital markets will be in 2030 and design the national digital infrastructure and regulatory framework that serves and benefits all Canadians.

The CSA and participant members are mandated by government goals. It is encouraging to see that the OSC has been given the responsibility to ensure economic growth is now part of its regulatory mandate.

Like the 2008/9 crisis, 2020 has started with the unexpected Covid black swan event that is creating tremendous strain on the Canadian economy and capital markets. It will disrupt and bankrupt many existing business models, but hopefully starting in 2021 we will be creating many new business models that will create new Canadian opportunities in the next decade. The recent success of Canadian based Shopify is a model for every aspiring Canadian entrepreneur.

One the initial goals of Crowdfunding was to make it easier for entrepreneurial companies to connect with qualified investors. By 2021 to encourage economic recovery, this goal will be a priority of all governments. The CSA should not underestimate its power and responsibility to develop innovative regulations and common digital infrastructure (SEDAR) to advance Canadian capital markets. We need to pick up the pace of regulatory change to keep up with the pace of digital change that is advancing at an accelerating rate.

Important responsibilities for capital market registrants are to curate investment opportunities to screen for fraud, overvaluation and illegal activities such as money laundering. CSA Registrants cannot predict the future but can provide guidance on forecasts and valuation based on the best available information. Understanding these responsibilities also coincides with successful investment dealer and wealth management business models that guide investors into opportunities with a higher probability of success. Risk is a necessary component to participate in early stage companies where the future is uncertain, but the upside can be significant. CSA Registrants can play an important oversight role in helping investors understand these risk/reward models.

Startup Companies are an important economic activity. Startup incubators and pitch deck development are now standard curriculum at universities and colleges. Anyone born 2000 and later has both the digital training and role models to aspire to be a successful Canadian entrepreneur in many existing and new sectors of the economy. Indeed it is very reasonable for the next generation of entrepreneurs will be able to build a website, register a company, trademark a brand, and establish a bank account that is digitally linked to online accounting software and government of Canada CRA account for a little as \$10,000. It will almost be an entrance requirement that must be met if there is any chance of future success. By 2030 it is likely that bright Canadian high school students will have the ability to create a Shopify digital ecommerce company that completes all the above steps including a blockchain listed token. These types of innovative tasks should not be inhibited by unnecessary CSA oversight.

For this group of the earliest stage Startup Companies, the Private Issuers exemption should be expanded to allow up to 100 investors (vs 50). The founding entrepreneurs can use any strategy that is relevant to source these investors including private digital platforms. The only requirement is that any offering ensures that a registered law firm (or alternative) certifies that investors have valid title to the securities offered. The Issuers must also certify that the Investors (Individual and Beneficial Corporate) meet standard KYC requirements as defined by FINTRAC AML regulations and expanded Accredited Investor definitions. Disclosure and acknowledgement that this is a high-risk Startup Venture will be required in subscription documents. FINTRAC would have the right and mandate to audit any Canadian Issuer to ensure it meets these regulatory requirements. CSA Registrants, at their discretion, may decide to provide

consulting services to these Startup Companies but not under the responsibilities and liabilities of a CSA Registrant in any category.

It is after the above noted Startup Company curation stage, or the new Qualified Issuer stage, that CSA Registrants can apply the next generation of digital Crowdfunding platforms, global KYC systems and investor databases to raise larger fund tranches and expand the number of Investors.

### **Crowdfunding 2030**

It is likely by 2030 there will be global capital markets that provide immediate settlement of many types of securities with sovereign backed digital currencies. The competitive advantage for Canada will be to have the databases and metadata of qualified Issuers and Investors that meet common global regulatory standards. Disclosure will be discretionary for Issuers but if they choose to participate in these global capital markets the network leverage will be very significant.

Artificial Intelligence (AI) may be assisting Registrants in finding, analyzing and curating Issuers. Investors may have their own personal AI assistants to build investment portfolios. There will likely be a new generation of Canadian entrepreneurs that have become very wealthy following models like the recent success of Shopify and others.

By 2030 Canadians will expect governments and associated regulators to build the common digital infrastructure and associated regulations to share future economic success and wealth with all Canadians.

### **Response to Questions:**

1. The OSC initiated almost three years of regulatory research, comments, committee, and community townhalls at significant cost to develop MI 45-108. The final user results for MI 45-108 are disappointing. This is a case study on how securities regulatory initiatives need to find new ways to create successful innovative regulations that keep pace with the pace of digital capital markets innovation. MI 45-108 was too restrictive and presented a business model of stand-alone funding portals that were required to meet 90% of regulatory steps of a typical Registrant sponsored funding transactions. The limitations on funding amounts and investor participation were arbitrary. As part of the regulatory initiative, there should have been an economic assessment on whether MI 45-108 was a viable business model.

MI 45-108 should be repealed but not without creating an alternative framework that meet the initial "Crowdfunding" goals of responsibly funding early stage Canadian Issuers with the assistance of CSA registrants. This important Canadian policy goal still exists. The proposed NI 45-110 Startup Crowdfunding Registration and Prospectus Exemption does not appear to be a viable alternative to either MI 45-108 or the original crowdfunding policy intentions.

As discussed in prior recommendations, the Private Issuer Exemption should be increased to 100 investors and early stage Startup Issuers should be allowed to utilize any digital tools and strategies that are available to acquire those investors. The Issuers must find Investors that meet existing and proposed Accredited Investors exemptions. Executive and Directors of the Issuers should be held liable for any misrepresentations, fraud, KYC or AML violations.

The MI 45-108 attempt to provide guidelines for the Startup Issuers and portals was useful. CSA registrants should be wary of Private Issuers that have not completed minimum start-up steps including providing reasonable unaudited financial statements, disclosure documents, management and directors background checks and verified existing shareholder records.

The expansion of general Accredited Investor exemptions and databases of verified qualified Canadian Issuers as discussed in the prior recommendations is the start of a more complete analysis of regulatory requirements for the next generation of digital crowdfunding systems.

2. The proposed investment limits for the NI 45-110 are too restrictive and are likely to have a limited material impact for funding the capital structure of Startup Issuers.

A simpler approach would be to reduce the barriers to non-accredited investors participation with a wider range of prospectus exemptions. The prior recommendations propose creating:

- i) Individual Investor Exemption (\$5000)
- ii) Qualified Accredited Investor Exemption (No Investment Limit)

It is difficult to envision it would be worthwhile task for a Registrant to assume responsibility for recommending any increase in any prescribed investment limit. (ie from \$5000 to \$10000) for a risky investment. Any strategic non-Accredited investor would likely be able to qualify for a Friends, Family and Associates exemption if there was a need to increase an individual's investment participation amount in a specific Private Issuer.

3. Subject to the proposed 100 Investor limit, there does not seem to be any rationale for capping the amount of funds that can be raised by any Issuer if Issuer meets legal requirements and there is Investor demand.
4. Issuer's executive and directors should be held liable for any misrepresentation, fraud or non-compliance with Canadian laws and regulations such as FINTRAC KYC and AML guidelines.
5. There does not seem to be any rationale for limiting security types and structures if there is complete disclosure, the Issuer meets legal requirements and there is Investor demand.

If the capital structure is too complicated the Issuer may find the Investor participation is limited. Complicated capital structures may also increase accounting and title verification costs.

6. As outlined previously, either a financing is under the formal assistance of a CSA Registrant or it is not. For Startup Issuers the private issuer exemption is available (with the recommendation to expand allowable activities and number of investors be increased from 50 to 100.) The rationale for charging CSA Registrant fees to unregistered entities does not appear to have merit. If the CSA charges a fee there may be a perceived due diligence review. CSA Registrants that wish to build the next generation of onboarding and crowdfunding systems that are directly linked to dealer registration should not require any additional CSA review. The potential new efficiencies of these next generation onboarding and investor qualification strategies and systems are still evolving and may be significant as business practices develop.

7. If the noted amendments make it easier for all Registrants to improve efficiency and facilitate innovation than they are endorsed. If the amendments have the purpose of further expanding OSC rulemaking authority into areas that it does not currently have jurisdiction than they are not endorsed. The rationale for these amendments is not fully explained in Question 7.
8. The status quo is not having any impact on raising capital for Startup Issuers. Different provincial regulations do not have merit. The proposed solution does not provide any rationale as to why it will work any better than the status quo. National harmonization of all securities regulations is the repeated recommendation of most private sectors CSA registrants and related stakeholders. A more complete review of Alternatives to assist with the financing of Startup and emerging stage Qualified Issuers is still required.
9. A reasonable question for the CSA is why there is not a more fulsome analysis of how regulators can assist with multi-investor arms-length financing strategies for early stage Startup Issuers and emerging Qualified Issuers?



July 13, 2020

Alberta Securities Commission  
 Autorité des marchés financiers  
 British Columbia Securities Commission  
 Financial and Consumer Affairs Authority of Saskatchewan  
 Financial and Consumer Services Commission (New Brunswick)  
 Manitoba Securities Commission  
 Nova Scotia Securities Commission  
 Nunavut Securities Office  
 Office of the Superintendent of Securities Newfoundland and Labrador  
 Office of the Superintendent of Securities Northwest Territories  
 Office of the Yukon Superintendent of Securities  
 Ontario Securities Commission  
 Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

The Secretary  
 Ontario Securities Commission  
 20 Queen Street West  
 22<sup>nd</sup> Floor  
 Toronto, ON M5H 3S8  
 Fax: 416-593-2318  
[comments@osc.gov.on.ca](mailto:comments@osc.gov.on.ca)

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[consultation-en-ours@lautorite.qc.ca](mailto:consultation-en-ours@lautorite.qc.ca)

Dear Sirs/Mesdames:

**Re: CSA Notice and Request for Comment on Proposed National Instrument 45-110 Start-up Crowdfunding Registration and Prospectus Exemptions**

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The Private Capital Markets Association of Canada (“PCMA”) is pleased to provide our comments in connection with the *Canadian Securities Administrators’ (“CSA”) Proposed National Instrument 45-110 Crowdfunding Registration and Prospectus Exemptions* (the “**Proposal**”) 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 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](http://www.pcmacanada.com).

The first section of the letter presents our general comments on the Proposal, followed by responses to specific questions asked in the Proposal.

The PCMA would like to thank the CSA for the opportunity to comment on proposed NI 45-110. Consultation with stakeholders is an important step in designing effective public policy.

Our general comment is that the proposed NI 45-110 is a small step forward from the status quo but is insufficient towards developing a robust equity crowdfunding environment in Canada.

At this juncture, ambitious public policy will be required to revitalize the Canadian economy which has suffered its steepest decline in living memory and wherein the prospects for a rapid upsurge and a return to the previous growth path remain questionable. A more ambitious crowdfunding regulatory architecture would contribute to Canada’s swifter emergence from the present economic and financial crisis. It would also complement the vibrant public capital markets, notably the CSE and the TMX-V, who continue to play an important role in the small and medium size firm capital raising process.

The PCMA is encouraged by the inter-provincial harmonization of the start-up crowdfunding registration and prospectus exemptions as the existing patchwork of regulations has impeded early-stage firms’ ability to access capital via this mechanism. Furthermore, we would recommend that a feedback loop process be instituted that would

enable regulators, industry stakeholders and consumers to regularly assess progress in terms of the numbers and volumes of company financings stimulated by the new proposals.

Given the current extraordinary circumstances and the importance of quickly implementing a national instrument for crowdfunding in order to better meet capital raising challenges for issuers utilizing the exemption at this time, Staff should consider waiving the comment request period and **implementing** the proposed changes immediately. Follow up with issuers, portals and registered dealers on the effectiveness of the instrument could be collected after 4-6 month period, with adjustments initiated in 2021, wherein applicable.

#### ***Start-up crowdfunding prospectus exemption***

The start-up crowdfunding prospectus exemption is available to issuers that meet a number of conditions, including:

- the distribution of, and payment for, the security is facilitated through a funding portal that is relying on the start-up crowdfunding registration exemption or operated by an exempt market dealer or investment dealer;

*We agree with this item.*

- the aggregate gross proceeds raised by the issuer group<sup>1</sup> during the 12-months before the closing of the start-up crowdfunding distribution does not exceed \$1,000,000;

*We agree with the **direction of this** item but believe a cap of \$5,000,000 should be considered. See Comments (2), below.*

- each purchaser invests no more than \$2,500 or, if the purchaser has obtained advice from a registered dealer that such investment is suitable for the purchaser, \$5,000;

*We agree with **the direction of this** item but believe an increase may be considered if an investor meets certain qualifications. See Comments (3), below.*

---

<sup>1</sup> The issuer group means, in respect of an issuer, any of the issuer, an affiliate of the issuer, an issuer that is engaged in a common enterprise with the issuer or with an affiliate of the issuer, and an issuer whose business is founded or organized by a person or company who founded or organized the issuer.

- the issuer prepares an offering document disclosing information about the business and the start-up crowdfunding distribution and makes it available to each purchaser through the funding portal's platform;

*We agree with this item.*

- the closing of the start-up crowdfunding distribution does not occur unless the issuer raises the minimum offering amount stated in the offering document within the 90-day period after the date the offering document is made available on the funding portal's platform; and

*We agree with this item but believe the period should extend to 120 days **in light of the particular challenges of the current economic environment**;*

- the issuer provides the purchaser with a two-day contractual right to withdraw from an agreement to purchase the security by delivering a notice to the funding portal.

*We agree with this item.*

- The issuer is not required to provide financial statements to investors in connection with a start-up crowdfunding distribution. No continuous disclosure requirements are tied to the start-up crowdfunding prospectus exemption.

*We agree with this item.*

- The prospectus exemption is not available if the issuer intends to use the proceeds of the distribution to invest in, merge with, amalgamate with, or acquire an unspecified business. Investors in issuers that propose raising capital for these purposes are better protected in regimes other than start-up crowdfunding, such as the TSX Venture Exchange capital pool company (CPC) program.

*We do not agree with this item. CPC and RTO (**Reverse Takeover**) structures may be better monitored through a registered dealer as it concerns suitability. Without a suitability framework, investors may push capital toward investments which normally would be considered unsuitable.*

***Start-up crowdfunding registration exemption***

The start-up crowdfunding registration exemption is available to funding portals that meet a number of conditions, including:

- at least 30 days prior to the first date the funding portal facilitates a start-up crowdfunding distribution in a jurisdiction, the funding portal delivers to the securities regulatory authority or regulator in each jurisdiction a completed Form 45-110F3 *Funding Portal Information* and, for each principal of the funding portal, a completed Form 45-110F4 *Portal Individual Information*;

*We agree with this item.*

- the funding portal or any of its principals must not be, or have been, the subject of certain proceedings in the last 10 years as specified in the Instrument, including claims related to fraud, theft, breach of trust, illegal distributions, or allegations of similar conduct;

*We agree with this item.*

- the funding portal holds each purchaser's assets separate and apart from the funding portal's own property, in trust for the purchaser, and in the case of cash, in a designated trust account at a Canadian financial institution;

*We agree with this item.*

- the funding portal provides the necessary disclosures (such as the issuer's offering document and any amendments) and obtains the necessary risk acknowledgement from purchasers under the Instrument in connection with a distribution of eligible securities;

*We agree with this item.*

- the funding portal is not registered under securities legislation; and the funding portal does not:
  - provide advice to a purchaser about the merits of the investment or otherwise recommend or represent that an eligible security is suitable, or
  - receive a commission, fee or other similar payment from a purchaser under a start-up crowdfunding distribution.

*We agree with this item.*

- A funding portal cannot rely on the start-up crowdfunding registration exemption if it is insolvent. A funding portal relying on the start-up crowdfunding registration exemption must deliver to the securities regulatory authority or regulator in each jurisdiction a completed Form 45 110F5 *Annual Working Capital Certification* within 10 days of each calendar year-end. As part of its obligation to deliver a completed Form 45 110F5 *Annual Working Capital Certification*, the funding portal must certify that it has sufficient working capital to continue its operations for at least the next 12 months. If the funding portal becomes insolvent or discontinues operations, it must promptly notify the securities regulatory authority or the regulator, and any purchasers for which it holds assets, of the process the funding portal will use to return the assets to these purchasers.

*We do not agree **fully** with this item. In general, margins for crowdfunding can be slim at times and the pressure of maintaining a capital requirement of 12 months would be challenging for most registrants and portals to adhere. This is especially true given the impact of Covid 19 now and in the foreseeable future. **We would suggest a requirement of 6 months maximum.***

### Comments

In addition to your comments on all aspects of the Instrument, the Guides and the consequential amendments, the CSA also seek specific feedback on the following questions:

1. We are considering repealing MI 45-108 because there has been no use of this regime. We also note that the adoption of the Instrument may reduce the need for market participants to rely on MI 45-108. Do you think MI 45-108 should be maintained? If so, please explain why.

*We agree with this item.*

2. We recognize the need to provide a balance in the Instrument between investor protection and streamlined, light-touch requirements for capital raising in the spirit of crowdfunding.

The Instrument contemplates individual investment limits of \$2,500 for each purchaser and \$5,000 for each purchaser, if the purchaser has obtained advice from a registered dealer that such investment is suitable for the purchaser. We recognize there may be need for greater flexibility in capital raising and continue

to consider whether to increase the individual investment limit to one or more of the following:

- a. \$5,000 for each purchaser;
- b. \$10,000 for each purchaser, if the purchaser has obtained advice from a registered dealer that such investment is suitable for the purchaser; and
- c. a number in between those currently in the Instrument, and those mentioned above.

What would be an appropriate individual investment limit? Please explain and identify the investor protections you think support that amount.

3. Additionally, the Instrument contemplates a limit on aggregate proceeds raised by the issuer group during the 12-month period of \$1,000,000. We recognize there may be need for greater flexibility in capital raising and continue to consider whether to increase the offering limit to one of the following:
  - a. \$1,500,000; or
  - b. a number in between \$1,000,000 and \$1,500,000.

What would be an appropriate offering limit? Please explain and identify the investor protections you think support that amount.

4. Under the Instrument, issuers, and in some jurisdictions, the directors and executives signing the offering document will be subject to statutory liability if the offering document provided to the investor contains a misrepresentation. The purpose of statutory liability is to make recovery of damages easier for investors in the event of a misrepresentation in the offering document. We have heard that some issuers view statutory liability as potentially increasing the regulatory burden of using the start-up crowdfunding prospectus exemption. We also recognize that claims of misrepresentation by a purchaser may be unlikely given the low investment limits under the Instrument. Overall, we think that any added regulatory burden is balanced against the additional capital raising opportunities provided by the Instrument.

Do you think that statutory liability for misrepresentation in the offering document will deter start-ups and early stage issuers from raising capital using the Instrument? Is any deterrent justified when it appears unlikely that claims for misrepresentations will be made?

5. The definition of “eligible securities” is limited to:
- common shares,
  - non-convertible preference shares,
  - securities, such as warrants, subscription receipts and simple agreements for future equity (or SAFEs), convertible into common shares or nonconvertible preference shares,
  - non-convertible debt securities linked to a fixed or floating interest rate, and
  - units of a limited partnership.

The definition of “eligible security” was intended to reflect the type of securities a start-up or early stage issuers would likely be selling and to ensure that the exemption was not used to sell more complex securities, such as asset-backed securities and structured products. Are there other types of securities that it would be appropriate to include in the definition of “eligible security” (e.g. trust units, co-operatives member shares or other)? If so, what other type of securities and why?



**Annex A**

**Key differences between the registration and prospectus exemptions under Proposed National Instrument 45-110 *Start-up Crowdfunding Registration and Prospectus Exemptions* and the Start-up Crowdfunding Blanket Orders**

Key theme	Start-up crowdfunding blanket orders	Instrument
<b>Maximum aggregate proceeds that can be raised by the issuer group under the prospectus exemption</b>	\$250,000 per distribution, up to two times in a calendar year.	\$1,000,000 during the 12 months before the closing of the offering.
<b>Maximum investment amount per person per distribution under the prospectus exemption</b>	<ul style="list-style-type: none"> <li>• \$1,500; or</li> <li>• in British Columbia, Alberta and Saskatchewan, \$5,000, provided that the purchaser has obtained advice from a registered dealer that such investment is suitable for the purchaser</li> </ul>	<ul style="list-style-type: none"> <li>• \$2,500; or</li> <li>• \$5,000, provided that the purchaser has obtained advice from a registered dealer that such investment is suitable for the purchaser</li> </ul>

INCLUDES COMMENT LETTERS RECEIVED

<p><b>Confirmation by the regulator before a funding portal starts to facilitate distributions</b></p>	<p>The funding portal cannot facilitate distributions until the regulator confirms in writing receipt of:</p> <ul style="list-style-type: none"> <li>• a duly completed funding portal information form;</li> <li>• a duly completed individual information form for each principal of the funding portal; and</li> <li>• such other documents and information as may be requested by the regulator.</li> </ul>	<p>The funding portal must deliver the required forms at least 30 days before facilitating distributions. There is no requirement for the regulator’s written confirmation. However, a funding portal may not rely on the start-up crowdfunding registration exemption if, within 30 days of receiving the funding portal information form, the regulator has notified the funding portal, it or any of its principals has been notified by the regulator that its process and procedure for handling of purchasers’ funds does not satisfy the conditions of the Instrument.</p>
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A-1

Key theme	Start-up crowdfunding blanket orders	Instrument
<p><b>Bad actor disqualification</b></p>	<p>Not applicable.</p>	<p>A funding portal cannot rely on the start-up crowdfunding registration exemption if it or any of its principals is or has been the subject of certain proceedings in the last 10 years related to a claim based in whole or in part on various conduct such fraud, theft, breach of trust, or allegations of similar conduct.</p>
<p><b>Funding portals financial resources certification</b></p>	<p>Not applicable.</p>	<p>On an annual basis, the funding portal must certify that it has sufficient working capital to continue its operations for at least the next 12 months by delivering a completed funding portal information form or Form 45-110F5 <i>Annual Working Capital Certification</i>.</p>
<p><b>Liability in the event the offering document contains misrepresentations</b></p>	<p>There is no statutory liability under securities law. The blanket orders do not require the issuer to provide contractual rights to purchasers. Purchasers may have rights under common law or civil law.</p>	<p>The issuer is subject to statutory liability similar to the offering memorandum exemption under section 2.9 of NI 45-106.</p>

<p><b>Investment in an unspecified business</b></p>	<p>No restrictions.</p>	<p>The start-up crowdfunding prospectus exemption is not available to issuers who intend to use the proceeds of the distribution to invest in, merge with or acquire an unspecified business.</p>
<p><b>Report of exempt distribution form</b></p>	<p>Except in British Columbia, issuers must use Form 5 – <i>Start-up Crowdfunding – Report of distribution</i>. In British Columbia, issuers must use Form 45-106F1 <i>Report of Exempt Distribution</i>.</p>	<p>Issuers must use Form 45-106F1 <i>Report of Exempt Distribution</i>.</p>
<p><b>Expiry date</b></p>	<p>The orders were initially set to expire on May 13, 2020. The startup crowdfunding blanket orders will be extended to remain available until the Instrument is available, if adopted.</p>	<p>The Instrument has no expiry date.</p>

A-2

**Annex B**

**Local Matters**

**British Columbia Securities Commission**

**BC Instrument 45-535**

Effective February 27, 2020, the BCSC has varied BCI 45-535 *Start-up Crowdfunding Registration and Prospectus Exemptions* (BCI 45-535) to extend the expiry date of BCI 45-535 from May 13, 2020 to the date that is 90-days after the effective date of a rule that provides for

- (a) a prospectus exemption for a distribution through a funding portal of an eligible security; and
- (b) a registration exemption exempting certain funding portals for such distributions under the prospectus exemption referred to in paragraph (a), above.

This variation of BCI 45-535 will permit market participants to have continued access to start-up crowdfunding until a harmonized rule is available, if adopted.

**Closing Remarks**

The PCMA would like to thank to the CSA for their efforts in drafting the Proposal and 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**

*“Philip A. du Heaume”*

Executive Committee Member, PCMA  
Co-Chair of PCMA Advisory Committee

*“Peter-Paul Van Hoeken”*

Member, PCMA Advisory Committee

*“Richard Remillard”*

Member, Comment Letter Committee

*“Richard Carleton”*

Director, PCMA

*“Tommy Baltzis”*

Chair, PCMA

*“Georgina Blanas”*

Executive Director, PCMA



June 11, 2020

Me Philippe Lebel  
Corporate Secretary and Executive Director, Legal Affairs  
Autorité des marchés financiers  
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Autorité des marchés financiers  
British Columbia Securities Commission  
Financial and Consumer Services Commission (New Brunswick)  
Financial and Consumer Affairs Authority of Saskatchewan  
Manitoba Securities Commission  
Nova Scotia Securities Commission  
Nunavut Securities Office  
Ontario Securities Commission  
Office of the Superintendent of Securities, Newfoundland and Labrador  
Office of the Superintendent of Securities, Northwest Territories  
Office of the Yukon Superintendent of Securities  
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward  
Island

Re:

CSA Notice and Request for Comment  
Proposed National Instrument 45-110 Start-up Crowdfunding Registration and  
Prospectus Exemptions

On behalf of:

Silver Maple Ventures Inc. dba *FrontFundr*

## 45-110 Comments

### *Start-up crowdfunding prospectus exemption*

The start-up crowdfunding prospectus exemption is available to issuers that meet a number of conditions, including:

- the distribution of, and payment for, the security is facilitated through a funding portal that is relying on the start-up crowdfunding registration exemption or operated by an exempt market dealer or investment dealer;

*We agree with this item.*

- the aggregate gross proceeds raised by the issuer group<sup>1</sup> during the 12-months before the closing of the start-up crowdfunding distribution does not exceed \$1,000,000;

*We agree with this item but believe a cap of \$3M per calendar year spread over 2 distributions should be considered for registrants utilizing the exemption (EMD).*

*We also note funding portals do not conduct KYC or KYP and as such generally do not provide the same level of screening applied to these important requirements, which are undertaken by a registrant for each transaction as part of their responsibilities. Given this greater responsibility, Staff should consider granting registrants using the instrument an ability to raise greater amounts during a distribution period, as indicated.*

- each purchaser invests no more than \$2,500 or, if the purchaser has obtained advice from a registered dealer that such investment is suitable for the purchaser, \$5,000;

*We agree with this item but believe an increase should be considered only for clients of a registrant.*

- the issuer prepares an offering document disclosing information about the business and the start-up crowdfunding distribution and makes it available to each purchaser through the funding portal's platform;

*We agree with this item.*

---

<sup>1</sup> The issuer group means, in respect of an issuer, any of the issuer, an affiliate of the issuer, an issuer that is engaged in a common enterprise with the issuer or with an affiliate of the issuer, and an issuer whose business is founded or organized by a person or company who founded or organized the issuer.

- the closing of the start-up crowdfunding distribution does not occur unless the issuer raises the minimum offering amount stated in the offering document within the 90-day period after the date the offering document is made available on the funding portal's platform; and

*We agree with this item.*

- the issuer provides the purchaser with a two-day contractual right to withdraw from an agreement to purchase the security by delivering a notice to the funding portal.

*We agree with this item.*

- The issuer is not required to provide financial statements to investors in connection with a start-up crowdfunding distribution. No continuous disclosure requirements are tied to the start-up crowdfunding prospectus exemption.

*We agree with this item, but would also agree that management of an issuer should be required to provide an investor financial statements for the distribution, either audited or unaudited, if the maximum amount allowable per distribution for a period were to increase substantially (+3M per 12 month period, or calendar year) and conducted through a registrant.*

- The prospectus exemption is not available if the issuer intends to use the proceeds of the distribution to invest in, merge with, amalgamate with, or acquire an unspecified business. Investors in issuers that propose raising capital for these purposes are better protected in regimes other than start-up crowdfunding, such as the TSX Venture Exchange capital pool company program.

*We agree with this item.*

#### ***Start-up crowdfunding registration exemption***

The start-up crowdfunding registration exemption is available to funding portals that meet a number of conditions, including:

- at least 30 days prior to the first date the funding portal facilitates a start-up crowdfunding distribution in a jurisdiction, the funding portal delivers to the securities regulatory authority or regulator in each jurisdiction a completed Form 45-110F3 *Funding Portal Information* and, for each principal of the funding portal, a completed Form 45-110F4 *Portal Individual Information*;

*We agree with this item, but as it concerns the "pop-up acknowledgement" cited in the Funding Portal Guide, we do not agree that an individual should have to view and acknowledge the risk warning again once they are a client of the portal. We also note that registrants provide numerous communications on the risks associated with exempt market products within their platforms and as part of documentation associated with a transaction.*

- the funding portal or any of its principals must not be, or have been, the subject of certain proceedings in the last 10 years as specified in the Instrument, including claims related to fraud, theft, breach of trust, illegal distributions, or allegations of similar conduct;

*We agree with this item.*

- the funding portal holds each purchaser's assets separate and apart from the funding portal's own property, in trust for the purchaser, and in the case of cash, in a designated trust account at a Canadian financial institution;

*We agree with this item.*

- the funding portal provides the necessary disclosures (such as the issuer's offering document and any amendments) and obtains the necessary risk acknowledgement from purchasers under the Instrument in connection with a distribution of eligible securities;

*We agree with this item.*

- the funding portal is not registered under securities legislation; and
- the funding portal does not:
  - provide advice to a purchaser about the merits of the investment or otherwise recommend or represent that an eligible security is suitable, or
  - receive a commission, fee or other similar payment from a purchaser under a start-up crowdfunding distribution.

*We agree with these items.*

- A funding portal cannot rely on the start-up crowdfunding registration exemption if it is insolvent. A funding portal relying on the start-up crowdfunding registration exemption must deliver to the securities regulatory authority or regulator in each jurisdiction a completed Form 45-110F5 *Annual Working Capital Certification* within 10 days of each calendar year-end. As part of its obligation to deliver a completed Form 45-110F5 *Annual Working Capital Certification*, the funding portal must certify that it has sufficient working capital to continue its operations for at least the next 12 months. If the funding portal becomes insolvent or discontinues operations, it must promptly notify the securities regulatory authority or the regulator, and any purchasers for which it holds assets, of the process the funding portal will use to return the assets to these purchasers.

*We agree with the delivery of an 45-110F5 but do not agree with a 12 month working capital requirement. In general, the pressure of maintaining a capital requirement of 12 months would be challenging for most registrants and portals. This is especially true given the impact of Covid 19 now and in the foreseeable future.*

### **Additional Comments**

In addition to your comments on all aspects of the Instrument, the Guides and the consequential amendments, the CSA also seek specific feedback on the following questions:

1. We are considering repealing MI 45-108 because there has been no use of this regime. We also note that the adoption of the Instrument may reduce the need for market participants to rely on MI 45-108. Do you think MI 45-108 should be maintained? If so, please explain why.

*We agree with this item. Though MI 45-108 has useful parts, as a whole it has not found traction within the market.*

2. We recognize the need to provide a balance in the Instrument between investor protection and streamlined, light-touch requirements for capital raising in the spirit of crowdfunding.

The Instrument contemplates individual investment limits of \$2,500 for each purchaser and \$5,000 for each purchaser, if the purchaser has obtained advice from a registered dealer that such investment is suitable for the purchaser. We recognize there may be need for greater flexibility in capital raising and continue to consider whether to increase the individual investment limit to one or more of the following:

- a. \$5,000 for each purchaser;
- b. \$10,000 for each purchaser, if the purchaser has obtained advice from a registered dealer that such investment is suitable for the purchaser; and
- c. a number in between those currently in the Instrument, and those mentioned above.

What would be an appropriate individual investment limit? Please explain and identify the investor protections you think support that amount.

*We agree with the increased amounts but only if processed by a registrant. As noted, funding portals are not required to conduct KYC or KYP when processing transactions and the current limits are appropriate for these entities. Funding portals are excellent conduits for very early stage ventures but the products they support are typically considered very high risk.*

*The Eligible investor requirements, as defined by NI 31-103 Part I (1.1), might be a base from which to allow for greater investment amounts with confidence.*

3. Additionally, the Instrument contemplates a limit on aggregate proceeds raised by the issuer group during the 12-month period of \$1,000,000. We recognize there may be need for greater flexibility in capital raising and continue to consider whether to increase the offering limit to one of the following:
  - a. \$1,500,000; or
  - b. a number in between \$1,000,000 and \$1,500,000.

What would be an appropriate offering limit? Please explain and identify the investor protections you think support that amount.

*Canada falls far behind other jurisdictions on the amounts issuers may raise under materially similar crowdfunding legislation, and the proposed amounts here do not adequately address the capital needs of the market historically and they do not address the needs of the economy as a result of Covid currently. We suggest a maximum of \$1,500,000.00 per distribution and two allowable distributions per calendar year for a registered portal; and*

- *if deemed appropriate, (unaudited) financial statement requirements to provide a measure of transparency and disclosure to better inform investors; and*
  - *Staff may also consider the filing of a Use of Proceeds form cataloging amounts raised and put to use by an issuer for each calendar year after a distribution, in order to promote accountability with issuers and greater transparency for investors.*
4. Under the Instrument, issuers, and in some jurisdictions, the directors and executives signing the offering document will be subject to statutory liability if the offering document provided to the investor contains a misrepresentation. The purpose of statutory liability is to make recovery of damages easier for investors in the event of a misrepresentation in the offering document. We have heard that some issuers view statutory liability as potentially increasing the regulatory burden of using the start-up crowdfunding prospectus exemption. We also recognize that claims of misrepresentation by a purchaser may be unlikely given the low investment limits under the Instrument. Overall, we think that any added regulatory burden is balanced against the additional capital raising opportunities provided by the Instrument.

Do you think that statutory liability for misrepresentation in the offering document will deter start-ups and early stage issuers from raising capital using the Instrument? Is any deterrent justified when it appears unlikely that claims for misrepresentations will be made?

*The cost of litigation versus the likelihood of success in obtaining material compensation for misrepresentation suggests that ‘best practice’ might be a better approach than strictly worded deterrence for start-ups. In general, we have found that those issuers with greater transparency and communication initiatives with investors tend to have greater outcomes with their distributions. Reputation is an important component determining actions within the exempt market, particularly for small ventures with limited resources. Requiring management to provide financial statements and submitting a Use of Proceeds form may assist issuers in cultivating an ongoing culture of transparency and timely disclosure and transparency to potential investors.*

5. The definition of “eligible securities” is limited to:
- common shares,
  - non-convertible preference shares,

- securities, such as warrants, subscription receipts and simple agreements for future equity (or SAFEs), convertible into common shares or nonconvertible preference shares,
- non-convertible debt securities linked to a fixed or floating interest rate, and
- units of a limited partnership.

The definition of “eligible security” was intended to reflect the type of securities a start-up or early stage issuers would likely be selling and to ensure that the exemption was not used to sell more complex securities, such as asset-backed securities and structured products. Are there other types of securities that it would be appropriate to include in the definition of “eligible security” (e.g. trust units, co-operatives member shares or other)? If so, what other type of securities and why?

*The security types mentioned are within the scope of interest we have seen to date for those issuers utilizing the exemption.*



June 23, 2020

VIA EMAIL

Alberta Securities Commission  
 Autorité des marchés financiers  
 British Columbia Securities Commission  
 Financial and Consumer Services Commission (New Brunswick)  
 Financial and Consumer Affairs Authority of Saskatchewan  
 Manitoba Securities Commission  
 Nova Scotia Securities Commission  
 Nunavut Securities Office  
 Ontario Securities Commission  
 Office of the Superintendent of Securities, Newfoundland and Labrador  
 Office of the Superintendent of Securities, Northwest Territories  
 Office of the Yukon Superintendent of Securities  
 Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

Me Philippe Lebel  
 Corporate Secretary and Executive Director, Legal Affairs  
 Autorité des marchés financiers  
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 2640, boulevard Laurier, bureau 400  
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[consultation-en-cours@lautorite.qc.ca](mailto:consultation-en-cours@lautorite.qc.ca)

The Secretary  
 Ontario Securities Commission  
 20 Queen Street West 22nd Floor  
 Toronto, Ontario M5H 3S8  
[comments@osc.gov.on.ca](mailto:comments@osc.gov.on.ca)

Dear Sirs/Mesdames:

**Re: CSA Notice and Request for Comment Proposed National Instrument 45-110  
*Start-up Crowdfunding Registration and Prospectus Exemptions* (the  
 “Proposed Instrument”)**

The Canadian Advocacy Council of CFA Societies Canada<sup>1</sup> (the “CAC”) appreciates the opportunity to provide the following comments on the Proposed Instrument.

<sup>1</sup> 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](http://www.cfacanada.org) to access the advocacy work of the CAC.



We understand that the Proposed Instrument is intended to harmonize the framework for crowdfunding by start-ups and early stage issuers. It will provide a prospectus exemption to non-reporting issuers to distribute eligible securities through an online portal, and a dealer exemption for those funding portals.

As a general comment, we are supportive of measures taken to try to assist small and emerging companies to finance growing operations while strongly emphasizing investor protection. We also agree with steps to harmonize registration and prospectus exemptions across jurisdictions for ease of use by issuers and investors. Before turning to our responses to the consultation questions included in the Proposed Instrument, we offer the following views on the importance of imposing proportionate due diligence and related obligations on funding portals to protect investors from fraud or other unfair or improper practices, and additional disclosure obligations on issuers and funding portals.

### Obligations of Funding Portals

The Proposed Instrument does not appear to place any responsibility on funding portals to screen issuers before posting their offering documents online, beyond taking reasonable measures to confirm that the issuer's head office is in Canada. Other jurisdictions, such as Australia and the United States, place additional obligations on funding portals to reduce the risk of fraud, including:

- conducting background checks on the issuer and its principals (i.e., directors, officers, and control persons);
- reviewing the issuer's proposed offering document to confirm that it appears to contain the required information and presents that information in a clear manner; and
- refusing to post an offering document if the funding portal has a reasonable basis for believing the issuer or the offering presents the potential for fraud or otherwise raises concerns about investor protection (e.g., as a result of deficient or unclear disclosure).<sup>2</sup>

We believe these steps are reasonable and should be required of funding portals under the Proposed Instrument. In respect of background checks, an issuer and its principals could be required to meet the same standards imposed on the portal and its principals under section 3(1)(r) of the Proposed Instrument (i.e., they cannot have been the subject of specified proceedings in the last 10 years, including claims related to fraud, theft, breach of trust, illegal distributions, or allegations of similar conduct).

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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 175,000 CFA charterholders worldwide in 164 markets. CFA Institute has nine offices worldwide and there are 158 local member societies. For more information, visit [www.cfainstitute.org](http://www.cfainstitute.org).

<sup>2</sup> See 17 CFR § 227.301; ASIC, *Regulatory Guide 262 Crowd-sourced funding: Guide for intermediaries* (2018) at 33, 36-37.



Funding portals also should play a role in confirming issuers have measures in place to track and communicate with the holders of the securities these issuers would offer and sell through the portal. For example, a funding portal could be required to secure representations from the issuer that it possesses these capabilities (e.g., through engaging a transfer agent), as is the case in the United States.<sup>3</sup> Alternatively, funding portals could be required to assist issuers in providing registrar and transfer agent type functions to help issuers monitor and communicate with their security holders, particularly as it relates to social media communications.

### Disclosure Obligations

Investors may not be cognizant of the fact that each additional financing by the issuer will dilute their investment, and thus the risk warning (or other similar warning prominently displayed by the portal) should specifically address the risk of dilution due to additional financings, whether through the portal or otherwise. Issuers should be required to notify investors (through the portal or otherwise) of any additional financings.

We also have concerns about the potential lack of disclosure on the financial condition of the issuer to investors. Under corporate or other applicable laws, an issuer's obligation to prepare and distribute annual financial statements after completing a crowdfunding offering will vary depending on its jurisdiction of incorporation and the type of securities it issues (e.g., equity vs. debt). We propose eliminating this potential source of confusion for investors by making the preparation of annual financial statements and their distribution to crowdfunding securityholders (or, at a minimum, their posting on the website of the funding portal and/or the issuer) an ongoing obligation of issuers that have completed a crowdfunding offering.

The fees payable by issuers to the portals will be required disclosure in the proposed offering document and included in the transaction confirmation sent by the issuer to the purchaser. We believe this information is important and should be prominent and in plain language in the disclosure documents and transaction confirmation.

### General Comments

In an Issues Brief prepared by CFA Society Singapore entitled "Investment Geared Crowdfunding – Sourcing Equity and Debt Funding from the Crowd: Developing a Regulatory Framework"<sup>4</sup> the authors observed that investment-g geared crowdfunding requires a comprehensive regulatory framework to develop its potential. Such a framework would include aspects such as transparency by issuers and platforms, due diligence and other safeguards for investors, and permitting only small and medium-sized enterprises to raise capital through crowdfunding. The brief includes a cross-jurisdictional study of crowdfunding frameworks, some of which include complaint and redress mechanisms.

<sup>3</sup> *Ibid.*, 17 CFR § 227.301(b).

<sup>4</sup> "Issue Brief: Investment-Geared Crowdfunding - Sourcing Equity and Debt Funding from the Crowd: Developing a Regulatory Framework" (March 2014), online: CFA Society Singapore <[www.cfacsociety.org/singapore/Linked%20Files/issue-brief-crowdfunding.pdf](http://www.cfacsociety.org/singapore/Linked%20Files/issue-brief-crowdfunding.pdf)>.

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Over the longer term, if the exemptions are implemented the CSA may wish to study the size, capital structure, and business types of the issuers utilizing this prospectus exemption. Timely and effective enforcement will also be key to mitigating the risk of abuse and fraud.

## Responses to Consultation Questions

We also wish to respond to the following specific consultation questions:

1. *We are considering repealing MI 45-108 because there has been no use of this regime. We also note that the adoption of the Instrument may reduce the need for market participants to rely on MI 45-108. Do you think MI 45-108 should be maintained? If so, please explain why.*

We do not believe it would be necessary to maintain MI 45-108 if the Proposed Instrument is adopted.

2. *We recognize the need to provide a balance in the Instrument between investor protection and streamlined, light-touch requirements for capital raising in the spirit of crowdfunding.*

*The Instrument contemplates individual investment limits of \$2,500 for each purchaser and \$5,000 for each purchaser, if the purchaser has obtained advice from a registered dealer that such investment is suitable for the purchaser. We recognize there may be need for greater flexibility in capital raising and continue to consider whether to increase the individual investment limit to one or more of the following:*

- a. \$5,000 for each purchaser;*
- b. \$10,000 for each purchaser, if the purchaser has obtained advice from a registered dealer that such investment is suitable for the purchaser; and*
- c. a number in between those currently in the Instrument, and those mentioned above.*

*What would be an appropriate individual investment limit? Please explain and identify the investor protections you think support that amount.*

We are of the view that the amounts that can be raised under the exemption per person are too low for the exemption to be a viable option for issuers when considering financing sources. The increased limits referenced above are still on the lower end, especially relative to the limits set by global counterparts. It would be helpful to be provided with more information with respect to why Canada's limits would need to be set at more conservative levels than elsewhere. For example, in Australia and the UK, our understanding is that the limits are higher—in Australia, A\$10,000 per company every 12 months;<sup>5</sup> and in the UK, no limit provided the investor has obtained advice (otherwise, a

<sup>5</sup> ASIC, Regulatory Guide 262 *Crowd-sourced funding: Guide for intermediaries* (2018) at 6.  
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global limit of 10% of the purchaser's "net investable assets" applies to all exempt offerings the purchaser participates in over a 12-month period).<sup>6</sup> It also is our understanding that the exemptions appear to be working adequately and meeting the aims of the applicable regulatory projects.

*3. Additionally, the Instrument contemplates a limit on aggregate proceeds raised by the issuer group during the 12-month period of \$1,000,000. We recognize there may be need for greater flexibility in capital raising and continue to consider whether to increase the offering limit to one of the following:*

- a. \$1,500,000; or*
- b. a number in between \$1,000,000 and \$1,500,000.*

*What would be an appropriate offering limit? Please explain and identify the investor protections you think support that amount.*

We are of the view that the amounts that can be raised under the exemption per person are still too low for the exemption to be a viable option for issuers when considering financing sources. As a general principle, the exemptions are not intended to guarantee performance, but rather to aid in capital formation. Like our comments with respect to individual investor limits, these aggregate annual offering limits are set conservatively, and may be weighted disproportionately on concerns of potential investor loss versus fostering capital formation and/or efficiency in the capital markets. They do not provide small/eligible issuers with an attractive amount and cost of capital to leverage the crowdfunding tool to raise capital. In order to set the appropriate limit, the CSA could continue to review the capital raised across various exemptions (and across industries), as well as the limits set by their global counterparts. For example, Australia permits issuers to raise up to A\$5 million through crowdfunding over each 12-month period.<sup>7</sup>

We note that the offering limit and individual investor limits must work together. If the offering limit is set too high relative to the individual investor limits, an offering could result in an unworkable number of small investors and the costs of communicating with such investors could become untenable for an issuer.

*4. Under the Instrument, issuers, and in some jurisdictions, the directors and executives signing the offering document will be subject to statutory liability if the offering document provided to the investor contains a misrepresentation. The purpose of statutory liability is to make recovery of damages easier for investors in the event of a misrepresentation in the offering document. We have heard that some issuers view statutory liability as potentially increasing the regulatory burden of using the start-up crowdfunding prospectus exemption. We also recognize that claims of misrepresentation by a purchaser may be unlikely given the low investment limits under the Instrument. Overall, we think that any added regulatory burden is balanced against the additional capital raising opportunities provided by the Instrument.*

<sup>6</sup> FCA, *A review of the regulatory regime for crowdfunding and the promotion of non-readily realizable securities by other media* (2005) at 2-3, online: <[www.fca.org.uk/publication/thematic-reviews/crowdfunding-review.pdf](http://www.fca.org.uk/publication/thematic-reviews/crowdfunding-review.pdf)>.

<sup>7</sup> ASIC, *Regulatory Guide 262 Crowd-sourced funding: Guide for intermediaries* (2018) at 6.



*Do you think that statutory liability for misrepresentation in the offering document will deter start-ups and early stage issuers from raising capital using the Instrument? Is any deterrent justified when it appears unlikely that claims for misrepresentations will be made?*

We believe the statutory liability for misrepresentation in the offering document is fair to impose, assuming the terms of the prospectus exemption itself are economical for the investors and eligible issuers. If the exemptions are set up in such a way that issuers can successfully raise needed capital, we expect that issuers would be more willing to accept some potential increase in the regulatory burden (i.e. the cost of ensuring the offering document does not contain a misrepresentation).

*5. The definition of “eligible securities” is limited to:*

- common shares,*
- non-convertible preference shares,*
- securities, such as warrants, subscription receipts and simple agreements for future equity (or SAFEs), convertible into common shares or nonconvertible preference shares,*
- non-convertible debt securities linked to a fixed or floating interest rate, and*
- units of a limited partnership.*

*The definition of “eligible security” was intended to reflect the type of securities a start-up or early stage issuers would likely be selling and to ensure that the exemption was not used to sell more complex securities, such as asset-backed securities and structured products. Are there other types of securities that it would be appropriate to include in the definition of “eligible security” (e.g. trust units, co-operatives member shares or other)? If so, what other type of securities and why?*

We believe the list of eligible securities should be kept to a minimum and agree that issuers should not be permitted to sell more complex securities using these crowdfunding exemptions.

### **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](mailto: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**