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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.*

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<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.*