



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

The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8
comments@osc.gov.on.ca

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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