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canada

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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and

The Secretary
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comments@osc.gov.on.ca

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.[1]

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[2].

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[3], and have twice the survival rate of traditional businesses[4].

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[5], more co-operatives request external funding (64.9%) than for all SMEs (47.1%).

About Co-operatives and Mutuals 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 mutuals, 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)[6].

General Observations[7]

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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[1] Government of Canada, SME Profile: Financing and Growth of Co-operatives in Canada, 2017,
[2] Government of Canada, Information Guide on Co-operatives
[3] Karaphillis, G., Duguid, F, Economic Impact of the Co-operative Sector in Canada, 2019
[4] Government of Canada, Co-operatives Secretariat, "Co-operatives: Solutions to 21st Century Challenges", 2011
[5] 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,
[6] Government of Canada, "Financial and non-financial statistics on Canadian non-financial co-operatives", 2019
[7] 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. <u>Repealing MI 45-108</u>. We take no position on this matter.

2. <u>Individual investment limits</u>: 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.[8]

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 Mutuals 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 Mutuals 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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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 Mutuals Canada