

June 18, 2014

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8
Fax: 416-593-2318
Email: comments@osc.gov.on.ca

Re: Response to Proposed Multilateral Instrument 45-108 Crowdfunding and Companion Policy 45-108CP Crowdfunding; and Proposed Form 45-106F11 Report of Exempt Distribution for Issuers other than Investment Funds (Alberta, New Brunswick, Ontario and Saskatchewan)

Dear Sirs and Madams,

Please find attached our response on behalf of the National Crowdfunding Association of Canada (**NCFA Canada**) with respect to the **Ontario Securities Commission Request for Comments on Proposed Multilateral Instrument 45-108 Crowdfunding and Companion Policy 45-108CP Crowdfunding; and Proposed Form 45-106F11 Report of Exempt Distribution for Issuers other than Investment Funds (Alberta, New Brunswick, Ontario and Saskatchewan) (Crowdfunding Exemption Proposals)** released on March 20, 2014.

We applaud the Ontario Securities Commission (**OSC**) for moving forward with this initiative within the province of Ontario and working with the securities regulators in the provinces of Manitoba, New Brunswick, Nova Scotia, Quebec and Saskatchewan to harmonize this proposed crowdfunding exemption across these provinces. NCFA Canada and its members also thank the OSC for the opportunity to participate in the consultation process.

NCFA Canada is a grass roots and membership-driven not-for-profit trade association that is actively engaged with both social and investment crowdfunding stakeholders and communities across the country. Our mandate is to provide crowdfunding education, advocacy and networking opportunities for our growing national membership of over 870 members, ambassadors, advisors and board members.

We support innovation, small businesses and entrepreneurs seeking to make a difference, and believe that crowdfunding markets and the eco-systems around them can play a significant role in mobilizing start-up capital and resources to early stage projects and businesses in an efficient and cost effective manner. We look forward to contributing ongoing input into the planning, implementation and operation of the proposed crowdfunding exemption in Ontario. Please feel free to contact us at any time to discuss further.

Sincerely,



Craig Asano
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Enclosure

The National Crowdfunding Association



Education, Awareness and Advocacy

Fostering a dynamic, vibrant and inclusive Crowdfunding industry in Canada

**Multilateral Instrument 45-108 Crowdfunding
and Companion Policy 45-108CP Crowdfunding;
and Proposed Form 45-106F11 Report of Exempt
Distribution for Issuers other than Investment
Funds (Alberta, New Brunswick, Ontario and
Saskatchewan)**

NCFA Canada Board
June 18, 2014

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About NCFA Canada

- The National Crowdfunding Association of Canada (**NCFA Canada**) is a cross-Canada non-profit organization with a mandate to be inclusive in providing **education, awareness** and **advocacy** in the rapidly evolving crowdfunding industry.
- NCFA Canada is a community-based and membership-driven entity that was founded at a grass roots level to fill a national need in the marketplace.
- Members and prospective members are industry stakeholders (e.g., portals, experts, service providers and enablers), small businesses using crowdfunding to fund their initiatives and investors seeking to learn more and get connected with a relevant and national membership peer network.

Overview

The Importance of SMEs to the Canadian Economy

- Small to mid-sized enterprise businesses (**SMEs**) are the lifeblood of the Canadian economy. From the corner laundry mat to the emerging high tech software company there were a total of 1,138,761 SMEs in 2010 according to Industry Canada. By definition, SMEs include micro-enterprises (1-4 employees), small businesses (5-100) and medium sized businesses (101-500).
- In 2010, SMEs hired 48.3% of the entire workforce while 25% of the Canadian population was self employed entrepreneurs. Stated differently, almost one in every two persons is directly affected and reliant on the SMEs for their livelihood. In 2009, SMEs represented 28% of Canada's total GDP and also accounted for \$68 billion in exports, or 25% of Canada's total export value.¹
- SMEs play a significant role as a feeder system. Successful smaller companies may grow, acquire other businesses or assets, and possibly become larger public companies.

SME's Funding Challenge

- A funding gap exists for Canadian start-ups and SMEs to raise small amounts of capital (e.g., estimated by various industry professionals to be \$1 to \$5 million) that is not currently being satisfied by friends and family networks, angels, incubator/accelerator programs and venture capital (**VC**) groups.
- Traditional institutions and alternative lenders have strict lending requirements that most start-ups do not qualify for. Many small businesses cannot get a line of credit approved by their bank (or revive credit lines) due to poor sales or insufficient collateral to support their loan requests.
- Many small businesses are asked to front money to initiate a funding process or are advised to pay expensive financial and legal planners to develop detailed business plans and prospectus documents that exceed the budget and viability of many start-ups and SMEs.
- Incubators and accelerators are excellent options, however there are only a limited number of placements available (e.g., most programs are operating at maximum capacity) and they generally focus on a niche industry. VC has been on the decline. In 2000, \$5.9 billion was invested in 1,007 Canadian start-ups, according to Thomson Reuters, compared to just \$1.1 billion in 2010 that was raised by 357 Canadian firms representing an alarming decreasing trend in a ten year period. VCs are incentivized to participate in larger funding transactions and the average deal sizes are mismatched with the needs of SME issuers.²

¹ <http://www.cbc.ca/news/business/smallbusiness/story/2011/10/04/f-smallbiz-by-the-numbers.html>

² <http://www.theglobeandmail.com/report-on-business/streetwise/canadian-venture-capital-stuck-in-deep-rut/article616668/>

What's at Stake?

- Fundamentally there's a strong need to ensure SMEs have the proper access to capital to innovate and develop competitive products/services to bring to Canadian and global markets.
- Without a clear funding roadmap for small businesses or an efficient and legally viable capital formation process many valid business ideas will not get funded in Canada.
- Crowdfunding has gained a lot of momentum in North America and Europe. Equity crowdfunding is currently legally permitted in many countries, such as Australia, UK, Netherlands and the US will soon be added to the growing list with the passing of the [Jumpstart Our Business Start-ups Act \(JOBS Act\)](#)³ last April 2012.
- Canada needs to review its securities laws to ensure they are current and suitable to meet the needs of SME issuers and their ability to connect with prospective investors (funders) and successfully raise early stage capital from online market places.
- Otherwise, Canada risks losing its Canadian funded ideas and best entrepreneurs to countries with more supportive funding environments and access to capital (e.g., United States) that are keen to commercialize on Canadian start-up ventures.
- Canada will continue to slide down global innovation rankings and the economy will suffer as a result negatively impacting job creation and Canada's strategic social-economic advantages.⁴

NCFA Canada 2014 Conferences and Outreach

NCFA Canada held four events across Canada (Toronto: April 16, 2014, Vancouver: May 21, 2014, Saskatoon: May 28, 2014, and Nova Scotia: Jun 19, 2014) to educate and receive feedback from various constituent groups interested in start-up capital in their communities. All of these events were held in association with strong community supporters such as the City of Toronto, the Saskatoon Chamber of Commerce, the Kolo Project, Vancouver Economic Commission, BC Technology Industry Association, Innovacorp and local angel groups. NCFA Canada and all in attendance appreciated the participation by local securities regulators in each jurisdiction at these events

In addition to holding conferences, NCFA Canada has fielded hundreds of questions from aspiring crowdfunding portal operators, issuers, investors and media by telephone, email and in person. We have participated in several federal and provincial government educational meetings with Industry Canada and Economic Social Development Canada (ESDC) and the Ontario Ministry of Economic Development, Trade and Employment.

We have worked towards building communities of crowdfunding practice across the country and have grown our national Crowdfunding Ambassadors program to over 20. We are working closely as community development partners in support of entrepreneurship with various organizational initiatives such as Startup Canada's Financial Literacy Committee and Fundica's cross-Canada funding road show to advance the level of Crowdfunding literacy amongst SMEs.

We have developed a significant amount of online educational content including webinars and we have published an equity crowdfunding FAQ on our website and provided articles summarizing the key elements of the proposed crowdfunding exemptions. We are also in the process of finalizing an e-book of a larger array of questions and answers on equity crowdfunding and investing in general.

³ http://en.wikipedia.org/wiki/Jumpstart_Our_Business_Startups_Act

⁴ <http://www.ncfacanada.org/poor-innovation-ranking-dims-the-lights-on-canadas-competitiveness-and-prosperity/>
NCFA Canada / June 18, 2014 / OSC Proposed MI 45-108 Crowdfunding Exemption

National Crowdfunding Survey in Canada

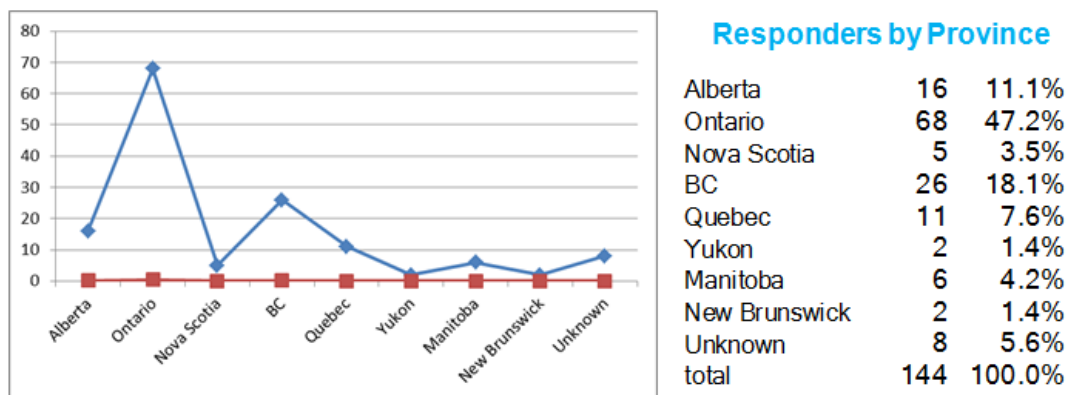
In 2013, NCFA Canada has collaborated with the Exempt Market Dealers Association of Canada to develop and host the National Canadian Crowdfunding Survey in Canada ([link to survey](#)). The purpose of the survey was to obtain a better understanding of the various stakeholder opinions on legalizing equity Crowdfunding in Canada and to provide Canadian securities regulators with feedback on many of the issues the OSC and the CSA are seeking input to.

NCFA Canada is planning to launch a similar survey in 2014 to gauge whether the opinions of various stakeholders has changed or evolved since 2013.

Overview of Survey Responders

We received a total of 144 survey responders from NCFA Canada's crowd:

- 100% of responders represented start-up and/or SME issuer views
- Almost 75% were a planned portal or service provider
- 70% / 25% identified themselves as non-accredited / accredited investors
- 12 self-identified as registrants including exempt market dealers, investment dealers, or portfolio managers



Selected Preliminary Survey Results

NCFA Canada is in the process of aggregating the survey data results into a research paper/report that will be prepared by newly joined NCFA Canada Advisory Board member, Douglas Cumming, Professor and Ontario Research Chair, York University – Schulich School of Business, and released shortly. Until then, based on the raw data responses, we can derive and share the following high level learnings:

Should we Adopt a Crowdfunding Exemption?

- 95.7% of responders voted that Canada should adopt a crowdfunding exemption under applicable securities laws.
- 74.8% of survey participants were moderately to extremely familiar with crowdfunding.
- Overall, approximately 90% of survey responders agreed or strongly agreed that there would be significant benefits for both SME issuers and investors by adopting a crowdfunding exemption.

Investor Motivations to Make an Investment through Crowdfunding (Ranked in Order):

- | | |
|------------------------------------|-----------------------------------|
| 1. Innovation and entrepreneurship | 4. Direct access to entrepreneurs |
| 2. Financial incentives | 5. Diversification |
| 3. Non-financial incentives | 6. Networking |

Should Canada Move Ahead or Follow the SEC and FINRA?

- 60.6% of survey responders agreed or strongly agreed that Canada should move ahead and finalize crowdfunding rules and regulations (23.1% were undecided).

Pilot Project

- 73.7% of survey responders believed that Canada should approve a crowdfunding exemption on a trial or limited basis initially.
- 43.3% or the majority of survey responders answered that the trial should be based on a limited period of time.
- A very low 5.6% clearly indicated that a crowdfunding pilot project should not be restricted to a particular industry or sector.

Investor Limits and Restrictions

- 72.9% of the responders voted that the investment cap should be \$10,000-\$15,000 or more per investor in a 12-month period.
- 64.2% of responders indicated that there should not be any further caps on the funds that can be invested with a single crowdfunding issuer within a 12 month period.

Issuer Limits

- 45% of responders voted that the aggregate amount of capital that an issuer should be able to raise in a 12 month period is up to \$2,000,000.
- 45% of responders indicated that there should not be a limit.

Secondary Market

- 64.4% of survey responders believed that securities should be free-trading after a period of time.
- 83.7% of survey respondents indicated that crowdfunding securities should be eligible for second market trading after 12-24 months of the original purchase.
- Note, by way of comparison and under the US JOBS Act there is a moratorium on transferring shares within one year from the date of issuance, unless the transfer is to an accredited investor or back to the company.

Prospective Crowdfunding Exemption

NCFA Canada advocates that a crowdfunding exemption in Canada will increase the awareness of Canadian start-ups, support innovation and entrepreneurship, create jobs and contribute to the total GDP and export base of the economy.

Proposed Implementation Principles

To cultivate the benefits of investment crowdfunding frameworks, regulators must strike the right balance between protecting investors while ensuring efficient capital formation for SMEs. To assist with this task, NCFA Canada has developed eight (8) high-level implementation principles to be used as guidelines when considering the costs and benefits of a prospective crowdfunding exemption in Canada.

Principle	Concept	Description
1. Harmonious	Collaborative development	The collaborative development of a harmonized set of crowdfunding regulations to benefit Canada as a whole.
2. Inclusive	All sectors and industries	To be as inclusive as possible to a broad-based range of sectors and industries to encourage balanced growth in communities across the country.
3. Transparent	Disclosure rules and crowd intelligence	Support transparent disclosure and crowd intelligence as a means to help government and industry prevent, identify and report potential fraud and abuse to authorities within a timely manner.
4. Adaptive	Innovative market adaptation	To ensure crowdfunding regulations support market evolution enabling innovation to flourish.
5. Robust	Efficient capital formation	A regulatory framework that gives SME issuers and investors (funders) the confidence that there is a robust framework in place capable of efficient capital formation, and one that is collectively supported by the eco-system.
6. Open	No jurisdictional restrictions	Enable a vehicle to allow businesses to accept investment (and funding) from other jurisdictions on a limited basis encouraging competitiveness, collaboration and cross border participation.
7. Additive	New channels and source of funds	Ensure crowdfunding regulations are designed to open up largely a new source and channel of funds by minimizing the impact and overlap with existing exempt market exemptions.
8. Protective	Investment caps and reasonable due diligence	Protect investors by limiting investment exposure, promoting education, fraud detection and implementing a fair and reasonable amount of due diligence and compliance without overly burdening the process.

NCFA Canada Responses to Proposed Multilateral Instrument 45-108 Crowdfunding and Companion Policy 45-108CP Crowdfunding; and Proposed Form 45-106F11 Report of Exempt Distribution for Issuers other than Investment Funds (Alberta, New Brunswick, Ontario and Saskatchewan)

#	Question and Answer																																								
	Issuer qualification criteria																																								
1.	Should the availability of the Crowdfunding Exemption be restricted to non-reporting issuers?																																								
	Comments: No. The exemption should be open to all qualifying participants that meet the due diligence and compliance requirements as outlined in the proposed crowdfunding exemption.																																								
2.	Is the proposed exclusion of real estate issuers that are not reporting issuers appropriate?																																								
	Comments: No. The crowdfunding exemption should be available to all real estate issuers reporting and non-reporting. Non-reporting real estate issuers have enjoyed equity crowdfunding success outside of Canada as illustrated in the chart below with no fraud or failure reported to date in the media. Real Estate Crowdfunding Portals Accredited and Non-Accredited Investor Sites (as of June 15, 2014) <table><tr><th>Portal</th><th>Country</th><th>Funding Placed on Portal (U.S.\$)</th><th># of Offerings</th><th>Mean Offering Size (U.S.\$)</th></tr><tr><td>Fundrise.com</td><td>U.S.</td><td>\$10,000,000</td><td>19</td><td>\$526,315</td></tr><tr><td>Groundfloor.us</td><td>U.S.</td><td>\$200,000</td><td>4</td><td>\$50,000</td></tr><tr><td>iFunding.co</td><td>U.S.</td><td>\$25,764,145</td><td>19</td><td>\$1,356,008</td></tr><tr><td>LendInvest.com</td><td>UK</td><td>\$73,679,683</td><td>69</td><td>\$1,067,821</td></tr><tr><td>PatchofLand.com</td><td>U.S.</td><td>\$3,000,000</td><td>12</td><td>\$250,000</td></tr><tr><td>RealtyMogul.com</td><td>U.S.</td><td>\$21,960,000</td><td>69</td><td>\$318,608</td></tr><tr><td>RealtyShares.com</td><td>U.S.</td><td>\$7,000,000</td><td>26</td><td>\$269,230</td></tr></table> Note: *Data self-reported by website portals and not verified by a third party.	Portal	Country	Funding Placed on Portal (U.S.\$)	# of Offerings	Mean Offering Size (U.S.\$)	Fundrise.com	U.S.	\$10,000,000	19	\$526,315	Groundfloor.us	U.S.	\$200,000	4	\$50,000	iFunding.co	U.S.	\$25,764,145	19	\$1,356,008	LendInvest.com	UK	\$73,679,683	69	\$1,067,821	PatchofLand.com	U.S.	\$3,000,000	12	\$250,000	RealtyMogul.com	U.S.	\$21,960,000	69	\$318,608	RealtyShares.com	U.S.	\$7,000,000	26	\$269,230
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	▪ We suggest you also visit http://crowdfundbeat.com/lendit-2014-real-estate-crowdfunding-panel/, which contains a video of five founders/representatives of the above real estate portals discussing their approach to equity crowdfunding real estate securities. ▪ Real estate as an investment is attractive to investors for several reasons not the least of which is steady returns from commercial or residential real estate investments, including office buildings, retail shopping centers, and single-family or multi-family homes. Crowdfunding allows investors who may not have been able to invest previously in this asset class to add real estate to their investment portfolio or otherwise diversify their investment dollars over several properties. ▪ It is unclear to the members of NCFA Canada what concerns the OSC has regarding private real estate issuers. Rather than exclude an entire vertical from participating in crowdfunding markets, we propose that the OSC consider creating an appropriate level of disclosure and reporting requirements for these transactions to address any issues they have concern with in this asset class. ▪ No two existing real estate crowdfunding portals in the world are alike, and we expect Canada will see its own share of interesting real estate crowdfunding portals if the OSC allows these portals to exist.
3.	The Crowdfunding Exemption would require that a majority of the issuer's directors be resident in Canada. One of the key objectives of our crowdfunding initiative is to facilitate capital raising for Canadian issuers. We also think this requirement would reduce the risk to investors. Would this requirement be appropriate and consistent with these objectives?
	Comments: ▪ No. We believe adding requirements regarding the residency of directors and officers would be unduly restrictive. Currently, foreign issuers may use any of the exemptions in <i>National Instrument 45-106 Prospectus and Registration Exemptions</i>. Why impose a residency restriction on the use of this exemption? ▪ We live in a global marketplace and artificial barriers to entry result in unattended negative results. For instance, Kickstarter at one time did not allow Canadian companies or residents to raise capital on its platform. This policy resulted in Canadians moving their business to the U.S. or adding a U.S. resident strawman to facilitate their campaign. Vancouver-born entrepreneur Eric Migicovsky of the Pebble Technology Corp. is one such example. ▪ A Canadian residency requirement in various corporate statutes in Canada has resulted in non-active Canadian directors being appointed from professionals assisting foreign nationals setting up their business in Canada. This provides no benefit to the company and a modest “capture fee” to Canadian professionals. ▪ As Canadians, we have experience in investing in companies active outside of Canada and with foreign boards of directors. Nearly 50% of the 9,000 mineral exploration projects held by TSX & TSX Venture companies are outside of Canada. Allow Canadians to continue to use their judgment to diversify their portfolio.

	Offering parameters
4.	The Crowdfunding Prospectus Exemption would impose a \$1.5 million limit on the amount that can be raised under the exemption by the issuer, an affiliate of the issuer, and an issuer engaged in a common enterprise with the issuer or with an affiliate of the issuer, during the period commencing 12 months prior to the issuer's current offering. Is \$1.5 million an appropriate limit? Should amounts raised by an affiliate of the issuer or an issuer engaged in a common enterprise with the issuer or with an affiliate of the issuer be subject to the limit? Is the 12-month period prior to the issuer's current offering an appropriate period of time to which the limit should apply?
	Comments: ▪ We believe the limit should be up to \$5,000,000 and not capped at \$1,500,000. We understand that this limit was previously selected based on the U.S. \$1,000,000 limit set out under Title II of the JOBS Act and the proposed U.S. Securities and Exchange Commission crowdfunding rules. Recent activity in the U.S. suggests a limit of \$1,500,000 may put Canada to a disadvantage over U.S. crowdfunding rules. ▪ Specifically, U.S. Congressman Patrick McHenry introduced a bill to amend U.S. Title III crowdfunding as proposed by the U.S. Securities and Exchange Commission. The proposed Startup Capital Modernization Act of 2014, if adopted, will raise crowdfunding limits in the U.S. federally from \$1,000,000 to \$5,000,000. Other changes will also make the U.S. federal crowdfunding exemption more attractive to issuers and investors than their Canadian counterparts if proposed caps are uncompetitive with international jurisdictions. ▪ A number of the intrastate crowdfunding exemptions adopted or under consideration have also chosen a higher limit than \$1,500,000. See: Intrastate-Crowdfunding-Exemptions-04-07-14. ▪ Equity crowdfunding, is still evolving and a higher limit would allow for that future growth. A higher limit would also ensure Canada offers equal crowdfunding opportunity that may well exist in the U.S. ▪ We believe an issuer's raise should not be aggregated with amounts raised by an affiliate of the issuer or an issuer engaged in a common enterprise with the issuer or with an affiliate of the issuer. A parent or subsidiary company may be involved in a completely different line of business or be the research arm of the organization. New developments and opportunities may be stifled by treating these entities as one for the purpose of this exemption. ▪ We believe the 12-month period prior to the issuer's current offering is an appropriate period of time to which the limit should apply.
5.	Should an issuer be able to extend the length of time a distribution could remain open if subscriptions have not been received for the minimum offering? If so, should this be tied to a minimum percentage of the target offering being achieved?
	Comments: ▪ Markets are not predictable. The rules should include a method to extend a crowdfunding offering beyond the 90-day window. A further 90-day extension should be allowed under the rule. Issuers should be required to update any information that is stale or inaccurate. ▪ Issuers, who have previously launched successful or unsuccessful campaigns on a portal, should be required to share this information in subsequent crowdfunding offerings. This requirement is similar to the disclosure required in prospectuses and qualifying transaction

	documents of capital pool corporations in Canada about directors and officers current and prior positions with other reporting issuers.
	Restrictions on solicitation and advertising
6.	Are the proposed restrictions on general solicitation and advertising appropriate?
	Comments: ▪ We support the exemptions prohibition against an issuer advertising the terms of an offering via the proposed crowdfunding exemption. We do believe however some clarification should be added to the rule expressly allowing issuers engaged in a crowdfunding offering to continue to publish regularly released factual business information – whether on an issuer’s Internet website or otherwise -- so long as such communications do not refer to the terms of the offering. ▪ We agree, only portals and issuers should be allowed to advertise. ▪ We believe further clarification should be added to the rule expressly allowing prospective investors to share information about a deal they are interested in through social media to their networks.
	Investment limits
7.	The Crowdfunding Prospectus Exemption would prohibit an investor from investing more than \$2,500 in a single investment under the exemption and more than \$10,000 in total under the exemption in a calendar year. An accredited investor can invest an unlimited amount in an issuer under the AI Exemption. Should there be separate investment limits for accredited investors who invest through the portal?
	Comments: ▪ We believe the investor investment cap of \$2,500 per single investment should be raised to \$5,000 or \$10,000 per single investment in a calendar year. Investors also should not be subject to aggregate crowdfunding exemption investment cap. Investors should be allowed to invest in as many equity crowdfunding campaigns as they chose. 90% of the U.S. States which have adopted or are considering adopting an intrastate crowdfunding exemption have chosen a 12 month investor investment cap of either \$5,000 or \$10,000 per single investment, unless the investor is accredited. If the investor is accredited no investment caps are applicable. The crowdfunding prospectus exemption should follow these U.S. developing norms. ▪ Issuers will have a difficult time raising the capital they need if the investment cap per investor remains at \$2,500 per single investment. ▪ As of June 16, 2014, U.K. equity crowdfunding portal Crowdcube has raised CD\$49,211,800 for 124 businesses. This means an average issuer raises CD\$396,869 in their equity crowdfunding campaign on Crowdcube. Only six of these campaigns have over 200 investors. The majority of the successful campaigns on Crowdcube have under 100 investors despite a minimum investment threshold of as little as a CD\$180, which means an average investment amount of \$4,000 per investor. Canada should expect similar investment trends under the crowdfunding prospectus exemption. As such, the investor investment cap should be raised to a much higher amount. ▪ Accredited investors should be able to invest an unlimited amount in a crowdfunding campaign as they are allowed to invest an unlimited amount under the accredited investor exemption.

	The participation of accredited investors at higher levels will provide non-accredited investors with added value as they are more likely to do greater due diligence than if they were only investing the minimum threshold amount in a campaign.
	Statutory or contractual rights in the event of a misrepresentation
8.	The Crowdfunding Prospectus Exemption would require that, if a comparable right were not provided by the securities legislation of the jurisdiction in which the investor resides, the issuer must provide the investor with a contractual right of action for rescission or damages if there is a misrepresentation in any written or other materials made available to the investor (including video). Is this the appropriate standard of liability? What impact would this standard of liability have on the length and complexity of offering documents?
	Comments: ▪ We do not have an issue with this requirement. ▪ Current securities laws require issuers to abide by the securities laws in the jurisdiction in which they reside and where the investor resides. This provision requires a similar application. ▪ This requirement is also identical to that which issuers and investors are subject to under the offering memorandum exemption in <i>National Instrument 45-106 Prospectus and Registration Exemptions</i>.
	Provision of ongoing disclosure
9.	How should the disclosure documents best be made accessible to investors? To whom should the documents be made accessible?
	Comments: ▪ All disclosure documents should be made accessible to prospective and actual investors of an issuer online. When running a campaign, issuers should be required to make this information available on the funding portal website or through a link on the funding portal website to the issuer's website or a third party website such as SEDAR, a transfer agent or other third party. ▪ Ongoing disclosure documents should also be made available to actual investors of the issuer online through the issuer's own website or a third party website. Information about how to access this ongoing disclosure material should be set out on an issuer's website.
10.	Would it be appropriate to require that all non-reporting issuers provide financial statements that are either audited or reviewed by an independent public accounting firm? Are financial statements without this level of assurance adequate for investors? Would an audit or review be too costly for non-reporting issuers?
	Comments: ▪ No. The financial audit and accounting/reporting requirements should be 'right sized' to the amount being raised and the financial stage of development (i.e., cash expenditures) of the company. ▪ The exemption should allow director and officer certified financials for raises under \$500,000; independently reviewed financial statements for raises between \$500,000 and \$3 million; and audited financials for raises between \$3 and \$5 million. This is in line with the requirements being proposed under the U.S. <i>Startup Capital Modernization Act of 2014</i>.

	- Financial statements for true start-up companies provide little useful information. What is more important at this stage of a company's life cycle is how much cash a company has on hand, how much they are burning through each month and how much they need to reach their next significant milestone. Investors also want to know whether the money being raised is to be used in consumption or production. Consumption and paying off prior debt is negative, while production is effort in building value in the company. - The need for reviewed and audited financial statements suggests a certain level of complication in an issuers business. When you are an early stage company, very little is complicated and most entries are outflows. - Once a company is making sales, audited financial statements provides greater value to investors and the company. - The majority of corporate statutes in Canada require issuers to provide audited financial statements unless all of the shareholders consent in writing to waiving this requirement each year.
11.	The proposed financial threshold to determine whether financial statements are required to be audited is based on the amount of capital raised by the issuer and the amount it has expended. Are these appropriate parameters on which to base the financial reporting requirements? Is the dollar amount specified for each parameter appropriate?
	Comments: - The financial threshold to require audited financial statements should be \$1,000,000 under the crowdfunding prospectus exemption not including funds raised under any other prospectus exemption since the formation of the issuer and the issuer having expended more than \$500,000 since its formation. - See also our response above under question 10.
	Other
12.	Are there other requirements that should be imposed to protect investors?
	Comments: In our February 28, 2013 comment letter regarding <i>OSC Staff Consulting Paper 45-710 Considerations for New Capital Raising Prospectus Exemptions</i>, we made the following suggestions the OSC may wish to explore to address investor protection concerns. The OSC has incorporated a number of these suggestions into the proposed crowdfunding exemption. The OSC may want to visit other suggestions at this time for further consideration. Statutory Declarations: Statutory declarations are used in other forums including the insurance industry to protect against fraud. In some cases, the purpose of a declaration is to make it easier to convict or successfully bring a civil suit for perjury (lying under oath in a sworn statement) or misrepresentation as opposed to obtaining a judgment for criminal or civil fraud. - In the crowdfunding context, management/directors/sponsors of SME issuers, portals, and investors must not submit false or misleading representations (including representations via social media).

- **Statutory Civil Remedies:** There must be clear statutory remedies for crowd investors including restitution of benefits and monies paid by investors because of wilful misrepresentations, fraud or, as above, lying under oath in a statutory declaration.
- **Spot Audits:** The OSC or an equivalent industry supported regulatory organization should be entitled to conduct a reasonable number of spot audits annually of portals and issuers with an obligation to report and address any suspicions of fraud to the appropriate authorities.
- **Education and Risk Acknowledgement from the Purchaser:** Industry best practices and standards need to be developed and offered to all crowdfunding participants by way of online media including tutorials, videos, podcasts, articles and whitepapers.
- Industry associations, and financial and academic institutions, should offer industry recognized non-mandatory courses to those interested in pursuing crowdfunding education via course work.
- Portals should provide robust FAQs and administer purchase risk acknowledgement forms in a clear and transparent manner.
- **Background Checks:** Criminal background and identify checks should be conducted for directors and management of SME issuers and portals (if appropriate for the circumstance and not overly burdensome or expensive for participants).
- **Disclosure (at the time of purchase):** Investors should have access to a reasonable amount of information pertaining to the investment allowing them to make a suitable decision to participate in the offering or not, without being overly burdensome to the process at hand.
- SME and portal directors should disclose personal information required to conduct a criminal background check.
- **Non-Compete Clauses:** Whether by way of a shareholders' agreement or OSC rules, there should be restrictions or regulations on the company's founders, management, and directors from competing in the same line of business during and for a reasonable time after their employment.
- Investors will lose faith and confidence in the process if management and founders abandon the company and compete with them.
- **Fraud Detection:** Collectively, the eco-system needs to ensure that fraud is swiftly detected and the appropriate deterrents are in place.
- Industry should support a self-regulating environment that allows crowd intelligence to play a significant role in the fraud detection process using advanced algorithms and practices in research/beta today.
- A centralized shared database could be established to track and protect the interests of the entire industry from potential cases of fraud and abuse. All occurrences of fraud and potential red flags could be stored and cross-referenced, protecting the reputation of regulators, portal operators, service providers and investors associated with crowdfunding industry.
- **Portal Duty and Obligation to Report Fraud:** Portals should have a legal duty and obligation to report suspicions of fraud to the OSC or related governing body.
- Investors should have a statutory or rule based cause of action against portals where they knew or ought to have known of fraud or suspicious conduct that goes unreported.
- Investors and portals should not be liable (civilly) (ex. for slander) for reporting suspicions of fraud to the OSC for further investigation.
- **On-going Disclosure:** Successfully funded SME issuers should provide shareholders with an annual snapshot of unaudited financial statements, and brief business update summarizing historical performance and future plans.

- Issuers should also be responsible for maintaining the company's basic share registry information once this information has been received from a facilitating portal or qualifying third party service provider.
- **Investment Limits:** We do not believe investors should be subject to an aggregate investment cap. If a cap is imposed it should be limited to unsophisticated investors with an aggregate cap of \$10,000 to \$20,000 per 12-month calendar period. 72.9% of survey responders reported that investor caps should be set above \$10,000.
- **Escrow Account and Disbursement of Funds:** Funds should be held in a third party escrow account and only released if the full funding target is achieved (and minimal cooling off period surpassed) with a maximum of 25% subscription overrun allowed before the offering is closed.
- Portals wishing to provide escrow account services must meet the qualifications of a compliant escrow account services provider.
- **Effective Dispute Resolution:** The process for certifying a class proceeding in Ontario is quite complex and expensive. Any dispute or individual claim arising from an investment would not be large enough to warrant independent legal action. However, a claim on behalf of all, or a group of investors may warrant legal action.
- The crowdfunding model would greatly benefit from a streamlined template (e.g., shareholders agreement) or legislation to the effect that all disputes be settled by way of private arbitration and expressly allow investors to commence arbitration as a class.
- **Sponsorship Concept from Australia:** The Australian sponsorship crowdfunding model was reviewed in a research paper that analyzes 'equity signals in crowdfunding' on a world leading equity crowdfunding portal called The Australian Small Scale Offerings Board (**ASSOB**).
- The self-imposed sponsorship model requires that all SME issuers participating on the ASSOB platform must engage at least one sponsor or professional business advisor, such as an accountant, corporate advisor, business consultant, financial broker, or lawyer, prior to getting listed on the portal.
- Sponsors assist entrepreneurs to prepare a set of online offering documents that follow a similar structure:
 - key investment highlights;
 - milestones achieved to date;
 - letter from the managing director;
 - business model;
 - market analysis;
 - financial projections;
 - purpose of the capital-raising;
 - offering details;
 - ownership structure; and
 - descriptions of the management team and external board members.
- Sponsors generally receive a mix of cash and 'sweat equity' for their services. They vet all companies seeking to list on the ASSOB portal, and give investors the confidence and information that they seek to make an effective investment decision.

Integrated Crowdfunding Portal Requirements	
	General registrant obligations
13.	The Crowdfunding Portal Requirements provide that portals will be subject to a minimum net capital requirement of \$50,000 and a fidelity bond insurance requirement of at least \$50,000. The fidelity bond is intended to protect against the loss of investor funds if, for example, a portal or any of its officers or directors breach the prohibitions on holding, managing, possessing or otherwise handling investor funds or securities. Are these proposed insurance and minimum net capital amounts appropriate?
	Comments: Yes. This requirement places equity crowdfunding portals operating under this exemption under the same capital and bond requirements as exempt market dealers and recently approved restricted dealers in Ontario.
	Additional portal obligations
14.	Do you think an international background check should be required to be performed by the portal on issuers, directors, executive officers, promoters and control persons to verify the qualifications, reputation and track record of the parties involved in the offering?
	Comments: - No. We believe that undertaking an international background check on an issuer's key stakeholders as contemplated in question 14, would impose a significant financial burden on both portal operators and issuers and provide little value in return. - Performing a quality international background check has many challenges. Language and regulation issues lie at the heart of these challenges and are a major driver of additional costs. Most developed countries have enacted legislation to protect the privacy of personal information and the ways in which this information is collected, transmitted and utilized. - Background verification companies have a duty of care to collect personal information in a manner which is consistent with the jurisdiction in which it is collected. - In Canada we are guided by the <i>Personal Information Protection and Electronic Documents Act (PIPEDA)</i>; in the US and Europe, <i>The Fair Credit Reporting Act (FCRA)</i>, and the EU's Directive on Data Protection govern. - In many countries, however, laws governing background verification and personal information privacy are still under development. Additional translation and interpreter resources would have to be accessed in order to understand local protocols and to subsequently request the personal information required for the verification of the key stakeholders. The additional time required to properly perform this service across multiple time-zones would also add to the cost of verification.
	Prohibited activities
15.	The Crowdfunding Portal Requirements would allow portal fees to be paid in securities of the issuer so long as the portal's investment in the issuer does not exceed 10%. Is the

	investment threshold appropriate? In light of the potential conflicts of interest from the portal's ownership of an issuer, should portals be prohibited from receiving fees in the form of securities?
	Comments: ▪ Yes. Portals should be able to accept securities as a portion of their fees. Historically, investment dealers, incubators and accelerators have all taken a portion of their fees in securities of issuers they are assisting. Portal operators are likely to be more careful in choosing good quality businesses to list on their portal if a portion of their fees is in the form of securities of that issuer. ▪ Many of the successful equity crowdfunding portals outside of Canada such as Israeli based OurCrowd and UK based Syndicate Room receive a portion of their fees in the form of securities in the businesses they fund. ▪ As long as portals provide conflict of interest disclosure to issuers and investors, the receipt of a portion of a portal fee in securities is likely to help the industry and portals form sustainable businesses versus causing any problems.
16.	The Crowdfunding Portal Requirements restrict portals from holding, handling or dealing with client funds. Is this requirement appropriate? How will this impact the portal's business operations? Should alternatives be considered?
	Comments: ▪ No. Portals should be able to hold, handle and deal with client funds on the same basis as an investment dealer, exempt market dealer, trustee, escrow agent or legal professional; providing that a portal meets the requirements of an accredited trustee or escrow agent. Why have portals post insurance and meet minimum net capital amounts. This rule seems unduly restrictive and adds another layer of cost that will be passed down to the issuer and indirectly the investors. ▪ If portals not allowed to handle or deal with clients' funds they should not be required to obtain a bond or insurance on par with exempt market dealers as there is reduced risk.
	Other
17.	Are there other requirements that should be imposed on portals to protect the interests of investors?
	Comments: No. We believe the proposed requirements governing portals are adequate to protect the interests of investors.
18.	Will the regulatory framework applicable to portals permit a portal to appropriately carry on business?
	Comments: ▪ It is still not clear in the rules if a portal may curate the businesses seeking to raise capital on its portal website. Unless a portal is extremely rigid in setting out its objective criteria as to how it plans to limit the offering on its platform it is open to regulatory action for having made a recommendation or endorsement by choosing business "y" over business "x". Portals should be able to make a judgment as to appropriateness of a particular business seeking capital through its services.

	- Portals should be able to post campaigns of affiliates or in businesses, they have financial stake if they disclose any such conflict of interest. We could imagine an incubator or university wanting to launch a crowdfunding portal to promote businesses they have an interest in advancing. We do not see anything wrong with this as long as the conflict is disclosed. - Background checks on issuers, directors, executive officers, promoters, and control persons should be limited to requiring portals accessing free public resources online. A number of the provincial courts in Canada make their database of past and pending charges/court actions and court materials available online for free. BC is one of those provinces. DUI and parking tickets are included as well as charges that are more serious and statements of claims. Canlii.org is an excellent source for judgements issued in civil and criminal cases right across Canada. The securities commissions also keep a database of people who have ran afoul of securities legislation: BCSC Disciplined Persons List and the CSA disciplined persons database. There are similar resources available in the US, Asia and Europe. - The TSX Venture Exchange charges \$500 for a domestic background search, which barely recoups their cost. International searches can cost up to \$5,000 per director and take up to three months to receive all information on the director. - The securities regulators should clarify whether portals and issuers may use search engine optimization or targeted social media advertising in identifying potential investors. - It is unclear what purpose is being served for requiring quarterly reports by portals to securities regulators.
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Activity fees

19.	Are the proposed activity fees appropriate? Do they address the objectives and concerns by which were guided?
	Comments: - No. Separate minimum filing fees of: \$0 in each Northwest Territories, Yukon & Nunavut; \$100 in each Prince Edward Island & Nova Scotia; \$350 in New Brunswick; \$500 in Ontario; \$125 in Saskatchewan; \$100 or 0.01% of capital raised in British Columbia if greater; and \$100 or 0.025% of capital raised in Alberta if greater are too high and confusing for issuers planning to raise capital using the crowdfunding exemption or the start-up crowdfunding exemption. Issuers would have to set minimum raises for each jurisdiction to justify the filing fee defeating the intent and purpose of crowdfunding. - No filing fee should be required when filing an exempt distribution report when an issuer has sold securities under either the crowdfunding exemption or the start-up crowdfunding exemption. No filing or fees are required when issuers rely on the private placement exemption in the US, which these two exemptions closely substitute. If a fee is necessary, it should be reduced and coordinated across all of the jurisdictions under which securities are sold pursuant to either of these exemptions.

	In such a newly forming and nascent industry, we feel that the distribution activity fees should take a ‘wait and see’ approach to determine how much market activity there is first before adding additional costs to a new process.
20.	Should we consider any other activity fees for exempt market activity?
	Comments: No.
Proposed Exempt Distribution Reports	
21.	Do the changes to the reporting requirements strike an appropriate balance between: (i) the benefits of collecting information that will enhance our understanding of exempt market activity and as a result, facilitate more effective regulatory oversight of the exempt market and inform our decisions about regulatory changes to the exempt market, and (ii) the compliance burden that may result for issuers and underwriters?
	Comments: - We believe the securities regulators across Canada should harmonize the exempt distribution reports into one report. There is not enough of a difference in these various exempt distribution reports to warrant separate documents. If all the proposed changes go through in Canada there will be four (4) different exempt distribution reports. The securities regulators by not harmonizing exempt distribution reports are creating unnecessary friction, regulatory and investor confusion, and increased compliance costs. Issuers will need to retain a lawyer just to figure out if they are using the right exempt distribution report. Securities regulators should also make the basic information contained in these reports available to the public. Currently, there is very little transparency regarding the actual information collected by securities regulators in the exempt market. It is impossible to determine what is happening in the exempt market without this information. - Similarly, there is no need for seven (7) different risk acknowledgements under <i>National Instrument 45-106 – Prospectus and Registration Exemptions</i>. Not only is this frustrating to issuers it is equally frustrating and confusing to investors.
22.	Should any of the information requested through the Proposed Reports not be required to be provided? Is there any alternative or additional information that should be provided that is not referred to in the Proposed Reports?
	Comments: We have no view as to the importance or adequacy of information being requested in the proposed reports at this time.

Other Proposed Exemptions: Friends, Family & Business Associates Exemption, Offering Memorandum Exemption, and the Existing Security Holder Exemption

Comments:

- We are not providing specific comments on these three exemptions at this time but instead general comments.
- NCFA Canada supports the OSC adopting the friends, family & business associate exemption (**FFBA**), the offering memorandum exemption (**OM**) and the existing security holder exemption (**ESH**). These three exemptions are currently available in every province and territory in Canada but Ontario with the exception of the ESH, which is also not available in Newfoundland and Labrador.
- Harmonization of the capital-raising exemptions in Canada should be a top priority of the OSC and all securities regulators. Adopting these three exemptions in Ontario will harmonize three key capital-raising exemptions across Canada if the OSC version adopted is identical to the rules currently in place in other provinces and territories in Canada.
- To the extent possible, the substantive and procedural components of these capital-raising exemptions should be identical across Canada. We can see no reason for an Ontario only version of the FFBA, OM or ESH exemption. Adopting a version of any of these three exemptions that is substantially or even moderately different from the version adopted in other jurisdictions in Canada is ill advised.
- Issuers and investors no longer conduct business or investments in a territorial bubble. Technology advances continue to change the way people conduct business. The gathering and sharing of information is almost instantaneous and global. Work is decentralized. Companies can outsource production, and back-end functions worldwide. Securities rules that artificially restrict business and its ability to raise capital efficiently hurt the Canadian economy as a whole.
- The OSC should review the 241 comment letters received in response to the other province and territories request for comment to their version of the ESH. The majority of these response letters were overwhelmingly in support of the proposed exemption. The form of the exemption adopted in these provinces and territories reflects the considered views of these various securities regulators and a wide sector of the market as represented by the comment letter writers. The OSC should not ignore these views and adopt a version of the ESH that differs in any respect to that adopted in all of the other provinces in Canada.
- Canada will have four different OM exemptions if the OSC, Alberta Securities Commission, Autorité des marchés financiers, Financial and Consumer Affairs Authority of Saskatchewan, and New Brunswick Financial and Consumer Services Commission go forward with a new version of the OM.
- SMEs do not use the current OM exemption because it is too complicated and expensive as is. Making the use of the OM even more complicated with more nuanced differences across Canada will make it completely unworkable for SMEs.
- The OM exemption as it exists now should be the version adopted by the OSC and remain in place across the rest of Canada. No evidence has been put forward by any of the participating jurisdictions that the existing forms of the OM exemption are flawed or being abused. Instead, evidence seems to suggest the OM exemption is being under-utilized by SMEs. The proposed amendments to the OM exemption do not suggest the proposed changes will be ones that would

	make this exemption more attractive to SMEs. Instead, the amendments appear to be adding a layer of complexity and cost.
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