

The Ontario Securities Commission

# CSA NOTICE OF PUBLICATION OF MULTILATERAL INSTRUMENT 45-108 *CROWDFUNDING*

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# CSA NOTICE OF PUBLICATION OF MULTILATERAL INSTRUMENT 45-108 *CROWDFUNDING*

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## TABLE OF CONTENTS

<b>CSA Notice of Publication of Multilateral Instrument 45-108 <i>Crowdfunding</i></b> .....	<b>1</b>
Annex A – Crowdfunding Regime .....	9
Annex A1 Multilateral Instrument 45-108 <i>Crowdfunding</i> .....	9
Annex A2 Form 45-108F1 <i>Crowdfunding Offering Document</i> .....	30
Annex A3 Form 45-108F2 <i>Risk Acknowledgement</i> .....	45
Annex A4 Form 45-108F3 <i>Confirmation of Investment Limits</i> .....	47
Annex A5 Form 45-108F4 <i>Notice of Specified Key Events</i> .....	49
Annex A6 Form 45-108F5 <i>Personal Information Form and Authorization     to Collect, Use and Disclose Personal Information</i> .....	50
Annex A7 Companion Policy 45-108CP <i>Crowdfunding</i> .....	60
Annex B – Amending Instrument for National Instrument 45-102 <i>Resale of Securities</i> .....	74
Annex C – Summary of Notable Changes to the March 2014 45-108 Materials .....	75
Annex D – Local Matters .....	83
Annex D1 Local Notice .....	83
Annex D2 Amending Instruments for Local Rules and Local Policy Changes .....	88
Annex E – OSC List of Commenters .....	92
Annex F – OSC Summary of Comments and Responses .....	95



# CSA NOTICE OF PUBLICATION OF MULTILATERAL INSTRUMENT 45-108 CROWDFUNDING



Canadian Securities  
Administrators

Autorités canadiennes  
en valeurs mobilières

## CSA Notice of Publication of Multilateral Instrument 45-108 *Crowdfunding*

November 5, 2015

### Introduction

The securities regulatory authorities in Manitoba, Ontario, Québec, New Brunswick and Nova Scotia (collectively, the **participating jurisdictions** or **we**) are publishing in final form Multilateral Instrument 45-108 *Crowdfunding* (**MI 45-108** or the **Rule**), which includes a crowdfunding prospectus exemption (the **crowdfunding exemption**) and a registration framework for funding portals (**funding portals**) (collectively, the **45-108 crowdfunding regime**). We are also making consequential amendments to other rules (the **consequential amendments**).

The Financial and Consumer Affairs Authority (**FCAA**) of Saskatchewan, which worked with the participating jurisdictions on the Rule, will be republishing MI 45-108 for a 60 day comment period.

The participating jurisdictions have coordinated their efforts in finalizing the 45-108 crowdfunding regime. In some jurisdictions, Ministerial approvals are required for the implementation of the 45-108 crowdfunding regime. Where applicable, Annex D provides information about each participating jurisdiction's approval process.

Provided all necessary Ministerial approvals are obtained, MI 45-108 will come into force in the participating jurisdictions on January 25, 2016.

### Substance and purpose of the 45-108 crowdfunding regime

As securities regulators, we have the responsibility to examine whether securities law contributes to the efficient functioning of our capital markets, while maintaining adequate investor protection. This includes assessing whether the securities regulatory framework remains responsive and relevant in a dynamic environment that is being shaped by advances in technology and a broad array of demographic, cultural and economic forces. The internet and social media have enabled start-ups and technology companies that foster innovation to reach out to a large number of investors, including retail investors (the crowd), to raise capital.

Selling securities over the internet to a large number of investors, sometimes referred to as "crowdfunding", has emerged as a new way for some businesses, particularly start-ups and small and medium-sized enterprises (**SMEs**), to access capital that would not have otherwise been accessible. "Crowdfunding" is an umbrella term used to capture many forms of capital and fund raising, that in this context, we mean raising capital from members of the public through the distribution/sale of securities. Crowdfunding may enable issuers to raise capital more effectively and at a lower cost while also providing investors with greater access to investment opportunities. The 45-108 crowdfunding regime is intended to leverage the use of the internet and social media to facilitate capital formation primarily for start-ups and SMEs that foster innovation and to provide new investment opportunities for investors. At the same time, we believe the 45-108 crowdfunding regime maintains an appropriate level of investor protection and regulatory oversight to be responsive both to global market developments in this area and to our mandate to provide protection to investors.

The 45-108 crowdfunding regime will enable start-ups and SMEs in their early-stages of development to raise capital online from a large number of investors through a single registered funding portal. A limit on the total amount that can be raised will be imposed on issuers and investors will be subject to investment limits as a means of limiting their exposure to a highly risky investment. The registration of the funding portal is a key investor protection measure as registration addresses, among other things, potential integrity concerns that may apply to funding portals and the persons operating them, as well as potential concerns relating to conflicts of interest and self-dealing.

We believe the introduction of the 45-108 crowdfunding regime is a significant step in enhancing capital raising alternatives in Canada, particularly for start-ups and SMEs. The introduction of the 45-108 crowdfunding regime in the participating jurisdictions will allow start-ups and SMEs to benefit from greater access to capital from investors that was previously limited.

The 45-108 crowdfunding regime encompasses measures which are intended to provide effective protection for investors, including:

Type of security	<ul style="list-style-type: none"> <li>issuers can only offer non-complex securities</li> </ul>
Investment limits	<ul style="list-style-type: none"> <li>investors are subject to the following investment limits: <ul style="list-style-type: none"> <li>an investor that does not qualify as an accredited investor: <ul style="list-style-type: none"> <li>\$2,500 per investment, and</li> <li>in Ontario, \$10,000 in total in a calendar year,</li> </ul> </li> <li>an accredited investor other than a permitted client: <ul style="list-style-type: none"> <li>\$25,000 per investment, and</li> <li>in Ontario, \$50,000 in total in a calendar year,</li> </ul> </li> <li>in Ontario, no investment limits for a permitted client</li> </ul> </li> </ul>
Offering document	<ul style="list-style-type: none"> <li>issuers are required to prepare an offering document that contains all of the information about the issuer and its business that an investor should know before purchasing the issuer's securities</li> </ul>
Risk acknowledgement form (RAF)	<ul style="list-style-type: none"> <li>investors must complete a RAF requiring them to positively confirm having read and understood the risk warnings and information in the crowdfunding offering document before they can enter into an agreement to purchase securities</li> </ul>
Liability for materials	<ul style="list-style-type: none"> <li>issuers are accountable for and are subject to a standard of liability on the crowdfunding offering document and other permitted materials, and investors are provided with a related right of action</li> </ul>
Advertising and solicitation	<ul style="list-style-type: none"> <li>a prohibition on advertising and general solicitation</li> </ul>
Ongoing disclosure	<ul style="list-style-type: none"> <li>non-reporting issuers must make available to investors (i) annual financial statements, (ii) a notice of use of proceeds, and (iii) in New Brunswick, Nova Scotia and Ontario, a notice of a discontinuation of the issuer's business, a change in the issuer's industry or a change of control of the issuer</li> <li>reporting issuers must continue to comply with all of their disclosure requirements</li> </ul>
Registered funding portal	<ul style="list-style-type: none"> <li>issuers can only distribute securities through a single funding portal that is registered as an investment dealer, exempt market dealer or restricted dealer as outlined in the Rule, and must post the offering document and other permitted materials solely on that funding portal's online platform</li> </ul>
Funding portal requirements	<ul style="list-style-type: none"> <li>funding portals are prohibited from offering securities of a related issuer</li> <li>a funding portal must fulfill certain gatekeeper responsibilities prior to allowing an issuer access to its online platform, including reviewing the issuer's disclosure in the crowdfunding offering document and other permitted materials for completeness, accuracy and any misleading statements</li> <li>a funding portal must review information and obtain background checks on the issuer and its directors, executive officers and promoters, and deny an issuer access to the funding portal in certain circumstances</li> </ul>

We note that the use of the internet for raising capital is not restricted to crowdfunding as defined in the 45-108 crowdfunding regime. Many online platforms today are used to raise capital under other prospectus exemptions such as the accredited investor exemption.

## Background

On March 20, 2014, the securities regulatory authorities of Saskatchewan, Manitoba, Québec, New Brunswick and Nova Scotia published a Notice of Publication and Request for Comment on two different crowdfunding prospectus exemption regimes:

- the start-up crowdfunding registration and prospectus exemptions (the **start-up crowdfunding exemptions**); and
- the proposed 45-108 crowdfunding regime.

The proposed 45-108 crowdfunding regime was also published on March 20, 2014 (the **March 2014 45-108 materials**) in a Notice and Request for Comment by the Ontario Securities Commission (**OSC**), as part of a broad review of the exempt market that would, among other things, introduce four new prospectus exemptions for issuers other than investment funds.

The securities regulatory authorities of British Columbia, Saskatchewan, Manitoba, Québec, New Brunswick and Nova Scotia have implemented the start-up crowdfunding exemptions by way of local blanket orders on May 14, 2015. The 45-108 crowdfunding regime and the start-up crowdfunding exemptions are viewed by those jurisdictions (except for British Columbia, which is not a jurisdiction participating in the 45-108 crowdfunding regime) as complementary regimes, as the 45-108 crowdfunding regime is available to both reporting and non-reporting issuers and provides both higher investment limits for investors and higher limits on the amount issuers can raise.

### Summary of written comments received by the participating jurisdictions

The comment period for the March 2014 45-108 materials ended on June 18, 2014. The participating jurisdictions collectively received 70 written submissions. We have considered the comments received and thank all of the commenters for their input.

Comment letters received by the following jurisdictions can be viewed on their websites as noted:

- OSC – [www.osc.gov.on.ca](http://www.osc.gov.on.ca)
- AMF – [www.lautorite.qc.ca/en](http://www.lautorite.qc.ca/en)

A summary of the comments submitted to the OSC, together with the responses of OSC staff, is contained in Annex F.

A summary of the general themes raised in the comment letters that were received across the participating jurisdictions is set out under the heading “Key themes from the comment letters” below.

### Key themes from the comment letters

There were several key themes expressed throughout the comment letters submitted to us. Below is a summary of these key themes.

#### *Investor protection*

A significant number of commenters raised concerns related to investor protection. Many of the commenters noted the high probability that investors would lose their entire investment in a start-up or a SME because these businesses typically have low survival rates and there are often issues related to corporate governance, insider trading and integrity concerns.

Some of the commenters further noted that unsophisticated investors are particularly vulnerable in a crowdfunding investment environment. Particular concerns expressed included:

- investors lack the requisite expertise, skills and experience to invest in a crowdfunded offering,
- investors are unfamiliar with start-up investing principles and the risks particular to start-ups and SMEs,
- investors lack sufficient information to make appropriate investment decisions due to the low level of disclosure required of non-reporting issuers under the crowdfunding exemption,
- there will be limited access to ongoing information about a start-up or SME that is a non-reporting issuer,
- investors do not understand and appreciate the restrictions on their ability to resell the shares they purchase, and
- the risk of fraud in a crowdfunding environment, particularly given the increased access of unsophisticated investors to private markets that the exemption would provide and the broad reach afforded by the internet.

As we expand accessibility to the exempt market through crowdfunding, we recognize that investor protection measures are an important component of the framework and we will remain vigilant in monitoring the adequacy of the protection it affords

investors. We believe the 45-108 crowdfunding regime we are introducing will provide greater access to capital for start-ups and SMEs and that the framework we are adopting, including the measures noted above, will provide effective protection for investors.

#### *Investment limits*

The March 2014 45-108 materials included proposed investment limits for all investors: a \$2,500 limit per investment and a \$10,000 limit for all investments made by an investor under the crowdfunding exemption in a calendar year. A large number of commenters expressed a range of opinions about the proposed investment limits.

One group of commenters thought the proposed investment limits would frustrate the 45-108 crowdfunding regime's objectives of facilitating capital raising for start-ups and SMEs, would interfere with investors' ability to pursue their investment objectives, and would not provide meaningful investor protection.

Another group of commenters recommended that the dollar amount of the investment limits be reduced for investors. The commenters pointed to the concept of crowdfunding being based on small investments made by a broad pool of investors and the limited amount of funds Canadians have available to invest annually as evidenced by published economic data. The commenters argued that lower investment limits would discourage over-concentration by unsophisticated investors in a risky class of investments.

Several commenters supported removing or increasing investment limits for accredited investors. The arguments in support of this position generally pertained to the relatively high level of sophistication such investors possess and their ability to retain advice and withstand loss.

We continue to believe that investment limits are a necessary and appropriate investor protection tool that can help to reduce the risk associated with an investment in securities under the crowdfunding exemption, while still facilitating capital-raising by start-ups and SMEs. However, in light of the feedback received, we considered different approaches to investment limits under the crowdfunding exemption and have made changes to the investment limits that were proposed in the March 2014 45-108 materials.

#### *Financial statement assurance requirements for non-reporting issuers and other financial disclosure*

Several commenters provided feedback regarding the proposed assurance requirements for the financial statements of a non-reporting issuer that distributes securities in reliance on the crowdfunding exemption. The commenters' recommendations on non-reporting issuers' financial statements included a mandatory audit, a review being sufficient and a tiered approach to assurance requirements.

We continue to support a tiered approach to financial statement assurance requirements. After considering the comments, we have simplified and raised the thresholds based on the amount an issuer has raised under one or more prospectus exemptions since its formation. As such, a non-reporting issuer's financial statements will be required to be:

- audited or reviewed by a public accounting firm if the cumulative amount an issuer has raised under prospectus exemptions since its formation is \$250,000 or more but is less than \$750,000, or
- audited if the cumulative amount an issuer has raised under prospectus exemptions since its formation is \$750,000 or more.

We think these thresholds strike an appropriate balance between providing investors with reliable financial information and not imposing a disproportionate financial burden on start-ups and SMEs that have limited financial resources to pursue their business.

#### *Offering limit*

Several commenters expressed views about the proposed \$1.5 million limit on the aggregate amount that could be raised by an issuer group under the crowdfunding exemption. Although several commenters supported the proposed limit, an equal number of commenters thought the limit should be higher.

We maintain that a limit of \$1.5 million is appropriate. The focus of the crowdfunding exemption is to facilitate capital raising by start-ups and SMEs, and the proposed limit is commensurate with the capital needs of issuers at this stage of development. There are other prospectus exemptions available to address the needs of issuers at more advanced stages of development.

*Funding portal registration in other registration categories and use of the crowdfunding exemption*

Many commenters disagreed with the prohibition on a funding portal against being registered in another registration category and suggested other registrants should be allowed to use the crowdfunding exemption. These commenters noted that registrants in other categories would have the experience and expertise to perform the work and comply with requirements in the Rule. They also noted that this restriction would increase complexity and costs for an issuer raising funds under multiple prospectus exemptions, and limiting funding portals to one prospectus exemption would prevent funding portals from being economically viable.

We considered the comments received and amended the March 2014 45-108 materials to permit registered dealers, such as investment dealers and exempt market dealers, to use the crowdfunding exemption. However, these registered dealers will need to comply with all of the requirements applicable to their registration category, including performing specific know-your-client and know-your product due diligence on the issuers, in addition to the requirements applicable to a funding portal as set out in the Rule.

However, a funding portal registered as a restricted dealer is a specialized type of restricted dealer that can only rely on the crowdfunding exemption to facilitate distributions of simple securities and their review of issuers will be limited in comparison to the know-your-product obligations of investment dealers and exempt market dealers relying on the crowdfunding exemption. In light of the limited activities of the restricted dealer funding portal, they will not be required to conduct a suitability assessment for the investor and will not assess the merits or expected returns of an investment. Rather, the restricted dealer funding portal will provide a gatekeeper role focused on compliance by issuers with the requirements of the Rule. Considering the limited activities of the restricted dealer funding portal, we continue to believe a funding portal that is registered as a restricted dealer in accordance with the Rule should not be registered in any other registration category, and, in Ontario, should not be affiliated with another registered firm.

*Custodial requirements – holding, handling or having access to purchaser funds or assets*

Many commenters expressed an opinion on the restriction on holding, handling, or having access to client funds or securities by funding portals.

We acknowledge these comments and agree that client funds and assets would be better protected if they were held by the funding portal that is subject to capital and insurance requirements. We have amended the March 2014 45-108 materials so that a funding portal registered in the category of restricted dealer will be permitted to hold, handle, control or have access to purchaser funds provided the restricted dealer funding portal maintains the minimum capital requirement and fidelity bond insurance requirements equivalent to an exempt market dealer. Funding portals that are registered as exempt market dealers and investment dealers will be required to comply with the capital and insurance requirements applicable to their registration category and where applicable, as required by the Investment Industry Regulatory Organization of Canada.

*Advertising and solicitation*

The March 2014 45-108 materials proposed that all relevant information about a crowdfunding offering would be required to be made available only on the funding portal's online platform through which the distribution was to be made and not on any other website. An issuer could inform potential investors that the issuer was proposing to offer its securities under the crowdfunding exemption and refer the potential investors to the online platform of the funding portal for more information.

Commenters generally supported, or did not believe it was inappropriate to have, reasonable restrictions on advertising and solicitation by funding portals and issuers relying on the crowdfunding exemption. However, some commenters disagreed with the restrictions on advertising and solicitation by funding portals and issuers. They felt that limiting avenues or channels through which investors receive information or advertisements about an investment opportunity would be a detriment to an issuer seeking capital and to investors seeking as much information as possible about a potential investment. These commenters suggested that other means of communication, such as e-mail, text, or verbal communications, should also be permitted.

We note that an issuer is permitted to inform potential investors of its offering on the funding portal's online platform and may use any form of communication (e.g., text, email or posters) it chooses to direct potential investors to the funding portal's online platform. We continue to believe that all materials pertaining to a crowdfunding offering (including terms sheets and videos) should only be made available to potential investors on the funding portal's online platform for ease of investor reference and to facilitate the exchange of information and views that is conducive to eliciting the "wisdom of the crowd". This will also allow the funding portal to ensure that all materials of the issuer are consistent with the crowdfunding offering document and comply with the requirements on advertising and solicitation.

The funding portal is able to advertise its business. For example, it can advertise the fact that crowdfunding offerings could be made through the funding portal and the fact that information about such offerings would be posted on its online platform.

## Changes to the March 2014 45-108 materials

After considering the comments received and consultations with stakeholders, we have made some changes to the proposal that was published for comment. We do not consider the changes made since the publication for comment to be material and therefore are not republishing the 45-108 crowdfunding regime for a further comment period.

Annex C contains a summary of notable changes between the March 2014 45-108 materials published for comment and the final publication.

## Consequential amendments

### *National amendments*

We are making consequential amendments to the following instrument:

- National Instrument 45-102 *Resale of Securities* so that securities distributed under the crowdfunding exemption are subject to a “restricted period” on resale.

In Québec, the consequential amendments to National Instrument 45-102 *Resale of Securities* are published for comment for a 30-day comment period. The consequential amendment is intended to come into force in Québec at the same time MI 45-108 comes into force on January 25, 2016.

### *Local amendments*

Any changes to local rules or policies will be identified in a local notice, where applicable.

## Local notices

Annex D is being published in any local jurisdiction that is making related changes to local securities laws and sets out any additional information that is relevant to that jurisdiction only.

## Questions

Please refer your questions to any of:

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**Annexes to Notice**

- Annex A – Crowdfunding Regime
  - A1 Multilateral Instrument 45-108 *Crowdfunding*
  - A2 Form 45-108F1 *Crowdfunding Offering Document*
  - A3 Form 45-108F2 *Risk Acknowledgement*
  - A4 Form 45-108F3 *Confirmation of Investment Limits*
  - A5 Form 45-108F4 *Notice of Specified Key Events*
  - A6 Form 45-108F5 *Personal Information Form and Authorization to Collect, Use and Disclose Personal information*
  - A7 Companion Policy 45-108CP *Crowdfunding*
- Annex B – Amending Instrument for National Instrument 45-102 *Resale of Securities*
- Annex C – Summary of Notable Changes to the March 2014 45-108 Materials
- Annex D – Local Matters
- Annex E – OSC List of Commenters
- Annex F – OSC Summary of Comments and Responses

**ANNEX A1**  
**MULTILATERAL INSTRUMENT 45-108**  
**CROWDFUNDING**

**Multilateral Instrument 45-108**  
**Crowdfunding**

**Table of Contents**

**Part 1 Definitions and interpretation**

1. Definitions
2. Terms defined or interpreted in other instruments
3. Purchaser
4. Specifications – Québec

**Part 2 Crowdfunding prospectus exemption**

*Division 1: Distribution requirements*

5. Crowdfunding prospectus exemption
6. Conditions for closing of the distribution
7. Certificates
8. Right of withdrawal
9. Liability for misrepresentation – reporting issuers
10. Liability for untrue statement – non-reporting issuers
11. Advertising and general solicitation
12. Additional distribution materials
13. Commissions or fees
14. Restriction on lending
15. Filing or delivery of distribution materials

*Division 2: Ongoing disclosure requirements for non-reporting issuers*

16. Annual financial statements
17. Annual disclosure of use of proceeds
18. Notice of specified key events
19. Period of time for providing ongoing disclosure
20. Books and records

**Part 3 Requirements for funding portals**

*Division 1: Registration requirements, general*

21. Restricted dealer funding portal
22. Registered dealer funding portal

*Division 2: Registration requirements, funding portals*

23. Restricted dealing activities
24. Advertising and general solicitation
25. Access to funding portal
26. Issuer access agreement
27. Obligation to review materials of eligible crowdfunding issuer
28. Denial of issuer access and termination
29. Return of funds
30. Notifications
31. Removal of distribution materials
32. Monitoring purchaser communications
33. Online platform acknowledgement
34. Purchaser requirements prior to purchase
35. Required online platform disclosure
36. Delivery to the issuer
37. Release of funds
38. Reporting requirements

*Division 3: Additional requirements, restricted dealer funding portal*

- 39. Prohibition on providing recommendations or advice
- 40. Restriction on referral arrangements
- 41. Permitted dealing activities
- 42. Chief compliance officer
- 43. Proficiency

**Part 4 Exemption**

- 44. Exemption

**Part 5 Coming into force**

- 45. Effective date

**Appendix A – Signing Requirements for Certificate of a Crowdfunding Offering Document (Section 7)****Form 45-108F1 Crowdfunding Offering Document****Form 45-108F2 Risk Acknowledgement****Form 45-108F3 Confirmation of Investment Limits****Form 45-108F4 Notice of Specified Key Events****Form 45-108F5 Personal Information Form and Authorization to Collect, Use and Disclose Personal Information**

**Multilateral Instrument 45-108**  
**Crowdfunding**

**PART 1**  
**DEFINITIONS AND INTERPRETATION**

**Definitions**

1. In this Instrument

“accredited investor” means

- (a) except in Ontario, an accredited investor as defined in National Instrument 45-106 *Prospectus Exemptions*, and
- (b) in Ontario, an accredited investor as defined in subsection 73.3(1) of the the *Securities Act*, R.S.O. 1990 c. S.5 and in National Instrument 45-106 *Prospectus Exemptions*;

“aggregate minimum proceeds” means the amount disclosed in item 5.2 of the crowdfunding offering document that is sufficient to accomplish the business objectives of the issuer;

“Canadian Financial Statement Review Standards” means standards for the review of financial statements by a public accountant determined with reference to the Handbook;

“confirmation of investment limits form” means a completed Form 45-108F3 *Confirmation of Investment Limits*;

“crowdfunding offering document” means a completed Form 45-108F1 *Crowdfunding Offering Document* together with any amendment to that document and any document incorporated by reference therein;

“crowdfunding prospectus exemption” means the exemption from the prospectus requirement in section 5 [*Crowdfunding prospectus exemption*];

“distribution period” means the period referred to in the crowdfunding offering document during which an eligible crowdfunding issuer offers its securities to purchasers in reliance on the crowdfunding prospectus exemption;

“eligible crowdfunding issuer” means an issuer if all of the following apply:

- (a) the issuer and, if applicable, its parent are incorporated or organized under the laws of Canada or any jurisdiction of Canada;
- (b) the head office of the issuer is located in Canada;
- (c) a majority of the directors of the issuer are resident in Canada;
- (d) the principal operating subsidiary of the issuer, if any, is incorporated or organized under
  - (i) the laws of Canada or any jurisdiction of Canada, or
  - (ii) the laws of the United States of America or any state or territory of the United States of America or the District of Columbia;
- (e) the issuer is not an investment fund;

“eligible securities” means securities of an eligible crowdfunding issuer having the same price, terms and conditions that are distributed under the crowdfunding prospectus exemption during the distribution period and are any one or more of the following:

- (a) a common share;
- (b) a non-convertible preference share;
- (c) a security convertible into securities 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;
- (f) a flow-through share under the ITA;

“executive officer” means an individual who is

- (a) a chair, vice-chair or president,
- (b) a chief executive officer or chief financial officer,
- (c) a vice-president in charge of a principal business unit, division or function including sales, finance or production, or
- (d) performing a policy-making function in respect of the issuer;

“funding portal” means

- (a) a registered dealer funding portal, or
- (b) a restricted dealer funding portal;

“issuer access agreement” means a written agreement entered into between an eligible crowdfunding issuer and a funding portal in compliance with section 26 [*Issuer access agreement*];

“issuer group” means

- (a) an eligible crowdfunding issuer,
- (b) an affiliate of the eligible crowdfunding issuer, and
- (c) any other issuer
  - (i) that is engaged in a common enterprise with the eligible crowdfunding issuer or with an affiliate of the eligible crowdfunding issuer, or
  - (ii) that is controlled, directly or indirectly, by the same person or company or persons or companies that control, directly or indirectly, the eligible crowdfunding issuer;

“permitted client” means a permitted client as defined in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;

“personal information form” means a completed Form 45-108F5 *Personal Information Form and Authorization to Collect, Use and Disclose Personal Information*;

“registered dealer funding portal” means a person or company that

- (a) is registered in the category of investment dealer or exempt market dealer under National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, and
- (b) acts or proposes to act as an intermediary in a distribution of eligible securities through an online platform in reliance on the crowdfunding prospectus exemption;

“restricted dealer funding portal” means a person or company that

- (a) is registered in the category of restricted dealer under National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*,
- (b) is authorized under the terms and conditions of its restricted dealer registration to distribute securities under this Instrument,
- (c) acts or proposes to act as an intermediary in a distribution of eligible securities through an online platform in reliance on the crowdfunding prospectus exemption,

- (d) is not registered in any other registration category, and
- (e) in Ontario, is not an affiliate of another registered dealer, registered adviser, or registered investment fund manager;

“right of withdrawal” means the right referred to in section 8 [*Right of withdrawal*] or a comparable right described in securities legislation of the jurisdiction in which the purchaser resides;

“risk acknowledgement form” means a completed Form 45-108F2 *Risk Acknowledgement*;

“SEC issuer” means an SEC issuer as defined in National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*;

“U.S. AICPA Financial Statement Review Standards” means the standards of the American Institute of Certified Public Accountants for a review of financial statements by a public accountant, as amended from time to time.

#### Terms defined or interpreted in other instruments

2. (1) Unless otherwise defined herein, in Part 2 [*Crowdfunding prospectus exemption*], each term has the meaning ascribed, or interpretation given, to it in National Instrument 45-106 *Prospectus Exemptions*.
- (2) Unless otherwise defined herein, in Part 3 [*Requirements for funding portals*], each term has the meaning ascribed, or interpretation given, to it in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*.

#### Purchaser

3. References to a “client” in a provision of any instrument with which a funding portal is required to comply under Part 3 [*Requirements for funding portals*], must be read as if the references are to a “purchaser”.

#### Specifications – Québec

4. (1) In Québec, “trade” in this Instrument refers to any of the following activities:
  - (a) the activities described in the definition of “dealer” in section 5 of the Securities Act (chapter V-1.1), including the following activities:
    - (i) the sale or disposition of a security by onerous title, whether the terms of payment be on margin, installment or otherwise, but does not include a transfer or the giving in guarantee of securities in connection with a debt or the purchase of a security, except as provided in paragraph (b);
    - (ii) participation as a trader in any transaction in a security through the facilities of an exchange or a quotation and trade reporting system;
    - (iii) the receipt by a registrant of an order to buy or sell a security;
  - (b) a transfer or the giving in guarantee of securities of an issuer from the holdings of a control person in connection with a debt.
- (2) In Québec, the crowdfunding offering document and materials that are made available to purchasers by a reporting issuer in accordance with this Instrument are documents authorized by the Autorité des marchés financiers for use in lieu of a prospectus.
- (3) In Québec, the crowdfunding offering document and materials that are made available to purchasers in accordance with this Instrument must be drawn up in French only or in French and English.

**PART 2**  
**CROWDFUNDING PROSPECTUS EXEMPTION**

**Division 1: Distribution requirements****Crowdfunding prospectus exemption**

5. (1) The prospectus requirement does not apply to a distribution by an eligible crowdfunding issuer of an eligible security of its own issue to a person or company that purchases the security as principal if all of the following apply:
- (a) the issuer offers the securities during the distribution period and the distribution period ends no later than 90 days after the date the issuer first offers its securities to purchasers;
  - (b) the total proceeds raised by the issuer group in reliance on the crowdfunding prospectus exemption does not exceed \$1,500,000 within the 12-month period ending on the last day of the distribution period;
  - (c) in Ontario, the acquisition cost of the securities acquired by the purchaser
    - (i) in the case of a purchaser that is not an accredited investor, does not exceed
      - (A) \$2,500 for the distribution, and
      - (B) \$10,000 for all distributions in reliance on the crowdfunding prospectus exemption in the same calendar year,
    - (ii) in the case of a purchaser that is an accredited investor that is not a permitted client, does not exceed
      - (A) \$25,000 for the distribution, and
      - (B) \$50,000 for all distributions in reliance on the crowdfunding prospectus exemption in the same calendar year, and
    - (iii) in the case of a purchaser that is a permitted client, is not limited;
  - (d) except in Ontario, the acquisition cost of the securities acquired by the purchaser
    - (i) in the case of a purchaser that is not an accredited investor, does not exceed \$2,500 for the distribution, and
    - (ii) in the case of a purchaser that is an accredited investor, does not exceed \$25,000 for the distribution;
  - (e) the issuer distributes the securities through a single funding portal;
  - (f) before the purchaser enters into an agreement to purchase the securities, the issuer makes available to the purchaser, through the funding portal, a crowdfunding offering document that is in compliance with
    - (i) section 7 [*Certificates*] and section 8 [*Right of withdrawal*], and
    - (ii) section 9 [*Liability for misrepresentation – reporting issuers*] or section 10 [*Liability for untrue statement – non-reporting issuers*], as applicable.
- (2) The crowdfunding prospectus exemption is not available if any of the following apply:
- (a) the proceeds of the distribution are used by the issuer to invest in, merge with or acquire an unspecified business;
  - (b) the issuer is not a reporting issuer, and the issuer previously distributed securities in reliance on the crowdfunding prospectus exemption and is not in compliance with any of the following:
    - (i) section 15 [*Filing or delivery of distribution materials*];

- (ii) section 16 [*Annual financial statements*];
- (iii) section 17 [*Annual disclosure of use of proceeds*];
- (iv) section 19 [*Period of time for providing ongoing disclosure*];
- (v) section 20 [*Books and records*];
- (vi) in New Brunswick, Nova Scotia and Ontario, section 18 [*Notice of specified key events*];
- (c) the issuer is a reporting issuer and is not in compliance with its reporting obligations under securities legislation, including under this Instrument;
- (d) the issuer has previously commenced a distribution under this section and that distribution has not closed, been withdrawn or otherwise terminated.

### Conditions for closing of the distribution

6. A distribution in reliance on the crowdfunding prospectus exemption must not close unless
- (a) the right of withdrawal has expired,
  - (b) the aggregate minimum proceeds have been raised through one or both of the following:
    - (i) the distribution;
    - (ii) any concurrent distributions by any member of the issuer group, provided that the proceeds from those distributions are unconditionally available to the eligible crowdfunding issuer at the time of closing of the distribution,
  - (c) the issuer has provided to the funding portal written confirmation of the proceeds of the concurrent distributions referred to in subparagraph (b)(ii), if any,
  - (d) the issuer has received
    - (i) the purchase agreement entered into between the issuer and the purchaser,
    - (ii) a risk acknowledgement form for the purchaser where the purchaser positively confirms having read and understood the risk warnings and the information in the crowdfunding offering document,
    - (iii) except in Ontario, confirmation and validation that the purchaser is an accredited investor if the acquisition cost is greater than \$2,500, and
    - (iv) in Ontario, a confirmation of investment limits form for the purchaser, and
  - (e) the closing occurs within 30 days of the end of the distribution period.

### Certificates

7. (1) A crowdfunding offering document made available under paragraph 5(1)(f) [*Crowdfunding prospectus exemption*] must contain a certificate executed by the issuer in accordance with the applicable provisions of Appendix A, which
- (a) if the issuer is a reporting issuer, states that “*This crowdfunding offering document does not contain a misrepresentation. Purchasers of securities have a right of action in the case of a misrepresentation.*”, or
  - (b) if the issuer is not a reporting issuer, states that “*This crowdfunding offering document does not contain an untrue statement of a material fact. Purchasers of securities have a right of action in the case of an untrue statement of a material fact.*”
- (2) A certificate under subsection (1) must be true as at the date the certificate is signed, the date the crowdfunding offering document is made available to purchasers and the time of the closing of the distribution.

- (3) If a certificate under subsection (1) ceases to be true after a crowdfunding offering document is made available to a purchaser, the issuer must
- (a) amend the crowdfunding offering document and provide a newly dated certificate executed by the issuer in accordance with the applicable provisions of Appendix A, and
  - (b) provide the amended crowdfunding offering document to the funding portal for the purpose of making it available to purchasers.

#### Right of withdrawal

8. If the securities legislation of the jurisdiction in which a purchaser resides does not provide a comparable right, the crowdfunding offering document made available to the purchaser under paragraph 5(1)(f) [*Crowdfunding prospectus exemption*] must provide the purchaser with a contractual right to withdraw from any agreement to purchase the security by delivering a notice to the funding portal within 48 hours after the date of the agreement to purchase and any subsequent amendment to the crowdfunding offering document.

#### Liability for misrepresentation – reporting issuers

9. If the securities legislation of the jurisdiction in which a purchaser resides does not provide a comparable right, the crowdfunding offering document of a reporting issuer, made available to the purchaser under paragraph 5(1)(f) [*Crowdfunding prospectus exemption*], must provide a contractual right of action against the issuer for rescission and damages that

- (a) is available to the purchaser if the crowdfunding offering document or other materials made available to the purchaser contain a misrepresentation, without regard to whether the purchaser relied on the misrepresentation,
- (b) is enforceable by the purchaser delivering a notice to the issuer
  - (i) in the case of an action for rescission, within 180 days after the date of purchase by the purchaser, or
  - (ii) in the case of an action for damages, before the earlier of
    - (A) 180 days after the purchaser first has knowledge of the facts giving rise to the cause of action, or
    - (B) 3 years after the date of purchase,
- (c) is subject to the defence that the purchaser had knowledge of the misrepresentation,
- (d) in the case of an action for damages, provides that the amount recoverable
  - (i) does not exceed the price at which the security was distributed, and
  - (ii) does not include all or any part of the damages that the issuer proves do not represent the depreciation in value of the security resulting from the misrepresentation, and
- (e) is in addition to, and does not detract from, any other right of the purchaser.

#### Liability for untrue statement – non-reporting issuers

10. The crowdfunding offering document of an issuer that is not a reporting issuer, made available to a purchaser under paragraph 5(1)(f) [*Crowdfunding prospectus exemption*], must provide a contractual right of action against the issuer for rescission and damages that

- (a) is available to the purchaser if the crowdfunding offering document or other materials made available to the purchaser contain an untrue statement of a material fact, without regard to whether the purchaser relied on the statement,
- (b) is enforceable by the purchaser delivering a notice to the issuer
  - (i) in the case of an action for rescission, within 180 days after the date of purchase by the purchaser, or

- (ii) in the case of an action for damages, before the earlier of
  - (A) 180 days after the purchaser first has knowledge of the facts giving rise to the cause of action, or
  - (B) 3 years after the date of purchase,
- (c) is subject to the defence that the purchaser had knowledge of the untrue statement of a material fact,
- (d) in the case of an action for damages, provides that the amount recoverable
  - (i) does not exceed the price at which the security was distributed, and
  - (ii) does not include all or any part of the damages that the issuer proves do not represent the depreciation in value of the security resulting from the untrue statement of a material fact, and
- (e) is in addition to, and does not detract from, any other right of the purchaser.

### Advertising and general solicitation

11. (1) An issuer must not, directly or indirectly, advertise a distribution, or solicit purchasers, under the crowdfunding prospectus exemption.
- (2) Despite subsection (1), the issuer may inform purchasers that it proposes to distribute securities under the crowdfunding prospectus exemption and may refer purchasers to the funding portal facilitating the distribution.

### Additional distribution materials

12. (1) In addition to the crowdfunding offering document required to be made available to a purchaser under paragraph 5(1)(f) [*Crowdfunding prospectus exemption*], an issuer may make available to a purchaser only through the funding portal the following materials:
- (a) a term sheet;
  - (b) a video;
  - (c) other materials summarizing the information in the crowdfunding offering document.
- (2) The materials referred to in subsection (1) must be consistent with the information in the crowdfunding offering document.
- (3) If an amended crowdfunding offering document is made available to purchasers, all materials made available to purchasers under this section must be amended, if necessary, and made available to purchasers through the funding portal.

### Commissions or fees

13. No person or company in the issuer group or director or executive officer of an issuer in the issuer group may, directly or indirectly, pay a commission, finder's fee, referral fee or similar payment to any person or company in connection with a distribution in reliance on the crowdfunding prospectus exemption, other than to a funding portal.

### Restriction on lending

14. No person or company in the issuer group or director or executive officer of an issuer in the issuer group may, directly or indirectly, lend or finance, or arrange lending or financing, for a purchaser to purchase securities of the issuer under the crowdfunding prospectus exemption.

### Filing or delivery of distribution materials

15. (1) An issuer must, no later than 10 days after the closing of the distribution, file with the securities regulatory authority or regulator Form 45-106F1 *Report of Exempt Distribution*.

- (2) At the same time that the issuer files the form referred to in subsection (1), the issuer must file a copy of the crowdfunding offering document and the materials referred to in paragraphs 12(1)(a) and (c) [*Additional distribution materials*].
- (3) Upon request, the issuer must deliver to the securities regulatory authority or regulator any video referred to in paragraph 12(1)(b) [*Additional distribution materials*].

## **Division 2: Ongoing disclosure requirements for non-reporting issuers**

### **Annual financial statements**

16. (1) An issuer that is not a reporting issuer that has distributed securities under the crowdfunding prospectus exemption must deliver to the securities regulatory authority or regulator and make reasonably available to each purchaser, within 120 days after the end of its most recently completed financial year, the financial statements listed in paragraphs 4.1(1)(a), (b), (c) and (e) [*Comparative annual financial statements and audit*] of National Instrument 51-102 *Continuous Disclosure Obligations*.
- (2) The financial statements referred to in subsection (1) must
  - (a) be approved by management of the issuer and be accompanied by
    - (i) a review report or auditor's report if the amount raised by the issuer under one or more prospectus exemptions from the date of the formation of the issuer until the end of its most recently completed financial year, is \$250,000 or more but is less than \$750,000, or
    - (ii) an auditor's report if the amount raised by the issuer under one or more prospectus exemptions from the date of the formation of the issuer until the end of its most recently completed financial year, is \$750,000 or more,
  - (b) comply with paragraph 3.2(1)(a) [*Acceptable accounting principles – general requirements*], subparagraph 3.2(1)(b)(i) [*Acceptable accounting principles – general requirements*], and subsection 3.2(5) [*Acceptable accounting principles – general requirements*] of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*, and
  - (c) comply with section 3.5 [*Presentation and functional currencies*] of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*.
- (3) If the financial statements referred to in subsection (1) are accompanied by a review report, the financial statements must be reviewed in accordance with Canadian Financial Statement Review Standards and the review report must
  - (a) not include a reservation or modification,
  - (b) identify the financial periods that were subject to review,
  - (c) be in the form specified by Canadian Financial Statement Review Standards, and
  - (d) refer to IFRS as the applicable financial reporting framework.
- (4) If the financial statements referred to in subsection (1) are accompanied by an auditor's report, the auditor's report must be
  - (a) prepared in accordance with section 3.3 [*Acceptable auditing standards – general requirements*] of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*, and
  - (b) signed by an auditor that complies with section 3.4 [*Acceptable auditors*] of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*.
- (5) If the financial statements referred to in subsection (1) are those of an SEC issuer,
  - (a) the financial statements may be prepared in accordance with section 3.7 [*Acceptable accounting principles for SEC issuers*] of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*,

- (b) the financial statements may be reviewed in accordance with U.S. AICPA Financial Statement Review Standards and accompanied by a review report prepared in accordance with U.S. AICPA Financial Statement Review Standards that
- (i) does not include a modification or exception,
  - (ii) identifies the financial periods that were subject to review,
  - (iii) identifies the review standards used to conduct the review and the accounting principles used to prepare the financial statements, and
  - (iv) refers to IFRS as the applicable financial reporting framework if the financial statements comply with paragraph 3.2(1)(a) [*Acceptable accounting principles – general requirements*] of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*, and
- (c) the financial statements may be audited in accordance with section 3.8 [*Acceptable auditing standards for SEC issuers*] of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*.
- (6) If the financial statements referred to in subsection (5) are accompanied by a review report and the statements have been reviewed in accordance with Canadian Financial Statement Review Standards, the review report must be in compliance with paragraphs (3)(a) to (c) and must
- (a) refer to IFRS as the applicable financial reporting framework if the financial statements comply with paragraph 3.2(1)(a) [*Acceptable accounting principles – general requirements*] of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*, or
  - (b) refer to U.S. GAAP as the applicable financial reporting framework if the financial statements comply with section 3.7 [*Acceptable accounting principles for SEC issuers*] of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*.
- (7) For the purpose of subsection (3) and paragraph (5)(b), the review report must be prepared and signed by a person or company authorized to sign a review report under the laws of a jurisdiction of Canada or a foreign jurisdiction, and that meets the professional standards of that jurisdiction.
- (8) If any of the financial statements referred to in subsection (1) are not accompanied by an auditor's report or a review report prepared by a public accountant, the statements must include the following statement; "These financial statements were not audited or subject to a review by a public accountant, as permitted by securities legislation where an issuer has not raised more than a pre-defined amount under prospectus exemptions."

#### Annual disclosure of use of proceeds

17. (1) The financial statements of an issuer referred to in section 16 [*Annual financial statements*] and the financial statements required under section 4.1 [*Comparative annual financial statements and audit*] of National Instrument 51-102 *Continuous Disclosure Obligations* must be accompanied by a notice that details, as at the date of the issuer's most recently completed financial year, the use of the gross proceeds received by the issuer from a distribution made under the crowdfunding prospectus exemption.
- (2) An issuer is not required to provide the notice referred to in subsection (1) if
- (a) the issuer has disclosed in one or more prior notices the use of the entire gross proceeds from the distribution, or
  - (b) the issuer is no longer required to deliver, and make available to purchasers, annual financial statements.

#### Notice of specified key events

18. In New Brunswick, Nova Scotia and Ontario, an issuer that is not a reporting issuer that distributes securities in reliance on the crowdfunding prospectus exemption must make reasonably available to each holder of a security acquired under the crowdfunding prospectus exemption, a notice in Form 45-108F4 *Notice of Specified Key Events* of each of the following events within 10 days of their occurrence:

- (a) a discontinuation of the issuer's business;
- (b) a change in the issuer's industry;

- (c) a change of control of the issuer.

### Period of time for providing ongoing disclosure

19. The obligations of an issuer that is not a reporting issuer under section 16 [*Annual financial statements*] and, in New Brunswick, Nova Scotia and Ontario, under section 18 [*Notice of specified key events*] apply until the earliest of the following events:

- (a) the issuer becomes a reporting issuer;
- (b) the issuer has completed a winding up or dissolution;
- (c) the securities of the issuer are beneficially owned, directly or indirectly, by fewer than 51 security holders worldwide.

### Books and records

20. An issuer that is not a reporting issuer that distributes securities under the crowdfunding prospectus exemption must maintain the following books and records relating to the distribution for 8 years following the closing of the distribution:

- (a) the crowdfunding offering document and the materials referred to in subsection 12(1) [*Additional distribution materials*];
- (b) the risk acknowledgement forms;
- (c) except in Ontario, confirmation and validation that the purchaser is an accredited investor if the acquisition cost is greater than \$2,500;
- (d) in Ontario, the confirmation of investment limits forms;
- (e) the ongoing disclosure documents described in Division 2 [*Ongoing disclosure requirements for non-reporting issuers*];
- (f) the aggregate number of securities issued under the crowdfunding prospectus exemption, and the date of issuance and the price for each security;
- (g) the names of all security holders of the issuer and the number and the type of securities held by each security holder;
- (h) such other books and records as are necessary to record the business activities of the issuer and to comply with this Instrument.

## PART 3 REQUIREMENTS FOR FUNDING PORTALS

### *Division 1: Registration requirements, general*

#### Restricted dealer funding portal

21. A restricted dealer funding portal and a registered individual of the restricted dealer funding portal that distributes securities in reliance on the crowdfunding prospectus exemption must comply with all of the following:

- (a) the requirements in this section and in Division 2 [*Registration requirements, funding portals*] and Division 3 [*Additional requirements, restricted dealer funding portal*] of this Part;
- (b) the terms, conditions, restrictions and requirements applicable to a registered dealer and to a registered individual, respectively, including
  - (i) National Instrument 31-102 *National Registration Database*,
  - (ii) National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, except for the following:

- (A) Division 2 of Part 3 [*Education and experience requirements*], except for subsection 3.4(2) [*Proficiency – initial and ongoing*] and section 3.9 [*Exempt market dealer - dealing representative*];
  - (B) section 6.2 [*If IIROC approval is revoked or suspended*];
  - (C) section 6.3 [*If MFDA approval is revoked or suspended*];
  - (D) Part 8 [*Exemptions from the requirement to register*];
  - (E) Part 9 [*Membership in a self-regulatory organization*];
  - (F) paragraphs 11.5(2)(i), and (j) [*General requirements for records*];
  - (G) paragraphs 13.2(2)(c) and (d) and subsection 13.2(6) [*Know your client*];
  - (H) section 13.3 [*Suitability*];
  - (I) Division 3 of Part 13 [*Referral arrangements*], if the restricted dealer funding portal does not enter into a referral arrangement permitted under subsection 40(2) [*Restriction on referral arrangements*] of this Instrument;
  - (J) section 13.13 [*Disclosure when recommending the use of borrowed money*];
  - (K) section 13.16 [*Dispute resolution service*];
  - (L) paragraphs 14.2(2)(i), (j), (k), (m), and (n) [*Relationship disclosure information*];
  - (M) Division 5 of Part 14 [*Reporting to clients*], except for section 14.12 [*Content and delivery of trade confirmation*],
- (iii) National Instrument 33-105 *Underwriting Conflicts*,
  - (iv) National Instrument 33-109 *Registration Information*, and
  - (v) the requirement to pay fees under securities legislation;
- (c) the requirement to deal fairly, honestly and in good faith with purchasers;
  - (d) any other terms, conditions, restrictions or requirements imposed by a securities regulatory authority or regulator on the restricted dealer funding portal or on a registered individual of the restricted dealer funding portal.

Note: In Ontario, a number of requirements in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* do not apply because similar requirements are contained in provisions of the *Securities Act* (Ontario). To the extent that (a) one or more requirements of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* made applicable under section 21 [*Restricted dealer funding portal*] do not apply in Ontario, and (b) there is a similar requirement in the *Securities Act* (Ontario) that is referenced in a note in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, a restricted dealer funding portal or a registered individual of the restricted dealer funding portal operating in Ontario is subject to the similar requirement referenced in the *Securities Act* (Ontario).

### Registered dealer funding portal

**22.** A registered dealer funding portal and a registered individual of the registered dealer funding portal that distributes securities in reliance on the crowdfunding prospectus exemption must comply with all of the following:

- (a) the requirements in this section and Division 2 [*Registration requirements, funding portals*] of this Part;
- (b) the terms, conditions, restrictions or requirements applicable to its registration category and to a registered individual, respectively, under securities legislation.

Note: In Ontario, a number of requirements in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* do not apply because similar requirements are contained in provisions of the *Securities Act* (Ontario). To the extent that (a) one or more requirements of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* made applicable under section 22 [*Registered dealer funding portal*] do not apply in Ontario, and (b) there is a similar requirement in the *Securities Act* (Ontario) that is referenced in a note in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, a registered dealer funding portal or a registered individual of the registered dealer funding portal operating in Ontario is subject to the similar requirement referenced in the *Securities Act* (Ontario).

## **Division 2: Registration requirements, funding portals**

### **Restricted dealing activities**

23. (1) A funding portal and a registered individual of the funding portal must not act as intermediaries in connection with a distribution of or trade in securities of an eligible crowdfunding issuer that is a related issuer of the funding portal.
- (2) For the purposes of subsection (1), an issuer is not a related issuer where a funding portal, an affiliate of the funding portal, or any officer, director, significant shareholder, promoter or control person of the funding portal or of any affiliate of the funding portal, has beneficial ownership of, or control or direction over, issued and outstanding voting securities of the issuer, or securities convertible into voting securities of the issuer that alone or together constitute 10 percent or less of the outstanding voting securities of the issuer.

### **Advertising and general solicitation**

24. (1) A funding portal must not, directly or indirectly, advertise a distribution or solicit purchasers under the crowdfunding prospectus exemption.
- (2) A funding portal may only make available to purchasers the crowdfunding offering document and the materials under section 12 [*Additional distribution materials*].
- (3) A funding portal must ensure that the information about an eligible crowdfunding issuer and a distribution of eligible securities of the issuer is presented or displayed on its online platform in a fair, balanced and reasonable manner.

### **Access to funding portal**

25. (1) Prior to allowing an eligible crowdfunding issuer to access the funding portal for the purposes of posting a distribution, a funding portal must
- (a) enter into an issuer access agreement with the issuer,
  - (b) obtain a personal information form from each director, executive officer and promoter of the issuer, and
  - (c) conduct or arrange for the following:
    - (i) backgrounds checks on the issuer;
    - (ii) criminal record and background checks on each individual referred to in paragraph (b).
- (2) In respect of each individual who becomes a director, executive officer or promoter of the issuer during the distribution period, the funding portal must
- (a) obtain a personal information form, and
  - (b) conduct or arrange for criminal record and background checks to be conducted.

### **Issuer access agreement**

26. The issuer access agreement referred to in paragraph 25(1)(a) [*Access to funding portal*] must include all of the following:
- (a) confirmation that the issuer will comply with the funding portal's policies and procedures concerning information posted by issuers on the funding portal's online platform;

- (b) confirmation that the information that the issuer provides to the funding portal or posts on the funding portal's online platform will only contain permitted materials that are reasonably supported, and will not contain a promotional statement, a misrepresentation or an untrue statement of a material fact or otherwise be misleading;
- (c) confirmation from each of the issuer and the funding portal that each is responsible for compliance with applicable securities legislation, including compliance with this Instrument;
- (d) a requirement that the funding portal must terminate any distribution and report immediately to the securities regulatory authority or regulator if, at any time during the distribution period, it appears to the funding portal that the business of the issuer is not being, or may not be, conducted with integrity;
- (e) in Ontario, confirmation that the funding portal is the agent of the issuer for the purposes of a distribution under the crowdfunding prospectus exemption.

#### Obligation to review materials of eligible crowdfunding issuer

27. (1) A funding portal is required to review the crowdfunding offering document, the materials referred to in subsection 12(1) [*Additional distribution materials*], the personal information forms, the results of the criminal record and background checks, and any other information about an issuer or a distribution made available to the funding portal or of which the funding portal is aware.
- (2) If it appears to the funding portal that, based upon its review of the information and materials in subsection (1), the disclosure in the crowdfunding offering document and other materials referred to in subsection 12(1) [*Additional distribution materials*] is incorrect, incomplete or misleading, the funding portal must require that the issuer correct, complete or clarify the incorrect, incomplete or misleading disclosure prior to its posting on the funding portal's online platform.

#### Denial of issuer access and termination

28. (1) The funding portal must not allow an issuer access to its online platform for the purposes of a distribution under the crowdfunding prospectus exemption if
- (a) after reviewing the information about the issuer or the distribution made available to the funding portal or of which the funding portal is aware, the funding portal makes a good faith determination that
    - (i) the business of the issuer may not be conducted with integrity because of the past conduct of
      - (A) the issuer, or
      - (B) any of the issuer's directors, executive officers, or promoters,
    - (ii) the issuer is not complying with one or more of its obligations under this Instrument, or
    - (iii) the crowdfunding offering document or the materials referred to in subsection 12(1) [*Additional distribution materials*] contain a statement or information that constitutes a misrepresentation or an untrue statement of a material fact and the issuer has not corrected the statement or information as requested by the funding portal under section 27 [*Obligation to review materials of eligible crowdfunding issuer*], or
  - (b) the issuer or any of its directors, executive officers or promoters has pled guilty to or has been found guilty of an offence related to or has entered into a settlement agreement in a matter that involved fraud, or securities violations.
- (2) A funding portal must terminate a distribution if, at any time during the distribution period, it appears to the funding portal that the business of the issuer is not being, or may not be, conducted with integrity.

#### Return of funds

29. A funding portal must promptly return to the purchaser all funds or assets received from a purchaser in connection with a distribution under the crowdfunding prospectus exemption if any of the following apply:
- (a) the purchaser exercises its right of withdrawal;

- (b) the requirements set out in section 6 [*Conditions for closing of the distribution*] are not met;
- (c) the issuer withdraws the distribution;
- (d) the distribution is otherwise terminated.

### Notifications

30. If an amended crowdfunding offering document has been made available to purchasers under paragraph 7(3)(b) [*Certificates*], the funding portal must notify each purchaser that entered into an agreement to purchase securities prior to the amended crowdfunding offering document being made available that an amended crowdfunding offering document and, if applicable, other materials referred to in subsection 12(1) [*Additional distribution materials*] have been made available on the funding portal's online platform.

### Removal of distribution materials

31. A funding portal must remove a crowdfunding offering document and the materials referred to in subsection 12(1) [*Additional distribution materials*] on the earliest of the following:

- (a) the end of the distribution period;
- (b) the withdrawal of the distribution;
- (c) the date on which the funding portal becomes aware that the crowdfunding offering document or the materials may contain a statement or information that is false, deceptive, misleading or that may constitute a misrepresentation or untrue statement of a material fact.

### Monitoring purchaser communications

32. If a funding portal establishes an online communication channel through which purchasers may communicate with one another and with the eligible crowdfunding issuer about a distribution, the funding portal must monitor postings and remove any statement by, or information from, the issuer that is inconsistent with the crowdfunding offering document or is not in compliance with this Instrument.

### Online platform acknowledgement

33. Prior to allowing a person or company entry to its online platform, a funding portal must require the person or company to acknowledge all of the following:

- (a) that a distribution posted on the funding portal's online platform
  - (i) has not been reviewed or approved in any way by a securities regulatory authority or regulator, and
  - (ii) is risky and may result in the loss of all or most of an investment;
- (b) that the person or company may receive limited ongoing information about an issuer or an investment made through the funding portal;
- (c) that the person or company is entering an online platform operated by a funding portal that
  - (i) is registered in the category of restricted dealer subject to the terms and conditions of this Instrument, and will not provide advice about the suitability of the purchase of the security, or
  - (ii) is registered in the category of investment dealer or exempt market dealer, and is required to provide advice about the suitability of the purchase of the security.

### Purchaser requirements prior to purchase

34. Prior to a purchaser entering into an agreement to purchase securities under the crowdfunding prospectus exemption, a funding portal must

- (a) obtain from the purchaser a risk acknowledgement form where the purchaser positively confirms having read and understood the risk warnings and the information in the crowdfunding offering document,

- (b) except in Ontario, confirm and validate that the purchaser is an accredited investor if the acquisition cost is greater than \$2,500, and
- (c) in Ontario, obtain from the purchaser, and validate, a confirmation of investment limits form.

#### **Required online platform disclosure**

35. A funding portal must include on its online platform prominent disclosure of all compensation, including fees, costs and other expenses that the funding portal may charge to, or impose on, an eligible crowdfunding issuer or a purchaser, and any such other disclosure that may be required under securities legislation.

#### **Delivery to the issuer**

36. On or before the closing of a distribution, the funding portal must deliver to the issuer the following:
- (a) the purchase agreement entered into between the issuer and the purchaser;
  - (b) a risk acknowledgement form from the purchaser where the purchaser positively confirms having read and understood the risk warnings and the information in the crowdfunding offering document;
  - (c) except in Ontario, confirmation and validation that the purchaser is an accredited investor, if the acquisition cost is greater than \$2,500;
  - (d) in Ontario, a confirmation of investment limits form for the purchaser.

#### **Release of funds**

37. A funding portal must not release the funds raised under the distribution to the eligible crowdfunding issuer unless the requirements set out in section 6 [*Conditions for closing of the distribution*] have been met.

#### **Reporting requirements**

38. (1) A funding portal must immediately notify the securities regulatory authority or regulator in writing if, at any time during the distribution period, the funding portal terminates a distribution pursuant to subsection 28(2) [*Denial of issuer access and termination*].
- (2) A funding portal must deliver to the securities regulatory authority or regulator, in a format acceptable to the securities regulatory authority or regulator, within 30 days of the end of the second and fourth quarters of its financial year, a report containing the following information for the immediately preceding two quarters:
- (a) each distribution through the funding portal, including the name of the issuer, the type of security, the amount of the distribution, the industry of the issuer and the number of purchasers participating in the distribution;
  - (b) the name and industry of each issuer denied access to the funding portal and the reason for the denial;
  - (c) the name and industry of each issuer
    - (i) that was granted access to the funding portal but the distribution did not close and the reason the distribution did not close, or
    - (ii) that was granted access to the funding portal but was subsequently removed from the funding portal and the reason for removal;
  - (d) such other information as a securities regulatory authority or regulator may reasonably request.

#### ***Division 3: Additional requirements, restricted dealer funding portal***

##### **Prohibition on providing recommendations or advice**

39. A restricted dealer funding portal and a registered individual of the restricted dealer funding portal must not, directly or indirectly, provide a recommendation or advice to a purchaser

- (a) to purchase securities under the crowdfunding prospectus exemption or in connection with any other trade in a security, or
- (b) to use borrowed money to finance any part of a purchase of securities under the crowdfunding prospectus exemption or in connection with any other trade in a security.

**Restriction on referral arrangements**

40. (1) A restricted dealer funding portal must not participate in a referral arrangement.
- (2) Despite subsection (1), a funding portal may compensate a third party for referring an issuer to the funding portal.

**Permitted dealing activities**

41. A restricted dealer funding portal and a registered individual of the restricted dealer funding portal may only act as intermediaries in connection with
- (a) a distribution of securities made in reliance on the crowdfunding prospectus exemption, and
  - (b) except in Ontario, a distribution of securities made in reliance on a start-up crowdfunding registration and prospectus exemptive relief order granted by a securities regulatory authority or regulator, provided that the restricted dealer funding portal and a registered individual of the restricted dealer funding portal are in compliance with the terms, conditions, restrictions and requirements in this Instrument.

**Chief compliance officer**

42. A restricted dealer funding portal must not designate an individual as its chief compliance officer under section 11.3 [*Designating a chief compliance officer*] of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* unless the individual has
- (a) passed the Exempt Market Products Exam or the Canadian Securities Course Exam,
  - (b) passed the PDO Exam or the Chief Compliance Officers Qualifying Exam, and
  - (c) gained 12 months of experience and training that a reasonable person would consider necessary to perform the functions of a chief compliance officer for a restricted dealer funding portal.

**Proficiency**

43. (1) A restricted dealer funding portal must not permit an individual to perform an activity in connection with a distribution under the crowdfunding prospectus exemption unless the individual has the education, training and experience, which may include appropriate registration, that a reasonable person would consider necessary to perform the activity competently, including understanding the structure, features and risks of the distribution.
- (2) For the purposes of subsection (1), the obligation to understand the structure, features and risks of the distribution does not include any obligation to assess
- (a) the merits or expected returns of the investment to purchasers, or
  - (b) the commercial viability of the proposed business or distribution.

**PART 4  
EXEMPTION****Exemption**

44. (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 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 5  
COMING INTO FORCE**

**Effective date**

45. This Instrument comes into force on January 25, 2016.

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**Appendix A****Signing Requirements for Certificate of a Crowdfunding Offering Document (Section 7)**

1. If the eligible crowdfunding issuer is a company, a certificate under paragraph 7(1)(b) [*Certificates*] of the Instrument complies with this section if it is signed
  - (a) by the issuer's chief executive officer and chief financial officer or, if the issuer does not have a chief executive officer or chief financial officer, an individual acting in that capacity,
  - (b) on behalf of the directors of the issuer, by
    - (i) any 2 directors who are authorized to sign, other than the persons referred to in paragraph (a), or
    - (ii) all the directors of the issuer, and
  - (c) by each promoter of the issuer.
2. If the eligible crowdfunding issuer is a trust, a certificate under paragraph 7(1)(b) [*Certificates*] of the Instrument complies with this section if it is signed by
  - (a) the individuals who perform functions for the issuer similar to those performed by the chief executive officer and the chief financial officer of a company, and
  - (b) each trustee and the manager of the issuer.
3. A certificate under paragraph 7(1)(b) [*Certificates*] of the Instrument complies with this section
  - (a) if a trustee or manager signing the certificate is an individual, the individual signs the certificate,
  - (b) if a trustee or manager signing the certificate is a company, the certificate is signed
    - (i) by the chief executive officer and the chief financial officer of the trustee or the manager, and
    - (ii) on behalf of the board of directors of the trustee or the manager, by
      - (A) any two directors of the trustee or the manager, other than the persons referred to in subparagraph (i), or
      - (B) all of the directors of the trustee or the manager,
  - (c) if a trustee or manager signing the certificate is a limited partnership, the certificate is signed by each general partner of the limited partnership as described in section 5 in relation to an eligible crowdfunding issuer that is a limited partnership, or
  - (d) in any other case, the certificate is signed by any person with authority to act on behalf of the trustee or the manager.
4. Despite sections 2 and 3, if the trustees of an eligible crowdfunding issuer, do not perform functions for the issuer similar to those performed by the directors of a company, the trustees are not required to sign the certificate of the issuer if at least two individuals who perform functions for the issuer similar to those performed by the directors of a company sign the certificate.
5. If the eligible crowdfunding issuer is a limited partnership, a certificate under paragraph 7(1)(b) [*Certificates*] of the Instrument complies with this section if it is signed by
  - (a) each individual who performs a function for the issuer similar to any of those performed by the chief executive officer or the chief financial officer of a company, and
  - (b) each general partner of the issuer.

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6. A certificate under paragraph 7(1)(b) [*Certificates*] of the Instrument complies with this section
- (a) if a general partner of the eligible crowdfunding issuer is an individual, the individual signs the certificate,
  - (b) if a general partner of the eligible crowdfunding issuer is a company, the certificate is signed
    - (i) by the chief executive officer and the chief financial officer of the general partner, and
    - (ii) on behalf of the board of directors of the general partner, by
      - (A) any two directors of the general partner, other than the persons referred to in subparagraph (i), or
      - (B) all of the directors of the general partner,
  - (c) if a general partner of the eligible crowdfunding issuer is a limited partnership, the certificate is signed by each general partner of the limited partnership and, for greater certainty, this section applies to each general partner required to sign,
  - (d) if a general partner of the eligible crowdfunding issuer is a trust, the certificate is signed by the trustees of the general partner as described in section 2 in relation to an issuer that is a trust, or
  - (e) in any other case where there is a general partner of the eligible crowdfunding issuer, the certificate is signed by any person with authority to act on behalf of the general partner.
7. If an eligible crowdfunding issuer is not a company, trust or limited partnership, a certificate under paragraph 7(1)(b) [*Certificates*] of the Instrument complies with this section if it is signed by the persons that, in relation to the issuer, are in a similar position or perform a similar function to any of the persons referred to in section 1, 2, 3, 4, 5 or 6.

**ANNEX A2**  
**FORM 45-108F1**  
**CROWDFUNDING OFFERING DOCUMENT**

**Form 45-108F1**  
**Crowdfunding Offering Document**

**Instructions**

This Form contains the disclosure items that an eligible crowdfunding issuer offering securities under the crowdfunding prospectus exemption (the **issuer**) must include in a crowdfunding offering document. If any disclosure item is not applicable, include the relevant heading and state “Not applicable” under it.

Use plain language and focus on relevant information that would assist purchasers in making an investment decision. Use tables, charts and other graphic methods of presenting information if this will make the information easier to understand. The information should be balanced and not promotional in nature. A longer document is not necessarily a better document.

Do not disclose forward-looking information unless there is a reasonable basis for the forward-looking information. If material forward-looking information is disclosed, it must be accompanied by disclosure that identifies the forward-looking information as such, and cautions that actual results may vary from the forward-looking information. An example of forward-looking information would be an estimate of the timeline to complete a project.

If this crowdfunding offering document is amended and restated, the document that is made available to purchasers must be labelled as an amended and restated crowdfunding offering document.

**This crowdfunding offering document is divided into the following 11 items:****ITEM 1** – Warning to purchasers**ITEM 2** – Brief overview of the issuer**ITEM 3** – Brief overview of the issuer’s business**ITEM 4** – What you need to know about the issuer’s management**ITEM 5** – What you need to know about the distribution**ITEM 6** – What you need to know about the issuer**ITEM 7** – What you need to know about the funding portal**ITEM 8** – What you need to know about your rights**ITEM 9** – Other relevant information**ITEM 10** – Documents incorporated by reference in this crowdfunding offering document**ITEM 11** – Certificate

**ITEM 1 – WARNING TO PURCHASERS**

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 crowdfunding offering document. Any representation to the contrary is an offence. This is a risky investment.”**

**ITEM 2 – BRIEF OVERVIEW OF THE ISSUER****2.1 – Issuer information**

Provide the following information in the table below:

Full legal name of issuer	
Legal status (form of entity and date and jurisdiction of organization)	
Articles of incorporation, limited partnership agreement or similar document, and shareholder agreement, available at:	
Head office address of issuer	
Telephone	
Fax	
Website URL	
Link(s) to access video(s) relating to this offering (see instruction 1 below)	
Jurisdictions of Canada where the issuer is a reporting issuer (see instruction 2 below)	

*Instructions:*

1. *A video may only be made available on the funding portal's online platform.*
2. *Disclose each jurisdiction of Canada where the issuer is a reporting issuer. If the issuer is not a reporting issuer, disclose that fact.*

**2.2 – Issuer contact person**

Provide the following information for a contact person at the issuer who is able to answer questions from a purchaser or a securities regulatory authority or regulator:

Full legal name of the contact person	
Position held at the issuer	
Business address	
Business telephone number	
Business email address	

**ITEM 3 – BRIEF OVERVIEW OF THE ISSUER'S BUSINESS**

Briefly explain, in a few lines, the issuer's business and why the issuer is raising funds.

Include the following statement, in bold type:

**“A more detailed description of the issuer's business is provided below.”**

**ITEM 4 – WHAT YOU NEED TO KNOW ABOUT THE ISSUER’S MANAGEMENT**

Provide the required information in the following table for each executive officer, director, promoter and control person of the issuer.

*Instruction: An executive officer is an individual who is: (a) a chair, vice-chair or president; (b) a chief executive officer or chief financial officer; (c) a vice-president in charge of a principal business unit, division or function including sales, finance or production; or (d) performing a policy-making function in respect of the issuer.*

Full legal name City, prov/state and country of residence Position at issuer	Principal occupation for the last five years	Expertise, education, and experience that is relevant to the issuer's business	Percentage of time the person spends/will spend on the issuer's business (if less than full time)	Number and type of securities of the issuer owned, directly or indirectly  Date securities were acquired and price paid for securities  % of the issuer's issued and outstanding securities as of the date of this crowdfunding offering document

State whether each person listed in item 4 or the issuer, 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;
  - (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 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 his or her involvement in any type of business, securities, insurance or banking activity,
- (c) is or has been the subject of a bankruptcy or insolvency proceeding in the last ten years, and/or
- (d) is an executive officer, director, promoter or control person of an issuer that is or has been subject to a proceeding described in paragraphs (a), (b) or (c) above.

**ITEM 5 – WHAT YOU NEED TO KNOW ABOUT THE DISTRIBUTION****5.1 – Distribution information**

Provide the following information in the table below:

Type of securities being distributed	
Price per security	\$
Description of any additional rewards or benefits that are not securities (see instruction 1 below)	
Start of distribution period	
End of distribution period	
Date and description of amendment(s) made to this crowdfunding offering document, if any	
Jurisdiction(s) where securities are being distributed	
Expected proceeds of this distribution (see instruction 2 below)	\$
Minimum subscription per purchaser, if applicable	\$

*Instructions:*

1. Include the following statement, in bold type as a footnote to the table if the issuer is offering any rewards or benefits:

**“The disclosure of additional rewards and benefits that are not securities is for information purposes only. A purchaser is cautioned that any rights applicable to a purchaser as result of an offering of rewards or benefits that are not securities are outside the jurisdiction of securities legislation.”**

2. The amount disclosed must be the same as the amount in Row A in the table under Proceeds to be raised in item 5.2.

**5.2 – Aggregate proceeds**

Insert the relevant dollar amount and include the following statement, in bold type:

**“The issuer requires aggregate minimum proceeds of \$\_\_\_\_\_ to accomplish the business objectives described below.”**

Provide the following information in the tables below:

Proceeds to be raised

A.	Expected proceeds of this distribution	\$
B.	Proceeds expected to be received from concurrent distributions, if any, that will be unconditionally available to the issuer at the time of closing of the distribution (see instruction 1 below)	\$
C.	<b>Aggregate minimum proceeds</b> C = (A+B) (see instruction 2 below)	\$
D.	Maximum amount the issuer wants to raise	\$

*Instructions:*

1. The amount disclosed in Row B should reconcile to the information provided in item 5.3.
2. The amount disclosed in Row C must be the same as the amount disclosed in the statement at the beginning of this item.

Use of proceeds

	Description of expenses	Assuming aggregate minimum proceeds	Assuming maximum amount raised, if applicable
A.	Fees to be paid to funding portal (see instructions 1 and 2 below)	\$	\$
B.	Other expenses of this distribution (see instruction 3 below)	\$	\$
C.	Funds to accomplish business objectives (see instruction 4)	\$	\$
D.	<b>Total</b> (see instruction 5)	\$	\$

*Instructions:*

1. Describe the fees (e.g., commission, arranging fee or other fee) that the funding portal is charging for its services. Describe each type of fee and the estimated amount to be paid for each type. If a commission is being paid, indicate the percentage that the commission will represent of the gross proceeds of the distribution.
2. Disclose the estimated number and value of the issuer's securities to be issued, if any, in consideration for all or a portion of the portal's fees.
3. State the nature of each expense (e.g. legal, accounting, audit) and the estimated amount of the expense.
4. State the business objectives the issuer expects to accomplish using the proceeds to be raised, assuming: (i) the aggregate minimum proceeds are raised; and (ii) if applicable, the maximum amount is raised. Describe each business objective and state the estimated time period for the objective to be accomplished and the costs related to accomplishing it. Each business objective must be included in a separate row in the table.
5. The total dollar amount of the proceeds to be raised must be accounted for in the table. The amount disclosed in Row D under the column Assuming aggregate minimum proceeds must be the same as the amount in Row C in the table under Proceeds to be raised in this item. The amount disclosed in Row D under the column Assuming maximum amount raised, if applicable must be the same as the amount in Row D in the table under Proceeds to be raised in this item.

Business Acquisition

If any of the proceeds will be used by the issuer to acquire, invest in, or merge with a business, disclose, for that business, the information required by items 3 and 6.3, together with other relevant information.

**5.3 – Concurrent distributions**

If the proceeds of a concurrent distribution will be unconditionally available to the issuer at the time of closing of the distribution, provide the following information for each distribution by any member of the issuer group that is intended to be conducted, at least in part, during the distribution period:

- (a) type of securities being distributed in concurrent distribution;
- (b) proposed size of concurrent distribution;
- (c) proposed closing date of concurrent distribution;
- (d) price and terms of securities to be distributed in concurrent distribution.

*Instruction: If during the course of this distribution: (i) there is any change in the size, type of security, price per security, or other terms and conditions in a concurrent distribution being made by the issuer; (ii) there is any change in the amount of proceeds proposed to be received by the issuer from a concurrent distribution being made by a member of the issuer group, other than the issuer; or (iii) a new distribution is commenced by any member of the issuer group where the proceeds of the distribution will be unconditionally available to the issuer, this crowdfunding offering document must be amended to reflect this development.*

**5.4 – Description of securities distributed and relevant rights**

This security gives you the following rights (choose all that apply):

- Voting rights;
- Interest or dividends;
- Redemption rights;
- Rights on dissolution;
- Conversion rights: Each security is convertible into \_\_\_\_\_;
- Other (describe) \_\_\_\_\_.

Provide a description of any right to receive interest or dividends.

**Other rights or obligations**

State whether purchasers will have protections such as tag-along or pre-emptive rights. If no such rights will be provided or are minimal in nature, explain:

- (a) the risks associated with being a minority security holder;
- (b) that the absence of such rights affects the value of the securities.

**Any other restrictions or conditions**

Provide a brief summary of any other restrictions or conditions that attach to the securities being distributed.

**Dilution**

Include the following statement:

“Your percentage of ownership in this issuer may be reduced significantly due to a number of factors beyond your control, such as the rights and characteristics of other securities already issued by the issuer, future issuances of securities by the issuer, and potential changes to the capital structure and/or control of the issuer.”

**5.5 – Other crowdfunding distributions**

For any crowdfunding distribution in which the issuer or an executive officer, director, promoter or control person of the issuer has been involved in the past five years, provide the information below:

**For crowdfunding distributions that were started but the issuer did not receive any funds:**

- (a) the full legal name of the issuer that made the distribution;
- (b) the date the distribution was discontinued.

**For closed crowdfunding distributions:**

- (a) the full legal name of the issuer that made the distribution;
- (b) the date that the distribution commenced and the date it closed;
- (c) the name and website address of the funding portal through which the distribution was made;
- (d) the amount raised;
- (e) the intended use of proceeds stated in the relevant crowdfunding offering document and the actual use of proceeds.

This information must be provided for each person that has been involved in a crowdfunding distribution in the past five years, whether with the issuer, or with another issuer.

## ITEM 6 – WHAT YOU NEED TO KNOW ABOUT THE ISSUER

### 6.1 – Issuer’s business

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;
- has shown profit in the last financial year.

Briefly describe:

- (a) the nature of the issuer’s product(s) or service(s);
- (b) the industry in which the issuer operates;
- (c) the issuer’s long term business objectives;
- (d) the issuer’s assets and whether those assets are owned or leased.

### 6.2 – Related party relationships and transactions

For purposes of this item, a control person is a person or company that controls, directly or indirectly, more than 20% of the issuer’s voting securities prior to the closing of this distribution.

#### Family relationships

Are there any family relationships between any executive officers, directors, promoters or control persons? Y    N  
  

If yes, describe the nature of each relationship.

#### Proceeds to be raised

Will the issuer use any of the proceeds to be raised to:

- acquire assets or services from an executive officer, director, promoter or control person, or an associate of any of them? Y    N
- loan money to any executive officer, director, promoter or control person, or an associate of any of them? Y    N
- reimburse any executive officer, director, promoter or control person, or an associate of any of them, for assets previously acquired, services previously rendered, monies previously loaned or advanced, or for any other reason? Y    N

If the answer to any of the above is “yes”, disclose the relationship between each person and the issuer and the principal terms of each transaction. If assets were acquired from a person, disclose the cost of the asset to the issuer and the method used to determine this cost. Disclose for each person who has been involved in more than one related party transaction, their relationship with the issuer and which of the transactions they have been involved with.

### 6.3 – Principal risks facing the business

Disclose the risks facing the issuer’s business that could result in a purchaser losing the value of the purchaser’s investment. Only those risks that are highly significant to the business should be disclosed. The risks should be disclosed in order of most to least significant.

In addition to disclosing the principal risks in this crowdfunding offering document, reporting issuers may incorporate by

reference the risk disclosure in their continuous disclosure documents (for example, their annual information form or management discussion & analysis).

*Instruction: Explain the risks of investing in the issuer for the purchaser in a meaningful way, avoiding overly general or “boilerplate” disclosure. Disclose both the risk and the factual basis for it. Risks can relate to the issuer’s business, its industry, its clients, etc.*

#### Litigation

Disclose any litigation or administrative action that has had or is likely to have a material effect on the issuer’s business. Include information not only about present pending litigation or administrative actions, but also past concluded litigation or administrative actions, and potential future claims of which the issuer is aware. Disclose the name of the court, agency or tribunal where the proceeding is pending, a description of the facts underlying the claim and the relief sought, or any information known to the issuer about pending litigation or administrative actions.

#### **6.4 – Financial information**

If the issuer is a non-reporting issuer, include the following statement, in bold type:

**“The issuer’s financial statements have not been provided to or reviewed by a securities regulatory authority or regulator.”**

#### Fiscal year end

Month and Day: \_\_\_\_\_

See Schedule A *Crowdfunding Offering Document – Financial Statement Requirements* to determine which financial statements must be attached to this crowdfunding offering document.

#### **6.5 – Ongoing disclosure**

Briefly describe how the issuer intends to communicate with purchasers.

#### Reporting issuer

If the issuer is a reporting issuer, state that the issuer is subject to reporting obligations under securities legislation and explain how a purchaser can access the issuer’s continuous disclosure documents.

#### Non-reporting issuer

If the issuer is a non-reporting issuer:

- (a) state that the issuer has limited disclosure obligations under securities legislation and that the issuer is required to provide only annual financial statements and annual disclosure regarding use of proceeds;
- (b) state the nature and frequency of any other disclosure the issuer intends to provide to purchasers;
- (c) explain how purchasers can access the disclosure documents referred to in paragraphs (a) and (b).

In New Brunswick, Nova Scotia and Ontario, a non-reporting issuer must make available to each holder of a security acquired under the crowdfunding prospectus exemption, within 10 days of their occurrence, a notice of each of the following events:

- (a) a discontinuation of the issuer’s business;
- (b) a change in the issuer’s industry;
- (c) a change of control of the issuer.

#### **6.6 – Capital structure**

Disclose the following information:

- (a) the issuer’s capital structure, including the terms and conditions of any other securities that are issued and

outstanding as at the date of this crowdfunding offering document and the amount(s) that were paid for the securities;

- (b) using the calculation outlined below, the percentage of the issuer's outstanding securities that the securities being distributed will represent on the closing of the distribution:

$$\frac{A}{A + B} = \%$$

A – Number of securities being distributed under this distribution

B – Number of issued and outstanding securities as of the date of this crowdfunding offering document

*Instruction: If the issuer has more than one class of outstanding securities, the calculation should be based only on the class of securities that is being distributed. If the securities being distributed are non-convertible debt securities, the calculation should be based on the face value of the debt securities;*

- (c) the total number of securities reserved or subject to issuance under outstanding options, warrants or rights, the amount(s) that were paid for the securities, and the terms and conditions of those instruments.

### 6.7 – Connected issuers

If the issuer is a connected issuer to a funding portal, include the disclosure required by Appendix C to National Instrument 33-105 *Underwriting Conflicts* (NI 33-105).

*Instruction: The definition of "connected issuer" is provided in NI 33-105.*

### 6.8 – Management compensation

#### Reporting issuer

If the issuer is a reporting issuer, incorporate by reference the disclosure provided for purposes of item 3 of Form 51-102F6 *Statement of Executive Compensation* (**Form 51-102F6**) and other information disclosed in the issuer's Form 51-102F6 as needed.

#### Non-reporting issuer

If the issuer is a non-reporting issuer, provide the following information in the format set out below for each director and the three most highly compensated executive officers (or all executive officers if there are fewer than three):

Name of person and position at issuer	Total compensation paid to that person during the 12 month period preceding commencement of this distribution		Total compensation expected to be paid to that person during the 12 month period following closing of this distribution	
	Cash (\$)	Other Compensation	Cash (\$)	Other Compensation

*Instruction: Describe any non-cash compensation and how it was valued.*

**6.9 – Mining issuer disclosure**

If the issuer is a mining issuer, state that the issuer is subject to the requirements of National Instrument 43-101 *Standards of Disclosure for Mineral Projects (NI 43-101)*.

*Instruction: Note that NI 43-101 applies to all issuers, including non-reporting issuers.*

**ITEM 7 – WHAT YOU NEED TO KNOW ABOUT THE FUNDING PORTAL**

State that the issuer is using the services of a funding portal to offer its securities and provide the contact information of the funding portal below:

Full legal name of the funding portal	
Full website address of the funding portal	
Business email address of the funding portal	
Full legal name of the Chief Compliance Officer	
Full legal name of the contact person	
Business address	
Business telephone number	

Include the following statement:

“A purchaser can check if the funding portal is operated by a registered dealer at the following website:  
[www.aretheyregistered.ca](http://www.aretheyregistered.ca)”

**ITEM 8 – WHAT YOU NEED TO KNOW ABOUT YOUR RIGHTS**Reporting issuer

If the issuer is a reporting issuer, state that a purchaser has the following contractual rights in connection with the purchase of securities:

- (a) if the securities legislation of the jurisdiction in which the purchaser resides does not provide a comparable right, a right of action for damages or rescission if this crowdfunding offering document, or any document or video made available to a purchaser in addition to this crowdfunding offering document, contains a misrepresentation, and
- (b) if the securities legislation of the jurisdiction in which the purchaser resides does not provide a comparable right, a right to withdraw from an agreement to purchase securities distributed under this crowdfunding offering document by delivering a notice to the funding portal within 48 hours after the date of subscription.

Non-reporting issuer

If the issuer is a non-reporting issuer, state that a purchaser has the following contractual rights in connection with the purchase of securities:

- (a) a right of action for damages or rescission if this crowdfunding offering document, or any document or video made available to a purchaser in addition to this crowdfunding offering document, contains an untrue statement of a material fact, and
- (b) if the securities legislation of the jurisdiction in which the purchaser resides does not provide a comparable right, a right to withdraw from an agreement to purchase securities distributed under this crowdfunding offering document by delivering a notice to the funding portal within 48 hours after the date of subscription.

Disclose how a purchaser can find more information about these rights and how to exercise them. The disclosure should include who a purchaser needs to contact, how a purchaser can contact that person and the deadline for a purchaser to do so in order to exercise their rights. The issuer may choose to include a link to the relevant portion of the funding portal's website.

**ITEM 9 – OTHER RELEVANT INFORMATION**

State any other facts that would likely be important to a purchaser purchasing securities under this crowdfunding offering document.

**ITEM 10 – DOCUMENTS INCORPORATED BY REFERENCE IN THIS CROWDFUNDING OFFERING DOCUMENT**

If the issuer is a reporting issuer, include the following disclosure and provide the required information in the table below:

“Information has been incorporated by reference into this crowdfunding offering document from documents listed in the table below, which have been filed with the securities regulatory authorities or regulators in Canada. The documents incorporated by reference are available for viewing on the SEDAR website at [www.sedar.com](http://www.sedar.com).

Documents listed in the table and information provided in those documents are not incorporated by reference to the extent that their contents are modified or superseded by a statement in this crowdfunding offering document or in any other subsequently filed document that is also incorporated by reference in this crowdfunding offering document.”

Description of document (in the case of material change reports, provide a brief description of the nature of the material change)	Date of document

**ITEM 11 – CERTIFICATE**

**11.1** – Insert the date of this crowdfunding offering document and the date it was made available to purchasers through the funding portal and include the following statement, in bold type:

For reporting issuers:

**“This crowdfunding offering document does not contain a misrepresentation. Purchasers of securities have a right of action in the case of a misrepresentation.”**

For non-reporting issuers:

**“This crowdfunding offering document does not contain an untrue statement of a material fact. Purchasers of securities have a right of action in the case of an untrue statement of a material fact.”**

**11.2** – For both reporting and non-reporting issuers, provide the signature, date of the signature, name and position of each individual certifying this crowdfunding offering document.

**11.3** – If this crowdfunding offering document is signed electronically, include the following statement for each individual certifying the document, in bold type:

**“I acknowledge that I am signing this crowdfunding offering document 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.”**

*Instruction: See Appendix A of Multilateral Instrument 45-108 Crowdfunding to determine who is required to certify this crowdfunding offering document.*

**Securities regulatory authorities and regulators of the participating jurisdictions:**

Manitoba	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 Fax: 204-945-0330 E-mail: <a href="mailto:exemptions.msc@gov.mb.ca">exemptions.msc@gov.mb.ca</a> <a href="http://www.msc.gov.mb.ca">www.msc.gov.mb.ca</a>
New Brunswick	Financial and Consumer Services Commission 85 Charlotte Street, Suite 300 Saint John, New Brunswick E2L 2J2 Toll free: 1-866-933-2222 Fax: 506-658-3059 E-mail: <a href="mailto:info@fcnb.ca">info@fcnb.ca</a> <a href="http://www.fcnb.ca">www.fcnb.ca</a>
Nova Scotia	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 Fax: 902-424-4625 E-mail: <a href="mailto:nssc.crowdfunding@novascotia.ca">nssc.crowdfunding@novascotia.ca</a> <a href="http://www.nssc.gov.ns.ca">www.nssc.gov.ns.ca</a>
Ontario	Ontario Securities Commission 20 Queen Street West, 22 <sup>nd</sup> Floor Toronto, Ontario M5H 3S8 Telephone: 416-593-8314 Toll-free (North America): 1-877-785-1555 Fax: 416-593-8122 E-mail: <a href="mailto:inquiries@osc.gov.on.ca">inquiries@osc.gov.on.ca</a> <a href="http://www.osc.gov.on.ca">www.osc.gov.on.ca</a>
Québec	Autorité des marchés financiers Direction du financement des sociétés 800, rue du Square-Victoria, 22 <sup>nd</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 Fax: 514-873-3090 E-mail: <a href="mailto:financement-participatif@lautorite.qc.ca">financement-participatif@lautorite.qc.ca</a> <a href="http://www.lautorite.qc.ca">www.lautorite.qc.ca</a>

**Schedule A****Crowdfunding Offering Document  
Financial Statement Requirements**

1. In this schedule

“Canadian Financial Statement Review Standards” means standards for the review of financial statements by a public accountant determined with reference to the Handbook;

“SEC issuer” means an SEC issuer as defined in National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*;

“U.S. AICPA Financial Statement Review Standards” means the standards of the American Institute of Certified Public Accountants for a review of financial statements by a public accountant, as amended from time to time.

**Reporting issuer**

2. If the issuer is a reporting issuer, attach as an appendix to this crowdfunding offering document

- (a) the most recent annual financial statements the issuer has filed with the securities regulatory authority or regulator, and
- (b) the most recent interim financial report the issuer has filed with the securities regulatory authority or regulator for an interim period that is subsequent to the financial year covered by the annual financial statements referred to in paragraph (a).

**Non-reporting issuer**

3. If the issuer is not a reporting issuer

- (a) Attach as an appendix to this crowdfunding offering document the financial statements listed in paragraphs 4.1(1)(a), (b), (c) and (e) [*Comparative annual financial statements and audit*] of National Instrument 51-102 *Continuous Disclosure Obligations*.
- (b) Despite paragraph (a), if the issuer has not completed a financial year, attach as an appendix to this crowdfunding offering document financial statements that include
  - (i) a statement of comprehensive income, a statement of changes in equity, and a statement of cash flows for the period from the date of the formation of the issuer to a date not more than 90 days before the date of this crowdfunding offering document,
  - (ii) a statement of financial position as at the end of the period referred to in subparagraph (i), and
  - (iii) notes to the financial statements.
- (c) The financial statements referred to in paragraphs (a) and (b), and any other financial statements that are attached as an appendix to this crowdfunding offering document, must
  - (i) be approved by management and be accompanied by
    - (A) a review report or auditor’s report if the amount raised by the issuer under one or more prospectus exemptions from the date of the formation of the issuer until 90 days before the date of this crowdfunding offering document, is \$250,000 or more but is less than \$750,000, or
    - (B) an auditor’s report if the amount raised by the issuer under one or more prospectus exemptions from the date of the formation of the issuer until 90 days before the date of this crowdfunding offering document, is \$750,000 or more,

- (ii) comply with paragraph 3.2(1)(a) [*Acceptable accounting principles – general requirements*], subparagraph 3.2(1)(b)(i) [*Acceptable accounting principles – general requirements*], and subsection 3.2(5) [*Acceptable accounting principles – general requirements*] of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*, and
  - (iii) comply with section 3.5 [*Presentation and functional currencies*] of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*.
- (d) If the financial statements referred to paragraphs (a) and (b), or any other financial statements that are attached as an appendix to this crowdfunding offering document, are accompanied by a review report, the financial statements must be reviewed in accordance with Canadian Financial Statement Review Standards and the review report must
  - (i) not include a reservation or modification,
  - (ii) identify the financial periods that were subject to review,
  - (iii) be in the form specified by Canadian Financial Statement Review Standards, and
  - (iv) refer to IFRS as the applicable financial reporting framework.
- (e) If the financial statements referred to in paragraphs (a) and (b), or any other financial statements that are attached as an appendix to this crowdfunding offering document, are accompanied by an auditor's report, the auditor's report must be
  - (i) prepared in accordance with section 3.3 [*Acceptable auditing standards – general requirements*] of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*, and
  - (ii) signed by an auditor that complies with section 3.4 [*Acceptable auditors*] of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*.
- (f) If the financial statements referred to in paragraphs (a) and (b), or any other financial statements that are attached as an appendix to this crowdfunding offering document, are those of an SEC issuer,
  - (i) the statements may be prepared in accordance with section 3.7 [*Acceptable accounting principles for SEC issuers*] of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*,
  - (ii) the financial statements may be reviewed in accordance with U.S. AICPA Financial Statement Review Standards and accompanied by a review report prepared in accordance with U.S. AICPA Financial Statement Review Standards that
    - (A) does not include a modification or exception,
    - (B) identifies the financial periods that were subject to review,
    - (C) identifies the review standards used to conduct the review and the accounting principles used to prepare the financial statements, and
    - (D) refers to IFRS as the applicable financial reporting framework if the financial statements comply with paragraph 3.2(1)(a) [*Acceptable accounting principles – general requirements*] of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*, and
  - (iii) the financial statements may be audited in accordance with section 3.8 [*Acceptable auditing standards for SEC issuers*] of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*.
- (g) If the financial statements referred to in paragraph (f) are accompanied by a review report and the statements have been reviewed in accordance with Canadian Financial Statement Review Standards, the review report must be in compliance with subparagraphs 3(d)(i) to (iii) and must

- (i) refer to IFRS as the applicable financial reporting framework if the financial statements comply with paragraph 3.2(1)(a) [*Acceptable accounting principles – general requirements*] of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*, or
  - (ii) refer to U.S. GAAP as the applicable financial reporting framework if the financial statements comply with section 3.7 [*Acceptable accounting principles for SEC issuers*] of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*.
- (h) For the purpose of paragraph (d) and subparagraph (f)(ii), the review report must be prepared and signed by a person or company authorized to sign a review report under the laws of a jurisdiction of Canada or a foreign jurisdiction, and that meets the professional standards of that jurisdiction.
- (i) If any of the financial statements referred to in paragraphs (a) and (b), or any other financial statements that are attached as an appendix to this crowdfunding offering document, are not accompanied by an auditor's report or a review report prepared by a public accountant, the statements must include the following statement: "*These financial statements were not audited or subject to a review by a public accountant as permitted by securities legislation where an issuer has not raised more than a pre-defined amount under prospectus exemptions.*"

**Instructions related to financial statement requirements and the disclosure of other financial information**

**What constitutes an issuer's first financial year** – The first financial year of an issuer commences on the date of its incorporation or organization and ends at the close of that financial year.

**What would be presented in an issuer's financial statements if the issuer has not completed a financial year** – The financial statements would include the financial statements listed in paragraphs 4.1(1)(a), (b), (c) and (e) [*Comparative annual financial statements and audit*] of National Instrument 51-102 *Continuous Disclosure Obligations* for the period from the date of the formation of the issuer to a date not more than 90 days before the date of this crowdfunding offering document. The financial statements would not include a comparative period.

**What financial years need to be audited or reviewed** – If an issuer is required to have an auditor's report or review report accompany its financial statements in accordance with subparagraph 3(c)(i) of this schedule, the financial statements for the most recent period and the comparative period, if any, are both required to be audited or are both required to be reviewed.

**Statement required in annual financial statements that have not been audited or reviewed** – Paragraph 3(i) of this schedule requires that if an issuer's annual financial statements are not accompanied by an auditor's report or a review report prepared by a public accountant, the financial statements must include a statement that discloses that fact. Consistent with the requirements set out in subparagraph 3(c)(i) of this schedule, an issuer's annual financial statements are not required to be audited or reviewed by a public accountant if the issuer has raised less than \$250,000 under one or more prospectus exemptions from the date of the formation of the issuer until 90 days before the date of this crowdfunding offering document.

**What financial reporting framework is identified in the financial statements, and any accompanying auditor's report or review report** – If an issuer's financial statements are prepared in accordance with Canadian GAAP for publicly accountable enterprises and include an unreserved statement of compliance with IFRS, the auditor's report or review report must refer to IFRS as the applicable financial reporting framework.

There are two options for referring to the financial reporting framework in the applicable financial statements and accompanying auditor's report or review report:

- (a) refer only to IFRS in the notes to the financial statements and in the auditor's report or review report, or
- (b) refer to both IFRS and Canadian GAAP in the notes to the financial statements and in the auditor's report or review report.

**Non-GAAP financial measures** – An issuer that intends to disclose non-GAAP financial measures in its crowdfunding offering document should refer to CSA guidance for a discussion of staff expectations concerning the use of these measures.

**ANNEX A3**  
**FORM 45-108F2**  
**RISK ACKNOWLEDGEMENT**

**Form 45-108F2**  
**Risk Acknowledgement**

**Instructions:** This form must be completed by the purchaser before the purchaser enters into an agreement to purchase securities under the exemption in Multilateral Instrument 45-108 Crowdfunding.

Issuer name: i.e., ABC Company  
 Type of security offered: i.e., common share

**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 acknowledgement</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>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 receive little ongoing information about the issuer and/or 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>2. No approval and no advice</b>		
<b>No approval</b> – Do you understand that this investment has not been reviewed or approved in any way by a securities regulatory authority?	<input type="checkbox"/>	<input type="checkbox"/>
<b>No advice</b> – Do you understand that you will not receive advice about whether this investment is suitable for you to purchase? <i>[Instructions: Delete if the funding portal is operated by a registered investment dealer or exempt market dealer.]</i>	<input type="checkbox"/>	<input type="checkbox"/>
<b>3. Limited legal rights</b>		
<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?  If you want to know more, you may need to seek professional legal advice.	<input type="checkbox"/>	<input type="checkbox"/>

	Yes	No
<b>4. Purchaser's understanding of this investment</b>		
<b>Investment risks</b> – Have you read this form and do you understand the risks of making this investment?	<input type="checkbox"/>	<input type="checkbox"/>
<b>Offering document</b> – Before you invest, you should read the offering document carefully. 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.  Have you read and do you understand the information in the offering document?	<input type="checkbox"/>	<input type="checkbox"/>
<b>5. Purchaser's acknowledgement</b>		
First and last name:	Date:	
<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.		
<b>6. Additional information</b>		
<ul style="list-style-type: none"> <li>You have 48 hours to cancel your purchase from the date of the agreement to purchase the security and any amendment to the crowdfunding offering document of the issuer, by sending a notice to the funding portal at: <i>[Instructions: Provide an email address or a fax number where purchasers can send their notice. Describe any other way purchasers can cancel their purchase.]</i></li> <li>To check if the funding portal is operated by a registered dealer, go to <a href="http://www.aretheyregistered.ca">www.aretheyregistered.ca</a></li> <li>If you want more information about your local securities regulatory authority, go to <a href="http://www.securities-administrators.ca">www.securities-administrators.ca</a></li> </ul>		

**ANNEX A4**  
**FORM 45-108F3**  
**CONFIRMATION OF INVESTMENT LIMITS**

**Form 45-108F3**  
**Confirmation of Investment Limits**

**Instructions:** This form must be completed by the purchaser before the purchaser enters into an agreement to purchase securities under the exemption in Multilateral Instrument 45-108 Crowdfunding (the crowdfunding exemption) in Ontario.

**How you qualify to buy securities under the crowdfunding exemption:** Checkmark the statement under A, B or C that applies to you. You may checkmark more than one statement. If you qualify under B or C, complete the confirmation of investment limits in the relevant section.

**A. Permitted Client**

You are a permitted client because:

- You are an individual who beneficially owns financial assets, as defined in section 1.1 of National Instrument 45-106 *Prospectus Exemptions*, having an aggregate realizable value that, before taxes but net of any related liabilities, exceeds \$5 million.
- Other – you are a person or company that otherwise falls within the definition of a permitted client in section 1.1 of Part 1 in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*. Please specify the relevant category: \_\_\_\_\_.

**B. Accredited Investor**

You are an accredited investor because (check all that apply):

- Your net income before taxes was more than \$200,000 in each of the 2 most recent calendar years and you expect it to be more than \$200,000 in this calendar year. (You can find your net income before taxes on your personal income tax return.)
- Your net income before taxes combined with your spouse's was more than \$300,000 in each of the 2 most recent calendar years and you expect your combined net income before taxes to be more than \$300,000 in the current calendar year.
- Either alone or with your spouse, you own more than \$1 million in cash and securities, after subtracting any debt related to the cash and securities.
- Either alone or with your spouse, you have net assets worth more than \$5 million. (Your net assets are your total assets (including real estate) minus your total debt.)
- Other - you are a person or company that otherwise falls within the definition of an accredited investor as defined in section 1.1 of National Instrument 45-106 *Prospectus Exemptions* and in subsection 73.3(1) of the *Securities Act*, R.S.O. 1990 c. S.5. Please specify the relevant category: \_\_\_\_\_.

**Confirmation** (if you are an accredited investor but not a permitted client)

- I confirm that, after taking into account my investment of \$\_\_\_\_\_ today in this issuer:
  - \_\_\_ I have not invested more than \$25,000 in a single crowdfunding investment, and
  - \_\_\_ I have not invested more than \$50,000 in all of the crowdfunding investments I have made in this calendar year.

**C. Retail Investor**

You are a retail investor if none of the statements in the previous two sections apply to you.

**Confirmation** (if you are a retail investor)

I confirm that, after taking into account my investment of \$ \_\_\_\_\_ today in this issuer:

\_\_\_ I have not invested more than \$2,500 in a single crowdfunding investment, and

\_\_\_ I have not invested more than \$10,000 in all of the crowdfunding investments I have made in this calendar year.

**Purchaser acknowledgement**

First and last name:

Date:

**Electronic signature:** 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.

**Funding portal information**

This section must only be completed if an investor has received advice about this investment from a funding portal registered in the category of an investment dealer or an exempt market dealer.

First and last name of registered individual:

Telephone:

Email:

Name of firm:

Registration Category:

**ANNEX A5**  
**FORM 45-108F4**  
**NOTICE OF SPECIFIED KEY EVENTS**

**Form 45-108F4**  
**Notice of Specified Key Events**

**Instructions:** This is the form of notice required under section 18 of Multilateral Instrument 45-108 Crowdfunding in New Brunswick, Nova Scotia and Ontario to be made available to holders of securities acquired under the crowdfunding prospectus exemption.

1. Issuer Name and Address	
Full legal name:	
Street address:	Province/State:
Municipality:	Postal code/Zip code:
Website:	Country:
2. Specified Key Event	
The event, as described in section 3, is (checkmark all that apply):	
<input type="checkbox"/> a discontinuation of the issuer's business <input type="checkbox"/> a change in the issuer's industry <input type="checkbox"/> a change of control of the issuer	
Date on which the event occurred (yyyy/mm/dd):	
3. Event Description	
Provide a brief description of the event identified in section 2.	
4. Contact Person	
Provide the following information for a person at the issuer who can be contacted regarding the event described in section 3.	
Name:	Title:
Email address:	Telephone number:
Date of notice (yyyy/mm/dd):	

**ANNEX A6**  
**FORM 45-108F5**  
**PERSONAL INFORMATION FORM AND**  
**AUTHORIZATION TO COLLECT, USE AND DISCLOSE PERSONAL INFORMATION**

**Form 45-108F5**  
**Personal Information Form and**  
**Authorization to Collect, Use and Disclose Personal Information**

**Instructions:** This Personal Information Form and Authorization to Collect, Use and Disclose Personal Information (the “Form”) is to be completed by every director, executive officer, and promoter of an eligible crowdfunding issuer relying on the crowdfunding prospectus exemption as set out in Multilateral Instrument 45-108 Crowdfunding.

**All Questions**      **All questions must have a response.** The response of “N/A” or “Not Applicable” will not be accepted for any questions, except Questions 1(B), 2(iii) and (v) and 5.

**Questions 6 to 10**      Please place a checkmark (✓) in the appropriate space provided. If your answer to any of questions 6 to 10 is “YES”, you must, in an attachment, provide complete details, including the circumstances, relevant dates, names of the parties involved and final disposition, if known. **Any attachment must be initialed by the person completing this Form.** Responses must consider all time periods.

If you have received a pardon under the *Criminal Records Act* (Canada) for an Offence that relates to fraud (including any type of fraudulent activity), misappropriation of money or other property, theft, forgery, falsification of books or documents or similar Offences, you must disclose the pardoned Offence in this Form. In such circumstances:

- (a) the appropriate written response would be “Yes, pardon granted on (date)”; and
- (b) you must provide complete details in an attachment to this Form.

**DEFINITIONS**

“**Offence**” An offence includes:

- (a) a summary conviction or indictable offence under the *Criminal Code* (Canada);
- (b) a quasi-criminal offence (for example under the *Income Tax Act* (Canada), the *Immigration and Refugee Protection Act* (Canada) or the tax, immigration, drugs, firearms, money laundering or securities legislation of any Canadian or 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;

“**Proceedings**” means:

- (a) a civil or criminal proceeding or inquiry which is currently before a court;
- (b) a proceeding before an arbitrator or umpire or a person or group of persons authorized by law to make an inquiry and take evidence under oath in the matter;
- (c) a proceeding before a tribunal in the exercise of a statutory power of decision making where the tribunal is required by law to hold or afford the parties to the proceeding an opportunity for a hearing before making a decision; or
- (d) a proceeding before a self-regulatory entity authorized by law to regulate the operations and the standards of practice and business conduct of its members (including where applicable, issuers listed on a stock exchange) and individuals associated with those members and issuers, in which the self-regulatory entity is required under its by-laws, rules or policies to hold or afford the parties the opportunity to be heard before making a decision, but does not apply to a proceeding in which one or more persons are required to make an investigation and to make a report, with or without recommendations, if the report is for the information or advice of the person to whom it is made and does not in any way bind or limit that person in any decision the person may have the power to make;

“securities regulatory authority” or “SRA” means a body created by statute in any Canadian or foreign jurisdiction to administer securities law, regulation and policy (e.g. securities commission), but does not include an exchange or other self-regulatory entity;

“self-regulatory entity” or “SRE” means:

- (a) a stock, derivatives, commodities, futures or options exchange;
- (b) an association of investment, securities, mutual fund, commodities, or future dealers;
- (c) an association of investment counsel or portfolio managers;
- (d) an association of other professionals (e.g. legal, accounting, engineering); and
- (e) any other group, institution or self-regulatory organization, recognized by a securities regulatory authority, that is responsible for the enforcement of rules, policies, disciplines or codes under any applicable legislation, or considered an SRE in another country.

1. Identification of individual completing form										
A.	Last name(s):			First name(s):			Full middle name(s) (No initials. If none, please state):			
	Name(s) most commonly known by:									
	Name of issuer:									
	Present or proposed position(s) with the issuer (check (√) all positions below that are applicable)			(√)	If director / executive officer disclose the date elected / appointed			If executive officer – provide title If other – provide details		
					MM	DD	YY			
	Director									
	Executive Officer									
Promoter										
B.	Other than the name given in Question 1A above, provide any legal names, assumed names or nicknames under which you have carried on business or have otherwise been known, including information regarding any name change(s) resulting from marriage, divorce, court order or any other process. Use an attachment if necessary.						From		To	
							MM	YY	MM	YY
C.	Gender		Date of birth			Place of birth				
	Male	<input type="checkbox"/>	MM	DD	YYYY	City		Province/State		Country
	Female	<input type="checkbox"/>								

D.	Marital Status:	Full name of spouse (include common law):	Occupation of spouse:
E.	Telephone and Facsimile Numbers and Email Address		
	Residential/ Cellular: (        )	Facsimile: (        )	
	Business: (        )	E-mail*:	

\*Provide an email address that the funding portal may use to contact you regarding this form. Where the securities regulatory authority or regulator (as defined in section 1.1 of National Instrument 14-101 *Definitions*) has requested the funding portal to provide it with this form, the securities regulator authority or regulator may also use the email address to contact you. This email address may be used to exchange personal information relating to you.

F.	Residential history				
	Provide all residential addresses for the past 10 YEARS starting with your current principal residential address. If you are unable to recall the complete residential address for a period, which is beyond 5 years from the date of completion of this Form, the municipality and province or state and country must be identified. The funding portal reserves the right to require the full address.				
	Street address, city, province/state, country & postal/zip code	From		To	
		MM	YY	MM	YY

	Yes	No
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<b>2. Citizenship</b>				
	(i)	Are you a Canadian citizen?	<input type="checkbox"/>	<input type="checkbox"/>
	(ii)	Are you a person lawfully in Canada as an immigrant but are not yet a Canadian citizen?	<input type="checkbox"/>	<input type="checkbox"/>
	(iii)	If "Yes" to Question 2(ii), the number of years of continuous residence in Canada:		
	(iv)	Do you hold citizenship in any country other than Canada?	<input type="checkbox"/>	<input type="checkbox"/>
	(v)	If "Yes" to Question 2(iv), the name of the country(ies):		

**3. Employment history**

Provide your complete employment history for the **5 YEARS** immediately prior to the date of this Form starting with your current employment. Use an attachment if necessary. If you were unemployed during this period of time, state this and identify the period of unemployment.

Employer name	Employer address	Position held	From		To	
			MM	YY	MM	YY

<b>Yes</b>	<b>No</b>
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**4. Involvement with issuers**

A. Are you or have you during the last 10 years ever been a director, officer, promoter, insider or control person for any issuer?

<input type="checkbox"/>	<input type="checkbox"/>
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B. If “YES” to 4A above, provide the names of each issuer. State the position(s) held and the period(s) during which you held the position(s). Use an attachment if necessary.

Name of issuer	Position(s) held	Market traded on	From		To	
			MM	YY	MM	YY

C. While you were a director, officer or insider of an issuer, did any exchange or other self-regulatory entity ever refuse approval for listing or quotation of the issuer, including (i) a listing resulting from a business combination, reverse takeover or similar transaction involving the issuer that is regulated by an SRE or SRA, (ii) a backdoor listing or qualifying acquisition involving the issuer (as those terms are defined in the TSX Company Manual as amended from time to time) or (iii) a qualifying transaction, reverse takeover or change of business involving the issuer (as those terms are defined in the TSX Venture Corporate Finance Manual as amended from time to time)? If yes, attach full particulars.

<b>Yes</b>	<b>No</b>
<input type="checkbox"/>	<input type="checkbox"/>

**5. Educational history**

A.	Professional designation(s)				
	Identify any professional designation held and professional associations to which you belong, for example, Barrister & Solicitor, C.P.A., C.A., C.M.A., C.G.A., P.Eng., P.Geol., CFA, etc. and indicate which organization and the date the designations were granted.				
	Professional Designation and Membership Number	Grantor of designation and Canadian or Foreign Jurisdiction	Date granted		
			MM	YY	
	Describe the current status of any designation and/or association (e.g. active, retired, non-practicing, suspended).				
B.	Provide your post-secondary educational history starting with the most recent.				
	School	Location	Degree or diploma	Date obtained	
				MM	DD

	Yes	No
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**6. Offences**

If you answer “YES” to any item in Question 6, you must provide complete details in an attachment. **If you have received a pardon under the Criminal Records Act (Canada) for an Offence that relates to fraud (including any type of fraudulent activity), misappropriation of money or other property, theft, forgery, falsification of books or documents or similar Offences, you must disclose the pardoned Offence in this Form.**

A.	Have you ever, in any Canadian or foreign jurisdiction, pled guilty to or been found guilty of an Offence?	<input type="checkbox"/>	<input type="checkbox"/>
B.	Are you the subject of any current charge, indictment or proceeding for an Offence, in any Canadian or foreign jurisdiction?	<input type="checkbox"/>	<input type="checkbox"/>
C.	To the best of your knowledge, are you currently or have you <b>ever</b> been a director, officer, promoter, insider, or control person of an issuer, in any Canadian or foreign jurisdiction, at the time of events that resulted in the issuer:		
	(i) pleading guilty to or being found guilty of an Offence?	<input type="checkbox"/>	<input type="checkbox"/>
	(ii) now being the subject of any charge, indictment or proceeding for an alleged Offence?	<input type="checkbox"/>	<input type="checkbox"/>

		Yes	No
<b>7. Bankruptcy</b>			
If you answer "YES" to any item in Question 7, you <u>must</u> provide complete details in an attachment and attach a copy of any discharge, release or other applicable document. You must answer "YES" or "NO" for EACH of (A), (B) and (C) below.			
A.	Have you, in any Canadian or foreign jurisdiction, within the past <b>10 years</b> had a petition in bankruptcy issued against you, made a voluntary assignment in bankruptcy, made a proposal under any bankruptcy or insolvency legislation, been subject to any proceeding, arrangement or compromise with creditors, or had a receiver, receiver-manager or trustee appointed to manage your assets?	<input type="checkbox"/>	<input type="checkbox"/>
B.	Are you now an undischarged bankrupt?	<input type="checkbox"/>	<input type="checkbox"/>
C.	To the best of your knowledge, are you currently or have you <b>ever</b> been a director, officer, promoter, insider, or control person of an issuer, in any Canadian or foreign jurisdiction, at the time of events, or for a period of 12 months preceding the time of events, where the issuer:		
	(i) has made a petition in bankruptcy, a voluntary assignment in bankruptcy, a proposal under any bankruptcy or insolvency legislation, been subject to any proceeding, arrangement or compromise with creditors or had a receiver, receiver-manager or trustee appointed to manage the issuer's assets?	<input type="checkbox"/>	<input type="checkbox"/>
	(ii) is now an undischarged bankrupt?	<input type="checkbox"/>	<input type="checkbox"/>

		Yes	No
<b>8. Proceedings</b>			
If you answer "YES" to any item in Question 8, you must provide complete details in an attachment.			
A.	Current proceedings by securities regulatory authority or self regulatory entity. Are you now, in any Canadian or foreign jurisdiction, the subject of:		
	(i) a notice of hearing or similar notice issued by an SRA or SRE?	<input type="checkbox"/>	<input type="checkbox"/>
	(ii) a proceeding of or, to your knowledge, an investigation by, an SRA or SRE?	<input type="checkbox"/>	<input type="checkbox"/>
	(iii) settlement discussions or negotiations for settlement of any nature or kind whatsoever with an SRA or SRE?	<input type="checkbox"/>	<input type="checkbox"/>
B.	Prior proceedings by securities regulatory authority or self regulatory entity. Have you <b>ever</b> :		
	(i) been reprimanded, suspended, fined, been the subject of an administrative penalty, or been the subject of any proceedings of any kind whatsoever, in any Canadian or foreign jurisdiction, by an SRA or SRE?	<input type="checkbox"/>	<input type="checkbox"/>
	(ii) had a registration or licence for the trading of securities, exchange or commodity futures contracts, real estate, insurance or mutual fund products cancelled, refused, restricted or suspended by an SRA or SRE?	<input type="checkbox"/>	<input type="checkbox"/>

	(iii) been prohibited or disqualified by an SRA or SRE under securities, corporate or any other legislation from acting as a director or officer of a reporting issuer or been prohibited or restricted by an SRA or SRE from acting as a director, officer or employee of, or an agent or consultant to, a reporting issuer?	<input type="checkbox"/>	<input type="checkbox"/>
	(iv) had a cease trading or similar order issued against you or an order issued against you by an SRA or SRE that denied you the right to use any statutory prospectus or registration exemption?	<input type="checkbox"/>	<input type="checkbox"/>
	(v) had any other proceeding of any kind taken against you by an SRA or SRE?	<input type="checkbox"/>	<input type="checkbox"/>
C.	Settlement agreement(s)		
	Have you ever entered into a settlement agreement with an SRA, SRE, attorney general or comparable official or body, in any Canadian or foreign jurisdiction, in a matter that involved actual or alleged fraud, theft, deceit, misrepresentation, conspiracy, breach of trust, breach of fiduciary duty, insider trading, unregistered trading in securities or exchange or commodity futures contracts, illegal distributions, failure to disclose material facts or changes or similar conduct, or any other settlement agreement with respect to any other violation of securities legislation in a Canadian or foreign jurisdiction or the rules, by-laws or policies of any SRE?	<input type="checkbox"/>	<input type="checkbox"/>
D.	To the best of your knowledge, are you now or have you ever been a director, officer, promoter, insider, or control person of an issuer at the time of such event, in any Canadian or foreign jurisdiction, for which a securities regulatory authority or self-regulatory entity has:		
	(i) refused, restricted, suspended or cancelled the registration or licensing of an issuer to trade securities, exchange or commodity futures contracts, or to sell or trade real estate, insurance or mutual fund products?	<input type="checkbox"/>	<input type="checkbox"/>
	(ii) issued a cease trade or similar order or imposed an administrative penalty of any nature or kind whatsoever against the issuer, other than an order for failure to file financial statements that was revoked within 30 days of its issuance?	<input type="checkbox"/>	<input type="checkbox"/>
	(iii) refused a receipt for a prospectus or other offering document, denied any application for listing or quotation or any other similar application, or issued an order that denied the issuer the right to use any statutory prospectus or registration exemptions?	<input type="checkbox"/>	<input type="checkbox"/>
	(iv) issued a notice of hearing, notice as to a proceeding or similar notice against the issuer?	<input type="checkbox"/>	<input type="checkbox"/>
	(v) commenced any other proceeding of any kind against the issuer, including a trading halt, suspension or delisting of the issuer, in connection with an alleged or actual contravention of an SRA's or SRE's rules, regulations, policies or other requirements, but excluding halts imposed (i) in the normal course for proper dissemination of information, or (ii) pursuant to a business combination, reverse takeover or similar transaction involving the issuer that is regulated by an SRE or SRA, including a qualifying transaction, reverse takeover or change of business involving the issuer (as those terms are defined in the TSX Venture Corporate Finance Manual as amended from time to time)?	<input type="checkbox"/>	<input type="checkbox"/>
	(vi) entered into a settlement agreement with the issuer in a matter that involved actual or alleged fraud, theft, deceit, misrepresentation, conspiracy, breach of trust, breach of fiduciary duty, insider trading, unregistered trading in securities or exchange or commodity futures contracts, illegal distributions, failure to disclose material facts or changes or similar conduct by the issuer, or any other violation of securities legislation or the rules, by-laws or policies of an SRE?	<input type="checkbox"/>	<input type="checkbox"/>

		Yes	No
<b>9. Civil proceedings</b>			
If you answer "YES" to any item in Question 9, you <u>must</u> provide complete details in an attachment.			
A.	Judgment, garnishment and injunctions Has a court in any Canadian or foreign jurisdiction:		
	(i) rendered a judgment, ordered garnishment or issued an injunction or similar ban (whether by consent or otherwise) against <u>you</u> in 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?	<input type="checkbox"/>	<input type="checkbox"/>
	(ii) rendered a judgment, ordered garnishment or issued an injunction or similar ban (whether by consent or otherwise) against <u>an issuer</u> , of which you are currently or have ever been a director, officer, promoter, insider or control person in 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?	<input type="checkbox"/>	<input type="checkbox"/>
B.	Current claims		
	(i) Are <u>you</u> now subject, in any Canadian or foreign jurisdiction, to a claim that is based in whole or in part on actual or alleged 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?	<input type="checkbox"/>	<input type="checkbox"/>
	(ii) To the best of your knowledge, are you currently or have you ever been a director, officer, promoter, insider or control person of <u>an issuer</u> that is now subject, in any Canadian or foreign jurisdiction, to a claim that is based in whole or in part on actual or alleged 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?	<input type="checkbox"/>	<input type="checkbox"/>
C.	Settlement agreement		
	(i) Have <u>you</u> ever entered into a settlement agreement, in any Canadian or foreign jurisdiction, in a civil action that involved actual or alleged 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?	<input type="checkbox"/>	<input type="checkbox"/>
	(ii) To the best of your knowledge, are you currently or have you ever been a director, officer, promoter, insider or control person of <u>an issuer</u> that has entered into a settlement agreement, in any Canadian or foreign jurisdiction, in a civil action that involved actual or alleged 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?	<input type="checkbox"/>	<input type="checkbox"/>

		Yes	No
<b>10. Involvement with other entities</b>			
A.	Has your employment in a sales, investment or advisory capacity with any employer engaged in the sale of real estate, insurance or mutual funds ever been suspended or terminated for cause? If yes, attach full particulars.	<input type="checkbox"/>	<input type="checkbox"/>
B.	Has your employment with a firm or company registered under the securities laws of any Canadian or foreign jurisdiction as a securities dealer, broker, investment advisor or underwriter, ever been suspended or terminated for cause? If yes, attach full particulars.	<input type="checkbox"/>	<input type="checkbox"/>
C.	Has your employment as an officer of an issuer ever been suspended or terminated for cause? If yes, attach full particulars.	<input type="checkbox"/>	<input type="checkbox"/>

**CERTIFICATE AND CONSENT**

I, \_\_\_\_\_ hereby certify that:

(Please Print – Name of Individual)

- (a) I have read and understand the questions, cautions, acknowledgement and consent in the personal information form to which this certificate and consent is attached or of which this certificate and consent forms a part (the “**Form**”), and the answers I have given to the questions in the Form and in any attachments to it are correct, except where stated to be answered to the best of my knowledge, in which case I believe the answers to be correct;
- (b) I have been provided with and have read and understand the Personal Information Collection Policy (the “**Personal Information Collection Policy**”) attached hereto as Schedule 1;
- (c) I consent to the collection, use and disclosure by the funding portal of the information in the Form and to the collection, use and disclosure by the funding portal of further personal information in accordance with the Personal Information Collection Policy;
- (d) I understand that the funding portal may use a third party to conduct the criminal record and background checks and I consent to the use and disclosure by the funding portal to the third party of the information in the Form and to the collection, use and disclosure by the third party of the information in the Form and of further personal information in order to provide these services to the funding portal;
- (e) I am aware that I am providing the Form to a funding portal, who upon request, will provide the Form and all further personal information in accordance with the Personal Information Collection Policy to the securities regulatory authorities or regulators (as defined in section 1.1 of National Instrument 14-101 *Definitions*) and consent to such disclosure to, and the collection, use and disclosure by, the securities regulatory authorities or regulators and I understand that I am under the jurisdiction of the securities regulatory authorities and the regulators to which this Form may be provided, and that it is a breach of securities legislation to provide false or misleading information to the securities regulatory authorities and the regulators.

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Signature of Person Completing this Form**

## SCHEDULE 1 PERSONAL INFORMATION COLLECTION POLICY

The funding portal collects, uses and discloses personal information from every director, executive officer, and promoter of an issuer relying on the crowdfunding prospectus exemption for the purpose of complying with its obligations under Multilateral Instrument 45-108 *Crowdfunding* (“MI 45-108”), including conducting criminal record and background checks; verifying the information provided in the Personal Information Form and Authorization to Collect, Use and Disclose Personal Information (the “**Personal Information Form**”); reviewing the crowdfunding offering document and other materials for incorrect, incomplete and misleading information; identifying whether the issuer or any of its directors, executive officers, or promoters has been convicted of an offence related to or has entered into a settlement agreement in a matter that involved fraud or securities law violations; and making a good faith determination as to whether (i) the business of the issuer may not be conducted with integrity; (ii) the issuer is not complying with one or more of its obligations under MI 45-108; and (iii) the crowdfunding offering document and other materials contain a statement or information that constitutes a misrepresentation or an untrue statement of a material fact.

You understand that by signing the certificate and consent in the Personal Information Form, you are consenting to the funding portal collecting and using your personal information in the Personal Information Form, as well as any other information that may be necessary for the purposes described above (the “Information”).

You also understand and agree that the Information the funding portal collects about you may also be disclosed, as permitted by law, where its use and disclosure is for the purposes described above. The funding portal may use a third party to conduct the criminal record and background checks and to process the Information, but when this happens, the third party will be carefully selected and obligated to comply with the limited use restrictions described above and with applicable privacy legislation. You understand that by signing the certificate and consent in the Personal Information Form, you are consenting to the funding portal disclosing your Information to, and to the collection, use and disclosure of your Information by, the third party service provider for the purposes of providing these services to the funding portal.

You understand that the funding portal, upon request of the securities regulatory authorities or regulators (as defined in section 1.1 of National Instrument 14-101 *Definitions*), is required to deliver the Information to the securities regulatory authorities or regulators because the issuer has relied upon the crowdfunding prospectus exemption. The securities regulatory authorities and the regulators collect, use and disclose the Information under the authority granted to them under provincial securities legislation for the purpose of enabling the securities regulatory authorities and regulators to administer and enforce provincial securities legislation. You understand that by signing the certificate and consent in the Personal Information Form, you are consenting to disclosure of your Information by the funding portal to the securities regulatory authorities and regulators upon their request.

You also understand that you have a right to be informed of the existence of personal information about you that is kept by funding portals, securities regulatory authorities and regulators, that you have the right to request access to that information, and that you have the right to request that such information be corrected, subject to the provisions of the applicable privacy legislation.

**Warning:** It is an offence to submit information that, in a material respect and at the time and in the light of the circumstances in which it is submitted, is misleading or untrue.

### Questions

If you have any questions about the collection, use, and disclosure of the information you provide, you may contact the funding portal at: *[Instructions: Provide an address and telephone number where an individual who has provided personal information can contact the funding portal.]*

**ANNEX A7**  
**COMPANION POLICY 45-108CP**  
**CROWDFUNDING**

**Companion Policy 45-108CP**  
**Crowdfunding**

**Table of Contents**

**Preamble to companion policy**

**Part 1 Definitions and interpretation**

2. Terms defined or interpreted in other instruments

**Part 2 Crowdfunding prospectus exemption**

*Division 1: Distribution Requirements*

5. Crowdfunding prospectus exemption  
6. Conditions for closing of the distribution  
9. Liability for misrepresentation – reporting issuers  
10. Liability for untrue statement – non-reporting issuers  
11. Advertising and general solicitation  
13. Commissions or fees

*Division 2: Ongoing disclosure requirements for non-reporting issuers*

16. Annual financial statements  
17. Annual disclosure of use of proceeds  
18. Notice of specified key events

**Part 3 Requirements for funding portals**

*Division 1: Registration requirements, general*

21. Restricted dealer funding portal  
22. Registered dealer funding portal

*Division 2: Registration requirements, funding portals*

23. Restricted dealing activities  
24. Advertising and general solicitation  
25. Access to funding portal  
26. Issuer access agreement  
27. Obligation to review materials of eligible crowdfunding issuer  
28. Denial of issuer access and termination  
32. Monitoring purchaser communications  
33. Online platform acknowledgement  
34. Purchaser requirements prior to purchase

*Division 3: Additional requirements, restricted dealer funding portal*

39. Prohibition on providing recommendations or advice  
41. Permitted dealing activities  
42. Chief Compliance Officer  
43. Proficiency

**Miscellaneous**

Resale of securities distributed under the crowdfunding prospectus exemption

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## PREAMBLE TO COMPANION POLICY

### Purpose of this Companion Policy

This Companion Policy sets out how the participating members of the Canadian Securities Administrators (**CSA**) (the “**participating CSA members**” or “**we**”) interpret or apply the provisions of Multilateral Instrument 45-108 *Crowdfunding* (the “**Instrument**”), including the required forms, and related securities legislation.

The Instrument provides

- (a) in Part 2, a prospectus exemption for eligible crowdfunding issuers that wish to make a crowdfunding distribution,
- (b) in Part 3, the registration requirements for funding portals, and
- (c) in Part 4, who can grant exemptions from the Instrument.

### References to the Instrument

Except for Part 1, all references in this Companion Policy to parts, divisions and sections are to the Instrument, unless otherwise noted. Any general guidance for a part or a division appears immediately after the reference to that part or division name. Any specific guidance on sections in the Instrument follows any general guidance. If there is no guidance for a part, division or section, the numbering in this Companion Policy will skip to the next provision that does have guidance.

### Models of crowdfunding

Crowdfunding is a method of funding a project or venture through amounts of money raised from members of the public over the internet via an online portal. There are at least four examples of crowdfunding models:

- (a) the donation model, which is the practice of the crowd donating to a project or venture in exchange for nothing of tangible value;
- (b) the reward model, which is the practice of the crowd donating to a project or venture in exchange for some tangible reward, perk or benefit;
- (c) the pre-purchase model, which is the practice of the crowd donating to a project or venture in exchange for a future tangible reward, such as a consumer product; and
- (d) the securities-based model, which is the practice of the crowd investing in an issuer and its business in exchange for the issuer’s securities, which are often equity securities but may include other types of securities, including debt securities.

### Applicability of securities legislation

In this Companion Policy, when we refer to a “crowdfunding offering”, we are referring to a distribution of securities made in reliance on the crowdfunding prospectus exemption through a funding portal as described in the Instrument.

Crowdfunding activities that are limited to the donation model, reward model and/or pre-purchase model generally will not constitute or involve a distribution of securities. However, crowdfunding offerings using the securities-based model will involve an offering of securities. Issuers that wish to make a crowdfunding offering using the securities-based model will always be subject to securities legislation.

### Securities-based and non-securities-based crowdfunding

An issuer may wish to include both securities and non-securities rewards or benefits in a crowdfunding offering. Permitting an issuer to do so may enable an issuer to derive the benefits of both securities-based and non-securities based crowdfunding. An issuer must disclose in item 5.1 of the crowdfunding offering document a description of any additional rewards or benefits being offered that are not securities.

### All distributions and other trades are subject to securities legislation

The securities legislation of a local jurisdiction applies to any distribution of a security in that jurisdiction, whether or not the issuer of the security is an issuer in that jurisdiction. A person or company who engages in a distribution must comply with the

securities legislation of each jurisdiction in which the distribution occurs. That may include the requirement that such person or company be registered under securities legislation.

A funding portal that carries on business in a jurisdiction (either by facilitating offerings of issuers in that jurisdiction and/or by facilitating offerings to investors in that jurisdiction) must be registered in that jurisdiction.

### Multi-jurisdictional distributions

A distribution can occur in more than one jurisdiction. If it does, the person or company conducting the distribution must comply with the securities legislation of each jurisdiction in which the distribution occurs. For example, a distribution from a person or company in Québec to a purchaser in Ontario may be considered a distribution in both jurisdictions.

## PART 1 DEFINITIONS AND INTERPRETATION

Defined terms used in this Companion Policy have the meaning ascribed to them in the Instrument unless otherwise noted.

### Terms defined or interpreted in other instruments

- (1) Director – The term “director” referred to in Part 3 is defined in the provincial securities legislation of each of the participating CSA members.
  - (2) Officer – The term “officer” referred to in Part 3 is defined in the provincial securities legislation of each of the participating CSA members.
  - (3) Principal Regulator – A registered dealer funding portal’s principal regulator generally will be determined in accordance with section 4A.1 of Multilateral Instrument 11-102 *Passport System*. This means that the principal regulator will usually be the securities regulatory authority or regulator in the jurisdiction where the funding portal’s head office is located.
  - (4) Funding portal – There are two types of funding portals that can facilitate distributions of securities in reliance on the crowdfunding prospectus exemption:
    - (a) a funding portal registered in the category of restricted dealer and defined in the Instrument as a restricted dealer funding portal; or
    - (b) a funding portal registered in the category of investment dealer or exempt market dealer and defined in the Instrument as a registered dealer funding portal.
- (a) *Restricted dealer funding portal*

The restricted dealer category is described in paragraph 7.1(2)(e) of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations (NI 31-103)* and permits specialized dealers or other intermediaries with an unconventional business model to carry on a limited trading business, subject to terms and conditions restricting their activities. The restricted dealer funding portal is intended to be a specialized type of restricted dealer with limited permitted dealing activities as described in section 41 [*Permitted dealing activities*]. Accordingly, the regulatory framework for a restricted dealer funding portal described in Part 3, including the exemptions from certain usual registrant requirements described in subparagraph 21(b)(ii) [*Restricted dealer funding portal*], is not available to other types of registrants that facilitate the sale of securities through an online portal. A restricted dealer funding portal will not be permitted to obtain dual registration in another registration category.

Except in Ontario, a restricted dealer funding portal may be affiliated with another registered dealer, registered adviser or registered investment fund manager. A restricted dealer funding portal that is affiliated with another registered firm must establish internal controls and appropriate policies and procedures to manage the risks associated with operating an affiliated restricted dealer funding portal. A restricted dealer funding portal should refer to section 13.4 of Companion Policy 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations (31-103CP)* to consider ways to identify and respond to conflicts of interest, including avoiding the conflict if it is significant and cannot be managed appropriately. In addition, a restricted dealer funding portal should be aware of other CSA guidance on registrant obligations to identify and respond to conflicts of interest.

- (b) *Registered dealer funding portal*

We recognize that other categories of registered dealers, such as investment dealers and exempt market dealers, may operate online portals that facilitate distributions of securities in reliance on other prospectus exemptions, such as the

accredited investor exemption in section 2.3 of National Instrument 45-106 *Prospectus Exemptions* (NI 45-106) or the offering memorandum exemption in section 2.9 of NI 45-106. An investment dealer or exempt market dealer may facilitate distributions of securities in reliance on the crowdfunding prospectus exemption; however, they are required to comply with all of their registrant obligations under securities legislation and Divisions 1 and 2 of Part 3.

- (5) Registered individual – The term “registered individual” is defined in NI 31-103 and ordinarily refers to an individual who is registered as the ultimate designated person (**UDP**), chief compliance officer (**CCO**) or a dealing or advising representative of a registered firm. A restricted dealer funding portal is not permitted to provide recommendations or advice to purchasers. Therefore, we do not expect a restricted dealer funding portal will require an individual registered as a dealing or advising representative.

## PART 2 CROWDFUNDING PROSPECTUS EXEMPTION

### **Division 1: Distribution requirements**

Reporting and non-reporting issuers – The definition of “eligible crowdfunding issuer” in section 1 [*Definitions*] outlines certain requirements for the issuer to be eligible to rely on the crowdfunding prospectus exemption. Subject to satisfying these requirements, the crowdfunding prospectus exemption is available to both reporting issuers and non-reporting issuers.

### **Crowdfunding prospectus exemption**

- 5.(1) Distribution period – The Instrument contemplates a distribution period that, in accordance with paragraph 5(1)(a) [*Crowdfunding prospectus exemption*], must end no later than 90 days after the date the issuer first offers its securities to purchasers under the crowdfunding prospectus exemption. If an issuer cannot complete an offering within the distribution period, the distribution period will expire. An issuer may commence a new crowdfunding offering so long as the issuer is in compliance with subsection 5(2) [*Crowdfunding prospectus exemption*].

Issuer group limit – Paragraph 5(1)(b) [*Crowdfunding prospectus exemption*] imposes a \$1,500,000 limit on the aggregate proceeds that can be raised by an issuer group under the crowdfunding prospectus exemption within the 12-month period ending on the last day of the distribution period. For example, suppose an issuer group consists of Issuer A, Issuer B and Issuer C. Issuer A proposes to distribute securities under the crowdfunding prospectus exemption and the last day of the distribution period will be March 15, 2015. In this case, the 12-month period to which the \$1,500,000 limit applies will commence on March 16, 2014 and end on March 15, 2015. If Issuer B has raised \$600,000 under the crowdfunding prospectus exemption during that same 12 month period (i.e., March 16, 2014 to March 15, 2015), the maximum amount Issuer A could raise under the crowdfunding prospectus exemption will be \$900,000 (\$1,500,000 minus \$600,000).

If, in addition, Issuer C proposes to raise a maximum of \$300,000 in a concurrent distribution under the crowdfunding prospectus exemption that will end on or prior to March 15, 2015, since this is within the same 12 month period, the maximum amount Issuer A could now raise under the crowdfunding prospectus exemption will be \$600,000 (\$1,500,000 minus (\$600,000 + \$300,000)) in order to ensure compliance with the \$1,500,000 offering limit for the issuer group.

Investment Limits – Paragraphs 5(1)(c) and (d) [*Crowdfunding prospectus exemption*] impose investment limits on purchasers of securities distributed under the crowdfunding prospectus exemption. In all the jurisdictions, a purchaser that is not an accredited investor is subject to an investment limit of \$2,500 per distribution and in Ontario, such purchaser is also subject to an annual investment limit of \$10,000 for all distributions made in reliance on the crowdfunding prospectus exemption in the same calendar year. In all jurisdictions, an accredited investor is subject to an investment limit of \$25,000 per distribution and in Ontario, an accredited investor is also subject to an annual investment limit of \$50,000 for all distributions made in reliance on the crowdfunding prospectus exemption in the same calendar year. In Ontario, an investor that is a permitted client is not subject to an investment limit.

- 5.(2) The crowdfunding prospectus exemption is not available to an issuer if any of the conditions in subsection 5(2) [*Crowdfunding prospectus exemption*] apply. For example, an issuer that uses the proceeds to invest in, merge with or acquire an unspecified business, commonly referred to as a blind pool, is excluded from using the crowdfunding prospectus exemption.

### **Conditions for closing of the distribution**

6. Concurrent distributions – Eligible securities are defined in section 1 [*Definitions*]. An eligible crowdfunding issuer can distribute securities under other prospectus exemptions, such as the accredited investor exemption in section 2.3 of NI 45-106 or the offering memorandum exemption in section 2.9 of NI 45-106, during the distribution period. Securities

distributed under other prospectus exemptions do not need to have the same price, terms and conditions as those distributed under the crowdfunding prospectus exemption. However, the issuer must ensure compliance with the conditions of the prospectus exemption being relied upon for the distribution. Information about any concurrent distribution, including a concurrent distribution by a member of the issuer group, must be disclosed in the crowdfunding offering document.

Risk acknowledgement form – The issuer must ensure upon closing of the distribution that they receive from the funding portal a Form 45-108F2 *Risk Acknowledgement (Form 45-108F2)* from each purchaser in which the purchaser has positively responded to each question in Form 45-108F2.

Confirmation of investment limits – In each jurisdiction other than Ontario, the issuer must ensure upon closing of the distribution that they receive from the funding portal confirmation that the purchaser is an accredited investor if the acquisition cost is greater than \$2,500. In Ontario, the issuer must receive a Form 45-108F3 *Confirmation of investment limits (Form 45-108F3)* for each purchaser regardless of the acquisition cost to the purchaser.

Closing of the distribution – If the closing of the distribution does not take place within 30 days of the end of the distribution period, the funding portal is required to promptly return to the purchaser all funds and assets received from a purchaser in connection with the distribution under the crowdfunding prospectus exemption.

#### **Liability for misrepresentation – reporting issuers**

9. In Ontario, the crowdfunding offering document required to be filed by an issuer under the Instrument is considered to be an offering memorandum and the rights available under section 130.1 of the *Securities Act* (Ontario) apply. Refer to Ontario Securities Commission (OSC) Rule 45-501 *Ontario Prospectus and Registration Exemptions* and the related Companion Policy for more information. Under section 9 [*Liability for misrepresentation – reporting issuers*], an issuer must provide a purchaser with a contractual right equivalent to the right in section 130.1 of the *Securities Act* (Ontario) for any materials made available to a purchaser in addition to the crowdfunding offering document, if the securities legislation of the jurisdiction in which a purchaser resides does not provide a comparable right.

In Québec, the crowdfunding offering document and any other materials that are made available to purchasers by a reporting issuer are documents authorized by the Autorité des marchés financiers for use in lieu of a prospectus in regards to which rights of action established in section 217 to 221 of *Securities Act* (Québec) may be exercised.

In Nova Scotia, the crowdfunding offering document required to be filed by an issuer under the Instrument is considered to be an offering memorandum and the rights available under section 138 of the *Securities Act* (Nova Scotia) apply. Refer to Nova Scotia Securities Commission Rule 45-501 *Statutory Liability for Misrepresentations in an Offering Memorandum Under Certain Exemptions from the Prospectus Requirement* and the related Companion Policy for more information. Under section 9 [*Liability for misrepresentation – reporting issuers*], an issuer must provide a purchaser with a contractual right equivalent to the right in section 138 of the *Securities Act* (Nova Scotia) for any materials made available to a purchaser in addition to the crowdfunding offering document.

#### **Liability for untrue statement – non-reporting issuers**

10. The crowdfunding offering document required to be filed by an issuer that is not a reporting issuer must contain a contractual right of action against the issuer for rescission and damages that is available to the purchaser if the crowdfunding offering document or other permitted materials made available to the purchaser contains an untrue statement of a material fact.

#### **Advertising and general solicitation**

11. An eligible crowdfunding issuer cannot advertise the distribution or solicit purchasers, except as permitted in subsection 11(2) [*Advertising and general solicitation*]. An issuer may inform purchasers, including the issuer's customers and clients, that the issuer is proposing to offer its securities under the crowdfunding prospectus exemption and refer the customers and clients to the funding portal facilitating the distribution. This direction can be provided through the use of social media or in paper format. However, in all cases, the direction must be limited to directing the purchasers, including the issuer's customers and clients, to the funding portal's online platform to obtain relevant information about the distribution.

We anticipate that issuers will want to use social media to harness the “wisdom of the crowd” in a crowdfunding offering. Although an issuer cannot advertise the distribution or solicit purchasers, an issuer may participate in communication channels or discussion boards to encourage purchasers to discuss the crowdfunding distribution, if the funding portal establishes one. An issuer is reminded that it cannot post any statement or information on the funding portal's online platform that is inconsistent with the crowdfunding offering document or the Instrument.

## Commissions or fees

13. Section 13 [*Commissions or fees*] prohibits payment of a commission, finder's fee, referral fee or similar payment by any person or company in the issuer group to any person or company in connection with a crowdfunding distribution, other than to a funding portal. This is meant to mitigate against potential conflicts of interest. However, this restriction is not intended to prohibit payments to persons or companies as compensation for their services to an issuer in preparing materials in connection with a crowdfunding offering, such as accounting or legal fees.

## Division 2: Ongoing disclosure requirements for non-reporting issuers

Division 2 [*Ongoing disclosure requirements for non-reporting issuers*] prescribes ongoing disclosure obligations for non-reporting issuers that distribute securities under the crowdfunding prospectus exemption.

Non-reporting issuers are required to make available to the purchaser certain ongoing disclosure documents. These include annual financial statements, notices disclosing the use of proceeds, and in New Brunswick, Nova Scotia and Ontario, notices of specified key events. We anticipate issuers generally will choose to make these documents available to purchasers electronically. However, an issuer may also make these documents available in paper format. We expect an issuer to take reasonable steps to ensure that all purchasers receive or have access to the documents promptly.

We consider ongoing disclosure documents to have been made reasonably available to each holder of a security acquired under the crowdfunding prospectus exemption if the documents are made available through the funding portal or are mailed to security holders, or if security holders receive an electronic notice that the annual financial statements, the notices disclosing the use of proceeds, and in New Brunswick, Nova Scotia and Ontario, the notices of specified key events can be viewed on a public website of the issuer or a website accessible by all holders of securities of the issuer that were acquired under the crowdfunding prospectus exemption (such as a password protected website).

For reporting issuers that distribute securities under the crowdfunding prospectus exemption, all applicable continuous disclosure obligations under securities legislation continue to apply.

## Annual financial statements

16. What constitutes an issuer's first financial year? – The first financial year of an issuer commences on the date of its incorporation or organization and ends at the close of that financial year.

What financial years need to be audited or reviewed? – If an issuer is required to have an auditor's report or review report accompany its financial statements in accordance with paragraph 16(2)(a) [*Annual financial statements*], the financial statements for the most recent period and the comparative period, if any, are both required to be audited or are both required to be reviewed.

Statement required in annual financial statements that have not been audited or reviewed – Subsection 16(8) [*Annual financial statements*] requires that if an issuer's annual financial statements are not accompanied by an auditor's report or a review report prepared by a public accountant, the financial statements must include a statement which discloses that fact. As set out in subsection 16(2) [*Annual financial statements*], an issuer's annual financial statements are not required to be audited or reviewed by a public accountant if the issuer has raised less than \$250,000 under one or more prospectus exemptions from the date of its formation until the end of its most recently completed financial year.

What financial reporting framework is identified in the financial statements and in any accompanying auditor's report or review report? – If an issuer's financial statements are prepared in accordance with Canadian GAAP for publicly accountable enterprises and include an unreserved statement of compliance with IFRS, the auditor's report or review report must refer to IFRS as the applicable financial reporting framework.

There are two options for referring to the financial reporting framework in the applicable financial statements and accompanying auditor's report or review report:

- (a) refer only to IFRS in the notes to the financial statements and in the auditor's report or review report; or
- (b) refer to both IFRS and Canadian GAAP in the notes to the financial statements and in the auditor's report or review report.

Non-GAAP financial measures – An issuer that intends to disclose non-GAAP financial measures, including in its crowdfunding offering document, should refer to CSA guidance for a discussion on staff's expectations concerning the use of these measures.

### Annual disclosure of use of proceeds

- 17.(1) Section 17 [*Annual disclosure of use of proceeds*] requires that an issuer's annual financial statements be accompanied by a notice that discloses in detail, how the gross proceeds raised by the issuer in a distribution under the crowdfunding prospectus exemption have been spent. The information in the notice is to be provided as at the date of the issuer's most recently completed financial year.

While specific disclosure is not prescribed for the notice, issuers should carefully consider whether the disclosure being provided contains sufficient detail for a security holder to understand how the proceeds have been used. For example, the level of detail expected in the notice of proceeds could include a breakdown of the amount of proceeds that were allocated to fees (including management or service provider fees), salaries or other compensation paid, asset purchases made or development costs.

If, at the date of the notice, there are funds raised by the issuer in a distribution under the crowdfunding prospectus exemption that have not been used, the notice should disclose that fact as well as the amount of the unused proceeds. The amount of the proceeds used together with the amount of unused proceeds, if any, should equal the gross proceeds raised by the issuer in the distribution under the crowdfunding prospectus exemption.

We expect the actual use of the proceeds as disclosed in the notice to be consistent with the issuer's intended use of proceeds as disclosed in the crowdfunding offering document.

If the proceeds of a crowdfunding distribution have been distributed to an entity that is related to the issuer (for example, an issuer in the same corporate structure), then the issuer should provide disclosure as to how the proceeds were used by that entity.

### Notice of specified key events

18. In addition to annual financial statements and the notice of how the proceeds raised under the crowdfunding prospectus exemption have been used, non-reporting issuers that issue securities in reliance on the crowdfunding prospectus exemption in New Brunswick, Nova Scotia and Ontario must also make available a notice of specified key events to each holder of a security acquired under the crowdfunding prospectus exemption, within 10 days of the occurrence of the event. These events are considered to be significant changes in the business of the issuer that purchasers should be notified of. This requirement is in addition to any similar requirement under corporate law and also applies to non-reporting issuers with non-corporate structures, such as trusts and partnerships.

In making a determination as to whether an issuer's industry has changed, issuers may consider whether they would identify a different industry category on Form 45-106F1 *Report of Exempt Distribution* than the category previously identified.

A non-reporting issuer must continue to provide notice of the specified key events, if applicable, until the earliest of the following events: (i) the issuer becomes a reporting issuer; (ii) the issuer has completed a winding up or dissolution; (iii) the securities of the issuer are beneficially owned, directly or indirectly, by fewer than 51 security holders worldwide.

## PART 3 REQUIREMENTS FOR FUNDING PORTALS

### *Division 1: Registration requirements, general*

Division 1 [*Registration requirements, general*] sets out the registration requirements for both a restricted dealer funding portal and a registered dealer funding portal.

#### **Restricted dealer funding portal**

21. A restricted dealer funding portal and a registered individual of a restricted dealer funding portal must comply with the requirements set out in Part 3.

Although a restricted dealer funding portal is not required to comply with section 13.3 of NI 31-103 or collect client specific know your client information as contemplated by paragraph 13.2(2)(c) of NI 31-103, a restricted dealer funding portal is still required to establish the identity of, and to conduct due diligence on its clients under the general know-your-client obligation set out in section 13.2 of NI 31-103.

## Registered dealer funding portal

22. A crowdfunding distribution must be made through a single funding portal. A registered dealer who currently distributes securities online under other prospectus exemptions, such as the accredited investor exemption in section 2.3 of NI 45-106 or the offering memorandum exemption in section 2.9 of NI 45-106, will already have in place the infrastructure required to facilitate distributions of securities under the crowdfunding prospectus exemption through an online platform. However, these registered dealers will be required to ensure they have the necessary policies and procedures in place to comply with Part 3, as applicable. For those registered dealers who do not currently distribute securities online and intend to use the crowdfunding prospectus exemption, they must establish an online funding portal to distribute the securities under the crowdfunding prospectus exemption in accordance with the Instrument.

A registered dealer that proposes to distribute securities under the Instrument must file a Form 33-109F5 *Change of Registration Information* that describes the change in its business operations.

## Division 2: Registration requirements, funding portals

### General

Although a funding portal enters into a contractual relationship with an eligible crowdfunding issuer, the funding portal also has a relationship with a purchaser investing through the funding portal. These purchasers are clients of the funding portal. A funding portal and its registered individuals must deal fairly, honestly and in good faith with a purchaser. This is consistent with the obligation imposed on all registered dealers and advisers under securities legislation. As a registrant, we expect a funding portal to follow the letter of the law and also the spirit of the law. For example, a funding portal that requires a purchaser to sign an agreement that contains an inappropriate waiver of liability or that attempts to transfer its responsibilities to the purchaser, is engaging in conduct that is not consistent with the principle of dealing fairly, honestly and in good faith with a purchaser.

A funding portal must be aware of and act in compliance with the terms of the exemption being relied upon for the trade or distribution of the security. For example, the funding portal must confirm and validate that the purchaser is investing within the investment limits set out in the Instrument.

### Restricted dealing activities

- 23.(1) Section 23 [*Restricted dealing activities*] provides that a funding portal and a registered individual of a funding portal must not allow an issuer access to the funding portal if the issuer is a “related issuer” of the funding portal. The definition of a “related issuer” is described in National Instrument 33-105 *Underwriting Conflicts (NI 33-105)* and generally refers to a situation where there is cross-ownership between an issuer and a registrant. Subsection 1.2(2) of NI 33-105 provides that an entity is a related issuer to another entity if one of them is an “influential security holder” of the other or if each of them is a related issuer of the same third party.

If a funding portal proposes to allow an issuer that is a connected issuer access to the funding portal, the funding portal should ensure that the issuer’s offering documents include the disclosure required by Appendix C to NI 33-105. The definition of a “connected issuer” is described in NI 33-105 and generally refers to a situation where an issuer may not be a related issuer of the registrant, but has some other relationship with the registrant that would cause a reasonable investor to question whether the registrant and the issuer are independent of each other for purposes of the distribution. Refer to NI 33-105 and the related guidance in Companion Policy 33-105CP for more information.

- 23.(2) A funding portal may accept securities of an issuer as payment of portal access fees or other similar fees, provided that the payment by the issuer does not result in the funding portal holding securities of the issuer that exceed the limit set out in subsection 23(2) [*Restricted dealing activities*]. However, an investment by a funding portal in an issuer that intends to distribute securities through the funding portal, including an investment in the form of securities accepted as payment for fees, may give rise to a conflict of interest. Accordingly, we expect the funding portal to comply with the conflicts of interest provisions in Division 2 of Part 13 of NI 31-103 and related provisions in 31-103CP.

### Advertising and general solicitation

24. A funding portal cannot advertise the distribution or solicit purchasers, except as permitted in subsection 24(2) [*Advertising and general solicitation*]. Any solicitation or marketing activities, either in print or electronic form that targets specific individuals in connection with a distribution under the crowdfunding prospectus exemption would be a contravention of section 24 [*Advertising and general solicitation*].

A funding portal is not permitted to recommend or endorse a particular issuer or distribution, which includes accepting payment or other benefits from an issuer to highlight or showcase the issuer or its distribution. Such conduct would be considered to be inconsistent with the restriction in section 24 [*Advertising and general solicitation*]. However, a funding

portal may advertise its business operations. For example, a funding portal may advertise that it is in the business of distributing securities under the crowdfunding prospectus exemption.

### Access to funding portal

25. Section 25 [*Access to funding portal*] requires a funding portal to obtain a Form 45-108F5 *Personal Information Form and Authorization to Collect, Use and Disclose Personal Information (Form 45-108F5)* from each director, executive officer and promoter of an issuer prior to allowing the issuer access to the funding portal for the purposes of posting a distribution.

Funding portals should ensure all questions in Form 45-108F5 have been answered and additional details provided, where necessary.

At a minimum, we expect the following checks to be conducted by a funding portal:

- (a) regarding issuers:
  - (i) the existence of the issuer and its business registration, including a review of the issuer's constating documents;
  - (ii) securities and disciplinary enforcement history checks;
  - (iii) bankruptcy check; and
  - (iv) court record check, where available; and
- (b) regarding directors, executive officers and promoters of the issuer:
  - (i) criminal record and securities and disciplinary enforcement history checks;
  - (ii) bankruptcy check; and
  - (iii) court record check, where available.

While we have outlined the minimum steps we expect a funding portal to take in conducting background checks on the issuer and criminal records and background checks on each director, executive officer and promoter of the issuer, a registered dealer funding portal must also take steps to ensure compliance with its regulatory obligations under securities legislation. For example, we would not consider the minimum checks and requirements outlined in this section by a registered dealer funding portal to be adequate compliance with its know-your-product obligation.

A funding portal may retain a third party to perform these checks. However, the funding portal is responsible and accountable for all functions that it outsources to a third party. A funding portal should have a written agreement that sets out the responsibilities of the parties to the arrangement. A funding portal should consider the guidance provided in Part 11 of 31-103CP on outsourcing.

### Issuer access agreement

26. We expect the funding portal and the issuer to enter into a written agreement that sets out all material terms and conditions of the arrangement under which a funding portal will grant the issuer access to its online platform. Although section 26 [*Issuer access agreement*] prescribes certain minimum requirements that must be included in an issuer access agreement, we encourage the funding portal and the issuer to also set out other key terms and conditions that will govern the arrangement.

### Obligation to review materials of eligible crowdfunding issuer

- 27.(2) If, after reviewing the crowdfunding offering document, the materials referred to in subsection 12(1) [*Additional distribution materials*], the personal information forms, the results of the criminal record and background checks, and any other information about the issuer or the distribution made available to the funding portal or of which the funding portal is aware, the funding portal determines the disclosure in the crowdfunding offering document and other materials referred to in subsection 12(1) [*Additional distribution materials*] is incorrect, incomplete or misleading, it must require the issuer to correct, complete or clarify the disclosure in the crowdfunding offering document and other permitted materials prior to posting on the funding portal's online platform. For example:

- (a) if an issuer's constating documents indicate that the "common shares" contain restrictions on voting or contain redemption rights that allow the issuer to redeem the shares in certain circumstances, or that insiders or promoters of the issuer hold another class of securities that have multiple votes, and the crowdfunding offering document does not contain this disclosure, the funding portal must not grant the issuer access to the funding portal for the purposes of distributing its securities until it is satisfied that the crowdfunding offering document accurately describes the securities being distributed, the capital structure of the issuer, including the percentage ownership of the outstanding securities of the issuer held by the insiders and promoters, and any rights not otherwise available to purchasers;
- (b) if an issuer is part of an issuer group, and the issuer's interest in the business or the assets of the business are owned through one or more subsidiaries, the funding portal should understand the features and risks of the capital structure of the issuer group and assess whether the issuer's disclosures adequately disclose these risks.

Nothing in the Instrument prevents a funding portal from establishing additional criteria that an issuer must satisfy or meet in order to distribute its securities through the funding portal. A funding portal should establish additional criteria or due diligence checks to grant or deny access by an issuer to its online platform for any reason, including any concern of the funding portal that:

- (a) the issuer may not be financially responsible in the conduct of its business; or
- (b) the issuer has not complied with, or is not complying with, securities legislation or the undertakings, terms and conditions agreed to by the issuer in connection with a distribution under the crowdfunding prospectus exemption or otherwise.

#### Denial of issuer access and termination

28.(1) Funding portals are expected to play a gatekeeper role in attempting to ensure that issuers comply with the requirements of the crowdfunding prospectus exemption and to maintain the integrity of the capital markets. We expect funding portals to have policies and procedures in place to carry out their gatekeeper function, including measures to reduce the risk of fraud in securities-based crowdfunding. These policies and procedures should include the steps a funding portal follows to review and assess the issuer, the distribution, the crowdfunding offering document and the materials described in subsection 12(1) [*Additional distribution materials*]. At a minimum, we expect a funding portal to:

- establish the identity of an issuer, such as obtaining and reviewing the issuer's articles of incorporation or other constating documents;
- determine the nature of the issuer's business; and
- review the responses provided in Form 45-108F5 and the results of the criminal record and background checks.

If, after reviewing the information provided to the funding portal under the Instrument and any other information about the issuer or the distribution made available to the funding portal or of which the funding portal is aware, the funding portal identifies any discrepancies or causes for concern about an issuer, its directors, executive officers or promoters, the distribution, the crowdfunding offering document or the materials described in subsection 12(1) [*Additional distribution materials*], the funding portal must make all reasonable inquiries to resolve the discrepancies or concerns. This may include asking additional questions of the issuer and its management and ensuring the answers provided resolve the concern to the satisfaction of the funding portal or obtaining and reviewing additional documentation. We expect the funding portal to consider the discrepancy or concern in its determination as to whether or not to grant an issuer access to its online platform.

We expect a funding portal to deny access to an issuer if based on the information the funding portal has, it appears to the funding portal that the issuer has not satisfied the conditions in subsection 28(1) [*Denial of issuer access and termination*]. For example, if it appears to the funding portal that upon a good faith determination the business of the issuer may not be conducted with integrity, including where the funding portal believes the issuer or the distribution is part of a scheme to defraud investors, the funding portal must deny the issuer access. If certain executive officers of the issuer reside in a jurisdiction where background checks and securities and disciplinary enforcement history checks are not readily available to the funding portal, it may determine that it is unable to assess whether the business of the issuer will be conducted with integrity, and thus must deny the issuer access to its platform.

### Monitoring purchaser communications

32. A funding portal that establishes an online communication channel, such as a blog or chat room, should have detailed written policies and procedures that outline the steps the funding portal will take to ensure compliance with section 32 [*Monitoring purchaser communications*]. For example, a funding portal may require issuers and purchasers to register to use the online communication channel and each will be assigned a user code or client identifier that enables the funding portal to track the communications of each participant.

If, for example, a purchaser makes an incorrect statement on the blog that the price per share is too high at \$50, when the crowdfunding offering document states the price per share is \$10, the funding portal would not be required to remove the statement. However, the issuer would be permitted to correct the price through a statement on the blog that the price per share is \$10. If, in another example, an issuer makes a statement on the blog that describes how its product works and that information was not disclosed in the crowdfunding offering document, then the funding portal must remove the statement as it is inconsistent with the crowdfunding offering document. However, in this example, an issuer could make a clarifying statement as to how its product works, if necessary, to address a misconception or misunderstanding expressed by a purchaser on the blog.

### Online platform acknowledgement

33. Prior to a person or company entering a funding portal's online platform, the funding portal must take reasonable steps to confirm that the person or company understands the risks of investing in securities posted on the funding portal and is advised whether they will or will not receive suitability advice depending on the type of dealer operating the funding portal. We expect that these acknowledgements will be completed electronically through the funding portal and that the funding portal's books and records will include evidence that the funding portal has satisfied this obligation.

### Purchaser requirements prior to purchase

34. Prior to a purchaser entering into an agreement to purchase securities under the crowdfunding prospectus exemption, a funding portal must obtain from a purchaser:
- (a) a risk acknowledgment form in which the purchaser has positively answered all questions;
  - (b) except in Ontario, confirmation and validation that the purchaser is an accredited investor if the acquisition cost is greater than \$2,500; and
  - (c) in Ontario, a confirmation of investment limits form and validation of the information contained in the form regardless of the acquisition cost to the purchaser.

A funding portal must not permit a purchaser to acquire securities of the issuer if the purchaser has responded negatively to any of the questions in the risk acknowledgement form.

We anticipate that (a) the risk acknowledgement form, (b) the confirmation and validation of the purchaser's investor status, and (c) where applicable, the confirmation of investment limits form will be completed online through the funding portal facilitating the distribution.

A funding portal should take reasonable steps to confirm that each purchaser proposing to participate in a crowdfunding distribution through its online platform understands and complies with the applicable investment limits. A funding portal must have appropriate policies and procedures in place to confirm and verify the purchaser's investor status, the applicable investment limits and whether the purchaser is in compliance with the applicable investment limits. In Ontario, these procedures must include obtaining a Form 45-108F3 from the purchaser prior to accepting any funds from the purchaser. The funding portal should review the risk acknowledgement form and in Ontario, also review the confirmation of investment limits form to ensure they have been properly completed and executed. If a purchaser specifies that it is an accredited investor or a permitted client, the funding portal will have to obtain further information from the purchaser in order to determine whether the purchaser has the requisite income or assets to meet the terms of the accredited investor or permitted client definition.

### ***Division 3: Additional requirements, restricted dealer funding portal***

#### **Prohibition on providing recommendations or advice**

39. Section 39 [*Prohibition on providing recommendations or advice*] provides that a restricted dealer funding portal and a registered individual of the restricted dealer funding portal must not provide a recommendation or advice to a purchaser in connection with a distribution under the crowdfunding prospectus exemption or other trades in a security. This

means a restricted dealer funding portal cannot tell a purchaser that the securities are a good investment, that the securities meet the purchaser's investment needs or objectives, or that the purchaser should, for whatever reason, buy the securities.

Some activities may be considered bona fide activities of a restricted dealer funding portal provided that a reasonable person would not construe those activities to be the restricted dealer funding portal providing a recommendation or advice to a purchaser. These activities could include:

- (a) using objective criteria to limit the crowdfunding distributions on the funding portal if the objective criteria are disclosed on the funding portal and applied consistently to all distributions on the funding portal;
- (b) providing general information and educational materials to purchasers about crowdfunding distributions if the information is presented in a fair, balanced and reasonable manner;
- (c) providing search functions or other tools for purchasers to search, sort or categorize crowdfunding distributions available on the funding portal if the search functions are based on objective criteria;
- (d) distributing information on the funding portal about a particular issuer or offering to a purchaser based on selection criteria identified by a purchaser; and
- (e) providing communication channels or discussion boards to enable purchasers in a crowdfunding distribution to communicate with one another and with representatives of the issuer about a crowdfunding distribution displayed on the funding portal if a communication by a person can be traced back to its author and the funding portal complies with its obligations in section 32 [*Monitoring purchaser communication*].

**Restriction on Lending** – A restricted dealer funding portal must comply with section 13.12 of NI 31-103 which provides that a registrant must not lend money, extend credit or provide margin to a client. Further, paragraph 39(b) [*Prohibition on providing recommendations or advice*] provides that a restricted dealer funding portal must not recommend that a purchaser use borrowed money to finance any part of the purchase of securities of the issuer under the crowdfunding prospectus exemption. This activity creates a conflict of interest which cannot be properly managed.

To the extent that products sold to a purchaser are structured in a way that results in the restricted dealer funding portal becoming a lender to the purchaser, we will consider the restricted dealer funding portal not to be in compliance with the prohibition in section 13.12 of NI 31-103.

### Permitted dealing activities

41. Section 41 [*Permitted dealing activities*] provides that a restricted dealer funding portal and a registered individual of the restricted dealer funding portal may only act as an intermediary in connection with a distribution of securities made in reliance on the crowdfunding prospectus exemption and, except in Ontario, a distribution of securities made in reliance on a start-up crowdfunding registration and prospectus exemptive relief order granted by a securities regulatory authority or regulator. This means that a restricted dealer funding portal is not permitted to engage in a broader range of dealing or advising activities, such as
  - (a) facilitating distributions of securities in reliance on other prospectus exemptions,
  - (b) facilitating resales of securities acquired by a purchaser to accredited investors or to other purchasers who are eligible to purchase securities on a prospectus-exempt basis, or
  - (c) providing underwriting or underwriting-related services to issuers except as otherwise permitted by the Instrument.

The limitation on dealing activities applies only to activities in connection with a distribution of securities under the crowdfunding prospectus exemption and, except in Ontario, a distribution of securities under a start-up crowdfunding exemptive relief order granted by a securities regulatory authority or regulator. A funding portal may engage in other types of crowdfunding activities that do not involve a distribution of securities, including facilitating crowdfunding activities based on a donation model, a reward model or a pre-purchase model. To the extent that a funding portal does engage in crowdfunding activities that do not involve a distribution of securities, it should have separate books and records for its non-securities related crowdfunding activities.

**Chief Compliance Officer**

42. A restricted dealer funding portal is required to have a UDP and a CCO. The UDP and the CCO can be the same person if they meet the requirements for both registration categories. We prefer funding portals to separate these functions, but we recognize that for a restricted dealer funding portal, it might not be practical.

Section 42 [*Chief compliance officer*] sets out the proficiency requirements for a CCO of a restricted dealer funding portal. The regulator is required to determine an individual's fitness for registration and may exercise discretion in so doing.

The regulator may grant an exemption from any of the education requirements in paragraphs 42(a) and (b) [*Chief compliance officer*] for the CCO of a restricted dealer funding portal if it is satisfied that the individual has qualifications or relevant experience that are equivalent to, or more relevant in the circumstances than, the prescribed requirements.

The experience requirement in paragraph 42(c) [*Chief compliance officer*] may include experience acquired:

- during employment as or with a registered dealer, a registered adviser or an investment fund manager;
- in related investment fields, such as investment banking, advisory services, venture capital or private equity;
- in legal, accounting or consulting practices; or
- in other professional fields that relate to capital raising business activities.

**Proficiency**

43. Section 43 [*Proficiency*] requires an individual of a restricted dealer funding portal to have the education, training and experience, among other things, to understand the structure, features and risks of the distribution. At a minimum, to comply with the proficiency requirements set out in section 43 [*Proficiency*], we expect a restricted dealer funding portal to review and assess the crowdfunding offering document, the materials referred to in subsection 12(1) [*Additional distribution materials*], the issuer's articles of incorporation and other constating documents. The restricted dealer funding portal must be able to evidence their review of the information provided by the issuer. If the information provided by the issuer is not sufficient to enable the restricted dealer funding portal to understand the structure, features and risks of the distribution, the funding portal must make further inquiries with the issuer to satisfy the proficiency requirement.

Examples of the structure, features and risks of the distribution include:

- return on the investment;
- fee structure;
- time horizon;
- liquidity risk;
- conflict of interest risk; and
- issuer's financial position.

**MISCELLANEOUS****Resale of securities distributed under the crowdfunding prospectus exemption**

Securities acquired under the crowdfunding prospectus exemption are subject to resale restrictions. Securities of a reporting issuer acquired under the crowdfunding prospectus exemption are subject to a four-month hold period. Securities of a non-reporting issuer cannot be resold in a jurisdiction:

- (a) until the issuer becomes a reporting issuer and certain other conditions are met; or
- (b) unless the sale is made under another available prospectus exemption.

The crowdfunding prospectus exemption is not available for distributions by selling security holders.

Refer to National Instrument 45-102 *Resale of Securities*.

**ANNEX B**  
**AMENDING INSTRUMENT FOR**  
**NATIONAL INSTRUMENT 45-102 *RESALE OF SECURITIES***

**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***
  - (a) ***by adding “1.” before “Except in Manitoba”, and***
  - (b) ***by adding before “Transitional and Other Provisions” the following:***
    2. In Ontario, Québec, New Brunswick and Nova Scotia, the exemption from the prospectus requirement in section 5 [*Crowdfunding prospectus exemption*] of Multilateral Instrument 45-108 *Crowdfunding*. .
3. This Instrument comes into force on January 25, 2016.

## ANNEX C

## SUMMARY OF NOTABLE CHANGES TO THE MARCH 2014 45-108 MATERIALS

## Summary of Notable Changes to the March 2014 45-108 Materials

**Crowdfunding exemption**

We have made certain changes to provisions relating to the crowdfunding exemption, specifically the following:

- investment limits,
- facilitating investments by lead investors,
- eligibility of issuers to use the crowdfunding exemption,
- aggregate minimum proceeds,
- point of sale disclosure,
- financial statements,
- notice of discontinuation of the issuer's business, change in industry or change of control, and
- investors' right of withdrawal.

**Investment limits***(a) Investment limits for non-accredited investors*

The March 2014 45-108 materials provided that an investor would not be permitted to invest:

- more than \$2,500 in a single investment under the crowdfunding exemption, or
- more than \$10,000 in total under the crowdfunding exemption in a calendar year.

We continue to think that investment limits for non-accredited investors are a critical investor protection measure. Ontario has retained both of these investment limits for a non-accredited investor. The other participating jurisdictions have retained the \$2,500 limit for a single investment by a non-accredited investor under the crowdfunding exemption but are not imposing an annual investment limit.

*(b) Investment limits for accredited investors in the 45-108 crowdfunding regime*

The March 2014 45-108 materials provided that an accredited investor that purchased securities under the crowdfunding exemption would be subject to the same investment limits as other investors. The March 2014 45-108 materials did, however, allow an issuer to distribute securities under another prospectus exemption such as the accredited investor exemption simultaneously with the distribution of securities under the crowdfunding exemption.

We specifically requested comment on whether an accredited investor should be permitted to make larger investments under the crowdfunding exemption.

Based on the comments we received, we have made the following revisions:

- we will impose a \$25,000 per investment limit, and in Ontario, will also impose a \$50,000 annual limit for an accredited investor that is not a permitted client, and
- in Ontario, we will not place investment limits on an investor that is a permitted client.

We think that higher investment limits for an accredited investor, and in Ontario, no investment limits for a permitted client, are appropriate given that these investors either have the ability to withstand financial loss or the resources to obtain financial

advice. A tiered approach to investment limits will allow accredited investors and permitted clients to invest larger amounts alongside retail investors, which may assist issuers to raise the desired amount of capital as set out in the crowdfunding offering document, and may potentially generate higher revenues for funding portals. This, in turn, may contribute to both the efficacy of crowdfunding as a tool for raising capital for early-stage businesses and the economic viability of funding portals.

(c) *Compliance with investment limits*

In the March 2014 45-108 materials, securities could not be distributed to a purchaser under the crowdfunding exemption if the amount invested exceeded the prescribed investment limits.

In the final Rule, we have maintained these requirements to support compliance with the investment limits. In addition, we now require as a condition of closing a distribution under the crowdfunding exemption:

- in the participating jurisdictions other than Ontario, confirmation and validation that the purchaser is an accredited investor if the acquisition cost is greater than \$2,500, and
- in Ontario, a confirmation from the investor of their investor status and that the investor has purchased securities within the applicable investment limits.

***Facilitating investments by lead investors***

Lead investors can play a valuable role in crowdfunding as they may have the incentive and the capability to provide valuable signalling to other investors. We have therefore introduced two measures that will facilitate lead investors carrying out these functions. First, as noted above, we have introduced:

- higher investment limits for accredited investors, and
- in Ontario, no investment limits for investors that are permitted clients.

Second, we have amended the Rule to remove the requirement that all securities distributed by an issuer during the crowdfunding distribution period have the same price, terms and conditions. An issuer will now be permitted to distribute securities under other prospectus exemptions during this period with different prices, terms and conditions from those being distributed under the crowdfunding exemption. This change provides flexibility for an issuer and may foster a lead investor role in a crowdfunding distribution where the lead investor can provide skills and expertise in management for the benefit of all investors. Depending on the nature and timing of the concurrent distribution, the crowdfunding offering document may require amendment to reflect the concurrent distribution.

An accredited investor that acts as a lead investor should be mindful of the potential registration requirements that arise if the lead investor engages in trading or advising activities.

***Eligibility of issuers to use the crowdfunding exemption***

(a) *Real estate issuers*

The March 2014 45-108 materials prohibited non-reporting real estate issuers from using the crowdfunding exemption. A real estate issuer was defined as a real estate investment trust, a mortgage investment entity, or a person that primarily invests in, or develops, real estate, or derives its revenues primarily from investments in real estate. We sought specific comment on whether this restriction was appropriate. Several commenters thought it would be inappropriate to prohibit a particular industry sector from being able to rely on the crowdfunding exemption and that it should therefore be available to all real estate issuers. Commenters noted that one industry is not necessarily riskier than another.

After considering the comments received, we removed the prohibition on non-reporting real estate issuers from distributing their securities under the crowdfunding exemption. We will monitor the industry of the issuers which use the crowdfunding exemption as part of our exempt market oversight.

(b) *Jurisdiction of incorporation or organization of principal operating subsidiary*

In the March 2014 45-108 materials, both the issuer, and if applicable, the parent and the principal operating subsidiary of the issuer were required to be incorporated or organized under the laws of Canada or a jurisdiction of Canada. The rationale for these restrictions was two-fold:

- to avoid concerns associated with an issuer in a foreign jurisdiction which may not have the comparable investor protections in its constating statute as are found in Canadian legislation, and

- to facilitate capital raising for Canadian issuers, one of the key objectives of the crowdfunding initiative.

We continue to think that requiring that an issuer be incorporated or organized under the laws of Canada or a jurisdiction of Canada, is consistent with our objectives.

We have, however, permitted the principal operating subsidiary of an issuer to be incorporated or organized under the laws of Canada, a jurisdiction of Canada, the laws of the United States, or a jurisdiction of the United States to be an eligible crowdfunding issuer. We think this will provide greater flexibility for issuers in structuring their affairs without compromising investor protection or our objectives as described above.

### ***Aggregate minimum proceeds***

In the March 2014 45-108 materials, a distribution made in reliance on the crowdfunding exemption could not be completed unless the minimum amount of funds to be raised, as specified in the crowdfunding offering document, had been subscribed for and, at the time of the completion of the offering, the issuer had financial resources sufficient to achieve the next milestone, or to carry out the business activities, set out in its written business plan.

We have revised the Rule to require that, as a condition of closing, an issuer must have raised aggregate minimum proceeds that are sufficient to accomplish the business objectives of the issuer that are described in the crowdfunding offering document. The aggregate minimum proceeds may be raised through one or both of: (i) the distribution; and (ii) any concurrent distributions by any member of the issuer group provided the proceeds from those distributions are unconditionally available to the issuer at the time of closing of the distribution. In the crowdfunding offering document, the issuer is required to describe each business objective, and the estimated time period and costs to accomplish it.

We think that requiring an issuer to have raised sufficient proceeds to accomplish its business objectives and to disclose each objective and the time period and costs associated with accomplishing the objective will provide significant protection to investors and meaningful information on which to base an investment decision.

### ***Point of sale disclosure***

#### ***(a) Streamlined crowdfunding offering document***

We have streamlined the disclosure requirements in the crowdfunding offering document and have more closely aligned them with the requirements for an offering document used under the start-up crowdfunding exemptions. We think this will make the document easier for investors to read and understand while still requiring issuers to provide investors with all of the information they need to know about the issuer and its business before investing. It may also be more cost-effective and faster for issuers to prepare.

#### ***(b) Forms of certificate for reporting issuers versus non-reporting issuers***

In the March 2014 45-108 materials, an issuer was required to certify that the crowdfunding offering document did not contain a misrepresentation. We continue to require this certification for reporting issuers.

However, we have amended the certificate requirement for non-reporting issuers. A non-reporting issuer will now be required to certify that its crowdfunding offering document does not contain an untrue statement of material fact.

We think that this standard of liability will allow a start-up or SME to provide a more streamlined crowdfunding offering document, which will provide all relevant information to investors and provide adequate investor protection. Further, this standard largely aligns with the standard of liability in the start-up crowdfunding exemption, which only applies to non-reporting issuers.

#### ***(c) Risk acknowledgement form***

Investors are provided with a RAF to complete before they make their investment. We have revised the RAF to closely align with the equivalent form used in the start-up crowdfunding exemptions. We think the revised RAF will better reinforce the risks of a potential investment to an investor, including that the investor may lose his, her or its entire investment. The revised RAF requires an investor to positively confirm that the investor has read and understood the risk warnings and the information in the crowdfunding offering document.

### ***Financial statements***

In the March 2014 45-108 materials, a non-reporting issuer's financial statements were required to be reviewed by an independent public accounting firm if the issuer had not raised more than \$500,000 under the crowdfunding exemption or any

other prospectus exemption since its formation or expended more than \$150,000 since that time. The issuer's financial statements were required to be audited if both of those thresholds were exceeded.

We have simplified the thresholds and slightly raised the threshold amounts. A non-reporting issuer's financial statements must now be reviewed by an independent public accounting firm or be audited if the issuer has raised \$250,000 or more but less than \$750,000 under one or more prospectus exemptions since its formation, and be audited if it has raised \$750,000 or more.

We think these thresholds strike an appropriate balance between providing investors with reliable financial information and not imposing a disproportionate financial burden on start-ups and SMEs that have limited financial resources to pursue their business.

#### ***Notice of discontinuation of the issuer's business, change in industry or change of control***

The March 2014 45-108 materials contemplated that non-reporting issuers would be required to provide notice to investors of the following specified events within 10 days of the event occurring:

- a fundamental change in the nature, or a discontinuation, of the issuer's business,
- a significant change to the issuer's capital structure,
- a major reorganization, amalgamation or merger involving the issuer,
- a take-over bid, issuer bid or insider bid involving the issuer,
- a significant acquisition or disposition of assets, property or joint venture interests, and
- changes to the issuer's board of directors or executive officers, including the departure of the issuer's chief executive officer, chief financial officer, chief operating officer or president or persons acting in similar capacities.

The final amendments require that in New Brunswick, Nova Scotia and Ontario, non-reporting issuers provide notice to investors of a streamlined list of key events within 10 days of the event occurring, as follows:

- a discontinuation of the issuer's business,
- a change in the issuer's industry, and
- a change of control of the issuer.

The final amendments also prescribe a form – Form 45-108F4 Notice of Specified Key Events – that sets parameters as to the nature and comprehensiveness of the information that is required to be provided to investors.

#### ***Investors' right of withdrawal***

The March 2014 45-108 materials provided that an issuer that offers securities under the crowdfunding exemption must provide an investor with a contractual right to withdraw an offer or agreement to purchase the security by delivering a notice to the issuer within at least 48 hours prior to the date of completion of the distribution disclosed in the issuer's crowdfunding offering document.

The Rule has been amended such that the purchaser will have a right of withdrawal that expires 48 hours after the date of the agreement to purchase securities and any subsequent amendment to the crowdfunding offering document. This 48-hour right of withdrawal will provide the purchaser with a "cooling off" period to consider the disclosure provided and reflect on his or her investment decision while also providing the issuer certainty about the amount of its offering that has been subscribed.

#### ***Funding Portal Requirements***

We have made certain changes to provisions relating to the registration regime for funding portals, specifically the following:

- use of the crowdfunding exemption by registrants,
- custodial requirements,

- restricted dealer funding portal requirements,
- access by issuers to a funding portal's online platform,
- access by investors to the funding portal's online platform, and
- operational requirements.

#### ***Use of the crowdfunding exemption by registrants***

In the March 2014 45-108 materials, the only entity that could distribute securities under the crowdfunding exemption was a funding portal registered solely as a restricted dealer, for the sole purpose of distributing securities under the crowdfunding exemption. The entity could not be registered in any other registration category. Exempt market dealers and other registered firms were not permitted to distribute securities under the proposed crowdfunding exemption.

Based on feedback we received, the final Rule allows exempt market dealers and investment dealers to distribute securities in reliance on the crowdfunding exemption. These firms are required to comply with all of their obligations as an exempt market dealer or as an investment dealer, as the case may be, including conducting client-specific know-your-client, know-your product and suitability, in addition to the applicable requirements and restrictions set out in the Rule, such as the restriction on advertising and solicitation.

However, a funding portal registered as a restricted dealer is a specialized type of restricted dealer that can only rely on the crowdfunding exemption, and other than in Ontario, on the start-up crowdfunding exemption, to facilitate distributions of simple securities. In light of the limited activities of the restricted dealer funding portal, they will not be required to conduct a suitability assessment for the investor and will not assess the merits or expected returns of an investment. Rather, the restricted dealer funding portal will provide a gatekeeper role focused on compliance by issuers with the requirements of the Rule. Considering the limited activities of the restricted dealer funding portal, we continue to believe that a funding portal that is registered as a restricted dealer in accordance with the Rule should not be registered in any other registration category, and, in Ontario, cannot be affiliated with another registered firm.

#### ***Custodial requirements***

The March 2014 45-108 materials prohibited a funding portal from holding, handling or having access to a purchaser's funds or assets. The funding portal was required to arrange for a Canadian financial institution:

- (a) to hold in trust all funds or consideration received from a potential purchaser in connection with a distribution of a security under the crowdfunding exemption until midnight on the second business day after the purchaser agreed to purchase the security, and
- (b) to return all funds or consideration to the purchaser promptly if the purchaser exercised the right to cancel the agreement to purchase the security.

Based on the comments we received, we have amended the restriction as set out in the March 2014 45-108 materials such that the restricted dealer funding portal will now be permitted to hold, handle, control or have access to purchaser funds or assets as long as they maintain minimum capital and fidelity bond insurance. We believe that investor funds and assets will be better protected if the funding portal is subject to capital and insurance requirements.

#### ***Restricted dealer funding portal requirements***

- (a) *Permitted activities*

In the March 2014 45-108 materials, a funding portal was only allowed to distribute securities under the crowdfunding exemption.

We have retained this restriction in Ontario as the start-up crowdfunding exemptions is not available in Ontario. However, in the participating jurisdictions other than Ontario, a funding portal will be allowed to act as an intermediary in connection with securities offerings pursuant to both the crowdfunding exemption and the start-up crowdfunding exemptions.

- (b) *Chief compliance officer*

In the March 2014 45-108 materials, a funding portal was required to designate an individual to be the Chief Compliance Officer (CCO). The individual designated by the funding portal was required to comply with the proficiency requirements for an exempt market dealer CCO.

We have retained the requirement for a CCO. However, a restricted dealer funding portal is a specialized type of restricted dealer that can only rely on the crowdfunding exemption, and other than in Ontario, on the start-up crowdfunding exemptions, to facilitate distributions of simple securities. Additionally, the restricted dealer funding portal will not be required to conduct a suitability assessment for the investor and will not assess the merits or expected returns of an investment. In light of the specialized nature of restricted dealer funding portals and their limited permitted dealing activities, the CCO proficiency requirements for a restricted dealer funding portal has been amended such that the individual may have 12 months of experience and training that a reasonable person would consider necessary to perform the activities of a CCO for a restricted dealer funding portal, instead of the experience requirements for an exempt market dealer CCO. We believe this change strikes an appropriate balance between sufficient proficiency of a restricted dealer funding portal CCO and the specialized nature of a restricted dealer funding portal and its limited permitted dealing activities.

#### ***Access by issuers to a funding portal's online platform***

##### *(a) Background checks*

In the March 2014 45-108 materials, we required a funding portal to obtain from each director, executive officer, and promoter of the issuer a completed personal information form that contained substantially the same information as set out in Appendix A to National Instrument 41-101 *General Prospectus Requirements*. The funding portal was required to review the forms and conduct criminal records and background checks on the issuer and its directors, executive officers, and promoters. We also required that the funding portal, as agent of the issuer, file a copy of the completed personal information forms and the results of the criminal records and other background checks with the principal regulator.

We continue to require funding portals to carry out this gatekeeper function. However, since funding portals are responsible for obtaining personal information forms, ensuring that criminal record and background checks are conducted, and reviewing this information, we no longer require funding portals to file a copy of the completed personal information forms and the results of criminal record and other background checks with the principal regulator. These documents will now be retained by the funding portal and will be provided to the securities regulatory authorities or regulators upon request.

Finally, we developed a new form – Form 45-108F5 *Personal Information Form and Authorization to Collect, Use and Disclose Personal Information* – for the crowdfunding regime which reflects the funding portals' gatekeeper role.

##### *(b) Denial of issuer access*

In the March 2014 45-108 materials, a funding portal was required to deny an issuer access to the funding portal's online platform if the funding portal had made a good faith determination that the issuer or the offering was a fraud, or that the issuer's offering documents or other materials contain a statement or information that is false, deceptive, misleading or that constitutes a misrepresentation, or if the business of the issuer may not be conducted with integrity and in the best interests of security holders, or the issuer is not complying with the Rule. In addition, a funding portal was required to ensure that the issuer's crowdfunding offering document disclosed certain information, including prior bankruptcies or insolvencies, cease trade or other similar orders, and certain penalties and sanctions.

We have maintained the requirement that a funding portal deny access where it makes a good faith determination that the business of the issuer may not be conducted with integrity; however we have removed the requirement to make a good faith determination that the issuer or the distribution is fraudulent. We believe that investors will continue to be protected against potential fraudulent distributions since a funding portal that makes a good faith determination that the issuer or the distribution is fraudulent or the business of the issuer may not be conducted in the best interests of security holders will also conclude that the business of the issuer may not be conducted with integrity. As such, the standard that the business of the issuer may not be conducted with integrity, will encompass the fraudulent conduct.

#### ***Access by investors to the funding portal's online platform***

##### *(a) Required online platform disclosure*

In the March 2014 45-108 materials, a funding portal was required to take reasonable steps to ensure that potential purchasers accessing the funding portal's online platform understand the high risk nature of an investment made under the crowdfunding exemption, and to include on its online platform the following prominent disclosure:

- no securities regulatory authority or regulator has approved or expressed an opinion about the securities offered on the registered funding portal's online platform,
- "A crowdfunding investment is highly risky. You may lose all your investment and you may not be able to sell any securities you purchase.", and

- a description of all compensation, including fees, costs and other expenses that the registered funding portal may charge to, or impose on, an issuer or purchaser.

We have retained these requirements but have amended the Rule so that, prior to allowing a person or company entry to its online platform, a funding portal must require the person or company to acknowledge:

- that the person or company may receive limited ongoing information about the issuer and an investment made through the funding portal, and
- that the person or company is entering an online platform operated by a funding portal that is either (a) registered in the category of restricted dealer and will not provide advice about the suitability of the purchase of the security; or (b) registered in the category of investment dealer or exempt market dealer and is required to provide advice about the suitability of the purchase of the security.

We believe these requirements will better reinforce the risks of a potential investment to an investor and inform the investor whether they will receive suitability advice depending on the type of dealer operating the funding portal.

*(b) Dispute resolution services*

In the final version of the Rule, we have clarified that a funding portal registered in the restricted dealer category is not required to make available the independent dispute resolution services of the Ombudsman for Banking Services and Investments' (OBSI) for clients of the restricted dealer funding portal. The CSA continues to remain supportive of the services provided by OBSI; however, given the limited scope of activities of the restricted dealer funding portal, including that it does not provide suitability advice or make recommendations, we believe that the costs associated with membership in OBSI would outweigh the benefits that may flow to investors. We expect complaints regarding restricted dealer funding portals will be submitted to the regulators. The participating jurisdictions intend to closely monitor complaints relating to restricted dealer funding portals.

Funding portals registered in the exempt market dealer or investment dealer category continue to be subject to the requirement that OBSI be made available to clients of those firms.

### **Operational Requirements**

*(a) Monitoring communications on the funding portal's online platform*

In the March 2014 45-108 materials, where a funding portal offered a discussion board or other means of communication between investors and/or between an issuer and its investors, the funding portal was required to monitor the postings in order to confirm that the issuer was not making any statement or providing information which is inconsistent with the crowdfunding offering document or is not in compliance with the Rule. The funding portal was also required to remove any material that it deemed inappropriate, or that raised investor protection concerns.

In the final Rule, we have clarified this requirement such that the funding portal must remove any statement or information which is inconsistent with the crowdfunding offering document or is not in compliance with the Rule.

*(b) Other operational requirements*

In the final version of the Rule, we introduced new requirements that set out:

- when a funding portal must remove from its online platform the crowdfunding offering document and all other permitted materials,
- what actions a funding portal must take when there is an amendment to the crowdfunding offering document and other permitted materials,
- when a funding portal is to return funds or assets received from a purchaser,
- what steps are to be taken by the funding portal prior to a purchaser entering into an agreement to purchase securities, including requirements related to confirmation of an investor's status and the applicable investment limits,
- what information a funding portal is required to deliver to the issuer on the closing of the distribution, and
- when a funding portal may release funds to the issuer.

These requirements are intended to ensure consistent practices between funding portals and issuers in certain areas. These requirements also help facilitate the communication of information between a funding portal and an issuer, particularly as certain information that one party requires may be held by the other party.

**Companion policy guidance**

We have added further companion policy guidance to 45-108CP in order to clarify certain matters.

**Other**

We have also:

- included new definitions in the Rule to reflect the above changes,
- revised the companion policy to the Rule to reflect the above changes and clarify certain matters, and
- made certain drafting changes to the provisions.

**ANNEX D1**  
**LOCAL NOTICE**

**Local Notice**

**1. Introduction**

The securities regulatory authorities in Manitoba, Ontario, Québec, New Brunswick and Nova Scotia (collectively, the **participating jurisdictions**) have published in final form:

- Multilateral Instrument 45-108 *Crowdfunding* (**MI 45-108**), which includes a crowdfunding prospectus exemption (the **crowdfunding exemption**) and a registration framework for funding portals (**funding portals**) (collectively, the **crowdfunding regime**), and
- related consequential amendments.

Please refer to the CSA Notice of Publication of Multilateral Instrument 45-108 *Crowdfunding* for a discussion of the substance and purpose of the crowdfunding regime.

**2. Ontario-only amendments**

The Ontario Securities Commission (the **OSC** or **we**) has made amendments to the following rules:

- OSC Rule 11-501 *Electronic Delivery of Documents to the Ontario Securities Commission*, and
- OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions*.

We have also made changes to the following Ontario policy:

- 45-501CP to OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions*.

Together, the amendments to the Ontario rules and changes to the Ontario policy are referred to as the **Ontario amendments**. The Ontario amendments are necessary to reflect the adoption of the crowdfunding regime in Ontario and are attached to this Annex D1.

We have also made minor changes to National Instrument 45-102 *Resale of Securities* (**NI 45-102**) and 45-102CP to NI 45-102.

**3. Implementation of the crowdfunding regime and Ontario amendments**

The OSC approved the implementation of the crowdfunding regime on October 20, 2015. MI 45-108, the Ontario amendments and other required materials were delivered to the Ontario Minister of Finance on November 3, 2015. The Minister may approve or reject MI 45-108 and the Ontario amendments or return them for further consideration. If the Minister approves MI 45-108 and the Ontario amendments or does not take any further action by January 4, 2016, MI 45-108 and the Ontario amendments will come into force on January 25, 2016.

**4. Introduction of the crowdfunding regime in Ontario**

*OSC exempt market review*

The OSC engaged in a broad review of the exempt market (the **exempt market review**) to consider whether to introduce new prospectus exemptions that would facilitate capital raising for business enterprises, particularly small and medium-sized enterprises (**SMEs**), while protecting the interests of investors.

In connection with the exempt market review, on March 20, 2014, the OSC published for comment proposals for four new capital raising prospectus exemptions in Ontario (the **March 2014 exemptions**):

- an offering memorandum exemption,
- the crowdfunding regime,

- an existing security holder exemption, and
- a family, friends and business associates exemption.

The OSC also published for comment two new reports of exempt distribution for use in Ontario.

Additional background information on the March 2014 exemptions is available in the notice published on March 20, 2014 which can be found on the OSC website. The comment period for these proposals ended on June 18, 2014.

Since that time,

- the existing security holder exemption came into force in Ontario on February 11, 2015,
- the family, friends and business associates exemption came into force in Ontario on May 5, 2015,
- the OSC has been working with the CSA to develop a new report of exempt distribution, which was published for comment on August 13, 2015, and
- the OSC published amendments to the offering memorandum exemption on October 29, 2015.

In developing the crowdfunding regime (and in connection with the exempt market review), the OSC conducted extensive public consultations with various stakeholders including OSC advisory committees. The OSC also engaged a third-party service provider to conduct an investor survey to gain insight into retail investors' views on investing in SMEs. A summary of the results of the survey was published with the March 2014 exemptions.

#### *Investor protection*

The introduction of the crowdfunding regime in Ontario will provide start-ups and SMEs with an additional capital raising tool. However, the introduction of the crowdfunding exemption in Ontario will allow issuers to raise capital from a broader group of investors, including retail investors, without the protections associated with a prospectus. This raises certain investor protection concerns that need to be addressed.

The crowdfunding regime includes a number of investor protection measures, including:

- allowing issuers to distribute only non-complex securities under the crowdfunding exemption that investors can easily understand,
- requiring issuers to prepare and make available an offering document that sets out information that an investor should know before investing in the issuer, including information about the issuer's business, its plans for the business and its management, promoter and control person,
- ensuring issuers are accountable for and are subject to a standard of liability for the information in their offering document and other permitted materials, and providing investors with a related right of action against the issuers,
- providing investors with additional information about the business activities of non-reporting issuers they have invested in, such as:
  - annual financial statements,
  - an annual notice on how the proceeds raised under the crowdfunding exemption have been used, and
  - a notice in the event of a discontinuation of the issuer's business, a change in the issuer's industry or a change of control of the issuer,
- prohibiting advertising and solicitation by issuers and a funding portal,
- highlighting to investors the key risks associated with making an investment in the exempt market through a risk acknowledgement form,

- requiring issuers to distribute securities through a single funding portal that is registered and requiring all information about an issuer's offering, including its offering document and other permitted materials, be posted only on that funding portal's online platform,
- requiring a funding portal to fulfill certain gatekeeper functions, including reviewing the issuer's disclosure in the crowdfunding offering document and other permitted materials for completeness, accuracy and any misleading statements, and conducting criminal record and background checks on issuers, its management and promoters,
- prohibiting a funding portal from distributing securities of a related issuer in order to reduce conflicts of interest, and
- limiting investors' exposure through the introduction of investment limits.

#### *Funding portal registration and use of the crowdfunding exemption*

In the March 2014 publication of the proposed crowdfunding regime, we proposed that the only entity that could distribute securities under the crowdfunding exemption was a funding portal registered solely as a restricted dealer, for the sole purpose of distributing securities online under the crowdfunding exemption. This restricted dealer funding portal cannot distribute securities under any other prospectus exemption. The entity could not be registered in any other registration category. Exempt market dealers and other registered firms were not permitted to distribute securities under the proposed crowdfunding exemption.

In response to comments received, we have amended the crowdfunding regime to permit investment dealers and exempt market dealers to distribute securities under the crowdfunding exemption. However, we continue to require investment dealers and exempt market dealers to comply with all of the requirements applicable to their registration category, including performing specific know-your-client and know-your-product due diligence on the issuers, in addition to the requirements applicable to a funding portal as set out in MI 45-108.

A funding portal registered in the category of restricted dealer is intended to be a specialized type of restricted dealer that can only rely on the crowdfunding exemption to facilitate distributions of simple securities to provide capital raising opportunities for start-ups and SMEs which are currently underserved in the market. In light of the limited activities of the restricted dealer funding portal, and its intended specialization, they will not be required to conduct a suitability assessment for the investor and will not assess the merits or expected returns of an investment. Rather, the restricted dealer funding portal will provide a gatekeeper role focused on compliance by issuers with the requirements of the Rule. Considering the limited activities of the restricted dealer funding portal, we continue to believe a funding portal that is registered as a restricted dealer in accordance with the Rule should not be registered in any other registration category, and, in Ontario, should not be affiliated with another registered firm. We believe this approach responds to comments received about permitting investment dealers and exempt market dealers to use the crowdfunding exemption while also fulfilling our mandate to provide for a specialized type of dealer that is intended to focus on the capital raising needs of start-ups and SMEs.

#### *Compliance and oversight of the exempt market in Ontario*

Given that a broader group of retail investors will be able to access the exempt market through the crowdfunding exemption, the OSC is developing a compliance and oversight program to monitor distributions under the crowdfunding exemption. This program will have three main elements:

- assessing compliance,
- enhancing awareness, and
- gathering data to support the first two activities.

#### Assessing compliance

As part of the compliance and oversight program we will oversee issuers and registrants that distribute securities under prospectus exemptions, including the crowdfunding exemption, to confirm whether they are complying with their respective obligations.

This program will apply a risk-based approach to select issuers and registered firms for review, in order to determine compliance with the prospectus exemptions being relied upon as well as applicable registrant requirements. We will take appropriate compliance and cross-branch referral action, including recommendations regarding enforcement action, where warranted.

#### Enhancing awareness

We also plan to engage in education and other outreach activities for issuers, registrants and investors. For example, through programs such as the OSC SME Institute, the OSC offers seminars to the public on securities law requirements, including prospectus exemptions. The Compliance and Registrant Regulation Branch also provides webinars and other outreach sessions to the registrant community. In addition, the Office of Investor Policy, Education and Outreach engages in educational outreach activities aimed primarily at retail investors.

#### Data gathering

Data gathering will support both our compliance and outreach activities. We plan to track information gathered from the report of exempt distribution in understanding how the crowdfunding exemption is being used and how the exempt market is developing. For example, based on data gathered from the report of exemption distribution, we can learn about the type of issuers that are distributing securities under the crowdfunding exemption and the types of registrants that are involved in these distributions. In addition, we can learn about the amount of capital raised by issuers under the crowdfunding exemption and the amounts invested by investors.

As noted above, we are currently working with the CSA to develop a proposed new report of exempt distribution, which will facilitate more effective regulatory oversight of the exempt market. Improved data collection through an enhanced report of exempt distribution is essential to support our exempt market reform initiative and the introduction of the crowdfunding exemption specifically, as it will allow us to gain greater insight into exempt market trends and behavior than is possible with the existing report.

#### *Resale restrictions*

There are limited opportunities to resell securities acquired under a prospectus exemption, which can be an issue for securities not intended to be held to maturity or lacking redemption features. By expanding the prospectus exemptions that will be available to a broader group of investors, including retail investors, there will be a greater number of securities held by retail investors that are subject to resale restrictions. As a result, we plan to monitor this aspect of the exempt market.

We think it is important for investors to understand how resale restrictions will apply to securities acquired in the exempt market. As part of our investor outreach efforts, we will educate investors about the limited ability to sell securities acquired under the crowdfunding exemption (and other prospectus exemptions). We have also highlighted to investors in the risk acknowledgement form that there is limited ability to sell their securities and we expect registrants involved in distributing these securities to ensure that investors understand these limits.

### **5. Comments received in Ontario**

As noted above, the comment period for the March 2014 exemptions ended on June 18, 2014. The OSC received written submissions from 45 commenters regarding the proposed crowdfunding regime. A summary of the comments submitted to the OSC, together with the responses of the OSC, is included at Annex F.

### **6. Questions**

Please refer any questions regarding this notice to:

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Ontario Securities Commission  
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Senior Accountant, Corporate Finance  
Ontario Securities Commission  
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## ANNEX D2

## AMENDING INSTRUMENTS FOR LOCAL RULES AND LOCAL POLICY CHANGES

**Amendments to Ontario Securities Commission Rule 11-501  
Electronic Delivery of Documents to the Ontario Securities Commission**

1. ***Ontario Securities Commission Rule 11-501 Electronic Delivery of Documents to the Ontario Securities Commission is amended by this Instrument.***
2. ***Appendix A is amended by adding the following rows to the table immediately following the row “45-106 s. 4.1(4)”:***

45-108 s. 12(1)(a)	A term sheet made available to a purchaser pursuant to clause 12(1)(a) of Multilateral Instrument 45-108 <i>Crowdfunding</i>
45-108 s. 12(1)(c)	Materials summarizing the information in a crowdfunding offering document made available to a purchaser pursuant to clause 12(1)(c) of Multilateral Instrument 45-108 <i>Crowdfunding</i>
45-108F1	Form 45-108F1 <i>Crowdfunding Offering Document</i>

3. This Instrument comes into force on January 25, 2016.

**Amendments to Ontario Securities Commission Rule 45-501  
Ontario Prospectus and Registration Exemptions**

1. **Ontario Securities Commission Rule 45-501 Ontario Prospectus and Registration Exemptions is amended by this Instrument.**
2. **Section 5.1 is amended by deleting “and” at the end of paragraph (f), and by adding the following paragraph:**
  - (f.1) section 5 of Multilateral Instrument 45-108 *Crowdfunding* [*Crowdfunding prospectus exemption*], if the eligible crowdfunding issuer is a reporting issuer, and .
3. This Instrument comes into force on January 25, 2016.

**Changes to Companion Policy 45-501CP  
Ontario Prospectus and Registration Exemptions**

This document represents changes to Companion Policy 45-501CP – to Ontario Securities Commission Rule 45-501 *Ontario Prospectus and Registration Exemptions*.

**5.3 Right of action for damages and right of rescission** – (1) Part 5 of the Rule provides for the application of the rights referred to in section 130.1 of the Act if an offering memorandum is delivered to a prospective purchaser in connection with a distribution made in reliance on a prospectus exemption in:

- (a) section 73.3 of the Act or a predecessor exemption to section 73.3 of the Act (subject to the provisions of subsection 6.2(2) of the Rule) [*Accredited investor*],
- (b) section 73.4 of the Act or a predecessor exemption to section 73.4 of the Act [*Private issuer*],
- (b.1) section 2.5 of NI 45-106 [*Family, friends and business associates*],
- (c) [Repealed.]
- (d) section 2.8 of NI 45-106 [*Affiliates*],
- (e) section 2.10 of NI 45-106 [*Minimum amount investment*],
- (f) section 2.19 of NI 45-106 [*Additional investment in investment funds*], or
- (f.1) section 5 of Multilateral Instrument 45-108 *Crowdfunding [Crowdfunding prospectus exemption]*, or (g) section 73.5 of the Act or a predecessor exemption to section 73.5 of the Act [*Government incentive security*].

The rights apply when the offering memorandum is delivered mandatorily in connection with a distribution made in reliance on the exemption in section 73.5 of the Act or a predecessor exemption to section 73.5 of the Act, in accordance with the requirements of section 5 of Multilateral Instrument 45-108 *Crowdfunding [Crowdfunding prospectus exemption]*, or voluntarily in connection with a distribution made in reliance on a prospectus exemption in section 73.3 of the Act or a predecessor exemption to section 73.3 of the Act, section 73.4 of the Act or a predecessor exemption to section 73.4 of the Act, 2.5, 2.7, 2.8, 2.10, 2.19 of NI 45-106.

(2) A document delivered in connection with a distribution in a security made otherwise than in reliance on the prospectus exemptions referred to in subsection (1) does not give rise to the rights referred to in section 130.1 of the Act or subject the selling security holder to the requirements of Part 5 of the Rule.

**5.4 Content of offering memorandum** – (1) Other than in the case of an offering memorandum delivered in connection with a distribution made in reliance on the exemption in section 73.5 of the Act or a predecessor exemption to section 73.5 of the Act, section 5 of 45-108 Multilateral Instrument 45-108 *Crowdfunding [Crowdfunding prospectus exemption]*, and subject to subsection (2), Ontario securities legislation generally does not prescribe the content of an offering memorandum. The decision relating to the appropriate disclosure in an offering memorandum generally rests with the issuer, the selling security holder and their advisors.

**5.5 Review of offering memorandum**~~Failure to disclose material information in offering memorandum~~ – (1) Staff may review the form and content of an offering memorandum filed in connection with a distribution made in reliance on the exemption in section 5 of Multilateral Instrument 45-108 *Crowdfunding [Crowdfunding prospectus exemption]* or delivered in connection with a distribution made in reliance on another exemption referred to in Part 5 of the Rule, for the purpose of determining whether the issuer has complied with the requirements, conditions and restrictions of the exemption relied on for the distribution.

(2) If Commission staff becomes aware that an offering memorandum contains a misrepresentation, fails to disclose material information relating to a security that is the subject of a distribution, or the distribution otherwise fails to comply with Ontario securities law, staff may recommend remedial action or, in appropriate circumstances, enforcement action.

**5.6 Preliminary offering material** – (1) The Commission cautions against the practice of providing preliminary offering material to a prospective purchaser before furnishing a “final” offering memorandum unless the offering material contains a description of the rights referred to in section 130.1 of the Act in situations where the rights apply.

(2) The only material delivered to a prospective purchaser in connection with a distribution made in reliance on a prospectus exemption referred to in section 5.1 of the Rule should be:

- (a) a “term sheet” (representing a skeletal outline of the features of a distribution without dealing extensively with the business or affairs of the issuer of the securities being distributed), or in the case of a distribution made in reliance on the exemption in section 2.9 of NI 45-106 [*Offering memorandum*] and “OM standard term sheet”, as that term is defined in NI 45-106, ~~and~~
- (b) an offering memorandum describing the rights referred to in section 130.1 of the Act available to purchasers and complying in all other respects with Ontario securities legislation, and
- (c) a video, in the case of a distribution made in reliance on the exemption in section 5 of Multilateral Instrument 45-108 *Crowdfunding* [*Crowdfunding prospectus exemption*].

**5.7 Availability of offering memorandum** – Subject to *Freedom of Information and Protection of Privacy Act* requests, it is the Commission’s policy that an offering memorandum delivered to the Commission under section 5.4 of the Rule will not be made available to the public.

**ANNEX E**  
**OSC LIST OF COMMENTERS**

**OSC List of Commenters**

	<b>Commenter</b>	<b>Date</b>
1.	Advocis	June 18, 2014
2.	Ajay Agrawal, Christian Catalini, Avi Goldfarb and Max Koven	June 12, 2014
3.	AUM Law Professional Corporation	June 18, 2014
4.	The Canadian Advocacy Council for Canadian CFA Institute Societies	May 8, 2014
5.	Canadian Investor Protection Fund	June 9, 2014
6.	Canadian Securities Exchange	June 18, 2014
7.	Chase Alternatives	June 18, 2014
8.	Compass360 Consulting Inc.	June 18, 2014
9.	CoPower, Inc.	June 18, 2014
10.	Crowd Fund Office	June 18, 2014
11.	Mr. Pierre Cyr	June 17, 2014
12.	Davies Ward Phillips & Vineberg LLP	June 18, 2014
13.	Equity Crowdfunding Alliance of Canada	June 25, 2014
14.	Canadian Foundation for Advancement of Investor Rights	June 18, 2014
15.	Financial Executives International Canada	April 15, 2014
16.	Fundscraper Corp.	undated
17.	Inline Reference Check	June 9, 2014
18.	Interactive Ontario	June 18, 2014
19.	The Investment Funds Institute of Canada	June 20, 2014
20.	Investment Industry Association of Canada	June 18, 2014
21.	Investor Advisory Panel	June 18, 2014
22.	Dan Jacob (IDIA Events Inc.) and Alex Sharpe (IQ Office Inc.)	June 18, 2014
23.	Kenmar Associates	March 26, 2014
24.	Launchramp Capital Corp.	April 2, 2014
25.	MaRS Discovery District	June 18, 2014
26.	MorFund Financial Inc.	undated
27.	National Crowdfunding Association of Canada	June 18, 2014
28.	NorthCrest Partners Inc.	June 16, 2014
29.	Ontario Nonprofit Network	June 18, 2014
30.	Open Avenue Inc.	June 18, 2014

31.	Optimize Capital Markets	June 18, 2014
32.	Ottawa Community Loan Fund	June 16, 2014
33.	Private Capital Markets Association of Canada	June 30, 2014
34.	Portfolio Audit	April 3, 2014
35.	Prospectors & Developers Association of Canada	June 18, 2014
36.	RBC Dominion Securities Inc., RBC Phillips Hager & North Investment Counsel Inc. and RBC Global Asset Management Inc.	June 18, 2014
37.	Mr. Art Ross	June 15, 2014
38.	Securities Transfer Association of Canada	June 18, 2014
39.	Small Investor Protection Association	April 4, 2014
40.	Siskinds LLP	June 18, 2014
41.	Stikeman Elliott, LLP (Laura Levine, Alix d'Anglejan-Chatillon, Ramandeep K. Grewal, Timothy McCormick, Darin R. Renton, Simon A. Romano)	June 18, 2014
42.	TMX Group Limited	June 18, 2014
43.	Wales Capital	June 18, 2014
44.	Walton International Group Inc.	June 17, 2014
45.	Waverley Corporate Financial Services Ltd.	June 13, 2014

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**ANNEX F**

**OSC SUMMARY OF COMMENTS AND RESPONSES**

**OSC Summary of Comments and Responses**

<b>No.</b>	<b>Topic</b>	<b>Summary of Comments</b>	<b>Responses</b>
<b>A. Support for proposed crowdfunding prospectus exemption</b>			
1.	General support	<p>Seventeen commenters indicated general agreement with the proposed crowdfunding prospectus exemption. The main reason cited was that crowdfunding would facilitate capital-raising for business enterprises, including start-up businesses and small and medium-sized enterprises (SMEs). Some of the commenters pointed to the positive impact this would have on the Canadian economy, including contributing to growth, supporting innovation and entrepreneurship, and creating jobs.</p> <p>Two commenters focused on the positive impact that crowdfunding would have on investors. One of the commenters thought that crowdfunding has the potential to induce investors to take greater ownership of their investment decisions which would foster their maturity and self-accountability in the investment process. The other commenter thought that crowdfunding of start-ups and SMEs would provide an opportunity for investors to diversify their portfolios.</p>	We acknowledge these comments of support.
<b>B. Concern about proposed crowdfunding prospectus exemption</b>			
2.	General concerns about investor protection	Six commenters were opposed to the proposed crowdfunding prospectus exemption. While a wide range of concerns were expressed, they largely focused on matters related to investor protection. One of the commenters thought that the OSC has tipped the balance too far in favour of the issuer and is neglecting the interests of investors; a second commenter thought that	We acknowledge these concerns. However, we believe that the crowdfunding regime includes appropriate protections to protect the interests of investors, including:

No.	Topic	Summary of Comments	Responses
		<p>there would be enormous sociological risks associated with crowdfunding; and a third commenter felt that there were significant risks to unaccredited investors, particularly seniors.</p> <p>One of the commenters thought that the proposed crowdfunding rules would water down the critical message that the internet is not a safe place for investors and questioned whether securities regulators would be able to convey to ordinary investors the difference between regulated crowdfunding offerings and non-compliant offerings.</p> <p>One commenter expressed the view that, other than in the case of the crowdfunding prospectus exemption, the recent trend in regulatory initiatives regarding exempt distributions has been to provide additional protection to retail and quasi-retail investors, while in contrast, the crowdfunding initiative would allow highly speculative securities to be made available to the retail segment with only limited protections.</p> <p>Five commenters are concerned that equity crowdfunding will focus on the least desirable and riskiest investments that cannot attract mainstream investor support. As a result, only the riskiest investments will be available to those who can least understand or afford the risk and those who may not have the ability to absorb the financial loss.</p> <p>One commenter noted that they failed to see why equity crowdfunding was needed or desirable for the regular small investor, given the wide access to existing high risk investments. A regular investor would likely be selecting from mostly low-quality offerings and would have little ability to select the good quality capital seekers from the chaff. The risk of selecting an investment with a high risk of failure would be significant and normal in this market.</p> <p>One commenter noted that, in their view: (i) the limits and requirements built into the crowdfunding prospectus exemption do not adequately address the fundamental issues associated with equity crowdfunding; (ii) the</p>	<ul style="list-style-type: none"> <li>• investment limits based on the sophistication of the investor that, except for a permitted client, will limit an investor’s exposure to a single investment and to investments made under the exemption in a calendar year,</li> <li>• requiring all funding portals distributing securities under the crowdfunding prospectus exemption to be registered as a restricted dealer, exempt market dealer, or investment dealer, and to be responsible for conducting background checks on issuers and their directors, executive officers and promoters in order to verify their qualifications, reputation and track records,</li> <li>• requiring an investor making an investment under the crowdfunding prospectus exemption to complete a risk acknowledgement form in which the investor positively confirms having read and understood the risk warnings and information in a crowdfunding offering document before entering into an agreement to purchase securities,</li> <li>• restricting solicitation and advertising by issuers and funding portals,</li> <li>• requiring that all information about an offering be posted on the funding portal’s website as further discussed</li> </ul>

No.	Topic	Summary of Comments	Responses
		<p>investments contemplated by the crowdfunding prospectus exemption are the kind of investments for which prospectus-level disclosure should be required; and (iii) the OSC should require better than prospectus-level disclosure in respect of such investments.</p> <p>One commenter suggested that while the proposed requirements for funding portals and the investment limits are important safeguards, additional restrictions should be considered specifically to address concerns relating to investors with low financial literacy and/or minimal investment experience.</p> <p>One commenter thought that any new requirement to protect investors should be assessed once the result of crowdfunding is observed in practice.</p> <p>One commenter suggested the Commission conduct a follow-up review on the mechanisms for right of action with respect to crowdfunding, in keeping with the scale and intention of the crowdfunding proposal.</p>	<p>below, and</p> <ul style="list-style-type: none"> <li>• requiring that an investor have a right of action and imposing a standard of liability on the issuer for the crowdfunding offering document and other marketing materials.</li> </ul> <p>We think that requiring that all information about an issuer’s offering be posted on a single funding portal’s website will facilitate an exchange of information and views about an investment that will contribute to more informed investment decisions being made and reduce the likelihood of fraud.</p>
3.	Concerns about unsophisticated investors	<p>Four commenters thought that most retail investors do not have the expertise, skills, access to information, experience or time to effect adequate due diligence.</p> <p>Other related concerns expressed by commenters included: (i) potential investors would not appreciate the risks inherent in crowdfunding; (ii) potential investors may not have the economic incentive or financial information to conduct due diligence and may be inclined to just “follow the crowd”; (iii) crowdfunding investment decisions would be based mostly on emotion and this could result in a precarious situation for investor protection; (iv) concern about the financial security of older investors; (v) the possibility of aggressive marketing campaigns encouraging workers to roll over RRSP balances into loosely regulated crowdfunding opportunities; and (vi) the inherent conflict of having the directors/managers of an issuer determine the issue price for a private placement and investors who may lack the skills, experience and requisite access to knowledge to value a</p>	<p>We acknowledge these concerns. However, we think the protections outlined in our response in Item 2 “General concerns about investor protection” will protect the interests of unsophisticated investors.</p> <p>We recognize that a retail investor may not have the same expertise as an accredited investor or a permitted client and have tailored the protections accordingly. For example, we have established the following requirements:</p> <ul style="list-style-type: none"> <li>• before entering the funding portal’s website, the investor is required to acknowledge that investments posted on the funding portal are risky and</li> </ul>

No.	Topic	Summary of Comments	Responses
		<p>crowdfunding investment.</p> <p>One commenter was concerned that investors would not be able to negotiate a company’s valuation which would impact potential financial returns to the investor.</p> <p>Two commenters were concerned that crowdfunded issuers would provide minimal information and would be under minimal regulatory oversight. These commenters, together with a third commenter, were concerned that small investors would likely be unfamiliar with key start-up investing principles, would not appreciate related risks such as liquidity constraints of crowdfunded investments and the risk of being “squeezed out” of any profits if a crowdfunding offering were successful, and would not likely possess the skills and experience of venture capitalists to vet issuers. One of the commenter’s accordingly concluded that it would not be socially responsible for a securities regulator to allow Ontario retail investors to be exposed to such a vehicle.</p> <p>One of the commenters noted that research has shown that retail investors have a low level of financial literacy and overestimate their investment knowledge and risk tolerance.</p>	<p>may result in the loss of all or most of his/her investment, and</p> <ul style="list-style-type: none"> <li>in order to be permitted to make an investment under the crowdfunding prospectus exemption, an investor must sign a risk acknowledgement form wherein the investor positively confirms having read and understood the risk warnings and the information in the crowdfunding offering document.</li> </ul> <p>In addition, we have established investment limits to reduce investors’ exposure to crowdfunded investments. We have retained for retail investors the investment limits of \$2,500 per investment and of \$10,000 in a calendar year that were published for comment. However, we have increased the investment limits for an accredited investor and have not imposed investment limits for a permitted client. Not only do these increased investment limits better take into account that these investors may have greater expertise, these investors may provide signalling that is of value to retail investors.</p> <p>In addition, we think that requiring that all information about an issuer’s offering be posted on single funding portal’s website will facilitate an exchange of information and views about an investment that will contribute to more informed investment decisions being made.</p>

No.	Topic	Summary of Comments	Responses
4.	Risks of investing in start-ups and SMEs	Five commenters noted the risks associated with investing in start-ups and SMEs including their low survival rate, the high probability of loss, issues regarding corporate governance, insider trading and unethical behaviour.	We acknowledge these concerns related to risk of investing in start-ups and SMEs but think that the crowdfunding regime will facilitate capital raising for start-ups and SMEs while providing an appropriate level of investor protection. We also note that investors will be required to acknowledge upon entering the funding portal's website that investments posted on the funding portal are risky and may result in the loss of all or most of his/her investment, will receive prior to investing in the crowdfunding investment a crowdfunding offering document that will include disclosure of the risks specific to the business, and will be required to complete a risk acknowledgement form in which the investor positively confirms having read and understood the risk warnings and information in a crowdfunding offering document prior to entering into an agreement to purchase securities of the crowdfunding issuer.
5.	Lack of understanding of resale restrictions	Two commenters were concerned that investors may not appreciate that there are restrictions on their ability to resell securities that they acquire under the crowdfunding prospectus exemption, both as a result of resale restrictions under Ontario securities laws and the absence of a public trading market, and that an illiquid investment is a far greater burden to an investor of limited means than it is to an investor of substantial means.	We acknowledge this concern and have therefore highlighted the risk that an investor may never be able to resell securities acquired through crowdfunding in the risk acknowledgement form wherein the investor positively confirms having read and understood the risk warnings and the information in the crowdfunding offering document.

No.	Topic	Summary of Comments	Responses
6.	Inadequate shareholder rights	<p>Two commenters noted that multiple funding rounds could lead to increased complexity for investors seeking to manage their existing investment and avoid a dilution of shareholder value. The commenters noted that there is a risk that other shareholders may receive more rights. One commenter recommended that the OSC prescribe basic mandatory protections for crowdfunding investors, including tag-along and pre-emptive rights.</p> <p>One commenter noted that investors would have a stake in a private company, but would not have the benefit of the protections that would ordinarily be sought by a sophisticated investor investing money in a private company, such as a seat on the board or specifically negotiated rights in a shareholders' agreement.</p>	<p>We acknowledge this concern and have therefore required disclosure in the crowdfunding offering document as to whether investors have protections such as tag-along or pre-emptive rights. In addition, if no such rights exist or are minimal in nature, the issuer is required to explain the risks associated with being a minority security holder and that the absence of such rights affects the value of the securities.</p>
7.	Litigation not economically viable	<p>Two commenters thought that when investors suffer losses, the relatively small size of the investments on both an individual and aggregate basis will mean that litigation will not be a viable mechanism for recovering those losses, including exercising the right of action against an issuer for a misrepresentation in its crowdfunding offering document. One of the commenters noted that this would apply even to a class action, in which smaller claims are aggregated to achieve efficiencies, because the value of the aggregate losses would likely render the class action uneconomical to pursue.</p>	<p>We acknowledge this concern, but it is for each investor to determine, in light of their circumstances, whether to litigate and there are many factors to consider when deciding to litigate. While, in some cases, litigation may not be a viable mechanism for recovering losses because of the limited size of the investments on both an individual and an aggregate basis, we note that this would be the case in any instance where there is a small offering and small investments. In our view, this factor should not be determinative as to the appropriateness of adopting the crowdfunding prospectus exemption.</p>
8.	Concerns about fraud	<p>Five commenters were concerned about the possibility of fraud in crowdfunding.</p> <p>The commenters noted that: (i) the CSA's BlueHedge Investments campaign demonstrated Canadians' vulnerability to online investment fraud ; (ii) in</p>	<p>We acknowledge this concern. While we recognize that the possibility of fraud can never be completely eliminated, we think that the crowdfunding regime includes measures that will minimize the incidence of fraud,</p>

No.	Topic	Summary of Comments	Responses
		<p>2013, the North American Securities Administrators Association (NASAA) listed <i>Unregulated Third Party Service Providers</i> among its “Top Investor Threats”; (iii) anticipating an increase in online fraud stemming in part from passage of the <i>JOBS Act</i>, NASAA created a task force on internet fraud investigations shortly after the enactment of the <i>JOBS Act</i> to monitor crowdfunding and other internet offerings; (iv) the World Bank has stated that “... as the crowdfunding market expands, there will inevitably be attempts to circumvent regulations and defraud investors”; (v) according to the CSA 2012 Investor Index, 27% of Canadians believe they have been approached with a possible fraudulent investment at some point in their life and 56% agree they are just as likely to be a victim of investment fraud as anyone else; and (vi) the OSC 2013 Enforcement report showed that fraud remains the biggest source of cases against individuals.</p> <p>One of the commenters thought that, given the high incidence of investment fraud, the crowdfunding prospectus exemption would place vulnerable retail investors, including the elderly, in a dangerous situation unless better controls could be articulated. (Ross, p. 5) The commenter also thought that the evolution of social media has increased the likelihood of affinity fraud in cyberspace, where the potential reach, and thus the potential harm, is multiplied exponentially. According to the commenter, the increased publicity surrounding, and popularity of, private markets heightens investor protection concerns and creates a natural magnet for non-accredited investors.</p> <p>One of the commenters thought that because crowdfunding would greatly increase access to capital for unsophisticated investors without ensuring that those investors received prospectus-level disclosure, it is virtually inevitable that crowdfunding would be accompanied by a much higher incidence of fraud.</p> <p>One commenter noted that the crowdfunding prospectus exemption would provide a large number of unsophisticated investors with access to the exempt market and suggested that, despite the proposed investor protection</p>	<p>including:</p> <ul style="list-style-type: none"> <li>• requiring funding portals to be registered and to be responsible for conducting background checks on issuers and its directors, executive officers and promoters in order to verify their qualifications, reputation and track records,</li> <li>• restricting solicitation and advertising by issuers and funding portals,</li> <li>• requiring that all information be posted on a single funding portal’s website as further discussed below, and</li> <li>• requiring that an investor have a right of action and imposing a standard of liability for the crowdfunding offering document and other marketing materials.</li> </ul> <p>We think that requiring that all information about an issuer’s offering be posted on a single funding portal’s website will facilitate an exchange of information and views about an investment that will contribute to more informed investment decisions being made and reduce the likelihood of fraud.</p>

No.	Topic	Summary of Comments	Responses
		<p>safeguards, investors would be more vulnerable to fraud under this type of exemption.</p> <p>Two commenters thought that the crowdfunding prospectus exemption would undermine all the excellent investor-protection initiatives the OSC/CSA have introduced regarding internet/fraud scams. One of the commenters did not think the exemption would be in the public interest. The commenter asserted that, like previous manias (Dotcom, Business income trusts, LSIF's), crowdfunding appeared to be a good opportunity for fraudsters, intermediaries and lawyers.</p> <p>One commenter thought that the enhanced use of tip lines, financial incentives for truth tellers (whistle blowers), systematic information sharing and scheduled, formal meetings with the FSCO/IIROC/MFDA/AG/RCMP/OBSI et al could prove effective tools for investor protection and lower the incidence of fraud.</p>	
9.	Risk of money laundering, terrorism and other financial crimes	<p>Two commenters thought that crowdfunding would be particularly susceptible to money laundering and other financial crimes. They noted that it would facilitate the offering of microcap or low-priced securities which they asserted, by their very nature, are more susceptible to fraud and market manipulation. According to the commenters, the combined effect of low-priced crowdfunded securities in offerings that are exempt from registration and not subject to the review by a regulator would result in the potential for crowdfunding to be used as a vehicle for money laundering and other financial crimes. One of the commenters was very concerned that equity crowdfunding could be used by organized crime.</p> <p>One of the commenters recommended that the OSC address the money laundering threat that the crowdfunding prospectus exemption would present, asserting that Ontario has not addressed measures in respect of fraud, the Anti-Money Laundering Program Requirement and other financial crimes as a matter of market or investor protection. The commenter believed</p>	We acknowledge this concern. Similar to the concern about the possibility of fraud, we recognize that the possibility of financial crimes occurring can never be completely eliminated. However, in our view, the measures outlined above that we think will minimize the incidence of fraud, will also minimize the incidence of financial crimes.

No.	Topic	Summary of Comments	Responses
		<p>that taking a position, or implementing requirements, to curb the potential for money laundering, terrorist financing, economic sanctions violations and other financial crimes would help to instill confidence in the emerging crowdfunding regime in Canada.</p> <p>One commenter hoped that the final OSC rules would have provisions that would not allow “investments” that finance terrorism.</p>	
10.	Economic benefits of crowdfunding are unlikely	<p>Two commenters cited Canadian data and research that, in their view, indicate that more than half of start-ups fail in the early years. According to the commenters, the data and research indicate that, while approximately 70% of SMEs survive for two years, only approximately 50% of small businesses (fewer than 250 employees) survive for five years, and the average (mean) survival time for new firms (not necessarily SMEs) is six years while the median survival time is three years.</p> <p>One of the commenters cited a Deutsche Bank report that states that it is unclear whether crowdfunding would result in “positive macro-economic spillover effects” in support of the commenter’s assertion that it is unclear whether the economic benefits of crowdfunding would outweigh its costs.</p> <p>Another commenter thought that crowdfunding would not open capital markets to SMEs in a material way, and certainly not in the way an appropriate offering memorandum exemption could.</p> <p>Two commenters pointed to the attributes of businesses that would use crowdfunding that would lower their odds of success. One of the commenters pointed to moral hazard and other factors. The other commenter noted that the management of a new company may be inexperienced and that a small business may depend heavily on a single employee, supplier or customer, the loss of which would seriously damage the company’s chances of success.</p>	<p>We are aware of the risks associated with investment in start-ups and SMEs but note the overall contribution of start-ups and SMEs to the broader economy. We believe that the crowdfunding prospectus exemption will provide a source of capital for start-ups and SMEs that currently have limited access to capital or have exhausted other available sources of capital.</p>

No.	Topic	Summary of Comments	Responses
11.	Inadequate research and analysis conducted	Three commenters thought that there was insufficient research and analysis to support the proposed crowdfunding prospectus exemption and that it was not clear at this time that equity crowdfunding would be a successful or appropriate capital raising tool for start-ups and SMEs. One of the commenters thought that the consultation period did not allow adequate time for a thorough discussion of the implications of specific provisions that were proposed.	<p>We respectfully disagree. In developing proposals for new prospectus exemptions, including the crowdfunding prospectus exemption, we engaged in extensive consultations, including:</p> <ul style="list-style-type: none"> <li>• the commissioning of third-party research to gain insight into retail investors' views on investing in SMEs, including through crowdfunding,</li> <li>• creating two OSC advisory committees consisting of volunteers from the securities industry, securities lawyers, academia and investor advocates, to advise the OSC on exempt market reform,</li> <li>• hosting five public town halls, and</li> <li>• holding 46 targeted stakeholder consultations.</li> </ul> <p>We also consulted with our regulatory counterparts in other Canadian jurisdictions and internationally. Their insight, experience and data have been considered and factored into our decisions.</p> <p>Finally, we have continuously monitored exempt market reform initiatives in jurisdictions outside of Canada.</p>
12.	Examine developments in	Three commenters did not think the OSC should proceed with a crowdfunding prospectus exemption at this time so it could first consider	We agree that such external research is valuable and we have taken into account the

No.	Topic	Summary of Comments	Responses
	other jurisdictions first	and gain insight from the experience and developments in other jurisdictions. Two of these commenters specifically referred to experience and developments in the United States.	<p>experience of other jurisdictions.</p> <p>We have consulted with our regulatory counterparts in other Canadian jurisdictions and internationally, including the United States. Their insight, experience and data have been considered and factored into our decisions.</p> <p>In addition, we have continuously monitored exempt market reform initiatives in jurisdictions outside of Canada.</p>
13.	Concerns about enforcement and compliance	<p>One commenter noted that there are a number of risks that should be of concern to investors. The commenter thought that some risks could be mitigated by the regulatory process, some should be mitigated by the self-interest of the intermediaries, and for some the investor must make the decision on risk acceptance. The commenter thought that if the OSC imposed a compliance system that attempted to mitigate all of the risks of crowdfunding, the result would be an unwieldy and inflexible system which would not achieve the intended goals.</p> <p>One commenter thought OSC staff should monitor, in particular, that the requisite financial reports are provided in a timely fashion and completed as required.</p>	As part of our compliance program, we intend to monitor the use of the exemption in a manner that will inform us of how it is being used and provide information for future policy making, but will not undermine its effectiveness the intended objectives of the exemption.
<b>C. Syndicate model</b>			
14.	Syndicate model	One commenter believed that lead investors play an integral role in crowdfunding. According to the commenter's research, concentrated involvement from these funders at the early stages of funding can improve the success of crowdfunding campaigns. The commenter believed that	We agree with this comment and have therefore introduced two measures that will facilitate lead investors taking a position in an issuer and fulfilling this role.

No.	Topic	Summary of Comments	Responses
		<p>having different prices may enable issuers to reward “first movers” and mute the collective action problem and this, in turn, may provide a solution to coordination failure. The commenter’s research indicated that early funders generate a valuable signal for later ones through accumulated capital, and incentivizing information-revealing by individuals with access to offline information about the entrepreneurs (and a motivation to perform due diligence) may lead to more effective markets. An example cited by the commenter of such a market design feature is “syndicates and backers” on the San Francisco-based platform AngelList, which enables a lead investor to charge subsequent investors a carry on future returns.</p>	<p>First, we have introduced higher investment limits for accredited investors and no investment limits for permitted clients.</p> <p>Second, since the initial publication of the crowdfunding regime, we have removed the restriction that all securities distributed by an issuer commencing on the first day of the distribution period and ending one month after the end of the distribution have the same price, terms and conditions. An issuer will be permitted to distribute securities under other prospectus exemptions with different prices, terms and conditions from those being distributed under the crowdfunding prospectus exemption during this period.</p> <p>An accredited investor that acts as a lead investor should be mindful of the potential registration requirements that arise if the lead investor engages in dealing or advising related activities.</p>
<b>D. Qualification criteria</b>			
15.	Issuer must be incorporated or organized in Canada	<p>Four commenters disagreed with the requirement that an issuer must be incorporated or organized in Canada to be able to use the crowdfunding prospectus exemption as this would: (i) severely undermine the market opportunity for Canada-based equity crowdfunding portals to survive and flourish in this burgeoning new global business model; (ii) limit the Canadian public’s opportunity to participate as an investor in “the next big thing”; and (iii) not provide a sufficient or relevant nexus.</p>	<p>We continue to think that this requirement is consistent with one of the key objectives of the crowdfunding prospectus exemption, which is to facilitate capital raising for Canadian issuers.</p> <p>We also continue to think that requiring that</p>

No.	Topic	Summary of Comments	Responses
		<p>Three of the commenters thought that issuers should be permitted to be incorporated in Canada or the United States. Two of the commenters thought there should be no restriction on U.S. companies using the crowdfunding prospectus exemption as long as the proper cross-border documents were filed with U.S. and Canadian securities regulators, and an issuer had a registered business location in Canada. Two of the commenters thought that the SEC was not imposing a reciprocal restriction, which would restrict Canadian issuers from seeking capital in the United States.</p>	<p>an issuer be incorporated or organized under Canadian laws may reduce the risks to investors.</p> <p>We note that in the proposed rules for crowdfunding that were published for comment by the SEC, the crowdfunding prospectus exemption would only be available to an issuer that was organized under, and subject to, the laws of a state or territory of the United States or the District of Columbia.</p> <p>The principal operating subsidiary of an issuer will, however, be permitted to be incorporated or organized under the laws of Canada or the U.S. We think that this will provide an appropriate degree of flexibility for companies in structuring their affairs without compromising our objective or investor protection.</p>
16.	Majority of directors must be resident in Canada	<p><u>Agreed</u></p> <p>Five commenters agreed with the requirement that a majority of an issuer's directors be resident in Canada for the issuer to be able to use the crowdfunding prospectus exemption.</p> <p>The reasons cited were that the requirement would:</p> <ul style="list-style-type: none"> <li>• be consistent with the stated objectives of the proposed crowdfunding prospectus exemption to: (i) facilitate capital raising for Canadian issuers, and (ii) reduce the risk to investors,</li> <li>• enable Canadian issuers to add global talent to their boards, comport the</li> </ul>	<p>We continue to think that this requirement is consistent with one of the key objectives of the crowdfunding prospectus exemption which is to facilitate capital raising for Canadian issuers.</p> <p>We also continue to think that requiring that a majority of an issuer's directors be resident in Canada may reduce the risks to investors.</p>

No.	Topic	Summary of Comments	Responses
		<p>existing regulations under the Income Tax Act (Canada), i.e. the notion of a Canadian-controlled private corporation or CCPC, and the underlying tax policy which has traditionally provided support to growth in certain sectors, and</p> <ul style="list-style-type: none"> <li>• be less expensive to implement, monitor and enforce than sophisticated criteria that have been employed in other jurisdictions to achieve broadly the same objectives.</li> </ul> <p>One commenter that supported the requirement recommended that if the OSC was satisfied that the crowdfunding prospectus exemption was working properly, then at some point down the road (e.g., after 24 to 36 months), it could consider amending the residency requirements by introducing provisions which would permit relief based on an issuer's need for particular competencies and skills.</p> <p><u>Disagreed</u></p> <p>Nine commenters disagreed with the requirement that a majority of an issuer's directors be resident in Canada for the issuer to be able to use the crowdfunding prospectus exemption. The reasons cited were that:</p> <ul style="list-style-type: none"> <li>• the requirement would be contrary to the borderless nature of online business,</li> <li>• the requirement would be a serious barrier to Canadian ventures building the right team (including a board of directors) to compete on a global scale, and could be too restrictive such that Canadian entrepreneurs would simply bypass the Canadian capital markets,</li> <li>• the requirement would limit the amount of capital companies in Canada that would be capable of raising through crowdfunding,</li> <li>• the Canadian start-up and SME community is in fierce competition for talent, markets and capital with U.S. companies and, as such, if the crowdfunding rules for issuers were too restrictive, Canadian entrepreneurs would simply bypass the Canadian capital markets,</li> <li>• the requirement would be inconsistent with Canadian corporate statutes</li> </ul>	

No.	Topic	Summary of Comments	Responses
		<p>that require that 25% of an issuer’s directors be resident in Canada,</p> <ul style="list-style-type: none"> <li>• a Canadian residency requirement in Canadian corporate statutes has resulted in non-active Canadian directors being appointed from professionals to assist foreign nationals setting up their business in Canada and this arrangement provides no benefit to a company and a modest “capture fee” to Canadian professionals,</li> <li>• given there is an existing memorandum of understanding <i>Concerning Consultation, Cooperation and the Exchange of Information Related to the Supervision of Cross-Border Regulated Entities</i> with the SEC and most of the major securities regulators in Canada, U.S. residents should not be considered foreign as the applicable memorandum of understanding allows Canadian regulators to collect information and conduct enforcement through the SEC and/or the appropriate law enforcement agencies,</li> <li>• a majority of directors should be permitted to be resident in either Canada or the United States, and U.S. residents should not be considered foreign as a memorandum of understanding between the SEC and most of the major securities regulators in Canada allows Canadian regulators to collect information and conduct enforcement through the SEC and/or the appropriate law enforcement agencies,</li> <li>• the requirement might encourage regulators in other countries to follow suit, which would be detrimental to the free flow of capital and would negatively impact the Canadian marketplace as well as companies operating in Canada, and</li> <li>• none of the other prospectus exemptions in National Instrument 45-106 <i>Prospectus Exemptions</i> include a restriction on the residency of directors.</li> </ul> <p>One commenter proposed that the restriction be relaxed to 25% Canadian residents.</p>	

No.	Topic	Summary of Comments	Responses
17.	Availability of exemption to both reporting and non-reporting issuers	<p><u>Exemption should be available to both reporting issuers and non-reporting issuers</u></p> <p>Eleven commenters thought the crowdfunding prospectus exemption should be available to both reporting issuers and non-reporting issuers because reporting issuers are just as much in need of capital as non-reporting issuers, have a continuous disclosure record and are subject to regulatory oversight.</p> <p>One commenter thought that all types of start-ups and SMEs should be able to benefit from the proposed exemptions, regardless of corporate form, including non-profits and charities.</p> <p><u>Exemption should be restricted to non-reporting issuers</u></p> <p>Two commenters thought that the use of the crowdfunding prospectus exemption should be restricted to non-reporting issuers as reporting issuers have other means of raising capital. In addition, one of the commenters thought it could be confusing for those investing in more than one issuer through a portal if issuers had different reporting requirements, as they may not understand the difference between the reporting obligations of a reporting issuer and a non-reporting issuer.</p>	<p>We continue to think that the crowdfunding prospectus exemption should be available to both reporting issuers and non-reporting issuers.</p> <p>We do not think that reporting issuers, which are subject to regulatory oversight and ongoing disclosure requirements, should be precluded from using the crowdfunding prospectus exemption.</p> <p>Furthermore, we think that permitting reporting issuers to use the crowdfunding prospectus exemption is consistent with the objective of facilitating capital raising for start-ups and SMEs, and may assist venture issuers that are struggling to raise capital.</p>
18.	Exclusion of investment funds	<p>Two commenters said that excluding investment funds would limit access to capital for SMEs. These comments related to pools of loans created as an extension of a lending business or a venture capital issuer. One commenter questioned whether the definition of “investment fund” would even include a lending business.</p> <p>One commenter said investment funds should be included as part of increasing retail access to alternative investments.</p>	<p>Certain issuers, such as pools of loans created as an extension of a lending business (such as a mortgage investment corporation or MIC) or a venture capital issuer would generally not meet the definition of “investment fund” under securities legislation. As a result, these types of issuers, generally, could use the crowdfunding prospectus exemption. Guidance and discussion on the definition of “investment fund” may be found in section 1.2 of Companion Policy 81-106CP to National Instrument 81-106 <i>Investment Fund</i></p>

No.	Topic	Summary of Comments	Responses
			<p data-bbox="1432 272 1978 506"><i>Continuous Disclosure</i>, OSC Staff Notice 81-722 <i>Mortgage Investment Entities and Investment Funds</i> published September 12, 2013 and the November 2012 edition of <i>The Investment Funds Practitioner</i> under the heading “The Definition of an ‘Investment Fund’”.</p> <p data-bbox="1432 542 1957 805">This policy initiative is focused on introducing new prospectus exemptions that would facilitate capital raising for business enterprises, particularly start-ups and SMEs. Increasing retail access to alternative investment fund products in the exempt market is outside the scope of this policy initiative.</p> <p data-bbox="1432 844 1969 1042">As a separate policy initiative, we are currently undertaking a project to modernize product regulation for investment funds, which includes consideration of retail access to alternative investment fund products in the public market.</p> <p data-bbox="1432 1078 1978 1409">Also, as noted in the Notice and Request for Comment dated March 20, 2014, OSC staff were requested to pursue amending the then existing accredited investor exemption to permit fully managed accounts to purchase investment fund securities using the managed account category of the accredited investor exemption in Ontario. This Ontario-only carve-out was removed as part of recent amendments implemented pursuant to the</p>

No.	Topic	Summary of Comments	Responses
			review of the accredited investor and minimum amount exemption.
19.	Availability of exemption to real estate issuers that are non-reporting issuers	<p><u>Agreed</u></p> <p>One commenter agreed that non-reporting real estate issuers should not be permitted to use the crowdfunding prospectus exemption, as it shared the OSC’s concerns about the sale of their securities in the exempt market.</p> <p>One commenter, although it would have preferred that all issuers be allowed to use the crowdfunding prospectus exemption, understood the OSC’s concerns and, in the interest of time, advocated for a revised exemption sometime later that incorporated some form of the exemption for non-reporting real estate investments.</p> <p><u>Disagreed</u></p> <p>Fifteen commenters disagreed with the proposal to exclude non-reporting real estate issuers from using the crowdfunding prospectus exemption.</p> <p>One of the commenters did not believe that the risks specific to the real estate industry were materially more severe than risks specific to other industries. The commenter was of the view that the OSC should not prohibit the use of a prospectus exemption by a particular Canadian industry, or create special rules for that industry to participate in the exempt markets unless, at a minimum, it publicly identified the nature of the concerns, presented independent market evidence demonstrating that the concerns were justifiable as compared to other industries, and engaged in a consultation process similar to that in OSC Staff Consultation Paper 45-710 <i>Considerations for New Capital Raising Exemptions</i>.</p> <p>One of the commenters thought that restricting a specific asset type sets a dangerous precedent.</p>	<p>We originally proposed excluding non-reporting real estate issuers from relying on the crowdfunding prospectus exemption. However, after considering the comments received, we have decided not to implement this type of prohibition. We recognize that excluding segments (e.g., real estate entities) would unfairly limit the issuers in those segments from accessing a beneficial capital formation vehicle. Our advisory committees and other stakeholders noted that one industry is not necessarily riskier than another.</p> <p>We note that the limit on the amount of capital an issuer group can raise under the crowdfunding prospectus exemption (\$1.5 million in a 12-month period) would likely mitigate against a large number of real estate issuers using the crowdfunding prospectus exemption. It should also be noted that neither the SEC’s proposal for a crowdfunding regime or the UK’s existing crowdfunding regime excludes any particular industry.</p> <p>At this time, we are not introducing tailored disclosure requirements for different types of issuers or industries. We will consider developing tailored disclosure requirements in any future review of the crowdfunding</p>

No.	Topic	Summary of Comments	Responses
		<p>One of the commenters thought that it seemed arbitrary that any one sector of the economy or asset class would be excluded from relying on the exemption. Instead the commenter suggested that the focus should be on ensuring that there were capable portal operators, underwriting deals in a responsible fashion, and ensuring compliance within the system.</p> <p>Five of the commenters thought that, rather than exclude an industry subsector from being able to rely on the exemption, the OSC should create disclosure requirements to address their concerns. One of these commenters recommended that, if working out the specific disclosures necessary for the OSC to feel comfortable with real estate issuers using the exemption would take additional time to develop, the exemption should be implemented now for other issuers and non-reporting real estate issuers should be phased in at a future date.</p> <p>One of the commenters stated that they understood the OSC’s concerns about “bad actors” but thought these concerns could be adequately addressed through detailed and responsible disclosure requirements.</p> <p>One of the commenters thought that the real estate industry would benefit from the additional transparency provided by a crowdfunding platform, social media and the efficient sharing of information online. The commenter noted that the crowdfunding industry was built on trust and confidence in social networks, technology platforms, and crowd wisdom. The commenter then observed that the lack of these three attributes in the current private real estate offering market may be why the OSC has experienced the current issues in the offering process and that these three attributes would mitigate the risk faced by investors.</p> <p>One of the commenters believed that portals could provide additional tools that would make investing in real estate more informed. The commenter pointed to opportunities for portals to pursue a competitive advantage in the crowdfunding industry, for example by requiring enhanced reporting and disclosure standards and by innovating to find and source the best</p>	<p>regime.</p>

No.	Topic	Summary of Comments	Responses
		<p>investments by issuers who have a good track record. The commenter believed that portals and issuers would evolve over time to develop industry best practices but they needed the opportunity to be able to take the first leap in utilizing crowdfunding.</p> <p><u><i>Benefits of real estate equity crowdfunding</i></u></p> <p>Several of the commenters pointed to the benefits of real estate equity crowdfunding to investors, including:</p> <ul style="list-style-type: none"> <li>• non-accredited investors would get access to a large pool of potentially successful investments in real estate development SMEs,</li> <li>• the ability to incorporate real estate into portfolio diversification and potentially steady returns into retirement planning,</li> <li>• the ability to add real estate to investment portfolios and diversify investment dollars over several properties,</li> <li>• investors that did not have the time or experience to invest in a real estate project on their own could partner with an experienced developer/property manager,</li> <li>• retail investors who had already invested in real estate and had an additional source of income from rent could scale up with other investors and make larger acquisitions for that same purpose,</li> <li>• a steady and predictable flow of cash,</li> <li>• debt-like securities that have a steady, high-single-digit blended return,</li> <li>• real estate investment is not modeled on a boom-bust scenario like many other asset classes – there are many profitable real estate investments that provide yield and cash flow to investors while not relying on speculation or market appreciation to provide returns,</li> <li>• real estate provides a built-in liquidity component which is a major benefit compared to traditional start-up investments,</li> <li>• from a valuation point of view, real estate is a safer investment relative to other start-ups because equity ownership in a project can be tied to ownership of title of the land and land values are</li> </ul>	

No.	Topic	Summary of Comments	Responses
		<p>published in publicly available reports,</p> <ul style="list-style-type: none"> <li>• local investors could participate in projects that have a direct impact on their community, and</li> <li>• real estate is a known, accepted and easily understood asset class.</li> </ul> <p>One of the commenters pointed to the economic and social benefits of real estate equity crowdfunding, including that it:</p> <ul style="list-style-type: none"> <li>• would rehabilitate communities,</li> <li>• would create jobs in SMEs,</li> <li>• would enable local investors to participate in projects that have a direct impact on their community,</li> <li>• has the potential to provide a major lift to the Ontario economy, as \$1.5 million can finance a \$5.0 million project using traditional leverage with amounts going towards direct labour, development fees to a local municipality, and servicing fees to local utilities, and</li> <li>• would provide at no expense to the taxpayer, capital required to help cities meet their unique planning challenges as densities increase, affordable housing requirements grow and government budgets tighten.</li> </ul>	
<b>E. Investment Limits</b>			
20.	Support for investment limits	Ten commenters supported imposing limits on: (i) the dollar amount of a single investment made under the crowdfunding prospectus exemption; and (ii) the total dollar amount that could be invested by an investor under the exemption in a calendar year.	We acknowledge these comments of support for investment limits.
21.	Concern about investment limits	Six commenters were concerned about the proposed investment limits for the following reasons: <ul style="list-style-type: none"> <li>• investment limits would be of limited effect in reducing the risk of abuse and fraud, and</li> </ul>	We acknowledge these concerns but maintain that the investment limits that we published for comment and intend to introduce for retail investors (\$2,500 per investment and \$10,000 in a calendar year) appropriately balance the

No.	Topic	Summary of Comments	Responses
		<ul style="list-style-type: none"> <li>the proposed investment limits and \$1.5 million offering limit imposed on an issuer group in a specified time period could lead to a false sense of security for investors.</li> </ul> <p>One commenter noted that the proposed investment limits appeared arbitrarily low and thought that if the proposed investment limits were deemed necessary, greater efficiency would be achieved with fixed limits, rather than periodically adjusted limits to account for inflation.</p> <p>Two commenters that did not support an annual investment limit nonetheless supported a limit for a single investment made under the crowdfunding prospectus exemption.</p> <p>One commenter that supported the limit of \$2,500 per investment stated that the fixed overall limit of \$10,000 should be calibrated based on a percentage of an investor's overall investment portfolio. This commenter suggested that a percentage of 5% would be a better balance between investor protection and capital flow. This commenter also believed that investment diversification is an important component of capital protection, particularly for this asset class.</p> <p>One commenter suggested that the \$10,000 limit be permitted to be carried forward for one year if not used in the previous year.</p> <p>One commenter believed the \$2,500 limit for a single investment was not appropriate given that the total for all investments allowed under this exemption in a calendar year was \$10,000 and stated that, by diversifying the risk, an investor did not eliminate risk nor would they reduce risk exposure if invested in similar issuers. This commenter was of the view there should only be a limit on the total investment under the exemption allowed per year, and suggested a limit for non-accredited investors of \$15,000, adjusted annually with the rate of inflation as reported by the Bank of Canada.</p>	<p>capital raising needs of issuers while maintaining an adequate level of investor protection for retail investors. Having low investment limits minimizes an investor's exposure.</p> <p>We recognize, however, that these investment limits are not appropriate for an accredited investor or a permitted client and are therefore introducing higher limits for accredited investors (\$25,000 per investment and \$50,000 in a calendar year) and no investment limits for a permitted client.</p>

No.	Topic	Summary of Comments	Responses
22.	Opposition to any investment limits	<p>Six commenters were opposed to the proposed investment limits.</p> <p>One commenter had reservations about the investment limits, asserting that the amounts of the limits seem arbitrary and bare no relation to the costs of operating a company (seed financing) or financing a particular project. The commenter also questioned the benefit to be gained from the limits, asserting that they are not an appropriate form of investor protection and could damage the advent of crowdfunding as a method of raising capital.</p>	<p>We think that the investment limits we intend to introduce appropriately balance the capital raising needs of issuers while maintaining an adequate level of investor protection.</p>
23.	Increase investment limits	<p>Two commenters that supported investment limits thought the investment limits of \$2,500 for a single investment under the crowdfunding prospectus exemption and \$10,000 for the total amount that could be invested under the exemption in a calendar year should be increased. One of these commenters recommended increasing the limits if they are not based on a net income and/or net worth test.</p> <p>Two commenters thought that in the absence of income or net worth tests to determine eligible or accredited investor status, the proposed investment limits would be too low and it would be extremely difficult for issuers to complete a \$1.5 million fundraising under the proposed crowdfunding prospectus exemption given that the requisite base of investor support would be impossible for start-up and early stage companies to achieve. The commenters submitted that the investment limits should be increased from \$2,500 to \$5,000 for non-eligible investors, and that these investors should be permitted to “top up” the amount invested in a single offering, to the \$10,000 per calendar year maximum.</p> <p>One commenter thought that the current proposed limits penalized sophisticated investors and unduly limited the amount of capital an issuer could raise from any one investor during a 12-month period. The commenter recommended the following limits: Ordinary Investor (\$5,000 per investment &amp; \$10,000 per year on a platform); Eligible Investor (\$15,000 per investment &amp; \$30,000 per year on platform); and Accredited Investor</p>	<p>In spring 2013, The Brondesbury Group was retained by the OSC to conduct a survey to gain insight into retail investors’ views on investing in start-ups and SMEs, including through crowdfunding (<b>Investor Survey</b>).</p> <p>Responses to the Investor Survey indicated that four out of 10 investors would invest less than \$1,000 through crowdfunding and a further four out of 10 would invest between \$1,000 and \$4,999. Only two out of 10 investors would invest \$5,000 or more in a crowdfunding offering. The investments limits we published for comment and intend to introduce for retail investors (\$2,500 per investment and \$10,000 in a calendar year) are consistent with these investor preferences for investment size.</p> <p>We believe that the annual investment limit of \$10,000 for retail investors provides important investor protection as it restricts the amount of investor capital at risk in crowdfunding offerings. A \$10,000 annual</p>

No.	Topic	Summary of Comments	Responses
		<p>(unlimited investment).</p> <p>One commenter thought that the investment limit of \$2,500 per investment should be raised to \$5,000 or \$10,000 per investment, and that investors should not be subject to an aggregate limit on the amount they could invest under the crowdfunding prospectus exemption. The commenter further thought that if an aggregate investment limit was imposed it should be limited to unsophisticated investors and be between \$10,000 and \$20,000 per 12-month calendar period.</p>	<p>investment limit is also consistent with investment limits we are introducing for non-eligible investors under the Offering Memorandum exemption.</p> <p>We therefore intend to introduce investment limits of \$2,500 per investment and \$10,000 in a calendar year for retail investors.</p> <p>We recognize, however, that these investment limits are not appropriate for an accredited investor or a permitted client and are therefore introducing higher limits for accredited investors (\$25,000 per investment and \$50,000 in a calendar year) and no investment limits for a permitted client.</p>
24.	Reduce investment limits	<p>Three commenters that supported investment limits thought the investment limits of \$2,500 for a single investment under the crowdfunding prospectus exemption and \$10,000 for the total amount that could be invested under the exemption in a calendar year should be reduced.</p> <p>One of the commenters provided statistical data to support their view that the proposed investment limits would be too high, particularly the annual limit. The statistical data included that: (i) Canadians contribute an average of just \$3,500 annually to their RRSPs; and (ii) annual earnings in Ontario in 2013 amounted to roughly \$48,900 pre-tax and \$27,660 for people in the retail trade. The commenter then pointed out that, assuming the generic rule that speculative investments for the middle class/elderly should be in the range of 0-5% of a portfolio, a \$2,500 after-tax investment in a start-up would mean that on average the amount of investable assets was \$50,000. At \$10,000, the proposed annual investment limit would mean that on average, the amount of investable assets was \$200,000, which the commenter thought</p>	<p>For the reasons cited above, we intend to introduce investment limits of \$2,500 per investment and \$10,000 in a calendar year for retail investors.</p> <p>We believe that these limits appropriately limit a retail investor's exposure to investments acquired through the crowdfunding prospectus exemption. We also note that the \$2,500 per investment limit is consistent with investor preferences for investment size identified in the Investor Survey.</p>

No.	Topic	Summary of Comments	Responses
		<p>seemed to be too high.</p> <p>One commenter recommended that the OSC decrease the individual investment limits to \$500 or less per investment and \$5,000 in total under the crowdfunding prospectus exemption in a calendar year. The commenter thought that, given that the underlying premise of crowdfunding is that SMEs can meet their capital-raising needs by sourcing a small amount of money from a large number of people, the proposed limits should be lowered. The commenter further noted that lower limits per investment could discourage concentration in one SME and could result in some diversification of crowdfunding investments by purchasing offerings from more SMEs.</p>	
25.	Application of investment limits to accredited investors	<p><u><i>No investment limits for accredited investors</i></u></p> <p>Eleven commenters thought there should be no investment limits for accredited investors who invest under the crowdfunding prospectus exemption through a funding portal. The reasons they cited in support of their recommendation largely mirrored those set out above in Item 23 <u>Increase investment limits</u>. In addition, however: (i) one of the commenters cited the practical difficulty of an issuer raising the maximum permitted offering of \$1.5 million from 600 separate investors each investing \$2,500, the investment limit; and (ii) another of the commenters asserted that imposing investment limits would be unfair from the perspective of an accredited investor.</p> <p>Four of the commenters who supported the current investment limits did not think they should apply to accredited investors. One of the commenters did not think the investment limits should apply to anyone who would be able to purchase securities through another prospectus exemption.</p> <p>Three of the commenters thought that accredited investors should have no investment limits, but provided no reasons for their view.</p>	<p>We think that an accredited investor should be permitted to make larger investments under the crowdfunding prospectus exemption. We are therefore imposing:</p> <ul style="list-style-type: none"> <li>(i) investment limits of \$25,000 per investment and \$50,000 in a calendar year for an accredited investor, and</li> <li>(ii) no investment limits apply for a permitted client.</li> </ul> <p>We think allowing an accredited investor or permitted client to invest more than \$2,500 in a single investment under the crowdfunding prospectus exemption will allow accredited investors and permitted clients to invest alongside retail investors which may assist issuers in achieving their target offerings and will generate potentially higher revenues for</p>

No.	Topic	Summary of Comments	Responses
		<p>One of the commenters thought that limiting an accredited investor would create a precedent that would not further the OSC’s mandate.</p> <p>One commenter thought that there should be no limits for accredited investors since they do not face any limits in other exempt market investment categories.</p> <p>One commenter thought that a limit on accredited investors essentially penalized such investors.</p> <p>One commenter thought that, since an accredited investor was allowed to invest an unlimited amount under the accredited investor exemption, they should be permitted to invest an unlimited amount in a crowdfunding issuer. The commenter also pointed out that investment by an accredited investor could be a useful signal to other investors about the overall value of the project.</p> <p>One commenter asserted that the proposed investment limits were unworkable for issuers, unless the OSC clarified the process for contemporaneous investment by accredited investors (including individuals, institutions and investment funds) to participate in a crowdfunded financing with no investor limits, and without imposing a KYC and suitability obligation on the portal (i.e. a dual registered exempt market dealer and crowdfunding portal).</p> <p>One commenter further opined that the economics in Canada would not support standalone crowdfunding portal entities. This commenter indicated that the cost of technology to repeatedly handle over 600 investors in each deal to reach the proposed \$1.5 million cap, plus the cost of compliance and due diligence would likely be overbearing for most, if not all, new market entrants, especially without being able to also attract much larger investments from accredited investors as does an EMD.</p>	<p>funding portals. This, in turn, will contribute to both the efficacy of crowdfunding in raising capital for early stage businesses and the economic viability of funding portals.</p> <p>The rationale for allowing these categories of investors to invest larger amounts through a funding portal is that they have sufficient sophistication or resources to protect themselves and can invest an unlimited amount under the accredited investor exemption.</p> <p>Given the limited scope of permitted activities for a restricted dealer funding portal, including that it does not provide suitability advice or make recommendations, a funding portal registered as a restricted dealer will not be required to complete suitability assessments for investors. However, we have amended the registration regime to permit investment dealers and exempt market dealers to use the crowdfunding prospectus exemption. These registered dealers will be required to comply with all of the requirements applicable to their registration category, including its suitability obligations, in addition to the requirements that are imposed on a registered dealer funding portal in the Instrument.</p>

No.	Topic	Summary of Comments	Responses
		<p><u>Increased investment limits for accredited investors</u></p> <p>Three commenters thought that if there are investment limits for accredited investors, the proposed limits should be increased. The commenters thought that this would: (i) enable issuers to more easily achieve their financing goals by having funding portals attract accredited investors; (ii) establish a certain amount of confidence in an offering by having an accredited investor invest a larger sum of money as a “lead investor”; and (iii) permit equity crowdfunding portals to be fairly compensated in relation to the distribution of securities to an accredited investor.</p> <p>Two of the commenters thought that this recommendation should be implemented without introducing suitability obligations for the portal. In support of their recommendation, the commenters pointed to the exemptive relief order received by MaRS VX which established a \$25,000 limit for accredited investors, with a corresponding obligation for the portal to verify an investor’s status as an accredited investor but without any obligation to determine whether such an investment was suitable for that accredited investor.</p> <p>One commenter thought that the \$2,500 investment limit for accredited investors would be very limiting and would make it very difficult for issuers to raise a sufficient amount of capital through the crowdfunding prospectus exemption. The commenter believed that accredited investors should be able to invest \$5,000 per investment. The commenter also thought that another major issue with the crowdfunding prospectus exemption was that “lead investors”, who invest a significant amount in a project, are often required in order to generate interest and attention from the crowd, and that preventing accredited investors from investing a significant amount in an offering would prevent many potentially successful crowdfunding capital raising campaigns from succeeding.</p> <p><u>Harmonize requirements for accredited investors across proposed prospectus exemptions</u></p>	

No.	Topic	Summary of Comments	Responses
		<p>One commenter thought the Commission should harmonize the requirements across the proposed prospectus exemptions for accredited investors, including the income and/or net worth test; no investor limits; and no KYC/KYP or suitability obligations on the portal.</p>	
<b>F. Risk acknowledgement form</b>			
26.	<p>Investors must sign a risk acknowledgement form (RAF) (proposed Form 45-108F2)</p>	<p><i>Concerns regarding proposed RAF</i></p> <p>Seven commenters had concerns regarding the proposed RAF.</p> <p><i>Limited contribution to investor protection</i></p> <p>Several commenters were skeptical that the proposed RAF would have any material impact on an investor’s decision as to whether to invest in a particular security and many believed investors do not always read, understand, or respond to product warnings. One commenter noted that there is no test to ensure that an investor understands the risk acknowledgement, and there are no suitability requirements or advisors acting on behalf of the investor.</p> <p>One commenter thought the proposed crowdfunding investment limits would already serve to provide investor protection without the requirement to sign an RAF.</p> <p>One commenter thought that a key purpose of RAFs appeared to be to ensure that investors investing under the relevant exemptions met the eligibility requirements. According to the commenter, this would primarily benefit issuers by protecting them from regulatory action for improper use of the prospectus exemptions, with any investor protection benefit seeming secondary.</p> <p><i>Additional research required</i></p> <p>Three commenters noted that there appeared to be little or no research into</p>	<p>We have relied on expert advice as to the design and efficacy of our proposed RAF and have amended it accordingly. We do, however, agree that additional data regarding the use and effectiveness of RAFs would always be helpful.</p> <p>However, we believe that it is appropriate to adopt a requirement that individuals purchasing securities under the crowdfunding prospectus exemption sign a RAF. Signing this form may help to alert the investor to the risks of the investment, including that the investor may lose his or her entire investment. Further, in order to reinforce the effectiveness of the RAF, a purchaser will now be required to positively confirm having read and understood the risk warnings and the information in the crowdfunding offering document.</p> <p>With respect to the specific concerns raised by the commenters:</p> <ul style="list-style-type: none"> <li>• We do not think it is sufficient for the information in a RAF to be included in a subscription agreement, which</li> </ul>

No.	Topic	Summary of Comments	Responses
		<p>the efficacy of RAFs in protecting investors and recommended that such research be undertaken. One of the commenters recommended that securities regulators test the RAF with investors prior to implementing the proposed crowdfunding prospectus exemption to ensure that it served the purpose for which it was intended.</p> <p><i>Concerns about administrative burden</i></p> <p>One commenter was concerned about the requirement that an issuer keep a copy of the RAF for 8 years following a distribution as the commenter thought it was an unnecessarily lengthy period of time that did not appear to reflect applicable retention or limitation periods under the <i>Securities Act</i> (Ontario) (OSA) or IIROC requirements.</p> <p><i>Undermine the validity of investor representations</i></p> <p>One commenter noted that most of the information included in the RAF was information that would typically be included in the subscription agreement between an investor and the issuer and/or in the offering document wherein it is disclosed that the investor is required and deemed to have made such representations. The commenter was concerned that imposing the RAF requirement might be seen as undermining the validity of representations made in subscription agreements and/or offering documents and as such calling into question the ability to rely on them.</p> <p><u><i>Possible alternatives to a RAF</i></u></p> <p>One commenter thought that the OSC may wish to reconsider the RAF or consider alternatives to this requirement, such as requiring that such disclosure be provided and acknowledged, while leaving it to the issuer or registrant to determine the appropriate form. The commenter also thought that other options to provide greater flexibility to address the needs and circumstances of the broad range of capital market participants should also be considered including; for example, only imposing the RAF requirement on investors investing below a particular threshold.</p>	<p>can be a lengthy document that uses technical language. We think it is more effective for an investor to receive the RAF as a separate document that is written using plain language.</p> <ul style="list-style-type: none"> <li>• One standard form will ensure that the risks are set out consistently and clearly to investors. Further, we do not think that the requirement to obtain RAFs is unduly burdensome for issuers.</li> <li>• We have imposed the requirement to retain the signed RAF for eight years because this represents the length of the longest limitation period under Canadian securities legislation.</li> <li>• We think that introducing different RAF to be used in different circumstances could result in confusion.</li> <li>• We have required the issuer to include in the offering document the principal risks facing the issuer’s business, the investor’s right of action and right of withdrawal, and a warning on the risk of dilution.</li> </ul> <p>Restricted dealer funding portals will be prohibited from recommending the use of borrowed funds. Registered dealer funding portals will be required to comply with section 13.13 of National Instrument 31-103 <i>Registration Requirements, Exemptions and</i></p>

No.	Topic	Summary of Comments	Responses
		<p><u>Content of the RAF</u></p> <p>Many comments provided suggestions on the content of the RAF, including:</p> <ul style="list-style-type: none"> <li>• the risk acknowledgement statements should be tailored to the individual risks of each investment opportunity as broad, boilerplate statements of risk do not add to investor protection,</li> <li>• the RAF should include: (i) information for investors regarding their two day right of withdrawal and any statutory or contractual right in the event of a misrepresentation where the form mentions the investor’s legal rights; and (ii) more comprehensive information about resale restrictions,</li> <li>• it should be made clear to investors that crowdfunding investments would not be eligible for inclusion in an RRSP, RESP, or RRIF account,</li> <li>• the warning to investors should be in bold-faced red type and the text should require that the investor certify that they will only invest money that does not affect their primary residence, pensions and living expenses,</li> <li>• provisions should be added regarding dilution protection perhaps by adding text on the certification form that subsequent rounds of financing could dramatically dilute the investor’s original investment,</li> <li>• an investor be required to specify in the RAF what percentage of the investor’s net investable assets the investment represented, and</li> <li>• the investor identify whether or not the registrant, if any, that was involved in the trade recommended the investor borrow money for purposes of making the investment.</li> </ul> <p><u>The RAF should not extend to a holding company</u></p> <p>One commenter thought that the RAF requirement should not extend to a holding company of an individual purchasing securities under the crowdfunding prospectus exemption.</p>	<p><i>Ongoing Registrant Obligations</i> which requires a specific disclosure when recommending the use of borrowed funds.</p>

No.	Topic	Summary of Comments	Responses
<b>G. Point of sale disclosure</b>			
27.	Offering document	<p>One commenter did not believe it would be possible for the offering document to sufficiently educate retail investors about minority investor rights (or lack thereof) and the risks associated with being a minority security holder. Furthermore, according to the commenter, disclosure of what rights investors have (or do not have) is far inferior to requiring the provision of basic protections.</p> <p>One commenter recommended that the prescribed statement regarding dilution in item 2.2 also outline any rights and characteristics of other securities already issued by the issuer that may dilute or negatively affect the rights of investors under the offering.</p> <p><u>Suggested additional disclosure</u></p> <p>Two commenters recommended that the following additional disclosure be included in the crowdfunding offering document:</p> <ul style="list-style-type: none"> <li>• any alternative use of the proceeds should the original business case not succeed and related investors’ rights and remedies, including the right to receive refunds of their full investments;</li> <li>• all fees that will be deducted from the proceeds raised, whether by the issuer, portal, payment processors or any other parties involved in the transaction; and</li> <li>• information about all previous crowdfunding offerings conducted by the issuer or by issuers associated with its officers and directors, whether successful or unsuccessful.</li> </ul> <p><u>Opportunity to assess ‘access equals delivery’ model</u></p> <p>One commenter noted that an issuer would be required to post its crowdfunding offering document and marketing materials on the portal’s website, but would not be required to physically deliver these materials to a potential investor before purchase. The commenter observed that this</p>	<p>We acknowledge these comments. For crowdfunding to be a viable method of raising capital, investors must be provided with appropriate information to make informed investment decisions, without imposing excessive costs on issuers. This is consistent with the disclosure requirements in other areas of securities law. The disclosure must be straightforward for the issuer to prepare and for the investor to understand. We do not intend that the point of sale offering document be overly lengthy or complicated.</p> <p>We intend to monitor the use of the crowdfunding prospectus exemption after it is implemented and consider changes to the disclosure required in the offering document based on our findings.</p> <p>Furthermore, we will require that an issuer certify its offering document, which will make management and directors accountable for the disclosure, and make investors aware of their rights of action.</p> <p>We note, however, that the offering document will require the following disclosure:</p> <ol style="list-style-type: none"> <li>1. all fees that will be deducted from the proceeds raised; and</li> <li>2. information about all crowdfunding distributions in which the issuer or an</li> </ol>

No.	Topic	Summary of Comments	Responses
		<p>presented the CSA with an opportunity to assess whether an ‘access equals delivery’ model could fully satisfy the investment information needs of investors, and recommended that the CSA share the results of any such assessment with a view to considering whether there should be a broader application for this approach in the context of retail investment.</p>	<p>executive officer, director, promoter or control person of the issuer has been involved in the past five years.</p>
<b>H. Statutory or contractual rights in the event of a misrepresentation or an untrue statement</b>			
28.	Contractual right of action in the event of a misrepresentation	<p><i>Support for contractual right of action in the event of a misrepresentation</i></p> <p>Seven commenters agreed that, if a comparable right were not provided by the securities legislation of the jurisdiction in which an investor resided, the issuer should be required to 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.</p> <p>One of the commenters thought that the standard of liability was necessary and consistent with current Ontario securities law, but pointed out that it would increase the length and complexity of certain offering documents, especially those prepared by early-stage, high-opportunity issuers. The commenter cautioned that it was not clear whether the costs associated with this increase would be justifiable in terms of augmented investor safety for the specific crowdfunded offering under consideration; however, in the fullness of time there would be at least an incremental increase in the level of protection for all offerings.</p> <p>One of the commenters was not concerned whether adding rights of action increased the length and complexity of an offering document since it is an important investor protection safeguard.</p> <p>Two of the commenters thought that when an issuer makes a misrepresentation, investors should be provided with a right that is comparable to those relying on the Offering Memorandum exemption.</p>	<p>We believe it is important for market confidence that investors have recourse for a misrepresentation or an untrue statement of a material fact made by issuers. The availability of a right of action will be a deterrent against making a misrepresentation or untrue statement of a material fact in materials that are made available to purchasers. We believe that this is an important requirement for investor protection.</p> <p>In the original publication, MI 45-108 required a certificate that stated that the crowdfunding offering document did not contain a misrepresentation. We have maintained this requirement for reporting issuers, but have amended MI 45-108 so that the certificate for non-reporting issuers will state that the offering document does not contain an untrue statement of a material fact. We think this standard of liability for non-reporting issuers will result in more streamlined offering documents, while providing all relevant information to investors and adequate investor protection. We also</p>

No.	Topic	Summary of Comments	Responses
		<p>One commenter believed this was an appropriate standard and thought that it would be important for market confidence that investors have a contractual right to sue.</p> <p>One commenter thought that a contractual right of rescission or damages should arise in the case of a misrepresentation given that accountability and accuracy are important hallmarks of an equity crowdfunding regime.</p> <p><u><i>Against contractual right of action in the event of a misrepresentation</i></u></p> <p>Several commenters indicated that establishing a standard of liability was not appropriate and argued that it was sufficient that an issuer and a portal comply with applicable regulatory regimes in the different CSA jurisdictions.</p> <p>One commenter thought that detailed rights of action that often vary by jurisdiction or must be provided contractually would significantly increase the length and complexity of offering documents, and that these disclosure documents are often long and confusing. The commenter also noted that it was not clear how all of the offering disclosure would be included or incorporated by reference into an offering that relied on the crowdfunding prospectus exemption (e.g., in a video on the portal) when providing such rights more easily lends itself for its inclusion in an offering document.</p> <p><u><i>Technical Comments</i></u></p> <p>Two commenters thought that extending the right of action for misrepresentations did not go far enough in protecting investors, noting that: (i) as drafted, it confers a right of action only as against the issuer (as opposed to the suggestion at D-20 of the OSC March 20, 2014 publication of the discussion materials that such right of action was intended to be available against the issuer, management, directors and portals (subject to a due diligence defence)); and (ii) given the heightened risks faced by investors, the right of action should be available against a broader range of defendants. In this regard, the commenters noted that a right of action</p>	<p>note that it aligns with the liability standard in the start-up crowdfunding prospectus exemption, which only applies to non-reporting issuers.</p> <p>While we acknowledge the concerns expressed by commenters about the potential burden on issuers that this requirement could impose, we believe that the benefits in terms of investor protection outweigh these potential burdens.</p> <p>We will consider preparing policy guidance on how issuers can satisfy the due diligence defense. For example, OSC Policy 51-604 <i>Defense for Misrepresentations in Forward-Looking Information</i> contains OSC guidance on satisfying the statutory defense for misrepresentations in forward-looking information.</p> <p>Similar to other registrants, funding portals perform a gatekeeper function. Funding portals will be responsible for reviewing the crowdfunding offering document and the other permitted materials of the issuer. A funding portal must require the issuer to amend the crowdfunding offering document and the other permitted materials if they are incorrect, incomplete or misleading. In addition, a funding portal must remove the crowdfunding offering document and the other permitted materials of the issuer from the funding portal's website if they contain a</p>

No.	Topic	Summary of Comments	Responses
		<p>against an issuer would be an empty right if the issuer failed and did not have sufficient assets to satisfy a judgement in favour of investors.</p> <p>One commenter suggested that if a portal did not vouch for the accuracy or completeness of an issuer’s information, this should be clearly disclosed (in specific plain language) so that an investor would know that they may not have recourse to the portal for inaccuracies or omissions.</p> <p>Two commenters noted there is an extremely tight limitation period applicable to actions under s. 130.1 of the OSA (being the lesser of three years from the date of the transaction and 180 days from the date of the discovery by the plaintiff of the facts underlying the claim) and believed that, given that crowdfunding will target less sophisticated investors, such investors should have the benefit of the limitation period that is generally available under s. 4 of the <i>Ontario Limitations Act, 2002</i> (being two years from the date on which the claim is discoverable, subject to an ultimate limitation period of 15 years).</p> <p>One commenter noted that, although investors would have a right to sue for a misrepresentation, the practical benefit of this would be questionable given the small investment amounts and the cost of litigation. The commenter also observed that the language in proposed clause 22(1) (c) states that a right of action against the issuer would be subject to “the defence that the investor had knowledge of the misrepresentation”. The commenter thought that this clause was meant to provide a defence only where the investor made the purchase with knowledge that the representation was untrue or incorrect but the commenter believed the proposed language was imprecise.</p> <p>One commenter thought there should be a rule defining the actions to be taken if the funds were used for a purpose other than that included in offering/disclosure documents.</p>	<p>statement or information that is false, deceptive, misleading or that constitutes a misrepresentation or an untrue statement of material fact.</p>

No.	Topic	Summary of Comments	Responses
<b>I. Right of withdrawal</b>			
29.	48-hour right of withdrawal	<p><u>Support for 48-hour right of withdrawal</u></p> <p>One commenter supported the right of all investors to request a refund of their investment up to 48 hours before the offering period ends. The commenter also thought that, prior to the start of the 48 hour period; the issuer should be required to certify that no material information had come to its attention which had not been previously disclosed in the information posted on the portal. Where such material information did arise, the commenter thought all investors should be offered the opportunity to withdraw from the process.</p> <p>One commenter thought that a “cooling off” period of five business days should be provided to investors.</p>	<p>We acknowledge this support and maintain that a 48-hour right of withdrawal will provide an investor with a sufficient “cooling off” period to consider the disclosure provided and reflect on his or her investment decision.</p> <p>We note, however, that the right of withdrawal will now extend until 48 hours after the date of the agreement to purchase securities and any subsequent amendment to the crowdfunding offering document. In our view, this will better balance the need to provide an investor with a reasonable period of time to reflect on his or her investment decision with the need of an issuer to know the amount of its distribution that has been subscribed.</p>
<b>J. Ongoing disclosure</b>			
30.	Adequacy of ongoing disclosure for non-reporting issuers	<p>One commenter was generally supportive of the proposed approach.</p> <p>One commenter thought that, since crowdfunding is intended to permit retail investors to participate in ventures by making relatively small investments, a strong framework that mandates that investors receive sufficient information about an investment and subsequent to a purchase, and that the portal intermediary be a regulated and supervised, is essential for investor protection.</p> <p>One commenter believed that annual disclosure for non-reporting issuers</p>	<p>Since the crowdfunding prospectus exemption will allow issuers to raise money from a large number of retail investors, we think that requiring non-reporting issuers to provide certain limited ongoing disclosure is appropriate.</p> <p>While we will not require non-reporting issuers to provide disclosure of material changes on an ongoing basis we will require</p>

No.	Topic	Summary of Comments	Responses
		<p>was not sufficient. The commenter thought that more regular updates, even of a non-financial nature, should be required to align with the ideal concept of crowd engagement.</p> <p>One commenter noted that as the market evolves, additional requirements will undoubtedly become apparent.</p> <p>One commenter thought that requiring only annual financial statements may cause an issuer to be lax with its financial management and inadvertently cause harm to its business, and accordingly recommended that non-reporting issuers be required to publish (within 20 days of the end of each calendar year quarter) a quarterly operating expenses monthly burn rate and cash available based on a standard calculation.</p>	<p>that they provide disclosure of the following specified key events, which we believe will provide adequate investor protection: a discontinuation of the issuer’s business, a change in the issuer’s industry, and a change of control of the issuer.</p> <p>We acknowledge the suggestion that issuers be required to publish a quarterly operating expenses monthly burn rate.</p> <p>We will monitor the use of the crowdfunding prospectus exemption after it is implemented in Ontario, and will consider whether changes to the ongoing disclosure regime for non-reporting issuers should be introduced.</p>
31.	Audited or reviewed financial statements	<p><u>Support for audit or review</u></p> <p>Two commenters thought non-reporting issuers should be required to provide annual financial statements that have been audited or reviewed by an independent public accounting firm.</p> <p>One commenter thought that, for non-reporting issuers, financial statements that have been reviewed by an independent public accounting firm should be the minimum requirement for a cumulative capital raise of up to \$750,000 and that for larger amounts, audited financial statements should be required.</p> <p><u>Audit or review in compliance with corporate statutes</u></p> <p>One commenter suggested that the OSC require non-reporting issuers to provide financial statements that were either audited or reviewed by an independent public accounting firm as prescribed by the <i>Business Corporations Act</i>, Ontario. Another commenter noted that the majority of</p>	<p>In the version of MI 45-108 that was published for comment, a non-reporting issuer’s financial statements were required to be reviewed by an independent public accounting firm if the issuer had not raised more than \$500,000 under the crowdfunding prospectus exemption or any other prospectus exemption since its formation or expended more than \$150,000 since that time. The issuer’s financial statements were required to be audited if either of those thresholds were exceeded.</p> <p>We have amended MI 45-108 to simplify the thresholds and to raise the threshold amounts. We will now require that a non-reporting</p>

No.	Topic	Summary of Comments	Responses
		<p>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.</p> <p><u>Concern about audit or review</u></p> <p>Two commenters believed that financial statements are essential for the purpose of determining the financial health and historical performance of an issuer, but thought that a requirement for all non-reporting issuers to provide financial statements that were audited or reviewed by an independent public accounting firm was unwarranted and too costly for many SMEs, unless they had raised in excess of a certain amount of capital. The commenters noted that, although preferable, not all start-ups and SMEs can afford audited financial statements. The commenters submitted that investor protection and the level of assurance of financial statements must be balanced against the amount of capital raised and an issuer's financial ability to provide financial statements with a higher level of assurance.</p> <p>One commenter agreed that the requirement for an audit or review should be commensurate with the amount that had been raised but thought that the financial statements of an issuer that had raised less than \$150,000 should not be required to be audited or reviewed as the cost of either could amount to a considerable use of the proceeds.</p> <p>One commenter thought that financial statements for very early-stage companies provide little useful information, and that a requirement for reviewed or audited financial statements for these companies would suggest a level of complication in their business that does not exist.</p> <p><u>Opposed to audit</u></p> <p>Two commenters did not think non-reporting issuers should be mandated to provide audited financial statements and that annual financial statements that had been reviewed by a public accounting firm should be adequate. These commenters were concerned about the expense of audited financial</p>	<p>issuer's financial statements be reviewed by an independent public accounting firm or be audited if the issuer has raised \$250,000 or more but less than \$750,000 under one or more prospectus exemptions since its formation, and be audited if it has raised \$750,000 or more. We think these thresholds appropriately address the concerns expressed by commenters. We acknowledge the overriding concerns expressed by commenters, but believe that the financial statement requirements we impose on non-reporting issuers, including the assurance requirements, strike the appropriate balance between providing investors with reliable financial information and not imposing a disproportionate financial burden on start-ups and SMEs that have limited financial resources to pursue their business.</p>

No.	Topic	Summary of Comments	Responses
		<p>statements.</p> <p><u><i>Proposed attestation thresholds too onerous</i></u></p> <p>Ten commenters thought that the proposed thresholds to require an audit or review by an independent public accounting firm were set too low and should be increased. The commenters were concerned that the costs would be too great for many issuers in light of the limited amount of capital they would likely be able to raise. Three of the commenters had additional comments about this matter. One of the commenters reiterated that notwithstanding their views about the proposed threshold, they thought it would be appropriate to have some form of independent verification of an issuer’s financial information. Another of the commenters questioned the utility of mandating financial statements even for sophisticated investors, e.g. in the case of start-up companies and for certain industry sectors. Another of the commenters thought that the threshold to require an audit should be adjusted for inflation annually.</p> <p>One commenter thought that that the incremental benefit of an audit versus a review for SMEs was dubious, and that if an audit was deemed necessary it should only be mandated for issuers that raise more than \$1,000,000 in total from crowdfunding investors and accredited investors.</p> <p><u><i>Other comments</i></u></p> <p>One commenter recommended that the financial reporting requirements be reduced for issuers (particularly those that are unincorporated) that are strictly raising debt financing through crowdfunding as long as there is no equity conversion option. The commenter thought the proposed requirements would be onerous for non-incorporated issuers raising debt financing under the crowdfunding prospectus exemption, and that debt holders would know if everything was acceptable on an ongoing basis through the receipt of regularly scheduled payments of principal and interest.</p>	

No.	Topic	Summary of Comments	Responses
		<p>One commenter thought that, although they believed the proposed thresholds were appropriate, it may be more appropriate to require smaller issuers to provide notice to reader compiled annual financial statements versus requiring a review engagement, which is considerably more expensive. The commenter pointed out that most SMEs provide their shareholders with notice to reader financial statements used in the preparation of their tax returns.</p> <p>One commenter suggested that the Commission consider adopting the practice of angel investors and venture capitalists that let investors decide what they need on an annual basis. According to the commenter, audit requirements are generally waived in the first couple of years, as investors would prefer that company funds be spent on product development, marketing and sales instead of a costly review engagement or audit.</p> <p>One commenter believed that unique obligations may be required in order to provide investors with tangible, relevant information about an issuer without requiring the issuer in all cases to provide expensive, audited financial statements. As an example, the commenter suggested an issuer could be required to post tax returns or assessments (redacted as needed to protect confidential information) as a method of confirming revenue (or the lack thereof).</p> <p>One commenter thought that successfully-funded SME issuers should provide shareholders with an annual snapshot of unaudited financial statements, and a brief business update summarizing historical performance and future plans.</p>	
32.	Method for making ongoing disclosure documents available to	Two commenters thought that all disclosure documents should be made accessible online to prospective and actual investors of an issuer. The commenters thought that, 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’s website to the issuer’s website or, in	Non-reporting issuers are required to make available to an investor certain ongoing disclosure documents. Issuers may choose to make these documents available to investors electronically or in paper format, provided

No.	Topic	Summary of Comments	Responses
	investors	<p>the view of one of the commenters, on a third party website such as SEDAR, a transfer agent or other third party. The commenters further thought that ongoing disclosure documents should also be made available online to actual investors of the issuer through the issuer’s own website or a third party website and that information about how to access the ongoing disclosure should be set out on the issuer’s website.</p> <p>One commenter thought that giving investors the choice of accessing disclosure documents online in a password-protected area of the company’s website or on the portal would be the most cost-effective approach for issuers. The commenter thought the documents should be accessible by investors and issuers, and portals should be encouraged to enable access to the documents by an investor’s advisor at the request of the investor.</p> <p>One commenter thought that disclosure documents should be accessible on the portal website and if available, the company website. Another commenter thought that disclosure documents should be available online at the portal or on the issuer’s website to any shareholder until the company became a reporting issuer.</p> <p>One commenter thought that the disclosure documents should also be mailed electronically to the investor upon initial closing.</p> <p>One commenter thought electronic delivery of information should contain the information and not a link to the information. The commenter thought that there needs to be a method devised to confirm receipt of material delivered electronically or by mail.</p>	<p>they take reasonable steps to ensure that all investors receive or have access to the documents promptly.</p> <p>In Companion Policy 45-108CP, we note that we consider disclosure documents to have been made reasonably available if they are made available through the funding portal or are mailed to security holders or if security holders receive an electronic notice that the disclosure documents can be viewed on a public website of the issuer or a website accessible by all holders of securities of the issuer that were acquired under the crowdfunding prospectus exemption (such as a password protected website).</p>
<b>K. Report of exempt distribution</b>			
33.	Contents of report of exempt distribution	One commenter thought that all reports should have an optional box to enable an investor to classify themselves as an “angel investor”. The commenter advised that angel communities are seeking to better identify to	We acknowledge the suggestion that angel investors should identify themselves in the report of exempt distribution. Although we

No.	Topic	Summary of Comments	Responses
		<p>the government the breadth and depth of angel investor involvement in the growth of entrepreneurial companies. According to the commenter, statistics about the follow-on investment rate in angel-involved companies indicate that angel investors are one of the best economic drivers of job creation in the country with the least amount of government subsidy. The commenter submitted that better statistics to follow these activities would be invaluable to all levels of government.</p> <p>One commenter noted that, in the case of a cross-Canada distribution, issuers could be required to complete and concurrently file three separate forms with different information requirements, and that this would be contrary to the purpose of the crowdfunding prospectus exemptions.</p>	<p>agree this would be useful information, this term is not defined under securities legislation.</p> <p>We note that requiring a report of exempt distribution is consistent with the approach taken for other prospectus exemptions. On August 13, 2015 we published “CSA Notice and Request for Comment Proposed Amendments to National Instrument 45-106 <i>Prospectus Exemptions</i> relating to Reports of Exempt Distribution”. The proposed amendments would introduce a harmonized report of exempt distribution across the CSA. The information derived from these reports will help us to effectively oversee the market and inform any future policy development regarding the exemption.</p>
<b>L. Offering parameters</b>			
34.	\$1.5 million offering limit during the period commencing 12 months prior to the current offering	<p><u><i>Support for \$1.5 million offering limit during the period commencing 12 months prior to the current offering</i></u></p> <p>Seven commenters thought the \$1.5 million offering limit during the period commencing 12 months prior to the current offering was appropriate.</p> <p>One of the commenters was concerned that the current proposal has no mechanism in place to limit an issuer from placing its offering on more than one portal and suggested that the Commission clarify their view on this point.</p> <p>One commenter was supportive of limits since crowdfunding is a relatively new concept in Canada and they thought that protective measures should be</p>	<p>We think that the \$1.5 million offering limit will help address the capital raising needs of start-ups and SMEs on which the crowdfunding regime is primarily focused, while limiting risk for investors.</p> <p>We also note that other capital raising prospectus exemptions are available to address the capital raising needs of issuers, including those at different stages in their growth and business cycles.</p>

No.	Topic	Summary of Comments	Responses
		<p>put into place to ensure it does not target fraudulent activity. The commenter noted that other exemptions, such as the Offering Memorandum exemption, are available to an issuer seeking funds over \$1.5 million.</p> <p><i><u>\$1.5 million offering limit should be higher</u></i></p> <p>Seven commenters thought that the \$1.5 million offering limit should be higher for the following reasons:</p> <ul style="list-style-type: none"> <li>• the \$1.5M offering limit would not provide adequate capital for entrepreneurs to have enough ‘staying power’ and incur the necessary expenses to successfully launch a business and to stay in business,</li> <li>• an increased offering limit would make Ontario more comparable and competitive with other jurisdictions, and a more attractive place to raise capital. By way of comparison, the commenter noted that Australia has a threshold of A\$5M, and the UK has a threshold of 5 million pounds. In addition, the commenter noted that 298 prospectuses from 2002-2006 were reviewed by the OSC and the median offering size was \$6M, which is four times the current proposed limit,</li> <li>• the offering limit would constrain the potential of crowdfunding platforms to fund truly innovative but capital-intensive projects without reducing the risk to individual investors. The commenter asserted that one possible middle ground would be to have funding tied to the achievement of measureable milestones, which would be required to be outlined in a business plan,</li> <li>• the average project size in digital media often exceeds the \$1.5M offering limit which would mean that digital media would still be reliant on other sources of ‘soft’ money and therefore at a disadvantage when compared with the resource or biotech sectors which are less reliant on such sources as they have the ability to raise money in the capital markets,</li> <li>• the \$1.5 million offering limit would be overly restrictive in light of the other proposed investor protection measures, and imposing an</li> </ul>	<p>We think that a single monetary limit that applies to all issuers will be simple to understand and follow, and will result in greater compliance. The funding portal will be responsible for ensuring that an issuer it posts on its website is in compliance with the \$1.5 million offering limit.</p>

No.	Topic	Summary of Comments	Responses
		<p>offering limit may lead to perverse effects such as influencing issuers to develop written business plans that fit within the offering limit rather than developing business plans based on sound economic and business factors,</p> <ul style="list-style-type: none"> <li>• the proposed offering limit may hinder issuers’ ability to react in a timely manner to available business opportunities if there is no room for them to raise more capital due to the offering limit, which could have the effect of requiring such issuers to avail themselves of other more time-consuming and expensive prospectus exemptions, while not necessarily providing additional protection to prospective investors,</li> <li>• the crowdfunding prospectus exemption may have a very limited appeal to issuers for whom the \$1.5 million limit is not a sufficient solution to their funding gap. The commenter proposed a limit of \$3 million to align with the cap that existed as part of the now repealed closely-held issuer exemption in Ontario, and</li> <li>• a junior mining company starting an exploration program may need to raise \$3-5 million. The commenter proposed a limit of \$1.5 million per offering with an annual limit of \$3 million per issuer.</li> </ul> <p>One commenter thought the offering limit should be up to \$5 million and not \$1.5 million, noting their understanding that the limit was based on the U.S. \$1 million limit in the <i>JOBS Act</i>. The commenter made reference to the proposed <i>Start-up Capital Modernization Act</i> of 2014 that would, if adopted, raise the crowdfunding limits in the U.S. federally to \$5 million. The commenter thought that other changes will also make the U.S. federal crowdfunding prospectus exemption more attractive to issuers and investors than its Canadian counterpart if the proposed limits are uncompetitive with international jurisdictions. The commenter did, however, think that the 12-month period prior to the issuer’s current offering is an appropriate period of time to which the offering limit should apply.</p> <p><u><i>Annual offering limit should be higher than per offering limit</i></u></p>	

No.	Topic	Summary of Comments	Responses
		<p>One commenter thought that the annual offering limit should be higher than the per offering limit since SMEs that successfully raise the maximum amount may need to raise more capital through another offering within a single year. The commenter believed that equating the per offering limit with the annual offering limit would restrict the number of times an issuer could access a good source of financing, and this might impact the issuer's fundraising strategy.</p> <p><i><u>\$1.5 million offering limit should be lower</u></i></p> <p>One commenter thought that the offering limit should be lower. The commenter supported the proposed BCSC approach, which includes a \$150,000 limit per offering and no more than two offerings, or up to \$300,000, per year.</p> <p><i><u>Other factors should be considered in determining offering limit</u></i></p> <p>One commenter thought that, while a limit of \$1.5-\$3 million could be sufficient for issuers to raise start-up capital while still offering some level of investor protection, the appropriate limit should be industry-specific (for example, technology start-ups are quite capital intensive). The commenter noted that more information could be required in order to determine if the limits should vary depending on the industry classification of the issuer. The commenter further noted that in all circumstances, if the maximum limit was too low, it could set up an issuer for failure before it had even begun operations. If the maximum limit was too high, however, given the proposed \$2,500 individual investment limit, an offering could result in an unworkable number of small investors, and the costs of communicating with such investors could be untenable.</p> <p><i><u>Size of offering limit should be reconsidered over time</u></i></p> <p>Three commenters thought that the offering limit should be reviewed after a period of time had passed.</p>	

No.	Topic	Summary of Comments	Responses
		<p>One commenter thought that accredited investors should not be factored into the size of an offering for the purpose of determining compliance with an offering limit, as their ability to act as “angel investors” would contribute to an issuer achieving its offering threshold.</p> <p><u>Application of offering limit period commencing 12 months prior to the current offering</u></p> <p>One commenter was of the view that, while a period commencing 12 months prior to the issuer’s current offering may be an appropriate period of time in which to limit the amount that can be raised; the assumption that a time limit is necessary is itself problematic.</p> <p>One commenter thought that imposing an offering limited based on a 12-month period prior to the issuer’s current offering would be an unnecessary constraint. Rather than imposing a 12-month limit on an issuer’s capital raise, the commenter suggested requiring disclosure on the use of proceeds related to the expense of preparing for and undertaking a subsequent financing round.</p> <p>One of the commenters that supported the \$1.5 million offering limit did not see any merit in a timeframe constraint in regard to the limit.</p> <p><u>Other suggestions regarding offering limits</u></p> <p>One commenter suggested that the OSC consider reintroducing the Closely Held Issuer Exemption that allows for a \$3 million offering but increase the limit of 35 closely held security holders, or increase the number of security holders beyond the limit of 50 individuals for the private issuer exemption.</p>	
35.	Application of \$1.5 million offering limit to an issuer group	<p><u>Support for imposing \$1.5 million offering limit on an issuer group</u></p> <p>Three commenters thought \$1.5 million is an appropriate limit for the amount that could be raised under the exemption by an issuer group.</p>	We think the imposition of the \$1.5 million offering limit on the issuer group will mitigate attempts to circumvent the limit on distribution size.

No.	Topic	Summary of Comments	Responses
		<p><u><i>\$1.5 million offering limit should not be imposed on an issuer group</i></u></p> <p>Four commenters thought that the \$1.5 million offering limit should not be imposed on an issuer group for the following reasons:</p> <ul style="list-style-type: none"> <li>• it would be arbitrary to impose the offering limit on an issuer group and would prevent issuers from benefitting from the accrual of both anticipated and unforeseen synergistic gains, and from the full use of their formal and informal organizational centres of excellence,</li> <li>• imposing the offering limit on an issuer group could unnecessarily restrict or limit a number of smaller companies with common control, but otherwise independent operations, from being able to rely on the exemption due to the unrelated financing activities of another issuer, and</li> <li>• a parent or subsidiary company could be involved in a completely different line of business or be the research arm of an organization and new developments and opportunities could be stifled by treating these entities as one for the purpose of this exemption.</li> </ul>	<p>We also note that other capital raising prospectus exemptions are available to address the needs of issuers, including those at different stages in their growth and business cycles.</p>
36.	90-day offering period	<p><u><i>Opposition to 90-day offering period</i></u></p> <p>Four commenters were opposed to the 90-day offering period.</p> <p>One of the commenters thought that a 90-day limit would be too short and could even be counterproductive. The commenter was concerned that a 90-day time limit would not provide an issuer with sufficient time to develop and refine a low-cost marketing campaign that utilised online social networks. The commenter was also concerned that a 90-day limit would not allow enough time for investors to conduct due diligence and research, especially since research on start-ups and SMEs is hard to come across. The commenter recommended a six-month time limit for the offering period.</p> <p>One of the commenters thought that a 90-day limit would restrict an investor's ability to fully consider the information that was presented, carry out any additional research they felt might be advisable and consult with</p>	<p>We continue to think that a 90-day limit on the length of time an offering can remain open is appropriate.</p> <p>Similar to the prospectus regime, a 90-day limit on the length of time an offering can remain open will help to ensure that the information in the crowdfunding offering document does not become stale.</p> <p>We also note that an issuer can commence a new crowdfunding offering after the 90-day period.</p>

No.	Topic	Summary of Comments	Responses
		<p>advisors or online with bulletin board contributors, and that this short period would also significantly increase the risk that the offering would not achieve the minimum goals. The commenter recommended that the offering period be increased to 120 days or more.</p> <p>One of the commenters thought that a 90-day limit would be necessary to give assurances, answer questions and provide information to serious investors where there was a lack of disciplined involvement on the part of the issuer, particularly if it was a private issuer, SME, etc. The commenter recommended extending the time limit to 180 days.</p> <p><u>Not appropriate to have a time limit</u></p> <p>Two commenters did not see any merit in imposing a time limit to achieve the minimum offering. One of the commenters noted that start-up companies and their capital needs can be extremely unpredictable. The commenter suggested that if there was a time limit, it should be extendable if 10% of the minimum offering was achieved within 180 days.</p> <p><u>Option to extend the offering period</u></p> <p>Eleven commenters thought that if a crowdfunding offering met certain requirements, it should be permissible to extend the offering period.</p> <p>Seven of the commenters thought that it should be permissible to extend the offering period if a minimum percentage of the offering had been achieved (ranging from 20% to 50%). The commenters that suggested 50% recommended that only three extensions be permitted.</p> <p>Three of the commenters recommended that if an offering was extended, an issuer should be required to update its financial statements and any stale information.</p> <p>One commenter recommended that investors be allowed to either re-confirm or withdraw their investment upon the extension of the original offering</p>	

No.	Topic	Summary of Comments	Responses
		<p>period.</p> <p><u>Offering limit redundant</u></p> <p>One commenter suggested that an offering time limit would be redundant since an issuer could simply re-launch the offering the day after their original offering expired. The commenter did, however, recognize the administrative burden of doing so.</p>	
37.	<p>Limited types of securities can be offered under the crowdfunding prospectus exemption</p>	<p><u>Securities offered under the crowdfunding prospectus exemption should have standard terms and conditions</u></p> <p>In the interest of simplification and investor understanding of the security (which would help in minimizing fraud), one commenter suggested that shares offered under the crowdfunding prospectus exemption should have standard terms and conditions.</p> <p><u>Debt securities should be eligible</u></p> <p>One commenter thought it was essential that debt securities be eligible to be offered under the crowdfunding prospectus exemption. The commenter was of the view that, as non-profits and charities are unable to issue shares, the inclusion of debt securities would be essential for these SMEs to be able to avail themselves of the opportunities afforded by the exemption as intended by the OSC.</p> <p><u>Clarify use of convertible debentures</u></p> <p>One commenter thought it was unclear as to whether convertible debenture securities were restricted from being offered under the crowdfunding prospectus exemption and thought that this type of security is one of the primary types of securities used by start-ups and SMEs in early stage financings.</p> <p><u>Eligible for tax-deferred accounts</u></p>	<p>We acknowledge these comments that are largely consistent with our intention to limit the types of securities that can be offered under the crowdfunding prospectus exemption to those that were contemplated in the proposal we published for comment. We continue to think that the crowdfunding regime is not appropriate for distributions of complex securities. Given that the securities distributed under the crowdfunding prospectus exemption will be sold to retail investors, we do not think it is appropriate to allow complex and/or novel securities to be sold without the full protections afforded by a prospectus. In addition, as the overall goal of our crowdfunding initiative is to facilitate capital raising by start-ups and SMEs, we do not think it is necessary or appropriate to allow complex securities, such as derivatives and securitized products, to be offered under the crowdfunding prospectus exemption.</p> <p>We acknowledge the comment but taxation policy is out of scope for securities legislation.</p>

No.	Topic	Summary of Comments	Responses
		One commenter suggested that crowdfunded securities be structured to be eligible for inclusion in tax deferred accounts, such as RRSPs and TFSAs.	
38.	Offering cannot be completed unless: (i) minimum offering fully subscribed and (ii) at time of completion of offering, issuer has financial resources sufficient to achieve the next milestone in written business plan or, if no milestones, to carry out the activities set out in the business plan	One commenter did not think that this requirement would provide any significant investor protection since the milestones may not be significant or represent any minimum level of achievement by the issuer.	We acknowledge this comment and have required as a condition of closing that an issuer must have raised the aggregate minimum proceeds (as set out in the crowdfunding offering document) , the amount which is required to carry out the business activities described in its crowdfunding offering document.
<b>M. Other</b>			
39.	CSA harmonization	<u>Support for CSA harmonization</u> Ten commenters supported CSA harmonization. The commenters were concerned that a disharmonized approach would result in confusion for all market participants, including investors, and an increased regulatory burden for issuers. In their view, this would, in turn, discourage the use of the	We agree that harmonization is an important goal and have attempted to harmonize wherever possible after taking into account our responsibilities to foster fair and efficient capital markets and provide adequate investor

No.	Topic	Summary of Comments	Responses
		<p>crowdfunding prospectus exemption.</p> <p>One commenter noted that there were two crowdfunding regimes (MI 45-108 and the start-up exemption) and was concerned that if jurisdictions exclusively adopted opposing proposals, it would create a bifurcated crowdfunding industry, which would limit the success of crowdfunding in Canada.</p>	<p>protection.</p>
40.	Investor education	<p>Eight commenters recommended that investor education materials be developed and made available to investors. Suggested means of providing investor education included online media (including tutorials, videos, podcasts, articles and whitepapers); courses by industry associations and financial and academic institutions; and brochures. Several of the commenters suggested that an information guide be delivered with the crowdfunding offering document together with a guide that included instruction on how an investor could register a complaint.</p> <p>A number of commenters provided suggestions as to the content of such materials, such as a discussion of the process of the offering, the risks associated with investing in the securities, the types of securities sold through the funding portal, restrictions on resale, the frequency of disclosure, investment limits, right of withdrawal and the potential need for suitability advice.</p> <p>One commenter thought that the OSC should provide a plain language brochure on explaining crowdfunding, and that the Investor Education Fund should provide no-nonsense educational materials on its website relating to crowdfunding.</p> <p>One commenter thought that timelier investor bulletins, “push” alerts, and investor protection checklists e.g. ones for crowdfunding, SPACs, etc. should be provided.</p>	<p>We acknowledge these suggestions and will be developing an investor education brochure in conjunction with the Investor Office.</p>

No.	Topic	Summary of Comments	Responses
		<p>However, one commenter asserted that investor education would not address concerns regarding fraud and would not effectively ensure investors understood the risks associated with crowdfunding.</p>	
41.	Dispute resolution	<p>One commenter thought that the crowdfunding regime would greatly benefit from a streamlined template (e.g., shareholders' agreement) or legislation prescribing that all disputes be settled by way of private arbitration and expressly allow investors to commence arbitration as a class.</p> <p>One commenter inquired as to who will be handling complaints and what the complaint handling process will be, while several other commenters recommended portals be required to establish complaint handling procedures and have complaints resolved by OBSI.</p>	<p>All registrants are required to have complaint handling policies and procedures which include the requirement to effectively and fairly respond to complaints. Given the limited scope of permitted activities for a restricted dealer funding portal, including that it does not provide suitability advice or make recommendations, we believe that the costs associated with membership in Ombudsman for Banking Services and Investments (<b>OBSI</b>) would outweigh the benefits that may flow to investors. We expect complaints regarding restricted dealer funding portals will be submitted to the regulators. This will enable the regulator to monitor complaints arising from the use of this prospectus exemption by restricted dealers and make any amendments to the regulations necessary. Registered dealer funding portals will continue to be required to be members of OBSI.</p>
42.	Sponsorship model	<p>One commenter noted the sponsorship model adopted by The Australian Small Scale Offerings Board (ASSOB). 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 vet companies seeking to list on the portal and help them prepare their offering materials. As compensation for their services, sponsors receive a mix of cash and 'sweat equity'. The presence of a sponsor provides investors with</p>	<p>We are aware of the ASSOB sponsorship model and have taken it into consideration.</p>

No.	Topic	Summary of Comments	Responses
		confidence and an element of investor protection.	
43.	Role of industry	One commenter thought the ecosystem needs to ensure that fraud is swiftly detected, that appropriate deterrents are in place, and that industry establishes 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. The commenter thought that 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 the crowdfunding industry.	We acknowledge that industry can make a valuable contribution to enhancing investor protection.
44.	Non-compete clause for officers and directors	One commenter thought there should be restrictions or regulations on an issuer's founders, management, and directors from competing in the same line of business during, and for a reasonable time after, their employment with a crowdfunded issuer, as investors will lose faith and confidence in the process if management and founders abandon the issuer and compete with it. The commenter suggested that this could be done by way of a shareholders' agreement or OSC rules.	We acknowledge this suggestion but this type of restriction is out of scope for securities regulation.
45.	Payment methods	Two commenters recommended that the payment methods for crowdfunding offerings be restricted. Specifically, the commenters suggested the permitted method of payment should be debit, cheque, digitally imaged cheque and PayPal. The commenters asserted that credit cards should not be permitted.	We acknowledge this suggestion but this type of restriction would be out of scope for securities regulation.
46.	Sunset provision	Five commenters suggested that the crowdfunding prospectus exemption be subject to a sunset provision so that experience with the exemption could be evaluated. One of the commenters recommended a three year sunset provision, and three of the commenters recommended a 2 year sunset provision.	Although we have not introduced a sunset provision into MI 45-108, we agree that experience with the crowdfunding prospectus exemption must be evaluated and we therefore intend to closely monitor and

No.	Topic	Summary of Comments	Responses
			evaluate the use of the exemption.
<b>N. Funding portal registration</b>			
47.	A funding portal that facilitates offerings made in reliance on the crowdfunding prospectus exemption will be registered as a restricted dealer	<p>Several commenters agreed with the requirement that a funding portal should be registered. Three of the four commenters specifically indicated that the appropriate registration category should be restricted dealer. These commenters noted that registering portals as restricted dealers: ensured a minimum level of sophistication and experience in dealing with securities; was consistent with regulations in other countries, such as the UK and Italy, and the proposed US rules; and provided a degree of oversight.</p> <p>Several commenters were concerned that Canadians would not be aware: that legitimate funding portals will be required to be registered; that Canadians would not be aware that they should only invest with registered funding portals; and that Canadians would not be able to identify licensed funding portals from non-registered funding portals. Commenters suggested public education would be required, as well as a requirement to prominently note such registration on funding portal websites.</p>	<p>We acknowledge the comments in support of registration. The requirement for registration of the funding portal is a key investor protection element. Registration addresses, among other things, potential integrity, proficiency and solvency concerns that may apply to funding portals and the persons operating them.</p> <p>We also believe that the crowdfunding regime includes appropriate requirements to ensure Canadians are aware of the registration status of the funding portal; in particular, the regime requires:</p> <ul style="list-style-type: none"> <li>• that crowdfunding offering offerings can only be made through a registered funding portal,</li> <li>• the crowdfunding offering documents identify the funding portal through which the securities will be offered,</li> <li>• that all information regarding a crowdfunding offering be posted on a single funding portal's website,</li> <li>• that crowdfunding issuers only refer investors to the funding portal's website through which the distribution will be made, and</li> <li>• that any person entering a funding</li> </ul>

No.	Topic	Summary of Comments	Responses
			<p>portal to acknowledge that the online platform they are entering is operated by a funding portal registered as a restricted dealer, an exempt market dealer or an investment dealer and whether or not they will be receiving suitability advice.</p>
48.	<p>Funding portals will not be permitted to register in any other dealer or adviser category (i.e., there will be no multiple registration of funding portals)</p>	<p>A few commenters agreed with the restriction that a registered funding portal should not be permitted to obtain registration in another registration category. These commenters noted that this restriction was required in order to prevent conflicts of interest and to prevent confusion between the requirements of the different registration categories from arising.</p> <p>Many commenters disagreed and suggested that other registrants (i.e. exempt market dealers, investment fund dealers, and IIROC dealers) should be allowed to operate funding portals. Reasons provided for permitting registrants in other categories to operate funding portals include: the experience and expertise of existing registrants to perform the work and comply with requirements; the negative impact on the business of existing registrants who currently serve this market; and, as reliance on multiple exemptions are likely required to raise capital and encourage investment, this restriction would increase complexity and costs for an issuer, and will prevent portals from being economically viable.</p> <p>Two commenters sought clarity on whether a holding company can own a restricted dealer, operating as a funding portal, as well as an EMD.</p> <p>Commenters noted that a structure whereby a holding company holds both a restricted dealer and an EMD would increase costs and complexity but would reduce public confusion and would ensure economic viability.</p> <p>Two commenters suggested alternative approaches to that proposed by the</p>	<p>We acknowledge these comments of support. A funding portal that is registered as a restricted dealer will not be able to register in any other registration category, and, in Ontario, will not be able to be affiliated with another registered firm.</p> <p>We have amended the crowdfunding regime to permit investment dealers and exempt market dealers to use the crowdfunding prospectus exemption, in addition to other prospectus exemptions, such as the accredited investor exemption or the offering memorandum exemption. In using the crowdfunding prospectus exemption, these registered dealers will need to comply with all of the requirements applicable to their registration category, in addition to the requirements for a funding portal under the crowdfunding regime.</p>

No.	Topic	Summary of Comments	Responses
		<p>OSC. The first was to ensure funding portals had access to experienced registrants or professional subject matter experts through either a sponsorship model or maintaining a list of experts funding portals could call upon. The other suggestion was to allow funding portals to register as restricted dealers, but also to allow existing registrants to use the crowdfunding prospectus exemption subject to increased capital requirements.</p>	
49.	Oversight of funding portals by regulator	<p>Several commenters raised concerns over the ability of regulators: to prevent unregistered funding portals from offering (or purportedly offering) investments to Canadians; to enforce regulatory requirements on funding portals who are not in compliance, regardless of whether the funding portal falls within the regulators' jurisdiction or outside of the regulator's jurisdiction; and to enforce the registration and compliance requirements. Two commenters noted that in the proposal, the OSC has placed a high degree of reliance on funding portals to protect investors.</p> <p>Many commenters stated that securities regulators or an equivalent industry supported regulatory organization must: allocate sufficient and appropriate resources, and develop appropriate tools to review funding portal practices regularly to ensure only registered firms are operating; and to prevent non-compliance, abuse and fraud. One commenter further noted that there should be an obligation to report and to address any suspicions of fraud to the appropriate authorities arising from the reviews.</p> <p>Several commenters recommended a light regulatory approach in order not to overburden the funding portals with extra cost and processes that are unsustainable or result in increased costs to the industry. One commenter noted that minimizing costs would be very important for non-profit and charitable organizations who rely on volunteers to use this exemption.</p> <p>Three commenters raised the concern that funding portals, like EMDs, have no self-regulatory organization (<b>SRO</b>) or do not belong to an SRO to</p>	<p>We acknowledge these comments. We believe the requirements of the crowdfunding regime address these concerns, in particular:</p> <ul style="list-style-type: none"> <li>• requiring funding portals to be registered; and</li> <li>• requiring issuers and funding portals to report on their activities.</li> </ul> <p>We also note that both issuers and funding portals will be considered market participants and will be subject to review by the regulators. In anticipation of the adoption of the crowdfunding regime, securities regulators are reviewing current compliance measures with respect to those parties involved in the exempt market to consider how existing compliance oversight may need to be adapted to appropriately address the use of the crowdfunding prospectus exemption and oversight of the funding portals.</p>

No.	Topic	Summary of Comments	Responses
		<p>provide oversight and enforcement. One commenter recommended membership in a SRO be required for funding portals.</p>	
50.	Funding portal operator proficiency standards	<p>One commenter supported the funding portal proficiency standards set out in the proposed legislation at section 30(1).</p> <p>A few commenters noted that permitting a funding portal to be administered by individuals who have not been screened to see if they have certain basic educational or proficiency standards was problematic. These commenters recommended checks be performed as a risk mitigation step: to ensure appropriate persons were establishing the portals, to prevent fraud or abuse, to ensure portal operators are skilled and capable, and to minimize costs in operating portals.</p> <p>One commenter requested further guidance for funding portal operators on education, training and experience required for an individual or firm to be appropriately registered.</p> <p>One commenter noted that the complexity of determining the suitability of an investment for any particular investor reinforces the need for registered dealers and advisers to perform a thorough analysis on the product, and for those dealers and advisers to have the necessary experience and educational background to provide such tailored advice.</p> <p>One commenter indicated concern that the following functions would be performed by unregulated entities without the requisite experience and expertise: record keeping, information technology infrastructure, issuing securities, transferring securities and registering securities.</p>	<p>We acknowledge these comments. We note that funding portals will be required to be registered and to designate an individual who has met certain qualifications to be its chief compliance officer. A securities regulator is required to determine a firm and individual's fitness for registration and may exercise discretion in doing so.</p>

No.	Topic	Summary of Comments	Responses
<b>O. General registrant obligations</b>			
51.	Funding portals must comply with general registrant requirements applicable to EMDs (with certain exceptions), including minimum capital, insurance, regulatory reporting, record-keeping and record-retention requirements	<p>Most commenters felt that the proposed minimum net capital requirement of \$50,000 and a fidelity bond insurance requirement of at least \$50,000 appeared reasonable or acceptable. Several of these commenters noted that the proposed insurance and minimum net capital amount requirements placed equity crowdfunding portals operating under the exemption under the same capital and bond requirements as exempt market dealers and recently approved restricted dealers in Ontario. In addition, some commenters noted that the proposed amounts should provide sufficient protection for the actions which the OSC proposes portals be permitted to do and acts as a barrier to less qualified groups applying for registration.</p> <p>A few commenters believe these limits are not appropriate. In one case, a commenter felt the minimum net capital requirement should be increased to \$250,000 and fidelity bond insurance of \$100,000 should be required. In another case, a commenter believed that in light of their comments on liability for misrepresentation, the amounts should be revisited.</p> <p>Two commenters noted that these limits would need to be revised if the proposal was changed to allow existing registrants to provide portal services or if portals were allowed to hold, handle and deal with client funds.</p>	<p>We acknowledge these comments of support and continue to require the minimum capital and insurance requirements as published, particularly in light of the amendment to allow funding portals to hold, handle, control or have access to client assets.</p> <p>These are only the minimum requirements and the funding portals should assess their business risk and ensure they have adequate insurance for their business.</p>
52.	Enforcement of requirements by funding portals	<p>Many commenters were concerned about the adequacy of self-certification of compliance with investment limits. Several commenters noted that investor limits would be difficult, if not impossible to police because an investor could invest additional amounts through other family members or through personal holding companies or through multiple funding portals; and investors could abuse the self-certification process or err in self-certifying or they may not, and may not, have the capacity to track their investments. Many commenters requested guidance be established on how funding portals could enforce the limits.</p>	<p>We acknowledge these comments. We note that investors will be aware of how much they have invested in crowdfunding issuers and will be in the best position to certify that they are in compliance with the individual investment limits and the annual limits. In Ontario, we have established a form in which the investor confirms his/her investor status and compliance with the investment limits. The funding portal will be responsible for</p>

No.	Topic	Summary of Comments	Responses
		<p>One commenter believed the self-certification would need some additional strengthening. The commenter suggested several plain language questions focused on an investor’s understanding of the risks of an investment that the investor would be required to proactively answer with YES/NO.</p> <p>Several commenters suggested that a centralized database of investors should be established, including their annual investment participation under the crowdfunding prospectus exemption or standardized reporting and communication across platforms or a cross-funding portal tracking system be implemented.</p> <p>A few commenters requested clarity on what the consequences were for exceeding the \$10,000 per annum maximum or fraudulently self-certifying, including who will be penalized and what the penalties will be.</p>	<p>reviewing these forms and for monitoring investments made by the investor through the funding portal’s online website. We think this is a reasonable and practical approach to ensuring compliance with the investment limits. In addition, we have provided additional guidance in the Companion Policy.</p>
53.	Restrictions on advertising and marketing by funding portals	<p>Most commenters were generally supportive of placing reasonable restrictions on advertising and promotion by portals and the issuers relying on the crowdfunding prospectus exemption, or did not believe they were inappropriate. However, several commenters indicated that the OSC may wish to amend or review the prohibition once the exemption has been put in place. One commenter was sceptical about whether issuers (and others) would comply with these rules and whether securities regulators would have the ability and capacity to ensure an acceptable level of compliance. The commenter questioned whether in practice materials will be made available to potential investors without additional advertising and soliciting.</p> <p>A few commenters disagreed with the restrictions on advertising and promotion by funding portals and issuers. They felt that limiting avenues or channels through which investors receive information or advertisements on the investment opportunity would be a detriment to the issuer seeking capital and to the investors seeking as much information as possible. One commenter believed that other means of communication, such as email, text, or verbal communications, should be permitted. One commenter thought</p>	<p>Issuers are permitted to inform potential investors of the offering on the funding portal’s website and may use any form of communication (e.g., text, email or posters) it chooses to direct potential investors to the funding portal’s website. On the funding portal’s website, the issuer may present the offering in any format (e.g., videos) for all potential investors to see. All permitted materials pertaining to the offering (including terms sheets and videos) are to be made available to all potential investors only on the funding portal’s website to facilitate the exchange of information and views that is conducive to eliciting the “wisdom of the crowd”. This will also allow the funding portal to ensure that all materials comply with the requirements on advertising and</p>

No.	Topic	Summary of Comments	Responses
		<p>that the rule should expressly allow issuers engaged in a crowdfunding offering to continue to publish regularly released factual business information and should allow prospective investors to share information about a deal they are interested in through social media. One commenter noted that the benefits of bulletin boards outweigh the risk mitigated by requiring portal to monitor and confirm that issuer comments on bulletin boards are consistent with the offering information, and such requirements will result in very few funding portals offering bulletin boards or portals providing this essential service at significant charge.</p> <p>Many commenters requested guidance on what marketing is or is not permissible. Specifically, they were interested in more details of where and how to promote the fact that an issuer is undertaking a crowdfunding prospectus exemption offering; how to respond to media questions; how certain tactics to locate, or be located by, potential investors, such as search engine optimization techniques and targeted social media postings, may be used; and what materials may be made available to potential investors.</p> <p>Two commenters recommended standards be established with respect to advertisements to protect investors from deceptive or misleading advertising.</p> <p>In addition, several commenters raised particular points regarding the proposed language that required clarification.</p> <p>Three commenters thought that offering documents should be published online and downloadable and that online disclosure and ongoing communications should be available to all shareholders. Two of the commenters suggested the disclosure could be password protected to protect an issuer's confidential information.</p> <p>One commenter was concerned that advertising and solicitation through social media may have the effect of priming investors to buy, causing them to think they had been educated about the investment by the crowd, and thus</p>	<p>solicitation.</p> <p>We have also provided guidance in the Companion Policy.</p> <p>We have continued to prohibit funding portals from posting related issuers in order to limit conflicts of interest that may arise. However, a funding portal is permitted to post distributions of an issuer in which the funding portal owns, controls or has direction over 10% or less of the voting securities of the issuer. If a funding portal does so, the funding portal is required to comply with the conflicts of interest provisions set out in National Instrument 31-103 <i>Registration Requirements, Exemptions and Ongoing Registrant Obligations</i> and its related companion policy.</p>

No.	Topic	Summary of Comments	Responses
		<p>causing them to disregard or scroll through the disclosure information on the funding portals without reading it.</p> <p>One commenter felt that funding portals should be able to post campaigns of affiliates or in businesses in which they have a financial stake, providing they disclose any such conflict of interest.</p>	
54.	Reporting obligations of funding portals	<p>Several commenters recommended that funding portals should have specified duties to: report suspicions of misrepresentation, fraudulent behaviour, and violations of securities law to the OSC, report violations of other laws to the relevant and appropriate government agencies, and report fraud to investors on their portals. One commenter further recommended that investors should have a statutory or rule-based cause of action against portals where the funding portal knew or ought to have known of fraud or suspicious conduct that was not reported, but that investors and funding portals should not be liable civilly for reporting suspicions of fraud to the OSC for further investigation.</p> <p>Several commenters recommended that the following information be reported:</p> <ul style="list-style-type: none"> <li>• annual confirmation that the portal has obtained a code of conduct (as per OSC crowdfunding rules relating to advertising and promotion of issue) document signed by all staff and contractors;</li> <li>• statistics on (1) quarterly status of issues - open, closed (fully funded, partial, returned); (2) annual statistics of investors in multiple issues (e.g. number of issuing companies and for each issuing company, the number of unique investors); (3) capital raised; (4) success rates; and (5) instances of fraud.</li> </ul> <p>One commenter requested clarification on the purpose of requiring funding portals to report on certain issues. Another commenter noted that it is unclear what purpose would be served for requiring quarterly reports by funding portals to regulators. A third commenter suggested that until all</p>	<p>We acknowledge these comments. While we recognize that the possibility of fraud can never be completely eliminated, we believe the crowdfunding regime includes measures that will minimize the incidence of fraud, including:</p> <ul style="list-style-type: none"> <li>• requiring funding portals to be registered and to be responsible for conducting background checks on issuers and their directors, executive officers, and promoters in order to verify their qualifications, reputation and track records;</li> <li>• denying access to the funding portal's online website where the funding portal has made a good faith determination that the business of the issuer may not be conducted with integrity; and</li> <li>• requiring funding portals to report to the principal securities regulator any suspected fraud.</li> </ul> <p>As a registrant, we would expect portals to report to clients any fraudulent behaviour it</p>

No.	Topic	Summary of Comments	Responses
		<p>jurisdictions have harmonized their reporting requirements, issuers and funding portals should only be required to file with their principal regulator.</p>	<p>identifies.</p> <p>We note that on a semi-annual basis, funding portals are required to file with the principal securities regulator a report that includes information on the amounts raised through the funding portal and the names of issuers granted, denied access or whose access was subsequently revoked.</p>
<b>P. Additional funding portal obligations</b>			
55.	<p>Additional funding portal requirements with a view to ensuring confidence in the market</p>	<p>Many commenters believed that portals should be required to verify the qualifications, reputation and track record of the parties involved in the offering in order to prevent fraud. In addition, commenters recommended additional portal obligations, including that portals be responsible for other reviewing and reporting transactions with respect to anti-money laundering and anti-terrorist financing; and for performing reference checks, education checks and media searches. Two commenters also recommended that portals be required to publicly post the results of criminal record and background checks.</p> <p>A few commenters disagreed with the requirement for funding portals to perform background checks. Two commenters suggested that the focus should be on due diligence as it is more important and it was not clear who is handling this responsibility. The commenter stated that there was a clear conflict of interest for the funding portal to be responsible for oversight of not only documentation but the businesses coming to the portal to raise money in that the funding portal is paid by the entities seeking to use the funding portal's website and yet the funding portal is to protect investors from the entities who pay the funding portal's salaries and profits.</p> <p>One commenter recommended minimum standards be mandated in respect</p>	<p>We acknowledge these comments. Similar to other registrants, funding portals perform a gatekeeper function. Funding portals will be responsible for conducting background checks on issuers and their directors, executive officers, and promoters in order to verify their qualifications, reputation and track records. If detrimental information is revealed, funding portals will be expected to take appropriate steps, including denying access to the funding portal's website, removing the crowdfunding offering document and other materials of the issuer from the funding portal's website, and reporting to the securities regulator.</p> <p>We acknowledge the comments regarding costs of conducting background checks and note that the crowdfunding issuer, and if applicable, its parent must be incorporated or organized under the laws of Canada or a</p>

No.	Topic	Summary of Comments	Responses
		<p>of the criminal record and background checks to be performed, and that the responsibility to meet such requirements should not be delegated to third parties. In addition, the commenter suggested that regulators should ensure investors have recourse against crowdfunding portals for inadequate background checks. One commenter requested additional guidance on the type of “risks of a security offered” given the limited types of securities permitted in crowdfunding offerings.</p> <p><i>International Background Checks by Portals</i></p> <p>Several commenters agreed that funding portals should perform international background checks because funding portals are in the best position to do so and funding portals have the strongest incentive to ensure it is performed correctly; these are the same requirements as those imposed on EMDs and IIROC dealers; and with management being a key asset of issuers, it is key to know their experience, suitability and track record.</p> <p>A large number of commenters did not agree with the requirement for the funding portal to perform an international background check on issuers, directors, executive officers, promoters and control persons. Two commenters suggested that international background checks should not be required for Canadian resident directors and executives, but should be performed on non-Canadians or Canadians who were resident outside of Canada at the time of application or at the time of capital raising. The main reasons for their disagreement with performing international background checks were the time, cost and effort to perform international background checks, and the usefulness of an international background check where the individual has not conducted business outside of Canada. Another commenter felt this was not required because the disclosure and acknowledgement requirements were adequate, particularly in light of the \$50,000 insurance requirement. One commenter suggested that funding portals should be free to decide whether to perform international background checks and the market will decide whether the extra costs associated with this work are worth it.</p>	<p>jurisdiction in Canada, the head office of the issuer must be situated in Canada, and the majority of directors must be resident in Canada, which may assist in reducing costs and efforts in conducting background checks.</p>

No.	Topic	Summary of Comments	Responses
		<p>Two commenters requested additional guidance from the OSC on the purpose of performing international background checks and on what work is expected for an international background check.</p>	
56.	Additional funding portal obligations with a view to ensuring investor protection	<p>Two commenters agreed with the requirement to provide prospective investors with prescribed issuer disclosure and risk acknowledgement. One of the two commenters noted that it was unfair to place the burden on funding portals and issuers to screen investors to ensure that the investors understand the nature of their investment. The commenter requested further guidance or a safe-harbour on how funding portals may ensure that the investor education and screening process is genuine.</p> <p>Two commenters recommended that funding portals be required to provide an interactive basic knowledge tutorial or quiz that investors must complete in order to view offerings. In addition, two other commenters suggested that, in addition to effective warnings, the OSC should provide self-assessment tools to help retail investors determine whether or not a crowdfunding investment is something they are comfortable with, knowing there is a significant risk of loss of their capital.</p> <p>One commenter recommended that funding portals be required to provide risk warnings to investors at various stages prior to the point of sale so that investors can incorporate the risk as they make their decision. Another commenter believed that the placement of sufficient information about the investment would be essential for investor protection.</p> <p>One commenter recommended specific risk warning statements, such as specific failure rates. In addition, the commenter believed the form should include: information on the right to withdraw; the investor's legal rights in the event of misrepresentation; information where the investor's legal rights are reduced; and clearer language on resale restrictions. A second commenter agreed with enhancing the risk warning statements by explicitly</p>	<p>We acknowledge these comments. We believe that the requirements set out in the crowdfunding regime ensures that investors are made aware of the risks associated with purchasing securities of a crowdfunding issuer, including the following:</p> <ul style="list-style-type: none"> <li>• requiring funding portals to ensure persons and companies accessing the funding portal's online website acknowledge that the investments presented on the website have not been reviewed or approved by securities regulators, the investments posted on the funding portal are risky and may result in the loss of all or most of his/her investment, and the limited information the person or company may receive,</li> <li>• requiring investors to complete a risk acknowledgement form in which the investor positively confirms having read and understood the risk warnings and information in a crowdfunding offering document prior to entering into an agreement to purchase any securities; and</li> <li>• requiring crowdfunding issuers to</li> </ul>

No.	Topic	Summary of Comments	Responses
		<p>listing those specific protections foregone, but also believed risk warnings should specifically address the risk due to dilution from additional financing. Another commenter recommended that investors be required to certify that they will only invest money that does not affect their primary residence, pensions and living expenses. A fourth commenter suggested including language to limit the liability of a portal in the event that an investor invests in offerings featured on several independent portals and exceeds their \$10,000 annual investment limit.</p> <p>Several commenters advised that warnings must be in clear, unambiguous language; be at an appropriate reading comprehension level; be easily identifiable with a prominent “warning” header in bold; and be prominent in a larger font size and different colour.</p>	<p>disclose in the offering document the risks facing the issuer’s business.</p>
<b>Q. Permitted activities</b>			
57.	Selection and assessment of issuers by funding portals	<p>One commenter stated that it was not clear if a funding portal may curate businesses seeking to raise capital on its funding portal website. The commenter also raised the concern that a funding portal could face regulatory action for how it selects the businesses it offers on its platform unless the funding portal was extremely rigid in setting out its objective criteria.</p>	<p>Certain activities, such as curating and highlighting, may, by their nature, be considered a form of express or implied recommendation, endorsement or advice to clients. A restricted dealer funding portal and a registered individual of the restricted dealer funding portal must not provide a recommendation or advice to a client in connection with a distribution of or other trade in a security.</p> <p>We encourage funding portals to establish additional criteria or terms and conditions that apply equally to all issuers and that an issuer must satisfy or meet in order to distribute securities through the funding portal. Funding portals may also provide tools which</p>

No.	Topic	Summary of Comments	Responses
			<p>an investor may use to identify particular issuers or offerings provided this is applied consistently to all distributions on the funding portal. We have also provided guidance in the Companion Policy.</p>
<b>R. Prohibited activities</b>			
58.	A funding portal cannot:		
(a)	provide specific recommendations or advice to investors about securities being offered on their platform,	<p>Two commenters agreed that a funding portal cannot offer investment advice or recommendations.</p> <p>One commenter submitted that there is an inconsistency in that funding portals will be prohibited from providing specific recommendations or advice to investors; but that funding portals will be required to review information provided on the funding portal’s website and, prior to allowing an issuer to access the funding portal’s website, “make a good faith determination that it does not appear that” the offering is misleading.</p> <p>Several commenters noted that while suitability is a low threshold, investors could benefit from some form of advice with respect to crowdfunding offers and this would address concerns with investors that are investing in inappropriate products or in products the investor does not understand. Another commenter took a different view stating funding portals should not be giving investment advice, but rather should provide analytical tools for the investor to make their own decisions.</p>	<p>We acknowledge these comments. We note that restricted dealer funding portals are intended to be a specialized type of restricted dealer and are subject to certain terms and conditions, including:</p> <ul style="list-style-type: none"> <li>• they may only distribute securities under the crowdfunding prospectus exemption in Ontario; and</li> <li>• they may not provide underwriting or underwriting-related business to issuers.</li> </ul> <p>In light of these limited activities, restricted dealer funding portals will not have any obligation to complete a suitability assessment for the investor. Rather, their review of the issuer is reflective of the funding portal’s gatekeeper role in ensuring that issuers comply with the requirements of the crowdfunding rule; determining whether the business of the issuer is not being or may</p>

No.	Topic	Summary of Comments	Responses
			<p>not be conducted with integrity; and ensuring materials posted on the funding portal’s online platform are not false, deceptive or misleading or constitute a misrepresentation or an untrue statement of a material fact.</p> <p>In contrast, an investment dealer or exempt market dealer operating a funding portal will need to comply with all of the requirements of their registration category, including performing specific know-your-client and know-your product due diligence on the issuers on its funding portal and with the requirements for a funding portal under the crowdfunding regime.</p>
(b)	solicit purchases or sales of securities offered on their platform (other than through posting an offering on the platform),	<p>Two commenters agreed that a funding portal cannot solicit purchases, sales or offers to buy securities offered or displayed on its website or portal.</p> <p>One commenter agreed that it is vitally important that an issuer may not (directly or indirectly) pay a commission, finder’s fee, referral fee or similar payment to any person in connection with an offering under the exemption, other than to a funding portal. Two commenters agreed that funding portals should be prohibited from receiving any direct or indirect payments from lenders.</p>	<p>We acknowledge these comments of support prohibiting a funding portal from soliciting purchases or sale of securities offered on their portal.</p> <p>A restricted dealer funding portal is prohibited from participating in a “referral arrangement”, subject to the exception as specified in MI 45-108. In contrast, investment dealers and exempt market dealers operating portals are subject to complying with all of the requirements of their registration category, including disclosure to clients of conflicts of interest and referral arrangement requirements in National Instrument 31-103 <i>Registration Requirements, Exemptions and Ongoing</i></p>

No.	Topic	Summary of Comments	Responses
			<p><i>Registrant Obligations.</i></p> <p>We acknowledge these comments of support prohibiting an issuer from paying a commission, finder’s fee, referral fee or other similar payment in connection with an offering under the exemption, other than to a funding portal and have maintained this requirement in the crowdfunding regime.</p>
(c)	compensate employees or agents to solicit the sale of securities on their platform	Two commenters agreed that a funding portal cannot compensate employees and others of such solicitation or based on the sale of securities.	We acknowledge this comment.
59.	A funding portal cannot:		
(a)	hold, handle, control or have access to investor funds/securities,	<p>Many commenters agreed with the custodial restrictions on funding portals. However, one commenter noted that such restriction would not be financially feasible and another commenter suggested that the OSC revisit the issue in the future as clients may expect funding portals to be able to provide this service. Reasons for agreeing with the requirement included: such a restriction will reduce capital requirements and fidelity bond insurance requirements, which, in turn, will lower the cost to raise capital; such a restriction will not unduly impact a funding portal’s business operations; and transfer agents currently perform this role.</p> <p>A comparable number of commenters disagreed with the custodial restrictions on funding portals. These commenters felt this restriction was</p>	We acknowledge these comments and have amended the crowdfund regime so that a funding portal registered in the category of restricted dealer be permitted to hold, handle, control or have access to client funds provided the funding portal maintains the minimum capital requirement and fidelity bond insurance requirements equivalent to an EMD. These are only the minimum requirements and the funding portals should assess their business risk and ensure they have adequate insurance for their business.

No.	Topic	Summary of Comments	Responses
		<p>excessively cautious or overly restrictive; created complexity; increased time and costs; and increased risk in funding portal business operations.</p> <p>One commenter stated that no viable Canadian escrow platform was in place to carry out this role. This was contrary to another commenter who indicated that transfer agents currently provide this service and requested that transfer agents be referred to in addition to Canadian financial institutions. In addition, commenters noted that this restriction was different from what an exempt market dealer could do and any security concerns could be addressed through insurance and bond requirements or ensuring portals who wish to provide escrow account services meet the qualifications of an escrow account service provider. Several commenters remarked that investors would expect a funding portal to be involved in collecting and disseminating any funds.</p> <p>One commenter indicated that if funding portals are 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. Conversely, another commenter suggested that if funding portals should be allowed to hold, handle or deal with client funds under specific circumstances, funding portals should also be required to have appropriate systems, processes and controls for client funds and should be required to have adequate capital and insurance coverage in light of such circumstances.</p> <p>One commenter sought clarification on whether a funding portal may hold and handle the portion of client funds that represents their portal fee from the issuer.</p> <p>One commenter suggested that commingling of client funds across issuers should be prohibited and the banking arrangements that would be permitted while funding portals temporarily hold client funds should be enumerated. In addition, the commenter recommended that investors should know: (i) the identity of the custodian or deposit-taking institution that holds their funds; (ii) whether their subscription proceeds are insured while on deposit with or</p>	<p>Exempt market dealers and investment dealers will be required to comply with the capital and insurance requirements applicable to their category of registration and where applicable, as required by the Investment Industry Regulatory Organization of Canada (IIROC).</p>

No.	Topic	Summary of Comments	Responses
		<p>held by the custodian; (iii) whether there is also a client relationship between a third party service provider and the investor as a result of the arrangement; and (iv) the time period to effect a refund in the event of a withdrawal request or if the offering is not completed. The commenter also noted that funding portals should be required to ensure that at least the minimum amount of capital raised is available for transfer as a condition to closing.</p>	
(b)	<p>invest in any issuer or underwrite any issuer (subject to receiving fees in the form of securities that do not exceed a 10% ownership interest in the issuer),</p>	<p>Many commenters agreed that the issuer should be permitted to pay funding portal fees in either cash or securities or a combination thereof, and agreed with the 10% threshold. They agreed on the basis that it was standard industry practice for those assisting issuers to raise capital; crowdfunded start-ups and SMEs will have limited cash; it provides the portal with incentives to conduct additional due diligence to ensure any listed enterprise is of appropriate quality; to engage in ongoing monitoring of the enterprise with regard to the hazards of inadequate disclosure, fraud, etc.; it would lessen the cost of raising capital; any conflicts of interest would be limited as a portal will likely be issued securities of many issuers and as the portal is not permitted to provide recommendations or advice, to solicit purchases or sales, to compensate employees or agent to solicit sales; and it is similar to practices of equity crowdfunding portals regulations outside of Canada.</p> <p>A few commenters disagreed with allowing funding portal fees to be paid in issuer securities because it creates a conflict of interest that needs to be managed and monitored and disclosure of an ownership interest by the funding portal could be construed by investors as an endorsement or recommendation, particularly as the portal is permitted to “curate”, highlight, or match an issuer to potential investors.</p> <p>One commenter requested that the OSC provide guidance as to when and how the calculation in section 39 of the proposed crowdfunding rule should be conducted, whether the calculation should be conducted on a fully diluted basis and the type of securities to which this prohibition is referring (i.e., equity, debt, etc.).</p>	<p>We acknowledge this potential concern. The overall goal of the crowdfunding initiative is to facilitate capital-raising for start-ups and SMEs. However, many start-ups and SMEs may have limited resources to pay funding portal fees. As a result, we believe that the limit on a funding portal owning or controlling more than 10% of the issuer and full disclosure of this compensation is a reasonable and practical approach to address this conflict of interest.</p> <p>As noted above, a restricted dealer funding portal and a registered individual of the restricted dealer funding portal must not provide a recommendation or advice to a client in connection with a distribution of or other trade in a security.</p>

No.	Topic	Summary of Comments	Responses
		<p>Two commenters recommended that the fact that a funding portal is receiving equity for all or a portion of its fees should be clearly disclosed to potential investors so they can consider any potential conflict of interest.</p>	
(c)	<p>endorse or comment on the merits or expected returns of an investment to investors (since this would constitute a recommendation or advice), or</p>	<p>One commenter recommended imposing an obligation on funding portals to assess the merits, or expected returns of an investment to investors, or the commercial viability of a proposed business or offering as it could assist in the funding portal’s responsibility to detect and prevent fraudulent offerings. This commenter also recommended that the management, directors, and portals have a responsibility for the accuracy and completeness of the issuer’s information. The commenter suggested that if a funding portal does not vouch for the accuracy or completeness of the issuer’s information, this should be clearly explained (in specific plain language) so that the investor knows that they may not have recourse to the funding portal for inaccuracies or omissions.</p>	<p>We acknowledge these comments. We note that restricted dealer funding portals are intended to be a specialized type of restricted dealer and are subject to certain terms and conditions, including:</p> <ul style="list-style-type: none"> <li>• they may only distribute securities under the crowdfunding prospectus exemption in Ontario; and</li> <li>• they may not provide underwriting or underwriting-related services to issuers.</li> </ul> <p>In light of these limited activities, restricted dealer funding portals will not have any obligation complete a suitability assessment for the investor. Rather, their review of the issuer is reflective of the funding portal’s gatekeeper role in ensuring issuers comply with the requirements of the crowdfunding rule, determining whether the business of the issuer is not being or may not be conducted with integrity and ensuring materials posted on the funding portal’s online platform are not false, deceptive or misleading or constitute a misrepresentation or an untrue statement of a material fact.</p> <p>In contrast, an investment dealer or exempt</p>

No.	Topic	Summary of Comments	Responses
			<p>market dealer operating a funding portal will need to comply all of the requirements of their registration category, including performing specific know-your-client and know-your-product due diligence on the issuers on its funding portals and with the requirements for a funding portal under the crowdfunding regime.</p> <p>We note that it is the responsibility of the issuer to certify that the materials on its offering do not contain a misrepresentation or an untrue statement of material fact.</p>
(d)	facilitate secondary trading (resales) in any securities issued under the exemption	A few commenters did not agree that funding portals should be prohibited from facilitating secondary trading (resales). These commenters indicated that, given investors will be subject to resale restrictions, a funding portal could help facilitate exempt market trades if any liquidity in an issuer exists. One commenter suggested that the exemption should address the resale market.	We acknowledge these comments and have determined to proceed with the restriction on secondary trading as published for comment. We believe the restriction on funding portals from facilitating secondary trading is consistent with the overall objective of the crowdfunding initiative, which is to facilitate capital-raising for start-ups and SMEs.

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