

CSA Notice and Request for Comment

Proposed National Instrument 45-110 *Start-up Crowdfunding Registration and Prospectus Exemptions*

February 27, 2020

Introduction

We, the Canadian Securities Administrators (the **CSA** or **we**), are publishing the following for a 90-day comment period expiring on May 27, 2020:

- Proposed National Instrument 45-110 *Start-up Crowdfunding Registration and Prospectus Exemptions* (the **Instrument**);
- Proposed *Start-up Crowdfunding Guide for Businesses* (the **Guide for Businesses**);
- Proposed *Start-up Crowdfunding Guide for Funding Portals* (the **Guide for Funding Portals**).

Collectively, the Guide for Businesses and the Guide for Funding Portals are referred to as the **Guides** in this Notice.

We are also proposing consequential amendments to National Instrument 45-102 *Resale of Securities* and National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)* (the **consequential amendments**).

We are issuing this Notice to solicit comments on the Instrument, the consequential amendments and the Guides. We welcome all comments on this publication and have also included specific questions in the Comments section.

This Notice is also available on the following websites of CSA jurisdictions:

www.lautorite.qc.ca

www.bcsc.bc.ca

www.albertasecurities.com

www.osc.gov.on.ca

nssc.novascotia.ca

www.fcaa.gov.sk.ca

www.fcnb.ca

www.mbsecurities.ca

Background

Securities crowdfunding is an emerging way for businesses, particularly start-ups and early stage issuers, to raise capital. With securities crowdfunding, a business raises funds through the Internet by issuing securities (such as shares or debt instruments) to many people. This form of financing is intended to provide an alternative source of capital to non-reporting issuers at an earlier stage of development.

On May 14, 2015, the securities regulatory authorities of British Columbia, Saskatchewan, Manitoba, Québec, New Brunswick and Nova Scotia adopted substantially harmonized registration and prospectus exemptions that allow start-ups and early stage issuers to raise capital in these jurisdictions under a tailored framework for securities crowdfunding. On October 2, 2019, the securities regulatory authority of Alberta adopted a substantially harmonized registration and prospectus exemption (the securities regulatory authorities in British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick and Nova Scotia collectively being the **blanket order jurisdictions**). The blanket order jurisdictions implemented the registration and prospectus exemptions by way of local blanket orders, as amended from time to time¹ (the **start-up crowdfunding blanket orders**).

Since the adoption of the start-up crowdfunding blanket orders and as of December 31, 2019:

- 11 funding portals have relied on the registration exemption under the start-up crowdfunding blanket orders in order to establish platforms;
- 1 registered dealer has facilitated start-up crowdfunding distributions;
- A total of 70 distributions have been completed in reliance on the prospectus exemption under the start-up crowdfunding blanket orders by 62 different issuers;
- The aggregate proceeds of all distributions made under the start-up crowdfunding blanket orders is \$3,470,754 (\$4,709,919 including the amounts raised with other prospectus exemptions as part of the same crowdfunding offering);
- The average investment amount per investor for distributions made in reliance of the start-up crowdfunding blanket orders is \$734.

In addition to the start-up crowdfunding blanket orders, two other securities crowdfunding regimes were adopted by CSA jurisdictions:

- Multilateral Instrument 45-108 *Crowdfunding (MI 45-108)* came into force on January 25, 2016 in Saskatchewan, Manitoba, Ontario, Québec, New Brunswick and Nova Scotia. Alberta adopted MI 45-108 on February 22, 2017. To date, no funding portal has registered as a restricted dealer under MI 45-108 and there has been no use of the regime.
- Alberta Securities Commission Rule 45-517 *Prospectus Exemption for Start-up Businesses (ASC Rule 45-517)* came into force on July 19, 2016. ASC Rule 45-517 is similar to the start-up crowdfunding blanket orders but does not provide an exemption from the registration requirement and does not require the use of a funding portal. As of December 31, 2019, there has been limited use of ASC Rule 45-517, with 6 distributions raising in aggregate \$130,650.

In addition, a number of firms registered as exempt market dealers and restricted dealers have launched online funding portals that facilitate crowdfunding through existing

¹ For example, please refer to Multilateral CSA Notice 45-317 *Amendments to Start-up Crowdfunding Registration and Prospectus Exemptions* and Multilateral CSA Notice 45-319 *Amendments to Start-up Crowdfunding Registration and Prospectus Exemptions*.

prospectus exemptions such as the offering memorandum and accredited investor exemptions under National Instrument 45-106 *Prospectus Exemptions* (NI 45-106).

We have heard from market participants that a harmonized regulatory framework tailored for securities crowdfunding available across Canada would foster the use of securities crowdfunding as an alternative for start-ups and early stage issuers to raise capital.

Substance and Purpose of the Instrument

The CSA have proposed the Instrument to improve the harmonization of the regulatory framework for securities crowdfunding by start-ups and early stage issuers.

Although the Instrument shares key features with the start-up crowdfunding blanket orders, we have made targeted amendments to improve the effectiveness of crowdfunding as a capital raising tool for start-ups and early stage issuers, while maintaining adequate investor protection. In the blanket order jurisdictions, the Instrument will replace the start-up crowdfunding blanket orders.

A comparative chart of the key differences between the Instrument and the start-up crowdfunding blanket orders is provided in Annex A.

Summary of the Instrument

The Instrument provides:

- an exemption from the prospectus requirement (the **start-up crowdfunding prospectus exemption**) that allows a non-reporting issuer to distribute eligible securities through an online funding portal; and
- an exemption from the dealer registration requirement (the **start-up crowdfunding registration exemption**) for funding portals that facilitate online distributions by issuers relying on the start-up crowdfunding prospectus exemption.

Start-up crowdfunding prospectus exemption

The start-up crowdfunding prospectus exemption is available to issuers that meet a number of conditions, including:

- the distribution of, and payment for, the security is facilitated through a funding portal that is relying on the start-up crowdfunding registration exemption or operated by an exempt market dealer or investment dealer;
- the aggregate gross proceeds raised by the issuer group² during the 12-months before the closing of the start-up crowdfunding distribution does not exceed \$1,000,000;

² The issuer group means, in respect of an issuer, any of the issuer, an affiliate of the issuer, an issuer that is engaged in a common enterprise with the issuer or with an affiliate of the issuer, and an issuer whose business is founded or organized by a person or company who founded or organized the issuer.

- each purchaser invests no more than \$2,500 or, if the purchaser has obtained advice from a registered dealer that such investment is suitable for the purchaser, \$5,000;
- the issuer prepares an offering document disclosing information about the business and the start-up crowdfunding distribution and makes it available to each purchaser through the funding portal's platform;
- the closing of the start-up crowdfunding distribution does not occur unless the issuer raises the minimum offering amount stated in the offering document within the 90-day period after the date the offering document is made available on the funding portal's platform; and
- the issuer provides the purchaser with a two-day contractual right to withdraw from an agreement to purchase the security by delivering a notice to the funding portal.

The issuer is not required to provide financial statements to investors in connection with a start-up crowdfunding distribution. No continuous disclosure requirements are tied to the start-up crowdfunding prospectus exemption.

The prospectus exemption is not available if the issuer intends to use the proceeds of the distribution to invest in, merge with, amalgamate with, or acquire an unspecified business. Investors in issuers that propose raising capital for these purposes are better protected in regimes other than start-up crowdfunding, such as the TSX Venture Exchange capital pool company program.

Start-up crowdfunding registration exemption

The start-up crowdfunding registration exemption is available to funding portals that meet a number of conditions, including:

- at least 30 days prior to the first date the funding portal facilitates a start-up crowdfunding distribution in a jurisdiction, the funding portal delivers to the securities regulatory authority or regulator in each jurisdiction a completed Form 45-110F3 *Funding Portal Information* and, for each principal of the funding portal, a completed Form 45-110F4 *Portal Individual Information*;
- the funding portal or any of its principals must not be, or have been, the subject of certain proceedings in the last 10 years as specified in the Instrument, including claims related to fraud, theft, breach of trust, illegal distributions, or allegations of similar conduct;
- the funding portal holds each purchaser's assets separate and apart from the funding portal's own property, in trust for the purchaser, and in the case of cash, in a designated trust account at a Canadian financial institution;
- the funding portal provides the necessary disclosures (such as the issuer's offering document and any amendments) and obtains the necessary risk acknowledgement

from purchasers under the Instrument in connection with a distribution of eligible securities;

- the funding portal is not registered under securities legislation; and
- the funding portal does not:
 - provide advice to a purchaser about the merits of the investment or otherwise recommend or represent that an eligible security is suitable, or
 - receive a commission, fee or other similar payment from a purchaser under a start-up crowdfunding distribution.

A funding portal cannot rely on the start-up crowdfunding registration exemption if it is insolvent. A funding portal relying on the start-up crowdfunding registration exemption must deliver to the securities regulatory authority or regulator in each jurisdiction a completed Form 45 110F5 *Annual Working Capital Certification* within 10 days of each calendar year-end. As part of its obligation to deliver a completed Form 45 110F5 *Annual Working Capital Certification*, the funding portal must certify that it has sufficient working capital to continue its operations for at least the next 12 months. If the funding portal becomes insolvent or discontinues operations, it must promptly notify the securities regulatory authority or the regulator, and any purchasers for which it holds assets, of the process the funding portal will use to return the assets to these purchasers.

Under the Instrument, a firm registered in the category of exempt market dealer or investment dealer may operate a funding portal that facilitates the distribution of securities under the start-up crowdfunding prospectus exemption provided that it meets the requirements set out in the Instrument.

Guide for Businesses and Guide for Funding Portals

The purpose of the Guides is to assist funding portals and issuers in understanding the requirements under the Instrument.

The Guide for Businesses provides information in a plain-language, Q&A format that issuers should consider when conducting a start-up crowdfunding distribution.

The Guide for Funding Portals provides information that businesses that intend to conduct funding portal activities should consider, including considerations applicable to funding portals relying on the start-up crowdfunding registration exemption and those operated by registered dealers.

We expect the Guides to be published as a CSA staff notice with the final Instrument.

Extension of the Start-up Crowdfunding Blanket Orders

The start-up crowdfunding blanket orders are scheduled to expire on May 13, 2020. The blanket order jurisdictions are publishing an amendment to their local blanket order concurrently with this Notice so that the blanket orders will remain available until the Instrument is available, if adopted.

Local Matters

An annex is being published in each local jurisdiction that is making related changes to local securities laws, including local notices or other policy instruments in that jurisdiction. It also includes any additional information that is relevant to that jurisdiction only.

Publication

The Instrument, the consequential amendments and the Guides are published together with this Notice.

Comments

In addition to your comments on all aspects of the Instrument, the Guides and the consequential amendments, the CSA also seek specific feedback on the following questions:

1. We are considering repealing MI 45-108 because there has been no use of this regime. We also note that the adoption of the Instrument may reduce the need for market participants to rely on MI 45-108. Do you think MI 45-108 should be maintained? If so, please explain why.
2. We recognize the need to provide a balance in the Instrument between investor protection and streamlined, light-touch requirements for capital raising in the spirit of crowdfunding.

The Instrument contemplates individual investment limits of \$2,500 for each purchaser and \$5,000 for each purchaser, if the purchaser has obtained advice from a registered dealer that such investment is suitable for the purchaser. We recognize there may be need for greater flexibility in capital raising and continue to consider whether to increase the individual investment limit to one or more of the following:

- a. \$5,000 for each purchaser;
- b. \$10,000 for each purchaser, if the purchaser has obtained advice from a registered dealer that such investment is suitable for the purchaser; and
- c. a number in between those currently in the Instrument, and those mentioned above.

What would be an appropriate individual investment limit? Please explain and identify the investor protections you think support that amount.

3. Additionally, the Instrument contemplates a limit on aggregate proceeds raised by the issuer group during the 12-month period of \$1,000,000. We recognize there may be need for greater flexibility in capital raising and continue to consider whether to increase the offering limit to one of the following:
 - a. \$1,500,000; or
 - b. a number in between \$1,000,000 and \$1,500,000.

What would be an appropriate offering limit? Please explain and identify the investor protections you think support that amount.

4. Under the Instrument, issuers, and in some jurisdictions, the directors and executives signing the offering document will be subject to statutory liability if the offering document provided to the investor contains a misrepresentation. The purpose of statutory liability is to make recovery of damages easier for investors in the event of a misrepresentation in the offering document. We have heard that some issuers view statutory liability as potentially increasing the regulatory burden of using the start-up crowdfunding prospectus exemption. We also recognize that claims of misrepresentation by a purchaser may be unlikely given the low investment limits under the Instrument. Overall, we think that any added regulatory burden is balanced against the additional capital raising opportunities provided by the Instrument.

Do you think that statutory liability for misrepresentation in the offering document will deter start-ups and early stage issuers from raising capital using the Instrument? Is any deterrent justified when it appears unlikely that claims for misrepresentations will be made?

5. The definition of “eligible securities” is limited to:
 - common shares,
 - non-convertible preference shares,
 - securities, such as warrants, subscription receipts and simple agreements for future equity (or SAFEs), convertible into common shares or non-convertible preference shares,
 - non-convertible debt securities linked to a fixed or floating interest rate, and
 - units of a limited partnership.

The definition of “eligible security” was intended to reflect the type of securities a start-up or early stage issuers would likely be selling and to ensure that the exemption was not used to sell more complex securities, such as asset-backed securities and structured products. Are there other types of securities that it would

be appropriate to include in the definition of “eligible security” (e.g. trust units, co-operatives member shares or other)? If so, what other type of securities and why?

Please provide your comments in writing by **May 27, 2020**.

We cannot keep submissions confidential because securities legislation in certain provinces requires publication of a summary of the written comments received during the comment period. In addition, all comments received will be posted on the websites of each of the Alberta Securities Commission at www.albertasecurities.com, the Autorité des marchés financiers at www.lautorite.qc.ca and the Ontario Securities Commission at www.osc.gov.on.ca. Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

Thank you in advance for your comments.

Please address your comments to each of the following:

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Nova Scotia Securities Commission
Nunavut Securities Office
Ontario Securities Commission
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

Please send your comments **only** to the following addresses. Your comments will be forwarded to the remaining jurisdictions:

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The Secretary
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Contents of Annexes

This notice contains the following annexes:

- Annex A - Key differences between the registration and prospectus exemptions under Proposed National Instrument 45-110 *Start-up Crowdfunding Registration and Prospectus Exemptions* and the Start-up Crowdfunding Registration and Prospectus Blanket Orders
- Annex B – Local Matters (Ontario only)
- Annex C – Proposed National Instrument 45-110 *Start-up Crowdfunding Registration and Prospectus Exemptions*
- Annex D – Proposed Form 45-110F1 *Offering Document*
- Annex E – Proposed Form 45-110F2 *Risk Acknowledgement*
- Annex F – Proposed Form 45-110F3 *Funding Portal Information*
- Annex G – Proposed Form 45-110F4 *Portal Individual Information*
- Annex H – Proposed Form 45-110F5 *Annual Working Capital Certification*
- Annex I – CSA Staff Notice 45-XXX *Guidance for using the start-up crowdfunding registration and prospectus exemptions*
- Annex J – Proposed Amendments to National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)*
- Annex K – Proposed Amendments to National Instrument 45-102 *Resale of Securities*

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Annex A

Key differences between the registration and prospectus exemptions under Proposed National Instrument 45-110 *Start-up Crowdfunding Registration and Prospectus Exemptions* and the Start-up Crowdfunding Blanket Orders

Key theme	Start-up crowdfunding blanket orders	Instrument
Maximum aggregate proceeds that can be raised by the issuer group under the prospectus exemption	\$250,000 per distribution, up to two times in a calendar year.	\$1,000,000 during the 12 months before the closing of the offering.
Maximum investment amount per person per distribution under the prospectus exemption	<ul style="list-style-type: none"> • \$1,500; or • in British Columbia, Alberta and Saskatchewan, \$5,000, provided that the purchaser has obtained advice from a registered dealer that such investment is suitable for the purchaser 	<ul style="list-style-type: none"> • \$2,500; or • \$5,000, provided that the purchaser has obtained advice from a registered dealer that such investment is suitable for the purchaser
Confirmation by the regulator before a funding portal starts to facilitate distributions	<p>The funding portal cannot facilitate distributions until the regulator confirms in writing receipt of:</p> <ul style="list-style-type: none"> • a duly completed funding portal information form; • a duly completed individual information form for each principal of the funding portal; and • such other documents and information as may be requested by the regulator. 	<p>The funding portal must deliver the required forms at least 30 days before facilitating distributions. There is no requirement for the regulator’s written confirmation. However, a funding portal may not rely on the start-up crowdfunding registration exemption if, within 30 days of receiving the funding portal information form, the regulator has notified the funding portal, it or any of its principals has been notified by the regulator that its process and procedure for handling of purchasers’ funds does not satisfy the conditions of the Instrument.</p>

Key theme	Start-up crowdfunding blanket orders	Instrument
Bad actor disqualification	Not applicable.	A funding portal cannot rely on the start-up crowdfunding registration exemption if it or any of its principals is or has been the subject of certain proceedings in the last 10 years related to a claim based in whole or in part on various conduct such fraud, theft, breach of trust, or allegations of similar conduct.
Funding portals financial resources certification	Not applicable.	On an annual basis, the funding portal must certify that it has sufficient working capital to continue its operations for at least the next 12 months by delivering a completed funding portal information form or Form 45-110F5 <i>Annual Working Capital Certification</i> .
Liability in the event the offering document contains misrepresentations	There is no statutory liability under securities law. The blanket orders do not require the issuer to provide contractual rights to purchasers. Purchasers may have rights under common law or civil law.	The issuer is subject to statutory liability similar to the offering memorandum exemption under section 2.9 of NI 45-106.
Investment in an unspecified business	No restrictions.	The start-up crowdfunding prospectus exemption is not available to issuers who intend to use the proceeds of the distribution to invest in, merge with or acquire an unspecified business.
Report of exempt distribution form	Except in British Columbia, issuers must use Form 5 – <i>Start-up Crowdfunding – Report of distribution</i> . In British Columbia, issuers must use Form 45-106F1 <i>Report of Exempt Distribution</i> .	Issuers must use Form 45-106F1 <i>Report of Exempt Distribution</i> .
Expiry date	The orders were initially set to expire on May 13, 2020. The start-up crowdfunding blanket orders will be extended to remain available until the Instrument is available, if adopted.	The Instrument has no expiry date.

ANNEX B
LOCAL MATTERS
ONTARIO SECURITIES COMMISSION

1. Introduction

The CSA are publishing for comment a draft national harmonized crowdfunding rule (the **Proposed Instrument**) that provides:

- an exemption from the prospectus requirement that allows a non-reporting issuer to distribute eligible securities through an online funding portal; and
- an exemption from the dealer registration requirement for funding portals that facilitate online distributions by issuers relying on the start-up crowdfunding prospectus exemption.

Please refer to the main body of the CSA Notice.

2. Local Amendments

In addition to the Proposed Instrument and the consequential amendments set out in annexes to the CSA Notice, the Ontario Securities Commission (the **OSC** or the **Commission**) is also publishing for comment:

- proposed amendments to OSC Rule 11-501 *Electronic Delivery of Documents to the Ontario Securities Commission* (attached as Schedule B1 to this Annex);
- proposed amendments to OSC Rule 13-502 *Fees* (attached as Schedule B2 to this Annex);
- proposed amendments to OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions* (attached as Schedule B3 to this Annex); and
- proposed changes to Companion Policy 45-501CP *Ontario Prospectus and Registration Exemptions* (attached as Schedule B4 to this Annex)

(collectively, the **Local Amendments**).

3. Overview

In Ontario, an issuer that wishes to raise capital in the exempt market through the issuance and sale of its securities has the option to rely on any of the prospectus exemptions under Ontario securities laws. To rely on a prospectus exemption, the issuer must comply with the requirements of the exemption. Beyond the private issuer exemption and the family, friends, and business associates exemption, the exemptions that are available for distributions to retail investors are the offering memorandum exemption (the **OM Exemption**) and the crowdfunding prospectus exemption in Multilateral Instrument 45-108 *Crowdfunding (MI 45-108)*. Under MI 45-108, the issuer must offer its securities through a funding portal that is registered under Ontario securities legislation. Additionally, under both exemptions, an issuer is required to provide detailed

disclosure concerning the issuer and the offering and must provide ongoing financial disclosure concerning the issuer.

Another significant drawback to an issuer relying on the crowding exemption in MI 45-108 is that it is not available nationally. Currently, crowdfunding is available in Canada under the following regimes, none of which are nationally harmonized:

- (i) **Start-up crowdfunding** – Local crowdfunding blanket orders provide registration and prospectus exemptions that allow start-ups and early stage issuers to raise capital in British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick and Nova Scotia (the **start-up crowdfunding blanket orders**). As set out in the main body of the CSA Notice, there has been some use of the start-up crowdfunding blanket orders.
- (ii) **Crowdfunding under MI 45-108** - MI 45-108 provides a prospectus exemption and a registration regime that allows start-ups and early stage issuers to raise capital in Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick and Nova Scotia. To date, no offerings have been completed in reliance on the prospectus exemption and no funding portal has registered as a restricted dealer under MI 45-108.
- (iii) **Crowdfunding under ASC Rule 45-517** – Alberta Securities Commission Rule 45-517 *Prospectus Exemption for Start-up Businesses (ASC Rule 45-517)* provides a prospectus exemption that is similar to the start-up crowdfunding blanket orders except that it does not require the use of a funding portal and does not provide a registration exemption. As set out in the main body of the CSA Notice, there has been very modest use of ASC Rule 45-517.

Market participants and other stakeholders have advocated for a harmonized regulatory framework for securities crowdfunding available across Canada to encourage the use of securities crowdfunding and provide an alternative method for start-ups and early stage issuers to raise capital.

Investor protection is not expected to be compromised because the Proposed Instrument balances most of the expected risk of investing in small businesses in the exempt market with appropriate protections for investors and is not significantly different from the start-up crowdfunding blanket orders.

The Proposed Instrument provides an option for start-ups and early stage issuers to raise capital. The Commission is of the view that the regulatory costs associated with the Proposed Instrument on issuers that choose to take advantage of the prospectus exemption, on intermediaries that choose to operate a funding portal (whether pursuant to a registration exemption or as a registrant) and on retail investors that wish to participate in a securities crowdfunding offering are outweighed by the benefits of the Proposed Instrument to these stakeholders.

4. Affected Stakeholders

a. Non-reporting Issuers

Under the Proposed Instrument, only non-reporting issuers that have their head office in Canada will have the option to access a new capital raising prospectus exemption. This exemption will allow these issuers to raise up to \$1,000,000 each year from retail investors within prescribed investment limits.

Issuers at this level of financing are expected to be small businesses, some of which will be seeking start-up or early stage financing or accessing Canada's capital markets for the first time. Small businesses that employ under 100 people represent 97.9% (or 1.15 million) of all Canadian businesses and approximately 36% of them (or approximately 417,000) are based in Ontario.¹ Based on a 2011 Industry Canada survey, less than 10% of small and medium-sized businesses (SMEs) financed their start-ups from external sources that did not include personal finances or financing from financial institutions, suppliers, government or close family and friends.² We expect that a small proportion of Ontario-based small businesses that are seeking external financing will access the capital markets.

Issuers may choose to rely on the prospectus exemption in the Proposed Instrument because they find it too expensive to rely on existing prospectus exemptions. Some issuers may have previously relied on other prospectus exemptions and exhausted their financing from family, close personal friends and close personal business associates or reached the 50-investor limit allowed under the private issuer prospectus exemption. Some issuers may seek additional funding beyond traditional sources (personal and credit financing) or they may lack sufficient collateral or revenue to secure loans from financial institutions and alternative online lenders. Many of these issuers may also operate businesses that are not within the expertise and scope of most angel investors and venture capital funds. Lastly, these businesses also may not be suited to secure financing through pre-orders of products or services on reward-based crowdfunding platforms such as Kickstarter or Indiegogo.

It is difficult to estimate the total number of issuers that will be affected by the Proposed Instrument given the unique circumstances (financing needs, capital structure and financial risk) of each issuer. This challenge is further complicated by the number of financing sources (internal and external) that may be available to each issuer. However, at a minimum, we expect issuers that have relied on the existing start-up crowdfunding exemptions in other jurisdictions to benefit from the Proposed Instrument being introduced in Ontario. Based on filings of Form 45-106F1 *Report of Exempt Distribution (Form 45-106F1)*, 56 issuers have raised a total of \$3.45 million under the start-up crowdfunding blanket orders as of November 1, 2019.

¹ See Innovation, Science and Economic Development Canada, Key Small Business Statistics, January 2019. Industry Canada defines small businesses as employer firms with between 1 and 99 employees and SMEs as firms with between 1 and 499 employees.

² See Industry Canada, Financing Statistics, Special Edition: Key Small Business Statistics, November 2013.

A subset of Canadian issuers that have previously relied on the OM Exemption to raise capital in Ontario (**OM Issuers**) may also consider the Proposed Instrument as an alternative to raising up to \$1 million from retail investors at a potentially lower cost. Based on filings of Form 45-106F1 in Ontario, we identified 58 issuers that each raised \$1 million or less annually under the OM Exemption from investors that individually purchased \$2,500 or less in securities.³ We also considered an alternative scenario, OM Issuers that raised up to \$1 million from a subset of their investors that purchased \$2,500 or less in securities.⁴ Under this second scenario, we estimated an additional 44 OM Issuers, for a total of 102 OM Issuers, that could have raised capital within the prescribed aggregate annual offering and investment limits of the Proposed Instrument. In aggregate over the period analyzed, these 102 OM Issuers could have raised up to approximately \$5.4 million under the offering and investment thresholds set out in the Proposed Instrument.

b. Exempt Funding Portals

Businesses that wish to operate an exempt funding portal in Ontario will also benefit from the Proposed Instrument. This includes: (i) new entrants that have not operated an exempt funding portal before, and (ii) exempt funding portals that are already operating platforms in those jurisdictions that have adopted the start-up crowdfunding blanket orders. Currently, there are 10 exempt funding portals that relied on the registration exemption under the start-up crowdfunding blanket orders outside of Ontario. However, only 5 of these 10 exempt funding portals have facilitated capital raising by issuers.

c. Registered Funding Portals

Funding portals that are registered as investment dealers or exempt market dealers in Ontario will also benefit from the Proposed Instrument. An aggregate of 22 funding portals have been registered under the exempt market dealer or restricted dealer categories in Canada. Of these, 15 funding portals are registered as exempt market dealers in Ontario and 2 are registered as restricted dealers.⁵ Issuers on the 15 funding portals registered as exempt market dealers in Ontario, which are currently limited to offering securities under the start-up crowdfunding blanket orders or offering in Ontario under the accredited investor exemption (**AI Exemption**) or OM Exemption, will be able to offer their securities in Ontario under the Proposed Instrument. As of November 2019, only one registered funding portal in Canada has facilitated crowdfunding distributions under the start-up crowdfunding blanket orders. The remainder may have facilitated crowdfunding offerings under the AI Exemption or OM Exemption.

d. Other Registered Intermediaries

Registered intermediaries that do not operate a funding portal but are in the business of facilitating small business capital raising may be affected by the Proposed Instrument. They will

³ OSC analysis, based on distributions from January 2017 to August 2019. These OM Issuers may have concurrently raised additional amounts under other prospectus exemptions (e.g. the AI Exemption).

⁴ Under this scenario, the OM Issuer may have raised a total of more than \$1 million annually, however, only those issuers with investors that purchased \$2,500 or less in securities would be included in the estimate.

⁵ Funding portal information updated as of November, 2019.

be impacted by increased competition for issuers looking to raise small amounts of capital or may decide to expand their operations to include an exempt or registered funding portal.

e. Investors

The Proposed Instrument will largely impact retail investors who are currently not able to participate in the majority of exempt market offerings that are conducted under the AI Exemption because they do not meet the minimum income or financial assets requirements under that exemption. Retail investors that are not directly related to an issuer or are considered to be members of the public are only able to participate in the OM Exemption. These retail investors, along with other investors who have not previously participated in prospectus exempt offerings, will be able to invest in issuers seeking capital under the Proposed Instrument.

5. Anticipated Costs and Benefits of the Proposed Instrument

The following section analyzes the anticipated costs and benefits to the affected stakeholders mentioned above. Data limitations and the opaque nature of the exempt market present challenges to quantifying all the costs and benefits of the Proposed Instrument. More importantly, the Proposed Instrument provides an additional option to issuers seeking to raise external financing from capital markets. Therefore, much of the anticipated costs outside of regulatory and compliance-related costs are assumed to be at the discretion of the affected stakeholders and are not discussed here.

a. Non-reporting Issuers

Search Cost Savings

The Proposed Instrument is intended to provide an alternative source of financing for non-reporting issuers, especially start-ups and early stage issuers. Issuers accessing capital market financing for the first time will need to conduct their own due diligence or seek appropriate legal or professional advice to navigate the prospectus exemptions that are available and most appropriate for their needs and circumstances.

As indicated above there are three crowdfunding regimes available in Canada, but none are nationally harmonized. We have heard that, in comparison to the existing complexity resulting from these different regimes, the introduction of a nationally harmonized crowdfunding regime will result in savings of between \$5,000 to \$20,000 in legal fees per deal for issuers.⁶

Since the Proposed Instrument does not currently contemplate the repeal of crowdfunding under MI 45-108, we expect issuers may still incur minimal search cost when contemplating both

⁶ In its submission to the OSC dated March 1, 2019, the National Crowdfunding & FinTech Association of Canada stated: “The differences among or within the exemptions seem to us not cost-effective for the risks they are presumably intended to mitigate. These also impose high demands on start-ups. On costs, the NCFCA estimates (based on anecdotal evidence from its members) that a lack of harmonisation and the resulting complexity adds \$5,000 - \$20,000 in legal fees alone per deal.”

options. However, we note there have been no offerings made under MI 45-108 and the CSA are considering repealing it.

Other Anticipated Benefits

The key benefit of the Proposed Instrument for non-reporting issuers is access to an additional potential funding source at a lower cost than existing capital market options. If this additional funding option proves to be popular among issuers, it should (theoretically) increase competition over time among funding sources and potentially lead to lower funding costs to issuers and more efficient allocation of capital.

Initial Compliance Costs

Issuers choosing to rely on the prospectus exemption in the Proposed Instrument will be responsible for the costs associated with preparing and filing Form 45-110F1 *Offering Document* (**Form 45-110F1** or the **Offering Document**) and Form 45-106F1 for each offering. There will also be an initial one-time cost associated with learning and meeting the specific requirements under the Proposed Instrument. We anticipate that the time spent understanding the requirements of the Proposed Instrument will be minimal. The costs associated with preparing the Form 45-110F1 for each offering will be the most significant component of the issuer's compliance costs. Issuers are not expected to incur any other on-going compliance costs since there are no continuous disclosure requirements associated with the Proposed Instrument.

Form 45-110F1 *Offering Document*

The information that is required to be disclosed in the Offering Document includes general information about the issuer and its business, information concerning the directors and officers of the issuer, and information concerning the crowdfunding offering and the anticipated use of funds for the offering. We expect issuers that have already accessed external financing or even bank financing to have most of this information already available and should therefore incur minimal administrative costs in preparing the Offering Document. Furthermore, these costs will reduce over time across multiple offerings because issuers can leverage previous offering materials and limit their time to updating relevant sections or providing new information.

Although issuers could prepare the Offering Document themselves, we anticipate that many issuers will rely on the services of legal professionals to prepare the Offering Document. This is especially the case because the Proposed Instrument contemplates statutory liability for issuers if the Offering Document contains a misrepresentation. Legal costs will vary depending on the complexity of the issuer's business, its size and the level of assistance the issuer needs.

Assuming that most issuers that will rely on the prospectus exemption in the Proposed Instrument will be start-ups and early stage issuers, we do not expect legal professionals to charge significant fees to prepare or review the Offering Document. Over time and if activity increases, it is expected that third-party service providers and even the portals themselves may offer additional services to assist issuers in preparing the Offering Document and associated materials at more competitive prices than legal professionals.

There is no requirement for financial statements to be provided in connection with the Offering Document. Therefore, we do not anticipate that issuers will require assistance from accounting professionals unless they obtain assistance at their own discretion. Issuers may also decide at their discretion to seek assistance from experienced valuation experts in setting an appropriate offering price or ensure that the economic terms of the offering and rights attached to the securities are properly disclosed. Again, these would be discretionary costs to the issuer since they are not specifically mandated by the Proposed Instrument.

In 2015, the U.S. Securities and Exchange Commission (SEC) estimated that the cost of preparing an offering document (SEC Form C) associated with their Regulation Crowdfunding rule⁷ will range from between \$2,500 (USD) to \$20,000 (USD) depending on the size of the offering.⁸ Similar to the crowdfunding exemption under MI 45-108 and the OM Exemption, the information requirements under the SEC’s Regulation Crowdfunding rule are more extensive than those required under the Proposed Instrument. The SEC Form C also requires certain financial information about the issuer and more detailed information regarding the issuer’s capital structure. Therefore, we anticipate that the cost to prepare the Offering Document will be within a similar range if not lower than the estimated ranges provided in the SEC’s analysis.

Figure 1- Excerpt of SEC Cost Estimates for Form C

(in U.S. dollars)	Offerings of \$100,000 or less	Offerings of more than \$100,000, but not more than \$500,000	Offerings of more than \$500,000
Costs per issuer for preparation and filing of Form C for each offering and related compliance costs	2,500	\$2,500 - \$5,000	\$5,000 - \$20,000

Source: SEC, Release Nos 33-9974, Crowdfunding Final Rule. Oct. 30, 2015.

Form 45-106F1 Report of Exempt Distribution

Issuers will also have administrative costs associated the preparation of Form 45-106F1. The information that is required in this form relates to the issuer, the funding portal and the offering. While the form is simple enough to complete, we anticipate that some issuers may rely on legal counsel to prepare this form with assistance from the funding portal.

Based on previous OSC analysis conducted with the release of the amended Form 45-106F1, it should take no longer than 45 to 60 minutes to complete the form. These estimates were based on a manual entry of the Schedule 1 portion of the form which requires information on each distribution made to each purchaser. Therefore, the higher the number of purchasers, the longer the expected time spent. However, issuers relying on the Proposed Instrument are not expected to complete this information manually. They should be able to readily obtain the necessary purchaser information for Schedule 1 in a machine generated format from the funding portal facilitating the crowdfunding distribution. While there is no direct fee associated with the filing

⁷ See rules governing the offer and sale of securities under new Section 4(a)(6) of the *Securities Act of 1933* (Regulation Crowdfunding).

⁸ See SEC Release No. 33-9974, Crowdfunding Final Rule. October 30, 2015.

of the Offering Document, there will be a nominal filing fee of \$500 for each Form 45-106F1 that is filed with the OSC.

b. Exempt Funding Portals

Increased Business Opportunities

Currently, all funding portals operating in Ontario must be registered. Therefore, the Proposed Instrument, which provides a registration exemption, represents an additional business opportunity for the 10 non-registered portals that operate outside of Ontario pursuant to the start-up crowdfunding blanket orders. These exempt funding portals will now be able to access Ontario investors and facilitate crowdfunding nationally.

The nationally harmonized aspect of the Proposed Instrument may also incentivize new entrants and potentially attract experienced operators of non-securities-based online portals such as those that provide online lending or donation/reward-based platforms. The NCFAs' 2016 report indicated that, based on a survey of Canadian online platforms, the majority (74%) operated a donation/reward crowdfunding model and about 8% operating a lending platform.⁹ There is also the possibility that experienced foreign-based platforms of securities and non-securities crowdfunding models may decide to establish a Canadian exempt funding portal to facilitate capital raising under the Proposed Instrument.

Initial Compliance Costs

Funding portals that are currently operating in other jurisdictions under the start-up crowdfunding blanket orders are expected to incur minimal costs associated with the Proposed Instrument because the requirements are very similar.

New entrants that want to operate an exempt funding portal in Ontario will initially incur one-time costs associated with learning about the specific requirements for exempt funding portals, building the required processes and training staff to comply with the requirements of the Proposed Instrument. New entrants will also incur a one-time compliance cost in connection with preparing Form 45-110F3 *Funding Portal Information* (**Form 45-110F3**) and Form 45-110F4 *Portal Individual Information* (**Form 45-110F4**) for each of the principals of the funding portal.

Form 45-110F3 *Funding Portal Information*

Form 45-110F3 requires an exempt funding portal to disclose information concerning the funding portal such as its structure and proposed business, whether it is or has been the subject of a criminal or civil proceeding involving fraud or theft, and its process for handling investor funds in a designated trust account with a Canadian financial institution. Form 45-110F3 must be certified to be true and complete by the funding portal. The information required by Form 45-110F3 should be readily available to a funding portal conducting its business.

⁹ See National Crowdfunding Association of Canada (NCFAs), 2016 Alternative Finance - Crowdfunding in Canada. The NCFAs report states that the survey was conducted in Q4 2015 and was sent to 80 funding portals in Canada across all business models, of which 51 responded.

Form 45-110F4 Portal Individual Information

Each principal of a funding portal must disclose in a Form 45-110F4 personal information concerning the individual, including whether the individual has been the subject of a criminal or civil proceeding involving fraud or theft. Form 45-110F4 must be certified by the individual to be true and complete. The information required by Form 45-110F4 should be readily available to the principals of the funding portal.

We consider the initial time spent learning the requirements of the Proposed Instrument, building a platform and setting up these systems to be a cost of conducting business as a funding portal. Most of the compliance costs on funding portals will be associated with preparing the Form 45-110F3 and Forms 45-110F4. Funding portals that are currently operating in other jurisdictions under the start-up crowdfunding blanket orders will incur lower costs to complete these forms since they have completed substantially similar forms under the start-up crowdfunding blanket orders.

Ongoing Compliance Costs

Both new exempt funding portals and exempt funding portals that are already operating under a start-up crowdfunding blanket order will be required to complete and file a Form 45-110F5 *Annual Financial Resources Certification (Form 45-110F5)* certifying that the funding portal has sufficient working capital to continue operations for at least the next 12 months. We believe that the form does not require the funding portal to do anything beyond that which it should already be doing when operating a funding portal business. Both new and existing exempt funding portals will also periodically incur costs in connection updating the information in Form 45-110F3 and Form 45-110F4. The information required to update the Form 45-110F3 and Form 45-110F4, respectively, should be readily available to a funding portal conducting its business and to its principals.

An exempt funding portal operating in Ontario will be considered an “unregistered capital markets participant” and be required to pay an annual participation fee to the OSC.¹⁰ The required participation fee is a graduated fee based on the participant’s revenues for the year. For example, an exempt funding portal with annual revenues under \$250,000 will pay a fee of \$835 and an exempt funding portal with annual revenues from \$250,000 to under \$500,000 will pay a fee of \$1,085. The exempt funding portal will also be required to file a completed Form 13-502F4 *Capital Markets Participation Fee Calculation (Form 13-502F4)* showing the information required to calculate the participation fee.

There will be no cost to exempt funding portals for filing the Form 45-110F3, Form 45-110F4 or Form 45-110F5 with the OSC.

A recent report by the Cambridge Centre for Alternative Finance indicated that registered online platforms in Canada dedicated approximately 9% of their budget towards

¹⁰ Please see the consultation question in section 6 below.

authorization/regulatory scoping, and 17% for ongoing compliance costs.¹¹ While this survey covered all types of crowdfunding portals, both securities and non-securities-based, it provides a general sense of the regulatory and ongoing compliance costs incurred by funding portals.

c. Registered Funding Portals

The Proposed Instrument will also provide a business opportunity for funding portals that are registered as an investment dealer or an exempt market dealer in Ontario. In addition to facilitating securities offerings over their platform in reliance on the AI Exemption and OM Exemption, these registered funding portals will be able to facilitate securities offerings under the Proposed Instrument. We expect that the initial costs to these registered funding portals associated with learning and understanding how to conduct a crowdfunding offering and setting up business systems to conduct a crowdfunding offering under the Proposed Instrument will be minimal. Registered funding portals are not required under the Proposed Instrument to complete a (i) Form 45-110F3, (ii) Form 45-110F4 for each principal of the funding portal, or (iii) Form 45-110F5. Funding portals registered in Ontario are already required to pay participation fees and file Form 13-502F4.

d. Investors

High Risk Investments

As set out above, retail investors will have the opportunity to invest in small Canadian businesses and start-ups under the Proposed Instrument. By their very nature, investments in start-up crowdfunding offerings are highly risky and are illiquid. Investors making such investments have few opportunities to sell their investment and may lose the money they paid for their investment. The lack of liquidity or market for the securities also inhibits price discovery (i.e. the ability to determine whether the issuer has over-valued its securities).

Investor Protection Requirements

The increased risk to retail investors is balanced by the investor protection requirements of the Proposed Instrument. For example, the Proposed Instrument requires that purchasers be provided a contractual right to withdraw from an agreement to purchase a security within 2 days of agreeing to purchase the security or being notified of an amendment to the Offering Document. Further, in order to address asymmetrical information between investors and issuers, issuers are required to prepare an Offering Document for posting on the funding portal. Under the *Securities Act* (Ontario) (the Act), purchasers may be entitled to damages against an issuer or require the issuer to unwind the purchase if the Offering Document contains a misrepresentation. The Proposed Instrument also contains individual investment limits for purchasers of \$5,000, if the purchaser has received suitability advice from a registered dealer that the investment is suitable to the purchaser and \$2,500 in all other cases. Furthermore, the aggregate amount that can be

¹¹ The report indicates that 68% of Canadian businesses they surveyed indicated they were authorised by their regulator while 32% indicated that no specific regulatory authorization was required for their operations. See Cambridge Centre for Alternative Finance, *Reaching New Heights*, the 3rd Americas alternative Finance industry Report, December 2018.

raised by issuers is \$1,000,000 per year. These provide limits on the amount that individual investors and investors as a group can potentially lose in a crowdfunding offering.

In addition to the investor protection requirements of the Proposed Instrument noted above, the requirement that the crowdfunding offering be completed through an exempt funding portal or a registered funding portal also helps to protect investors. In both cases, funding portals are required to hold funds being raised under a crowdfunding offering and not release the funds to the issuer until the offering has closed and purchasers' contractual rights of withdrawal have expired. Apart from the requirements of the Proposed Instrument, funding portals will also have an incentive to protect their reputation by carefully vetting the issuers on their platform.

e. Conclusion

Although, there will be costs associated with an issuer relying on the prospectus exemption in the Proposed Instrument as set out above, an issuer is not required to rely on the Proposed Instrument. The Proposed Instrument is a new securities-based financing alternative for non-reporting issuers. Similarly, the harmonized crowdfunding regime under the Proposed Instrument offers a business opportunity to (i) new businesses that want to operate an exempt funding portal, (ii) exempt funding portals operating under the start-up crowdfunding blanket orders, and (iii) registered portals offering securities of issuers relying on other prospectus exemptions. The risks to retail investors that participate in securities crowdfunding under the Proposed Instrument are reduced by the individual investment limits, the annual distribution limits, the disclosure in the Offering Document and the funding portal acting as intermediary in the crowdfunding offering.

6. Comments

In addition to your comments on all aspects of the Proposed Instrument and the Local Amendments, the OSC seeks specific feedback on the following:

(i) Fees payable by entities relying on exemptions in the rule

Issuers that wish to rely on the prospectus exemption in the rule in Ontario will be required to pay an activity fee for the filing of Form 45-106F1 *Report of Exempt Distribution (Form 45-106F1)* (generally \$500 per filing). Unregistered entities that wish to operate a funding portal in reliance on the dealer registration exemption in the rule in Ontario will be required to pay an annual participation fee based on the firm's Ontario revenues for the year (generally expected to be \$835 per year for most funding portals).

As explained in the Companion Policy to OSC Rule 13-502 *Fees*, activity fees are charged for the filing of certain documents with the Commission based on the average cost to the Commission of reviewing such documents. Participation fees are charged to cover the Commission's costs not easily attributable to specific regulatory activities. In the case of registered firms or unregistered capital markets participants, the participation fee is based on the firm's revenues attributable to its capital markets activity in Ontario.

We have included these fees to be consistent with other prospectus exemptions that require the filing of a Form 45-106F1 and to treat registered and unregistered entities that operate funding portals in a consistent manner. The participation fee payable by funding portals is also intended to cover the costs of the Commission conducting background checks on persons and companies filing Form 45-110F3 *Funding Portal Information* and Form 45-110F4 *Portal Individual Information*.

In view of the purpose of the rule to improve the effectiveness of crowdfunding as a capital raising tool for start-ups and early stage issuers, while maintaining adequate investor protection, are there other considerations we should consider, in addition to consistency of treatment among market participants?

7. Rule-making Authority

In Ontario, the following provisions of the Act provide the Commission with authority to make the Proposed Amendments:

- Paragraph 8 of subsection 143(1) of the Act authorizes the Commission to make rules that prescribe exemptions from the requirement to be registered under the Act;
- Clause iii of paragraph 10 of subsection 143(1) authorizes the Commission to make rules designating a person or company for the purpose of the definition of “market participant” and paragraph 10 of subsection 143(10) of the Act authorizes the Commission to make rules that prescribe requirements in respect of the books, records and other documents required to be kept by market participants;
- Paragraph 20 of subsection 143(1) of the Act authorizes the Commission to make rules that prescribe exemptions from the prospectus requirement in the Act;
- Paragraph 49 of subsection 143(1) of the Act authorizes the Commission to make rules to permit or require methods of filing or delivery of documents to or by issuers; and
- Paragraph 55 of subsection 143(1) of the Act authorizes the Commission to make rules that specify exemptions and circumstances that shall be subject to section 130.1 of the Act.

8. Alternatives Considered

An alternative considered was to maintain the *status quo*, which would mean that there will continue to be no harmonized crowdfunding regime in Canada. The Commission is of the view that maintaining the *status quo* denies an alternative source of capital to non-reporting issuers that are at early stage of development, denies a business opportunity to exempt funding portals and registered funding portals that wish to facilitate start-up crowdfunding offerings and generally denies crowdfunding investment opportunities to retail investors. The Commission is also of the

view that the opportunities associated with a national harmonized start-up crowdfunding outweigh any associated regulatory costs.

9. Reliance on unpublished studies

The Commission is not relying on any significant unpublished study, report or other written material in proposing the Proposed Instrument.

SCHEDULE B1

Proposed 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 inserting the following rows to the table immediately following the row “45-108F1”:*

45-110F1	Form 45-110F1 <i>Offering Document</i>
45-110F3	Form 45-110F3 <i>Funding Portal Information</i>
45-110F4	Form 45-110F4 <i>Portal Individual Information</i>
45-110F5	Form 45-110F5 <i>Annual Financial Resources Certification</i>

3. This Instrument comes into force on *[date]*.

SCHEDULE B2

Proposed Amendments to Ontario Securities Commission Rule 13-502 *Fees*

1. *Ontario Securities Commission Rule 13-502 Fees is amended by this Instrument.*
2. *The definition of “unregistered capital markets participant” in section 1.1 is replaced by the following:*

“unregistered capital markets participant” means

- (a) an unregistered investment fund manager;
- (b) an unregistered exempt international firm; or
- (c) a funding portal relying on the exemption in section 3 of National Instrument 45-110 *Start-up Crowdfunding Registration and Prospectus Exemptions*.

3. This Instrument comes into force on [*date*].

SCHEDULE B3

Proposed 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.1), and by adding the following paragraph:***
 - (f.2) section 5 of National Instrument 45-110 *Start-up Crowdfunding Registration and Prospectus Exemptions*, and
3. ***The following subsection is added after subsection 5.2(1):***
 - (1.1) For the purposes of section 130.1 of the Act, the method of furnishing or delivering an offering document under Multilateral Instrument 45-108 *Crowdfunding* or National Instrument 45-110 *Start-up Crowdfunding Registration and Prospectus Exemptions* to a prospective purchaser includes making the offering document available to the prospective purchaser through a funding portal, as defined in the respective instruments.
4. ***Subsection 5.4(2) is replaced by the following:***
 - (2) The requirement in subsection (1) does not apply to an offering memorandum prepared and filed with the Commission in accordance with section 2.9 of NI 45-106, Multilateral Instrument 45-108 *Crowdfunding*, or National Instrument 45-110 *Start-up Crowdfunding Registration and Prospectus Exemptions*.
5. This Instrument comes into force on [*date*].

SCHEDULE B4

Proposed Changes to Companion Policy 45-501CP – to Ontario Securities Commission Rule 45-501 Ontario Prospectus and Registration Exemptions

1. *Companion Policy 45-501CP – to Ontario Securities Commission Rule 45-501 Ontario Prospectus and Registration Exemptions is changed by this Instrument.*

2. *Subsection 5.3(1) is replaced by the following:*

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 listed in section 5.1 of the Rule.

The rights apply when the offering memorandum is delivered mandatorily in connection with a distribution made in reliance on a prospectus exemption listed in paragraphs (d.1), (f.1), (f.2) or (g) of section 5.1 of the Rule, or voluntarily in connection with a distribution made in reliance on a prospectus exemption listed in paragraphs 5.1(a), (b), (b.1), (d), (e) or (f) of the Rule.

3. *Subsection 5.4(1) is replaced by the following:*

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 a prospectus exemption listed in paragraphs 5.1(d.1), (f.1), (f.2) or (g) of the Rule, and subject to subsection (2), Ontario securities legislation does not prescribe the content of an offering memorandum. The decision relating to the appropriate disclosure in an offering memorandum rests with the issuer, the selling security holder and their advisors.

4. *Subsection 5.5(1) is changed as follows:*

5.5 Review of offering memorandum – (1) Staff may review an offering memorandum filed in connection with a distribution made in reliance on

- the exemption in section 2.9 of NI 45-106 [*Offering memorandum*],
- the exemption in section 5 of Multilateral Instrument 45-108 *Crowdfunding*, or
- the exemption in section 5 of National Instrument 45-110 *Start-up Crowdfunding Registration and Prospectus Exemptions*.

They may also review an offering memorandum if it is delivered in connection with a distribution made in reliance on another exemption referred to in Part 5 of the Rule.

When Staff reviews an offering memorandum, they review its form and content for the purpose of determining whether the issuer has complied with the requirements, conditions and restrictions of the exemption relied on for the distribution.

5. These changes become effective on *[date]*.

ANNEX C

PROPOSED NATIONAL INSTRUMENT 45-110 START-UP CROWDFUNDING REGISTRATION AND PROSPECTUS EXEMPTIONS

PART 1 DEFINITIONS AND INTERPRETATION

Definitions

1. (1) In this Instrument

“affiliate” means, in respect of an issuer, another issuer if (a) one of the issuers is the subsidiary of the other, or (b) each of the issuers is controlled by the same person or company;

“crowdfunding distribution” means a distribution under the exemption from the prospectus requirement in this Instrument;

“eligible security” means any of the following:

- (a) a common share;
- (b) a non-convertible preference share;
- (c) a security convertible into a security 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;

“exempt market dealer” means a person or company registered in the category of exempt market dealer;

“founder” means a person or company who,

- (a) in respect of an issuer or a funding portal, acting alone, in conjunction, or in concert with one or more persons or companies, directly or indirectly, takes the initiative in founding, organizing or substantially reorganizing the business of the issuer or funding portal, as applicable, and
- (b) in respect of an issuer, at the time of the distribution or trade, is actively involved in the business of the issuer;

“funding portal” means a person or company that facilitates or proposes to facilitate a crowdfunding distribution through a web-based or application-based platform;

“investment dealer” means a person or company registered in the category of investment dealer;

“issuer group” means, in respect of an issuer, any of the following:

- (a) the issuer;
- (b) an affiliate of the issuer;
- (c) any other issuer if either of the following conditions is satisfied:
 - (i) it is engaged in a common enterprise with the issuer or with an affiliate of the issuer;
 - (ii) its business is founded or organized by a person or company who founded or organized the issuer;

“minimum offering amount” means, with respect to a crowdfunding distribution, the minimum amount disclosed in an issuer’s completed Form 45-110F1 *Offering Document*;

“principal” means, with respect to a funding portal or an issuer, a founder, director, officer or control person;

“subsidiary” means an issuer that is controlled directly or indirectly by another issuer and includes a subsidiary of that subsidiary.

- (2) For the purpose of this Instrument, a person (first person) is considered to control another person (second person) if
 - (a) the first person beneficially owns or directly or indirectly exercises control or direction over securities of the second person carrying votes which, if exercised, would entitle the first person to elect a majority of the directors of the second person, unless that first person holds the voting securities only to secure an obligation,
 - (b) the second person is a partnership, other than a limited partnership, and the first person holds more than 50% of the interests of the partnership, or
 - (c) the second person is a limited partnership and the general partner of the limited partnership is the first person.

Special Rules – Alberta, British Columbia, Ontario, Québec and Saskatchewan

- 2. (1) In Alberta, a completed Form 45-110F1 *Offering Document* relied on under this Instrument is designated to be an offering memorandum under securities legislation.
- (2) In British Columbia, a completed Form 45-110F1 *Offering Document* required to be made available to a purchaser under the exemption from the prospectus requirement in this

Instrument is a prescribed disclosure document for purposes of section 132.1 of the *Securities Act* (British Columbia).

- (3) In Ontario, an issuer that distributes securities in reliance on the exemption in section 5 is prescribed as a market participant under the *Securities Act* (Ontario).
- (4) In Saskatchewan, a completed Form 45-110F1 *Offering Document* relied on under this Instrument is an offering memorandum under securities legislation.
- (5) In Québec,
 - (a) a completed Form 45-110F1 *Offering Document* and a completed Form 45-110F2 *Risk Acknowledgement* made available to purchasers in accordance with this Instrument must be drawn up in French only or in French and English;
 - (b) a funding portal that has relied on the exemption in section 3 is a market participant determined by regulation for the purpose of section 151.1.1 of the *Securities Act* (chapter V-1.1); and
 - (c) a completed Form 45-110F1 *Offering Document* and materials that are made available to purchasers in accordance with this Instrument are documents authorized by the Autorité des marchés financiers for use in lieu of a prospectus.

PART 2

EXEMPTION FROM THE DEALER REGISTRATION REQUIREMENT

Exemption from dealer registration requirement

3. (1) A funding portal is exempt from the dealer registration requirement if the following apply:
 - (a) the funding portal is not registered under securities legislation in any jurisdiction of Canada;
 - (b) the funding portal does not advise a purchaser about the merits of an investment or recommend or represent that an eligible security is a suitable investment for the purchaser;
 - (c) the funding portal does not receive a commission, fee or other similar payment from a purchaser;
 - (d) the funding portal only facilitates or proposes to facilitate crowdfunding distributions;
 - (e) at least 30 days before the first date the funding portal facilitates a crowdfunding distribution, the funding portal delivered to the securities regulatory authority or regulator all of the following documents:

- (i) a completed Form 45-110F3 *Funding Portal Information* for the funding portal certified by an authorized individual of the funding portal;
 - (ii) a completed Form 45-110F4 *Portal Individual Information* for each principal of the funding portal that contains a certification signed by that principal;
- (f) the funding portal has its head office in Canada;
- (g) the funding portal has policies and procedures reasonably designed to prevent a person or company from accessing its platform unless the person or company acknowledges that the person or company is accessing a platform of a funding portal that:
- (i) is not a registered dealer under securities legislation in any jurisdiction of Canada, and
 - (ii) will not, and is not authorized to, provide advice about
 - (A) the suitability of any security for investment by the person or company, or
 - (B) the merits of any investment;
- (h) the following is disclosed on the funding portal's platform:
- (i) a statement that the funding portal is not registered in any capacity under securities legislation in any jurisdiction of Canada and is relying on the exemption in this Instrument from the dealer registration requirement;
 - (ii) a statement that the funding portal will hold each purchaser's assets
 - (A) separate and apart from the funding portal's own property,
 - (B) in trust for the purchaser, and
 - (C) in the case of cash, in a designated trust account at a Canadian financial institution; and
 - (iii) the policies and procedures that the funding portal will follow for notifying each purchaser if the funding portal becomes insolvent or discontinues operations, and how the funding portal will return the assets to the purchaser;
- (i) the funding portal holds each purchaser's assets
- (i) separate and apart from the funding portal's own property,
 - (ii) in trust for the purchaser, and

- (iii) in the case of cash, in a designated trust account at a Canadian financial institution;
- (j) the funding portal has policies and procedures for handling funds, in relation to a crowdfunding distribution, sufficient to provide reasonable assurance that the funding portal will comply with the conditions at paragraph 3(1)(i);
- (k) the funding portal does not close a crowdfunding distribution on its platform unless the funding portal receives, through the funding portal's platform, payment for the distribution of each eligible security from the purchaser of such security;
- (l) when an issuer provides the funding portal with its completed Form 45-110F1 *Offering Document* and a Form 45-110F2 *Risk Acknowledgement*, the funding portal has policies and procedures reasonably designed to make these documents available to each purchaser through its platform;
- (m) the funding portal has policies and procedures to prevent a purchaser from subscribing to a crowdfunding distribution unless the purchaser first completes the Form 45-110F2 *Risk Acknowledgement* and confirms that the purchaser has read and understands the issuer's completed Form 45-110F1 *Offering Document*;
- (n) the funding portal has policies and procedures for promptly notifying each purchaser of an issuer's crowdfunding distribution of
 - (i) any amendment to that issuer's completed Form 45-110F1 *Offering Document*, and
 - (ii) the purchaser's right to withdraw from the agreement to purchase the security by delivering a notice to the funding portal under paragraph 5(1)(j);
- (o) the funding portal has policies and procedures to return all funds to a purchaser within five business days of receiving a withdrawal notification under paragraph 5(1)(j) from the purchaser;
- (p) if an issuer has not raised the minimum offering amount by the 90th day after the issuer's completed Form 45-110F1 *Offering Document* is first made available on the funding portal's platform, or if an issuer notifies the funding portal that it is withdrawing its crowdfunding distribution, then no later than five business days after such occurrence, the funding portal
 - (i) notifies the issuer, and each purchaser of that issuer's crowdfunding distribution, that funds have been returned or are in the process of being returned, and
 - (ii) takes reasonable steps to return, or cause to be returned, all funds to each purchaser of that issuer's crowdfunding distribution;
- (q) if each two-day period in paragraph 5(1)(j) has elapsed, then the funding portal

- (i) releases, or causes to be released, all funds due to the issuer at the closing of the distribution, and
 - (ii) no later than fifteen days after the closing of the distribution
 - (A) notifies each purchaser that the funds have been released to the issuer, and
 - (B) provides the issuer with all information required to comply with the issuer's obligations in paragraph 5(2)(b);
 - (r) neither the funding portal, nor any of its principals, is or has been the subject of an order, judgment, decree, sanction, or administrative penalty imposed by, or has entered into a settlement agreement with, a government agency, administrative agency, self-regulatory organization, civil court, or administrative court in the last 10 years related to 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;
 - (s) neither the funding portal, nor any of its principals, is or has been a principal of an entity that is or has been subject to an order, judgment, decree, sanction, administrative penalty or a settlement agreement described in paragraph 3(1)(r);
 - (t) the funding portal has policies and procedures to promptly notify the securities regulatory authority or the regulator, and any purchasers for which it holds assets, of the process the funding portal will use to return the assets to these purchasers, in the event that the funding portal becomes insolvent or discontinues operations; and
 - (u) the funding portal is not insolvent.
- (2) A funding portal relying on the exemption in subsection 3(1) must:
- (a) maintain, for a period of eight years from the date a record is created, books and records at its head office that accurately record its financial affairs and client transactions, and demonstrate the extent of the funding portal's compliance with this Instrument;
 - (b) notify the securities regulatory authority or regulator of each change to the information previously submitted in a document referred to in paragraph 3(1)(e) by delivering an amendment to the document no later than 30 days after the change;
 - (c) take reasonable steps to confirm that the majority of the directors of the funding portal ordinarily reside in Canada;
 - (d) disclose on its platform, for each principal of the funding portal, the full legal name, municipality and jurisdiction of residence, business mailing and email address and business telephone number of each principal of the funding portal;

- (e) take reasonable steps to confirm that the head office of an issuer is in Canada before allowing that issuer to post a crowdfunding distribution on the funding portal's platform;
- (f) not allow a person or company to access the funding portal's platform unless the person or company acknowledges that the person or company is accessing a platform of a funding portal that:
 - (i) is not a registered dealer under securities legislation in any jurisdiction of Canada, and
 - (ii) will not, and is not authorized to, provide advice about
 - (A) the suitability of any security for investment by the person or company, or
 - (B) the merits of any investment;
- (g) not close a crowdfunding distribution on its platform unless the funding portal has made the applicable Form 45-110F1 *Offering Document* and Form 45-110F2 *Risk Acknowledgement* available to each purchaser through the funding portal's platform;
- (h) not close a crowdfunding distribution on its platform unless each purchaser completes the Form 45-110F2 *Risk Acknowledgement* and confirms that the purchaser has read and understands the issuer's completed Form 45-110F1 *Offering Document*;
- (i) upon receiving notice from an issuer that the issuer has amended its completed Form 45-110F1 *Offering Document*, promptly notify each purchaser of that issuer's crowdfunding distribution of
 - (i) the amendment; and
 - (ii) the purchaser's right to withdraw from the agreement to purchase the security by delivering a notice to the funding portal under paragraph 5(1)(j);
- (j) return all funds to a purchaser within five business days of receiving a withdrawal notification under paragraph 5(1)(j) from that purchaser;
- (k) deliver to the securities regulatory authority or regulator a completed Form 45-110F5 *Annual Working Capital Certification* within 10 days of the calendar year-end; and
- (l) upon becoming insolvent or discontinuing operations, promptly notify the securities regulatory authority or the regulator, and any purchasers for which it holds assets, of the process the funding portal will use to return the assets to these purchasers.

PART 3
REGISTERED PORTALS

4. (1) If an investment dealer or exempt market dealer operates a funding portal, the dealer must:
- (a) not close a crowdfunding distribution on its platform unless the dealer receives, through the funding portal's platform, payment for the distribution of each eligible security from the purchaser of such security;
 - (b) take reasonable steps to confirm that the head office of an issuer is in Canada before allowing that issuer to post a crowdfunding distribution on the funding portal's platform;
 - (c) not close a crowdfunding distribution on its platform unless the funding portal has made the applicable Form 45-110F1 *Offering Document* and Form 45-110F2 *Risk Acknowledgement* available to each purchaser through the funding portal's platform;
 - (d) not close a crowdfunding distribution on its platform unless each purchaser completes the Form 45-110F2 *Risk Acknowledgement* and confirms that the purchaser has read and understands the issuer's completed Form 45-110F1 *Offering Document*;
 - (e) upon receiving notice from an issuer that the issuer has amended its completed Form 45-110F1 *Offering Document*, promptly notify each purchaser of that issuer's crowdfunding distribution of
 - (i) the amendment, and
 - (ii) the purchaser's right to withdraw from the agreement to purchase the security by delivering a notice to the funding portal not later than midnight on the 2nd business day after the funding portal provides notice of the amendment;
 - (f) return all funds to a purchaser within five business days of receiving a withdrawal notification under paragraph 5(1)(j) from that purchaser;
 - (g) upon an issuer not raising the minimum offering amount by the 90th day after the issuer's completed Form 45-110F1 *Offering Document* is first made available on the funding portal's platform, or an issuer notifying the funding portal that it is withdrawing its crowdfunding distribution, no later than five business days after such occurrence
 - (i) notify the issuer, and each purchaser of that issuer's crowdfunding distribution, that funds have been returned or are in the process of being returned, and

- (ii) take reasonable steps to return, or cause to be returned, all funds to each purchaser of that issuer's crowdfunding distribution;
- (h) after each two-day period in paragraph 5(1)(j) has elapsed
 - (i) release, or cause to be released, all funds due to the issuer at the closing of the distribution, and
 - (ii) no later than fifteen days after the closing of the distribution
 - (A) notify each purchaser that the funds have been released to the issuer, and
 - (B) provide the issuer with all information required to comply with the issuer's obligations in paragraph 5(2)(b); and
 - (i) not allow a person or company to access the funding portal's platform, unless the person or company has acknowledged that the person or company is accessing a platform that
 - (i) is operated by an investment dealer or an exempt market dealer, as applicable, and
 - (ii) will provide advice about the suitability of the eligible security.

PART 4
EXEMPTION FROM PROSPECTUS REQUIREMENT FOR ISSUERS

Exemption from prospectus requirement for issuers

- 5. (1)** An issuer is exempt from the prospectus requirement in respect of a crowdfunding distribution if the following apply:
- (a) the distribution of and payment for the security is facilitated through a funding portal that is
 - (i) relying on the exemption set out in subsection 3(1), or
 - (ii) operated by an exempt market dealer or investment dealer;
 - (b) the purchaser purchases the security as principal;
 - (c) the issuer is not a reporting issuer in any jurisdiction of Canada or the equivalent in any foreign jurisdiction;
 - (d) the issuer is not an investment fund;
 - (e) the issuer has its head office in Canada;
 - (f) the security distributed is an eligible security of the issuer's own issue;

- (g) the aggregate gross proceeds raised by the issuer group in reliance on this section during the 12-month period before the closing of the crowdfunding distribution does not exceed \$1 000 000;
- (h) the issuer has completed a Form 45-110F1 *Offering Document* and provided it to the funding portal;
- (i) the crowdfunding distribution ends no later than the 90th day after the date the issuer's completed Form 45-110F1 *Offering Document* is made available on the funding portal's platform;
- (j) the issuer includes in the subscription agreement a term that the purchaser may withdraw from the agreement to purchase the security by delivering a notice of withdrawal to the funding portal not later than midnight on the 2nd business day after:
 - (i) the day on which the purchaser enters into the agreement, and
 - (ii) the day on which the funding portal notifies the purchaser of an amendment to the issuer's completed Form 45-110F1 *Offering Document*;
- (k) the issuer's completed Form 45-110F1 *Offering Document* discloses how the issuer intends to use the funds raised and the minimum offering amount required to close the crowdfunding distribution;
- (l) the issuer does not close the crowdfunding distribution until the issuer has raised the minimum offering amount stated in the issuer's completed Form 45-110F1 *Offering Document* either through subscriptions to the crowdfunding distribution or any concurrent distribution under one or more other exemptions from the prospectus requirement provided the funds are unconditionally available to the issuer;
- (m) no concurrent crowdfunding distribution is made by any member of the issuer group for the same purposes as described in the issuer's completed Form 45-110F1 *Offering Document*;
- (n) no commission, fee or similar payment is paid by the issuer to the issuer group, or any principal, employee or agent of a member of the issuer group with respect to the crowdfunding distribution;
- (o) no principal of the issuer group is a principal of the funding portal;
- (p) the issuer does not distribute to any one purchaser securities valued at more than
 - (i) subject to subparagraph (ii), \$2 500 or
 - (ii) if the purchaser has obtained advice from a registered dealer that the investment is suitable for the purchaser, \$5 000; and

- (q) the issuer does not intend to use the proceeds of the crowdfunding distribution to invest in, merge with, amalgamate with or acquire a business, or to purchase securities of one or more other issuers, that is not identified in the issuer's completed Form 45-110F1 *Offering Document*.

(2) An issuer relying on subsection 5(1) must

- (a) if the issuer becomes aware that its completed Form 45-110F1 *Offering Document* is not accurate, promptly
 - (i) advise the funding portal that the issuer's Form 45-110F1 is not accurate,
 - (ii) amend the Form 45-110F1 so that it is no longer inaccurate, and
 - (iii) provide the amended Form 45-110F1 to the funding portal;
- (b) within 30 days after the closing of the crowdfunding distribution, deliver to each purchaser
 - (i) a confirmation setting out the following:
 - (A) the date of subscription and the closing of the crowdfunding distribution;
 - (B) the quantity and description of the eligible security purchased;
 - (C) the price per eligible security paid by the purchaser;
 - (D) the total commissions, fees and any similar payments paid by the issuer to the funding portal in respect of the crowdfunding distribution; and
 - (ii) a copy of the issuer's completed Form 45-110F1 *Offering Document*.

Filing of distribution materials

- 6. An issuer that distributes a security under this Instrument must file both of the following documents no later than the 30th day after the closing of the crowdfunding distribution:
 - (a) the completed Form 45-110F1 *Offering Document*;
 - (b) a report of exempt distribution in accordance with Form 45-106F1 *Report of Exempt Distribution* of National Instrument 45-106 *Prospectus Exemptions*.

**PART 5
EXEMPTION**

Exemption

7. (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 Alberta and 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 6
COMING INTO FORCE**

Coming into force

8. (1) This Instrument comes into force on ●.
- (2) In Saskatchewan, despite subsection (1), if these regulations are filed with the Registrar of Regulations after [insert date], these regulations come into force on the day on which they are filed with the Registrar of Regulations.

ANNEX D

PROPOSED FORM 45-110F1 OFFERING DOCUMENT

GENERAL INSTRUCTIONS:

- (1) *This offering document is to be provided to your funding portal, which must make it available on its online platform. This offering document must not contain a misrepresentation. A misrepresentation means an untrue statement of material fact or an omission to state a material fact that is required to be stated, or necessary to prevent a statement that is made from being false or misleading in the circumstances in which it was made. If the information contained in this offering document is no longer accurate and contains a misrepresentation, you must immediately notify the funding portal, amend the offering document and provide the new version to the funding portal.*
- (2) *An issuer relying on the start-up crowdfunding prospectus exemption must file this offering document, and all amendments to it, in the jurisdictions where the issuer has made a crowdfunding distribution, as well as in the province or territory where the issuer's head office is located.*

The offering document is required to be filed no later than the 30th day after the closing of the distribution.
- (3) *This offering document must be completed and certified by an authorized individual on behalf of the issuer.*
- (4) *Draft this offering document so that it is easy to read and understand. Be concise and use clear, plain language. Avoid technical terms.*
- (5) *Conform as closely as possible to the format set out in this form. Address the items in the order set out below. No variation of headings, numbering or information set out in the form is allowed and all are to be displayed as shown.*

Item 1: RISKS OF INVESTING

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

- 1.2 Include the following statement, in bold type, if the issuer provides forward-looking statements:

“The forecasts and predictions of an early-stage business are difficult to objectively analyze or confirm. Forward-looking statements represent the opinion of the issuer only and may not prove to be reasonable.”

Item 2: THE ISSUER

2.1 Provide the following information for the issuer:

- (a) Full legal name as it appears in the issuer’s articles of incorporation, limited partnership agreement or other organizing documents, as the case may be,
- (b) Head office address,
- (c) Telephone,
- (d) Email address, and
- (e) Website URL.

Instructions: The head office is generally where the people managing the issuer, including the CEO, maintain their offices. This may be the same as, or different from, the registered office address, depending on the legal structure of the issuer. The address of the head office should be a physical address and not a post office (P.O.) box.

2.2 Provide the following information for a contact person of the issuer who is able to answer questions from purchasers and the securities regulatory authority or regulator:

- (a) Full legal name (first name, middle name and last name),
- (b) Position held with the issuer,
- (c) Business address,
- (d) Business telephone, and
- (e) Email address.

Item 3: ISSUER’S BUSINESS

3.1 Describe the issuer’s business. Provide details about the issuer’s industry and operations. Provide enough details for an investor to clearly understand what the issuer does or intends to do.

Instructions:

(1) Consider the following:

- *Does or will the issuer build, design or develop something? Sell something produced by others? Provide a service? What makes the issuer's business special and different from other competitors in the industry?*
- *What milestones has the issuer already reached and hopes to achieve in the next couple years? E.g., Complete testing? Find a manufacturer? Commence a marketing campaign? Buy inventory? What is the proposed timeline for achieving each of the milestones?*
- *What are the major hurdles that the issuer expects to face in achieving its milestones?*
- *How are the funds raised from this financing expected to help the issuer advance its business and achieve one or more of the milestones?*
- *Has the issuer entered any contracts that are important to its business?*
- *Has the issuer conducted any operations yet?*
- *Where does the issuer see its business in three, five and ten years?*
- *What are the issuer's future plans and hopes for its business and how does it plan to get there?*
- *What is the issuer's management experience in running a business or in the same industry?*
- *Does the issuer have business premises from which it can operate its business?*
- *How many employees does the issuer have? Need?*

(2) *An issuer describing its business must not refer to a measure of financial performance, financial position or cash flow in the offering document unless (i) the issuer has made financial statements available for the most recently completed financial year, and (ii) the measure referred to in the offering document is an amount presented in the financial statements or is reconciled to an amount presented in the financial statements.*

3.2 Describe the legal structure of the issuer and indicate the jurisdiction where the issuer is incorporated or organized.

Instructions: Indicate whether the issuer is a corporation, a limited partnership, a general partnership or other. Also, indicate the province, territory or state where the issuer is incorporated or organized.

3.3 Indicate where the issuer's articles of incorporation, limited partnership agreement, shareholder agreement or similar document are available for purchasers to review.

Instruction: You may provide online access to these documents for investors.

3.4 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,

3.5 Indicate whether the issuer has financial statements available. If yes, include the following statement, in bold type:

“Information for purchasers: If you receive financial statements from an issuer conducting a crowdfunding distribution, you should know that those financial statements have not been provided to or reviewed by a securities regulatory authority or regulator. They are not part of this offering document. You should also consider seeking advice of an accountant or an independent financial adviser about the information in the financial statements.”

Instructions:

- (1) Any financial statements made available in connection with the start-up crowdfunding distribution must be prepared in accordance with Canadian GAAP. These financial statements must present the issuer's results of operations for its most recently completed financial year.*
- (2) If an auditor has issued an auditor's report on the financial statements, they must be included with the financial statements. If the financial statements were not audited, the issuer must label the financial statements as unaudited.*

3.6 Describe the number and type of securities of the issuer outstanding as at the date of the offering document. If there are securities outstanding other than the eligible securities being offered, please describe those securities.

Item 4: MANAGEMENT

4.1 Provide the information in the following table for each founder, director, officer and control person of the issuer:

Full legal name, municipality of residence and position at issuer	Principal occupation for the last five years	Expertise, education, and experience that is relevant to the issuer's business	Number and type of securities of the issuer owned	Date securities were acquired and price paid for the securities	Percentage of the issuer's securities held as of the date of this offering document

4.2 Provide the name of the person involved and details on the time, nature and the outcome of the proceedings for each of the persons listed in item 4.1 and the issuer who, 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, or
 - (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, or has entered into a settlement agreement with, 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:
 - (i) the person's involvement in any securities, insurance or banking activity, or
 - (ii) 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,
- (c) is or has been the subject of an order, judgment, decree, sanction or administrative penalty imposed by a discipline committee, professional order or administrative court of Canada or a foreign jurisdiction in the last ten years related to any professional misconduct,
- (d) is or has ever been the subject of a bankruptcy or insolvency proceeding,
- (e) is a director, officer, founder or control person of an entity that is or has been subject to a proceeding described in paragraphs (a), (b), (c) or (d) above.

Instructions: A quasi-criminal offence includes offences under the Income Tax Act (R.S.C. 1985, c. 1 (5th Suppl.)), the Immigration and Refugee Protection Act (R.S.C., 2001, c. 27) or the tax, immigration,

drugs, firearms, money laundering or securities legislation of any province or territory of Canada or foreign jurisdiction.

Item 5: CROWDFUNDING DISTRIBUTION

5.1 Provide the name of the funding portal the issuer is using to conduct its crowdfunding distribution. If the issuer is using a funding portal that is operated by a registered dealer, it must also provide the name of the registered dealer.

Instruction: The offering document can only be posted on one funding portal.

5.2 Indicate all the jurisdictions (Canadian provinces and territories) where the issuer intends to raise funds and make this offering document available.

- | | | |
|---|--|---|
| <input type="checkbox"/> Alberta | <input type="checkbox"/> Newfoundland and Labrador | <input type="checkbox"/> Ontario |
| <input type="checkbox"/> British Columbia | <input type="checkbox"/> Northwest Territories | <input type="checkbox"/> Prince Edward Island |
| <input type="checkbox"/> Manitoba | <input type="checkbox"/> Nova Scotia | <input type="checkbox"/> Québec |
| <input type="checkbox"/> New Brunswick | <input type="checkbox"/> Nunavut | <input type="checkbox"/> Saskatchewan |
| | | <input type="checkbox"/> Yukon |

5.3 Provide the following information with respect to the crowdfunding distribution:

- (a) the date before which the issuer must have raised the minimum offering amount for the closing of the distribution (no later than 90 days after the date this offering document is first made available on the funding portal); and
- (b) the date(s) and description of any amendment(s) made to this offering document, if any.

Instruction: An amendment to the offering document cannot modify the date in (a).

5.4 Indicate the type of eligible securities offered.

- Common shares
- Non-convertible preference shares
- Securities convertible into common shares
- Securities convertible into non-convertible preference shares
- Non-convertible debt linked to a fixed interest rate
- Non-convertible debt linked to a floating interest rate
- Limited partnership units

5.5 The securities offered have the following rights, restrictions and conditions:

- Voting rights
- Dividends or interests (describe any right to receive dividends or interest)
- Rights on dissolution
- Conversion rights (describe what each security is convertible into)
- Tag-along rights
- Drag-along rights
- Pre-emptive rights
- Other (describe the rights).

Instructions: This information is usually found in the organizing documents referred to in item 3.3.

5.6 Provide a brief summary of any other material restrictions or conditions that attach to the eligible securities being offered, such as tag-along, drag along or pre-emptive rights.

Instructions: The restrictions and conditions to be described here are generally found in by-laws, shareholder’s agreements or limited partnership agreements.

5.7 In a table, provide the following information:

	Total amount (\$)	Total number of securities issuable
Minimum offering amount		
Maximum offering amount		
Price per security		

5.8 Indicate the minimum investment amount per purchaser, or if the issuer has not set a minimum investment amount, state that.

5.9 Include the following statement, in bold type:

“Note: The minimum offering amount stated in this offering document may be satisfied with funds that are unconditionally available to [insert name of issuer] that are raised using other prospectus exemptions.”

Item 6: USE OF FUNDS

6.1 Provide the following information on the funds previously raised by the issuer:

- (a) The amount of funds previously raised;

- (b) How the issuer raised those funds;
- (c) If the funds were raised by issuing securities, the prospectus exemption that the issuer relied on to issue those securities; and
- (d) How the issuer used those funds.

If the issuer has not previously raised funds, state this fact.

6.2 Using the following table, provide a detailed breakdown of how the issuer will use the funds from this crowdfunding distribution. If any of the funds will be paid directly or indirectly to a founder, director, officer or control person of the issuer, disclose in a note to the table the name of the person, the relationship to the issuer and the amount. If more than 10% of the available funds will be used by the issuer to pay debt and the issuer incurred the debt within the two preceding financial years, describe why the debt was incurred.

Description of intended use of funds listed in order of priority	Assuming minimum offering amount	Assuming maximum offering amount

Item 7: PREVIOUS CROWDFUNDING DISTRIBUTIONS

7.1 For each crowdfunding distribution in which the issuer group and each founder, director, officer and control person of the issuer group have been involved in the past five years, provide the information below:

- (a) the full legal name of the issuer that made the distribution,
- (b) the name of the funding portal, and
- (c) whether the distribution successfully closed, was withdrawn by the issuer or did not close because the minimum offering amount was not reached and the date on which any of these occurred.

Instruction: Provide the information for all previous crowdfunding distributions involving the issuer group and each founder, director, officer and control person of the issuer group, even if the previous crowdfunding distribution was made by an issuer that is not part of the issuer group.

Item 8: COMPENSATION PAID TO FUNDING PORTAL

Provide a description of each commission, fee and any other amounts expected to be paid by the issuer to the funding portal for this crowdfunding distribution and the estimated amount to be paid. If a commission is being paid, indicate the percentage that the commission will represent of the gross proceeds of the offering assuming both the minimum and maximum offering amount.

Item 9: RISK FACTORS

- 9.1 Describe in order of importance, starting with the most important, the risk factors material to the issuer that a reasonable investor would consider important in deciding whether to buy the issuer's securities.
- 9.2 If the securities being distributed are to pay interest, dividends or distributions and the issuer does not have the financial resources to make such payments, (other than from the sale of securities) state in bold type:

“We do not currently have the financial resources to pay [interest, dividends or distributions] to investors. There is no assurance that we will ever have the financial resources to do so.”

Item 10: REPORTING OBLIGATIONS

- 10.1 Describe the nature and frequency of any disclosure of information the issuer intends to provide to purchasers after the closing of the distribution and explain how purchasers can access this information.
- 10.2 If the issuer is required by corporate legislation, its constating documents (e.g., articles of incorporation or by-laws) or otherwise to provide either or both of annual financial statements or an information circular/proxy statements to its security holders, state that fact.
- 10.3 If the issuer is aware, after making due inquiries, of any existing voting trust agreement among certain shareholders of the issuer, provide the information below:
- (a) the number of shareholders party to the agreement,
 - (b) the percentage of voting shares of the issuer subject to the agreement,
 - (c) the name of the person acting as a trustee,
 - (d) whether the trustee has been granted any additional powers, and
 - (e) whether the agreement is limited to a specified period of time.

Item 11: RESALE RESTRICTIONS

11.1 Include the following statement, in bold type:

“The securities you are purchasing are subject to a resale restriction. You may never be able to resell the securities.”

Item 12: PURCHASERS’ RIGHTS

12.1 Include the following statement, in bold type:

“Rights of Action in the Event of a Misrepresentation

If there is a misrepresentation in this offering document, you have a right to sue:

- (a) [name of issuer or other term used to refer to issuer] to cancel your agreement to buy these securities, or**
- (b) for damages against [name of issuer or other term used to refer to issuer] and may, in certain jurisdictions, have the statutory right to sue other persons.**

This right to sue is available to you whether or not you relied on the misrepresentation. However, there are various defenses available to the persons or companies that you have a right to sue. In particular, they have a defense if you knew of the misrepresentation when you purchased the securities.

If you intend to rely on the rights described in (a) or (b) above, you must do so within strict time limitations.

Two-day cancellation right

You can cancel your agreement to purchase these securities. To do so, you must send a notice to the funding portal not later than midnight on the second business day after you enter into the agreement. If there is an amendment to this offering document, you can cancel your agreement to purchase these securities by sending a notice to the funding portal not later than midnight on the second business day after the funding portal provides you notice of the amendment.”

Item 13: DATE AND CERTIFICATE

13.1 Include the following statement, in bold type:

“This offering memorandum does not contain a misrepresentation.”

13.2 Provide the signature, date of the signature, name and position of the authorized individual certifying this offering document.

13.3 If this offering document is signed electronically, include the following statement, in bold type:

“I acknowledge that I am signing this offering document electronically and agree that this is the legal equivalent of my handwritten signature.”

ANNEX E

**PROPOSED FORM 45-110F2
RISK ACKNOWLEDGEMENT**

Issuer Name:

Type of Eligible Security offered:

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
1. Risk acknowledgment		
Risk of loss – 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"/>
No income – Do you understand that you may not earn any income, such as dividends or interest, on this investment?	<input type="checkbox"/>	<input type="checkbox"/>
Liquidity risk – Do you understand that you may never be able to sell this investment?	<input type="checkbox"/>	<input type="checkbox"/>
Lack of information – Do you understand that you may not be provided with any ongoing information about the issuer and/or this investment?	<input type="checkbox"/>	<input type="checkbox"/>
2. No approval and no advice <i>[Instructions: Delete “no advice” if the funding portal is operated by a registered dealer.]</i>		
No approval – Do you understand that this investment has not been reviewed or approved in any way by a securities regulator?	<input type="checkbox"/>	<input type="checkbox"/>
No advice – Do you understand that you will not receive advice about your investment? <i>[Instructions: Delete if the funding portal is operated by a registered dealer.]</i>	<input type="checkbox"/>	<input type="checkbox"/>

	Yes	No
3. Limited legal rights		
<p>Limited legal rights – Do you understand that you will not have the same rights as if you purchased under a prospectus or through a stock exchange?</p> <p>If you want to know more, you may need to seek professional legal advice.</p>	<input type="checkbox"/>	<input type="checkbox"/>
4. Purchaser’s acknowledgement		
<p>Investment risks – Have you read this form and do you understand the risks of making this investment?</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Offering document – Has an offering document relating to this investment been made available to you on the funding portal?</p> <p>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. You should retain a copy of the offering document for your records.</p> <p>Have you read and do you understand the information in the offering document?</p>	<input type="checkbox"/>	<input type="checkbox"/>
First and last name:		
<p>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.</p>		
5. Additional information		
<ul style="list-style-type: none"> ▪ You have two days to cancel your purchase by sending a notice to the funding portal at: <i>[Instructions: Provide email address where purchasers can send their notice. Describe any other manner for purchasers to cancel their purchase.]</i> ▪ If you want more information about your local securities regulation, go to www.securities-administrators.ca. Securities regulators do not provide advice on investment. ▪ To check if the funding portal is operated by a registered dealer, go to www.aretheyregistered.ca <i>[Instructions: Delete if the funding portal is not operated by a registered dealer.]</i> 		

ANNEX F

PROPOSED FORM 45-110F3 FUNDING PORTAL INFORMATION

GENERAL INSTRUCTIONS:

Complete and deliver this form with any attachments and all corresponding Forms 45-110F4 Portal Individual Information to the securities regulatory authority or regulator of each of the jurisdictions where the funding portal facilitates or intends to facilitate a crowdfunding distribution.

For information on how to submit the form and other information relevant to funding portals, please refer to the Start-up Crowdfunding Guide for Funding Portals available on the website of the securities regulatory authority or regulator of the jurisdictions.

FUNDING PORTAL INFORMATION

1. Provide the following information regarding the funding portal:

- (a) Full legal name of the funding portal as it appears on the funding portal's organizing documents;
- (b) Name that the funding portal will be operating under;
- (c) Website URL;
- (d) Telephone;
- (e) E-mail address;
- (f) Head office address;
- (g) Jurisdiction where the head office is located (check).

- | | | |
|---|--|---|
| <input type="checkbox"/> Alberta | <input type="checkbox"/> Newfoundland and Labrador | <input type="checkbox"/> Ontario |
| <input type="checkbox"/> British Columbia | <input type="checkbox"/> Northwest Territories | <input type="checkbox"/> Prince Edward Island |
| <input type="checkbox"/> Manitoba | <input type="checkbox"/> Nova Scotia | <input type="checkbox"/> Québec |
| <input type="checkbox"/> New Brunswick | <input type="checkbox"/> Nunavut | <input type="checkbox"/> Saskatchewan |
| | | <input type="checkbox"/> Yukon |

2. Provide the following information regarding the contact person for the funding portal:

- (a) Full legal name (first name, middle name and last name);

- (b) Business address;
- (c) Telephone;
- (d) E-mail address.

3. Provide the following information regarding each founder, director, officer and control person of the funding portal. If necessary, use an attachment signed and dated by the authorized individual certifying this form. Please refer to the *Start-up Crowdfunding Guide for Funding Portals* available on the website of the securities regulatory authority or regulator of the jurisdictions for the meaning of “founder”, “director”, “officer” and “control person”.

- (a) Full legal name (first name, middle name and last name);
- (b) Position(s) held.

4. Indicate each jurisdiction where the funding portal is delivering this form. The funding portal must deliver this form in each jurisdiction where it facilitates or intends to facilitate crowdfunding distributions.

- | | | |
|---|--|---|
| <input type="checkbox"/> Alberta | <input type="checkbox"/> Newfoundland and Labrador | <input type="checkbox"/> Ontario |
| <input type="checkbox"/> British Columbia | <input type="checkbox"/> Northwest Territories | <input type="checkbox"/> Prince Edward Island |
| <input type="checkbox"/> Manitoba | <input type="checkbox"/> Nova Scotia | <input type="checkbox"/> Québec |
| <input type="checkbox"/> New Brunswick | <input type="checkbox"/> Nunavut | <input type="checkbox"/> Saskatchewan |
| | | <input type="checkbox"/> Yukon |

5. Provide the date the funding portal expects to begin to facilitate crowdfunding distributions in the jurisdictions named in item 4 above.

6. If the funding portal is already relying on National Instrument 45-110 *Start-up Crowdfunding Registration and Prospectus Exemptions* in any jurisdiction, provide the name(s) of the jurisdiction(s) and the date the Funding Portal Information Form was delivered to the securities regulatory authority or regulator.

LEGAL STRUCTURE AND CONSTATING DOCUMENTS

7. Indicate the legal structure of the funding portal.

- Sole proprietorship
- Partnership
- Limited partnership (Provide the name of the general partner)
- Corporation

Other (Specify)

8. Attach the funding portal's organizing documents, for example, the funding portal's articles and certificate of incorporation, any articles of amendments, partnership agreement or declaration of trust. If the funding portal is a sole proprietorship, provide a copy of the registration of trade name. The attachment must be signed and dated by the authorized individual certifying this form.
9. Attach a chart showing the funding portal's structure and ownership. At a minimum, include all parents, affiliates and subsidiaries. Include the name of the person or company, and class, type, amount and voting percentage of ownership of the firm's securities. The attachment must be signed and dated by the authorized individual certifying this form.

BUSINESS ACTIVITIES

10. Provide a description of following:

- (a) the proposed business activities of the funding portal;
- (b) the marketing strategy of the funding portal;
- (c) the target issuers, including their sectors;
- (d) the key risks you identify in operating your funding portal.

CRIMINAL DISCLOSURE

11. Has the funding portal ever been found guilty, pleaded no contest to, or been granted an absolute or conditional discharge from:

- (a) a summary conviction or indictable offence under the *Criminal Code* (R.S.C., 1985, c. C-46) (Canada),
- (b) a quasi-criminal offence in any jurisdiction of Canada or a 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.

Yes No

If yes, provide complete details in an attachment signed and dated by the authorized individual certifying this form, including the circumstances, relevant dates, names of the parties involved and final disposition, if known. Consider all time periods.

Instructions: A quasi-criminal offence includes offences under the Income Tax Act (R.S.C. 1985, c. 1 (5th Suppl.)), the Immigration and Refugee Protection Act (R.S.C., 2001, c. 27) or the tax, immigration, drugs, firearms, money laundering or securities legislation of any province or territory of Canada or foreign jurisdiction.

12. Are there any outstanding or stayed charges against the funding portal alleging a criminal offence that was committed?

Yes No

If yes, provide complete details in an attachment signed and dated by the authorized individual certifying this form, including the circumstances, relevant dates, names of the parties involved and final disposition, if known. Consider all time periods.

CIVIL DISCLOSURE

13. Has the funding portal been the subject of an order (cease trade or otherwise), judgment, decree, sanction, or administrative penalty imposed by, or has entered into a settlement agreement with, a government agency, administrative agency, self-regulatory organization, civil court, or administrative court of Canada or a foreign jurisdiction in the last 10 years related to 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 in Canada or a foreign jurisdiction related to its involvement in any type of securities, derivatives, insurance or banking activity.

Yes No

If yes, provide complete details in an attachment signed and dated by the authorized individual certifying this form, including the circumstances, relevant dates, names of the parties involved and final disposition, if known. Consider all time periods.

14. Are there currently any outstanding civil actions alleging fraud, theft, deceit, misrepresentation, or similar misconduct against the funding portal?

Yes No

If yes, provide complete details in an attachment signed and dated by the authorized individual certifying this form, including the circumstances, relevant dates, names of the parties involved and final disposition, if known. Consider all time periods.

PROCESS AND PROCEDURE FOR HANDLING OF FUNDS

15. Provide details and attach in an attachment that is signed and dated by the authorized individual certifying this form the relevant documents on the process and procedure for handling all funds in relation to the crowdfunding distribution in a designated trust account at a Canadian financial institution, including:
- (a) the name of the Canadian financial institution the funding portal will use with the designated trust account number;
 - (b) the names of the signatories on this account and their role with the funding portal;
 - (c) details of how the funds held in this account will be separate and apart from the funding portal's own property;
 - (d) a copy of the trust agreement, or details surrounding the establishment of this account. If the funding portal does not have a trust agreement or an account, please explain;
 - (e) details regarding how funds will flow:
 - i. from purchasers to the funding portal's account;
 - ii. from the funding portal's account to the issuer in the event that the crowdfunding distribution closes; and
 - iii. from the funding portal's account back to the purchasers in the event that the crowdfunding distribution does not close or the purchaser has exercised their right of withdrawal.

COLLECTION AND USE OF INFORMATION

The information required under this form is collected, used and disclosed by the securities regulatory authority or, where applicable, regulator of the jurisdictions under the authority granted in securities legislation for the purposes of the administration and enforcement of the securities legislation.

By submitting this form, the funding portal:

- acknowledges that the securities regulatory authority or regulator may collect personal information about the individuals referred to in this form or information about the funding portal,

- confirms that the individuals referred to in this form have been notified that their personal information is disclosed on this form, the legal reason for doing so, how it will be used and who to contact for more information, and
- consents to the posting on the website of the securities regulatory authority or regulator of:
 - i. the name that the funding portal will be operating under,
 - ii. the website address for the funding portal, and
 - iii. the funding portal's reliance on a dealer registration exemption.

If you have any questions about the collection and use of this information, contact the securities regulatory authority or regulator in any jurisdiction in which this form is delivered. Contact information is listed at the end of this form.

CERTIFICATION

By signing this form, the funding portal:

- undertakes to comply with all of the applicable conditions set out in National Instrument 45-110 *Start-up Crowdfunding Registration and Prospectus Exemptions*;
- certifies that its platform is complete, ready for viewing in a test environment and designed to comply with the applicable conditions set out in National Instrument 45-110 *Start-up Crowdfunding Registration and Prospectus Exemptions*;
- certifies that it has sufficient financial resources to continue its operations for at least the next 12 months; and
- acknowledges that the securities regulatory authority or regulator of a jurisdiction may access the books and records relating to the carrying on of its activities and may conduct a compliance review.

On behalf of the funding portal, I certify that the statements made in this form including any attachments are true and complete.

Full legal name of
funding portal:

Signature of
authorized individual:

Date:

Print name of
authorized individual:

Position held:

Telephone:

E-mail:

IT IS AN OFFENCE TO MAKE A MISREPRESENTATION IN THIS FORM

Contact information:

<p>Alberta The Alberta Securities Commission Suite 600, 250-5th Street SW Calgary, Alberta T2P 0R4 Telephone: 403-297-6454 E-mail: registration@asc.ca www.asc.ca</p>	<p>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 E-mail: nssc.crowdfunding@novascotia.ca nssc.novascotia.ca</p>
<p>British Columbia British Columbia Securities Commission P.O. Box 10142, Pacific Centre 701 West Georgia Street Vancouver, British Columbia V7Y 1L2 Telephone: 604-899-6854 Toll free in Canada: 1-800-373-6393 E-mail: portal@bcsc.bc.ca www.bcsc.bc.ca</p>	<p>Ontario Ontario Securities Commission 20 Queen Street West, 22nd Floor Toronto, Ontario M5H 3S8 Toll free: 1-877-785-1555 E-mail: inquiries@osc.gov.on.ca www.osc.ca OSC Electronic Filing Portal https://eforms1.osc.gov.on.ca/e-filings/generic/form.do?token=ec7a3cb6-d86d-419d-9c11-f1febe403cb6</p>
<p>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 E-mail: exemptions.msc@gov.mb.ca www.mbsecurities.ca</p>	<p>Québec Autorité des marchés financiers Direction de l'encadrement des intermédiaires 800, rue du Square-Victoria, 4th 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 E-mail: financement-participatif@lautorite.qc.ca www.lautorite.qc.ca</p>
<p>New Brunswick Financial and Consumer Services Commission 85 Charlotte Street, Suite 300 Saint John, New Brunswick E2L 2J2 Toll free: 1-866-933-2222 E-mail: emf-md@fcnb.ca www.fcnb.ca</p>	<p>Saskatchewan Financial and Consumer Affairs Authority of Saskatchewan Securities Division Suite 601 – 1919 Saskatchewan Drive Regina, Saskatchewan S4P 4H2 Telephone: 306-787-5645 E-mail: registrationfcaa@gov.sk.ca www.fcaa.gov.sk.ca</p>

ANNEX G

PROPOSED FORM 45-110F4 PORTAL INDIVIDUAL INFORMATION

GENERAL INSTRUCTIONS:

Complete and deliver this form with any attachments and the corresponding Form 45-110F3 Funding Portal Information to the securities regulatory authority or regulator of each jurisdiction where the funding portal facilitates or intends to facilitate a crowdfunding distribution.

The information provided on this form should be specific to the individual certifying this form.

For information on how to submit the form and other relevant information, please refer to the Start-up Crowdfunding Guide for Funding Portals available on the website of the securities regulatory authority or regulator of the jurisdictions.

FUNDING PORTAL INFORMATION

1. Provide the full legal name of the funding portal as it appears on the funding portal's organizing documents.
2. Provide the name that the funding portal will be operating under.
3. Indicate the position(s) you hold with the funding portal.

INDIVIDUAL INFORMATION

4. Full legal name:

First name

Middle name(s)

Last name

5. Are you currently, or have you ever been, known by any name(s) other than your full legal name stated above, for example nicknames or names due to marriage?

Yes No

If yes, provide details.

6. Telephone and e-mail address:

Residential:	()	Mobile:	
Business:	()	E-mail:	

7. Provide all residential addresses for the past five years starting with your current residential address.

Number, street, city, province, territory or state, country and postal/ZIP code	From		To	
	MM	YYYY	MM	YYYY

8. If you are not a resident of Canada, you must have one address for service of process in Canada and provide the following information:

Name of agent for service:	
Name of contact person:	
Address for service:	
Telephone:	

9. Date and place of birth:

Date of birth			Place of birth		
MM	DD	YYYY	City	Province/Territory/State	Country

10. Country of citizenship: _____

11. Are you currently or have you ever been registered or licensed in any capacity with any Canadian securities regulatory authority or regulator, or with any other professional or regulatory entity?

Yes No

If yes, provide your licence/ registration type, name of the entity, and the start date and ending date, if applicable:

12. Have you ever been dismissed for cause by an employer from a position following allegations that you:

- (a) violated any statutes, regulations, rules or standards of conduct;
- (b) failed to appropriately supervise compliance with any statutes, regulations, rules or standards of conduct; or
- (c) committed fraud or the wrongful taking of property, including theft?

Yes No

If yes, provide complete details in an attachment signed and dated by the authorized individual certifying this form, including the circumstances, relevant dates, names of the parties involved and final disposition, if known. Consider all time periods.

CRIMINAL DISCLOSURE

13. Have you ever been found guilty, pleaded no contest to, or been granted an absolute or conditional discharge from:

- (a) a summary conviction or indictable offence under the *Criminal Code* (R.S.C., 1985, c. C-46) (Canada),
- (b) a quasi-criminal offence in any jurisdiction of Canada or a 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.

Yes No

If yes, provide complete details in an attachment signed and dated by the authorized individual certifying this form, including the circumstances, relevant dates, names of the parties involved and final disposition, if known. Consider all time periods.

Instructions: A quasi-criminal offence includes offences under the Income Tax Act (R.S.C. 1985, c. 1 (5th Suppl.)), the Immigration and Refugee Protection Act (R.S.C., 2001, c. 27) or the tax, immigration, drugs, firearms, money laundering or securities legislation of any province or territory of Canada or foreign jurisdiction.

14. Are there any outstanding or stayed charges against you alleging a criminal offence that was committed?

Yes No

If yes, provide complete details in an attachment signed and dated by the authorized individual certifying this form, including the circumstances, relevant dates, names of the parties involved and final disposition, if known. Consider all time periods.

15. To the best of your knowledge, are there any outstanding or stayed charges against any entity of which you were, at the time the criminal offence was alleged to have taken place, a founder, director, officer or control person?

Yes No

If yes, provide complete details in an attachment signed and dated by the authorized individual certifying this form, including the circumstances, relevant dates, names of the parties involved and final disposition, if known. Consider all time periods.

16. To the best of your knowledge, has any entity, when you were a founder, director, officer or control person, ever been found guilty, pleaded no contest to or been granted an absolute or conditional discharge from a criminal offence that was committed?

Yes No

If yes, provide complete details in an attachment signed and dated by the authorized individual certifying this form, including the circumstances, relevant dates, names of the parties involved and final disposition, if known. Consider all time periods.

CIVIL DISCLOSURE

17. Have you or an entity of which you are or were a founder, director, officer or control person been the subject of an order (cease trade or otherwise), judgment, decree, sanction, or administrative penalty imposed by, or entered into a settlement agreement with, a government agency, administrative agency, self-regulatory organization, civil court, or administrative court of Canada or a foreign jurisdiction in the last 10 years related to 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 in Canada or a foreign jurisdiction related to your involvement in any type of securities, derivatives, insurance or banking activity.

Yes No

If yes, provide complete details in an attachment signed and dated by the authorized individual certifying this form, including the circumstances, relevant dates, names of the parties involved and final disposition, if known. Consider all time periods.

18. Are there currently any outstanding civil actions alleging fraud, theft, deceit, misrepresentation, or similar misconduct against you or an entity of which you are or were a founder, director, officer or control person?

Yes No

If yes, provide complete details in an attachment signed and dated by the authorized individual certifying this form, including the circumstances, relevant dates, names of the parties involved and final disposition, if known. Consider all time periods.

COLLECTION AND USE OF PERSONAL INFORMATION

The personal information required under this form is collected, used and disclosed by the securities regulatory authority or, where applicable, regulator of the jurisdictions under the authority granted in securities legislation for the purposes of the administration and enforcement of the securities legislation.

By submitting this form, you consent to the collection, use and disclosure of this personal information by the securities regulatory authority or regulator of each jurisdiction and any police records, records from other government or non-governmental regulators or self-regulatory

organizations, credit records and employment records about you that the securities regulatory authority or regulator may need to determine the completeness of the information submitted in this form and compliance with the conditions of the start-up crowdfunding registration and prospectus exemptions. The securities regulatory authority or regulator may contact government and private bodies or agencies, individuals, corporations and other organizations for information about you.

If you have any questions about the collection and use of this information, contact the securities regulatory authority or regulator of any jurisdiction in which this form is delivered. Contact information is listed at the end of this form.

CERTIFICATION

By submitting this form, I:

- certify that the statements made in this form including any attachments are true and complete, and
- agree to be subject to the securities legislation of each jurisdiction of Canada where I have submitted this form. This includes the jurisdiction of any tribunals or any proceedings that relate to my activities as a founder, director, officer or control person of a funding portal under applicable securities legislation.

Signature: _____ Date: _____
Print name: _____
Position held: _____

IT IS AN OFFENCE TO MAKE A MISREPRESENTATION IN THIS FORM

Contact information:

<p>Alberta The Alberta Securities Commission Suite 600, 250-5th Street SW Calgary, Alberta T2P 0R4 Telephone: 403-297-6454 E-mail: registration@asc.ca www.asc.ca</p>	<p>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 E-mail: nssc.crowdfunding@novascotia.ca nssc.novascotia.ca</p>
<p>British Columbia British Columbia Securities Commission P.O. Box 10142, Pacific Centre 701 West Georgia Street Vancouver, British Columbia V7Y 1L2 Telephone: 604-899-6854 Toll free in Canada: 1-800-373-6393 E-mail: portal@bcsc.bc.ca www.bcsc.bc.ca</p>	<p>Ontario Ontario Securities Commission 20 Queen Street West, 22nd Floor Toronto, Ontario M5H 3S8 Toll free: 1-877-785-1555 E-mail: inquiries@osc.gov.on.ca www.osc.ca OSC Electronic Filing Portal https://eforms1.osc.gov.on.ca/e-filings/generic/form.do?token=ec7a3cb6-d86d-419d-9c11-f1febe403cb6</p>
<p>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 E-mail: exemptions.msc@gov.mb.ca www.mbsecurities.ca</p>	<p>Québec Autorité des marchés financiers Direction de l'encadrement des intermédiaires 800, rue du Square-Victoria, 4th 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 E-mail: financement-participatif@lautorite.qc.ca www.lautorite.qc.ca</p>
<p>New Brunswick Financial and Consumer Services Commission 85 Charlotte Street, Suite 300 Saint John, New Brunswick E2L 2J2 Toll free: 1-866-933-2222 E-mail: emf-md@fcnb.ca www.fcnb.ca</p>	<p>Saskatchewan Financial and Consumer Affairs Authority of Saskatchewan Securities Division Suite 601 – 1919 Saskatchewan Drive Regina, Saskatchewan S4P 4H2 Telephone: 306-787-5645 E-mail: registrationfcaa@gov.sk.ca www.fcaa.gov.sk.ca</p>

ANNEX H

**PROPOSED FORM 45-110F5
ANNUAL WORKING CAPITAL CERTIFICATION**

The funding portal certifies that it has sufficient working capital to continue its operations for at least the next 12 months.

On behalf of the funding portal, I certify that the statement made in this form is true and complete.

Full legal name of
funding portal:

Signature of the chief
executive officer,
chief financial officer
or functional
equivalent:

Date:

Print name of
individual:

Position held:

Telephone:

E-mail:

IT IS AN OFFENCE TO MAKE A MISREPRESENTATION IN THIS FORM

ANNEX I



Canadian Securities
Administrators

Autorités canadiennes
en valeurs mobilières

CSA Staff Notice 45-XXX *Guidance for using the start-up crowdfunding registration and prospectus exemptions*

XX, 202X

The Canadian Securities Administrators (**CSA**) have implemented National Instrument 45-110 *Start-up Crowdfunding Registration and Prospectus Exemptions* to provide a further option for start-ups and early stage businesses to raise capital using securities crowdfunding (the **prospectus exemption**).

Staff (**staff** or **we**) of the CSA have prepared this Staff Notice (this **Notice**) to assist issuers with raising capital using the prospectus exemption and businesses proposing to operate a funding portal to facilitate the use of the prospectus exemption.

This Notice includes the following documents:

- Appendix 1 – Proposed Start-up Crowdfunding Guide for Businesses
- Appendix 2 – Proposed Start-up Crowdfunding Guide for Funding Portals

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APPENDIX 1

Start-up Crowdfunding Guide for Businesses

Crowdfunding is a process through which an individual or a business can raise money from a large number of people, typically through the Internet. The objective is usually to raise sufficient funds in order to carry out a specific project. There are different types of crowdfunding, such as by donation, pre-selling of products or through selling shares or other securities. This guide discusses securities crowdfunding.

Securities crowdfunding

Securities crowdfunding involves a business raising money by issuing securities (such as shares) to many people through the Internet using a funding portal. This type of crowdfunding must comply with the securities laws of the provinces and territories where the business and potential investors are located.

Legal obligations

In Canada, trading of securities is subject to legal obligations. For example, a business seeking to raise capital by issuing securities must file a prospectus (a comprehensive disclosure document that includes financial statements) with the securities regulator of each of the provinces and territories where its business and its potential investors are located or have an exemption from the prospectus requirement under securities law.

These obligations can be costly for start-ups and early stage businesses. There are a number of exemptions from the prospectus requirement that businesses can use to conduct securities crowdfunding in Canada. However, these exemptions require a fairly comprehensive disclosure and/or limit the types of investors that can invest. Canadian securities regulators have created a streamlined system to allow start-ups and small businesses (**issuers**) to raise small amounts of money from the general public using securities crowdfunding, without filing a prospectus or preparing financial statements (start-up prospectus exemption).

Instead, the issuer prepares an abbreviated disclosure document that does not require financial statements.

Under securities law in Canada, a business that intends to operate a funding portal, e.g., creating a website that brings together buyers and sellers of securities, must typically be registered as a dealer with the securities regulator. However, if the funding portal restricts itself to certain activities, it is permitted to facilitate trades of those securities without having to register as a dealer (**start-up registration exemption**). In this guide,

we refer to the start-up prospectus exemption and the start-up registration exemption as the “**start-up crowdfunding exemptions**” or “**start-up crowdfunding.**”

The purpose of this guide is to assist issuers intending to raise funds by relying on the start-up prospectus exemption. In this guide, “**regulator**” means the applicable provincial securities regulator or regulatory authority.

How Start-up Crowdfunding Works



In order to raise funds using the start-up prospectus exemption, issuers must prepare and post an offering document on a funding portal’s crowdfunding website. Investors will then be able to read about the offering and decide whether to invest. Before investing, investors will have to confirm that they have read the offering document and understand that the investment is risky.

When should an issuer consider start-up crowdfunding?

Before launching a start-up crowdfunding campaign, the management of the issuer will want to:

- evaluate other sources of funding, such as a loan from a financial institution,
- assess whether they are willing to invest the time and effort needed to prepare and run a start-up crowdfunding campaign,
- determine the type and characteristics of securities that will be sold,
- determine the number of securities to be sold and at what price, and

- assess if they have the capabilities to manage a greater number of security holders.

If a start-up crowdfunding campaign that involves the sale of shares (or other equity) is successful, the founders of the issuer may have to give up part of the ownership of the issuer to investors. Investors may want to be informed about successes and failures of the issuer's business. Management of the issuer should assess whether they are willing to spend the time and effort to maintain contact with investors.

The start-up prospectus exemption is not available to reporting issuers (public companies). Reporting issuers are required to provide ongoing public disclosure of their business activities by filing financial statements and other documents required by securities laws. These types of issuers are considered to be more established than the start-up or early stage issuers that are permitted to use start-up crowdfunding.

In addition, the start-up prospectus exemption is not available to issuers that are raising money without a specific business objective, commonly known as "blind pools". If the proceeds of the distribution are intended to be used by the issuer to invest in, merge or amalgamate with or acquire a business that has not been described in the issuer's offering document, then the issuer will need to raise capital using methods other than the start-up prospectus exemption.

Where is start-up crowdfunding available?

The start-up prospectus exemption is available to issuers that have a head office in Canada.

If an issuer wants to raise funds using start-up crowdfunding in a particular province or territory, the funding portal must be permitted to operate in that particular province or territory (see "*Where can I find out more information on whether a funding portal is able to operate?*", below).

What is the maximum amount that can be raised? How often can an issuer raise money using start-up crowdfunding?

An issuer can raise up to \$1,000,000 in the 12-month period before closing of the distribution. It may complete as many distributions per calendar year as fits their business objectives.

For instance, if an issuer has already raised \$250,000 on June 1 and \$300,000 on December 31 using the start-up crowdfunding exemption, it can still raise up to \$450,000 at any point before May 31 of the following year under that exemption.

This maximum amount applies to the issuer, together with any of related issuers in its issuer group. The “**issuer group**” has a broad meaning. In addition to the issuer, it also includes any affiliates of the issuer (e.g. related companies) and any other issuer that is engaged in a common enterprise with the issuer or an affiliate, or whose business is founded or organized by the same person or company who founded or organized the issuer.

Does the issuer have to distribute common shares in a start-up crowdfunding offering?

The securities offered in a start-up crowdfunding offering must be among those permitted by the start-up prospectus exemption. An issuer can use start-up crowdfunding to distribute common shares, but it can also distribute non-convertible preference shares, non-convertible debt securities linked to a fixed or floating interest rate, or units of a limited partnership.

The issuer can also issue securities that convert into common shares or non-convertible preference shares. These securities may include certain types of warrants, options or simple agreements for future equity.

It is up to the issuer to decide what type of security helps it best achieve its growth and development goals.

Are there any time limitations for completing a crowdfunding offering?

The offering document must indicate a minimum dollar amount that has to be raised before the offering can close. The issuer has a maximum of 90 days to raise the minimum amount, starting on the day the issuer’s offering document is first made available to investors through the funding portal’s website.

Investors will send the funds for their investment to the funding portal. The funding portal will then hold the money in trust. Before releasing the funds to the issuer, the following must have occurred:

- the issuer has secured the minimum amount of the offering and has decided to complete the offering; and

- the time for exercise of all withdrawal rights have expired (see “What if an investor changes their mind?”, below).

If the minimum amount is not reached, or the start-up crowdfunding campaign is withdrawn, the funding portal must return all the money to the investors.

Can an issuer or group of related issuers conduct more than one start-up crowdfunding at once?

No. An issuer group cannot have more than one start-up crowdfunding campaign running at the same time or on different funding portals for the same purpose. The issuer group must wait until the first campaign has ended before launching a second one.

What is the maximum amount an issuer can raise from each investor?

The maximum investment an issuer can accept from an investor is \$2,500 per start-up crowdfunding distribution. However, this amount can be increased to \$5,000 if the investor has obtained advice from a registered dealer that the investment is suitable for the investor.

The issuer may require a minimum amount per investor, but this amount cannot be over \$2,500 if there is no registered dealer involved.

Launching a Start-up Crowdfunding Campaign

Once an issuer has determined that it will launch a start-up crowdfunding campaign, it will need to prepare an offering document and choose a funding portal to post its offering document. Issuers are required to prepare the offering document using Form 45-110F1 *Offering Document*.

What is a funding portal?

A funding portal is a website that brings buyers and sellers together by listing start-up crowdfunding campaigns on its website and facilitating the payment of the purchase price from the investor to the issuer. The funding portal has a number of responsibilities, including:

- posting the issuer’s offering document;
- providing a risk warning form to potential investors;
- holding all investor funds in trust until the issuer is permitted to close the distribution; and

- returning funds to investors, without deduction, if the issuer does not reach its minimum funding target or if the issuer withdraws the start-up crowdfunding campaign.

Funding portals will generally charge issuers for hosting a start-up crowdfunding campaign on its website.

What types of funding portals are available?

There are two types of funding portals that may facilitate start-up crowdfunding in Canada:

- funding portals that are operated by registered dealers (e.g. investment dealers or exempt market dealers) that must provide advice to investors on whether the investment is suitable to the investor, and
- funding portals that are operated by persons relying on the start-up registration exemption and that are prohibited from providing suitability advice

An issuer has the choice of which type of funding portal to use for its start-up crowdfunding campaign.

A funding portal should be able to confirm to the issuer that it can provide certain services necessary for start-up crowdfunding, including that it will make the offering document and risk warnings available to the investor through its website.

Where can I find out information on whether a funding portal is able to operate?

The Canadian Securities Administrators maintain a list of funding portals currently permitted to operate in one or more jurisdictions of Canada. The issuer may check this list to determine whether the funding portal is authorized to operate in jurisdictions that it proposes to conduct start-up crowdfunding.

In addition, the issuer may want to evaluate other aspects of the funding portal's business, such as finding out about the individuals operating the funding portal, how it handles the funds collected from investors, and what fees it will charge the issuer for posting its start-up crowdfunding offering document.

What information needs to be in the offering document?

An issuer must include all the information required by Form 45-110F1 *Offering Document*. This form requires the issuer to disclose basic information about the business and the offering, how it will use the money and the relevant risks of the business or project. The issuer must disclose the minimum amount needed to be raised to accomplish the issuer's business goals. The issuer must provide enough detail in the offering document about the business for an investor to clearly understand what the issuer does or intends to do.

If the issuer raises funds in Québec, the offering document and the risk acknowledgement form must be made available to investors in Québec in French or in French and English.

For additional details on the offering document, including instructions on how to prepare this document, please refer to Form 45-110F1 *Offering Document*.

Do I need to include financial statements in the offering document?

The issuer is not required to provide financial statements to investors in connection with a start-up crowdfunding distribution.

However, the issuer can choose to make financial statements available to investors. For example, many investors use financial statements to assess and compare investment opportunities and may be reluctant to invest in a business that does not provide this type of information. In addition, if an issuer chooses to disclose a measure of financial performance (such as sales or expenses), financial position (such as amount of equipment or debt) or cash flow in the offering document, it must make financial statements available for the most recently completed financial year. The measure referred to in the offering document must be an amount presented in the financial statements or be reconciled to an amount presented in the financial statements.

If the issuer chooses to make financial statements available to investors, it must:

- prepare these financial statements in accordance with Canadian generally accepted accounting principles;
- present the issuer's results of operations for its most recently completed financial year; and
- include the statement provided in item 3.5 in Form 45-110F1 *Offering Document*.

As with any information provided to investors, the financial statements should not be misleading.

The issuer can post the financial statements on its website for the convenience of its investors. **However, if an issuer includes financial statements in its offering document or provides a link to the financial statements in the offering document, there will likely**

be an obligation under securities laws to prepare the financial statements using Canadian generally accepted accounting principles for publicly accountable enterprises.

There may be other requirements outside securities laws. For example, corporate legislation in some jurisdictions may require issuers to prepare and disseminate audited annual financial statements to their shareholders. Further, such issuers may be required to hold annual meetings of shareholders and provide certain specified disclosure in an information circular. To ascertain whether these requirements apply, issuers can refer to applicable corporate law and consult their legal advisers.

Do I need to disclose information about myself or other principals of the issuer?

The issuer must include in the offering document certain details about the residency, principal occupation, expertise and securityholdings of each founder, director, officer and control person.

Director: An individual occupying the position of director with the issuer or another person acting in a similar capacity.

Officer: Includes the CEO, president, a vice-president, corporate secretary, general manager or any other individual who performs functions of officer for the issuer. If the issuer is a limited partnership, information should also be provided for the officers of the general partner.

Founder: A person who, acting along, in conjunction, or in concert with one or more persons, directly or indirectly, take the initiative in founding, organizing or substantially reorganizing the business of the issuer and at the time of the start-up crowdfunding distribution is actively involved in the business of the issuer.

Control person: A person that holds more than 20% of the voting rights, alone or with other persons acting in concert, is generally considered a control person of the issuer.

Does the issuer need to provide information to the investor following the crowdfunding campaign?

Canadian securities laws do not require that the issuer report to investors, but investors will want to be kept informed. The issuer should disclose to investors in the offering document whether and, if so, how it intends to keep investors informed about the business and their investment. Reporting can be through newsletters, social media sites, email, financial statements or similar documents.

What if an investor changes their mind?

Investors have the right to withdraw their investment within two business days following either:

- the investor's subscription; or
- the funding portal notifying the investor of an amendment to the issuer's offering document.

To exercise this right of withdrawal, an investor must deliver a notice to the funding portal not later than midnight on the 2nd business day after the investor's subscription or notification of the amendment, as applicable. The funding portal must return the funds to an investor who exercises this right, without any deduction, within five business days after receiving notice of the withdrawal.

What if the information in the offering document is not, or is no longer, accurate?

The issuer must certify that the offering document does not contain a **misrepresentation**.

A misrepresentation means:

- a statement of material fact that is not true, or
- omitting a material fact that is required or necessary to be stated to prevent a statement in the offering document from being false or misleading in the circumstances in which it was made.

The information contained in the offering document may need to be updated during the start-up crowdfunding campaign. If the circumstances of the issuer have changed such that the offering document is no longer accurate and contains a misrepresentation, the issuer must:

- immediately advise the funding portal of this fact; and
- amend the offering document and send the new version to the funding portal as soon as practicable.

The funding portal is required to post the new version of the offering document on its website and promptly notify investors about the amendment. Providing an amended offering document gives an investor the opportunity to withdraw their investment (see "*What if an investor changes their mind?*" above).

The offering document does not need to be updated after the start-up crowdfunding campaign is over.

What if an investor purchases securities when the offering document contained a misrepresentation?

Securities laws in all provinces and territories of Canada provide investors with a **statutory right to sue for damages (typically limited to the amount paid for the securities) or rescission (to unwind or reverse the purchase)** in cases where an offering document contains a misrepresentation. These claims may be made against the issuer and in a number of provinces and territories, the directors and other persons that signed the offering document.

This statutory right to sue is available whether or not the investor relied on the misrepresentation. However, there may be various defenses available. In particular, a defense may be available if the investor knew of the misrepresentation when he or she purchased the securities.

Completing a Start-up Crowdfunding Campaign

Once the minimum offering amount has been collected, the issuer may choose to “close the offering” by issuing the securities to investors. However, the issuer must wait until each investor’s 2-day withdrawal period has expired.

An issuer can continue raising additional funds up to the maximum amount indicated in the offering document provided it closes the offering within the 90-day maximum offering period. The issuer must disclose in the offering document what it intends to do with any extra funds raised above the minimum amount.

At the closing of the offering, the funding portal will release the funds raised to the issuer. The issuer should make note of the date on which it closes the offering because certain filings and deliveries must be completed within a certain number of days of the closing.

Can an issuer use another prospectus exemption to meet the minimum amount?

Although an issuer cannot have more than one start-up crowdfunding campaign running at the same time, the issuer can raise funds using other prospectus exemptions during a start-up crowdfunding campaign. For example, the issuer may issue securities to an accredited investor. Other prospectus exemptions, such as the accredited investor exemption, are found in securities laws, including [National Instrument 45-106 Prospectus Exemptions](#). The funds raised under other prospectus exemptions can be counted towards the minimum offering amount if those funds are unconditionally available to the issuer. This would not trigger the requirement for the issuer to amend the offering document.

If an issuer raises funds under other prospectus exemptions, it must comply with the conditions of both the start-up crowdfunding exemptions and the other exemption(s). An issuer should seek professional advice if it has any questions regarding compliance.

After the closing

What documents have to be filed with securities regulators?

The offering document and a [Form 45-106F1 Report of Exempt Distribution](#) must be filed with the regulator in each jurisdiction where investors are located no later than 30 days after the closing of the distribution. For example, if the issuer has raised money in Québec and Nova Scotia, the offering document and report of exempt distribution must be filed with the Autorité des marchés financiers and the Nova Scotia Securities Commission.

In addition, the offering document and report of exempt distribution must be filed with the regulator of the jurisdiction where the issuer's head office is located, even if no investors were located in this jurisdiction.

When filing the offering document, the issuer must include all copies of the offering document including any amended versions.

[Note to industry: this section will also include instructions to assist issuers with filing the offering document and report of exempt distribution]

Confirmation notice to investors

Within 30 days after the closing of the offering, the issuer must send a copy of the offering document and a confirmation notice to each investor who purchased securities with the following information:

- the date of subscription and the closing date of the distribution;
- the quantity and description of securities purchased;
- the price paid per security;
- the total commission, fee and any other amounts paid by the issuer to the funding portal in respect of the start-up crowdfunding distribution.

The issuer may choose to have the funding portal send this information to investors if the funding portal platform has this capability.

For more information contact:

For more information, please contact the following:

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British Columbia	<p>British Columbia Securities Commission Telephone: 604-899-6854 or 1-800-373-6393 Email: inquiries@bcsc.bc.ca Website: www.bcsc.bc.ca</p>
Saskatchewan	<p>Financial and Consumer Affairs Authority of Saskatchewan Securities Division Telephone: 306-787-5645 E-mail: exemptions@gov.sk.ca Website: www.fcaa.gov.sk.ca</p>
Manitoba	<p>The Manitoba Securities Commission Toll free in Manitoba: 1-800-655-2548 E-mail: exemptions.msc@gov.mb.ca Website: www.msc.gov.mb.ca</p>
Ontario	<p>Ontario Securities Commission Toll free: 1-877-785-1555 E-mail: inquiries@osc.gov.on.ca Website: www.osc.ca</p>
Québec	<p>Autorité des marchés financiers Direction du financement des sociétés Toll free in Québec: 1-877-525-0337 E-mail: financement-participatif@lautorite.qc.ca Website: www.lautorite.qc.ca</p>
New Brunswick	<p>Financial and Consumer Services Commission Toll free: 1-866-933-2222 E-mail: emf-md@fcnb.ca Website: www.fcnb.ca</p>
Nova Scotia	<p>Nova Scotia Securities Commission Toll free in Nova Scotia: 1-855-424-2499 E-mail: nssc.crowdfunding@novascotia.ca Website: www.nssc.novascotia.ca</p>

APPENDIX 2

Start-up Crowdfunding Guide for Funding Portals

Introduction and purpose

The purpose of this guide is to assist funding portals that facilitate or intend to facilitate distributions under National Instrument 45-110 *Start-up Crowdfunding Registration and Prospectus Exemptions* (NI 45-110). This guide is intended both for funding portals that rely on the registration exemption in NI 45-110 (an exempt funding portal) and those operated by registered dealers.

This guide describes:

- the requirements that apply to funding portals, and
- how a crowdfunding distribution under NI 45-110 works, including an overview of the responsibilities of an issuer of which the funding portal should be aware.

What is securities crowdfunding?

Securities crowdfunding involves a business raising money by issuing securities (such as shares) to many people through the Internet using a funding portal. This type of crowdfunding must comply with the securities laws of the provinces and territories where the business and potential purchasers are located.

Legal obligations for securities crowdfunding

In Canada, trading of securities is subject to legal obligations. For example, a person or company that operates a funding portal to facilitate securities crowdfunding offerings must be registered in each province or territory where it is carrying on this business, or rely on an exemption from the registration requirement under securities laws. Similarly, a business seeking to raise capital by issuing securities must file a prospectus with the securities regulators or regulatory authorities of each province or territory (the regulators) in which it intends to sell its securities, or have an exemption from the prospectus requirements under securities laws.

These obligations, however, can be costly for start-ups and early stage issuers. There are a number of exemptions from the prospectus requirement that businesses can use to conduct securities crowdfunding in Canada. However, these exemptions require fairly comprehensive disclosure and/or limit the types of investors that can invest. Canadian securities regulators have created a streamlined system to allow start-ups and small

businesses to raise small amounts of money from the general public using securities crowdfunding, without filing a prospectus or preparing financial statements.

NI 45-110 provides additional new exemptions tailored to start-up and early stage issuers to facilitate securities crowdfunding and make it easier for them to raise money by issuing securities. NI 45-110 allows:

- a start-up or early stage issuer to raise relatively small amounts of capital from the general public by distributing securities to purchasers without filing a prospectus or lengthy offering document and, significantly, without needing to prepare financial statements (the start-up prospectus exemption), and
- a funding portal to facilitate the distribution of those securities without having to register as a dealer (the start-up registration exemption), although a funding portal can be operated by a registered dealer.

Under NI 45-110, all issuers intending to conduct a start-up crowdfunding offering must use a funding portal.

Types of funding portals under NI 45-110

This section describes some of the key characteristics of funding portals operated by registered dealers, and exempt funding portals.

- **Funding portals operated by registered dealers:** Registered dealers generally are required to fulfil certain obligations including know-your-client, know-your-product, and, before accepting an order to buy or sell securities from a client, determining whether that purchase or sale is suitable for the client. Funding portals operated by registered dealers must also meet these obligations. Funding portals operated by registered dealers are allowed to facilitate distributions of securities under the start-up prospectus exemption, and other prospectus exemptions. In addition, a purchaser may make a larger investment in an offering conducted through a funding portal operated by a registered dealer.
- **Exempt funding portals:** Exempt funding portals rely on the start-up registration exemption. They are not required to register provided they meet the conditions of the start-up registration exemption, including the filing of certain documents with the regulators. The requirements on exempt funding portals are different from the obligations placed on registered dealers. For example, exempt funding portals are not allowed to provide advice and are only allowed to facilitate distributions that rely on the start-up prospectus exemption.

Operating requirements for exempt funding portals

A person or company operating a funding portal does not have to register as a dealer if they meet all conditions of the start-up registration exemption. The responses to the following questions further detail many of these conditions of the start-up registration exemption. You should refer to NI 45-110 for the complete list of the conditions that exempt funding portals must follow.

Are there any restrictions on who may operate an exempt funding portal?

A funding portal may not rely on the start-up registration exemption if it or any of its founders,¹ directors, officers or control persons² (principals), or any entity it or its principals has been the principal of has had a judgment, sanction or similar order imposed against it based on fraud, theft, breach of trust, insider trading, or allegations of similar conduct.

The funding portal must not be registered with the regulators. As well, it must have its head office in Canada and the majority of its directors must be Canadian residents.

What must an exempt funding portal do for an issuer seeking to conduct a crowdfunding raise?

Make the necessary disclosures available on its website. An issuer looking to raise capital using the start-up prospectus exemption must provide the funding portal an offering document that meets the conditions of the exemption. The exempt funding portal must post the issuer's offering document on its website. It is intended that posting the document on the exempt funding portal's website will satisfy any requirement to deliver the offering document to a purchaser that may apply under securities legislation.

A funding portal can carry out reviews of issuers before making their offering documents available on its website to protect the funding portal's own interests or reputation.

¹ A person or company who founded, organized or significantly reorganized the funding portal is generally considered to be a founder.

² A person or company who holds a sufficient number of voting rights to control the funding portal or who holds more than 20% of the voting rights of the funding portal is generally considered a control person of the funding portal.

Confirm the issuer's location. The exempt funding portal must take reasonable measures to confirm that the head office of the issuer is in Canada. For instance, reviewing the incorporating or governing documents may be a reasonable step to confirm the issuer's head office.

What must an exempt funding portal do for purchasers?

Obtain the necessary acknowledgements before a purchaser can access the website. An exempt funding portal must not allow entry to its website until the purchaser acknowledges that they are entering the website of a funding portal that (i) is not operated by a registered dealer under Canadian securities legislation, and (ii) will not provide advice about the suitability or the merits of any investment.

For further information on the mechanics of the acknowledgement, please see the section in this guide entitled *Pop-up Acknowledgement*.

Not provide advice or recommendations. An exempt funding portal must not tell purchasers an investment is suitable for them or otherwise discuss the merits of an investment.

This means the funding portal cannot tell a purchaser that the securities offered are a good investment or that the purchaser should make an investment. The funding portal must refrain from saying or doing anything that might lead a purchaser to think that they should buy the securities because the securities somehow meet their investment needs or objectives.

However, the funding portal can give factual information about the securities. For example, it may tell purchasers the information set out in the offering document about the features of the securities, the risks generally of investing, how start-up crowdfunding works, and other items of a general, factual nature.

Confirm purchaser status. An exempt funding portal can only facilitate a distribution for a purchaser residing in a province or territory where the funding portal meets the conditions of the start-up registration exemption, including having delivered documents to the regulator in that jurisdiction (see *Delivery Requirements for Exempt Funding Portals* below). Accordingly, the exempt funding portal should take reasonable measures to ensure that the purchaser is a resident of a province or territory in which the exempt funding portal is permitted to operate. These reasonable measures may include requiring the purchaser to indicate its address in Canada, including the province or territory of residence before allowing a subscription for securities.

Obtain the necessary risk acknowledgement before receiving funds. Before taking a purchaser's subscription, an exempt funding portal must ensure that purchasers confirm online that they have read and understood the offering document and risk warning available on the exempt funding portal.

What requirements do exempt funding portals have for handling funds?

The exempt funding portal must ensure that a purchaser's payment for securities through its platform is received only by the exempt funding portal, and no one else. The exempt funding portal must hold purchasers' assets separate from the exempt funding portal's property, in trust for the purchaser and, in the case of cash, at a Canadian financial institution.

What must the exempt funding portal disclose about itself on its website?

The exempt funding portal must prominently display the following information on its website:

- the full legal name, municipality and jurisdiction of residence, business mailing and e-mail address, and business telephone number of each principal of the exempt funding portal,
- that the exempt funding portal is relying on the start-up registration exemption,
- that the exempt funding portal will hold purchasers' assets separate from the funding portal's property, in trust for the purchaser and, in the case of cash, at a Canadian financial institution, and
- the process the exempt funding portal will use to notify purchasers if it becomes insolvent or discontinues operations, and how the exempt funding portal will return the purchasers' assets it is holding to those purchasers.

For instance, clearly displaying this information on one page of the website that is easily accessible (such as a main tab in a drop-down menu) would generally be acceptable.

What other requirements do exempt funding portals have?

Only facilitate start-up crowdfunding distributions under NI 45-110. The exempt funding portal must not facilitate the distribution of securities to purchasers under prospectus exemptions other than the start-up prospectus exemption. A funding portal that intends to facilitate crowdfunding distributions under other prospectus exemptions (e.g. the accredited investor exemption and the offering memorandum exemption) would need to apply for registration as a dealer.

Not receive compensation directly from a purchaser. The exempt funding portal must not receive a commission or fee from a purchaser.

Maintain records. The exempt funding portal must keep its books and records, including its compliance procedures, at its head office for eight years from the date a record is created.

Delivery requirements for exempt funding portals

Attached as Appendix A to this guide is a checklist that includes some of the delivery and timing requirements for exempt funding portals.

What steps must occur before a funding portal can rely on the start-up registration exemption?

At least 30 days before it intends to start operating in reliance on the start-up registration exemption, the funding portal must deliver the following documents to the regulator of each jurisdiction of Canada in which it intends to solicit investors:

- 1) a completed Form 45-110F3 *Funding Portal Information* (funding portal information form),
- 2) completed Forms 45-110F4 *Portal Individual Information* (individual information form) for each principal of the funding portal, and
- 3) the applicable supporting documents (see below).

The regulators will review these documents during the 30-day waiting period and may notify the funding portal, for example, if:

- the documents the funding portal delivered are incomplete, or
- the policies and procedures for handling funds in relation to a start-up crowdfunding distribution described in the funding portal information form and supporting documents does not satisfy the conditions of the start-up exemption.

If the funding portal receives such notification, it has not satisfied the conditions of the start-up registration exemption and cannot operate as an exempt funding portal. If this occurs, the funding portal must file amended documents with the regulators and wait a 30 day period from the date the revised documents are filed before operating.

What supporting documents are required?

The funding portal information form and individual information form must include the following supporting documents:

- organizing documents such as articles and certificate of incorporation or partnership agreement,

- a chart showing the funding portal's structure and ownership that, at a minimum, includes all parents, affiliates and subsidiaries, as well as the full list of securityholders (including number and type of securities held) of the funding portal,
- details and relevant documents describing the funding portal's process and procedure for handling funds relating to a start-up crowdfunding offering, including:
 - the name of the Canadian financial institution the funding portal will use, together with the designated trust account number,
 - the name of the signatories on this account and their role with the funding portal,
 - a description of how the funds held in this account will be kept separate and apart from the funding portal's own property,
 - a copy of the trust agreement for the funding portal's trust account with a Canadian financial institution or details surrounding the establishment of this account, or, if there is no trust agreement or trust account, an explanation why,
 - how funds will flow from: (i) the purchasers to the account; (ii) the funding portal's trust account to the issuer in the event that the offering closes; and (iii) the trust account back to the purchasers' bank accounts if the offering does not close, or the purchaser has exercised their right of withdrawal (for further information please see the section in this guide entitled *What rights do purchasers have before the start-up crowdfunding distribution closes?*), and
- attachments providing the relevant details sought if the answer to any of questions 11 to 14 of the funding portal information form or questions 11 to 18 of an individual information form is "Yes".

The requirements around the flow of purchaser funds are fundamental to the start-up registration exemption. The regulators may assess if the funding portal complies with these requirements, as well as the other conditions of the start-up crowdfunding exemption, in future compliance exams.

How do I deliver the funding portal information form and individual information forms?

The funding portal must deliver the forms and documents by e-mail to the regulator in each jurisdiction where the funding portal intends to facilitate start-up crowdfunding distributions. For example, a funding portal with a head office in Saskatchewan that intends to seek funds from purchasers in all jurisdictions of Canada must deliver the forms and documents described in this guide to the Financial and Consumer Affairs Authority of Saskatchewan and the regulators in all of the other jurisdictions of Canada.

Are there any required filings after an exempt funding portal has started operating?

After it has started operating, the exempt funding portal must:

- 1) certify, within ten days of a calendar year-end, that it has sufficient working capital to continue its operations for at least the next 12 months (See “Working Capital Certification” below), and
- 2) deliver, within 30 days of a change to any of the information in the funding portal information form or individual information forms, the updated funding portal information form and/or individual forms as applicable.

Working Capital Certification

An exempt funding portal is required to certify to the regulator that it has sufficient working capital to operate for the next 12 months:

- in the completed funding portal information form, and
- in the completed Form 45-110F5 *Annual Working Capital Certification* (working capital certification) that needs to be delivered within ten days of a calendar year-end.

For example: an exempt funding portal delivers the completed funding portal information form (which includes a form of the working capital certification) on May 31, 2021. The funding portal ensures that it complies with all the conditions of the start-up registration exemption and begins to facilitate distributions on June 30, 2021.

- The exempt funding portal must then deliver a working capital certification between December 31, 2021 and January 10, 2022, in order to meet the requirements to operate as an exempt funding portal after January 10, 2022.
- If the exempt funding portal delivers its working capital certification on January 4, 2021, it will need to deliver its next working capital certification between December 31, 2021 and January 10, 2022, in order to meet the requirements to operate as an exempt funding portal after January 10, 2022.

A funding portal’s working capital is calculated based on current assets less current liabilities. The terms “current assets” and “current liabilities” are defined under Canadian GAAP. Current assets generally include assets such as cash, accounts receivable, inventory and other assets that can be realised, sold or consumed within a year. Current liabilities generally include accounts payable, wages, taxes, and the portion of debt to come due within a year.

Good practices for compliance with this condition include:

- Keeping documentation that is regularly maintained to ensure effective monitoring; and
- Establishing, maintaining and applying a system of controls and supervision sufficient to ensure the accuracy of the documents, including financial statements, used to support the funding portal's assessment of working capital.

Updated Funding Portal Information Form and/or Individual Information Forms

If a change occurs and the information in the forms and documents delivered to a regulator are no longer up-to-date, the exempt funding portal must update the information by delivering a new form or document setting out the change. These updated forms must be provided within thirty days of the change. Failure to deliver these updated forms on time means that the funding portal has not satisfied the conditions of the start-up registration exemption and cannot rely on the exemption.

For example: if management at an exempt funding portal changes on July 1, 2021, an updated funding portal information form, as well as an individual information form for each new officer, must be delivered to the regulators by July 31, 2021.

Assessing compliance for funding portals

Failure to comply with the conditions of NI 45-110 or other securities law requirements is a serious offence that could prevent the funding portal from being able to rely on the start-up registration exemption and expose the funding portal's principals to sanctions. The regulators may conduct compliance reviews on funding portals, including exempt funding portals, to ensure that they comply with the requirements. Funding portals relying on the start-up registration exemption should be prepared to provide documents supporting their compliance with the conditions of the start-up registration exemption.

Funding portals will also be subject to various other laws beyond securities law (e.g. anti-money laundering and privacy laws). We encourage funding portals to consult a lawyer for advice.

Funding portals operated by registered dealers

Registered exempt market dealers and investment dealers are allowed to operate start-up funding portals, provided that they:

- meet their existing registration obligations under securities legislation (including the know-your-client, know-your-product and suitability obligations owed to purchasers, and disclosure of all fees charged to purchasers in accordance with

relationship disclosure requirements under National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*),

- meet the requirements in NI 45-110 for portals that rely on the start-up registration exemption that still apply to registered dealers (see the section entitled “What are the requirements in NI 45-110 that apply to funding portals operated by registered dealers, as well as to exempt funding portals?” below),
- confirm to issuers that the funding portal is being operated by a registered dealer, and
- prompt any person entering the funding portal’s website to acknowledge that the funding portal is operated by a registered dealer that will provide suitability advice. For more information on the mechanics of this acknowledgement, please see the section of this guide entitled *Pop-Up Acknowledgement*.

An exempt market dealer or investment dealer that wants to operate a start-up funding portal is required to report changes in their business activities by completing and delivering Form 33-109F5 *Change of Registration Information* and updating information previously reported in Form 33-109F6 *Firm Registration* to include operating a start-up funding portal.

What are the requirements in NI 45-110 that apply to funding portals operated by registered dealers, as well as to exempt funding portals?

Registered dealers operating funding portals must meet the conditions set out in section 4 of NI 45-110 (which also apply to exempt funding portals). These include requirements to:

- ensure that a purchaser’s payment for securities through the funding portal’s platform is received only by the funding portal, and no one else,
- take reasonable measures to ensure the head office of the issuer is in Canada,
- make available the issuers’ offering documents and risk warnings on its website, and
- ensure, before it takes a purchaser’s subscription, that the purchaser has confirmed they have read and understood the offering document and risk warning available on the funding portal.

Are there different restrictions (e.g. investment limits) placed on start-up crowdfunding distributions facilitated by registered dealers?

An offering conducted through a funding portal operated by a registered dealer is permitted to facilitate a larger investment. Typically, a purchaser may invest up to \$2,500 under the start-up prospectus exemption. However, purchasers can purchase up to \$5,000 if the registered dealer has determined that the investment is suitable for the purchaser.

“Pop-up” Acknowledgement

The start-up crowdfunding exemptions require purchasers to acknowledge certain information before entering the platform of a funding portal (pop-up acknowledgement). A platform may include the funding platform’s website or app. This requirement does not distinguish between where or how the purchaser enters the funding portal’s platform. As a result, funding portals must design their platform so that purchasers acknowledge the required information regardless of whether those purchasers enter the platform through the funding portal’s home page or through another page.

The funding portal should also manage the risk that potential purchasers are visiting the funding portal’s platform using a shared computer, tablet, or other mobile device. In other words, multiple people in a household may be entering the funding portal’s website at different times using the same device. As a result, the funding portal should consider designing their platform so that the pop-up acknowledgement reappears each time the purchaser’s internet browser or app is closed and re-opened.

We expect the pop-up acknowledgement to appear in the following circumstances:

The pop-up acknowledgement should appear upon the first and every subsequent time a person enters a funding portal’s platform. This means that after opening their internet browser or app:

- (a) If a person lands on any page of a funding portal’s platform (home page or other page) the pop-up acknowledgment should appear.
- (b) If the person clicks “I acknowledge” and then immediately closes out of their browser, when the person goes back to any page on a funding portal’s platform, the pop-up acknowledgment should appear. The result is that the same person will have to click on “I acknowledge” to go back into the funding portal’s platform regardless of the fact that they had just been to that platform.

The pop-up acknowledgement should appear regardless of a person’s entry point to the platform (home page or other page). For example:

- (c) If a person were to search the name of the funding portal and finds a link to the funding portal’s platform, the link would take the person to the funding portal’s home page and a pop-up acknowledgement would appear.
- (d) If a person were to browse directly to the funding portal’s issuer-offering page from an external link, the link would take the person to issuer’s

page on the funding portal's platform and a pop-up acknowledgement would appear.

Once a person clicks "I acknowledge" and enters the funding portal's platform, they can navigate from page to page within the website without the re-appearance of the pop-up acknowledgement.

How does a start-up crowdfunding distribution work?

Issuers are responsible for preparing an offering document that complies with Form 45-110F1 *Offering Document*. In particular, the offering document must indicate the minimum amount necessary to close a start-up crowdfunding distribution. Issuers provide the offering document to the funding portal to post online. Purchasers read the offering document and decide whether or not to invest.

Before accepting an investment, the funding portal collects personal information on the purchaser, including the province or territory where the purchaser resides. The funding portal also obtains confirmation that the purchaser has read and understood the offering document and the risks described in Form 45-110F2 *Risk Acknowledgement Form*.

An issuer cannot close a distribution unless it has raised the minimum amount set out in its offering document and each purchaser's right to withdraw has expired. At the closing:

- the issuer distributes shares or other eligible securities to purchasers, and
- the funding portal releases funds to the issuer.

No later than 15 days following the closing of the distribution, the funding portal notifies purchasers that the funds have been released to the issuer, and provides the issuer with the following information on each purchaser:

- full name,
- address,
- telephone number,
- e-mail address,
- number of securities purchased, and
- total purchase price.

Using this information, no later than 30 days following the closing of the distribution, the issuer files Form 45-106F1 *Report of Exempt Distribution* (the report of exempt distribution) with the regulators. When providing purchaser information to the issuer, funding portals may use the spreadsheet of Schedule 1 of the report of exempt distribution. Please refer

to the *Start-up Crowdfunding Guide for Businesses* for more information on the issuer's filing requirements.

As well, no later than 30 days following the closing of the distribution, the issuer sends a confirmation to each purchaser that includes:

- the date of the purchaser's subscription and the closing date,
- the number of securities purchased and a description of the securities purchased,
- the price per security paid,
- the total commission, fee and any other amounts paid by the issuer to the funding portal in respect of the distribution, and
- instructions on how the purchaser can access the offering document.

While the obligation is on the issuer to provide this information to purchasers, we expect that the issuer will arrange for the funding portal to provide this information on its behalf.

If the issuer withdraws its start-up crowdfunding offering or does not raise the minimum amount within 90 days after the funding portal posts the offering document online, all the funds must be returned to purchasers within five business days. No deductions are permitted. The funding portal must also send a notice to the issuer and each purchaser confirming that the funds have been returned to purchasers.

The funding portal may send notices to purchasers and issuers by e-mail.

When must an offering document be amended?

From the time it is posted online until the closing or withdrawal of the offering, an issuer must amend its offering document if the information it contains is no longer accurate and contains a misrepresentation. This could be the case if, for example, an issuer wants to change the price of the securities or the minimum or maximum offering amount. The issuer must send the amended version to the funding portal for posting on the funding portal's website. The funding portal must promptly notify purchasers about the amendment.

Can a funding portal facilitate a start-up crowdfunding distribution for itself or for related parties?

A funding portal cannot act in a start-up crowdfunding distribution if one of its principals is also a principal of the issuer group. The issuer group means the issuer, an affiliate of the issuer, and any other issuer that is engaged in a common enterprise with the issuer or an affiliate, or whose business is founded or organized by the same person or company who founded or organized the issuer.

What rights do purchasers have before the start-up crowdfunding distribution closes?

Purchasers have the right to withdraw their investment up to midnight, two business days following:

- the purchaser's subscription, and
- any notice the funding portal sends to the purchaser of an amendment to the offering document.

For example: a funding portal posts an offering document on July 1, 2021 and a purchaser subscribes on July 5, 2021. The funding portal then notifies the purchaser of amendments to the offering documents on July 14, 2021 and July 28, 2021. The purchaser then has the right to withdraw its investment during the following time periods:

- up to midnight, July 7, 2021 (two business days from subscription),
- between July 14, 2021 and midnight, July 16, 2021 (two business days from the first amendment), and
- between July 28, 2021 and midnight, July 30, 2021 (two business days from the second amendment).

The funding portal must give purchasers the opportunity to exercise this right. The purchaser exercises the right of withdrawal by notifying the funding portal. The funding portal must return the funds to a purchaser who exercises this right, without any deduction, within five business days after the notice.

Does an issuer have to provide financial statements?

Under the start-up prospectus exemption, issuers are not required to provide financial statements to purchasers with the offering document.

If an issuer wants to make its financial statements available to purchasers, it can place a hyperlink on the funding portal leading to the financial statements. However, the hyperlink should not appear in the offering document unless the issuer wants the financial statements to form part of it. Please refer to the *Start-Up Crowdfunding Guide for Businesses* for more information on potential reporting requirements relating to making financial statements a part of the issuer's offering document. It should be noted that if an issuer makes its financial statements available to purchasers, those financial statements have to be prepared in accordance with Canadian GAAP.

For more information

For more information, please contact the following:

British Columbia	British Columbia Securities Commission Telephone: 604-899-6854 or 1-800-373-6393 Email: inquiries@bcsc.bca Website: www.bcsc.bc.ca
Alberta	Alberta Securities Commission Telephone: 403-355-4151 E-mail: inquiries@asc.ca Website: www.albertasecurities.com
Saskatchewan	Financial and Consumer Affairs Authority of Saskatchewan Securities Division Telephone: 306-787-5645 E-mail: exemptions@gov.sk.ca Website: www.fcaa.gov.sk.ca
Manitoba	The Manitoba Securities Commission Toll free in Manitoba: 1-800-655-2548 E-mail: exemptions.msc@gov.mb.ca Website: http://www.mbsecurities.ca/
Ontario	Ontario Securities Commission Toll free: 1-877-785-1555 E-mail : inquiries@osc.gov.on.ca Website: www.osc.ca
Québec	Autorité des marchés financiers Direction du financement des sociétés Toll free in Québec: 1-877-525-0337 E-mail: financement-participatif@lautorite.qc.ca Website: www.lautorite.qc.ca
New Brunswick	Financial and Consumer Services Commission Toll free: 1-866-933-2222 E-mail: emf-md@fcnb.ca Website: www.fcnb.ca

Nova Scotia

Nova Scotia Securities Commission

Toll free in Nova Scotia: 1-855-424-2499

E-mail: nssc.crowdfunding@novascotia.ca

Website: nssc.novascotia.ca

The information in this Guide is for educational purposes only and does not constitute legal advice.

If any information in this Guide is inconsistent with NI 45-110 Start-up Crowdfunding Registration and Prospectus Exemptions, please follow the instrument and the related forms.

Published **.

Appendix A

Checklist for Exempt Funding Portals

Documents required to be delivered to the regulators before a funding portal can rely on the start-up registration exemption:

- A completed Form 45-110F3 *Funding Portal Information* (portal information form), with the following documents attached, signed and dated by the authorized individual certifying the portal information form:
 - The funding portal's organizing documents (Item 8 of the portal information form)
 - A chart showing the funding portal's structure and ownership (Item 9 of the portal information form)
 - Details and the relevant documents on the process and procedure for handling all funds relating to a start-up crowdfunding offering (Item 15 of the portal information form)
 - If any of the answers to questions 11 to 14 of the portal information form is "Yes", complete details pertaining to such matters
- Completed Forms 45-110F4 *Portal Individual Information* (individual information form) for each principal of the funding portal, with the following documents attached to each individual information form:
 - If any of the answers to questions 11 to 18 of an individual information form is "Yes", complete details pertaining to such matters; except for attachments pertaining to question 11, these attachments must be signed and dated by the authorized individual certifying the individual information form.

Date the funding portal has delivered a completed portal information form and individual information forms, with necessary attachments, to the regulators:

Date the funding portal may begin operations if it has not received a notification from the regulator that it is not allowed to rely on the start-up registration exemption (30 days from the date the funding portal delivered the completed portal information

form and individual information forms, with necessary attachments, to the regulators): _____

Documents required to be delivered to the regulators after an exempt funding portal has started operations:

- A completed Form 45-110F5 *Annual Working Capital Certification* (working capital certification) within ten (10) days of each calendar year-end that the funding portal intends to continue operating.

Note: the working capital certification requires exempt funding portals to certify they have sufficient working capital to operate for at least the next 12 months.

We consider an exempt funding portal to have sufficient working capital if its current assets are equal or greater than its current liabilities. The terms “current assets” and “current liabilities” are defined under Canadian GAAP. Current assets generally include assets such as cash, accounts receivable, inventory and other assets that can be realised, sold or consumed within a year. Current liabilities generally include accounts payable, wages, taxes, and the portion of debt to come due within a year.

Good practices for compliance with this condition include:

- **Keeping documentation that is regularly maintained to ensure effective monitoring; and**
 - **Establishing, maintaining and applying a system of controls and supervision sufficient to ensure the accuracy of the documents, including financial statements, used to support the funding portal’s assessment of working capital.**
- Updated portal information forms or individual information forms if there is a change to any of the information previously provided in these forms, within 30 days of the change.

ANNEX J

PROPOSED AMENDMENTS TO NATIONAL INSTRUMENT 13-101 SYSTEM FOR ELECTRONIC DOCUMENT ANALYSIS AND RETRIEVAL (SEDAR)

1. *Appendix A of National Instrument 13-101 System for Electronic Analysis and Retrieval (SEDAR) is amended by adding, in section II “Other Issuers (Reporting/Non-reporting)” and after section 6 of item E “Exempt Market Offerings and Disclosure”, the following:*
 7. Offering document required to be filed or delivered by an issuer under National Instrument 45-110 *Start-up Crowdfunding Registration and Prospectus Exemptions*. Alta, Sask, Man, Que, NB, PEI, NS, Nfld, YK, NWT, NU
2. This Instrument comes into force on [•].

ANNEX K

PROPOSED 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 by adding, before the title “Transitional and Other Provisions”, the following paragraph:*
 3. Except in Manitoba, the exemption from the prospectus requirement in section 5 [Exemption from Prospectus Requirement for Issuers] of National Instrument 45-110 *Start-up Crowdfunding Registration and Prospectus Exemptions*.
3. This Instrument comes into force on [•].