

This document is an unofficial consolidation of all amendments to Multilateral Instrument 45-108 *Crowdfunding* and all changes to its Companion Policy, current to October 31, 2016. It does not include the Forms to MI 45-108. It does include local amendments and changes made in Alberta, as set out in CSA Staff Notice 11-334 (January 19, 2017). This document is for reference purposes only and is not an official statement of law or policy. The two notes in MI 45-108 are not part of the Instrument.

As of October 31, 2016, the participating jurisdictions in MI 45-108 are Alberta, Ontario, Québec, New Brunswick and Nova Scotia.

Multilateral Instrument 45-108 *Crowdfunding*

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PART 1
DEFINITIONS AND INTERPRETATION

Definitions

1. In this Instrument

“accredited investor” means

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

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

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

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

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

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

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

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

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

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

- (a) a common share;
- (b) a non-convertible preference share;
- (c) a security convertible into securities referred to in paragraph (a) or (b);
- (d) a non-convertible debt security linked to a fixed or floating interest rate;
- (e) a unit of a limited partnership;
- (f) a flow-through share under the ITA;

“executive officer” means an individual who is

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

“funding portal” means

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

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

“issuer group” means

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

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

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

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

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

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

- (a) is registered in the category of restricted dealer under National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*,
- (b) is authorized under the terms and conditions of its restricted dealer registration to distribute securities under this Instrument,
- (c) acts or proposes to act as an intermediary in a distribution of eligible securities through an online platform in reliance on the crowdfunding prospectus exemption,
- (d) is not registered in any other registration category, and
- (e) in Alberta and Ontario, is not an affiliate of another registered dealer, registered adviser, or registered investment fund manager;

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

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

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

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

Terms defined or interpreted in other instruments

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

Purchaser

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

Specifications – Québec

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

PART 2 CROWDFUNDING PROSPECTUS EXEMPTION

Division 1: Distribution requirements

Crowdfunding prospectus exemption

5. (1) The prospectus requirement does not apply to a distribution by an eligible crowdfunding issuer of an eligible security of its own issue to a person or company that purchases the security as principal if all of the following apply:
- (a) the issuer offers the securities during the distribution period and the distribution period ends no later than 90 days after the date the issuer first offers its securities to purchasers;
 - (b) the total proceeds raised by the issuer group in reliance on the crowdfunding prospectus exemption does not exceed \$1,500,000 within the 12-month period ending on the last day of the distribution period;

- (c) in Alberta and Ontario, the acquisition cost of the securities acquired by the purchaser
 - (i) in the case of a purchaser that is not an accredited investor, does not exceed
 - (A) \$2,500 for the distribution, and
 - (B) \$10,000 for all distributions in reliance on the crowdfunding prospectus exemption in the same calendar year,
 - (ii) in the case of a purchaser that is an accredited investor that is not a permitted client, does not exceed
 - (A) \$25,000 for the distribution, and
 - (B) \$50,000 for all distributions in reliance on the crowdfunding prospectus exemption in the same calendar year, and
 - (iii) in the case of a purchaser that is a permitted client, is not limited;
 - (d) except in Alberta and Ontario, the acquisition cost of the securities acquired by the purchaser
 - (i) in the case of a purchaser that is not an accredited investor, does not exceed \$2,500 for the distribution, and
 - (ii) in the case of a purchaser that is an accredited investor, does not exceed \$25,000 for the distribution;
 - (e) the issuer distributes the securities through a single funding portal;
 - (f) before the purchaser enters into an agreement to purchase the securities, the issuer makes available to the purchaser, through the funding portal, a crowdfunding offering document that is in compliance with
 - (i) section 7 [*Certificates*] and section 8 [*Right of withdrawal*], and
 - (ii) section 9 [*Liability for misrepresentation – reporting issuers*] or section 10 [*Liability for untrue statement – non-reporting issuers*], as applicable.
- (2) The crowdfunding prospectus exemption is not available if any of the following apply:
- (a) the proceeds of the distribution are used by the issuer to invest in, merge with or acquire an unspecified business;
 - (b) the issuer is not a reporting issuer, and the issuer previously distributed securities in reliance on the crowdfunding prospectus exemption and is not in compliance with any of the following:
 - (i) section 15 [*Filing or delivery of distribution materials*];
 - (ii) section 16 [*Annual financial statements*];

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

Conditions for closing of the distribution

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

Certificates

- 7. (1) A crowdfunding offering document made available under paragraph 5(1)(f) [*Crowdfunding prospectus exemption*] must contain a certificate executed by the issuer in accordance with the applicable provisions of Appendix A, which

- (a) if the issuer is a reporting issuer, states that “*This crowdfunding offering document does not contain a misrepresentation. Purchasers of securities have a right of action in the case of a misrepresentation.*”, or
 - (b) if the issuer is not a reporting issuer, states that “*This crowdfunding offering document does not contain an untrue statement of a material fact. Purchasers of securities have a right of action in the case of an untrue statement of a material fact.*”
- (2) A certificate under subsection (1) must be true as at the date the certificate is signed, the date the crowdfunding offering document is made available to purchasers and the time of the closing of the distribution.
- (3) If a certificate under subsection (1) ceases to be true after a crowdfunding offering document is made available to a purchaser, the issuer must
- (a) amend the crowdfunding offering document and provide a newly dated certificate executed by the issuer in accordance with the applicable provisions of Appendix A, and
 - (b) provide the amended crowdfunding offering document to the funding portal for the purpose of making it available to purchasers.

Right of withdrawal

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

Liability for misrepresentation – reporting issuers

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

- (a) is available to the purchaser if the crowdfunding offering document or other materials made available to the purchaser contain a misrepresentation, without regard to whether the purchaser relied on the misrepresentation,
- (b) is enforceable by the purchaser delivering a notice to the issuer
 - (i) in the case of an action for rescission, within 180 days after the date of purchase by the purchaser, or
 - (ii) in the case of an action for damages, before the earlier of
 - (A) 180 days after the purchaser first has knowledge of the facts giving rise to the cause of action, or

- (B) 3 years after the date of purchase,
- (c) is subject to the defence that the purchaser had knowledge of the misrepresentation,
- (d) in the case of an action for damages, provides that the amount recoverable
 - (i) does not exceed the price at which the security was distributed, and
 - (ii) does not include all or any part of the damages that the issuer proves do not represent the depreciation in value of the security resulting from the misrepresentation, and
- (e) is in addition to, and does not detract from, any other right of the purchaser.

Liability for untrue statement – non-reporting issuers

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

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

Advertising and general solicitation

11. (1) An issuer must not, directly or indirectly, advertise a distribution, or solicit purchasers, under the crowdfunding prospectus exemption.

- (2) Despite subsection (1), the issuer may inform purchasers that it proposes to distribute securities under the crowdfunding prospectus exemption and may refer purchasers to the funding portal facilitating the distribution.

Additional distribution materials

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

Commissions or fees

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

Restriction on lending

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

Filing or delivery of distribution materials

15. (1) An issuer must, no later than 10 days after the closing of the distribution, file with the securities regulatory authority or regulator Form 45-106F1 *Report of Exempt Distribution*.
- (2) At the same time that the issuer files the form referred to in subsection (1), the issuer must file a copy of the crowdfunding offering document and the materials referred to in paragraphs 12(1)(a) and (c) [*Additional distribution materials*].
- (3) Upon request, the issuer must deliver to the securities regulatory authority or regulator any video referred to in paragraph 12(1)(b) [*Additional distribution materials*].

Division 2: Ongoing disclosure requirements for non-reporting issuers

Annual financial statements

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

- (b) signed by an auditor that complies with section 3.4 [*Acceptable auditors*] of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*.
- (5) If the financial statements referred to in subsection (1) are those of an SEC issuer,
- (a) the financial statements may be prepared in accordance with section 3.7 [*Acceptable accounting principles for SEC issuers*] of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*,
 - (b) the financial statements may be reviewed in accordance with U.S. AICPA Financial Statement Review Standards and accompanied by a review report prepared in accordance with U.S. AICPA Financial Statement Review Standards that
 - (i) does not include a modification or exception,
 - (ii) identifies the financial periods that were subject to review,
 - (iii) identifies the review standards used to conduct the review and the accounting principles used to prepare the financial statements, and
 - (iv) refers to IFRS as the applicable financial reporting framework if the financial statements comply with paragraph 3.2(1)(a) [*Acceptable accounting principles – general requirements*] of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*, and
 - (c) the financial statements may be audited in accordance with section 3.8 [*Acceptable auditing standards for SEC issuers*] of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*.
- (6) If the financial statements referred to in subsection (5) are accompanied by a review report and the statements have been reviewed in accordance with Canadian Financial Statement Review Standards, the review report must be in compliance with paragraphs (3)(a) to (c) and must
- (a) refer to IFRS as the applicable financial reporting framework if the financial statements comply with paragraph 3.2(1)(a) [*Acceptable accounting principles – general requirements*] of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*, or
 - (b) refer to U.S. GAAP as the applicable financial reporting framework if the financial statements comply with section 3.7 [*Acceptable accounting principles for SEC issuers*] of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*.
- (7) For the purpose of subsection (3) and paragraph (5)(b), the review report must be prepared and signed by a person or company authorized to sign a review report under the laws of a jurisdiction of Canada or a foreign jurisdiction, and that meets the professional standards of that jurisdiction.
- (8) If any of the financial statements referred to in subsection (1) are not accompanied by an auditor's report or a review report prepared by a public accountant, the statements must include the following statement; "*These financial statements were not audited or subject to a review by a public accountant, as permitted by securities legislation where an issuer has not raised more than a pre-defined amount under prospectus exemptions.*"

Annual disclosure of use of proceeds

17. (1) The financial statements of an issuer referred to in section 16 [*Annual financial statements*] and the financial statements required under section 4.1 [*Comparative annual financial statements and audit*] of National Instrument 51-102 *Continuous Disclosure Obligations* must be accompanied by a notice that details, as at the date of the issuer's most recently completed financial year, the use of the gross proceeds received by the issuer from a distribution made under the crowdfunding prospectus exemption.

(2) An issuer is not required to provide the notice referred to in subsection (1) if

- (a) the issuer has disclosed in one or more prior notices the use of the entire gross proceeds from the distribution, or
- (b) the issuer is no longer required to deliver, and make available to purchasers, annual financial statements.

Notice of specified key events

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

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

Period of time for providing ongoing disclosure

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

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

Books and records

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

- (a) the crowdfunding offering document and the materials referred to in subsection 12(1) [*Additional distribution materials*];

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

PART 3 REQUIREMENTS FOR FUNDING PORTALS

Division 1: Registration requirements, general

Restricted dealer funding portal

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

- (a) the requirements in this section and in Division 2 [*Registration requirements, funding portals*] and Division 3 [*Additional requirements, restricted dealer funding portal*] of this Part;
- (b) the terms, conditions, restrictions and requirements applicable to a registered dealer and to a registered individual, respectively, including
 - (i) National Instrument 31-102 *National Registration Database*,
 - (ii) National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, except for the following:
 - (A) Division 2 of Part 3 [*Education and experience requirements*], except for subsection 3.4(2) [*Proficiency – initial and ongoing*] and section 3.9 [*Exempt market dealer - dealing representative*];
 - (B) section 6.2 [*If IIROC approval is revoked or suspended*];
 - (C) section 6.3 [*If MFDA approval is revoked or suspended*];
 - (D) Part 8 [*Exemptions from the requirement to register*];

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

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

Registered dealer funding portal

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

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

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

Division 2: Registration requirements, funding portals

Restricted dealing activities

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

Advertising and general solicitation

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

Access to funding portal

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

Issuer access agreement

26. The issuer access agreement referred to in paragraph 25(1)(a) [*Access to funding portal*] must include all of the following:

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

Obligation to review materials of eligible crowdfunding issuer

27. (1) A funding portal is required to review the crowdfunding offering document, the materials referred to in subsection 12(1) [*Additional distribution materials*], the personal information forms, the

results of the criminal record and background checks, and any other information about an issuer or a distribution made available to the funding portal or of which the funding portal is aware.

- (2) If it appears to the funding portal that, based upon its review of the information and materials in subsection (1), the disclosure in the crowdfunding offering document and other materials referred to in subsection 12(1) [*Additional distribution materials*] is incorrect, incomplete or misleading, the funding portal must require that the issuer correct, complete or clarify the incorrect, incomplete or misleading disclosure prior to its posting on the funding portal's online platform.

Denial of issuer access and termination

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

Return of funds

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

- (a) the purchaser exercises its right of withdrawal;

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

Notifications

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

Removal of distribution materials

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

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

Monitoring purchaser communications

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

Online platform acknowledgement

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

- (a) that a distribution posted on the funding portal's online platform
 - (i) has not been reviewed or approved in any way by a securities regulatory authority or regulator, and
 - (ii) is risky and may result in the loss of all or most of an investment;
- (b) that the person or company may receive limited ongoing information about an issuer or an investment made through the funding portal;

- (c) that the person or company is entering an online platform operated by a funding portal that
 - (i) is registered in the category of restricted dealer subject to the terms and conditions of this Instrument, and will not provide advice about the suitability of the purchase of the security, or
 - (ii) is registered in the category of investment dealer or exempt market dealer, and is required to provide advice about the suitability of the purchase of the security.

Purchaser requirements prior to purchase

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

- (a) obtain from the purchaser a risk acknowledgement form where the purchaser positively confirms having read and understood the risk warnings and the information in the crowdfunding offering document,
- (b) except in Alberta and Ontario, confirm and validate that the purchaser is an accredited investor if the acquisition cost is greater than \$2,500, and
- (c) in Alberta and Ontario, obtain from the purchaser, and validate, a confirmation of investment limits form.

Required online platform disclosure

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

Delivery to the issuer

36. On or before the closing of a distribution, the funding portal must deliver to the issuer the following:

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

Release of funds

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

Reporting requirements

38. (1) A funding portal must immediately notify the securities regulatory authority or regulator in writing if, at any time during the distribution period, the funding portal terminates a distribution pursuant to subsection 28(2) [*Denial of issuer access and termination*].

(2) A funding portal must deliver to the securities regulatory authority or regulator, in a format acceptable to the securities regulatory authority or regulator, within 30 days of the end of the second and fourth quarters of its financial year, a report containing the following information for the immediately preceding two quarters:

- (a) each distribution through the funding portal, including the name of the issuer, the type of security, the amount of the distribution, the industry of the issuer and the number of purchasers participating in the distribution;
- (b) the name and industry of each issuer denied access to the funding portal and the reason for the denial;
- (c) the name and industry of each issuer
 - (i) that was granted access to the funding portal but the distribution did not close and the reason the distribution did not close, or
 - (ii) that was granted access to the funding portal but was subsequently removed from the funding portal and the reason for removal;
- (d) such other information as a securities regulatory authority or regulator may reasonably request.

Division 3: Additional requirements, restricted dealer funding portal

Prohibition on providing recommendations or advice

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

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

Restriction on referral arrangements

40. (1) A restricted dealer funding portal must not participate in a referral arrangement.

- (2) Despite subsection (1), a funding portal may compensate a third party for referring an issuer to the funding portal.

Permitted dealing activities

41. A restricted dealer funding portal and a registered individual of the restricted dealer funding portal may only act as intermediaries in connection with
- (a) a distribution of securities made in reliance on the crowdfunding prospectus exemption,
 - (b) except in Ontario, a distribution of securities made in reliance on a start-up crowdfunding registration and prospectus exemptive relief order granted by a securities regulatory authority or regulator, provided that the restricted dealer funding portal and a registered individual of the restricted dealer funding portal are in compliance with the terms, conditions, restrictions and requirements in this Instrument, and
 - (c) in Alberta, a distribution of securities made in reliance on Alberta Securities Commission Rule 45-517 *Prospectus Exemption for Start-up Businesses*, provided that the restricted dealer funding portal and a registered individual of the restricted dealer funding portal are in compliance with the terms, conditions, restrictions and requirements in this Instrument.

Chief compliance officer

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

Proficiency

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

**PART 4
EXEMPTION**

Exemption

44. (1) Subject to subsection (2), the securities regulatory authority or regulator may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.
- (2) Despite subsection (1), in Ontario, only the regulator may grant an exemption.
- (3) Except in Ontario and Alberta, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction.

**PART 5
COMING INTO FORCE**

Effective date

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

Appendix A

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

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

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

Companion Policy 45-108CP
Crowdfunding

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PREAMBLE TO COMPANION POLICY

Purpose of this Companion Policy

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

The Instrument provides

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

References to the Instrument

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

Models of crowdfunding

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

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

Applicability of securities legislation

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

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

Securities-based and non-securities-based crowdfunding

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

All distributions and other trades are subject to securities legislation

The securities legislation of a local jurisdiction applies to any distribution of a security in that jurisdiction, whether or not the issuer of the security is an issuer in that jurisdiction. A person or company who engages in a distribution must comply with the securities legislation of each jurisdiction in which the distribution occurs. That may include the requirement that such person or company be registered under securities legislation.

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

Multi-jurisdictional distributions

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

PART 1 DEFINITIONS AND INTERPRETATION

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

Terms defined or interpreted in other instruments

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

- (a) a funding portal registered in the category of restricted dealer and defined in the Instrument as a restricted dealer funding portal; or
- (b) a funding portal registered in the category of investment dealer or exempt market dealer and defined in the Instrument as a registered dealer funding portal.

(a) *Restricted dealer funding portal*

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

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

(b) *Registered dealer funding portal*

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

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

PART 2
CROWDFUNDING PROSPECTUS EXEMPTION

Division 1: Distribution requirements

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

Crowdfunding prospectus exemption

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

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

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

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

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

Conditions for closing of the distribution

6. Concurrent distributions – Eligible securities are defined in section 1 [*Definitions*]. An eligible crowdfunding issuer can distribute securities under other prospectus exemptions, such as the accredited investor exemption in section 2.3 of NI 45-106 or the offering memorandum exemption in section 2.9 of NI 45-106, during the distribution period. Securities distributed under other prospectus exemptions do not need to have the same price, terms and conditions as those distributed under the crowdfunding prospectus exemption. However, the issuer must ensure compliance with the conditions of the prospectus exemption being relied upon for the distribution. Information about any concurrent distribution, including a concurrent distribution by a member of the issuer group, must be disclosed in the crowdfunding offering document.

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

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

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

Liability for misrepresentation – reporting issuers

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

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

In Nova Scotia, the crowdfunding offering document required to be filed by an issuer under the Instrument is considered to be an offering memorandum and the rights available under section

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

In Alberta, a crowdfunding offering document has been designated as an offering memorandum and the rights available under the *Securities Act* (Alberta) apply. Refer to Alberta Securities Commission Designation Order *Designation of a Crowdfunding Offering Document under Multilateral Instrument 45-108 Crowdfunding as an Offering Memorandum*.

Liability for untrue statement – non-reporting issuers

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

Advertising and general solicitation

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

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

Commissions or fees

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

Division 2: Ongoing disclosure requirements for non-reporting issuers

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

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

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

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

Annual financial statements

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

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

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

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

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

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

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

Annual disclosure of use of proceeds

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

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

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

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

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

Notice of specified key events

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

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

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

directly or indirectly, by fewer than 51 security holders worldwide.

PART 3 REQUIREMENTS FOR FUNDING PORTALS

Division 1: Registration requirements, general

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

Restricted dealer funding portal

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

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

Registered dealer funding portal

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

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

Division 2: Registration requirements, funding portals

General

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

A funding portal must be aware of and act in compliance with the terms of the exemption being relied upon for the trade or distribution of the security. For example, the funding portal must confirm and

validate that the purchaser is investing within the investment limits set out in the Instrument.

Restricted dealing activities

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

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

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

Advertising and general solicitation

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

A funding portal is not permitted to recommend or endorse a particular issuer or distribution, which includes accepting payment or other benefits from an issuer to highlight or showcase the issuer or its distribution. Such conduct would be considered to be inconsistent with the restriction in section 24 [*Advertising and general solicitation*]. However, a funding portal may advertise its business operations. For example, a funding portal may advertise that it is in the business of distributing securities under the crowdfunding prospectus exemption.

Access to funding portal

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

Funding portals should ensure all questions in Form 45-108F5 have been answered and additional

details provided, where necessary.

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

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

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

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

Issuer access agreement

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

Obligation to review materials of eligible crowdfunding issuer

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

- (a) if an issuer’s constating documents indicate that the “common shares” contain restrictions on voting or contain redemption rights that allow the issuer to redeem the shares in certain

circumstances, or that insiders or promoters of the issuer hold another class of securities that have multiple votes, and the crowdfunding offering document does not contain this disclosure, the funding portal must not grant the issuer access to the funding portal for the purposes of distributing its securities until it is satisfied that the crowdfunding offering document accurately describes the securities being distributed, the capital structure of the issuer, including the percentage ownership of the outstanding securities of the issuer held by the insiders and promoters, and any rights not otherwise available to purchasers;

- (b) if an issuer is part of an issuer group, and the issuer's interest in the business or the assets of the business are owned through one or more subsidiaries, the funding portal should understand the features and risks of the capital structure of the issuer group and assess whether the issuer's disclosures adequately disclose these risks.

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

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

Denial of issuer access and termination

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

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

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

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

Monitoring purchaser communications

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

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

Online platform acknowledgement

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

Purchaser requirements prior to purchase

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

- (c) in Alberta and Ontario, a confirmation of investment limits form and validation of the information contained in the form regardless of the acquisition cost to the purchaser.

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

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

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

Division 3: Additional requirements, restricted dealer funding portal

Prohibition on providing recommendations or advice

39. Section 39 [*Prohibition on providing recommendations or advice*] provides that a restricted dealer funding portal and a registered individual of the restricted dealer funding portal must not provide a recommendation or advice to a purchaser in connection with a distribution under the crowdfunding prospectus exemption or other trades in a security. This means a restricted dealer funding portal cannot tell a purchaser that the securities are a good investment, that the securities meet the purchaser's investment needs or objectives, or that the purchaser should, for whatever reason, buy the securities.

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

- (a) using objective criteria to limit the crowdfunding distributions on the funding portal if the objective criteria are disclosed on the funding portal and applied consistently to all distributions on the funding portal;
- (b) providing general information and educational materials to purchasers about crowdfunding distributions if the information is presented in a fair, balanced and reasonable manner;
- (c) providing search functions or other tools for purchasers to search, sort or categorize crowdfunding distributions available on the funding portal if the search functions are based on objective criteria;

- (d) distributing information on the funding portal about a particular issuer or offering to a purchaser based on selection criteria identified by a purchaser; and
- (e) providing communication channels or discussion boards to enable purchasers in a crowdfunding distribution to communicate with one another and with representatives of the issuer about a crowdfunding distribution displayed on the funding portal if a communication by a person can be traced back to its author and the funding portal complies with its obligations in section 32 [*Monitoring purchaser communication*].

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

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

Permitted dealing activities

41. Section 41 [*Permitted dealing activities*] provides that a restricted dealer funding portal and a registered individual of the restricted dealer funding portal may only act as an intermediary in connection with a distribution of securities made in reliance on the crowdfunding prospectus exemption and, except in Ontario, a distribution of securities made in reliance on a start-up crowdfunding registration and prospectus exemptive relief order granted by a securities regulatory authority or regulator. In addition, in Alberta, a restricted dealer funding portal and a registered individual of the restricted dealer funding portal may act as an intermediary in connection with a distribution of securities under ASC Rule 45-517 *Prospectus Exemption for Start-up Businesses*. This means that a restricted dealer funding portal is not permitted to engage in a broader range of dealing or advising activities, such as
- (a) facilitating distributions of securities in reliance on other prospectus exemptions,
 - (b) facilitating resales of securities acquired by a purchaser to accredited investors or to other purchasers who are eligible to purchase securities on a prospectus-exempt basis, or
 - (c) providing underwriting or underwriting-related services to issuers except as otherwise permitted by the Instrument.

The limitation on dealing activities applies only to activities in connection with a distribution of securities under the crowdfunding prospectus exemption and, except in Ontario, a distribution of securities under a start-up crowdfunding exemptive relief order granted by a securities regulatory authority or regulator. In Alberta, it also applies a distribution of securities under ASC Rule 45-517 *Prospectus Exemption for Start-up Businesses*. A funding portal may engage in other types of crowdfunding activities that do not involve a distribution of securities, including facilitating crowdfunding activities based on a donation model, a reward model or a pre-purchase model. To the extent that a funding portal does engage in crowdfunding activities that do not involve a distribution of securities, it should have separate books and records for its non-securities related crowdfunding activities.

Chief Compliance Officer

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

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

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

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

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

Proficiency

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

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

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

MISCELLANEOUS

Resale of securities distributed under the crowdfunding prospectus exemption

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

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

The crowdfunding prospectus exemption is not available for distributions by selling security holders. Refer to National Instrument 45-102 *Resale of Securities*.