

## **CSA Notice of Publication of National Instrument 45-110 *Start-up Crowdfunding Registration and Prospectus Exemptions***

**June 23, 2021**

### **Introduction**

The Canadian Securities Administrators (the **CSA** or **we**) are publishing in final form:

- National Instrument 45-110 *Start-up Crowdfunding Registration and Prospectus Exemptions* (**NI 45-110**), including:
  - Form 45-110F1 *Offering Document*
  - Form 45-110F2 *Risk Acknowledgement*
  - Form 45-110F3 *Funding Portal Information*
  - Form 45-110F4 *Portal Individual Information*
  - Form 45-110F5 *Semi-Annual Financial Resources Certification*
- CSA Staff Notice 45-329 *Guidance for using the start-up crowdfunding registration and prospectus exemptions*, including:
  - Appendix 1 – *Start-up Crowdfunding Guide for Businesses* (the **Guide for Businesses**)
  - Appendix 2 – *Start-up Crowdfunding Guide for Funding Portals* (the **Guide for Funding Portals**)

Collectively, the Guide for Businesses and the Guide for Funding Portals are referred to as the **Guides** in this Notice and NI 45-110 and the Guides are collectively referred to as the **Start-up Crowdfunding Rule**.

We are also making consequential changes to:

- National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)* (**NI 13-101**)
- National Instrument 45-102 *Resale of Securities* (**NI 45-102**)

Provided all necessary ministerial approvals are obtained, the Start-up Crowdfunding Rule and the consequential amendments to NI 13-101 and NI 45-102 will come into force September 21, 2021. We are publishing the text of the Start-up Crowdfunding Rule and amending instruments to NI 13-101 and NI 45-102 that identifies the consequential changes to those instruments concurrently with this notice. Where applicable, Annex E of this Notice provides information about each of the jurisdiction's approval process.

## Substance and Purpose

The Start-up Crowdfunding Rule provides a harmonized national framework to facilitate securities crowdfunding for start-ups and early stage issuers. NI 45-110 provides:

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

We are publishing the Guides to assist funding portals and issuers in understanding the requirements under NI 45-110.

## Background

On May 14, 2015, the securities regulatory authorities of British Columbia, Saskatchewan, Manitoba, Québec, New Brunswick and Nova Scotia adopted substantially harmonized registration and prospectus exemptions to allow start-ups and early stage issuers to raise capital in these jurisdictions under a tailored framework for securities crowdfunding. On October 2, 2019 and July 30, 2020, respectively, the securities regulatory authorities of Alberta and Ontario also adopted substantially harmonized registration and prospectus exemptions (the securities regulatory authorities in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick and Nova Scotia collectively being the **blanket order jurisdictions**). The blanket order jurisdictions implemented the registration and prospectus exemptions by way of local blanket orders, as amended from time to time (the **start-up crowdfunding blanket orders**).

Since adoption in 2015, CSA staff have heard from market participants that a harmonized regulatory framework tailored for securities crowdfunding available across Canada would foster the use of securities crowdfunding as an alternative for start-ups and early stage issuers to raise capital. As a result, the CSA proposed NI 45-110 with prospectus and registration exemptions similar to the prospectus and registration exemptions in the start-up crowdfunding blanket orders. We have also proposed targeted enhancements to improve the effectiveness of crowdfunding as a capital raising tool for start-ups and early stage issuers, while maintaining adequate investor protection. In the blanket order jurisdictions, NI 45-110 is proposed to replace the start-up crowdfunding blanket orders.

## Summary of Written Comments Received by the CSA

On February 27, 2020, the CSA published the proposed rule for comment to improve the harmonization of the regulatory framework for securities crowdfunding by start-ups and early stage issuers. The comment period ended on July 13, 2020. During the comment period, we received submissions from ten commenters.

We have considered the comments received and thank the commenters for their input. The commenters' names and a summary of their comments, together with our responses, are contained in Annex B of this notice.

### **Summary of Changes to the Proposed Instrument**

We have revised the Start-up Crowdfunding Rule to:

- increase the individual investment limit from \$5,000 for each purchaser, if the purchaser has obtained advice from a registered dealer that such investment is suitable for the purchaser, to \$10,000;
- increase the limit on aggregate proceeds raised by the issuer group during a 12-month period from \$1,000,000 to \$1,500,000;
- include shares in the capital of an association (commonly known as a co-operative) in the definition of "eligible securities";
- revise the annual financial resources certification (previously termed the working capital certification) to a semi-annual certification, with the term of certification reduced from 12 months to 6 months; and
- include a condition of the prospectus exemption that an issuer have operations other than to identify and evaluate assets or a business with a view to completing an investment in, merger with, amalgamation with or acquisition of a business, or a purchase of the securities of one or more other issuers.

As we do not consider these to be material changes, we are not republishing NI 45-110 for a further comment period. A comparative chart of the key differences, on a cumulative basis, between NI 45-110 and the start-up crowdfunding blanket orders is provided in Annex A.

### **Local Matters**

Because NI 45-110 will replace the start-up crowdfunding blanket orders, the securities regulatory authorities of the blanket order jurisdictions anticipate their respective start-up crowdfunding blanket orders will cease to have effect by 90 days after the date the Start-up Crowdfunding Rule comes into force.

Annex E is being published in any local jurisdiction that is proposing related changes to local securities laws, including local notices or other policy instruments in that jurisdiction. It may also include additional information that is relevant to that jurisdiction only.

## Questions

Please refer your questions to any of the following:

Elliott Mak  
Senior Legal Counsel, Corporate Finance  
British Columbia Securities Commission  
604 899-6501  
[emak@bcsc.bc.ca](mailto:emak@bcsc.bc.ca)

James Leong  
Senior Legal Counsel, Capital Markets  
Regulation  
British Columbia Securities Commission  
604 899-6681  
[jleong@bcsc.bc.ca](mailto:jleong@bcsc.bc.ca)

Charmaine Coutinho  
Legal Counsel, Market Regulation  
Alberta Securities Commission  
403.592.4898  
[charmaine.coutinho@asc.ca](mailto:charmaine.coutinho@asc.ca)

Denise Weeres  
Director, New Economy  
Alberta Securities Commission  
403.297.2930  
[denise.weeres@asc.ca](mailto:denise.weeres@asc.ca)

Gillian Findlay  
Senior Legal Counsel, Corporate Finance  
Alberta Securities Commission  
403.297.3302  
[gillian.findlay@asc.ca](mailto:gillian.findlay@asc.ca)

Mikale White  
Legal Counsel  
Financial and Consumer Affairs Authority  
of Saskatchewan  
306 798-3381  
[mikale.white@gov.sk.ca](mailto:mikale.white@gov.sk.ca)

Chris Besko  
Director, General Counsel  
The Manitoba Securities Commission  
204 945-2561  
[Chris.Besko@gov.mb.ca](mailto:Chris.Besko@gov.mb.ca)

Sarah Hill  
Legal Counsel  
The Manitoba Securities Commission  
204 945-0605  
[Sarah.Hill@gov.mb.ca](mailto:Sarah.Hill@gov.mb.ca)

Jo-Anne Matear  
Manager, Corporate Finance  
Ontario Securities Commission  
416 593-2323  
Toll free: 1 877 785-1555  
[jmatear@osc.gov.on.ca](mailto:jmatear@osc.gov.on.ca)

Faustina Otchere  
Legal Counsel, Compliance and  
Registrant Regulation  
Ontario Securities Commission  
416 596-4255  
Toll free: 1 877 785-1555  
[fotchere@osc.gov.on.ca](mailto:fotchere@osc.gov.on.ca)

Patrick Théorêt  
Director, Corporate Finance  
Autorité des marchés financiers  
514 395-0337, extension 4381  
Toll-free: 1 877 525-0337  
[patrick.theoret@lautorite.qc.ca](mailto:patrick.theoret@lautorite.qc.ca)

Jason Alcorn  
Senior Legal Counsel and Special Advisor  
to the Executive Director  
Financial and Consumer Services  
Commission (New Brunswick)  
506 643-7857  
Toll free: 1 866 933-2222  
[jason.alcorn@fcnb.ca](mailto:jason.alcorn@fcnb.ca)

Abel Lazarus  
Director, Corporate Finance  
Nova Scotia Securities Commission  
902 424-6859  
[abel.lazarus@novascotia.ca](mailto:abel.lazarus@novascotia.ca)

Erin O'Donovan  
Senior Legal Counsel, Corporate Finance  
Ontario Securities Commission  
416 204-8973  
Toll free: 1 877 785-1555  
[eodonovan@osc.gov.on.ca](mailto:eodonovan@osc.gov.on.ca)

Adrian Molder  
Legal Counsel, Corporate Finance  
Ontario Securities Commission  
416 593-2389  
Toll free: 1 877 785-1555  
[amolder@osc.gov.on.ca](mailto:amolder@osc.gov.on.ca)

Peter Lamey  
Legal Analyst, Corporate Finance  
Nova Scotia Securities Commission  
902 424-7630  
[peter.lamey@novascotia.ca](mailto:peter.lamey@novascotia.ca)

## **Contents of Annexes**

This notice contains the following Annexes:

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

Annex B – Summary of Comments and Responses

Annex C – National Instrument 45-110 *Start-up Crowdfunding Registration and Prospectus Exemptions*

Annex D – CSA Staff Notice 45-329 *Guidance for using the start-up crowdfunding registration and prospectus exemptions*

Annex E – Local Matters

## ANNEX A

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

Key theme	Start-up crowdfunding blanket orders	Instrument
<b>Maximum aggregate proceeds that can be raised by the issuer group under the prospectus exemption</b>	\$250,000 per distribution, up to two times in a calendar year.	\$1,500,000 during the 12 months before the closing of the offering.
<b>Maximum investment amount per person per distribution under the prospectus exemption</b>	<ul style="list-style-type: none"> <li>• \$1,500; or</li> <li>• in British Columbia, Alberta, Saskatchewan and Ontario, \$5,000, provided that the purchaser has obtained advice from a registered dealer that such investment is suitable for the purchaser</li> </ul>	<ul style="list-style-type: none"> <li>• \$2,500; or</li> <li>• \$10,000, provided that the purchaser has obtained advice from a registered dealer that such investment is suitable for the purchaser</li> </ul>
<b>Eligible securities that can be distributed under the prospectus exemption</b>	<ul style="list-style-type: none"> <li>• common shares</li> <li>• non-convertible preference shares</li> <li>• securities convertible into common shares or non-convertible preference shares</li> <li>• non-convertible debt securities linked to a fixed or floating interest rate</li> <li>• units of limited partnerships</li> </ul>	<ul style="list-style-type: none"> <li>• common shares</li> <li>• non-convertible preference shares</li> <li>• securities convertible into common shares or non-convertible preference shares</li> <li>• non-convertible debt securities linked to a fixed or floating interest rate</li> <li>• units of limited partnerships</li> <li>• shares in the capital of an association</li> </ul>

Key theme	Start-up crowdfunding blanket orders	Instrument
<b>Confirmation by the regulator before a funding portal starts to facilitate distributions</b>	<p>The funding portal cannot facilitate distributions until the regulator confirms in writing receipt of:</p> <ul style="list-style-type: none"> <li>• a duly completed funding portal information form;</li> <li>• a duly completed individual information form for each principal of the funding portal; and</li> <li>• such other documents and information as may be requested by the regulator.</li> </ul>	<p>The funding portal must deliver the required forms at least 30 days before facilitating distributions. There is no requirement for the regulator's written confirmation. However, a funding portal may not rely on the start-up crowdfunding registration exemption if, within 30 days of receiving the funding portal information form, the regulator has notified the funding portal or any of its principals has that its process and procedure for handling of purchasers' funds does not satisfy the conditions of the Instrument.</p>
<b>Bad actor disqualification</b>	Not applicable.	<p>A funding portal cannot rely on the start-up crowdfunding registration exemption if it or any of its principals is or has been the subject of certain proceedings in the last 10 years related to a claim based in whole or in part on various conduct such fraud, theft, breach of trust, or allegations of similar conduct.</p>
<b>Funding portals financial resources certification</b>	Not applicable.	<p>On a semi-annual basis, the funding portal must certify that it has, or expects to have, sufficient financial resources to continue its operations for at least the next 6 months by delivering a completed funding portal information form or Form 45-110F5 <i>Semi-Annual Financial Resources Certification</i>.</p>
<b>Liability in the event the offering document contains misrepresentations</b>	<p>There is no statutory liability under securities law. The blanket orders do not require the issuer to provide contractual rights to purchasers. Purchasers may have rights under common law or civil law.</p>	<p>The issuer is subject to statutory liability similar to the offering memorandum exemption under section 2.9 of NI 45-106.</p>



Key theme	Start-up crowdfunding blanket orders	Instrument
<b>Investment in an unspecified business</b>	No restrictions.	<p>The start-up crowdfunding prospectus exemption is not available to issuers who:</p> <ul style="list-style-type: none"> <li>• have no operations other than to identify and evaluate assets or a business with a view to completing an investment in, merger with, amalgamation with or acquisition of a business, or a purchase of the securities of one or more other issuers; or</li> <li>• intend to use the proceeds of the distribution to invest in, merge with or acquire an unspecified business.</li> </ul>
<b>Report of exempt distribution form</b>	Except in Alberta, British Columbia and Ontario, issuers must use Form 5 – <i>Start-up Crowdfunding – Report of distribution</i> . In Alberta, British Columbia and Ontario, issuers must use Form 45-106F1 <i>Report of Exempt Distribution</i> .	Issuers must use Form 45-106F1 <i>Report of Exempt Distribution</i> .
<b>Expiry date</b>	Except in Alberta and Ontario, the orders were initially set to expire on May 13, 2020, but were extended to remain available until 90 days after the Instrument comes into effect. All orders, including those in Alberta and Ontario, are intended to cease to have effect by 90 days after the Instrument comes into effect.	The Instrument has no expiry date.

## ANNEX B

### PROPOSED NATIONAL INSTRUMENT 45-110 START-UP CROWDFUNDING LIST OF COMMENTERS AND SUMMARY OF COMMENTS AND RESPONSES

No.	Commenter	Date
1.	James S. Hershaw	May 20, 2020
2.	National Crowdfunding & Fintech Association	May 27, 2020
3.	David Patterson & David Brook (Vested Technology Corp.)	May 27, 2020
4	BC Co-operative Association	June 1, 2020
5.	Silver Maple Ventures Inc.	June 11, 2020
6.	Eden Yesh (Community Impact Investment Coalition of British Columbia)	June 17, 2020
7.	Canadian Advocacy Council of CFA Societies Canada	June 23, 2020
8.	Private Capital Markets Association of Canada	July 13, 2020
9.	André Beaudry (Co-operatives and Mutuals Canada)	July 13, 2020
10.	Alexander Morsink (Equivesto Canada Inc.)	July 13, 2020

No.	Subject	Summarized Comment	Response
1	General Support	<p>All respondents expressed support for the harmonization and assistance provided to small businesses represented by NI 45-110.</p> <p>Seven respondents indicated that the proposed instrument should go further in providing access to capital, mostly by raising the investor and/or investment limits beyond the consultation parameters.</p>	<p>We thank the commenters for their views.</p> <p>We acknowledge the views expressed in the comment letters indicating that NI 45-110 would be an unviable option for most small issuers. We think the harmonized instrument will help fill a capital raising gap in our capital raising regime to support small issuers.</p>

No.	Subject	Summarized Comment	Response
		<p>One respondent expressed an opinion that as drafted, raises under NI 45-110 would still be an inviable option for most small issuers.</p>	
2	<p>Repeal of MI 45-108</p>	<p>Six respondents supported the repeal of MI 45-108. The general view was that there was no need to maintain MI 45-108 when NI 45-110 comes into effect, and MI 45-108 has not gained any traction.</p>	<p>We thank the commenters for their views.</p> <p>The jurisdictions that have adopted MI 45-108 will monitor the amount of activity occurring under both MI 45-108 and NI 45-110 to determine whether to rescind MI 45-108. If and when appropriate, these jurisdictions will seek further feedback to do so.</p>
3	<p>Investor limit – increasing limit from \$2,500</p>	<p>Eight respondents indicated that the investor limit should be raised from \$2,500.</p> <p>Of the eight, six respondents indicated that of the consulted numbers, \$5,000 was appropriate.</p> <p>Of these six, two indicated that an increase beyond \$5,000 was desired.</p> <p>Additionally, two respondents suggested considering importing the concept of “eligible investors” (as such term is defined in the offering memorandum prospectus exemption for various provinces) with specific raised limits for eligible investors.</p> <ul style="list-style-type: none"> <li>• Three respondents also suggested that in their capacity as operators of co-operative associations, co-</li> </ul>	<p>We thank the commenters for their views.</p> <p>We acknowledge that many respondents favored increasing this limit. However, we did not receive responses that identified investor protections that supported an increase. While some respondents submitted that certain legislation (such as co-operative legislation) provided additional investor protection, such protection would only apply to a subset of all offerings we anticipate being conducted using the prospectus exemption. Therefore, we have decided to proceed with the investor limit as originally published.</p>

No.	Subject	Summarized Comment	Response
		<p>operative legislation, combined with the current requirements, were sufficient investor protection.</p> <p>Two respondents did not view that the higher limit consulted on made start-up crowdfunding a viable option.</p>	
4	Investor limit with positive suitability – increasing limit from \$5,000	<p>Nine respondents indicated that the investor limit should be raised from \$5,000, as follows:</p> <ul style="list-style-type: none"> <li>• In the range we proposed in the publication for comment (\$5,000 to \$10,000), seven indicated that they preferred \$10,000.</li> <li>• Two respondents further indicated that they would prefer numbers beyond \$10,000.</li> </ul> <p>Additionally, two respondents suggested importing the concept of “eligible investors” (as such term is defined in the OM exemption for various provinces), with specific raised limits. One respondent also suggested that such limit should be increased to \$10,000 where suitability advice was provided, regardless of it being positive or negative.</p> <p>Two respondents did not view that the higher limit consulted on made start-up crowdfunding a viable option.</p>	<p>We thank the commenters for their views.</p> <p>We agree with comments indicating that investors who have received positive suitability advice from a registered dealer have additional investor protection in this space. We think it is appropriate to balance this increased investor protection with an increased investor limit to \$10,000.</p>

No.	Subject	Summarized Comment	Response
5	Offering limit – increasing limit from \$1,000,000 in a 12-month period	<p>All respondents indicated that the offering limit should be raised.</p> <p>Four respondents favored removal of a cap entirely, with three arguing there is no justification for an issuer limit as it does not address an identified investor protection concern.</p> <p>Of the other six respondents, all favored an increase to \$1,500,000 within the consultation parameters, but all favored increases beyond \$1,500,000. In particular:</p> <ul style="list-style-type: none"> <li>Two respondents suggested that the issuer limit be increased to \$2,000,000 or \$3,000,000 where the offering is going through a registrant, given the investor protections afforded by registrant requirements.</li> <li>Three respondents favored increases to at least \$5,000,000, noting that in other countries with crowdfunding regimes, issuer limits are often much higher (ranging from \$5M USD in the US to \$8M EUR in the UK).</li> </ul> <p>Two respondents suggested that an increase in the limit could be supplemented by additional required disclosure from the issuer, such as</p>	<p>We thank the commenters for their views.</p> <p>We agree with the views that raising the offering limit will not decrease investor protection in the context of a start-up crowdfunding campaign. We have raised the offering limit to \$1,500,000, the highest number consulted on.</p> <p>We acknowledge that many respondents favored an increase beyond \$1,500,000. We also acknowledge that some respondents suggested that an increase can be supplemented by additional required disclosure. We think that it is more appropriate for issuers to use the offering memorandum exemption to crowdfund larger amounts, which includes increased disclosure to protect investors.</p>

No.	Subject	Summarized Comment	Response
		financial statements or subsequent reporting on use of proceeds.	
6	Removing statutory liability for misreps in offering document	<p>Eight respondents expressed an opinion, as follows:</p> <p>Three respondents supported removing the requirement because they did not think the protections were practically useful.</p> <p>One was neutral but did not think it was needed because investors would be unlikely to use this in practice, and the requirement would be unlikely to deter parties intending to commit fraud.</p> <p>Two respondents expressed support for the requirement if the investor and issuer limits were increased.</p> <p>One respondent expressed support for the requirement if the issuer managed to raise at least \$1,500,000.</p> <p>One respondent indicated that executives and directors should be held liable for any misrepresentations, fraud or non-compliance with Canadian laws and regulations.</p>	<p>We thank the commenters for their views.</p> <p>We acknowledge that many respondents thought that it was unlikely that investors would use a statutory liability cause of action to sue for a misrepresentation in the offering document. However, we did not receive any feedback indicating that imposing a statutory liability standard would be practically burdensome for issuers. Therefore, we have decided to maintain the statutory liability standard because it represents additional investor protection without unduly raising regulatory burden.</p>
7	Expanding “eligible securities” definition	<p>Seven respondents supported expanding the definition but offered differing inclusions, such as:</p> <ul style="list-style-type: none"> <li>• convertible preference shares</li> </ul>	<p>We thank the commenters for their views.</p> <p>We have decided to include</p>

No.	Subject	Summarized Comment	Response
		<ul style="list-style-type: none"> <li>• trust units</li> <li>• co-op investment and membership shares</li> </ul> <p>We noted that three argued that co-op membership and co-op investment shares should be included because they are relatively simple instruments with additional protections (e.g. a redemption right) relative to other simple securities.</p>	<p>co-operative membership shares and co-operative investment shares under the definition of “eligible securities”. We intend for the properties of “eligible securities” to be simple and understandable for investors, and think that these types of co-operative shares meet this criterion.</p>
8.	Blind pool ban	<p>Four respondents want the blind pool ban (the restriction on the prospectus exemption for issuers intending to invest in, merge with, amalgamate with or acquire an unspecified business) removed. Three argue that this will hurt investment co-ops without justification and one argues that this may already be best addressed by using a registered dealer “as it involves suitability”.</p> <p>One response supports the blind pool ban as this appears to be in line with the intent of the NI.</p>	<p>We thank the commenters for their views.</p> <p>We included the blind pool ban in NI 45-110 because the investor protections built into start-up crowdfunding are not intended to address the risk inherent in these types of investments. We think that investors looking to invest in such issuers receive better protection from existing regimes, such as the TSX Venture Exchange capital pool company program.</p> <p>In alignment with this view, we have revised the blind pool ban to also specify that issuers who do not have any operations other than to identify and evaluate assets or a business with a view to completing an investment in, merger with, amalgamation with or acquisition of a business, or a purchase of the securities of one or more other issuers, are not eligible to use start-up crowdfunding.</p>

No.	Subject	Summarized Comment	Response
9	Working capital certification	Three responses suggest reconsidering the working capital certification. The burden seems too onerous on exempt portals, particularly in the short-term given the economic turmoil. One respondent proposes shortening the term of the certification to six months.	<p>We thank the commenters for their views.</p> <p>We think that the twelve month term of the annual working capital certification (which we have renamed the financial resources certification) may impose a significant burden imposed on exempt portals and have decided to decrease the term of the certification to six months, while making the certification semi-annual.</p>



## ANNEX C

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

#### PART 1 DEFINITIONS AND INTERPRETATION

##### Definitions

**1. (1)** In this Instrument,

“association” means any of the following:

- (a) a cooperative, as defined in subsection 2(1) of the *Canada Cooperatives Act* (Canada);
- (b) a person or company referred to in Appendix A;

“crowdfunding distribution” means a distribution under section 5;

“eligible security” means any of the following:

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

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

“founder” means a person or company that,

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

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

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

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

- (a) the issuer;
- (b) an affiliate of the issuer;
- (c) any other issuer if either of the following applies:
  - (i) the other issuer is engaged in a common enterprise with the issuer or with an affiliate of the issuer;
  - (ii) the other issuer’s business is founded or organized by a person or company that founded or organized the issuer;

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

“principal”, except under paragraph 5(1)(b), means a founder, director, officer or control person of a funding portal or an issuer;

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

- (2) For the purposes of this Instrument, an issuer is affiliated with another issuer if
  - (a) one of them is the subsidiary of the other, or
  - (b) each of them is controlled by the same person or company.
- (3) For the purposes of this Instrument, a person (first person) is considered to control another person (second person) if
  - (a) the first person beneficially owns or directly or indirectly exercises control or direction over securities of the second person carrying votes that, if exercised, would entitle the first person to elect a majority of the directors of the second person, unless that first person holds the voting securities only to secure an obligation,
  - (b) the second person is a partnership, other than a limited partnership, and the first person holds more than 50% of the interests of the partnership, or

- (c) the second person is a limited partnership and the general partner of the limited partnership is the first person.

**Special application – Alberta, British Columbia, Ontario, Québec and Saskatchewan**

- 2. (1) In Alberta, an offering document that is provided under section 5 is designated to be an offering memorandum under securities legislation.
- (2) In British Columbia, an offering document that is provided under paragraph 5(1)(h) is a prescribed disclosure document for purposes of section 132.1 of the *Securities Act* (British Columbia).
- (3) In Ontario, an issuer that distributes securities under section 5 is prescribed as a market participant under the *Securities Act* (Ontario).
- (4) In Saskatchewan, an offering document that is provided under section 5 is an offering memorandum under securities legislation.
- (5) In Québec,
  - (a) an offering document that is provided under section 5 and a Form 45-110F2 *Risk Acknowledgement* made available to purchasers in accordance with this Instrument must be drawn up in French only or in French and English,
  - (b) a funding portal that has relied on the exemption under section 3 is a market participant determined by regulation for the purpose of section 151.1.1 of the *Securities Act* (Québec),
  - (c) an offering document that is provided under section 5 and materials that are made available to purchasers in accordance with this Instrument are documents authorized by the Autorité des marchés financiers for use in lieu of a prospectus, and
  - (d) “trade”, in this Instrument, means any of the following activities:
    - (i) the activities described in the definition of “dealer” in section 5 of the *Securities Act* (Québec), including the following activities:
      - (A) the sale or disposition of a security by onerous title, whether the terms of payment be on margin, instalment 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 under subparagraph (ii);
      - (B) participation as a trader in any transaction in a security through the facilities of an exchange or a quotation and trade reporting system;
      - (C)
      - (D) the receipt by a registrant of an order to buy or sell a security;
      - (E)
    - (ii) a transfer or the giving in guarantee of securities of an issuer from the holdings of a control person in connection with a debt.

**PART 2**  
**EXEMPTION FROM THE DEALER REGISTRATION REQUIREMENT**

**Exemption from dealer registration requirement**

- 3. (1)** A funding portal is exempt from the dealer registration requirement if all of the following apply:
- (a) the funding portal is not registered under securities legislation in any jurisdiction of Canada;
  - (b) the funding portal does not advise a purchaser about the merits of an investment or recommend or represent that an eligible security is a suitable investment for the purchaser;
  - (c) the funding portal does not receive a commission, fee or other similar payment from a purchaser;
  - (d) the funding portal facilitates or proposes to facilitate crowdfunding distributions only;
  - (e) at least 30 days before the first date the funding portal facilitates a crowdfunding distribution, the funding portal delivered to the securities regulatory authority or regulator both of the following:
    - (i) a completed Form 45-110F3 *Funding Portal Information* for the funding portal certified by an authorized individual of the funding portal;
    - (ii) a completed Form 45-110F4 *Portal Individual Information* for each principal of the funding portal that contains a certification signed by that principal;
  - (f) the funding portal has its head office in Canada;
  - (g) the funding portal has policies and procedures to prevent a person or company from accessing its platform unless the person or company acknowledges that the person or company is accessing a platform of a funding portal that
    - (i) is not registered under securities legislation in any jurisdiction of Canada, and
    - (ii) will not, and is not authorized to, provide advice about
      - (A) the suitability of any security for investment by the person or company, or
      - (B) the merits of any investment;
  - (h) the following are disclosed on the funding portal's platform:
    - (i) a statement that the funding portal is not registered under securities legislation in any jurisdiction of Canada and is relying on the exemption from the dealer registration requirement under this Instrument;
    - (ii) a statement that the funding portal will hold each purchaser's assets
      - (A) separate and apart from the funding portal's own assets,
      - (B) in trust for the purchaser, and
      - (C) in the case of cash, in a designated trust account at a Canadian financial institution;

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

- (i) releases, or causes to be released, all assets due to the issuer at the closing of the distribution, and
    - (ii) no later than 15 days after the closing of the distribution,
      - (A) notifies each purchaser that the assets have been released to the issuer, and
      - (B) provides the issuer with the documents referred to in paragraph 5(2)(b);
  - (r) neither the funding portal, nor any of its principals, is or has been the subject of an order, judgment, decree, sanction, or administrative penalty imposed by, or has entered into a settlement agreement with, a government agency, administrative agency, self-regulatory organization or court in the last 10 years related to a claim based in whole or in part on fraud, theft, deceit, misrepresentation, conspiracy, breach of trust, breach of fiduciary duty, insider trading, unregistered trading, illegal distributions, failure to disclose material facts or changes, or allegations of similar conduct;
  - (s) neither the funding portal nor any of its principals is or has been a principal of an entity that is or has been subject to an order, judgment, decree, sanction or administrative penalty or a settlement agreement referred to in paragraph (r);
  - (t) the funding portal has policies and procedures to promptly notify the securities regulatory authority or regulator, and any purchasers for which it holds assets, of the process the funding portal will use to return assets to those purchasers in the event that the funding portal becomes insolvent or discontinues operations;
  - (u) the funding portal is not insolvent.
- (2) A funding portal relying on subsection (1) must
- (a) maintain, for a period of 8 years from the date a record is created, records at its head office that accurately record its financial affairs and client transactions, and demonstrate the extent of the funding portal's compliance with this Instrument,
  - (b) notify the securities regulatory authority or regulator of each change to the information previously submitted in a document referred to in paragraph (1)(e) by delivering an amendment to the document no later than 30 days after the change,
  - (c) take reasonable steps to confirm that the majority of the directors of the funding portal ordinarily reside in Canada,
  - (d) disclose on its platform, for each principal of the funding portal, the principal's full legal name, municipality and jurisdiction of residence, business mailing and email addresses and business telephone number,
  - (e) take reasonable steps to confirm that the head office of an issuer is in Canada before allowing the issuer to post a crowdfunding distribution on the funding portal's platform,
  - (f) not allow a person or company to access the funding portal's platform unless the person or company acknowledges that the person or company is accessing a platform of a funding portal that
    - (i) is not registered under securities legislation in any jurisdiction of Canada, and
    - (ii) will not, and is not authorized to, provide advice about

- (A) the suitability of any security for investment by the person or company, or
- (B) the merits of any investment,
- (g) not close a crowdfunding distribution on its platform unless the funding portal has made the issuer's completed Form 45-110F1 *Offering Document* and Form 45-110F2 *Risk Acknowledgement* available to each purchaser through the funding portal's platform,
- (h) not close a crowdfunding distribution on its platform unless each purchaser completes Form 45-110F2 *Risk Acknowledgement* acknowledging the risks and confirms that the purchaser has read and understands the issuer's completed Form 45-110F1 *Offering Document*,
- (i) upon receiving notice from an issuer that the issuer has amended its completed Form 45-110F1 *Offering Document*, promptly
  - (i) post the amendment on the funding portal's platform, and
  - (ii) notify each purchaser of the amendment, and the purchaser's right to withdraw from the agreement to purchase the security by delivering a notice to the funding portal under paragraph 5(1)(j),
- (j) return all assets to a purchaser within 5 business days of receiving a withdrawal notification under paragraph 5(1)(j) from the purchaser,
- (k) during the following periods of each year, deliver to the securities regulatory authority or regulator a completed Form 45-110F5 *Semi-Annual Financial Resources Certification*:
  - (i) between January 1 and January 10, and
  - (ii) between July 1 and July 10, and
- (l) upon becoming insolvent or discontinuing operations, promptly notify the securities regulatory authority or regulator, and any purchasers for which it holds assets, of the process the funding portal will use to return the assets to those purchasers.

### PART 3 REGISTERED FUNDING PORTALS

#### **Requirements for investment dealers or exempt market dealers operating funding portals**

4. (1) A funding portal that is an investment dealer or exempt market dealer must not
  - (a) close a crowdfunding distribution on its platform unless
    - (i) the funding portal receives, through its platform, payment for the distribution of each eligible security from the purchaser of such security,
    - (ii) the funding portal has made the issuer's completed Form 45-110F1 *Offering Document* and Form 45-110F2 *Risk Acknowledgement* available to each purchaser through its platform, and
    - (iii) each purchaser completes the Form 45-110F2 *Risk Acknowledgement* acknowledging the risks and confirms that the purchaser has read and understands the issuer's completed Form 45-110F1 *Offering Document*, and

- (b) allow a person or company to access the funding portal's platform unless the person or company has acknowledged that the person or company is accessing a platform that
    - (i) is operated by an investment dealer or an exempt market dealer, as applicable, and
    - (ii) will provide advice about the suitability of the eligible security.
- (2) A funding portal that is an investment dealer or exempt market dealer must
- (a) take reasonable steps to confirm that the head office of an issuer is in Canada before allowing the issuer to post a crowdfunding distribution on the funding portal's platform,
  - (b) upon receiving notice from an issuer that the issuer has amended its completed Form 45-110F1 *Offering Document*, promptly notify each purchaser of that issuer's crowdfunding distribution of
    - (i) the amendment, and
    - (ii) the purchaser's right to withdraw from the agreement to purchase the security by delivering a notice to the funding portal under paragraph 5(1)(j),
  - (c) return all assets to a purchaser within 5 business days of receiving a withdrawal notification under paragraph 5(1)(j) from the purchaser,
  - (d) upon an issuer not raising the minimum offering amount by the 90th day after the issuer's completed Form 45-110F1 *Offering Document* is first made available to a prospective purchaser on the funding portal's platform, or an issuer notifying the funding portal that it is withdrawing its crowdfunding distribution, no later than 5 business days after the 90th day or the notice, as applicable,
    - (i) notify the issuer, and each purchaser of that issuer's crowdfunding distribution, that assets have been returned or are in the process of being returned, and
    - (ii) take reasonable steps to return, or cause to be returned, all assets to each purchaser of that issuer's crowdfunding distribution, and
  - (e) after the later of the periods referred to in paragraph 5(1)(j) has elapsed,
    - (i) release, or cause to be released, all assets due to the issuer at the closing of the distribution, and
    - (ii) no later than 15 days after the closing of the distribution,
      - (A) notify each purchaser that the assets have been released to the issuer, and
      - (B) provide the issuer with all information required to comply with the issuer's obligations under paragraph 5(2)(b).

## PART 4

### EXEMPTION FROM PROSPECTUS REQUIREMENT FOR ISSUERS

#### Exemption from prospectus requirement for issuers



5. (1) An issuer is exempt from the prospectus requirement in respect of a crowdfunding distribution if all of the following apply:
- (a) the distribution of and payment for the security is facilitated through a funding portal that is
    - (i) relying on subsection 3(1), or
    - (ii) operated by an exempt market dealer or investment dealer;
  - (b) the purchaser purchases the security as principal;
  - (c) the issuer is not a reporting issuer in any jurisdiction of Canada or the equivalent in any foreign jurisdiction;
  - (d) the issuer is not an investment fund;
  - (e) the issuer has its head office in Canada;
  - (f) the security distributed is an eligible security of the issuer's own issue;
  - (g) the aggregate gross proceeds raised by the issuer group in reliance on this section during the 12-month period before the closing of the crowdfunding distribution do not exceed \$1 500 000;
  - (h) the issuer has completed a Form 45-110F1 *Offering Document* and provided it to the funding portal;
  - (i) the crowdfunding distribution closes no later than the 90th day after the date the issuer's completed Form 45-110F1 *Offering Document* is first made available to a prospective purchaser on the funding portal's platform;
  - (j) the subscription agreement provides that the purchaser may withdraw from the agreement to purchase the security,
    - (i) after entering into the agreement, by delivering a notice of withdrawal to the funding portal not later than midnight on the 2nd business day after the day on which the purchaser enters into the agreement, and
    - (ii) after an amendment to the issuer's completed Form 45-110F1 *Offering Document*, by delivering a notice of withdrawal not later than midnight on the 2nd business day after the day on which the funding portal notifies the purchaser of the amendment;
  - (k) the issuer's completed Form 45-110F1 *Offering Document* discloses how the issuer intends to use the assets raised and the minimum offering amount required to close the crowdfunding distribution;
  - (l) the issuer does not close the crowdfunding distribution until the issuer has raised the minimum offering amount stated in the issuer's completed Form 45-110F1 *Offering Document* either through subscriptions to the crowdfunding distribution or any concurrent distribution under one or more other exemptions from the prospectus requirement, provided that the assets are unconditionally available to the issuer;
  - (m) no concurrent crowdfunding distribution is made by any member of the issuer group for the same purposes as described in the issuer's completed Form 45-110F1 *Offering Document*;
  - (n) no commission, fee or similar payment is paid by the issuer to the issuer group, or any principal, employee or agent of a member of the issuer group, with respect to the crowdfunding distribution;
  - (o) no principal of the issuer group is a principal of the funding portal;
  - (p) the issuer does not distribute to any one purchaser securities valued at more than,

- (i) subject to subparagraph (ii), \$2 500, or
  - (ii) if the purchaser has obtained advice from a registered dealer that the investment is suitable for the purchaser, \$10 000;
- (q) the issuer
  - (i) has operations other than operations to identify and evaluate assets or a business with a view to completing an investment in, merger with, amalgamation with or a purchase of the securities of an issuer, or the acquisition of a business, and
  - (ii) does not intend to use the proceeds of the crowdfunding distribution to invest in, merge with, amalgamate with or to purchase securities of an issuer, or to acquire a business, unless the issuer or the business is identified in the issuer's completed Form 45-110F1 *Offering Document*.

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

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

**Filing of distribution materials**

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

## **PART 5 EXEMPTION**

### **Exemption**

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

## **PART 6 EFFECTIVE DATE**

### **Effective date**

8. (1) This Instrument comes into force on September 21, 2021.
- (2) In Saskatchewan, despite subsection (1), if this Instrument is filed with the Registrar of Regulations after September 21, 2021, this Instrument comes into force on the day on which they are filed with the Registrar of Regulations.

**APPENDIX A**  
**TO**  
**NATIONAL INSTRUMENT 45-110 *START-UP CROWDFUNDING REGISTRATION***  
***AND PROSPECTUS EXEMPTIONS***

**ASSOCIATIONS**

In this Instrument, a person or company is an “association” if the person or company is any of the following:

- a cooperative, as defined in subsection 1(1) of the *Cooperatives Act* (Alberta)
- an association, as defined in subsection 1(1) of the *Cooperative Association Act* (British Columbia)
- a cooperative, as defined in subsection 1(1) of the *Cooperatives Act* (Manitoba)
- a cooperative, as defined in section 1 of the *Cooperatives Act* (New Brunswick)
- a co-operative, as defined in section 2 of the *Co-Operatives Act* (Newfoundland)
- an association, as defined in section 1 of the *Co-Operative Associations Act* (Northwest Territories)
- an association, as defined in section 2 of the *Co-Operative Associations Act* (Nova Scotia)
- an association, as defined in section 1 of the *Co-Operative Associations Act* (Nunavut)
- a co-operative, as defined in section 1 of the *Co-Operative Corporations Act* (Ontario), only if permitted or authorized by that legislation to rely on the exemption from the prospectus requirement in this Instrument
- an association, as defined in section 1 of the *Co-Operative Associations Act* (Prince Edward Island)
- a cooperative, as defined in section 3 of the *Co-Operatives Act* (Québec)
- a co-operative, as defined in clause 2(1)(l) of *The New Generation Co-Operatives Act* (Saskatchewan)
- an association, as defined in section 1 of the *Cooperative Associations Act* (

**FORM 45-110F1**  
**OFFERING DOCUMENT**

**GENERAL INSTRUCTIONS:**

- (1) This offering document must be provided to your funding portal, which must make it available on its online platform. This offering document must not contain a misrepresentation. A misrepresentation means an untrue statement of material fact or an omission to state a material fact that is required to be stated, or necessary to prevent a statement that is made from being false or misleading in the circumstances in which it was made. If the information contained in this offering document is no longer accurate and contains a misrepresentation, you must immediately notify the funding portal, amend the offering document and provide the new version to the funding portal.*
- (2) If an issuer is relying on the start-up crowdfunding prospectus exemption (section 5 of the Instrument) in the local jurisdiction with respect to a crowdfunding distribution, the issuer must file this offering document in the local jurisdiction. Note: if a purchaser of the securities and the issuer are in different jurisdictions, the crowdfunding distribution is occurring in both jurisdictions – the jurisdiction of the issuer’s head office and the jurisdiction of the purchaser.*
- (3) This offering document is required to be filed no later than the 30th day after the closing of the distribution.*
- (4) This offering document must be completed and certified by an authorized individual on behalf of the issuer.*
- (5) Draft this offering document so that it is easy to read and understand. Be concise and use clear, plain language. Avoid technical terms.*
- (6) Disclosure must conform as closely as possible to this form. Address the items in the order set out below. No variation of headings, numbering or information set out in the form is allowed and all are to be displayed as shown.*

**Item 1: RISKS OF INVESTING**

- 1.1 Include the following statement in bold type:

**“No securities regulatory authority or regulator has assessed, reviewed or approved the merits of these securities or reviewed this offering document. Any representation to the contrary is an offence. This is a risky investment.”**

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

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

## **Item 2: THE ISSUER**

2.1 Provide the following information about the issuer:

- (a) full legal name as it appears in the issuer’s articles of incorporation, limited partnership agreement or other organizing documents, as the case may be;
- (b) head office address;
- (c) telephone;
- (d) email address;
- (e) website URL.

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

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

- (a) full legal name (first name, middle name and last name);
- (b) position held with the issuer;
- (c) business address;
- (d) business telephone;
- (e) email address.

## **Item 3: ISSUER’S BUSINESS**

3.1 Describe the issuer’s business. Provide enough detail for an investor to clearly understand what the issuer does or intends to do.

*Instructions:*

*(1) Answer the following questions if applicable:*

- *Does or will the issuer build, design or develop something? Will it sell something produced by others? Will it provide a service?*
  - *What are the key details about the issuer's industry and operations? What makes the issuer's business special and different from other competitors in the industry?*
  - *What milestones has the issuer already reached and what do they hope to achieve in the next 2 years? E.g., Complete testing, find a manufacturer, commence a marketing campaign or buy inventory. What is the proposed timeline for achieving each of the milestones?*
  - *What are the major hurdles that the issuer expects to face in achieving its milestones?*
  - *How are the funds raised from this financing expected to help the issuer advance its business and achieve one or more of the milestones?*
  - *Has the issuer entered any contracts that are important to its business?*
  - *Has the issuer conducted any operations yet?*
  - *Where does the issuer see its business in 3, 5 and 10 years?*
  - *What are the issuer's future plans and hopes for its business and how does it plan to get there?*
  - *What is the issuer's management experience in running a business or in the same industry?*
  - *Does the issuer have business premises from which it can operate its business?*
  - *How many employees does the issuer have? How many does it need?*
- (2) *Do not refer to a measure of financial performance, financial position or cash flow in the offering document unless (i) the issuer has made financial statements available for the most recently completed financial year, and (ii) the measure referred to in the offering document is an amount presented in the financial statements or is reconciled to an amount presented in the financial statements.*
- (3) *An issuer must have operations other than to identify and evaluate assets or a business with a view to completing an investment in, merger with, amalgamation with or acquisition of a business, or a purchase of the securities of one or more other issuers. If it has no other operations, it must not raise capital using start-up crowdfunding.*

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

*Instructions:*

- (1) *Indicate whether the issuer is a corporation, a limited partnership, a general partnership, an association (as defined under the Instrument) or other.*
- (2) *Indicate the province, territory or state where the issuer is incorporated or organized.*

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

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

- 3.4 Indicate which statement(s) best describe(s) the issuer's operations (select all that apply)

The issuer

- ☐ has never conducted operations,
- ☐ is in the development stage,
- ☐ is currently conducting operations.

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

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

*Instructions:*

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



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

**Item 4: MANAGEMENT**

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

Full legal name, municipality of residence and position at issuer	Principal occupation for the last 5 years	Expertise, education, and experience that is relevant to the issuer's business	Number and type of securities of the issuer owned	Date securities were acquired and price paid for the securities	Percentage of the issuer's securities held as of the date of this offering document

- 4.2 Provide the name of the person involved and details of the time, nature and the outcome of the proceedings for each of the persons listed under item 4.1 and the issuer who, as the case may be:

- (a) has ever pleaded guilty to or been found guilty of
  - (i) a summary conviction or indictable offence under the *Criminal Code*,
  - (ii) a quasi-criminal offence in any jurisdiction of Canada or a foreign jurisdiction,
  - (iii) a misdemeanor or felony under the criminal legislation of the United States of America, or any state or territory therein, or
  - (iv) an offence under the criminal legislation of any other foreign jurisdiction,
- (b) is or has been the subject of an order (cease trade or otherwise), judgment, decree, sanction, or administrative penalty imposed by, or has entered into a settlement agreement with, a government agency, administrative agency, self-regulatory organization, civil court, or administrative court of Canada or a foreign jurisdiction in the last 10 years related to:
  - (i) the person's involvement in any securities, insurance or banking activity, or
  - (ii) a claim based in whole or in part on fraud, theft, deceit, misrepresentation, conspiracy, breach of trust, breach of fiduciary duty, insider trading, unregistered trading, illegal distributions, failure to disclose material facts or changes, or allegations of similar conduct,

- (c) is or has been the subject of an order, judgment, decree, sanction or administrative penalty imposed by a discipline committee, professional order or administrative court of Canada or a foreign jurisdiction in the last ten years related to any professional misconduct,
- (d) is or has ever been the subject of a bankruptcy or insolvency proceeding, or
- (e) is a director, officer, founder or control person of a person or company that is or has been subject to a proceeding described in paragraph (a), (b), (c) or (d) above.

*Instruction: A quasi-criminal offence includes offences under the Income Tax Act (Canada), the Immigration and Refugee Protection Act (Canada) or the tax, immigration, drugs, firearms, money laundering or securities legislation of any province or territory of Canada or foreign jurisdiction.*

## **Item 5: CROWDFUNDING DISTRIBUTION**

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

*Instruction: This offering document must not be posted on more than one funding portal.*

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

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

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

*Instruction: An amendment to the offering document must not change the date referred to under paragraph (a).*

- 5.4 Indicate the type of eligible securities offered.

- ☐ Common shares
- ☐ Non-convertible preference shares

- ☐ Securities convertible into common shares
- ☐ Securities convertible into non-convertible preference shares
- ☐ Non-convertible debt linked to a fixed interest rate
- ☐ Non-convertible debt linked to a floating interest rate
- ☐ Limited partnership units
- ☐ Shares in the capital of an association. Specify type of shares (e.g. membership, investment, preference, etc.): \_\_\_\_\_

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

- ☐ voting rights;
- ☐ dividends or interests (describe any right to receive dividends or interest);
- ☐ rights on dissolution;
- ☐ conversion rights (describe what each security is convertible into);
- ☐ tag-along rights;
- ☐ drag-along rights;
- ☐ pre-emptive rights;
- ☐ other (describe the rights).

*Instruction: This information is found in the organizing documents referred to in item 3.3.*

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

*Instruction: The restrictions and conditions required to be described here are found in by-laws, shareholder's agreements or limited partnership agreements.*

5.7 In a table, provide the following information:

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

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

5.9 Include the following statement in bold type:

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

## **Item 6: USE OF FUNDS**

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

- (a) the amount of funds previously raised;
- (b) how the issuer raised those funds;
- (c) if the funds were raised by issuing securities, the prospectus exemption that the issuer relied on to issue those securities;
- (d) how the issuer used those funds.

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

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

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

## **Item 7: PREVIOUS CROWDFUNDING DISTRIBUTIONS**

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

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

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

## **Item 8: COMPENSATION PAID TO FUNDING PORTAL**

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

## **Item 9: RISK FACTORS**

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

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

## **Item 10: REPORTING OBLIGATIONS**

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

(e) whether the agreement is limited to a specified period of time.

#### **Item 11: RESALE RESTRICTIONS**

11.1 Include the following statement, in bold type:

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

#### **Item 12: PURCHASERS’ RIGHTS**

12.1 Include the following statement, in bold type:

**“Rights of Action in the Event of a Misrepresentation**

**If there is a misrepresentation in this offering document, you have a right**

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

**These rights are available to you whether or not you relied on the misrepresentation. However, there are various circumstances that limit your rights. In particular, your rights might be limited if you knew of the misrepresentation when you purchased the securities.**

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

**Two-day cancellation right:**

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

#### **Item 13: DATE AND CERTIFICATE**

13.1 Include the following statement in bold type:

**“This offering document does not contain a misrepresentation.”**

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

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

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

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

**Issuer Name:**

**Type of Eligible Security Offered:**

**WARNING!**  
**BUYER BEWARE: This investment is risky.**  
**Don't invest unless you can afford to lose all the money you pay for this investment.**

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



	Yes	No
<b>3. Limited legal rights</b>		
<p><b>Limited legal rights</b> – Do you understand that you will not have the same rights as if you purchased under a prospectus or through a stock exchange?</p> <p>If you want to know more, you may need to seek professional legal advice.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<b>4. Purchaser's acknowledgement</b>		
<p><b>Investment risks</b> – Have you read this form and do you understand the risks of making this investment?</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p><b>Offering document</b> – Has an offering document relating to this investment been made available to you on the funding portal?</p> <p>The offering document contains important information about this investment. If you have not read the offering document or if you do not understand the information in it, you should not invest. You should retain a copy of the offering document for your records.</p> <p>Have you read and do you understand the information in the offering document?</p>	<input type="checkbox"/>	<input type="checkbox"/>

	Yes	No
<b>First and last name:</b>		
<p><b>Electronic signature:</b> By clicking the [I confirm] button, I acknowledge that I am signing this form electronically and agree that this is the legal equivalent of my handwritten signature. I will not at any time in the future claim that my electronic signature is not legally binding. The date of my electronic signature is the same as my acknowledgement.</p>		
<b>5. Additional information</b>		
<ul style="list-style-type: none"> <li>▪ <b>You have two days to cancel your purchase by sending a notice to the funding portal at:</b> <i>Instruction: Provide email address where purchasers can send their notice. Describe any other manner for purchasers to cancel their purchase.</i></li> <li>▪ <b>If you want more information about your local securities regulation, go to <a href="http://www.securities-administrators.ca">www.securities-administrators.ca</a>.</b> Securities regulators do not provide advice on investment.</li> <li>▪ <b>To check if the funding portal is operated by a registered dealer, go to <a href="http://www.aretheyregistered.ca">www.aretheyregistered.ca</a>.</b> <i>Instruction: Delete if the funding portal is not operated by a registered dealer.</i></li> </ul>		

**FORM 45-110F3**  
**FUNDING PORTAL INFORMATION**

**GENERAL INSTRUCTION:**

*If the funding portal is relying on the start-up crowdfunding registration exemption (section 3 of the Instrument), the funding portal must complete and deliver this form with any attachments and all corresponding Forms 45-110F4 Portal Individual Information to the securities regulatory authority or regulator if the funding portal facilitates or intends to facilitate a crowdfunding distribution.*

**FUNDING PORTAL INFORMATION**

1. Provide the following information regarding the funding portal:

- (a) full legal name of the funding portal as it appears on the funding portal's organizing documents;
- (b) name that the funding portal will be operating under;
- (c) website URL;
- (d) telephone;
- (e) email address;
- (f) head office address;
- (g) jurisdiction where the head office is located (check).

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

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

- (a) full legal name (first name, middle name and last name);
- (b) business address;
- (c) business Telephone;
- (d) email address.

3. Provide the following information regarding each founder, director, officer and control person of the funding portal. If necessary, use an attachment signed and dated by the authorized individual certifying this form.

- (a) full legal name (first name, middle name and last name);  
(b) position(s) held.
4. Indicate each jurisdiction where the funding portal is delivering this form. The funding portal must deliver this form in the local jurisdiction if it facilitates or intends to facilitate a crowdfunding distribution in that jurisdiction.
- |                                           |                                                    |                                               |
|-------------------------------------------|----------------------------------------------------|-----------------------------------------------|
| <input type="checkbox"/> Alberta          | <input type="checkbox"/> Newfoundland and Labrador | <input type="checkbox"/> Ontario              |
| <input type="checkbox"/> British Columbia | <input type="checkbox"/> Northwest Territories     | <input type="checkbox"/> Prince Edward Island |
| <input type="checkbox"/> Manitoba         | <input type="checkbox"/> Nova Scotia               | <input type="checkbox"/> Québec               |
| <input type="checkbox"/> New Brunswick    | <input type="checkbox"/> Nunavut                   | <input type="checkbox"/> Saskatchewan         |
|                                           |                                                    | <input type="checkbox"/> Yukon                |
5. Provide the date the funding portal expects to begin to facilitate crowdfunding distributions in the jurisdictions indicated under item 4.
6. If the funding portal is relying on National Instrument 45-110 *Start-up Crowdfunding Registration and Prospectus Exemptions* in any jurisdiction, provide the name(s) of the jurisdiction(s) and the date this Funding Portal Information form was delivered to the securities regulatory authority or regulator.

## LEGAL STRUCTURE AND CONSTATING DOCUMENTS

7. Indicate the legal structure of the funding portal.
- ☐ Sole proprietorship  
☐ Partnership  
☐ Limited partnership (provide the name of the general partner)  
☐ Corporation  
☐ Other (specify)
8. Attach the funding portal's organizing documents: for example, the funding portal's articles and certificate of incorporation, any articles of amendments, partnership agreement or declaration of trust. If the funding portal is a sole proprietorship, provide a copy of the registration of the trade name. The attachment must be signed and dated by the authorized individual certifying this form.
9. Attach a chart showing the funding portal's structure and ownership. Include disclosure for all parents, affiliates and subsidiaries. Include the name of each person or company, and the class, type, amount and voting percentage of ownership of the funding portal's securities. The attachment must be signed and dated by the authorized individual certifying this form.

## BUSINESS ACTIVITIES

10. Provide a description of following:

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

## CRIMINAL DISCLOSURE

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

- (a) a summary conviction or indictable offence under the *Criminal Code*,
- (b) a quasi-criminal offence in any jurisdiction of Canada or a foreign jurisdiction,
- (c) a misdemeanor or felony under the criminal legislation of the United States of America, or any state or territory therein, or
- (d) an offence under the criminal legislation of any other foreign jurisdiction?

Yes ☐ No ☐

If yes, provide all relevant details in an attachment signed and dated by the authorized individual certifying this form that includes the circumstances, relevant dates, names of the parties involved and the final disposition, if a final disposition has been made.

*Instruction: A quasi-criminal offence includes an offence under the Income Tax Act (Canada), the Immigration and Refugee Protection Act (Canada) or the tax, immigration, drugs, firearms, money laundering or securities legislation of any province or territory of Canada or foreign jurisdiction.*

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

Yes ☐ No ☐

If yes, provide all relevant details in an attachment signed and dated by the authorized individual certifying this form that includes the circumstances, relevant dates, names of the parties involved and final disposition, if a final disposition has been made.

## CIVIL DISCLOSURE

13. Has the funding portal been the subject of an order (cease trade or otherwise), judgment, decree, sanction, or administrative penalty imposed by, or entered into a settlement agreement with, a government agency, administrative agency, self-regulatory organization, civil court, or administrative court of Canada or a foreign jurisdiction in the last 10 years related to a claim based in whole or in part on fraud, theft, deceit, misrepresentation, conspiracy, breach of trust, breach of fiduciary duty, insider trading, unregistered trading, illegal distributions, failure to disclose material facts or changes, or allegations of similar conduct in Canada or a foreign jurisdiction related to its involvement in any type of securities, derivatives, insurance or banking activity.

Yes ☐ No ☐

If yes, provide all relevant details in an attachment signed and dated by the authorized individual certifying this form that includes the circumstances, relevant dates, names of the parties involved and final disposition, if a final disposition has been made.

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

Yes ☐ No ☐

If yes, provide all relevant details in an attachment signed and dated by the authorized individual certifying this form that includes the circumstances, relevant dates, names of the parties involved and final disposition, if a final disposition has been made.

## PROCESS AND PROCEDURE FOR HANDLING OF FUNDS

15. Provide all relevant details in an attachment that is signed and dated by the authorized individual certifying this form of the relevant documents on the process and procedure for handling all funds in relation to the crowdfunding distribution in a designated trust account at a Canadian financial institution, including the following:

- (a) the name of the Canadian financial institution the funding portal will use with the designated trust account number;
- (b) the names of the signatories on this account and their role with the funding portal;
- (c) details of how the funds held in this account will be separate and apart from the funding portal's own property;
- (d) a copy of the trust agreement, or details surrounding the establishment of this account. If the funding portal does not have a trust agreement or an account, please explain;
- (e) details regarding how funds will flow
  - (i) from purchasers to the funding portal's account,

- (ii) from the funding portal's account to the issuer in the event that the crowdfunding distribution closes, and
- (iii) from the funding portal's account back to the purchasers in the event that the crowdfunding distribution does not close or the purchaser has exercised their right of withdrawal.

## COLLECTION AND USE OF INFORMATION

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

By submitting this form, the funding portal

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

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

## CERTIFICATION

By signing this form, the funding portal

- undertakes to comply with all of the applicable conditions set out in National Instrument 45-110 *Start-up Crowdfunding Registration and Prospectus Exemptions*,
- certifies that its platform is complete, ready for viewing in a test environment and designed to comply with National Instrument 45-110 *Start-up Crowdfunding Registration and Prospectus Exemptions*,

- certifies that it has, or reasonably expects to have, sufficient financial resources to continue its operations for at least the next 6 months, and
- acknowledges that the securities regulatory authority or regulator of a jurisdiction in which this form is submitted may access the books and records relating to the carrying on of its activities and may conduct a compliance review.

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

Full legal name of  
funding portal:

\_\_\_\_\_

Signature of  
authorized individual:

\_\_\_\_\_

Date:

\_\_\_\_\_

Print name of  
authorized individual:

\_\_\_\_\_

Position held:

\_\_\_\_\_

Telephone number:

\_\_\_\_\_

Email:

\_\_\_\_\_

**IT IS AN OFFENCE TO MAKE A MISREPRESENTATION IN THIS FORM**



**Contact information:**

<b>Alberta</b> The Alberta Securities Commission Suite 600, 250 – 5th Street SW Calgary, Alberta T2P 0R4 Telephone: 403-297-6454 Email: registration@asc.ca www.asc.ca	<b>Nova Scotia</b> Nova Scotia Securities Commission Suite 400, 5251 Duke Street Halifax, Nova Scotia B3J 1P3 Telephone: 902-424-7768 Toll free in Nova Scotia: 1-855-424-2499 Email: nssc.crowdfunding@novascotia.ca nssc.novascotia.ca
<b>British Columbia</b> British Columbia Securities Commission P.O. Box 10142, Pacific Centre 701 West Georgia Street Vancouver, British Columbia V7Y 1L2 Telephone: 604-899-6854 Toll free in Canada: 1-800-373-6393 Email: portal@bcsc.bc.ca www.bcsc.bc.ca	<b>Ontario</b> Ontario Securities Commission 20 Queen Street West, 22nd Floor Toronto, Ontario M5H 3S8 Toll free: 1-877-785-1555 Email: inquiries@osc.gov.on.ca www.osc.ca OSC Electronic Filing Portal <a href="https://eforms1.osc.gov.on.ca/e-filings/generic/form.do?token=ec7a3cb6-d86d-419d-9c11-f1febe403cb6">https://eforms1.osc.gov.on.ca/e-filings/generic/form.do?token=ec7a3cb6-d86d-419d-9c11-f1febe403cb6</a>
<b>Manitoba</b> The Manitoba Securities Commission 500 – 400 St Mary Avenue Winnipeg, Manitoba R3C 4K5 Telephone: 204-945-2548 Toll free in Manitoba: 1-800-655-2548 Email: exemptions.msc@gov.mb.ca www.mbsecurities.ca	<b>Québec</b> Autorité des marchés financiers Direction de l'encadrement des intermédiaires 800, rue du Square-Victoria, 22 <sup>e</sup> étage C.P. 246, Place Victoria Montréal, Québec H4Z 1G3 Telephone: 514-395-0337 Toll free in Québec: 1-877-525-0337 Email: financement-participatif@lautorite.qc.ca www.lautorite.qc.ca
<b>New Brunswick</b> Financial and Consumer Services Commission 85 Charlotte Street, Suite 300 Saint John, New Brunswick E2L 2J2 Toll free: 1-866-933-2222 Email: emf-md@fcnb.ca www.fcnb.ca	<b>Saskatchewan</b> Financial and Consumer Affairs Authority of Saskatchewan Securities Division Suite 601 – 1919 Saskatchewan Drive Regina, Saskatchewan S4P 4H2 Telephone: 306-787-5645 Email: registrationfcaa@gov.sk.ca www.fcaa.gov.sk.ca

**FORM 45-110F4**  
**PORTAL INDIVIDUAL INFORMATION**

**GENERAL INSTRUCTIONS:**

*If the funding portal is relying on the start-up crowdfunding registration exemption (section 3 of the Instrument), each founder, director, officer and control person of the funding portal must complete this form and the funding portal must deliver those completed forms and any attachments, along with the corresponding Form 45-110F3 Funding Portal Information, to the securities regulatory authority or regulator if the funding portal facilitates or intends to facilitate a crowdfunding distribution.*

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

**FUNDING PORTAL INFORMATION**

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

**INDIVIDUAL INFORMATION**

4. Full legal name:

---

First name	Middle name(s)	Last name
------------	----------------	-----------

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

Yes     ☐     No     ☐

If yes, provide details.

6. Telephone number and email address:

Residential:	(   )	Mobile:	
Business:	(   )	Email:	

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

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

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

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

9. Date and place of birth:

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

10. Country of citizenship: \_\_\_\_\_

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

Yes ☐ No ☐

If yes, provide your licence or registration type, the securities regulatory authority or regulator, and the start date and ending date, if applicable:

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

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

Yes ☐ No ☐

If yes, provide all relevant details in an attachment signed and dated by the authorized individual certifying this form that includes the circumstances, relevant dates, names of the parties involved and final disposition, if a final disposition has been made.

#### CRIMINAL DISCLOSURE

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

- (a) a summary conviction or indictable offence under the *Criminal Code*,
- (b) a quasi-criminal offence in any jurisdiction of Canada or a foreign jurisdiction,
- (c) a misdemeanour or felony under the criminal legislation of the United States of America, or any state or territory therein, or
- (d) an offence under the criminal legislation of any other foreign jurisdiction?

Yes ☐ No ☐

If yes, provide all relevant details in an attachment signed and dated by the authorized individual certifying this form that includes the circumstances, relevant dates, names of the parties involved and final disposition, if a final disposition has been made.

*Instructions: A quasi-criminal offence includes an offence under the Income Tax Act (Canada), the Immigration and Refugee Protection Act (Canada) or the tax, immigration, drugs, firearms, money laundering or securities legislation of any province or territory of Canada or of a foreign jurisdiction.*

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

Yes ☐ No ☐

If yes, provide all relevant details in an attachment signed and dated by the authorized individual certifying this form that includes the circumstances, relevant dates, names of the parties involved and final disposition, if a final disposition has been made.

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

Yes ☐ No ☐

If yes, provide all relevant details in an attachment signed and dated by the authorized individual certifying this form that includes the circumstances, relevant dates, names of the parties involved and final disposition, if a final disposition has been made.

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

Yes ☐ No ☐

If yes, provide all relevant details in an attachment signed and dated by the authorized individual certifying this form that includes the circumstances, relevant dates, names of the parties involved and final disposition, if a final disposition has been made.

#### CIVIL DISCLOSURE

17. Have you or a person or company of which you are or were a founder, director, officer or control person been the subject of an order (cease trade or otherwise), judgment, decree, sanction, or administrative penalty imposed by, or entered into a settlement agreement with, a government agency, administrative agency, self-regulatory organization, civil court, or administrative court of Canada or a foreign jurisdiction in the last 10 years related to a claim based in whole or in part on fraud, theft, deceit, misrepresentation, conspiracy, breach of trust, breach of fiduciary duty, insider trading, unregistered trading, illegal distributions, failure to disclose material facts or changes, or allegations of similar conduct in Canada or a foreign jurisdiction related to your involvement in any type of securities, derivatives, insurance or banking activity?

Yes ☐ No ☐

If yes, provide all relevant details in an attachment signed and dated by the authorized individual certifying this form that includes the circumstances, relevant dates, names of the parties involved and final disposition, if a final disposition has been made.

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

Yes ☐ No ☐

If yes, provide all relevant details in an attachment signed and dated by the authorized individual certifying this form that includes the circumstances, relevant dates, names of the parties involved and final disposition, if a final disposition has been made.

## COLLECTION AND USE OF PERSONAL INFORMATION

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

By submitting this form, you consent to the collection, use and disclosure of this personal information by the securities regulatory authority or regulator of each jurisdiction in which this form is submitted and any police records, records from other government or non-governmental regulators or self-regulatory organizations, credit records and employment records about you that the securities regulatory authority or regulator may need to determine the completeness of the information submitted in this form and compliance with the conditions of the start-up crowdfunding registration and prospectus exemptions. The securities regulatory authority or regulator may contact government and private bodies or agencies, individuals, corporations and other organizations for information about you.

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

## CERTIFICATION

By submitting this form, I

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

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Print name: \_\_\_\_\_  
Position held: \_\_\_\_\_

**IT IS AN OFFENCE TO MAKE A MISREPRESENTATION IN THIS FORM**

**Contact information:**

<b>Alberta</b> The Alberta Securities Commission Suite 600, 250 – 5th Street SW Calgary, Alberta T2P 0R4 Telephone: 403-297-6454 Email: <a href="mailto:registration@asc.ca">registration@asc.ca</a> <a href="http://www.asc.ca">www.asc.ca</a>	<b>Nova Scotia</b> Nova Scotia Securities Commission Suite 400, 5251 Duke Street Halifax, Nova Scotia B3J 1P3 Telephone: 902-424-7768 Toll free in Nova Scotia: 1-855-424-2499 Email: <a href="mailto:nssc.crowdfunding@novascotia.ca">nssc.crowdfunding@novascotia.ca</a> <a href="http://nssc.novascotia.ca">nssc.novascotia.ca</a>
<b>British Columbia</b> British Columbia Securities Commission P.O. Box 10142, Pacific Centre 701 West Georgia Street Vancouver, British Columbia V7Y 1L2 Telephone: 604-899-6854 Toll free in Canada: 1-800-373-6393 Email: <a href="mailto:portal@bcsc.bc.ca">portal@bcsc.bc.ca</a> <a href="http://www.bcsc.bc.ca">www.bcsc.bc.ca</a>	<b>Ontario</b> Ontario Securities Commission 20 Queen Street West, 22nd Floor Toronto, Ontario M5H 3S8 Toll free: 1-877-785-1555 Email: <a href="mailto:inquiries@osc.gov.on.ca">inquiries@osc.gov.on.ca</a> <a href="http://www.osc.ca">www.osc.ca</a> OSC Electronic Filing Portal <a href="https://eforms1.osc.gov.on.ca/e-filings/generic/form.do?token=ec7a3cb6-d86d-419d-9c11-f1febe403cb6">https://eforms1.osc.gov.on.ca/e-filings/generic/form.do?token=ec7a3cb6-d86d-419d-9c11-f1febe403cb6</a>
<b>Manitoba</b> The Manitoba Securities Commission 500 – 400 St Mary Avenue Winnipeg, Manitoba R3C 4K5 Telephone: 204-945-2548 Toll free in Manitoba: 1-800-655-2548 Email: <a href="mailto:exemptions.msc@gov.mb.ca">exemptions.msc@gov.mb.ca</a> <a href="http://www.mbsecurities.ca">www.mbsecurities.ca</a>	<b>Québec</b> Autorité des marchés financiers Direction de l'encadrement des intermédiaires 800, rue du Square-Victoria, 22 <sup>e</sup> étage C.P. 246, Place Victoria Montréal, Québec H4Z 1G3 Telephone: 514-395-0337 Toll free in Québec: 1-877-525-0337 Email: <a href="mailto:financement-participatif@lautorite.qc.ca">financement-participatif@lautorite.qc.ca</a> <a href="http://www.lautorite.qc.ca">www.lautorite.qc.ca</a>
<b>New Brunswick</b> Financial and Consumer Services Commission 85 Charlotte Street, Suite 300 Saint John, New Brunswick E2L 2J2 Toll free: 1-866-933-2222 Email: <a href="mailto:emf-md@fcnb.ca">emf-md@fcnb.ca</a> <a href="http://www.fcnb.ca">www.fcnb.ca</a>	<b>Saskatchewan</b> Financial and Consumer Affairs Authority of Saskatchewan Securities Division Suite 601 – 1919 Saskatchewan Drive Regina, Saskatchewan S4P 4H2 Telephone: 306-787-5645 Email: <a href="mailto:registrationfcaa@gov.sk.ca">registrationfcaa@gov.sk.ca</a> <a href="http://www.fcaa.gov.sk.ca">www.fcaa.gov.sk.ca</a>



**FORM 45-110F5**  
***SEMI-ANNUAL FINANCIAL RESOURCES CERTIFICATION***

The funding portal certifies that it has, or reasonably expects to have, sufficient financial resources to continue its operations for at least the next 6 months.

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

Full legal name of  
funding portal:

\_\_\_\_\_

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

Date:

\_\_\_\_\_

Print name of  
individual:

\_\_\_\_\_

Position held:

\_\_\_\_\_

Telephone number:

\_\_\_\_\_

Email:

\_\_\_\_\_

**IT IS AN OFFENCE TO MAKE A MISREPRESENTATION IN THIS FORM**

## ANNEX D



**June 23, 2021**

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

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

This Notice includes the following documents:

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

### **Questions**

Please refer your questions to any of the following:

Elliott Mak  
Senior Legal Counsel, Corporate Finance  
British Columbia Securities Commission  
604 899-6501  
[emak@bcsc.bc.ca](mailto:emak@bcsc.bc.ca)

James Leong  
Senior Legal Counsel, Capital Markets  
Regulation  
British Columbia Securities Commission  
604 899-6681  
[jleong@bcsc.bc.ca](mailto:jleong@bcsc.bc.ca)

Charmaine Coutinho  
Legal Counsel, Market Regulation  
Alberta Securities Commission  
403 592-4898  
[Charmaine.Coutinho@asc.ca](mailto:Charmaine.Coutinho@asc.ca)

Denise Weeres  
Director, New Economy  
Alberta Securities Commission  
403 297-2930  
[Denise.Weeres@asc.ca](mailto:Denise.Weeres@asc.ca)

Gillian Findlay  
Senior Legal Counsel, Corporate Finance  
Alberta Securities Commission  
403 297-3302  
[Gillian.Findlay@asc.ca](mailto:Gillian.Findlay@asc.ca)

Mikale White  
Legal Counsel  
Financial and Consumer Affairs Authority  
of Saskatchewan  
306 798-3381  
[mikale.white@gov.sk.ca](mailto:mikale.white@gov.sk.ca)

Chris Besko  
Director, General Counsel  
The Manitoba Securities Commission  
204 945-2561  
[Chris.Besko@gov.mb.ca](mailto:Chris.Besko@gov.mb.ca)

Sarah Hill  
Legal Counsel  
The Manitoba Securities Commission  
204 945-0605  
[Sarah.Hill@gov.mb.ca](mailto:Sarah.Hill@gov.mb.ca)

Jo-Anne Matear  
Manager, Corporate Finance  
Ontario Securities Commission  
416 593-2323  
Toll free: 1 877 785-1555  
[jmatear@osc.gov.on.ca](mailto:jmatear@osc.gov.on.ca)

Erin O'Donovan  
Senior Legal Counsel, Corporate Finance  
Ontario Securities Commission  
416 204-8973  
Toll free: 1 877 785-1555  
[eodonovan@osc.gov.on.ca](mailto:eodonovan@osc.gov.on.ca)

Faustina Otchere  
Legal Counsel, Compliance and Registrant  
Regulation  
Ontario Securities Commission  
416 596-4255  
Toll free: 1 877 785-1555  
[fotchere@osc.gov.on.ca](mailto:fotchere@osc.gov.on.ca)

Adrian Molder  
Legal Counsel, Corporate Finance  
Ontario Securities Commission  
416 593-2389  
Toll free: 1 877 785-1555  
[amolder@osc.gov.on.ca](mailto:amolder@osc.gov.on.ca)

Patrick Théorêt  
Director, Corporate Finance  
Autorité des marchés financiers  
514 395-0337, extension 4381  
Toll-free: 1 877 525-0337  
[patrick.theoret@lautorite.qc.ca](mailto:patrick.theoret@lautorite.qc.ca)

Jason Alcorn  
Senior Legal Counsel and Special Advisor  
to the Executive Director  
Financial and Consumer Services  
Commission (New Brunswick)  
506 643-7857  
Toll free: 1 866 933-2222  
[jason.alcorn@fcnb.ca](mailto:jason.alcorn@fcnb.ca)

Abel Lazarus  
Director, Corporate Finance  
Nova Scotia Securities Commission  
902 424-6859  
[abel.lazarus@novascotia.ca](mailto:abel.lazarus@novascotia.ca)

Peter Lamey  
Legal Analyst, Corporate Finance  
Nova Scotia Securities Commission  
902 424-7630  
[peter.lamey@novascotia.ca](mailto:peter.lamey@novascotia.ca)

## Appendix 1

### Start-up Crowdfunding Guide for Businesses

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

#### *Securities crowdfunding*

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

#### *Legal obligations*

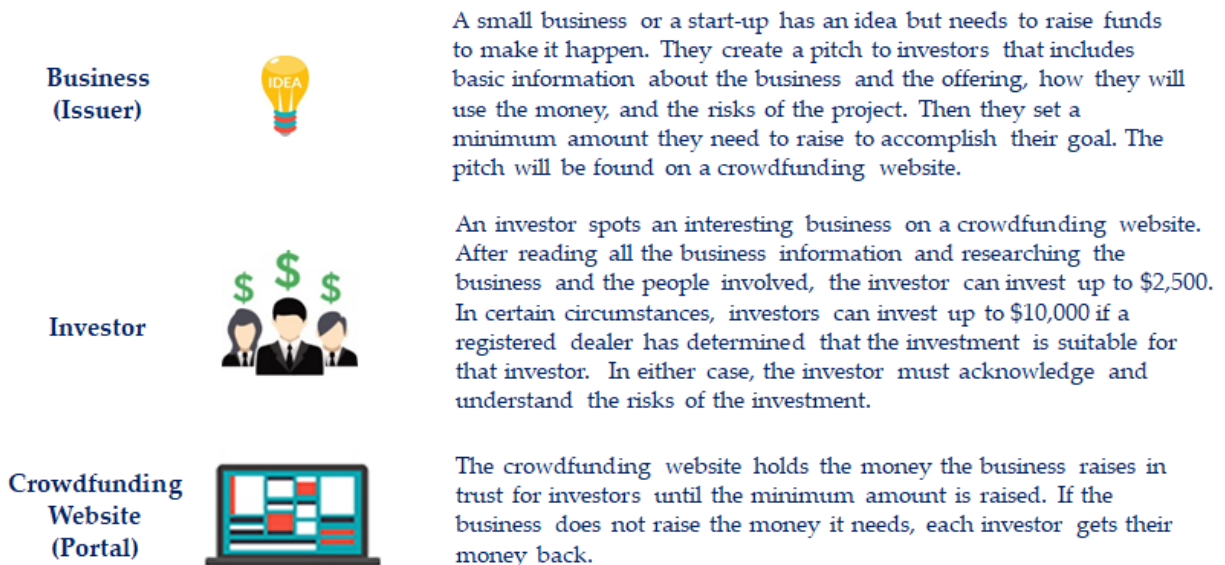
In Canada, trading of securities is subject to legal obligations. For example, a business seeking to raise capital by issuing securities must file a prospectus (a comprehensive disclosure document that includes financial statements) with the securities regulator of each of the provinces and territories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

These obligations can be costly for start-ups and early stage businesses. There are a number of exemptions from the prospectus requirement that businesses can use to conduct securities crowdfunding in Canada. However, these exemptions require a fairly comprehensive disclosure and/or limit the types of investors that can invest. Canadian securities regulators have created a streamlined system to allow start-ups and small businesses (**issuers**) to raise small amounts of money from the general public using securities crowdfunding, without filing a prospectus or preparing financial statements (**start-up prospectus exemption**). Instead, the issuer prepares an abbreviated disclosure document that does not require financial statements.

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

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

## How Start-up Crowdfunding Works



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

### *When should an issuer consider start-up crowdfunding?*

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

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

Issuers should also carefully consider the effect of raising capital through the issuance of securities. There are primarily two types of securities: debt instruments, such as non-

convertible debt securities linked to an interest rate, and equities, such as common shares. Both types of securities are permitted under the start-up crowdfunding instrument. While debt is essentially a loan from an investor to an issuer, equity provides holders with certain ownership rights in the issuer. Accordingly, if a start-up crowdfunding campaign that involves the sale of shares (or other equity) is successful, the founders or other individuals with an economic interest in the issuer may have to give up part of the ownership of the issuer to investors. Under corporate law, investors that purchase equity securities in an issuer may have certain rights to participate in key decisions relating to the management of the issuer. Investors may also want to be informed about successes and failures of the issuer's business. Management of the issuer should assess whether they are willing to spend the time and effort to maintain contact with investors.

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

In addition, the start-up prospectus exemption is not available to issuers that are raising money without a specific business objective, commonly known as "blind pools". In particular, the start-up prospectus exemption is not available where:

- (a) the issuer has no operations other than to identify and evaluate assets or a business with a view to completing an investment in, merger with, amalgamation with or acquisition of a business, or a purchase of the securities of one or more other issuers; or
- (b) the proceeds of the distribution are intended to be used by the issuer to invest in, merge or amalgamate with or acquire a business that has not been described in the issuer's offering document.

In these circumstances, the issuer will need to raise capital using methods other than the start-up prospectus exemption.

When considering whether these conditions have been met, the regulators may consider, among other things, the disclosure in the offering document to determine what operations the issuer has and how the issuer intends to use the proceeds of the distribution.

### *Where is start-up crowdfunding available?*

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

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

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

An issuer can raise up to \$1,500,000 in the 12-month period before closing of the distribution. It may complete as many distributions per calendar year as fits their business objectives.

For instance, if an issuer has already raised \$250,000 on June 1 and \$300,000 on December 31 using the start-up crowdfunding exemption, it can still raise up to \$950,000 at any point before May 31 of the following year under that exemption.

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

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

The securities offered in a start-up crowdfunding offering must be among those permitted by the start-up prospectus exemption. An issuer can use start-up crowdfunding to distribute common shares, but it can also distribute non-convertible preference shares, non-convertible debt securities linked to a fixed or floating interest rate, or units of a limited partnership. If the issuer is an association (also commonly known as a co-operative), it can use start-up crowdfunding to distribute shares in the capital of that association provided that it is not restricted from doing so under its enabling legislation.

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



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

*Are there any time limitations for completing a crowdfunding offering?*

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

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

- the issuer has secured the minimum amount of the offering and has decided to complete the offering; and
- the time for exercise of all withdrawal rights have expired (see "What if an investor changes their mind?", below).

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

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

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

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

The maximum investment an issuer can accept from an investor is \$2,500 per start-up crowdfunding distribution. However, this amount can be increased to \$10,000 if the investor has been advised by a registered dealer that the investment is suitable for the investor.

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

## Launching a Start-up Crowdfunding Campaign

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

### *What is a funding portal?*

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

- posting the issuer's offering document;
- providing a risk warning form to potential investors;
- holding all investor funds in trust until the issuer is permitted to close the distribution; and
- returning funds to investors, without deduction, if the issuer does not reach its minimum funding target or if the issuer withdraws the start-up crowdfunding campaign.

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

### *What types of funding portals are available?*

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

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

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

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

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

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

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

### *What information needs to be in the offering document?*

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

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

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

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

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

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

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

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

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

The issuer can post the financial statements on its website for the convenience of its investors. **However, if an issuer includes financial statements in its offering document or provides a link to the financial statements in the offering document, there will likely be an obligation under securities laws to prepare the financial statements using Canadian generally accepted accounting principles for publicly accountable enterprises.**

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

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

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

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

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

**Founder:** A person who, acting alone, in conjunction, or in concert with one or more persons, directly or indirectly, takes the initiative in founding, organizing or substantially

reorganizing the business of the issuer and at the time of the start-up crowdfunding distribution is actively involved in the business of the issuer.

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

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

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

*What if an investor changes their mind?*

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

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

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

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

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

A misrepresentation means:

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

To avoid misrepresentations, the information contained in the offering document may need to be updated during the start-up crowdfunding campaign. If the offering document is no longer accurate and contains a misrepresentation, the issuer must:

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

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

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

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

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

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

## Completing a Start-up Crowdfunding Campaign

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

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

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

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

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

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

## After the closing

### *What documents have to be filed with securities regulators?*

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

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

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

Participating Jurisdiction	How to File
All CSA jurisdictions, except British Columbia and Ontario	Electronically through <b>SEDAR</b> , in accordance with National Instrument 13-101 <i>System for Electronic Document Analysis and Retrieval</i> (SEDAR)

	<p>The Canadian Securities Administrators (CSA) has information regarding the SEDAR filing requirements. Please see:</p> <p><a href="#"><u>CSA Staff Notice 13-323 – Frequently Asked Questions About Making Exempt Market Offering and Disclosure Filings on SEDAR</u></a></p> <p><a href="#"><u>CSA website on Reports of Exempt Distribution contains links to the reports for start-up crowdfunding prospectus exemption for SEDAR filing</u></a></p>
British Columbia	<p>Electronically via BC's eServices website (<a href="https://eservices.bcsc.bc.ca/"><u>https://eservices.bcsc.bc.ca/</u></a>). When submitting a report of exempt distribution for a start-up crowdfunding distribution, there will be an option to attach the offering document.</p>
Ontario	<p>Electronically through the OSC Electronic Filing Portal at <a href="https://www.osc.ca/en/filing-documents-online"><u>https://www.osc.ca/en/filing-documents-online</u></a></p>

### *Confirmation notice to investors*

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

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

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

### **For more information contact:**

For more information, please contact the following:



Alberta	<p>Alberta Securities Commission  Telephone: 403-355-4151  E-mail: <a href="mailto:inquiries@asc.ca">inquiries@asc.ca</a>  Website: <a href="http://www.albertasecurities.com">www.albertasecurities.com</a></p>
British Columbia	<p>British Columbia Securities Commission  Telephone: 604-899-6854 or 1-800-373-6393  Email: <a href="mailto:inquiries@bcsc.bc.ca">inquiries@bcsc.bc.ca</a>  Website: <a href="http://www.bcsc.bc.ca">www.bcsc.bc.ca</a></p>
Saskatchewan	<p>Financial and Consumer Affairs Authority of Saskatchewan  Securities Division  Telephone: 306-787-5645  E-mail: <a href="mailto:exemptions@gov.sk.ca">exemptions@gov.sk.ca</a>  Website: <a href="http://www.fcaa.gov.sk.ca">www.fcaa.gov.sk.ca</a></p>
Manitoba	<p>The Manitoba Securities Commission  Toll free in Manitoba: 1-800-655-2548  E-mail: <a href="mailto:exemptions.msc@gov.mb.ca">exemptions.msc@gov.mb.ca</a>  Website: <a href="http://www.msc.gov.mb.ca">www.msc.gov.mb.ca</a></p>
Ontario	<p>Ontario Securities Commission  Toll free: 1-877-785-1555  E-mail: <a href="mailto:inquiries@osc.gov.on.ca">inquiries@osc.gov.on.ca</a>  Website: <a href="http://www.osc.ca">www.osc.ca</a></p>
Québec	<p>Autorité des marchés financiers  Direction du financement des sociétés  Toll free in Québec: 1-877-525-0337  E-mail: <a href="mailto:financement-participatif@lautorite.qc.ca">financement-participatif@lautorite.qc.ca</a>  Website: <a href="http://www.lautorite.qc.ca">www.lautorite.qc.ca</a></p>
New Brunswick	<p>Financial and Consumer Services Commission  Toll free: 1-866-933-2222  E-mail: <a href="mailto:emf-md@fcnb.ca">emf-md@fcnb.ca</a>  Website: <a href="http://www.fcnb.ca">www.fcnb.ca</a></p>
Nova Scotia	<p>Nova Scotia Securities Commission  Toll free in Nova Scotia: 1-855-424-2499  E-mail: <a href="mailto:nssc.crowdfunding@novascotia.ca">nssc.crowdfunding@novascotia.ca</a>  Website: <a href="http://www.nssc.novascotia.ca">www.nssc.novascotia.ca</a></p>

## **Appendix 2**

### **Start-up Crowdfunding Guide for Funding Portals**

#### **Introduction and purpose**

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

This guide describes:

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

#### **What is securities crowdfunding?**

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

#### **Legal obligations for securities crowdfunding**

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

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

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

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

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

### *Funding portals under NI 45-110*

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

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

### Operating requirements for exempt funding portals

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

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

A funding portal may not rely on the start-up registration exemption if it or any of its founders<sup>1</sup>, directors, officers or control persons<sup>2</sup> (principals), or any entity it or its principals has been the principal of has had a judgment, sanction or similar order imposed against it based on fraud, theft, breach of trust, insider trading, or allegations of similar conduct.

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

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

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

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

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

*What must an exempt funding portal do for purchasers?*

**Obtain the necessary acknowledgements before a purchaser can access the website.** An exempt funding portal must not allow entry to its website until the purchaser

---

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

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

acknowledges that they are entering the website of a funding portal that (i) is not operated by a registered dealer under Canadian securities legislation, and (ii) will not provide advice about the suitability or the merits of any investment.

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

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

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

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

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

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

### *What requirements do exempt funding portals have for handling funds?*

The exempt funding portal must ensure that a purchaser's payment for securities through its platform is received only by the exempt funding portal. The exempt funding portal must hold purchasers' assets separate from the exempt funding portal's property, in trust for the purchaser and, in the case of cash, at a Canadian financial institution.

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

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

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

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

#### *What other requirements do exempt funding portals have?*

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

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

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

### Delivery requirements for exempt funding portals

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

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

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

- 1) a completed Form 45-110F3 *Funding Portal Information* (funding portal information form),

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

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

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

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

#### *What supporting documents are required?*

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

- organizing documents such as articles and certificate of incorporation or partnership agreement,
- a chart showing the funding portal's structure and ownership that, at a minimum, includes all parents, affiliates and subsidiaries, as well as the full list of securityholders (including number and type of securities held) of the funding portal,
- details and relevant documents describing the funding portal's process and procedure for handling funds relating to a start-up crowdfunding offering, including:
  - the name of the Canadian financial institution the funding portal will use, together with the designated trust account number,
  - the name of the signatories on this account and their role with the funding portal,
  - a description of how the funds held in this account will be kept separate and apart from the funding portal's own property,
  - a copy of the trust agreement for the funding portal's trust account with a Canadian financial institution or details surrounding the establishment of this account, or, if there is no trust agreement or trust account, an explanation why,
  - how funds will flow from: (i) the purchasers to the trust account; (ii) the trust account to the issuer in the event that the offering closes; and (iii) the trust account back to the purchasers' bank accounts if the offering does not close, or the purchaser has exercised their right of withdrawal (for further information



- please see the section in this guide entitled *What rights do purchasers have before the start-up crowdfunding distribution closes?*), and
- attachments providing the relevant details sought if the answer to any of questions 11 to 14 of the funding portal information form or questions 11 to 18 of an individual information form is “Yes”.

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

### *How does a funding portal deliver the funding portal information form and individual information forms to the regulator?*

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

### *What needs to be delivered after an exempt funding portal has started operating?*

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

- 1) certify, within 10 days of December 31 each year and again within 10 days of June 30 each year, that it has, or expects to have, sufficient financial resources to continue its operations for at least the next 6 months (See “Financial Resources Certification” below), and
- 2) deliver, within 30 days of a change to any of the information in the funding portal information form or individual information forms, the updated funding portal information form and/or individual forms as applicable.

### *Financial Resources Certification*

An exempt funding portal is required to certify to the regulator that it has, or expects to have, sufficient financial resources to operate for the next 6 months:

- in the completed funding portal information form, and
- in the completed Form 45-110F5 *Semi-Annual Financial Resources Certification* (financial resources certification) that needs to be delivered twice a year, within 10 days of June 30 and within 10 days of December 31.



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

- The exempt funding portal must then deliver a financial resources certification between January 1, 2022 and January 10, 2022, in order to meet the requirements to operate as an exempt funding portal after January 10, 2022.
- It will need to deliver its next financial resources certification between July 1, 2022 and July 10, 2022, in order to meet the requirements to operate as an exempt funding portal after July 10, 2022.

### *Sufficient Financial Resources*

When an exempt funding portal makes an assessment of its sufficiency of financial resources for a 6 month period, it must take into account all available information about the future, which is at least, but is not limited to, 6 months from the date of certification. The degree of analysis depends on the facts for each exempt funding portal. When an entity has a history of positive cash flows from operations and ready access to financial resources, the exempt funding portal may reach the conclusion it has sufficient financial resources to continue its operations for at least the next 6 months. In other cases, the exempt funding portal may need to consider a wide range of factors relating to current and expected cash flows, such as debt repayment schedules and potential sources of replacement financing before it can assert that there is sufficient financial resources to continue its operations for at least the next 6 months.

When an exempt funding portal considers the feasibility and reasonableness of its plans, it may want to include the following in its consideration:

- Which expenditures will take priority at various levels of operation, and what effect this allocation would have on the exempt funding portal's operations, business objectives and milestones;
- The risks of defaulting on payments as they become due, and what effect the defaults would have on the exempt funding portal's operations; and
- An analysis of the exempt funding portal's ability to generate sufficient amounts of cash and cash equivalents from other sources, the circumstances that could affect those sources and management's assumptions in conducting this analysis.

Good practices for compliance with this condition include:

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

#### *Updated Funding Portal Information Form and/or Individual Information Forms*

If a change occurs and the information in the forms and documents delivered to a regulator are no longer up-to-date, the exempt funding portal must update the information by delivering a new form or document setting out the change. These updated forms must be provided within 30 days of the change. Failure to deliver these updated forms on time means that the funding portal has not satisfied the conditions of the start-up registration exemption and cannot rely on the exemption.

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

#### Assessing compliance for funding portals

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

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

#### Funding portals operated by registered dealers

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

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

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

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

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

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

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

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

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

An offering conducted through a funding portal operated by a registered dealer is permitted to facilitate a larger investment. Both exempt funding portals and funding portals operated by registered dealers can facilitate investments up to \$2,500 from a purchaser under the start-up prospectus exemption. However, purchasers can purchase

up to \$10,000 if the registered dealer has determined that the investment is suitable for the purchaser.

## “Pop-up” Acknowledgement

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

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

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

The pop-up acknowledgement should appear upon the first and every subsequent time a person enters a funding portal’s platform. This means that after opening their internet browser or app:	
(a)	If a person lands on any page of a funding portal’s platform (home page or other page) the pop-up acknowledgement should appear.
(b)	If the person clicks “I acknowledge” and then immediately closes out of their browser, when the person goes back to any page on a funding portal’s platform, the pop-up acknowledgement should appear. The result is that the same person will have to click on “I acknowledge” to go back into the funding portal’s platform regardless of the fact that they had just been to that platform.
The pop-up acknowledgement should appear regardless of a person’s entry point to the platform (home page or other page). For example:	
(c)	If a person were to search the name of the funding portal and finds a link to the funding portal’s platform, the link would take the person to the funding portal’s home page and a pop-up acknowledgement would appear.
(d)	If a person were to browse directly to the funding portal’s issuer-offering page from an external link, the link would take the person to issuer’s page on the funding portal’s platform and a pop-up acknowledgement would appear.
Once a person clicks “I acknowledge” and enters the funding portal’s platform, they can navigate from page to page within the website without the re-appearance of the pop-up acknowledgement.	

## How does a start-up crowdfunding distribution work?

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

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

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

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

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

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

Using this information, no later than 30 days following the closing of the distribution, the issuer files Form 45-106F1 *Report of Exempt Distribution* (the report of exempt distribution) with the regulators. When providing purchaser information to the issuer, funding portals may use the spreadsheet of Schedule 1 of the report of exempt distribution. Please refer to the *Start-up Crowdfunding Guide for Businesses* for more information on the issuer's filing requirements.

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

- the date of the purchaser's subscription and the closing date,

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

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

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

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

#### *When must an offering document be amended?*

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

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

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

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

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

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

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

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

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

#### *Does an issuer have to provide financial statements?*

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

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

For more information

For more information, please contact the following:

British Columbia

British Columbia Securities Commission

Telephone: 604-899-6854 or 1-800-373-6393

E-mail: [inquiries@bcsc.bc.ca](mailto:inquiries@bcsc.bc.ca)

Website: [www.bcsc.bc.ca](http://www.bcsc.bc.ca)

Alberta	<p>Alberta Securities Commission  Telephone: 403-355-4151  E-mail: <a href="mailto:inquiries@asc.ca">inquiries@asc.ca</a>  Website: <a href="http://www.albertasecurities.com">www.albertasecurities.com</a></p>
Saskatchewan	<p>Financial and Consumer Affairs Authority of Saskatchewan  Securities Division  Telephone: 306-787-5645  E-mail: <a href="mailto:exemptions@gov.sk.ca">exemptions@gov.sk.ca</a>  Website: <a href="http://www.fcaa.gov.sk.ca">www.fcaa.gov.sk.ca</a></p>
Manitoba	<p>The Manitoba Securities Commission  Toll free in Manitoba: 1-800-655-2548  E-mail: <a href="mailto:exemptions.msc@gov.mb.ca">exemptions.msc@gov.mb.ca</a>  Website: <a href="http://www.mbsecurities.ca/">http://www.mbsecurities.ca/</a></p>
Ontario	<p>Ontario Securities Commission  Toll free: 1-877-785-1555  E-mail: <a href="mailto:inquiries@osc.gov.on.ca">inquiries@osc.gov.on.ca</a>  Website: <a href="http://www.osc.ca">www.osc.ca</a></p>
Québec	<p>Autorité des marchés financiers  Direction du financement des sociétés  Toll free in Québec: 1-877-525-0337  E-mail: <a href="mailto:financement-participatif@lautorite.qc.ca">financement-participatif@lautorite.qc.ca</a>  Website: <a href="http://www.lautorite.qc.ca">www.lautorite.qc.ca</a></p>
New Brunswick	<p>Financial and Consumer Services Commission  Toll free: 1-866-933-2222  E-mail: <a href="mailto:emf-md@fcnb.ca">emf-md@fcnb.ca</a>  Website: <a href="http://www.fcnb.ca">www.fcnb.ca</a></p>
Nova Scotia	<p>Nova Scotia Securities Commission  Toll free in Nova Scotia: 1-855-424-2499  E-mail: <a href="mailto:nssc.crowdfunding@novascotia.ca">nssc.crowdfunding@novascotia.ca</a>  Website: <a href="http://nssc.novascotia.ca">nssc.novascotia.ca</a></p>

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

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



## Appendix A

### Checklist for Exempt Funding Portals

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

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

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

\_\_\_\_\_

**Date the funding portal may begin operations if it has not received a notification from the regulator that it is not allowed to rely on the start-up registration exemption (30 days from the date the funding portal delivered the completed portal information form and individual information forms, with necessary attachments, to the regulators):** \_\_\_\_\_

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

- ☐ Two completed Forms 45-110F5 *Semi-Annual Financial Resources Certification* (financial resources certification) each calendar year, one within 10 days of June 30, and the other within 10 days of December 31

Note: particular guidance on this requirement can be found in the *Start-Up Crowdfunding Guide for Funding Portals*, under the sections titled “Financial Resources Certification” and “Sufficient Financial Resources” beginning on page 8.

- ☐ Updated portal information forms or individual information forms if there is a change to any of the information previously provided in these forms, within 30 days of the change.

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

1. *National Instrument 13-101 System for Electronic Document Analysis and Retrieval (SEDAR) is amended by this Instrument.*
2. *Appendix A is amended in section II Other Issuers (Reporting/Non-reporting),*

*(a) by striking out section 4 of Item E “Exempt Market Offerings and Disclosure” and substituting the following:*

- |    |                                                                                                                                                                            |                                                            |
|----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------|
| 4. | Offering document and report of exempt distribution required to be filed or delivered by an issuer under the start-up crowdfunding prospectus and registration exemptions. | Alta, Sask, Man, Que,<br>NB, PEI, NS, Nfld,<br>YK, NWT, NU |
|----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------|

*(b) by adding, after section 5 of item E “Exempt Market Offerings and Disclosure”, the following:*

- |    |                                                                                                                               |      |
|----|-------------------------------------------------------------------------------------------------------------------------------|------|
| 6. | Offering document required to be filed or delivered under ASC Rule 45-517 <i>Prospectus Exemption for Start-up Businesses</i> | Alta |
|----|-------------------------------------------------------------------------------------------------------------------------------|------|

3. (1) This Instrument comes into force on September 21, 2021.

(2) In Saskatchewan, despite subsection (1), if this Instrument is filed with the Registrar of Regulations after September 21, 2021, this Instrument comes into force on the day on which they are filed with the Registrar of Regulations.

**AMENDMENTS TO  
NATIONAL INSTRUMENT 45-102 *RESALE OF SECURITIES***

- 1.**     *National Instrument 45-102 Resale of Securities is amended by this Instrument.*
- 2.**     *Appendix D is amended by adding, before the heading “Transitional and Other Provisions”, the following section:*
  - 3.**     Except in Manitoba, the exemption from the prospectus requirement in section 5 [Exemption from prospectus requirement for issuers] of National Instrument 45-110 *Start-up Crowdfunding Registration and Prospectus Exemptions*.
- 3.** (1) This Instrument comes into force on September 21, 2021.
  - (2)     In Saskatchewan, despite subsection (1), if this Instrument is filed with the Registrar of Regulations after September 21, 2021, this Instrument comes into force on the day on which they are filed with the Registrar of Regulations.

## **ANNEX E**

### **LOCAL MATTERS**

Pursuant to section 7 of Blanket Order 45-524 (Amendment) *Start Up Crowdfunding Registration and Prospectus Exemptions* (the Blanket Order), the Blanket Order expires on the date that is 90 days after NI 45-110 comes into force.

**AMENDMENTS TO NOVA SCOTIA SECURITIES COMMISSION RULE 45-501  
STATUTORY LIABILITY FOR MISREPRESENTATIONS IN AN OFFERING  
MEMORANDUM UNDER CERTAIN EXEMPTIONS FROM THE PROSPECTUS  
REQUIREMENT**

- 1. *Nova Scotia Securities Commission Rule 45-501 Statutory Liability for Misrepresentations in An Offering Memorandum Under Certain Exemptions From The Prospectus Requirement is amended by this Instrument.***
- 2. *Section 2.1 is amended by adding before subsection (b) the following:***  
  

(a2) Section 5 of National Instrument 45-110 *Start-up Crowdfunding Registration and Prospectus Exemptions*.
- 3. This Instrument comes into force on September 21, 2021.**

**Blackline Showing Changes To  
Nova Scotia Securities Commission Companion Policy 45-501CP to Rule 45-501 *Statutory  
Liability for Misrepresentations In An Offering Memorandum Under Certain Exemptions  
From The Prospectus Requirement***

**NOVA SCOTIA SECURITIES COMMISSION**

**COMPANION POLICY 45-501CP TO RULE 45-501  
STATUTORY LIABILITY FOR MISREPRESENTATIONS IN AN  
OFFERING MEMORANDUM UNDER CERTAIN EXEMPTIONS  
FROM THE PROSPECTUS REQUIREMENT**

**PART 1 APPLICATION**

1.1 Introduction

The Rule specifies when the statutory rights of action for misrepresentation in section 138 of the Act will apply to an offering memorandum that has been furnished to a prospective purchaser in connection with a distribution of a security under certain prospectus exemptions.

1.2 Purpose

The purpose of the Policy is to provide guidance on how the Commission interprets or applies certain provisions of Nova Scotia securities laws relating to the provision of an offering memorandum when an issuer relies on a prospectus exemption.

**PART 2 INTERPRETATION**

2.1 Definitions

In the Policy,

“Act” means the *Securities Act*, R.S.N.S. 1989, chapter 418, as amended;

“CEDC Regulations” means the *Community Economic-Development Corporations Regulations*;

“Commission” means the Nova Scotia Securities Commission;

“MI 45-108” means Multilateral Instrument 45-108 *Crowdfunding*;

“NI 45-106” means National Instrument 45-106 *Prospectus and Registration Exemptions*;

“NI 45-110” means National Instrument 45-110 *Start-Up Crowdfunding Registration and Prospectus Exemptions*

“Nova Scotia securities laws” has the same meaning as in clause 2(1)(aab) of the Act;

“offering memorandum” has the same meaning as in clause 2(1)(ab) of the Act;

“Policy” means Companion Policy 45-501CP to Rule 45-501 Statutory Liability for Misrepresentations in an Offering Memorandum Under Certain Exemptions From the Prospectus Requirement;

“prospectus exemption” means an exemption from the prospectus requirement in section 58 of the Act; and

“Rule” means Rule 45-501 Statutory Liability for Misrepresentations in an Offering Memorandum Under Certain Exemptions From the Prospectus Requirement.

## **PART 3 OFFERING MEMORANDUM**

### **3.1 Definition of offering memorandum**

The Commission is of the view that the phrase “prepared primarily for delivery to and review by a prospective purchaser” in the definition of offering memorandum means the document is prepared in contemplation of soliciting an investment from a prospective purchaser.

### **3.2 Mandatory and voluntary use of offering memorandum**

(1) An issuer must prepare an offering memorandum for use in connection with a distribution made in reliance on the prospectus exemptions in section 2.9 of NI 45-106, section 5 of MI 45-108, [section 5 of NI 45-110](#) and subsection 3(2) of the CEDC Regulations.

(2) There is no requirement to provide an offering memorandum to a prospective purchaser in connection with a distribution made in reliance on a prospectus exemption in:

- (a) section 2.3 of NI 45-106 Accredited investor;
- (b) section 2.5 of NI 45-106 Family, friends and business associates;
- (c) section 2.10 of NI 45-106 Minimum amount investment;
- (d) section 2.19 of NI 45-106 Additional investment in investment funds; or
- (e) clause 77(1)(ah) of the Act.

An issuer may decide to prepare offering material that is delivered voluntarily to a prospective purchaser in connection with a distribution made in reliance on a prospectus exemption referred to in clauses (a) to (e) of this subsection. This offering material may constitute an offering memorandum which is defined generally to mean a document that describes the business and affairs of an issuer that is prepared primarily for delivery to and review by a prospective purchaser under a prospectus exemption.

### **3.3 Right of action for damages or rescission**



(1) Section 138 of the Act describes the rights of action for a misrepresentation in an offering memorandum. Subsection 138(14) of the Act states that section 138 applies only with respect to an offering memorandum that has been furnished to a prospective purchaser in connection with a distribution of a security under a prospectus exemption specified in the regulations for the purpose of that section.

(2) Section 2.1 of the Rule specifies the following prospectus exemptions for the application of the rights in section 138 of the Act for an offering memorandum that has been furnished to a prospective purchaser in connection with a distribution of a security:

- (a) one of the following sections of NI 45-106:
  - (i) 2.3 Accredited investor;
  - (ii) 2.5 Family, friends and business associates;
  - (iii) 2.9 Offering memorandum;
  - (iv) 2.10 Minimum amount investment;
  - (v) 2.19 Additional investment in investment funds;
- (a1) section 5 of MI 45-108 if the issuer is a reporting issuer;
- (a2) section 5 of NI 45-110;
- (b) subsection 3(2) of the CEDC Regulations; and
- (c) clause 77(1)(ah) of the Act.

The rights apply when an offering memorandum is delivered mandatorily in connection with a distribution made in reliance on the prospectus exemption in section 2.9 of NI 45-106, or section 5 of MI 45-108 provided the issuer is a reporting issuer, or section 5 of NI 45-110, or subsection 3(2) of the CEDC Regulations, or voluntarily in connection with a distribution made in reliance on a prospectus exemption in section 2.3, 2.5, 2.10 or 2.19 of NI 45-106 or clause 77(1)(ah) of the Act.

(3) An offering memorandum delivered in connection with a distribution of a security made otherwise than in reliance on the prospectus exemptions referred to in subsection (2) does not trigger the rights referred to in section 138 of the Act.

### 3.4 Content of offering memorandum

(1) Other than an offering memorandum delivered in connection with a distribution made in reliance on the prospectus exemption in section 2.9 of NI 45-106, section 5 of MI 45-108, section 5 of NI 45-110 or subsection 3(2) of the CEDC Regulations and subject to subsection (2), Nova Scotia securities laws generally do not prescribe the content of an offering memorandum. The decision relating to the appropriate disclosure in an offering memorandum generally rests with the issuer, the selling security holder and their advisers.

(2) Under subsection 65(3) of the Act, an offering memorandum must contain a statement of the rights described in section 138 of the Act and a statement that these rights are in addition to any other right or remedy available at law to the purchaser and must describe the time limitations in subsection 146(2) of the Act for enforcing a right under section 138 of the Act.

### 3.5 Delivery of offering memorandum to the Director

(1) Subsection 77(3) of the Act requires two copies of an offering memorandum that is voluntarily furnished to a purchaser in connection with a distribution under section 2.3, 2.5, 2.10 or 2.19 of NI 45-106 to be delivered to the Director concurrently with or before the date upon which a report of trade is required to be filed with the Director under Part 6 of NI 45-106.

(2) Under subsection 2.9(17) of NI 45-106, an issuer must file with the Director a copy of an offering memorandum delivered under section 2.9 of NI 45-106 within 10 days of the distribution under the offering memorandum.

(3) Under clause 77(1B)(b) of the Act, a co-operative must file with the Director a copy of an offering memorandum that is sent or delivered to a member of a co-operative or a purchaser in connection with a distribution under clause 77(1)(ah) of the Act, other than a distribution referred to in subsection 77(1A) of the Act, at least 10 days before the first trade of securities offered under the offering memorandum.

(4) Prior to an offering of securities under the CEDC Regulations, the Director must issue a letter of non-objection to an offering document prepared in accordance with Form 1 of the CEDC Regulations. The offering document would be an offering memorandum by definition. The offering document is pre-filed with the Director for review and non-objection.

(5) Under subsection 15(2) of MI 45-108, an issuer must file with the Director a copy of a crowdfunding offering document, which is an offering memorandum by definition, and other materials referred to in paragraphs 12(1)(a) and (c) of MI 45-108 at the time the issuer files a report of exempt distribution and no later than 10 days after the closing of the distribution.

(6) Under section 6 of NI 45-110, an issuer must file with the Director a copy of an offering document, which is an offering memorandum by definition, no later than 30 days after the closing of the distribution.

### 3.6 Review of offering memorandum

(1) An offering memorandum delivered to the Director under subsection 77(3) or clause 77(1B)(b) of the Act, or subsection 15(2) of MI 45-108, or section 6 of NI 45-110 is not generally reviewed or commented on by Commission staff. If Commission staff becomes aware that an offering memorandum fails to disclose material information relating to a security that is the subject of a distribution, Commission staff may consider remedial action.

(2) An offering memorandum filed under subsection 2.9(17) of NI 45-106 by an issuer with its head office in Nova Scotia is reviewed by Commission staff under the monitoring program described in Notice No. 45-705 (Amendment) In the Matter of National Instrument 45-106 Capital Raising Exemption Monitoring Program. If there are substantial deficiencies in the offering memorandum, Commission staff may consider remedial action.

(3) An offering memorandum filed under the CEDC Regulations is fully reviewed by Commission staff.

### 3.7 Preliminary offering material

(1) The Commission cautions against providing preliminary offering material to a prospective purchaser before furnishing a “final” offering memorandum unless the offering material contains a description of the rights referred to in section 138 of the Act in situations when the rights apply.

(2) The CEDC Regulations govern the use of preliminary offering material for an offering of securities under subsection 3(2) of the CEDC Regulations.

***The changes become effective on September 21, 2021.***