

## CSA Notice of Publication of *Regulation 45-108 respecting Crowdfunding*

November 5, 2015

### Introduction

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

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

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

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

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

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

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

The 45-108 crowdfunding regime will enable start-ups and SMEs in their early-stages of development to raise capital online from a large number of investors through a single registered funding portal. A limit on

the total amount that can be raised will be imposed on issuers and investors will be subject to investment limits as a means of limiting their exposure to a highly risky investment. The registration of the funding portal is a key investor protection measure as registration addresses, among other things, potential integrity concerns that may apply to funding portals and the persons operating them, as well as potential concerns relating to conflicts of interest and self-dealing.

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

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

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

	<p>issuer's disclosure in the crowdfunding offering document and other permitted materials for completeness, accuracy and any misleading statements</p> <ul style="list-style-type: none"> <li>• a funding portal must review information and obtain background checks on the issuer and its directors, executive officers and promoters, and deny an issuer access to the funding portal in certain circumstances</li> </ul>
--	---

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

### **Background**

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

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

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

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

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

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

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

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

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

### **Key themes from the comment letters**

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

### *Investor protection*

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

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

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

As we expand accessibility to the exempt market through crowdfunding, we recognize that investor protection measures are an important component of the framework and we will remain vigilant in monitoring the adequacy of the protection it affords investors. We believe the 45-108 crowdfunding regime we are introducing will provide greater access to capital for start-ups and SMEs and that the framework we are adopting, including the measures noted above, will provide effective protection for investors.

### *Investment limits*

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

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

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

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

We continue to believe that investment limits are a necessary and appropriate investor protection tool that

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

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

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

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

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

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

*Offering limit*

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

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

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

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

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

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

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

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

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

*Advertising and solicitation*

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

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

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

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

### **Changes to the March 2014 45-108 materials**

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

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

### **Consequential amendments**

#### *National amendments*

We are making consequential amendments to the following regulation:

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

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

#### *Local amendments*

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

### **Local notices**

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

### **Questions**

Please refer your questions to any of:

#### *Québec*

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

Gabriel Araish  
Senior Analyst, Corporate Finance  
Autorité des marchés financiers  
514 395-0337, ext. 4414  
[gabriel.araish@lautorite.qc.ca](mailto:gabriel.araish@lautorite.qc.ca)

Marc-Olivier St-Jacques  
Analyst, Corporate Finance  
Autorité des marchés financiers  
514 395-0337, ext. 4424  
[marco.st-jacques@lautorite.qc.ca](mailto:marco.st-jacques@lautorite.qc.ca)

Noémie Corneau-Girard  
Analyst, Firms Registration  
Autorité des marchés financiers  
514 395-0337, ext. 4806  
[noemie.corneau-girard@lautorite.qc.ca](mailto:noemie.corneau-girard@lautorite.qc.ca)

*Ontario*

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

Rick Whiler  
Senior Accountant, Corporate Finance  
Ontario Securities Commission  
416 593-8127  
[rwhiler@osc.gov.on.ca](mailto:rwhiler@osc.gov.on.ca)

Erin O'Donovan  
Senior Legal Counsel, Corporate Finance  
Ontario Securities Commission  
416 593-8973  
[eodonovan@osc.gov.on.ca](mailto:eodonovan@osc.gov.on.ca)

Denise Morris  
Senior Legal Counsel, Compliance and Registrant  
Regulation  
Ontario Securities Commission  
416 595-8785  
[dmorris@osc.gov.on.ca](mailto:dmorris@osc.gov.on.ca)

Marah Smith  
Legal Counsel, Corporate Finance  
Ontario Securities Commission  
416 204-8969  
[msmith@osc.gov.on.ca](mailto:msmith@osc.gov.on.ca)

Gloria Tsang  
Legal Counsel, Compliance and Registrant  
Regulation  
Ontario Securities Commission  
416 593-8263  
[gtsang@osc.gov.on.ca](mailto:gtsang@osc.gov.on.ca)

*Manitoba*

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

*New Brunswick*

Susan Powell  
Deputy Director, Securities  
Financial and Consumer Services  
Commission  
506 643-7697  
[susan.powell@fcnb.ca](mailto:susan.powell@fcnb.ca)

Jason Alcorn  
Legal Counsel, Securities  
Financial and Consumer Services  
Commission  
506 643-7857  
[jason.alcorn.fcnb.ca](mailto:jason.alcorn.fcnb.ca)

*Nova Scotia*

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



## Annex A

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

#### **Crowdfunding exemption**

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

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

#### ***Investment limits***

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

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

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

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

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

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

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

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

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

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

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

*(c) Compliance with investment limits*

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

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

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

***Facilitating investments by lead investors***

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

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

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

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

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

*(a) Real estate issuers*

The March 2014 45-108 materials prohibited non-reporting real estate issuers from using the crowdfunding exemption. A real estate issuer was defined as a real estate investment trust, a mortgage investment entity, or a person that primarily invests in, or develops, real estate, or derives its revenues primarily from investments in real estate. We sought specific comment on whether this restriction was appropriate. Several commenters thought it would be inappropriate to prohibit a particular industry sector from being able to rely on the crowdfunding exemption and that it should therefore be available to all real estate issuers. Commenters noted

that one industry is not necessarily riskier than another.

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

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

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

- to avoid concerns associated with an issuer in a foreign jurisdiction which may not have the comparable investor protections in its constating statute as are found in Canadian legislation, and
- to facilitate capital raising for Canadian issuers, one of the key objectives of the crowdfunding initiative.

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

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

***Aggregate minimum proceeds***

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

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

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

***Point of sale disclosure***

*(a) Streamlined crowdfunding offering document*

We have streamlined the disclosure requirements in the crowdfunding offering document and have more closely aligned them with the requirements for an offering document used under the start-up crowdfunding

exemptions. We think this will make the document easier for investors to read and understand while still requiring issuers to provide investors with all of the information they need to know about the issuer and its business before investing. It may also be more cost-effective and faster for issuers to prepare.

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

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

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

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

*(c) Risk acknowledgement form*

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

***Financial statements***

In the March 2014 45-108 materials, a non-reporting issuer's financial statements were required to be reviewed by an independent public accounting firm if the issuer had not raised more than \$500,000 under the crowdfunding exemption or any other prospectus exemption since its formation or expended more than \$150,000 since that time. The issuer's financial statements were required to be audited if both of those thresholds were exceeded.

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

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

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

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

- a fundamental change in the nature, or a discontinuation, of the issuer's business,
- a significant change to the issuer's capital structure,
- a major reorganization, amalgamation or merger involving the issuer,

- a take-over bid, issuer bid or insider bid involving the issuer,
- a significant acquisition or disposition of assets, property or joint venture interests, and
- changes to the issuer’s board of directors or executive officers, including the departure of the issuer’s chief executive officer, chief financial officer, chief operating officer or president or persons acting in similar capacities.

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

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

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

### ***Investors’ right of withdrawal***

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

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

### **Funding Portal Requirements**

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

- use of the crowdfunding exemption by registrants,
- custodial requirements,
- restricted dealer funding portal requirements,
- access by issuers to a funding portal’s online platform,
- access by investors to the funding portal’s online platform, and
- operational requirements.

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

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

Based on feedback we received, the final Regulation allows exempt market dealers and investment dealers to

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

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

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

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

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

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

##### *(a) Permitted activities*

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

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

##### *(b) Chief compliance officer*

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

We have retained the requirement for a CCO. However, a restricted dealer funding portal is a specialized type of restricted dealer that can only rely on the crowdfunding exemption, and other than in Ontario, on the

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

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

#### *(a) Background checks*

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

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

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

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

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

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

of the issuer may not be conducted with integrity. As such, the standard that the business of the issuer may not be conducted with integrity, will encompass the fraudulent conduct.

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

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

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

- no securities regulatory authority or regulator has approved or expressed an opinion about the securities offered on the registered funding portal's online platform,
- "A crowdfunding investment is highly risky. You may lose all your investment and you may not be able to sell any securities you purchase.", and
- a description of all compensation, including fees, costs and other expenses that the registered funding portal may charge to, or impose on, an issuer or purchaser.

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

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

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

#### *(b) Dispute resolution services*

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

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

### ***Operational Requirements***

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



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

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

*(b) Other operational requirements*

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

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

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

**Policy Statement guidance**

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

**Other**

We have also:

- included new definitions in the Regulation to reflect the above changes,
- revised the Policy Statement to the Regulation to reflect the above changes and clarify certain matters, and
- made certain drafting changes to the provisions.