

## CSA Notice of Consultation

### *Draft Regulation 45-110 respecting Start-up Crowdfunding Registration and Prospectus Exemptions*

February 27, 2020

#### Introduction

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

- Draft *Regulation 45-110 respecting Start-up Crowdfunding Registration and Prospectus Exemptions* (the **Regulation**);
- Draft *Start-up Crowdfunding Guide for Businesses* (the **Guide for Businesses**);
- Draft *Start-up Crowdfunding Guide for Funding Portals* (the **Guide for Funding Portals**).

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

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

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

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

[www.lautorite.qc.ca](http://www.lautorite.qc.ca)

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

[www.albertasecurities.com](http://www.albertasecurities.com)

[www.osc.gov.on.ca](http://www.osc.gov.on.ca)

[nssc.novascotia.ca](http://nssc.novascotia.ca)

[www.fcaa.gov.sk.ca](http://www.fcaa.gov.sk.ca)

[www.fcnb.ca](http://www.fcnb.ca)

[www.mbsecurities.ca](http://www.mbsecurities.ca)

#### Background

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

On May 14, 2015, the securities regulatory authorities of British Columbia, Saskatchewan, Manitoba, Québec, New Brunswick and Nova Scotia adopted substantially harmonized registration and prospectus exemptions that allow start-ups and early stage issuers to raise capital in these jurisdictions under a tailored framework for securities crowdfunding. On October 2, 2019, the securities regulatory authority of Alberta adopted a substantially harmonized registration and prospectus exemption (the securities regulatory authorities in British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick and Nova Scotia collectively being the **blanket order jurisdictions**). The blanket order jurisdictions implemented the registration and prospectus exemptions by way of local blanket orders, as amended from time to time<sup>1</sup> (the **start-up crowdfunding blanket orders**).

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

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

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

- *Regulation 45-108 respecting Crowdfunding (Regulation 45-108)* came into force on January 25, 2016 in Saskatchewan, Manitoba, Ontario, Québec, New Brunswick and Nova Scotia. Alberta adopted Regulation 45-108 on February 22, 2017. To date, no funding portal has registered as a restricted dealer under Regulation 45-108 and there has been no use of the regime.
- Alberta Securities Commission Rule 45-517 *Prospectus Exemption for Start-up Businesses* (ASC Rule 45-517) came into force on July 19, 2016. ASC Rule 45-517 is similar to the start-up crowdfunding blanket orders but does not provide

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

an exemption from the registration requirement and does not require the use of a funding portal. As of December 31, 2019, there has been limited use of ASC Rule 45-517, with 6 distributions raising in aggregate \$130,650.

In addition, a number of firms registered as exempt market dealers and restricted dealers have launched online funding portals that facilitate crowdfunding through existing prospectus exemptions such as the offering memorandum and accredited investor exemptions under *Regulation 45-106 respecting Prospectus Exemptions (Regulation 45-106)*.

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

### **Substance and Purpose of the Regulation**

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

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

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

### **Summary of the Regulation**

The Regulation provides:

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

#### *Start-up crowdfunding prospectus exemption*

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

- the distribution of, and payment for, the security is facilitated through a funding portal that is relying on the start-up crowdfunding registration exemption or operated by an exempt market dealer or investment dealer;

- the aggregate gross proceeds raised by the issuer group<sup>2</sup> during the 12-months before the closing of the start-up crowdfunding distribution does not exceed \$1,000,000;
- each purchaser invests no more than \$2,500 or, if the purchaser has obtained advice from a registered dealer that such investment is suitable for the purchaser, \$5,000;
- the issuer prepares an offering document disclosing information about the business and the start-up crowdfunding distribution and makes it available to each purchaser through the funding portal's platform;
- the closing of the start-up crowdfunding distribution does not occur unless the issuer raises the minimum offering amount stated in the offering document within the 90-day period after the date the offering document is made available on the funding portal's platform; and
- the issuer provides the purchaser with a two-day contractual right to withdraw from an agreement to purchase the security by delivering a notice to the funding portal.

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

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

#### *Start-up crowdfunding registration exemption*

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

- at least 30 days prior to the first date the funding portal facilitates a start-up crowdfunding distribution in a jurisdiction, the funding portal delivers to the regulator, except in Québec, or the securities regulatory authority in each jurisdiction a completed Form 45-110F3 *Funding Portal Information* and, for each principal of the funding portal, a completed Form 45-110F4 *Portal Individual Information*;
- the funding portal or any of its principals must not be, or have been, the subject of certain proceedings in the last 10 years as specified in the Regulation, including

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

- claims related to fraud, theft, breach of trust, illegal distributions, or allegations of similar conduct;
- the funding portal holds each purchaser's assets separate and apart from the funding portal's own property, in trust for the purchaser, and in the case of cash, in a designated trust account at a Canadian financial institution;
  - the funding portal provides the necessary disclosures (such as the issuer's offering document and any amendments) and obtains the necessary risk acknowledgement from purchasers under the Regulation in connection with a distribution of eligible securities;
  - the funding portal is not registered under securities legislation; and
  - the funding portal does not:
    - provide advice to a purchaser about the merits of the investment or otherwise recommend or represent that an eligible security is suitable, or
    - receive a commission, fee or other similar payment from a purchaser under a start-up crowdfunding distribution.

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

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

### **Guide for Businesses and Guide for Funding Portals**

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

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

The Guide for Funding Portals provides information that businesses that intend to conduct funding portal activities should consider, including considerations applicable to

funding portals relying on the start-up crowdfunding registration exemption and those operated by registered dealers.

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

### **Extension of the Start-up Crowdfunding Blanket Orders**

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

### **Local Matters**

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

### **Publication**

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

### **Comments**

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

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

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

- a. \$5,000 for each purchaser;

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

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

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

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

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

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

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

- units of a limited partnership.

The definition of “eligible security” was intended to reflect the type of securities a start-up or early stage issuers would likely be selling and to ensure that the exemption was not used to sell more complex securities, such as asset-backed securities and structured products. Are there other types of securities that it would be appropriate to include in the definition of “eligible security” (e.g. trust units, co-operatives member shares or other)? If so, what other type of securities and why?

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

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

Thank you in advance for your comments.

Please address your comments to each of the following:

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

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

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The Secretary  
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## **Annexes**

This notice contains the following annexes:

- Annex A – Key differences between the registration and prospectus exemptions under Draft *Regulation 45-110 respecting Start-up Crowdfunding Registration and Prospectus Exemptions* and the Start-up Crowdfunding Registration and Prospectus Blanket Orders
- Annex B – CSA Staff Notice 45-XXX *Guidance for using the start-up crowdfunding registration and prospectus exemptions*

## **Questions**

Please refer your questions to any of:

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## Annex A

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

Key theme	Start-up crowdfunding blanket orders	Regulation
<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.	\$1,000,000 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 and Saskatchewan, \$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>• \$5,000, provided that the purchaser has obtained advice from a registered dealer that such investment is suitable for the purchaser</li> </ul>
<b>Confirmation by the regulator, except in Québec, or the securities regulatory authority before a funding portal starts to facilitate distributions</b>	<p>The funding portal cannot facilitate distributions until the regulator, except in Québec, or the securities regulatory authority 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 or the securities regulatory authority.</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, except in Québec, or the securities regulatory authority'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 or the securities regulatory authority has notified the funding portal, it or any of its principals has been notified by the regulator or the securities regulatory authority that its process and procedure for handling of purchasers' funds does not satisfy the conditions of the Regulation.</p>

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

## Appendix B



Canadian Securities  
Administrators

Autorités canadiennes  
en valeurs mobilières

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

#### XX, 202X

The Canadian Securities Administrators (CSA) have implemented *Regulation 45-110 respecting 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 – Draft Start-up Crowdfunding Guide for Businesses
- Appendix 2 – Draft Start-up Crowdfunding Guide for Funding Portals

#### Questions

Please refer your questions to any of the following:

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## Appendix 1

### Start-up Crowdfunding Guide for Businesses

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

#### *Securities crowdfunding*

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

#### *Legal obligations*

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

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

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

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

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

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

## How Start-up Crowdfunding Works



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **Launching a Start-up Crowdfunding Campaign**

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

### *What is a funding portal?*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### *What if an investor changes their mind?*

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

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

To exercise this right of withdrawal, an investor must deliver a notice to the funding portal not later than midnight on the 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.

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

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

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

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

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

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

This statutory right to sue is available whether or not the investor relied on the misrepresentation. However, there may be various defenses available. In particular, a

defense may be available if the investor knew of the misrepresentation when he or she purchased the securities.

## Completing a Start-up Crowdfunding Campaign

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

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

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

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

Although an issuer cannot have more than one start-up crowdfunding campaign running at the same time, the issuer can raise funds using other prospectus exemptions during a start-up crowdfunding campaign. For example, the issuer may issue securities to an accredited investor. Other prospectus exemptions, such as the accredited investor exemption, are found in securities laws, including [Regulation 45-106 respecting 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* under [Regulation 45-106 respecting Prospectus Exemptions](#) must be filed with the regulator in each jurisdiction where investors are located no later than 30 days after the closing of the distribution. For example, if the issuer has raised money in Québec and Nova Scotia, the offering document and report of exempt distribution must be filed with the Autorité des marchés financiers and the Nova Scotia Securities Commission.

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

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

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

### *Confirmation notice to investors*

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

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

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

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

For more information, please contact the following:

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 *Regulation 45-110 respecting Start-up Crowdfunding Registration and Prospectus Exemptions* (Regulation 45-110). This guide is intended both for funding portals that rely on the registration exemption in Regulation 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 Regulation 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 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, except in Québec, or regulatory authorities of each province or territory (the regulators) in which it intends to sell its securities, or have an exemption from the prospectus requirements under securities laws.

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

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

Regulation 45-110 provides additional new exemptions tailored to start-up and early stage issuers to facilitate securities crowdfunding and make it easier for them to raise money by issuing securities. Regulation 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 Regulation 45-110, all issuers intending to conduct a start-up crowdfunding offering must use a funding portal.

### *Types of funding portals under Regulation 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 operating a funding portal does not have to register as a dealer if they meet all conditions of the start-up registration exemption. The responses to the following questions further detail many of these conditions of the start-up registration exemption. You should refer to Regulation 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 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

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

<sup>2</sup> A person 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.

incorporating or governing documents may be a reasonable step to confirm the issuer's head office.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## Delivery requirements for exempt funding portals

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

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

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

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

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

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

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

### *What supporting documents are required?*

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

- organizing documents such as articles and certificate of incorporation or partnership agreement,
- a chart showing the funding portal's structure and ownership that, at a minimum, includes all parents, affiliates and subsidiaries, as well as the full list of securityholders (including number and type of securities held) of the funding portal,

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

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

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

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

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

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

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

### *Working Capital Certification*

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

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

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

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

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

Good practices for compliance with this condition include:

- Keeping documentation that is regularly maintained to ensure effective monitoring; and

- Establishing, maintaining and applying a system of controls and supervision sufficient to ensure the accuracy of the documents, including financial statements, used to support the funding portal's assessment of working capital.

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

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

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

### **Assessing compliance for funding portals**

Failure to comply with the conditions of Regulation 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 *Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations*),

- meet the requirements in Regulation 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 Regulation 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 Regulation 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 Regulation 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 an purchaser’s subscription, that the purchaser has confirmed they have read and understood the offering document and risk warning available on the funding portal.

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

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

## “Pop-up” Acknowledgement

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

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

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

<p>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:</p> <ul style="list-style-type: none"><li>(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.</li><li>(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.</li></ul>
<p>The pop-up acknowledgement should appear regardless of a person’s entry point to the platform (home page or other page). For example:</p> <ul style="list-style-type: none"><li>(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.</li><li>(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.</li></ul>

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## For more information

For more information, please contact the following:

British Columbia	British Columbia Securities Commission Telephone: 604 899-6854 or 1 800 373-6393 Email: <a href="mailto:inquiries@bcsc.bca">inquiries@bcsc.bca</a> Website: <a href="http://www.bcsc.bc.ca">www.bcsc.bc.ca</a>
Alberta	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>
Saskatchewan	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>
Manitoba	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>
Ontario	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>
Québec	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>
New Brunswick	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>

Nova Scotia

Nova Scotia Securities Commission

Toll free in Nova Scotia: 1 855 424-2499

E-mail: [nssc.crowdfunding@novascotia.ca](mailto:nssc.crowdfunding@novascotia.ca)

Website: [nssc.novascotia.ca](http://nssc.novascotia.ca)

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

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

Published \*\*.

## Appendix A

### Checklist for Exempt Funding Portals

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

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

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

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

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

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

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

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

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

**Good practices for compliance with this condition include:**

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