

CSA Notice of Publication

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

June 23, 2021

Introduction

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

- *Regulation 45-110 respecting Start-up Crowdfunding Registration and Prospectus Exemptions* (**Regulation 45-110**), including:
 - Form 45-110F1 *Offering Document*;
 - Form 45-110F2 *Risk Acknowledgement*;
 - Form 45-110F3 *Funding Portal Information*;
 - Form 45-110F4 *Portal Individual Information*;
 - Form 45-110F5 *Semi-Annual Financial Resources Certification*.

- CSA Staff Notice 45-329 *Guidance for using the start-up crowdfunding registration and prospectus exemptions*, including:
 - Appendix 1 – *Start-up Crowdfunding Guide for Businesses* (the **Guide for Businesses**);
 - Appendix 2 – *Start-up Crowdfunding Guide for Funding Portals* (the **Guide for Funding Portals**).

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

We are also making consequential amendments to:

- *Regulation 13-101 respecting the System for Electronic Document Analysis and Retrieval (SEDAR)* (**Regulation 13-101**);
- *Regulation 45-102 respecting Resale of Securities* (**Regulation 45-102**).

Provided all necessary ministerial approvals are obtained, the Regulation, the *Regulation to amend Regulation 13-101 respecting the System for Electronic Document Analysis and Retrieval (SEDAR)* and the *Regulation to amend Regulation 45-102 respecting Resale of Securities* will come into force on September 21, 2021. These texts are published with this Notice. Where applicable, an annex provides information about each of the jurisdiction's approval process.

Substance and Purpose

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

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

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

Background

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

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

Summary of Written Comments Received by the CSA

On February 27, 2020, the CSA published the draft regulation for comment to improve the harmonization of the regulatory framework for securities crowdfunding by start-ups and early stage issuers. The comment period ended on July 13, 2020. During the comment period, we received submissions from 10 commenters.

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

Summary of Changes to the Draft Regulation

We have revised the Start-up Crowdfunding Regulation to:

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

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

Local Matters

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

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

Contents of Annexes

This Notice contains the following Annexes:

Annex A – Key differences between the registration and prospectus exemptions under *Regulation 45-110 respecting Start-up Crowdfunding Registration and Prospectus Exemptions* and the Start-up Crowdfunding Blanket Orders;

Annex B – List of Commenters and Summary of Comments and Responses.

Questions

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ANNEX A

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

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

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

ANNEX B

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

List of Commenters and Summary of Comments and Responses

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

No.	Subject	Summarized Comment	Response
1	General Support	<p>All respondents expressed support for the harmonization and assistance provided to small businesses represented by <i>Regulation 45-110 respecting Start-up Crowdfunding Registration and Prospectus Exemptions (Regulation 45-110)</i>.</p> <p>Seven respondents indicated that the draft regulation should go further in providing access to capital, mostly by raising the investor and/or investment limits beyond the consultation parameters.</p> <p>One respondent expressed an opinion that as drafted, raises under</p>	<p>We thank the commenters for their views.</p> <p>We acknowledge the views expressed in the comment letters indicating that Regulation 45-110 would be an unviable option for most small issuers. We think the harmonized regulation will help fill a capital raising gap in our capital raising regime to support small issuers.</p>

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

No.	Subject	Summarized Comment	Response
		<p>Two respondents did not view that the higher limit consulted on made start-up crowdfunding a viable option.</p>	
4	<p>Investor limit with positive suitability – increasing limit from \$5,000</p>	<p>Nine respondents indicated that the investor limit should be raised from \$5,000, as follows:</p> <ul style="list-style-type: none"> • In the range we proposed in the publication for comment (\$5,000 to \$10,000), seven indicated that they preferred \$10,000. • Two respondents further indicated that they would prefer numbers beyond \$10,000. <p>Additionally, two respondents suggested importing the concept of “eligible investors” (as such term is defined in the OM exemption for various provinces), with specific raised limits. One respondent also suggested that such limit should be increased to \$10,000 where suitability advice was provided, regardless of it being positive or negative.</p> <p>Two respondents did not view that the higher limit consulted on made start-up crowdfunding a viable option.</p>	<p>We thank the commenters for their views.</p> <p>We agree with comments indicating that investors who have received positive suitability advice from a registered dealer have additional investor protection in this space. We think it is appropriate to balance this increased investor protection with an increased investor limit to \$10,000.</p>
5	<p>Offering limit – increasing limit from \$1,000,000 in a 12-month period</p>	<p>All respondents indicated that the offering limit should be raised.</p> <p>Four respondents favored removal of a cap entirely, with three arguing there is no justification for an issuer limit as it does not address an identified investor protection concern.</p>	<p>We thank the commenters for their views.</p> <p>We agree with the views that raising the offering limit will not decrease investor protection in the context of a start-up crowdfunding campaign. We have raised the offering limit to \$1,500,000, the highest number consulted on.</p>

No.	Subject	Summarized Comment	Response
		<p>Of the other six respondents, all favored an increase to \$1,500,000 within the consultation parameters, but all favored increases beyond \$1,500,000. In particular:</p> <ul style="list-style-type: none"> • Two respondents suggested that that the issuer limit be increased to \$2,000,000 or \$3,000,000 where the offering is going through a registrant, given the investor protections afforded by registrant requirements. • Three respondents favored increases to at least \$5,000,000, noting that in other countries with crowdfunding regimes, issuer limits are often much higher (ranging from \$5M USD in the US to \$8M EUR in the UK). <p>Two respondents suggested that an increase in the limit could be supplemented by additional required disclosure from the issuer, such as financial statements or subsequent reporting on use of proceeds.</p>	<p>We acknowledge that many respondents favored an increase beyond \$1,500,000. We also acknowledge that some respondents suggested that an increase can be supplemented by additional required disclosure. We think that it is more appropriate for issuers to use the offering memorandum exemption to crowdfund larger amounts, which includes increased disclosure to protect investors.</p>
6	Removing statutory liability for misreps in offering document	<p>Eight respondents expressed an opinion, as follows:</p> <p>Three respondents supported removing the requirement because they did not think the protections were practically useful.</p> <p>One was neutral but did not think it was needed because investors would be unlikely to use this in practice, and the requirement would be unlikely to deter parties intending to commit fraud.</p>	<p>We thank the commenters for their views.</p> <p>We acknowledge that many respondents thought that it was unlikely that investors would use a statutory liability cause of action to sue for a misrepresentation in the offering document. However, we did not receive any feedback indicating that imposing a statutory liability standard would be practically burdensome for issuers. Therefore, we have decided to maintain the statutory liability standard because it represents additional</p>

No.	Subject	Summarized Comment	Response
		<p>Two respondents expressed support for the requirement if the investor and issuer limits were increased.</p> <p>One respondent expressed support for the requirement if the issuer managed to raise at least \$1,500,000.</p> <p>One respondent indicated that executives and directors should be held liable for any misrepresentations, fraud or non-compliance with Canadian laws and regulations.</p>	<p>investor protection without unduly raising regulatory burden.</p>
7	Expanding “eligible securities” definition	<p>Seven respondents supported expanding the definition but offered differing inclusions, such as:</p> <ul style="list-style-type: none"> • convertible preference shares • trust units • co-op investment and membership shares <p>We noted that three argued that co-op membership and co-op investment shares should be included because they are relatively simple instruments with additional protections (e.g. a redemption right) relative to other simple securities.</p>	<p>We thank the commenters for their views.</p> <p>We have decided to include co-operative membership shares and co-operative investment shares under the definition of “eligible securities”. We intend for the properties of “eligible securities” to be simple and understandable for investors, and think that these types of co-operative shares meet this criterion.</p>
8.	Blind pool ban	<p>Four respondents want the blind pool ban (the restriction on the prospectus exemption for issuers intending to invest in, merge with, amalgamate with or acquire an unspecified business) removed. Three argue that this will hurt investment co-ops without justification and one argues that this may already be best addressed by</p>	<p>We thank the commenters for their views.</p> <p>We included the blind pool ban in Regulation 45-110 because the investor protections built into start-up crowdfunding are not intended to address the risk inherent in these types of investments. We think that investors looking to invest in such issuers</p>

No.	Subject	Summarized Comment	Response
		<p>using a registered dealer “as it involves suitability”.</p> <p>One response supports the blind pool ban as this appears to be in line with the intent of the Regulation.</p>	<p>receive better protection from existing regimes, such as the TSX Venture Exchange capital pool company program.</p> <p>In alignment with this view, we have revised the blind pool ban to also specify that issuers who do not have any operations other than to identify and evaluate assets or a business with a view to completing an investment in, merger with, amalgamation with or acquisition of a business, or a purchase of the securities of one or more other issuers, are not eligible to use start-up crowdfunding.</p>
9	Working capital certification	<p>Three responses suggest reconsidering the working capital certification. The burden seems too onerous on exempt portals, particularly in the short-term given the economic turmoil. One respondent proposes shortening the term of the certification to 6 months.</p>	<p>We thank the commenters for their views.</p> <p>We think that the twelve month term of the annual working capital certification (which we have renamed the financial resources certification) may impose a significant burden imposed on exempt portals and have decided to decrease the term of the certification to 6 months, while making the certification semi-annual.</p>