

**Multilateral CSA Notice 45-316***Start-up Crowdfunding  
Registration and Prospectus Exemptions*

May 14, 2015

**Introduction**

The securities regulatory authorities (the **participating regulators** or **we**) of British Columbia, Saskatchewan, Manitoba, Québec, New Brunswick and Nova Scotia (the **participating jurisdictions**) are adopting substantially harmonized registration and prospectus exemptions (together, the **start-up crowdfunding exemptions**) that allows start-up and early stage companies to raise capital in these jurisdictions, subject to certain conditions. The participating regulators have implemented, or expect to implement, the start-up crowdfunding exemptions by way of local blanket orders (the **start-up crowdfunding exemption orders**).

The start-up crowdfunding exemptions will be effective in each participating jurisdiction concurrently with, or as soon as possible after, the publication of this notice. Each start-up crowdfunding exemption order is or will shortly be available on the website of the respective securities regulatory authority of the participating jurisdiction.

**Substance of the start-up crowdfunding exemptions**

The start-up crowdfunding exemptions are comprised of an exemption from the prospectus requirement (the **start-up prospectus exemption**) and an exemption from the dealer registration requirement (the **start-up registration exemption**).

The start-up prospectus exemption permits non-reporting issuers to issue eligible securities, subject to a number of conditions. The key conditions are:

- the head office of the issuer is located in a participating jurisdiction;
- the issuer distributes eligible securities of its own issue through an online funding portal;
- the issuer distributes eligible securities using an offering document in the form required that is made available through the online funding portal. The offering document includes basic information about the issuer, its management and the distribution, including how the issuer intends to use the funds raised and the minimum offering amount;

- the issuer group cannot raise aggregate funds of more than \$250,000 per distribution and is restricted to not more than two start-up crowdfunding distributions in a calendar year;
- no person invests more than \$1,500 per distribution;
- the distribution may remain open to up to a maximum of 90 days
- the distribution must be made through a funding portal that is either relying on the start-up registration exemption or is operated by a registered dealer. Registered dealers that operate funding portals must meet their existing registration obligations under securities legislation and confirm to issuers that they meet or will meet certain conditions provided in the start-up registration exemption;
- the issuer provides each purchaser with a contractual right to withdraw their offer to purchase securities within 48 hours of the purchaser's subscription or notification to the purchaser that the offering document has been amended; and
- none of the promoters, directors, officers and control persons (collectively, the **principals**) of the issuer group is a principal of the funding portal.

The eligible securities are subject to an indefinite hold period and can only be resold under another prospectus exemption, under a prospectus or four months after the issuer becomes a reporting issuer.

The start-up registration exemption permits funding portals to facilitate distributions under the start-up crowdfunding exemptions, subject to a number of conditions. The key conditions are:

- the funding portal must deliver a funding portal information form and individual information forms for each of its principals to the participating regulators at least 30 days prior to facilitating its first start-up crowdfunding distribution;
- the head office of the funding portal is located in Canada;
- the majority of the funding portal's directors are Canadian residents;
- the funding portal does not provide advice to a purchaser or otherwise recommend or represent that an eligible security is suitable, or about the merits of the investment;
- the funding portal does not receive a commission, fee or any other amount from a purchaser of eligible securities;

- the funding portal makes the offering document of the issuer and the risk warnings available online to purchasers and does not allow a subscription until the purchasers have confirmed that they have read and understood these documents;
- the funding portal receives payment for an eligible security electronically through the funding portal's website;
- the funding portal holds the purchasers' assets separate and apart from its own property, in trust for the purchasers and, in the case of cash, at a Canadian financial institution;
- the funding portal maintains books and records at its head office to accurately record its financial affairs and client transactions, and to demonstrate the extent of the funding portal's compliance with the start-up crowdfunding exemption orders for a period of eight years from the date a record is created;
- the funding portal either
  - releases funds to the issuer after the minimum offering amount has been reached and provided that the 48-hour right of withdrawal has elapsed, or
  - returns the funds to purchasers if the minimum offering amount is not reached or if the start-up crowdfunding distribution is withdrawn by the issuer; and
- a participating regulator has not notified the funding portal that it cannot rely on the start-up registration exemption because its principals or their past conduct demonstrate a lack of integrity, financial responsibility or relevant knowledge or expertise.

The start-up exemption orders will expire on May 13, 2020.

## **Background**

In a relatively short period of time, crowdfunding has become an important new method of raising capital through the internet for a broad range of purposes. It has been used to raise money for specific projects that do not generally involve the issuance of securities. However, in some foreign jurisdictions, equity crowdfunding is emerging as a way for businesses, particularly start-ups and small issuers, to raise capital.

A crowdfunding exemption has existed in Saskatchewan since December 2013 (General Order 45-925 – *Saskatchewan Equity Crowdfunding Exemption*). As a participating regulator, the Financial and Consumer Affairs Authority of Saskatchewan will adopt the start-up crowdfunding exemptions and repeal its current exemption in order to harmonize with other participating regulators. The current Saskatchewan exemption will not be repealed if there are distributions open under that exemption.

We think that crowdfunding can be a viable method for start-ups and small issuers to

raise capital. Consequently, on March 20, 2014, the securities regulatory authorities of Saskatchewan, Manitoba, Québec, New Brunswick and Nova Scotia published for comment two different crowdfunding exemptions (the **2014 proposal**):

- the integrated crowdfunding prospectus exemption and crowdfunding portal requirements proposed under Multilateral Instrument 45-108 *Crowdfunding* (the **45-108 crowdfunding exemption**); and
- the start-up crowdfunding exemptions.

Although the British Columbia Securities Commission did not participate in the 2014 proposal, it published a local notice, BC Notice 2014/03 *Notice and Request for Comment on Start-Up Crowdfunding*, soliciting comment on the start-up crowdfunding exemptions.

The 45-108 crowdfunding exemption would be available to reporting issuers and non-reporting issuers and provide a higher offering limit. The participating regulators that have published the 2014 proposal continue to work closely with the Ontario Securities Commission in developing the proposals relating to the 45-108 crowdfunding exemption.

The start-up crowdfunding exemptions are intended to provide an alternative source of capital to non-reporting issuers at an earlier stage of development. The participating regulators that have published the 2014 proposal have conceived both exemptions to coexist and be complementary.

Based on the feedback received from market participants, the participating regulators are adopting start-up crowdfunding exemption orders containing substantially harmonized terms and conditions for a period of five years. Issuers will be able to conduct a start-up crowdfunding distribution under the start-up crowdfunding exemptions simultaneously in all of the participating jurisdictions as well as any other jurisdictions of Canada that may adopt the start-up crowdfunding exemptions in the future.

### **Summary of the comments received**

The comment period on the 2014 proposal ended on June 18, 2014. During that period, we received 26 written submissions in response to the 2014 proposal, 13 of which specifically discussed the start-up crowdfunding exemptions. We thank everyone who provided comments. A list of the names of the commenters on the start-up crowdfunding exemptions and a summary of the comments received on the start-up crowdfunding exemptions, together with Staff responses, are provided in Appendices A and B of this Notice.

### **Summary of changes to the start-up crowdfunding exemption orders**

After considering the comments, we made some revisions to the start-up crowdfunding exemptions in the 2014 proposal. Those revisions are reflected in the form of the start-up

crowdfunding exemption orders. The key changes we have made to the start-up crowdfunding exemptions in the 2014 proposal are described in Appendix C.

## **Questions**

Please refer your questions to any of the following:

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**Appendix A**  
**List of commenters**

Canadian Advocacy Council for Canadian CFA Institute Societies (CFA)  
Canadian Foundation for Advancement of Investor Rights (FAIR)  
Equity Crowdfunding Alliance of Canada (ECFA)  
Fonds de solidarité FTQ  
Invest Crowdfund Québec  
National Crowdfunding Association of Canada (NCFA)  
Optimize Capital Markets  
Private Capital Markets Association (PCMA)  
Prospectors & Developers Association of Canada (PDAC)  
Stewart McKelvey  
The Bay Wind Field Inc.  
TMX Group  
Tripp Business Law

## Appendix B

### Summary of comments

The start-up crowdfunding exemption was published for comment simultaneously with draft Multilateral Instrument 45-108 *Crowdfunding* in Saskatchewan, Manitoba, Québec, New Brunswick and Nova Scotia in the 2014 proposal. The British Columbia Securities Commission (BCSC) requested comments from its market participants on the start-up crowdfunding exemption separately in a local notice, BC Notice 2014/03 *Notice and Request for Comment on Start-Up Crowdfunding*. Comments received by the BCSC are not included in this appendix.

The following is a summary of the 13 comment letters that specifically discuss the start-up crowdfunding exemption received in response to the 2014 proposal.

TOPIC	NATURE OF COMMENTS	RESPONSES
Support for the start-up crowdfunding exemption	<ul style="list-style-type: none"> <li>• Out of 13 comment letters specifically discussing the start-up crowdfunding exemption, 12 expressed general support for start-up crowdfunding exemption.</li> <li>• One commenter specifically expressed its strong opposition to the start-up crowdfunding exemption, citing various issues.</li> </ul>	<ul style="list-style-type: none"> <li>• We thank the commenters for their support.</li> </ul>
Harmonization – allowing funding portals established in any participating jurisdiction to accept issuers and investors established in any participating jurisdiction.	<ul style="list-style-type: none"> <li>• All commenters agreed with the approach of allowing issuers to access investors in more than one Canadian jurisdiction.</li> <li>• One commenter stated that even slight differences between jurisdictions are likely to increase compliance challenges, costs and confusion for companies who wish to use the exemption in more than one province or territory.</li> <li>• One commenter was of the view that given the proposed individual investment limits, it will be important for issuers to be able to access investors in more than one Canadian jurisdiction.</li> <li>• One commenter indicated that the start-up crowdfunding exemption should not be restricted to participating jurisdictions.</li> <li>• One commenter stated that harmonization will encourage a healthy marketplace.</li> <li>• One commenter believed that by allowing investors to invest across jurisdictions, we reduce the costs associated with regulatory fragmentation and improve efficiency in capital allocation.</li> </ul>	<ul style="list-style-type: none"> <li>• We thank the commenters for their comments. We think that the viability of the start-up crowdfunding exemption is contingent on a substantial effort of harmonization between the participating jurisdictions.</li> </ul>
Support for absence of	<ul style="list-style-type: none"> <li>• One commenter indicated that it would add an unnecessary layer</li> </ul>	<ul style="list-style-type: none"> <li>• We thank the commenters for their</li> </ul>

TOPIC	NATURE OF COMMENTS	RESPONSES
registration requirements	<p>of complexity. Also, funding portals are becoming more sophisticated in terms of security measures and the intelligence of the crowd contributes to a high degree of integrity.</p> <ul style="list-style-type: none"> <li>• One commenter was of the view that it could potentially compromise the success of start-ups.</li> <li>• One commenter believed that registration is not required to protect investors. The same commenter stated that there has been less than 0.01% of fraud in the marketplace, there are no reported frauds on the equity crowdfunding platforms operating outside of Canada and founders of a portal have high incentives to make their business a success.</li> <li>• One commenter believed that funding portals will utilize best practices. Therefore, innovation should be encouraged.</li> <li>• One commenter believed that the registration of the funding portal adds expenditure and inefficiency to the system.</li> </ul>	comments.
Against the absence of registration requirements	<ul style="list-style-type: none"> <li>• One commenter believed that registration would be useful way for regulators to monitor who is administering funding portals, creating additional transparency and accountability.</li> <li>• One commenter indicated that the difference between \$2,500 and \$1,500 does not justify the absence of registration.</li> <li>• One commenter believed that unregulated funding portals would be a complete abandonment of Canadian securities regulators' investor protection missions. Adequate oversight and compliance are needed to ensure that small and medium enterprises use a legitimate intermediary.</li> <li>• One commenter was of the view that if the exemption was to be adopted, investors may not exercise sufficient diligence with respect to a particular investment, mistakenly believing that if the investment is permitted by the regulators, it must be safe. Therefore, strict monitoring and enforcement of transgressions would be extremely important.</li> <li>• One commenter believed that funding portals should be expected to minimize misconduct by having record keeping requirements relating to securities issued and investors, have conflict of interest requirements, have regulatory responsibility for ensuring integrity of issuers and have robust information requirements (i.e. financial condition data).</li> </ul>	<ul style="list-style-type: none"> <li>• We think that costs associated with the use of the start-up crowdfunding exemption must be kept as low as possible for funding portals and issuers for the exemption to be a viable alternative source of capital for start-ups and issuers at a very early stage of development.</li> <li>• Imposing funding portal registration requirements may affect the viability of the start-up crowdfunding exemption and the costs of registration may outweigh the added benefits. There are a number of conditions imposed in the start-up crowdfunding exemption that mitigate the risk associated with non-registered funding portals.</li> <li>• We note that securities regulatory authorities have the power to inspect and investigate unregistered funding portals using the start-up registration</li> </ul>



TOPIC	NATURE OF COMMENTS	RESPONSES
	<ul style="list-style-type: none"> <li>• One commenter believed that some minimum oversight is needed.</li> <li>• One commenter was of the view that an unregistered funding portal would have no liability in the event of fraud, and that it increases the potential for loss of trust, thus unfairly impacting registered and non-registered funding portals.</li> <li>• One commenter indicated that non-equity rewards-based crowdfunding portals will be actively involved in equity crowdfunding under the start-up crowdfunding exemption. The public will be confused when an unregulated non-equity funding portal is involved in equity crowdfunding. Also, an unregistered funding portal is contrary to the “business trigger” test which would ordinarily require registration under applicable securities law and investors may incorrectly assume a regulator’s review of an issuer’s offering document and background checks will be interpreted as having approved an offering.</li> </ul>	<p>exemption. Enforcement action may be taken if necessary.</p> <ul style="list-style-type: none"> <li>• Registered dealers may operate funding portals to facilitate start-up crowdfunding distributions, provided that they comply with their obligations under securities legislation when operating funding portals as well as some conditions of the start-up crowdfunding exemption.</li> </ul>
<p>Offering limit – limit per calendar year of 2 distributions by an issuer of a maximum amount of \$150,000 under the exemption (\$300,000 per year).</p>	<p>Four commenters thought the proposed offering limit is appropriate. However, one of them suggested that the limit should be adjusted for inflation annually based on the rate of inflation.</p> <ul style="list-style-type: none"> <li>• Five commenters thought the offering limit should be higher: <ul style="list-style-type: none"> <li>• One commenter suggested a ceiling of \$1.5 million per year.</li> <li>• One commenter suggested a ceiling of \$500,000 per year per issuer (with a maximum of two \$250,000 distributions) because it would allow the issuer to operate without having to worry about its next financing round.</li> <li>• One commenter proposed two capital raises around \$500,000 to \$750,000 each with a maximum annual cap of \$1 million per year. The commenter also wondered if two distributions of equal amounts is the best method, questioning the possibility to implement milestones in the distribution.</li> <li>• One commenter believed that the \$150,000 limit per offer is appropriate but that the limit on the number of raises per calendar year is not. Therefore, the commenter proposed to limit the maximum amount of capital that can be raised under the exemption during the lifetime of an issuer to a</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• We have increased the offering limit to \$250,000 (\$500,000 per year) from the \$150,000 provided in the 2014 proposal. We think this limit will better address the funding needs of issuers at a very early stage of development, while remaining an appropriate purchaser protection safeguard.</li> </ul>

TOPIC	NATURE OF COMMENTS	RESPONSES
	<p>maximum of \$500,000. In other words, once the \$500,000 limit is reached, an issuer can no longer rely on the exemption.</p> <ul style="list-style-type: none"> <li>• One commenter was of the view that safety measures should focus on the registration requirements, due diligence and experience within the financial industry rather than limiting the amount raised.</li> </ul>	
<p>Limit of \$1,500 per investor per distribution</p>	<ul style="list-style-type: none"> <li>• Five commenters thought the limit for a single investment is appropriate.</li> <li>• Among these five commenters, one commenter believed that limiting the amount a retail investor can invest makes sense as it relates to this new asset category.</li> <li>• Five commenters were of the view that the single investment limit should be higher: <ul style="list-style-type: none"> <li>• Three commenters suggested a \$2,500 investment limit.</li> <li>• One commenter suggested a \$5,000 to \$10,000 investment limit.</li> <li>• One commenter suggested a \$20,000 investment limit.</li> </ul> </li> <li>• One commenter indicated that the relatively low limit will result in a heavy burden for the issuer concerning his relation with investors.</li> <li>• One commenter suggested an investment limit of \$250 per distribution.</li> </ul>	<ul style="list-style-type: none"> <li>• We think that the \$1,500 investment limit is an adequate limit as it provides appropriate purchaser protection safeguard, particularly given the fact that there may be a great number of unsophisticated purchasers that will invest in start-ups and issuers at a very early stage of development.</li> </ul>
<p>Absence of aggregate annual investment limit per investor</p>	<ul style="list-style-type: none"> <li>• Nine commenters thought there should be a limit on the aggregate annual investment: <ul style="list-style-type: none"> <li>• One commenter was of the view that it would be in line with the policy rationale underlying the Crowdfunding Exemption individual annual investment limits.</li> <li>• One commenter stated that nothing in the proposed exemption would prevent an unsophisticated investor from investing all of their financial assets in a number of issuers through the start-up crowdfunding exemption.</li> <li>• Others suggested specific limits: <ul style="list-style-type: none"> <li>• \$5,000 to \$10,000</li> <li>• \$20,000</li> <li>• \$15,000 adjusted for inflation</li> </ul> </li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Given the low investment limits of the start-up crowdfunding exemption, that the purchasers will be warned of the risk of the investment and will have to complete a risk acknowledgement form prior to investing, we do not think that an aggregate annual investment limit is necessary.</li> <li>• The annual investment limit could be re-visited in the future if it becomes an issue.</li> </ul>

TOPIC	NATURE OF COMMENTS	RESPONSES
	<ul style="list-style-type: none"> <li>• \$6,000</li> <li>• \$2,000</li> <li>• Around \$10,000</li> </ul>	
Applicability of investment limits to accredited investors	<ul style="list-style-type: none"> <li>• Five commenters thought accredited investors should be permitted to invest higher amounts. <ul style="list-style-type: none"> <li>• One commenter believed we should follow the U.S developing norms.</li> <li>• Two commenters suggested that if we decided to increase the limit for accredited investors, the MaRS VX exemptive relief order would be reasonable.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• The start-up crowdfunding exemption will impose an investment limit of \$1,500 per distribution.</li> <li>• The accredited investor exemption is separately available to those investors who wish to invest higher amounts.</li> </ul>
Support for absence of formal ongoing disclosure requirements	<ul style="list-style-type: none"> <li>• Three commenters thought there should not be ongoing disclosure.</li> </ul>	<ul style="list-style-type: none"> <li>• We thank the commenters for their comments.</li> </ul>
Against the absence of formal ongoing disclosure requirements	<ul style="list-style-type: none"> <li>• Seven commenters indicated that issuers should provide some form of periodical updates of their activities.</li> <li>• Two commenters suggested that issuers should maintain securities registers on the funding portal’s website or on their website.</li> </ul>	<ul style="list-style-type: none"> <li>• Purchasers will have to read and accept a risk acknowledgement form clearly warning them that they will not be provided with any ongoing information.</li> <li>• Ongoing disclosure requirements may discourage start-ups and issuers at a very early stage of development from using the start-up crowdfunding exemption.</li> <li>• We encourage issuers to communicate with their security holders despite the absence of formal ongoing disclosure requirements. Such communication may assist in future fundraising by the issuer.</li> <li>• Corporate laws apply and investors may have the right to request information from issuers under these laws.</li> </ul>
Support for absence of	<ul style="list-style-type: none"> <li>• Six commenters believed that there should not be an ongoing</li> </ul>	<ul style="list-style-type: none"> <li>• We thank the commenters for their</li> </ul>

TOPIC	NATURE OF COMMENTS	RESPONSES
requirement to update the offering document outside the distribution period	obligation to update the offering document forms outside of the distribution period.	comments.
Against the absence of requirement to update the offering document outside the distribution period	<ul style="list-style-type: none"> <li>• Four commenters believed that there should be an ongoing obligation to update the offering document forms outside of the distribution period. <ul style="list-style-type: none"> <li>• One commenter believed that investors need to be kept abreast of any material changes and therefore issuers need to update this information during and after the distribution period.</li> <li>• One commenter suggested that the documents be updated once annually and distributed to all security holders at the anniversary of the incorporation or at the annual security holders meeting.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• We encourage issuers to communicate with their security holders despite the absence of formal ongoing disclosure requirements. Such communication may assist in future fundraising by the issuer</li> <li>• Corporate laws apply and investors may have the right to request information from issuers under these laws.</li> </ul>
Support for the introduction of a cooling-off period	<ul style="list-style-type: none"> <li>• Four commenters thought a two-day “cooling-off” requirement is appropriate.</li> </ul>	<ul style="list-style-type: none"> <li>• We thank the commenters for their comments.</li> </ul>
Against the introduction of a cooling-off period	<ul style="list-style-type: none"> <li>• One commenter was of the view that a 10 day “cooling-off” requirement would be better but the right of withdrawal should be exercised 20 days prior to the closing of the distribution. During this 20-day period, no withdrawal right should be allowed.</li> <li>• One commenter suggested that it should be 5 business days.</li> <li>• One commenter proposed a two-business day right of withdrawal from the date of the initial investment decision as long as that investment is made 96 hours prior to the closing of the distribution. The commenter was of the view that our proposed withdrawal period is not feasible in an all or nothing campaign unless a subscription waitlist is permitted. The commenter argues that it would be challenging for issuers to replace investors exercising their right of withdrawal considering the short time frame to do so.</li> <li>• Two commenters were of the view that investors should have a two-day withdrawal right after they commit to an investment, arguing that our proposal would allow issuers to ask “friendly” investors to invest and, thereafter, withdraw prior to the deadline with the only intention to create an appearance of a successful campaign.</li> </ul>	<ul style="list-style-type: none"> <li>• We think that purchasers should have the right to withdraw their investment within 48 hours of the subscription, not within 48 hours of the closing of the distribution.</li> <li>• If the purchaser had the right to withdraw their subscription at least 48 hours prior to the closing of the distribution, then this may provide an incentive for issuers to inflate their offerings with early investments from relatives who would then, prior to the closing, withdraw their investments. Therefore, the right to withdraw their investment within at least 48 hours of the subscription eliminates the possibility for an issuer to artificially create a successful campaign.</li> <li>• We also think that since the offering</li> </ul>

TOPIC	NATURE OF COMMENTS	RESPONSES
		<p>document may be amended during the distribution period, purchasers should have the right to withdraw their investment within 48 hours of the funding portal notifying them that the offering document has been amended.</p>
<p>For Nova Scotia only – CEDIF’s eligibility to use the start-up crowdfunding exemption</p>	<ul style="list-style-type: none"> <li>• Four commenters were of the view that Community Economic Development Investment Funds should be eligible to use Multilateral Instrument 45-108.</li> </ul>	<ul style="list-style-type: none"> <li>• Staff of the Nova Scotia Securities Commission (NSSC) thanks the commenters for their comments.</li> <li>• Staff of the NSSC will be reviewing the CEDC Regulations to assess what changes are required to accommodate CEDIFs wanting to use the crowdfunding exemptions.</li> </ul>
<p>Handling of investor funds by funding portals</p>	<ul style="list-style-type: none"> <li>• One commenter indicated that many lawyers may be unwilling to serve as an “accepted depository”.</li> </ul>	<ul style="list-style-type: none"> <li>• We acknowledge the comment and have amended the start-up crowdfunding exemption order so that funding portals be permitted to hold or handle investor funds, subject to conditions. Funding portals handling purchaser’s assets will have to hold them separate and apart from their own property, in trust for the purchaser, and, in the case of cash, in a designated trust account at a Canadian financial institution.</li> </ul>
<p>Funding portal’s head office requirement</p>	<ul style="list-style-type: none"> <li>• One commenter was of the view that funding portals should not be required to have a head office in a participating jurisdiction.</li> </ul>	<ul style="list-style-type: none"> <li>• We thank the commenter for its comment. We have amended the start-up crowdfunding exemption order so that funding portals relying on the start-up registration exemption have their head office located in Canada rather than only in a participating jurisdiction.</li> </ul>

TOPIC	NATURE OF COMMENTS	RESPONSES
Funding portal's promoters, directors, officers and control persons residency requirements	<ul style="list-style-type: none"> <li>One commenter indicated that funding portals should not be required to have Canadian resident directors, promoters, officers and control persons.</li> </ul>	<ul style="list-style-type: none"> <li>We thank the commenter for its comment. We have amended the start-up crowdfunding exemption order to require that the majority of the funding portal's directors be resident of Canada for those funding portals relying on the start-up registration exemption.</li> <li>The adjustment should give funding portals enough latitude to recruit qualified managers while maintaining a strong presence of the management team in Canada.</li> </ul>
Exclusion of investment funds	<ul style="list-style-type: none"> <li>Two commenters thought the exclusion of investment funds from the exemption is not appropriate. <ul style="list-style-type: none"> <li>One commenter was of the view that an investment in an entity which would, in turn, invest in issuers that would otherwise, on their own, qualify for investment under the start-up crowdfunding exemption should be permitted. The commenter expressed the view that such entity would allow risk-diversification for investors and mentorship for the issuers.</li> <li>One commenter indicated that some investment funds have channeled funds to operating companies to allow them to proceed with their operations and believes they should be included.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>We thank the commenters for their comments. We think that the start-up crowdfunding exemption is intended for start-ups and issuers at a very early stage of development. The scope of the regime does not apply to investment funds.</li> </ul>
Financial statements requirements	<ul style="list-style-type: none"> <li>Four commenters thought that issuers should produce financial statements, although the commenters thought financial statements should not be audited.</li> </ul>	<ul style="list-style-type: none"> <li>We thank the commenters. However, we think that costs associated with the use of the start-up crowdfunding exemption must be kept as low as possible for the exemption to be a viable alternative source of capital for start-ups and issuers at a very early stage of development. A requirement to produce financial statements may be too costly for this type of issuers.</li> </ul>

TOPIC	NATURE OF COMMENTS	RESPONSES
		<p>We note that issuers may be required to prepare financial statements under corporate laws or for other purposes.</p>
Permitted communication	<ul style="list-style-type: none"> <li>• One commenter was of the view that funding portals should provide guidance on permitted communication between issuers, investors, and potential investors.</li> <li>• One commenter thought funding portals should be required to provide forums of discussion after the finalization of fundraises, stressing the fact that failing to do so would increase risks of fraud.</li> </ul>	<ul style="list-style-type: none"> <li>• We thank the commenters for their comments, but have not added guidance or requirements with respect to funding portal communication.</li> <li>• We encourage issuers to communicate with their security holders despite the absence of formal communication requirements. Such communication may assist in future fundraising by the issuer.</li> </ul>
Risk Acknowledgement Form	<ul style="list-style-type: none"> <li>• One commenter believed the “Important Risk Warnings” is sufficient to protect investors.</li> <li>• One commenter believed that the language used in the “Important Risk Warnings” should, to some extent, be modified because: (i) It does not emphasize enough on the fact that the money may never be available to them; (ii) It should cover the lack of continuous disclosure materials; (iii) It should explain some of the investor’s rights in plain language; (iv) It should emphasize the benefits of speaking to a qualified financial advisor.</li> <li>• One commenter indicated that the “Important Risk Warnings” does not adequately assist investors for a number of reasons: the risk warnings do not include references or explanations of the risks associated with investments in start-ups and issuers at a very early stage of development; the following extract is confusing: “I understand that I have not received any advice...”; Specific information should be provided about the difference between the rights attached to a prospectus-qualified investment and an exempt distribution.</li> <li>• The same commenter believed regulators should test any risk acknowledgement form.</li> </ul>	<ul style="list-style-type: none"> <li>• In response to these comments, we replaced “Schedule A – Important Risk Warnings” with a new risk acknowledgement form to better reflect the risks associated with investing in start-ups and issuers at a very early stage of development. The risks warnings are expressed in plain language.</li> <li>• The risk acknowledgement form requires an active confirmation from purchasers.</li> </ul>

TOPIC	NATURE OF COMMENTS	RESPONSES
Concerns with the wording of the proposed instrument	<ul style="list-style-type: none"> <li>One commenter expressed concerns regarding the wording of the Draft Blanket Order. The commenter stated he would have difficulty advising clients and recommended amendments to certain definitions.</li> </ul>	<ul style="list-style-type: none"> <li>We thank the commenter for its comments.</li> </ul>



## Appendix C

### Summary of changes to the start-up crowdfunding exemption orders

We provide below a summary of the key changes that have been made to the start-up crowdfunding exemption orders published in the 2014 proposal.

#### *Definitions*

We have amended certain definitions, such as the following:

- we have modified the definition of “issuer group” so it includes the issuer, an affiliate of the issuer, and any other issuer that is engaged in a common enterprise with the issuer or with an affiliate of the issuer, or whose business is founded or organized, directly or indirectly, by the same person who founded or organized the issuer; and
- the list of “participating jurisdictions” was amended to include British Columbia and any other jurisdiction with a corresponding start-up crowdfunding exemption order.

We have added certain definitions for ease of reading of the conditions set out in the start-up crowdfunding exemption orders;

#### *Offering limits*

We have increased the offering limit from \$150,000 to \$250,000 twice per calendar year. We think this limit will better address the funding needs of issuers at an early stage of development, while remaining an appropriate investor protection safeguard. We have also clarified that this is an aggregate limit that applies to a start-up crowdfunding distribution made in all participating jurisdictions.

#### *Funding portals head office and residence conditions for directors, officers, promoters and control persons*

We have revised the funding portal head office location condition so that a funding portal located in a jurisdiction of Canada that is not a participating jurisdiction may use the start-up registration exemption. A funding portal located in a non-participating jurisdiction that intends to use the start-up registration exemption in a participating jurisdiction should consider whether it is subject to the registration requirement under the securities legislation of its local jurisdiction.

Previously, funding portals’ promoters, directors, officers and control persons were required to be residents of Canada. We have amended this condition to require that the majority of the funding portal’s directors be resident of Canada. We expect that this

condition to give funding portals sufficient latitude to recruit qualified individuals, while maintaining a strong management presence in Canada.

#### *48-hour right to withdraw investment*

Following the comments received, we have amended the start-up crowdfunding exemption orders to provide a right of withdrawal to purchasers that can be exercised within 48 hours of a subscription or after the purchaser is notified by the funding portal of any amendment to an offering document. Issuers are required to amend their offering document if it is no longer true before the end of a distribution period.

#### *Handling of purchaser's funds by funding portals*

We have revised the conditions applicable to handling of purchaser funds by funding portals during a start-up crowdfunding distribution. We think that the cost associated with funding portals retaining the services of an accepted depository may be too onerous given the relatively low offering limits under the start-up prospectus exemption and the fact that start-up crowdfunding distributions involve a high number of purchasers. We have amended the start-up registration exemption to allow funding portals to hold purchasers' funds, provided that the funds are segregated and held in trust for purchasers in a designated trust account at a Canadian financial institution.

We have amended the start-up registration exemption to clarify that the funding portals are to release funds to the issuer only after the minimum offering amount has been reached and the 48-hour right to withdraw has elapsed. If the minimum offering amount is not reached or the offering has been withdrawn by the issuer, funding portals are required to return all funds to purchasers no later than five business days after the end of the distribution period or withdrawal of the distribution. Consequently, we have amended the start-up registration exemption to remove the trust agreement delivery condition.

#### *Books and record of funding portals*

We have added the condition for a funding portal relying on the start-up registration exemption to maintain books and records at its head office to accurately record its financial affairs and client transactions, and to demonstrate the extent of the funding portal's compliance with the start-up registration exemption for a period of eight years from the date a record is created.

#### *Funding portals operated by registered dealers*

We have amended the start-up crowdfunding exemption orders to allow registered dealers to operate funding portals. Registered dealers must still comply with their existing obligations under securities legislation when operating funding portals. An issuer using the start-up prospectus exemption and using a funding portal operated by a registered dealer must receive a confirmation from the registered dealer that it will meet certain conditions provided under the start-up registration exemption.

### *Issuer information form and issuer individual form*

We have removed the condition to file an issuer information form to avoid duplication of information and simplify the process for issuers. We have amended other forms to incorporate information that previously required in the issuer information form under the 2014 proposal.

Also, we have removed the condition to file issuer individual forms to ensure consistency with delivery or filing requirements associated with other statutory prospectus exemptions.

### *Offering document*

We have amended the offering document to include additional background information about the issuer's directors, officers, promoters and control persons. We have made other changes to the offering document to ensure that the information is clearer.

### *Risk acknowledgement form*

We have made several changes to the risk acknowledgement form for ease of reading and to ensure that the information is clearer.

### *Filing or delivery of offering document and issuer access agreement*

We have amended the deadline for issuers to file the offering document to 30 days after the closing of the distribution. Also, we have removed the condition to deliver the issuer access agreement. These changes were made to ensure consistency with delivery or filing requirements associated with other statutory prospectus exemptions.

### *Funding portal disclosure of contact information*

We have added a condition for funding portals relying on the start-up registration exemption to disclose online the name and business contact information of their officers, directors, promoters and control persons.

### *Availability of the registration exemption*

We have added a condition that allows securities regulatory authorities to notify funding portals that they cannot rely on the start-up registration exemption because their principals or their past conduct demonstrate a lack of integrity, financial responsibility or relevant knowledge or expertise. We think this will provide an investor protection safeguard.