

Annex B

Proposed National Instrument 45-110 Start-Up Crowdfunding

List of Commenters and Summary of Comments and Responses

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

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

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2	Repeal of MI 45-108	<p>Six respondents supported the repeal of MI 45-108. The general view was that there was no need to maintain MI 45-108 when NI 45-110 comes into effect, and MI 45-108 has not gained any traction.</p>	<p>We thank the commenters for their views.</p> <p>The jurisdictions that have adopted MI 45-108 will monitor the amount of activity occurring under both MI 45-108 and NI 45-110 to determine whether to rescind MI 45-108. If and when appropriate, these jurisdictions will seek further feedback to do so.</p>
3	Investor limit – increasing limit from \$2,500	<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>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 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
4	Investor limit with positive suitability – increasing limit from \$5,000	<p>Nine respondents indicated that the investor limit should be raised from \$5,000, as follows:</p> <ul style="list-style-type: none"> • 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	Offering limit – increasing limit from \$1,000,000 in a 12-month period	<p>All respondents indicated that the offering limit should be raised.</p> <p>Four respondents favored removal of a cap entirely, with three arguing there is no justification for an issuer limit as it does not address an identified investor protection concern.</p> <p>Of the other six respondents, all favored an increase to \$1,500,000 within the consultation parameters, but all favored increases beyond \$1,500,000. In particular:</p>	<p>We thank the commenters for their views.</p> <p>We agree with the views that raising the offering limit will not decrease investor protection in the context of a start-up crowdfunding campaign. We have raised the offering limit to \$1,500,000, the highest number consulted on.</p> <p>We acknowledge that many respondents favored an increase beyond \$1,500,000. We also acknowledge that some respondents</p>

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		<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>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>Two respondents expressed support for the requirement if the investor and issuer limits were increased.</p>	<p>We thank the commenters for their views.</p> <p>We acknowledge that many respondents thought that it was unlikely that investors would use a statutory liability cause of action to sue for a misrepresentation in the offering document. However, we did not receive any feedback indicating that imposing a statutory liability standard would be practically burdensome for issuers. Therefore, we have decided to maintain the statutory liability standard because it represents additional investor protection without unduly raising regulatory burden.</p>

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		<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>	
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 using a registered dealer “as it involves suitability”.</p>	<p>We thank the commenters for their views.</p> <p>We included the blind pool ban in NI 45-110 because the investor protections built into start-up crowdfunding are not intended to address the risk inherent in these types of investments. We think that investors looking to invest in such issuers receive better protection from existing regimes, such as the TSX Venture Exchange capital pool company program.</p>

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		One response supports the blind pool ban as this appears to be in line with the intent of the NI.	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.
9	Working capital certification	Three responses suggest reconsidering the working capital certification. The burden seems too onerous on exempt portals, particularly in the short-term given the economic turmoil. One respondent proposes shortening the term of the certification to six months.	We thank the commenters for their views. We think that the twelve month term of the annual working capital certification (which we have renamed the financial resources certification) may impose a significant burden imposed on exempt portals and have decided to decrease the term of the certification to six months, while making the certification semi-annual.