

Proposed National Instrument 45-110
Start-Up Crowdfunding Registration and Prospectus Exemptions

PART 1 DEFINITIONS AND INTERPRETATION

Definitions

1. (1) In this Instrument

“affiliate” means, in respect of an issuer, another issuer if (a) one of the issuers is the subsidiary of the other, or (b) each of the issuers is controlled by the same person or company;

“crowdfunding distribution” means a distribution under the exemption from the prospectus requirement in this Instrument;

“eligible security” means any of the following:

- (a) a common share;
- (b) a non-convertible preference share;
- (c) a security convertible into a security referred to in paragraph (a) or (b);
- (d) a non-convertible debt security linked to a fixed or floating interest rate;
- (e) a unit of a limited partnership;

“exempt market dealer” means a person or company registered in the category of exempt market dealer;

“founder” means a person or company who,

- (a) in respect of an issuer or a funding portal, acting alone, in conjunction, or in concert with one or more persons or companies, directly or indirectly, takes the initiative in founding, organizing or substantially reorganizing the business of the issuer or funding portal, as applicable, and
- (b) in respect of an issuer, at the time of the distribution or trade, is actively involved in the business of the issuer;

“funding portal” means a person or company that facilitates or proposes to facilitate a crowdfunding distribution through a web-based or application-based platform;

“investment dealer” means a person or company registered in the category of investment dealer;

“issuer group” means, in respect of an issuer, any of the following:

- (a) the issuer;
- (b) an affiliate of the issuer;
- (c) any other issuer if either of the following conditions is satisfied:
 - (i) it is engaged in a common enterprise with the issuer or with an affiliate of the issuer;
 - (ii) its business is founded or organized by a person or company who founded or organized the issuer;

“minimum offering amount” means, with respect to a crowdfunding distribution, the minimum amount disclosed in an issuer’s completed Form 45-110F1 *Offering Document*;

“principal” means, with respect to a funding portal or an issuer, a founder, director, officer or control person;

“subsidiary” means an issuer that is controlled directly or indirectly by another issuer and includes a subsidiary of that subsidiary.

- (2) For the purpose of this Instrument, a person (first person) is considered to control another person (second person) if
 - (a) the first person beneficially owns or directly or indirectly exercises control or direction over securities of the second person carrying votes which, if exercised, would entitle the first person to elect a majority of the directors of the second person, unless that first person holds the voting securities only to secure an obligation,
 - (b) the second person is a partnership, other than a limited partnership, and the first person holds more than 50% of the interests of the partnership, or
 - (c) the second person is a limited partnership and the general partner of the limited partnership is the first person.

Special Rules – Alberta, British Columbia, Ontario, Québec and Saskatchewan

- 2. (1) In Alberta, a completed Form 45-110F1 *Offering Document* relied on under this Instrument is designated to be an offering memorandum under securities legislation.
- (2) In British Columbia, a completed Form 45-110F1 *Offering Document* required to be made available to a purchaser under the exemption from the prospectus requirement in this Instrument is a prescribed disclosure document for purposes of section 132.1 of the *Securities Act* (British Columbia).
- (3) In Ontario, an issuer that distributes securities in reliance on the exemption in section 5 is prescribed as a market participant under the *Securities Act* (Ontario).

- (4) In Saskatchewan, a completed Form 45-110F1 *Offering Document* relied on under this Instrument is an offering memorandum under securities legislation.
- (5) In Québec,
 - (a) a completed Form 45-110F1 *Offering Document* and a completed Form 45-110F2 *Risk Acknowledgement* made available to purchasers in accordance with this Instrument must be drawn up in French only or in French and English;
 - (b) a funding portal that has relied on the exemption in section 3 is a market participant determined by regulation for the purpose of section 151.1.1 of the *Securities Act* (chapter V-1.1); and
 - (c) a completed Form 45-110F1 *Offering Document* and materials that are made available to purchasers in accordance with this Instrument are documents authorized by the Autorité des marchés financiers for use in lieu of a prospectus.

PART 2 EXEMPTION FROM THE DEALER REGISTRATION REQUIREMENT

Exemption from dealer registration requirement

- 3. (1) A funding portal is exempt from the dealer registration requirement if the following apply:
 - (a) the funding portal is not registered under securities legislation in any jurisdiction of Canada;
 - (b) the funding portal does not advise a purchaser about the merits of an investment or recommend or represent that an eligible security is a suitable investment for the purchaser;
 - (c) the funding portal does not receive a commission, fee or other similar payment from a purchaser;
 - (d) the funding portal only facilitates or proposes to facilitate crowdfunding distributions;
 - (e) at least 30 days before the first date the funding portal facilitates a crowdfunding distribution, the funding portal delivered to the securities regulatory authority or regulator all of the following documents:
 - (i) a completed Form 45-110F3 *Funding Portal Information* for the funding portal certified by an authorized individual of the funding portal;
 - (ii) a completed Form 45-110F4 *Portal Individual Information* for each principal of the funding portal that contains a certification signed by that principal;

- (f) the funding portal has its head office in Canada;
- (g) the funding portal has policies and procedures reasonably designed to prevent a person or company from accessing its platform unless the person or company acknowledges that the person or company is accessing a platform of a funding portal that:
 - (i) is not a registered dealer under securities legislation in any jurisdiction of Canada, and
 - (ii) will not, and is not authorized to, provide advice about
 - (A) the suitability of any security for investment by the person or company, or
 - (B) the merits of any investment;
- (h) the following is disclosed on the funding portal's platform:
 - (i) a statement that the funding portal is not registered in any capacity under securities legislation in any jurisdiction of Canada and is relying on the exemption in this Instrument from the dealer registration requirement;
 - (ii) a statement that the funding portal will hold each purchaser's assets
 - (A) separate and apart from the funding portal's own property,
 - (B) in trust for the purchaser, and
 - (C) in the case of cash, in a designated trust account at a Canadian financial institution; and
 - (iii) the policies and procedures that the funding portal will follow for notifying each purchaser if the funding portal becomes insolvent or discontinues operations, and how the funding portal will return the assets to the purchaser;
- (i) the funding portal holds each purchaser's assets
 - (i) separate and apart from the funding portal's own property,
 - (ii) in trust for the purchaser, and
 - (iii) in the case of cash, in a designated trust account at a Canadian financial institution;
- (j) the funding portal has policies and procedures for handling funds, in relation to a crowdfunding distribution, sufficient to provide reasonable assurance that the funding portal will comply with the conditions at paragraph 3(1)(i);

- (k) the funding portal does not close a crowdfunding distribution on its platform unless the funding portal receives, through the funding portal's platform, payment for the distribution of each eligible security from the purchaser of such security;
- (l) when an issuer provides the funding portal with its completed Form 45-110F1 *Offering Document* and a Form 45-110F2 *Risk Acknowledgement*, the funding portal has policies and procedures reasonably designed to make these documents available to each purchaser through its platform;
- (m) the funding portal has policies and procedures to prevent a purchaser from subscribing to a crowdfunding distribution unless the purchaser first completes the Form 45-110F2 *Risk Acknowledgement* and confirms that the purchaser has read and understands the issuer's completed Form 45-110F1 *Offering Document*;
- (n) the funding portal has policies and procedures for promptly notifying each purchaser of an issuer's crowdfunding distribution of
 - (i) any amendment to that issuer's completed Form 45-110F1 *Offering Document*, and
 - (ii) the purchaser's right to withdraw from the agreement to purchase the security by delivering a notice to the funding portal under paragraph 5(1)(j);
- (o) the funding portal has policies and procedures to return all funds to a purchaser within five business days of receiving a withdrawal notification under paragraph 5(1)(j) from the purchaser;
- (p) if an issuer has not raised the minimum offering amount by the 90th day after the issuer's completed Form 45-110F1 *Offering Document* is first made available on the funding portal's platform, or if an issuer notifies the funding portal that it is withdrawing its crowdfunding distribution, then no later than five business days after such occurrence, the funding portal
 - (i) notifies the issuer, and each purchaser of that issuer's crowdfunding distribution, that funds have been returned or are in the process of being returned, and
 - (ii) takes reasonable steps to return, or cause to be returned, all funds to each purchaser of that issuer's crowdfunding distribution;
- (q) if each two-day period in paragraph 5(1)(j) has elapsed, then the funding portal
 - (i) releases, or causes to be released, all funds due to the issuer at the closing of the distribution, and
 - (ii) no later than fifteen days after the closing of the distribution

- (A) notifies each purchaser that the funds have been released to the issuer, and
 - (B) provides the issuer with all information required to comply with the issuer's obligations in paragraph 5(2)(b);
 - (r) neither the funding portal, nor any of its principals, is or has been the subject of an order, judgment, decree, sanction, or administrative penalty imposed by, or has entered into a settlement agreement with, a government agency, administrative agency, self-regulatory organization, civil court, or administrative court in the last 10 years related to a claim based in whole or in part on fraud, theft, deceit, misrepresentation, conspiracy, breach of trust, breach of fiduciary duty, insider trading, unregistered trading, illegal distributions, failure to disclose material facts or changes, or allegations of similar conduct;
 - (s) neither the funding portal, nor any of its principals, is or has been a principal of an entity that is or has been subject to an order, judgment, decree, sanction, administrative penalty or a settlement agreement described in paragraph 3(1)(r);
 - (t) the funding portal has policies and procedures to promptly notify the securities regulatory authority or the regulator, and any purchasers for which it holds assets, of the process the funding portal will use to return the assets to these purchasers, in the event that the funding portal becomes insolvent or discontinues operations; and
 - (u) the funding portal is not insolvent.
- (2) A funding portal relying on the exemption in subsection 3(1) must:
- (a) maintain, for a period of eight years from the date a record is created, books and records at its head office that accurately record its financial affairs and client transactions, and demonstrate the extent of the funding portal's compliance with this Instrument;
 - (b) notify the securities regulatory authority or regulator of each change to the information previously submitted in a document referred to in paragraph 3(1)(e) by delivering an amendment to the document no later than 30 days after the change;
 - (c) take reasonable steps to confirm that the majority of the directors of the funding portal ordinarily reside in Canada;
 - (d) disclose on its platform, for each principal of the funding portal, the full legal name, municipality and jurisdiction of residence, business mailing and email address and business telephone number of each principal of the funding portal;

- (e) take reasonable steps to confirm that the head office of an issuer is in Canada before allowing that issuer to post a crowdfunding distribution on the funding portal's platform;
- (f) not allow a person or company to access the funding portal's platform unless the person or company acknowledges that the person or company is accessing a platform of a funding portal that:
 - (i) is not a registered dealer under securities legislation in any jurisdiction of Canada, and
 - (ii) will not, and is not authorized to, provide advice about
 - (A) the suitability of any security for investment by the person or company, or
 - (B) the merits of any investment;
- (g) not close a crowdfunding distribution on its platform unless the funding portal has made the applicable Form 45-110F1 *Offering Document* and Form 45-110F2 *Risk Acknowledgement* available to each purchaser through the funding portal's platform;
- (h) not close a crowdfunding distribution on its platform unless each purchaser completes the Form 45-110F2 *Risk Acknowledgement* and confirms that the purchaser has read and understands the issuer's completed Form 45-110F1 *Offering Document*;
- (i) upon receiving notice from an issuer that the issuer has amended its completed Form 45-110F1 *Offering Document*, promptly notify each purchaser of that issuer's crowdfunding distribution of
 - (i) the amendment; and
 - (ii) the purchaser's right to withdraw from the agreement to purchase the security by delivering a notice to the funding portal under paragraph 5(1)(j);
- (j) return all funds to a purchaser within five business days of receiving a withdrawal notification under paragraph 5(1)(j) from that purchaser;
- (k) deliver to the securities regulatory authority or regulator a completed Form 45-110F5 *Annual Working Capital Certification* within 10 days of the calendar year-end; and
- (l) upon becoming insolvent or discontinuing operations, promptly notify the securities regulatory authority or the regulator, and any purchasers for which it holds assets, of the process the funding portal will use to return the assets to these purchasers.

PART 3 REGISTERED PORTALS

4. (1) If an investment dealer or exempt market dealer operates a funding portal, the dealer must:
- (a) not close a crowdfunding distribution on its platform unless the dealer receives, through the funding portal's platform, payment for the distribution of each eligible security from the purchaser of such security;
 - (b) take reasonable steps to confirm that the head office of an issuer is in Canada before allowing that issuer to post a crowdfunding distribution on the funding portal's platform;
 - (c) not close a crowdfunding distribution on its platform unless the funding portal has made the applicable Form 45-110F1 *Offering Document* and Form 45-110F2 *Risk Acknowledgement* available to each purchaser through the funding portal's platform;
 - (d) not close a crowdfunding distribution on its platform unless each purchaser completes the Form 45-110F2 *Risk Acknowledgement* and confirms that the purchaser has read and understands the issuer's completed Form 45-110F1 *Offering Document*;
 - (e) upon receiving notice from an issuer that the issuer has amended its completed Form 45-110F1 *Offering Document*, promptly notify each purchaser of that issuer's crowdfunding distribution of
 - (i) the amendment, and
 - (ii) the purchaser's right to withdraw from the agreement to purchase the security by delivering a notice to the funding portal not later than midnight on the 2nd business day after the funding portal provides notice of the amendment;
 - (f) return all funds to a purchaser within five business days of receiving a withdrawal notification under paragraph 5(1)(j) from that purchaser;
 - (g) upon an issuer not raising the minimum offering amount by the 90th day after the issuer's completed Form 45-110F1 *Offering Document* is first made available on the funding portal's platform, or an issuer notifying the funding portal that it is withdrawing its crowdfunding distribution, no later than five business days after such occurrence
 - (i) notify the issuer, and each purchaser of that issuer's crowdfunding distribution, that funds have been returned or are in the process of being returned, and

- (ii) take reasonable steps to return, or cause to be returned, all funds to each purchaser of that issuer's crowdfunding distribution;
- (h) after each two-day period in paragraph 5(1)(j) has elapsed
 - (i) release, or cause to be released, all funds due to the issuer at the closing of the distribution, and
 - (ii) no later than fifteen days after the closing of the distribution
 - (A) notify each purchaser that the funds have been released to the issuer, and
 - (B) provide the issuer with all information required to comply with the issuer's obligations in paragraph 5(2)(b); and
- (i) not allow a person or company to access the funding portal's platform, unless the person or company has acknowledged that the person or company is accessing a platform that
 - (i) is operated by an investment dealer or an exempt market dealer, as applicable, and
 - (ii) will provide advice about the suitability of the eligible security.

PART 4 EXEMPTION FROM PROSPECTUS REQUIREMENT FOR ISSUERS

Exemption from prospectus requirement for issuers

- 5. (1)** An issuer is exempt from the prospectus requirement in respect of a crowdfunding distribution if the following apply:
- (a) the distribution of and payment for the security is facilitated through a funding portal that is
 - (i) relying on the exemption set out in subsection 3(1), or
 - (ii) operated by an exempt market dealer or investment dealer;
 - (b) the purchaser purchases the security as principal;
 - (c) the issuer is not a reporting issuer in any jurisdiction of Canada or the equivalent in any foreign jurisdiction;
 - (d) the issuer is not an investment fund;
 - (e) the issuer has its head office in Canada;

- (f) the security distributed is an eligible security of the issuer's own issue;
- (g) the aggregate gross proceeds raised by the issuer group in reliance on this section during the 12-month period before the closing of the crowdfunding distribution does not exceed \$1 000 000;
- (h) the issuer has completed a Form 45-110F1 *Offering Document* and provided it to the funding portal;
- (i) the crowdfunding distribution ends no later than the 90th day after the date the issuer's completed Form 45-110F1 *Offering Document* is made available on the funding portal's platform;
- (j) the issuer includes in the subscription agreement a term that the purchaser may withdraw from the agreement to purchase the security by delivering a notice of withdrawal to the funding portal not later than midnight on the 2nd business day after:
 - (i) the day on which the purchaser enters into the agreement, and
 - (ii) the day on which the funding portal notifies the purchaser of an amendment to the issuer's completed Form 45-110F1 *Offering Document*;
- (k) the issuer's completed Form 45-110F1 *Offering Document* discloses how the issuer intends to use the funds raised and the minimum offering amount required to close the crowdfunding distribution;
- (l) the issuer does not close the crowdfunding distribution until the issuer has raised the minimum offering amount stated in the issuer's completed Form 45-110F1 *Offering Document* either through subscriptions to the crowdfunding distribution or any concurrent distribution under one or more other exemptions from the prospectus requirement provided the funds are unconditionally available to the issuer;
- (m) no concurrent crowdfunding distribution is made by any member of the issuer group for the same purposes as described in the issuer's completed Form 45-110F1 *Offering Document*;
- (n) no commission, fee or similar payment is paid by the issuer to the issuer group, or any principal, employee or agent of a member of the issuer group with respect to the crowdfunding distribution;
- (o) no principal of the issuer group is a principal of the funding portal;
- (p) the issuer does not distribute to any one purchaser securities valued at more than
 - (i) subject to subparagraph (ii), \$2 500 or

- (ii) if the purchaser has obtained advice from a registered dealer that the investment is suitable for the purchaser, \$5 000; and
- (q) the issuer does not intend to use the proceeds of the crowdfunding distribution to invest in, merge with, amalgamate with or acquire a business, or to purchase securities of one or more other issuers, that is not identified in the issuer's completed Form 45-110F1 *Offering Document*.

(2) An issuer relying on subsection 5(1) must

- (a) if the issuer becomes aware that its completed Form 45-110F1 *Offering Document* is not accurate, promptly
 - (i) advise the funding portal that the issuer's Form 45-110F1 is not accurate,
 - (ii) amend the Form 45-110F1 so that it is no longer inaccurate, and
 - (iii) provide the amended Form 45-110F1 to the funding portal;
- (b) within 30 days after the closing of the crowdfunding distribution, deliver to each purchaser
 - (i) a confirmation setting out the following:
 - (A) the date of subscription and the closing of the crowdfunding distribution;
 - (B) the quantity and description of the eligible security purchased;
 - (C) the price per eligible security paid by the purchaser;
 - (D) the total commissions, fees and any similar payments paid by the issuer to the funding portal in respect of the crowdfunding distribution; and
 - (ii) a copy of the issuer's completed Form 45-110F1 *Offering Document*.

Filing of distribution materials

- 6.** An issuer that distributes a security under this Instrument must file both of the following documents no later than the 30th day after the closing of the crowdfunding distribution:
- (a) the completed Form 45-110F1 *Offering Document*;
 - (b) a report of exempt distribution in accordance with Form 45-106F1 *Report of Exempt Distribution* of National Instrument 45-106 *Prospectus Exemptions*.

PART 5 EXEMPTION

Exemption

7. (1) Subject to subsection (2), the securities regulatory authority or regulator may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.
- (2) Despite subsection (1), in Ontario, only the regulator may grant an exemption.
- (3) Except in Alberta and Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction.

PART 6 COMING INTO FORCE

Coming into force

8. (1) This Instrument comes into force on ●.
- (2) In Saskatchewan, despite subsection (1), if these regulations are filed with the Registrar of Regulations after [insert date], these regulations come into force on the day on which they are filed with the Registrar of Regulations.