Appendix B

Summary of Comments

The start-up crowdfunding exemption was published for comment simultaneously with Proposed 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	• Out of 13 comment letters specifically discussing the start-up crowdfunding exemption, 12 expressed general support for start-up crowdfunding exemption. • One commenter specifically expressed its strong opposition to the start-up crowdfunding exemption, citing various issues.	• We thank the commenters for their support.
Harmonization – allowing funding portals established in any participating jurisdiction to accept issuers and investors established in any participating jurisdiction.	• All commenters agreed with the approach of allowing issuers to access investors in more than one Canadian jurisdiction. • 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. • 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. • One commenter indicated that the start-up crowdfunding exemption should not be restricted to participating jurisdictions. • One commenter stated that harmonization will encourage a healthy marketplace. • 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.	• 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.

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Support for absence of registration requirements	• One commenter indicated that it would add an unnecessary layer 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. • One commenter was of the view that it could potentially compromise the success of start-ups. • 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. • One commenter believed that funding portals will utilize best practices. Therefore, innovation should be encouraged. • One commenter believed that the registration of the funding portal adds expenditure and inefficiency to the system.	• We thank the commenters for their comments.
Against the absence of registration requirements	• One commenter believed that registration would be useful way for regulators to monitor who is administering funding portals, creating additional transparency and accountability. • One commenter indicated that the difference between $2,500 and $1,500 does not justify the absence of registration. • 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. • 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. • 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	• 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. • 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. • We note that securities regulatory authorities have the power to inspect and investigate unregistered funding portals using the start-up registration exemption.

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	(i.e. financial condition data). • One commenter believed that some minimum oversight is needed. • 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. • 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.	Enforcement action may be taken if necessary. • 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.

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).	• 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.
	• Five commenters thought the offering limit should be higher:
	  • One commenter suggested a ceiling of $1.5 million per year.
	  • 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.
	  • 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.
	  • 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
		• 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.

TOPIC	NATURE OF COMMENTS	RESPONSES
	under the exemption during the lifetime of an issuer to a maximum of $500,000. In other words, once the $500,000 limit is reached, an issuer can no longer rely on the exemption. • 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.	

Limit of $1,500 per investor per distribution	• Five commenters thought the limit for a single investment is appropriate.
	• 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.
	• Five commenters were of the view that the single investment limit should be higher:
	  • Three commenters suggested a $2,500 investment limit.
	  • One commenter suggested a $5,000 to $10,000 investment limit.
	  • One commenter suggested a $20,000 investment limit.
	• One commenter indicated that the relatively low limit will result in a heavy burden for the issuer concerning his relation with investors.
	• One commenter suggested an investment limit of $250 per distribution.
		• 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.

Absence of aggregate annual investment limit per investor	• Nine commenters thought there should be a limit on the aggregate annual investment:
	  • One commenter was of the view that it would be in line with the policy rationale underlying the Crowdfunding Exemption individual annual investment limits.
	  • 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.
	  • Others suggested specific limits:
	  • $5,000 to $10,000
	  • $20,000
		• 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.
		• The annual investment limit could be re-visited in the future if it becomes an issue.

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	• $15,000 adjusted for inflation • $6,000 • $2,000 • Around $10,000	

Applicability of investment limits to accredited investors	• Five commenters thought accredited investors should be permitted to invest higher amounts.
	  • One commenter believed we should follow the U.S developing norms.
	  • Two commenters suggested that if we decided to increase the limit for accredited investors, the MaRS VX exemptive relief order would be reasonable.
		• The start-up crowdfunding exemption will impose an investment limit of $1,500per distribution.
		• The accredited investor exemption is separately available to those investors who wish to invest higher amounts.

Support for absence of formal ongoing disclosure requirements	• Three commenters thought there should not be ongoing disclosure.	• We thank the commenters for their comments.
Against the absence of formal ongoing disclosure requirements	• Seven commenters indicated that issuers should provide some form of periodical updates of their activities. • Two commenters suggested that issuers should maintain securities registers on the funding portal's website or on their website.	• Purchasers will have to read and accept a risk acknowledgement form clearly warning them that they will not be provided with any ongoing information. • Ongoing disclosure requirements may discourage start-ups and issuers at a very early stage of development from using the start-up crowdfunding exemption. • 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. • Corporate laws apply and investors may have the right to request information from issuers under these laws.
Support for absence of requirement to update the offering document outside the distribution period	• Six commenters believed that there should not be an ongoing obligation to update the offering document forms outside of the distribution period.	• We thank the commenters for their comments.
Against the absence of requirement to update the offering document outside	• Four commenters believed that there should be an ongoing obligation to update the offering document forms outside of the distribution period.	• We encourage issuers to communicate with their security holders despite the absence of formal ongoing disclosure

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the distribution period	• 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. • 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.	requirements. Such communication may assist in future fundraising by the issuer • Corporate laws apply and investors may have the right to request information from issuers under these laws.
Support for the introduction of a cooling-off period	• Four commenters thought a two-day "cooling-off" requirement is appropriate.	• We thank the commenters for their comments.
Against the introduction of a cooling-off period	• 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. • One commenter suggested that it should be 5 business days. • 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. • 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.	• 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. • 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. • We also think that since the offering 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.
For Nova Scotia only – CEDIF's eligibility to use	• Four commenters were of the view that Community Economic Development Investment Funds should be eligible to use	• Staff of the Nova Scotia Securities Commission (NSSC) thanks the

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the start-up crowdfunding exemption	Multilateral Instrument 45-108.	commenters for their comments. • 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.
Handling of investor funds by funding portals	• One commenter indicated that many lawyers may be unwilling to serve as an "accepted depository".	• 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.
Funding portal's head office requirement	• One commenter was of the view that funding portals should not be required to have a head office in a participating jurisdiction.	• 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.
Funding portal's promoters, directors, officers and control persons residency requirements	• One commenter indicated that funding portals should not be required to have Canadian resident directors, promoters, officers and control persons.	• 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. • The adjustment should give funding portals enough latitude to recruit qualified managers while maintaining a strong presence of the management team in Canada.

TOPIC	NATURE OF COMMENTS	RESPONSES

Exclusion of investment funds	• Two commenters thought the exclusion of investment funds from the exemption is not appropriate.
	  • 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.
	  • 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.
		• 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.

Financial statements requirements	• Four commenters thought that issuers should produce financial statements, although the commenters thought financial statements should not be audited.	• 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. We note that issuers may be required to prepare financial statements under corporate laws or for other purposes.
Permitted communication	• One commenter was of the view that funding portals should provide guidance on permitted communication between issuers, investors, and potential investors. • 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.	• We thank the commenters for their comments, but have not added guidance or requirements with respect to funding portal communication. • 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.

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Risk Acknowledgement Form	• One commenter believed the "Important Risk Warnings" is sufficient to protect investors. • 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. • 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. • The same commenter believed regulators should test any risk acknowledgement form.	• 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. • The risk acknowledgement form requires an active confirmation from purchasers.
Concerns with the wording of the proposed instrument	• 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.	• We thank the commenter for its comments.