

December 18, 2015

To: Alberta Securities Commission  
Superintendent of Securities, Nunavut

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**Re: Response to Proposed Multilateral Instrument 45-109 Prospectus Exemption for Start-up Businesses**

Dear Sirs and Madams,

Please find attached our response on behalf of the National Crowdfunding Association of Canada (“**NCFA Canada**”) with respect to the **Request for Comments on Proposed Multilateral Instrument 45-109 Prospectus Exemption for Start-up Businesses** (the “**Start-Up Business Exemption**”) being considered by Alberta and Nunavut, as released on October 19, 2015.

We applaud the Alberta Securities Commission and the Nunavut Securities Office (together “**Participating Regulators**”) for looking at creating a new exemption to assist small and medium enterprises to raise capital in their respective jurisdictions. It is unfortunate, however, that this is not a proposal that is harmonized with respect to either the start-up crowdfunding exemption or integrated crowdfunding exemption adopted elsewhere in Canada or that the Start-Up Business Exemption only applies to Alberta and Nunavut. NCFA Canada and its members thank the Participating Regulators for the opportunity to participate in the consultation process.

NCFA Canada is a cross-Canada non-profit actively engaged with both social and investment crowdfunding stakeholders across the country. NCFA Canada provides education, research, leadership, support and networking opportunities to over 1300+ members and works closely with industry, government, academia, community, and eco-system partners and affiliates, to create a strong and vibrant crowdfunding industry in Canada.

We support innovation, small businesses and entrepreneurs seeking to make a difference, and believe that crowdfunding markets and the eco-systems around them can play a significant role in mobilizing start-up capital and resources to early stage projects and businesses in an efficient and cost effective manner.



We look forward to contributing ongoing input into the planning, implementation and operation of the proposed Startup Business Exemption in Alberta and Nunavut. Please feel free to contact us at any time to discuss further.

Sincerely,

Craig Asano  
Founder and Executive Director  
NCFA Canada  
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Enclosure

# The National Crowdfunding Association



**Education, Advocacy, Networking, Growth**

*Fostering a dynamic, vibrant and inclusive Crowdfunding industry in Canada*

## **Proposed Multilateral Instrument 45-109 Prospectus Exemption for Start-up Businesses**

NCFCA Canada Board  
December 18, 2015

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## About NCFA Canada

- The National Crowdfunding Association of Canada (**NCFA Canada**) is a cross-Canada non-profit organization with a mandate to be inclusive in providing **education, awareness** and **advocacy** in the rapidly evolving crowdfunding industry.
- NCFA Canada is a community-based and membership-driven non-profit entity that was founded at a grass roots level to fill a national need in the marketplace.
- Members and prospective members are industry stakeholders (e.g., portals, experts, service providers and enablers), small businesses using crowdfunding to fund their initiatives and investors seeking to learn more and get connected with a relevant and national membership peer network.

## Overview

### The Importance of SMEs to the Canadian Economy

- Small to mid-sized enterprise businesses (**SMEs**) are the lifeblood of the Canadian economy. From the corner laundry mat to the emerging high tech software company there were a total of 1,105,972 SMEs in 2012 according to Industry Canada. By definition, SMEs include micro-enterprises (1-4 employees), small businesses (5-100) and medium sized businesses (101-500).
- In 2012, SMEs hired 89.9% of the entire workforce. Stated differently, almost nine in every ten persons is directly affected and reliant on the SMEs for their livelihood. In 2011, SMEs represented 27% of Canada's total GDP and also accounted for \$150 billion in exports, or 40.1% of Canada's total export value.<sup>1</sup>
- SMEs play a significant role as a feeder system. Successful smaller companies may grow, acquire other businesses or assets, and possibly become larger public companies.

### SME's Funding Challenge

- A funding gap exists for Canadian start-ups and SMEs to raise small amounts of capital (e.g., estimated by various industry professionals to be \$1 to \$5 million) that is not currently being satisfied by friends and family networks, angels, incubator/accelerator programs and venture capital (**VC**) groups.
- Traditional institutions and alternative lenders have strict lending requirements that most start-ups do not qualify for. Many small businesses cannot get a line of credit approved by their bank (or revive credit lines) due to poor sales or insufficient collateral to support their loan requests.
- Many small businesses are asked to front money to initiate a funding process or are advised to pay expensive financial and legal planners to develop detailed business plans and prospectus documents that exceed the budget and viability of many start-ups and SMEs.
- Incubators and accelerators are excellent options, however there are only a limited number of placements available (e.g., most programs are operating at maximum capacity) and they generally focus on a niche industry. VC has been on the decline. In 2000, \$5.9 billion was invested in 1,007 Canadian start-ups, according to Thomson Reuters, compared to just \$1.1 billion in 2010 that was raised by 357 Canadian firms representing an alarming decreasing trend in a ten year period. In 2014, Canadian start-ups received \$2.36 B in funding, nearly double the amount invested five years ago but this was primarily due to four exceptionally large financing.<sup>2</sup> VCs are incentivized to participate in larger funding transactions and the average deal sizes are mismatched with the needs of SME issuers.<sup>3</sup>

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<sup>1</sup> Key Small Business Statistics - August 2013 Edition, Innovation, Science and Economic Development Canada, Industry Canada  
[http://www.ic.gc.ca/eic/site/061.nsf/eng/h\\_02800.html](http://www.ic.gc.ca/eic/site/061.nsf/eng/h_02800.html)

<sup>2</sup> <http://www.reuters.com/article/canada-investment-idUSL1N0VK2MW20150210>

<sup>3</sup> <http://www.theglobeandmail.com/report-on-business/streetwise/canadian-venture-capital-stuck-in-deep-rut/article616668/>

### What's at Stake?

- Fundamentally there's a strong need to ensure SMEs have the proper access to capital to innovate and develop competitive products/services to bring to Canadian and global markets.
- Without a clear funding roadmap for small businesses or an efficient and legally viable capital formation process many valid business ideas will not get funded in Canada.
- Crowdfunding has gained a lot of momentum in North America and Europe. Equity crowdfunding is currently legally permitted in many countries, such as Australia, United Kingdom ("UK"), Netherlands and the United States ("US"). will soon be added to the growing list with the passing of the [\*Jumpstart Our Business Start-ups Act \(JOBS Act\)\*](#)<sup>4</sup> last April 2012.
- Canada needs to review its securities laws to ensure they are current and suitable to meet the needs of SME issuers and their ability to connect with prospective investors (funders) and successfully raise early stage capital from online market places.
- Canada risks losing its Canadian funded ideas and best entrepreneurs to countries with more supportive funding environments and access to capital (e.g., US) that are keen to commercialize on Canadian start-up ventures.
- Canada will continue to slide down global innovation rankings and the economy will suffer as a result negatively impacting job creation and Canada's strategic social-economic advantages.<sup>5</sup>

### NCFA Canada 2015 Conferences and Outreach

In 2015, NCFA Canada held five events across Canada (Toronto: March 3, 2015, July 28, 2015, and October 15, 2015, Vancouver: September 29, 2015, and Calgary: December 3, 2015) to educate and receive feedback from various constituent groups interested in start-up capital in their communities. All of these events were held in association with strong government, academic, industry and community supporters such as the Dec 3rd event held in Calgary that involved participants from Government of Alberta (Innovation and Access to Capital; and Alberta Securities Commission), ATB Financial, VA Angels, LendingArch, Business Link and SeedUps Canada. NCFA Canada and all in attendance appreciated the participation by local securities regulators in each jurisdiction at these events.

In addition to holding conferences, NCFA Canada has fielded questions from aspiring crowdfunding portal operators, issuers, and investors by telephone and email. We have published an equity crowdfunding FAQ on our website and provided articles summarizing the key elements of the proposed crowdfunding exemptions. We are also in the process of finalizing an e-book of a larger array of questions and answers on equity crowdfunding and investing in general, and an industry led whitepaper on the topic of Online Lending in Canada.

### National Crowdfunding Surveys in Canada

In 2013, NCFA Canada collaborated with the Exempt Market Dealers Association of Canada to develop and host the National Canadian Crowdfunding Survey in Canada ([link to survey](#)) ("2013 Survey"). The purpose of the survey was to obtain a better understanding of the various stakeholder opinions on legalizing equity Crowdfunding in Canada and to provide Canadian securities regulators with feedback on many of the issues Canadian securities regulators were seeking input into on online capital raising options for SMEs.

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<sup>4</sup> [http://en.wikipedia.org/wiki/Jumpstart\\_Our\\_Business\\_Startups\\_Act](http://en.wikipedia.org/wiki/Jumpstart_Our_Business_Startups_Act)

<sup>5</sup> <http://www.ncfacanada.org/poor-innovation-ranking-dims-the-lights-on-canadas-competitiveness-and-prosperity/>

NCFA Canada has joined Cambridge Centre for Alternative Finance at Cambridge Judge Business School and the Polsky Center for Entrepreneurship and Innovation at Chicago Booth School of Business in launching the 2015 Americas Alternative Finance Benchmarking Survey.

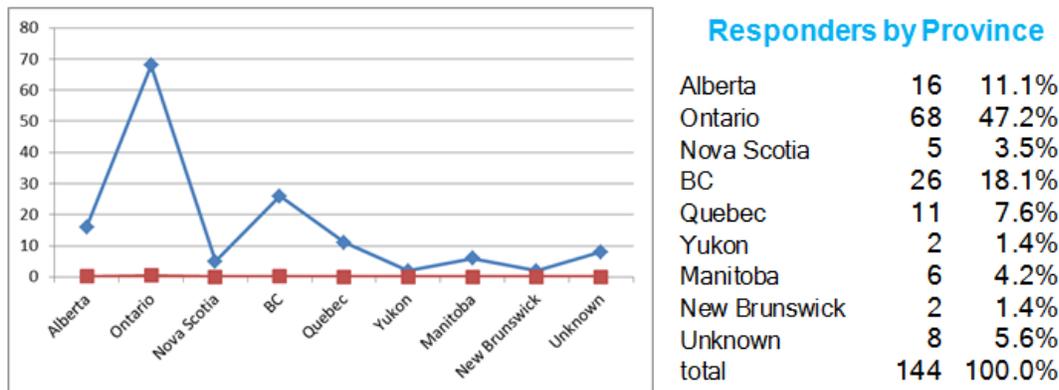
Additionally, NCFA Canada is in the process of completing a 2015 Canadian Crowdfunding Platform Survey that attempts to measure the size and make-up of the Canadian market. The survey is expected to be completed in time for release in the first quarter of 2016. There is also discussion about administrating a follow-up survey to the original 2013 Survey to gage how opinions of various stakeholders has changed or evolved since 2013.

We believe the results of our 2013 Survey, although focused on an equity crowdfunding specific exemption, is equally relevant to the Participating Regulators as they consider the Start-Up Business Exemption.

### Overview of 2013 Survey Responders

We received a total of 144 survey responders from NCFA Canada’s crowd:

- 100% of responders represented start-up and/or SME issuer views
- Almost 75% were a planned portal or service provider
- 70% / 25% identified themselves as non-accredited / accredited investors
- 12 self-identified as registrants including exempt market dealers, investment dealers, or portfolio managers



### Preliminary Survey Results

In addition to the raw data survey responses below, NCFA Canada Advisory Board member, Douglas Cumming, Professor and Ontario Research Chair, York University – Schulich School of Business, and his research team, conducted further analysis of the data: [Demand Driven Securities Regulation: Evidence from Crowdfunding](#) (Apr 2013); and [Crowdfunding and Prosperity In Ontario](#) (Mar 2014).

### **Should we Adopt a Crowdfunding Exemption?**

- 95.7% of responders voted that Canada should adopt a crowdfunding exemption under applicable securities laws.
- 74.8% of survey participants were moderately to extremely familiar with crowdfunding.
- Overall, approximately 90% of survey responders agreed or strongly agreed that there would be significant benefits for both SME issuers and investors by adopting a crowdfunding exemption.

### **Investor Motivations to Make an Investment through Crowdfunding (Ranked in Order):**

1. Innovation and entrepreneurship
2. Financial incentives
3. Non-financial incentives
4. Direct access to entrepreneurs
5. Diversification
6. Networking

### **Should Canada Move Ahead or Follow the SEC and FINRA?**

- 60.6% of survey responders agreed or strongly agreed that Canada should move ahead and finalize crowdfunding rules and regulations (23.1% were undecided).

### **Pilot Project**

- 73.7% of survey responders believed that Canada should approve a crowdfunding exemption on a trial or limited basis initially.
- 43.3% or the majority of survey responders answered that the trial should be based on a limited period of time.
- A very low 5.6% clearly indicated that a crowdfunding pilot project should not be restricted to a particular industry or sector.

### **Investor Limits and Restrictions**

- 72.9% of the responders voted that the investment cap should be \$10,000-\$15,000 or more per investor in a 12-month period.
- 64.2% of responders indicated that there should not be any further caps on the funds that can be invested with a single crowdfunding issuer within a 12 month period.

### **Issuer Limits**

- 45% of responders voted that the aggregate amount of capital that an issuer should be able to raise in a 12 month period is up to \$2,000,000.
- 45% of responders indicated that there should not be a limit.

### **Secondary Market**

- 64.4% of survey responders believed that securities should be free-trading after a period of time.
- 83.7% of survey respondents indicated that crowdfunding securities should be eligible for second market trading after 12-24 months of the original purchase.
- Note, by way of comparison and under the USJOBS Act there is a moratorium on transferring shares within one year from the date of issuance, unless the transfer is to an accredited investor or back to the company.

### **Prospective Crowdfunding Exemption**

NCFCA Canada advocates that a crowdfunding exemption in Canada will increase the awareness of Canadian start-ups, support innovation and entrepreneurship, create jobs and contribute to the total GDP and export base of the economy.

### Proposed Implementation Principles

To cultivate the benefits of investment crowdfunding frameworks, regulators must strike the right balance between protecting investors while ensuring efficient capital formation for SMEs. To assist with this task, NCFA Canada has developed eight (8) high-level implementation principles to be used as guidelines when considering the costs and benefits of a prospective crowdfunding exemption in Canada. (These considerations apply equally to the Start-Up Business Exemption.)

Principle	Concept	Description
1. Harmonious	Collaborative development	The collaborative development of a harmonized set of crowdfunding regulations to benefit Canada as a whole.
2. Inclusive	All sectors and industries	To be as inclusive as possible to a broad-based range of sectors and industries to encourage balanced growth in communities across the country.
3. Transparent	Disclosure rules and crowd intelligence	Support transparent disclosure and crowd intelligence as a means to help government and industry prevent, identify and report potential fraud and abuse to authorities within a timely manner.
4. Adaptive	Innovative market adaptation	To ensure crowdfunding regulations support market evolution enabling innovation to flourish.
5. Robust	Efficient capital formation	A regulatory framework that gives SME issuers and investors (funders) the confidence that there is a robust framework in place capable of efficient capital formation, and one that is collectively supported by the eco-system.
6. Open	No jurisdictional restrictions	Enable a vehicle to allow businesses to accept investment (and funding) from other jurisdictions on a limited basis encouraging competitiveness, collaboration and cross border participation.
7. Additive	New channels and source of funds	Ensure crowdfunding regulations are designed to open up largely a new source and channel of funds by minimizing the impact and overlap with existing exempt market exemptions.
8. Protective	Investment caps and reasonable due diligence	Protect investors by limiting investment exposure, promoting education, fraud detection and implementing a fair and reasonable amount of due diligence and compliance without overly burdening the process.

**NCFACANADA Responses to Alberta Securities Commission Proposed Multilateral Instrument 45-109 Prospectus Exemption for Start-up Businesses: Questions and Answers**

#	Question and Answer
<b>Exemption For Start-Up Businesses</b>	
<b>Investment Limits/Caps</b>	
1.	<p><b>In setting the lifetime limit of \$1,000,000 per issuer group, our goal was to set a limit after which an issuer should have sufficient funds to use the OM Exemption. Do you think this is the appropriate threshold? If not, please provide what you would consider acceptable limits given the parameters of the Proposed Start-Up Business Exemption.</b></p>
<p><b>Comments:</b></p> <ul style="list-style-type: none"> <li>▪ We believe the limit, if applied at all, should be \$5,000,000 or \$10,000,000 and not \$1,000,000. We believe that the \$1,000,000 limit chosen by the Participating Regulators was selected based on the US \$1,000,000 limit set out under Title II of the JOBS Act and the proposed US Securities and Exchange Commission crowdfunding rules. Recent activity in the US suggests a limit of \$1,000,000 may put Alberta and Nunavut (and Canada if the rule was adopted in other provinces) to a disadvantage over US crowdfunding rules, particularly as this is a lifetime limit and other caps, if they exist, are yearly limits.</li> <li>▪ Specifically, US Congressman Patrick McHenry introduced a bill to amend US Title III crowdfunding as proposed by the US Securities and Exchange Commission. The proposed <i>Startup Capital Modernization Act of 2014</i>, if adopted, will raise crowdfunding limits in the US federally from \$1,000,000 to \$5,000,000. Other changes will also make the US federal crowdfunding exemption more attractive to issuers and investors.</li> <li>▪ A number of the intrastate crowdfunding exemption adopted or under consideration have also chosen a higher limit than \$1,000,000. See: <a href="#">NASAA Intrastate-Crowdfunding-Exemptions-08-01-2015</a>.</li> <li>▪ Current data from existing early stage equity crowdfunding portals in Europe and accredited investor equity crowdfunding portals in the US seem to indicate the mean offering size of existing campaigns are trending upwards past \$5,000,000 as issuers and investors are becoming more comfortable with this form of raising capital and investing. In 2014, 30% of equity funding for SMEs in the UK came from equity crowdfunding. In 2015, that number is projected to be around 50%. Similar patterns can be seen in each jurisdiction in Europe. Equity crowdfunding is still evolving and a higher limit would allow for that future growth. A higher limit would also ensure Canada offers equal crowdfunding opportunities as exists in the US</li> <li>▪ We believe an issuer’s raise should not be aggregated with amounts raised by an affiliate of the issuer or an issuer engaged in a common enterprise with the issuer or with an affiliate of the issuer (“<b>issuer groups</b>”). A parent or subsidiary company may be involved in a completely different line of business or be the research arm of the organization. New developments and opportunities may be stifled by treating these entities as one for the purpose of this exemption.</li> </ul>	

2.	<p><b>The Proposed Start-Up Business Exemption would prohibit an issuer from accepting an investment from an investor of more than \$1,500 in a single investment under the exemption, and no more than \$3,000 in respect of an issuer group in a calendar year if the distribution is conducted without a registered dealer.</b></p> <p><b>The Proposed Start-Up Business Exemption would prohibit an investor from investing more than \$5,000 in a single investment under the exemption, and no more than \$10,000 in a calendar year if the distribution is conducted with a registered dealer.</b></p> <p><b>Do you agree with these limits? Are investors generally able to withstand the loss of a \$1,500 investment? Do you agree with allowing a higher limit when a registered dealer providing suitability advice is involved? Why or why not?</b></p>
	<p><b>Comments:</b></p> <ul style="list-style-type: none"> <li>▪ We believe the investor investment cap of \$1,500 per single investment should be raised to \$5,000 or \$10,000 per single investment in a calendar year without the use of registered dealer, but on a funding portal.</li> <li>▪ Issuer groups, as started previously, should not be aggregated or treated as one on the Start-Up Business Exemption.</li> <li>▪ Investors should be allowed to invest in as many equity crowdfunding campaigns as they chose in a calendar year.</li> <li>▪ 90% of the US States which have adopted or are considering adopting an intrastate crowdfunding exemption have chosen a 12 month investor investment cap of either \$5,000 or \$10,000 per single investment, unless the investor is accredited. If an investor is accredited no investment cap should be applicable. The Start-Up Business Exemption should follow the developing norms in the US and UK.</li> <li>▪ Issuers will have a difficult time raising the capital they need if the investment cap per investor remains at \$1,500 per single investment.</li> <li>▪ As of December 17, 2015, UK equity crowdfunding portal <a href="#">Crowdcube</a> has raised approximately C\$264,116,442 for 332 businesses. This means an average issuer raises C\$795,531 in their equity crowdfunding campaign on Crowdcube. The average number of investors per pitch is 185, despite a minimum investment threshold of as little as a C\$180. The average investment per investor on Crowdcube is \$3,923. The Participating Regulators should expect similar investment trends under the Start-Up Business Exemption. As such, the investor investment cap should be raised to a much higher amount.</li> <li>▪ Accredited investors should be encouraged to invest in or along side a Start-up Business Exemption campaign. The participation of accredited investors at higher levels will provide non-accredited investors with added value as the investment group are more likely to do greater due diligence than investors only investing the minimum threshold amount in a Start-Up Business Exemption offering or investing as an accredited investor independent of the Start-Up Business Exemption investors.</li> </ul>

3.	<p><b>Given the potential ongoing costs associated with having a large number of security holders, do you think that the Proposed Start-Up Business Exemption will be a useful tool to assist very early-stage and start-up businesses with raising capital?</b></p>
	<p><b>Comments:</b></p> <ul style="list-style-type: none"> <li>▪ Given time, encouragement, and support the Start-Up Business Exemption and Canada’s other crowdfunding exemptions will prove to be a useful tool to SMEs looking to raise capital.</li> <li>▪ Technology is evolving such that having a large number of security holders is not as problematic or as expensive as it was even two years ago.</li> <li>▪ Equity funding portals in other jurisdictions are split on how they handle this issue of a large number of security holders. The majority of portals have chosen to adopt a direct ownership structure, whereby individual investors are independently responsible for their shares; while others have chosen a nominee structure, in which the company behind the equity funding portal manages the investors’ shares on their behalf. Ultimately, having a large number of security holders is proving to be a non-issue.</li> <li>▪ The Participating Regulators should not be quick to determine that the Start-Up Business Exemption is of no interest to SMEs if a large number of SMEs do not immediately use this exemption or portal operators are not quick to offer securities under this exemption.</li> <li>▪ Canada has been slow to adopt the <a href="#">start-up crowdfunding exemption</a> available in BC, MB, NB, NS, QU, and SK and the use of funding portals in general utilizing the accredited investor and offering memorandum exemption.</li> <li>▪ Other jurisdictions such as the UK, Europe and the US also had a slow start to the use of their funding portals. The use of these portals however have doubled or tripled year after year over the past four years in these jurisdictions. We expect a similar evolution of the use of funding portals will occur in Canada as investors and issuers become aware of and educated about this form of raising capital and investing.</li> </ul>
	<p><b>Disclosure Requirements</b></p>
4.	<p><b>Should there be some form of ongoing disclosure e.g., financial statements or notice of proceeds, that issuers using the exemption should be required to provide to their security holders? If so, what should it be? What do you estimate as the costs of preparing such ongoing disclosure?</b></p>
	<p><b>Comments:</b></p> <ul style="list-style-type: none"> <li>▪ Successfully funded issuers should provide shareholders with an annual snapshot of unaudited financial statements, and brief business update summarizing historical performance and future plans.</li> <li>▪ Issuers should be required to maintain a basic share registry on their own website or a third party service provider.</li> <li>▪ Portals or third party service providers, should also remain the central, publically accessible centers for all reports and amendments by issuers. Portals should be required to keep this material permanently on their site and make this information accessible to the public. This not only provides a central location for information about an issuer, it also incentivizes portals to be accountable for issuances on their sites. The names and businesses of fundraisers are also permanently diarized and assessable to future potential investors and regulators.</li> <li>▪ Other than the foregoing there should be no other ongoing disclosure requirements. Issuers relying on the start-up exemption should be treated identical to issuers raising capital under the friends and family and accredited investor exemptions as much as possible.</li> </ul>

	<ul style="list-style-type: none"> <li>▪ Audited financial statements cost \$5,000 to \$200,000 for small and medium sized enterprises ("SME"). Reviewed financial statements are only slightly less expensive to prepare. This is often an unnecessary cost.</li> <li>▪ Financial statements for true start-up companies provide little useful information. What is more important at this stage of a company's life cycle is how much cash a company has on hand, how much they are burning through each month and how much they need to reach their next significant milestone. Investors also want to know whether the money being raised is to be used in consumption or production. Consumption and paying off prior debt is negative, while production is effort in building value in the company.</li> <li>▪ The need for reviewed and audited financial statements suggests a certain level of complication in an issuers business. When you are an early stage company, very little is complicated and most entries are outflows.</li> <li>▪ Once a company is making sales, audited financial statements provides greater value to investors and the company.</li> <li>▪ The majority of corporate statutes in Canada require issuers provide audited financial statements unless all of the shareholders consent in writing to waiving this requirement each year. A single investor could refuse to provide written consent forcing a company to obtain audited financial statements.</li> </ul>
5.	<p><b>In addition to filing the offering document, should issuers be required to file all other information (e.g., marketing materials) provided in conjunction with the offering with the regulator?</b></p>
	<p><b>Comments:</b></p> <ul style="list-style-type: none"> <li>▪ Marketing material should not be required to be filed with Participating Regulators.</li> <li>▪ If the purpose of filing all marketing material related to an online offering with the Participating Jurisdictions is to mitigate any potential misrepresentations made by an issuer group related to their offering, then this information could be required by the portal to maintain and made available to the Participating Jurisdiction upon request.</li> <li>▪ Marketing material and content online is constantly evolving and is likely to include videos and social media messaging – it would seem that the Participating Jurisdiction would be required to hire additional oversight program resources just to stay on top of the collection and review of this material with vary little benefit.</li> <li>▪ Unless marketing materials become standardized as part of the offering we encourage the Participating Jurisdiction to work with dealers and funding portals to make this information available.</li> </ul>
	<p><b>Investor Protection</b></p>
6.	<p><b>Does the risk acknowledgement provide warning to investors of the major risks of investing in a very early stage or start-up business? Are there any other warnings that should be considered?</b></p>
	<p><b>Comments:</b></p> <ul style="list-style-type: none"> <li>▪ There is no need for eight (8) different risk acknowledgements under <i>National Instrument 45-106 – Prospectus and Registration Exemptions</i> and related multi-lateral instruments. Not only is this frustrating to issuers it is equally frustrating and confusing to investors.</li> <li>▪ The Participating Regulators should look at harmonizing its Start-Up Business Exemption risk acknowledgement with either the integrated crowdfunding risk acknowledgement, start-up crowdfunding risk acknowledgement, accredited investor risk acknowledgement or the Participating Regulators' offering memorandum risk acknowledgement. Creating another risk</li> </ul>

	<p>acknowledgement is creating too much of a regulatory patchwork necessitating issuers engage a lawyer to figure out what rules and forms apply to their proposed offering.</p> <ul style="list-style-type: none"> <li>▪ Instead of spending money on new staff reviewing whether an issuer has filed the correct risk acknowledgement form, Participating Regulators should encourage and provide financial support for market education. Industry best practices and standards need to be developed and offered to all funding participants by way of online media including tutorials, videos, podcasts, articles and whitepapers. These types of ongoing initiatives will go a lot further in reducing investor risk than making investors sign different risk acknowledgement forms.</li> <li>▪ Industry associations, and financial and academic institutions, should offer industry recognized non-mandatory courses to those interested in pursuing crowdfunding education via course work.</li> </ul>
	<p><b>Portal Registration</b></p>
<p>7.</p>	<p><b>The Proposed Start-Up Business Exemption is only a prospectus exemption. There is no corresponding registration exemption; consequently, if a portal is used it must be registered as an exempt market dealer or investment dealer. Do you think that this will be a significant barrier for access to financing through the Proposed Start-Up Business Exemption?</b></p>
	<p><b>Comments:</b></p> <ul style="list-style-type: none"> <li>▪ The Start-Up Business Exemption will have limited use if portals are required to be registered as a dealer or exempt market dealer. The Participating Regulators should take the approach of the jurisdictions which have adopted the start-up crowdfunding exemption and create a new non-dealer portal category.</li> <li>▪ We believe registration as an investment dealer, exempt market dealer or restricted dealer <b>is not required</b> in order to protect investors. Further, history has shown innovation in any market does not come from within the established pillars of that marketplace. Assumptions about one's industry get in the way in seeing obvious innovations and opportunities.</li> <li>▪ Very few funding portals are operational in Canada under the start-up crowdfunding exemption. Only one exempt market dealer (<b>EMD</b>) is currently offering securities under the start-up crowdfunding exemption. This EMD also offers securities relying on the accredited investor and offering memorandum exemption. The other funding portals who are registered as exempt market dealers are focused on raising capital for more established issuers and for traditional private market products (real estate, mortgage investments, and funds).</li> <li>▪ There are 184 IROC dealers in Canada. 25 fewer than June 2011. A number of IROC firms have indicated they intend to close their doors in 2016 (Jacob's Securities, Octagon Capital Markets, RBS Capital Markets, and Salman Partners) or have merged with competitors (Jones, Gable &amp; Co. Ltd. merged with Leede Financial Markets; Burgeonvest Bick Securities merged with Industrial Allied Securities; and Pope &amp; Co. merged with Europacific) all since November 2015. Fewer of these firms are catering to SMEs and are instead focused on selling managed products. There are no funding portals established by an IROC member despite diminishing returns in their traditional markets, and it is highly unlikely an IROC member will establish a funding portal in the near future.</li> <li>▪ EMDs overwhelmingly favor selling securities that offer their clients yield and which have a clear exit. SMEs are seldom in a position to provide yield or have a clear exit. In Canada, dealers have been able to set-up online equity crowdfunding portals relying on the accredited investor exemption or the offering memorandum exemption since 2004. They have also been allowed to advertise on and offline. Established EMDs have not rushed to create funding portals relying on any of the exemptions available to them to sell securities.</li> </ul>

	<ul style="list-style-type: none"> <li>▪ EMDs are not interested in establishing funding portals as it would require deal transparency and the potential loss of control over their book of business (investors) which is at the heart of their business.</li> <li>▪ Optimize Capital Markets was the first exempt market dealer in Canada to set up an online funding portal in 2009. It remained the sole online funding portal in Canada until 2013. Even now, Optimize Capital Markets stands alone in moving to a cross-border online funding portal model.</li> <li>▪ In contrast, the US Securities and Exchange Commission only recently (September 23, 2014) allowed advertising under its accredited investor exemption. Since that date, accredited investor portals established by registrants and through no-action letters from registration have proliferated in the US. A number of these portals have raised significant capital. For example: Circle-Up – \$150,000,000 (\$30,000,000 - May 2014); Crowdfunder – \$312,900,000 (\$111,700,000- May 2014); EquityNet - \$ 200,000,000+ (\$ 231,748,700- May 2014 – EquityNet is no longer reporting actual amount raised on its platform); Fundable – \$218,000,000 (\$114,000,000 –May 2014); Microventures – \$80,000,000 (\$36,600,000 - May 2014); RealtyMogul – \$57,000,000* (\$ 18,000,000 - May 2014 - RealtyMogul is no longer reporting amount raised on its platform and this is an estimate from deals closed) are all active US accredited investor equity portals. (All amounts approximates in US dollars and as reported on their websites on December 17, 2015.) Intrastate crowdfunding portals are starting to emerge in the US as well. On November 19, 2019, Anya Coverman, the Deputy Director of Policy, for the North American Securities Administrators Association (NASAA) reported at the Securities and Exchange Commission Government-Business Forum on Small Business Capital Formation that over 100 issuers have raised capital to date under the various intrastate equity crowdfunding exemptions. Most of the founders of these accredited and intrastate crowdfunding portals come from a mixed background and not solely the finance markets. Given our different experience with the development of accredited investor portals in Canada, we could be waiting a long time for a vibrant Start-Up Business Exemption funding market to emerge if we rely solely on existing Canadian dealers to develop these portals.</li> <li>▪ Funding portals are a business. They are driven by the same considerations as any other successful business: opportunity; ownership structure; funding; management; business model and relationships. Funding portals in the donation, perk, and product pre-sale market emerged without any structure or rules to guide them or protect campaign contributors. There has been less than 0.01% of fraud in this marketplace since its inception. Similarly, there has been no reported fraud on the equity funding portals operating outside of Canada. Founders of a funding portal have high incentives to make their business as success.</li> <li>▪ We expect there will be significant sampling and attrition among equity funding portals in Canada similar to that experienced in the mutual fund and discount brokerage businesses in the early 1990s. The better operators are likely to utilize best practices from the non-equity funding marketplaces and innovate in ways we cannot anticipate at this time. This innovation should be encouraged.</li> <li>▪ Again, requiring portals to register as a registered dealer, EMD or restricted dealer will not necessarily protect investors. Keeping the status quo will not benefit Canada in the short or long term as issuers and investors will seek out jurisdictions that advance their interests versus the interests of the established finance industry.</li> </ul>
	<p><b>Cross-Country Capital Raises</b></p>
<p><b>8.</b></p>	<p><b>If an Alberta-based or Nunavut-based issuer were using the Proposed Start-up Business Exemption, in what other jurisdictions would they likely also seek to raise funds?</b></p>
	<p><b>Comments:</b></p>

	<ul style="list-style-type: none"> <li>▪ Issuers in Alberta and Nunavut raising capital currently look to Ontario and British Columbia in addition to their home province. Alberta residents also have strong ties with Saskatchewan and likely approach residents in that province if those investors fall under one of the existing investor exemptions available.</li> <li>▪ Issuers ideally would prefer that the Start-Up Business Exemption was harmonized and available across Canada. Investors will be attracted to different types of businesses based on their knowledge of the industry and their relationship to management. Criteria for investing therefore may not depend on proximity to the business or a pre-existing relationship to management.</li> <li>▪ Also keep in mind SMEs do not see a border when doing business. Approximately 9% of SMEs in Alberta and 11% of British Columbia and the Territories export goods and services to other countries. The number of exports across provincial and territorial borders is even higher. The individuals and companies these SMEs do business with, inside and outside of their home jurisdictions, may be interested in investing in these SMEs. SMEs raising capital will want to be able to offer their securities under the Start-Up Business Exemption or similar exemption in each province or territory where a user of their product or service resides. Someone who uses a SMEs product is much more likely to understand the business and want to be an equity owner and not just a consumer.</li> <li>▪ The whole purpose of accommodating equity crowdfunding and exemptions such as the Start-Up Business Exemption is to enable SMEs to reach out to a wider investor community by using the internet and other electronic means, whereby geographic boundaries become irrelevant.</li> </ul>
<p><b>9.</b></p>	<p><b>Do you think issuers would want to use the Proposed Start-Up Business Exemption in Alberta or Nunavut in conjunction with using Multilateral Instrument 45-108 Crowdfunding (MI 45-108) in other jurisdictions? If so, would it be helpful to issuers if they were able to use, and file, the form of offering document available under MI 45-108 in connection with a distribution under MI 45-109? Are there other accommodations that should be considered for the purpose of harmonization?</b></p>
	<p><b>Comments:</b></p> <ul style="list-style-type: none"> <li>▪ Harmonization between the Start-Up Business Exemption and MI 45-108 and/or with <i>Multilateral CSA Notice 45-316 Start-Up Crowdfunding Exemption</i> should be a top priority of the Participating Regulators.</li> <li>▪ The Start-Up Business Exemption will be much more useful if it can be utilized with other jurisdictions private placement exemptions with as little regulatory friction or excessive fees by legal, accounting and selling dealer agent fees as possible. Private placements that are unduly complex as a result of having to rely on different exemptions in different jurisdictions that require different documents and have conflicting rules on how capital may be raised will be avoided if there is a simpler solution.</li> <li>▪ Any such harmonization should be made in favour of expanding the rules as much as possible to allow the markets versus regulators to ultimately determine the optimal offering size, documents necessary to encourage investment, and investor investment limits.</li> </ul>
	<p><b>Offering Memorandum Exemption</b></p>
<p><b>10.</b></p>	<p><b>Would it be helpful to issuers to be permitted to use and file Form 45-106F2 Offering Memorandum for Non-Qualifying Issuers, the form of offering memorandum required under the OM Exemption, in lieu of Proposed Form 45-109F1 Start-up Business Offering Document in connection with a distribution under MI 45-109?</b></p>

	<p><b>Comments:</b></p> <ul style="list-style-type: none"> <li>See answer in item 9 above.</li> </ul>
<b>11.</b>	<p><b>In Alberta, we are considering whether ASC Blanket Order 45-515 Exemption from certain financial statement requirements of Form 45-106F2 Offering Memorandum for Non-Qualifying Issuers will be necessary if MI 45-109 is adopted. Do you anticipate issuers would use Blanket Order 45-515 if MI 45-109 is available?</b></p>
	<p><b>Comments:</b></p> <ul style="list-style-type: none"> <li>ASC Blanket Order 45-515 Exemption should remain as an exemption in Alberta.</li> <li><i>Multilateral CSA Notice 45-311: Exemptions from Certain Financial Statement-Related Requirements in the Offering Memorandum Exemption to Facilitate Access to Capital by Small Businesses</i> resulted in a number of provinces adopting a blanket order, local policy, or other instrument to facilitate capital raising for SMEs. ASC Blank Order 45-515 is how Alberta implemented this harmonized interim local order. The original harmonized interim order expired on December 20, 2014. A number of provinces, including Alberta, extended this harmonized interim order to December 20, 2016. Very few SMEs were every aware that this exemption even existed.</li> <li>As this exemption is available in a number of different provinces it provides an opportunity for SMEs to create one document that it can use to sell securities across Canada without the use of a funding portal or registered dealer if it so chooses. This exemption does not have any ongoing disclosure requirements (as of today's date) and is essentially the same in every jurisdiction making it much easier to manage than meeting the requirements of a different exemption in each province SMEs may be thinking of selling securities.</li> </ul>
<b>12.</b>	<p><b>Other Comments</b></p>
	<ul style="list-style-type: none"> <li>It is disappointing that Canada is about to have four (4) different versions of the offering memorandum, three (3) different SME equity crowdfunding exemptions, eight (8) different risk acknowledgement forms; and a number of different exempt distribution reports and continuous disclosure requirements across the country depending on which exemption a private SME uses to raise capital. Most of these differences do not serve the goal of creating fair and efficient capital markets in Canada or protecting investors. It must be obvious to the Participating Regulators and other Canadian securities regulators they are increasing the complexity SMEs face when raising capital, not simplifying that process, or protecting investors.</li> <li>SMEs do not use the current offering memorandum exemption because it is too complicated and expensive. There is a risk that by choosing to implement the Start-Up Business Exemption in only two jurisdictions in Canada and not adopting one of the two different equity crowdfunding exemptions available in seven of the other provinces of Canada that the Start-Up Business Crowdfunding will not be used. The adoption of the Start-Up Business Exemption and two different crowdfunding exemptions makes raising capital more complicated and expensive in the minds of many SMEs. It may also curtail Canada wide offerings by SMEs under any of these exemptions due to an inability to co-ordinate the more nuanced differences of these rules when more than one version of these exemptions is involved. This will make the Start-Up Business Exemption and the various equity crowdfunding exemptions, exemptions SMEs avoid unless highly motivated.</li> <li>To the extent possible, the substantive and procedural components of all capital-raising exemptions should be identical across Canada. We like the idea of sampling various SME and equity crowdfunding exemptions, but this sampling does carry a cost to SMEs and Canada's economy as a whole. A benefits versus cost analysis should be weighed very</li> </ul>

carefully before a variation under an existing rule is undertaken as a new rule versus an amendment or carve-out of one of the existing forms of that rule. There are a number of things we like about the proposed Start-Up Business Exemption that do not exist in either the start-up crowdfunding exemption or integrated crowdfunding exemption but we are concerned about the loss of harmonization across Canada of these various SME targeted exemptions.

- Issuers and investors no longer conduct business or investment in a territorial bubble. Technology advances continue to change the way people conduct business. The gathering and sharing of information is almost instantaneous and global. Work is decentralized. Companies can outsource production, and back-end functions worldwide. Securities rules that artificially restrict business and its ability to raise capital efficiently hurt the Canadian economy as a whole.

### Contact Information

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