

## BCSC Meeting - 15 August 2017

### Key Points - draft 14 Aug

We welcome this opportunity to provide feedback on the Canadian crowdfunding requirements. These points apply to FinTech and to crowdfunding generally.

The BCSC crowdfunding regime is NCFAs preferred regime in Canada:

- it approaches the gold standard - the UK FCA regime - in that it is more principles based and proportionate;
- it more often resists the urge to constrain market activity where no market problems have been identified (and so the market has responded relatively well in BC);
- it is easier for smaller businesses to understand and comply with it.

However:

- the regimes are not harmonized across Canada which is very costly for small businesses as they start up and attempt to scale up (see table at Annex 1);
- some prescriptive requirements bear no relationship to the risks of crowdfunding and (taken together) add significant costs, especially for smaller operations which have few resources to spare. Below are examples provided by regulated platforms, experts and practitioners:

Description	Benefit / Impact
Harmonize MI 45-108 and Crowdfunding requirements	Reduce regulatory burden for all stakeholders
Allow advertising and general solicitation	Increase investor participation -- more liquidity and more investors
Increase threshold for required review and audited financial statements	Increase investor participation -- attract more companies, reduce undue burden
Reduce frequency of exempt distribution reports	Reduce burden (esp for small EMDs/ funding portals)
Allow accredited investors to fully participate (without caps)	Increase investor participation -- reach funding targets, benefits from exemptions, assist scale-up
Increase \$1.5M issuer caps to \$5M or more	Increase investor participation, assist scale-up
Increase retail investor cap per deal from \$2.5k to \$10k	Increase investor participation -- suitable for more sectors
Provide a reasonable sunset clause for audited financial statement filings	Reduce burden for small companies
Increase retail investor cap per year to >\$10k	More liquidity, more investors

- Canada is failing to take full advantage of the benefits of these new financial tools and is falling behind other jurisdictions [evidence below]. We ask the BCSC to try again with other CSA members to harmonize and reduce unjustified regulatory burden.

We also ask that CSA follow the lead of FCA and ASIC to work with entities like the NCFAs to provide training for stakeholders and to obtain the research/data needed by regulators and the industry to keep up-to-date with a quickly changing marketplace and to more quickly identify what

is working and to correct roadblocks to success.

## **Background**

### The value of crowdfunding

- Crowdfunding drives innovation, jobs and entrepreneurship and enables more productive investment in venture markets. It strengthens the early stage capital market. Some examples:
  - 1) Research Funding – American Gun US\$1.27 Million;
  - 2) Innovation Capital – Revols US\$2.5 Million;
  - 3) Equity Capital – Impak Finance at CA\$1.04 Million
  - 4) See case studies download: [2016 Alternative Finance Crowdfunding industry report](#)
- Canadian Crowdfunding was \$133 million in 2015, and predicted to reach \$190 million in 2016 (NCFCA 2016 Survey), confirming that it is a genuine source of seed and growth capital but it is growing much slower than international comparators.
- 23% of portals responded >50% of successfully funded projects were led by women.
- 60% of portals reported having between 1001-5000 investors (many retail) on their platform indicating a concrete public interest in this sector.
- Besides raising the money needed for product development, pre-sales serve as critical tests of product/market fit and proof points that a product is in demand. – [Bernd Petak, Investment Partner, Northmark Ventures](#)
- Crowdfunding is the opportunity to leverage the power of the internet to bring some efficiency, transparency and democracy to fundraising in Canadian private capital markets for the benefit issuers and investors. – [Rubsun Ho, Founder, Crowdmatrix Inc.](#)

### Overly complex and fragmented rules and cost of undue burden

“...Provincial securities regulators in Canada created a fragmented framework of crowdfunding rules that undermines effective capital formation. It causes confusion and frustration for all market participants, young companies looking to raise capital, investors and even some securities lawyers. Harmonization of rules will be key for Canada to take full advantage of crowdfunding as a new way of financing private companies and engaging the wider investor community.” – NCFCA member (see **Annex 1: Comparison of crowdfunding regulations in Canada**)

[Alixé Cormick to speak about companies that have left Canada to raise capital elsewhere.]

### Sector needs more resources and education

While educational conferences are in high demand and markets are slowly gaining traction, the sector needs more resources to remain internationally competitive and to establish more portals, participants, and investors to “scale up” and operate more efficiently.

NCFCA’s most recent survey (Jun-Jul 2017) points to education and awareness gaps as inhibitors along with a ‘more of everything’ sentiment. See **Annex 2: Select 2017 Annual Survey Results**

### Need for more transparency and market analysis to encourage efficiency and build confidence

To date there has been no analysis provided by the CSA on the sector. By contrast, the SEC recently published a [27 page whitepaper \(Feb 2017\) on Title III RegCF activity that provides detailed analysis on market volumes, offering activity, platform performance and compensation rates. We encourage the CSA to initiate such research and to support data collection initiatives](#)

[such as NCFE's annual survey.](#)

#### UK regime

The UK market is somewhat different (and larger), nevertheless, the [risk based outcomes focused regulatory regime is acknowledged to be one of the best in the world and the UK market is working well. The FCA is consulting on tightening the financial promotion rules for crowdfunding, but the tightening is not expected to be significant or to detract from the flexibility of the regime.](#)

**See Annex 3 - UK Crowdfunding activity continues with government investing and tax incentives.**

#### Canada is falling behind in capital raising and scaling up

Comparing alternative finance market volume between Canada, US and UK clearly shows a disproportionate gap with Canada underperforming:

Country	Volume (US\$)
United States	\$34.5 Billion (2016)
United Kingdom	\$5.11 Billion (2015)
Canada	\$0.33 Billion (2016)

#### Impact on start-ups and SMEs:

2016: U.S. raised \$8.8B for 143,344 businesses (average raise \$61.4K)

2016: CA raised \$0.17B (1.93% of US) for 7,450 businesses (average raise \$23.1K).

Source: Cambridge-Chicago-KPMG reports: [Americas | United Kingdom](#)

#### New Reg CF (Title III) research from Crowdfund Capital Advisors shows

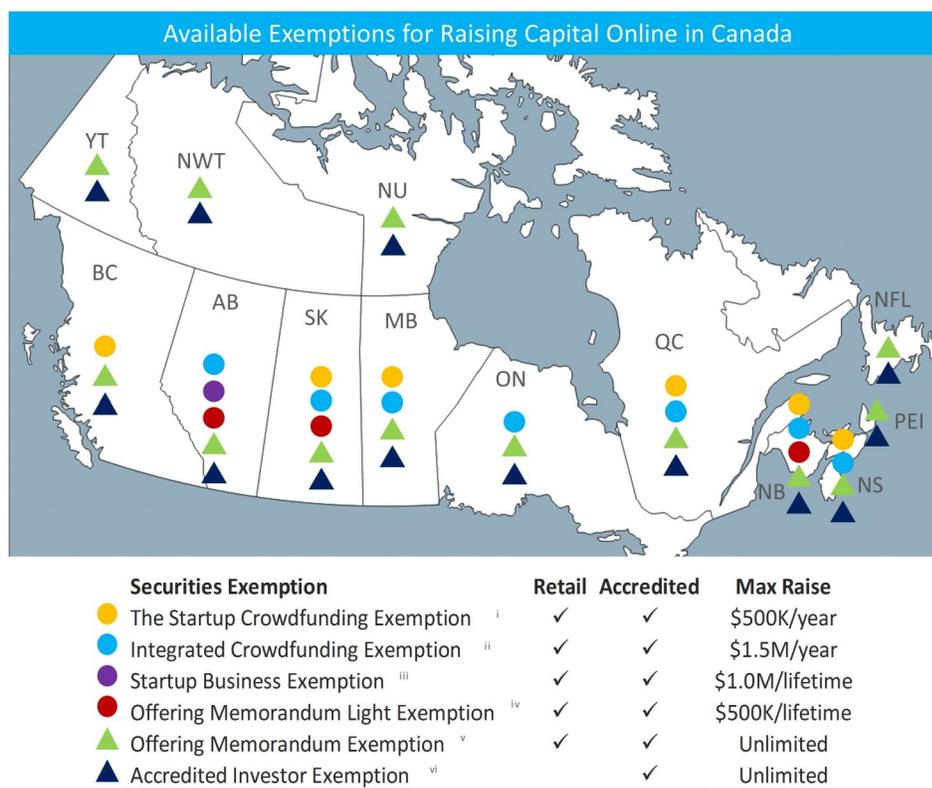
Growing interest to fund a wide range of quality deals providing an economic boost in local communities and opportunities for start-ups and scale-ups of all backgrounds (diversity):

- Of 399 offerings, 139 companies raised US\$37 million seed funding, which created 1397 jobs for the new economy (growing 15% per month).
- Total investors 37,396 (46.5K have opened accounts)
- Average funded campaign size \$301,930 (Average check size \$994);
- Average valuation of companies \$10.7 million
- Number of industries/sectors represented (funded) 75 (34)
- Number of states represented (funded) 44 (27)
- Average jobs created per successfully funded campaign = 2.7

Further, in the U.S. there is an ongoing effort to fix bugs and strengthen regulatory actions with a focus on protecting investors and providing improved opportunities for smaller investors to generate wealth. For instance, the “H.R. 4855 Bill [“Fix Crowdfunding Act” passed by the house on July 6<sup>th</sup>, 2016.](#) [Alixé Cormick to provide additional information.]

“The newly appointed SEC Chair, Jay Clayton has been chosen by the President to have an agenda with a threefold mission to protect investors and maintain fair and orderly markets and to [also promote capital formation.](#)” said [Commissioner Michael Piwowar, Acting Chair of the SEC in a recent interview.](#)

## Annex 1: Comparison of overly complex Crowdfunding regulations in Canada as of Feb 2016 - for illustration only needs updating



EQUITY CROWDFUNDING IN CANADA TODAY (February 2016)						
	Available Now					Pending
<b>Securities Exemption Relied On</b>	Accredited Investor Exemption[1]	Offering Memorandum Exemption[2]	Offering Memorandum Light Exemption[3]	Start-Up Crowdfunding Exemption[4]	Integrated Crowdfunding Exemption[5]	AB/NU Start-Up Business Exemption[6]
<b>Jurisdictions</b>	BC, AB, SK, MB, ON, QU, NB, NS, NFL, PEI, NU, YK, NWT	BC, AB, SK, MB, ON, QU, NB, NS, NFL, PEI, NU, YK, NWT	AB, SK	BC, SK, MB, QU, NB, NS	MB, ON, QU, NB, NS Pending: SK	AB, NU
<b>Offering Limit</b>	Unlimited.	Unlimited.	\$500,000 cap every 12-month period.	\$250,000 cap per offering  \$500,000 aggregate cap every 12-month period.  Limit of two offerings using exemption per 12 month period	\$1,500,000 cap every 12-month period.	\$1,000,000 lifetime cap.
<b>Type of Securities</b>	All.	All but securitized products and in AB,	All but derivative type securities.	All but derivative type securities.	All but derivative type securities.	All but derivative type securities.

		SK, ON, QU, NB and NS [8] specified derivatives and structured finance products.				
<b>Issuer Restrictions</b>	None. Available to reporting and non-reporting issuers involved in all business sectors.	Available to reporting and non-reporting issuers involved in all business sectors, except not available to investment funds in AB, NS, SK, NB, ON and QU [8], unless if offering is in AB, NS, SK issuer is a non-redeemable investment fund or mutual fund that is a reporting issuer.	Not available if a reporting issuer, investment fund, mortgage investment entity or an issuer engaged in the real estate business.	Not available if a reporting issuer or investment fund. Head office must be resident in a participating jurisdiction.	Available to reporting and non-reporting issuers involved in all business sectors except investment funds. Must be incorporated or organized under the laws of a jurisdiction in Canada and have head office in Canada.	Not available if a reporting issuer or investment fund. Head office must be resident in a AB or NU or in participating jurisdiction of the Start-up Crowdfunding Exemption.
<b>Investor Restrictions</b>	Must be an accredited investor based on annual income (\$200,000 individually or \$300,000 with spouse) or net financial assets (\$1 million excluding home) or net assets (\$5 million). No limits on investment amount.	If investing \$10,000 or more and from MB, PEI, NU, YK or NWT, must be an eligible investor based on annual income (\$75,000 individually or \$125,000 with spouse) or net assets (\$400,000), or a close friend, family or business associate, or accredited investor, or have obtained the advice from an eligible adviser on suitability. Eligible investors resident in AB, NB, NS, ON, QU and SK [8] have a 12 month investment cap of \$30,000 unless investor receives suitability advice from registered dealer than cap of \$100,000 for all distributions under exemption in 12 month period.	12 month investment cap of \$2,000 in all securities of issuer group. No 12 month investment cap for all distributions under exemptions.	Must be resident in one of the participating jurisdictions and over the age of 18. 12-month investment cap of \$1,500 per distribution by an investor.	Must be resident in one of the participating jurisdictions. 12-month investment cap of \$2,500 per distribution and \$10,000 for all distributions under exemption, unless an accredited investor who is not a permitted client, than \$25,000 per distribution and \$50,000 for all distributions under exemption, issuers. No cap for permitted clients.	Must be resident in AB or NU or in participating jurisdiction of the Start-up Crowdfunding Exemption. 12-month investment cap of \$1,500 per investment or \$3,000 per issuer group unless investor receives suitability advice from registered dealer than cap of \$5,000 per investment or \$10,000 per issuer group.
<b>Financial Statements</b>	Optional.	IFRS audited.	PE-GAAP unaudited.	Optional. If included may be audited or un-	IFRS audited if amount raised under all prospectus ex-	Optional. If included may be audited or unaudited

				audited and use either IFRS or PE-GAAP.	emptions \$750,000 or more or issuer is a reporting issuer. Unaudited IFRS financial statements with review report if non-reporting issuer and amount raised under all prospectus exemptions is more than \$250,000 and less than \$750,000. Unaudited financial statements if a non-reporting issuer and amount raised from all prospectus exemptions is under \$250,000.	and use either IFRS or PE-GAAP.
<b>Document Requirements</b>	Subscription Agreement , Investor Questionnaire and <a href="#">Form 45-106F9 Form for Individual Accredited Investor.</a>	Offering memorandum in prescribed form ( <a href="#">Form 45-106F2 for Non-Qualifying Issuers;</a> or <a href="#">Form 45-106F3 for Qualifying Issuers</a> ); subscription agreement and <a href="#">Form 45-106F4 – Risk Acknowledgement.</a>	Offering memorandum in prescribed form (Form 45-106F2 <a href="#">for Non-Qualifying Issuers;</a> subscription agreement and <a href="#">Form 45-106F4 – Risk Acknowledgement.</a>	Offering document prescribed form: <a href="#">Form 1 - Start-up Crowdfunding - Offering Document;</a> subscription agreement and <a href="#">Form 2 Start-up Crowdfunding Risk Acknowledgement.</a>	Offering document prescribed form: <a href="#">Form 45-108F1 Crowdfunding Offering Document;</a> subscription agreement, <a href="#">Form 45-108F2 Risk Acknowledgement ;</a> and <a href="#">Form 45-108F3 Confirmation of Investment Limits.</a>	Offering document prescribed form: <a href="#">Form 1 - Start-up Crowdfunding - Offering Document;</a> subscription agreement and <a href="#">Form 2 Start-up Crowdfunding Risk Acknowledgement..</a>
<b>Statutory or Contractual Right of Action</b>	None.	Two-day right of withdrawal. <a href="#">[7]</a> Statutory or contractual right of action for rescission or damages if misrepresentation in offering memorandum.	Two-day right of withdrawal. Statutory right of action against issuer if misrepresentation in offering document.	None. 48 hour right of withdrawal after subscription and after notification of a material amendment to the offering.	None. 48 hour right of withdrawal after subscription and after notification of a material amendment to the offering. Contractual right of action against reporting issuer if misrepresentation in offering document. Statutory right of action against private issuer if misrepresentation in offering document.	Two-day right of withdrawal. Statutory right of action against issuer if misrepresentation in offering document. 48 hour right of withdrawal after subscription and after notification of a material amendment to the offering.
<b>Post Offering Requirements</b>	File <a href="#">Form 45-106F1 (Form 45-106F6</a> in BC) within 10 days of closing offering. No annual report or other continuous disclosure re-	File <a href="#">Form 45-106F1 (Form 45-106F6</a> in BC) and offering memorandum within 10 days of closing offering. If a mining company must also	File <a href="#">Form 45-106F1</a> and offering memorandum within 10 days of closing offering. If a mining company must also file a <a href="#">Form 43-101</a>	File <a href="#">Form 45-106F1 (Form 45-106F6</a> in BC) and offering document within 30 days of closing offering.	File <a href="#">Form 45-106F1</a> and offering document within 10 days of closing offering. Subject to continuous disclosure requirements: (1) an-	File <a href="#">Form 45-106F1 (Form 45-106F6</a> in BC) and offering document within 30 days of closing offering.

	quirements because of offering.	file a <b>Form 43-101 Technical Report</b> . If an oil and gas company must also file a <b>Form 51-101F1</b> or <b>Form 51-101F2</b> statement or report. If offering made in AB, SK, ON, QU, NB, or NS <sup>[8]</sup> subject to continuous disclosure requirements: (1) annual audited financial statements within 120 days from fiscal year end; (2) annual disclosure of use of proceeds; (3) material change like reports in NB, NS and ON; and (4) deemed to be a market participant in ON and NB subject to record-keeping requirements and compliance review.	<b>Technical Report</b> . If an oil and gas company must also file a <b>Form 51-101F1</b> or <b>Form 51-101F2</b> statement or report. No annual report or other continuous disclosure requirements as a result of offering. Not clear if on April 30, 2016, issuers will be subject to continuous disclosure requirements,		nual financial statements within 120 days from fiscal year end review report or auditor's report if amount raised under exemption is \$250,000 or more but less than \$750,000 and audited report if amount raised is more than \$750,000; (2) annual disclosure of use of proceeds; (3) material change like reports in NB, NS and ON; and (4) must maintain books and records available for inspection by investors and ON and NB regulators.	
<b>Portal Requirements</b>	Direct sales by issuer on their website or offline, or portal operator needs to be registered as an exempt market dealer, investment dealer or a restricted market dealer.	Direct sales by issuer on their website or offline, or portal operator needs to be registered as an exempt market dealer, investment dealer or a restricted market dealer	Direct sales by issuer on their website or offline, or portal operator needs to be registered as an exempt market dealer, investment dealer or a restricted market dealer	Portal operator must provide 30 days <a href="#">advance notice of intent to act as a Start-up Crowdfunding portal</a> . Cannot be related to an issuer of securities on portal.  OR:  Registered as an exempt market dealer, investment dealer or a restricted market dealer. <b>[9]</b>	Portal operator needs to be registered as an exempt market dealer, investment dealer or a restricted market dealer	Direct sales by issuer on their website or offline, or portal operator needs to be registered as an exempt market dealer, investment dealer or a restricted market dealer.
<b>Advantages</b>	(1) No limit to offering size; (2) Available across Canada; (3) No financial statements	(1) No limit to offering size; (2) Available across Canada; (3) Available to all issuers	(1) Can sell to anyone resident in AB and SK; (2) Un-audited financial statement prepared	(1) Can sell to anyone in participating jurisdictions; (2) Limited offering document obliga-	(1) Can sell to anyone in participating jurisdictions; (2) Limited offering document obliga-	(1) Can sell to anyone in participating jurisdictions; (2) Limited offering document obliga-

	<p>requirement; (4) No offering document obligation; (5) Available to all issuers; (6) No annual report or other continuous disclosure requirements as a result of offering; (7) All types of securities may be sold; and (8) No statutory or contractual right of action.</p>	<p>but investment funds in certain jurisdictions; (4) No annual report or other continuous disclosure requirements because of offering in BC, MB, PEI, NFL, NU, YK and NWT ; and (5) All types of securities may be sold other than securitized products and in AB, SK, ON, QU, NB and NS<sup>[8]</sup> specified derivatives and structured finance products.</p>	<p>using PE-GAAP allowed; and (3) No annual report or other continuous disclosure requirements as a result of offering.</p>	<p>tion; (3) No financial statement requirement; (4) No annual report or other continuous disclosure requirements as a result of offering; and (5) No statutory or contractual right of action.</p>	<p>tion; and (3) Un-audited financial statements allowed if non-reporting issuer and total amount raised under all prospectus exemptions to date less than \$750,000 (audit review letter required if amount raised is more than \$250,000).</p>	<p>tion; (3) No financial statement requirement; and (4) No annual report or other continuous disclosure requirements as a result of offering.</p>
<b>Disadvantages</b>	<p>(1) Accredited investors only; and (2) Must confirm accredited investor status.</p>	<p>(1) Rule is complicated; (2) Requires IFRS audited financial statements; (3) Must provide detailed offering memorandum; (4) Not available to investment funds in AB, NS, SK, NB, ON and QU<sup>[8]</sup>, unless if offering is in AB, NS, SK issuer is a non-redeemable investment fund or mutual fund that is a reporting issuer; (5) \$10,000 investment limit per 12 month period by investors in MB, PEI, NU, YK or NWT unless accredited investors, friends, family or business associate, or receives suitability advice from eligibility advisor. \$30,000 investment limit per 12 month period by investors in AB, NB, NS, ON, QU or SK unless eligible investor obtains suitability advice than \$100,000</p>	<p>(1) Offering size limited to \$500,000 every 12 month period; (2) Must provide detailed offering memorandum; (3) Only available in AB and SK; (4) Not available if a reporting issuer, investment fund, mortgage investment entity or an issuer engaged in real estate as a business; (5) No derivative type securities allowed; (6) 12 month investment cap of \$2,000 in all securities of issuer group; and (7) Statutory or contractual right of action attached.</p>	<p>(1) Offering size limited to \$250,000 per offering to a maximum of \$500,000 in two offerings every 12 month period; (2) Only available to participating jurisdiction resident issuers and investors; (3) Not available if a reporting issuer or investment fund; (4) No derivative type securities allowed; and (5) Offering must be made through a funding portal.</p>	<p>(1) Offering size limited to maximum of \$1,500,000 every 12 month period; (2) Only available to participating jurisdiction resident issuers and investors; (3) Not available if an investment fund; (4) No derivative type securities allowed; (5) Offering must be made through a funding portal; (6) 12-month investment cap of \$2,500 per distribution and \$10,000 for all distributions under exemption, unless an accredited investor who is not a permitted client, than \$25,000 per distribution and \$50,000 for all distributions under exemption; and (7) Statutory right of action attached.</p>	<p>(1) Offering lifetime limit of \$1,000,000; (2) Only available to issuers and investors in AB, NU and in participating jurisdictions of the Start-up Crowdfunding Exemption; (3) Not available if a reporting issuer or investment fund; and (4) No derivative type securities allowed.</p>

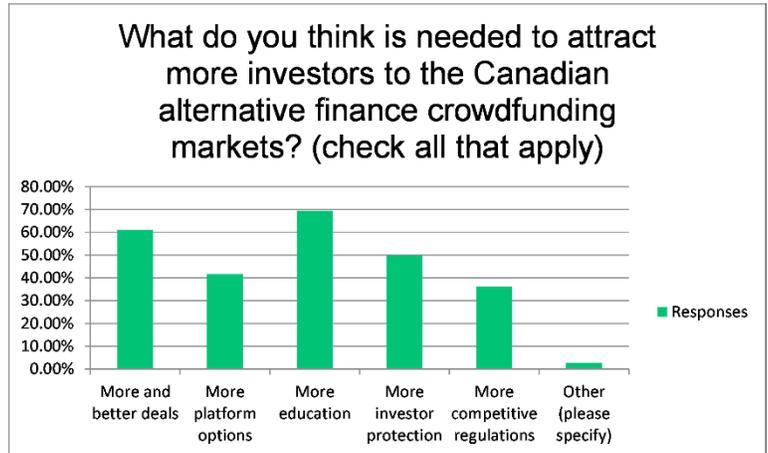
		cap for all investments under exemption in 12 month period; (6) Statutory or contractual right of action attached; (7) Continuous disclosure requirements including audited financial statements indefinitely if offering securities in AB, NB, NS, ON, QU or SK.				
<b>Active Portal Examples</b>	<b>Exempt Market Dealer:</b> <a href="#">FrontFundr</a> (AB, BC, MB, SK, QU, MB, NS, NB); <a href="#">NexusCrowd</a> (AB, BC, ON); <a href="#">Optimize Capital Markets</a> (AB, BC, MB, QU) <a href="#">InvestX</a> (AB, BC, ON, QU)  <b>Restricted Market Dealer:</b> <a href="#">Social Venture Connexion/MaRs SVX</a> (ON, QU)	<b>Exempt Market Dealer:</b> <a href="#">FrontFundr</a> (AB, BC, MB, SK, QU, MB, NS, NB)  <b>Exempt Market Dealers Through Registered 3rd Party:</b> <a href="#">SeedUps Canada</a> (AB, BC, ON, QU via <a href="#">Waverley</a> )	<b>Exempt Market Dealer:</b> <a href="#">FrontFundr</a> (AB, BC, MB, SK, QU, MB, NS, NB)  <b>Exempt Market Dealers Through Registered 3rd Party:</b> <a href="#">SeedUps Canada</a> (AB, BC, ON, QU via <a href="#">Waverley</a> )	<b>Exempt Market Dealer:</b> <a href="#">FrontFundr</a> (BC, SK, QU, MB, NS, NB)  <b>Start-up Crowdfunding Portals:</b> <a href="#">GoTroo</a> (BC, QU, NS, NB); <a href="#">InvestLocal</a> (BC); <a href="#">SmallStarter</a> (BC, SK, MB, QU, NS, NB); <a href="#">StellaNova</a> (QU, NS, NB); <a href="#">Vested</a> (BC)	No Portals.	No Portals.

## Annex 2: NCFA Annual Industry Survey Results (Jun-Jul, 2017)

Below are select charts and responses from the recent NCFA annual survey data collection that was administered Jun-Jul 2017. The full results will be published, and made widely available, in the 2017 Alternative Finance Crowdfunding industry report in Q4, 2017.

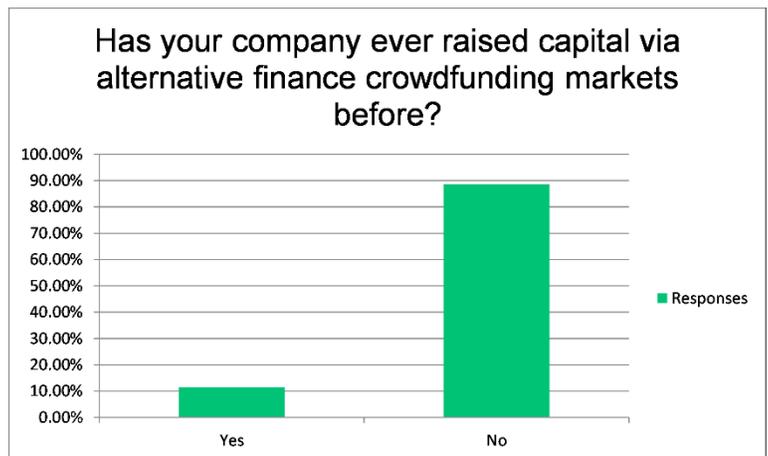
When asked ‘**What do you think is needed to attract more investors to the Canadian alternative finance crowdfunding markets?**’

**A:** 70% of the responders and the number one answer was “More education”



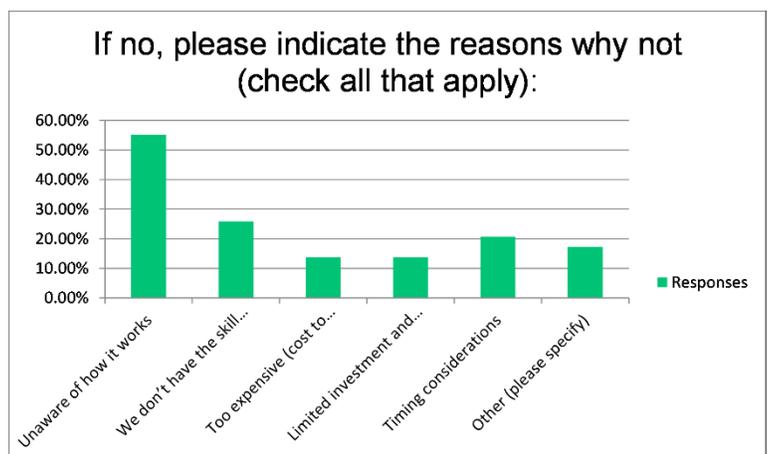
When asking issuers “**Has your company ever raised capital via alternative finance crowdfunding markets before?**”

**A:** the overwhelming majority (approximately 90%) had responded ‘No’.



The when asking the same responders **why not**, they expressed the number one reason

**A:** Over 55% of responders said that they were ‘Unaware of how it works’



### **Annex 3 - UK Crowdfunding activity continues with government investing and tax incentives**

- Even in a competitive post-Brexit market, crowdfunding continues to help a wide range of businesses from restaurants to cleantech projects [Examples](#)
- 2017 [Beauhurst](#) research highlights top 3 providers of equity investment in the UK for small rounds between £250K - £2M are equity crowdfunding platforms (Crowdcube, Seedrs, and SyndicateRoom). This level of funding is crucial to ensure startups have the financial support to scale beyond small seed investments.
- 2017 [Small Business Equity Tracker](#) (British Business Bank) confirms “Crowdfunding remains an important source of funding for early stage companies forming 25% of all announced equity deals in 2016. Crowdfunding platforms were the most prevalent investor at the seed-stage in 2016 a similar position to 2015), with crowdfunding platforms involved in 192 deals compared to 132 for PE/VC funds.” (page 5)
- State-owned British Business Bank (BBB) [has invested £85 million of taxpayer money directly in the peer-to-peer \(P2P\) lending sector.](#)
- UK government tax incentives including income tax relief, capital gains tax exemption, loss relief, and capital gains tax deferral relief. Usage example: approx.. 80% of deals on a leading equity platform, Seedrs, fall under the [Enterprise Investment Scheme \(EIS\) and Seed Enterprise Investment Scheme \(SEIS\)](#)
- UK has great research and innovation support through FCAs Project Innovate ([Podcast Mar 2017](#))]