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Capital Markets Modernization Taskforce  
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**Subject: Consultation – Modernizing Ontario’s Capital Markets**

Dear colleagues and distinguished members of the Taskforce:

**Joint goals.** As a not-for-profit association<sup>1</sup> representing over 3,500 members in the FinTech and crowd-funding space throughout Canada, the NCFA applauds the Taskforce’s proposals to modernize Ontario’s capital markets, many of which also support the NCFA’s mission to promote a vibrant and innovative FinTech and funding industry in Canada.

**NCFA’s high-level position(s).** The NCFA is pleased to provide its input on the following:

(i) Governance reform

The NCFA agrees with the Taskforce that Ontario Securities Commission (“OSC”) and IIROC governance should be reformed. Without it, Canada can never be a leading regulator of capital markets; with it, capital markets regulators in Canada can contribute more positively to economic prosperity.

(ii) Regulatory approach

The OSC must be transformed into a more cost-effective, risk based, and outcomes focused regulator with three (equal) high level objectives, namely: (1) consumers are treated fairly; (2) market integrity; and (3) promoting competition. With a change in culture and approach, over time, the NCFA believes that much regulatory burden<sup>2</sup> (shown not to be justified under a more outcomes focused regime) would melt away, and the OSC would more proactively support the economy and innovation. The NCFA very much supports a competition objective, as well as a closer relationship between the OSC and the Competition Bureau. The NCFA also agrees with the sandbox proposals and notes the recent UK FCA announcement of the *Digital sandbox pilot: DataSprint*.<sup>3</sup>

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<sup>1</sup> See: <https://ncfacanada.org/about-us/>.

<sup>2</sup> See the NCFA’s prior submission (March 1, 2019) to the OSC on regulatory burden, available at <https://ncfacanada.org/march-1-2019-ncfa-submission-to-the-ontario-securities-commission-on-regulatory-burden/>.

<sup>3</sup> See: <https://www.fca.org.uk/firms/innovation/digital-sandbox-pilot-datasprint>.

Indeed, a change in regulatory approach and culture at the OSC would make it easier for the NCFA to support the Cooperative Capital Markets Regulatory (“CCMR”) system. The NCFA also supports moving towards open data and open finance<sup>4</sup> in conjunction with modernized and enhanced data protection and privacy standards as, example, those set forth in Europe (e.g., GDPR, PSD2), the UK and/or Australia.<sup>5</sup>

Though, after a lengthy consultation on cross-border data transfers, the Office of the Privacy Commissioner of Canada concluded “[...] that its guidelines for processing personal data across borders will remain unchanged under the current law”<sup>6</sup> and “[...] will now focus its efforts on how a reformed law can best protect Canadians’ privacy rights when their information is transferred between organizations”<sup>7</sup>. The NCFA believes that the foregoing foreign legislation will provide meaningful insight for better data rights, which are key for a successful open banking framework.

The NCFA strongly believes that open finance will bring more competition and innovation, including intellectual property<sup>8</sup>, to financial services and products. It will increase competitor offerings and give consumers more choice and control over their data and financial history.

The NCFA supports the collaborative efforts of the CSA with respect to the adoption of a passport system<sup>9</sup> and, with a change in regulatory culture, supports a national securities regulator.

Further information regarding the need for regulatory change can be found on the NCFA’s website.<sup>10, 11, 12</sup>

### (iii) Change management at the OSC

Changing the culture and approach at the OSC would require enormous commitment from the Premier and Cabinet, senior officials in relevant Ministries, and a new OSC Chair and CEO (selected in large part for their change management skills). As the experience in the UK shows, that commitment must be unrelenting, senior managers at the OSC must be constantly ‘on-message’, staff must be trained and properly supported,

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<sup>4</sup> The UK FCA has recently published a Call for Input with respect to open finance, available at: <https://www.fca.org.uk/publications/calls-input/call-input-open-finance>.

<sup>5</sup> See: <https://www.accenture.com/ acnmedia/PDF-102/Accenture-Unlocking-Value-Consumer-Data-Rights-Rules.pdf>;

<sup>6</sup> See: [https://www.priv.gc.ca/en/opc-news/news-and-announcements/2019/an\\_190923/](https://www.priv.gc.ca/en/opc-news/news-and-announcements/2019/an_190923/).

<sup>7</sup> *id.*

<sup>8</sup> See: *Report: Intellectual Property in Ontario’s Innovation Ecosystem Expert Panel on Intellectual Property*: <https://www.ontario.ca/document/report-intellectual-property-in-ontarios-innovation-ecosystem> (February 2020).

<sup>9</sup> See the CSA’s’ Comments on the Ontario Capital Markets Modernization Taskforce Report (September 3, 2020): <https://www.securities-administrators.ca/uploadedFiles/RELEModernizationTaskforceReport.pdf>.

<sup>10</sup> See: <https://ncfacanada.org/advocacy/>.

<sup>11</sup> See: <https://1hvtld3evinm3tpd022grx7s-wpengine.netdna-ssl.com/wp-content/uploads/2020/04/NCFA-COVID-19-Government-should-Collaborate-with-Fintechs-CSA.pdf> (NCFA’s open letter of April 15, 2020 to the CSA). In this submission, the NCFA proposed a two-pronged capital raise funding program to improve access to capital for earlier stage companies.

<sup>12</sup> See: <https://ncfacanada.org/ncfa-canadas-submission-finance-canada-march-2018-urgent-need-regulatory-change-government-support/> (Finance Canada, March 2018). In this submission, the NCFA argued that there is an urgent need for regulatory change, outlining the following challenges:

1. Investment-based crowdfunding requirements are far from internationally competitive with respect to raising non-bank funding;
2. Regulatory requirements are overly prescriptive with a one size fits all approach (versus principles- and risk-based) that is not working well;
3. Regulatory regimes in Canada are not sufficiently harmonized and are overly complex which adds significantly to the costs of start-up and ongoing compliance; and
4. Lack of co-ordinated governmental incentives and support for innovation and for education and awareness puts Canada at a disadvantage that our competitors are happy to exploit.

and communication with the industry and other stakeholders must be clear, consistent, and persuasive. A wider range of skills at the regulators is also needed (e.g., economists, risk experts).

Also essential is a Government strategy for innovation that connects Government legislation and support (e.g., accelerators, loans, and grants) with relevant regulators (including the OSC), and with other relevant provincial, federal, and overseas bodies.

(iv) Level playing field

The NCFA believes that the best starting point for a level playing field is principles-based regulation. More constraining detail or prescription should be imposed on firms only where clearly justified (the onus being on the regulator). Principles based regulation allows firms to comply and to meet desired regulatory outcomes in the way that best suits their businesses. Enhancing investor protection does not require layers of prescriptive requirements. Quite the opposite, the approach of the UK FCA illustrates this very well - keeping in mind that some prescriptive requirements in the UK were required by European Union laws. In the longer term, unjustified prescriptive burden harms the market and consumers.

(v) Regulatory burden

While the NCFA generally agrees with the proposals on burden in section 2.2 of the Consultation Report, it submits that:

- (a) The proposals on accredited investor(s) are too restrictive.<sup>13</sup> “Experience” (to support accreditation) should include, for example: (i) legal/accounting/actuarial practice in the financial services sector, (ii) work as staff in a regulator, or (iii) university/college lecturer on financial services. Investors should be able to self-certify as accredited with appropriate back-up provided in the certificate.
- (b) Less burdensome harmonized crowdfunding exemptions are required to support capital raising for start-ups.<sup>14</sup> We lag far behind jurisdictions such as the UK and US, among others.

The onus should always be on the regulator to show, with hard evidence and CBA, that burdens and restrictions are justified.

(vi) Separate tribunal

The NCFA does not think that separation of the supervision/staff from the adjudicative function is essential, but given the size of the OSC and the Ontario market, as well as the perceptions of bias, it should probably be done now, and could be done by adding the function to the Financial Services Tribunal. Funds acquired as a result of fines or disgorgement could be devoted to education or to compensation of harmed consumers/investors.

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<sup>13</sup> See, for example: <https://1hvtld3evinm3tpd022grx7s-wpengine.netdna-ssl.com/wp-content/uploads/2019/09/NCFA-Submission-ASC-Consultation-11-701-Energizing-Albertas-capital-markets.pdf>, regarding the expanded definition of “Accredited Investor”.

<sup>14</sup> Although the CSA is harmonizing the startup exemption, there are improvements that NCFA is recommending to be more competitive and in line with international comparators, available at: <https://ncfacanada.org/ncfa-submission-to-csa-on-ni-45-110-startup-crowdfunding-harmonization-rules/>.

(vii) Ombudsman

Giving the Ombudsman for Banking Services and Investments the power to issue binding decisions and to order a registered firm (or individuals) to pay compensation is long overdue. Consumer protection in the UK is significantly enhanced by a very effective Ombudsman.<sup>15</sup>

**Supporting innovation: a pathway to success and seizing opportunity**

We need to get this right. With the pandemic, incoming OSC Chair, and ample evidence that our regulatory environment is lagging behind, without significant changes we'll end up with a similar result. As we have recommended in the past (see footnotes)<sup>16</sup> we must:

- (i) Improve access to capital for startups and entrepreneurs as follows:
  - (a) Issuer caps should be increased to \$5 million Canadian dollars, to fall into line with foreign jurisdictions, and allow a broader range of companies to participate. For example:
    - In the United States, companies can raise US\$5M under RegCF<sup>17</sup>;
    - In Australia, companies can raise A\$5M<sup>18</sup>; and
    - In Germany, companies can raise €8M<sup>19</sup>.
  - (b) Allow qualified accredited investors to participate fully without caps;
  - (c) Establish a regulatory regime that recognizes and accepts that the activities of P2P lenders (and simple loan agreements) are inherently different from equity investments and should be regulated differently; and
  - (d) Capital raise readiness reimbursement and matching investment program for qualified companies and investors raising capital via crowdfunding platforms.
- (ii) Improve data collection and analysis and reporting transparency.

The lack of basic data collection is a recurring theme that requires a solution. The NCFA is willing to collaborate with any government body to help develop and provide a solution.

- (iii) Provide more support and funding for educational initiatives with industry so as to build credibility and investor confidence in a more digital world.

In addition, the NCFA believes that a Canada-wide technology innovation sandbox that fully integrates all provincial regulators should be a priority and that the innovation sandbox should have clear end-to-end processes and visible metrics for the streamlined onboarding and graduation of fintech innovators in the

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<sup>15</sup> See: <https://www.financial-ombudsman.org.uk/>.

<sup>16</sup> See: <https://ncfacanada.org/advocacy/>

<sup>17</sup> See the US SEC's press release of March 4, 2020 ("SEC Proposes Rule Changes to Harmonize, Simplify and Improve the Exempt Offering Framework"), at: <https://www.sec.gov/news/press-release/2020-55>.

<sup>18</sup> See: <https://ncfacanada.org/5-million-equity-crowdfunding-extended-to-private-companies/>.

<sup>19</sup> See: <https://www.crowdfundinsider.com/2018/07/135781-uk-government-ups-crowdfunding-without-prospectus-to-e8-million-matching-germany/>.

innovation sandbox. Cooperation with regulators in the UK and Singapore is critical for our startups to have clear paths to going global from Canada.

**Conclusion.** Given today's environment and governmental initiatives to foster and promote innovation, the NCFA believes that the success of the Taskforce's efforts in, for example, enabling greater access to capital for Canadian start-ups and entrepreneurs are key to:

- sparking Canada's leadership and presence in the global FinTech space, especially when foreign regulators, such as the UK FCA, MAS<sup>20</sup>, and FINMA<sup>21</sup>, have already adopted friendly regulatory environments and have captured a significant portion of the FinTech innovation space<sup>22</sup>; and
- becoming more: (i) *competitive* in the global capital markets, (ii) *innovative*, and (iii) *adaptive* to new technologies (or technological advancements).

In other words, the Minister of Finance, as well as Canadian securities regulators, including the OSC and the CSA, must act now. Time is of the essence, as Canada cannot continuously fall behind international trends and markets (at multiple levels).

The NCFA hopes that its comments and publications are of value to the Taskforce. The NCFA is ready to engage with the Taskforce to provide further insight and any additional information.

Best Regards,



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**NCFA Canada**  
Craig Asano, Founder and CEO

This submission is informed by a wide range of voices from within NCFA and its Advisory Group, including content from [Craig Asano](#) (Founding CEO of the NCFA), [Richard Remillard](#) (RCG Group), [Robin Ford](#) (Robin Ford Consulting), and [M<sup>c</sup> David Durand](#) (Durand Lawyers) and [Michelle Beyo](#) (Finavator), [Alan Wunsche](#) (Tokenfunder) as well as the NCFA's industry partners and affiliates in the aggregate.

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<sup>20</sup> See: <https://www.mas.gov.sg/development/fintech>.

<sup>21</sup> See: <https://www.finma.ch/en/authorisation/fintech/fintech-bewilligung/>.

<sup>22</sup> See: <https://www.fintechweekly.com/magazine/articles/top-5-countries-leading-in-fintech-innovation> (published February 5, 2020); and <https://www.bbva.com/en/countries-leading-fintech-regulation/> (BBVA).