Appendix A

Summary of Comments and Responses on Saskatchewan Equity Crowdfunding Exemption

# of Comments Received	Comment	FCAA Response
	General:	
2	Equity crowdfunding fills a gap in the capital-raising arena by providing start-up and small businesses in Saskatchewan with another option to obtain funding;	Agreed
1	Strict monitoring and enforcement will be important to ensure the conditions of the proposed crowdfunding exemption do not favour small issuers over investor protection and transparency in the capital markets;	We are committed to balancing our mandate of investor protection while also providing options to businesses for efficient and cost-effective ways to raise capital.
2	Crowdfunding exemptions should be harmonized across other Canadian jurisdictions;	We continue to support and work for harmonization of securities legislation.
1	Clarify that the crowdfunding exemption can be used with other exemptions;	Clarification will be made.
1	It might be useful to know more detail on the type of fundraising the exemption is intended to encourage;	We hope that the exemption will support capital raising by start-up and small businesses.
4	Concerns about the combination of unsophisticated issuers, unsophisticated investors and unregistered portals and the effect that a failure of this exemption could have on the exempt market;	We are of the view that the exemption contains sufficient protection for investors, without any adverse effect on the exempt market.
4	Concerns about the potential for fraud and how this will be monitored, detected and mitigated;	The exemption and related forms contains various conditions that are meant to mitigate risk. We will conduct various activities aimed at monitoring and detecting fraud.
1	A 3 year trial period is sufficient time to work through any implementation challenges while giving pilot participants a fair chance to develop operating models and recoup their pilot investments;	Agreed.

	Offering:	
1	Implement a cumulative cap on how much money an issuer can raise under the crowdfunding exemption, forcing the issuer to eventually utilize other exemptions or a prospectus offering;	The exemption is designed to be available for early stage capital formation. We expect if an issuer sees growth in its business, it will naturally through market factors (for example the need to raise larger capital amounts or the need to provide liquidity for its investors), be forced to move on to other types of offerings, without the need for a cumulative cap. Also this exemption is currently only available for a 3 year period.
1	In place of the current issuer cap of 2@$150,000/year, consider a single annual offering size cap. Very few issuers will conduct more than one offering in a 12 month period under this exemption;	We feel the current structure is appropriate for early stage capital formation.
2	The issuer cap per offering is low and may have a detrimental effect on gaining investor interest. Pending success of the model, the minimum should be re-evaluated in the future. Consider an annual offering cap of $1 million;	We believe the current issuer cap offering is appropriate for early stage capital formation, but will revisit the issue once the exemption has been in operation. The exemption is set for review at the end of three years.
3	Clarify that funds must be held by a lawyer or third party escrow agent pending confirmation that the minimum amount has been raised;	Clarification will be made.
3	Consider a maximum amount any one person can invest in multiple issuers in any given year or a maximum based on a person's net worth or annual income;	We have not seen evidence to date that this has been a problem with non equity crowdfunding but we will address the issue in the information guide for investors we will be publishing with the exemption.
1	The investor cap is too low – consider a cap of $5000 per investor per offering rather than $1500;	We believe $1500 is the right number to limit risk to investors for this exemption. Contributions by individuals in non equity crowdfunding have not generally exceeded this amount per individual.

2	Investors should have to certify they have not exceeded their investment limit in the offering (through the use of nominees, etc.)	We do not believe this is necessary for this exemption.
	Investors should authorize the collection and use of personal information.	We think we have appropriately addressed this in our forms for this exemption.
1	Investment limits are not adequate measures to reduce the risk of abuse and fraud because they will be difficult to monitor and enforce and will not be followed by fraudsters;	We believe we have achieved the appropriate balance between investor protection and capital formation in this exemption.
1	Investors should be given anti-dilution protection, tag-along rights and pre-emptive rights;	We do not believe these are necessary for this exemption.
1	Consider a two day cooling off period from the date of the investment where investors can withdraw, subject to applicable withdrawal fees;	We do not believe this is necessary for this exemption.
1	Individual claims or disputes would not warrant independent legal action, so consider requiring disputes to be settled by arbitration, individually or as a class;	We do not believe this is necessary for this exemption.
1	In order to mitigate against the risk of illiquid securities being issued under the crowdfunding exemption, crowdfunded securities should be eligible for second market trading after a predefined period;	We do not believe this is possible as the issuer will not be continuously providing information to the market place. This approach is consistent with the approach taken on with other exemptions in securities legislation.
1	Clarify if some of the conditions to the exemption are monitored and checked by an automated process or does the portal conduct a physical due diligence check;	We will do some monitoring activities for this exemption. We expect portals will carry out sound business practices to meet their requirements under this exemption.
1	Are PO Boxes and virtual office addresses permitted?	They would not. We require an address (location) in Saskatchewan. This is only a base indication for us that the business in not trading outside of Saskatchewan and therefore not contrary to the securities legislation of another jurisdiction. Businesses must ensure their own compliance with the securities legislation in other jurisdictions.

1	Do issuers and investors have to be residing in Saskatchewan or only have a mailing address in Saskatchewan?	See above.
1	Although the exemption is meant to apply to businesses and investors located in Saskatchewan, the current rules only require a mailing address in Saskatchewan, which could permit businesses with head offices or substantial operations outside of Saskatchewan, making use of the exemption to sell to Saskatchewan residents.	See above.
	Disclosure:	
1	The limited amount of disclosure required by issuers may mean investors do not have sufficient information to determine the issuer's likelihood of success; however, this risk is mitigated by the low maximum investment amount.	We think the disclosure (as the requirements have now been amended) mandated is appropriate for this exemption but we note your comment of risk mitigation.
2	Issuers should be required to provide additional disclosure such as: description of the ownership and capital structure of the issuer; has the issuer previously tried to obtain financing from other sources and if denied, why; prior bankruptcy or reorganizations; total amount of investment contributed by the owners/promoters; summary of other businesses owned by the promoters and their success rates; name, business address, resume and photo of each person with signing authority over the financial accounts of the issuer; prior criminal or regulatory proceedings;	We have made some changes to the disclosure required and believe what is now mandated is appropriate for this exemption.
2	There should be ongoing financial disclosure required by the issuer to its investors;	We have not mandated reporting to investors but the information guide for business that we will be publishing with this exemption strongly suggests that it is in the best interests of businesses to address this issue. We hope this will provide flexibility to business but ensure investors are kept in the loop. We will reassess this once the exemption has been in operation.

1	Issuers should be required to update the information in the portal at least annually and should be permitted to modify the offering forms to delete information that is not relevant to their particular offering;	This exemption is for single primary offerings only and not for continuous distributions or the secondary market. Each offering will require the business to provide current information.
2	While it may be too expensive for issuers relying on this exemption to prepare financial statements, they should at least be required to comment on the financial condition of the business.	We will require some disclosure in this regard.
1	To ensure issuers have sufficient capital to sustain a business, consider requiring senior management to post collateral and/or require issuers to post a certified summary of their tax returns;	We do not believe this is necessary for this exemption.
	Portals:	
4	Portals should be registered and regulated to protect investors through oversight and compliance;	We do not believe this is necessary for this exemption given the conditions imposed on this exemption.
1	Clarify that portals can charge commissions;	Clarification will be made.
2	All relevant forms for the application should be completed online in the portal, including all information and signatures required for the application. This form would be received by the FCAA in pdf format and would be entered into a database, only requiring the issuer to enter them once;	We will work with portals to streamline the process in so far as possible.
2	Consider having the portal offer other services to the issuer such as management of minute books, capitalization tables, communications with shareholders, etc;	We have set out base requirements for portals but there is nothing stopping them from offering these types of services to businesses should they wish to.

3	Consider effective ways to quickly enforce sanctions against portals, absent registration. Some options include: record keeping requirements, segregation of investor funds at a regulated bank/trust company while an offering is open, requirements related to conflicts of interest, minimum insurance requirements to deal with loss of investor funds prior to release, portals should keep available financial information and risk factors about the issuer, compliance with anti-money laundering obligations, responsibility for mitigating risk of fraud that can be facilitated by the anonymity of the internet, portals should disclose their credit rating and financial condition; portals should conduct due diligence on the issuer and its disclosure; portals should conduct background checks;	We will enforce our requirements but we think the requirements imposed on portal by this exemption are appropriate for this exemption.
2	Portals should be required to disclose their process for allowing issuers to use their service and provide information regarding the success or failure of past issuers that have used the portal;	We expect portals will need to tell businesses how they can access their services. We are not requiring registration of portals for this exemption so we are not mandating what review of the businesses they need to carry out to allow access to the portal. We will consider the disclosure of successes and failures once the exemptions has been in operation.
1	Clarity on the definition of funding portals might be useful, i.e. can issuers sell securities directly from their website without intent to represent any other issuer's securities?	Issuers cannot sell securities under this exemption without the use of a portal to facilitate trades. Portals need to provide us with 30 days notice before they begin operations and we would allow the structure you suggest. We have also added a condition to this exemption that the portal cannot be related to the businesses making offerings through it.
2	Portals should have a legal obligation to report suspicions of fraud to the FCAA;	We have not imposed this requirement but we will encourage this practice in the information guide for portals we will be publishing with this exemption

1	Portals wishing to provide their own escrow services should be required to meet the qualifications of a compliant escrow agent;	We have clarified that a lawyer must hold the funds in trust for the investors pending closing.
2	Portals should be independent of issuers to avoid conflicts of interest where a portal may inaccurately misrepresent the true offerings of an issuer or promote securities in a biased manner;	We agreed and have it a condition of this exemption that the portal cannot be related to the businesses making offerings through it.
	Risk:	
2	Risk Warnings are insufficient. Documents should clearly state that the investment is illiquid, there are resale restrictions and that money may not be able to be taken out of the investment even in a financial emergency situation;	We think we have clarified the warnings to make this clear.
1	Risk warnings should cover the lack of continuous disclosure materials and should suggest investors consult an advisor for more information on the suitability of the investment for themselves;	We think current warning do suggest consultation with professionals. We have not mentioned continuous disclosure as the offering document requires businesses to address reporting to investors.
1	Investors should certify that they understand they may lose their entire investment and that they can bear the financial loss;	We think the current warning addresses the possible loss of the investment and do not believe a certification that the investor can bear the loss is required for this exemption.
1	Investors will not understand what is meant by the phrase explaining they do not have the same legal rights as those granted when investing through a prospectus offering. It would be helpful to explain the top 2-3 legal rights that are not available to an investor in a private placement of this nature;	We have amended the warning to suggest consultation with a professional.
1	Materials should include statistics on what percentage of small businesses fail within the first few months;	We have alluded to this in the information guide for investors we will be publishing with this exemption.
2	Statutory declarations from management/directors/promoters, portals and investors may mitigate against false or misleading representations;	We do not think this is necessary for this exemption.
2	Investors should have a statutory right of action against the issuer, its principals and the portal for misrepresentation or fraud.	We do not think this is necessary or practical given the limitations on this exemption.

1	FCAA should be entitled to conduct spot audits on issuers and portals;	We believe we have this right under our legislation.
1	Industry best practices and standards should be developed and portals should participate in educating potential investors on the risks and benefits of crowdfunding;	We do not disagree with this statement and we hope industry will develop these materials. We will encourage this where we can. We do not believe it should be a condition of this exemption. We are publishing information guides for portals, businesses and investors with this exemption that we hope will be a start of this process. We welcome any comments on them.
1	Management and directors of the issuer should be subject to restrictions or regulations from competing in the same line of business during and for a reasonable time after employment;	We do not think this is necessary for this exemption.
1	Guides should describe how communications will operate between issuers, portals and investors in circumstances where an offering is oversubscribed, cannot proceed because it does not attain the minimum amount and should address communications amongst investors through the portal;	We do not think this is necessary for this exemption. All parties will need to communicate to carry out their activities. We prefer leaving them flexibility in how this happens. If issues arise we will consider revisiting this issue then.

Comments were received from the following organizations:

- BoardSuite Corp.
- The Canadian Advocacy Council for Canadian CFA Institute Societies
- The Greater Saskatoon Chamber of Commerce
- Saskatchewan Capital Network
- W. Brett Wilson Centre for Entrepreneurial Excellence
- Exempt Market Dealers Association
- Canadian Foundation for Advancement of Investor Rights
- The National Crowd funding Association
- Canadian Securities Administrators