

ANNEX A-3

CROWDFUNDING PROSPECTUS EXEMPTION AND CROWDFUNDING PORTAL REQUIREMENTS

PROPOSED MULTILATERAL INSTRUMENT 45-108 CROWDFUNDING

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PART 1
DEFINITIONS AND INTERPRETATION

Definitions

1. (1) In this Instrument

“Canadian financial institution” has the same meaning as in section 1.1 [*Definitions*] of NI 45-106;

“connected issuer” has the same meaning as in section 1.1 [*Definitions*] of National Instrument 33-105 *Underwriting Conflicts*;

“crowdfunding offering document” means the document referred to in section 15 [*Disclosure at time of distribution – crowdfunding offering document*] and any document incorporated by reference in such document;

“crowdfunding prospectus exemption” means the exemption from the prospectus requirement in section 7 [*Crowdfunding prospectus exemption*];

“debt security” has the same meaning as in section 1.1 [*Definitions*] of NI 45-106;

“director” has the same meaning as in section 1.1 [*Definitions*] of NI 45-106;

“distribution period” means the period referred to in the crowdfunding offering document during which an issuer offers its securities to purchasers in reliance on the crowdfunding prospectus exemption and that ends no later than 90 days after the date the issuer first offers its securities to potential purchasers;

“eligible crowdfunding issuer” means an issuer referred to in section 8 [*Availability of crowdfunding prospectus exemption to issuers*];

“eligible securities” means any of the following:

- (a) a common share;
- (b) a non-convertible preference share;
- (c) a security convertible into securities referred to paragraphs (a) or (b);
- (d) a non-convertible debt security linked to a fixed or floating interest rate;
- (e) a unit of a limited partnership;
- (f) a flow-through share under the ITA;

“executive officer” has the same meaning as in section 1.1 [*Definitions*] of NI 45-106;

“interim financial report” means the interim financial report described in subsections 4.3(2) and (2.1) [*Interim financial report*] of NI 51-102;

“interim period” has the same meaning as in section 1.1 [*Definitions*] of NI 51-102;

“investment fund” has the same meaning as in National Instrument 81-106 *Investment Fund Continuous Disclosure*;

“issuer access agreement” means an agreement entered into between an issuer and a registered funding portal containing all of the following:

- (a) the terms and conditions under which the issuer proposes to offer securities through the registered funding portal;
- (b) confirmation that the issuer will comply with the registered funding portal’s posting policies, including confirmation that the information that the issuer provides to the registered funding portal or posts on the registered funding portal’s website will
 - (i) comply with applicable securities legislation,
 - (ii) not contain unduly promotional statements or material that cannot be reasonably supported or any misrepresentation,
 - (iii) be presented in a fair and balanced manner, and
 - (iv) not be misleading;
- (c) confirmation by the issuer that it is responsible for compliance with applicable securities laws, including those pertaining to reliance on prospectus exemptions, the drafting, delivery and filing of offering documents, the filing of reports of exempt distribution and the payment of filing fees;
- (d) a requirement for the issuer to prepare and send to its security holders that invest through the registered funding portal’s website annual financial statements and a notice detailing the actual use of the gross proceeds received by the issuer under the crowdfunding prospectus exemption as required under sections 23 [*Annual financial statements*] and 24 [*Annual disclosure of use of proceeds*];
- (e) such other terms and conditions as may be required by the registered funding portal;

“issuer group” means:

- (a) the issuer;
- (b) an affiliate of the issuer; and
- (c) any other issuer that is engaged in a common enterprise with the issuer or with an affiliate of the issuer;

“issuer’s GAAP” has the same meaning as in NI 52-107;

“marketplace” has the same meaning as in National Instrument 21-101 *Marketplace Operation*;

“NI 31-103” means National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;

“NI 45-106” means National Instrument 45-106 *Prospectus and Registration Requirements*;

“NI 51-102” means National Instrument 51-102 *Continuous Disclosure Obligations*;

“NI 52-107” means National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*;

“person” has the same meaning as in section 1.1 [*Definitions*] of NI 45-106;

“posting policies” means policies and procedures established by a registered funding portal governing the information that an issuer may post on the registered funding portal’s website;

“Principal Regulator” has the same meaning as in section 1.3 [*Information may be given to the principal regulator*] of NI 31-103;

“private enterprise” has the same meaning as in section 3.1 [*Definitions and application*] of NI 52-107;

“publicly accountable enterprise” has the same meaning as in section 3.1 [*Definitions and application*] of NI 52-107;

"public accounting firm" has the same meaning as in section 1.1 [*Definitions*] of National Instrument 52-108 *Auditor Oversight*;

“real estate issuer” means an issuer that is

- (a) a real estate investment trust,
- (b) a mortgage investment entity, or
- (c) a person that primarily invests in, or develops, real estate, or derives its revenues primarily from investments in real estate;

“registered firm” means a registered dealer, a registered adviser, or a registered investment fund manager;

“registered individual” means an individual who is registered

- (a) in a category that authorizes the individual to act as a dealer or an adviser on behalf of a registered firm,
- (b) as an ultimate designated person, or
- (c) as a chief compliance officer;

“registered funding portal” means a person or company who

- (a) is registered in the category of restricted dealer,
- (b) acts or proposes to act as an intermediary in a distribution of securities made in reliance on the crowdfunding prospectus exemption, and
- (c) is in compliance with the restrictions and obligations imposed on a registered funding portal in Part 3 of this Instrument;

“related issuer” has the same meaning as in section 1.1 [*Definitions*] of National Instrument 33-105 *Underwriting Conflicts*;

“restricted dealer” means a person or company registered in the category of restricted dealer;

“restricted portfolio manager” means a person or company registered in the category of restricted portfolio manager;

“SEC issuer” has the same meaning as in section 1.1 [*Definitions*] of NI 52-107;

“subsidiary” means an issuer that is controlled directly or indirectly by another issuer and includes a subsidiary of that subsidiary;

“U.S. GAAP” has the same meaning as in section 1.1 [*Definitions*] of NI 52-107.

Interpretation of affiliate

2. For the purpose of this Instrument, an issuer is an affiliate of another issuer if
 - (a) one of them is the subsidiary of the other, or
 - (b) each of them is controlled by the same person.

Control

3. For the purpose of this Instrument, a person (first person) is considered to control another person (second person) if
 - (a) the first person beneficially owns or directly or indirectly exercises control or direction over securities of the second person carrying votes which, if exercised, would entitle the first person to elect a majority of the directors of the second person, unless that first person holds the voting securities only to secure an obligation,
 - (b) the second person is a partnership, other than a limited partnership, and the first person holds more than 50% of the interests of the partnership, or
 - (c) the second person is a limited partnership and the general partner of the limited partnership is the first person.

Registration requirement

4. An exemption in this Instrument from the prospectus requirement that refers to a registered dealer is only available for a trade in a security if the dealer is registered in a category that permits the trade described in the exemption.

Definition of trade – Québec

5. For the purpose of this Instrument, in Québec, "trade" refers to any of the following activities:
 - (a) the activities described in the definition of "dealer" in section 5 of the *Securities Act* (R.S.Q., c. V-1.1), including the following activities:
 - (i) the sale or disposition of a security by onerous title, whether the terms of payment be on margin, installment or otherwise, but does not include a transfer or the giving in guarantee of securities in connection with a debt or the purchase of a security, except as provided in paragraph (b);

- (ii) participation as a trader in any transaction in a security through the facilities of an exchange or a quotation and trade reporting system;
 - (iii) the receipt by a registrant of an order to buy or sell a security;
- (b) a transfer or the giving in guarantee of securities of an issuer from the holdings of a control person in connection with a debt.

Language

6. In Québec, an issuer must file a crowdfunding offering document and any other document required to be delivered under this Instrument in French or in French and English.

PART 2 CROWDFUNDING PROSPECTUS EXEMPTION

Division 1: Offering requirements

Crowdfunding prospectus exemption

7. The prospectus requirement does not apply to a distribution by an issuer of securities of its own issue to a purchaser if all of the following apply:
- (a) the securities are eligible securities of an eligible crowdfunding issuer;
 - (b) the sum of the following does not exceed \$1,500,000:
 - (i) the aggregate proceeds to be raised under the distribution;
 - (ii) the aggregate proceeds to be raised under a concurrent distribution under the crowdfunding prospectus exemption by any issuer in the issuer group;
 - (iii) the aggregate proceeds received by the issuer group under distributions made in reliance on the crowdfunding prospectus exemption during the 12-month period immediately preceding the beginning of the distribution period;
 - (c) the distribution is conducted through a registered funding portal;
 - (d) the distribution is made during the distribution period;
 - (e) the purchaser purchases the securities as principal;
 - (f) at or before the time that the purchaser enters into an agreement to purchase the security,
 - (i) the issuer makes available to the purchaser the crowdfunding offering document through the registered funding portal in compliance with section 15 [*Disclosure at time of distribution – crowdfunding offering document*], and
 - (ii) the issuer obtains a signed risk acknowledgement from the purchaser in compliance with section 20 [*Risk acknowledgement*].

Availability of crowdfunding prospectus exemption to issuers

8. (1) For the purposes of section 7 [*Crowdfunding prospectus exemption*], an eligible crowdfunding issuer means an issuer if all of the following apply:
- (a) the issuer, and if applicable, the parent and the principal operating subsidiary of the issuer, are incorporated or organized under the laws of Canada or a jurisdiction of Canada;
 - (b) the head office of the issuer is situated in Canada;
 - (c) a majority of the directors of the issuer are resident in Canada.
- (2) Despite subsection (1), a real estate issuer that is not a reporting issuer is not an eligible crowdfunding issuer.
- (3) Despite subsection (1), an investment fund is not an eligible crowdfunding issuer.
- (4) Despite section 7 [*Crowdfunding prospectus exemption*], the crowdfunding prospectus exemption does not apply to a distribution of an issuer in a distribution period if
- (a) the issuer does not have a written business plan setting out its business or proposed business, its goals or milestones and the plan for reaching those goals or milestones; or
 - (b) the proceeds of the distribution will be used primarily by the issuer to invest in, merge with or acquire another unspecified business.
- (5) Despite section 7 [*Crowdfunding prospectus exemption*], the crowdfunding prospectus exemption does not apply to a distribution of an issuer in a distribution period if the issuer has previously distributed securities in reliance on the crowdfunding prospectus exemption and the issuer is not in compliance with sections 23, 24, 25, 26 and 27 with respect to that distribution.

Investment limits

9. Despite section 7 [*Crowdfunding prospectus exemption*], a distribution of securities to a purchaser may not be made in reliance of the crowdfunding prospectus exemption if
- (a) the acquisition cost to the purchaser of securities distributed under the crowdfunding prospectus exemption exceeds \$2,500, or
 - (b) the sum of the following exceeds \$10,000:
 - (i) the acquisition cost referred to in paragraph (a);
 - (ii) the acquisition cost of all other securities previously distributed to the purchaser in the same calendar year in reliance on the crowdfunding prospectus exemption.

Restriction on lending

10. An issuer, or a director or executive officer of the issuer, must not lend or finance, or arrange lending or financing, for a purchaser to purchase securities of the issuer under the crowdfunding prospectus exemption.

Prohibition on distributions through multiple registered funding portals

11. For the purposes of paragraph 7(c) [*Crowdfunding prospectus exemption*], during the distribution period, an issuer must not use more than one registered funding portal to conduct a distribution of securities under the crowdfunding prospectus exemption.

Terms and conditions of securities to be distributed

12. Despite section 7 [*Crowdfunding prospectus exemption*], all securities distributed under the crowdfunding prospectus exemption during a distribution period must have the same price, terms and conditions.

Full subscription of distribution and financial resources available

13. (1) Despite section 7 [*Crowdfunding prospectus exemption*], a distribution in reliance on the crowdfunding prospectus exemption must not be completed by the issuer unless
- (a) the minimum amount of funds to be raised under the crowdfunding prospectus exemption, as specified in the crowdfunding offering document, has been subscribed for, and
 - (b) at the time of completion of the distribution, the issuer has
 - (i) financial resources sufficient to achieve the next milestone set out in the issuer's written business plan, or
 - (ii) if the issuer does not have any milestones set out in the issuer's written business plan, financial resources sufficient to carry out the activities set out in the written business plan.
- (2) For the purposes of subsection (1), the issuer's financial resources include
- (a) the net proceeds of the distribution under the crowdfunding prospectus exemption;
 - (b) the net proceeds of any distribution under a prospectus exemption, other than the crowdfunding prospectus exemption; and
 - (c) any other financial resources of the issuer.
- (3) Prior to proceeds being transferred to the issuer, the issuer must confirm to the registered funding portal that the conditions in subsection (1) have been satisfied.

Concurrent distributions under other prospectus exemptions

14. If an issuer distributes a security under a prospectus exemption other than the crowdfunding prospectus exemption during the period beginning on the first day of the distribution period and ending one month after the end of the distribution period, the security must have the same price, terms and conditions as the security distributed under the crowdfunding prospectus exemption.

Disclosure at time of distribution – crowdfunding offering document

15. (1) For the purposes of subparagraph 7(f)(i) [*Crowdfunding prospectus exemption*], a crowdfunding offering document must contain
- (a) the disclosure required by Form 45-108F1, and

- (b) a certificate signed by the issuer in accordance with the applicable provision of Appendix A, stating: “This offering document does not contain a misrepresentation. Purchasers of securities have rights of action and withdrawal in the case of a misrepresentation.”
- (2) A certificate under paragraph 1(b) must be true as at the date the certificate is signed and as of the date the crowdfunding offering document is made available to a potential purchaser.
- (3) Despite section 7 [*Crowdfunding prospectus exemption*], if a certificate under paragraph (1)(b) ceases to be true after it is made available to a potential purchaser, the issuer must not accept an offer to purchase the security from the purchaser unless
 - (a) an amended and restated crowdfunding offering document is posted on the website of the registered funding portal and is made available to the purchaser,
 - (b) the amended and restated crowdfunding offering document contains a newly dated certificate signed by the issuer in accordance with the provisions of Appendix A, and
 - (c) the purchaser reconfirms its offer, or does not withdraw its offer, to purchase the security prior to the end of the distribution period.
- (4) A crowdfunding offering document cannot be posted on any website other than the website of the registered funding portal through which the distribution is being conducted.

Disclosure at time of distribution – marketing materials

- 16. (1) The only materials that may be made available to potential purchasers by an issuer during a distribution period in connection with a distribution under the crowdfunding prospectus exemption are
 - (a) the crowdfunding offering document,
 - (b) a document that is described in the crowdfunding offering document, and
 - (c) a term sheet or other summary, including a video, of the information that is included in the crowdfunding offering document.
- (2) The documents referred to in subsection (1) must be made available to potential purchasers through the website of the registered funding portal through which the distribution will be made.

Delivery of distribution materials

- 17. The issuer must deliver a copy of the documents referred to in subsection 16(1) [*Disclosure at the time of distribution – marketing materials*] to the securities regulatory authority at the time that they are posted on the website of the registered funding portal.

Advertising and general solicitation

- 18. (1) An issuer, the registered funding portal through which a distribution is being made and any other person involved with a distribution under the crowdfunding prospectus exemption must not advertise the distribution or solicit potential purchasers.
- (2) Despite subsection (1), a person referred to in subsection (1) may

- (a) make the materials referred to in section 16 [*Disclosure at time of distribution – marketing materials*] available to potential purchasers, and
 - (b) advise potential purchasers, including customers and clients of the issuer, that the issuer is proposing to distribute securities under the crowdfunding prospectus exemption and refer the potential purchasers to the website of the registered funding portal through which the distribution will be made.
- (3) Despite subsection (1), a registered funding portal may advertise the fact that a distribution in reliance on the crowdfunding prospectus exemption is being made to potential purchasers through the registered funding portal and may carry on the activities contemplated by this Instrument.

Commissions or fees

19. An issuer may not, directly or indirectly, pay a commission, finder's fee, referral fee or similar payment to any person in connection with a distribution in reliance on the crowdfunding prospectus exemption, other than to a registered funding portal.

Risk acknowledgement

20. (1) A risk acknowledgement under paragraph 7(f)(ii) [*Crowdfunding prospectus exemption*] must be in Form 45-108F2.

- (2) An issuer must retain the signed risk acknowledgment for 8 years after the distribution.

Division 2: Rights of security holders

Right of withdrawal

21. If the securities legislation of the jurisdiction in which the purchaser resides does not provide a comparable right, an issuer of securities under the crowdfunding prospectus exemption that makes a crowdfunding offering document available to a purchaser must provide the purchaser with a contractual right to withdraw any offer or agreement to purchase the security by delivering a notice to the issuer within at least 48 hours prior to the date of completion of the distribution disclosed in the crowdfunding offering document.

Liability for misrepresentation

22. (1) If the securities legislation of the jurisdiction in which the purchaser resides does not provide a comparable right, an issuer of securities under the crowdfunding prospectus exemption that makes a crowdfunding offering document or any other document or video available to potential purchasers must provide a contractual right of action against the issuer for rescission or damages that
- (a) is available to the purchaser if the crowdfunding offering document, other document or video made available to the purchaser contains a misrepresentation, without regard to whether the purchaser relied on the misrepresentation,
 - (b) is enforceable by the purchaser delivering a notice to the issuer
 - (i) in the case of an action for rescission, within 180 days after the purchaser agrees to purchase the security, or
 - (ii) in the case of an action for damages, before the earlier of

- (A) 180 days after the purchaser first has knowledge of the facts giving rise to the cause of action, or
 - (B) 3 years after the date the purchaser agrees to purchase the security,
 - (c) is subject to the defence that the purchaser had knowledge of the misrepresentation,
 - (d) in the case of an action for damages, provides that the amount recoverable
 - (i) does not exceed the price at which the security was offered, and
 - (ii) does not include all or any part of the damages that the issuer proves does not represent the depreciation in value of the security resulting from the misrepresentation, and
 - (e) is in addition to, and does not detract from, any other right of the purchaser.
- (2) In addition to subsection (1), in Québec
- (a) the crowdfunding offering document and any other document or videos that are made available to potential purchasers are documents authorized by the Autorité des marchés financiers for use in lieu of a prospectus;
 - (b) a crowdfunding offering is considered to be a securities distribution to which a special disclosure scheme is established by regulation under section 64 of the *Securities Act* (Québec).

Division 3: Ongoing disclosure requirements for issuers that have relied on the crowdfunding prospectus exemption

Annual financial statements

- 23. (1)** A reporting issuer that distributes securities under the crowdfunding prospectus exemption must comply with its disclosure obligations under securities legislation, including the requirement to file annual financial statements as and when required under sections 4.1 and 4.2 of NI 51-102.
- (2)** An issuer that is not a reporting issuer that distributes securities under the crowdfunding prospectus exemption must deliver to the securities regulatory authority and make available to each purchaser, within 120 days after the end of its most recently completed financial year
- (a) annual financial statements reviewed by an independent public accounting firm, if the issuer has incurred any expenditures and has
 - (i) raised an aggregate of \$500,000 or less under the crowdfunding prospectus exemption or any other prospectus exemption since its formation, or
 - (ii) expended \$150,000 or less since its formation,
 - (b) annual financial statements audited by an independent public accounting firm, if the issuer has
 - (i) raised an aggregate of more than \$500,000 under the crowdfunding prospectus exemption or any other prospectus exemption since its formation, and

(ii) expended more than \$150,000 since its formation.

- (3) The financial statements referred to in subsection (2) must be prepared in accordance with paragraph (a) of subsection 3.2(1) [*Acceptable accounting principles – general requirements*] of NI 52-107 and include the disclosure required by paragraph (b)(i) of subsection 3.2(1) [*Acceptable accounting principles – general requirements*] of NI 52-107.
- (4) Despite subsection (3), the financial statements of an SEC issuer may be prepared in accordance with U.S. GAAP.
- (5) Despite subsection (3), the financial statements of an issuer that is not a publicly accountable enterprise may be prepared in accordance with Canadian GAAP for private enterprises.
- (6) The financial statements referred to in paragraph (2)(a) must be reviewed in accordance with the relevant standards set out in the Handbook for a review of financial statements by a public accounting firm.
- (7) The financial statements referred to in paragraph (2)(b) must be audited in compliance with section 3.3 [*Acceptable auditing standards – general requirements*] of NI 52-107 by an auditor that complies with section 3.4 [*Acceptable auditors*] of NI 52-107.
- (8) Despite paragraph 2(a) and subsections (6) and (7), the financial statements of an SEC issuer may be audited in accordance with section 3.8 [*Acceptable auditing standards for SEC issuers*] of NI 52-107.

Annual disclosure of use of proceeds

24. (1) The financial statements of an issuer referred to in section 23 [*Annual financial statements*] must be accompanied by a notice of the issuer disclosing in reasonable detail the actual use of the gross proceeds received by the issuer under the distribution made under the crowdfunding prospectus exemption.
- (2) An issuer is not required to provide a notice referred to in subsection (1) if
 - (a) it has disclosed in one or more prior notices the actual use of the entire gross proceeds from the distribution under the crowdfunding prospectus exemption, or
 - (b) it is no longer required to deliver and make available annual financial statements.

Notice of specified events

25. (1) An issuer that is not a reporting issuer that distributes securities in reliance on the crowdfunding prospectus exemption must make available to each holder of a security acquired under the crowdfunding prospectus exemption within 10 days of their occurrence a notice of each of the following events:
 - (a) a fundamental change in the nature, or a discontinuation, of the issuer's business;
 - (b) a material change to the issuer's capital structure;
 - (c) a major reorganization, amalgamation or merger involving the issuer;
 - (d) a take-over bid, issuer bid or insider bid involving the issuer;
 - (e) a significant acquisition or disposition of assets, property or joint venture interests;

- (f) changes to the issuer's board of directors or executive officers, including the departure of the issuer's chief executive officer, chief financial officer, chief operating officer or president or persons acting in similar capacities.

Period of time for providing ongoing disclosure

- 26.** An issuer that is not a reporting issuer must continue to provide the disclosure required by sections 23 [*Annual financial statements*] and 25 [*Notice of specified events*] until the earliest of the following events:
- (a) the issuer becomes a reporting issuer;
 - (b) the issuer ceases to carry on business;
 - (c) securities of the issuer are beneficially owned, directly or indirectly, by fewer than 51 security holders worldwide that acquired such securities under the crowdfunding prospectus exemption.

Books and records

- 27.** An issuer that is not a reporting issuer that distributes securities under the crowdfunding prospectus exemption must maintain the following books and records:
- (a) the crowdfunding offering document and the other documents and things described in section 16;
 - (b) the risk acknowledgement form described in section 20;
 - (c) the ongoing disclosure documents described in Division 3;
 - (d) the number of securities issued by the issuer under the crowdfunding prospectus exemption, and the date of issuance and the price per security; and
 - (e) the names of all security holders of the issuer together with the number and the type of securities held by each security holder.

Market participant

- 28.** In Ontario, a non-reporting issuer that distributes securities in reliance on the crowdfunding prospectus exemption is designated a market participant under the *Securities Act* (Ontario).

PART 3 REGISTRATION REQUIREMENTS, EXEMPTIONS AND ONGOING OBLIGATIONS FOR REGISTERED FUNDING PORTALS

Division 1: Obligations of a registered funding portal and its registered individuals

General

- 29. (1)** A registered funding portal and a registered individual of a registered funding portal must comply with the terms, conditions, restrictions or requirements applicable to an exempt market dealer under NI 31-103 except for the following requirements:
- (a) section 12.3 [*Insurance - dealer*];

- (b) paragraph 13.2(2)(c) [*Know your client*];
 - (c) section 13.3 [*Suitability*];
 - (d) paragraphs 14.2(2)(i), (j), (k) and (m) [*Relationship disclosure information*];
 - (e) division 3 of Part 14 [*Client assets*];
 - (f) division 4 of Part 14 [*Client accounts*], except for:
 - (i) section 14.10 [*Allocating investment opportunities*];
 - (ii) section 14.11 [*Selling or assigning client accounts*];
 - (g) division 5 of Part 14 [*Reporting to clients*], except for section 14.12 [*Content and delivery of trade confirmation*].
- (2) Subsection (1) only applies to a registered funding portal and a registered individual of a registered funding portal if the registered funding portal and the registered individual comply with the terms, conditions, restrictions and requirements in this Instrument.
- (3) A registered funding portal and every registered individual of a registered funding portal must deal fairly, honestly and in good faith with purchasers.

Proficiency

30. (1) A registered individual of a registered funding portal must not perform an activity in connection with a distribution of securities made through the registered funding portal unless the individual has the education, training and experience that a reasonable person would consider necessary to perform the activity competently, including understanding the structure, features and risks of each security distributed.
- (2) For the purposes of subsection (1), the obligation to understand the structure, features and risks of each security does not include any obligation to assess
- (a) the merits or expected returns of an investment to purchasers, or
 - (b) the commercial viability of a proposed business or offering.

Division 2: Permitted and restricted dealing activities

Permitted dealing activities

31. A registered funding portal and every registered individual of the registered funding portal may only act as an intermediary in connection with a distribution of securities made in reliance on the crowdfunding prospectus exemption.

Restricted dealing activities

32. A registered funding portal and its registered individuals must not act as an intermediary in connection with a distribution of or trade in securities of an issuer that is a related issuer of the registered funding portal.

Prohibition on providing recommendations or advice

- 33. (1)** A registered funding portal and its registered individuals must not provide a recommendation or advice to a potential purchaser to purchase securities under the crowdfunding prospectus exemption or in connection with any other trade in a security.
- (2)** Despite subsection (1), and provided that the following would not be viewed by a reasonable person as an assessment of the quality or commercial viability of a crowdfunding offering, a portal may
- (a) present or display information about an issuer or a crowdfunding offering on its website, if the information is presented or displayed in a fair, balanced and reasonable manner,
 - (b) use objective criteria to limit the crowdfunding offerings on its website, provided the objective criteria are disclosed on the website and applied consistently to all offerings on the website,
 - (c) prohibit crowdfunding offerings on its website based on a good faith determination that an issuer is not complying with securities law, including the provisions of this instrument,
 - (d) assist an issuer in the preparation of an offering document, business plan or other document contemplated by this instrument, provided that the service is limited to assisting the issuer comply with its disclosure obligations and to ensure the information is presented in a fair, balanced and reasonable manner,
 - (e) provide general information and educational materials to potential purchasers about crowdfunding offerings, provided that the information and materials are presented in a fair, balanced and reasonable manner,
 - (f) provide on its website search functions or other tools for potential purchasers to search, sort or categorize crowdfunding offerings available on the funding portal's website according to objective criteria, and
 - (g) provide communication channels or discussion boards to enable potential purchasers pursuant to a crowdfunding offering, to communicate with one another and with representatives of the issuer about a crowdfunding offering displayed on the funding portal's website provided that communication by a person can be traced back to its author.

Division 3: Portal obligations – issuer access to the portal

Issuer access agreement

- 34.** Prior to allowing an issuer to access the registered funding portal's website, the registered funding portal must enter into an issuer access agreement with that issuer.

Personal information forms and background checks

- 35. (1)** Prior to allowing an issuer to access the registered funding portal's website, the registered funding portal must require directors, executive officers and promoters of the issuer
- (a) to complete a personal information form that contains substantially the same information as set out in Appendix A to National Instrument 41-101 *General Prospectus Requirements*, and

- (b) to consent to criminal record and other background checks and the collection of personal information in accordance with applicable privacy legislation.
- (2) For the purposes of paragraph (1)(b), the form containing the consent referred to in that paragraph must acknowledge that
- (a) the registered funding portal will file, as agent of the issuer, a copy of the completed personal information form and the results of any criminal record or other background checks with the Principal Regulator, and
 - (b) it is an offence to make a statement in any document required to be filed with the Principal Regulator that, in a material respect, is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the statement not misleading.

Criminal record and background checks

36. The registered funding portal must arrange for criminal record and background checks to be conducted on
- (a) each individual who is, at the time of application for access, a director, executive officer or promoter of an issuer, and
 - (b) each individual who subsequently becomes a director, executive officer or promoter of an issuer, in which case section 35 [*Personal information forms and background checks*] and paragraph (a) apply to in respect of the individual with necessary modifications during the distribution period.

Issuers' access refusal – general

37. Prior to allowing an issuer to access the registered funding portal's website, a registered funding portal must
- (a) review the information referred to in sections 35 [*Personal information forms and background checks*] and 36 [*Criminal record and background checks*];
 - (b) make a good faith determination that it does not appear that
 - (i) the issuer or the offering is a fraud,
 - (ii) the issuer's offering documents or other materials contain a statement or information that is false, deceptive, misleading or that constitutes a misrepresentation,
 - (iii) the business of the issuer may not be conducted with integrity and in the best interests of security holders because of the past conduct of
 - (A) the issuer, or
 - (B) any of the issuer's executive officers, directors or promoters,
 - (iv) the issuer is not complying with this Instrument, and

- (c) if it appears to the portal that, based upon its review of the issuer's application for access, completed personal information forms and the results of the criminal records and background checks, any of the following is true, ensure that such information is disclosed in the issuer's crowdfunding offering document:
 - (i) a director or executive officer of the issuer is or has been, within 10 years before the date of the personal information form, a director or executive officer of an issuer that is or has been
 - (A) subject to a cease trade order or similar order, or
 - (B) bankrupt or subject to a similar insolvency proceeding;
 - (ii) a director or executive officer of the issuer is or has been, within 10 years before the date of such personal information form, bankrupt or subject to a similar insolvency proceeding;
 - (iii) a director or executive officer of the issuer is or has been subject to
 - (A) penalties or sanctions imposed by a court relating to contraventions of securities legislation or by a securities regulatory authority or who entered into a settlement agreement with a securities regulatory authority, or
 - (B) any other penalties or sanctions imposed by a court or regulatory body that would likely be considered important to a reasonable purchaser in making an investment decision.

Issuers' access refusal – misleading disclosure

- 38.** A registered funding portal must not include on its website any offering document or information that appears to be false, deceptive, misleading or contains a misrepresentation and must terminate any offering and report immediately to the Principal Regulator if fraud is discovered during the distribution period.

Restriction on cross ownership

- 39.** A registered funding portal must not allow an issuer access to the funding portal's website if the registered funding portal, or any officer, director or significant shareholder of the registered funding portal or of any affiliate of the registered funding portal
- (a) has beneficial ownership of, or control or direction over, more than 10% of the issued and outstanding securities of the issuer, or securities convertible into securities of the issuer, or
 - (b) except as permitted under clause (a), otherwise has an economic interest in the issuer.

Division 4: General portal obligations and prohibited activities

Required website disclosure

- 40.** A registered funding portal must

- (a) take reasonable steps to ensure that potential purchaser accessing the registered funding portal's website understands the high risk nature of any investment made under the crowdfunding prospectus exemption,
- (b) include on its website prominent disclosure that discloses
 - (i) no securities regulatory authority or regulator has approved or expressed an opinion about the securities offered on the registered funding portal's website,
 - (ii) "A crowdfunding investment is highly risky. You may lose all your investment and you may not be able to sell any securities you purchase.",
 - (iii) all compensation, including fees, costs and other expenses that the registered funding portal may charge to, or impose on, an issuer or purchaser.

Monitoring purchaser communications

- 41.** If a registered funding portal establishes on its website a communication channel by which potential purchasers may communicate with one another and with representatives of the issuer about offerings of securities displayed on the website, the registered funding portal must monitor postings to confirm that the issuer is not making any statement or providing information that is inconsistent with the crowdfunding offering document or is not in compliance with this Instrument and remove any material that it deems inappropriate, or that raises investor protection concerns.

Prohibition on holding, handling or having access to purchaser funds or assets

- 42.** A registered funding portal and every registered individual of the registered funding portal must not hold, handle or have access to purchaser funds or assets.

Custodial arrangements

- 43. (1)** The portal must arrange for a Canadian financial institution
- (a) to hold in trust all funds or consideration received from a potential purchaser in connection with a distribution of a security under the crowdfunding prospectus exemption until midnight on the second business day after the purchaser agrees to purchase the security, and
 - (b) to return all funds or consideration to the purchaser promptly if the purchaser exercises the right to cancel the agreement to purchase the security described under section 21 [*Right of withdrawal*].
- (2)** The registered funding portal must confirm that the conditions in section 13 [*Full subscription of distribution and financial resources available*] have been satisfied.

Insurance

- 44.** The registered funding portal must maintain fidelity bonding or insurance of
- (a) \$50,000 per employee, agent and dealing representative or \$200,000, whichever is less, and
 - (b) such other amount as may be determined by the regulator.

Restriction on lending

45. A registered funding portal, or a director or executive officer of the registered funding portal, must not lend or finance, or arrange lending or financing, for a purchaser to purchase securities of an issuer under the crowdfunding prospectus exemption.

Restrictions on referral agreements

46. A registered funding portal must not participate in a “referral arrangement” as such term is defined in section 13.7 [*Definitions – Referral arrangements*] of NI 31-103, except that a registered funding portal may compensate a third party for referring an issuer to the registered funding portal.

PART 4 REPORTING REQUIREMENTS

Report of exempt distribution

47. (1) An issuer that distributes securities under section 7 [*Crowdfunding prospectus exemption*] must file a report within 10 days of completion of the distribution.
- (2) The required form of report under subsection (1) is
- (a) in Saskatchewan, Ontario and New Brunswick, Form 45-106F11, and
 - (b) in Manitoba, Nova Scotia and Québec, Form 45-106F1.

Registered funding portal reporting requirement

48. A registered funding portal must provide within 30 days of the end of each quarter of its financial year to the Principal Regulator a report on
- (a) the amounts raised through offerings on the portal that were successfully completed within the quarter based on information received from issuers, on a per offering basis, including the name of the issuer, details on the type and amount of the offering, the industry of the issuer and the number of purchasers participating in each such offering,
 - (b) the names and types of issuers given access to the portal and the types of offerings posted on the portal,
 - (c) the names and types of issuers denied access to the portal at the time of initial application and the reasons for denial of access,
 - (d) the names and types of issuers granted access to the portal at the time of initial application that were subsequently removed from the portal and the reasons for removal,
 - (e) the names of issuers who have not complied with ongoing disclosure obligations to purchasers, and
 - (f) such other information as the Principal Regulator may reasonably request.

**PART 5
EXEMPTION**

Exemption

49. (1) Subject to subsection (2), the regulator or the securities regulatory authority may grant an exemption to this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.
- (2) In Ontario, only the regulator may grant an exemption and only from Part 3 [*Registration requirements, exemptions and ongoing registrant obligations for registered funding portals*] and Part 4 [*Reporting requirements*], in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.
- (3) Except in Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction.

**PART 6
COMING INTO FORCE**

Effective date

50. This Instrument comes into force on •.

Appendix A

Signing Requirements for Certificate of a Crowdfunding Offering Document referred to in Section 15

1. If the issuer is a company, a certificate under paragraph 15(1)(b) of the Instrument complies with this section if it is signed
 - (a) by the issuer's chief executive officer and chief financial officer or, if the issuer does not have a chief executive officer or chief financial officer, an individual acting in that capacity,
 - (b) on behalf of the directors of the issuer, by
 - (i) any 2 directors who are authorized to sign, other than the persons referred to in paragraph (a), or
 - (ii) all the directors of the issuer, and
 - (c) by each promoter of the issuer.
2. If the issuer is a trust, a certificate under paragraph 15(1)(b) of the Instrument complies with this section if it is signed by
 - (a) the individuals who perform functions for the issuer similar to those performed by the chief executive officer and the chief financial officer of a company, and
 - (b) each trustee and the manager of the issuer.
3. A certificate under paragraph 15(1)(b) of the Instrument complies with this section
 - (a) if a trustee or manager signing the certificate is an individual, the individual signs the certificate,
 - (b) if a trustee or manager signing the certificate is a company, the certificate is signed
 - (i) by the chief executive officer and the chief financial officer of the trustee or the manager, and
 - (ii) on behalf of the board of directors of the trustee or the manager, by
 - (A) any two directors of the trustee or the manager, other than the persons referred to in subparagraph (i), or
 - (B) all of the directors of the trustee or the manager,
 - (c) if a trustee or manager signing the certificate is a limited partnership, the certificate is signed by each general partner of the limited partnership as described in section 5 in relation to an issuer that is a limited partnership, or
 - (d) in any other case, the certificate is signed by any person or company with authority to act on behalf of the trustee or the manager.
4. Despite sections 2 and 3, if the trustees of an issuer, do not perform functions for the issuer similar to those performed by the directors of a company, the trustees are not required to sign the certificate of the

issuer if at least two individuals who perform functions for the issuer similar to those performed by the directors of a company sign the certificate.

5. If the issuer is a limited partnership, a certificate under paragraph 15(1)(b) of the Instrument complies with this section if it is signed by
 - (a) each individual who performs a function for the issuer similar to any of those performed by the chief executive officer or the chief financial officer of a company, and
 - (b) each general partner of the issuer.
6. A certificate under paragraph 15(1)(b) of the Instrument complies with this section
 - (a) if a general partner of the issuer is an individual, the individual signs the certificate,
 - (b) if a general partner of the issuer is a company, the certificate is signed
 - (i) by the chief executive officer and the chief financial officer of the general partner, and
 - (ii) on behalf of the board of directors of the general partner, by
 - (A) any two directors of the general partner, other than the persons referred to in subparagraph (i), or
 - (B) all of the directors of the general partner,
 - (c) if a general partner of the issuer is a limited partnership, the certificate is signed by each general partner of the limited partnership and, for greater certainty, this section applies to each general partner required to sign,
 - (d) if a general partner of the issuer is a trust, the certificate is signed by the trustees of the general partner as described in section 7 in relation to an issuer that is a trust, or
 - (e) in any other case where there is a general partner of the issuer, the certificate is signed by any person or company with authority to act on behalf of the general partner.
7. If an issuer is not a company, trust or limited partnership, a certificate under paragraph 15(1)(b) of the Instrument complies with this section if it is signed by the persons that, in relation to the issuer, are in a similar position or perform a similar function to any of the persons referred to in section 1, 2, 3, 4, 5 or 6.