

**ANNEX A-4**

**CROWDFUNDING PROSPECTUS EXEMPTION AND CROWDFUNDING PORTAL REQUIREMENTS**

**PROPOSED COMPANION POLICY 45-108CP  
CROWDFUNDING**

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## PREAMBLE TO COMPANION POLICY

### Purpose of this Companion Policy

This Companion Policy sets out how the participating members of the Canadian Securities Administrators (the **participating CSA members** or **we**) interpret or apply the provisions of Multilateral Instrument 45-108 *Crowdfunding* (the **Instrument**) and related securities legislation.

The Instrument provides

- (a) in Part 2, a prospectus exemption for eligible crowdfunding issuers that wish to make a crowdfunding offering in accordance with the regime described in the Instrument,
- (b) in Part 3, the principal registration requirements, exemptions and ongoing obligations that apply to a funding portal that wishes to act as an intermediary in a crowdfunding offering in accordance with the regime described in the Instrument, and
- (c) in Part 4, the reporting requirements for eligible crowdfunding issuers and registered funding portals that make a crowdfunding offering in accordance with the regime described in the Instrument.

### Numbering system

Except for this preamble, the numbering of parts, divisions and sections in this Companion Policy corresponds to the numbering in the Instrument. Any general guidance for a part or a division appears immediately after the part or division name. Any specific guidance on sections in the Instrument follows any general guidance. If there is no guidance for a part, division or section, the numbering in this Companion Policy will skip to the next provision that does have guidance. All references in this Companion Policy to parts, divisions and sections are to the Instrument, unless otherwise noted.

### Meaning of crowdfunding

Crowdfunding is a method of funding a project or venture through small amounts of money raised from a potentially large number of people over the internet via an internet portal acting as intermediary. There are at least five models of crowdfunding:

- (a) the donation model, which is the practice of the crowd donating to a project or venture in exchange for nothing of tangible value;
- (b) the reward model, which is the practice of the crowd donating to a project or venture in exchange for some tangible reward or a “perk”;
- (c) the pre-purchase model, which is the practice of the crowd donating to a project or venture in exchange for a future tangible reward, such as a consumer product;
- (d) the peer-to-peer lending model, which is the practice of an online intermediary facilitating money lending between individuals to fund a project or a business, usually in the form of unsecured personal loans;
- (e) the securities-based model, which is the practice of the crowd investing in an issuer and its business in exchange for securities, which are often equity securities but may include other types of securities, including debt securities.

In this Companion Policy, when we refer to a “crowdfunding offering”, we are referring to an offering (distribution) of securities made in reliance on the crowdfunding prospectus exemption through a registered funding portal as described in the Instrument.

### **Applicability of securities legislation**

Crowdfunding activities that are limited to the donation model, reward model and/or pre-purchase model generally will not constitute or involve a distribution of securities. However, crowdfunding offerings based on the peer-to-peer lending model and the securities-based model will generally involve an offering of securities. As a result, issuers that wish to make a crowdfunding offering based on the peer-to-peer lending model or the securities-based model will generally be subject to the prospectus requirement in securities legislation or be required to limit their offering to accredited investors or other investors who are eligible to purchase securities in the “exempt market”.

### **Securities-based and non-securities-based crowdfunding**

An issuer may wish to include both securities and non-securities rewards and perks in a crowdfunding offering. Permitting an issuer to do so may enable an issuer to derive the benefits of both securities-based and non-securities based crowdfunding. Where an issuer combines securities and non-securities rewards and perks in a crowdfunding offering, it must disclose in the crowdfunding offering document information about the non-securities rewards and perks that are being offered.

### **All distributions and other trades are subject to securities legislation**

The securities legislation of a local jurisdiction applies to any distribution of a security in that jurisdiction, whether or not the issuer of the security is a reporting issuer in that jurisdiction. A person who engages in this activity must comply with the securities legislation of each jurisdiction in which the distribution occurs. That may include the requirement that such person be registered under securities legislation.

### **Multi-jurisdictional distributions**

A distribution can occur in more than one jurisdiction. If it does, the person conducting the distribution must comply with the securities legislation of each jurisdiction in which the distribution occurs. For example, a distribution from a person in Québec to a purchaser in Ontario may be considered a distribution in both jurisdictions.

## **PART 1 DEFINITIONS AND INTERPRETATION**

Defined terms used in this Companion Policy have the meaning ascribed to that term in the Instrument unless otherwise noted.

### **Definitions**

- 1. (1) Directors and executive officers** – The term “director” is defined in the Instrument and includes, for non-corporate issuers, individuals who perform functions similar to those of a director of a company. Therefore, non-corporate issuers must determine in light of the particular circumstances which individuals or persons are acting in such capacities for the purposes of complying with the Instrument and Form 45-108F1 *Crowdfunding Offering Document*.

The term “executive officer” includes an individual who is performing a policy-making function in respect of the issuer. We would consider an individual who is employed by an entity separate from the issuer, but who performs a policy-making function in respect of the issuer through that separate entity or otherwise, to fit within this definition.

- (2) Distribution period – The Instrument contemplates a distribution period of 90 days. If an issuer cannot complete a crowdfunding distribution within 90 days, the issuer must withdraw it. It can commence a new crowdfunding distribution after the 90-day period.
- (3) Principal Regulator - A registered funding portal's Principal Regulator will generally be determined in accordance with section 1.3 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations (NI 31-103)*. This means that the principal regulator will usually be the securities regulatory authority or regulator in the jurisdiction where the registered funding portal's head office is located.
- (4) Registered funding portal - A person that intends to operate a portal, platform or website to facilitate offerings made in reliance on the crowdfunding prospectus exemption is required to register as a restricted dealer under NI 31-103. The restricted dealer category is described in paragraph 7.1(2)(e) of NI 31-103 and permits specialized dealers or other intermediaries with an unconventional business model to carry on a limited trading business.

We recognize that other categories of registered dealers and advisers may wish to operate internet portals, platforms or websites that may facilitate distributions of securities in reliance on other prospectus exemptions, such as the accredited investor exemption in section 2.3 of National Instrument 45-106 *Prospectus and Registration Exemptions (NI 45-106)* or the offering memorandum exemption in section 2.9 of NI 45-106, and may be similar to the registered funding portal concept described in the Instrument. However, the registered funding portal described in the Instrument is intended to be a specialized type of restricted dealer to facilitate only distributions of securities in reliance on the crowdfunding prospectus exemption described in the Instrument. Accordingly, the regulatory regime for registered funding portals described in the Instrument, including the exemptions from certain usual registrant requirements described in Part 3 of the Instrument, are not available to other types of registrants that facilitate the sale of securities through the internet. A registered funding portal will not be permitted to obtain dual registration in another registration category.

- (5) Registered individual - The term "registered individual" is defined in NI 31-103 and ordinarily refers to an individual who is registered as the ultimate designated person (**UDP**), chief compliance officer (**CCO**) or a dealing or advising representative of a registered firm. A registered funding portal is not permitted to provide recommendations or advice to investors, except as permitted in subsection 33(2) [*Prohibition on providing recommendations or advice*] of the Instrument. Therefore, we do not anticipate that it will be necessary for an individual to register as a dealing or advising representative of a registered funding portal.

## PART 2 CROWDFUNDING PROSPECTUS EXEMPTION

### *Division 1: Offering requirements*

#### **Crowdfunding prospectus exemption**

7. Subsection 7(b) [*Crowdfunding prospectus exemption*] imposes a \$1.5 million limit on the amount that can be raised under the crowdfunding prospectus exemption by the issuer group during a specified time period. The imposition of the offering limit on the aggregate proceeds raised by the issuer group, rather than only by the issuer, is intended to prevent the \$1.5 million limit being circumvented.

#### **Availability of crowdfunding prospectus exemption to issuers**

8. (1) Reporting and non-reporting issuers - Subsections 8(1) to (3) [*Availability of crowdfunding prospectus exemption to issuers*] impose certain conditions on the availability of the crowdfunding prospectus exemption.

Subject to these conditions, the crowdfunding prospectus exemption is available to both reporting issuers and non-reporting issuers.

- (2) **Real estate issuers** –A “real estate issuer”, as defined in section 1 of the Instrument, that is not a reporting issuer, is excluded from being able to rely on the crowdfunding prospectus exemption. A real estate issuer includes a non-reporting issuer that “is a person that primarily invests in, or develops, real estate, or derives its revenues primarily from investments in real estate”. This exclusion is intended to capture non-reporting issuers whose primary business is focused on real estate. It is not intended to capture an issuer with a primary business that is not focused on real estate, but that invests in or develops real estate in the furtherance of its primary business. For example, an issuer that is developing a bakery business might need to rent or purchase real estate in order to establish retail bakery locations. We would not generally consider real estate activity that is ancillary to the issuer’s primary business as precluding the issuer from being able to rely on the exemption.

### **Investment limits**

9. Section 9 [*Investment limits*] of the Instrument imposes certain investment limits on purchasers of securities distributed under the crowdfunding prospectus exemption. An accredited investor that purchases securities under the crowdfunding prospectus exemption is subject to the same investment limits as other investors. However, an issuer can distribute securities to the accredited investor under the accredited investor prospectus exemption simultaneously with the distribution of securities under the crowdfunding prospectus exemption. In so doing, the issuer must comply with all applicable requirements under both exemptions, including the requirement that the securities distributed under the accredited investor prospectus exemption during the prescribed period have the same price, terms and conditions as those distributed under the crowdfunding prospectus exemption. The registered funding portal is not permitted to act as an intermediary in the distribution of securities under the accredited investor prospectus exemption. However, information about this distribution must be disclosed in the issuer’s marketing materials described in section 16 [*Disclosure at time of distribution - marketing materials*].

### **Full subscription of distribution and financial resources available**

13. Section 13 [*Full subscription of distribution and financial resources available*] requires that, at the time of the closing of an offering under the crowdfunding prospectus exemption, an issuer must have financial resources sufficient to achieve the next milestone set out in its written business plan. If no milestones have been established, the financial resources must be sufficient to carry out the activities set out in the business plan. This requirement will provide an element of investor protection, as a purchaser will have some assurance that the issuer will raise a sufficient amount of proceeds to achieve the next milestone or activities set out in its written business plan. In addition, permitting the additional financial resources of the issuer to be included in the determination as to whether this requirement has been satisfied will permit an issuer to satisfy the requirement as quickly as possible.

### **Concurrent distributions under other prospectus exemptions**

14. (1) The crowdfunding prospectus exemption set out in the Instrument is in addition to other prospectus exemptions contained in securities legislation, including the prospectus exemptions contained in NI 45-106. An eligible crowdfunding issuer may rely on other prospectus exemptions and may distribute securities through other types of registered intermediaries at the same time as conducting a crowdfunding offering in accordance with the crowdfunding regime described in the Instrument.
- (2) Section 14 [*Concurrent distributions under other prospectus exemptions*] of the Instrument requires that securities distributed under another 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, must have the same price, terms and conditions as those distributed under the crowdfunding prospectus exemption. This requirement is intended to promote fairness to purchasers by prohibiting an issuer from offering securities during the

prescribed period at different prices, or with different terms and conditions, than those distributed under the crowdfunding prospectus exemption.

### **Advertising and general solicitation**

18. Subsections 18(1) and (2) [*Advertising and general solicitation*] of the Instrument impose limits on advertising and soliciting purchasers in connection with a crowdfunding offering other than through the registered funding portal. No person involved with a crowdfunding offering can advertise the offering or solicit purchasers except as described below. However, an issuer or any other person involved with a crowdfunding offering can advise potential purchasers, including the issuer's customers and clients, that the issuer is proposing to offer its securities through crowdfunding and refer the potential purchasers to the website of the portal through which the distribution will be made. This advice can be provided in paper format or through the use of social media. However, in all cases, the advice must be limited to directing the potential purchaser to the portal's website to obtain relevant information about the offering.

### **Commissions or fees**

19. Section 19 [*Commissions or fees*] of the Instrument prohibits the payment by an issuer of a commission, finder's fee, referral fee or similar payment to any person in connection with a crowdfunding offering, other than to a registered funding portal. This is meant to mitigate against potential conflicts of interest. However, this restriction is not intended to prohibit payments to persons as compensation for their services to an issuer in preparing materials in connection with a crowdfunding offering, such as accounting or legal fees.

### **Risk acknowledgement**

20. (1) The risk acknowledgment form required by section 20 [*Risk acknowledgement*] of the Instrument may be completed online through the registered funding portal through which the distribution is made.
- (2) The risk acknowledgment form should be completed and signed by the issuer and registered funding portal (including by online signature) before it is provided to a purchaser.

### **Division 2: Rights of security holders**

#### **Liability for misrepresentation**

22. (1) In Ontario, the crowdfunding offering document required to be delivered by an issuer under the Instrument is considered to be an offering memorandum and the rights available under section 130.1 of the *Securities Act* (Ontario) apply in respect of the crowdfunding offering document. Refer to OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions* and the related Companion Policy for more information. Under section 22 [*Liability for misrepresentation*] of the Instrument, an issuer must provide a purchaser with a contractual right equivalent to the right in section 130.1 for any document or video made available to a purchaser in addition to the crowdfunding offering document.
- (2) In Québec, the crowdfunding offering document and any other documents or videos that are made available to potential purchasers are documents authorized by the Authority for use in lieu of a prospectus in regards to which rights of action established in section 217 to 219 of *Securities Act* (Québec) may be exercised. In addition, an issuer must provide a purchaser with a contractual right equivalent to the right in sections 217 to 219 of *Securities Act* (Québec) for any document or video made available to a purchaser in addition to the crowdfunding offering document.
- (3) The offering document required to be delivered by an issuer under the Instrument is considered to be an offering memorandum and the rights available under section 138 of the *Securities Act* (Nova Scotia) apply in respect of the offering document. Refer to Nova Scotia Securities Commission Rule 45-501 *Statutory Liability*

*for Misrepresentations in an Offering Memorandum Under Certain Exemptions From the Prospectus Requirement* and the related Companion Policy for more information. Under section 22 [*Liability for misrepresentation*] of the Instrument, an issuer must provide a purchaser with a contractual right equivalent to the right in section 138 for any document or video made available to a purchaser in addition to the crowdfunding offering document.

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

**Ongoing disclosure – reporting issuers and non-reporting issuers**

23. (1) Section 23 [*Annual financial statements*] of the Instrument prescribes ongoing disclosure obligations for non-reporting issuers that distribute securities under the crowdfunding prospectus exemption. For reporting issuers that distribute securities under the crowdfunding prospectus exemption, all applicable continuous disclosure obligations under securities law will continue to apply.
- (2) Non-reporting issuers are required to make available to the purchaser certain ongoing disclosure documents. These include annual financial statements, notices disclosing the use of proceeds and notices of specified events. Issuers may choose to make these documents available to purchasers in different ways, provided they take reasonable steps to ensure that all purchasers receive or can access the documents.

We consider disclosure documents to have been made available if they are mailed to each security holder or if the security holder receives notice that the disclosure documents can be viewed on a public website of the issuer or a website accessible by all security holders of the issuer.

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

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

**General**

29. A registered funding portal and its registered individuals must deal fairly, honestly and in good faith with its clients. This is consistent with the obligation imposed on all registrants, including restricted dealers, under securities legislation. A registered funding portal's clients include both issuers that enter into a contractual relationship with the portal to distribute securities through the portal and investors who open an account with the portal to purchase these securities.

**Proficiency**

30. (1) Section 30 [*Proficiency*] of the Instrument provides that a registered individual of a registered funding portal must, among other things, understand the structure, features and risks of each security distributed through the registered funding portal. This is consistent with the general proficiency requirement applicable to all registered individuals in section 3.4 of NI 31-103.
- (2) We expect the registered individual to develop an understanding of the structure, features and risks of each security distributed through the registered funding portal based on a review of the issuer's articles of incorporation, other constating documents and other materials included in the application for access to the registered funding portal. For example:
- (a) a registered funding portal and its registered individuals are expected to take reasonable steps to confirm that an issuer that proposes to make an offering through a registered funding portal meets the



definition of an “eligible crowdfunding issuer” and that the proposed offering involves “eligible securities”;

- (b) if an issuer proposes to offer securities described as “common shares” to the public, but the issuer’s constating documents and application for access indicate that the “common shares” contain restrictions on voting, or contain redemption rights that allow the issuer to redeem the shares in certain circumstances, or that insiders or promoters of the issuer hold another class of securities that have multiple votes, the registered funding portal should understand that it may be misleading to investors if the issuer describes the securities as “common shares” or does not disclose the existence and material terms of the securities held by the insiders and promoters;
  - (c) if the issuer is part of a corporate group, and the issuer’s interest in the business or the assets of the business are owned through one or more subsidiaries, the registered funding portal should understand the features and risks of the capital structure of the corporate group and assess whether the issuer’s disclosure adequately discloses these risks.
- (3) Subsection 30(2) [*Proficiency*] of the Instrument provides that the obligation to understand the structure, features and risks of a security does not include any obligation to assess
- (a) the merits or expected returns of an investment to investors, or
  - (b) the commercial viability of a proposed business or offering.

In addition, the obligation does not include any obligation to determine whether an issuer’s milestones are realistic or achievable or to assess the experience of the executive officers or directors of the issuer.

## ***Division 2: Permitted and restricted dealing activities***

### **Permitted dealing activities**

31. (1) Section 31 [*Permitted dealing activities*] of the Instrument provides that 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. This means that registered funding portals are not permitted to engage in a broader range of dealing and/or advising activities, including
- (a) facilitating distributions of securities in reliance on other prospectus exemptions;
  - (b) facilitating resales of securities acquired by an investor to accredited investors or other investors who are eligible to purchase securities on a prospectus-exempt basis; or
  - (c) providing other services of a corporate finance nature to issuers.
- (2) The limitation on dealing activities applies only to activities in connection with a distribution of securities under the crowdfunding prospectus exemption. A registered funding portal may engage in other types of crowdfunding activities that do not involve a distribution of securities, including facilitating crowdfunding activities based on a donation model, reward model or pre-purchase model.

### **Restricted dealing activities**

32. (1) Section 32 [*Restricted dealing activities*] of the Instrument provides that a registered funding portal and every registered individual of the registered funding portal must not allow an issuer access to the funding portal’s website if the issuer is a “related issuer” of the registered funding portal. The definition of a “related issuer” is

described in National Instrument 33-105 *Underwriting Conflicts* (NI 33-105) and generally refers to a situation where there is cross-ownership between an issuer and the registered funding portal. Subsection 1.2(2) of NI 33-105 provides that an entity is a related issuer to another entity if one of them is an "influential securityholder" of the other, or each of them is a related issuer of the same third party.

- (2) If a registered funding portal or a registered individual of a registered funding portal proposes to allow an issuer that is a connected issuer access to the registered funding portal, the registered funding portal should ensure that the issuer's offering documents include the disclosure required by Appendix C to NI 33-105. The definition of a "connected issuer" is described in NI 33-105 and generally refers to a situation where an issuer is not a related issuer of the registrant, but has some other relationship with the registrant that would cause a reasonable investor to question whether the registrant and the issuer are independent of each other for purposes of the distribution. Refer to NI 33-105 and the related guidance in Companion Policy 33-105CP for more information.

### **Prohibition on providing recommendations or advice**

33. (1) Section 33 [*Prohibition on providing recommendations or advice*] of the Instrument provides that a registered funding portal and a registered individual of the registered funding portal must not provide a recommendation or advice to an investor in connection with a distribution of or other trade in a security. Certain activities undertaken by registered funding portals may, by their nature, be considered a form of express or implied recommendation, endorsement or advice to investors. These activities may include activities in relation to:

- (a) selecting, screening or approving an issuer for access to the registered funding portal, which is sometimes referred to as curating;
- (b) highlighting, showcasing or spotlighting an issuer on the portal's website;
- (c) matching an issuer to an investor based on selection criteria identified by an investor;
- (d) distributing information about a particular issuer or offering to an investor based on selection criteria identified by an investor.

Since these activities may be considered part of the *bona fide* activities of a registered funding portal, the Instrument provides that the prohibition on providing a recommendation or advice does not prevent the activities described in subsection 33(2) of the Instrument.

(2) Nothing in the Instrument prevents a registered funding portal from establishing additional criteria or terms and conditions that an issuer must satisfy or meet in order to participate in a distribution under the crowdfunding prospectus exemption through the registered funding portal. In addition to its obligations under section 37 [*Issuers' access refusal - general*], a registered funding portal may establish additional criteria or due diligence checks to prevent access by an issuer to its portal for any reason, including any concern of the registered funding portal that:

- (a) any offering document or marketing materials of the issuer contain any statement or information that is misleading, false or deceptive or contains a misrepresentation;
- (b) the proceeds from a distribution under the crowdfunding prospectus exemption, together with any other amounts referred to in subsection 13(2) [*Full subscription of distribution and financial resources available*], are insufficient to accomplish the milestone or business plan referred to in section 8 [*Availability of crowdfunding prospectus exemption to issuers*];
- (c) the issuer may not be financially responsible in the conduct of its business or such business may not be conducted with integrity and with a view to the best interests of investors; or

- (d) the issuer has not complied with, or is not complying with, securities law or the undertakings, terms and conditions agreed to by the issuer in connection with any distribution under the crowdfunding prospectus exemption or otherwise.
- (3) We expect a registered funding portal to take reasonable steps to confirm that an investor proposing to participate in a crowdfunding distribution through its website understands the risks of such a distribution. In this respect, a registered funding portal should not rely solely on the risk acknowledgement form signed by an investor.

***Division 3: Portal obligations – issuer access to the portal***

**Criminal record and background checks**

36. (1) Section 36 [*Criminal record and background checks*] of the Instrument requires a registered funding portal to obtain the following documents from the the directors, executive officers and promoters of an issuer prior to allowing the issuer access to the registered funding portal’s website:
- (a) a completed 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) a consent to criminal record and other background checks and the collection of personal information in accordance with applicable privacy legislation.
- (2) At a minimum, we expect the following checks to be conducted by a registered funding portal:
- (a) regarding issuers:
    - (i) the existence of the issuer and its business registration, including a review of the issuer’s constating documents,
    - (ii) criminal record and securities enforcement history checks,
    - (iii) bankruptcy check, and
    - (iv) court record check, where available;
  - (b) regarding directors, executive officers, control persons and promoters of the issuer:
    - (i) criminal record and securities enforcement history checks,
    - (ii) bankruptcy check, and
    - (iii) court record check, where available.
- (3) A registered funding portal may retain a third party to perform these checks. However, the responsibility to comply with this section remains with the registered funding portal.
- (4) Subsection 35(2) requires the registered funding portal to file the completed personal information form with its Principal Regulator. This requirement is intended to act as a deterrent against false statements in a personal information form since it is an offence to make a false statement in a document that is required to be filed or furnished to the securities regulatory authorities and to ensure that regulatory authorities have recourse against the person making a false statement in a personal information form.

### **Restriction on cross ownership**

39. (1) Section 39 [*Restriction on cross ownership*] of the Instrument provides that a registered funding portal must not accept an application for access by an issuer 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 in paragraph (a), otherwise has an economic interest in the issuer.
- (2) A registered funding portal may accept securities of an issuer as payment of portal access fees or similar fees, provided the investment by the registered funding portal does not exceed the limit contained in section 39. However, an investment by a registered funding portal in an issuer that intends to distribute securities through the registered funding portal, including an investment in the form of securities accepted as payment for fees, will generally give rise to a conflict of interest. Accordingly, we expect the registered funding portal to prominently disclose the investment and to comply with the conflicts of interest provisions in Part 13 of NI 31-103.
- (3) A registered funding portal is not permitted to recommend or endorse a particular issuer or offering on its website. Accordingly, a registered funding portal is not permitted to advertise or promote an issuer in which it has an investment in a manner that is more prominent than, or inconsistent with, the manner in which other issuers are displayed on its website.

### **Division 4: General portal obligations and prohibited activities**

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

42. (1) Section 42 [*Prohibition on holding, handling or having access to purchaser funds or assets*] of the Instrument provides that a registered funding portal and its registered individuals must not hold, handle or have access to purchaser funds or purchaser assets. Indicia of holding or having access to an investor's funds or assets include
- (a) holding an investor's securities, certificates or cash for any period of time;
  - (b) having authority (e.g., a power of attorney) to withdraw funds or securities from an investor's account;
  - (c) accepting funds from an investor directly (e.g., a cheque made payable to the registered funding portal) or accepting funds on the investor's behalf from a custodian);
  - (d) acting in the capacity of a trustee for an investor;
  - (e) having, in any capacity, legal ownership of, or access to, the investor's funds or securities.
- (2) For the purposes of this condition, we interpret the phrase "hold, handle or have access" as not including the handling in transit of an investor's cheque made payable to a third party. For example, a registered funding portal may handle in transit an investor's cheque made payable to a Canadian financial institution or other acceptable escrow party.

#### **Restriction on lending**

45. (1) Section 45 [*Restriction on lending*] of the Instrument provides that a registered funding portal must not lend money, extend credit or provide margin to an investor or recommend that an investor use borrowed money to finance the purchase of securities of the issuer under the crowdfunding prospectus exemption. This activity

would create a conflict of interest which cannot be properly managed. In addition, investments made in reliance on the crowdfunding prospectus exemption will generally be made without the benefit of a suitability assessment or other advice from a registrant.

- (2) To the extent that products sold to clients are structured in a way that would result in the registered funding portal becoming a lender to the clients, including the portal extending margin to the client, we would consider the registered funding portal to not be in compliance with section 45.

#### MISCELLANEOUS

##### **Resale of securities distributed under the crowdfunding prospectus exemption**

Securities acquired under the crowdfunding prospectus exemption are subject to resale restrictions. Securities of a reporting issuer acquired under the crowdfunding prospectus exemption are subject to a four-month hold period. Securities of a non-reporting issuer cannot be resold in a jurisdiction:

- (a) until the issuer becomes a reporting issuer and certain other conditions are met, or
- (b) unless the sale is made under another available prospectus exemption.

The crowdfunding prospectus exemption is not available for distributions by selling security holders. Refer to National Instrument 45-102 *Resale of Securities*.