

Notice of Publication and Request for Comment

Proposed Multilateral Instrument 45-108 *Crowdfunding* and Companion Policy 45-108 *Crowdfunding*

Consequential Amendments to National Instrument 45-102 *Resale of Securities*

November 5, 2015

Introduction

The Financial and Consumer Affairs Authority of Saskatchewan (FCAA) published proposed Multilateral Instrument 45-108 *Crowdfunding* (MI 45-108) and proposed Companion Policy 45-108 *Crowdfunding* (45-108CP) for comment on March 20, 2014 and are now republishing MI 45-108 and 45-108CP for a 60-day comment period. In conjunction with the republication, FCAA is publishing for comment MI 45-108 related forms and consequential amendments to National Instrument 45-102 *Resale of Securities* (NI 45-102).

The FCAA worked on MI 45-108 with the securities regulatory authorities in Manitoba, Ontario, Québec, New Brunswick and Nova Scotia (collectively, the **jurisdictions**). Concurrent with the republication, other than in Saskatchewan, MI 45-108 is being published in final form, which includes a crowdfunding prospectus exemption (the **crowdfunding exemption**) and a registration framework for funding portals (**funding portals**) (collectively, the **45-108 crowdfunding regime**). Together the jurisdictions have coordinated their efforts in developing the 45-108 crowdfunding regime.

Substance and purpose of the 45-108 crowdfunding regime

We have the responsibility to examine whether securities law contributes to the efficient functioning of our capital markets, while maintaining adequate investor protection. This includes assessing whether the securities regulatory framework remains responsive and relevant in a dynamic environment that is being shaped by advances in technology and a broad array of demographic, cultural and economic forces. The internet and social media have enabled start-ups and technology companies that foster innovation to reach out to a large number of investors, including retail investors (the crowd), to raise capital.

Selling securities over the internet to a large number of investors, sometimes referred to as “crowdfunding”, has emerged as a new way for some businesses, particularly start-ups and small and medium-sized enterprises (SMEs), to access capital that would not have otherwise been accessible. “Crowdfunding” is an umbrella term used to capture many forms of capital and fund raising, in this context, we mean raising capital from members of the public through the distribution/sales of securities. Crowdfunding may enable issuers to raise capital more effectively and at a lower cost while also providing investors with greater access to investment opportunities. The 45-108 crowdfunding regime is intended to leverage the use of the internet and social media to facilitate capital formation primarily for start-ups and SMEs that foster innovation and to provide new investment opportunities for investors. At the same time, we believe the 45-108 crowdfunding regime maintains an appropriate level of investor protection and regulatory oversight to be responsive both to global market developments in this area and to our mandate to provide protection to investors.

The 45-108 crowdfunding regime will enable start-ups and SMEs in their early-stages of development to raise capital online from a large number of investors through a single funding portal. A limit on the total

amount that can be raised will be imposed on issuers and investors will be subject to investment limits as a means of limiting their exposure to a highly risky investment. The registration requirement for those operating a funding portal is a key investor protection measure as the registration requirement addresses, among other things, potential integrity concerns that may apply to funding portals and the persons operating them, as well as potential concerns relating to conflicts of interest and self-dealing.

We believe the introduction of the 45-108 crowdfunding regime is a significant step in enhancing capital raising alternatives in Canada, particularly for start-ups and SMEs. The introduction of the 45-108 crowdfunding regime in the jurisdictions will allow start-ups and SMEs to benefit from greater access to capital from investors that was previously limited.

The 45-108 crowdfunding regime encompasses measures which are intended to provide effective protection for investors, including:

Type of security	<ul style="list-style-type: none"> • issuers can only offer non-complex securities
Investment limits	<ul style="list-style-type: none"> • investors are subject to the following investment limits: <ul style="list-style-type: none"> ○ an investor that does not qualify as an accredited investor: <ul style="list-style-type: none"> ▪ \$2,500 per investment, and ▪ in Ontario, \$10,000 in total in a calendar year, ○ an accredited investor: <ul style="list-style-type: none"> ▪ \$25,000 per investment, and ▪ in Ontario, \$50,000 in total in a calendar year, ○ in Ontario, no investment limits for a permitted client
Offering document	<ul style="list-style-type: none"> • issuers are required to prepare an offering document that contains all of the information about the issuer and its business that an investor should know before purchasing the issuer's securities
Risk acknowledgement form (RAF)	<ul style="list-style-type: none"> • investors must complete a RAF requiring them to positively confirm having read and understood the risk warnings and information in the crowdfunding offering document before they can enter into an agreement to purchase securities
Liability for materials	<ul style="list-style-type: none"> • issuers are accountable for, and are subject to a standard of liability on the crowdfunding offering document and other permitted materials, and investors are provided with a related right of action
Advertising and solicitation	<ul style="list-style-type: none"> • a prohibition on advertising and general solicitation
Ongoing disclosure	<ul style="list-style-type: none"> • non-reporting issuers must make available to investors: (i) annual financial statements; (ii) a notice of use of proceeds; and (iii) in New Brunswick, Nova Scotia and Ontario, a notice of specified key events when there is a discontinuation of the issuer's business, a change in the issuer's industry or a change of control of the issuer • reporting issuers must continue to comply with all of their disclosure requirements
Funding portal	<ul style="list-style-type: none"> • issuers can only distribute securities through a single funding portal that is operated by a registrant that is registered as an investment dealer, exempt market dealer (registered dealer funding portal) or restricted dealer as outlined in MI 45-108 (restricted dealer funding portal) and must post the offering document and other permitted materials solely on that funding portal's online platform
Funding portal requirements	<ul style="list-style-type: none"> • funding portals are prohibited from offering securities of a related issuer • a funding portal must fulfill certain gatekeeper responsibilities prior to

	<p>allowing an issuer access to its online platform, including reviewing the issuer's disclosure in the crowdfunding offering document and other permitted materials for completeness, accuracy and any misleading statements</p> <ul style="list-style-type: none"> • a funding portal must review information and obtain background checks on the issuer and its directors, executive officers and promoters, and deny an issuer access to the funding portal in certain circumstances
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We note that the use of the internet for raising capital is not restricted to crowdfunding as defined in the 45-108 crowdfunding regime. Today, many online platforms are used to raise capital under other prospectus exemptions such as the accredited investor exemption.

Background

On March 20, 2014, the securities regulatory authorities of Saskatchewan, Manitoba, Québec, New Brunswick and Nova Scotia published a Notice of Publication and Request for Comment on two different crowdfunding prospectus exemption regimes:

- the start-up crowdfunding registration and prospectus exemptions (the **start-up crowdfunding exemptions**); and
- the proposed 45-108 crowdfunding regime.

The proposed 45-108 crowdfunding regime was also published on March 20, 2014 (the **March 2014 45-108 materials**) in a Notice and Request for Comment by the Ontario Securities Commission, as part of a broad review of the exempt market that would, among other things, introduce four new prospectus exemptions for issuers other than investment funds.

The securities regulatory authorities of British Columbia, Saskatchewan, Manitoba, Québec, New Brunswick, and Nova Scotia have implemented the start-up crowdfunding exemptions by way of local blanket orders on May 14, 2015. The 45-108 crowdfunding regime and the start-up crowdfunding exemptions are viewed by those jurisdictions (except for British Columbia, which is not a jurisdiction participating in the 45-108 crowdfunding regime) as complementary regimes. However, the 45-108 crowdfunding regime is available to both reporting and non-reporting issuers and provides both higher investment limits for investors and higher limits on the amount issuers can raise.

Comments received by the jurisdictions

The comment period for the March 2014 45-108 materials ended on June 18, 2014. The jurisdictions collectively received 70 written submissions. We have considered the comments received and thank all of the commenters for their input.

Comment letters received can be viewed on the following websites:

- Ontario Securities Commission – www.osc.gov.on.ca
- Autorité des marchés financiers – www.lautorite.qc.ca/en

Key themes from the comment letters

A summary of the general themes raised in the comment letters that were received across the jurisdictions is set out below.

Investor protection

A significant number of commenters raised concerns related to investor protection. Many of the commenters noted the high probability that investors would lose their entire investment in a start-up or a SME because these businesses typically have low survival rates and there are often issues related to corporate governance, insider trading and integrity concerns.

Some of the commenters further noted that unsophisticated investors are particularly vulnerable in a crowdfunding investment environment. Particular concerns expressed included:

- investors lack the requisite expertise, skills and experience to invest in a crowdfunding offering,
- investors are unfamiliar with start-up investing principles and the risks particular to start-ups and SMEs,
- investors lack sufficient information to make appropriate investment decisions due to the low level of disclosure required of non-reporting issuers under the crowdfunding exemption,
- there will be limited access to ongoing information about a start-up or SME that is a non-reporting issuer,
- investors do not understand and appreciate the restrictions on their ability to resell the shares they purchase, and
- the risk of fraud in a crowdfunding environment, particularly given the increased access of unsophisticated investors to private markets that the exemption would provide and the broad reach afforded by the internet.

As we expand accessibility to the exempt market through crowdfunding, we recognize that investor protection measures are an important component of the framework and we will remain vigilant in monitoring the adequacy of the protection it affords investors. We believe the 45-108 crowdfunding regime we are introducing will provide greater access to capital for start-ups and SMEs and that the framework we are adopting, including the measures noted above, will provide effective protection for investors.

Investment limits

The March 2014 45-108 materials included proposed investment limits for all investors: a \$2,500 limit per investment and a \$10,000 limit for all investments made by an investor under the crowdfunding exemption in a calendar year. A large number of commenters expressed a range of opinions about the proposed investment limits.

One group of commenters thought the proposed investment limits would frustrate the 45-108 crowdfunding regimes' objectives of facilitating capital raising for start-ups and SMEs, would interfere with investors' ability to pursue their investment objectives, and would not provide meaningful investor protection.

Another group of commenters recommended that the dollar amount of the investment limits be reduced for investors. The commenters pointed to the concept of crowdfunding being based on small investments made by a broad pool of investors and the limited amount of funds Canadians have available to invest annually as evidenced by published economic data. The commenters argued that lower investment limits would discourage over-concentration by unsophisticated investors in a risky class of investments.

Several commenters supported removing or increasing investment limits for accredited investors. The arguments in support of this position generally pertained to the relatively high level of sophistication such investors possess and their ability to retain advice and withstand loss.

We continue to believe that investment limits are a necessary and appropriate investor protection tool that can help to reduce the risk associated with an investment in securities under the crowdfunding exemption, while still facilitating capital-raising by start-ups and SMEs. However, in light of the feedback received, we considered different approaches to investment limits under the crowdfunding exemption and have made changes to the investment limits that were proposed in the March 2014 45-108 materials.

Financial statement assurance requirements for non-reporting issuers and other financial disclosure

Several commenters provided feedback regarding the proposed assurance requirements for the financial statements of a non-reporting issuer that distributes securities in reliance on the crowdfunding exemption. The commenters' recommendations on non-reporting issuer's financial statements included a mandatory audit, a review being sufficient and a tiered approach to assurance requirements.

We continue to support a tiered approach to financial statement assurance requirements. After considering the comments, we have simplified and raised the thresholds based on the amount an issuer has raised under one or more prospectus exemptions since its formation. As such, a non-reporting issuer's financial statements will be required to be:

- audited or reviewed by a public accounting firm if the cumulative amount an issuer has raised under prospectus exemptions since its formation is \$250,000 or more but is less than \$750,000, or
- audited if the cumulative amount an issuer has raised under prospectus exemptions since its formation is \$750,000 or more.

We believe these thresholds strike an appropriate balance between providing investors with reliable financial information and not imposing a disproportionate financial burden on start-ups and SMEs that have limited financial resources to pursue their business.

Offering limit

Several commenters expressed views about the proposed \$1.5 million limit on the aggregate amount that could be raised by an issuer group under the crowdfunding exemption. Although several commenters supported the proposed limit, an equal number of commenters thought the limit should be higher.

We maintain that a limit of \$1.5 million is appropriate. The focus of the crowdfunding exemption is to facilitate capital raising by start-ups and SMEs, and the proposed limit is commensurate with the capital needs of issuers at this stage of development. There are other prospectus exemptions available to address the needs of issuers at more advanced stages of development.

Funding portal – registration in other registration categories and use of the crowdfunding exemption

Many commenters disagreed with the prohibition on a funding portal operated by a registrant registered in a registration category other than that of restricted dealer under MI 45-108 and suggested other registrants should be allowed to use the crowdfunding exemption. These commenters noted that registrants in other categories would have the experience and expertise to perform the work and comply with requirements of MI 45-108. They also noted that this restriction would increase complexity and costs for an issuer raising funds under multiple prospectus exemptions, and limiting funding portals to one prospectus exemption would prevent funding portals from being economically viable.

We considered the comments received and amended the March 2014 45-108 materials to permit investment dealers and exempt market dealers to use the crowdfunding exemption as registered dealer funding portals. However, these registrants will need to comply with all of the requirements applicable to their registration category, including performing specific know-your-client and know-your product due diligence on the issuers, in addition to the requirements applicable to a funding portal as set out in MI 45-108.

As a funding portal operated by a registrant registered as a restricted dealer under MI 45-108 is a specialized type of restricted dealer, these restricted dealer funding portals can only rely on the crowdfunding exemption to facilitate distributions of non-complex securities and their review of issuers will be limited in comparison to the know-your-product obligations of investment dealers and exempt market dealers relying on the crowdfunding exemption. Restricted dealer funding portals will not be required to conduct a suitability assessment for the investor and will not assess the merits or expected returns of an investment. Rather, the restricted dealer funding portal will provide a gatekeeper role focused on compliance by issuers within the requirements of MI 45-108. While we continue to believe a restricted dealer under MI 45-108 should not be registered in any other registration category, we believe the restricted dealer should be allowed to be affiliated with another registered firm.

Custodial requirements – holding, handling or having access to investor funds or assets

Many commenters expressed an opinion on the restriction on holding, handling, or having access to client funds or securities by funding portals.

We acknowledge these comments and agree that client funds and assets would be better protected if they were held by the funding portal that is subject to capital and insurance requirements. We have amended the March 2014 45-108 materials so that a restricted dealer funding portal will be permitted to hold, handle, control or have access to investor funds provided the restricted dealer funding portal maintains the minimum capital requirement and fidelity bond insurance requirements equivalent to an exempt market dealer. Registered dealer funding portals will be required to comply with the capital and insurance requirements applicable to their registration category and where applicable, as required by the Investment Industry Regulatory Organization of Canada.

Advertising and solicitation

The March 2014 45-108 materials proposed that all relevant information about a crowdfunding offering would be required to be made available only on the funding portal's online platform through which the distribution was to be made and not on any other website. An issuer could inform potential investors that the issuer was proposing to offer its securities under the crowdfunding exemption and refer the potential investors to the online platform of the funding portal for more information.

Commenters generally supported, or did not believe it was inappropriate to have reasonable restrictions on advertising and solicitation by funding portals and issuers relying on the crowdfunding exemption. However, some commenters disagreed with the restrictions on advertising and solicitation by funding portals and issuers. They felt that limiting avenues or channels through which investors receive information or advertisements about an investment opportunity would be a detriment to an issuer seeking capital and to investors seeking as much information as possible about a potential investment. These commenters suggested that other means of communication, such as email, text, or verbal communications, should also be permitted.

We note that an issuer is permitted to inform potential investors of its offering on the funding portal's online platform and may use any form of communication (e.g. text, email or posters) it chooses to direct potential investors to the funding portal's online platform. We continue to believe that all materials

pertaining to a crowdfunding offering (including terms sheets and videos) should only be made available to potential investors on the funding portal's online platform. This will also allow the funding portal to ensure that all materials of the issuer are consistent with the crowdfunding offering document and comply with the requirements of MI 45-108.

The funding portal is able to advertise its business. For example, a funding portal can advertise the fact that crowdfunding offerings can be made through the funding portal and the fact that information about such offerings would be posted on its online platform.

Changes to the March 2014 45-108 materials

After considering the comments received and consultations with stakeholders, we have made significant changes to MI 45-108 and 45-108CP that were published for comment. The following is a summary of the changes made:

- investment limits
- use of other prospectus exemptions
- eligibility of issuers to use the crowdfunding exemption
- aggregate minimum proceeds
- point of sale disclosure
- financial statements
- investors' rights of withdrawal
- funding portal requirements

Investment limits

(a) Investment limits for investors that are not accredited investors (non-accredited investors)

The March 2014 45-108 materials provided that an investor would not be permitted to invest:

- more than \$2,500 in a single investment under the crowdfunding exemption, or
- more than \$10,000 in total under the crowdfunding exemption in a calendar year.

We continue to believe that investment limits for non-accredited investors are a critical investor protection measure. We have retained the \$2,500 limit for a single investment by a non-accredited investor, but are not imposing an annual investment limit. Ontario has retained both the single and annual investment limits for non-accredited investors.

(b) Investment limits for accredited investors

The March 2014 45-108 materials provided that an accredited investor that purchased securities under the crowdfunding exemption would be subject to the same investment limits as other investors. We specifically requested comment on whether an accredited investor should be permitted to make larger investments under the crowdfunding exemption.

Based on the comments we received, we have made the following changes:

- accredited investors will now be allowed to invest up to \$25,000 in a single investment with no annual investment limit. Ontario will impose a \$50,000 annual limit,
- when the investor is a permitted client, Ontario will not place any investment limits.

We believe that higher investment limits for an accredited investor are appropriate given that these investors either have the ability to withstand financial loss or the resources to obtain financial advice. A tiered approach to investment limits will allow accredited investors to invest larger amounts alongside non-accredited investors. We believe this may assist issuers to raise capital in more cost effective manner and may potentially generate higher revenues for funding portals contributing to their economic viability.

(c) Compliance with investment limits

In the March 2014 45-108 materials, securities could not be distributed to an investor under the crowdfunding exemption if the amount invested exceeded the prescribed investment limits.

We have maintained these requirements to support compliance with the investment limits. In addition, we now require as a condition of closing a distribution confirmation and validation from the investor that they are an accredited investor when the investment is greater than \$2,500. Ontario will require a confirmation of investment limits form from the investor.

Use of other prospectus exemptions

The March 2014 45-108 materials allowed an issuer to distribute securities under another prospectus exemption such as the accredited investor exemption concurrently with the distribution of securities under the crowdfunding exemption as long as all securities distributed by an issuer during the crowdfunding distribution period had the same price, terms and conditions.

We have now removed this requirement. An issuer will now be permitted to distribute securities under other prospectus exemptions with different prices, terms and conditions from those being distributed under the crowdfunding exemption during the crowdfunding distribution period. This change provides flexibility for an issuer. Depending on the nature and timing of the concurrent distribution, the crowdfunding offering document may require an amendment to reflect the concurrent distribution.

Eligibility of issuers to use the crowdfunding exemption

(a) Real estate issuers

The March 2014 45-108 materials prohibited non-reporting real estate issuers from using the crowdfunding exemption. We sought specific comment on whether this restriction was appropriate.

After considering the comments received, we removed the prohibition on non-reporting real estate issuers from distributing their securities under the crowdfunding exemption.

(b) Jurisdiction of incorporation or organization of principal operating subsidiary

In the March 2014 45-108 materials, both the issuer, and if applicable, the parent and the principal operating subsidiary of the issuer were required to be incorporated or organized under the laws of Canada or a jurisdiction of Canada. The rationale for these restrictions was two-fold:

- to avoid concerns associated with an issuer in a foreign jurisdiction which may not have the comparable investor protections in its constating statute as are found in Canadian legislation, and
- to facilitate capital raising for Canadian issuers, one of the key objectives of the crowdfunding initiative.

We continue to believe that requiring that an issuer be incorporated or organized under the laws of Canada or a jurisdiction of Canada is consistent with our objectives.

We now permit the principal operating subsidiary of an issuer incorporated or organized under the laws of Canada, a jurisdiction of Canada, the laws of the United States of America, or territory of the United States of America or the District of Columbia to be an eligible crowdfunding issuer. We believe this will provide greater flexibility for issuers in structuring their affairs without compromising investor protection or our objectives as described above.

Aggregate minimum proceeds and conditions for closing of the distribution

In the March 2014 45-108 materials, a distribution made in reliance on the crowdfunding exemption could not be completed unless the minimum amount of funds to be raised, as specified in the crowdfunding offering document, had been subscribed for and, at the time of the completion of the offering, the issuer had financial resources sufficient to achieve the next milestone, or to carry out the business activities, set out in its written business plan.

We have revised MI 45-108 to require that, as a condition of closing, an issuer must have raised aggregate minimum proceeds that are sufficient to accomplish the business objectives of the issuer that are described in the crowdfunding offering document. The aggregate minimum proceeds may be raised through one or both of: (i) the crowdfunding distribution; and (ii) any concurrent distributions by any member of the issuer group provided that the proceeds from those distributions are unconditionally available to the issuer at the time of closing of the distribution. In the crowdfunding offering document, the issuer is now required to describe each business objective, and the estimated time period and costs to accomplish it.

The conditions for closing of the distribution have now been expanded to not only aggregate minimum proceeds, but also the investor's right of withdrawal has expired, the issuer must provide written confirmation to the funding portal regarding proceeds of concurrent distributions and the issuer must receive from the funding portal the purchase agreement, risk acknowledgement form and a confirmation and validation that the purchaser is an accredited investor if the investment is greater than \$2,500.

We believe that these changes will provide adequate protection to investors and meaningful information on which to base an investment decision.

Point of sale disclosure

(a) Crowdfunding offering document

We have changed the disclosure requirements in the crowdfunding offering document and have more closely aligned them with the start-up crowdfunding offering document requirements. We believe the changes will provide investors with all of the information they need to know about the issuer and its business before investing.

(b) Forms of certificate for reporting issuers and for non-reporting issuers

In the March 2014 45-108 materials, an issuer was required to certify that the crowdfunding offering document did not contain a misrepresentation. We continue to require this certification for reporting issuers.

We have changed the certificate requirement for non-reporting issuers. A non-reporting issuer will now be required to certify that its crowdfunding offering document does not contain an untrue statement of material fact. This now aligns with the standard of liability in the start-up crowdfunding exemption, which only allows non-reporting issuers.

(c) Risk acknowledgement form

Investors are provided with a RAF to complete before they make their investment. We have revised the RAF to closely align with the equivalent form used in the start-up crowdfunding exemptions. We believe the revised RAF will reinforce the risks of a potential investment to an investor, including that the investor may lose the entire investment. The revised RAF now requires an investor to positively confirm that the investor has read and understood the risk warnings and the information in the crowdfunding offering document.

Financial statements

In the March 2014 45-108 materials, a non-reporting issuer's financial statements were required to be reviewed by an independent public accounting firm if the issuer had not raised more than \$500,000 under the crowdfunding exemption or any other prospectus exemption since its formation or expended more than \$150,000 since that time. The issuer's financial statements were required to be audited if both of those thresholds were exceeded.

We have changed the threshold amounts, removed the \$150,000 expenditure threshold and added additional requirements regarding financial statements. A non-reporting issuer's financial statements must now be approved by management of the issuer and reviewed by an independent public accounting firm or be audited if the issuer has raised \$250,000 or more, but less than \$750,000 under one or more prospectus exemptions since its formation, and be audited if it has raised \$750,000 or more.

We believe these thresholds strike an appropriate balance between providing investors with reliable financial information and not imposing a disproportionate financial burden on start-ups and SMEs that have limited financial resources to pursue their business.

Notice of Specified Key Events

The March 2014 45-108 materials contemplated that non-reporting issuers would be required to provide notice to investors of the following specified events within 10 days of the event occurring:

- a fundamental change in the nature, or a discontinuation, of the issuer's business,
- a significant change to the issuer's capital structure,
- a major reorganization, amalgamation or merger involving the issuer,
- a take-over bid, issuer bid or insider bid involving the issuer,
- a significant acquisition or disposition of assets, property or joint venture interests, and
- 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.

We have removed this requirement. New Brunswick, Nova Scotia and Ontario have retained this requirement and now have a prescribed form (Form 45-108F4 *Notice of Specified Key Events*) that sets parameters as to the nature and comprehensiveness of the information that is required to be provided to investors.

Investors' right of withdrawal

The March 2014 45-108 materials provided that an issuer that offers securities under the crowdfunding exemption must provide an investor with a contractual right to withdraw an 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 issuer’s crowdfunding offering document.

MI 45-108 has been changed so the investor will have a right of withdrawal that expires 48 hours after the date of the agreement to purchase securities and any subsequent amendment to the crowdfunding offering document. We believe that this change will provide the investor with a “cooling off” period to consider the disclosure provided and reflect on their investment decision while also providing the issuer information about the amount of its offering that has been subscribed during the distribution period.

Funding Portal Requirements

We have made changes to the requirements for funding portals, specifically the following:

- use of the crowdfunding exemption by registrants,
- custodial requirements,
- restricted dealer funding portal requirements,
- access by issuers to a funding portal’s online platform,
- access by investors to the funding portal’s online platform,
- operational requirements.

Use of the crowdfunding exemption by registrants

In the March 2014 45-108 materials, a specialized type of restricted dealer could operate a funding portal and could only distribute securities under the crowdfunding exemption. This restricted dealer could not be registered in any other registration category. Investment dealers and exempt market dealers were not permitted to distribute securities under the proposed crowdfunding exemption.

Based on feedback, we have changed MI 45-108 to now allow two types of funding portals: the restricted dealer funding portal (specific to MI 45-108) and registered dealer funding portals (investment dealers and exempt market dealers). Registered dealer funding portals are still required to comply with all of their obligations as an investment dealer or as an exempt market dealer, as the case may be, including conducting client-specific know-your-client, know-your product and suitability, in addition to the applicable funding portal requirements set out in MI 45-108.

While we have not changed the requirement that a restricted dealer under MI 45-108 cannot be registered in any other registration category, we now permit restricted dealer funding portals to be affiliated with another registered firm. However, in Ontario affiliates are not allowed.

Custodial requirements – holding, handling or having access to investor funds or assets

The March 2014 45-108 materials prohibited a funding portal from holding, handling or having access to an investor’s funds or assets. The funding portal was required to arrange for a Canadian financial institution: (i) hold in trust all funds or consideration received from a potential investor in connection with a distribution of a security under the crowdfunding exemption until midnight on the second business day after the investor agreed to purchase the security, and (ii) to return all funds or consideration to the investor promptly if the investor exercised the right to cancel the agreement to purchase the security.

Based on the comments we received, we have changed MI 45-108 to permit funding portals to hold, handle, control or have access to investor funds or assets as long as they maintain minimum capital and fidelity bond insurance. We believe that investor funds and assets will be better protected if the funding portal is subject to capital and insurance requirements.

MI 45-108 now requires the funding portal to return of funds to the investor when the investor exercises its right of withdrawal, the crowdfunding distribution does not close, the crowdfunding distribution is withdrawn or is otherwise terminated. Additionally, there is a new requirement that the funding portal cannot release the funds to the issuer until the requirements for the closing of the distribution have been met by the issuer.

Additional requirements, restricted dealer funding portal

(a) Permitted activities

In the March 2014 45-108 materials, a funding portal was only allowed to distribute securities under the crowdfunding exemption.

We have changed MI 45-108 to permit a funding portal to act as an intermediary in connection with securities offerings pursuant to both the crowdfunding exemption and the start-up crowdfunding exemptions.

(b) Chief compliance officer

In the March 2014 45-108 materials, a funding portal was required to designate an individual to be the Chief Compliance Officer (CCO). The individual designated by the funding portal was required to comply with the proficiency requirements for an exempt market dealer CCO.

We have retained the requirement for a CCO. In light of the specialized nature of restricted dealer funding portals and their limited permitted dealing activities, the CCO proficiency requirements for a restricted dealer funding portal has been amended such that the individual may have 12 months of experience and training that a reasonable person would consider necessary to perform the activities of a CCO for a restricted dealer funding portal, instead of the experience requirements for an exempt market dealer CCO. We believe this change strikes an appropriate balance between sufficient proficiency of a restricted dealer funding portal CCO and the specialized nature of a restricted dealer funding portal and its limited permitted dealing activities.

(c) Dispute resolution services

In the MI 45-108, we have clarified that a restricted dealer funding portal is not required to make available the independent dispute resolution services of the Ombudsman for Banking Services and Investments' (OBSI) for clients of the restricted dealer funding portal. The Canadian Securities Administrators (CSA) continues to remain supportive of the services provided by OBSI; however, given the limited scope of activities of the restricted dealer funding portal, including that it does not provide suitability advice or make recommendations, we believe that the costs associated with membership in OBSI would outweigh the benefits that may flow to investors. Registered dealer funding portals continue to be subject to the OBSI requirement.

Access by issuers to a funding portal's online platform

(a) Background checks

In the March 2014 45-108 materials, we required a funding portal to obtain from each director, executive officer, and promoter of the issuer a completed personal information form that contained substantially the same information as set out in Appendix A to National Instrument 41-101 *General Prospectus Requirements*. The funding portal was required to review the forms and conduct criminal records and background checks on the issuer and its directors, executive officers, and promoters. We also required that the funding portal, as agent of the issuer, file a copy of the completed personal information forms and the results of the criminal records and other background checks with the principal regulator.

We continue to require funding portals to carry out this gatekeeper function. However, since funding portals are responsible for obtaining personal information forms, ensuring that criminal record and background checks are conducted, and reviewing this information, we no longer require funding portals to file a copy of this information with us, unless requested.

An additional change is that there is now a new personal information form (Form 45-108F5 *Personal Information Form and Authorization to Collect, Use and Disclose Personal Information*).

(b) Denial of issuer access and termination

In the March 2014 45-108 materials, a funding portal was required to deny an issuer access to the funding portal's online platform if the funding portal had made a good faith determination that the issuer or the offering was a fraud; that the issuer's offering documents or other materials contain a statement or information that is false, deceptive, misleading or that constitutes a misrepresentation; if the business of the issuer may not be conducted with integrity and in the best interests of security holders; or the issuer is not complying with MI 45-108. In addition, a funding portal was required to ensure that the issuer's crowdfunding offering document disclosed certain information, including prior bankruptcies or insolvencies, cease trade or other similar orders, and certain penalties and sanctions.

We have maintained the requirement that a funding portal must deny the issuer access where the funding portal makes a good faith determination that the business of the issuer may not be conducted with integrity. We have removed the requirement to make a good faith determination that the issuer or the distribution is fraudulent. We believe that investors will continue to be protected against potential fraudulent distributions since a funding portal has a gatekeeper role which includes background checks and review of the issuer's offering document and other materials.

Access by investors to the funding portal's online platform

Required online platform disclosure

In the March 2014 45-108 materials, a funding portal was required to take reasonable steps to ensure that potential investors accessing the funding portal's online platform understand the high risk nature of an investment made under the crowdfunding exemption, and to include on its online platform the following prominent disclosure:

- (i) no securities regulatory authority or regulator has approved or expressed an opinion about the securities offered on the registered funding portal's online platform,
- (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.", and
- (iii) a description of all compensation, including fees, costs and other expenses that the registered funding portal may charge to, or impose on, an issuer or investor.

We have retained these requirements but have changed MI 45-108 so that now the disclosure in (i) and (ii) and the following must be provided and acknowledged by the investor prior to the funding portal allowing the investor entry to its online platform,

- that the person or company may receive limited ongoing information about the issuer and an investment made through the funding portal, and
- that the person or company is entering an online platform operated by a funding portal that is either (a) registered in the category of restricted dealer subject to the terms and conditions of MI 45-108 and will not provide advice about the suitability of the purchase of the security; or

(b) registered in the category of investment dealer or exempt market dealer and is required to provide advice about the suitability of the purchase of the security.

We believe these requirements for upfront disclosure will reinforce the risks of a potential investment to an investor and inform the investor whether they will receive suitability advice or not.

The disclosure in (iii) remains as a requirement for the funding portal to display on their online platform.

Operational Requirements

(a) Monitoring communications on the funding portal's online platform

In the March 2014 45-108 materials, where a funding portal offered a discussion board or other means of communication between investors and/or between an issuer and its investors, the funding portal was required to monitor the postings in order to confirm that the issuer was not making any statement or providing information which is inconsistent with the crowdfunding offering document or is not in compliance with the MI 45-108. The funding portal was also required to remove any material that it deemed inappropriate, or that raised investor protection concerns.

We have clarified this to now require the funding portal to monitor postings and remove any statement by or information from the issuer which is inconsistent with the crowdfunding offering document or is not in compliance with MI 45-108.

(b) Other operational requirements

We have now introduced new requirements including:

- when a funding portal must terminate an issuer's distribution and notify us,
- when a funding portal must remove an issuer's crowdfunding offering document and all other related materials, from its online platform,
- what actions a funding portal must take where there is an amendment to the crowdfunding offering document and other related materials,
- what steps are to be taken by the funding portal prior to an investor to entering into an agreement to purchase securities, including requirements related to confirmation of an investor's status and the applicable investment limits, and
- what information a funding portal is required to deliver to the issuer on the closing of the distribution.

These requirements are intended to ensure consistent practices for funding portals and issuers

Companion policy guidance

We have incorporated the above noted changes in 45-108CP.

Proposed form of exemption

MI 45-108 and 45-108CP will be republished for comment and the MI 45-108 related forms and consequential amendments to NI 45-102 will be published for comment with this notice.

Authority

The Securities Act, 1988 (Saskatchewan) provides the FCAA with the authority to adopt the proposed MI 45-108, MI 45-108 related form, 45-108CP and consequential amendments to NI 45-102 under

subsections 154(1)(b), (c), (d), (d.1) (d.2), (f), (g), (h), (j), (l), (m), (o), (r), (r.1), (s), (t), (u.5), (v), (x), (dd), (ee), (ff), (ii), (jj), (kk), (ll), (mm), (oo), and (oo.1).

Request for comments

We welcome all comments on the proposed MI 45-108, 45-108CP the MI 45-108 related forms and consequential amendments to NI 45-102 on or before January 4, 2016.

Please submit your comments in writing. If you are not sending your comments by email, please send a CD containing the submission (in Microsoft Word format).

Please note that we cannot keep submissions confidential because securities legislation requires publication of a summary of the written comments received during the comment period. You should not include personal information directly in comments. It is important that you state on whose behalf you are making the submission.

Thank you in advance for your comments.

Please address your submission as follows and deliver your comments only to the email address below:

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Questions

Please refer your questions to either of the following:

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Contents of Annexes

The following annexes form part of this Notice:

- Annex A1 – Proposed Multilateral Instrument 45-108 *Crowdfunding*
- Annex A2 – Proposed Form 45-108F1 *Crowdfunding Offering Document*
- Annex A3 – Proposed Form 45-108F2 *Risk Acknowledgment*
- Annex A4 – Proposed Form 45-108F3 *Confirmation of Investment Limits*
- Annex A5 – Proposed Form 45-108F4 *Notice of Specified Key Events*

- Annex A6 – Proposed Form 45-108F5 *Personal Information Form and Authorization to Collect, Use and Disclose Personal Information*
- Annex A7 – Proposed Companion Policy 45-108CP *Crowdfunding*
- Annex B – Blackline showing changes to Multilateral Instrument 45-108 *Crowdfunding* published for comment March 20, 2014
- Annex C – Blackline showing changes to Companion Policy 45-108CP *Crowdfunding* published for comment March 20, 2014
- Annex D – Proposed Consequential Amendments to National Instrument 45-102 *Resale of Securities*