

CSA Staff Notice 45-329

Guidance for using the start-up crowdfunding registration and prospectus exemptions

June 23, 2021

The Canadian Securities Administrators (**CSA**) have implemented National Instrument 45-110 *Start-up Crowdfunding Registration and Prospectus Exemptions* to provide a further option for start-ups and early stage businesses to raise capital using securities crowdfunding (the **prospectus exemption**).

Staff (**staff** or **we**) of the CSA have prepared this Staff Notice (this **Notice**) to assist issuers with raising capital using the prospectus exemption and businesses proposing to operate a funding portal to facilitate the use of the prospectus exemption.

This Notice includes the following documents:

- Appendix 1 – Start-up Crowdfunding Guide for Businesses
- Appendix 2 – Start-up Crowdfunding Guide for Funding Portals

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Appendix 1

Start-up Crowdfunding Guide for Businesses

Crowdfunding is a process through which an individual or a business can raise money from a large number of people, typically through the Internet. The objective is usually to raise sufficient funds in order to carry out a specific project. There are different types of crowdfunding, such as by donation, pre-selling of products or through selling shares or other securities. This guide discusses securities crowdfunding.

Securities crowdfunding

Securities crowdfunding involves a business raising money by issuing securities (such as shares) to many people through the Internet using a funding portal. This type of crowdfunding must comply with the securities laws of the provinces and territories where the business and potential investors are located.

Legal obligations

In Canada, trading of securities is subject to legal obligations. For example, a business seeking to raise capital by issuing securities must file a prospectus (a comprehensive disclosure document that includes financial statements) with the securities regulator of each of the provinces and territories where its business and its potential investors are located or have an exemption from the prospectus requirement under securities law.

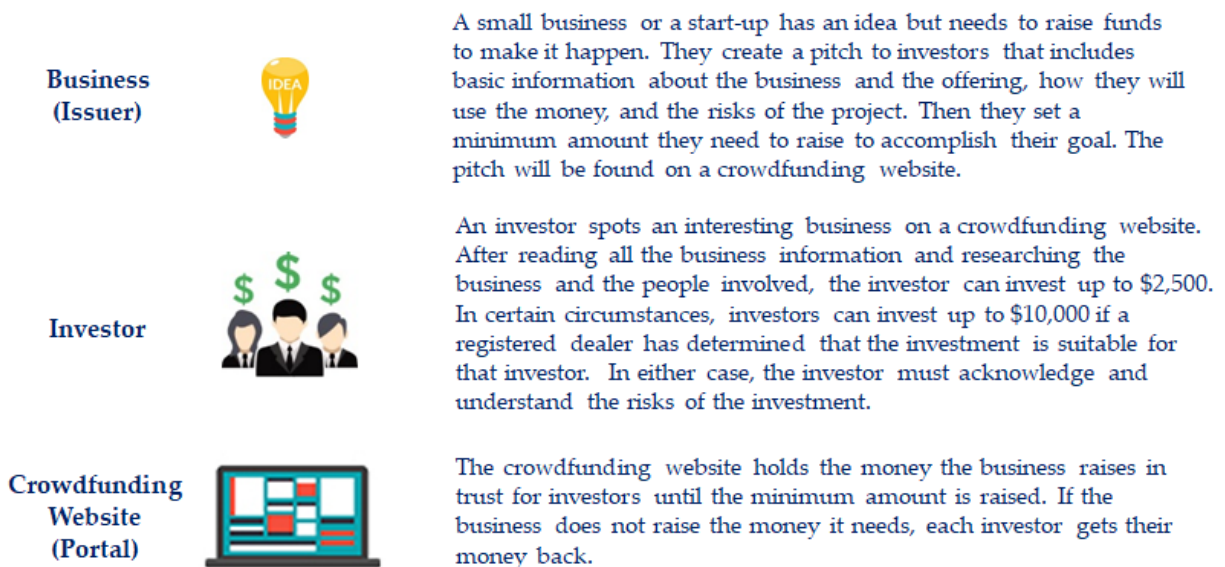
These obligations can be costly for start-ups and early stage businesses. There are a number of exemptions from the prospectus requirement that businesses can use to conduct securities crowdfunding in Canada. However, these exemptions require a fairly comprehensive disclosure and/or limit the types of investors that can invest. Canadian securities regulators have created a streamlined system to allow start-ups and small businesses (**issuers**) to raise small amounts of money from the general public using securities crowdfunding, without filing a prospectus or preparing financial statements (start-up prospectus exemption). Instead, the issuer prepares an abbreviated disclosure document that does not require financial statements.

Under securities law in Canada, a business that intends to operate a funding portal, e.g., creating a website that brings together buyers and sellers of securities, must typically be registered as a dealer with the securities regulator. However, if the funding portal restricts itself to certain activities, it can facilitate trades of those securities without having to register as a dealer (**start-up registration exemption**). In this guide, we refer to the

start-up prospectus exemption and the start-up registration exemption as the “**start-up crowdfunding exemptions**” or “**start-up crowdfunding.**”

The purpose of this guide is to assist issuers intending to raise funds by relying on the start-up prospectus exemption. In this guide, “**regulator**” means the applicable provincial securities regulator or regulatory authority.

How Start-up Crowdfunding Works



In order to raise funds using the start-up prospectus exemption, issuers must prepare and post an offering document on a funding portal’s crowdfunding website. Investors can then read about the offering and decide whether to invest. Before investing, investors will have to confirm that they have read the offering document and understand that the investment is risky.

When should an issuer consider start-up crowdfunding?

Before launching a start-up crowdfunding campaign, the management of the issuer will want to:

- evaluate other sources of funding, such as a loan from a financial institution,
- assess whether they are willing to invest the time and effort needed to prepare and run a start-up crowdfunding campaign,
- determine the type and characteristics of securities that will be sold,
- determine the number of securities to be sold and at what price, and
- assess if they can manage a greater number of security holders.

Issuers should also carefully consider the effect of raising capital through the issuance of securities. There are primarily two types of securities: debt instruments, such as non-convertible debt securities linked to an interest rate, and equities, such as common shares. Both types of securities are permitted under the start-up crowdfunding instrument. While debt is essentially a loan from an investor to an issuer, equity provides holders with certain ownership rights in the issuer. Accordingly, if a start-up crowdfunding campaign that involves the sale of shares (or other equity) is successful, the founders or other individuals with an economic interest in the issuer may have to give up part of the ownership of the issuer to investors. Under corporate law, investors that purchase equity securities in an issuer may have certain rights to participate in key decisions relating to the management of the issuer. Investors may also want to be informed about successes and failures of the issuer's business. Management of the issuer should assess whether they are willing to spend the time and effort to maintain contact with investors.

The start-up prospectus exemption is not available to reporting issuers (public companies). Reporting issuers are required to provide ongoing public disclosure of their business activities by filing financial statements and other documents required by securities laws. These types of issuers are considered to be more established than the start-up or early stage issuers that are permitted to use start-up crowdfunding.

In addition, the start-up prospectus exemption is not available to issuers that are raising money without a specific business objective, commonly known as "blind pools". In particular, the start-up prospectus exemption is not available where:

- (a) the issuer has no operations other than to identify and evaluate assets or a business with a view to completing an investment in, merger with, amalgamation with or acquisition of a business, or a purchase of the securities of one or more other issuers; or
- (b) the proceeds of the distribution are intended to be used by the issuer to invest in, merge or amalgamate with or acquire a business that has not been described in the issuer's offering document.

In these circumstances, the issuer will need to raise capital using methods other than the start-up prospectus exemption.

When considering whether these conditions have been met, the regulators may consider, among other things, the disclosure in the offering document to determine what operations the issuer has and how the issuer intends to use the proceeds of the distribution.

Where is start-up crowdfunding available?

The start-up prospectus exemption is available to issuers that have a head office in Canada.

If an issuer wants to raise funds using start-up crowdfunding in a particular province or territory, the funding portal must be permitted to operate in that particular province or territory (see “*Where can I find out more information on whether a funding portal is able to operate?*”, below).

What is the maximum amount that can be raised? How often can an issuer raise money using start-up crowdfunding?

An issuer can raise up to \$1,500,000 in the 12-month period before closing of the distribution. It may complete as many distributions per calendar year as fits their business objectives.

For instance, if an issuer has already raised \$250,000 on June 1 and \$300,000 on December 31 using the start-up crowdfunding exemption, it can still raise up to \$950,000 at any point before May 31 of the following year under that exemption.

This maximum amount applies to the issuer, together with any related issuers in its issuer group. The “**issuer group**” has a broad meaning. In addition to the issuer, it also includes any affiliates of the issuer (e.g. related companies) and any other issuer that is engaged in a common enterprise with the issuer or an affiliate, or whose business is founded or organized by the same person or company who founded or organized the issuer.

Does the issuer have to distribute common shares in a start-up crowdfunding offering?

The securities offered in a start-up crowdfunding offering must be among those permitted by the start-up prospectus exemption. An issuer can use start-up crowdfunding to distribute common shares, but it can also distribute non-convertible preference shares, non-convertible debt securities linked to a fixed or floating interest rate, or units of a limited partnership. If the issuer is an association (also commonly known as a co-operative), it can use start-up crowdfunding to distribute shares in the capital of that association provided that it is not restricted from doing so under its enabling legislation.

The issuer can also issue securities that convert into common shares or non-convertible preference shares. These securities may include certain types of warrants, options or simple agreements for future equity.

It is up to the issuer to decide what type of security distribution helps it best achieve its growth and development goals.

Are there any time limitations for completing a crowdfunding offering?

The offering document must indicate a minimum dollar amount that has to be raised before the offering can close. The issuer has a maximum of 90 days to raise the minimum amount, starting on the day the issuer's offering document is first made available to investors through the funding portal's website.

Investors will send the funds for their investment to the funding portal. The funding portal will then hold the money in trust. Before releasing the funds to the issuer, the following must have occurred:

- the issuer has secured the minimum amount of the offering and has decided to complete the offering; and
- the time for exercise of all withdrawal rights have expired (see "What if an investor changes their mind?", below).

If the minimum amount is not reached, or the start-up crowdfunding campaign is withdrawn, the funding portal must return all the money to the investors.

Can an issuer or group of related issuers conduct more than one start-up crowdfunding at once?

No. An issuer group cannot have more than one start-up crowdfunding campaign running at the same time or on different funding portals for the same purpose. The issuer group must wait until the first campaign has ended before launching a second one.

What is the maximum amount an issuer can raise from each investor?

The maximum investment an issuer can accept from an investor is \$2,500 per start-up crowdfunding distribution. However, this amount can be increased to \$10,000 if the investor has been advised by a registered dealer that the investment is suitable for the investor.

The issuer may require a minimum amount per investor, but this amount cannot be over \$2,500 if there is no registered dealer involved.

Launching a Start-up Crowdfunding Campaign

Once an issuer has determined that it will launch a start-up crowdfunding campaign, it will need to prepare an offering document and choose a funding portal to post its offering document. Issuers are required to prepare the offering document using Form 45-110F1 *Offering Document*.

What is a funding portal?

A funding portal is a website that brings buyers and sellers together by listing start-up crowdfunding campaigns on its website and facilitating the payment of the purchase price from the investor to the issuer. The funding portal has a number of responsibilities, including:

- posting the issuer's offering document;
- providing a risk warning form to potential investors;
- holding all investor funds in trust until the issuer is permitted to close the distribution; and
- returning funds to investors, without deduction, if the issuer does not reach its minimum funding target or if the issuer withdraws the start-up crowdfunding campaign.

Funding portals will generally charge issuers for hosting a start-up crowdfunding campaign on its website.

What types of funding portals are available?

There are two types of funding portals that may facilitate start-up crowdfunding in Canada:

- funding portals that are operated by registered dealers (e.g. investment dealers or exempt market dealers) that must provide advice to investors on whether the investment is suitable to the investor, and
- funding portals that are operated by persons relying on the start-up registration exemption and that are prohibited from providing suitability advice.

An issuer has the choice of which type of funding portal to use for its start-up crowdfunding campaign.

A funding portal should be able to confirm to the issuer that it can provide certain services necessary for start-up crowdfunding, including that it will make the offering document and risk warnings available to the investor through its website.

Where can I find out information on whether a funding portal is able to operate?

The Canadian Securities Administrators maintain a list of funding portals currently permitted to operate in one or more jurisdictions of Canada. The issuer may check to determine whether the funding portal is authorized to operate in jurisdictions in which it proposes to conduct start-up crowdfunding.

In addition, the issuer may want to evaluate other aspects of the funding portal's business, such as the individuals operating the funding portal, how it handles the funds collected from investors, and what fees it will charge the issuer for posting its start-up crowdfunding offering document.

What information needs to be in the offering document?

An issuer must include all the information required by Form 45-110F1 *Offering Document*. This form requires the issuer to disclose basic information about the business and the offering, how it will use the money and the relevant risks of the business or project. The issuer must disclose the minimum amount needed to be raised to accomplish the issuer's business goals. The issuer must provide enough detail in the offering document about the business for an investor to clearly understand what the issuer does or intends to do.

If the issuer raises funds in Québec, the offering document and the risk acknowledgement form must be made available to investors in Québec in French or in French and English.

For additional details on the offering document, including instructions on how to prepare it, please refer to Form 45-110F1 *Offering Document*.

Do I need to include financial statements in the offering document?

The issuer is not required to provide financial statements to investors in connection with a start-up crowdfunding distribution.

However, the issuer can choose to make financial statements available to investors. For example, many investors use financial statements to assess and compare investment opportunities and may be reluctant to invest in a business that does not provide this information. If an issuer chooses to disclose a measure of financial performance (such as sales or expenses), financial position (such as amount of equipment or debt) or cash flow in the offering document, it must make financial statements available for the most recently completed financial year. Any measure referred to in the offering document must be an amount presented in the financial statements or be reconciled to an amount presented in the financial statements.

If the issuer chooses to make financial statements available to investors, it must:

- prepare these financial statements in accordance with Canadian generally accepted accounting principles;
- present the issuer's results of operations for its most recently completed financial year; and
- include the statement provided in item 3.5 in Form 45-110F1 *Offering Document*.

As with any information provided to investors, the financial statements should not be misleading.

The issuer can post the financial statements on its website for the convenience of its investors. **However, if an issuer includes financial statements in its offering document or provides a link to the financial statements in the offering document, there will likely be an obligation under securities laws to prepare the financial statements using Canadian generally accepted accounting principles for publicly accountable enterprises.**

There may be other requirements outside securities laws. For example, corporate legislation in some jurisdictions may require issuers to prepare and disseminate audited annual financial statements to their shareholders. Further, such issuers may be required to hold annual meetings of shareholders and provide certain specified disclosure in an information circular. To determine whether these requirements apply, issuers can refer to applicable corporate law and consult their legal advisers.

Do I need to disclose information about myself or other principals of the issuer?

The offering document must include certain details about the residency, principal occupation, expertise and security holdings of each founder, director, officer and control person of the issuer.

Director: An individual occupying the position of director with the issuer, or another person acting in a similar capacity.

Officer: Includes the CEO, president, a vice-president, corporate secretary, general manager or any other individual who performs similar functions for the issuer. If the issuer is a limited partnership, information should also be provided for the officers of the general partner.

Founder: A person who, acting alone, in conjunction, or in concert with one or more persons, directly or indirectly, takes the initiative in founding, organizing or substantially reorganizing the business of the issuer and at the time of the start-up crowdfunding distribution is actively involved in the business of the issuer.

Control person: A person that holds more than 20% of the voting rights, alone or with other persons acting in concert, is generally considered a control person of the issuer.

Does the issuer need to provide information to the investor following the crowdfunding campaign?

Canadian securities laws do not require that the issuer report to investors, but investors will want to be kept informed. The issuer should disclose to investors in the offering document whether and, if so, how it intends to keep investors informed about the business and their investment. Reporting can be through newsletters, social media sites, email, financial statements or similar documents.

What if an investor changes their mind?

Investors have the right to withdraw their investment within two business days following either:

- the investor's subscription; or
- the funding portal notifying the investor of an amendment to the issuer's offering document.

To exercise this right of withdrawal, an investor must deliver a notice to the funding portal not later than midnight on the 2nd business day after the investor's subscription or notification of the amendment, as applicable. The funding portal must return the funds to an investor who exercises this right, without any deduction, within five business days after receiving notice of the withdrawal.

What if the information in the offering document is not, or is no longer, accurate?

The issuer must certify that the offering document does not contain a **misrepresentation**.

A misrepresentation means:

- a statement of material fact that is not true, or
- omitting a material fact that is required or necessary to be stated to prevent a statement in the offering document from being false or misleading in the circumstances in which it was made.

To avoid misrepresentations, the information contained in the offering document may need to be updated during the start-up crowdfunding campaign. If the offering document is no longer accurate and contains a misrepresentation, the issuer must:

- immediately advise the funding portal of this fact; and

- amend the offering document and send the new version to the funding portal as soon as practicable.

The funding portal is required to post the new version of the offering document on its website and promptly notify investors about the amendment. Providing an amended offering document gives an investor the opportunity to withdraw their investment (see “*What if an investor changes their mind?*” above).

The offering document does not need to be updated after the start-up crowdfunding campaign is over.

What if an investor purchases securities when the offering document contained a misrepresentation?

Securities laws in all provinces and territories of Canada provide investors with a **statutory right to sue for damages (typically limited to the amount paid for the securities) or rescission (to unwind or reverse the purchase)** in cases where an offering document contains a misrepresentation. These claims may be made against the issuer and in a number of provinces and territories, the directors and other persons that signed the offering document.

This statutory right to sue is available whether or not the investor relied on the misrepresentation. However, there may be various defenses available. In particular, a defense may be available if the investor knew of the misrepresentation when he or she purchased the securities.

Completing a Start-up Crowdfunding Campaign

Once the minimum offering amount has been collected, the issuer may choose to “close the offering” by issuing the securities to investors. However, the issuer must wait until each investor’s 2-day withdrawal period has expired.

An issuer can continue raising additional funds up to the maximum amount indicated in the offering document provided it closes the offering within the 90-day maximum offering period. The issuer must disclose in the offering document what it intends to do with any extra funds raised above the minimum amount.

At the closing of the offering, the funding portal will release the funds raised to the issuer. The issuer should make note of the date on which it closes the offering because certain filings and deliveries must be completed within a certain number of days of the closing.

Can an issuer use another prospectus exemption to meet the minimum amount?

Although an issuer cannot have more than one start-up crowdfunding campaign running at the same time, the issuer can raise funds using other prospectus exemptions during a start-up crowdfunding campaign. For example, the issuer may issue securities to an accredited investor. Other prospectus exemptions, such as the accredited investor exemption, are found in securities laws, including National Instrument 45-106 *Prospectus Exemptions*. The funds raised under other prospectus exemptions can be counted towards the minimum offering amount if those funds are unconditionally available to the issuer. This would not trigger the requirement for the issuer to amend the offering document.

If an issuer raises funds under other prospectus exemptions, it must comply with the conditions of both the start-up crowdfunding exemptions and the other exemption(s). An issuer should seek professional advice if it has any questions regarding compliance.

After the closing

What documents have to be filed with securities regulators?

The offering document and a Form 45-106F1 *Report of Exempt Distribution* must be filed with the regulator in each jurisdiction where investors are located no later than 30 days after the closing of the distribution. For example, if the issuer has raised money in Québec and Nova Scotia, the offering document and report of exempt distribution must be filed with the Autorité des marchés financiers and the Nova Scotia Securities Commission.

In addition, the offering document and report of exempt distribution must be filed with the regulator of the jurisdiction where the issuer's head office is located, even if no investors were located in this jurisdiction.

When filing the offering document, the issuer must include all copies of the offering document including any amended versions.

Participating Jurisdiction	How to File
All CSA jurisdictions, except British Columbia and Ontario	Electronically through SEDAR , in accordance with National Instrument 13-101 <i>System for Electronic Document Analysis and Retrieval</i> (SEDAR)

	<p>The Canadian Securities Administrators (CSA) has information regarding the SEDAR filing requirements. Please see:</p> <p>CSA Staff Notice 13-323 – <i>Frequently Asked Questions About Making Exempt Market Offering and Disclosure Filings on SEDAR</i></p> <p>CSA website on <i>Reports of Exempt Distribution</i> contains links to the reports for start-up crowdfunding prospectus exemption for SEDAR filing</p>
British Columbia	<p>Electronically via BC's eServices website (https://eservices.bcsc.bc.ca/). When submitting a report of exempt distribution for a start-up crowdfunding distribution, there will be an option to attach the offering document.</p>
Ontario	<p>Electronically through the OSC Electronic Filing Portal at https://www.osc.ca/en/filing-documents-online</p>

Confirmation notice to investors

Within 30 days after the closing of the offering, the issuer must send a copy of the offering document and a confirmation notice to each investor who purchased securities with the following information:

- the date of subscription and the closing date of the distribution;
- the quantity and description of securities purchased;
- the price paid per security;
- the total commission, fee and any other amounts paid by the issuer to the funding portal in respect of the start-up crowdfunding distribution.

The issuer may choose to have the funding portal send this information to investors if the funding portal platform has this capability.

For more information contact:

For more information, please contact the following:

Alberta	<p>Alberta Securities Commission Telephone: 403-355-4151 E-mail: inquiries@asc.ca Website: www.albertasecurities.com</p>
British Columbia	<p>British Columbia Securities Commission Telephone: 604-899-6854 or 1-800-373-6393 Email: inquiries@bcsc.bc.ca Website: www.bcsc.bc.ca</p>
Saskatchewan	<p>Financial and Consumer Affairs Authority of Saskatchewan Securities Division Telephone: 306-787-5645 E-mail: exemptions@gov.sk.ca Website: www.fcaa.gov.sk.ca</p>
Manitoba	<p>The Manitoba Securities Commission Toll free in Manitoba: 1-800-655-2548 E-mail: exemptions.msc@gov.mb.ca Website: www.msc.gov.mb.ca</p>
Ontario	<p>Ontario Securities Commission Toll free: 1-877-785-1555 E-mail: inquiries@osc.gov.on.ca Website: www.osc.ca</p>
Québec	<p>Autorité des marchés financiers Direction du financement des sociétés Toll free in Québec: 1-877-525-0337 E-mail: financement-participatif@lautorite.qc.ca Website: www.lautorite.qc.ca</p>
New Brunswick	<p>Financial and Consumer Services Commission Toll free: 1-866-933-2222 E-mail: emf-md@fcnb.ca Website: www.fcnb.ca</p>
Nova Scotia	<p>Nova Scotia Securities Commission Toll free in Nova Scotia: 1-855-424-2499 E-mail: nssc.crowdfunding@novascotia.ca Website: www.nssc.novascotia.ca</p>

Appendix 2

Start-up Crowdfunding Guide for Funding Portals

Introduction and purpose

The purpose of this guide is to assist funding portals that facilitate or intend to facilitate distributions under National Instrument 45-110 *Start-up Crowdfunding Registration and Prospectus Exemptions* (NI 45-110). This guide is intended both for funding portals that rely on the registration exemption in NI 45-110 (an exempt funding portal) and those operated by registered dealers.

This guide describes:

- the requirements that apply to funding portals, and
- how a crowdfunding distribution under NI 45-110 works, including an overview of the responsibilities of an issuer of which the funding portal should be aware.

What is securities crowdfunding?

Securities crowdfunding involves a business raising money by issuing securities (such as shares) to many people through the Internet using a funding portal. This type of crowdfunding must comply with the securities laws of the provinces and territories where the business and potential purchasers are located.

Legal obligations for securities crowdfunding

In Canada, trading of securities is subject to legal obligations. For example, a person or company that operates a funding portal to facilitate securities crowdfunding offerings must be registered in each province or territory where it is carrying on this business, or rely on an exemption from the registration requirement under securities laws. Similarly, a business seeking to raise capital by issuing securities must file a prospectus with the securities regulators or regulatory authorities of each province or territory (the regulators) in which it intends to sell its securities, or have an exemption from the prospectus requirements under securities laws.

These obligations, can be costly for start-ups and early stage issuers. There are a number of exemptions from the prospectus requirement that businesses can use to conduct securities crowdfunding in Canada. However, these exemptions require fairly comprehensive disclosure and/or limit the types of investors that can invest. Canadian securities regulators have created a streamlined system to allow start-ups and small businesses to raise small amounts of money from the general public using securities crowdfunding, without filing a prospectus or preparing financial statements.

NI 45-110 provides additional exemptions tailored to start-up and early stage issuers to facilitate securities crowdfunding and make it easier for them to raise money by issuing securities. NI 45-110 allows:

- a start-up or early stage issuer to raise relatively small amounts of capital from the general public by distributing securities to purchasers without filing a prospectus or lengthy offering document and, significantly, without needing to prepare financial statements (the start-up prospectus exemption), and
- a funding portal to facilitate the distribution of those securities without having to register as a dealer (the start-up registration exemption), although a funding portal can be operated by a registered dealer.

Under NI 45-110, all issuers intending to conduct a start-up crowdfunding offering must use a funding portal.

Types of funding portals under NI 45-110

This section describes some of the key characteristics of funding portals operated by registered dealers, and exempt funding portals.

- **Funding portals operated by registered dealers:** Registered dealers generally are required to fulfil certain obligations including know-your-client, know-your-product, and, before accepting an order to buy or sell securities from a client, determining whether that purchase or sale is suitable for the client. Funding portals operated by registered dealers must also meet these obligations. Funding portals operated by registered dealers are allowed to facilitate distributions of securities under the start-up prospectus exemption and other prospectus exemptions. In addition, a purchaser may make a larger investment in an offering conducted through a funding portal operated by a registered dealer.
- **Exempt funding portals:** Exempt funding portals rely on the start-up registration exemption. They are not required to register provided they meet the conditions of the start-up registration exemption, including the filing of certain documents with

the regulators. The requirements on exempt funding portals are different from the obligations placed on registered dealers. For example, exempt funding portals are not allowed to provide advice and are only allowed to facilitate distributions that rely on the start-up prospectus exemption.

Operating requirements for exempt funding portals

A person or company operating a funding portal does not have to register as a dealer if they meet all conditions of the start-up registration exemption. The responses to the following questions detail many of these conditions. You should refer to NI 45-110 for the complete list of the conditions that exempt funding portals must follow.

Are there any restrictions on who may operate an exempt funding portal?

A funding portal may not rely on the start-up registration exemption if it or any of its founders,¹ directors, officers or control persons² (principals), or any entity it or its principals has been the principal of has had a judgment, sanction or similar order imposed against it based on fraud, theft, breach of trust, insider trading, or allegations of similar conduct.

The funding portal must not be registered with the regulators. As well, it must have its head office in Canada and the majority of its directors must be Canadian residents.

What must an exempt funding portal do for an issuer seeking to conduct a crowdfunding raise?

Make the necessary disclosures available on its website. An issuer looking to raise capital using the start-up prospectus exemption must provide the funding portal with an offering document that meets the conditions of the exemption. The exempt funding portal must post the issuer's offering document on its website. It is intended that posting the document on the exempt funding portal's website will satisfy any requirement to deliver the offering document to a purchaser that may apply under securities legislation.

¹ A person or company who founded, organized or significantly reorganized the funding portal is generally considered to be a founder.

² A person or company who holds a sufficient number of voting rights to control the funding portal or who holds more than 20% of the voting rights of the funding portal is generally considered a control person of the funding portal.

A funding portal can carry out reviews of issuers before making their offering documents available on its website to protect the funding portal's own interests or reputation.

Confirm the issuer's location. The exempt funding portal must take reasonable measures to confirm that the head office of the issuer is in Canada. For instance, reviewing the incorporating or governing documents may be a reasonable step to confirm the issuer's head office.

What must an exempt funding portal do for purchasers?

Obtain the necessary acknowledgements before a purchaser can access the website. An exempt funding portal must not allow entry to its website until the purchaser acknowledges that they are entering the website of a funding portal that (i) is not operated by a registered dealer under Canadian securities legislation, and (ii) will not provide advice about the suitability or the merits of any investment.

For further information on the mechanics of the acknowledgement, please see the section in this guide entitled *Pop-up Acknowledgement*.

Not provide advice or recommendations. An exempt funding portal must not tell purchasers an investment is suitable for them or otherwise discuss the merits of an investment.

This means the funding portal cannot tell a purchaser that the securities offered are a good investment or that the purchaser should make an investment. The funding portal must refrain from saying or doing anything that might lead a purchaser to think that they should buy the securities because the securities somehow meet their investment needs or objectives.

However, the funding portal can give factual information about the securities. For example, it may tell purchasers the information set out in the offering document about the features of the securities, the risks generally of investing, how start-up crowdfunding works, and other items of a general, factual nature.

Confirm purchaser status. An exempt funding portal can only facilitate a distribution for a purchaser residing in a province or territory where the funding portal meets the conditions of the start-up registration exemption, including having delivered documents to the regulator in that jurisdiction (see *Delivery Requirements for Exempt Funding Portals* below). Accordingly, the exempt funding portal should take reasonable measures to ensure that the purchaser is a resident of a province or territory in which the exempt funding portal is permitted to operate. These reasonable measures may include requiring the purchaser to indicate its address in Canada, including the province or territory of residence, before allowing a subscription for securities.

Obtain the necessary risk acknowledgement before receiving funds. Before taking a purchaser's subscription, an exempt funding portal must ensure that purchasers confirm online that they have read and understood the offering document and risk warning available on the exempt funding portal.

What requirements do exempt funding portals have for handling funds?

The exempt funding portal must ensure that a purchaser's payment for securities through its platform is received only by the exempt funding portal. The exempt funding portal must hold purchasers' assets separate from the exempt funding portal's property, in trust for the purchaser and, in the case of cash, at a Canadian financial institution.

What must the exempt funding portal disclose about itself on its website?

The exempt funding portal must prominently display the following information on its website:

- the full legal name, municipality and jurisdiction of residence, business mailing and e-mail address, and business telephone number of each principal of the exempt funding portal,
- that the exempt funding portal is relying on the start-up registration exemption,
- that the exempt funding portal will hold purchasers' assets separate from the funding portal's property, in trust for the purchaser and, in the case of cash, at a Canadian financial institution, and
- the process the exempt funding portal will use to notify purchasers if it becomes insolvent or discontinues operations, and how the exempt funding portal will return the purchasers' assets it is holding to those purchasers.

For instance, clearly displaying this information on one page of the website that is easily accessible (such as a main tab in a drop-down menu) would generally be acceptable.

What other requirements do exempt funding portals have?

Only facilitate start-up crowdfunding distributions under NI 45-110. The exempt funding portal must not facilitate the distribution of securities to purchasers under prospectus exemptions other than the start-up prospectus exemption. A funding portal that intends to facilitate crowdfunding distributions under other prospectus exemptions (e.g. the accredited investor exemption and the offering memorandum exemption) would need to apply for registration as a dealer.

Not receive compensation directly from a purchaser. The exempt funding portal must not receive a commission or fee from a purchaser.

Maintain records. The exempt funding portal must keep its books and records, including its compliance procedures, at its head office for eight years from the date a record is created.

Delivery requirements for exempt funding portals

Attached as Appendix A to this guide is a checklist that includes some of the delivery and timing requirements for exempt funding portals.

What steps must occur before a funding portal can rely on the start-up registration exemption?

At least 30 days before it intends to start operating in reliance on the start-up registration exemption, the funding portal must deliver the following documents to the regulator of each jurisdiction of Canada in which it intends to solicit investors:

- 1) a completed Form 45-110F3 *Funding Portal Information* (funding portal information form),
- 2) completed Forms 45-110F4 *Portal Individual Information* (individual information form) for each principal of the funding portal, and
- 3) the applicable supporting documents (see below).

The regulators will review these documents during the 30-day waiting period and may notify the funding portal, for example, if:

- the documents the funding portal delivered are incomplete, or
- the policies and procedures for handling funds in relation to a start-up crowdfunding distribution described in the funding portal information form and supporting documents does not satisfy the conditions of the start-up exemption.

If the funding portal receives such notification, it has not satisfied the conditions of the start-up registration exemption and cannot operate as an exempt funding portal. If this occurs, the funding portal must file amended documents with the regulators and wait 30 days from the date the revised documents are filed before operating.

What supporting documents are required?

The funding portal information form and individual information form must include the following supporting documents:

- organizing documents such as articles and certificate of incorporation or partnership agreement,
- a chart showing the funding portal's structure and ownership that, at a minimum, includes all parents, affiliates and subsidiaries, as well as the full list of securityholders (including number and type of securities held) of the funding portal,
- details and relevant documents describing the funding portal's process and procedure for handling funds relating to a start-up crowdfunding offering, including:
 - the name of the Canadian financial institution the funding portal will use, together with the designated trust account number,
 - the name of the signatories on this account and their role with the funding portal,
 - a description of how the funds held in this account will be kept separate and apart from the funding portal's own property,
 - a copy of the trust agreement for the funding portal's trust account with a Canadian financial institution or details surrounding the establishment of this account, or, if there is no trust agreement or trust account, an explanation why,
 - how funds will flow from: (i) the purchasers to the trust account; (ii) the trust account to the issuer in the event that the offering closes; and (iii) the trust account back to the purchasers' bank accounts if the offering does not close, or the purchaser has exercised their right of withdrawal (for further information please see the section in this guide entitled *What rights do purchasers have before the start-up crowdfunding distribution closes?*), and
- attachments providing the relevant details sought if the answer to any of questions 11 to 14 of the funding portal information form or questions 11 to 18 of an individual information form is "Yes".

The requirements around the flow of purchaser funds are fundamental to the start-up registration exemption. The regulators may assess if the funding portal complies with these requirements, as well as the other conditions of the start-up crowdfunding exemption, in future compliance exams.

How does a funding portal deliver the funding portal information form and individual information forms to the regulator?

The funding portal must deliver the forms and documents by e-mail to the regulator in each jurisdiction where the funding portal intends to facilitate start-up crowdfunding distributions. For example, a funding portal with a head office in Saskatchewan that intends to seek funds from purchasers in all jurisdictions of Canada must deliver the forms and documents described in this guide to the Financial and Consumer Affairs Authority of Saskatchewan and the regulators in all of the other jurisdictions of Canada.

What needs to be delivered after an exempt funding portal has started operating?

After it has started operating, the exempt funding portal must:

- 1) certify, within 10 days of December 31 each year and again within 10 days of June 30 each year, that it has, or expects to have, sufficient financial resources to continue its operations for at least the next 6 months (See “Financial Resources Certification” below), and
- 2) deliver, within 30 days of a change to any of the information in the funding portal information form or individual information forms, the updated funding portal information form and/or individual forms as applicable.

Financial Resources Certification

An exempt funding portal is required to certify to the regulator that it has, or expects to have, sufficient financial resources to operate for the next 6 months:

- in the completed funding portal information form, and
- in the completed Form 45-110F5 *Semi-Annual Financial Resources Certification* (financial resources certification) that needs to be delivered twice a year, within 10 days of June 30 and within 10 days of December 31.

For example: an exempt funding portal delivers the completed funding portal information form (which includes a form of the financial resources certification) on October 31, 2021. The funding portal ensures that it complies with all the conditions of

the start-up registration exemption and begins to facilitate distributions on November 30, 2021.

- The exempt funding portal must then deliver a financial resources certification between January 1, 2022 and January 10, 2022, in order to meet the requirements to operate as an exempt funding portal after January 10, 2022.
- It will need to deliver its next financial resources certification between July 1, 2022 and July 10, 2022, in order to meet the requirements to operate as an exempt funding portal after July 10, 2022.

Sufficient Financial Resources

When an exempt funding portal makes an assessment of its sufficiency of financial resources for a 6 month period, it must take into account all available information about the future, which is at least, but is not limited to, 6 months from the date of certification. The degree of analysis depends on the facts for each exempt funding portal. When an entity has a history of positive cash flows from operations and ready access to financial resources, the exempt funding portal may reach the conclusion it has sufficient financial resources to continue its operations for at least the next 6 months. In other cases, the exempt funding portal may need to consider a wide range of factors relating to current and expected cash flows, such as debt repayment schedules and potential sources of replacement financing before it can assert that there is sufficient financial resources to continue its operations for at least the next 6 months.

When an exempt funding portal considers the feasibility and reasonableness of its plans, it may want to include the following in its consideration:

- Which expenditures will take priority at various levels of operation, and what effect this allocation would have on the exempt funding portal's operations, business objectives and milestones;
- The risks of defaulting on payments as they become due, and what effect the defaults would have on the exempt funding portal's operations; and
- An analysis of the exempt funding portal's ability to generate sufficient amounts of cash and cash equivalents from other sources, the circumstances that could affect those sources and management's assumptions in conducting this analysis.

Good practices for compliance with this condition include:

- Keeping documentation that is regularly maintained to ensure effective monitoring; and

- Establishing, maintaining and applying a system of controls and supervision sufficient to ensure the accuracy of the documents, including financial statements, used to support the funding portal's assessment of financial resources.

Updated Funding Portal Information Form and/or Individual Information Forms

If a change occurs and the information in the forms and documents delivered to a regulator are no longer up-to-date, the exempt funding portal must update the information by delivering a new form or document setting out the change. These updated forms must be provided within 30 days of the change. Failure to deliver these updated forms on time means that the funding portal has not satisfied the conditions of the start-up registration exemption and cannot rely on the exemption.

For example: if management at an exempt funding portal changes on July 1, 2021, an updated funding portal information form, as well as an individual information form for each new officer, must be delivered to the regulators by July 31, 2021.

Assessing compliance for funding portals

Failure to comply with the conditions of NI 45-110 or other securities law requirements is a serious offence that could prevent the funding portal from being able to rely on the start-up registration exemption and expose the funding portal's principals to sanctions. The regulators may conduct compliance reviews on funding portals, including exempt funding portals, to ensure that they comply with the requirements. Funding portals relying on the start-up registration exemption should be prepared to provide documents supporting their compliance with the conditions of the start-up registration exemption.

Funding portals will also be subject to various other laws beyond securities law (e.g. anti-money laundering and privacy laws). We encourage funding portals to consult a lawyer for advice.

Funding portals operated by registered dealers

Registered exempt market dealers and investment dealers are allowed to operate start-up funding portals, provided that they:

- meet their existing registration obligations under securities legislation (including the know-your-client, know-your-product and suitability obligations owed to purchasers, and disclosure of all fees charged to purchasers in accordance with

relationship disclosure requirements under National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*),

- meet the requirements in NI 45-110 for portals that rely on the start-up registration exemption that still apply to registered dealers (see the section entitled “What are the requirements in NI 45-110 that apply to funding portals operated by registered dealers, as well as to exempt funding portals?” below),
- confirm to issuers that the funding portal is being operated by a registered dealer, and
- prompt any person entering the funding portal’s website to acknowledge that the funding portal is operated by a registered dealer that will provide suitability advice. For more information on the mechanics of this acknowledgement, please see the section of this guide entitled *Pop-Up Acknowledgement*.

An exempt market dealer or investment dealer that wants to operate a start-up funding portal is required to report changes in their business activities by completing and delivering Form 33-109F5 *Change of Registration Information* and updating information previously reported in Form 33-109F6 *Firm Registration* to include operating a start-up funding portal.

What are the requirements in NI 45-110 that apply to funding portals operated by registered dealers, as well as to exempt funding portals?

Registered dealers operating funding portals must meet the conditions set out in section 4 of NI 45-110 (which also apply to exempt funding portals). These include requirements to:

- ensure that a purchaser’s payment for securities through the funding portal’s platform is received only by the funding portal, and no one else,
- take reasonable measures to ensure the head office of the issuer is in Canada,
- make available the issuers’ offering documents and risk warnings on its website, and
- ensure, before it takes a purchaser’s subscription, that the purchaser has confirmed they have read and understood the offering document and risk warning available on the funding portal.

Are there different restrictions (e.g. investment limits) placed on start-up crowdfunding distributions facilitated by registered dealers?

An offering conducted through a funding portal operated by a registered dealer is permitted to facilitate a larger investment. Both exempt funding portals and funding portals operated by registered dealers can facilitate investments up to \$2,500 from a purchaser under the start-up prospectus exemption. However, purchasers can purchase

up to \$10,000 if the registered dealer has determined that the investment is suitable for the purchaser.

“Pop-up” Acknowledgement

The start-up crowdfunding exemptions require purchasers to acknowledge certain information before entering the platform of a funding portal (pop-up acknowledgement). A platform may include the funding platform’s website or app. This requirement does not distinguish between where or how the purchaser enters the funding portal’s platform. As a result, funding portals must design their platform so that purchasers acknowledge the required information regardless of whether those purchasers enter the platform through the funding portal’s home page or through another page.

The funding portal should also manage the risk that potential purchasers are visiting the funding portal’s platform using a shared computer, tablet, or other mobile device. In other words, multiple people in a household may be entering the funding portal’s website at different times using the same device. As a result, the funding portal should consider designing their platform so that the pop-up acknowledgement reappears each time the purchaser’s internet browser or app is closed and re-opened.

We expect the pop-up acknowledgement to appear in the following circumstances:

<p>The pop-up acknowledgement should appear upon the first and every subsequent time a person enters a funding portal’s platform. This means that after opening their internet browser or app:</p> <ul style="list-style-type: none">(a) If a person lands on any page of a funding portal’s platform (home page or other page) the pop-up acknowledgment should appear.(b) If the person clicks “I acknowledge” and then immediately closes out of their browser, when the person goes back to any page on a funding portal’s platform, the pop-up acknowledgment should appear. The result is that the same person will have to click on “I acknowledge” to go back into the funding portal’s platform regardless of the fact that they had just been to that platform.
<p>The pop-up acknowledgement should appear regardless of a person’s entry point to the platform (home page or other page). For example:</p> <ul style="list-style-type: none">(c) If a person were to search the name of the funding portal and finds a link to the funding portal’s platform, the link would take the person to the funding portal’s home page and a pop-up acknowledgement would appear.(d) If a person were to browse directly to the funding portal’s issuer-offering page from an external link, the link would take the person to issuer’s page on the funding portal’s platform and a pop-up acknowledgement would appear.

Once a person clicks “I acknowledge” and enters the funding portal’s platform, they can navigate from page to page within the website without the re-appearance of the pop-up acknowledgement.

How does a start-up crowdfunding distribution work?

Issuers are responsible for preparing an offering document that complies with Form 45-110F1 *Offering Document*. In particular, the offering document must indicate the minimum amount necessary to close a start-up crowdfunding distribution. Issuers provide the offering document to the funding portal to post online. Purchasers read the offering document and decide whether or not to invest.

Before accepting an investment, the funding portal collects personal information on the purchaser, including the province or territory where the purchaser resides. The funding portal also obtains confirmation that the purchaser has read and understood the offering document and the risks described in Form 45-110F2 *Risk Acknowledgement Form*.

An issuer cannot close a distribution unless it has raised the minimum amount set out in its offering document and each purchaser’s right to withdraw has expired. At the closing:

- the issuer distributes shares or other eligible securities to purchasers, and
- the funding portal releases funds to the issuer.

No later than 15 days following the closing of the distribution, the funding portal notifies purchasers that the funds have been released to the issuer, and provides the issuer with the following information on each purchaser:

- full name,
- address,
- telephone number,
- e-mail address,
- number of securities purchased, and
- total purchase price.

Using this information, no later than 30 days following the closing of the distribution, the issuer files Form 45-106F1 *Report of Exempt Distribution* (the report of exempt distribution) with the regulators. When providing purchaser information to the issuer, funding portals may use the spreadsheet of Schedule 1 of the report of exempt distribution. Please refer to the *Start-up Crowdfunding Guide for Businesses* for more information on the issuer’s filing requirements.

As well, no later than 30 days following the closing of the distribution, the issuer sends a confirmation to each purchaser that includes:

- the date of the purchaser's subscription and the closing date,
- the number of securities purchased and a description of the securities purchased,
- the price per security paid,
- the total commission, fee and any other amounts paid by the issuer to the funding portal in respect of the distribution, and
- instructions on how the purchaser can access the offering document.

While the obligation is on the issuer to provide this information to purchasers, we expect that the issuer will arrange for the funding portal to provide this information on its behalf.

If the issuer withdraws its start-up crowdfunding offering or does not raise the minimum amount within 90 days after the funding portal posts the offering document online, all the funds must be returned to purchasers within five business days. No deductions are permitted. The funding portal must also send a notice to the issuer and each purchaser confirming that the funds have been returned to purchasers.

The funding portal may send notices to purchasers and issuers by e-mail.

When must an offering document be amended?

From the time it is posted online until the closing or withdrawal of the offering, an issuer must amend its offering document if the information it contains is no longer accurate and contains a misrepresentation. This could be the case if, for example, an issuer wants to change the price of the securities or the minimum or maximum offering amount. The issuer must send the amended version to the funding portal for posting on the funding portal's website. The funding portal must promptly notify purchasers about the amendment.

Can a funding portal facilitate a start-up crowdfunding distribution for itself or for related parties?

A funding portal cannot act in a start-up crowdfunding distribution if one of its principals is also a principal of the issuer group. The issuer group means the issuer, an affiliate of the issuer, and any other issuer that is engaged in a common enterprise with the issuer or an affiliate, or whose business is founded or organized by the same person or company who founded or organized the issuer.

What rights do purchasers have before the start-up crowdfunding distribution closes?

Purchasers have the right to withdraw their investment up to midnight, two business days following:

- the purchaser's subscription, and
- any notice the funding portal sends to the purchaser of an amendment to the offering document.

For example: a funding portal posts an offering document on July 1, 2021 and a purchaser subscribes on July 5, 2021. The funding portal then notifies the purchaser of amendments to the offering documents on July 14, 2021 and July 28, 2021. The purchaser then has the right to withdraw its investment during the following time periods:

- up to midnight, July 7, 2021 (two business days from subscription),
- between July 14, 2021 and midnight, July 16, 2021 (two business days from the first amendment), and
- between July 28, 2021 and midnight, July 30, 2021 (two business days from the second amendment).

The funding portal must give purchasers the opportunity to exercise this right. The purchaser exercises the right of withdrawal by notifying the funding portal. The funding portal must return the funds to a purchaser who exercises this right, without any deduction, within five business days after the notice.

Does an issuer have to provide financial statements?

Under the start-up prospectus exemption, issuers are not required to provide financial statements to purchasers with the offering document.

If an issuer wants to make its financial statements available to purchasers, it can place a hyperlink on the funding portal leading to the financial statements. However, the hyperlink should not appear in the offering document unless the issuer wants the financial statements to form part of it. Please refer to the *Start-Up Crowdfunding Guide for Businesses* for more information on potential reporting requirements relating to making financial statements a part of the issuer's offering document. It should be noted that if an issuer makes its financial statements available to purchasers, those financial statements have to be prepared in accordance with Canadian GAAP.

For more information

For more information, please contact the following:

British Columbia	British Columbia Securities Commission Telephone: 604-899-6854 or 1-800-373-6393 Email: inquiries@bcsc.bca Website: www.bcsc.bc.ca
Alberta	Alberta Securities Commission Telephone: 403-355-4151 E-mail: inquiries@asc.ca Website: www.albertasecurities.com
Saskatchewan	Financial and Consumer Affairs Authority of Saskatchewan Securities Division Telephone: 306-787-5645 E-mail: exemptions@gov.sk.ca Website: www.fcaa.gov.sk.ca
Manitoba	The Manitoba Securities Commission Toll free in Manitoba: 1-800-655-2548 E-mail: exemptions.msc@gov.mb.ca Website: http://www.mbsecurities.ca/
Ontario	Ontario Securities Commission Toll free: 1-877-785-1555 E-mail : inquiries@osc.gov.on.ca Website: www.osc.ca
Québec	Autorité des marchés financiers Direction du financement des sociétés Toll free in Québec: 1-877-525-0337 E-mail: financement-participatif@lautorite.qc.ca Website: www.lautorite.qc.ca
New Brunswick	Financial and Consumer Services Commission Toll free: 1-866-933-2222 E-mail: emf-md@fcnb.ca Website: www.fcnb.ca
Nova Scotia	Nova Scotia Securities Commission Toll free in Nova Scotia: 1-855-424-2499 E-mail: nssc.crowdfunding@novascotia.ca Website: nssc.novascotia.ca

The information in this Guide is for educational purposes only and does not constitute legal advice.

If any information in this Guide is inconsistent with NI 45-110 Start-up Crowdfunding Registration and Prospectus Exemptions, please follow the instrument and the related forms.

Appendix A
Checklist for Exempt Funding Portals

Documents required to be delivered to the regulators before a funding portal can rely on the start-up registration exemption:

- A completed Form 45-110F3 *Funding Portal Information* (portal information form), with the following documents attached, signed and dated by the authorized individual certifying the portal information form:
 - The funding portal's organizing documents (Item 8 of the portal information form)
 - A chart showing the funding portal's structure and ownership (Item 9 of the portal information form)
 - Details and the relevant documents on the process and procedure for handling all funds relating to a start-up crowdfunding offering (Item 15 of the portal information form)
 - If any of the answers to questions 11 to 14 of the portal information form is "Yes", complete details pertaining to such matters
- Completed Forms 45-110F4 *Portal Individual Information* (individual information form) for each principal of the funding portal.
 - If any of the answers to questions 11 to 18 of an individual information form is "Yes", complete details pertaining to such matters must be attached to that individual information form; except for attachments pertaining to question 11, these attachments must be signed and dated by the authorized individual certifying the individual information form.

Date the funding portal has delivered a completed portal information form and individual information forms, with necessary attachments, to the regulators:

Date the funding portal may begin operations if it has not received a notification from the regulator that it is not allowed to rely on the start-up registration exemption (30 days from the date the funding portal delivered the completed portal information

form and individual information forms, with necessary attachments, to the regulators): _____

Documents required to be delivered to the regulators after an exempt funding portal has started operations:

- Two completed Forms 45-110F5 *Semi-Annual Financial Resources Certification* (financial resources certification) each calendar year, one within 10 days of June 30, and the other within 10 days of December 31

Note: particular guidance on this requirement can be found in the *Start-Up Crowdfunding Guide for Funding Portals*, under the sections titled “Financial Resources Certification” and “Sufficient Financial Resources” beginning on page 8.

- Updated portal information forms or individual information forms if there is a change to any of the information previously provided in these forms, within 30 days of the change.