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CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

Multilateral CSA Notice of Publication and Request for Comment Proposed Multilateral Instrument 45-109 *Prospectus Exemption for Start-up Businesses*

October 19, 2015

Introduction

The Alberta Securities Commission and the Nunavut Securities Office (together, the **Participating Jurisdictions**) are publishing for a 60-day comment period:

- Proposed Multilateral Instrument 45-109 *Prospectus Exemption for Start-up Businesses* (**MI 45-109**)*;*
- Proposed Companion Policy 45-109CP *Prospectus Exemption for Start-up Businesses;*
- Proposed Form 45-109F1 *Start-up Business Offering Document*;
- Proposed Form 45-109F2 *Start-up Business Risk Acknowledgment*; and
- Proposed Form 45-109F3 *Start-up Business Report of Exempt Distribution*

(collectively, the **Proposed Start-up Business Exemption**);
and

- Proposed Amendments to National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)* (**NI 13-101**), and
- Proposed Amendments to Multilateral Instrument 13-102 *System Fees for SEDAR and NRD* (**MI 13-102**)

(together, the **Proposed Consequential Amendments**).

This notice summarizes the terms of the Proposed Start-up Business Exemption and includes a request for comments. The text of the Proposed Start-up Business Exemption and the Proposed Consequential Amendments are contained in Annexes A through G of this notice.

Substance and Purpose

We have heard that in the case of some small, early-stage businesses the costs of using the offering memorandum prospectus exemption (the **OM Exemption**) in National Instrument 45-106 *Prospectus Exemptions* (**NI 45-106**) can be high relative to the limited funds sought to be raised. The Proposed Start-up Business Exemption is intended to provide a prospectus exemption to address these circumstances. We intend the Proposed Start-up Business Exemption to be available only to serve the funding gap that may exist prior to an issuer being able to cost effectively use the OM Exemption.

The Proposed Start-up Business Exemption requires that an offering document and report of exempt distribution be prepared and filed by an issuer through SEDAR. The Proposed Consequential Amendments are necessary to facilitate these requirements.

We provide further information on the Proposed Start-up Business Exemption below and in the attached annexes.

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Background
Absent an available prospectus exemption, securities law requires an issuer distributing securities to file and obtain a receipt for a prospectus. Issuers can sell securities without a prospectus if a prospectus exemption is available. There are a number of prospectus exemptions available to issuers in the Participating Jurisdictions, most of which are contained in NI 45-106.

Some exemptions, like the accredited investor exemption, do not prescribe any particular disclosure or limits on an investor's investment provided that the investor meets the definition of an "accredited investor" e.g., is a specified institution or meets certain financial thresholds. In those circumstances, the investor is generally considered able to withstand the loss of their investment and negotiate for the disclosure they desire. The OM Exemption provides an exemption that permits access to a broader group of investors (those who do not meet the definition of accredited investor) if prescribed disclosure is provided. To off-set the risks associated with the fact that the disclosure is reduced relative to that of an issuer using a prospectus and then subject to continuous disclosure obligations, the OM Exemption requires a risk acknowledgement form and generally (in Participating Jurisdictions) imposes limits on investment designed to address the investor's ability to withstand loss.

Equity or other securities-based crowdfunding, that is, raising capital on-line through a portal, is emerging as a way for businesses, particularly start-ups and small issuers, to raise capital. We understand that crowdfunding is already occurring in certain Participating Jurisdictions. Securities-based crowdfunding typically triggers both the prospectus requirement and the registration requirement under applicable securities legislation. Accordingly, some issuers are using the accredited investor prospectus exemption or the OM Exemption to distribute their securities. The portal they use would generally be considered to be a dealer under securities laws and since there is no corresponding registration exemption in the Participating Jurisdictions, the portal is then required to comply with the registration requirement.

We have heard that in the case of some very small, early-stage businesses they are unable to obtain investment from accredited investors or from family, close friends or close business associates to assist with their capital raising. Further, the costs of using the OM Exemption, whether in conjunction with the use of a portal, or otherwise, can be very high relative to the limited funds required.

The Proposed Start-up Business Exemption is directed principally at small and very early-stage businesses and is designed to allow them to raise a defined amount of money in a more cost effective way while still providing appropriate investor protection.

Proposed Start-up Business Exemption
The Proposed Start-up Business Exemption provides a prospectus exemption but not a registration exemption. As mentioned above, a person or company in the business of, or holding themselves out as being in the business of, trading in securities is considered a "dealer" and must be registered. We would generally consider a person or company operating a crowdfunding portal to be a "dealer" and, as such, would expect them to comply with the registration requirement. The Proposed Start-up Business Exemption could be used to facilitate financings by issuers through a portal that is complying with the registration requirement e.g., the portal is

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registered as either an exempt market dealer or an investment dealer. The Proposed Start-up Business Exemption could also be used for financings using more traditional distribution methods, with or without a dealer.

Investors under the Proposed Start-up Business Exemption must be given an offering document containing prescribed information. Further, the issuer must obtain from each investor a completed risk acknowledgment at the same time or before they sign an agreement to purchase the security. The information required in the offering document is more streamlined than that required under the OM Exemption and, significantly, financial statements are not required.

Investment Limits

Under the Proposed Start-up Business Exemption, we propose to limit the amount of money purchasers can invest. The limits on investment are intended to off-set the risks associated with the reduction in both initial and ongoing disclosure and the limited ability to resell the securities. If a registered dealer is not involved, for example if an issuer accesses investors through its own network, no investor can invest more than $1,500 in a single investment or more than $3,000 in the issuer group[1] in a 12 month period under start-up business distributions[2].

If an issuer retains a registered dealer to access investors, whether through a portal or through traditional channels, the investment limits are somewhat higher. Where a registered dealer is involved and provides suitability advice, a purchaser can invest up to $5,000 in a single investment and up to $10,000 per issuer group in a 12 month period under start-up business distributions.

We think the higher investment limit is appropriate when a registered dealer is involved and provides suitability advice. The dealer will be subject to know-your-product, know-your-client and suitability requirements which will help ensure that investors that have low risk tolerance or lack the ability to withstand the loss of an investment do not make investments that are not suitable for them. The higher investment limit allows issuers to raise more capital from a smaller number of investors, potentially reducing the costs associated with having a large number of investors. While the $5,000 investment limit is still relatively low, we do not think that it suggests a start-up business investment at this level is necessarily suitable for all investors. We anticipate that these investments will generally only be suitable for investors with both (i) an appreciation of the risks and a very high risk tolerance and (ii) the financial ability to withstand the loss of their investment.

Lifetime Limit

The Proposed Start-up Business Exemption is intended only to address a possible financing gap for very small or early-stage businesses. Accordingly, we have proposed a lifetime limit on funds

[1] "issuer group" means an issuer together with each of the following: (a) each affiliate of the issuer, (b) each other issuer (i) that is engaged in a common enterprise with the issuer or with an affiliate of the issuer, (ii) that has a founder that is a founder of the issuer or an affiliate of the issuer.

[2] "start-up business distributions" means a distribution under MI 45-109 or a corresponding exemption. "Corresponding exemption" includes the Start-up Crowdfunding Blanket Orders and any other prospectus exemption substantially similar to the Proposed Start-up Business Exemption or the Start-up Crowdfunding Blanket Orders.

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raised through start-up business distributions.[3] Issuers using the Proposed Start-up Business Exemption would be subject to a $1,000,000 lifetime limit on the amount that they can raise under either MI 45-109 or any corresponding exemptions in corresponding jurisdictions.[4] In calculating the $1,000,000, all funds ever raised by the issuer and other members of the "issuer group" under MI 45-109 or a corresponding exemption are included. We think that once an issuer has raised $1,000,000 through start-up business distributions, the issuer should be in a position to prepare financial statements and comply with the other disclosure requirements under the OM Exemption.

Subject to the lifetime maximum, we propose no restrictions on how many distributions can occur per calendar year or on the amount of each distribution. We provide issuers with some flexibility by permitting them to raise the lifetime limit in a single offering, or conduct multiple offerings in a single year.

Proposed Start-up Business Exemption Compared to Existing Crowdfunding Models
On May 14, 2015, some members of the CSA[5], adopted local blanket orders that provide *both* registration and prospectus exemptions that will allow start-ups and early-stage companies to raise capital through crowdfunding subject to certain conditions (the **Start-up Crowdfunding Blanket Orders**). Although we are not proposing a registration exemption, in drafting proposed MI 45-109 we have endeavoured to harmonize the Proposed Start-up Business Exemption with the prospectus exemption in the Start-up Crowdfunding Blanket Orders in order to facilitate start-up business distributions in multiple jurisdictions at the same time. In particular, in certain circumstances, we propose to accept the prescribed form of offering document, risk acknowledgement and report of exempt distribution under the Start-up Crowdfunding Blanket Orders.

On March 20, 2014[6] certain members of the CSA published for comment proposed Multilateral Instrument 45-108 *Crowdfunding* (MI 45-108). That instrument contemplates a prospectus exemption in connection with a financing via a funding portal. It also sets out a regime for registering portals in a special restricted dealer category as a "restricted dealer funding portal". Because MI 45-108 has not yet been adopted as a rule, the Proposed Start-up Business Exemption does not yet contemplate harmonization with MI 45-108. However, we seek comment on the extent to which, if MI 45-108 is ultimately adopted as a rule in those CSA jurisdictions, proposed MI 45-109 should include methods of harmonizing with MI 45-108.

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[3] "start-up business distributions" means a distribution under MI 45-109 or a corresponding exemption. "corresponding exemption" includes the Start-up Crowdfunding Blanket Orders and any other prospectus exemption substantially similar to the Proposed Start-up Business Exemption or the Start-up Crowdfunding Blanket Orders.
[4] "corresponding jurisdiction" means a jurisdiction that has adopted the Start-up Crowdfunding Blanket Orders (as listed in Appendix A of the MI 45-109) and each other jurisdiction in which the securities regulatory authority or regulator has adopted a corresponding exemption.
[5] The jurisdictions that adopted Start-up Crowdfunding blanket orders are British Columbia, Manitoba, Nova Scotia, New Brunswick, Quebec and Saskatchewan. [Multilateral CSA Notice 45-316 *Start-up Crowdfunding Registration and Prospectus Exemptions*]
[6] The jurisdictions that published proposed MI 45-108 for comment are Manitoba, Nova Scotia, New Brunswick, Ontario, Quebec and Saskatchewan; however, the proposal was published under a separate local notice in Ontario.

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The Proposed Start-up Business Exemption differs from the Start-up Crowdfunding Blanket Orders in certain key areas. The main points of difference are below:

- The Proposed Start-up Business Exemption provides a prospectus exemption but not a registration exemption. The Start-up Crowdfunding Blanket Orders include both a prospectus and registration exemption.
- The Start-up Crowdfunding Blanket Orders require all distributions to be conducted through an online funding portal. We have designed the Proposed Start-up Business Exemption so that it is not limited to online crowdfunding.
- The Start-up Crowdfunding Blanket Orders limit issuers to two offerings a year with an offering limit of $250,000 per distribution. However, there is no lifetime limit for issuers. Subject to the lifetime limit of $1,000,000 the Proposed Start-up Business Exemption does not limit the offering amount per distribution or the number of distributions in a year.
- Investors can not invest more than $1,500 in a single investment under the Start-up Crowdfunding Blanket Orders. Under the Proposed Start-up Business Exemption there are different investment limits based on whether a registered dealer[7] facilitates the distribution: $1,500 without and $5,000 with a registered dealer.
- In MI 45-109, we propose to designate the offering document as an offering memorandum. This results in the application of both a statutory two-day right of withdrawal and statutory civil liability for any misrepresentations included in an offering document. The Start-up Crowdfunding Blanket Orders do not include a similar designation but do include a contractual 48 hour right of withdrawal which we have included in MI 45-109 as well to align investors' rights in the event of a multi-jurisdictional distribution.
- The prescribed forms under the Start-up Business Exemption and the Start-up Crowdfunding Blanket Orders are somewhat different. This was necessary to address the fact that the Start-up Business Exemption is not limited to crowdfunding. However, we have included a provision that would allow an issuer who is primarily conducting a distribution under a corresponding exemption in a corresponding jurisdiction to use, and file where required, the forms prescribed under the corresponding exemption in lieu of those mandated by the Proposed Start-up Business Exemption.

Summary of the Proposed Instrument

The following is a summary of the key elements of the Proposed Start-up Business Exemption.

Element of exemption	**Details**
Issuer restrictions	
Qualification Criteria	• Issuer's head office must be located in a jurisdiction that has adopted MI 45-109 or in a corresponding jurisdiction with a corresponding exemption. • Available to non-reporting issuers only. • Not available to investment funds.

[7] References here to registered dealer refer to an investment dealer or exempt market dealer and not to restricted dealers.

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Distribution details	

Types of Securities	• Limited to distributions by an issuer of securities of its own issue.
	• Limited types of securities can be offered:
	  o common shares,
	  o non-convertible preference shares,
	  o securities convertible into common shares or non-convertible preference shares,
	  o non-convertible debt securities linked to a fixed or floating interest rate,
	  o units of a limited partnership, or
	  o in Alberta, an investment share that is a non-convertible preference share issued by a cooperative organized under the *Cooperatives Act* (Alberta).

Offering Parameters	• Issuer group cannot raise aggregate funds of more than $1,000,000 under the Start-up Business Exemption or a corresponding exemption. • Minimum offering must be raised within 90 days. • Offering document must disclose minimum offering amount and whether there is a maximum offering amount.
Investor protection measures	

Investment Limits	• Where there is no registered dealer involved,
	  o an investor can not invest more than $1,500 in a single investment under the exemption, and
	  o an investor can not invest more than $3,000 per issuer group in the previous 12 months under start-up business distributions.
	• Where there is a registered dealer involved, who performs a suitability assessment,
	  o an investor can not invest more than $5,000 in a single investment, and
	  o an investor can not invest more than $10,000 per issuer group in the previous 12 months under start-up business distributions.

Risk Acknowledgment	• The issuer must obtain a completed Form 45-109F2 *Start-up Business Risk Acknowledgment* from each investor, evidencing that the investor has read the matters set out in that form.
Provision of Disclosure at Point of Sale	• The issuer must complete, and deliver to purchasers, Form 45-109F1 *Start-up Business Offering Document*, which includes basic information about the offering and the issuer.
Offering Materials	• Offering materials must be balanced and fair and can not contain any information that is misleading or untrue in a material respect. • Financial statements are not required under MI 45-109; however, if they are voluntarily provided they must be prepared in accordance with either o Canadian generally accepted accounting principles for

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	publicly accountable enterprises, or o Part II of the Handbook applied to an issuer as if it were a private enterprise and the financial statements consolidate any subsidiaries and account for any significantly influenced investees and joint ventures using the equity method.
Contractual and Statutory Rights	• In Alberta, the offering document is designated under section 10(1)(a.1) of the *Securities Act* (Alberta) to be an offering memorandum. In Nunavut, the offering document is designated under section 1 of the *Securities Act* (Nunavut) to be an offering memorandum. Consequently, investors will have the following statutory rights: o two day right of withdrawal; o a right of action for rescission against the issuer *or* for damages against the issuer, every director of the issuer at the date of the offering document and every person or company who may have signed the offering document. • To be consistent with the corresponding exemptions, investors will also have the following contractual rights: o 48 hour right of withdrawal after the purchaser's subscription; o 48 hour right of withdrawal after the purchaser is notified of a material amendment to the offering document.
Registered Dealers	• A registered dealer is not allowed to participate in a distribution under MI 45-109 if the issuer is a "connected issuer" or a "related issuer", as defined in National Instrument 33-105 *Underwriting Conflicts*.
Resale Restrictions	• Securities obtained by investors are subject to indefinite resale restrictions and, until and unless the issuer becomes a reporting issuer, can only be resold under another prospectus exemption or under a prospectus.
Reporting	
Reporting of Distribution	• Form 45-109F3 *Start-up Business Report of Exempt Distribution* must be filed within 30 days of the closing of the distribution in each jurisdiction, that has adopted MI 45-109, where a distribution occurred. • The report of exempt distribution is required to be filed in electronic format, consistent with what is currently proposed for the corresponding exemptions under Multilateral CSA Notice Request for Comment Proposed Amendments to National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)* and Multilateral Instrument 13-102 *System Fees for SEDAR and NRD* issued on June 30, 2015. The Proposed Consequential Amendments are necessary to address the fact that the offering document and report of exempt distribution under the Proposed Start-up Business Exemption will be required to be filed through SEDAR.

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	• Where there is a multi-jurisdictional distribution that takes place primarily under a corresponding exemption, the issuer is permitted to instead complete, and where required, file the forms prescribed by the corresponding exemption in lieu of those normally required under MI 45-109.
Books and Records	• Consistent with the corresponding exemptions, issuers and registered dealers that participate in a start-up business distribution must maintain books and records for 8 years from the distribution to demonstrate compliance with MI 45-109.

Consequential Amendments

We propose to amend NI 13-101 and MI 13-102 to reflect the filing requirements under the Proposed Start-up Business Exemption. Annexes F and G to this notice contain the proposed consequential amendments to these instruments.

Request for Comments

We welcome your comments on the Proposed Start-up Business Exemption. In addition to any general comments you may have, we also invite comments on the following specific questions.

1. In setting the lifetime limit of $1,000,000 per issuer group, our goal was to set a limit after which an issuer should have sufficient funds to use the OM Exemption. Do you think this is the appropriate threshold? If not, please provide what you would consider acceptable limits given the parameters of the Proposed Start-up Business Exemption.

2. The Proposed Start-up Business Exemption would prohibit an issuer from accepting an investment from an investor of more than $1,500 in a single investment under the exemption, and no more than $3,000 in respect of an issuer group in a calendar year if the distribution is conducted without a registered dealer.

   The Proposed Start-up Business Exemption would prohibit an investor from investing more than $5,000 in a single investment under the exemption, and no more than $10,000 in a calendar year if the distribution is conducted with a registered dealer.

   Do you agree with these limits? Are investors generally able to withstand the loss of a $1,500 investment? Do you agree with allowing a higher limit when a registered dealer providing suitability advice is involved? Why or why not?

3. Given the potential ongoing costs associated with having a large number of security holders, do you think that the Proposed Start-up Business Exemption will be a useful tool to assist very early-stage and start-up businesses with raising capital?

4. Should there be some form of ongoing disclosure e.g., financial statements or notice of proceeds, that issuers using the exemption should be required to provide to their security

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holders? If so, what should it be? What do you estimate as the costs of preparing such ongoing disclosure?

5. In addition to filing the offering document, should issuers be required to file all other information (e.g., marketing materials) provided in conjunction with the offering with the regulator?

6. Does the risk acknowledgement provide warning to investors of the major risks of investing in a very early stage or start-up business? Are there any other warnings that should be considered?

7. The Proposed Start-up Business Exemption is only a prospectus exemption. There is no corresponding registration exemption; consequently, if a portal is used it must be registered as an exempt market dealer or investment dealer. Do you think that this will be a significant barrier for access to financing through the Proposed Start-up Business Exemption?

8. If an Alberta-based or Nunavut-based issuer were using the Proposed Start-up Business Exemption, in what other jurisdictions would they likely also seek to raise funds?

9. Do you think issuers would want to use the Proposed Start-up Business Exemption in Alberta or Nunavut in conjunction with using Multilateral Instrument 45-108 *Crowdfunding* (MI 45-108) in other jurisdictions? If so, would it be helpful to issuers if they were able to use, and file, the form of offering document available under MI 45-108 in connection with a distribution under MI 45-109? Are there other accommodations that should be considered for the purpose of harmonization?

10. Would it be helpful to issuers to be permitted to use and file Form 45-106F2 *Offering Memorandum for Non-Qualifying Issuers*, the form of offering memorandum required under the OM Exemption, in lieu of Proposed Form 45-109F1 *Start-up Business Offering Document* in connection with a distribution under MI 45-109?

11. In Alberta, we are considering whether ASC Blanket Order 45-515 *Exemption from certain financial statement requirements of Form 45-106F2 Offering Memorandum for Non-Qualifying Issuers* will be necessary if MI 45-109 is adopted. Do you anticipate issuers would use Blanket Order 45-515 if MI 45-109 is available?

Please submit your comments in writing on or before 18 December 2015. If you are not sending your comments by email, please send a CD containing the submissions (in Microsoft Word format).

Please note that comments received will be made publicly available and posted on the Alberta Securities Commission website (at www.albertasecurities.com). You should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

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Address your submission as follows:

Alberta Securities Commission
Superintendent of Securities, Nunavut

Deliver your comments **only** to the addresses below. Your comments will be distributed to the other participating jurisdictions.

Alberta Securities Commission
Suite 600, 250 – 5th Street SW
Calgary, AB, T2P 0R4

Attention:
Jessie Gill
Legal Counsel, Corporate Finance
Email: Jessie.gill@asc.ca

Contents of Annexes

Annex A	Proposed Multilateral Instrument 45-109 *Prospectus Exemption for Start-up Businesses*
Annex B	Proposed Form 45-109F1 *Start-up Business Offering Document*
Annex C	Proposed Form 45-109F2 *Start-up Business Risk Acknowledgment*;
Annex D	Proposed Form 45-109F3 *Start-up Business Report of Exempt Distribution*
Annex E	Proposed Companion Policy 45-109CP *Prospectus Exemption for Start-up Businesses*
Annex F	Proposed Amendments to National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)*
Annex G	Proposed Amendments to Multilateral Instrument 13-102 *System Fees for SEDAR and NRD*

Questions
Please refer your questions to the following:

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Shamus Armstrong
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ANNEX A

PROPOSED MULTILATERAL INSTRUMENT 45-109
PROSPECTUS EXEMPTION FOR START-UP BUSINESSES

Definitions

1. Terms defined in National Instrument 14-101 *Definitions* have the same meaning in this Instrument.

2. In this Instrument:

"corresponding exemption" means

(a) for a jurisdiction listed in Appendix A, the exemption in the order issued or rule adopted by the securities regulatory authority or regulator in that jurisdiction as listed in Appendix A, and

(b) for a jurisdiction of Canada not listed in Appendix A means a prospectus exemption that is substantially similar to this Instrument or an exemption that is substantially similar to an exemption referenced in Appendix A;

"corresponding jurisdiction" means a jurisdiction that is any of the following:

(a) is listed in Appendix A;

(b) each other jurisdiction in which the securities regulatory authority or regulator has adopted a corresponding exemption;

"eligible issuer" means an issuer that is not an investment fund or reporting issuer in a jurisdiction of Canada and is not subject to reporting obligations similar to those of a reporting issuer in a foreign jurisdiction;

"deliver" when used in relation to a purchaser includes the document being made reasonably available through the facilities of a funding portal provided that the funding portal requires the purchaser to acknowledge having read the document;

"eligible security" means any of the following:

(a) a common share;

(b) a non-convertible preference share;

(c) a security convertible into a security referred to in (a) or (b);

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(d) a non-convertible debt security linked to a fixed or floating interest rate;

(e) a unit of a limited partnership;

(f) in Alberta, an investment share that is a non-convertible preference share issued by a cooperative organized under the *Cooperatives Act*;

"founder" has the meaning ascribed to it in National Instrument 45-106 *Prospectus Exemptions*[1];

"issuer group" means an issuer together with each of the following:

(a) each affiliate of the issuer;

(b) each other issuer that is either of the following:

(i) that is engaged in a common enterprise with the issuer or with an affiliate of the issuer,

(ii) that has a founder that is a founder of the issuer or an affiliate of the issuer;

"minimum offering amount" means the minimum amount required to be raised by an issuer conducting a start-up business distribution which amount can include funds raised under either the start-up business distribution or a concurrent distribution under one or more other exemptions from the prospectus requirement;

"offering document" means a completed Form 45-109F1 *Start-up Business Offering Document*;

"participating jurisdiction" means a jurisdiction that has adopted this Instrument;

"principal" means a promoter, director, officer or control person;

"risk acknowledgment" means a completed Form 45-109F2 *Start-up Business Risk Acknowledgment*;

"start-up business distribution" means a distribution under this Instrument or a corresponding exemption.

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[1] [For publication for comment version only: Founder is defined in National Instrument 45-106 *Prospectus Exemptions* as follows: "founder" means, in respect of an issuer, a person who, (a) 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 (b) at the time of the distribution or trade is actively involved in the business of the issuer.]

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Prospectus Exemption

3. The prospectus requirement does not apply to a distribution by an issuer of a security of its own issue provided all of the following apply:

(a) each security distributed by the issuer is an eligible security;

(b) the issuer is an eligible issuer;

(c) the head office of the issuer is located in a participating jurisdiction or a corresponding jurisdiction;

(d) the aggregate funds raised in the start-up business distribution together with all funds raised by members of the issuer group in prior start-up business distributions does not exceed $1 000 000;

(e) at the same time or before the purchaser signs the agreement to purchase the security, the issuer or, if the issuer has retained a registered dealer in respect of the distribution, the dealer

(i) delivers to the purchaser an offering document that complies with sections 4, 5, and 8, and

(ii) obtains a completed risk acknowledgment from the purchaser;

(f) the issuer provides to the purchaser a contractual right to withdraw the purchaser's offer to purchase the security which right can be exercised by the purchaser delivering a notice to the issuer or, if the issuer has retained a registered dealer in respect of the distribution, the dealer within 48 hours of the later of

(i) the purchaser's subscription, and

(ii) an amended offering document being delivered to the purchaser;

(g) either

(i) the acquisition cost of the securities acquired by the purchaser does not exceed $1500 and the aggregate acquisition cost of all securities of the issuer group acquired by the purchaser in the prior 12 months under start-up business distributions does not exceed $3000, or

(ii) if a registered dealer provides the purchaser with suitability advice in respect of the acquisition, the acquisition cost of the securities acquired by the purchaser does not exceed $5000 and the aggregate acquisition cost of all securities of the issuer group acquired by the purchaser in the prior 12 months under start-up business distributions does not exceed $10 000.

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Offering Document

4. The offering document must contain a certificate signed by a person authorized to sign on behalf of the issuer stating that the offering document does not contain a statement that, in a material respect and at the time and in light of the circumstances in which it is made, is misleading or untrue and does not fail to state a fact that is required to be stated or that is necessary to make a statement not misleading.

5. If prior to the closing of the distribution the certificate referred to in section 4 ceases to be true, the issuer must amend the offering document and must not accept a purchaser's subscription unless the purchaser has been provided with the amendment to the offering document.

Other Offering Materials

6. The issuer must not make available to a purchaser under section 3 any material that purports to describe the business and affairs of the issuer that has been prepared primarily for delivery to and review by a prospective purchaser so as to assist the prospective purchaser to make an investment decision if the material is not balanced and fair or contains a statement that, in a material respect and at the time and in light of the circumstances in which it is made is misleading or untrue and it does not state a fact that is required to be stated or that is necessary to make a statement not misleading.

7. The issuer must not make available to a purchaser its financial statements unless the financial statements are prepared in accordance with one of the following:[2]

(a) Canadian GAAP applicable to publicly accountable enterprises,

(b) Part II of the Handbook applied to an issuer as if it were a private enterprise and the financial statements consolidate any subsidiaries and account for any significantly influenced investees and joint ventures using the equity method.

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[2] [For publication for comment version only: Financial statements are not required to be included in an offering document. However, if financial statements are voluntarily provided to a purchaser they must comply with sections 6 and 7. If the financial statements are included in the offering document, they must be filed with the offering document and be prepared in accordance with the requirements of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards.*]

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Minimum Offering Amount

8. An issuer conducting a distribution under section 3, must specify in the offering document a minimum offering amount.

9. If a distribution under section 3 is withdrawn or if the issuer does not raise the minimum offering amount by the 90th day after the earlier of the date that the offering document is (i) first delivered to a purchaser and (ii) made publicly available on a funding portal, the issuer must

(a) return or cause to be returned, all funds to each purchaser, and

(b) notify each purchaser or cause each purchaser to be notified that the funds have been returned.

Purchase Confirmation

10. Within 30 days after the closing of the distribution, the issuer must deliver or cause to be delivered to each purchaser a confirmation setting out each of the following:

(a) the date of the subscription and the closing of the distribution;

(b) the quantity and description of the security purchased;

(c) the price per security paid by the purchaser;

(d) the total commission, fee and any other amounts paid by the issuer to a dealer in respect of the start-up business distribution.

Registered Dealers

11. A registered dealer that participates in a distribution under section 3 must promptly deliver to each purchaser the offering document.

12. A registered dealer must not participate in a distribution under section 3 if the issuer is a connected issuer or a related issuer, as defined in National Instrument 33-105 *Underwriting Conflicts.*

Filings

13. On or before the 30th day after the closing of the start-up business distribution, the issuer must file each of the following:

(a) a completed Form 45-109F1 *Start-up Business Offering Document*;

(b) a completed Form 45-109F3 *Start-up Business Report of Exempt Distribution*.

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[Multi-Jurisdictional Distributions

14. Despite subsection 3(e) and section 13, an issuer that is conducting a start-up business distribution under this Instrument and is concurrently conducting the start-up business distribution under a corresponding exemption in a corresponding jurisdiction may, if it is expected to be principally conducting the distribution under a corresponding exemption, do any of the following:

(a) complete and file its offering document in accordance with the form of offering document prescribed under the corresponding exemption in the participating jurisdiction;

(b) obtain a risk acknowledgment from purchasers in accordance with the form of risk acknowledgment prescribed under the corresponding exemption in the participating jurisdiction;

(c) complete its report of exempt distribution in accordance with the form of report of exempt distribution prescribed under the corresponding exemption in the participating jurisdiction.]

Books and Records

15. An issuer that distributes securities under section 3 must maintain at its head office, books and records in respect of the distribution of securities under section 3 that demonstrate that it has complied with this Instrument.

16. A registered dealer that participates in a start-up business distribution must maintain at its head office, books and records to accurately record the client transactions and to demonstrate compliance with this Instrument.

17. The books and records required under sections 15 and 16 must be maintained for a period of eight years from the date the record is created.

Resale Restrictions

18. The first trade of a security acquired under section 3 is subject to section 2.5 of National Instrument 45-102 *Resale of Securities*.

Designated Offering Memorandum

19. In Alberta, an offering document used for a distribution under section 3, including all amendments to that document, is designated to be an offering memorandum under Alberta securities legislation.

20. In Nunavut, an offering document used for a distribution under section 3, including all amendments to that document, is designated to be an offering memorandum under Nunavut

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securities legislation[3].

Effective Date

21. This Instrument comes into force on •

[3] [For publication for comment version only: The effect of designating the offering document to be an offering memorandum is that the statutory rights of action in respect of an offering memorandum apply, i.e., the two day right of withdrawal and the right to sue for damages or rescission in the event of a misrepresentation in the offering document. It does not mean that the offering document is an offering memorandum required under National Instrument 45-106 *Prospectus Exemptions.* Further, it does not mean that the offering document must comply with the form requirements applicable to an offering memorandum under section 2.9 of National Instrument 45-106 *Prospectus Exemptions*.]

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APPENDIX A
CORRESPONDING JURISDICTIONS

British Columbia
BC Instrument 45-535 *Start-up Crowdfunding Registration and Prospectus Exemptions*

Saskatchewan
General Ruling/Order 45-929 *Start-up Crowdfunding Registration and Prospectus Exemptions*

Manitoba
Blanket Order 45-502 *Start-up Crowdfunding Prospectus and Registration Exemption*

Quebec
Decision 2015-PDG-0077: *Start-up Crowdfunding Prospectus and Registration Exemptions*

New Brunswick
Blanket Order 45-506 *Start-up Crowdfunding Registration and Prospectus Exemptions*

Nova Scotia
Blanket Order No. 45-524 *Start-up Crowdfunding Registration & Prospectus Exemptions*

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ANNEX B

PROPOSED FORM 45-109F1
START-UP BUSINESS OFFERING DOCUMENT

GENERAL INSTRUCTIONS:

(1) An offering document prepared using this Form can only be used for a distribution of securities under Multilateral Instrument 45-109 Prospectus Exemption for Start-up Businesses (the Instrument).

(2) This offering document and all amendments to it must be filed through SEDAR with the securities regulatory authority or regulator in each of the participating jurisdictions in which the issuer has made the start-up business distribution, no later than the 30th day after the closing of the distribution.

(3) This offering document must be certified by an individual authorized to act on behalf of the issuer.

(4) Draft this offering document so that it is easy to read and understand. Be concise and use clear, plain language. Avoid technical terms.

(5) Conform as closely as possible to the format set out in this Form. Address the items in the order set out below. No variation of headings, numbering or information set out in the Form is allowed and all are to be displayed as shown.

(6) Refer to Appendix A of this Form for definitions of terms used in this Form.

(7) The offering document must be provided to each investor before the investor signs the agreement to purchase the security. If the information contained in this offering document becomes untrue or misleading the offering document must be amended and investors must be given the amended offering document before their subscription can be accepted.

(8) If any forward-looking information (as defined in Appendix A) that could reasonably be expected to be material to an investor's decision to invest is included in the offering document identify it and include proximate to the identification of it

a. reasonable cautionary language identifying material factors that could cause actual results to differ materially from a conclusion, forecast or projection in the forward-looking information,

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b. state that the issuer believes it has a reasonable basis for drawing the conclusions or making the forecasts and projections set out in the forward-looking information, and

c. state in bold type:

The forecasts and predictions of an early-stage business are difficult to objectively analyze or confirm. Forward-looking statements represent the opinion of the issuer only and may not prove to be reasonable.

Item 1: RISKS OF INVESTING

1.1 Include the following statement on the first page of the offering document, in bold type:

"**No securities regulatory authority or regulator has assessed, reviewed or approved the merits of these securities or reviewed this offering document. Any representation to the contrary is an offence. This is a risky investment.**"

Item 2: THE ISSUER

2.1 Provide the following information for the issuer:

(a) Full legal name as it appears in the issuer's organizing documents,

(b) Head office address,

(c) Telephone,

(d) Fax, and

(e) Website URL.

Guidance: The organizing documents are the issuer's articles of incorporation, limited partnership agreement or other similar documents.

2.2 Identify an officer, employee or agent of the issuer who is able to answer questions from investors and any security regulatory authority or regulator. Provide the following contact information for that individual:

(a) Full legal name (first name, middle name and last name),

(b) Position held with the issuer,

(c) Business address,

(d) Business telephone,

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(e) Fax, and

(f) Business e-mail.

Item 3: BUSINESS OVERVIEW

3.1 Briefly explain, in a few lines, the issuer's business and why the issuer is raising funds.

Include the following statement, in bold type:

"**A more detailed description of the issuer's business is provided below.**"

Item 4: MANAGEMENT

4.1 Provide the information in the following table for each promoter, founder, director, officer and control person of the issuer:

Guidance: The definitions of the terms "promoter", "founder", "director", "officer" and "control person" can be found in Appendix A of this Form.

Full legal name municipality of residence and position at issuer	Principal occupation for the last five years	Expertise, education, and experience that is relevant to the issuer's business	Number and type of securities of the issuer owned	Date securities were acquired and price paid for the securities	Percentage of the issuer's securities held as of the date of this offering document

4.2 For the issuer and for each person or company listed in item 4.1, state whether they:

(a) have ever, pled guilty to or been found guilty of:

(i) a summary conviction or indictable offence under the *Criminal Code* (R.S.C., 1985, c. C-46) of Canada,

(ii) a quasi-criminal offence in any jurisdiction of Canada or a foreign jurisdiction,

(iii) a misdemeanour or felony under the criminal legislation of the United States of America, or any state or territory therein, or

(iv) an offence under the criminal legislation of any other foreign jurisdiction,

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(b) is or have been the subject of an order (cease trade or otherwise), judgment, decree, sanction, or administrative penalty imposed by a government agency, administrative agency, self-regulatory organization, civil court, or administrative court of Canada or a foreign jurisdiction in the last ten years related to his or her involvement in any type of business, securities, insurance or banking activity,

(c) is or has been the subject of a bankruptcy or insolvency proceeding,

(d) is a director or executive officer of an issuer that is or has been subject to a proceeding described in paragraphs (a), (b) or (c) above.

For each person or company listed in this item, provide details on the time, nature and outcome of any, and all, proceedings.

Guidance: The definitions of the terms "executive officer" and "quasi-criminal offence" can be found in Appendix A of this Form.

Item 5: START-UP BUSINESS DISTRIBUTION

5.1 Provide the name of any dealer the issuer is using to conduct its start-up business distribution.

5.2 List the name of all the jurisdictions where the issuer intends to raise funds and make this offering document available.

Guidance: The distribution can only be made in jurisdictions that provide applicable exemptions or otherwise in compliance with applicable securities legislation in such jurisdictions.

5.3 Provide the following information with respect to the start-up business distribution:

(a) the minimum offering amount that must be raised;

(b) the date by which the issuer must raise the minimum offering amount (which cannot be later than 90 days after the date this offering document is first made available to an investor); and

(c) the dates of each amendment, if any, made to this offering document, and a description of each amendment.

Guidance: The date in (a) does not change as a result of amending an offering document.

5.4 State the type of eligible securities offered.

Guidance: Only "eligible securities" as defined in the Instrument can be distributed under the Instrument.

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5.5 The eligible securities offered provide the following rights (choose all that apply):

☐ Voting rights,

☐ Dividends or interests (describe any right to receive dividends or interest),

☐ Rights on dissolution,

☐ Conversion rights (describe what each security is convertible into),

☐ Other (describe the rights).

Guidance: This information is usually found in the organizing documents referred to in Item 6.3.

5.6 Provide a brief summary of any other material restrictions or conditions that attach to the eligible securities being offered, such as tag-along, drag along or pre-emptive rights.

Guidance: The restrictions or conditions to be described here are generally found in shareholder's agreements or limited partnership agreements. The definitions of the terms "tag-along right", "drag along right", and "pre-emptive right" can be found in Appendix A of this Form.

5.7 In a table, provide the following information:

	Total amount ($)	Total number of eligible securities issuable
Minimum offering amount		
Maximum offering amount		
Price per eligible security		

Guidance: The total number of eligible securities issuable multiplied by the offering price per security should equal the minimum or maximum offering amount, as applicable. The maximum offering amount cannot exceed $1,000,000, including all other start-up distributions by the issuer and other members of the issuer group (as defined in the Instrument).

5.8 State whether investors are each required to make a minimum investment. If so, state the minimum investment.

Guidance: The issuer has the option to set a minimum investment amount per investor. This amount can not be over $1,500 if there is no dealer involved, and can not be over

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$5,000 if there is a registered dealer, who provides suitability advice, involved. If the issuer has not set a minimum investment amount, state that.

Item 6: ISSUER'S BUSINESS

6.1 Describe the issuer's business. Provide sufficient details about the issuer's industry and operations for an investor to understand the issuer's business and its plans and make an informed investment decision.

Guidance: The information provided must be balanced and fair and not misleading or untrue. It should not over-emphasize the positive and downplay the negative. If the issuer has future hopes or goals but the reasonableness of those hopes or goals can not yet be appropriately analyzed or assessed or, given the stage of development of the business, there can be little or no assurance that the hopes or goals are achievable, the risks associated with being able to achieve those hopes or goals should be made clear.

Enough details should be provided so an investor can clearly understand the issuer's business, what it does and intends to do. Consideration should be given to addressing the following:

- *Does or will the issuer build, design or develop something? Sell something produced by others? Provide a service?*
- *Does the issuer have business premises from which it can operate its business?*
- *How many employees does the issuer have? Need?*
- *Has the issuer entered any contracts that are important to its business?*
- *Has the issuer conducted any operations yet?*
- *Are there factors that make the issuer's business different from its competitors?*
- *What milestones has the issuer already reached e.g., developed a prototype, signed a distribution agreement, leased premises, obtained a bank loan or other significant financing?*
- *What milestones does the issuer hope to achieve in the next couple years e.g., Complete testing? Find a manufacturer? Commence a marketing campaign? Buy inventory? What is the proposed timeline for achieving each of the milestones?*
- *What are the major hurdles that the issuer expects to face in achieving its milestones?*
- *If the issuer is offering shares or similar securities to investors, is there a long-term hope or goal that would provide an "exit-opportunity" for investors e.g., the issuer hopes to eventually become a reporting issuer? Be bought out/taken over by a larger company. (NOTE: It is a breach of securities laws to state that an*

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issuer will be or will apply to be traded on an exchange or quoted on a quotation and trade reporting system.)

- *How are the funds raised from this financing expected to help the issuer advance its business and achieve one or more of the milestones?*

6.2 Describe the legal structure of the issuer (e.g., corporation, partnership, trust, unincorporated sole proprietor) and indicate the jurisdiction where the issuer is incorporated or organized.

6.3 Indicate where the issuer's articles of incorporation, limited partnership agreement, shareholder agreement or similar document are available to investors.

6.4 Indicate which statement(s) best describe the issuer's operations (select all that apply):

☐ Has never conducted operations,

☐ Is in the development stage,

☐ Is currently conducting operations,

☐ Has shown profit in the last financial year.

6.5 If the issuer is providing financial statements to investors, state that fact.

(a) If the financial statements have not been audited, state in bold type:

The financial statements have not been audited.

(b) Unless the financial statements are prepared in accordance with Canadian generally accepted accounting principles applicable to publicly accountable enterprises, state in bold type:

The financial statements have not been prepared using Canadian generally accepted accounting principles (GAAP) for publicly accountable enterprises and are not comparable to financial statements using Canadian GAAP for publicly accountable enterprises. They may not be suitable for your purposes.

Guidance: The issuer is not required to provide financial statements to investors in connection with a start-up business distribution. The issuer can choose to make financial statements available to investors; however, if financial statements are provided they must comply with sections 6 and 7 of the Instrument.

If financial statements are included in the offering document, they must be filed with the offering document and must be prepared in accordance with the requirements of National Instrument 52-107 Acceptable Accounting Principles and Auditing Standards.

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Item 7: USE OF FUNDS

Prior Funds

7.1 Provide information on all funds previously raised by the issuer and how they have been used by the issuer. Include enough details so an investor can clearly understand:

- How much money the issuer has already raised?
- How the issuer raised it?
- What prospectus exemption(s) was/were used?
- How has that money been used?

If the issuer has not previously raised funds, state this fact.

Funds from this Start-Up Business Distribution

7.2 Using the following table, provide a detailed breakdown of how the issuer will use the funds from this start-up business distribution. Provide enough details to allow investors to make a reasoned investment decision.

If any of the funds will be paid directly or indirectly to a promoter, founder, director, officer or control person of the issuer, disclose in a note to the table the name of the person or company, the relationship to the issuer and the amount. If more than 10% of the available funds will be used by the issuer to pay debt and the issuer incurred the debt within the two preceding financial years, describe why the debt was incurred.

Description of intended use of funds listed in order of priority	Total amount ($)	
	Assuming minimum offering amount	Assuming maximum offering amount

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Item 8: PREVIOUS START-UP BUSINESS DISTRIBUTIONS

8.1 If the issuer or any member of the issuer group has conducted a start-up business distribution in the past five years, state the following:

(a) the full legal name of the issuer that made the distribution,

(b) the name of any dealer used, and

(c) whether the distribution successfully closed, was withdrawn by the issuer or did not close because the minimum offering amount was not reached and the date on which each of these, as applicable, occurred.

Guidance: The term "issuer group" is defined in the Instrument.

8.2 If a promoter, founder, director, officer or control person of the issuer has been a promoter, founder, director, officer or control person of any issuer that has conducted a start-up business distribution in the past five years, state the following:

(a) the full legal name of the issuer that made the distribution,

(b) the name of any dealer used, and

(c) whether the distribution successfully closed, was withdrawn by the issuer or did not close because the minimum offering amount was not reached and the date on which each of these, as applicable, occurred.

Item 9: COMPENSATION PAID TO DEALER

9.1 If any commission, fee or other payment is expected to be paid by the issuer to any dealer in connection with the start-up business distribution,

(a) for each type of commission, fee or other payment, describe it and state the estimated amount to be paid; and

(b) if a commission is expected to be paid, indicate the percentage that the commission will represent of the gross proceeds of the offering (assuming both the minimum and maximum offering).

Guidance: Fees payable to the dealer should be mutually agreed between the dealer and the issuer prior to distributing the offering document.

Item 10: RISK FACTORS

10.1 Describe in order of importance, starting with the most important, the main risks of investing in the issuer's business for the investors. Explain the risks of investing in the issuer for the investor in a meaningful way, avoiding overly general or "boilerplate" disclosure. Disclose both the risk and the factual basis for it. Risks can relate to the

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issuer's business, its stage of development, its lack of management experience, its limited financial resources, the industry, the extent of competition, its clients, etc.

Guidance: The disclosure must be fair and balanced and not misleading or untrue. Issuers may indicate how the business plans to mitigate these risks, but should not de-emphasize the risks by including excessive caveats or conditions.

If the securities being distributed are to pay interest, dividends or distributions and the issuer does not have the financial resources to make such payments, (other than from the sale of securities) state in bold type:

"We do not currently have the financial resources to pay [interest, dividends or distributions] to investors. There is no assurance that we will ever have the financial resources to do so."

Item 11: REPORTING OBLIGATIONS

11.1 Describe the nature and frequency of any disclosure of information the issuer intends to provide to investors after the closing of the distribution and explain how investors can access this information.

Guidance: Setting out a reporting plan will generally be important to investors. As it will create an expectation by investors, ensure it is realistic and achievable. Reporting does not have to be complex or costly. Reporting can be through a website, newsletters, social media sites, email and mailings. Reporting might involve identifying milestones that have been met, confirming how investors' money was used, identifying material changes to the business, discussing future plans and providing financial statements.

11.2 If the issuer is required by corporate legislation, its constating documents or otherwise to provide either or both of annual financial statements or an information circular/proxy statements to its security holders, state that fact.

Guidance: Corporate legislation in many jurisdictions requires issuers with more than a specified number of shareholders to prepare and disseminate audited annual financial statements. Further, such issuers may be required to hold annual meetings of shareholders and provide certain specified disclosure in an information circular. Refer to applicable corporate law.

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Item 12: RESALE RESTRICTIONS

12.1 Include the following statement, in bold type:

“**The securities you are purchasing are subject to resale restrictions. They can only legally be resold to a very limited number of people. You may never be able to resell the securities.**”

Item 13: INVESTORS’ RIGHTS

13.1 Include the following statement, in bold type:

“*Two-day cancellation right* – if you agree to make an investment, you have a short period in which to change your mind and cancel your agreement. To do so, you must send a notice to the issuer, or if the issuer has retained a registered dealer in respect of the distribution, to the dealer within 48 hours of the later of (a) your subscription, and (b) an amended offering document being delivered to you.

***Right of action in the event of a misrepresentation* – if there is a misrepresentation in the offering document, including all amendments to that document, you have a statutory right to sue (a) the issuer to cancel your agreement or (b) the issuer, its directors, and each individual who has signed the offering document for damages.**

This right to sue is available to you whether or not you relied on the misrepresentation. However, there are various defences available to the persons or companies that you have a right to sue. In particular, they have a defence if you knew of the misrepresentation when you purchased the securities.

If you intend to rely on these rights, you must do so within strict time limits. An action to cancel your agreement must be commenced no more than 180 days from the day of the transaction giving rise to the cause of action. An action for damages must be within the lesser of (a) 180 days from the day that the plaintiff first had knowledge of the facts giving rise to the cause of action, and (b) 3 years from the day of the transaction giving rise to the cause of action.”

Item 14: DATE AND CERTIFICATE

14.1 Include the following statement, in bold type:

This offering document does not contain a statement that, in a material respect and at the time and in light of the circumstances in which it is made, is misleading or untrue and it does not fail to state a fact that is required to be stated or that is necessary to make a statement not misleading.

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14.2 The offering document must be dated, certified and signed by an individual authorized to sign on behalf of the issuer, as follows:

Certified as of: [State the date on which the certification is made]

By: [State the name of the individual who certifies the statement]

Title: [State the title of the individual with the issuer]

Signature: [Include signature of the authorized individual.]

Guidance: This certificate can only be signed by a person authorized to sign on behalf of the issuer.

14.3 If the offering document is signed electronically, include the following statement, in bold type:

"**I acknowledge that I am signing this offering document electronically and agree that this is the legal equivalent of my handwritten signature.**"

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Appendix A

"control person" means,

(a) a person or company who holds a sufficient number of the voting rights attached to all outstanding voting securities of an issuer to affect materially the control of the issuer, and if a person or company holds more than 20% of the voting rights attached to all outstanding voting securities of an issuer, the person or company is deemed, in the absence of evidence to the contrary, to hold a sufficient number of the voting rights to affect materially the control of the issuer, or

(b) each person or company in a combination of persons or companies acting in concert by virtue of an agreement, arrangement, commitment or understanding, who holds in total a sufficient number of the voting rights attached to all outstanding voting securities of an issuer to affect materially the control of the issuer, and if a combination of persons or companies holds more than 20% of the voting rights attached to all outstanding voting securities of an issuer, the combination of persons or companies is deemed, in the absence of evidence to the contrary, to hold a sufficient number of the voting rights to affect materially the control of the issuer;

"director" means

(a) a member of the board of directors of a company or an individual who performs similar functions for a company, and

(b) with respect to a person that is not a company, an individual who performs functions similar to those of a director of a company;

"drag-along right" is a right designed to protect a majority shareholder, a drag-along right enables a majority shareholder to force minority shareholders to join in the sale of a company, by giving the minority shareholders the same price, terms, and conditions as any other seller;

"executive officer" means, for an issuer, an individual who is

(a) a chair, vice-chair or president,

(b) a vice-president in charge of a principal business unit, division or function including sales, finance or production, or

(c) performing a policy making function in respect of the issuer;

"forward-looking information" means disclosure regarding possible events, conditions or financial performance that is based on assumptions about the future economic conditions and

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courses of action, and includes future-oriented financial information with respect to prospective results of operations, financial position or cash flows that is presented either as a forecast or a projection;

"founder" means, in respect of an issuer, a person who,

(a) 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

(b) at the time of the distribution or trade is actively involved in the business of the issuer;

"officer" with respect to an issuer, means

(a) a chair or vice-chair of the board of directors, a chief executive officer, chief operating officer, chief financial officer, president, vice-president, secretary, assistant secretary, treasurer, assistant treasurer or general manager,

(b) an individual who is designated as an officer under a bylaw or similar authority of the issuer or registrant, or

(c) an individual who performs functions for a person or company similar to those normally performed by an individual referred to in subclause (a) or (b);

"pre-emptive right" is the right of existing shareholders to acquire new shares issued by the issuer, it can allow existing shareholders to maintain their proportional ownership of the issuer, preventing stock dilution;

"promoter" means

(a) a person or company, acting alone or in conjunction with one or more other persons or companies or a combination of them, that, directly or indirectly, takes the initiative in founding, organizing or substantially reorganizing the business of the issuer, or

(b) a person or company that, directly or indirectly, receives in consideration of services or property, or both,

a. 10% or more of any class of securities of the issuer, or

b. 10% or more of the proceeds from the sale of any class of securities of a particular issue,

in connection with the founding, organizing or substantial reorganizing of the

business of the issuer, but does not include a person or company that receives securities or proceeds solely

c. as underwriting commissions, or

d. in consideration of property transferred to the issuer,

if that person or company does not otherwise take part in founding, organizing or substantially reorganizing the business;

"quasi-criminal offence" includes offences under the *Income Tax Act* (R.S.C. 1985, c. 1 (5th Suppl.)), the *Immigration and Refugee Protection Act* (R.S.C., 2001, c. 27) and the tax, immigration, drugs, firearms, money laundering or securities legislation of any province or territory of Canada or of a foreign jurisdiction; and

"tag-along right" is a contractual obligation used to protect minority shareholders, the right assures that if the majority shareholder sells his stake, minority shareholders have the right to join and sell their securities on the same terms and conditions as would apply to the majority shareholder.

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Securities Regulatory Authorities and Regulators

Alberta Securities Commission
Suite 600, 250 – 5th Avenue SW
Calgary, Alberta T2P 0R4
Telephone: (403) 297-6454
Facsimile: (403) 297-6156

Government of Nunavut
Department of Justice
Legal Registries Division
P.O. Box 1000, Station 570
1st Floor, Brown Building
Iqaluit, Nunavut X0A 0H0
Telephone: (867) 975-6590
Facsimile: (867) 975-6594

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ANNEX C

PROPOSED FORM 45-109F2
START-UP BUSINESS RISK ACKNOWLEDGMENT

Issuer Name: ________________________________

Type of Security Offered: ________________________________

> **WARNING!**
> **BUYER BEWARE: This investment is risky.**
> **Don't invest in this business unless you can afford to lose all the money you invest.**

	Yes	**No**
1. Risk acknowledgment		
<u>**Risk of loss**</u> – **You are buying "securities" (e.g., shares, units or debentures) of a start-up business. A high percentage of start-up businesses fail or do not survive.** Do you understand that this is a risky investment and that you could lose all the money you invest?	☐	☐
<u>**No income**</u> – **If the securities you are buying are supposed to provide interest, a dividend or a similar return you should consider whether the business has a reasonable prospect of making the income necessary to make those payments.** Do you understand that you may not earn any income, such as dividends or interest, on this investment?	☐	☐
<u>**Liquidity risk**</u> – **The securities you are buying cannot be legally resold except in very limited circumstances. If you want to sell the securities, you may not be able to find a buyer.** Do you understand that you may never be able to sell the securities?	☐	☐
<u>**Lack of information**</u> – **You are buying securities of a business that is not a "reporting issuer". After making an investment you may receive little or no information about the business or your investment.** Do you understand that you may not be provided with any ongoing information about the issuer and/or this investment?	☐	☐

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2. No review or approval		
<u>No approval</u> – No securities regulatory authority or regulator has reviewed or approved this offering. Do you understand that this investment has not been reviewed or approved in any way by a securities regulator?	☐	☐

3. Investor's signature

I have read this Risk Acknowledgement and the Issuer's Offering Document.

Investor's Name:[*Instructions: Investor to print/type first and last name:]*

____

Investor's Signature: *[Instructions: Delete if the distribution is being conducted online]*

____

Electronic signature: *[Instructions: Delete if the distribution is **not** being conducted online]*
By clicking the [I confirm] button, I acknowledge that I am signing this form electronically and agree that this is intended as the legal equivalent of my handwritten signature. The date of my electronic signature is the same as my acknowledgement.

4. Additional information

You have 48 hours to cancel your purchase by sending a notice to the issuer or dealer, depending on who you bought your securities through.

Issuer's Contact Information: *[Instructions: Provide email address or fax number for a contact person at the issuer where investors can send their notice. Describe any other manner for investors to cancel their purchase.]*

Dealer's Contact Information: *[Instructions: If the sale is through a portal or if a dealer is otherwise involved, provide email address or fax number for the dealer/portal where investors can send their notice. Describe any other manner for investors to cancel their purchase.]*

If you want more information about your local securities regulation, go to www.securities-administrators.ca. Securities regulators do not provide advice on investment.

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ANNEX D

PROPOSED FORM 45-109F3
START-UP BUSINESS REPORT OF EXEMPT DISTRIBUTION

GENERAL INSTRUCTIONS:

(1) This Form can only be used to report a distribution of securities under Multilateral Instrument 45-109 Prospectus Exemption for Start-up Businesses (the Instrument).

(2) This Form must be certified by an individual authorized to act on behalf of the issuer.

(3) References to a purchaser in this report are to the person or company who became the beneficial owner of the securities.

(4) If the issuer has made a start-up business distribution, under the Instrument, it is required to file the report with the securities regulator authority or regulator in each participating jurisdiction in which the distribution occurred through SEDAR no later than the 30th day after the closing of the distribution.

GUIDANCE:

(1) Only "eligible securities" as defined in the Instrument may be distributed under the prospectus exemption in the Instrument.

(2) The offering document used for the distribution must also be filed no later than the 30th day after the closing of the distribution.

(3) If the distribution also occurs under a corresponding exemption in other corresponding jurisdictions a report of exempt distribution (in the required form) must also be filed in each of those jurisdictions.

ISSUER INFORMATION

1. Full legal name: ______________________________

Former legal name (if the name has changed since last report): ______________________________

Head office address: ______________________________

Telephone: ______________ Fax: ______________

Website URL: ______________________________

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2. Full legal name of contact person: ______________________

Business address: ______________________

Telephone: ______________ Fax: ______________

E-mail: ______________________

Position with issuer ______________________

3. Indicate the industry of the issuer by checking the appropriate box:

☐ Bio-tech ☐ Hi-tech ☐ Oil and gas

☐ Financial Services ☐ Industrial ☐ Real estate

☐ Forestry ☐ Mining ☐ Utilities

☐ Other (describe): ______________________

START-UP BUSINESS DISTRIBUTION

4. Date the offering document was first made available to purchasers: ______________

Date of the closing of the distribution: ______________

5. Type of securities offered: ______________

6. If the eligible securities offered are convertible, describe the type of underlying security, the terms of conversion and any expiry date:

____

____

7. Total number of securities distributed: ______________ Price per security ($): ______________

8. Aggregate funds raised through this distribution ($): ______________

9. Total commission, fee and any other amount paid to a dealer for this distribution ($): ______________

10. Complete Schedule 1 to this report.

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11. Complete the following table for each jurisdiction where purchasers of the securities reside.

Jurisdiction where purchaser resides	**Number of purchasers in the jurisdiction**	**Total funds raised from purchasers in the jurisdiction ($)**
Total number of purchasers		
Total funds raised from purchasers in all jurisdictions ($)		

CERTIFICATE

On behalf of the issuer, I certify that the statements made in this report are true and complete.

Full legal name of issuer: ________________________________

Signature: ________________________ Date: ______________

Print name: ________________________________

Position held: ________________________________

Telephone: ________________________________

E-mail: ________________________________

IT IS AN OFFENCE TO MAKE A MISREPRESENTATION IN THIS REPORT

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NOTICE - COLLECTION AND USE OF PERSONAL INFORMATION

The personal information required under this report is collected on behalf of and used by the securities regulatory authorities or, where applicable, the regulators of the applicable jurisdictions under the authority granted in securities legislation for the purposes of the administration and enforcement of the securities legislation.

If you have any questions about the collection and use of this information, contact the securities regulatory authority or, where applicable, the regulator in each of the participating jurisdictions where the report is filed, at the address(es) listed at the end of this report.

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SCHEDULE 1 - PURCHASER INFORMATION

Provide the information below for each purchaser who purchased securities in a start-up business distribution under the Instrument. Use an attachment if necessary.

This information will not be placed on the public file of the securities regulatory authority or regulator of the participating jurisdictions in which it is filed. However, freedom of information legislation may require a securities regulatory authority or regulator of a participating jurisdiction to make this information available if requested.

Full legal name	**Residential address, including number, street, city and postal code**	**Province / territory**	**Telephone, including area code**	**E-mail**	**Number of securities purchased**	**Total purchase price ($)**

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Securities Regulatory Authorities and Regulators

Alberta Securities Commission
Suite 600, 250 – 5th Avenue SW
Calgary, Alberta T2P 0R4
Telephone: (403) 297-6454
Facsimile: (403) 297-6156

Government of Nunavut
Department of Justice
Legal Registries Division
P.O. Box 1000, Station 570
1st Floor, Brown Building
Iqaluit, Nunavut X0A 0H0
Telephone: (867) 975-6590
Facsimile: (867) 975-6594

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ANNEX E

PROPOSED COMPANION POLICY 45-109CP
PROSPECTUS EXEMPTION FOR START-UP BUSINESSES

PART 1
GENERAL COMMENTS

Application

1. Multilateral Instrument 45-109 Prospectus Exemption for Start-up Businesses (MI 45-109) has been adopted by the securities regulatory authorities or regulator in each of the following participating jurisdictions: Alberta and Nunavut.

No Registration Exemption

2. MI 45-109 provides an exemption from the prospectus requirement. It is designed to facilitate capital raising by start-up or early stage businesses while still providing appropriate investor protection. It does not provide an exemption from the requirement that a person or company who is a dealer must be registered. Accordingly, a person or company acting as a dealer in respect of a distribution of securities under MI 45-109, including as a portal, will need to comply with the registration requirement.

Purpose

3. The purpose of this Companion Policy is to help users of MI 45-109 understand how we, the securities regulatory authorities or regulators in the participating jurisdictions interpret certain provisions of MI 45-109. This Companion Policy includes explanations, discussion and examples of the application of various parts of MI 45-109.

Multi-jurisdictional Distributions

4. A distribution under MI 45-109 can occur in more than one jurisdiction, for example, the issuer, i.e., the person or company issuing securities to raise money might be in one jurisdiction but be selling securities to investors in another jurisdiction. In that case, the issuer must comply with the securities legislation of both jurisdictions in which the distribution occurs. For example, if an issuer is headquartered in Alberta and is selling securities to investors in British Columbia, it will need to comply with both MI 45-109 and the corresponding exemption in British Columbia. Please refer to Part 12 for further discussion and examples of how MI 45-109 works with the corresponding exemptions in the corresponding jurisdictions.

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Raising Money Under MI 45-109

5. An issuer wishing to raise funds can use the prospectus exemption in MI 45-109 in three ways:

- to raise money through an online funding portal (provided that the portal is in compliance with the registration requirement e.g., registered as an exempt market dealer);
- to raise money through a dealer (provided the dealer is in compliance with the registration requirement e.g., registered as an exempt market dealer or investment dealer) that will solicit investment and distribute securities through traditional distribution channels; or
- to raise money through the issuer's principal's own network of contacts (provided that they are not in the business of trading securities such that the dealer registration requirement is triggered).

Suitability for Issuers

6. Before commencing a distribution under MI 45-109 issuers should consider whether it is appropriate for their purposes. Issuers should assess whether they have the resources to comply with the requirements under MI 45-109 and estimate if they have the financial and other resources necessary to manage a great number of security holders.

If the distribution is successful, the founders of the issuer may have to give up part of the ownership of the issuer to investors. The issuer will be accountable to its investors. Investors will likely expect to be informed about successes and failures of the issuer's business. The issuer may have to spend time and money to maintain contact with investors.

Within 30 days after the closing of a distribution the issuer must file a report of exempt distribution with the securities regulatory authority or regulator of each of the participating jurisdictions and corresponding jurisdictions where the issuer has made a start-up business distribution. There is a fee associated with the filing of this report. An issuer making a distribution in more than one jurisdiction must file a report, and pay the associated fee, required in each jurisdiction.[1]

An issuer that relies on MI 45-109 will likely no longer be considered a "private issuer" under National Instrument 45-106 *Prospectus Exemptions* (NI 45-106) and, as such, will likely not be able to rely on the "private issuer" prospectus exemption for future distributions of securities. As a consequence, other prospectus exemptions will need to be considered and if relied upon, a report of exempt distribution with the associated fee will likely be required in respect of each future distribution.

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[1] For example, as at the date of this Companion Policy, in Alberta, the minimum fee for filing a report of exempt distribution is $120.

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Relying on MI 45-109 will not make an issuer a "reporting issuer" under securities laws; however, by increasing the number of its shareholders, the issuer may become subject to certain reporting requirements under applicable corporate law. For example, under business corporations legislation an issuer is typically required to hold an annual meeting of its shareholders and is required to distribute an information circular, containing certain specified information, where it solicits proxies from more than a specified number of shareholders, e.g., more than 15. Also under business corporations legislation an issuer will often be required to deliver audited annual financial statements to shareholders, unless the shareholders unanimously resolve to dispense with the appointment of an auditor. With a large number of public shareholders obtaining such a resolution is probably not realistic.

PART 2
INTERPRETATION

Lifetime Limit

7. Issuers using MI 45-109 are subject to a $1,000,000 lifetime limit on the amount that they can raise under MI 45-109 and any corresponding exemption. In calculating the $1,000,000 all funds ever raised by the issuer and other members of the "issuer group" under MI 45-109 or a corresponding exemption are included.

Distribution Limit

8. Under the corresponding exemption in the corresponding jurisdictions listed in Appendix A of MI 45-109, there is a $250,000 limit on the amount that can be raised in any one distribution. Issuers conducting distributions under MI 45-109 have some flexibility as they have the option of doing multiple smaller offerings or one more substantial offering, so long as the aggregate funds raised by the issuer group through all start-up business distributions is less than $1,000,000.

MI 45-109 is intended to serve the funding gap that may exist prior to an issuer being able to cost effectively use the offering memorandum prospectus exemption in NI 45-106 (the OM Exemption). Once an issuer group has raised $1,000,000 under start-up business distribution(s) we think it should be in a position to prepare financial statements and comply with the requirements of the OM Exemption.

The term issuer group is defined in MI 45-109 and includes the issuer, each affiliate of the issuer and any other issuer that is engaged in a common enterprise with the issuer or who has a founder that is also a founder of the issuer. The term "founder" is defined in NI 45-106. It includes a requirement that, at the time of the distribution of a security the person be actively involved in the business of the issuer. Accordingly, a person who takes the initiative in founding, organizing or substantially reorganizing the business of the issuer within the meaning of the definition but subsequently ceases to be actively engaged in the day to day operations of the business of the

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issuer would no longer be a "founder" for the purposes of MI 45-109, regardless of the person's degree of prior involvement with the issuer or the extent of the person's continued ownership interest in the issuer.

Investment Limits

9. MI 45-109 includes various limits on the amount that can be raised from any particular investor. If a registered dealer is *not* involved, for example, if an issuer accesses investors through its own network of contacts, without using a portal, no investor can invest more than $1,500 in a single investment or more than $3,000 per issuer group in a 12 month period under start-up business distributions.

If an issuer retains a registered dealer to access investors, whether through a portal or through traditional channels, the investment limits are somewhat higher. Where a registered dealer provides suitability advice regarding an investor's investment, then the investor can invest up to $5,000 in a single investment and up to $10,000 per issuer group in a 12 month period under start-up business distributions.

All dealers participating in a distribution under MI 45-109 are required to comply with the registration requirement. Generally, the operation of a portal is considered to constitute acting as a dealer. Accordingly, any portal would be expected to comply with the registration requirement. Registered dealers are subject to know-your-product, know-your-client and suitability requirements, accordingly, a somewhat higher investment limit is permitted. The higher investment limit allows issuers access to greater capital but is intended to still protect investors by safeguarding them from investments that are not suitable for them.

Concurrent Distributions

10. An issuer can raise money using other prospectus exemptions concurrently with conducting a start-up business distribution. Other prospectus exemptions are found in NI 45-106. The funds raised under other prospectus exemptions can serve to reach the minimum offering amount stated in the offering document.

For example, NewTech Co's goal is to raise a minimum offering amount of $75,000. They used a funding portal that is registered as a dealer. They raised $65,000 through the funding portal from several investors under MI 45-109. At the same time, Rebecca, an "accredited investor" as defined in NI 45-106 (e.g., annual net income of over $200,000 for the last few years), wants to invest $10,000 in NewTech Co. under the accredited investor exemption. NewTech Co. cannot use MI 45-109 since Rebecca wants to invest more than is permitted under MI 45-109. However, Rebecca qualifies to invest under the accredited investor exemption. Together, the $65,000 from the distribution under MI 45-109 and the $10,000 under the accredited investor exemption meet

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the minimum offering amount. NewTech Co can ask the funding portal to release the $65,000 raised as soon as the withdrawal period has expired for all start-up business distribution investors.

Amendments to the Offering Document

11. The information contained in the offering document must be kept up to date throughout the duration of the start-up business distribution. If the information in the offering document contains any information that becomes, in a material respect, misleading or untrue at the time and in light of the circumstances in which it is made, the issuer must amend the offering document as soon as practicable and deliver the new version to investors. An updated version of the offering document does not need to be provided to investors under prior start-up business distributions that have been completed.

Investors will have 48 hours from being notified of the amendment to cancel their agreement to purchase the securities. Investors who want to withdraw their investment during this time must notify the issuer or dealer, depending on who they purchased their securities through.

In determining whether an offering document must be updated, an issuer must consider the materiality of the change in circumstances. Materiality is a matter of judgment to be made in light of the circumstances, taking into account both qualitative and quantitative factors, assessed in respect of the issuer as a whole. Consider whether a hypothetical investor, broadly representative of investors generally and guided by reason, would be likely to be influenced, in making an investment decision to buy a security of an issuer, by an item of information or an aggregate of items of information. If so, then that item of information, or aggregate of items, is “material” in respect of that issuer. An item that is immaterial alone may be material in the context of other information, or may be necessary to give context to other information.

Multi-jurisdictional Distributions

12. MI 45-109 is designed to permit an issuer to raise money by conducting a distribution under MI 45-109 in one or more participating jurisdictions and concurrently under one or more corresponding exemptions in corresponding jurisdictions. However, there are some important differences between MI 45-109 and the existing corresponding exemptions that must be addressed when coordinating a distribution in such circumstances.

The major differences between MI 45-109 and the corresponding exemptions listed in Appendix A of MI 45-109 are set out below.

- MI 45-109 is a prospectus exemption only and does not include a registration exemption.

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- A registered dealer is not allowed to participate in a distribution under MI 45-109 if the issuer is a connected issuer or a related issuer of the dealer, as defined in National Instrument 33-105 *Underwriting Conflicts*.
- The corresponding exemptions require the use of a funding portal to facilitate any start-up business distribution. MI 45-109 is a prospectus exemption that can be used with or without a funding portal.
- MI 45-109 includes the following investment limits:
    - If the distribution is conducted *without* a registered dealer, no investor can invest more than $1,500 in a single investment or more than $3,000 per issuer group in a 12 month period under start-up business distributions.
    - If the distribution is conducted *with* a registered dealer that provides suitability advice, an investor can invest up to $5,000 in a single investment and up to $10,000 per issuer group in a 12 month period under start-up business distributions.
- The corresponding exemptions have an investment limit of $1,500 per investor per offering and issuer groups are restricted to two offerings in a year which means that effectively there is an annual investment limit of $3,000 per issuer group.
- Under MI 45-109, the maximum aggregate funds that an issuer group can raise, in its lifetime, through start-up business distributions (including under corresponding exemptions) is $1,000,000. The maximum offering amount under the corresponding exemptions is $250,000 per distribution and an issuer group cannot make more than two start-up business distributions in a year. There is no lifetime limit under the corresponding exemptions.
- Financial statements provided to an investor under MI 45-109 must be prepared in accordance with either Canadian GAAP applicable to publicly accountable enterprises, or Part II of the Handbook (together with certain additions). Further, if applicable, certain warnings in respect of the financial statements may be required.

If an issuer is conducting a distribution under MI 45-109 and a corresponding exemption at the same time they will be subject to both sets of rules. For example, an issuer, Startup Agro-Enterprises, makes a distribution through a funding portal in Alberta under MI 45-109 and in Saskatchewan under a corresponding exemption.[2] Startup Agro Enterprises must consider the offering limits under MI 45-109 and the Saskatchewan corresponding exemption. The distribution made by Startup Agro-Enterprises will be subject to both the maximum offering limit of $250,000 in Saskatchewan (and the limit on two start-up crowdfunding distributions per year), under Saskatchewan's corresponding exemption, and, under MI 45-109, the lifetime limit of $1,000,000 raised under any start-up business distribution.

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[2] As at the date of this Companion Policy, the corresponding exemption in Saskatchewan is: General Ruling/Order 45-929 *Start-up Crowdfunding Registration and Prospectus Exemption*

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For example, if Startup Agro-Enterprises (or members of its issuer group) had raised $800,000 in a previous start-up business distribution two years ago, it would be subject to a maximum offering limit of $200,000 because of the lifetime offering limit under MI 45-109.

If Startup Agro-Enterprises is an *Alberta issuer* selling to investors in both Alberta and Saskatchewan through a funding portal, the funding portal would need to be in compliance with the registration requirement under applicable securities legislation. The corresponding exemption from registration in Saskatchewan is not available if the funding portal is registered under securities legislation in any jurisdiction of Canada. In addition to complying with its obligations as a registrant, the funding portal would need to comply with the additional conditions applicable to a registered funding portal under Saskatchewan's corresponding exemption.

In such case, provided that the registered dealer provides suitability advice to each investor, Startup Agro-Enterprises would be permitted to raise up to $5,000 from each investor in Alberta. However, under the corresponding exemption in Saskatchewan, the maximum investment from a Saskatchewan investor would be $1,500.[3]

If Startup Agro-Enterprises were a *Saskatchewan issuer* selling to investors in both Saskatchewan and Alberta through a funding portal, the funding portal would need to be in compliance with the registration requirement under applicable securities legislation, and comply with the conditions applicable to registered funding portals in Saskatchewan's corresponding exemption.

In such case, the maximum amount Startup Agro-Enterprises could raise from any one investor, whether the investor was in Saskatchewan or Alberta, even if suitability advice was provided, would be $1,500.

The $5,000 investment limit (available under MI 45-109 when a registered dealer, who provides suitability advice, is involved) is only applicable to issuers in a jurisdiction that has adopted MI 45-109 where the issuer is selling to investors that are in a jurisdiction that has adopted MI 45-109.

Under MI 45-109, an issuer that expects to be principally conducting a start-up business distribution under a corresponding exemption may use the forms prescribed under that other exemption. For example, Fresh Designs Inc. is conducting a start-up business distribution principally in Manitoba, Nova Scotia, and New Brunswick under corresponding exemptions but will distribute some securities in Alberta under MI 45-109. Fresh Designs Inc. would be allowed to use, and, where required, file in Alberta, the form of offering document, risk acknowledgment and report of exempt distribution required under the corresponding exemptions in lieu of the forms otherwise required under MI 45-109.

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[3] As at the date of this Companion Policy, the corresponding exemption in Saskatchewan has an investment limit of $1,500 per distribution.

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PART 3
FORMS

Offering Document

13. Issuers are responsible for preparing the offering document to be provided to investors to enable them to make a decision whether to invest in the issuer's securities. Generally, an offering document delivered under MI 45-109 must be prepared by using Form 45-109F1 *Start-up Business Offering Document*. The issuer must provide information for each of the items in the Form. Subject to certain conditions, an issuer concurrently conducting a distribution in a corresponding jurisdiction may use the form of offering document required under a corresponding exemption in a participating jurisdiction.

Risk Acknowledgment

14. The issuer must obtain a signed risk acknowledgment from each investor prior to the investor signing the agreement to purchase any securities. Generally, a risk acknowledgment obtained under MI 45-109 must be in the form prescribed by Form 45-109F2 *Start-up Business Risk Acknowledgment.* Subject to certain conditions, an issuer concurrently conducting a distribution in a corresponding jurisdiction may use the form of risk acknowledgment required under a corresponding exemption in the participating jurisdiction. All risk acknowledgments must evidence that the investor has read the matters set out in the form.

PART 4
CLOSING OF THE DISTRIBUTION

Achieving the Minimum Offering Amount

15. If the minimum offering amount has been raised within the determined time period, the issuer can proceed to close the distribution. The issuer will issue the securities and instruct the dealer, if any, to release the funds. However, in all cases, the issuer must not access funds until the withdrawal period for each investor under a start-up business distribution has expired.

Report of Exempt Distribution

16. Within 30 days after the closing of any distribution under MI 45-109, the issuer must file a completed report of exempt distribution in each participating jurisdiction in which the start-up distribution occurred. Generally the report of exempt distribution must be in Form 45-109F3 *Start-up Business Report of Exempt Distribution*. Subject to certain conditions, an issuer concurrently conducting a distribution in a corresponding jurisdiction may use the form of report of exempt distribution required under a corresponding exemption in a participating jurisdiction.

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Filing of Offering Document

17. Within 30 days after the closing of a distribution under MI 45-109, the issuer must file the offering document, including all applicable amendments, in each of the participating jurisdictions in which the distribution occurred.

If the issuer conducts a start-up business distribution in multiple jurisdictions it must file the offering document, in each jurisdiction where the distribution occurs, in the form required by the jurisdiction.

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ANNEX F

Proposed Amendments to
National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)*

1. National Instrument 13-101 System for Electronic Document Analysis and Retrieval (SEDAR) is amended by this Instrument.

2. Section 2.2 is amended by adding the following:

(1.3) In Alberta and Nunavut, an electronic filer that is required to file a report of exempt distribution under Multilateral Instrument 45-109 *Prospectus Exemption for Start-up Businesses* must file that report in the form and manner and using the templates specified in the SEDAR Filer Manual.**.**

3. Appendix A – Mandated Electronic Filings is amended by adding the following:

(a) to section II Other Issuers (Reporting/Non-reporting), under E. Exempt Market Offerings and Disclosure:

6.	Report of exempt distribution and offering document required to be filed or delivered under Multilateral Instrument 45-109 *Prospectus Exemption for Start-up Businesses*.	Alta, NU

4. This Instrument comes into force on ●.

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ANNEX G

Proposed Amendments to
Multilateral Instrument 13-102 *System fees for SEDAR and NRD*

1. ***Multilateral Instrument 13-102 System fees for SEDAR and NRD is amended by this Instrument.***

2. ***Appendix B – Other SEDAR System Fees (Section 4) is amended by adding the following:***

25	Other issuers/ exempt market offerings and disclosure	Report of exempt distribution under Multilateral Instrument 45-109 *Prospectus Exemption for Start-up Businesses*	$25.00	-

3. This Instrument comes into force on ●.

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From: Don Pare
To: Jessie Gill
Subject: comments on the new start-up exemption
Date: November-11-15 12:48:14 PM

First of all, the initiative would be very good for Alberta.

As far as feedback is concerned, I do not really see the need for a dealer at all as the amounts do not match their business model and they would charge > 10% commission plus a retainer that would make the process too expensive.

I believe that the limits should be $5,000 not $1500; but that the investor should sign a simple document that he/she realizes the risk and that he/she would be fine if he/she lost the money.

I like this initiative and believe it would give Alberta a strong new tool to create a start-up sector and am willing to help further.

be well and make a difference

Don Pare, Mentor

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Susan Copland, B.Comm, LLB.
Director

Jessie Gill, Legal Counsel, Corporate Finance
Alberta Securities Commission
Suite 600, 250 – 5th Street SW
Calgary, AB T2P 0R4

December 9, 2015

Dear Sir/Madame:

Re: Proposed Multilateral Instrument 45-109 *Prospectus Exemption for Start-Up Businesses* (the "Proposed Exemption")

The Investment Industry Association of Canada (the "IIAC" or the "Association") appreciates the opportunity to comment on the Proposed Exemption.

While we support the Commissions' goals of assisting small companies in raising capital, the IIAC has a number of concerns about the Proposed Exemption.

The Proposed Exemption introduces another, non-harmonized prospectus exemption into the already complex and differentiated regulatory framework that exists within Canada. While we understand that the Alberta Securities Commission and the Nunavut Securities Office (the "Participating Jurisdictions") are attempting to provide an improved means of fundraising, which addresses certain of the concerns raised by the Start-Up Crowdfunding exemption enacted in several other jurisdictions, the creation of yet another multi-facted exemption, available in only two provinces, adds more complexity and inefficiency into the Canadian capital markets.

The Proposed Exemption introduces new criteria, forms, and means of creating liability. It is not clear that the gaps in existing regulation, including the proposed Investment Dealer prospectus exemption and recently announced streamlined Offering Memorandum exemption justify the creation of this relatively complex new exemption.

Suite 1500, 701 West Georgia Street, Vancouver, BC V7Y-1C6 Tel: 604-637-1677 Fax: 604-801-5911

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Adding to the complexity, is the manner in which the Proposed Exemption interacts with the Start-Up Crowdfunding Exemption, which is in effect in certain other jurisdictions, but not the Participating Jurisdictions. While the criteria tying the two exemptions together may help limit investor losses in start-up issuers, however, the record keeping and tracking of investor purchases using either or both exemptions in different jurisdictions will very likely pose significant practical problems, and may reduce the compliance with the proposed investment limits.

It is unclear from the Notice whether research was conducted to determine if the intended target group of non reporting issuers that are unable to access the other available exemptions (due to cost or potential investor base issues) is of a significant enough size to justify the creation of this new, geographically limited exemption.

Although we question the need for, and the limited application of the Proposed Exemption, the IIAC supports the acknowledgment, within the Proposed Amendment, that the potential investment limits be in part, determined by the presence of a registered dealer. It is appropriate that investors utilizing dealers with regulatory obligations related to suitability and product knowledge be subject to higher investment limits than those dealing directly with the issuer. However, given the continued compliance issues raised in commission reviews of Exempt Market Dealers, we recommend that if this exemption is enacted, the higher investment limits only apply to IIROC investment dealers.

Thank you for considering our comments.

Yours sincerely,

Susan Copland

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The Canadian Advocacy Council for Canadian CFA Institute Societies
ADVOCATING THE CFA INSTITUTE'S CODE OF ETHICS AND STANDARDS

December 17, 2015

BY EMAIL

Alberta Securities Commission
Superintendent of Securities, Nunavut

Alberta Securities Commission
Suite 600, 250 – 5th Street SW
Calgary, AB, T2P 0R4

Attention: Jessie Gill Legal Counsel, Corporate Finance
Email: Jessie.gill@asc.ca

Dear Sirs/Mesdames:

Re: Multilateral CSA Notice of Publication and Request for Comment Proposed Multilateral Instrument 45-109 *Prospectus Exemption for Start-up Businesses* (the "Proposed MI")

The Canadian Advocacy Council[1] for Canadian CFA Institute[2] Societies (the CAC) appreciates the opportunity to respond to the Proposed MI.

We support the efforts made by the Alberta Securities Commission, Superintendent of Securities, Nunavut and other securities regulatory authorities across Canada to streamline access to capital by issuers at a lower cost, while endeavouring to ensure that investor protection remains a high priority.

We understand from the notice accompanying the Proposed MI that the Start-Up Business Exemption is intended to be used by issuers that can not (or do not wish to) utilize the offering memorandum prospectus exemption. However, given the availability of other exemptions (such as the private issuer exemption and the accredited investor exemption) where an offering memorandum is not required to be delivered, we do not see a compelling rationale for an additional prospectus exemption at this time.

Issuers finding the exemption attractive will likely be those that have already been rejected by traditional lenders, and possibly used all available capital from family and friends. There is a probability that the management of an issuer choosing to raise money through the start-up business

[1]The CAC represents more than 15,000 Canadian members of the CFA Institute and its 12 Member Societies across Canada. The CAC membership includes portfolio managers, analysts and other investment professionals in Canada who review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital markets in Canada. See the CAC's website at http://www.cfasociety.org/cac. Our Code of Ethics and Standards of Professional Conduct can be found at http://www.cfainstitute.org/ethics/codes/ethics/Pages/index.aspx.

[2] CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organization is a champion for ethical behavior in investment markets and a respected source of knowledge in the global financial community. The end goal: to create an environment where investors' interests come first, markets function at their best, and economies grow. CFA Institute has more than 135,000 members in 151 countries and territories, including 128,000 CFA charterholders, and 145 member societies. For more information, visit www.cfainstitute.org.

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exemption will not have adequate experience and qualifications to run a business raising money from the public. They may not have any financial background or ability to assess the financial risks attributable to their business, or the ability or desire to maintain investor relations with numerous unsophisticated investors. If the exemption is adopted, investors may not exercise sufficient diligence with respect to a particular investment, mistakenly believing that if the investment is permitted by the regulators, it must be safe. If the start-up business exemption is adopted, strict monitoring, enforcement of transgressions and investor education will be extremely important factors in limiting its potential negative impact.

As we have noted in previous submissions, we wish to stress the importance of implementing a statutory best interest standard on all persons providing investment advice. Such a standard would help ensure that an investment under the proposed exemption is in fact in a client's best interests, and would help mitigate concerns relating to potential conflicts of interest in a private placement where the issuer is compensating the dealer for locating investors. Investor protection in the exempt market is best enhanced by providing clear risk disclosures, taking steps to verify eligibility to participate in the market, and implementing a best interest standard on all registrants.

Similarly, we remain of the view that it is important, to the extent possible, to harmonize the capital raising exemptions across all Canadian jurisdictions. It is becoming increasingly confusing for issuers, advisors, dealers and investors to determine whether or not a prospectus exemption is available to an issuer or purchaser in a particular province or territory, which has a negative impact on the efficiency of our markets. Given the small amounts of capital that can be raised by issuers and the individual limits placed on investors themselves, we do not think it will be economically feasible for issuers to raise capital based on the proposed exemption, particularly as it would only be available in two jurisdictions. It may be helpful to instead help educate smaller issuers (through outreach or other regulatory programs) on the availability of existing exemptions which may be most cost efficient for issuers to utilize and which would not have the quantitative capital raising limitations of the proposed start-up business exemption.

Concluding Remarks

We thank you for the opportunity to provide these comments. We would be happy to address any questions you may have or to meet with you to discuss these and related issues in greater detail. We appreciate the time you are taking to consider our points of view. Please feel free to contact us at chair@cfaadvocacy.ca on this or any other issue in future.

(Signed) *Michael Thom*

Michael Thom, CFA
Chair, Canadian Advocacy Council

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FAIR | Canadian Foundation for Advancement of Investor Rights

December 18, 2015

Shamus Armstrong
Department of Justice
Government of Nunavut
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P.O. Box 1000 - Station 570
Iqaluit, NU X0A 0H0
Sent via email to: sarmstrong@gov.nu.ca

Jessie Gill
Legal Counsel, Corporate Finance
Alberta Securities Commission
Suite 600, 250 – 5th Street SW
Calgary, Alberta T2P 0R4

Sent via email to: Jessie.gill@asc.ca

RE: Proposed Multilateral Instrument 45-109 Prospectus Exemption for Start-up Businesses

FAIR Canada is pleased to offer comments on Multilateral CSA Notice of Publication and Request for Comment on Draft Regulation 45-109 respecting a prospectus exemption for start-up businesses (the "**Notice**") dated October 19, 2015 (the "Start-Up Business Exemption").

Since this Notice was published for comment, Multilateral Instrument 45-108, Crowdfunding has been published in final form and will come into effect in January 2016 in the provinces of Manitoba, Nova Scotia, New Brunswick, Ontario, and Quebec (with Saskatchewan republishing for a further 60 day comment period). In addition, the jurisdictions of Alberta, New Brunswick, Nova Scotia, Ontario, Quebec and Saskatchewan have published Multilateral Notice of Amendments to National Instrument 45-106 Prospectus Exemptions relating to the Offering Memorandum Exemption, which also will come into effect in January 2016 (April 2016 in Saskatchewan). As noted in the Notice, some members of the CSA (namely, British Columbia, Manitoba, Nova Scotia, New Brunswick, Quebec and Saskatchewan) have, prior to the publishing of this Notice, adopted Multilateral Instrument 45-109, Start-up Crowdfunding Exemption.

To date, Alberta has neither proposed nor adopted a prospectus exemption specifically tailored to crowdfunding. However, the Notice contemplates that the Start-up Business Exemption will be used to conduct online crowdfunding through a registered portal or through traditional distribution methods.

FAIR Canada is a national, charitable organization dedicated to putting investors first. As a voice for Canadian investors, FAIR Canada is committed to advocating for stronger investor protections in securities regulation. Visit www.faircanada.ca for more information.

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1. Executive Summary

1.1. **In light of the serious investor protection concerns that have been identified with the Offering Memorandum Exemption[1], FAIR Canada urges the Alberta Securities Commission ("ASC") not to move forward with the Start-Up Business Exemption. Given that the ASC (and some other participating jurisdictions) saw fit to amend the OM Exemption in light of its experience, by adopting certain measures that regulators believe would improve investor protection[2], it should not now undermine those efforts by introducing a new exemption that allows those investor protection measures to be avoided**.

1.2. **FAIR Canada believes that securities regulators should be undertaking fundamental reform of the exempt market in order to adequately protect investors and foster fair and efficient capital markets and confidence in those markets.** We urge securities regulators to work together to implement proper reforms to the accredited investor exemption and other prospectus exemptions so that the various jurisdictions in Canada have a regulatory regime in which businesses are able to raise sufficient capital while investors are adequately protected.

1.3. FAIR Canada urges regulators and governments to approach the harmonization of rules regarding investments with the goal of furthering the key mandate of investor protection; and to not engage in a harmonization process at the expense of adequate investor protection.

1.4. Reforms are needed in light of widespread deficiencies with disclosure requirements in the exempt market (for example, regarding the Offering Memorandum), a lack of compliance by exempt market dealers ("EMDs") with their regulatory obligations (including know-your-client and know-your product suitability obligations), and serious conflicts of interest not being avoided, managed or disclosed by the seller.

1.5. FAIR Canada has noted in its recent Fraud Report that there is a lack of empirical data to determine the incidence of fraud, misrepresentation and resulting losses suffered by investors whose purchases are made through prospectus exemptions.[3] Nonetheless, based on media

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[1] See FAIR Canada's letter to the CSA regarding CSA Notice of Publication and Request for Comment on Proposed Amendments to NI 45-106, (June 18, 2014), available online at: http://faircanada.ca/wp-content/uploads/2011/01/140618-final-comments-to-CSA-re-OM-exemption-2.pdf

[2] The participating jurisdictions amended the Offering Memorandum exemption "…in light of the particular risks associated with the OM exemption and based on the experience of certain participating jurisdictions" to include the following that they "believe that it is appropriate to introduce …new investor protection measures…These include:

- Requiring that non-reporting issuers provide to investors:
  - Audited annual financial statements,
  - An annual notice on how the proceeds raised under the OM exemption have been used, and
  - In New Brunswick, Nova Scotia and Ontario, notice in the event of a discontinuation of the issuer's business, a change in the issuer's industry or a change of control of the issuer;
- Requiring that marketing materials be incorporated by reference into the offering memorandum to provide investors with the same rights of action in respect of all disclosure made under the OM exemption in the event of a misrepresentation; and
- Imposing additional investment limits in respect of both eligible (i.e., investor who meet certain income or asset thresholds) and non-eligible investors that are individuals to limit the risks associated with an investment in securities acquired under the OM exemption."

[3] August 2014, A Report on A Canadian Strategy to Combat Investment Fraud, available online at http://faircanada.ca/wp-content/uploads/2014/08/FINAL-A-Canadian-Strategy-to-Combat-Investment-Fraud-August-2014-0810.pdf.

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reports[4], reported cases[5] and notices from securities regulators,[6] there appears to be serious and widespread fraud and financial loss linked to investments made through prospectus exemptions.

1.6. We recommend that securities regulators consider gathering more data on the exempt market and on investment fraud perpetrated in Canada. We also recommend that regulators make such data public in order to determine the relationship between prospectus exemptions and investment fraud with a view to developing better investor protection. It is essential to ask how investors can differentiate between legitimate prospectus-exempt investments and fraudulent investments. If this is not possible, tools to better protect investors should be developed, including clearer warnings about the correlation of fraud and exempt market investing.

1.7. Exemptions should only be permitted if there is adequate investor protection; otherwise real capital formation – where monies are invested in productive assets (leading to increased jobs and economic growth) – will not occur. Investor protection mechanisms are not an impediment to efforts to raise capital, but rather an essential feature of an efficient and effective market in which investors have confidence. Ignoring the need for investor protection will only make the exempt market more inefficient and further reduce investor confidence in our capital markets, thereby further hurting economic growth.

1.8. FAIR Canada has voiced, on behalf of retail investors, its opposition to the following initiatives:

(i) the Crowdfunding Exemption (45-108)[7];

(ii) the Start-up Crowdfunding Exemption (MI 45-316)[8]; and

(iii) the Offering Memorandum Exemption (45-106).[9]

1.9. **In our comments on those proposed exemptions (or amendments to existing prospectus exemptions with respect to the Offering Memorandum (except for in Ontario)), we have**

[4] FAIR Canada highlighted media reports on exempt market related frauds in a 2013 FAIR Canada Newsletter, available online here: http://archive.constantcontact.com/fs123/1102284477892/archive/1114331931909.html.

[5] FAIR Canada "A Canadian Strategy to Combat Investment Fraud", (August 2014), available online at: http://faircanada.ca/wp-content/uploads/2014/08/FINAL-A-Canadian-Strategy-to-Combat-Investment-Fraud-August-2014-0810.pdf?utm_source=August+Newsflash+2014&utm_campaign=August+Newsflash&utm_medium=email

[6] Alberta's Securities Commission states that there have been "…numerous complaints from investors that have invested significant amounts under the OM Exemption and incurred significant losses."Multilateral CSA Notice of Publication and Request for Comment Proposed Amendments to National Instrument 45-106 Prospectus and Registration Exemptions Relating to the Offering Memorandum Exemption, published March 20, 2014, at Annex B; available online at Annex B; available online at http://www.lautorite.qc.ca/files//pdf/reglementation/valeurs-mobilieres/45-106/2014-03-20/2014mars20-45-106-avis-cons-om-en.pdf.

[7] FAIR Canada's letter to the CSA regarding Regulation 45-108 Respecting Crowdfunding, (June 18, 2015), available online at: http://faircanada.ca/submissions/csa-crowdfunding-and-start-up-exemptions/

[8] FAIR Canada's letter to the BCSC regarding BC Notice 2014/03 – Notice and Request for Comment on Start-Up Crowdfunding, (June 18, 2014), available online at: http://faircanada.ca/submissions/bcsc-start-up-crowdfunding/

[9] FAIR Canada's letter to the CSA regarding NI 45-106, and FAIR Canada's letter to the OSC regarding OSC Notice and Request for Comments on the Introduction of Proposed Prospectus Exemptions and Proposed Reports of Exempt Distribution in Ontario, (June 18, 2014), available online at: http://faircanada.ca/submissions/osc-proposed-prospectus-exemptions/.

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made numerous recommendations so that investors will be better protected, capital markets will be more efficient, and investors will have more confidence in those markets. We urge you to give serious consideration to our recommendations if intent on proceeding with the Start-up Business Exemption. We urge that implementation of any new exemption for start-ups and early stage businesses be done in a way that affords the highest level of investor protection possible. This is the best chance of serving the interests of both investors and issuers.

1.10. Accordingly, if Alberta decides to move forward with the exemption, we set out below comments on the proposed Start-up Business Exemption to the extent it materially differs from Crowdfunding, NI 45-108 and/or the Offering Memorandum, NI 45-106, as recently amended. Otherwise, we refer you to our June 18, 2014 submissions[10] for our recommendations.

2. Specific Comments

2.1. The Start-Up Business Exemption affords less adequate protection for retail investors than the Offering Memorandum exemption given the following: the lack of any requirement for financial statements; the lack of any annual investment limits for investors (as opposed to limits per issuer); no ongoing disclosure requirements; and no incorporation by reference into the offering document of any marketing materials so as to give investors the same rights to sue for misrepresentation in respect of all disclosure made in the course of promotion pursuant to the Start-Up Business Exemption.

2.2. The Notice remarks that "…the costs of using the OM Exemption, whether in conjunction with the use of a portal or otherwise, can be very high relative to the limited funds required." FAIR Canada questions assertions by early stage businesses and SMEs that the cost of preparing an Offering Memorandum is prohibitively expensive for capital raising. The Notice does not provide any dollar figures with respect to the average or mean cost of preparing an Offering Memorandum including the preparing of audited financial statements or other financial information for early stage businesses and SMEs (whether as required by corporate laws or otherwise), nor does it compare this with what it proposes for a fully compliant Start-Up Business distribution. We question whether sufficient empirical work has been conducted on these costs. If empirical data has been gathered, we urge regulators to make such information public.

Lack of Financial Statement Requirement

2.3. FAIR Canada has serious concerns about the lack of any requirement for financial statement disclosure. Investors use audited financial statement disclosure to decide whether or not to invest in particular securities. Financial statement disclosure is intended to encourage more efficient management and to discourage fraud. Auditors, as gatekeepers, serve a fundamental purpose and fill an important role in promoting confidence and trust in certain financial information in financial statements. Auditors are intended to ensure independence,

[10] See FAIR Canada's letter to the CSA regarding NI 45-106 (June 18, 2014), and FAIR Canada's letter to the CSA regarding Regulation 45-108 (June 18, 2014).

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impartiality and expertise; and audits enable shareholders to oversee management. We refer you to our letter to the ASC dated February 20, 2013 (in response to Multilateral CSA Notice 45-311), which sets out our position on financial statements.[11]

2.4. At a bare minimum, the requirement for financial statement disclosure should be harmonized with that of 45-108, Crowdfunding or the Offering Memorandum Prospectus Exemption.

Ongoing Disclosure

2.5. FAIR Canada believes that ongoing disclosure to investors should occur in order to hold issuers accountable for their use of proceeds and in order to reduce incentives for using a non-corporate structure to avoid reporting obligations.[12]

2.6. We believe that audited financial statements, notice of use of proceeds, notice of a change in control of the issuer, notice of a change in the issuer's industry and notice of any discontinuation of the issuer's business be required, at a minimum, in harmonization with the Offering Memorandum Exemption requirements as adopted by New Brunswick, Nova Scotia and Ontario. That said, however, we question whether there will be compliance with those requirements and whether there will be sufficient accountability to retail investors who become the issuer's security-holders.

Incorporate Marketing Materials

2.7. FAIR Canada recommends that the offering document incorporate by reference any marketing materials .This will result in the marketing materials being subject to the same liability as the disclosure provided in the offering document in the event of a misrepresentation. We believe that this would be consistent with the approach taken for the OM Exemption. We refer you to our letter dated June 18, 2014 for further details on marketing materials and liability for same.

Investment Limits

2.8. **While investment limits don't reduce the risk of fraud[13], FAIR Canada believes limits are necessary under a Start-Up Business Exemption in order to reduce the extent of losses, even for legitimate offerings.**

2.9. The underlying premise of crowdfunding exemptions is that small and very early-stage businesses can meet their capital-raising needs by sourcing a small amount of money from a large number of people. We recommend that the individual investor limits be decreased to $500 or less per offering. We also recommend that a limit be placed on the total amount that

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11 FAIR Canada's letter to the CSA regarding CSA Notice 45-311, (February 20, 2013), available online at: http://faircanada.ca/wp-content/uploads/2011/01/FAIR-Canada-comments-re-Certain-OM-Exemptions.pdf.

12 Requirements under provincial and federal business corporations acts and provincial securities acts require corporations to appoint an auditor to hold office, impose duties upon such auditors, and require the preparation of annual financial statements. If not required to do so under securities laws, issuers may choose to use a non-corporate structure to avoid financial statement and other disclosure obligations. We have been informed that a non-corporate structure is quite commonly used for those who utilize the OM Exemption in Alberta

13 See our letter dated June 18, 2014 to participating CSA jurisdictions regarding NI 45-108 at paragraph 5.1; available online at http://faircanada.ca/wp-content/uploads/2011/01/FAIR-Canada-CSA-Crowdfunding-and-Start-Up-Exemption-Comments.pdf.

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can be invested by investors in any start-up or early stage business through the various exemptions in a given calendar year, including in the Start-Up Business Exemption, in the amount of $5,000. The current proposed limits are not small amounts for most retail investors and there is no investment limit with respect to the total that individuals can invest in start-ups or early stage businesses made in reliance on various prospectus exemptions (whether crowdfunded or otherwise) in a calendar year.[14] As a bare minimum, the annual investment limits imposed under 45-108, Crowdfunding (by the Ontario Securities Commission ("OSC")) should be adopted

2.10. **We are of the view that crowdfunding and other prospectus exemptions aimed at individual investors should not be introduced until such time as regulators have a reasonable prospect of enforcing those investment limits.** FAIR Canada notes that the Start-Up Business Exemption has a $1,000,000 lifetime limit on the amount that an issuer can raise under the Start-up Business Exemption or any corresponding exemption (for example, the Start-Up Crowdfunding Exemption, 45-316).Adequate mechanisms have not been set out to ensure compliance with the investor investment limits per issuer or the offering limit. FAIR Canada recommends the use of a centralized database to verify aggregate investment amounts rather than reliance upon self-certification. [15]

2.11. FAIR Canada also is concerned that the investment limits for individual investors will become the ***de facto*** **minimum amount that can be invested in light of the following: (i) the proposed Guidance at section 5.8 of Form 45-109F1 that gives the issuer an option to set a minimum investment amount per investor (which** can be up to $1500 if no dealer is involved and can be a minimum of $5,000 is a dealer is involved); (ii) the possible desire (expressly recognized by the securities regulator in the Notice) to set a higher investment limit so as to "raise more capital from a smaller number of investors, potentially reducing the costs associated with having a large number of investors"[16], and (iii) the lack of compliance by exempt market dealers with their KYC, KYP and suitability obligations.[17]

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[14] For further details on FAIR Canada's views on investment limits, we refer you to our letter to the OSC regarding Proposed Prospectus Exemptions (June 18, 2014), at section 5 and 6, pages 12-15.

[15] See our letter dated June 18, 2014 to participating CSA jurisdictions regarding NI 45-108 respecting crowdfunding, at page 2 and 13.

[16] Notice at page 3.

[17] Compliance reviews by CSA members have found significant deficiencies in how EMDs address conflicts of interest with 21% of registered firms that were sampled being deficient in how they address conflicts of interest including:

- Registered firms considered themselves to operate independently, and assumed that they did not have relationships that could potentially present a conflict of interest requiring disclosure, but this was not the case.
- Registered firms indicated that their policies and procedures manual or other internal policies described their conflicts, but acknowledged that they did not disclose these conflicts to clients.
- EMDs indicated that the issuer's offering documents adequately described the conflicts of interest, but this was not the case.
- Registered firms disclosed that they had conflicts, but they did not describe the conflicts or explain how they were addressing them.
- Registered firms provided an insufficient or unclear explanation about their conflicts and did not discuss the potential impact on clients.
- Registered firms disclosed the conflicts of interest at the individual dealing or advising level, but did not consider and disclose conflicts of interest at the firm level.

In addition, EMDs have a low level of compliance with existing know-your-client and know-your-product obligations, as found in compliance sweeps by regulators. There is no published report which indicates from the securities regulators that

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Investors Limited Financial Literacy

2.12. We are concerned that, currently, many retail investors do not understand the risks associated with crowdfunding. The OSC's Exempt Market Study on Crowdfunding found that "[w]hile it is clear that investing via crowdfunding is more likely as risk tolerance increases, we are concerned with the high proportion of low risk people who might potentially invest via crowdfunding. In our view, the survey made the risks quite visible and explicit leaving us to wonder how they concluded that crowdfunding was appropriate for them."[18] We question whether investor education efforts (on portals or elsewhere) could effectively address this concern. We are not optimistic that they can or will.

2.13. The 2012 CSA Investor Index also found that 58% of Canadians do not understand the fundamental principle of risk-reward tradeoff and found that only 12% of Canadians have realistic expectations of market returns. Only 9% of low knowledge investors were found to have realistic market expectations.[19]

High Risk Tolerance Investors Who Can Afford To Lose it All

2.14. It is widely accepted that many investors (possibly most) will lose money by investing in start-up and early stage businesses, given those enterprises' failure rates.[20] The Notice remarks that a start-up business investment is not necessarily suitable for all investors if $5,000 is invested and that "these investments will generally only be suitable for investors with both (i) an appreciation of the risks and a very high risk tolerance and (ii) the financial ability to withstand the loss of their investment." Later in the Notice it states that "suitability requirements …will help ensure that investors that have *low risk tolerance* or lack the ability to withstand the loss of an investment do not make investments that are not suitable for them." (our emphasis) FAIR Canada recommends that it be expressly set out in the rule or guidance that investing under this prospectus exemption is only available to those who have a high risk tolerance and ability to withstand the loss of their entire investment.

Investors Who Obtain Advice Need Objective, Independent Advice in their Best Interests

2.15. If a higher investment limit is to be permitted for those who obtain suitability advice, FAIR Canada recommends that the advice must come from a registrant who has an obligation (either statutorily or contractually) to act in the client's best interests. In addition, to qualify, the proposed exempt investment should actually be recommended by the registrant as an investment that is in the best interest of the retail investor. This requirement should be monitored by requiring that information on the use of the qualifying criteria, including the name of the registrant who provided the advice, be provided to the ASC.

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the above-noted problems have been adequately addressed; and EMDs are not members of an SRO, which would provide some level of protection to investors.

[18] The Brondesbury Group, "Exempt Market Study on Crowdfunding" (May 28, 2013) at page 34.

[19] Innovative Research Group, "2012 CSA Investor Index" (October 16, 2012), available online: <https://www.securities-administrators.ca/uploadedFiles/General/pdfs/2012%20CSA%20Investor%20Index%20-%20Public%20Report%20FINAL_EN.pdf>.

[20] FAIR Canada's letter to the CSA regarding Regulation 45-108 (June 18, 2014), at paragraph 4.2.

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Risk Warnings and the Risk Acknowledgement Form

2.16. FAIR Canada is very concerned with the lack of any investor testing of the risk acknowledgement to determine whether it serves the purpose for which it is intended. Behavioural sciences widely acknowledge that design and delivery of information significantly affects how it is interpreted and how it is used and understood.

2.17. FAIR Canada refers you to our comments on risk warnings and risk acknowledgement forms at section 12 of our letter to the OSC dated June 18, 2014.[21]

Reports of Exempt Distribution

2.18. FAIR Canada urges regulators to ensure that adequate information is collected through the reports of exempt distribution so that the information needed to understand this area of our capital markets and to regulate effectively with sufficient data for sound policy decisions is collected. We refer you to our submission dated October 15, 2015.[22]

Sun-Set Clause

2.19. Given the experimental nature of start-up and crowdfunding regulation, if the ASC proceeds with the introduction of this exemption, we strongly urge that a sunset clause of two years be included.

We thank you for the opportunity to provide our comments and views in this submission. We welcome its public posting and would be pleased to discuss this letter with you at your convenience. Feel free to contact Neil Gross at 416-214-3408 (neil.gross@faircanada.ca) or Marian Passmore at 416-214-3441 (marian.passmore@faircanada.ca).

Sincerely,

Canadian Foundation for Advancement of Investor Rights

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[21] FAIR Canada's letter to the OSC regarding Proposed Prospectus Exemptions (June 18, 2014) at page 20-21.

[22] FAIR Canada's letter to the CSA regarding CSA Notice and request for comment on Proposed Amendments relating to Reports of Exempt Distribution, (October 15, 2015), available online at: http://faircanada.ca/wp-content/uploads/2015/10/151015-CSA-Re-Proposed-Exempt-Distribution-Reports-final-signed.pdf

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http://www.ncfacanada.org/

December 18, 2015

To: Alberta Securities Commission
Superintendent of Securities, Nunavut

C/O: Jessie Gill
Legal Counsel, Corporate Finance
Alberta Securities Commission
Suite 600, 250 – 5th Street SW
Calgary, AB, T2P 0R4
Fax : 514-864-6381
E-mail: Jessie.gill@asc.ca

Re: Response to Proposed Multilateral Instrument 45-109 Prospectus Exemption for Start-up Businesses

Dear Sirs and Madams,

Please find attached our response on behalf of the National Crowdfunding Association of Canada ("**NCFA Canada**") with respect to the **Request for Comments on Proposed Multilateral Instrument 45-109 Prospectus Exemption for Start-up Businesses** (the "**Start-Up Business Exemption**") being considered by Alberta and Nunavut, as released on October 19, 2015.

We applaud the Alberta Securities Commission and the Nunavut Securities Office (together "**Participating Regulators**") for looking at creating a new exemption to assist small and medium enterprises to raise capital in their respective jurisdictions. It is unfortunate, however, that this is not a proposal that is harmonized with respect to either the start-up crowdfunding exemption or integrated crowdfunding exemption adopted elsewhere in Canada or that the Start-Up Business Exemption only applies to Alberta and Nunavut. NCFA Canada and its members thank the Participating Regulators for the opportunity to participate in the consultation process.

NCFA Canada is a cross-Canada non-profit actively engaged with both social and investment crowdfunding stakeholders across the country. NCFA Canada provides education, research, leadership, support and networking opportunities to over 1300+ members and works closely with industry, government, academia, community, and eco-system partners and affiliates, to create a strong and vibrant crowdfunding industry in Canada.

We support innovation, small businesses and entrepreneurs seeking to make a difference, and believe that crowdfunding markets and the eco-systems around them can play a significant role in mobilizing start-up capital and resources to early stage projects and businesses in an efficient and cost effective manner.

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We look forward to contributing ongoing input into the planning, implementation and operation of the proposed Startup Business Exemption in Alberta and Nunavut. Please feel free to contact us at any time to discuss further.

Sincerely,

Craig Asano
Founder and Executive Director
NCFA Canada
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Enclosure

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The National Crowdfunding Association

Education, Advocacy, Networking, Growth

Fostering a dynamic, vibrant and inclusive Crowdfunding industry in Canada

Proposed Multilateral Instrument 45-109
Prospectus Exemption for Start-up Businesses

NCFA Canada Board
December 18, 2015

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About NCFA Canada

- The National Crowdfunding Association of Canada (**NCFA Canada**) is a cross-Canada non-profit organization with a mandate to be inclusive in providing **education**, **awareness** and **advocacy** in the rapidly evolving crowdfunding industry.
- NCFA Canada is a community-based and membership-driven non-profit entity that was founded at a grass roots level to fill a national need in the marketplace.
- Members and prospective members are industry stakeholders (e.g., portals, experts, service providers and enablers), small businesses using crowdfunding to fund their initiatives and investors seeking to learn more and get connected with a relevant and national membership peer network.

Overview

The Importance of SMEs to the Canadian Economy

- Small to mid-sized enterprise businesses (**SMEs**) are the lifeblood of the Canadian economy. From the corner laundry mat to the emerging high tech software company there were a total of 1,105,972 SMEs in 2012 according to Industry Canada. By definition, SMEs include micro-enterprises (1-4 employees), small businesses (5-100) and medium sized businesses (101-500).
- In 2012, SMEs hired 89.9% of the entire workforce. Stated differently, almost nine in every ten persons is directly affected and reliant on the SMEs for their livelihood. In 2011, SMEs represented 27% of Canada's total GDP and also accounted for $150 billion in exports, or 40.1% of Canada's total export value.[1]
- SMEs play a significant role as a feeder system. Successful smaller companies may grow, acquire other businesses or assets, and possibly become larger public companies.

SME's Funding Challenge

- A funding gap exists for Canadian start-ups and SMEs to raise small amounts of capital (*e.g*., estimated by various industry professionals to be $1 to $5 million) that is not currently being satisfied by friends and family networks, angels, incubator/accelerator programs and venture capital **(VC)** groups.
- Traditional institutions and alternative lenders have strict lending requirements that most start-ups do not qualify for. Many small businesses cannot get a line of credit approved by their bank (or revive credit lines) due to poor sales or insufficient collateral to support their loan requests.
- Many small businesses are asked to front money to initiate a funding process or are advised to pay expensive financial and legal planners to develop detailed business plans and prospectus documents that exceed the budget and viability of many start-ups and SMEs.
- Incubators and accelerators are excellent options, however there are only a limited number of placements available (*e.g*., most programs are operating at maximum capacity) and they generally focus on a niche industry. VC has been on the decline. In 2000, $5.9 billion was invested in 1,007 Canadian start-ups, according to Thomson Reuters, compared to just $1.1 billion in 2010 that was raised by 357 Canadian firms representing an alarming decreasing trend in a ten year period. In 2014, Canadian start-ups received $2.36 B in funding, nearly double the amount invested five years ago but this was primarily due to four exceptionally large financing.[2] VCs are incentivized to participate in larger funding transactions and the average deal sizes are mismatched with the needs of SME issuers.[3]

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[1] Key Small Business Statistics - August 2013 Edition, Innovation, Science and Economic Development Canada, Industry Canada http://www.ic.gc.ca/eic/site/061.nsf/eng/h_02800.html

[2] http://www.reuters.com/article/canada-investment-idUSL1N0VK2MW20150210

[3] http://www.theglobeandmail.com/report-on-business/streetwise/canadian-venture-capital-stuck-in-deep-rut/article616668/

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What's at Stake?

- Fundamentally there's a strong need to ensure SMEs have the proper access to capital to innovate and develop competitive products/services to bring to Canadian and global markets.
- Without a clear funding roadmap for small businesses or an efficient and legally viable capital formation process many valid business ideas will not get funded in Canada.
- Crowdfunding has gained a lot of momentum in North America and Europe. Equity crowdfunding is currently legally permitted in many countries, such as Australia, United Kingdom ("**UK**"), Netherlands and the United States ("**US**").will soon be added to the growing list with the passing of the *Jumpstart Our Business Start-ups Act* (**JOBS Act**)[4] last April 2012.
- Canada needs to review its securities laws to ensure they are current and suitable to meet the needs of SME issuers and their ability to connect with prospective investors (funders) and successfully raise early stage capital from online market places.
- Canada risks losing its Canadian funded ideas and best entrepreneurs to countries with more supportive funding environments and access to capital (e.g., US) that are keen to commercialize on Canadian start-up ventures.
- Canada will continue to slide down global innovation rankings and the economy will suffer as a result negatively impacting job creation and Canada's strategic social-economic advantages.[5]

NCFA Canada 2015 Conferences and Outreach

In 2015, NCFA Canada held five events across Canada (Toronto: March 3, 2015, July 28, 2015, and October 15, 2015, Vancouver: September 29, 2015, and Calgary: December 3, 2015) to educate and receive feedback from various constituent groups interested in start-up capital in their communities. All of these events were held in association with strong government, academic, industry and community supporters such as the Dec 3rd event held in Calgary that involved participants from Government of Alberta (Innovation and Access to Capital; and Alberta Securities Commission), ATB Financial, VA Angels, LendingArch, Business Link and SeedUps Canada. NCFA Canada and all in attendance appreciated the participation by local securities regulators in each jurisdiction at these events.

In addition to holding conferences, NCFA Canada has fielded questions from aspiring crowdfunding portal operators, issuers, and investors by telephone and email. We have published an equity crowdfunding FAQ on our website and provided articles summarizing the key elements of the proposed crowdfunding exemptions. We are also in the process of finalizing an e-book of a larger array of questions and answers on equity crowdfunding and investing in general, and an industry led whitepaper on the topic of Online Lending in Canada.

National Crowdfunding Surveys in Canada

In 2013, NCFA Canada collaborated with the Exempt Market Dealers Association of Canada to develop and host the National Canadian Crowdfunding Survey in Canada (link to survey)("**2013 Survey**"). The purpose of the survey was to obtain a better understanding of the various stakeholder opinions on legalizing equity Crowdfunding in Canada and to provide Canadian securities regulators with feedback on many of the issues Canadian securities regulators were seeking input into on online capital raising options for SMEs.

[4] http://en.wikipedia.org/wiki/Jumpstart_Our_Business_Startups_Act

[5] http://www.ncfacanada.org/poor-innovation-ranking-dims-the-lights-on-canadas-competitiveness-and-prosperity/

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NCFA Canada has joined Cambridge Centre for Alternative Finance at Cambridge Judge Business School and the Polsky Center for Entrepreneurship and Innovation at Chicago Booth School of Business in launching the 2015 Americas Alternative Finance Benchmarking Survey.

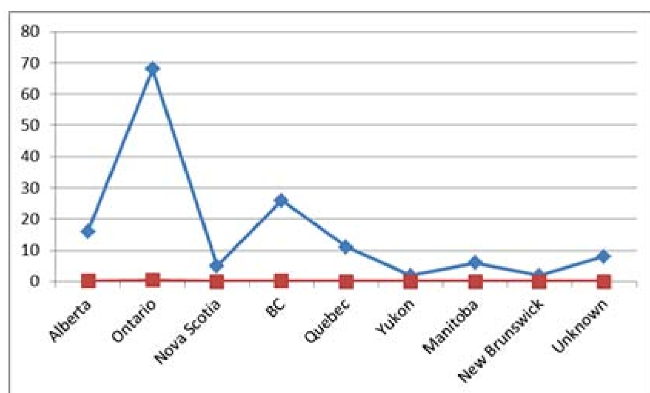
Additionally, NCFA Canada is in the process of completing a 2015 Canadian Crowdfunding Platform Survey that attempts to measure the size and make-up of the Canadian market. The survey is expected to be completed in time for release in the first quarter of 2016. There is also discussion about administrating a follow-up survey to the original 2013 Survey to gage how opinions of various stakeholders has changed or evolved since 2013.

We believe the results of our 2013 Survey, although focused on an equity crowdfunding specific exemption, is equally relevant to the Participating Regulators as they consider the Start-Up Business Exemption.

Overview of 2013 Survey Responders

We received a total of 144 survey responders from NCFA Canada's crowd:

- 100% of responders represented start-up and/or SME issuer views
- Almost 75% were a planned portal or service provider
- 70% / 25% identified themselves as non-accredited / accredited investors
- 12 self-identified as registrants including exempt market dealers, investment dealers, or portfolio managers



Responders by Province

Alberta	16	11.1%
Ontario	68	47.2%
Nova Scotia	5	3.5%
BC	26	18.1%
Quebec	11	7.6%
Yukon	2	1.4%
Manitoba	6	4.2%
New Brunswick	2	1.4%
Unknown	8	5.6%
total	144	100.0%

Preliminary Survey Results

In addition to the raw data survey responses below, NCFA Canada Advisory Board member, Douglas Cumming, Professor and Ontario Research Chair, York University – Schulich School of Business, and his research team, conducted further analysis of the data: Demand Driven Securities Regulation: Evidence from Crowdfunding (Apr 2013); and Crowdfunding and Prosperity In Ontario (Mar 2014).

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Should we Adopt a Crowdfunding Exemption?

- 95.7% of responders voted that Canada should adopt a crowdfunding exemption under applicable securities laws.
- 74.8% of survey participants were moderately to extremely familiar with crowdfunding.
- Overall, approximately 90% of survey responders agreed or strongly agreed that there would be significant benefits for both SME issuers and investors by adopting a crowdfunding exemption.

Investor Motivations to Make an Investment through Crowdfunding (Ranked in Order):

1. Innovation and entrepreneurism
2. Financial incentives
3. Non-financial incentives
4. Direct access to entrepreneurs
5. Diversification
6. Networking

Should Canada Move Ahead or Follow the SEC and FINRA?

- 60.6% of survey responders agreed or strongly agreed that Canada should move ahead and finalize crowdfunding rules and regulations (23.1% were undecided).

Pilot Project

- 73.7% of survey responders believed that Canada should approve a crowdfunding exemption on a trial or limited basis initially.
- 43.3% or the majority of survey responders answered that the trial should be based on a limited period of time.
- A very low 5.6% clearly indicated that a crowdfunding pilot project should not be restricted to a particular industry or sector.

Investor Limits and Restrictions

- 72.9% of the responders voted that the investment cap should be $10,000-$15,000 or more per investor in a 12-month period.
- 64.2% of responders indicated that there should not be any further caps on the funds that can be invested with a single crowdfunding issuer within a 12 month period.

Issuer Limits

- 45% of responders voted that the aggregate amount of capital that an issuer should be able to raise in a 12 month period is up to $2,000,000.
- 45% of responders indicated that there should not be a limit.

Secondary Market

- 64.4% of survey responders believed that securities should be free-trading after a period of time.
- 83.7% of survey respondents indicated that crowdfunding securities should be eligible for second market trading after 12-24 months of the original purchase.
- Note, by way of comparison and under theUSJOBS Act there is a moratorium on transferring shares within one year from the date of issuance, unless the transfer is to an accredited investor or back to the company.

Prospective Crowdfunding Exemption

NCFA Canada advocates that a crowdfunding exemption in Canada will increase the awareness of Canadian start-ups, support innovation and entrepreneurism, create jobs and contribute to the total GDP and export base of the economy.

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Proposed Implementation Principles

To cultivate the benefits of investment crowdfunding frameworks, regulators must strike the right balance between protecting investors while ensuring efficient capital formation for SMEs. To assist with this task, NCFA Canada has developed eight (8) high-level implementation principles to be used as guidelines when considering the costs and benefits of a prospective crowdfunding exemption in Canada. (These considerations apply equally to the Start-Up Business Exemption.)

Principle	Concept	Description
1. Harmonious	Collaborative development	The collaborative development of a harmonized set of crowdfunding regulations to benefit Canada as a whole.
2. Inclusive	All sectors and industries	To be as inclusive as possible to a broad-based range of sectors and industries to encourage balanced growth in communities across the country.
3. Transparent	Disclosure rules and crowd intelligence	Support transparent disclosure and crowd intelligence as a means to help government and industry prevent, identify and report potential fraud and abuse to authorities within a timely manner.
4. Adaptive	Innovative market adaptation	To ensure crowdfunding regulations support market evolution enabling innovation to flourish.
5. Robust	Efficient capital formation	A regulatory framework that gives SME issuers and investors (funders) the confidence that there is a robust framework in place capable of efficient capital formation, and one that is collectively supported by the eco-system.
6. Open	No jurisdictional restrictions	Enable a vehicle to allow businesses to accept investment (and funding) from other jurisdictions on a limited basis encouraging competiveness, collaboration and cross border participation.
7. Additive	New channels and source of funds	Ensure crowdfunding regulations are designed to open up largely a new source and channel of funds by minimizing the impact and overlap with existing exempt market exemptions.
8. Protective	Investment caps and reasonable due diligence	Protect investors by limiting investment exposure, promoting education, fraud detection and implementing a fair and reasonable amount of due diligence and compliance without overly burdening the process.

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NCFA Canada Responses to Alberta Securities Commission Proposed Multilateral Instrument 45-109 Prospectus Exemption for Start-up Businesses: Questions and Answers

#	Question and Answer
	Exemption For Start-Up Businesses
	Investment Limits/Caps
1.	**In setting the lifetime limit of $1,000,000 per issuer group, our goal was to set a limit after which an issuer should have sufficient funds to use the OM Exemption. Do you think this is the appropriate threshold? If not, please provide what you would consider acceptable limits given the parameters of the Proposed Start-Up Business Exemption.**
	Comments: ▪ We believe the limit, if applied at all, should be $5,000,000 or $10,000,000 and not $1,000,000. We believe that the $1,000,000 limit chosen by the Participating Regulators was selected based on the US $1,000,000 limit set out under Title II of the JOBS Act and the proposed US Securities and Exchange Commission crowdfunding rules. Recent activity in the US suggests a limit of $1,000,000 may put Alberta and Nunavut (and Canada if the rule was adopted in other provinces) to a disadvantage over US crowdfunding rules, particularly as this is a lifetime limit and other caps, if they exist, are yearly limits. ▪ Specifically, US Congressman Patrick McHenry introduced a bill to amend US Title III crowdfunding as proposed by the US Securities and Exchange Commission. The proposed *Startup Capital Modernization Act of 2014*, if adopted, will raise crowdfunding limits in the US federally from $1,000,000 to $5,000,000. Other changes will also make the US federal crowdfunding exemption more attractive to issuers and investors. ▪ A number of the intrastate crowdfunding exemption adopted or under consideration have also chosen a higher limit than $1,000,000. See: NASAA Intrastate-Crowdfunding-Exemptions-08-01-2015. ▪ Current data from existing early stage equity crowdfunding portals in Europe and accredited investor equity crowdfunding portals in the US seem to indicate the mean offering size of existing campaigns are trending upwards past $5,000,000 as issuers and investors are becoming more comfortable with this form of raising capital and investing. In 2014, 30% of equity funding for SMEs in the UK came from equity crowdfunding. In 2015, that number is projected to be around 50%. Similar patterns can be seen in each jurisdiction in Europe. Equity crowdfunding is still evolving and a higher limit would allow for that future growth. A higher limit would also ensure Canada offers equal crowdfunding opportunities as exists in the US ▪ We believe an issuer's raise should not be aggregated with amounts raised by an affiliate of the issuer or an issuer engaged in a common enterprise with the issuer or with an affiliate of the issuer ("**issuer groups**"). A parent or subsidiary company may be involved in a completely different line of business or be the research arm of the organization. New developments and opportunities may be stifled by treating these entities as one for the purpose of this exemption.

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2.	**The Proposed Start-Up Business Exemption would prohibit an issuer from accepting an investment from an investor of more than $1,500 in a single investment under the exemption, and no more than $3,000 in respect of an issuer group in a calendar year if the distribution is conducted without a registered dealer.** **The Proposed Start-Up Business Exemption would prohibit an investor from investing more than $5,000 in a single investment under the exemption, and no more than $10,000 in a calendar year if the distribution is conducted with a registered dealer.** **Do you agree with these limits? Are investors generally able to withstand the loss of a $1,500 investment? Do you agree with allowing a higher limit when a registered dealer providing suitability advice is involved? Why or why not?**
	Comments: ▪ We believe the investor investment cap of $1,500 per single investment should be raised to $5,000 or $10,000 per single investment in a calendar year without the use of registered dealer, but on a funding portal. ▪ Issuer groups, as started previously, should not be aggregated or treated as one on the Start-Up Business Exemption. ▪ Investors should be allowed to invest in as many equity crowdfunding campaigns as they chose in a calendar year. ▪ 90% of the US States which have adopted or are considering adopting an intrastate crowdfunding exemption have chosen a 12 month investor investment cap of either $5,000 or $10,000 per single investment, unless the investor is accredited. If an investor is accredited no investment cap should be applicable. The Start-Up Business Exemption should follow the developing norms in the US and UK. ▪ Issuers will have a difficult time raising the capital they need if the investment cap per investor remains at $1,500 per single investment. ▪ As of December 17, 2015, UK equity crowfunding portal Crowdcube has raised approximately C$264,116,442 for 332 businesses. This means an average issuer raises C$795,531 in their equity crowdfunding campaign on Crowdcube. The average number of investors per pitch is 185, despite a minimum investment threshold of as little as a C$180. The average investment per investor on Crowdcube is $3,923. The Participating Regulators should expect similar investment trends under the Start-Up Business Exemption. As such, the investor investment cap should be raised to a much higher amount. ▪ Accredited investors should be encouraged to invest in or along side a Start-up Business Exemption campaign. The participation of accredited investors at higher levels will provide non-accredited investors with added value as the investment group are more likely to do greater due diligence than investors only investing the minimum threshold amount in a Start-Up Business Exemption offering or investing as an accredited investor independent of the Start-Up Business Exemption investors.

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3.	**Given the potential ongoing costs associated with having a large number of security holders, do you think that the Proposed Start-Up Business Exemption will be a useful tool to assist very early-stage and start-up businesses with raising capital?**
	Comments: ▪ Given time, encouragement, and support the Start-Up Business Exemption and Canada's other crowdfunding exemptions will prove to be a useful tool to SMEs looking to raise capital. ▪ Technology is evolving such that having a large number of security holders is not as problematic or as expensive as it was even two years ago. ▪ Equity funding portals in other jurisdictions are split on how they handle this issue of a large number of security holders. The majority of portals have chosen to adopt a direct ownership structure, whereby individual investors are independently responsible for their shares; while others have chosen a nominee structure, in which the company behind the equity funding portal manages the investors' shares on their behalf. Ultimately, having a large number of security holders is proving to be a non-issue. ▪ The Participating Regulators should not be quick to determine that the Start-Up Business Exemption is of no interest to SMEs if a large number of SMEs do not immediately use this exemption or portal operators are not quick to offer securities under this exemption. ▪ Canada has been slow to adopt the start-up crowdfunding exemption available in BC, MB, NB, NS, QU, and SK and the use of funding portals in general utilizing the accredited investor and offering memorandum exemption. ▪ Other jurisdictions such as the UK, Europe and the US also had a slow start to the use of their funding portals. The use of these portals however have doubled or tripled year after year over the past four years in these jurisdictions. We expect a similar evolution of the use of funding portals will occur in Canada as investors and issuers become aware of and educated about this form of raising capital and investing.
	Disclosure Requirements
4.	**Should there be some form of ongoing disclosure e.g., financial statements or notice of proceeds, that issuers using the exemption should be required to provide to their security holders? If so, what should it be? What do you estimate as the costs of preparing such ongoing disclosure?**
	Comments: ▪ Successfully funded issuers should provide shareholders with an annual snapshot of unaudited financial statements, and brief business update summarizing historical performance and future plans. ▪ Issuers should be required to maintain a basic share registry on their own website or a third party service provider. ▪ Portals or third party service providers, should also remain the central, publically accessible centers for all reports and amendments by issuers. Portals should be required to keep this material permanently on their site and make this information accessible to the public. This not only provides a central location for information about an issuer, it also incentivizes portals to be accountable for issuances on their sites. The names and businesses of fundraisers are also permanently diarized and assessable to future potential investors and regulators. ▪ Other than the foregoing there should be no other ongoing disclosure requirements. Issuers relying on the start-up exemption should be treated identical to issuers raising capital under the friends and family and accredited investor exemptions as much as possible.

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	▪ Audited financial statements cost $5,000 to $200,000 for small and medium sized enterprises ("**SME**"). Reviewed financial statements are only slightly less expensive to prepare. This is often an unnecessary cost. ▪ Financial statements for true start-up companies provide little useful information. What is more important at this stage of a company's life cycle is how much cash a company has on hand, how much they are burning through each month and how much they need to reach their next significant milestone. Investors also want to know whether the money being raised is to be used in consumption or production. Consumption and paying off prior debt is negative, while production is effort in building value in the company. ▪ The need for reviewed and audited financial statements suggests a certain level of complication in an issuers business. When you are an early stage company, very little is complicated and most entries are outflows. ▪ Once a company is making sales, audited financial statements provides greater value to investors and the company. ▪ The majority of corporate statutes in Canada require issuers provide audited financial statements unless all of the shareholders consent in writing to waiving this requirement each year. A single investor could refuse to provide written consent forcing a company to obtain audited financial statements.
5.	**In addition to filing the offering document, should issuers be required to file all other information (e.g., marketing materials) provided in conjunction with the offering with the regulator?**
	Comments: ▪ Marketing material should not be required to be filed with Participating Regulators. ▪ If the purpose of filing all marketing material related to an online offering with the Participating Jurisdictions is to mitigate any potential misrepresentations made by an issuer group related to their offering, then this information could be required by the portal to maintain and made available to the Participating Jurisdiction upon request. ▪ Marketing material and content online is constantly evolving and is likely to include videos and social media messaging – it would seem that the Participating Jurisdiction would be required to hire additional oversight program resources just to stay on top of the collection and review of this material with vary little benefit. ▪ Unless marketing materials become standardized as part of the offering we encourage the Participating Jurisdiction to work with dealers and funding portals to make this information available.
	Investor Protection
6.	**Does the risk acknowledgement provide warning to investors of the major risks of investing in a very early stage or start-up business? Are there any other warnings that should be considered?**
	Comments: ▪ There is no need for eight (8) different risk acknowledgements under *National Instrument 45-106 – Prospectus and Registration Exemptions* and related multi-lateral instruments. Not only is this frustrating to issuers it is equally frustrating and confusing to investors. ▪ The Participating Regulators should look at harmonizing its Start-Up Business Exemption risk acknowledgement with either the integrated crowdfunding risk acknowledgement, start-up crowdfunding risk acknowledgment, accredited investor risk acknowledgement or the Participating Regulators' offering memorandum risk acknowledgement. Creating another risk

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	acknowledgement is creating too much of a regulatory patchwork necessitating issuers engage a lawyer to figure out what rules and forms apply to their proposed offering. ▪ Instead of spending money on new staff reviewing whether an issuer has filed the correct risk acknowledgement form, Participating Regulators should encourage and provide financial support for market education. Industry best practices and standards need to be developed and offered to all funding participants by way of online media including tutorials, videos, podcasts, articles and whitepapers. These types of ongoing initiatives will go a lot further in reducing investor risk than making investors sign different risk acknowledgement forms. ▪ Industry associations, and financial and academic institutions, should offer industry recognized non-mandatory courses to those interested in pursuing crowdfunding education via course work.
	Portal Registration
7.	**The Proposed Start-Up Business Exemption is only a prospectus exemption. There is no corresponding registration exemption; consequently, if a portal is used it must be registered as an exempt market dealer or investment dealer. Do you think that this will be a significant barrier for access to financing through the Proposed Start-Up Business Exemption?**
	Comments: ▪ The Start-Up Business Exemption will have limited use if portals are required to be registered as a dealer or exempt market dealer. The Participating Regulators should take the approach of the jurisdictions which have adopted the start-up crowdfunding exemption and create a new non-dealer portal category. ▪ We believe registration as an investment dealer, exempt market dealer or restricted dealer **is not required** in order to protect investors. Further, history has shown innovation in any market does not come from within the established pillars of that marketplace. Assumptions about one's industry get in the way in seeing obvious innovations and opportunities. ▪ Very few funding portals are operational in Canada under the start-up crowdfunding exemption. Only one exempt market dealer (**EMD**) is currently offering securities under the start-up crowdfunding exemption. This EMD also offers securities relying on the accredited investor and offering memorandum exemption. The other funding portals who are registered as exempt market dealers are focused on raising capital for more established issuers and for traditional private market products (real estate, mortgage investments, and funds). ▪ There are 184 IROC dealers in Canada. 25 fewer than June 2011. A number of IROC firms have indicated they intend to close their doors in 2016 (Jacob's Securities, Octagon Capital Markets, RBS Capital Markets, and Salman Partners) or have merged with competitors (Jones, Gable & Co. Ltd. merged with Leede Financial Markets; Burgeonvest Bick Securities merged with Industrial Allied Securities; and Pope & Co. merged with Europacific) all since November 2015. Fewer of these firms are catering to SMEs and are instead focused on selling managed products. There are no funding portals established by an IROC member despite diminishing returns in their traditional markets, and it is highly unlikely an IROC member will establish a funding portal in the near future. ▪ EMDs overwhelming favor selling securities that offer their clients yield and which have a clear exit. SMEs are seldom in a position to provide yield or have a clear exit. In Canada, dealers have been able to set-up online equity crowdfunding portals relying on the accredited investor exemption or the offering memorandum exemption since 2004. They have also been allowed to advertise on and offline. Established EMDs have not rushed to create funding portals relying on any of the exemptions available to them to sell securities.

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	▪ EMDs are not interested in establishing funding portals as it would require deal transparency and the potential loss of control over their book of business (investors) which is at the heart of their business. ▪ Optimize Capital Markets was the first exempt market dealer in Canada to set up an online funding portal in 2009. It remained the sole online funding portal in Canada until 2013. Even now, Optimize Capital Markets stands alone in moving to a cross-border online funding portal model. ▪ In contrast, the US Securities and Exchange Commission only recently (September 23, 2014) allowed advertising under its accredited investor exemption. Since that date, accredited investor portals established by registrants and through no-action letters from registration have proliferated in the US A number of these portals have raised significant capital. For example: Circle-Up – $150,000,000 ($30,000,000 - May 2014); Crowdfunder – $312,900,000 ($111,700,000- May 2014); EquityNet - $ 200,000,000+ ($ 231,748,700- May 2014 – EquityNet is no longer reporting actual amount raised on its platform); Fundable – $218,000,000 ($114,000,000 –May 2014); Microventures – $80,000,000 ($36,600,000 - May 2014); RealtyMogul – $57,000,000* ($ 18,000,000 - May 2014 - RealtyMogul is no longer reporting amount raised on its platform and this is an estimate from deals closed) are all active US accredited investor equity portals. (All amounts approximates in US dollars and as reported on their websites on December 17, 2015.) Intrastate crowdfunding portals are starting to emerge in the US as well. On November 19, 2019, Anya Coverman, the Deputy Director of Policy, for the North American Securities Administrators Association (NASAA) reported at the Securities and Exchange Commission Government-Business Forum on Small Business Capital Formation that over 100 issuers have raised capital to date under the various intrastate equity crowdfunding exemptions. Most of the founders of these accredited and intrastate crowdfunding portals come from a mixed background and not solely the finance markets. Given our different experience with the development of accredited investor portals in Canada, we could be waiting a long time for a vibrant Start-Up Business Exemption funding market to emerge if we rely solely on existing Canadian dealers to develop these portals. ▪ Funding portals are a business. They are driven by the same considerations as any other successful business: opportunity; ownership structure; funding; management; business model and relationships. Funding portals in the donation, perk, and product pre-sale market emerged without any structure or rules to guide them or protect campaign contributors. There has been less than 0.01% of fraud in this marketplace since its inception. Similarly, there has been no reported fraud on the equity funding portals operating outside of Canada. Founders of a funding portal have high incentives to make their business as success. ▪ We expect there will be significant sampling and attrition among equity funding portals in Canada similar to that experienced in the mutual fund and discount brokerage businesses in the early 1990s. The better operators are likely to utilize best practices from the non-equity funding marketplaces and innovate in ways we cannot anticipate at this time. This innovation should be encouraged. ▪ Again, requiring portals to register as a registered dealer, EMD or restricted dealer will not necessarily protect investors. Keeping the status quo will not benefit Canada in the short or long term as issuers and investors will seek out jurisdictions that advance their interests versus the interests of the established finance industry.
	Cross-Country Capital Raises
8.	**If an Alberta-based or Nunavut-based issuer were using the Proposed Start-up Business Exemption, in what other jurisdictions would they likely also seek to raise funds?**
	Comments:

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	▪ Issuers in Alberta and Nunavut raising capital currently look to Ontario and British Columbia in addition to their home province. Alberta residents also have strong ties with Saskatchewan and likely approach residents in that province if those investors fall under one of the existing investor exemptions available. ▪ Issuers ideally would prefer that the Start-Up Business Exemption was harmonized and available across Canada. Investors will be attracted to different types of businesses based on their knowledge of the industry and their relationship to management. Criteria for investing therefore may not depend on proximity to the business or a pre-existing relationship to management. ▪ Also keep in mind SMEs do not see a border when doing business. Approximately 9% of SMEs in Alberta and 11% of British Columbia and the Territories export goods and services to other countries. The number of exports across provincial and territorial borders is even higher. The individuals and companies these SMEs do business with, inside and outside of their home jurisdictions, may be interested in investing in these SMEs. SMEs raising capital will want to be able to offer their securities under the Start-Up Business Exemption or similar exemption in each province or territory where a user of their product or service resides. Someone who uses a SMEs product is much more likely to understand the business and want to be an equity owner and not just a consumer. ▪ The whole purpose of accommodating equity crowdfunding and exemptions such as the Start-Up Business Exemption is to enable SMEs to reach out to a wider investor community by using the internet and other electronic means, whereby geographic boundaries become irrelevant.
9.	**Do you think issuers would want to use the Proposed Start-Up Business Exemption in Alberta or Nunavut in conjunction with using Multilateral *Instrument 45-108 Crowdfunding* (MI 45-108) in other jurisdictions? If so, would it be helpful to issuers if they were able to use, and file, the form of offering document available under MI 45-108 in connection with a distribution under MI 45-109? Are there other accommodations that should be considered for the purpose of harmonization?**
	Comments: ▪ Harmonization between the Start-Up Business Exemption and MI 45-108 and/or with *Multilateral CSA Notice 45-316 Start-Up Crowdfunding Exemption* should be a top priority of the Participating Regulators. ▪ The Start-Up Business Exemption will be much more useful if it can be utilized with other jurisdictions private placement exemptions with as little regulatory friction or excessive fees by legal, accounting and selling dealer agent fees as possible. Private placements that are unduly complex as a result of having to rely on different exemptions in different jurisdictions that require different documents and have conflicting rules on how capital may be raised will be avoided if there is a simpler solution. ▪ Any such harmonization should be made in favour of expanding the rules as much as possible to allow the markets versus regulators to ultimately determine the optimal offering size, documents necessary to encourage investment, and investor investment limits.
	Offering Memorandum Exemption
10.	**Would it be helpful to issuers to be permitted to use and file Form 45-106F2 Offering Memorandum for Non-Qualifying Issuers, the form of offering memorandum required under the OM Exemption, in lieu of Proposed Form 45-109F1 Start-up Business Offering Document in connection with a distribution under MI 45-109?**

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	Comments: ▪ See answer in item 9 above.
11.	**In Alberta, we are considering whether ASC Blanket Order 45-515 Exemption from certain financial statement requirements of Form 45-106F2 Offering Memorandum for Non-Qualifying Issuers will be necessary if MI 45-109 is adopted. Do you anticipate issuers would use Blanket Order 45-515 if MI 45-109 is available?**
	Comments: ▪ ASC Blanket Order 45-515 Exemption should remain as an exemption in Alberta. ▪ *Multilateral CSA Notice 45-311: Exemptions from Certain Financial Statement-Related Requirements in the Offering Memorandum Exemption to Facilitate Access to Capital by Small Businesses* resulted in a number of provinces adopting a blanket order, local policy, or other instrument to facilitate capital raising for SMEs. ASC Blank Order 45-515 is how Alberta implemented this harmonized interim local order. The original harmonized interim order expired on December 20, 2014. A number of provinces, including Alberta, extended this harmonized interim order to December 20, 2016. Very few SMEs were every aware that this exemption even existed. ▪ As this exemption is available in a number of different provinces it provides an opportunity for SMEs to create one document that it can use to sell securities across Canada without the use of a funding portal or registered dealer if it so chooses. This exemption does not have any ongoing disclosure requirements (as of today's date) and is essentially the same in every jurisdiction making it much easier to manage than meeting the requirements of a different exemption in each province SMEs may be thinking of selling securities.
12.	**Other Comments**
	▪ It is disappointing that Canada is about to have four (4) different versions of the offering memorandum, three (3) different SME equity crowdfunding exemptions, eight (8) different risk acknowledgement forms; and a number of different exempt distribution reports and continuous disclosure requirements across the country depending on which exemption a private SME uses to raise capital. Most of these differences do not serve the goal of creating fair and efficient capital markets in Canada or protecting investors. It must be obvious to the Participating Regulators and other Canadian securities regulators they are increasing the complexity SMEs face when raising capital, not simplifying that process, or protecting investors. ▪ SMEs do not use the current offering memorandum exemption because it is too complicated and expensive. There is a risk that by choosing to implement the Start-Up Business Exemption in only two jurisdictions in Canada and not adopting one of the two different equity crowdfunding exemptions available in seven of the other provinces of Canada that the Start-Up Business Crowdfunding will not be used. The adoption of the Start-Up Business Exemption and two different crowdfunding exemptions makes raising capital more complicated and expensive in the minds of many SMEs. It may also curtail Canada wide offerings by SMEs under any of these exemptions due to an inability to co-ordinate the more nuanced differences of these rules when more than one version of these exemptions is involved. This will make the Start-Up Business Exemption and the various equity crowdfunding exemptions, exemptions SMEs avoid unless highly motivated. ▪ To the extent possible, the substantive and procedural components of all capital-raising exemptions should be identical across Canada. We like the idea of sampling various SME and equity crowdfunding exemptions, but this sampling does carry a cost to SMEs and Canada's economy as a whole. A benefits versus cost analysis should be weighed very

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	carefully before a variation under an existing rule is undertaken as a new rule versus an amendment or carve-out of one of the existing forms of that rule. There are a number of things we like about the proposed Start-Up Business Exemption that do not exist in either the start-up crowdfunding exemption or integrated crowdfunding exemption but we are concerned about the loss of harmonization across Canada of these various SME targeted exemptions. ▪ Issuers and investors no longer conduct business or investment in a territorial bubble. Technology advances continue to change the way people conduct business. The gathering and sharing of information is almost instantaneous and global. Work is decentralized. Companies can outsource production, and back-end functions worldwide. Securities rules that artificially restrict business and its ability to raise capital efficiently hurt the Canadian economy as a whole.

Contact Information

Craig Asano
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SeedUps™ Canada

December 18, 2015

VIA email

Alberta Securities Commission
Suite 600, 250 – 5th Street SW
Calgary, AB, T2P 0R4

Attention: **Jessie Gill**, **Legal Counsel, Corporate Finance**

Re: **Proposed Start-up Business Exemption MI 45-109**

Thank you for the opportunity to provide comments on the proposed Start-up Business Exemption MI 45-109. As we are all aware, it is challenging for small companies to access growth capital in the Canadian marketplace. We strongly believe that innovative early stage companies are integral to the sustainability of the province of Alberta, particularly in the challenging times we are faced with today. By accessing growth capital, these small, innovative companies contribute to job growth and have a positive economic impact. We agree that alternative capital raising options should be reviewed, while taking into consideration the viability of the exemption and the protection of the ordinary investor.

SeedUps has developed and maintains a technology platform to create efficiencies and transparency for companies seeking capital in the exempt market. Waverley Corporate Financial Services Ltd., (“Waverley”), a registrant under National Instrument 31-103, has licensed the use of the SeedUps platform to market its early stage issuers’ offerings.

We support these issuers by providing corporate advisory services and assistance in navigating the complex world of raising private capital and help them prepare to offer their securities through Waverley. As such, we have extensive experience in working with the very companies that will utilize MI 45-109 if implemented. We are currently working with a number of issuers that intend to utilize the Crowdfunding exemption MI 45-108 available in certain jurisdictions in January 2016 and the Start-up Crowdfunding Registration and Prospectus Exemptions currently available in the corresponding jurisdictions.

We are pleased to that the ASC has put forth a proposed exemption for these early stage companies and we generally support the proposed exemption as published. We provide the following comments for your review.

Response to Questions

1. **In setting the lifetime limit of $1,000,000 per issuer group, our goal was to set a limit after which an issuer should have sufficient funds to use the OM Exemption. Do you think this is the appropriate threshold? If not, please provide what you would consider acceptable limits given the parameters of the Proposed Start-up Business Exemption.**

   We believe the $1,000,000 lifetime limit adequately serves the early stage issuer, considering they can conduct concurrent offers under existing NI 45-106 prospectus exemptions.

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Recommendation - we would ask for clarification that the $1,000,000 lifetime limit relates only to capital raises conducted under MI 45-109. If an issuer had raised $3,000,000 through other prospectus exemptions defined in NI 45-106 (ie accredited investor or family, friend and close business associates exemptions) they could still raise $1,000,000 in an MI 45-109 offering.

2. **The Proposed Start-up Business Exemption would prohibit an issuer from accepting an investment from an investor of more than $1,500 in a single investment under the exemption, and no more than $3,000 in respect of an issuer group in a calendar year if the distribution is conducted without a registered dealer. The Proposed Start-up Business Exemption would prohibit an investor from investing more than $5,000 in a single investment under the exemption, and no more than $10,000 in a calendar year if the distribution is conducted with a registered dealer. Do you agree with these limits? Are investors generally able to withstand the loss of a $1,500 investment? Do you agree with allowing a higher limit when a registered dealer providing suitability advice is involved? Why or why not?**

<u>**Investor limits without a registered dealer**</u>

The $1,500 limit is certainly conservative. We also question how the investor is protected by splitting the maximum investment limit of $3,000 into two investments (albeit in two different offerings of the issuer). This would suggest that in raise one (1), the individual invests $1,500. The raise closes and the issuer delivers a share certificate to the holder. Three months later, the issuer conducts raise two (2). The same individual invests $1,500. The raise closes and the issuer delivers a second share certificate to the holder. This would impact the costs of closing and the ongoing costs of shareholder communications, because in effect, the one shareholder becomes two.

Recommendation – allow a maximum $3,000 one-time investment in an issuer offering its securities under the Start-up Business Exemption, saving the issuer the expense of issuing and managing two separate closings.

<u>**Investor limits with a registered dealer**</u>

We do agree that an investment conducted through a registered dealer that has an obligation to conduct KCP, KYC and suitability should have a higher investment limit. The $5,000 limit seems conservative given the suitability obligation and we would question the rationale around splitting the maximum investment into two separate offerings as outlined above.

Recommendation – allow a maximum $10,000 one-time investment in an issuer offering its securities under the MI 45-109, saving the issuer the expense of issuing and managing two separate closings, while still limiting the investor to the maximum issuer limit. Also, consider expanding the investor class to include the "eligible investor" as defined in NI 45-106 with a maximum one-time investment of $20,000 (subject to suitability).

3. **Given the potential ongoing costs associated with having a large number of security holders, do you think that the Proposed Start-up Business Exemption will be a useful tool to assist very early-stage and start-up businesses with raising capital?**

Service providers are continually developing solutions that will help private companies manage a large number of security holders and technologies will continue to be embraced to streamline

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security holder communication and management. Having said that, no early stage company wants to have 600 security holders. The investment limit recommendations noted in 2 above, would help reduce the number of security holders an early stage issuer would have to manage. We would also recommend that issuer's conduct a concurrent accredited investor exemption raise so they can attract larger investments from sophisticated investors that may want to take the lead in the offering.

Recommendation – expand the investor class to include the "eligible investor" as defined in NI 45-106 with $20,000 maximum one-time investment (subject to suitability).

4. **Should there be some form of ongoing disclosure e.g., financial statements or notice of proceeds, that issuers using the exemption should be required to provide to their security holders? If so, what should it be? What do you estimate as the costs of preparing such ongoing disclosure?**

   The *Canadian Business Corporations Act* (CBCA) requires that private companies conduct an annual general meeting at which they provide annual audited financial statements to their security holders unless there is a unanimous shareholder resolution not to engage an auditor.

   Recommendation – this requirement seems to provide satisfactory and timely disclosure to security holders. Although not mandatory, we would encourage all issuers to provide regular company updates to all security holders to keep them engaged in the company's progress.

5. **In addition to filing the offering document, should issuers be required to file all other information (e.g., marketing materials) provided in conjunction with the offering with the regulator?**

   Most funding portals will use digital media to provide information to prospective investors. This may include video, discussion forums, pitch decks etc. It also may include an "investment overview" section that is only presented on-line (not in a downloadable document). It may be difficult for the regulators to store and manage such data.

   Recommendation – Although we recognize the rationale around filing all materials with the regulator, we feel it may be impractical to do so. As such, given the investment limits on distributions under MI 45-109, we would recommend that issuer be required to file only the offering document Form 45-109F1.

6. **Does the risk acknowledgement provide warning to investors of the major risks of investing in a very early stage or start-up business? Are there any other warnings that should be considered?**

   Form 45-109F2 clearly identifies the major risks of investing in an early stage or start-up business. By acknowledging and signing this form, an investor should clearly understand the risks.

   Recommendation – the Risk Acknowledgement Form 45-109F2 adequately identifies the risk to the investors.

7. **The Proposed Start-up Business Exemption is only a prospectus exemption. There is no corresponding registration exemption; consequently, if a portal is used it must be registered as an exempt market dealer or investment dealer. Do you think that this will be a significant barrier for access to financing through the Proposed Start-up Business Exemption?**

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We continue to support the requirement that portals operate with an exempt market dealer or investment dealer for registerable activities. Unfortunately, when using a dealer, the barrier for early stage companies continues to be the due diligence a dealer must conduct in support of its KYC, KYP and suitability obligations. As a result, dealers may not be interested in engaging with early stage companies raising smaller amounts of capital as the fees may not justify the effort.

Recommendation – Investments in early stage companies are inherently risky. Since the investor is acknowledging such risk and is subject to investment limits, is KYP, KYC and suitability required?

8. **If an Alberta-based or Nunavut-based issuer were using the Proposed Start-up Business Exemption, in what other jurisdictions would they likely also seek to raise funds?**

   One of the complications issuers face when raising capital is the ability and cost of reaching a broader investor audience than those in their own back yard. By conducting their raise through an online portal, the issuer can efficiently attract investment from outside their own region, getting the true benefit of utilizing a technology platform.

   Recommendation – harmonize with other jurisdictions as much as practical so that early stage companies have the flexibility to attract investment from all across Canada.

9. **Do you think issuers would want to use the Proposed Start-up Business Exemption in Alberta or Nunavut in conjunction with using Multilateral Instrument 45-108 Crowdfunding (MI 45-108) in other jurisdictions? If so, would it be helpful to issuers if they were able to use, and file, the form of offering document available under MI 45-108 in connection with a distribution under MI 45-109? Are there other accommodations that should be considered for the purpose of harmonization?**

   It would not be practical for an Alberta or Nunavut issuer to offer its securities into only these two jurisdictions. Canada is not a large market, so issuers need the flexibility to offer their securities to a broad and geographically diverse investor base.

   Recommendation – the form of offering document available under MI 45-109 can be used in jurisdictions participating in MI 45-108 and the form of offering document available under MI 45-108 can be used in jurisdictions participating in MI 45-109. We understand there is similar harmonization proposed for the corresponding exemption in the corresponding jurisdictions.

10. **Would it be helpful to issuers to be permitted to use and file Form 45-106F2 Offering Memorandum for Non-Qualifying Issuers, the form of offering memorandum required under the OM Exemption, in lieu of Proposed Form 45-109F1 Start-up Business Offering Document in connection with a distribution under MI 45-109?**

    We are not clear why an issuer would want to prepare Form 45-106F2 for a distribution under MI 45-109.

    Recommendation – there is no need to allow the use of Form 45-106F2 for a distribution under MI 45-109.

11. **In Alberta, we are considering whether ASC Blanket Order 45-515 Exemption from certain financial statement requirements of Form 45-106F2 Offering Memorandum for Non-Qualifying**

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Issuers will be necessary if MI 45-109 is adopted. Do you anticipate issuers would use Blanket Order 45-515 if MI 45-109 is available?

Blanket Order 45-515 requires the issuer to prepare financial statements in accordance with the financial reporting framework specified in subsection 6(e) of Alberta Securities Commission Blanket Order 45-515. If the ASC implements MI 45-109, which does not require the issuer to prepare or present financial statements, we do not believe issuers would undertake the expense to prepare such statements or use and file Blanket Order 45-515.

Recommendation – there is no need to have both exemptions available to issuers.

Thank you again for your consideration of our comments. We are confident the ASC will be able put forth solutions that help small business access capital and broaden investment opportunities for the ordinary Alberta investor.

Sincerely,

Signed

Sandi K Gilbert
Founder & CEO
sandi@SeedUps.ca

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December 21, 2015

jesse.gill@asc.ca
Jesse Gill
Legal Counsel, Corporate Finance
Alberta Securities Commission

sarmstrong@gov.nu.ca
Shamus Armstrong
Superintendent of Securities, Nunavut
Nunavut Securities Office

Re: Proposed Multilateral Instrument MI 45-109 Prospectus Exemption for Start-up Businesses

Please find attached our submission regarding MI 45-109.

If you have any questions about this submission, please feel free to contact me directly at 403.261.8459.

Regards,

Craig Skauge

President

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General Commentary

While we applaud both the ASC and Nunavut Securities Office for their attempt to provide an additional prospectus exemption for Start-up Businesses, we are of the opinion that this particular proposal has multiple areas of concern and should not be adopted.

We have only answered questions 1-3 as we feel those concerns outweigh the particular logistics associated with this exemption.

In particular, we are concerned of the nature of both the entrepreneur using it and the investor purchasing securities as outlined below.

Notwithstanding our having similar concerns with Multilateral Instrument 45-108 Crowdfunding, in the interests of harmonization, we would encourage both the ASC and Nunavut Securities Office to consider adoption of the same in lieu of this proposal.

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Request for Comment Specific Questions

1. **In setting the lifetime limit of $1,000,000 per issuer group, our goal was to set a limit after which an issuer should have sufficient funds to use the OM Exemption. Do you think this is the appropriate threshold? If not, please provide what you would consider acceptable limits given the parameters of the Proposed Start-up Business Exemption.**

This would be more than sufficient to provide an Issuer with the necessary capital to proceed with preparation and utilization of an Offering Memorandum (OM).

In regards to an appropriate threshold, if the primary goal of this exemption is to get issuers the necessary capital to proceed with the preparation an OM, we would suggest that this exemption is unnecessary in the first place.

Assuming a securities lawyer is involved in the preparation of the underlying disclosure document, we believe that the cost differential between preparing this and an OM would be negligible. The primary difference is the preparation of audited financial statements, which for a newly formed entity is a relatively small cost, amounting to $5,000 or less. Given that, we would suggest that adoption of this would add confusion amongst market participants for a negligible benefit.

2. **The Proposed Start-up Business Exemption would prohibit an issuer from accepting an investment from an investor of more than $1,500 in a single investment under the exemption, and no more than $3,000 in respect of an issuer group in a calendar year if the distribution is conducted without a registered dealer.**

   The Proposed Start-up Business Exemption would prohibit an investor from investing more than $5,000 in a single investment under the exemption, and no more than $10,000 in a calendar year if the distribution is conducted with a registered dealer.

   Do you agree with these limits? Are investors generally able to withstand the loss of a $1,500 investment?

While investors are generally able to withstand the loss of $1,500, we have concerns about the sophistication of an investor who would be willing to invest only $1,500 in a single security. In our experience, these investors are generally likely to be highly unsophisticated as those with investment knowledge wouldn't anticipate earning any material returns on such a small investment amount.

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Do you agree with allowing a higher limit when a registered dealer providing suitability advice is involved? Why or why not?

As is the case with any prospectus exemption, we are supportive of higher limits when a registered dealer providing suitability is involved, however given the costs of compliance and potential liability associated with any trade, we cannot see a legitimate dealership entertaining the sale of securities in such small denominations. We have confirmed this in discussions with our members.

3. **Given the potential ongoing costs associated with having a large number of security holders, do you think that the Proposed Start-up Business Exemption will be a useful tool to assist very early-stage and start-up businesses with raising capital?**

No.

For an Issuer to raise significant enough capital to make this exemption worthwhile, they'll be subject to reporting to far too many securities holders (666 assuming the maximum amount raised), most of which will presumably be unsophisticated. This onerous reporting will distract entrepreneurs from focusing on their underlying business, rendering this exemption ineffective.

Much like our concerns with the sophistication of an investor willing to invest only $1,500, we have similar concerns with the sophistication and/or legitimacy of an entrepreneur willing to take on such a large base of securities holders for such a small amount of capital.

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December 22, 2015

VIA EMAIL

Superintendent of Securities, Nunavut

Alberta Securities Commission
Suite 600, 250 – 5th
Calgary, AB T2P 0R4

Attention: Jessie Gill, Legal Counsel, Corporate Finance

Dear Sirs/Mesdames:

Re: Proposed Multilateral Instrument 45-109 *Prospectus Exemption for Start-Up Businesses*

Toronto Stock Exchange ("**TSX**") and TSX Venture Exchange ("**TSXV**") (each, an "**Exchange**" and collectively, the "**Exchanges**" or "**we**") welcome the opportunity to comment on the Notice of Publication and Request for Comment published by the Alberta Securities Commission and the Nunavut Securities Office (together, the "**Participating Jurisdictions**") on October 19, 2015 entitled Multilateral CSA Notice of Publication and Request for Comment – Proposed Multilateral Instrument 45-109 *proposed Exemption for Start-up Businesses* (the "**Request for Comment**"). Capitalized terms used in this letter and not specifically defined have the meaning given to them in the Request for Comment.

TSX and TSXV recognize the importance of the exempt market for Canada, and are committed, along with the Canadian Securities Administrators ("**CSA**") and other industry participants, to supporting an exempt market that is both robust and fair to investors while providing the necessary opportunity for companies, including start-ups, to raise capital in a timely and cost-efficient manner. We are therefore supportive of the Participating Jurisdictions' efforts to implement a crowdfunding regime.

While we acknowledge that the Participating Jurisdictions have attempted to harmonize the Proposed Start-Up Business Exemption with the prospectus exemption in the local blanket orders adopted by some members of the CSA on May 14, 2015, there are still a number of significant differences between the two regimes, including with respect to the availability of a registration exemption, distribution limits imposed on issuers, investment limits imposed on investors, rights of withdrawal and statutory civil liability for misrepresentations included in an offering document. We also note that the Proposed Start-Up Business Exemption does not contemplate harmonization with proposed MI 45-108. Therefore, various members of the CSA have proposed three distinct crowdfunding regimes.

TSX and TSXV continue to strongly encourage one harmonized Canadian crowdfunding regime that will allow issuers and investors from all CSA jurisdictions to participate in a crowdfunding

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equity financing in the same manner and on the same terms. We continue to believe that even slight differences between jurisdictions for exemptions related to crowdfunding are likely to increase compliance challenges, increase costs and cause confusion if companies wish to use these exemptions in more than one province or territory. TSX and TSX Venture believe that undue complexity and regulatory fragmentation across Canadian jurisdictions will serve to deter issuers, particularly start-ups and SMEs, from using these exemptions to raise funds. This is particularly the case because such issuers are looking to raise funds in a cost efficient manner.

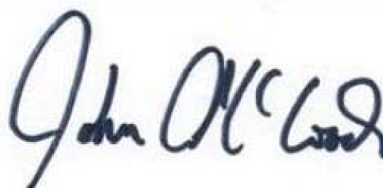
We believe that retail investors may also be deterred from investing in reliance on a fractured exemption. For this reason, we encourage the Participating Jurisdictions to collaborate closely with all CSA members to devise and implement one harmonized crowdfunding exemption available to all issuers and investors in Canada who meet the agreed upon qualification criteria. Similarly, harmonizing portal requirements and registration exemptions related to crowdfunding would be beneficial and avoid confusion.

As with other exemptions aimed at facilitating capital raising for smaller companies and, especially because crowdfunding is often conducted via an internet portal and the internet is a tool that tends to transcend jurisdictions, we strongly encourage the Participating Jurisdictions and the other members of the CSA to work together to implement one harmonized crowdfunding regime in Canada. We continue to strongly believe that having one harmonized crowdfunding regime in Canada will benefit issuers and investors alike.

TMX Group continues to support the harmonization of prospectus exemptions across all Canadian jurisdictions and is hopeful that the Participating Jurisdictions will work together with the other members of the CSA, including those that have not published crowdfunding proposals to date, in order to implement a harmonized crowdfunding regime to benefit all market participants, regardless of the jurisdiction of their lead regulator.

Thank you for the opportunity to provide our comments on the Request for Comment.

Yours truly,



Ungad Chadda
Senior Vice President
Toronto Stock Exchange

John McCoach
President
TSX Venture Exchange

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December 24, 2015

To: Jessie Gill
Legal Counsel, Corporate Finance
Alberta Securities Commission
Suite 600, 250 - 5th Street SW
Calgary, Alberta, T2P 0R4
E-mail: Jessie.gill@asc.ca

Dear Sir and Mesdames:

Re: Multilateral CSA Notice of Publication and Request for Comment – Proposed Multilateral Instrument 45-109 Prospectus Exemption for Start-up Businesses (the **Proposed Start-Up Business Exemption**)

The Private Capital Markets Association of Canada (**PCMA**) is pleased to provide our comments in connection with the Proposed Start-Up Business Exemption as set out below.

Who is the PCMA?

The PCMA is a not-for-profit association founded in 2002 as the national voice of exempt market dealers (**EMDs**), issuers and industry professionals in the private capital markets across Canada.

PCMA plays a critical role in the private capital markets by:

- assisting its hundreds of dealer and issuer member firms and individuals to understand and implement their regulatory responsibilities;
- providing high-quality and in-depth educational opportunities to private capital markets professionals;
- encouraging the highest standards of business conduct amongst its membership across Canada;
- increasing public and industry awareness of the private capital markets in Canada;
- being the voice of the private capital market to securities regulators, government agencies, other industry associations and the public capital markets;

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- providing valuable services and cost-saving opportunities to its member firms and individual dealing representatives; and
- connecting its members across Canada for business and professional networking.

Additional information about the PCMA is available on our website at: www.pcmacanada.com

Who Are Exempt Market Dealers?

EMDs are fully registered dealers who engage in the business of trading in securities to qualified exempt market clients. EMDs are subject to full dealer registration and compliance requirements and are directly regulated by the provincial securities commissions. The regulatory framework for EMDs is set out in National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations (**NI 31-103**) and it applies in every jurisdiction across Canada.

EMDs must satisfy substantially the same "Know-Your-Client" (**KYC**), "Know-Your-Product", (**KYP**) and trade suitability obligations as other registered dealers who are registered investment dealers and members of the Investment Industry Regulatory Organization of Canada and mutual fund dealers and members of the Mutual Fund Dealers Association of Canada. NI 31-103 sets out a comprehensive dealer regulatory framework (substantially the same for all categories of dealer), which requires EMDs to satisfy a number of regulatory obligations including:

- educational proficiency;
- capital and solvency standards;
- insurance;
- audited financial statements;
- KYC, KYP and trade suitability;
- compliance policies and procedures;
- books and records;
- trade confirmations and client statements;
- relationship disclosure, including disclosure of conflicts of interest and referral arrangements;
- complaint handling;

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- internal dispute resolution procedures, and external dispute resolution for clients through the Ombudsman for Banking Services and Investments;
- cost, product and account fees disclosure;
- maintenance of internal controls and supervision sufficient to manage risks associated with its business;
- prudent business practices requirements;
- registration obligations; and
- submission to regulatory oversight and dealer compliance reviews.

EMDs may focus on certain market sectors (*e.g.*, oil and gas, real estate, mining or minerals, technology, venture financing, etc.) or may have a broad cross-sector business model. EMD clients may be companies, institutional investors, accredited investors or investors who purchase exempt securities pursuant to an offering memorandum or another available prospectus exemption.

EMDs provide many valuable services to small and medium size enterprises, large businesses, investment funds, merchant banks, financiers, entrepreneurs, and individual investors, through their ability to participate in the promotion, distribution and trading of securities, as either a principal or agent.

General Comments of the Proposed Start-Up Business Exemption

We commend the Alberta Securities Commission and the Nunavut Securities Office (collectively, the **Regulators**) for considering adopting another exemption to make it easier for start-ups to raise capital.

(i) Acknowledgement of a funding gap

We agree that there is a funding gap in helping start-ups raise capital outside of available prospectus exemptions and the Proposed Start-up Business Exemption may indeed fill that gap, subject to our comments herein.

(ii) PCMA does not support the requirement that a portal be fully registered as a dealer under the accompanying restrictions

We acknowledge that some EMDs are in effect, operating a portal and raising capital under the accredited investor and offering memorandum prospectus exemptions and

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we believe EMDs will continue to do so, however, we doubt EMDs or investment dealers will be significantly involved in raising capital for start-ups because it would be difficult for them to do so economically in light of current regulatory requirements. We respectively submit that the Regulators have not struck the right balance in the Proposed Start-up Business Exemption by requiring a portal to be registered as an EMD and we recommend this be reconsidered.

Simply, the proposed $1 million life-time limit financing restrictions for use of the exemption and the investor investment limits would require too much time, money, effort and risk for a dealer in order to raise small amounts of capital from a very large number of investors. As a result, the Proposed Start-up Business Exemption is unlikely to be utilized by dealers whose alternative is to continue to raise capital under existing prospectus exemptions, such as the accredited investor and offering memorandum prospectus exemptions.

For example, under the Proposed Start-up Business Exemption an issuer will require at least 200 investors each investing $5,000 in one or more offerings to raise $1 million (if a registrant was involved). It is quite likely that the average investment will be much less than $5,000 and would effectively increase the number of required investors for the issuer to complete an aggregate $1 million raise under the exemption. Accordingly, if the intention of the Regulators was to simplify the offering process and allow issuers to reach out to a larger number of investors, then the PCMA believes the proposal overshoots the mark by requiring a portal to be registered as an EMD.

(iii) Regulators should adopt Multilateral Instrument 45-108 Crowdfunding

We understand the Regulators are looking at alternative structures for helping start-ups raise capital in their respective jurisdictions since Alberta and Nunavut have not adopted Multilateral Instrument 45-108 *Crowdfunding* or the Start-up Crowdfunding Blanket Orders (*i.e.,* Multilateral CSA Notice 45-316 *Start-up Crowdfunding Registration and Prospectus Exemptions*).

However, the PCMA believes that the starting point for new regulation should be to simplify and expand the options for start-ups and small and medium sized enterprises (**SMEs**) to raise capital from the wider potential investor community across Canada in an effective manner. Investment crowdfunding, using the Internet and other electronic means, offer such opportunities to issuers at affordable capital raising costs and without unnecessary complexity. This year, several laws have already been adopted by multiple provincial securities regulators including both Multilateral Instrument 45-108

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Crowdfunding and the Start-up Crowdfunding Blanket Orders.

Based on the foregoing, the PCMA respectively submits that the Regulators should NOT adopt the Proposed Start-up Business Exemption and instead reconsider their position and adopt and harmonize with Multilateral Instrument 45-108 Crowdfunding.

The PCMA believes that a new exemption that aligns with only certain elements of both Multilateral Instrument 45-108 *Crowdfunding* and the Start-up Crowdfunding Blanket Orders is inefficient, unnecessary and creates further complexity and disharmony in our regulatory framework. Requiring start-ups and early stage companies, to incur the cost and burden of navigating through these multiple regulatory frameworks, all with important variations, including the adoption of the Proposed Start-up Business Exemption, undermines the overall objective to ease regulatory burden and reduce the funding gap which is adversely affecting innovation, economic growth and job creation in Canada.

We acknowledge that the PCMA did not support the adoption of the Start-up Crowdfunding Blanket Orders since the portal intermediary was not required to be registered under applicable securities laws. (See the PCMA comment letter dated June 30, 2014 at www.pcmacanada.com.[1]) However, the PCMA believes requiring only fully registered dealers, such as EMDs, to be involved in selling securities on the Internet under the Proposed Start-up Business Exemption may be too onerous. Accordingly, the PCMA believes the Regulators should consider having a portal registered as a 'restricted dealer', as set out in Multilateral Instrument 45-108 *Crowdfunding,* as the middle ground which we believe strikes the right balance in protecting investors while promoting fair and efficient capital markets.

The PCMA believes it is important to provide a nationalized and harmonized approach to raising capital for not only start-ups but also SMEs and we believe that is better accomplished under Multilateral Instrument 45-108 *Crowdfunding*. It is counter-productive to attempt to ease capital raising for small businesses and start-ups if done in manner that is disharmonized and further burdens start-ups with regulatory complexity and cost, which are among the most important obstacles Regulators are intending to remove.

[1] http://c.ymcdn.com/sites/pcmacanada.site-ym.com/resource/resmgr/Comment_Letters/PCMA_-_AMF,_FCAA,FCNB,_MSC,_.pdf

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(iv) *General comments*

If the Regulators do not reconsider adopting Multilateral Instrument 45-108 *Crowdfundin*g, the PCMA's general comments involving the Proposed Start-up Business Exemption are set out below.

1. *Registrant should not be subject to investment limits* - The investment limits involving a registrant such as an EMD are relatively low and the PCMA does not believe they are appropriate for registrants who have a legal obligation to ensure that all investments are suitable. Accordingly, a registrant should not be subject to any investment limits since a registrant, including an EMD, may recommend a suitable investment in excess of the proposed $5,000 per issuer and $10,000 aggregate investment limit in any 12-month period under the Proposed Start-up Business Exemption. Accordingly, the PCMA submits that if a registrant is involved, investors will better understand the risks in a start-up investment including that they could lose all their money which is in addition to other investor protections under the Proposed Start-up Business Exemption including, requiring investors to sign Form 45-109F1 *Start-up Business Risk Acknowledgement*. However, the PCMA supports placing investment limits on issuers who do not raise capital through a registrant since such issuers are not under any obligation to ensure that an investment is suitable for an investor.

2. *Introduce a threshold for imposition of the Financial Statement Requirements* - We agree the cost of preparing audited financial statement are too onerous for start-ups. However, if an issuer does provide financial statements to investors the Proposed Start-up Business Exemption requires such statements to be prepared with either (a) Canadian GAAP for publicly accountable enterprises; or (b) Part II of the Handbook applied to an issuer as if it were a private enterprise, and the financial statements consolidate any subsidiaries and account for any significantly influenced investees and joint ventures using the equity method (collectively, the **Financial Statement Requirements**).

   The PCMA respectively submits that providing such statements will be very cost prohibitive for start-up issuers, even though they are not audited. The requirements may unintentionally incent issuers to not provide any financial statements to investors and we submit that result would not be in the public interest.

   Accordingly, the PCMA recommends that the Financial Statements Requirements

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should only apply for amounts raised in excess of $500,000 under the Proposed Start-up Business Exemption. We believe this is an acceptable compromise that protects investors while requiring start-ups to provide a more heightened review of their financial information in excess of a threshold amount.

3. *No limit on the number of distributions* - We agree that the Proposed Start-up Business Exemption should not limit the number of distributions in any 12-month period as set out in your proposal.

4. *Question regarding standard of liability* - We agree that the Proposed Start-up Business Exemption should provide for a more streamlined offering document than required under the offering memorandum exemption in s. 2.9 of National Instrument 45-106 (the **OM Exemption**) and that it should have statutory civil liability. However, the same standard of liability that the document cannot contain a misrepresentation is the same standard of liability as under the OM Exemption but both documents require different levels of disclosure. The PCMA respectively requests the Regulators provide additional guidance on how it will apply the same common law standard to different forms of offering documents? It will be important to provide issuers with comfort on the quality and extent of the disclosure required under both the Proposed Start-up Business Exemption and the OM Exemption.

5. *Types* of securities – The PCMA believes that the types of securities should also include trust units to permit indirect offering structures where issuers may seek to aggregate investors in a trust and invest the proceeds in an underlying entity.

Specific PCMA responses to questions from the Regulators

1. In setting the lifetime limit of $1,000,000 per issuer group, our goal was to set a limit after which an issuer should have sufficient funds to use the OM Exemption. Do you think this is the appropriate threshold? If not, please provide what you would consider acceptable limits given the parameters of the Proposed Start-up Business Exemption.

The PCMA has no objection with the imposition of a $1 million per issuer group investment limit. We assumed it is somewhat arbitrary and could have easily been $1.5 million as under Multilateral Instrument 45-108 *Crowdfunding*. However, if the Regulators are going to permit issuers who are raising capital under a comparable

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exemption to the Proposed Start-up Business Exemption, then it make sense to at least harmonize with the limit thereunder of $1.5 million.

2. The Proposed Start-up Business Exemption would prohibit an issuer from accepting an investment from an investor of more than $1,500 in a single investment under the exemption, and no more than $3,000 in respect of an issuer group in a calendar year if the distribution is conducted without a registered dealer.

The Proposed Start-up Business Exemption would prohibit an investor from investing more than $5,000 in a single investment under the exemption, and no more than $10,000 in a calendar year if the distribution is conducted with a registered dealer.

Do you agree with these limits? Are investors generally able to withstand the loss of a $1,500 investment? Do you agree with allowing a higher limit when a registered dealer providing suitability advice is involved? Why or why not?

The PCMA agrees with the imposition of limits for issuers and issuer groups but not when a registrant, such as an EMD, is involved in the transaction in reliance on the Proposed Start-up Business Exemption.

An EMD is registered under applicable securities law and must satisfy various initial and ongoing registration requirements, as briefly described above under "*Who are Exempt Market Dealers?*" Most importantly, an EMD is required to ensure that a trade is suitable and this fundamentally distinguishes them from an issuer that has no such obligation.

Accordingly, the PCMA believes the inclusion of limits when an EMD or other registrant is involved is unnecessary since investors are already protected by virtue of the EMD or other registrant's legal obligations under applicable securities law.

See also #1 above under "(iv) *General comments.*"

3. Given the potential ongoing costs associated with having a large number of security holders, do you think that the Proposed Start-up Business Exemption will be a useful tool to assist very early-stage and start-up businesses with raising capital?

Despite the ongoing costs associated with having a large number of security holders

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under the Proposed Start-up Business Exemption, the PCMA believes the exemption may still be a useful tool to assist very early-stage and start-up businesses with raising capital.

We acknowledge that there are alternative ways of managing large numbers of securityholders more indirectly including, through shareholders agreements or establishing a single investment vehicle through which investors can invest (such as a limited partnership) and such entity can invest as a single investor in the issuer seeking to raise capital under the Proposed Start-up Business Exemption.

4. Should there be some form of ongoing disclosure e.g., financial statements or notice of proceeds, that issuers using the exemption should be required to provide to their security holders? If so, what should it be? What do you estimate as the costs of preparing such ongoing disclosure?

The PCMA believes there should be some form of ongoing disclosure that issuers using the Proposed Start-up Business Exemption should be required to provide to their security holders. Issuers should be required to provide annual unaudited financial statements and a notice of proceeds that explains how the money raised under the Proposed Start-up Business Exemption was used by the issuer. As stated above,[2] we do not believe such statements should be subject to the Financial Statement Requirements since it would be cost prohibitive for an issuer to prepare such financial statements in accordance with such requirements.

The PCMA believes the cost for providing such ongoing disclosure would be manageable and minimal.

5. In addition to filing the offering document, should issuers be required to file all other information (e.g., marketing materials) provided in conjunction with the offering with the regulator?

The PCMA believes that in addition to filing the offering document, issuers should also be required to file all other information (*e.g.* marketing materials) provided in

[2] See 2 above under "*IV - General comments re: the Proposed Start-up Business Exemption.*"

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conjunction with the offering with the Regulators. This information should also be filed and posted on SEDAR. This ensures that all materials are publicly posted and available.

The PCMA believes that all marketing materials must be consistent with or form part of the offering document under the Proposed Start-up Business Exemption as will be required under proposed changes to the OM Exemption in 2016.

6. Does the risk acknowledgement provide warning to investors of the major risks of investing in a very early stage or start-up business? Are there any other warnings that should be considered?

We believe the warnings are sufficient.

7. The Proposed Start-up Business Exemption is only a prospectus exemption. There is no corresponding registration exemption; consequently, if a portal is used it must be registered as an exempt market dealer or investment dealer. Do you think that this will be a significant barrier for access to financing through the Proposed Start-up Business Exemption?

The PCMA believes that a portal that raises capital for an issuer in connection with the Proposed Start-up Business Exemption must be registered, however, the portal should only be registered as a 'restricted dealer', as required under Multilateral Instrument 45-108 *Crowdfunding*.

As discussed above, the PCMA's comment letter on June 20, 2014 to those CSA members who have adopted the Start-Up Crowdfunding Exemption was against having unregistered portals raise capital under that exemption.

However, the PCMA also believes the requirement that dealers, such as EMDs, should only be permitted to operate portals under the Proposed Start-up Business Exemption is too onerous in the face of the various investor protections set out in this exemption.

We believe many EMDs would not be interested in using the Proposed Start-up Business Exemption since

- the cost of creating and operating a software program and dealing with hundreds of investors that invest small amounts of money, relative to the

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commissions and fees to be earned by such an EMD, do not present a viable business/economic case for such EMDs; and

- there are fewer individuals available to be the Chief Compliance Officer (**CCO**) of an EMD in light of recent changes to NI 31-103 that now require a CCO to have relevant industry experience. The PCMA believes those individuals who want to establish an EMD to sell securities on the Internet under the Proposed Start-up Business Exemption are unlikely to have such relevant industry experience or find a CCO who has such experience.

Simply, our concern is that if the Regulators proceed with the Proposed Start-up Business Exemption as contemplated, it may find little or no EMDs interested in using the exemption or new EMDs entering in the marketplace.

Accordingly, the PCMA believes that the type of restricted dealer that is required to be registered in those CSA jurisdictions that have adopted Multilateral Instrument 45-108 *Crowdfunding* strikes the right balance by requiring registration (but not as an EMD rather a restricted dealer or 'EMD-lite') but absent any requirement for the restricted dealer to assess suitability.

We believe that the investment limits that are set out in Multilateral Instrument 45-108 *Crowdfunding* are appropriate for the Alberta and Nunavut and provides for a more harmonized approach to this type of capital raising including for start-ups.

8. If an Alberta-based or Nunavut-based issuer were using the Proposed Start-up Business Exemption, in what other jurisdictions would they likely also seek to raise funds?

The PCMA believes that a funding portal lends itself to selling securities across Canada. Social media would arguably create a national interest so the PCMA believes that an Alberta-based or Nunavut-based issuer would seek to raise capital in any jurisdiction where an investor provides an expression of interest.

9. (a) Do you think issuers would want to use the Proposed Start-up Business Exemption in Alberta or Nunavut in conjunction with using Multilateral Instrument 45-108 *Crowdfunding* (MI 45-108) in other jurisdictions? I(b) f so, would it be helpful to issuers if they were able to use, and file, the form of offering document available

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under MI 45-108 in connection with a distribution under MI 45-109? Are there other accommodations that should be considered for the purpose of harmonization?

(a) Yes, we believe that issuers would want to use the Proposed Start-up Business Exemption in Alberta or Nunavut will also want to use it in conjunction with using Multilateral Instrument 45-108 *Crowdfunding* in other jurisdictions. There are similar and different requirements, so it would be helpful if the Regulators published future detailed guidance on such requirements involving a concurrent offering under both exemptions.

(b) Yes, it would be useful to have a single offering document, however, it is not clear why Alberta and Nunavut would not simply adopt Multilateral Instrument 45-108 *Crowdfunding* as per our recommendations above.

10. Would it be helpful to issuers to be permitted to use and file Form 45-106F2 *Offering Memorandum for Non-Qualifying Issuers*, the form of offering memorandum required under the OM Exemption, in lieu of Proposed Form 45-109F1 *Start-up Business Offering Document* in connection with a distribution under MI 45-109?

The PCMA believes that it would be confusing and problematic for issuers to use and file Form 45-106F2 *Offering Memorandum for Non-Qualifying Issuers* (**Form 45-106F2**)in lieu of Proposed Form 45-109F1 *Start-up Business Offering Document* in connection with a distribution under the Proposed Start-up Business Exemption.

We understand that Proposed Form 45-109F1 *Start-up Business Offering Document* is streamlined and easier to use than Form 45-106F2 and imposes a different disclosure standard. To permit one or the other to be used would be confusing and suggests they are similar or inter-changeable disclosure documents.

The PCMA understands that over the last few years Alberta has been more regularly cease trading issuers for providing inadequate disclosure under the OM Exemption. We believe that the level of disclosure should be less for a start-up and not the same as other issuers who currently use the exemption.

11. In Alberta, we are considering whether ASC Blanket Order 45-515 *Exemption from certain financial statement requirements of Form 45-106F2 Offering Memorandum for Non-Qualifying Issuers* will be necessary if MI 45-109 is adopted. Do you anticipate

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issuers would use Blanket Order 45-515 if MI 45-109 is available?

The PCMA believes that issuers would not use Blanket Order 45-515 if the Proposed Start-Up Business Exemption became available since it is more tailored for start-ups than the proposed OM Exemption. Moreover, the PCMA understands that Blanket Order 45-515 has been infrequently used since the other requirements under the OM Exemption are too onerous for issuers who are seeking the type of relief from the financial statement requirements set out in Blanket Order 45-515.

* * *

We thank for considering our submissions and we would be pleased to respond to any questions you may have or meet with you to discuss our comments and concerns.

Regards,

"***Brian Koscak***" PCMA Vice Chair	"***Geoffrey Ritchie***" Director & Executive Member	"***Peter-Paul Van Hoeken***" Director