

THE MANITOBA SECURITIES COMMISSION
MSC RULE 2021-3
(Section 149.1, The Securities Act)

NATIONAL INSTRUMENT 45-110
START-UP CROWDFUNDING REGISTRATION AND PROSPECTUS EXEMPTIONS

PART 1 - DEFINITIONS AND INTERPRETATION

Definitions

1.(1) In this Instrument,

“**association**” means any of the following:

- (a) a cooperative, as defined in subsection 2(1) of the *Canada Cooperatives Act* (Canada);
- (b) a person or company referred to in Appendix A;

“**crowdfunding distribution**” means a distribution under section 5;

“**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 paragraph (a) or (b);
- (d) a non-convertible debt security linked to a fixed or floating interest rate;
- (e) a unit of a limited partnership;
- (f) a share in the capital of an association;

“**exempt market dealer**” means a person or company registered in the category of exempt market dealer;

“**founder**” means a person or company that,

- (a) in the case of an issuer or a funding portal, acting alone or in conjunction or in concert with one or more persons or companies, directly or indirectly, takes the initiative in founding, organizing or substantially reorganizing the business of the issuer or funding portal, and
- (b) in the case of an issuer, at the time of the distribution or trade, is actively involved in the business of the issuer;

“**funding portal**” means a person or company that facilitates or proposes to facilitate a crowdfunding distribution through a web-based or application-based platform;

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

“**issuer group**” means, in respect of an issuer, the following:

- (a) the issuer;

(b) an affiliate of the issuer;

(c) any other issuer if either of the following applies:

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

(ii) the other issuer's business is founded or organized by a person or company that founded or organized the issuer;

“minimum offering amount”, in respect of a crowdfunding distribution, means the minimum amount disclosed in the issuer's completed Form 45-110F1 *Offering Document*;

“principal”, except under paragraph 5(1)(b), means a founder, director, officer or control person of a funding portal or an issuer;

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

1.(2) For the purposes of this Instrument, an issuer is affiliated with another issuer if

(a) one of them is the subsidiary of the other, or

(b) each of them is controlled by the same person or company.

1.(3) For the purposes of this Instrument, a person (first person) is considered to control another person (second person) if

(a) the first person beneficially owns or directly or indirectly exercises control or direction over securities of the second person carrying votes that, if exercised, would entitle the first person to elect a majority of the directors of the second person, unless that first person holds the voting securities only to secure an obligation,

(b) the second person is a partnership, other than a limited partnership, and the first person holds more than 50% of the interests of the partnership, or

(c) the second person is a limited partnership and the general partner of the limited partnership is the first person.

Special application – Alberta, British Columbia, Ontario, Québec and Saskatchewan

2.(1) In Alberta, an offering document that is provided under section 5 is designated to be an offering memorandum under securities legislation.

2.(2) In British Columbia, an offering document that is provided under paragraph 5(1)(h) is a prescribed disclosure document for purposes of section 132.1 of the *Securities Act* (British Columbia).

2.(3) In Ontario, an issuer that distributes securities under section 5 is prescribed as a market participant under the *Securities Act* (Ontario).

2.(4) In Saskatchewan, an offering document that is provided under section 5 is an offering memorandum under securities legislation.

2.(5) In Québec,

- (a) an offering document that is provided under section 5 and a Form 45-110F2 Risk Acknowledgement made available to purchasers in accordance with this Instrument must be drawn up in French only or in French and English,
- (b) a funding portal that has relied on the exemption under section 3 is a market participant determined by regulation for the purpose of section 151.1.1 of the *Securities Act* (Québec),
- (c) an offering document that is provided under section 5 and materials that are made available to purchasers in accordance with this Instrument are documents authorized by the Autorité des marchés financiers for use in lieu of a prospectus, and
- (d) “trade”, in this Instrument, means any of the following activities:
 - (i) the activities described in the definition of “dealer” in section 5 of the *Securities Act* (Québec), including the following activities:
 - (A) the sale or disposition of a security by onerous title, whether the terms of payment be on margin, instalment or otherwise, but does not include a transfer or the giving in guarantee of securities in connection with a debt or the purchase of a security, except as provided under subparagraph (ii);
 - (B) participation as a trader in any transaction in a security through the facilities of an exchange or a quotation and trade reporting system;
 - (C) the receipt by a registrant of an order to buy or sell a security;
 - (ii) a transfer or the giving in guarantee of securities of an issuer from the holdings of a control person in connection with a debt.

PART 2 - EXEMPTION FROM THE DEALER REGISTRATION REQUIREMENT

Exemption from dealer registration requirement

3.(1) A funding portal is exempt from the dealer registration requirement if all of the following apply:

- (a) the funding portal is not registered under securities legislation in any jurisdiction of Canada;
- (b) the funding portal does not advise a purchaser about the merits of an investment or recommend or represent that an eligible security is a suitable investment for the purchaser;
- (c) the funding portal does not receive a commission, fee or other similar payment from a purchaser;
- (d) the funding portal facilitates or proposes to facilitate crowdfunding distributions only;
- (e) at least 30 days before the first date the funding portal facilitates a crowdfunding distribution, the funding portal delivered to the securities regulatory authority or regulator both of the following:
 - (i) a completed Form 45-110F3 *Funding Portal Information* for the funding portal certified by an authorized individual of the funding portal;
 - (ii) a completed Form 45-110F4 *Portal Individual Information* for each principal of the funding portal that contains a certification signed by that principal;

- (f) the funding portal has its head office in Canada;
- (g) the funding portal has policies and procedures to prevent a person or company from accessing its platform unless the person or company acknowledges that the person or company is accessing a platform of a funding portal that
 - (i) is not registered under securities legislation in any jurisdiction of Canada, and
 - (ii) will not, and is not authorized to, provide advice about
 - (A) the suitability of any security for investment by the person or company, or
 - (B) the merits of any investment;
- (h) the following are disclosed on the funding portal's platform:
 - (i) a statement that the funding portal is not registered under securities legislation in any jurisdiction of Canada and is relying on the exemption from the dealer registration requirement under this Instrument;
 - (ii) a statement that the funding portal will hold each purchaser's assets
 - (A) separate and apart from the funding portal's own assets,
 - (B) in trust for the purchaser, and
 - (C) in the case of cash, in a designated trust account at a Canadian financial institution;
 - (iii) the policies and procedures that the funding portal will follow for notifying each purchaser if the funding portal becomes insolvent or discontinues operations, and how the funding portal will return a purchaser's assets;
- (i) the funding portal holds each purchaser's assets
 - (i) separate and apart from the funding portal's own assets,
 - (ii) in trust for the purchaser, and
 - (iii) in the case of cash, in a designated trust account at a Canadian financial institution;
- (j) the funding portal has policies and procedures for handling assets, in relation to a crowdfunding distribution, sufficient to provide reasonable assurance that the funding portal will comply with the conditions under paragraph (i);
- (k) the funding portal does not close a crowdfunding distribution on its platform unless the funding portal receives, through the funding portal's platform, payment for the distribution of each eligible security from the purchaser of that security;
- (l) the funding portal has policies and procedures to ensure that, after an issuer provides the funding portal with its completed Form 45-110F1 *Offering Document* and a Form 45-110F2 *Risk Acknowledgement*, these documents are made available to each purchaser through the funding portal's platform;

(m) the funding portal has policies and procedures to prevent a purchaser from subscribing to a crowdfunding distribution unless the purchaser first completes Form 45-110F2 *Risk Acknowledgement* and confirms that the purchaser has read and understands the issuer's completed Form 45-110F1 *Offering Document*;

(n) the funding portal has policies and procedures for, upon receiving notice from an issuer that the issuer has amended its completed Form 45-110F1 *Offering Document*, promptly

(i) posting the amendment on the funding portal's platform, and

(ii) notifying each purchaser of the amendment, and of the purchaser's right to withdraw from the agreement to purchase the security by delivering a notice to the funding portal under paragraph 5(1)(j);

(o) the funding portal has policies and procedures to return all assets to a purchaser within 5 business days of receiving a withdrawal notification under paragraph 5(1)(j) from the purchaser;

(p) if an issuer has not raised the minimum offering amount by the 90th day after the issuer's completed Form 45-110F1 *Offering Document* is first made available to a prospective purchaser on the funding portal's platform, or if an issuer notifies the funding portal that it is withdrawing its crowdfunding distribution, no later than 5 business days after the 90th day or the notice, as applicable, the funding portal

(i) notifies the issuer, and each purchaser of that issuer's crowdfunding distribution, that assets have been returned or are in the process of being returned, and

(ii) takes reasonable steps to return, or cause to be returned, all assets to each purchaser of that issuer's crowdfunding distribution;

(q) if both periods referred to in paragraph 5(1)(j) have elapsed, the funding portal

(i) releases, or causes to be released, all assets due to the issuer at the closing of the distribution, and

(ii) no later than 15 days after the closing of the distribution,

(A) notifies each purchaser that the assets have been released to the issuer, and

(B) provides the issuer with the documents referred to in paragraph 5(2)(b);

(r) neither the funding portal, nor any of its principals, is or has been the subject of an order, judgment, decree, sanction, or administrative penalty imposed by, or has entered into a settlement agreement with, a government agency, administrative agency, self-regulatory organization or court in the last 10 years related to a claim based in whole or in part on fraud, theft, deceit, misrepresentation, conspiracy, breach of trust, breach of fiduciary duty, insider trading, unregistered trading, illegal distributions, failure to disclose material facts or changes, or allegations of similar conduct;

(s) neither the funding portal nor any of its principals is or has been a principal of an entity that is or has been subject to an order, judgment, decree, sanction or administrative penalty or a settlement agreement referred to in paragraph (r);

(t) the funding portal has policies and procedures to promptly notify the securities regulatory authority or regulator, and any purchasers for which it holds assets, of the process the funding portal will use to return assets to those purchasers in the event that the funding portal becomes insolvent or discontinues operations;

(u) the funding portal is not insolvent.

3.(2) A funding portal relying on subsection (1) must

- (a) maintain, for a period of 8 years from the date a record is created, records at its head office that accurately record its financial affairs and client transactions, and demonstrate the extent of the funding portal's compliance with this Instrument,
- (b) notify the securities regulatory authority or regulator of each change to the information previously submitted in a document referred to in paragraph (1)(e) by delivering an amendment to the document no later than 30 days after the change,
- (c) take reasonable steps to confirm that the majority of the directors of the funding portal ordinarily reside in Canada,
- (d) disclose on its platform, for each principal of the funding portal, the principal's full legal name, municipality and jurisdiction of residence, business mailing and email addresses and business telephone number,
- (e) take reasonable steps to confirm that the head office of an issuer is in Canada before allowing the issuer to post a crowdfunding distribution on the funding portal's platform,
- (f) not allow a person or company to access the funding portal's platform unless the person or company acknowledges that the person or company is accessing a platform of a funding portal that
 - (i) is not registered under securities legislation in any jurisdiction of Canada, and
 - (ii) will not, and is not authorized to, provide advice about
 - (A) the suitability of any security for investment by the person or company, or
 - (B) the merits of any investment,
- (g) not close a crowdfunding distribution on its platform unless the funding portal has made the issuer's completed Form 45-110F1 *Offering Document* and Form 45-110F2 *Risk Acknowledgement* available to each purchaser through the funding portal's platform,
- (h) not close a crowdfunding distribution on its platform unless each purchaser completes Form 45-110F2 *Risk Acknowledgement* acknowledging the risks and confirms that the purchaser has read and understands the issuer's completed Form 45-110F1 *Offering Document*,
- (i) upon receiving notice from an issuer that the issuer has amended its completed Form 45-110F1 *Offering Document*, promptly
 - (i) post the amendment on the funding portal's platform, and
 - (ii) notify each purchaser of the amendment, and the purchaser's right to withdraw from the agreement to purchase the security by delivering a notice to the funding portal under paragraph 5(1)(j),
- (j) return all assets to a purchaser within 5 business days of receiving a withdrawal notification under paragraph 5(1)(j) from the purchaser,
- (k) during the following periods of each year, deliver to the securities regulatory authority or regulator a completed Form 45-110F5 *Semi-Annual Financial Resources Certification*:

(i) between January 1 and January 10, and

(ii) between July 1 and July 10, and

(l) upon becoming insolvent or discontinuing operations, promptly notify the securities regulatory authority or regulator, and any purchasers for which it holds assets, of the process the funding portal will use to return the assets to those purchasers.

PART 3 - REGISTERED FUNDING PORTALS

Requirements for investment dealers or exempt market dealers operating funding portals

4.(1) A funding portal that is an investment dealer or exempt market dealer must not

(a) close a crowdfunding distribution on its platform unless

(i) the funding portal receives, through its platform, payment for the distribution of each eligible security from the purchaser of such security,

(ii) the funding portal has made the issuer's completed Form 45-110F1 *Offering Document* and Form 45-110F2 *Risk Acknowledgement* available to each purchaser through its platform, and

(iii) each purchaser completes the Form 45-110F2 *Risk Acknowledgement* acknowledging the risks and confirms that the purchaser has read and understands the issuer's completed Form 45-110F1 *Offering Document*, and

(b) allow a person or company to access the funding portal's platform unless the person or company has acknowledged that the person or company is accessing a platform that

(i) is operated by an investment dealer or an exempt market dealer, as applicable, and

(ii) will provide advice about the suitability of the eligible security.

4.(2) A funding portal that is an investment dealer or exempt market dealer must

(a) take reasonable steps to confirm that the head office of an issuer is in Canada before allowing the issuer to post a crowdfunding distribution on the funding portal's platform,

(b) upon receiving notice from an issuer that the issuer has amended its completed Form 45-110F1 *Offering Document*, promptly notify each purchaser of that issuer's crowdfunding distribution of

(i) the amendment, and

(ii) the purchaser's right to withdraw from the agreement to purchase the security by delivering a notice to the funding portal under paragraph 5(1)(j),

(c) return all assets to a purchaser within 5 business days of receiving a withdrawal notification under paragraph 5(1)(j) from the purchaser,

(d) upon an issuer not raising the minimum offering amount by the 90th day after the issuer's completed Form 45-110F1 *Offering Document* is first made available to a prospective purchaser on the funding portal's

platform, or an issuer notifying the funding portal that it is withdrawing its crowdfunding distribution, no later than 5 business days after the 90th day or the notice, as applicable,

- (i) notify the issuer, and each purchaser of that issuer's crowdfunding distribution, that assets have been returned or are in the process of being returned, and
 - (ii) take reasonable steps to return, or cause to be returned, all assets to each purchaser of that issuer's crowdfunding distribution, and
- (e) after the later of the periods referred to in paragraph 5(1)(j) has elapsed,
- (i) release, or cause to be released, all assets due to the issuer at the closing of the distribution, and
 - (ii) no later than 15 days after the closing of the distribution,
 - (A) notify each purchaser that the assets have been released to the issuer, and
 - (B) provide the issuer with all information required to comply with the issuer's obligations under paragraph 5(2)(b).

PART 4 - EXEMPTION FROM PROSPECTUS REQUIREMENT FOR ISSUERS

Exemption from prospectus requirement for issuers

5.(1) An issuer is exempt from the prospectus requirement in respect of a crowdfunding distribution if all of the following apply:

- (a) the distribution of and payment for the security is facilitated through a funding portal that is
 - (i) relying on subsection 3(1), or
 - (ii) operated by an exempt market dealer or investment dealer;
- (b) the purchaser purchases the security as principal;
- (c) the issuer is not a reporting issuer in any jurisdiction of Canada or the equivalent in any foreign jurisdiction;
- (d) the issuer is not an investment fund;
- (e) the issuer has its head office in Canada;
- (f) the security distributed is an eligible security of the issuer's own issue;
- (g) the aggregate gross proceeds raised by the issuer group in reliance on this section during the 12-month period before the closing of the crowdfunding distribution do not exceed \$1 500 000;
- (h) the issuer has completed a Form 45-110F1 *Offering Document* and provided it to the funding portal;
- (i) the crowdfunding distribution closes no later than the 90th day after the date the issuer's completed Form 45-110F1 *Offering Document* is first made available to a prospective purchaser on the funding portal's platform;

(j) the subscription agreement provides that the purchaser may withdraw from the agreement to purchase the security,

(i) after entering into the agreement, by delivering a notice of withdrawal to the funding portal not later than midnight on the 2nd business day after the day on which the purchaser enters into the agreement, and

(ii) after an amendment to the issuer's completed Form 45-110F1 *Offering Document*, by delivering a notice of withdrawal not later than midnight on the 2nd business day after the day on which the funding portal notifies the purchaser of the amendment;

(k) the issuer's completed Form 45-110F1 *Offering Document* discloses how the issuer intends to use the assets raised and the minimum offering amount required to close the crowdfunding distribution;

(l) the issuer does not close the crowdfunding distribution until the issuer has raised the minimum offering amount stated in the issuer's completed Form 45-110F1 *Offering Document* either through subscriptions to the crowdfunding distribution or any concurrent distribution under one or more other exemptions from the prospectus requirement, provided that the assets are unconditionally available to the issuer;

(m) no concurrent crowdfunding distribution is made by any member of the issuer group for the same purposes as described in the issuer's completed Form 45-110F1 *Offering Document*;

(n) no commission, fee or similar payment is paid by the issuer to the issuer group, or any principal, employee or agent of a member of the issuer group, with respect to the crowdfunding distribution;

(o) no principal of the issuer group is a principal of the funding portal;

(p) the issuer does not distribute to any one purchaser securities valued at more than,

(i) subject to subparagraph (ii), \$2 500, or

(ii) if the purchaser has obtained advice from a registered dealer that the investment is suitable for the purchaser, \$10 000;

(q) the issuer

(i) has operations other than operations to identify and evaluate assets or a business with a view to completing an investment in, merger with, amalgamation with or a purchase of the securities of an issuer, or the acquisition of a business, and

(ii) does not intend to use the proceeds of the crowdfunding distribution to invest in, merge with, amalgamate with or to purchase securities of an issuer, or to acquire a business, unless the issuer or the business is identified in the issuer's completed Form 45-110F1 *Offering Document*.

5.(2) An issuer relying on subsection (1) must,

(a) if the issuer becomes aware that its completed Form 45-110F1 *Offering Document* is not accurate, or is no longer accurate, promptly

(i) advise the funding portal that the issuer's Form 45-110F1 *Offering Document* is not accurate, or is no longer accurate,

- (ii) amend the Form 45-110F1 *Offering Document* so that it is accurate, and
 - (iii) provide the amended Form 45-110F1 *Offering Document* to the funding portal, and
- (b) within 30 days after the closing of the crowdfunding distribution, deliver to each purchaser
- (i) a written confirmation setting out all of the following:
 - (A) the date of subscription and the closing of the crowdfunding distribution;
 - (B) the quantity and description of the eligible security purchased;
 - (C) the price per eligible security paid by the purchaser;
 - (D) the total commissions, fees and any other similar payments paid by the issuer to the funding portal in respect of the crowdfunding distribution, and
 - (ii) a copy of the issuer's completed Form 45-110F1 *Offering Document*.

Filing of distribution materials

6. An issuer that distributes a security under this Instrument must, no later than the 30th day after the closing of the crowdfunding distribution, file with the securities regulatory authority or regulator both of the following:

- (a) the issuer's completed Form 45-110F1 *Offering Document*;
- (b) a report of exempt distribution in accordance with Form 45-106F1 *Report of Exempt Distribution of National Instrument 45-106 Prospectus Exemptions*.

PART 5 - EXEMPTION

Exemption

7.(1) The securities regulatory authority or regulator may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

7.(2) Despite subsection (1), in Ontario, only the regulator may grant an exemption.

7.(3) Except in Alberta and Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction.

PART 6 - EFFECTIVE DATE

Effective date

8.(1) This Instrument comes into force on September 21, 2021.

8.(2) In Saskatchewan, despite subsection (1), if this Instrument is filed with the Registrar of Regulations after September 21, 2021, this Instrument comes into force on the day on which they are filed with the Registrar of Regulations.

Citation

9. This Instrument may be cited as MSC Rule 2021-3.

**APPENDIX A
TO
NATIONAL INSTRUMENT 45-110 *START-UP CROWDFUNDING REGISTRATION AND
PROSPECTUS EXEMPTIONS***

ASSOCIATIONS

In this Instrument, a person or company is an “association” if the person or company is any of the following:

- a cooperative, as defined in subsection 1(1) of the *Cooperatives Act* (Alberta)
- an association, as defined in subsection 1(1) of the *Cooperative Association Act* (British Columbia)
- a cooperative, as defined in subsection 1(1) of the *Cooperatives Act* (Manitoba)
- a cooperative, as defined in section 1 of the *Cooperatives Act* (New Brunswick)
- a co-operative, as defined in section 2 of the *Co-Operatives Act* (Newfoundland)
- an association, as defined in section 1 of the *Co-Operative Associations Act* (Northwest Territories)

- an association, as defined in section 2 of the *Co-Operative Associations Act* (Nova Scotia)
- an association, as defined in section 1 of the *Co-Operative Associations Act* (Nunavut)
- a co-operative, as defined in section 1 of the *Co-Operative Corporations Act* (Ontario), only if permitted or authorized by that legislation to rely on the exemption from the prospectus requirement in this Instrument
- an association, as defined in section 1 of the *Co-Operative Associations Act* (Prince Edward Island)
- a cooperative, as defined in section 3 of the *Co-Operatives Act* (Québec)
- a co-operative, as defined in clause 2(1)(l) of *The New Generation Co-Operatives Act* (Saskatchewan)
- an association, as defined in section 1 of the *Cooperative Associations Act* (Yukon)