

**THE MANITOBA SECURITIES COMMISSION**  
**MSC Rule No. 2015-33**  
(Section 149.1, *The Securities Act*)

**MULTILATERAL INSTRUMENT 45-108**  
***CROWDFUNDING***

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## PART 1 – DEFINITIONS AND INTERPRETATION

### Definitions

1. In this Instrument

"**accredited investor**" means

(a) except in Ontario, an accredited investor as defined in National Instrument 45-106 *Prospectus Exemptions*, and

(b) in Ontario, an accredited investor as defined in subsection 73.3(1) of the the *Securities Act*, R.S.O. 1990 c. S.5 and in National Instrument 45-106 *Prospectus Exemptions*;

"**aggregate minimum proceeds**" means the amount disclosed in item 5.2 of the crowdfunding offering document that is sufficient to accomplish the business objectives of the issuer;

"**Canadian Financial Statement Review Standards**" means standards for the review of financial statements by a public accountant determined with reference to the Handbook;

"**confirmation of investment limits form**" means a completed Form 45-108F3 *Confirmation of Investment Limits*;

"**crowdfunding offering document**" means a completed Form 45-108F1 *Crowdfunding Offering Document* together with any amendment to that document and any document incorporated by reference therein;

"**crowdfunding prospectus exemption**" means the exemption from the prospectus requirement in section 5 [*Crowdfunding prospectus exemption*];

"**distribution period**" means the period referred to in the crowdfunding offering document during which an eligible crowdfunding issuer offers its securities to purchasers in reliance on the crowdfunding prospectus exemption;

"**eligible crowdfunding issuer**" means an issuer if all of the following apply:

(a) the issuer and, if applicable, its parent are incorporated or organized under the laws of Canada or any jurisdiction of Canada;

(b) the head office of the issuer is located in Canada;

(c) a majority of the directors of the issuer are resident in Canada;

(d) the principal operating subsidiary of the issuer, if any, is incorporated or organized under

(i) the laws of Canada or any jurisdiction of Canada, or

(ii) the laws of the United States of America or any state or territory of the United States of America or the District of Columbia;

(e) the issuer is not an investment fund;

**"eligible securities"** means securities of an eligible crowdfunding issuer having the same price, terms and conditions that are distributed under the crowdfunding prospectus exemption during the distribution period and are any one or more of the following:

- (a) a common share;
- (b) a non-convertible preference share;
- (c) a security convertible into securities 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 flow-through share under the ITA;

**"executive officer"** means an individual who is

- (a) a chair, vice-chair or president,
- (b) a chief executive officer or chief financial officer,
- (c) a vice-president in charge of a principal business unit, division or function including sales, finance or production, or
- (d) performing a policy-making function in respect of the issuer;

**"funding portal"** means

- (a) a registered dealer funding portal, or
- (b) a restricted dealer funding portal;

**"issuer access agreement"** means a written agreement entered into between an eligible crowdfunding issuer and a funding portal in compliance with section 26 [*Issuer access agreement*];

**"issuer group"** means

- (a) an eligible crowdfunding issuer,
- (b) an affiliate of the eligible crowdfunding issuer, and
- (c) any other issuer
  - (i) that is engaged in a common enterprise with the eligible crowdfunding issuer or with an affiliate of the eligible crowdfunding issuer, or
  - (ii) that is controlled, directly or indirectly, by the same person or company or persons or companies that control, directly or indirectly, the eligible crowdfunding issuer;

**"permitted client"** means a permitted client as defined in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;

**"personal information form"** means a completed Form 45-108F5 *Personal Information Form and Authorization to Collect, Use and Disclose Personal Information*;

**"registered dealer funding portal"** means a person or company that

- (a) is registered in the category of investment dealer or exempt market dealer under National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, and
- (b) acts or proposes to act as an intermediary in a distribution of eligible securities through an online platform in reliance on the crowdfunding prospectus exemption;

**"restricted dealer funding portal"** means a person or company that

- (a) is registered in the category of restricted dealer under National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*,
- (b) is authorized under the terms and conditions of its restricted dealer registration to distribute securities under this Instrument,
- (c) acts or proposes to act as an intermediary in a distribution of eligible securities through an online platform in reliance on the crowdfunding prospectus exemption,
- (d) is not registered in any other registration category, and
- (e) in Ontario, is not an affiliate of another registered dealer, registered adviser, or registered investment fund manager;

**"right of withdrawal"** means the right referred to in section 8 [*Right of withdrawal*] or a comparable right described in securities legislation of the jurisdiction in which the purchaser resides;

**"risk acknowledgement form"** means a completed Form 45-108F2 *Risk Acknowledgement*;

**"SEC issuer"** means an SEC issuer as defined in National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*;

**"U.S. AICPA Financial Statement Review Standards"** means the standards of the American Institute of Certified Public Accountants for a review of financial statements by a public accountant, as amended from time to time.

#### **Terms defined or interpreted in other instruments**

**2.(1)** Unless otherwise defined herein, in Part 2 [*Crowdfunding prospectus exemption*], each term has the meaning ascribed, or interpretation given, to it in National Instrument 45-106 *Prospectus Exemptions*.

**2.(2)** Unless otherwise defined herein, in Part 3 [*Requirements for funding portals*], each term has the meaning ascribed, or interpretation given, to it in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*.

#### **Purchaser**

3. References to a "client" in a provision of any instrument with which a funding portal is required to comply under Part 3 [*Requirements for funding portals*], must be read as if the references are to a "purchaser".

### **Specifications – Québec**

**4.(1)** In Québec, "trade" in this Instrument refers to any of the following activities:

(a) the activities described in the definition of "dealer" in section 5 of the *Securities Act* (chapter V-1.1), including the following activities:

(i) the sale or disposition of a security by onerous title, whether the terms of payment be on margin, installment 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 in paragraph (b);

(ii) participation as a trader in any transaction in a security through the facilities of an exchange or a quotation and trade reporting system;

(iii) the receipt by a registrant of an order to buy or sell a security;

(b) a transfer or the giving in guarantee of securities of an issuer from the holdings of a control person in connection with a debt.

**4.(2)** In Québec, the crowdfunding offering document and materials that are made available to purchasers by a reporting issuer in accordance with this Instrument are documents authorized by the Autorité des marchés financiers for use in lieu of a prospectus.

**4.(3)** In Québec, the crowdfunding offering document and materials that are made available to purchasers in accordance with this Instrument must be drawn up in French only or in French and English.

## **PART 2 – CROWDFUNDING PROSPECTUS EXEMPTION**

### ***Division 1: Distribution requirements***

#### **Crowdfunding prospectus exemption**

**5.(1)** The prospectus requirement does not apply to a distribution by an eligible crowdfunding issuer of an eligible security of its own issue to a person or company that purchases the security as principal if all of the following apply:

(a) the issuer offers the securities during the distribution period and the distribution period ends no later than 90 days after the date the issuer first offers its securities to purchasers;

(b) the total proceeds raised by the issuer group in reliance on the crowdfunding prospectus exemption does not exceed \$1,500,000 within the 12-month period ending on the last day of the distribution period;

(c) in Ontario, the acquisition cost of the securities acquired by the purchaser

(i) in the case of a purchaser that is not an accredited investor, does not exceed

(A) \$2,500 for the distribution, and

(B) \$10,000 for all distributions in reliance on the crowdfunding prospectus exemption in the same calendar year,

- (ii) in the case of a purchaser that is an accredited investor that is not a permitted client, does not exceed
  - (A) \$25,000 for the distribution, and
  - (B) \$50,000 for all distributions in reliance on the crowdfunding prospectus exemption in the same calendar year, and
- (iii) in the case of a purchaser that is a permitted client, is not limited;
- (d) except in Ontario, the acquisition cost of the securities acquired by the purchaser
  - (i) in the case of a purchaser that is not an accredited investor, does not exceed \$2,500 for the distribution, and
  - (ii) in the case of a purchaser that is an accredited investor, does not exceed \$25,000 for the distribution;
- (e) the issuer distributes the securities through a single funding portal;
- (f) before the purchaser enters into an agreement to purchase the securities, the issuer makes available to the purchaser, through the funding portal, a crowdfunding offering document that is in compliance with
  - (i) section 7 [*Certificates*] and section 8 [*Right of withdrawal*], and
  - (ii) section 9 [*Liability for misrepresentation – reporting issuers*] or section 10 [*Liability for untrue statement – non-reporting issuers*], as applicable.

5.(2) The crowdfunding prospectus exemption is not available if any of the following apply:

- (a) the proceeds of the distribution are used by the issuer to invest in, merge with or acquire an unspecified business;
- (b) the issuer is not a reporting issuer, and the issuer previously distributed securities in reliance on the crowdfunding prospectus exemption and is not in compliance with any of the following:
  - (i) section 15 [*Filing or delivery of distribution materials*];
  - (ii) section 16 [*Annual financial statements*];
  - (iii) section 17 [*Annual disclosure of use of proceeds*];
  - (iv) section 19 [*Period of time for providing ongoing disclosure*];
  - (v) section 20 [*Books and records*];
  - (vi) in New Brunswick, Nova Scotia and Ontario, section 18 [*Notice of specified key events*];
- (c) the issuer is a reporting issuer and is not in compliance with its reporting obligations under securities legislation, including under this Instrument;
- (d) the issuer has previously commenced a distribution under this section and that distribution has not closed, been withdrawn or otherwise terminated.

**Conditions for closing of the distribution**

**6.** A distribution in reliance on the crowdfunding prospectus exemption must not close unless

- (a) the right of withdrawal has expired,
- (b) the aggregate minimum proceeds have been raised through one or both of the following:
  - (i) the distribution;
  - (ii) any concurrent distributions by any member of the issuer group, provided that the proceeds from those distributions are unconditionally available to the eligible crowdfunding issuer at the time of closing of the distribution,
- (c) the issuer has provided to the funding portal written confirmation of the proceeds of the concurrent distributions referred to in subparagraph (b)(ii), if any,
- (d) the issuer has received
  - (i) the purchase agreement entered into between the issuer and the purchaser,
  - (ii) a risk acknowledgement form for the purchaser where the purchaser positively confirms having read and understood the risk warnings and the information in the crowdfunding offering document,
  - (iii) except in Ontario, confirmation and validation that the purchaser is an accredited investor if the acquisition cost is greater than \$2,500, and
  - (iv) in Ontario, a confirmation of investment limits form for the purchaser, and
- (e) the closing occurs within 30 days of the end of the distribution period.

**Certificates**

**7.(1)** A crowdfunding offering document made available under paragraph 5(1)(f) [*Crowdfunding prospectus exemption*] must contain a certificate executed by the issuer in accordance with the applicable provisions of Appendix A, which

- (a) if the issuer is a reporting issuer, states that "*This crowdfunding offering document does not contain a misrepresentation. Purchasers of securities have a right of action in the case of a misrepresentation.*", or
- (b) if the issuer is not a reporting issuer, states that "*This crowdfunding offering document does not contain an untrue statement of a material fact. Purchasers of securities have a right of action in the case of an untrue statement of a material fact.*"

**7.(2)** A certificate under subsection (1) must be true as at the date the certificate is signed, the date the crowdfunding offering document is made available to purchasers and the time of the closing of the distribution.

**7.(3)** If a certificate under subsection (1) ceases to be true after a crowdfunding offering document is made available to a purchaser, the issuer must

- (a) amend the crowdfunding offering document and provide a newly dated certificate executed by the issuer in accordance with the applicable provisions of Appendix A, and



(b) provide the amended crowdfunding offering document to the funding portal for the purpose of making it available to purchasers.

**Right of withdrawal**

**8.** If the securities legislation of the jurisdiction in which a purchaser resides does not provide a comparable right, the crowdfunding offering document made available to the purchaser under paragraph 5(1)(f) [*Crowdfunding prospectus exemption*] must provide the purchaser with a contractual right to withdraw from any agreement to purchase the security by delivering a notice to the funding portal within 48 hours after the date of the agreement to purchase and any subsequent amendment to the crowdfunding offering document.

**Liability for misrepresentation – reporting issuers**

**9.** If the securities legislation of the jurisdiction in which a purchaser resides does not provide a comparable right, the crowdfunding offering document of a reporting issuer, made available to the purchaser under paragraph 5(1)(f) [*Crowdfunding prospectus exemption*], must provide a contractual right of action against the issuer for rescission and damages that

(a) is available to the purchaser if the crowdfunding offering document or other materials made available to the purchaser contain a misrepresentation, without regard to whether the purchaser relied on the misrepresentation,

(b) is enforceable by the purchaser delivering a notice to the issuer

(i) in the case of an action for rescission, within 180 days after the date of purchase by the purchaser, or

(ii) in the case of an action for damages, before the earlier of

(A) 180 days after the purchaser first has knowledge of the facts giving rise to the cause of action, or

(B) 3 years after the date of purchase,

(c) is subject to the defence that the purchaser had knowledge of the misrepresentation,

(d) in the case of an action for damages, provides that the amount recoverable

(i) does not exceed the price at which the security was distributed, and

(ii) does not include all or any part of the damages that the issuer proves do not represent the depreciation in value of the security resulting from the misrepresentation, and

(e) is in addition to, and does not detract from, any other right of the purchaser.

**Liability for untrue statement – non-reporting issuers**

**10.** The crowdfunding offering document of an issuer that is not a reporting issuer, made available to a purchaser under paragraph 5(1)(f) [*Crowdfunding prospectus exemption*], must provide a contractual right of action against the issuer for rescission and damages that

(a) is available to the purchaser if the crowdfunding offering document or other materials made available to the purchaser contain an untrue statement of a material fact, without regard to whether the purchaser relied on the statement,

(b) is enforceable by the purchaser delivering a notice to the issuer

(i) in the case of an action for rescission, within 180 days after the date of purchase by the purchaser, or

(ii) in the case of an action for damages, before the earlier of

(A) 180 days after the purchaser first has knowledge of the facts giving rise to the cause of action, or

(B) 3 years after the date of purchase,

(c) is subject to the defence that the purchaser had knowledge of the untrue statement of a material fact,  
(d) in the case of an action for damages, provides that the amount recoverable

(i) does not exceed the price at which the security was distributed, and

(ii) does not include all or any part of the damages that the issuer proves do not represent the depreciation in value of the security resulting from the untrue statement of a material fact, and

(e) is in addition to, and does not detract from, any other right of the purchaser.

### **Advertising and general solicitation**

**11.(1)** An issuer must not, directly or indirectly, advertise a distribution, or solicit purchasers, under the crowdfunding prospectus exemption.

**11.(2)** Despite subsection (1), the issuer may inform purchasers that it proposes to distribute securities under the crowdfunding prospectus exemption and may refer purchasers to the funding portal facilitating the distribution.

### **Additional distribution materials**

**12.(1)** In addition to the crowdfunding offering document required to be made available to a purchaser under paragraph 5(1)(f) [*Crowdfunding prospectus exemption*], an issuer may make available to a purchaser only through the funding portal the following materials:

(a) a term sheet;

(b) a video;

(c) other materials summarizing the information in the crowdfunding offering document.

**12.(2)** The materials referred to in subsection (1) must be consistent with the information in the crowdfunding offering document.

**12.(3)** If an amended crowdfunding offering document is made available to purchasers, all materials made available to purchasers under this section must be amended, if necessary, and made available to purchasers through the funding portal.

### **Commissions or fees**

**13.** No person or company in the issuer group or director or executive officer of an issuer in the issuer group may, directly or indirectly, pay a commission, finder's fee, referral fee or similar payment to any person or company in connection with a distribution in reliance on the crowdfunding prospectus exemption, other than to a funding portal.

### **Restriction on lending**

**14.** No person or company in the issuer group or director or executive officer of an issuer in the issuer group may, directly or indirectly, lend or finance, or arrange lending or financing, for a purchaser to purchase securities of the issuer under the crowdfunding prospectus exemption.

### **Filing or delivery of distribution materials**

**15.(1)** An issuer must, no later than 10 days after the closing of the distribution, file with the securities regulatory authority or regulator Form 45-106F1 *Report of Exempt Distribution*.

**15.(2)** At the same time that the issuer files the form referred to in subsection (1), the issuer must file a copy of the crowdfunding offering document and the materials referred to in paragraphs 12(1)(a) and (c) [*Additional distribution materials*].

**15.(3)** Upon request, the issuer must deliver to the securities regulatory authority or regulator any video referred to in paragraph 12(1)(b) [*Additional distribution materials*].

### **Division 2: Ongoing disclosure requirements for non-reporting issuers**

#### **Annual financial statements**

**16.(1)** An issuer that is not a reporting issuer that has distributed securities under the crowdfunding prospectus exemption must deliver to the securities regulatory authority or regulator and make reasonably available to each purchaser, within 120 days after the end of its most recently completed financial year, the financial statements listed in paragraphs 4.1(1)(a), (b), (c) and (e) [*Comparative annual financial statements and audit*] of National Instrument 51-102 *Continuous Disclosure Obligations*.

**16.(2)** The financial statements referred to in subsection (1) must

(a) be approved by management of the issuer and be accompanied by

(i) a review report or auditor's report if the amount raised by the issuer under one or more prospectus exemptions from the date of the formation of the issuer until the end of its most recently completed financial year, is \$250,000 or more but is less than \$750,000, or

(ii) an auditor's report if the amount raised by the issuer under one or more prospectus exemptions from the date of the formation of the issuer until the end of its most recently completed financial year, is \$750,000 or more,

(b) comply with paragraph 3.2(1)(a) [*Acceptable accounting principles – general requirements*], subparagraph 3.2(1)(b)(i) [*Acceptable accounting principles – general requirements*], and subsection 3.2(5) [*Acceptable accounting principles – general requirements*] of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*, and

(c) comply with section 3.5 [*Presentation and functional currencies*] of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*.

**16.(3)** If the financial statements referred to in subsection (1) are accompanied by a review report, the financial statements must be reviewed in accordance with Canadian Financial Statement Review Standards and the review report must

(a) not include a reservation or modification,

(b) identify the financial periods that were subject to review,

(c) be in the form specified by Canadian Financial Statement Review Standards, and

(d) refer to IFRS as the applicable financial reporting framework.

**16.(4)** If the financial statements referred to in subsection (1) are accompanied by an auditor's report, the auditor's report must be

(a) prepared in accordance with section 3.3 [*Acceptable auditing standards – general requirements*] of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*, and

(b) signed by an auditor that complies with section 3.4 [*Acceptable auditors*] of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*.

**16.(5)** If the financial statements referred to in subsection (1) are those of an SEC issuer,

(a) the financial statements may be prepared in accordance with section 3.7 [*Acceptable accounting principles for SEC issuers*] of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*,

(b) the financial statements may be reviewed in accordance with U.S. AICPA Financial Statement Review Standards and accompanied by a review report prepared in accordance with U.S. AICPA Financial Statement Review Standards that

(i) does not include a modification or exception,

(ii) identifies the financial periods that were subject to review,

(iii) identifies the review standards used to conduct the review and the accounting principles used to prepare the financial statements, and

(iv) refers to IFRS as the applicable financial reporting framework if the financial statements comply with paragraph 3.2(1)(a) [*Acceptable accounting principles – general requirements*] of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*, and

(c) the financial statements may be audited in accordance with section 3.8 [*Acceptable auditing standards for SEC issuers*] of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*.

**16.(6)** If the financial statements referred to in subsection (5) are accompanied by a review report and the statements have been reviewed in accordance with Canadian Financial Statement Review Standards, the review report must be in compliance with paragraphs (3)(a) to (c) and must

(a) refer to IFRS as the applicable financial reporting framework if the financial statements comply with paragraph 3.2(1)(a) [*Acceptable accounting principles – general requirements*] of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*, or

(b) refer to U.S. GAAP as the applicable financial reporting framework if the financial statements comply with section 3.7 [*Acceptable accounting principles for SEC issuers*] of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*.

**16.(7)** For the purpose of subsection (3) and paragraph (5)(b), the review report must be prepared and signed by a person or company authorized to sign a review report under the laws of a jurisdiction of Canada or a foreign jurisdiction, and that meets the professional standards of that jurisdiction.

**16.(8)** If any of the financial statements referred to in subsection (1) are not accompanied by an auditor's report or a review report prepared by a public accountant, the statements must include the following statement; "*These financial statements were not audited or subject to a review by a public accountant, as*

*permitted by securities legislation where an issuer has not raised more than a pre-defined amount under prospectus exemptions."*

**Annual disclosure of use of proceeds**

**17.(1)** The financial statements of an issuer referred to in section 16 [*Annual financial statements*] and the financial statements required under section 4.1 [*Comparative annual financial statements and audit*] of National Instrument 51-102 *Continuous Disclosure Obligations* must be accompanied by a notice that details, as at the date of the issuer's most recently completed financial year, the use of the gross proceeds received by the issuer from a distribution made under the crowdfunding prospectus exemption.

**17.(2)** An issuer is not required to provide the notice referred to in subsection (1) if

(a) the issuer has disclosed in one or more prior notices the use of the entire gross proceeds from the distribution, or

(b) the issuer is no longer required to deliver, and make available to purchasers, annual financial statements.

**Notice of specified key events**

**18.** In New Brunswick, Nova Scotia and Ontario, an issuer that is not a reporting issuer that distributes securities in reliance on the crowdfunding prospectus exemption must make reasonably available to each holder of a security acquired under the crowdfunding prospectus exemption, a notice in Form 45-108F4 *Notice of Specified Key Events* of each of the following events within 10 days of their occurrence:

(a) a discontinuation of the issuer's business;

(b) a change in the issuer's industry;

(c) a change of control of the issuer.

**Period of time for providing ongoing disclosure**

**19.** The obligations of an issuer that is not a reporting issuer under section 16 [*Annual financial statements*] and, in New Brunswick, Nova Scotia and Ontario, under section 18 [*Notice of specified key events*] apply until the earliest of the following events:

(a) the issuer becomes a reporting issuer;

(b) the issuer has completed a winding up or dissolution;

(c) the securities of the issuer are beneficially owned, directly or indirectly, by fewer than 51 security holders worldwide.

**Books and records**

**20.** An issuer that is not a reporting issuer that distributes securities under the crowdfunding prospectus exemption must maintain the following books and records relating to the distribution for 8 years following the closing of the distribution:

(a) the crowdfunding offering document and the materials referred to in subsection 12(1) [*Additional distribution materials*];

(b) the risk acknowledgement forms;

- (c) except in Ontario, confirmation and validation that the purchaser is an accredited investor if the acquisition cost is greater than \$2,500;
- (d) in Ontario, the confirmation of investment limits forms;
- (e) the ongoing disclosure documents described in Division 2 [*Ongoing disclosure requirements for non-reporting issuers*];
- (f) the aggregate number of securities issued under the crowdfunding prospectus exemption, and the date of issuance and the price for each security;
- (g) the names of all security holders of the issuer and the number and the type of securities held by each security holder;
- (h) such other books and records as are necessary to record the business activities of the issuer and to comply with this Instrument.

### PART 3 – REQUIREMENTS FOR FUNDING PORTALS

#### ***Division 1: Registration requirements, general***

##### **Restricted dealer funding portal**

**21.** A restricted dealer funding portal and a registered individual of the restricted dealer funding portal that distributes securities in reliance on the crowdfunding prospectus exemption must comply with all of the following:

- (a) the requirements in this section and in Division 2 [*Registration requirements, funding portals*] and Division 3 [*Additional requirements, restricted dealer funding portal*] of this Part;
- (b) the terms, conditions, restrictions and requirements applicable to a registered dealer and to a registered individual, respectively, including
  - (i) National Instrument 31-102 *National Registration Database*,
  - (ii) National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, except for the following:
    - (A) Division 2 of Part 3 [*Education and experience requirements*], except for subsection 3.4(2) [*Proficiency – initial and ongoing*] and section 3.9 [*Exempt market dealer - dealing representative*];
    - (B) section 6.2 [*If IIROC approval is revoked or suspended*];
    - (C) section 6.3 [*If MFDA approval is revoked or suspended*];
    - (D) Part 8 [*Exemptions from the requirement to register*];
    - (E) Part 9 [*Membership in a self-regulatory organization*];
    - (F) paragraphs 11.5(2)(i), and (j) [*General requirements for records*];
    - (G) paragraphs 13.2(2)(c) and (d) and subsection 13.2(6) [*Know your client*];

(H) section 13.3 [*Suitability*];

(I) Division 3 of Part 13 [*Referral arrangements*], if the restricted dealer funding portal does not enter into a referral arrangement permitted under subsection 40(2) [*Restriction on referral arrangements*] of this Instrument;

(J) section 13.13 [*Disclosure when recommending the use of borrowed money*];

(K) section 13.16 [*Dispute resolution service*];

(L) paragraphs 14.2(2)(i), (j), (k), (m), and (n) [*Relationship disclosure information*];

(M) Division 5 of Part 14 [*Reporting to clients*], except for section 14.12 [*Content and delivery of trade confirmation*],

(iii) National Instrument 33-105 *Underwriting Conflicts*,

(iv) National Instrument 33-109 *Registration Information*, and

(v) the requirement to pay fees under securities legislation;

(c) the requirement to deal fairly, honestly and in good faith with purchasers;

(d) any other terms, conditions, restrictions or requirements imposed by a securities regulatory authority or regulator on the restricted dealer funding portal or on a registered individual of the restricted dealer funding portal.

Note: In Ontario, a number of requirements in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* do not apply because similar requirements are contained in provisions of the *Securities Act* (Ontario). To the extent that (a) one or more requirements of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* made applicable under section 21 [*Restricted dealer funding portal*] do not apply in Ontario, and (b) there is a similar requirement in the *Securities Act* (Ontario) that is referenced in a note in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, a restricted dealer funding portal or a registered individual of the restricted dealer funding portal operating in Ontario is subject to the similar requirement referenced in the *Securities Act* (Ontario).

### **Registered dealer funding portal**

**22.** A registered dealer funding portal and a registered individual of the registered dealer funding portal that distributes securities in reliance on the crowdfunding prospectus exemption must comply with all of the following:

(a) the requirements in this section and Division 2 [*Registration requirements, funding portals*] of this Part;

(b) the terms, conditions, restrictions or requirements applicable to its registration category and to a registered individual, respectively, under securities legislation.

Note: In Ontario, a number of requirements in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* do not apply because similar requirements are contained in provisions of the *Securities Act* (Ontario). To the extent that (a) one or more requirements of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* made applicable under section 22 [*Registered dealer funding portal*] do not apply in Ontario, and (b) there is a similar requirement in the *Securities Act* (Ontario) that is referenced in a note in National Instrument 31-103

*Registration Requirements, Exemptions and Ongoing Registrant Obligations*, a registered dealer funding portal or a registered individual of the registered dealer funding portal operating in Ontario is subject to the similar requirement referenced in the *Securities Act* (Ontario).

### ***Division 2 Registration requirements, funding portals***

#### **Restricted dealing activities**

**23(1)** A funding portal and a registered individual of the funding portal must not act as intermediaries in connection with a distribution of or trade in securities of an eligible crowdfunding issuer that is a related issuer of the funding portal.

**23(2)** For the purposes of subsection (1), an issuer is not a related issuer where a funding portal, an affiliate of the funding portal, or any officer, director, significant shareholder, promoter or control person of the funding portal or of any affiliate of the funding portal, has beneficial ownership of, or control or direction over, issued and outstanding voting securities of the issuer, or securities convertible into voting securities of the issuer that alone or together constitute 10 percent or less of the outstanding voting securities of the issuer.

#### **Advertising and general solicitation**

**24.(1)** A funding portal must not, directly or indirectly, advertise a distribution or solicit purchasers under the crowdfunding prospectus exemption.

**24.(2)** A funding portal may only make available to purchasers the crowdfunding offering document and the materials under section 12 [*Additional distribution materials*].

**24.(3)** A funding portal must ensure that the information about an eligible crowdfunding issuer and a distribution of eligible securities of the issuer is presented or displayed on its online platform in a fair, balanced and reasonable manner.

#### **Access to funding portal**

**25.(1)** Prior to allowing an eligible crowdfunding issuer to access the funding portal for the purposes of posting a distribution, a funding portal must

- (a) enter into an issuer access agreement with the issuer,
- (b) obtain a personal information form from each director, executive officer and promoter of the issuer, and
- (c) conduct or arrange for the following:
  - (i) backgrounds checks on the issuer;
  - (ii) criminal record and background checks on each individual referred to in paragraph (b).

**25.(2)** In respect of each individual who becomes a director, executive officer or promoter of the issuer during the distribution period, the funding portal must

- (a) obtain a personal information form, and
- (b) conduct or arrange for criminal record and background checks to be conducted.

#### **Issuer access agreement**

**26.** The issuer access agreement referred to in paragraph 25(1)(a) [*Access to funding portal*] must include all of the following:



(a) confirmation that the issuer will comply with the funding portal's policies and procedures concerning information posted by issuers on the funding portal's online platform;

(b) confirmation that the information that the issuer provides to the funding portal or posts on the funding portal's online platform will only contain permitted materials that are reasonably supported, and will not contain a promotional statement, a misrepresentation or an untrue statement of a material fact or otherwise be misleading;

(c) confirmation from each of the issuer and the funding portal that each is responsible for compliance with applicable securities legislation, including compliance with this Instrument;

(d) a requirement that the funding portal must terminate any distribution and report immediately to the securities regulatory authority or regulator if, at any time during the distribution period, it appears to the funding portal that the business of the issuer is not being, or may not be, conducted with integrity;

in Ontario, confirmation that the funding portal is the agent of the issuer for the purposes of a distribution under the crowdfunding prospectus exemption.

#### **Obligation to review materials of eligible crowdfunding issuer**

**27.(1)** A funding portal is required to review the crowdfunding offering document, the materials referred to in subsection 12(1) [*Additional distribution materials*], the personal information forms, the results of the criminal record and background checks, and any other information about an issuer or a distribution made available to the funding portal or of which the funding portal is aware.

**27.(2)** If it appears to the funding portal that, based upon its review of the information and materials in subsection (1), the disclosure in the crowdfunding offering document and other materials referred to in subsection 12(1) [*Additional distribution materials*] is incorrect, incomplete or misleading, the funding portal must require that the issuer correct, complete or clarify the incorrect, incomplete or misleading disclosure prior to its posting on the funding portal's online platform.

#### **Denial of issuer access and termination**

**28.(1)** The funding portal must not allow an issuer access to its online platform for the purposes of a distribution under the crowdfunding prospectus exemption if

(a) after reviewing the information about the issuer or the distribution made available to the funding portal or of which the funding portal is aware, the funding portal makes a good faith determination that

(i) the business of the issuer may not be conducted with integrity because of the past conduct of

(A) the issuer, or

(B) any of the issuer's directors, executive officers, or promoters,

(ii) the issuer is not complying with one or more of its obligations under this Instrument, or

(iii) the crowdfunding offering document or the materials referred to in subsection 12(1) [*Additional distribution materials*] contain a statement or information that constitutes a misrepresentation or an untrue statement of a material fact and the issuer has not corrected the statement or information as requested by the funding portal under section 27 [*Obligation to review materials of eligible crowdfunding issuer*], or

(b) the issuer or any of its directors, executive officers or promoters has pled guilty to or has been found guilty of an offence related to or has entered into a settlement agreement in a matter that involved fraud, or securities violations.

**28.(2)** A funding portal must terminate a distribution if, at any time during the distribution period, it appears to the funding portal that the business of the issuer is not being, or may not be, conducted with integrity.

**Return of funds**

29. A funding portal must promptly return to the purchaser all funds or assets received from a purchaser in connection with a distribution under the crowdfunding prospectus exemption if any of the following apply:

- (a) the purchaser exercises its right of withdrawal;
- (b) the requirements set out in section 6 [*Conditions for closing of the distribution*] are not met;
- (c) the issuer withdraws the distribution;
- (d) the distribution is otherwise terminated.

**Notifications**

30. If an amended crowdfunding offering document has been made available to purchasers under paragraph 7(3)(b) [*Certificates*], the funding portal must notify each purchaser that entered into an agreement to purchase securities prior to the amended crowdfunding offering document being made available that an amended crowdfunding offering document and, if applicable, other materials referred to in subsection 12(1) [*Additional distribution materials*] have been made available on the funding portal's online platform.

**Removal of distribution materials**

31. A funding portal must remove a crowdfunding offering document and the materials referred to in subsection 12(1) [*Additional distribution materials*] on the earliest of the following:

- (a) the end of the distribution period;
- (b) the withdrawal of the distribution;
- (c) the date on which the funding portal becomes aware that the crowdfunding offering document or the materials may contain a statement or information that is false, deceptive, misleading or that may constitute a misrepresentation or untrue statement of a material fact.

**Monitoring purchaser communications**

32. If a funding portal establishes an online communication channel through which purchasers may communicate with one another and with the eligible crowdfunding issuer about a distribution, the funding portal must monitor postings and remove any statement by, or information from, the issuer that is inconsistent with the crowdfunding offering document or is not in compliance with this Instrument.

**Online platform acknowledgement**

33. Prior to allowing a person or company entry to its online platform, a funding portal must require the person or company to acknowledge all of the following:

- (a) that a distribution posted on the funding portal's online platform
  - (i) has not been reviewed or approved in any way by a securities regulatory authority or regulator, and

- (ii) is risky and may result in the loss of all or most of an investment;
- (b) that the person or company may receive limited ongoing information about an issuer or an investment made through the funding portal;
- (c) that the person or company is entering an online platform operated by a funding portal that
  - (i) is registered in the category of restricted dealer subject to the terms and conditions of this Instrument, and will not provide advice about the suitability of the purchase of the security, or
  - (ii) is registered in the category of investment dealer or exempt market dealer, and is required to provide advice about the suitability of the purchase of the security.

**Purchaser requirements prior to purchase**

**34.** Prior to a purchaser entering into an agreement to purchase securities under the crowdfunding prospectus exemption, a funding portal must

- (a) obtain from the purchaser a risk acknowledgement form where the purchaser positively confirms having read and understood the risk warnings and the information in the crowdfunding offering document,
- (b) except in Ontario, confirm and validate that the purchaser is an accredited investor if the acquisition cost is greater than \$2,500, and
- (c) in Ontario, obtain from the purchaser, and validate, a confirmation of investment limits form.

**Required online platform disclosure**

**35.** A funding portal must include on its online platform prominent disclosure of all compensation, including fees, costs and other expenses that the funding portal may charge to, or impose on, an eligible crowdfunding issuer or a purchaser, and any such other disclosure that may be required under securities legislation.

**Delivery to the issuer**

**36.** On or before the closing of a distribution, the funding portal must deliver to the issuer the following:

- (a) the purchase agreement entered into between the issuer and the purchaser;
- (b) a risk acknowledgement form from the purchaser where the purchaser positively confirms having read and understood the risk warnings and the information in the crowdfunding offering document;
- (c) except in Ontario, confirmation and validation that the purchaser is an accredited investor, if the acquisition cost is greater than \$2,500;
- (d) in Ontario, a confirmation of investment limits form for the purchaser.

**Release of funds**

**37.** A funding portal must not release the funds raised under the distribution to the eligible crowdfunding issuer unless the requirements set out in section 6 [*Conditions for closing of the distribution*] have been met.

### **Reporting requirements**

**38.(1)** A funding portal must immediately notify the securities regulatory authority or regulator in writing if, at any time during the distribution period, the funding portal terminates a distribution pursuant to subsection 28(2) [*Denial of issuer access and termination*].

**38.(2)** A funding portal must deliver to the securities regulatory authority or regulator, in a format acceptable to the securities regulatory authority or regulator, within 30 days of the end of the second and fourth quarters of its financial year, a report containing the following information for the immediately preceding two quarters:

- (a) each distribution through the funding portal, including the name of the issuer, the type of security, the amount of the distribution, the industry of the issuer and the number of purchasers participating in the distribution;
- (b) the name and industry of each issuer denied access to the funding portal and the reason for the denial;
- (c) the name and industry of each issuer
  - (i) that was granted access to the funding portal but the distribution did not close and the reason the distribution did not close, or
  - (ii) that was granted access to the funding portal but was subsequently removed from the funding portal and the reason for removal;
- (d) such other information as a securities regulatory authority or regulator may reasonably request.

### ***Division 3 Additional requirements, restricted dealer funding portal***

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

**39.** A restricted dealer funding portal and a registered individual of the restricted dealer funding portal must not, directly or indirectly, provide a recommendation or advice to a purchaser

- (a) to purchase securities under the crowdfunding prospectus exemption or in connection with any other trade in a security, or
- (b) to use borrowed money to finance any part of a purchase of securities under the crowdfunding prospectus exemption or in connection with any other trade in a security.

#### **Restriction on referral arrangements**

**40.(1)** A restricted dealer funding portal must not participate in a referral arrangement.

**40.(2)** Despite subsection (1), a funding portal may compensate a third party for referring an issuer to the funding portal.

#### **Permitted dealing activities**

**41.** A restricted dealer funding portal and a registered individual of the restricted dealer funding portal may only act as intermediaries in connection with

- (a) a distribution of securities made in reliance on the crowdfunding prospectus exemption, and
- (b) except in Ontario, a distribution of securities made in reliance on a start-up crowdfunding registration and prospectus exemptive relief order granted by a securities regulatory authority or regulator, provided that the restricted dealer funding portal and a registered individual of the restricted dealer funding portal are in compliance with the terms, conditions, restrictions and requirements in this Instrument.

**Chief compliance officer**

**42.** A restricted dealer funding portal must not designate an individual as its chief compliance officer under section 11.3 [*Designating a chief compliance officer*] of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* unless the individual has

- (a) passed the Exempt Market Products Exam or the Canadian Securities Course Exam,
- (b) passed the PDO Exam or the Chief Compliance Officers Qualifying Exam, and
- (c) gained 12 months of experience and training that a reasonable person would consider necessary to perform the functions of a chief compliance officer for a restricted dealer funding portal.

**Proficiency**

**43.(1)** A restricted dealer funding portal must not permit an individual to perform an activity in connection with a distribution under the crowdfunding prospectus exemption unless the individual has the education, training and experience, which may include appropriate registration, that a reasonable person would consider necessary to perform the activity competently, including understanding the structure, features and risks of the distribution.

**43.(2)** For the purposes of subsection (1), the obligation to understand the structure, features and risks of the distribution does not include any obligation to assess

- (a) the merits or expected returns of the investment to purchasers, or
- (b) the commercial viability of the proposed business or distribution.

PART 4 – EXEMPTION

**Exemption**

**44.(1)** Subject to subsection (2), 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.

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

**44.(3)** Except in 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 5 – COMING INTO FORCE

**Effective date**

**45.** This Instrument comes into force on January 25, 2016.

**Citation**

**46.** This Instrument may be cited as MSC Rule 2015-33.

## Appendix A

### Signing Requirements for Certificate of a Crowdfunding Offering Document (Section 7)

1. If the eligible crowdfunding issuer is a company, a certificate under paragraph 7(1)(b) [*Certificates*] of the Instrument complies with this section if it is signed
  - (a) by the issuer's chief executive officer and chief financial officer or, if the issuer does not have a chief executive officer or chief financial officer, an individual acting in that capacity,
  - (b) on behalf of the directors of the issuer, by
    - (i) any 2 directors who are authorized to sign, other than the persons referred to in paragraph (a), or
    - (ii) all the directors of the issuer, and
  - (c) by each promoter of the issuer.
2. If the eligible crowdfunding issuer is a trust, a certificate under paragraph 7(1)(b) [*Certificates*] of the Instrument complies with this section if it is signed by
  - (a) the individuals who perform functions for the issuer similar to those performed by the chief executive officer and the chief financial officer of a company, and
  - (b) each trustee and the manager of the issuer.
3. A certificate under paragraph 7(1)(b) [*Certificates*] of the Instrument complies with this section
  - (a) if a trustee or manager signing the certificate is an individual, the individual signs the certificate,
  - (b) if a trustee or manager signing the certificate is a company, the certificate is signed
    - (i) by the chief executive officer and the chief financial officer of the trustee or the manager, and
    - (ii) on behalf of the board of directors of the trustee or the manager, by
      - (A) any two directors of the trustee or the manager, other than the persons referred to in subparagraph (i), or
      - (B) all of the directors of the trustee or the manager,
  - (c) if a trustee or manager signing the certificate is a limited partnership, the certificate is signed by each general partner of the limited partnership as described in section 5 in relation to an eligible crowdfunding issuer that is a limited partnership, or
  - (d) in any other case, the certificate is signed by any person with authority to act on behalf of the trustee or the manager.
4. Despite sections 2 and 3, if the trustees of an eligible crowdfunding issuer, do not perform functions for the issuer similar to those performed by the directors of a company, the trustees are not required to

sign the certificate of the issuer if at least two individuals who perform functions for the issuer similar to those performed by the directors of a company sign the certificate.

5. If the eligible crowdfunding issuer is a limited partnership, a certificate under paragraph 7(1)(b) [*Certificates*] of the Instrument complies with this section if it is signed by
  - (a) each individual who performs a function for the issuer similar to any of those performed by the chief executive officer or the chief financial officer of a company, and
  - (b) each general partner of the issuer.
  
6. A certificate under paragraph 7(1)(b) [*Certificates*] of the Instrument complies with this section
  - (a) if a general partner of the eligible crowdfunding issuer is an individual, the individual signs the certificate,
  - (b) if a general partner of the eligible crowdfunding issuer is a company, the certificate is signed
    - (i) by the chief executive officer and the chief financial officer of the general partner, and
    - (ii) on behalf of the board of directors of the general partner, by
      - (A) any two directors of the general partner, other than the persons referred to in subparagraph (i), or
      - (B) all of the directors of the general partner,
  - (c) if a general partner of the eligible crowdfunding issuer is a limited partnership, the certificate is signed by each general partner of the limited partnership and, for greater certainty, this section applies to each general partner required to sign,
  - (d) if a general partner of the eligible crowdfunding issuer is a trust, the certificate is signed by the trustees of the general partner as described in section 2 in relation to an issuer that is a trust, or
  - (e) in any other case where there is a general partner of the eligible crowdfunding issuer, the certificate is signed by any person with authority to act on behalf of the general partner.
  
7. If an eligible crowdfunding issuer is not a company, trust or limited partnership, a certificate under paragraph 7(1)(b) [*Certificates*] of the Instrument complies with this section if it is signed by the persons that, in relation to the issuer, are in a similar position or perform a similar function to any of the persons referred to in section 1, 2, 3, 4, 5 or 6.