

# National Crowdfunding Association of Canada

Presentation to the Ontario Minister of  
Finance Charles Sousa  
October 2017

# National Crowdfunding Association of Canada

- A national, non-profit organization engaged with social and investment crowdfunding, blockchain ICO, alternative finance, fintech, P2P and online investing stakeholders across Canada
- Provides education, research, leadership, support and networking opportunities to over 1600 members
- Works with industry, government, academia and community and eco-system partners to create a strong and vibrant crowdfunding industry
- Supports innovation and SMEs seeking to make a difference

# NCFA's Objectives for Crowdfunding Regulations

- A change in regulatory approach among Canadian Securities Administrators and within provincial and federal Ministries with capital markets responsibilities - as in the UK
- A cost effective, competitive and vibrant crowdfunding regime in Canada that:
  - Provides enhanced access to capital
  - Stimulates investment opportunities
  - Creates jobs
  - Protects investors

# Challenges of Current Regulation

- Numerous consultations and a national survey show that current crowdfunding requirements are not working:
  - Overly prescriptive, complex and costly
  - Not risk based
  - Restrict crowdfunding to a limited number of investors
  - Discourage issuers and licensed dealers from participating
- As a result, Canada is falling behind international competitors such as the U.K. and U.S.

# The Evidence

- The 2017 Ontario Exempt Market Report confirms that MI 45-108 has not been used at all in Ontario
- Small amounts of capital have been raised online under the Accredited Investor and Offering Memorandum exemptions
- In comparison, U.K. crowdfunding represented 25% of all equity raised in 2016.
- U.S crowdfunding Title III (equivalent to MI-45-108) is growing at 15% per month funding a range of quality deals

# Provincial Comparison

- Crowdfunding requirements are not harmonized
- B.C. has produced a 'lighter' set of crowdfunding requirements called the 'Startup Exemption' (MN 45-316) that allows small firms to raise up to \$250,000 per offering (twice a year), that is gaining initial traction
- Ontario should review B.C.'s crowdfunding regime and consider adopting a similar approach or allow B.C. offers to be distributed in Ontario under a mutual recognition system
- We made the above recommendation to the OSC in August and the OSC agreed to take a closer look at the B.C. regime

# Our Mid-level Objectives

- Work harder to harmonize and reduce unjustified regulatory burden
- Modify existing requirements so that they are principles based; detailed or prescriptive controls should only be imposed when clearly justified and harmonized
- Support the Competition Bureau's report -- FinTech Workshop: Driving Competition and Innovation in the FinTech Sector (released on May 1, 2017 with a final report due at end of this year)

# Our Ask

- Ontario Minister of Finance to champion crowdfunding and fintech
- A unified, simplified and harmonized crowdfunding regime across Canada
- A regime that more easily accommodates changing technology and business models
- Implementation of the recommendations in this presentation and in our more detailed submission

# Recommendations (in order of priority)

- Harmonize requirements across Canada
- Allow advertising and solicitation
- Increase threshold for review or audit of financial statements
- Allow investors to participate without caps
- Increase issuer caps to \$5 million or more
- Provide reasonable sunset clauses for audited financial statements and other filings
- Less frequent filing of distribution report

# Benefits of Crowdfunding to Ontario

- More capital would be raised, especially for challenged sectors (e.g. women, rural, First Nations) and smaller players
- Increased investor confidence
- Healthier capital market
- Greater economic activity
- Generation of jobs

# Next Steps

- To obtain support and leadership from the Ontario Minister of Finance for our recommended changes
- NCFA to send our submission to provincial and territorial Finance Ministers and securities regulators, and publish it on the NCFA website
- NCFA to inform key stakeholders of the views and recommendations outlined in the submission

**National Crowdfunding Association of Canada  
Submission to the Ontario Minister of Finance  
Urgent Need for Regulatory Change  
Oct. 18, 2017**

This submission will be forwarded to provincial and territorial finance ministers and securities regulators, and published on the NCFA website.

**Table of Contents**

1. OVERVIEW: Ontario's Crowdfunding Requirements are Market Stifling .....	2
2. NEED FOR CHANGE: CHALLENGES IN THE CURRENT ENVIRONMENT.....	3
Ontario's MI 45-108.....	3
Overly Prescriptive Crowdfunding Requirements .....	4
Regulation is Not Uniform across Canada and is Overly Complex.....	4
Lack of Incentives and Support for Education and Awareness Initiatives.....	5
3. OBJECTIVES FOR REGULATION IN ONTARIO.....	6
Work harder to harmonize and reduce unjustified regulatory burden.....	6
Ontario Ministry of Finance to champion and promote regulatory change .....	7
More resources and support for regulated crowdfunding education .....	7
4. SPECIFIC NCFA RECOMMENDATIONS (in order of priority):.....	8
5. BENEFITS OF CROWDFUNDING TO ONTARIO AND CANADA .....	9
6. ABOUT THE NATIONAL CROWDFUNDING ASSOCIATION OF CANADA .....	9
7. APPENDICES .....	11
Appendix 1: Comparison of overly complex crowdfunding requirements in Canada.....	11
Appendix 2: Jurisdictional Differences within M1 45-108 Crowdfunding .....	17
Appendix 3: NCFA Annual Industry Survey - Selected Results (2017).....	20
Appendix 4: Private-Public Model for the Alternative Finance Crowdfunding Sector .....	21
Appendix 5: Prohibitions on Advertising and Soliciting - holding the sector back.....	22
Appendix 6: Frequency of Reporting Requirements - examples of regulatory burden .....	23
Appendix 7 - Regulatory approach .....	24
Appendix 8: NCFA Meetings with OSC and BCSC .....	25
Appendix 9: Comparing Canada to the US and UK .....	26
Appendix 10: Peer-to-Peer Lending in Canada.....	28
Appendix 11: More Detail on NCFA Recommendations .....	30

## 1. OVERVIEW: Ontario's Crowdfunding Requirements are Market Stifling

Canada's crowdfunding regime must be competitive, in line with global trends, and 'smarter' to enable wider access to small amounts of capital (i.e. < \$5 million) by early stage companies. There is a 'funding gap' in the market as many smaller companies find it extremely challenging to raise funding. This means fewer innovative start-ups, fewer opportunities for investors and constraints on economic growth (and jobs).

Since the regulatory regime came into force on Jan 25, 2016, the National Crowdfunding Association of Canada (NCFA) has conducted numerous stakeholder consultations which overwhelmingly tell us that the current requirements are overly prescriptive, complex and burdensome (costly). They restrict crowdfunding to a limited number of investors and discourage smaller issuers and licensed dealers from participating.

As a result, Ontario and Canada are falling behind international comparators such as the United Kingdom (U.K.) and the United States (U.S.). Companies and investors are reluctant to participate due to the high costs (relative to the small financing size), unwarranted transactional and ongoing regulatory burdens, and educational gaps. This pushes many talented entrepreneurs, investors and key stakeholders to overseas jurisdictions that understand (and support) innovation and the economic potential of start-ups and small businesses.

In its 2017 Ontario Exempt Market Report, the Ontario Securities Commission (OSC) confirmed that M1 45-108 had not been used at all in Ontario. A small number of issuers have used online platforms to raise capital under the Accredited Investor or Offering Memorandum exemptions. In the NCFA's view, this warrants further analysis and changes to the existing regime.

The U.K. has a more innovative [risk-based regulatory approach](#) that is acknowledged to be world class and is highly adaptive to emerging technologies. NCFA strongly encourages Canadian regulators to study its approach. The U.K. also has assumed a leadership role with incentives and funding to support early market traction and education. In the U.K., crowdfunding activity continues to flourish, representing 25% of all equity deals announced in 2016.

The U.S. has also made significant progress with 134,000 small businesses benefiting from crowdfunding in 2016 (some of which are Canadian) versus only 7,450 in Canada. In the U.S. there is an ongoing effort to fix bugs and improve regulation with a focus on protecting investors **and** providing improved opportunities for smaller entrepreneurs and investors to generate wealth (e.g. "H.R. 4855 Bill "[Fix Crowdfunding Act](#)" passed by the House on July 6<sup>th</sup>, 2016).

We strongly encourage the Ontario government, and the OSC, to work smarter (and harder) to streamline regulation across the country, reduce undue burdens that undermine cost effective capital formation for young companies (and that bear no relation to the risks presented by crowdfunding), and provide the required resources and support to encourage the crowdfunding sector and to improve Ontario's competitiveness.

## 2. NEED FOR CHANGE: CHALLENGES IN THE CURRENT ENVIRONMENT

As the leading and only dedicated crowdfunding association in Canada, NCFA has consulted numerous registrants, industry experts and practitioners in the sector about the most pressing challenges in the current environment. They say:

1. Investment-based crowdfunding requirements are far from internationally competitive with respect to raising alternative funding.
2. Crowdfunding requirements are overly prescriptive with a one size fits all approach (versus risk-based) that is not working.
3. Regulatory regimes in Canada are not harmonized and are overly complex which adds significantly to costs of compliance.
4. Lack of incentives and support for education and awareness initiatives puts Canada at a disadvantage that our competitors are happy to exploit.

### Ontario's MI 45-108

The 2017 OSC Exempt Market Report released in June noted that no capital has been raised in Ontario under the new crowdfunding exemption (MI 45-108). The report, however, does not go into any detail or provide any analysis as to why this may be the case. As we note above, many smaller companies have expressed interest in crowdfinancing but have been discouraged by high fees, onerous reporting requirements and other costs of compliance.

The Integrated Crowdfunding Exemption and restricted dealer registration does not work for most potential **marketplace lending platforms**. For example, the requirements do not allow the multi-party participation of public, private and government blended funding models which have developed in the U.K. and elsewhere, or membership marketplace lending models. They also prevent financial institutions from operating a marketplace lending portal or from heavily participating in funding events. (A number of successful portals in other countries may raise 25% from the crowd and 75% from a portal/loan institution).

NCFA also notes that requiring marketplace lending portals to do a suitability analysis of each lender/investor when their loan/investment is capped and the investor may be an institution ignores the fact that these lenders may have extensive experience with small loans. In other words, loan based crowdfunding is not the same as investment based crowdfunding and it should be regulated differently. (See: **Appendix 10: P2P Lending.**)

While the **Offering Memorandum Exemption** is gaining traction in Ontario and is used by several NCFA member portals, it is primarily aimed at companies wishing to raise at least \$250,000 (due to the costs e.g. of preparing the necessary legal and financial documentation). Most early stage companies seeking to raise smaller amounts of capital cannot realistically use the OM, and, at the same time, cannot use MI 45-108 due to similarly high costs.

Meanwhile, B.C. and other jurisdictions have a 'lighter' set of crowdfunding requirements (the **'Start-up Crowdfunding Registration and Prospectus Exemptions** MN 45-316 that allow small firms to raise up to \$250,000 per offering (twice a year), with participation from other provinces. We ask that Ontario review B.C.'s crowdfunding regime and consider adopting a

similar approach, or allow B.C. offers to be distributed in Ontario under a mutual recognition system. (NCFA is pleased to see BCSC's recent announcement of changes to the Startup Exemption (BCI 45-535) - [http://bcsc.bc.ca/News/News\\_Releases/2017/72\\_Changes\\_to\\_start-up\\_crowdfunding\\_exemption\\_will\\_increase\\_access\\_to\\_capital\\_for\\_B\\_C\\_issuers/](http://bcsc.bc.ca/News/News_Releases/2017/72_Changes_to_start-up_crowdfunding_exemption_will_increase_access_to_capital_for_B_C_issuers/))

## **Overly Prescriptive Crowdfunding Requirements**

The Canadian crowdfunding regulatory regimes are more prescriptive than principles based and so do not easily accommodate rapidly changing technology and business models. Prescriptive regulation is inappropriate in a highly innovative and fast paced digital space. Moreover, if regulation is too rigid, or “one size fits all”, businesses cannot be as nimble and responsive to market demand and may be faced with costs of compliance that seriously inhibit profitability and limit their ability to scale up. Furthermore, there may be a considerable disconnect between the enthusiasm of regulatory bodies to embrace change and the knowledge and flexibility of staff who are tasked with day-to-day supervision.

NCFA encourages the OSC to adopt a more risk-based approach to crowdfunding regulation and to improve the measurement of the cost of a proposed regulatory solution against its demonstrated benefits. (Please see **Appendices 5 and 6** ‘*Prohibitions on Advertising and Solicitation*’ and ‘*Frequency of Reporting Requirements*’ for a high-level analysis of two requirements where we conclude that the burden far outweighs any benefit, and **Appendix 7** ‘*Regulatory approach*’.)

## **Regulation is Not Uniform across Canada and is Overly Complex**

There are currently three versions of crowdfunding specific requirements in Canada that form a patchwork that varies with respect to offering documentation, ongoing disclosure requirements, capital raising and investor limits and advertising. These differences make it more difficult and costly for early stage companies (additional costs for issuers of approximately \$5,000 - \$20,000 in legal fees alone).

The differences among the regulatory systems are outlined in **Appendix 1**. The table illustrates how complex and varied the requirements are, causing confusion and frustration for all market participants. **Appendix 2** shows that differences exist even among jurisdictions participating in the same instrument, in this case MI 45-108.

## **Lack of Incentives and Support for Education and Awareness Initiatives**

Introducing new crowdfunding requirements in Ontario without a robust educational program is like asking new drivers to follow a road that contains no ‘signs’, without maps and limited ‘light’. To increase the use of the new financing tools, in addition to the proposed regulatory changes outlined in this submission, many more businesses and individuals need to be educated about the opportunities and threats for both companies and investors.

While the OSC has provided dedicated web pages to help potential investors and issuers better understand the capital markets, the information is limited. In contrast, the Securities and Exchange Commission (SEC) recently published a whitepaper on Title III Regulation crowdfunding activity titled ‘U.S. Securities-based Crowdfunding under Title III of the JOBS Act’ that reviews offering activity, characteristics, geographic distribution and regulated platforms performance, characteristics and compensation rates.

Selected insights from NCFA’s annual 2017 Alternative Finance Crowdfunding survey of 170 responders (Jun-Jul 2017) including investment platforms, companies seeking capital and a wide range of investors (including VC/PE and institutional investors) highlight the need for more education and awareness initiatives. (See: **Appendix 3** *NCFA Selected Survey Results Charts.*)

- When asked ‘What do you think is needed to attract more investors to the Canadian alternative finance crowdfunding markets?’ The number one (70% of the responders) answer was “More education”.
- When issuers were asked “Has your company ever raised capital via alternative finance crowdfunding markets before?” the overwhelming majority (approximately 90%) responded ‘No’.
- When asked why not, issuers’ number one reason (over 55%) was that they were ‘Unaware of how it works’.
- We encourage the OSC to support data collection and analysis initiatives and education in collaboration with the private sector to achieve mutual data-driven objectives.

### 3. OBJECTIVES FOR REGULATION IN ONTARIO

#### **Work harder to harmonize and reduce unjustified regulatory burden**

NCFA's goal is to encourage crowdfunding regulation that supports a competitive and vibrant crowdfunding sector in Canada which provides access to capital, stimulates investment opportunities and creates jobs, while providing appropriate protection for investors. We need internationally competitive regulation that is sufficiently flexible to accommodate a rapidly changing environment. This means that crowdfunding requirements should be principles and risk based and that detailed or prescriptive controls should only be imposed when clearly justified. Market problems should not be "resolved" by additional requirements unless demonstrated benefits exceed costs.

The regulatory regime must address not only crowdfunding but also the larger picture of how to best deal with a flurry of new business models based on new technologies commonly known as "fintech". A recent report by the Toronto Centre entitled "Fintech, RegTech and SupTech: What They Mean for Financial Supervisors" outlines how fintech innovations raise questions about how to regulate the sector and how best to identify and monitor the threats and opportunities that this sector poses. A new regulatory approach is required.

Regulators need to understand these new business models. According to a recently published Ernst & Young "Fintech Adoption Index" survey, Canada has one of the lowest fintech adoption rates in the world and the main reason for this is lack of consumer awareness. Over 70% of the respondents thought that more education was required to attract more investors to crowdfunding and that the regulators should publish more market analysis.

We encourage the regulators to implement a **sandbox project** which provides a class-wide licensing waiver for new businesses to run early-stage tests and trials in the fintech area. Related to this, we ask that exempt market dealers be permitted to create a separate MI 45 - 108 subsidiary for crowdfunding that operates with rules closer to an online discount broker (which is not required to conduct suitability assessments). This would allow dealers to test different crowdfunding formats without affecting their dealer registration or resulting in onerous compliance.

As we already know, sandboxes encourage dialogue versus suspicion between the innovators and regulators. Along with others, we encourage the OSC to move beyond its concierge service to a fully-fledged sandbox. It is especially important that developments in this area be undertaken in association with other interested regulatory bodies.

The sandbox approach for fintechs has had good success in the U.K. and the Australian Securities & Investment Commission recently issued an update on its Innovation Hub for fintech companies. In the U.S., the Consumer Financial Protection Bureau formed Project Catalyst to engage with companies developing innovative consumer financial products and has established a process for obtaining a no-action letter (equivalent to an exemption in Canada) for innovative financial products.

The Highlights from the Competition Bureau's FinTech Workshop: Driving Competition and Innovation in the FinTech Sector, released on May 1, 2017, support our position:

- “Regulators have an important role in setting the pace and enabling innovation in the financial services sector. Our ultimate goal is to provide guidance for policy makers on how best to nurture an environment that allows Canada’s FinTech companies to innovate, grow and compete globally.”
- “This means fostering a flexible and dynamic regulatory environment. Canada lags behind many of our international counterparts in terms of innovation, particularly in the private sector.” “Greater innovation in all sectors of the economy, including in financial services, is needed to boost productivity and growth and to improve Canadian competitiveness.”
- “They must strive to narrow the inevitable regulatory lag as much as possible with as much foresight as possible. The right regulatory approach is about striking a balance between enabling the benefits that FinTech innovation has to offer with the expected and appropriate resiliency in financial security/soundness and consumer protection.”

We look forward to the Bureau’s final report at the end of the year.

### **Ontario Ministry of Finance to champion and promote regulatory change**

We expressed our concerns to the OSC about the current crowdfunding regulatory regime most recently at a meeting on August 24. Although we feel that the OSC listened, no changes have been announced (see **Appendix 8: *NCFA Meetings with the OSC and BCSC***). We are now urgently advocating that all stakeholders, including the federal and provincial governments as well as the provincial and territorial securities regulators, work together to address the issues highlighted in this submission or we risk falling further behind. It would be fitting that the Ontario Ministry of Finance champion and promote the regulatory changes necessary to encourage crowdfunding and fintech (and reap the benefits).

### **More resources and support for regulated crowdfunding education**

While educational conferences are in high demand and markets are slowly gaining traction in Canada, the sector needs more government support to encourage and enable more portals and participants to ‘scale up’ and operate more efficiently. There is a large knowledge gap that exists due to the real (or perceived) complexities and burdens involved in putting together an online financing round. More businesses and investors need to be educated in Ontario, and in Canada, about how regulated crowdfunding works and can help them grow, the choices available, and the opportunities and threats. Education is an investment by governments that will generate more capital investment and jobs, as well as making potential investors more risk aware. It is incumbent upon both government and industry to ramp up educational programming in line with high functioning regimes like the U.K. (see **Appendix 4: *Private-public growth model for the alternative finance crowdfunding industry***).

#### 4. SPECIFIC NCFA RECOMMENDATIONS (in order of priority):

The changes that we propose would remove much of the undue burden for small companies and licensed portals, and encourage wider participation by all stakeholders. Some recommendations would simply bring us into line with the crowdfunding regulatory regimes of other provinces.

NCFA considers that its recommendations are positive or neutral for investor protection. Higher compliance costs when there is no net benefit to mitigate downside risk only serves to increase costs for consumers or to push businesses to other jurisdictions for cheaper capital. The complexity of requirements can also be confusing for investors.

Priority	Description	Benefit / Impact
1	Harmonize crowdfunding requirements	Reduce regulatory burden for all stakeholders
2	Allow advertising and general solicitation	Increase investor participation -- more liquidity and attract more investors
3	Increase threshold for required review and audited financial statements	Attract more companies, reduce burden
4	Allow accredited investors to fully participate (without caps) and self-certification	Increase investor participation -- reach funding targets, increase benefits from exemptions
5	Provide funding for crowdfunding education and data collection	Increase participation for all stakeholders and improve decision making
6	Increase \$1.5M issuer caps to \$5M or more	Increase investor participation, reach funding targets
7	Eliminate retail investor caps	Increase investor choices and participation, more liquidity, -- suitable for more sectors
8	Provide a reasonable sunset clause for audited financial statement and other filings	Reduce burden for small companies
9	Less frequent filing of the distribution report	Reduce regulatory burden for small EMDs / funding portals

**Please see Appendix 11 for more details.** We also ask all Canadian regulators to make changes that enable and support marketplace (P2P) lenders (see above and Appendix 10).

## **5. BENEFITS OF CROWDFUNDING TO ONTARIO AND CANADA**

The potential benefits of a smarter crowdfunding regime in Ontario are numerous. If our recommendations were to be implemented, the experience of other jurisdictions makes clear that more capital would be raised, especially for under-served sectors (e.g. women and minority groups, including First Nations and rural areas) and smaller players, along with increased investor confidence, better market data, and other benefits described elsewhere in this submission.

We have a lot of tech and innovation talent in Canada. A more risk based crowdfunding (and fintech) regime would benefit the provincial economy by driving entrepreneurship, innovation and jobs, retaining more potentially high growth companies (now going elsewhere or stalling), and accelerating the commercialization of new products and services.

## **6. ABOUT THE NATIONAL CROWDFUNDING ASSOCIATION OF CANADA**

NCFA is a national non-profit organization engaged with both social and investment crowdfunding stakeholders across the country. NCFA provides education, research, leadership, support and networking opportunities to over 1600 members and works closely with industry, government, academia, and community and eco-system partners and affiliates, to create a strong and vibrant crowdfunding industry in Canada. NCFA supports innovation, and small businesses and entrepreneurs seeking to make a difference. Its members believe that crowdfunding markets and their eco-systems can play a significant role in mobilizing start-up and scale-up capital and resources for early stage projects and businesses efficiently and effectively.

*Participants in NCFA's consultation for the purpose of generating this submission include (alphabetical order):*

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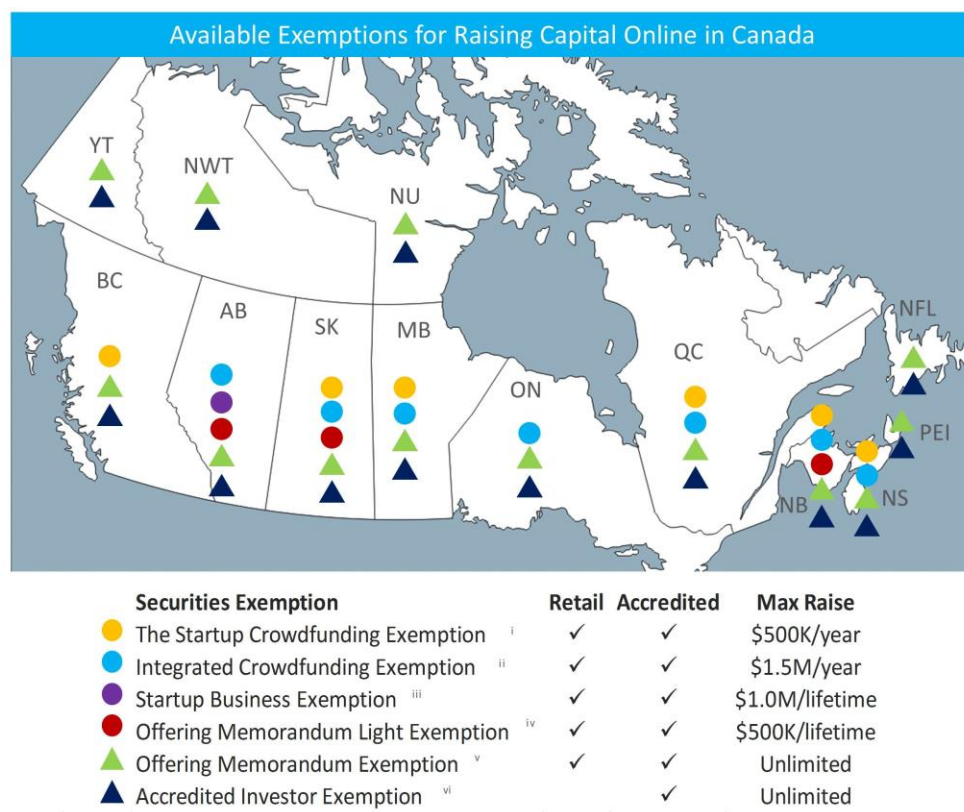


For more information about NCFA, please visit the website: <http://ncfacanada.org/> or contact:

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## 7. APPENDICES

### Appendix 1: Comparison of overly complex crowdfunding requirements in Canada



As of Feb 2016 (for illustration only needs updating)

EQUITY CROWDFUNDING IN CANADA TODAY (February 2016)						
	Available Now					Pending
Securities Exemption Relied On	Accredited Investor Exemption[1]	Offering Memorandum Exemption[2]	Offering Memorandum Light Exemption[3]	Start-Up Crowdfunding Exemption[4]	Integrated Crowdfunding Exemption[5]	AB/NU Start-Up Business Exemption[6]
Jurisdictions	BC, AB, SK, MB, ON, QU, NB, NS, NFL, PEI, NU, YK, NWT	BC, AB, SK, MB, ON, QU, NB, NS, NFL, PEI, NU, YK, NWT	AB, SK	BC, SK, MB, QU, NB, NS	MB, ON, QU, NB, NS Pending: SK	AB, NU
Offering Limit	Unlimited.	Unlimited.	\$500,000 cap every 12-month period.	\$250,000 cap per offering  \$500,000 aggregate cap every 12-month period.  Limit of two offerings using exemption per 12 month period	\$1,500,000 cap every 12-month period.	\$1,000,000 lifetime cap.
Type of Securities	All.	All but securitized products and in AB,	All but derivative type securities.	All but derivative type securities.	All but derivative type securities.	All but derivative type securities.

		SK, ON, QU, NB and NS[8] specified derivatives and structured finance products.				
<b>Issuer Restrictions</b>	None. Available to reporting and non-reporting issuers involved in all business sectors.	Available to reporting and non-reporting issuers involved in all business sectors, except not available to investment funds in AB, NS, SK, NB, ON and QU[8], unless if offering is in AB, NS, SK issuer is a non-redeemable investment fund or mutual fund that is a reporting issuer.	Not available if a reporting issuer, investment fund, mortgage investment entity or an issuer engaged in the real estate business.	Not available if a reporting issuer or investment fund. Head office must be resident in participating jurisdictions.	Available to reporting and non-reporting issuers involved in all business sectors except investment funds. Must be incorporated or organized under the laws of a jurisdiction in Canada and have head office in Canada.	Not available if a reporting issuer or investment fund. Head office must be resident in a AB or NU or in participating jurisdiction of the Start-up Crowdfunding Exemption.
<b>Investor Restrictions</b>	Must be an accredited investor based on annual income (\$200,000 individually or \$300,000 with spouse) or net financial assets (\$1 million excluding home) or net assets (\$5 million). No limits on investment amount.	If investing \$10,000 or more and from MB, PEI, NU, YK or NWT, must be an eligible investor based on annual income (\$75,000 individually or \$125,000 with spouse) or net assets (\$400,000), or a close friend, family or business associate, or accredited investor, or have obtained the advice from an eligible adviser on suitability. Eligible investors resident in AB, NB, NS, ON, QU and SK[8] have a 12 month investment cap of \$30,000 unless investor receives suitability advice from registered dealer than cap of \$100,000 for all distributions under exemption in 12 month period.	12 month investment cap of \$2,000 in all securities of issuer group. No 12 month investment cap for all distributions under exemptions.	Must be resident in one of the participating jurisdictions and over the age of 18. 12-month investment cap of \$1,500 per distribution by an investor.	Must be resident in one of the participating jurisdictions. 12-month investment cap of \$2,500 per distribution and \$10,000 for all distributions under exemption, unless an accredited investor who is not a permitted client, then \$25,000 per distribution and \$50,000 for all distributions under the exemption. No cap for permitted clients.	Must be resident in AB or NU or in participating jurisdiction of the Start-up Crowdfunding Exemption. 12-month investment cap of \$1,500 per investment or \$3,000 per issuer group unless investor receives suitability advice from registered dealer than cap of \$5,000 per investment or \$10,000 per issuer group.
<b>Financial Statements</b>	Optional.	IFRS audited.	PE-GAAP unaudited.	Optional. If included may be audited or unaudited and use either IFRS or PE-GAAP.	IFRS audited if amount raised under all prospectus exemptions \$750,000 or more or issuer is a reporting issuer. Unaudited IFRS financial statements with review report if non-reporting issuer and amount raised under all prospectus exemptions is more than \$250,000 and	Optional. If included may be audited or unaudited and use either IFRS or PE-GAAP.

					less than \$750,000. Unaudited financial statements if a non-reporting issuer and amount raised from all prospectus exemptions is under \$250,000.	
<b>Document Requirements</b>	Subscription Agreement, Investor Questionnaire and <a href="#">Form 45-106F9</a> <a href="#">Form for Individual Accredited Investor</a> .	Offering memorandum in prescribed form ( <a href="#">Form 45-106F2 for Non-Qualifying Issuers</a> ; or <a href="#">Form 45-106F3 for Qualifying Issuers</a> ); subscription agreement and <a href="#">Form 45-106F4 – Risk Acknowledgement</a> .	Offering memorandum in prescribed form (Form 45-106F2 for <a href="#">Non-Qualifying Issuers</a> ); subscription agreement and <a href="#">Form 45-106F4 – Risk Acknowledgement</a> .	Offering document prescribed form: <a href="#">Form 1 - Start-up Crowdfunding - Offering Document</a> ; subscription agreement and <a href="#">Form 2 Start-up Crowdfunding Risk Acknowledgement</a> .	Offering document prescribed form: <a href="#">Form 45-108F1 Crowdfunding - Offering Document</a> ; subscription agreement, <a href="#">Form 45-108F2 Risk Acknowledgement</a> ; and <a href="#">Form 45-108F3 Confirmation of Investment Limits</a> .	Offering document prescribed form: <a href="#">Form 1 - Start-up Crowdfunding - Offering Document</a> ; subscription agreement and <a href="#">Form 2 Start-up Crowdfunding Risk Acknowledgement</a> .
<b>Statutory or Contractual Right of Action</b>	None.	Two-day right of withdrawal. <sup>[7]</sup> Statutory or contractual right of action for rescission or damages if misrepresentation in offering memorandum.	Two-day right of withdrawal. Statutory right of action against issuer if misrepresentation in offering document.	None. 48 hour right of withdrawal after subscription and after notification of a material amendment to the offering.	None. 48 hour right of withdrawal after subscription and after notification of a material amendment to the offering. Contractual right of action against reporting issuer if misrepresentation in offering document. Statutory right of action against private issuer if misrepresentation in offering document.	Two-day right of withdrawal. Statutory right of action against issuer if misrepresentation in offering document. 48 hour right of withdrawal after subscription and after notification of a material amendment to the offering.
<b>Post Offering Requirements</b>	File <a href="#">Form 45-106F1 (Form 45-106F6 in BC)</a> within 10 days of closing offering. No annual report or other continuous disclosure requirements because of offering.	File <a href="#">Form 45-106F1 (Form 45-106F6 in BC)</a> and offering memorandum within 10 days of closing offering. If a mining company must also file a <a href="#">Form 43-101 Technical Report</a> . If an oil and gas company must also file a <a href="#">Form 51-101F1</a> or <a href="#">Form 51-101F2</a> statement or report. If offering made in AB, SK, ON, QU, NB, or NS <sup>[8]</sup> subject to continuous disclosure requirements: (1) annual audited financial statements within 120 days from fiscal year end; (2) annual disclosure of	File <a href="#">Form 45-106F1</a> and offering memorandum within 10 days of closing offering. If a mining company must also file a <a href="#">Form 43-101 Technical Report</a> . If an oil and gas company must also file a <a href="#">Form 51-101F1</a> or <a href="#">Form 51-101F2</a> statement or report. No annual report or other continuous disclosure requirements as a result of offering. Not clear if on April 30, 2016, issuers will be subject to continuous disclosure requirements,	File <a href="#">Form 45-106F1 (Form 45-106F6 in BC)</a> and offering document within 30 days of closing offering.	File <a href="#">Form 45-106F1</a> and offering document within 10 days of closing offering. Subject to continuous disclosure requirements: (1) annual financial statements within 120 days from fiscal year end review report or auditor's report if amount raised under exemption is \$250,000 or more but less than \$750,000 and audited report if amount raised is more than \$750,000; (2) annual disclosure of use of proceeds; (3) material change like reports in NB, NS and ON; and (4) must maintain books and	File <a href="#">Form 45-106F1 (Form 45-106F6 in BC)</a> and offering document within 30 days of closing offering.

		use of proceeds; (3) material change like reports in NB, NS and ON; and (4) deemed to be a market participant in ON and NB subject to record-keeping requirements and compliance review.			records available for inspection by investors and ON and NB regulators.	
<b>Portal Requirements</b>	Direct sales by issuer on their website or offline, or portal operator needs to be registered as an exempt market dealer, investment dealer or a restricted market dealer.	Direct sales by issuer on their website or offline, or portal operator needs to be registered as an exempt market dealer, investment dealer or a restricted market dealer	Direct sales by issuer on their website or offline, or portal operator needs to be registered as an exempt market dealer, investment dealer or a restricted market dealer	Portal operator must provide 30 days <a href="#">advance notice of intent to act as a Start-up Crowdfunding portal</a> .  Cannot be related to an issuer of securities on portal.  OR:  Registered as an exempt market dealer, investment dealer or a restricted market dealer. <sup>[9]</sup>	Portal operator needs to be registered as an exempt market dealer, investment dealer or a restricted market dealer	Direct sales by issuer on their website or offline, or portal operator needs to be registered as an exempt market dealer, investment dealer or a restricted market dealer.
<b>Advantages</b>	(1) No limit to offering size; (2) Available across Canada; (3) No financial statement requirement; (4) No offering document obligation; (5) Available to all issuers; (6) No annual report or other continuous disclosure requirements as a result of offering; (7) All types of securities may be sold; and (8) No statutory or contractual right of action.	(1) No limit to offering size; (2) Available across Canada; (3) Available to all issuers but investment funds in certain jurisdictions; (4) No annual report or other continuous disclosure requirements because of offering in BC, MB, PEI, NFL, NU, YK and NWT ; and (5) All types of securities may be sold other than securitized products and in AB, SK, ON, QU, NB and NS <sup>[8]</sup> specified derivatives and structured finance products.	(1) Can sell to anyone resident in AB and SK; (2) Unaudited financial statement prepared using PE-GAAP allowed; and (3) No annual report or other continuous disclosure requirements as a result of offering.	(1) Can sell to anyone in participating jurisdictions; (2) Limited offering document obligation; (3) No financial statement requirement; (4) No annual report or other continuous disclosure requirements as a result of offering; and (5) No statutory or contractual right of action.	(1) Can sell to anyone in participating jurisdictions; (2) Limited offering document obligation; and (3) Unaudited financial statements allowed if non-reporting issuer and total amount raised under all prospectus exemptions to date less than \$750,000 (audit review letter required if amount raised is more than \$250,000).	(1) Can sell to anyone in participating jurisdictions; (2) Limited offering document obligation; (3) No financial statement requirement; and (4) No annual report or other continuous disclosure requirements as a result of offering <sup>[9]</sup>
<b>Disadvantages</b>	(1) Accredited investors only; and (2) Must confirm accredited investor status.	(1) Rule is complicated; (2) Requires IFRS audited financial statements; (3) Must provide detailed offering	(1) Offering size limited to \$500,000 every 12 month period; (2) Must provide detailed offering memorandum; (3)	(1) Offering size limited to \$250,000 per offering to a maximum of \$500,000 in two offerings every 12 month period; (2)	(1) Offering size limited to maximum of \$1,500,000 every 12 month period; (2) Only available to participating jurisdiction resident	(1) Offering lifetime limit of \$1,000,000; (2) Only available to issuers and investors in AB, NU and in

		<p>memorandum; (4) Not available to investment funds in AB, NS, SK, NB, ON and QU<sup>[8]</sup>, unless if offering is in AB, NS, SK issuer is a non-redeemable investment fund or mutual fund that is a reporting issuer; (5) \$10,000 investment limit per 12 month period by investors in MB, PEI, NU, YK or NWT unless accredited investors, friends, family or business associate, or receives suitability advice from eligibility advisor. \$30,000 investment limit per 12 month period by investors in AB, NB, NS, ON, QU or SK unless eligible investor obtains suitability advice than \$100,000 cap for all investments under exemption in 12 month period; (6) Statutory or contractual right of action attached; (7) Continuous disclosure requirements including audited financial statements indefinitely if offering securities in AB, NB, NS, ON, QU or SK.</p>	<p>Only available in AB and SK; (4) Not available if a reporting issuer, investment fund, mortgage investment entity or an issuer engaged in real estate as a business; (5) No derivative type securities allowed; (6) 12 month investment cap of \$2,000 in all securities of issuer group; and (7) Statutory or contractual right of action attached.</p>	<p>Only available to participating jurisdiction resident issuers and investors; (3) Not available if a reporting issuer or investment fund; (4) No derivative type securities allowed; and (5) Offering must be made through a funding portal.</p>	<p>issuers and investors; (3) Not available if an investment fund; (4) No derivative type securities allowed; (5) Offering must be made through a funding portal; (6) 12-month investment cap of \$2,500 per distribution and \$10,000 for all distributions under exemption, unless an accredited investor who is not a permitted client, than \$25,000 per distribution and \$50,000 for all distributions under exemption; and (7) Statutory right of action attached.</p>	<p>participating jurisdictions of the Start-up Crowdfunding Exemption; (3) Not available if a reporting issuer or investment fund; and (4) No derivative type securities allowed.</p>
Active Portal Examples	<p><b>Exempt Market Dealer:</b> <a href="#">FrontFundr</a> (AB, BC, MB, SK, QU, MB, NS, NB); <a href="#">NexusCrowd</a> (AB, BC, ON); <a href="#">Optimize Capital Markets</a> (AB, BC, MB, QU)</p> <p><b>Restricted Market Dealer:</b> <a href="#">Social Venture Connexion/MaRs SVX</a> (ON, QU)</p> <p><b>Exempt Market Dealers Through Registered 3rd</b></p>	<p><b>Exempt Market Dealer:</b> <a href="#">FrontFundr</a> (AB, BC, MB, SK, QU, MB, NS, NB)</p> <p><b>Exempt Market Dealers Through Registered 3rd Party:</b> <a href="#">SeedUps Canada</a> (AB, BC, ON, QU via <a href="#">Waverley</a>)</p>	<p><b>Exempt Market Dealer:</b> <a href="#">FrontFundr</a> (AB, BC, MB, SK, QU, MB, NS, NB)</p> <p><b>Exempt Market Dealers Through Registered 3rd Party:</b> <a href="#">SeedUps Canada</a> (AB, BC, ON, QU via <a href="#">Waverley</a>)</p>	<p><b>Exempt Market Dealer:</b> <a href="#">FrontFundr</a> (BC, SK, QU, MB, NS, NB)</p> <p><b>Start-up Crowdfunding Portals:</b> <a href="#">GoTroo</a> (BC, QU, NS, NB); <a href="#">InvestLocal</a> (BC); <a href="#">SmallStarter</a> (BC, SK, MB, QU, NS, NB); <a href="#">StellaNova</a> (QU, NS, NB); <a href="#">Vested</a> (BC)</p>	No Portals.	No Portals.

	<b>Party: <u>Exempt Capital Markets</u></b> (AB, BC, ON, QU via <a href="#">Waverley</a> ); <a href="#">InvestX</a> (AB, BC, ON, QU via <a href="#">Waverley</a> ); <b><u>SeedUps Canada</u></b> (AB, BC, ON, QU via <a href="#">Waverley</a> )					
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## Appendix 2: Jurisdictional Differences within M1 45-108 Crowdfunding

Jurisdictional Differences in M1 45-108 Crowdfunding						
	Ontario	New Brunswick	Nova Scotia	Manitoba	Saskatchewan	Quebec
<b>Investment Limits</b>  Non-accredited investors have a cap of \$2,500 per distribution.  Accredited investors have a cap of \$25,000 per distribution.	Non-accredited investors capped at \$10,000 per year for all CF investments.	No aggregate cap for CF investments per year.				
	Accredited investors capped at \$50,000 per year for all CF investments, unless permitted client. No limits apply to permitted client.	No aggregate cap for CF investments per year.				
<b>Document Requirements</b>	Confirmation of investment limit Form 45-108F3 from investors required.	No investment limit form required.				
	No accredited investor confirmation or validation required, but portal required to obtain additional information to determine if investor meets accredited or permitted client definition.	Accredited investor confirmation and validation if investing over \$2,500.				
	Offering documents considered an offering memorandum	N/A	Offering documents considered an offering memorandum	N/A	N/A	Offering documents and material considered authorized

Jurisdictional Differences in MI 45-108 Crowdfunding						
	Ontario	New Brunswick	Nova Scotia	Manitoba	Saskatchewan	Quebec
	with rights available under s. 130.1 of ON securities act.		with rights available under s. 138 of NS securities act.			in lieu of prospectus with rights of action in s. 217 to 221 of QU securities act.
	No direction regarding language.					Documents must be in French only or in French and English.
Ongoing Disclosure Obligations	Notice of specified key events if a non-reporting issuer.			No key event notice.		
Portal	A restricted dealer funding portal must not be an affiliate of another registered dealer, registered adviser, or registered investment fund manager.	No restriction on affiliation. A restricted dealer funding portal that is affiliated with another registered firm must establish internal controls and appropriate policies and procedures to manage the risks associated with operating an affiliated restricted dealer funding portal.				
	Substitution of NI 31-103 requirements for similar (but not identical) Ontario Securities Act registration requirements.	No local rule substitutions.				
	Issuer access agreement must include confirmation funding portal is agent of issuer for purposes of a distribution under the CF exemption.	No confirmation of agent requirement.				

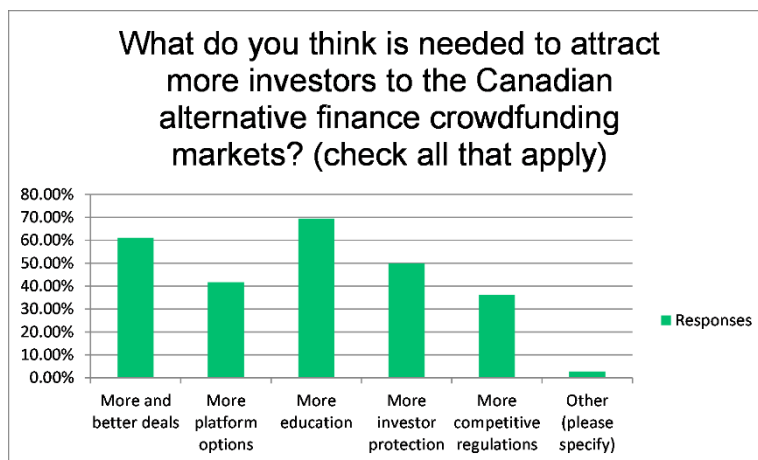
Jurisdictional Differences in MI 45-108 Crowdfunding						
	Ontario	New Brunswick	Nova Scotia	Manitoba	Saskatchewan	Quebec
	Restricted dealer can only act for a distribution under CF Exemption.	Restricted dealer portal may act for a distribution under CF Exemption and Start-Up CF Exemption.				

### Appendix 3: NCFA Annual Industry Survey - Selected Results (2017)

Below are selected charts and responses from the recent NCFA annual survey administered June-July 2017. The full results will be published, and made widely available, in the 2017 Alternative Finance Crowdfunding Industry Report in Q4, 2017.

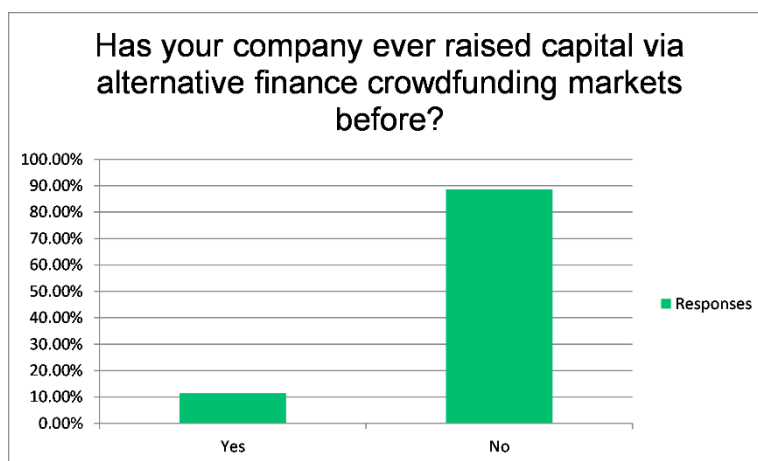
When asked ‘What do you think is needed to attract more investors to the Canadian alternative finance crowdfunding markets?’

- 70% of the responders and the number one answer was “More education”



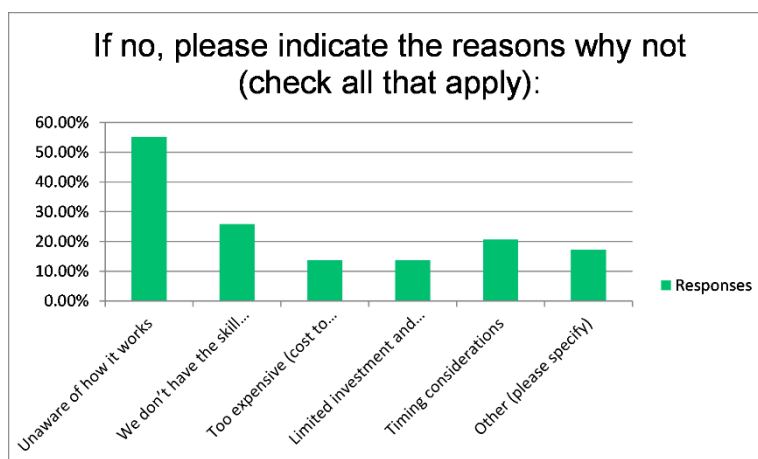
When issuers were asked “Has your company ever raised capital via alternative finance crowdfunding markets before?”

- The overwhelming majority (approximately 90%) responded ‘No’.

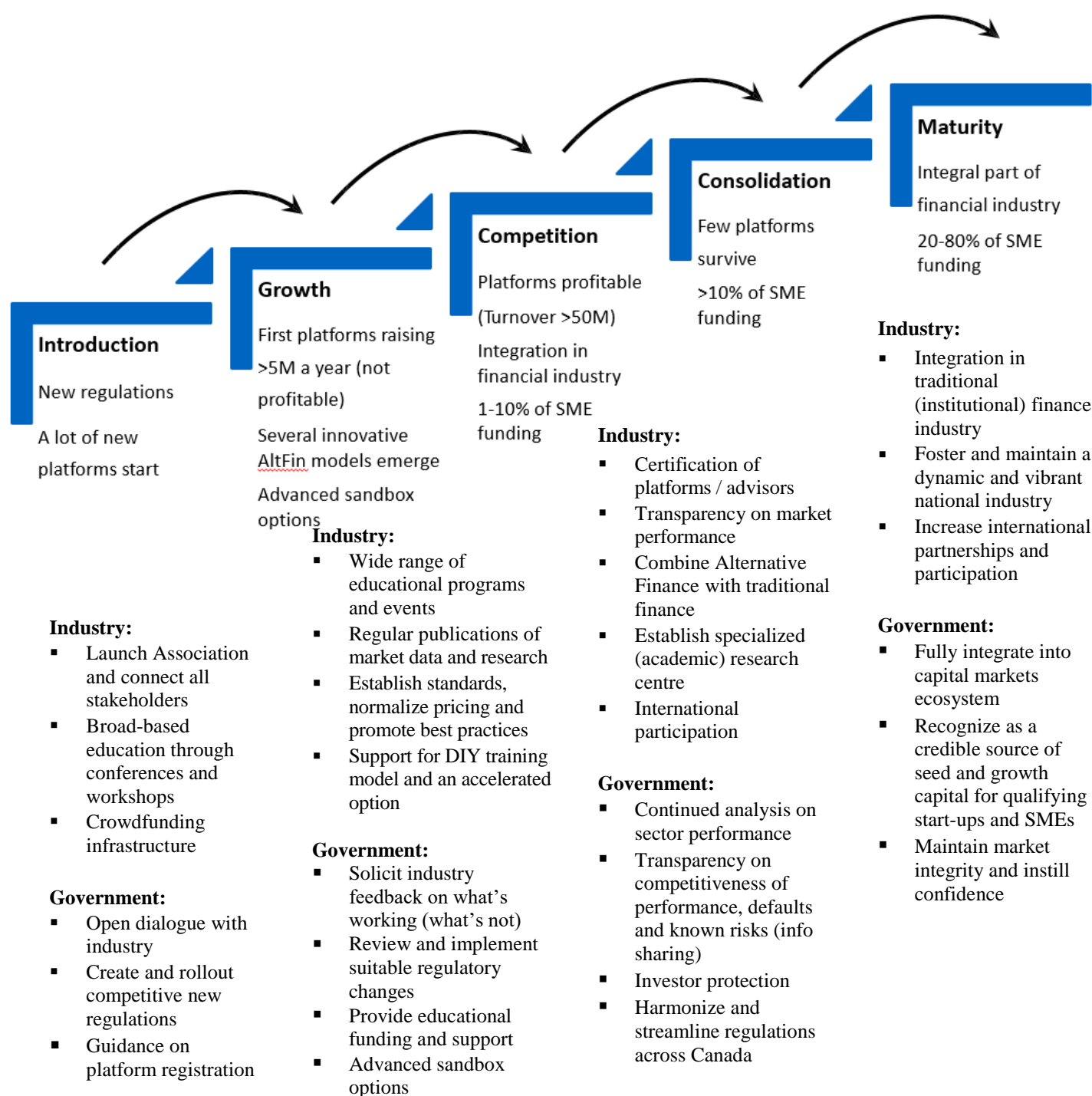


When asked why not, issuers expressed their number one reason

- Over 55% of responders said that they were ‘Unaware of how it works’



## Appendix 4: Private-Public Model for the Alternative Finance Crowdfunding Sector



## **Appendix 5: Prohibitions on Advertising and Soliciting - holding the sector back**

The Integrated Crowdfunding Exemption prohibits issuers from directly or indirectly advertising their crowdfunding offering, although an issuer may inform prospective “purchasers” that it intends to conduct a crowdfunding offering and may direct purchasers to the portal. Contrast this with the U.K. FCA where the **Financial Promotion Rules** simply require issuers to consider the nature and risks of the investment and the information needs of the customers, then to ensure that investors have the information they need to make informed investment decisions and that all communications are fair, clear and not misleading. Although the FCA is now considering some tightening of the regime, NCFA considers it likely that the FCA will remain of the view that the high level requirements generally remain appropriate and proportionate for this market. In the FCA’s view, it is generally not appropriate to mandate specific disclosures since business models vary considerably. The high level approach puts the onus on firms to provide appropriate, useful information and not to burden consumers with too much detail. - <https://www.fca.org.uk/publication/policy/ps14-04.pdf>

**Under Title II of the U.S. Jobs Act**, a company may use “general solicitation” to market securities offerings if it follows the rules and guidelines of Rule 506 of Regulation D. Under this new exemption, companies can use the internet or other media to advertise their offerings. This gives companies the chance to attract a large number of new investors in a short period of time, but restricts the type of investor who can purchase the securities to “accredited” investors. The Act defines an accredited investor as one who has a net worth of \$1,000,000 (not including the principal residence), or who made more than \$200,000 a year for the three years before the securities purchase. Companies must take “reasonable steps” to verify that they are accredited. There is no cap on the number of investors or the amount of money that can be raised.

**Title III** of the Act allows securities offerings to non-accredited investors but capped at \$1,000,000 raised in a 12-month period. There are some additional [restrictions](#) on portals, but a company is essentially free to advertise and solicit off portal about its business and prospects via social media, webinars, live events, etc. [Bend Law Group - <http://www.bendlawoffice.com/2016/01/03/crowdfunding-and-the-important-distinctions-between-title-ii-and-title-iii-of-the-jobs-act/>]

The prohibition on advertising and soliciting in Ontario appears to NCFA to be another example of unjustified regulation. While consumer protection is a key objective, and high level requirements along the lines of those in the UK are appropriate, we are not aware of evidence of abuse or a degree of risk that would justify a complete prohibition, let alone a prohibition as costly to the market as this one. It should go without saying that unnecessary costs will inhibit the development of the sector, individual entrepreneurs, and capital raising and innovation generally, or be passed on to the consumer, or both.

## Appendix 6: Frequency of Reporting Requirements - examples of regulatory burden

In Ontario, entrepreneurs who are non-reporting issuers who have distributed securities under the crowdfunding prospectus exemption must deliver financial statements to the regulator within 120 days of their financial year end. This requirement is commonly imposed globally and is entirely appropriate. However, in Ontario, the statements must 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. (MI 45-108, s.16)

Contrast this with UK requirements where an audit is generally not required at all if a company is “small” and an audit is not required under companies legislation if at least two of the following apply for at least two consecutive years:

- Turnover < £10.2 million
- Balance sheet total (fixed assets plus current assets) <£5.1 million
- Number of employees < 50).

While the UK audit threshold is probably the highest of comparable jurisdictions, Ontario’s appears to be one of the lowest. The cost of an audit plus the company time associated with the process can be a very significant burden for small firms.

In addition, for data reporting other than financial statements other regulators (eg, UK FCA) commonly require quarterly reporting, while data may be required in Ontario as frequently as **every 10 days**. These burdens are exacerbated by the fact that Ontario entrepreneurs must also comply with different reporting requirements in other Canadian jurisdictions.

In the absence of any explanation or analysis from the regulators, these requirements appear to NCFA to be uncontested examples of unjustified regulatory burden. While consumer protection is a key objective here, and regular reporting is appropriate, it must also be a regulatory objective that NO requirement is imposed unless it can be shown on good evidence that the requirement is the best alternative to achieve the regulatory objective or solve a market problem, **and** that the demonstrated benefit will exceed the costs.

The OSC has not revealed its analysis. Compare this to the extensive cost/benefit analysis in the FCA’s Consultation Paper 13/3 - “The FCA’s regulatory approach to crowdfunding (and similar activities)” Oct 2013 - <https://www.fca.org.uk/publication/consultation/cp13-13.pdf>.

## Appendix 7 - Regulatory approach

In its recent submission on regulatory burden FAIR: "cautioned against reducing regulatory burden in the absence of empirical support that it will be beneficial to the capital markets including investors, a key stakeholder in our capital markets."

While the NCFA is 100% behind the consumer protection objective, the NCFA strongly takes issue with this approach. The statement should be turned on its head (and the onus reversed) – i.e. No regulatory burden should be imposed unless a risk to regulatory objectives (e.g. consumer protection) has been identified by the regulator and the regulatory solution selected (if any) is the most cost-effective to mitigate the risk. (The regulator's analysis should also be fully transparent so stakeholders can respond effectively.)

Apart from the fact that FAIR's approach does not support the equally important objective of efficient and competitive markets, it makes any argument for reducing burden much more difficult. How does the NCFA provide empirical support for a lower trigger for an audit, for example? How can it show that reducing this burden is "beneficial" for investors? It is a bit like trying to prove a negative, with the onus on the NCFA and other stakeholders rather than the regulator.

NCFA supports the approach of regulators such as the FCA - <https://www.fca.org.uk/publication/consultation/cp13-13.pdf>

Speech (Getting regulation right) - <https://www.fca.org.uk/news/speeches/getting-regulation-right>

FCA's regulatory principles - <https://www.fca.org.uk/about/principles-good-regulation>

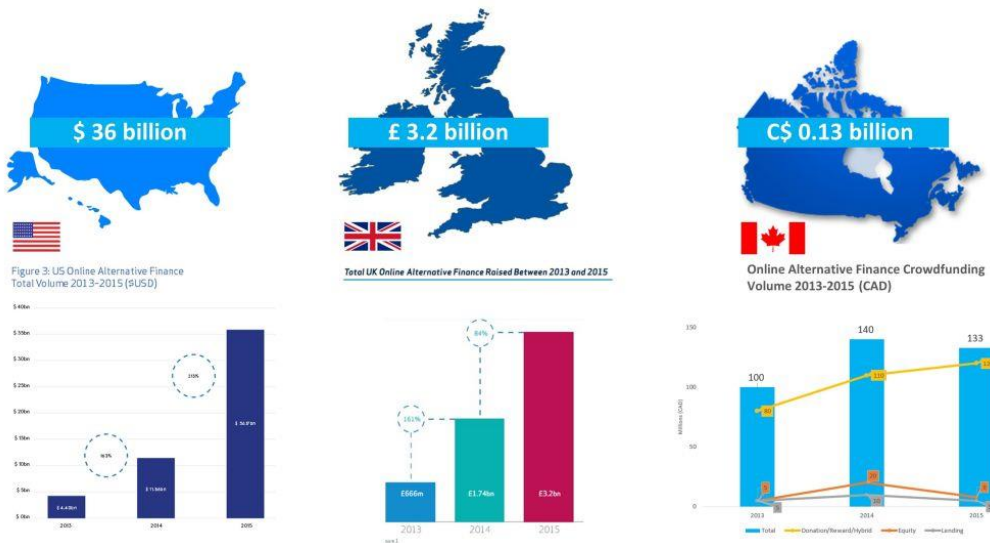
## **Appendix 8: NCFA Meetings with OSC and BCSC**

NCFA has had several meetings with the provincial regulators to discuss crowdfunding challenges. On August 15, the NCFA met with the British Columbia Securities Commission (BCSC). BCSC is consulting with stakeholders as part of their 3 year Service Plan ( Strategy 1: modernize our approach to capital raising exemptions). A report will be published in a few months with stakeholder feedback, their analysis/findings, and recommendations. NCFA raised all the recommendations in this submission in its meeting with BCSC. BCSC made no commitments, but soon afterwards announced changes to the Startup Exemption which NCFA supports.

On August 24, NCFA met with OSC who confirmed there has still been no take up of MI 45-108. NCFA emphasized that MI 45-108 is expensive and overly complex/burdensome relative to other exemptions like the Offering Memorandum (OM) and noted that the OM does not specifically help SMEs raising smaller amounts of capital (i.e. <\$250,000). NCFA provided numerous examples of companies incorporating and raising capital in the U.S. to underline the magnitude of the problem that the regulatory regime presents. The issue of lack of awareness and the need for education was discussed and several NCFA participants pointed to the U.K. as an example of what should be done to educate investors about crowdfunding. The OSC did not make any commitment to move forward with the recommendations. NCFA informed OSC that the next step was to approach the provincial and federal Ministers of Finance to advocate for the regulatory changes that should be made to the crowdfunding regimes.

## Appendix 9: Comparing Canada to the US and UK

Crowdfunding activity is far more vibrant in the U.S. and the U.K. than it is in Canada. The use of crowdfunding portals in the U.S. and the U.K. has doubled or tripled year after year over the past four years. The U.S. and U.K. achieved alternative finance volumes of \$34.5-billion (U.S.) and £3.6-billion respectively for 2016. Even when adjusted for its much smaller population, Canada's alternative finance crowdfunding markets underperformed at approximately \$133-million, undermining Canada's international competitiveness and the growth of innovative small- and medium-sized businesses.



Other indicators show that other countries are also far ahead of Canada with respect to crowdfunding.

### U.K. Crowdfunding activity grows with government investing and tax incentives

- Crowdfunding continues to help a wide range of businesses from restaurants to cleantech projects [Link to examples](http://www.businessinsider.com/biggest-uk-crowdfunding-campaigns-2016-12/) - <http://www.businessinsider.com/biggest-uk-crowdfunding-campaigns-2016-12/>
- 2017 [Beauhurst](#) research highlights that the top 3 providers of equity investment in the U.K. for small rounds between £250K - £2M are equity crowdfunding platforms (Crowdcube, Seedrs, and SyndicateRoom). This funding is crucial to ensure startups have the financial support to scale up
- 2017 [Small Business Equity Tracker](#) (British Business Bank) confirms "Crowdfunding remains an important source of funding for early stage companies forming 25% of all announced equity deals in 2016. Crowdfunding platforms were the most prevalent investor at the seed-stage in 2016 (a similar position to 2015), with crowdfunding platforms involved in 192 deals compared to 132 for PE/VC funds." (page 5)
- State-owned British Business Bank (BBB) [has invested £85 million](#) of taxpayer's money directly in the peer-to-peer (P2P) lending sector

- U.K. government tax incentives include income tax relief, capital gains tax exemptions, loss relief, and capital gains tax deferral relief. In addition, approx. 80% of deals on a leading equity platform, Seedrs, falls under the [Enterprise Investment Scheme](#) (EIS) and Seed Enterprise Investment Scheme (SEIS)
- U.K. has great research and innovation support through eg FCAs Project Innovate ([Podcast Mar 2017](#)).

### **RegCF (Title III) research from the US shows significant growth and impact trends:**

Growing interest to fund a wide range of quality deals providing an economic boost in local communities and opportunities for start-ups and scale-ups of all backgrounds and diversity (source: Crowdfund capital advisors):

- Of 399 offerings, 139 companies raised US\$37 million seed funding, which created 1397 jobs for the new economy (growing 15% per month).
- Total investors 37,396 (46.5K have opened accounts)
- Average funded campaign size \$301,930 (Average check size \$994);
- Average valuation of companies \$10.7 million
- Number of industries/sectors represented (funded) 75 (34)
- Number of states represented (funded) 44 (27)
- Average jobs created per successfully funded campaign = 2.7

Further, in the U.S. there is an ongoing effort to improve regulation with a focus on protecting investors while providing improved opportunities for smaller investors to generate wealth. For instance, the “H.R. 4855 Bill “[Fix Crowdfunding Act](#)” was passed by the house on July 6<sup>th</sup>, 2016.

“The newly appointed SEC Chair, Jay Clayton has been chosen by the President to lead an agenda with a threefold mission to protect investors, maintain fair and orderly markets, and to [also promote capital formation](#).” said Commissioner Michael Piwowar, Acting Chair of the SEC in a recent interview.

## Appendix 10: Peer-to-Peer Lending in Canada

### What is Peer-to-Peer (P2P) Lending?

P2P lending, also known as marketplace lending, is the practice of lending money to individuals or businesses through online services that match lenders directly with borrowers. Since P2P lending companies operate entirely online, they can run with lower overhead and provide the service more cheaply than traditional financial institutions. As a result, lenders often earn higher returns compared to savings and investment products offered by banks, while borrowers can borrow money at lower interest rates, even after the P2P lending company has taken a fee for providing the match-making platform and evaluating the borrower's creditworthiness. Since more companies have been seeking debt financing, the P2P lending market is now about 10 times larger than the investment crowdfunding market in the UK and other developed markets.

### The Problem with the Regulation of P2P Lending in Canada

The exemptions such as the Integrated Crowdfunding Exemption and restricted dealer registration do not work for most potential marketplace lending platforms. Due to the significant cost burden of tasks such as determining suitability, the requirements have kept the sector from making any headway in Canada. Other issues have been set out in the body of this submission. NCFA also submits that imposing investment limits/caps is excessive given the lower risk of non-speculative debt investments. So far as we are aware, only Canada imposes caps on P2P lending.

In summary, loan based crowdfunding is not the same as investment based crowdfunding and it should be regulated differently in many respects as is the case in the U.K. (See <https://www.fca.org.uk/publication/thematic-reviews/crowdfunding-review.pdf>)

### Why It Matters

Marketplace lending platforms are having a significant positive impact on SMEs in the U.K. as set out in the Cambridge University 2015 U.K. Alternative Finance Industry Report and in the U.S. as illustrated by a report prepared by the Milken Institute Center for Financial Markets (which profiled 70 US based online non-bank fintech businesses). **We ask all Canadian regulators to revisit the requirements and make changes that enable and support loan based crowdfunding.**

### Case Study: Funding Circle, a UK P2P Lending Platform

In addition to lightening the regulatory burden to make P2P lending competitive in the U.K., the government has made significant efforts to support the growth of this burgeoning sector. The U.K. government, through the British Business Bank has committed £80 million to date toward the U.K. SME lending platform Funding Circle. They do so by providing 20% of the loan capital for each loan that is facilitated on the Funding Circle platform. The Centre for Economics and

Business Research researched the impact of Funding Circle on the U.K. economy. They found that since 2010 Funding Circle has boosted the U.K. economy by £2.7 billion by:

- Supporting the creation of over 40,000 new jobs
- Helping businesses in regions that have faced economic hardship (such as the North)
- Helping small housebuilders to build more than 2,200 homes
- Helping more than 15,000 SMEs to access finance.

## **Appendix 11: More Detail on NCFA Recommendations**

### **1. Harmonize Crowdfunding Requirements**

A key NCFA priority is the harmonization of the capital-raising requirements and exemptions in Canada. The Integrated Crowdfunding Exemption (MI 45-108) came into effect January 25, 2016 in the provinces of Manitoba, Nova Scotia, New Brunswick, Ontario, and Quebec. Saskatchewan and Alberta have since adopted the Integrated Crowdfunding Exemption. Ideally, the Integrated Crowdfunding Exemption and the Start-Up Crowdfunding Exemption (MI 45-316), should be available to issuers in every province and territory in Canada. The requirements and application of these exemptions should also be identical; the differences that currently exist should be eliminated. The differences among provincial crowdfunding regimes are documented in detail at Appendix 2. We suggest that the best approach to harmonization is to modify Ontario's crowdfunding regime so that it is more in line with that of British Columbia.

In addition, variations within MI 45-108 have led to three new versions of an offering memorandum under Canadian securities law). Ontario and Nova Scotia both treat the MI45-108 offering document as an offering memorandum, while Quebec treats it as a document in lieu of a prospectus. Issuers and investors were already confused so creating more versions was not helpful. See **Appendix 1: Comparison of overly complex crowdfunding requirements in Canada** and **Appendix 2: Jurisdictional differences within MI 45-108 Crowdfunding**.

### **2. Allow Advertising and General Solicitation**

The Integrated Crowdfunding Exemption (MI45-108) prohibits issuers from directly or indirectly advertising their crowdfunding offering, although an issuer may inform prospective "purchasers" that it intends to conduct a crowdfunding offering and may direct purchasers to the portal. This restriction is in stark contrast with the U.K. FCA where the financial promotion rules simply require issuers to ensure that investors have the information they need to be able to make informed investment decisions and that all communications are fair, clear and not misleading. In the FCA's view, it is generally not appropriate to mandate specific disclosures since business models vary considerably. Instead, the rules require regulated firms to consider the nature and risks of the investment, and the information needs of customers, and then to disclose relevant, accurate information to them. This high-level approach puts the onus on firms to provide appropriate, useful information, and not to over-burden consumers with too much detail.

The SEC prohibits general solicitation (such as advertising in the newspaper). However, Title II allows a company to employ "general solicitation" to market securities offerings as long as it follows the rules and guidelines of Rule 506 of Regulation D. Under this exemption, companies can use the internet or other medium to advertise their security offerings.

A company trying to raise capital for the first time, probably does not have a list of willing investors to draw from so the ability to use the internet could increase the likelihood of a successful capital raising dramatically. Issuers and registered dealers have been allowed to use advertising and general solicitation under the accredited investor exemption and the offering memorandum exemption for over ten years. During this period, so far as we are aware, there has been very little abuse.

Not allowing advertising, and requiring portals to put information about an offering behind a wall, creates a private room environment where issuers and portal operators have a greater ability to hide what is being said to potential investors. It is equivalent to creating a “private pitch dinner” or “timeshare presentation” which can breed high-pressure sales tactics, false information, and empty promises. Regulators cannot police everything. With more visibility, the crowd will alert regulators and potential investors to issuers and founders who are not who they say they are or who are not abiding by the rules. Allowing advertising and general solicitation creates transparency and with this approach fraud is less likely and quickly uncovered. This increases investor protection (rather than reducing it).

See also **Appendix 5: Prohibitions on Advertising and Soliciting - holding the sector back**

### **3. Increase Thresholds for Required Review and Audit of Financial Statements**

In Ontario, entrepreneurs who are non-reporting issuers who have distributed securities under the crowdfunding prospectus exemption must deliver financial statements to the regulator within 120 days of their financial year end. This requirement is commonly imposed globally and is entirely appropriate. However, in Ontario, the statements must be accompanied by:

- 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;
- 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. (MI 45-108, s.16)

The cost of an audit plus the company time associated with the process can be a significant burden for small firms.

In comparison, the majority of the intrastate crowdfunding exemptions in the U.S. do not require reviewed or audited financial statements until an issuer raises \$1 million or more **per year**. Canadian non-reporting issuers are at a disadvantage compared to issuers located elsewhere.

For data reporting other than financial statements, other regulators (e.g. U.K. FCA) commonly require quarterly reporting, while some reporting in Ontario may be required **every 10 days**.

These requirements appear to the NCFA to be uncontested examples of unjustified regulatory burden. It is not uncommon for reviews of financial statements to cost \$20,000 or more, as well as additional management time. Audited financial statements can cost substantially more. These burdens are exacerbated by the fact that Ontario entrepreneurs must comply with different reporting requirements in other Canadian jurisdictions. See also

#### **4. Remove Caps on Accredited Investors and Allow Self-certification**

In all jurisdictions, if an investor indicates they are an accredited investor or a permitted client, the portal is required to obtain further information from the purchaser in order to be satisfied that the purchaser has the requisite income or assets to meet the definition of accredited investor or permitted client. This imposes additional administrative costs on small start up companies.

Portals and issuers struggle with what is required of them to confirm and validate that someone is an accredited investor. Ideally, they would like to be able to rely on self-declarations by investors or use a check-the-box approach, however, regulatory actions across Canada and guidelines issued by various regulators have indicated these actions are not sufficient to determine if someone is an accredited investor.

Our understanding is that Ontario's and Alberta's *Form 45-108F3 - Confirmation of Investment Limits* not only serves to provide information about investment limits but also confirms for issuers if an investor is an accredited investor. If this is true we encourage all participating jurisdictions to adopt an accredited investor confirmation and validation form that issuers and portals can rely on to determine if someone is an accredited investor.

#### **5. Provision of Funding for Crowdfunding Education and Data Collection**

Education and data collection and analysis are at the core of the successful implementation of a vibrant crowdfunding sector and a continuous effort by all stakeholders including industry and government should enable more understanding, education and support on regulatory requirements, costs, pricing, participants and opportunities and threats. Government, industry, investors, and the public at large (taxpayers) would benefit from the economic growth and jobs generated from enhanced crowdfunding activity.

In both the U.S. and the U.K., regulators and government agencies have worked together with industry to provide resources, incentives and funding (e.g. U.K. Business Bank) and to actively educate about regulation and about the potential upsides and downsides of crowdfunding. A recent U.K. Report found that funding from bodies like Innovate U.K. significantly boosts jobs, turnover, and productivity - <https://www.wired-gov.net/wg/news.nsf/articles/New+jobs+and+billions+to+UK+economy+from+innovation+grants+08092017142700>

In addition, "the impact of participating in [such] projects is larger for small firms and those with lower starting productivity (turnover per employee)".

#### **6. Increase Amount Issuers May Raise to \$5 Million**

The maximum amount an issuer group can raise under the Integrated Crowdfunding Exemption in a twelve-month period is \$1.5 million. The NCFA is aware of no reason why this limit should not be \$5 million or higher. It is our understanding that the \$1.5 million limit was selected based on the U.S. \$1,000,000 limit set under Title III of the JOBS Act and in the U.S. Securities and Exchange Commission (SEC) crowdfunding rules. Several House and Senate members in the U.S. have proposed that the cap be raised for offerings under Title III Crowdfunding under

various bills, none of which has yet been adopted. Under the intrastate crowdfunding exemptions offering, caps vary from \$100,000 to \$5 million per year. Other than in Oregon, there has been no activity under the intrastate crowdfunding exemptions in states where the offering cap is less than \$1 million.

## **7. Eliminate Caps on Retail Investors and Investment**

Under the current cap of \$2,500 per retail investor or per investment, a startup would have to crowdfund from 600 retail investors to generate the maximum \$1.5 million investment. That number of individual investors is very difficult for a startup to manage. Documenting all those investments in the company's investment ownership record or "cap table" is also onerous and off-putting for angel investors or venture capitalists looking for a simpler capital base. It could also be challenging for companies to round up investors' approvals on the future direction of the company.

While we understand the intent is to protect retail investors by limiting investment, caps also limit the ability of the same retail investors to achieve returns or allocations that suit their investment profile and risk appetite. Many retail investors are 'repeat participants' or are comfortable with the process and want to be able to increase their participation or expand their portfolio.

See - <https://www.wealthforge.com/insights/crowdfunding-gaining-traction-in-the-uk-but-what-about-the-us>

## **8. Provide a Reasonable Sunset Clause for Ongoing Disclosure Requirements**

An indefinite ongoing disclosure requirement only makes sense if a non-reporting issuer is continually raising capital, planning to go public in the near term, or has a definite life span. Certain ongoing disclosure requirements should not apply when an issuer has finished raising capital under the private issuer exemption, the accredited investor exemption, the Start-up Crowdfunding Exemption or the Start-up Business Exemption. We suggest a sunset clause of one year after a non-reporting issuer finishes a capital raising exercise under the exemption.

## **9. Less Frequent Filing of the Distribution Report**

The offering memorandum and the MI45-108 exemption distribution report must be filed every 10 days with investor distribution details. This is an onerous (and so far as we are aware unprecedented) burden for a small exempt market dealer. In addition, the report has to be inputted multiple times since British Columbia, Ontario and others have different input forms. We strongly recommend that this form be filed monthly or quarterly (as in the U.K.) and that input forms be harmonized. (See **Appendix 6: *Crowdfunding Frequency of Reporting Requirements - examples of regulatory burden***)