OSC EXEMPT MARKET REVIEW
OSC NOTICE 45-712
APPENDIX A – SUMMARY OF COMMENTS ON CONSULTATION PAPER

1. List of commenters

Comment Letter	Signatories
A2A Capital Management Inc.	Foo, Clifton
Accilent Capital Management Inc.	Pembleton, Dan
Advocis	Pollock, G. & Lockhart, H.
Alternative Investment Management Association	Pember, Ian
Angel One Network Inc.	
Antony, Dave	
Austin, Richard E.	
Bacon, Nancy	
Canada Gold Corporation, NewRock Market Advisors Inc.	McMillan, Chad
Canadian Advocacy Council for Canadian CFA Institute Societies	Litvinov, Ada
Canadian Foundation for Advancement of Investors Rights	Pascutto, Ermanno
Capital Angel Network	Gill, Parm
CATA ALLIANCE Invest CrowdFund Canada	Reid, John & Gordon, Dr. Cindy
Cdling Capital Service Inc.	Cayley, Michael
Centurion Apartment REIT	Orr, Robert
Cheng, Chris	
CNSX Markets Inc.	Theriault, Rob
Compliance Support Services	McManus, Stephanie
Crowdfunding Investment Angels	Sidman, Charles
Davies Ward Phillips & Vineburg LLP	Murphy, Robert S.
DeMelo, Paul R.	
Enlightened Private Capital Inc.	Light, Norman
Exempt Experts Inc.	Hoult, Ryan
Exempt Market Dealers Association of Canada	Koscak, Brian, Gilkes, David & Ritchie, Geoffrey
Fan, Gail	
Fasken Martineau DuMoulin LLP	Peterson, Jim
Financial Value Inc.	Cameron, Don
Fiore Management & Advisory Corp.	Keep, Gordon
Fraser Milner Casgrain LLP	Johnson, Andrea C., Inman, Keith & London, Steve

Comment Letter	Signatories
Friedman & Associates	Friedman, William
Funding Portal Inc., The	Kirk, Teri
Garrison Hill Capital Management Inc.	Yhip, Michael
Gledhil, Neal	
Golden Triangle Angelnet	Douglas, Robert L.
Gowling Lafleur Henderson LLP	
Hershaw, James	
HiveWire Inc.	Charlesworth, Christopher & Ania, Asier
Hopkins, Darrin	
Horwood, Rosemary	
Insight Exempt Market Research & Analysis Inc.	Wellwood, Michael D.
Interactive Ontario	Henderson, Donald
Investment Funds Institute of Canada, The	Hensel, Ralf
Investment Industry Association of Canada	Amsden, Barbara J.
Kan, Calvin	
Kemball Group, The	Kemball, Peter
Kingsmont Investment Management Inc.	Warner, Paget
Lee, Ronald	
Lorenz, Dr. Patricia	
Lun, Carol	
MacKenzie, Robert	
Madison Avenue Development Corporation	Litt, Stephen
Mak, Elaine	
MaRS Discovery District	Treurnicht, Ilse
McManus, Matt	
Miller Thomson LLP	Smits, Darren
Mitra, Devashis	
Nahmias, Jordan	
National Angel Capital Organization	Scarborough, Michelle
National Exempt Market Association	Skauge, Craig & Pettipas, Cora
National Crowdfunding Association of Canada	Asano, Craig
Network of Angel Organizations – Ontario	Lorenz, Dr. Patricia

Comment Letter	Signatories
Ontario Centre of Excellence	Corr, Dr. Tom
Ontario Media Development Corporation	Thorne-Stone, Karen
Optimize Capital Markets	McGrath, Matthew J.
Ottawa Community Loan Fund	
Pangaea Asset Management Inc.	Palin, Linda
Pinnacle Wealth Brokers	Cerson, Douglas J
Pinnacle Wealth Brokers	Chan, Phoebe
Pinnacle Wealth Brokers Inc.	Zurfluh, Darvin & Unrau, Rick
Pinnacle Wealth Brokers Inc.	Taitinger, Ruth
Platinex Inc.	Paradis, Lori
Platinex Inc.	Perrin, Joanna
Platinex Inc.	Trusler, James R.
Portfolio Management Association of Canada	Walmsley, Katie & Mahaffy, Scott
Prestige Capital Inc.	Potyondi, Curtis
Producers Roundtable of Ontario, The	Powell, Karen
Prospectors & Developers Association of Canada	Gallinger, Ross
RBC Dominion Securities Inc. and RBC Philips Hager & North Investment Counsel Inc.	Agnew, David & Parmar, Vijay
Sargent, Marcus	
Secure Capital MIC Inc.	Singal, Samuel
SecureCare Investments Inc	Johannes, Peter
Sentry Group/Pinnacle Wealth Brokers	Aarssen, Jolin
SkyLaw LLP	Lee, Michael M.
Sloane Capital Corp.	Freedman, Stephen
Stikeman Elliott LLP	Ottenbreit, Kenneth G.
Stirling, John C.	
Swire, Peter	
Szabo, Irene	
Taddle Creek Capital	Smith, Nelson
Thring, David E.	
TMX Group Limited	Chadda, Ungad & McCoach, John
Toronto Business Development Centre	Hobbs, Ed
Trinity Compliance Partners Inc.	Rhee, Andrew & Santiago, Dave

Comment Letter	Signatories
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Venturelynx	Hassan, Kamal
Vickers, J. S.	
w5th Equity Management Inc.	Huizinga, Batholomew
Wales Capital	Wales, Kim
Walton Group of Companies	McKenna, Mark
Wildeboer Dellelce LLP	Apps, Eric & Cassie, Gordon
Wolverton Securities Ltd.	Wolverton, Brian
York Angel Investors Inc.	MacCannell, Scott

2. Summary of comments

This summary of comments contains the following headings:

- General comments – comments 1-7
- Crowdfunding exemption – comments 8-42
- Offering memorandum exemption – comments 43-58
- Exemption based on investment knowledge – comments 59-68
- Exemption based on registrant advice – comments 69-77
- Private issuer exemption – comments 78-79
- Closely-held issuer exemption – comments 80-81
- Family exemption – comments 82-84
- Other exemptions – comments 85-87
- Data – comments 88-91
- Other proposals – comments 92-112

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General Comments		
1	Broadening access to the exempt market	***Support for broadening access to the exempt market*** Twelve commenters expressed general support for broadening access to the exempt market. One of these commenters was of the view that continuing the status quo in Ontario is problematic as it limits investing options for investors and the amount of available investment capital. This in turn negatively impacts job and wealth creation generated by small and medium sized enterprises (**SMEs**). Consistent with this view, the commenter pointed out that: (a) there has been a decline in Canadian start-up capital between 2000 and 2010; (b) a perception exists that investments sold under a prospectus are safer than those sold by alternative exemptions ignores financial realities; (c) there is a reduced need to draw a distinction between a prospectus investment and exempt market products if an investor has engaged a registrant who meets certain criteria; and (d) the current regime negatively impacts the ability of an investor to diversify their portfolio. The commenter also believes that participation in the exempt market should not be limited to individuals who fall within a narrow segment of the population as defined under current prospectus exemptions, noting that the current tests are not necessarily indicative of financial literacy or demonstrative of an ability to withstand financial loss. Accordingly, the commenter was of the view that the exemptions that are currently in place represent too blunt an instrument to efficiently and fairly foster access to capital while meeting investor protection concerns, which results in a large pool of risk capital being unavailable to Canadian companies. Eighteen commenters described current challenges issuers are facing in raising capital. Commenters referred to specific issues encountered in the following industries: • junior public companies, • the innovation sector, • interactive digital media companies, • the technology sector, and

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		• the biotech and medicine sector. Similarly, nine commenters indicated that there is a funding gap that exists for Canadian start-ups and SMEs. One of these commenters recommended that Canada review its securities laws to ensure they are current and suitably meet the needs of SMEs and their ability to connect with prospective investors and successfully raise capital (particularly from online market places). Otherwise, the commenter was concerned that Canada would risk losing its ideas and entrepreneurs to jurisdictions with more supportive funding environments and access to capital. Other commenters referred to difficulties in raising capital due to the thresholds that must be met in order to rely on the accredited investor exemption. ***Caution around broadening access to the exempt market*** One commenter indicated that OSC Staff Consultation Paper 45-710 *Considerations for New Capital Raising Prospectus Exemptions* (the **Consultation Paper**) does not quantify a problem with access to capital for SMEs, nor show it to be attributable to securities regulation as distinct from market conditions generally. The commenter was of the view that further study is required to quantify the nature of the problem and to determine whether and how regulation contributes to it and whether regulation can and should be modified to assist in capital raising. One commenter had the following comments: • The policy objective of increasing the amount of capital raised from the exempt market for businesses, particularly SMEs, must be accomplished in a manner that protects investors. Otherwise, real capital formation, where money is invested in productive assets (leading to increased jobs and economic growth) will not occur. Simply increasing the gross dollar amount of capital raised in the exempt market can be illusory, pointless and even destructive to the ability to raise capital for SMEs. • The OSC's focus should be on the quality of capital formation given its mandate to "foster fair and efficient capital markets and confidence in capital markets". In order to foster "fair and efficient capital markets", the OSC must have regard to the quality or efficiency of the market, rather than simply the amount of capital raised. • A regulatory framework that provides for strong investor protection and efficient markets will also facilitate true (i.e., quality) capital formation, resulting in a lowered cost of capital and increased confidence in our markets. Instead of viewing investor protection mechanisms as getting in the way of capital raising efforts, they should be seen as essential features of a properly designed regulatory system. • Caution should be exercised in expanding the exempt market in the absence of necessary empirical data. • Based on two studies that it cited, the commenter was of the view that proposed exemptions should be devised to allow for: o information symmetry, o more publicly available information about the performance of investments in SMEs, both listed and unlisted investments, and o sufficient information for investors so that they can make more informed decisions about whether to purchase the investment given its price, cost, risk and/or value.

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		• They noted their understanding that the risks posed to investors vary considerably depending on: o whether the security is that of a listed issuer or not, o whether the seller is a member of a self-regulatory organization, and o whether the security is straightforward or complex. • They recommended that exemptions based on sophistication and advice specifically consider these factors in order to ensure an appropriate level of investor protection and, in particular, suggested that these exemptions apply only to non-complex products absent a separate consultation to consider the appropriateness of offering complex products to retail investors in the exempt market. • They were of the view that, for many retail investors, investing in the exempt market would not be suitable given the lack of liquidity and higher risk that are associated with the vast majority of these investments. For those investors for whom high risk products are suitable, there are already many high risk investment products that are prospectus qualified from which investors can choose which are subject to greater regulatory oversight. • They believe that the OSC should be cognizant of the fact that encouraging capital formation in the unregulated market rather than through the regulated public markets impedes the transparency of the marketplace, thereby reducing efficiency.
2	Harmonization	Fourteen commenters encouraged the CSA to harmonize means of raising capital in the exempt market, including the exemptions available under National Instrument 45-106 *Prospectus and Registration Exemptions* (**NI 45-106**). • One commenter noted that this will reduce confusion for investors and market participants. • One commenter indicated that harmonization of the exemptions would simplify the capital raising process for issuers, and would help issuers and investors more easily confirm eligibility for participation in an exempt offering that takes place in more than one jurisdiction. • One commenter was of the view that inconsistent rules and exemptions create unnecessary costs as registrants conduct business in various jurisdictions, and unequal investing opportunities for Canadian investors. • One commenter indicated that inconsistent rules create additional costs for SMEs. • One commenter indicated that without data to support maintaining these exemptions in their current form (and Ontario carve-outs) or to support making any changes in terms of adding new exemptions, it is difficult to understand exactly where issues arise, if any, with the current form of the exemptions in NI 45-106. Similarly, two commenters stated that any attempted justification of different regulatory regimes between jurisdictions should be based on specific market differences and not due to philosophical differences in approach between CSA members. • One commenter was of the view that harmonization should be a priority for the OSC and the CSA. • One commenter recommended that the OSC focus on making current exemptions available and harmonized across jurisdictions, and addressing compliance and enforcement to better protect investors. • One commenter was of the view that CSA members should agree on national

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		exemptions that apply across the country and until that time, any new OSC exemptions should be patterned on existing ones. With respect to new exemptions that may be adopted in Ontario pursuant to the consultation process, one commenter recommended that the OSC coordinate with regulators in other Canadian jurisdictions to make the exemptions available across Canada.
3	Exempt market dealers	One commenter indicated that the OSC's review of exempt market dealers revealed a number of serious deficiencies which resulted in a "sweep" which was conducted in June 2012. They observed that the results of the sweep will likely be critical to informing the policy-making process with respect to broadening exemptions. However, another commenter indicated that as with any new regulatory initiative, understanding and compliance takes time and, accordingly, it is not surprising that recent reviews have uncovered deficiencies. The commenter was of the view that this does not mean that exempt market dealers will be unable to correct deficiencies going forward. Several commenters noted the concerns raised in the Consultation Paper around exempt market dealers. Two of these commenters indicated that the exempt market dealer registration category is relatively new and that over time, compliance issues will decrease. The commenter suggested that the solution to addressing these issuers should be to focus on compliance and enforcement, rather than limiting the ability of exempt market dealers to make use of new exemptions. One commenter indicated that the level of oversight necessary for exempt market dealers should be commensurate with the inherent risk of the product being distributed.
4	Limits of proposed exemptions	One commenter indicated that the exemptions described in the Consultation Paper are unlikely to achieve the objective of raising capital in the exempt market.
5	Costs and benefits	One commenter cautioned that over-regulation of the investment community will result in a reduction in investment activity, reduced economic growth and, ultimately, a decline in prosperity.
6	Need for additional empirical data and other information	One commenter indicated that there is a need for additional empirical data about the exempt market. The commenter noted that, as part of its review, the OSC has provided little or no empirical data as to: • whether retail investors know or understand what the exempt market is and the level of risk associated with it, and in particular, investing in SMEs, • how many retail investors have had positive returns through investing in the exempt market (and in particular, with SMEs), • whether investors wish to invest in the exempt market, and • whether these exempt products are sold (rather than bought). The commenter recommended that research be undertaken to aid in assessing which parts of the exempt market are highest risk and in need of reform, and indicated that it looks forward to reviewing any analysis of data from other jurisdictions as to their experience with the offering memorandum and family and friends prospectus

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		exemptions. The commenter indicated that a broad range of other information would be valuable to the policy-making process including data related to the functioning of the exempt market, including the profile of investors, the role of registrants, capital raised in general and by SMEs in particular, viability of SMEs, returns generated by SMEs and any evidence of fraud and other wrongdoing. The commenter also indicated that there appears to be little empirical evidence of the effects of regulatory constraints on the ability of SMEs to raise capital in a timely and efficient manner.
7	Other	One commenter recommended that prior to implementing the exemptions outlined in the Consultation Paper, particularly the crowdfunding exemption, the OSC should consider the experience and developments in other jurisdictions, in order to determine whether similar exemptions enhanced the capital raising mechanisms for SMEs in those jurisdictions and/or whether they have resulted in adverse effects on investor protection.
Crowdfunding exemption		
8	Support for a crowdfunding exemption	***Support for a crowdfunding exemption*** Thirty-three commenters supported introducing a crowdfunding exemption in Ontario. Nine commenters indicated that crowdfunding could help to fill a gap that is not being filled by other sources of capital. However, one of these commenters noted that while this may be the case for start-ups and early stage companies, it would not necessarily be so for SMEs that have larger capital requirements than can be fulfilled through crowdfunding. Commenters also referred to the following potential benefits of crowdfunding: <u>Issuers</u> • Access to capital generally for entrepreneurs and/or start-ups, early stage companies, small business and SMEs, which in some cases is not currently available to them. • It would increase access to capital for issuers in certain industries, including assisting the innovation sector to access seed and research and development capital and Ontario interactive digital media SMEs. It would particularly benefit industry sectors that face unique challenges with accessing capital such as the medical technology/biotech and medicine and social innovation fields, as well as creative media content creators. It would provide relief to the junior exploration industry which requires broader access to capital that can be raised in a cost-effective manner, and it would complement traditional sources of funding and enhance the ability of media producers to raise capital. • It would provide a useful additional tool for issuers, particularly SMEs. • Crowdfunding would address the need of Canadian SMEs for alternative sources of capital in order to foster innovation, stimulate job creation and ultimately grow into larger sustainable businesses. • It would support those that want to be productive, yet have been constrained by access to capital. • Crowdfunding brings greater issuer transparency and accountability.

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		• It would reduce the costs of raising capital. • Capital would be less structured. • Issuers would have access to a broader range of investors. • It could provide a more level playing field for issuers. • Issuers would have access to much needed liquidity. • Crowdfunding makes the capital raising process more efficient. One commenter indicated that crowdfunding provides the most efficient access to capital, allowing for successful capital raises to take place in extremely short time frames. • With the advent of technology, SMEs could efficiently access capital through crowdfunding over the internet. • Crowdfunding could help provide access to capital for those who have limited access based on gender, race or (dis)ability, as well as immigrants, rural communities, social enterprises and other non-mainstream groups. • Allowing individuals who wouldn't otherwise be able to invest in projects and young companies opens the window for more Ontarians to participate in the province's innovation culture. • Entrepreneurs and ideas would be more effectively leveraged and generate greater economic activity. • There are many business sectors that have difficulty obtaining capital because they do not fit into the traditional incubator profiles and are therefore unappealing to large institutional, venture capital or angel investors. • Undercapitalized small businesses often have difficulty in obtaining bank financing, and crowdfunding may be useful for strengthening a company's balance sheet to obtain additional bank financing, ultimately reducing its overall weighted average cost of capital. • Crowdfunding is a progressive model that is in line with how many SMEs (particularly in the innovation sector) operate. • Benefits go beyond capital raising, as crowdfunding has the potential to engage an issuer's shareholders in a manner that may drive interest in the issuer's products and services, in addition to its securities. • Crowdfunding would provide benefits to issuers that seek to avoid registrants and their fees on small transactions. • Funding raised from crowdfunding will allow issuers to strengthen their offerings and grow their businesses to a point where they then become attractive to prospectus venture capital and institutional deal makers. • Crowdfunding markets allow issuers to research and validate their product offerings and business models in a diverse public context, encouraging them to be more aware and competitive, and ultimately create stronger business and product offerings. • Issuers will benefit from social media marketing and the recognition inherent in the crowdfunding process. <u>Investors</u> • It could be used to raise funds for diverse initiatives for which investors can expect a return on their investments. • It could allow investors who would otherwise be barred from participating in the capital markets to safely invest in businesses and ideas they like. • Allows investors to see a larger variety of early stage investment opportunities they would not otherwise be able to access. • Investors would potentially have access to a greater number of investment

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		opportunities. • It would increase investors' product knowledge. • It would increase the ability to tailor investments to investors' personal values and/or strategic goals and provide additional investment opportunities for investors who can further tailor their portfolio based on their own personal preferences with more control over their investment decisions. • Investors would be able to diversify and thereby manage risk. • Investors would have greater protection against exposure at default. • It would allow a wider group of the public to participate in a more substantive way than in traditional casual forms of crowdfunding that do not result in an equity investment in the company. • By lowering transaction costs, portals will make it possible to have more diverse goals for investing. • There is increased transparency to investing in opportunities online and it provides good education for companies and investors on valuation and other terms of early stage companies. • There would be increased transparency, investor engagement and accountability. • Democratizing the exempt market for all investors is important. • It enables participation by retail investors. • It would provide benefits for investors that seek to avoid registrants and their fees on small transactions. • Crowd intelligence will help to detect and reduce occurrences of fraud. • Investors would be able to choose a portal that best suits their interests and appetite for financial risk versus return by spreading small amounts of capital across a number of preferred crowdfunding investments. • Investors are able to connect directly with the project founders and participate in the creative process by providing feedback and research. <u>Economy</u> • It has the potential for increased global economic competitiveness. • It would help to create jobs opportunities in Ontario and Canada. • It would help to retain companies in Ontario. • People are increasingly using the internet and social media to gather information and make decisions on many matters, including with respect to their investments. • It will create new technology and a stronger providence of entrepreneurial leaders. • Investing in local community businesses will impact the social and economic value of the geographic area that investors choose to support. • Investors may be encouraged to launch their own pursuits, which stimulates creativity, innovation, confidence and the economy. Other comments included the following: • Crowdfunding is exactly how higher risk financings should be distributed to stimulate growth. • Not implementing a legal crowdfunding solution will result in both the flight of Ontario's capital seeking innovation companies to other jurisdictions where crowdfunding exists, and the existence of unregulated services in Ontario. • If Ontario does not allow ordinary investors to participate in crowdfunding, we may still feel the effects of it on our local market, as companies aggregate funds in other markets (as a form of regulatory arbitrage) and invest here. Additionally,

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		our local markets will be impacted though an influx of foreign capital. • Companies that will use a crowdfunding exemption would be very early stage companies that are otherwise unable to access capital to fund their growth, and it is effectively "friends and family" in a world of social networking. • Crowdfunding is a natural evolution of efficient and transparent markets brought on by the technological advances of the internet and social media. • The internet is being used more and more in the capital markets as an effective and efficient means to communicate and deliver information for investors and to facilitate the completion of transactions. This is the way of the future and should be encouraged with prudent and reasonable oversight. Through technology, crowdfunding also has the potential to standardize, professionalize and streamline communications and interactions between investors and issuers. One commenter was supportive of a crowdfunding exemption for listed issuers, noting that it would help to open up a large pool of risk capital that is unavailable to Canadian companies due to current exemptions. Additionally, the commenter was of the view that crowdfunding would provide for ease of administration and reduced costs of raising capital for listed issuers, and would democratize the exempt market for these issuers. While supportive of crowdfunding, one commenter was concerned that the OSC may have neglected to take into consideration the spirit of crowdfunding and in many cases those who want to engage in crowdfunding in order to achieve their objectives in relation to their enterprises. In particular, the commenter indicated that the concept idea appears to be an attempt to "map an old method onto a new model", where a new model should be developed. ***Concerns around over-regulation*** Some commenters were concerned with the potential for imposing excessive regulation on crowdfunding which would in turn render it unworkable or impractical. • One commenter indicated that a crowdfunding exemption would be useful for issuers and in particular, SMEs, provided that investor protection and other regulatory safeguards do not render the model unworkable. • Another commenter cautioned against introducing "old frameworks" in this new context, noting that regulators must consider the internet and social media-based nature of crowdfunding and the impact this has on the way risk protection measures are considered. • One commenter noted that while the market will ultimately decide, with the costs relating to dealers or other service providers maintaining a registered portal (as well as other associated costs) and the costs of financial reporting, all of which will likely fall upon issuers, small issuers may struggle to raise capital. • One commenter recommended introducing liberal requirements for crowdfunding, due to the difficulties in regulating the internet. The commenter also noted that the OSC's resources could be better used in other areas that impact the public interest. • Another commenter expressed concern around ensuring that any new regulations not hamper or prohibit the ability to use other sources of funding, particularly other forms of crowdfunding currently used in the media industry. ***Support for a two-tiered model of crowdfunding*** One commenter would support a two-tiered version of the OSC's concept idea for a

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		crowdfunding exemption. The first tier would facilitate capital raising for start-ups while the second (more senior) tier would focus on SMEs. Each tier would have different investment limits, offering limits, requirements for disclosure at the time of sale and ongoing disclosure requirements. Under both tiers, an investor would be advised to consult with a registered financial adviser. A risk acknowledgement form would indicate that an investor's total exempt market holdings should not exceed 10% of the investor's total portfolio. ***Caution towards crowdfunding*** However, other commenters, while supporting the introduction of a crowdfunding exemption, expressed caution regarding how it would be implemented. • One commenter noted that as crowdfunding is new and has the potential for fraud, it should be subject to heightened regulation. • Two commenters cautioned that when it comes to implementing a crowdfunding exemption, "doing it right" is more important than doing it quickly, while another indicated that it is important that it be done properly to avoid future problems for issuers or investors. • One commenter recommended that the OSC consider whether regulatory mechanisms can address false expectations of open access and positive returns. • Another commenter indicated that while crowdfunding could be useful, stronger protections than those described in the Consultation Paper should be adopted as without further study and protections the model is likely to be abused. One commenter indicated that the prospect of introducing a crowdfunding exemption in Ontario raises general investor protection concerns and concerns around non-compliance by issuers, specifically in relation to risk disclosure. The commenter recommended that through its investor research, the OSC should seek specific feedback on whether investors would understand investing in companies relying on the crowdfunding exemption, whether they would do so, and whether they have any underlying concerns with offering securities over the internet. Further, they recommended that the OSC should observe the experience in the United States prior to adopting a crowdfunding exemption in Canada. One commenter indicated that great consideration needs to be given to the risks and the harm to other areas of the capital markets that could arise from crowdfunding. The commenter noted that while appropriate regulation could reduce or eliminate some of the concerns that arise (due to, for instance, the facilitation of investments from a geographically and educationally diverse group of investors with a lack of information about issuers operated by individuals who can maintain total anonymity and avoid accountability for the failure of their businesses), without providing similar exemptions for all other methods of financing a systemic bias towards its use would be created. The commenter noted that this is problematic because crowdfunding is facilitated by private operators that charge commissions on proceeds raised through their services, such that if start-ups are required to use crowdfunding to raise funds from non-accredited and non-related investors, they will suffer as all of their capital raising activities would become subject to the fees of crowdfunding service providers. While not indicating that it was opposed to the introduction of a crowdfunding exemption in Ontario, one commenter was of the view that the OSC should not rush into implementing a model where extremely liberal regulations are extended to the least regulated issuers and exempt individuals without testing the concept on publicly

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		traded issuers. The commenter noted that there are numerous securities, regulatory, administrative and compliance issues around crowdfunding, and that it presents an enormous potential for abuse. ***Commenters not in favour of adopting a crowdfunding exemption at this time*** Four commenters were not supportive of moving forward with a crowdfunding exemption at this time. One of these commenters expressed concerns around the regulatory complexities involved with crowdfunding. The commenter recommended that the OSC focus on the other exemptions discussed in the Consultation Paper and in the interim, continue monitoring crowdfunding developments in other jurisdictions before further work is done in this area. The commenter noted that some of the OSC's objectives in exploring crowdfunding could be achieved by expanding the existing exemptions that are available to investors in other jurisdictions such as the family, friends and business associates exemption. One commenter indicated that there is insufficient information to conclude that crowdfunding would be useful in the long run, or whether it would be a better way to raise capital with no greater risk to investors than other initiatives currently under consideration in Canada. Accordingly, the commenter was of the view that it is premature to conclude that crowdfunding should be pursued before additional research has been completed. One commenter was not supportive of moving forward with crowdfunding for the following reasons: • There are no provisions in the concept idea that incentivize SMEs to use any capital that may be raised to expand their business or create jobs in Ontario or Canada. • The lowering of investor protections with the resultant likely increase in fraud has the real possibility of hurting legitimate businesses by increasing the cost of capital while making it easy for fraudsters and scammers to make off with investors' funds. • There is insufficient evidence to determine whether the crowdfunding concept would have the desired result of increased real capital formation. • The crowdfunding concept results in too large a degree of informational asymmetry and too great a risk of fraud and potential for investor harm and, therefore, will not result in efficient capital markets nor the desired benefits that its proponents would argue it will achieve. • "Democratization" really means eliminating fundamental investor protections and is not a principle that should guide securities regulators. • Certain studies do not support further relaxation of securities regulations to allow more financing of unregulated SMEs by retail investors given their inability to accurately appraise the correct price of the securities offered and their tendency to exhibit a preference for positive skewness when investing in SMEs, where they seek outsized returns or lottery style earnings. • Equity crowdfunding has too many fundamental problems which lead to investor protection concerns that cannot be adequately addressed. In particular, the following concerns were noted: o Informational asymmetry will exist. o Investors will want a return on their investment, and tend to have unrealistic

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		return expectations and not be aware of the low probability of return with SMEs. o Retail investors are likely not aware that investing in start-ups and SMEs is highly risky. o Given the small amounts that will be invested by any one investor, there is not sufficient economic rationale to do the due diligence that sophisticated investors would engage in. o Most investors will not understand that the level of due diligence conducted will not have been as great as with a prospectus offering. o While proponents of crowdfunding suggest that the crowd will be able to detect fraud and weed out bad actors, existing research suggests that many retail investors are not able to adequately detect fraud and instead, become victims of fraud at an alarming rate. o Group irrationality is well documented. o Compliance with regulatory requirements may be difficult, if not impossible, to adequately supervise and police. o The relatively small amounts invested per person will be a barrier to commencing any sort of action to recover lost funds. Further, by the time a person knows something is wrong, the money will have been misappropriated and will be very difficult to locate, let alone recover. The economics of bringing a claim and the adequacy of the economic incentives available to plaintiff law firms to bring suits will limit the ability to obtain a remedy. o Many investors will assume (wrongly) that if a portal is a registrant and issuers are required to disclose information to potential investors, then it cannot be risky. o Boiler plate statements like "you could lose all of your investment" will not resonate with investors. Another commenter expressed concerns around investor protection, recommending that a form of crowdfunding similar to what has been proposed in the United States should not be adopted as it does not provide potential investors with advice or a prospectus-like document on which to base an investment decision. ***Limitations of crowdfunding for SMEs*** One commenter indicated that as not all SMEs may be comfortable raising money through crowdfunding or directly from individual investors, capital pools should be able to raise money through crowdfunding that would then be on-lent or invested in SMEs. One commenter was of the view that due to the limitations described in the Consultation Paper, the crowdfunding exemption would only be used for micro-financing for very small issuers and not by many other issuers including SMEs. Overall, the commenter did not see this as being a meaningful exemption to increase access to capital for issuers.
9	Use of other exemptions	Four commenters recommended that a crowdfunding exemption be complementary to existing exemptions, such that issuers would be permitted to use different exemptions when raising capital. One of these commenters was of the view that crowdfunding has the potential to

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		make a positive impact on early-stage financing provided it is part of a larger and well-coordinated system of prospectus exemptions.
10	Benefits to investors	Seven commenters were of the view that the OSC has recognized the potential benefits to investors of a crowdfunding exemption in the Consultation Paper. One commenter noted that while the OSC had recognized the potential benefits for issuers, the benefits for investors are not as easily articulated or easily identifiable. Two commenters felt that the OSC had recognized the potential benefits to investors in part. One of these commenters suggested that the benefits will be greater than as suggested in the Consultation Paper. Commenters cited many potential benefits associated with the introduction of a crowdfunding exemption, which are listed under the heading "Support for a crowdfunding exemption" above.
11	Harmonization of a crowdfunding exemption	Seven commenters were of the view that if a crowdfunding exemption is adopted, it should be harmonized across Canada. • One commenter indicated that due to the conditions on the exemption, it would not be economically feasible to raise capital if the terms differed across jurisdictions. The commenter also suggested that before introducing a radically new exemption such as crowdfunding, the OSC should first attempt to harmonize existing exemptions and after an appropriate time has passed (no less than 12 months) determine if a new exemption is still required and, if so, proceed with an exemption that is harmonized across the CSA. • One commenter indicated that the internet and social media technologies are global tools and crowdfunding platforms will be much more useful if they can attract companies and investors across provincial borders. Similarly, another commenter indicated that this would help give crowdfunding the scale it would need in Canada to be successful. • One commenter recommended that both the OSC and CSA adopt the form of crowdfunding framework being considered by the OSC.
12	Timing for introducing a crowdfunding exemption	***Commenters in favour of introducing crowdfunding on a trial basis*** Twelve commenters supported introducing a crowdfunding exemption on a trial or staged basis. While not specifically indicating recommending that crowdfunding be introduced on a trial basis, one commenter was of the view that it will be important to monitor the use of the exemption closely for the first three to five years after implementation for signs of misuse. <u>Benefits of trial period</u> It was suggested that a trial period would be beneficial for the following reasons: • There are concerns around introducing crowdfunding into a largely unregulated market, particularly in light of the potential for fraud. • It could allow regulators in Canada to review crowdfunding regularly and see how it can be harmonized with the rules in the United States once they are finalized. • It would allow regulators to monitor for misuse of the exemption. • It would allow regulators to monitor portals to determine if they have capacity to

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		evaluate issuers. • It would allow operational issues and gaps to be tracked and identified and provide data for more lasting and suitable regulatory parameters. • There is not enough relevant experience in Canada or internationally that can provide sufficient lessons to ensure a particular approach is appropriate for our marketplace, and it is important to ensure that a crowdfunding exemption is introduced properly and safely rather than to rush and invite investor harm. • It would allow portals, issuers and investors to gain the necessary experience, understanding and data to ensure that this form of capital raising is viable in Canada. • It would provide an opportunity to consider whether crowdfunding might be better suited for, and have an immediate impact on, particular sectors in which it may be difficult to raise start-up capital. • It would allow time for investors and entrepreneurs to decide if they wish to rely on the exemption and to monitor for the emergence of any significant issues, thus permitting the OSC to review and modify the process as necessary. <u>Trial industry</u> However, six of the commenters who supported introducing crowdfunding on a trial basis stated specifically that they did not believe a trial should be limited to any particular industry, with one noting that this would lead to individuals attempting to redefine and force their projects to qualify under a specific category and another suggesting that it could lead to inconclusive results if the industry or companies within the industry fare poorly. <u>Trial portal</u> Two commenters suggested launching a trial portal, with one specifically recommending that it be launched through a government funded service with a finite number of issuers. Another commenter suggested that crowdfunding be offered initially on platforms that meet baseline standards established by regulators. However, two commenters did not think that a trial should be limited to any portal. One of these commenters was of the view that this would unfairly limit competition and not help to foster excellence or innovation among portals, as well as provide an unfair advantage to the trial portal(s) over new entrants. One commenter indicated that this could lead to inconclusive results if the portal does not do well or acts fraudulently. One commenter, while not supportive of crowdfunding, recommended that if a crowdfunding exemption is introduced, this should be done on a trial basis through a single portal under certain conditions not set out in the Consultation Paper. <u>Trial participants</u> One commenter recommended that a trial be limited to participants that have: • a viable technology that can be viewed by the OSC as a condition of regulation, • adequate financial resources to undertake the trial, and • adequate capital markets experience depending on their particular business model. <u>Trial investors</u> One commenter did not think a trial should place limits on who would be able to invest.

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		Trial limits on investment One commenter recommended limiting the amount an issuer could raise during a trial period. Trial period One commenter recommended a trial period of two years and two others recommended a three year trial period. One commenter supported introducing crowdfunding for a time-limited trial period, but did not specify any particular time frame. While not specifically recommending that a crowdfunding exemption be introduced for a trial period, one commenter suggested that the exemption be closely monitored for a period of three to five years after implementation. If an initial length of time for the exemption is adopted, the commenter cautioned that it should be reasonable so that issuers (particularly start-ups) will have time to generate returns. Another commenter noted that while not in favour of introducing a crowdfunding exemption on a trial basis, if this approach was taken a two year trial with limits on the amount that could be invested would be appropriate. Another commenter that was not in favour of implementation on a trial basis indicated that if such an approach were taken, they would suggest minimal restrictions during an 18-24 month period as this would encourage experimentation with different models to help inform the development of regulations. Trial through exchanges While not specifically advocating a trial period, one commenter recommended that Canadian securities regulators should provide the TSX Venture Exchange (**TSXV**) or an appropriate affiliate with an exclusive one year window to develop a crowdfunding portal that would allow any TSXV issuers to access, without restriction, online investors from any Canadian or international jurisdiction. The commenter suggested that after this one year period, the TSXV would develop the technical specifications to have integrated access to CDS, Trading, SEDAR and disclosure databases, and could provide appropriate licensing arrangements to other crowdfunding portals. While competition would be encouraged between portals, there would be controls over basic technical standards to ensure seamless communication between portals, with direct secure links to discount and full service brokerage accounts to allow direct delivery of digital book-based share certifications. The commenter was of the view that these systems would be for private company investors. Another commenter recommended that a pilot crowdfunding model be introduced in the existing public venture markets in cooperation with the TSXV, with the following features: • restricted to publicly traded reporting issuers with market capitalization of $250 million or less, • maximum annual capital raised of $2.5 million, • maximum individual crowdfunding exempt purchase of $20,000, • individual annual income requirement of $40,000, • disclosure limited to public press release containing financing details and maintenance of regular securities ongoing disclosure, • risk disclosure document contained within subscription agreement, and • registered dealer due diligence would not be required unless new directors,

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		officers or a change of business, major acquisition or change of control is contemplated in connection with the offering. ***Commenters in support of exercising caution in adopting a crowdfunding exemption*** While of the view that the idea of a trial period has merit, one commenter indicated that an alternative approach would be to let the market decide, as competitive pressures would lead platforms to implement governance standards and policies that would be beneficial to investors. Another commenter suggested that while it is an interesting concept with potential, regulators should take a cautious approach due to the early stage of crowdfunding. One commenter suggested that industries with large capital requirements and high risks of failure, and that require very specialized knowledge in order to evaluate an opportunity (e.g., drug development, mining), should be excluded from crowdfunding. ***Commenters not in favour of introducing crowdfunding on a trial basis*** Seven commenters did not support introducing crowdfunding on a trial basis. Reasons for this included the following: • One commenter noted that people who might otherwise be interested in establishing a funding portal may not wish to invest the time and money if the future of the exemption is uncertain. The commenter suggested that the exemption could be adjusted at a later time, if issues not raised in the consultation process come to light. • One commenter noted that it cannot be known in advance which industry sectors would most benefit from it, and if a sector is chosen that is not a good fit for crowdfunding, its "failure" could be projected across the entire SME market which could result in lost opportunities for other sectors. • One commenter suggested that implementation of a trial for a particular industry sector would be difficult to administer and could be unfair. • One commenter noted that with a time-limited basis, there could be a rush of crowdfunding applicants, who may not be ready or appropriate for crowdfunding, trying to get in before the deadline. It was noted that it will take time for the crowdfunding model to fully develop and SMEs will need appropriate time to develop crowdfunding approaches that make sense for them yet protect investors. • One commenter noted that while using a specified portal might work initially, it could also move SMEs to the offering memorandum model, which would then restrict the potential number of investors. The commenter noted that as long as funding portals are licensed and meet all regulatory requirements, the number of portals should not be limited. • One commenter indicated that any restriction on introducing crowdfunding will stifle the Ontario market and not act to provide sufficient access to capital. • Three commenters indicated that trial approach is not necessary in light of the experience of other jurisdictions with crowdfunding. • One commenter indicated that a restriction based on industry does not further address the needs of providing access to capital for SMEs or protecting investors. • One commenter indicated that restricting crowdfunding to a specific portal would limit consumer choice and alter market pricing, and is outside of the philosophy of market competition and crowdfunding.

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		Five of these commenters, as well as one other commenter that did not express a view on whether or not a trial should be implemented, recommended that a crowdfunding exemption be introduced sooner rather than later. In particular, it was noted that: • Crowdfunding is being introduced in other jurisdictions and if Canada does not provide a similar exemption Canadian entrepreneurs will likely go elsewhere. • 10 years from now, crowdfunding will be practiced in all jurisdictions, with those that adopted it first having the largest economic benefit. The OSC should introduce it and adapt the rules until it gets it right. • Moving quickly will help ensure that crowdfunding is not filled by non-Canadian funding portals that are outside the OSC's power to regulate. Currently, there is evidence that US-based portals are approaching early-stage companies in Ontario with the aim of drawing them to relocate to the United States to take advantage of their services and improve their access to capital. • Ontario should not fall further behind other jurisdictions in developing innovative regulatory frameworks that grasp the reality of the internet and widespread adoption of social media. • There will be an initial "landrush" as portals establish themselves, and certain portals should not be given a "time to market" advantage. Another commenter, while in favour of introducing a crowdfunding exemption on a trial basis, also expressed concern that if Ontario (and Canada) does not provide such an exemption many issuers and entrepreneurs may re-locate to jurisdictions where crowdfunding is legally permitted, most likely the US, which would result in a loss of talent and business opportunity and have a negative impact on our economy, jobs and entrepreneurialism. One commenter was of the view that Ontario should fully support and perhaps help to finance leading edge crowdfunding portal developments that lead rather than follow the practice of other jurisdictions in Canada and around the world. While of the view that crowdfunding be introduced quickly, one commenter recommended the following approach to implementation: • initially, enabling the use of portals for SMEs to raise capital from accredited investors, as there is little risk and lots of opportunity to democratize, improve and better regulate the capital formation process, and • subsequently, extend the potential investor base for early-stage company financings in the exempt market by including non-accredited investors.
13	Investment limits	***Commenters in favour of investment limits*** Thirty-four commenters supported setting limits on the amount that an investor could invest under a crowdfunding exemption. The primary reasons cited for setting limits related to investor protection. One commenter was of the view that investment limits are the best possible investor protection mechanism. It was noted that: • The lower restrictions contemplated in the Consultation Paper relative to other exemptions expose investors to greater risk. • The limits significantly address investor protection concerns, as there are few people who would be involved in investments at all who could not recover a total loss of $10,000 and those who could not would hopefully be filtered out through

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		other mechanisms such as disclosure and investor education. • Limits are an important element of investor protection as they limit an investor's exposure. It was also noted that crowdfunding can be opened up to non-accredited investors provided that reasonable limits are in place to avoid financial exposure. • Given that most investors will not be high net worth individuals, it is important to impose a limit to ensure that investors can withstand the loss. Additionally, commenters noted that: • As there is always a certain amount of risk involved with a new avenue regardless of the amount of regulation it receives, investment limits are a necessary protection. • The limits, combined with limits on offering size, are the most important "damage control" method. • Limits are appropriate due to the level of risk and the goal to have more investors providing capital to SMEs. Four of these commenters suggested imposing limits at the outset of implementing a crowdfunding exemption, and re-evaluating them over time, with one recommending that after 12-18 months would be an appropriate time for reconsideration. One of these commenters suggested that as risks become better known, investment limits could be raised or removed. One of these commenters recommended that listed issuers be exempt from the limits as they are subject to substantial regulatory and exchange oversight. <u>Size of limits</u> Of those commenters who supported imposing investment limits, differing views were expressed as to what those limits should be. • Eleven commenters agreed with the limits set out in the Consultation Paper, with three adding the caveat that the limits in the Consultation Paper provide a reasonable balance for an initial or trial period and could be re-evaluated after further experience is gained and another noting that they are a good place to start but ultimately may be on the low side. • One commenter noted that if anything, the limits are generous. • Two commenters were of the view that an absolute dollar amount rather than a limit based on income or assets is easier to administer, with one noting that the latter could impose an administrative burden on both investors and portals. Further, it was indicated that investors are not always forthcoming in providing personal financial information. • One commenter noted that as there is some risk that investments will gravitate towards the limit, it may be preferable for issuers/portals to post an investment range which also includes the minimum investment amount they permit (e.g., $500-$2,500 per investor). • One commenter recommended a limit of $5,000 per year. • One commenter indicated that while whether or not the limits are too low is open to debate, one advantage of relatively low limits is that where voting shares are issued, no single investor will attain a large enough block to influence voting. • One commenter suggested that the more regulation portals are subject to, the greater the investment limits should be for investors (and vice versa).

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		• One commenter was of the view that limits should be set by the company raising funds in accordance with its budgetary requirements with a maximum amount to be raised to avoid dilution. • One commenter that proposed a two-tiered version crowdfunding model recommended investment caps in the first tier for individual investors of a maximum of $500 per investment up to a total of $2,000 in a twelve month period, and $15,000 and $60,000 respectively for these caps in the second (more senior) tier. Nine commenters recommended raising the limits. Of these commenters: • One commenter indicated that a limit of $2,500 per investor would make it difficult for issuers to raise any significant amount of capital and as a result would make crowdfunding a difficult funding method for most junior issuers. • One commenter was of the view that the specified limits are so small as to undermine the credibility and effectiveness of the exemption. • One commenter explained that in the start-up community, there is no demand for equity-based fundraising for transactions below $10,000 due to the time and cost relative to the amounts raised. • One commenter was of the view that low thresholds increase investor and company risk by trivializing the business of equity-based financing, and exert downward pressure on reasonable investments in due diligence by investors and fulsome disclosure by companies, given the small amounts at stake. • Referring to the low rates of default through crowdfunding reporting in other jurisdictions, one commenter suggested that the limits be increased to $5,000 per offering with a maximum of $20,000 in a 12 month period or, due to the difficulty in monitoring this, a limit of investment in a portal to $5,000. • One commenter recommended increasing the limit to $20,000 per year in listed issuers with no per distribution limit. • One commenter recommended raising the limits to $25,000 per investment and $100,000 per year. • One commenter recommended limiting the amount an unsophisticated investor could invest in a 12 month period to between $10,000 and $20,000. One commenter recommended limits of $5,000 to $10,000, although it was not clear if the commenter was referring to limits on an individual investment or investments over a 12 month period. Six commenters recommended that income level play a role in determining investment limits. • One commenter recommended that the limit in a 12 month period not exceed: (i) the greater of US$4,000 or 5% of the investor's annual income or net worth if either the annual income or net worth of the investor is less than US$100,000, or (ii) 10% of the investor's annual income or net worth, not to exceed a maximum aggregate amount of $100,000, if either the annual income or net worth is equal to $100,000. • One commenter was of the view that $15,000 is a more appropriate lower limit, and should be raised for higher income individuals. • Two commenters indicated that the limits in the Consultation Paper do not take into consideration an individual's financial situation, particularly risk tolerance, investment objectives and investment capacity. One commenter also noted that

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		they prevent investors from diversifying their investments to no more than four crowdfunding offerings in any calendar year. The commenters supported setting the maximum individual investment limit at $2,500, but recommended including the percentage formula used in the crowdfunding proposals in the United States to take into consideration the higher risk tolerance of individuals with higher income or net worth. One of these commenters also noted that the $1.5 million offering limit, in connection with the investment limits set out in the Consultation Paper, does not adequately take into consideration the investor relations burden a company would have to undertake to handle the large shareholder base that a crowdfunding offering could generate. However, one of these commenters acknowledged that an approach to investment limits based on income level or net worth may not always be feasible due to unavailability of information about investor income or net worth. While not supportive of introducing a crowdfunding exemption, one commenter expressed the view that investment limits are not adequate measures to reduce the risk of abuse and fraud, as they are difficult, if not impossible, to enforce and do not deter scammers from taking advantage of people. Also, people who are investing may be those who are least able to bear the risk of even a small investment in a speculative business. However, the commenter recommended that if a crowdfunding exemption is introduced, investment limits should be imposed and should be based on the income of the individual investor or, if they choose not to provide their annual income, based on the average median income level in Canada. The commenter recommended that limits be enforced using personal identification data that would be filed with securities regulators. One commenter recommended that investment limits be linked to individual or household income more broadly, as this would ensure that the limits remain appropriate as the economy and income either grow or contract. Specifically, the commenter suggested that a limit of 5% of individual median income on individual investments would ensure that an appropriate level is established based on the number of people in each tax bracket, rather than using an average, which is distorted by extremely high or low income levels of a small group of investors. Further, the commenter was of the view that a limit of 15% of individual medium income for all investments within a calendar year would ensure that investors would be able to sustain the loss even if significantly all of their investments were not successful. Additionally, while not in favour of investment limits, two commenters indicated that if implemented, limits should be linked to income. One of these commenters suggested a limit of 10% of annual income for unsophisticated investors, noting that any fixed amount will result in investments being clustered around that amount. One commenter recommended that investment limits should be based on the total investment per company, rather than an aggregate for the individual investor. ***Support for limits when relying only on crowdfunding exemption*** Four commenters were of the view that investment limits should only be imposed on investors that are not relying on other exemptions. Additionally, it was suggested that investors should be able to make additional investments of any size during later stages of funding in order to maintain their *pro rata* shareholdings.

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		Concerns with abuse of limits One commenter indicated there is the potential for an investor to use other entities controlled by him or her (i.e., children, trusts or corporations) to circumvent the limits, and suggested that individual purchasers be required to be of legal age. Another commenter recommended extending the limits on individual investment to limits on household investment to help ensure that a family does not collectively invest a sizable portion of their net worth. ***Commenters not in favour of investment limits*** Two commenters did not support imposing limits on investments made through a crowdfunding exemption. • One commenter indicated that limits would have a negative impact on crowdfunding in Canada, where there is a need to generate continuity, consistency and quality of signal from a relatively small crowd in order to attract larger crowds from other jurisdictions (including the United States). • One commenter noted that Ontarians do not have restrictions placed on their capital allocation decisions with respect to gambling, so it does not follow that they should have limits placed on them when investing through crowdfunding. ***Other comments regarding investment limits*** While not expressing a view on whether investment limits should be imposed, one commenter shared the following views on the limits set out in the Consultation Paper and noted that, if anything, it might make sense to impose a limit at the outset but allow for graduated limits as a company moves through its life cycle: • $10,000 per investor is too low to help achieve the objective of stimulating capital investment in SMEs. • Placing strict limits on investment may create a chilling effect by fostering a further perception of heightened risk in the mind of the investor, thereby negating substantive funding in the long run. • The limits restrict the potential return for an investor, which may lead investors to decide that it is not worth the time it takes to make the investment decision. Another commenter that did not express a view on whether or not investment limits should be imposed noted that there are issues around how such limits will be monitored and enforced. Similarly, another commenter questioned what would happen if an investor exceeded the limit by subscribing for a different class of shares that are not listed. One commenter, while not expressing a view on whether or not a limit should be set per investment, indicated that if this were to be the case the limit should be 50% of any annual investment limit imposed on investors.
14	Offering limits	***Commenters in favour of limits on offering size*** Twenty-three commenters supported (or did not oppose) setting limits on the amount of capital that could be raised by an issuer under a crowdfunding exemption. Comments generally focused on reducing exposure to risk for investors and included the following: • Limits on offering size should be set because the lower standards contemplated for the exemption expose investors to greater risk. • Limits on offering size are a means of containing exposure to risk. • As crowdfunding initiatives are often project-based or for micro to small

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		businesses, and given that they are highly risky, there should be a limit. • It would reduce the overall losses sustained by crowdfunding investors as a whole and ensure that crowdfunders can sustain the loss of their investment. • A limit on the size of the offering, combined with investment limits, is the most important "damage control" method. However, commenters expressed differing views regarding what the limits should be. In particular: • Three commenters were of the view that $1.5 million is appropriate, although two of these commenters indicated that this should not include investments made under the accredited investor exemption or another prospectus exemption. • Three commenters indicated that if anything, the limit is too high, with one specifying that this may be the case at least until more experience with crowdfunding is gained. One of these commenters recommended reducing the limit to $1 million in a 12 month period, in light of the nature of crowdfunding and individual investment limits. A fourth commenter was of the view that funding limits should be less than $1-2 million. • One commenter indicated that while $1.5 million generally appears to be reasonable, there are circumstances in which a higher limit may be warranted. For instance, where an issuer is able to provide security for certain debt issues or where funds are being raised as part of a capital pool for on-lending or investing in other businesses, the limit could be increased to $2 or $2.5 million with other conditions imposed if appropriate. • One commenter indicated that a suitable limit would be between $1.5 million and $2 million in a 12 month period. • One commenter suggested that a limit in the range of $1.5 million-$3 million should be sufficient to raise start-up capital while offering some investor protection. • Two commenters suggested that the limit be increased to $2 million in a 12 month period. One of these commenters noted that the $1.5 million limit in the Consultation Paper appears to be low in light of low default rates experienced through crowdfunding in other jurisdictions, while another was of the view that a $2 million limit would be more realistic given the costs and infrastructure involved. • Two commenters recommended a limit of $2 million in the first year and $6 million in total, in light of the costs of distribution and communication with a large number of shareholders. • One commenter suggested increasing the limit where there are accredited investors who are also investing and who have conducted their own due diligence. One example suggested was to increase the maximum for crowdfunders by an amount equal to the parallel accredited investors (i.e., if accredited investors invest $1 million, the crowdfunders' limit could be increased to $2.5 million). It was noted that this would provide the company with more funds while also ensuring that there has been adequate review and assessment of the investment opportunity by investors that have their own money at stake. • One commenter indicated that companies should be able to raise between $3-$5 million using all exemptions, but each exemption should have a limit (i.e., $1.5-$3 million). • One commenter recommended that the limit be increased to $200 million. • One commenter proposed a two-tiered crowdfunding model and recommended

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		an offering limit of $250,000 in a 12 month period in the first tier, and $5 million in a 12 month period in the second (more senior) tier. One commenter recommended that listed issuers be exempt from any offering limits as they are subject to exchange and securities regulation and oversight and continuous and timely disclosure requirements, and have an organized market to trade securities. One commenter was of the view that if a crowdfunding exemption is implemented, offering limits should be established at the outset but re-evaluated after more experience is gained. Another noted that as the true costs of using a crowdfunding exemption will probably not be known or quantifiable until it is put into place, any limit should be revisited and reviewed after implementation. While not indicating whether or not it supported a limit on offering size, one commenter recommended that any such limit be reviewed after 12-18 months and then adjustments could be made based on market experience. One commenter who supported setting a limit on offering size recommended that issuers be permitted to set a cap on the offering amount of 25% at the start of the funding campaign, which is greater than or equal to the offering target amount, not exceeding a $1.5 million threshold for any 12 month period. The commenter was of the view that this would allow for oversubscription within a defined range and would protect issuers and investors. ***Commenters not in favour of limits on offering size*** Three commenters were not in favour of setting limits on offering size. The following was noted: • Any prescribed offering size would be arbitrary given the varying capital requirements of issuers. • Limits on offering size are something that the market will determine. • A limit will not further protect individual investors. ***Other comments relating to offering size*** One commenter recommended that rather than imposing a limit on offering size, consideration should be given to limiting the number of times an issuer may use a crowdfunding exemption within a period of time. As an example, the commenter suggested a maximum of three rounds in a five year period with only one round in a 12 month period, and a requirement to wait three years after the third round. If, after three rounds of crowdfunding, the enterprise is viable, and if the capital raisings and subsequent deployment of capital were done property, the commenter indicated that there should have been enough time and opportunity for the enterprise to grow to a stage where it can afford traditional capital raising methods. If not, the commenter was of the view that the issuer should not be allowed to raise capital through crowdfunding again until after a "recovery period" has passed. The commenter believes this would help limit to abuse by issuers and incentivize issuers to take each crowdfunding round seriously. While not expressing a view on whether offering limits should be imposed, two commenters indicated that a limit on offering size of $1.5 million would not offer a full solution to current funding gaps, and recommended that the OSC adopt an offering memorandum exemption based on existing exemptions across Canada. One of these

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		commenters also noted that the specified offering limit, in connection with the investment limits, does not adequately take into consideration the investor relations burden a company would have to undertake to handle the large shareholder base that a crowdfunding offering could generate. Another commenter that did not express a view as to whether or not offering limits should be set indicated that if they are, it would not oppose a limit of $1.5 million in a 12 month period, provided that the limit relates only to capital raised under the crowdfunding exemption and excludes any amounts raised under other prospectus exemption(s).
15	Offering limits – other	One commenter suggested that portals consider allowing companies to determine and describe the use of proceeds for their total offering and, where applicable, specify a minimum first closing amount that may enable them to move forward with a smaller number of interested investors in either a first closing or, ultimately, upon completion of a smaller offering.
16	Allowing investment through a portal	***Support for permitting investments to be made through a funding portal*** Eighteen commenters indicated that investments through a funding portal should be permitted. One of these commenters added the caveat that investing through a portal should be permitted provided that the OSC also adopts a modified form of offering memorandum exemption as proposed by the commenter. Another commenter indicated that as traditional brokers are unlikely to be interested in crowdfunding due to the small amounts of capital involved or may feel uncomfortable in selling these investments given the limited financial disclosure involved, there must be opportunities for new organizations to establish portals. One commenter indicated that investments through a funding portal should be allowed, provided that the people behind the portal are not anonymous and have had criminal background checks performed and that a third party Tier one bank holds any funds in separate trust funds for investors until closing. Additionally, the commenter was of the view that the portal should have directors' and officers' insurance and meet the requirements of an exempt market dealer in terms of integrity, proficiency and solvency. ***Commenters not in favour of permitting investments through a funding portal*** One commenter did not support allowing investments through a portal, noting that there are currently enough means available for investing, particularly since the creation of the exempt market dealer registration category. The commenter suggested offering "portal registration" to exempt market dealers.
17	Mandating use of portals	***Support for mandating use of a portal*** Two commenters were of the view that use of portals should be mandated rather than optional. One of these commenters indicated that this is critical to the success of crowdfunding and will reduce the risk of potential abuse and fraud. ***Commenters not in favour of mandating use of a portal*** One commenter was of the view that use of a portal should not be mandated for issuers that are listed, as investor protection concerns can be addressed through the

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		requirements for these issuers to meet listing requirements (including background checks on all related persons) and continuous disclosure requirements. One commenter was of the view that while they should be permitted, funding portals should not be a necessary requirement for a crowdfunding exemption and, if they are required, the requirement should only apply where a large number of investors (e.g., 50 or more) are taking advantage of the exemption at once. The commenter was of the view that an investor should be able to invest up to $2,500 in a company he or she finds interesting, whether or not that company uses a funding portal. Another commenter indicated that an issuer that meets the requirements of a crowdfunding program should have the option to proceed in raising funds without being required to place the offering on a funding portal.
18	Portals – registration and other regulation	While not supportive of introducing a crowdfunding exemption, one commenter recommended that if such an exemption is introduced, it should be done on a trial basis through a single portal that is subject to certain conditions other than those set out in the Consultation Paper. ***Importance of portal registration*** Two commenters were not in favour of exempting portals from certain registration requirements. One of these commenters noted that portals have the potential to do damage to investor confidence if they are merely a seller collecting a commission with no obligations. Another commenter was of the view that registration of the portal is a key mechanism to reduce opportunities for fraud and abuse. The commenter believes that registration will be essential for investors to establish the legitimacy of investment opportunities and will also allow securities regulators to establish their jurisdiction over portals. One commenter recommended that portals be registrants subject to obligations such as know your client and know your product assessments, as the participation of a registrant in the crowdfunding process will help to mitigate risks for investors. The commenter indicated that only through this requirement will the portal obtain personnel with the necessary knowledge, qualifications and responsibilities to maintain and follow restrictions put in place to protect investors. One commenter recommended that consideration be given to requiring that a portal act as a “Nominated Adviser” subsequent to the investment and be registered in an additional class of registration with a possible fiduciary duty. One commenter recommended that portals be provincially licensed and that service fees be shared with the province for licensing and oversight accountabilities. ***Category of registration*** <u>Registration based on business model</u> Four commenters were of the view that appropriate registration categories and requirements should vary depending on a portal’s business model. Accordingly, one of these commenters indicated that no bright line requirements should be set and recommended that registration of portals initially be addressed on an exemptive relief basis and over time further guidance can be provided based on experience.

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		One of these commenters recommended providing relief from certain registration requirements (such as those relating to working capital, audited financial statements, insurance and proficiency) based on the portal's business model. One commenter recommended that an additional category of registration should be created for portals that act as a passive interface between issuers and investors, noting that these portals should still be required to perform a gatekeeper function but should face minimal regulatory hurdles. Rather than applying for registration as an exempt market dealer and seeking exemptions, the commenter recommended that a portal of this nature should be able to apply for registration in a category that better reflects the role it will play. Specifically, the commenter was of the view that these portals should not be required to satisfy know your client or know your product obligations. One commenter indicated that if a portal is not providing advice on suitability of investments and/or is not actively involved in the exchange of funds, it should only be subject to a light regulatory framework focused on validating the management and board of the issuer against key risks associated with fraud. On the other hand, it was suggested that a portal playing a more active role should be subject to additional requirements. One commenter was of the view that while portals should be exempt from certain registration requirements, if a portal is holding funds it should meet solvency requirements. However, it was suggested that if a portal sets up arrangements where funds are held in trust, rather than on the portal's own books, or if funds are transferred directly from investor to investee with the portal being only a facilitator, such requirements are unnecessary. Three commenters recommended that portals be required to register as a type of restricted dealer. One of these commenters was of the view that portals should be exempt from proficiency and solvency requirements, while the other indicated that they should be exempt from certain registration requirements under National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) that the crowdfunding model does not lend itself to (i.e., requirements relating to suitability, regulatory capital and insurance). One of these commenters indicated that portals that register in this category should not be permitted to provide advice or to hold funds or securities. Another recommended that the OSC should consider some type of restricted dealer status for portals so that portals could efficiently and cost-effectively intermediate a private placement of fund securities. Otherwise, the commenter was of the view that the prospect of assuming the full obligations of a registrant is likely to be unattractive to a portal, given the likelihood of encountering potentially low fees and unknown liabilities in any trial of raising funds for start-ups over the internet. One commenter recommended that portals be registered as a special class of registrant, with obligations beyond those of an exempt market dealer. Another commenter indicated that while the OSC may want to issue guidelines or prescribe additional requirements for portals that fall within certain registration categories, as some categories may not be suitable it may be appropriate to create a new, single purpose category of registrant for portals.

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		One commenter was of the view that all portals should be subject to more heightened requirements, indicating that at the very least, portals should be subject to the same requirements as investment dealers, except with respect to know your client requirements which would be impractical to enforce in a crowdfunding context. The commenter noted that if only one standardized class of shares can be distributed, costs associated with know your product assessments would be reduced. One commenter indicated that portals should not have to register as dealers, nor should operators of portals be required to have the usual dealer qualifications, but should be required to register with the OSC. The commenter indicated that this should include providing boilerplate information on the portal, ownership of the portal, investment focus of the portal and expertise/experience/background on key employees and owners. The commenter was also of the view that portals should be required to produce annual financial statements and if operated by a not-for-profit organization, be in good standing with the Canada Revenue Agency. ***Appropriate level of regulation*** One commenter was of the view that there is a strong need to balance portal efficiency and investor protection against fraud, noting that if there is heavy regulation it will be too expensive for SMEs and portals will be unable to build a viable business model. One commenter indicated that regulation must allow each portal to establish its own community of companies and investors, and reflect the investing culture of that community. The commenter suggested that this could be highly varied and regulations need to allow investors and issuers with aligned goals to co-exist and ensure efficient capital raising. One commenter indicated that it is important to adopt a regulatory framework that will enable entry by stakeholders who are not currently active in the securities industry. One commenter did not support restricting registration of portals to only certain categories of registrants. While the commenter recognized that registration of a portal may be in a separate registration category, it noted that existing registrants in all categories should also be eligible to register as a portal. ***Registration not required where another registrant is involved*** One commenter was of the view that while some registration for portals may be required (although modified to address their role) if no other registered broker or dealer is involved, where a portal operates in conjunction with registrants, registration of the portal is not necessary as the actual trade takes place with the registrant who is complying with know your product, know your client and suitability requirements and further registration requirements would add another layer of administration and cost and stifle the use of the internet for its effectiveness and efficiency. ***Further consultation is required to determine appropriate model*** One commenter noted that as the foundation of crowdfunding is the existence of a portal to connect issuers to investors, some regulatory oversight of and compliance responsibility over portals is essential. However, the commenter recommended

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		further discussion and consultation in developing a regulatory model for portals.
19	Portals – who can operate	Several commenters provided feedback on qualifications that portals should have. While one commenter was of the view that portals should have knowledge of securities laws and another expressed concern around portal operators that have little or no background or experience in the capital markets, another commenter indicated that portal operators should not be required to have been active in the securities industry. Commenters recommended that portal operators should have the following qualifications: • knowledge of privacy laws, • data security handling capabilities, and • financial skills and knowledge to operate a portal and understand the companies raising funds through it, which would involve someone with a financial education (i.e., Bachelor of Commerce, Master of Business Administration) or experience in banking, accounting or brokerage services.
20	Portals – functions and obligations	***Gatekeeper role*** Commenters were generally of the view that portals should play some form of gatekeeper role. However, comments varied with respect to the specific functions that this should encompass. <u>Due diligence</u> Commenters recommended that various forms of due diligence be conducted by portals. • Six commenters suggested conducting background and regulatory/criminal checks to reduce the risk of fraud. • One commenter recommended that portals perform some of the "listing" processes usually performed by stock exchanges, such as background checks. Other commenters recommended more extensive forms of due diligence: • One commenter recommended that portals conduct a minimum level of due diligence on investment opportunities and report regularly to the OSC. • One commenter recommended that portals review the company's business plan, and certify that they have undertaken this review prior to offering the company's securities. • One commenter indicated that as the intermediary, and likely the only participant to be regulated and subject to oversight, the portal is the most appropriate entity to perform all due diligence on issuers and investors, and to distribute all information and ensure compliance with all other requirements. • One commenter suggested that consideration be given to requiring the portal to engage in specific due diligence activities such as visiting a company's premises and making specific inquiries of the company's bankers, lawyers and external accountants. • One commenter recommended that portals periodically monitor comments posted on linked social media sites in order to reduce the risk of planted or staged commentary. • One commenter was of the view that a portal should be responsible for undertaking some due diligence on the management and business plan of an

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		issuer and any offering documents and statements posted on its website, and to decide which deals get posted and which do not. <u>Education</u> • One commenter recommended that portals provide investors with education about crowdfunding and the risks of investing, potentially through a video presentation on crowdfunding and requiring investors to successfully pass a test. <u>Managing information</u> • One commenter suggested that portals could be responsible for distributing information. • It was also suggested by two commenters that portals could provide a place for documentation to be posted or make available all information required, as submitted by management, to potential investors. <u>Ensuring compliance</u> Some commenters were of the view that portals should play a role in ensuring issuers' compliance with regulatory requirements. • Four commenters indicated that portals should ensure compliance with disclosure, and in some instances could be responsible for validating some facts or, where the facts cannot be validated, issuing a warning. • One commenter was of the view that portals should ensure that crowdfunded offerings are only advertised through the portal or on the issuer's website. • One commenter recommended that portals ensure compliance with requirements generally. • One commenter suggested that portals should be responsible for reporting instances where issuers do not comply with regulatory requirements, while another recommended that portals flag any issuer that has not met any of its initial and/or ongoing disclosure requirements. • Two commenters were of the view that portals should be responsible for enforcing any investor or issuer limits in connection with offerings undertaken on its site, based on investor and issuer affirmations. One commenter suggested that portals could establish standards for the companies that use their site and the disclosure they must provide (in addition to legally required disclosure). <u>Facilitation of transactions but no investment advice</u> • One commenter was of the view that portals should exist solely for the purpose of facilitating transactions and be free of obligations or requirements. • Three commenters were of the view that portals should not offer investment advice or recommendations. One of these commenters also indicated that portals should not be expected to evaluate the merits of an issuer's business. <u>Escrowed funds</u> Three commenters suggested that a portal could play a role as the body that holds money in escrow. If funds are held in escrow, one commenter was of the view that portals should be subject to applicable supervision similar to that provided for a legal firm (e.g., funds held for real estate transactions) or banking organization, while another indicated that the portal should meet and maintain the qualifications of a compliant escrow account services provider.

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		Another commenter suggested that portals could arrange for payment processing through a third party payment processor. <u>Establish means for interaction</u> • Two commenters indicated that some portals may establish chat rooms or other social networking platforms for investors or issuers and investors to interact with each other, while another recommended that portals be required to have a forum that would allow for potential investor questions and company responses to be publicly posted, as this would increase disclosure. • One commenter noted that social proof or due diligence could be a way to mitigate potential fraud, and could be applied by portals. For example, some closed community angel networks require investors and companies to be referred and then validated through members of the community before being permitted to post company information for review by investors, or also to review company data for potential investment. • One commenter recommended that consideration be given to requiring that a portal act as a Nominated Adviser or "Nomad" subsequent to the investment and as a means of communication between the company and investors for an additional fee, as this would better align the interests of the portal with those of investors and there would be a continuing relationship. It was suggested that other entities could qualify for this role, including law or accounting firms. The commenter was of the view that Nomads should fall within an additional class of registrant with a possible fiduciary duty. • One commenter recommended that portals facilitate online continuous disclosure for a defined period after an offering (e.g., two years), which could be done through a link to the issuer's website if the issuer has robust disclosure. If the issuer is in default during this period, a deficiency note could be posted on the portal's website. <u>Liability</u> One commenter indicated that the role of portals should be minimal and should not require them to assume any liability or be the exclusive offerers of the crowdfunding service. One commenter indicated that while the obligations of a portal would vary depending on its business model, portals should generally have liability to investors and not be immune from regulatory oversight. One commenter suggested that in order to provide a backstop for liability relating to performance of its obligations, an entity seeking registration as a portal could be required to meet minimum capital adequacy and proficiency tests, while another was of the view that portals should have liability insurance. <u>Other</u> One commenter recommended that funding portals: • "showcase" companies and describe their funding requirements, and • create an investor database and administer investor access to the portal (e.g., through passwords). While not supportive of crowdfunding, one commenter recommended that if it is introduced, portals should be required to do each of the following: • Supervise and certify offerings, with recourse against the portal for fraud and

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		misrepresentation. • Perform certain due diligence on the issuer and the disclosure contained in the information statement, and certify the information being provided to investors. • Help issuers prevent mistakes and errors as to disclosure and guide them as to what is appropriate and necessary to disclose to potential investors. • Attempt to actively prevent fraud from taking place, including through conducting background checks, and be vigilant for potential dilution or shareholder oppression. • Carry fidelity insurance to provide coverage from fraud or dishonest acts of its employees and professional liability insurance to cover errors and omissions in respect of its obligations. • Review the promotional and marketing material of each issuer that is on the portal's website, and be subject to statutory liability for such statements. • Notify the crowd about claims that have resulted from fraud or other wrongdoing, and post notifications about recent (suspected) frauds and track rates of return. ***Role of OSC in regulating portals*** One commenter noted that while some existing portals (e.g., ASSOB, Crowdcube) conduct additional due diligence on the quality of listed projects or entities, this does not need to be required through regulation as portals that provide this additional service will in the long run become more successful and robust. One commenter noted that there are many different models for portals, which are business decisions that should not be regulated by the OSC. The commenter was of the view that portals will gain a reputation as a good marketplace to belong to or one to be cautious of, and recommended that the OSC, or a party approved by it, should keep a central registration system of infractions by individuals (with open access to all investors), as well as an open record of infractions by portal, which will provide an incentive for portals to "clean themselves up". Further, the commenter was of the view that the OSC should be aggressive in prosecuting fraud, especially in the case of portals that appear to be enabling fraud. ***Interest of portals in issuers*** Two commenters were of the view that portals should be restricted from having an interest in the businesses they are listing. One of these commenters indicated that portals should not have any business interest in the companies they list while the other recommended that portals and their employees not be permitted to invest in listed offerings. One commenter recommended that portals be required to be transparent about their commercial relationships with issuers while another was of the view that portals should clearly disclose any financial relationships and/or interest in issuers. Another commenter indicated that while a portal should likely not be permitted to receive founders' shares, underwriter's options or any other securities as part of its compensation, at a minimum, if the portal or an affiliate intends to buy shares of the issuer, the purchase should be for the same price paid by other investors and should be fully disclosed in advance. ***Portal disclosure*** Five commenters were of the view that portals should disclose how they are paid.

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		One commenter suggested that portals be required to disclose their due diligence process, criteria for selection of issuers, and the success of issuers who have raised capital through the portal (and, conversely, how many issuers have become insolvent). Another commenter was of the view that portals should disclose who their management, board members and advisers are, as well as provide basic aggregate historical funding data (including total funding volume by industry) on a regular basis and at a minimum to the OSC. One commenter recommended that portals annually publish their performance statistics. ***Additional research*** One commenter recommended that the OSC study current portals, particularly in terms of whether they have a due diligence function, how to lever the power of the crowd with respect to evaluating character or investment and how to provide continuity that would better align interests. ***More detail required on role of portal*** One commenter was of the view that more detail on the role of the portal should be provided. For example, the commenter noted that there is no discussion in the Consultation Paper of whether there would be any ongoing relationship, post-financing, between the portal and the issuer.
21	Portals – fees	One commenter recommended that a flexible approach be taken with respect to portal fee structures. Specifically, the commenter suggested a 10-15% fee, and recommended that portals be able to pass along other costs independent of the revenue model such as third party fees (e.g., Amazon payments, escrow) and maintenance fees. The commenter also suggested that portals be able to charge set up fees to offset expenses incurred when a campaign is not successful. One commenter recommended that fees be capped at 6-8% of the funds raised. Five commenters were of the view that portals should disclose how they are paid. With respect to fees, another commenter indicated that developing a portal can be costly and some consideration must be addressed to this area as lack of clarity will stifle development.
22	Portals – other	One commenter was of the view that most successful portals will be operated by non-profit organizations, educational institutions, economic development agencies and chambers of commerce, and these organizations will not necessarily seek dealer-type compensation. Another commenter recommended that if portals are owned by banks or other large institutions, they should have ethical walls in place to ensure that other divisions do not have priority access to issuer information. One commenter suggested that rather than upfront regulation, a check could be made after the fact to see if funds have been used as promoted and a “seal of approval” given to portals that can prove their case. One commenter was of the view that a portal should be permitted to promote itself through social media and communications or “alerts” transmitted online to the

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		portal's subscribers, as the portal will need to have sufficient deal flow in order to be viable. One commenter noted that portals are being used and will be used more in the exempt and public markets beyond just for crowdfunding, as portals are an extension of capital markets often in conjunction with registrants. One commenter pointed out that in the United States, the Financial Industry Regulatory Authority (**FINRA**) has requested that portals complete and file an interim form with information about their contemplated business. The commenter recommended that the OSC consider a similar request, as this would help to gauge interest by potential portal operators and could provide an idea of contemplated portal models, which could be useful in offering guidance on registration and ongoing compliance requirements for different portal models.
23	Involvement of other registrants	***Commenters in favour of requiring registrant involvement*** One commenter recommended requiring that a registrant other than a funding portal be involved in a crowdfunding distribution. ***Commenters not in favour of requiring registrant involvement*** Nine commenters were of the view that involvement of another registrant would not be necessary. Reasons for this included the following: • It would add further costs. • It would be cumbersome. • It would not add any benefit and could mislead investors into treating crowdfunding investments as conventional investment products. • It would reduce the capital that can be employed. • Given the nature of oversight that a portal may need to provide over their listed investments, it may not be appropriate for other registrants to be involved in the initial distribution of the securities. Centralizing the oversight among licensed portals should promote compliance and reduce redundancy. • If a portal is registered as a restricted dealer or an exempt market dealer, there does not need to be any other registrant involved. One commenter noted that a registrant would be performing a know your product assessment. ***Circumstances where other registrants are involved*** One commenter was of the view that while involvement of another registrant should not be required, a registered dealer should be permitted to assist issuers in raising funds through a crowdfunding exemption and to charge fees for doing so, while another indicated that a portal should be able to enter into referral arrangements with exempt market dealers and direct those investors that qualify under another exemption to an exempt market dealer who has full know your product, know your client and suitability obligations under NI 31-103. Another commenter indicated that an issuer should be able to raise capital under the crowdfunding exemption with a portal while also raising capital under another prospectus exemption with a registrant, including an exempt market dealer. One commenter noted that opening up greater funding opportunities to SMEs may require registrants who are not following a funding portal model to raise funds. The commenter indicated that if a registrant other than a portal is involved in this type of

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		distribution, it should have to provide the same level of disclosure to the OSC as a portal, as well as some disclosure to investors. One commenter raised the possibility of creating a class of due diligence experts who specialize in analyzing issuances in particular niche markets in which they have expertise. The commenter suggested that such individuals or firms could sell their analytic and forensic services to portals to promote timely and low-risk placements. One commenter was of the view that this is a matter for existing registrants and issuers to determine, rather than creating more regulatory structures.
24	Concerns around having a large number of shareholders	***Concerns around issuers having a large number of shareholders*** Fifteen commenters indicated that there are concerns around SMEs that are not reporting issuers having a large number of shareholders. • One commenter noted that issuers will require assistance with monitoring and communicating with shareholders. • Two commenters indicated that there will be additional investor relations work involved. • One commenter noted that accredited investors may be uncomfortable with investing in such circumstances because of the perceived risk of being grouped with the management team and sued for damages for misrepresentation if things go wrong. • One commenter indicated that a concern with having a large number of shareholders is the election of the board of directors and having sufficient votes to approve by-laws, amendments and other items that require shareholder approval, while two others indicated that having a large number of shareholders can be an impediment to decision making generally. Another commenter noted that this makes it nearly impossible to obtain any unanimously signed shareholder resolution. • One commenter referred to challenges with accurate recording of shares. • One commenter noted that issuers will need to be educated about the potential impediments to working with a large number of shareholders and to raising follow-up financing from angels and venture capitalists in this situation. • One commenter indicated that there should be transparency around these concerns. • One commenter was of the view that this could create a significant reporting burden for issuers, which in many cases will be unsophisticated young entrepreneurs. • Two commenters indicated that it can make follow on funding difficult to attract, with one noting that this can serve as a disincentive to invest. • One commenter indicated that in the absence of any prospectus exemptions, investors in private issuers may find it difficult to sell their shares with an issuer that no longer satisfies the private issuer exemption. • One commenter noted that OSC Rule 62-504 *Take-Over Bids and Issuer Bids* restricts the non-reporting issuer exemption for take-over bids and issuer bids to issuers with fewer than 50 non-employee shareholders, and that in the absence of any relief or change in the law, sales and issuer redemptions would be required to comply with the full take-over bid and issuer bid regime that also applies to public companies. • One commenter was concerned that allowing non-reporting issuers to have a

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		large number of shareholders may hinder or delay liquidity by impeding an exchange listing as a result of costs of complying with continuous disclosure obligations or a capital or share ownership structure deemed unattractive to support a going public event. • One commenter was of the view that this may negatively impact the likelihood of a liquidity event such as the sale of the company to a competitor or a strategic investor. ***Methods to address concerns around having a large number of shareholders*** However, commenters were generally of the view that concerns, if any, can be addressed through certain mechanisms: • Two commenters recommended permitting accredited investors to invest through portals in larger transactions or without limits, as this would lessen the need to raise money from many small shareholders and provide a balance between shareholders of different sizes. • Three commenters indicated that a trustee or voting trustee could be appointed to act on behalf of investors, while another suggested that concerns could be addressed through trust arrangements administered by transfer agents. • One commenter suggested that crowdfunding investors be pooled into a single investment vehicle, such as a trust, limited partnership or corporation which would invest in the crowdfunded entity. • Two commenters suggested that portals could provide registry and transfer agent-type functions. • One commenter recommended adapting existing exemptions based on having 50 shareholders or less to exclude current or former employees and crowdfunding investors where a modest investment is made by the crowdfunding investors. • Two commenters indicated that the ability to communicate with shareholders electronically mitigates some concerns, as a password protected site could be created to post information. Another commenter indicated that issuers can use technology to inform, educate and distribute regular updates to shareholders rather than rely on hard copies sent through the mail. • One commenter was of the view that the use of standardized shares for crowdfunding can address some potential concerns as procedures relating to managing shareholders can be structured in a standardized way that would allow for the streamlining and potential automation of such procedures, all of which could be performed through the portal. • One commenter indicated that the best way for SMEs to manage a large number of shareholders is through frequent investor communication, including monthly updates in unrestricted format. • One commenter suggested that concerns regarding shareholding voting could be addressed by reducing the quorum required to conduct certain shareholder business and by allowing annual meetings and shareholder votes to be conducted electronically. Another commenter indicated that online polling and voting platforms could be used to facilitate decision making. • Three commenters were of the view that concerns can be addressed through shareholders agreements. One of these commenters indicated that standardized shareholders agreements would streamline communications, reporting and decision making processes. • One commenter suggested that portals provide technology solutions to help maintain an issuer's share register and capitalization table and to standardize

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		these documents. • One commenter indicated that limitations could be placed on equity rights similar to that of non-voting preferred shares, subject to piggy-back, drag-along and pre-emptive rights contained in a standard shareholders agreement, while another recommended issuing crowdfunded shares as a separate non-voting class. Another commenter noted, however, that while issuing non-voting shares could limit investors' participation in a company, they would still have rights under corporate law to vote on certain matters. • One commenter was of the view that companies that do not intend to give shareholders a voice should explicitly stipulate that all decision making rights rest with those appointed by management. • One commenter indicated that it may be appropriate for SMEs to provide the OSC with their plans for maintaining a large shareholder base, including communications plans and records maintenance. • One commenter suggested that securities issued under the exemption to more than 100 or 200 investors could have CUSIP identifiers as a special asset class. • One commenter suggested that the portal could have a due diligence obligation to ensure that companies set up good share ownership records. • One commenter recommended relaxing applicable requirements for proxy solicitations and information circulars for shareholder meetings where voting securities have been issued through crowdfunding. ***Role of regulators*** Two commenters questioned whether it is appropriate for the OSC to become involved in regulating measures to address concerns around having a large number of shareholders. One commenter indicated that it will be up to each issuer to determine whether it is able to administer its shareholder base and communicate with shareholders in accordance with corporate and securities laws. In terms of the costs of administering a large number of shareholders, the commenter noted that the market adapted to the introduction of capital pool companies, with transfer agents offering differential rates until such time as the issuer completed its qualifying transaction. Another commenter indicated that this is a matter that should not be regulated by the OSC but rather left to industry to come up with appropriate solutions. ***Benefits to having a large number of shareholders*** Two commenters noted that while there are concerns around having a large number of shareholders, there are also potential benefits: • A successful crowdfunding campaign can provide "proof of concept" and some market validation that may be helpful to an issuer for raising further funds from venture capitalists, angels or other investors. • It could enable an accredited investor to make an investment with a controlling interest relatively easily. • An issuer would not have to give up control to another entity simply to access funds and may attract major funding from an accredited investor, angel investor or bank after signs of initial success. ***Commenters without concerns around issuers having a large number of shareholders*** Four commenters did not have concerns around SMEs that are not reporting issuers having a large number of small investors. One of these commenters noted that having

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		a larger distribution due to a large number of shareholders is a good thing for an early stage company as it results in the company not giving up consolidated control to one or a few entities. Another noted that this should not be a concern if the ongoing disclosure requirements set out in the Consultation Paper are implemented. One commenter indicated that good companies will communicate with their shareholders and/or educate them and that while some standards should be in place, this is made inexpensive through current technologies. ***Other*** One commenter was of the view that there should be a "tipping point" (i.e., having a large number of shareholders) where a non-reporting issuer should be considered as a reporting issuer under applicable securities laws.
25	Shareholder rights and protections	***Rights and protections should not be imposed through regulation*** Four commenters were of the view that while shareholder rights and protections such as anti-dilution protection, tag-along rights and pre-emptive rights should be available to shareholders, this is not a matter that should be subject to securities regulation. Two of these commenters suggested that portals could develop a standard form of shareholders agreement that issuers would be encouraged or required to adopt, while another was of the view that these rights are best negotiated between management and investors based on individual circumstances. One commenter indicated that these rights and protections should be provided to investors, and suggested that they be set out in the crowdfunding exemption and made universal to all, with issuers and investors able to decide which are applicable in the circumstances. While not expressing a view of whether these rights and protections should generally be available to shareholders, seven commenters indicated that where they are available, they should be applied at the discretion of the issuer. Reasons for this included the following: • A one size fits all package of rights and protections imposed through regulation may be problematic. • A template could be developed that sets out basic rights, privileges, restrictions and conditions recommended for crowdfunding investors, and an issuer could either adopt the template or post a blacklined version demonstrating how its shares differ from the template. In particular, the commenter noted that careful consideration should be given in the template to voting rights and accountability of officers and directors to shareholders, and the shares should be structured so as not to impede future rounds of capital raising. • In a competitive market, this will allow investors to access some of the protections that are currently only available to other investors. ***Rights and protections should be provided*** While not supportive of a crowdfunding exemption, one commenter recommended that if a crowdfunding exemption is adopted, investors should be given anti-dilution protection, tag-along rights and pre-emptive rights and, overall, protections should be in place to protect investors from having their rights and the value of their investments diluted by future capital raising initiatives. However, the commenter questioned the ability of retail investors to understand and employ these rights in order to protect themselves.

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		Specific protections for shareholders One commenter indicated that while anti-dilution protection should be provided to shareholders, tag-along rights would not be applicable as most issuers would be illiquid until a funding project closes, and pre-emptive rights would not be necessary as the shares would likely be non-voting. Another commenter did not see anti-dilution protection as a significant concern given that crowdfunding investors will likely hold a very small proportion of a company's shares, and noted that anti-dilution concerns could be addressed by allowing pre-emptive rights, which will ensure that existing shareholders would be able to acquire additional securities if desired. The commenter was of the view that tag-along rights would be more important if they could provide an "out" for individual investors, given the illiquid nature of the market. One commenter indicated that while tag-along rights and anti-dilution protection should be provided, pre-emptive rights may be impractical as the exercise of these rights may be limited due to the individual limits on investment contemplated in the Consultation Paper. ***Protections may not be practical in all instances*** One commenter that proposed a two-tiered version of crowdfunding suggested that protective measures be available, but only under the second (more senior) tier as most start-up entrepreneurs using the first tier would not be able to understand, issue and provide administration for such rights, nor would they have the ability to pay for advice on them. Two commenters indicated that rights and protections of this nature appear overly complex for this market, but suggested that existing shareholders be included in new offering solicitations. Another commenter noted that while these protections are important for minority shareholders, they are usually granted in shareholders agreements, which would likely not be feasible under crowdfunding. ***Alternative proposal for ensuring shareholder protections*** One commenter was of the view that the best way to ensure rights are given to shareholders is to require that companies that use the crowdfunding exemption can have only one class of shares at the time of crowdfunding, as this would: • motivate the principals behind the company to put rights and protections in place for their own benefit as they will be forced into the same class of shares, • encourage companies to clean up their capital table before crowdfunding, which is good for prior holders, and • remove possibilities for abuse of small shareholders that emerge when companies have multiple classes of shares with multiple rights.
26	Disclosure at time of sale	Commenters generally agreed that some form of disclosure should be required at the time of sale. However, differing views were expressed as to the nature and extent of such disclosure. ***Risk acknowledgement form or other risk disclosure*** Eleven commenters supporting requiring a risk acknowledgement form. One of these

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		commenters recommended that the risk acknowledgement form emphasize illiquidity and lack of continuous disclosure materials for private issuers. Another recommended including prescribed language describing the risks of investing in early stage, illiquid stock in very direct terms, including industry statistics (i.e., failure rates), while one recommended including guidance on asset allocation. Three other commenters supported some form of risk disclosure. One of these commenters recommended that the "issuer facts" referred to in the Consultation Paper disclose risks specific to the issuer's own business, while general risks relating to early stage investments should be in a risk acknowledgement form. Another commenter suggested that risk disclosure include details relating to lack of liquidity, historical failure rates of start-ups, lack of regulatory oversight and possibility of loss of the entire investment, and recommended that this be supplemented by an investor education component required to be completed online before an investment can be made. One commenter was of the view that disclosure should include risks associated with the company and the industry. While not supportive of crowdfunding, one commenter was of the view that if a crowdfunding exemption is introduced, a risk acknowledgement should be signed by the investor. The commenter recommended that this be preceded by an interactive knowledge quiz that would inform investors of the high risk of failure of start-ups and SMEs in Canada and the average poor returns that SMEs provide, and provide them with information about how the investment may not be accurately priced and is likely illiquid, and that their investment may be lost due to fraud with very limited remedies available to them. ***General support for disclosure requirements in Consultation Paper*** Three commenters expressed general support for the disclosure requirements set out in the Consultation Paper. One commenter thought the proposed disclosure requirements were reasonable subject to the following comments: • For efficiency, reporting issuers with audited financial statements available on SEDAR should be allowed to incorporate by reference such financial statements into the information statement. • For non-reporting issuers in the mining or oil and gas sectors, consideration should be given to mandating some technical disclosure as well as some involvement of a qualified technical person, as is the case for reporting issuers. ***Information statement*** Six commenters supported providing an information statement. Two of these commenters indicated that this should be a "streamlined" document while another noted that it should be brief and that the requirements of "full" disclosure from the prospectus regime should be relaxed for the information statement. One of these commenters recommended that the information statement include information about the offering, the business, the portal (including its compensation for the transaction) and a description of the key risks of the business. Three of these commenters suggested that the information statement contain disclosure similar to that set out in the Consultation Paper, with one recommending the following modifications:

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		• inclusion of a capital table, • disclosure of statutory rights and resale restrictions should be in standard form, and • any executive compensation should be in a single, easy to read table. One commenter expressed concern around the potential for information statements to vary in level of detail among issuers, especially if lawyers are involved, and become more than just a summary document as contemplated in the Consultation Paper. The commenter recommended that additional guidance be provided on disclosure matters. One commenter assumed that the information statement would be published online by the portal and filed with the OSC as a public document. While not supportive of crowdfunding, one commenter was of the view that if a crowdfunding exemption is adopted, the information statement should be required to be filed with the OSC. ***Certification of disclosure*** Two commenters supported a requirement for the contents of the information statement to be certified by management. Another supported requiring the disclosure provided at the time of sale to be certified by the issuer. One commenter recommended that the information statement be certified by each director, while another recommended certification in accordance with subsection 2.9(8) of NI 45-106. One commenter was of the view that the issuer should be responsible for disclosure generally and should certify it. ***Financing facts*** One commenter recommended that the "financing facts" set out in the Consultation Paper include standard form disclosure on: • the impact on the investor's rights if the issuer's operations or assets are outside of Canada, • resale restrictions, and • statutory rights and rights of withdrawal. ***Other disclosure*** Support for disclosure of the following was also expressed: <u>Information about the issuer and its business</u> • The name, legal status, physical address and website address of the issuer, • a business summary, • the issuer's business plan, • business model for which funding is sought, • future funding plan, • current and proposed products and services, • the customer/market problem being addressed, • information on the relevant target market, • sales and marketing strategy, • customer concentration and channels of distribution,

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		• description of competitors, • key milestones for the next year, • a description of the ownership and capital structure of the issuer, and • capital table. <u>Information about the issuer's principals</u> • Management's experience in the industry, • whether or not the issuer, its directors or officers have been the subject of any regulatory or criminal proceeding, • the officers and directors of the issuer, • key employees and principals of the issuer, • details on the principal owners and managers, • CVs for management, founders and existing shareholders, • names of representatives of corporate and intellectual property law and accounting firms acting as advisers, • any investment of principals in the issuer, • persons holding more than 20% of the shares of the issuer, and • list of existing shareholders and managers. <u>Information about the offering</u> • Amount of money raised in return for what percentage of the company, • the use of proceeds, • basic description of the investment opportunity, • the target offering amount, deadline to reach that amount and regular updates regarding the issuer's progress in reaching that amount, • the share price or method for determining the price, provided that, prior to sale, each investor is provided in writing with the final price and all other required disclosure and given a reasonable opportunity to rescind the purchase, • a description of how the securities offered are being valued and examples of methods for how such securities may be valued in the future, including during subsequent corporate actions, • term sheet, and • rights and restrictions associated with the purchase. ***Financial information/statements*** Four commenters supported a requirement to provide audited financial statements if the proceeds of the distribution are greater than $500,000, with three of these commenters recommending management certified statements at lower amounts. Another commenter recommended that non-reporting issuers be required to provide audited annual financial statements after they have raised in excess of $500,000 since inception, but noted that corporate law requirements should also be considered in this regard. Two commenters suggested that where the proceeds are less than $500,000, reviewed financial statements should be required, with one noting that if the company has not reached its first year end, management prepared financial statements as of the month end prior to the offering should be sufficient for investors. One commenter supported a requirement for unaudited financial statements prepared by independent accountants if less than $500,000 is to be raised.

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		One commenter supported a requirement for audited financial statements subject to a threshold, although the commenter did not specify what this threshold should be. One commenter supported requiring unaudited financial statements if the company is operating, while another was of the view that given the costs of audits, audited financial statements should not be required of non-reporting issuers if the proceeds of the distribution are at or below $1 million. Two commenters suggested that review engagement financial statements by an independent third party CA/CPA signed by the directors is appropriate at the time of sale provided that extensive note disclosure is provided and that the statements comply with GAAP. One commenter recommended requiring reviewed financial statements and a simplified management's discussion and analysis (**MD&A**), as well as a description of what the proceeds will be used for. The simplified MD&A could take the place of a business plan where the company is already in business, although for new start-ups, the commenter was of the view that some form of streamlined business plan should be required. One commenter indicated that audited financial statements should not be required as this would be overly burdensome, time consuming and costly, as well as unnecessary given other measures that have been contemplated in the Consultation Paper to limit exposure for investors. Another commenter indicated that for very early stage companies, requiring audited financial statements is not appropriate due to cost and the fact that the requirement does not reduce risk. One commenter indicated that start-ups typically do not have financial statements of any kind, and accounting firms that have reviewed or audited statements for an existing SME are not likely to willingly consent to publication of those statements online, or expose themselves to potential liability to crowdfunding investors. Accordingly, the commenter suggested that the information statement could provide a summary of key data, and potentially forecasts without review by the company's accountants, provided that the underlying assumptions are clearly articulated and appropriate warnings are given. One commenter recommended that issuers be required to provide a description of the financial condition of the issuer including, for offerings that, together with all other crowdfunding offerings within the preceding 12 months have in the aggregate target offering amounts of $250,000 or less, the income tax returns filed by the issuer for the most recently completed financial year and the issuer's financial statements certified by the CEO. For target offering amounts of more than $250,000 but less than $750,000, the commenter was of the view that financial statements reviewed by an independent public accountant should be provided, with audited financial statements provided for target offering amounts of more than $750,000. One commenter recommended that issuers provide financial statements and/or in house projections. One commenter that proposed a two-tiered version of a crowdfunding model recommended different financial information requirements for each tier. For the first tier, the commenter recommended a description of the financial condition of the

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		issuer and unaudited financial statements certified by the CEO. If the issuer was already operating, the commenter also recommended income tax returns filed by the issuer for the most recently completed financial year. For the second (more senior) tier, the commenter recommended a description of the financial condition of the issuer. For amounts raised between $250,000 and $500,000, the commenter also recommended income tax returns filed by the issuer for the most recently completed financial year and the issuer's unaudited financial statements certified by the CEO. For amounts between $500,000 and $1 million, financial statements reviewed by the issuer's auditors would be required, and for amounts greater than $1 million, audited financial statements. ***Format of disclosure*** Some commenters provided suggestions regarding the format of disclosure. Two commenters recommended allowing issuers to present information in video or PowerPoint format, with one noting that such alternative presentations should still be certified by the CEO and directors of the issuer. Another commenter indicated that disclosure should be presented in a streamlined format and should not resemble an offering memorandum. One commenter recommended that the format be "loose", with an emphasis on deterring intentional fraud rather than allowing prosecution for minor inconsistencies or over-optimism. One commenter indicated that if issuers post videos and/or PowerPoint presentations on a portal and respond to questions from the "crowd", it should be made clear that any such information will form part of the issuer's disclosure record and any responsible parties will be liable for misrepresentations. One commenter recommended considering word limits where written information is provided. One commenter recommended that disclosure contain an executive summary. ***Other*** One commenter was of the view that there is an opportunity to harmonize the information required to be provided in an offering memorandum with what is proposed to be disclosed in the information document under the crowdfunding exemption. One commenter suggested that while supportive of disclosure generally, rather than imposing upfront requirements, a check could be made after the fact to determine whether funds have been used as promoted, and a "seal of approval" given to those companies that are able to prove their case. One commenter recommended that companies and portals be encouraged to have links to social media where investors can post their observations about the company and the offering, noting that through crowdfunding, risks inherent with relaxing disclosure requirements will be offset by social commentary.
27	Ongoing disclosure	Six commenters recommended that issuers be required to provide ongoing disclosure to investors. Commenters were generally of the view that ongoing disclosure should consist of financial information and some form of regular updates on the business.

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		Financial information/statements Commenters expressed mixed views around whether or not financial statements and, in particular, audited financial statements, should be required by issuers seeking to raise funds through crowdfunding. Commenters noted the following: • The requirement for audited financial statements defeats the purpose of providing an efficient and cost-effective method for accessing the capital markets, especially for reporting issuers that are already filing audited financial statements on SEDAR. • Historical financial statements at a very early stage of company development are likely of very little value in helping an investor determine the future potential of the company. One commenter noted that audited financial statements may not be necessary as the burden may outweigh the benefit for many early stage companies. Alternatively, another commenter suggested that an audit of the Statement of Assets and Liabilities and disclosure of related party transactions or contracts could be an appropriate level of review. In terms of financial information: • Four commenters recommended requiring issuers to provide annual financial statements, with one of these commenters indicating that the statements could be unaudited, and another recommending that the statements at least be reviewed. • One commenter indicated that, while dependent on the company being in operation, where possible companies should be required to provide one to three years of financial statements. • One commenter recommended that issuers provide audited financial statements within 120 days of the year end of a non-reporting issuer, where the issuer raises over $500,000. • Two commenters recommended that issuers provide semi-annual financial statements. • One commenter recommended that issuers provide interim unaudited financial information within 90 days following each quarter. • One commenter recommended that issuers provide regular financial statements. • One commenter suggested that financial information could be reviewed to ensure that proceeds are used as intended, which could be done through a special engagement given that there would be some cost involved. One commenter noted that while corporate statutes require financial statements to be audited unless 100% of a company's shareholders vote to exempt it from this requirement, it is unlikely that unanimity could be achieved among the potentially large number of shareholders in a crowdfunded entity and, in any event, requiring audited financial statements on an ongoing basis may be desirable despite the cost of an audit. Another commenter noted generally that financial statements should be provided where available, but that shareholders should have the right to waive the audit in return for the company reinvesting funds in the business rather than in audit fees. The commenter recommended that the vote be done in a way that is easy for investors to participate, such as an online survey tool.

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		One commenter recommended that the OSC conduct an updated cost/benefit analysis to set appropriate thresholds for when audited financial statements should be required. One commenter that proposed a two-tiered version of the OSC's proposed crowdfunding model recommended different disclosure requirements for each tier. For the first tier, the commenter recommended quarterly updates of the status of the project, semi-annual activity statements certified by management showing how proceeds had been spent and management certified annual financial statements. For the second (more senior) tier, the commenter recommended quarterly updates of the status of the project and quarterly financial statements reviewed by management for issuers with less then $500,000 of public shares; quarterly financial statements reviewed by the issuer's auditors for issuers with greater than $500,000 but less than $1 million of public shares; and audited interim financial statements for issuers with greater than $1 million of public shares. An issuer's annual financial statements would be subject to the same requirements as its interim financial statements. One commenter was of the view that crowdfunding disclosure for reporting issuers should be based on available SEDAR filings, which are already certified by the CEO and CFO. Where an issuer is not a reporting issuer, it was suggested that CEO and CFO certification of management prepared financial statements should be sufficient, especially if investors are given statutory rights for damages or rescission in the event of a misrepresentation. Another commenter supported CEO and CFO certification for all issuers as this would provide investors with financial disclosure as well as statutory rights for damages or rescission in the event of a misrepresentation. Two commenters noted that CEO and CFO certification of interim financial statements for venture issuers is already considered to be adequate investor protection. While not supportive of crowdfunding, one commenter was of the view that if a crowdfunding exemption is adopted, issuers should be required to provide audited financial statements prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises. ***Updates and reports*** In terms of other updates or reports: • Three commenters recommended that issuers communicate information on material events. • One commenter recommended that issuers provide an update of the project relative to its stated milestones and deliverables. • One commenter recommended that companies be required to provide ongoing reports on results of operations. • One commenter recommended that issuers provide a monthly report to investors in whatever format the issuer chooses, with penalties not applied unless an issuer goes 60 days without reporting. • One commenter was of the view that regular progress reports are critical, and should include disclosure regarding how proceeds have been spent, how much capital is left, and how much more will be needed to achieve the company's goals. • One commenter recommended that issuers provide quarterly and annual management update reports that would serve as a progress report against the issuer's business plan and information statement, including any current business

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		challenges and opportunities. • One commenter was of the view that updates should describe how the funds from the offering are being used and any issues, concerns or unforeseen events involving the business. • One commenter recommended that issuers be required to disclose a summary of historical performance and future plans. ***Other disclosure*** Two commenters were of the view that the ongoing disclosure items specified in the Consultation Paper are appropriate. While not supportive of crowdfunding, one commenter was of the view that if a crowdfunding exemption is introduced, issuers should be required to disclose the following on an ongoing basis: • material changes and material developments (including any actual use of funds in a manner different from that disclosed in the information statement), and • sale or redemption by principals of their shares in the company. One commenter was of the view that non-reporting issuers should provide at least the following: • audited financial statements, • updated "issuer facts" on an annual basis, and • timely disclosure by news release of material information regarding the company's business plan and changes to management and the board. ***Role of portals in ongoing disclosure*** Four commenters suggested that portals could play a role in posting ongoing disclosure. • One commenter indicated that it would be helpful if portals could assist companies in publishing ongoing disclosure information in an investor-only, password-protected area on their website or through electronic distribution to the company's investors. • One commenter was of the view that the portal where funds were raised would be an ideal place for issuers to post their ongoing disclosure documents for public viewing. • One commenter indicated that companies should be able to meet their disclosure requirements by posting required information on a portal. • One commenter suggested that portals be required to keep an open internet page for an issuer for a minimum period (e.g., two years) after the initial offering, where the issuer could publish regular progress reports with links to social media where investors could share their opinions or degree of satisfaction with the issuer's performance. Additionally, while not specifically referring to the use of a portal, one commenter suggested that ongoing disclosure be made available on an online platform where all investors have equal and timely access to it and, ideally, investors would be able to ask questions (so all can see the answers) and make comments on the platform, as this could help to mobilize one another in the event of fraud.

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		Other comments regarding format and location of disclosure Two commenters recommended that non-reporting issuers be permitted to post required disclosure materials on their own websites, due to the cost of mailing these documents to investors. One commenter indicated that the format of ongoing disclosure should be user-friendly and not overly formal. ***Ongoing disclosure should be requirement of portal, not regulation*** One commenter indicated a preference for portals to require that ongoing disclosure be provided to investors, rather than requiring it through regulation. ***Commenter not in favour of ongoing disclosure requirements*** One commenter was of the view that there should be no requirement to provide ongoing disclosure (including financial statements) to investors, beyond the current requirements imposed by corporate and securities laws. The commenter noted that resale restrictions are already designed to ensure that there is sufficient disclosure available in the marketplace before securities become freely tradable, to allow a subsequent purchaser to make an informed investment decision.
28	Implementing a funding target	One commenter suggested that issuers be required to meet a specified funding target (from all sources, rather than just crowdfunding) before receiving funds from people investing through crowdfunding, as this would allow the market to determine whether the issuer's concept is viable and would also increase the chances of success. Another commenter recommended that crowdfunded offerings include a funding goal and not be permitted to close until that goal is met. The commenter recommended that the target offering amount be disclosed, along with the deadline to reach that amount and regular updates regarding the issuer's progress in reaching that amount. One commenter recommended that issuers be required to provide a detailed use of proceeds and a clear business plan together with a minimum raise condition tied to the business plan. If an issuer fails to raise the minimum disclosed, the commenter was of the view that the financing should not be permitted to close and the proceeds should be returned to investors.
29	Investor motivations	Commenters cited a number of potential factors that could motivate an individual to invest through crowdfunding, noting that these could vary based on the investor and project, and could be financial and non-financial in nature. Among the motivations noted were the following: • Return on investment/profit. • Social benefits that serve public interests, such as community engagement and participation and local economic activity. • Support family, friends, neighbours and/or former colleagues. • Desire to give back to a certain cause or support a local business. • Promote business with a positive social or community impact/business the investor believes in. • Opportunity to invest in micro and small businesses in one's own community. • Desire to support the business and/or management of an issuer in ways other than being a customer, supplier, promoter or marketer. • An interest in a specific issuer and/or management team to which the investor was exposed through a direct relationship or through other means (such as

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		media, social networking or internet research). • Ability to get as close as possible to innovative ideas and the entrepreneurs behind them. • Help bring to market a desirable product or service. • Access to products that may never be available in traditional market channels. • Interest fuelled by social media that is informational and entertaining. • The "crowd" motivates an investor; it produces crowd intelligence through social media ferreting out fraud or incorrect statements, which assumes that people investing will undertake more or other due diligence than traditionally done and in turn arguably gives an investor a higher degree of confidence and trust in management. • Greater transparency provided through crowdfunding for any financings by family and close personal friends and business associates, which allows the public to gain more confidence and trust in making an investment. • Participating in the development of a new product. • Being among the first to own an innovative product or get some other material return. • Speculating on what one sees to be a promising venture with some potential for a financial return. • A hobby in retirement. • Participating in a recreational form of business networking, inspired by watching television programs such as Dragon's Den or Shark Tank. • Ability to further refine one's investment portfolio based on factors such as location, small business sector and social/environmental factors. • Desire to invest in social or environmental business not large enough to be part of the listed market. • Ability to invest in culture and the arts on a micro level, such as individual projects. • Credible management with demonstrated experience and appropriate qualifications to execute the proposed business plan. • Non-excessive fees. • Adequate information. • Some confidence that no criminals are involved. • Continuity of an agent/registrant involvement beyond the sale (i.e., knowing that the seller has a responsibility beyond collection of a fee) as there is better alignment of interests. • Knowledge in a certain area. • Belief in the future of a certain technology. • Unhappy with current investment opportunities. • Desire to get in on the ground floor of a high growth company. • Comfort in investing through the internet and being able to research the company, product, market, competition, etc. • Comfort that the company and portal are legitimate. • Ability to gain access to investments at a lower cost. • Desire to invest in a low-hassle manner. • Potential for equity levels of return that are not normally available for small investors. • Opportunity to have a personal relationship with a business in which the investor has an investment, which normal stock market investing does not allow for. • Desire to provide funding for a company seeking to achieve a social good while

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		earning a potential return. ***More research is required to understand what would motivate an investor to make an investment through crowdfunding*** One commenter was of the view that more research is needed to fully understand the motivations behind crowdfunding investments. However, the commenter noted the following: • Existing research suggests that investors who exhibit positive skewness will be attracted to crowdfunding. • While retail investors who are not aware of the high rate of failure of SMEs may be attracted to crowdfunding, truly sophisticated investors will not likely use it as they will be aware of the lack of necessary information to make an informed investment decision. • Sophisticated investors may also determine that SMEs that have a greater probability of success will have been able to obtain capital through other means and will not seek to invest in the lower quality SMEs that will have resorted to crowdfunding for capital raising.
30	Concerns with illiquid nature of investments	***Concerns around illiquidity of investments*** Nine commenters indicated that there are concerns around illiquidity of investments made through crowdfunding. One of these commenters viewed this as the most significant risk a purchaser will bear in investing in an unlisted non-reporting issuer. Another noted that there is a need to ensure that there is some form of exit available, as otherwise many investors may never see a return on their investment and this may discourage many investors from using crowdfunding in the first place. One commenter indicated that there is the potential for investors to have unrealistic expectations related to crowdfunding investments. One commenter was of the view that retail investors typically do not want to make investments that are illiquid, and such investments are often not suitable for retail investors. Given that the concept idea does not contemplate the portal determining the suitability of an investment for an individual, retail investors may end up putting their entire yearly investment into illiquid and highly risky ventures. Three commenters were of the view that this concern is not specific to crowdfunding. Two of these commenters stated that this is a risk involved with investing in non-public companies generally. ***Mechanisms to address concerns around illiquidity of investments*** Commenters generally felt that these concerns around illiquidity of investments could be mitigated through certain mechanisms, including the following: • Restricting the amount a person can invest. • Requiring a risk acknowledgement that clearly specifies the lack of liquidity and limited options for monetizing investments, or otherwise ensuring that investors understand they may never see a return on their investment. • Otherwise requiring clear disclosure as to the illiquidity of the investment and that it is likely that no return will be realized (except for any proposed exit strategy outlined in the disclosure). • With proper education, investors can be made aware of the illiquid nature of these types of investments. One commenter was of the view that industry, government, academia and relevant associations should come together to

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		promote awareness in this area and provide non-mandatory investor education, in addition to encouraging portals to provide educational tutorials and robust FAQs. However, the commenter also indicated that investors need to take time to educate themselves and understand the risks involved. • Issuers could have in place an investor liquidity plan. One commenter indicated that requirements for later-stage initial public offerings, issuer bids or take-over bids under existing laws may have to be reviewed and revised to permit crowdfunding investors to participate fully in liquidation events. One commenter noted that there are only a few equity crowdfunding portals that exist today and one of them, the Australian Small Scale Offerings Board (**ASSOB**), has a platform that enables the secondary sale of securities for issuers that list through the portal. Five commenters indicated that by providing for resale through some form of secondary market, concerns around illiquidity could be mitigated. Specifically, the following suggestions were provided: • Implementing a secondary "private" market platform through Canada's primary exchanges, similar to www.secondmarket.com which is currently active in the United States. • Allowing portals to set up a secondary market, or otherwise permitting portals to both sell the initial securities and provide an aftermarket for the purchase and sale of those securities or, alternatively, to allow approved businesses or portals to operate an exchange-type business, much like a crowdfunding securities exchange. • Permitting a form of resale after a period of time (i.e., longer than one year, as many start-ups will fail within the first 12, 18, 24 and 36 months after a crowdfunding offering). However, as there are many issues that need to be considered in developing any resale regime for non-public companies, a review of this matter should be deferred until a later time. • Providing a means for crowdfunding investors to sell their investments amongst themselves on a periodic basis. • Allowing registrants to resell exempt market products to qualified retail investors, provided that the purchaser qualifies as an accredited investor or otherwise consults with a registered financial adviser, and signs an appropriate risk acknowledgement form which emphasizes the general principle that an investor's total exempt market holdings should not amount to more than 10% of the investor's total portfolio. Another commenter, while not referring specifically to concerns around illiquidity, was of the view that while resale restrictions should be imposed on securities acquired through crowdfunding, after one year any crowdfunding shareholder should be able to resell through the portal. One of the commenters that suggested considering resale opportunities was of the view that this should only be done where a continuous disclosure regime for non-reporting issuers has been put in place. Another indicated that if ongoing disclosure is required, there would be at least as much information available to subsequent investors as there was to initial investors, and recommended that companies be required to make available any information supplied by management so that subsequent investors have access to it. Another commenter, while not specifically recommending that any resale or share transfer mechanisms be put in place, noted

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		that there are a number of questions that would have to be considered around this. ***Commenters not concerned with illiquidity of investments*** One commenter did not have concerns around the illiquid nature of crowdfunded securities, noting that this is a risk investors take on when they invest, while another was of the view that crowdfunding investors should not be treated differently than other exempt market investors. Four commenters indicated that illiquidity of investments through crowdfunding is not a concern if the risks are made clear to investors prior to sale (through risk disclosure or otherwise). One commenter indicated that the only concern around retail investors making illiquid investments could be if they do so with an inappropriately large portion of their portfolio. However, the commenter was of the view that the limits set out in the Consultation Paper are low enough that this should not be a concern. A second commenter also expressed the view that illiquidity is not a risk in part due to the investment limits. One commenter noted that an illiquid private equity investment is better than day trading in public markets/doing online FX trading, or other investing activities open to all, and private equity is a means of risky forced long term saving which can be of benefit even to the financially vulnerable. Another commenter was of the view that concerns regarding illiquidity and limited monetizing options are overstated in the context of crowdfunding. The commenter noted that crowdfunding investors may be more interested in owning a piece of an enterprise that they like or believe in rather than immediate financial rewards. Additionally, the illiquid nature and limiting monetizing options can be viewed positively in that they minimize short term speculation and help to better align incentives in the longer term between the issuer and its shareholders. One commenter noted that through the use of standardized shares issued through crowdfunding, the OSC could build specific provisions into the share terms dealing with liquidity events and redemption/exit rights.
31	Advertising limits	***Support for advertising limits*** One commenter recommended that non-reporting issuers selling securities through crowdfunding be subject to marketing limits so that investors rely on the details of the offering rather than the “glitter”. Another commenter agreed with the use of social media to direct investors to the portal or the issuer’s website. One commenter recommended that crowdfunded offerings only be permitted to be advertised through the portal or on the issuer’s website. However, the commenter was of the view that if a 36 month trial for crowdfunding was successful, companies could be permitted to market offerings through a range of social media. ***Commenters not in favour of advertising limits*** Five commenters disagreed with the advertising limits described in the Consultation

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		Paper. In particular, it was noted that advertising is important in finding investors and improving the success of the offering. • Three of these commenters emphasized the importance of social media for crowdfunded offerings and recommended that issuers be able to advertise through social media channels. However, one of these commenters did believe that restrictions should be imposed on advertising through "one way" communication. • One commenter was of the view that while advertising on a mass scale is dangerous for issuers and investors, the limitation on advertising contemplated in the Consultation Paper may fail to take into consideration the nature and spirit of crowdfunding as a vehicle for investment. The commenter indicated that allowing "social media" promotion while not allowing "advertising" may demonstrate a misunderstanding of the nature of social media and audience engagement as it exists in a product's life cycle, marketplace and society today. It was also noted that the failure to define "social media" in any critical or comprehensive sense raises certain questions about the scope of the limit on advertising as there are certain cases where a blending of social media and advertising in its modern form take place. Accordingly, the commenter recommended a comprehensive exploration of the social media technologies or methods that would protect investors, issuers and portals while encouraging investment and growth.
32	Geographic restrictions	***Issuers with a connection to Ontario*** Four commenters supported restricting a crowdfunding exemption to issuers that are incorporated, and have their head office, in Canada. One commenter indicated that a crowdfunding exemption should be limited to companies that will use the capital raised to create new jobs in Canada or investment funds that will in turn invest in companies that will create new jobs in Canada. ***Restrictions should not be placed on location of investors*** Six commenters recommended that no jurisdictional boundary be imposed on investors. One commenter recommended that Ontario investors be able to invest outside of Ontario and Canada. ***Commenters not in favour of requiring that proceeds be spent in Canada*** Seventeen commenters did not agree that issuers should be required to spend the entire proceeds raised through crowdfunding in Canada. One of these commenters noted that what is relevant is not where funds are spent but rather, how they are spent. Commenters provided various reasons for not restricting where funds can be used, as set out below. <u>This is a matter best left to issuers</u> Four commenters indicated that where funds are spent is a matter best left to issuers. One of these commenters was of the view that this is to be determined by issuers and investors while another indicated that issuers can refer to this matter in the disclosure that is provided to investors, which will in turn assist investors in making an informed investment decision.

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		Business realities • Issuers should be able to deploy capital as required in a global marketplace. • It is important to allow Canadian businesses to be able to take advantage of international opportunities for expansion and investment. • This would create an unnecessary obstacle and may prevent or deter companies from being able to raise funds through crowdfunding. • Spending proceeds locally would require significant administrative expense for little benefit. Concerns around competition • Issuers should be able to spend proceeds in an unrestricted way as their business framework requires in order to remain domestically and globally competitive. • This could put companies raising money through crowdfunding at an unfair, uncompetitive advantage, which could decrease the likelihood that the investor will be repaid. • Canadian companies operate in global markets and must source products and other resources from other countries in order to be competitive. Compliance difficulties • Compliance would be difficult to monitor and would result in administrative expense. Inconsistent with other means of capital raising • There are no restrictions on how companies may spend money raised from capital markets, so it is unclear why funds raised through crowdfunding should merit additional restrictions. • There is no requirement to spend the proceeds raised under other exemptions in Canada or other kinds of fundraising. Other considerations • Mining and oil and gas issuers often have properties in foreign jurisdictions. • This could raise extra-territorial jurisdiction issuers. • Such restrictions may go against Canada's commitment under its free trade agreements and other international trade agreements or the World Trade Organization. One commenter noted that while crowdfunding may be intended to stimulate the economy and create jobs where it is introduced, it will have that effect if the issuer's head office remains in Canada and the issuer remains established under the laws of a jurisdiction in Canada. Another commenter suggested that in order to further this goal, a limit could be placed on the amount of funds spent outside of Canada (i.e. 25%) to ensure that a sizable proportion of the proceeds are spent in Canada. Two commenters indicated that they would not object to a requirement that 30-40% be spent in Canada, noting that companies should be encouraged to purchase equipment that provides the most value and that can often mean purchasing directly from foreign manufacturers. These commenters also indicated that at least 50% should be allowed to be spent to access global markets via trade shows, representation, foreign offices or employees or components that can only be sourced from abroad on a competitive basis.

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		Support for requirement to spend all or substantially all of proceeds in Canada One commenter supported a requirement that issuers spend the proceeds raised from crowdfunding in Canada with the one exception to this being media productions that are certified as official treaty co-productions by the Canadian Audio-Visual Certification Office. One commenter supported a requirement that either more than half or substantially all (i.e., greater than 90%) of the proceeds be spent in Canada, as this would contribute to the Canadian economy and have spin-off benefits. Additionally, the commenter noted that this would ensure capital flight out of Canada is not encouraged. ***Support for tiered approach*** One commenter that proposed a two-tiered version of the OSC's proposed crowd-funding model was of the view that it would be desirable to require that a significant amount of the proceeds raised through crowdfunding be spent in Canada. Under the first tier, the commenter recommended that the issuer be restricted to spending all of the proceeds in Canada whereas in the second (more senior) tier the issuer would be permitted to spend up to 25% of the proceeds outside of Canada. The commenter also recommended that if the second (more senior) tier of crowdfunding proved to be successful, the OSC could consider a full-reciprocity approach wherein companies would be permitted to both raise capital and spend the proceeds outside of Canada as they see fit.
33	Investment funds	One commenter agreed with the restriction on investment funds raising capital through crowdfunding set out in the concept ideas.
34	Type of security that could be offered through crowdfunding	Two commenters questioned why convertible and preferred shares were excluded from the concept idea. One commenter recommended prescribing one type of security that could be offered under a crowdfunding exemption that would have simple, standardized terms for all issuers and offerings. Specifically, it was suggested that: • Shares be non-voting and have standard terms and conditions and formulas for dealing with initial public offering, liquidation and other events. • The terms of the shares be structured to confer unique status to the crowdfunders relative to other shareholders, so that their rights and interests are clearly delineated and protected. • This would help to ensure that even the most inexperienced investor would be able to understand what they are investing in. • This class should be available only to people investing through crowdfunding and not to other investors. • If the exemption is limited to one type of security with standardized terms, much of the "financing facts" disclosure could be standardized, which would help to reduce the costs to the issuer in preparing the information statement. • For most SMEs, inclusion of a prescribed class of shares can be done at incorporation or through an amendment to the company's articles. One commenter suggested that just as complex securities are deemed not to be suitable for crowdfunding, it would not be unreasonable to exclude companies with complex capital structures from being able to use crowdfunding.

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35	Right of withdrawal	***Support for two day right of withdrawal*** Three commenters agreed with the two day right of withdrawal described in the Consultation Paper. Another commenter was of the view that either a two day right of withdrawal or a statutory declaration sworn in front of a Notary or Commissioner of Oaths that the investor has read and understands the risk disclosure provided by the issuer should be required. ***Support for extended right of withdrawal period*** One commenter recommended increasing the two day period to 10 business days, noting that two days does not seem feasible for the OSC nor provide investors with sufficient time to perform due diligence on issuers. It was suggested that a longer period would empower investors to more fully engage with the issuer, thereby fostering transparency between the issuer and investor. The commenter suggested starting the ten day period at the time that required disclosure is posted on a portal, following which sales could not be completed until after the 10 day period has expired. In the event that material revisions are made to the offering during that time, the commenter recommended that the 10 day period be restarted. ***Support for allowing issuers to rescind an offering and decline investment offers*** One commenter recommended that issuers be permitted to rescind an offering at any time before final sale and to decline offers from individual investors to purchase if a specific transaction would be unlawful.
36	Statutory rights in event of misrepresentation	One commenter was of the view that investors should have statutory rights in the event of a misrepresentation.
37	Investor protection and how to address abuse and fraud	Commenters expressed differing views regarding the risks to investors posed by crowdfunding. One commenter was of the view that regardless of the measures that are taken, not all concerns may be addressed and there will remain some significant residual risks of fraud and illiquidity. Three commenters did not believe that the risks involved were specific to crowdfunding. In particular, it was noted that the risks relate to investing in start-ups, rather than through crowdfunding specifically. Two of these commenters suggested that the use of social media in crowdfunding will help to mitigate risks, due to reduced anonymity, increased engagement and scrutiny, and the ability of the crowd to detect fraud. One commenter indicated that while introducing crowdfunding can play a role in helping some entrepreneurs raise capital, it will not address the primary reasons that start-ups often fail. Two commenters indicated that some responsibility for investing, no matter how much risk is involved, should be placed on investors, as long as proper risk disclosure is provided. One commenter noted that there are particular investor protection concerns associated with crowdfunding, especially in relation to retail investors, but these are adequately addressed through the investor protection measures set out in the Consultation Paper. ***Measures to address investor protection concerns*** Commenters recommended the following measures to address investor protection

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		concerns: <u>Risk acknowledgement</u> • Ten commenters supported a requirement for investors to sign a risk acknowledgement form. • Two commenters indicated that this should be a standard form document, with one adding that it should be easy to read and clearly indicate that investors can bear the risk of losing all of their investment. • One commenter suggested that the OSC develop guidelines to be included in the risk acknowledgement form regarding investor advice such as asset allocation. <u>Disclosure regarding issuer</u> • Ten commenters recommended certain disclosure requirements for issuers, including sufficient disclosure to allow investors to make a suitable decision to participate and risk disclosure. <u>Disclosure and other restrictions on portals</u> • One commenter recommended that portals be required to disclose fees paid by companies and investors. • One commenter recommended that portals make publicly available the names, faces and other information regarding their executives and directors (possibly including CVs). • Two commenters were of the view that background checks on management and directors of portals be should conducted, with one recommending that violations be disclosed on the portal site. • One commenter also recommended that criminal and securities law background checks on employees of portals be conducted, with clean records being required prior to having access to personal information of investors. <u>Investment limits</u> • Three commenters were of the view that investors that are not accredited investors or otherwise able to invest under another exemption, or that are otherwise unsophisticated, should be subject to investment limits. • Six commenters recommended that all investors be subject to investment limits. • Three commenters indicated that investment limits are the most effective means of minimizing risk for investors while another was of the view that this is the simplest and most effective way to protect unsophisticated investors. However, one commenter cautioned that limits on investment should not be the only or primary investor protection mechanism, noting that in the mutual fund industry the small initial investment that retail investors are able to make does not reduce the regulatory requirements applicable to mutual funds. • One commenter recommended imposing additional limits for non-reporting issuers (e.g., limiting the number of shareholders in non-reporting issuers using the exemption or capping the overall aggregate amount of money that can be raised, in addition to a yearly offering limit). <u>Background checks and disclosure and other controls on principals of issuer</u> • Seven commenters were of the view that some form of background checks, including criminal checks, identity checks and securities law checks, would be helpful in mitigating concerns around investor protection.

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		• One commenter recommended posting violations discovered through background checks on portals. • One commenter recommended ensuring that individuals convicted of a felony cannot certify management information. • One commenter was of the view that the board, or a majority of the board, should be independent. • Two commenters recommended making publicly available the names and other information of executives and/or directors of issuers (possibly including CVs), as well as faces. • Two commenters recommended that personal information forms be filed. • Two commenters recommended a requirement for directors and officers insurance. • One commenter was of the view that an issuer's founders, management and directors should be subject to non-compete clauses. <u>Statutory declarations</u> • One commenter suggested that management, directors and sponsors of issuers, portals and investors be required to declare that they will not submit false or misleading information. <u>Gatekeeper role of portals</u> • Three commenters indicated that the gatekeeper role of portals will help to address investor protection concerns. <u>Registration and other regulation of portals</u> • One commenter indicated that transactions should take place through a portal, with another six noting that a requirement for portals to be registered could help to address investor protection concerns. • One commenter indicated that registration requirements for portals are essential to establish accountability and prevent fraud in light of minimal regulatory oversight and third party involvement. • One commenter indicated that regulation and close monitoring of portals will be very important in addressing concerns with investor protection. <u>Registration of issuers</u> • One commenter recommended that companies using crowdfunding be registered with the OSC. This would include providing information relating to ownership structure, capital structure, abbreviated business plan and financial statements. The commenter recommended that the OSC educate the public about the need to check whether a company is properly registered. <u>Education</u> • Two commenters suggested that portals could provide investors with education about crowdfunding and the risks of investing in order to help address investor protection concerns. It was noted that this could include a video presentation and requiring investors to successfully pass a test or FAQs. • One commenter recommended that industry associations and financial and academic institutions offer industry recognized non-mandatory courses to people interested in pursuing crowdfunding education. • Two commenters recommended that the OSC publish statistics on crowdfunding,

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		with one indicating specifically that such statistics should relate to fraud. • Two commenters were of the view that the OSC should play a role in educating the public about crowdfunding. One of these commenters was of the view that the OSC should allocate designated resources to educate the public about crowdfunding and the risk that they can lose their entire investment. The other suggested that the OSC require that investors complete a substantive education component to ensure that they attain a minimum understanding of the crowdfunding investment process and the risks of start-up financing more generally. <u>Simplified share structure</u> • One commenter was of the view that the risk of abuse by issuers can be reduced by using a standardized class of shares. <u>Structured closing procedures</u> • Two commenters suggested that portals could use an escrow process for funds received from investors to facilitate a simultaneous closing date for all investors, and if the issuer does not find sufficient investors for the offering, any funds would be returned. Additionally, it was suggested that portals consider allowing for a "first closing" process for a smaller amount. • One commenter was of the view that portals should consider setting expiry dates for offers. • Three commenters suggested that portals hold investors' money in escrow until a minimum threshold of investment is achieved, so that investors could get their money back where a company is not able to raise a minimum base level of funds. One of these commenters indicated that the minimum level should be clearly tied to a business plan disclosed to investors. • One commenter suggested consideration of a technical solution that would halt investments and allow for a cooling off period, which could be managed through an escrow arrangement. • One commenter suggested that companies raising over a specified amount (e.g., $500,000) be required to define performance milestones in the information statement, and to place the net proceeds of the offering into an escrow account for release only as those milestones are achieved. <u>Mechanisms for dealing with funds</u> • One commenter recommended measures similar to those in the United States under the proposed *Entrepreneur Access to Capital Act*, which could require cash management to be outsourced to a bank where start-up companies are involved. <u>Right of withdrawal</u> • One commenter was of the view that investors should be provided with a two day right of withdrawal. <u>Limits on use of crowdfunding</u> • One commenter recommended limiting the number of times an issuer can use the exemption within a certain period of time. <u>Reputation of funding portals</u> • One commenter noted that the reputation of a funding portal, as it develops over

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		time, will serve to reduce risk. • One commenter was of the view that the emergence over time of more crowdfunding portals should create more competition, so that to remain competitive a portal's fraud detection and vetting services will become important points of comparative advantage and, over time, the more responsible portals are likely to survive as competitive pressures would encourage them to implement governance standards and policies beneficial to investors. <u>Restrictions on use of proceeds</u> • One commenter suggested that issuers could be restricted from using funds raised to relay loans or other amounts owing by the issuer to its founders or promoters, as the policy objective should be to encourage new money to finance growth, rather than to repay old debts to insiders. <u>Other restrictions on issuers</u> • One commenter recommended that entities seeking to raise money through crowdfunding be required to be incorporated. • One commenter was of the view that an independent investor representative should have a right, but not an obligation, to be a member of an issuer's board of directors if the issuer completes a crowdfunding offering, as this would provide a level of oversight to ensure the issuer does what it says it will, particularly with respect to executing the business plan and using the proceeds of the offering as contemplated in the information statement. <u>Other restrictions on portals</u> • One commenter recommended that portals be restricted from accepting direct credit card purchases. <u>Transparency</u> • One commenter indicated that fraud concerns can be reduced and mitigated if the OSC provides a clear mechanism for the public to report it. Specifically, the commenter suggested that crowdfunding platforms provide feedback mechanisms and discussion areas for projects, as well as a monitoring protocol for projects that are submitted. • One commenter recommended the establishment of a centralized shared database to track and protect against fraud through storing all occurrences of fraud and potential "red flags" and suggested that portals be required to report suspected fraud to the OSC or a related entity. • One commenter cautioned that risk of businesses failing is more significant than fraud, and the crowdfunding industry must play a strong part in educating consumers about risk to their capital. It was noted that there are many web-based tools that can be used for this, including duration based page-timing, online testing, cooling off periods and double opt-in consent provisions (i.e., via email). • One commenter suggested that portals could play a role by having a forum where investor questions and company responses can be publicly posted. • One commenter recommended that the OSC keep lists on its website of registered portals and companies that have and are raising funds through crowdfunding and the portals they have used. One commenter indicated that an effective protection against fraud and abuse is a

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		reputation management system which could be a list that includes, at minimum, all people who have been prosecuted, gone bankrupt, been associated with firms that have done the same, etc., and ideally also a place where comments/reviews are attached to users by people who have done business with them. It was noted that this would only be useful where centralized, and could be approved by the OSC or run by it. Another commenter indicated that the best way to reduce the potential for fraud and abuse without creating a disincentive for investees to participate is by creating a system that is public and transparent. At minimum, the commenter indicated that individual investees should be required to provide identifying information (i.e., they are who they say they are) and other basic details about the project and ongoing developments. The commenter noted that while another level of accountability could be created by building in the capacity to make public comments regarding the company and the project, this could result in an inordinate amount of time being spent by investees in rebutting comments and carries the risk of abuse by competitors attempting to discredit a project. The commenter indicated that if it is determined that the OSC should play a formal role in preventing fraud and abuse, it should take the form of a checklist (e.g., "have you ever been sued") and a review of company documents related to ownership and a business plan, but should not become an onerous process requiring certified documents. Another commenter was of the view that social media can be used as a tool for fraud prevention, as use of the internet and social networking will allow investors to perform research on entrepreneurs before deciding whether to invest. Further, another level of accountability could be built in through enabling public comments to be made about the business. <u>Enforcement and liability</u> Other comments were focused on increasing enforcement efforts to address fraud and abuse through crowdfunding. One commenter indicated that while fraud and abuse will take place no matter what rules are put into place, regulators should make the cost of fraud and abuse so high that fraudsters are motivated to look for easier targets and move away from this market. The commenter noted that this is best done through aggressive enforcement, which could be enhanced through: • allocating funds to hire an enforcement team whose only job is to prosecute fraud in the crowdfunding market, and • having a fraud reporting line prominently posted on all crowdfunding sites so that investors and fraudsters can see it. The commenter suggested that if funds are not available for these mechanisms, the OSC should consider a special levy (e.g., 1-2% on all funds raised through crowdfunding) to be allocated solely to enforcement. Another commenter also indicated that it may be necessary to consider new elements of enforcement to help ensure that issuers provide the requisite information to investors, but did not elaborate on what this might entail. One commenter recommended that investors have a statutory or rule based cause of action against portals that knew or ought to have known of fraud or suspicious conduct that the portal does not report and, further, that investors and portals should

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		not be liable for reporting suspicions of fraud to the OSC for further investigation. Other commenters recommended the following: • Imposing fines on unregistered portals and companies that raise money through crowdfunding on an unregistered portal. • Prohibiting people from being a director or officer or from trading in securities for a prescribed time in addition to prosecutions for fraud and abuse. • The OSC or another regulatory organization should be entitled to conduct a reasonable number of spot audits annually of portals and issuers, with an obligation to report and address any suspicions of fraud to the appropriate authorities. One commenter indicated that there should be clear statutory remedies for investors, including restitution of benefits and funds paid by investors as a result of misrepresentations, fraud or lying under oath in a statutory declaration. <u>Involvement of adviser or sponsor or other third party</u> • Two commenters suggested requiring the portal or another qualified third party to act in a Nominated Adviser role to the company, similar to what takes place with the AIM market of the London Stock Exchange, where this party represents the interests of shareholders. • Another commenter suggested adopting a sponsorship model similar to that utilized by the ASSOB, which requires issuers to engage at least one sponsor or professional business adviser prior to being listed on a portal. • One commenter was of the view that investors should be required to consult with a registered financial adviser in order to review the details of the investment before executing the risk acknowledgement form. • One commenter recommended that portals use a third party to undertake additional due diligence on particular proposed distributions in their field of expertise, and suggested that experts on particular niche market start-ups could be consulted to provide a more thorough vetting of proposals. ***Concerns around over-regulation*** One commenter indicated that while investor protection is a key concern, it must be addressed without putting in place an overly bureaucratic and cumbersome approach that would deter participation. One commenter was of the view that simplicity is important in addressing investor risk. Another commenter indicated that the most important measure for reducing the risk of fraud and abuse is to establish and monitor a simple set of standardized regulations for crowdfunding investments and the portals that facilitate these investments. The commenter noted that simplicity is important as stakeholders that establish portals may not currently be in the securities industry. The commenter was of the view that over time portals will likely put in place measures to protect investors and their reputations. ***Concerns around limited ability to address risks*** One commenter indicated that crowdfunding involves investor protection concerns that will require strict monitoring and enforcement, due to the following features: • Unlike other exemptions that are based on a relationship between the issuer and investor or the investor's ability to withstand loss, crowdfunding involves the

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		issuance of securities to a larger, unlimited group of potentially unsophisticated investors with no relationship to the issuer. • Concerns with fraud arise due to the anonymity of the portal. • Management may not have adequate experience and qualifications to run a business. This commenter was concerned that the monetary limits and requirements for portals set out in the Consultation Paper may not be sufficient to help unsophisticated investors. One commenter indicated that crowdfunding poses risks to investors as it would provide a large number of unsophisticated investors with access to the exempt market, and non-accredited investors may not understand that investing in the exempt market can carry a significantly higher risk and result in total loss. While the commenter was of the view that the involvement of a registrant, as well as some of the investor protection mechanisms contemplated in the Consultation Paper (including investment limits and registration of the portal) could help, investors may be more vulnerable to fraud under this exemption. If a crowdfunding exemption is adopted, the commenter indicated that investor education would be a critical component to ensure that investors understand the risks associated with crowdfunding. One commenter expressed concern that there is a significant potential for fraud due to the ability for unregistered individuals to sell securities in companies that have not been subjected to any due diligence processes to unsophisticated investors. The commenter indicated that the integrity, registration and sophistication of the portal will be critical in ensuring protection for investors. One commenter described investing through crowdfunding as pure speculation with a real potential for fraud. The commenter was of the view that the focus of the OSC should be to take sensible steps to limit the amount of loss rather than trying to prevent it, by imposing limits on investment and offering size. The commenter also suggested that background checks could be conducted. When fraud does occur, the commenter indicated that there should be real recourse available. Most of the above commenters suggested that it is possible to mitigate at least some of the risk involved with crowdfunding. However, one commenter was of the view that equity crowdfunding has too many fundamental problems which lead to investor protection concerns that cannot be adequately addressed. In particular, the following concerns were noted: • Informational asymmetry will exist. • Investors will want a return on their investment, and tend to have unrealistic return expectations and not be aware of the low probability of return with SMEs. • Retail investors are likely not aware that investing in start-ups and SMEs is highly risky. • Given the small amounts that will be invested by any one investor, there is not sufficient economic rationale to do the due diligence that sophisticated investors would engage in. • Most investors will not understand that the level of due diligence will not have been as great as with a prospectus offering. • While proponents suggest that the crowd will be able to detect fraud and weed

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		out bad actors, existing research suggests that many retail investors are not able to adequately detect fraud and instead, become victims of fraud at an alarming rate. • Group irrationality is well documented. • Compliance with regulatory requirements may be difficult, if not impossible, to adequately supervise and police. • The relatively small amounts invested per person will be a barrier to commencing any sort of action to recover lost funds. Further, by the time a person knows something is wrong, the money will have been misappropriated and will be very difficult to locate, let alone recover. Further, the economics of bringing a claim and the adequacy of the economic incentives available to plaintiff law firms to bring suits will limit the ability to obtain a remedy.
38	Considering use of a sponsoring agent	One commenter suggested that the quality of crowdfunded offerings could be improved through the use of sponsoring agents who perform additional due diligence on certain offerings and thereby ensure greater credibility and reliability. Another commenter suggested adopting a sponsorship model similar to that utilized by the ASSOB, which requires issuers to engage at least one sponsor or professional business adviser prior to being listed on a portal.
39	Books and records	One commenter noted that while corporate law currently provides shareholders with limited rights of access to books and records, the Consultation Paper suggests that books and records of issuers relying on the crowdfunding exemption would be available for inspection by both investors and OSC staff. The commenter questioned whether the OSC would have the resources to conduct reviews of these materials, and what the penalties for non-compliance would be.
40	Marketing	One commenter noted that securities law currently limits communications by issuers to potential investors, including restrictions on management from communicating through social media during pre-marketing and marketing periods on distributions of securities under a prospectus. The commenter noted that this is in contrast to crowdfunding in which, based on the reward model, engaging audiences online is crucial to gaining awareness, momentum and success in a fundraising campaign. The commenter noted that if the main protection for investors under the exemption is a limit on investment size, management should perhaps be allowed to engage in ongoing dialogue with investors through social media during the course of a crowdfunding campaign.
41	Role for independent rating agency	One commenter indicated that as portals should not offer investment advice or recommendations or evaluate the merits of an issuer's business there may be a role in crowdfunding for a new independent rating agency, set up as either a not-for-profit or for-profit entity. The commenter suggested that participation by issuers could be voluntary and, if requested by the issuer, the rating agency could analyze and rate both quantitative and qualitative aspects of its business using well-defined criteria published on the agency's website. It was noted that this kind of validation by a third party could help to provide assurance to investors and bring order to the funding market. It was suggested that further features could include: • operating costs covered by fees paid by issuers once the agency is up and

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		running, • ratings applicable for the initial offering, followed by annual renewals thereafter, and • as the agency's role grows and becomes more accepted, investment limits could be gradually increased.
42	Other	One commenter indicated that the combination of complicated requirements and relatively inexperienced issuers will prove problematic if a crowdfunding exemption is introduced, and inadvertent violations will likely occur. Accordingly, the commenter recommended that if a crowdfunding exemption is adopted, the OSC should have the authority to specify that an issuer that reasonably believed that it met the requirements of the exemption, or substantially complied with those requirements, is entitled to the exemption, despite noncompliance. It was noted that such a "substantial compliance" doctrine may be needed in order to prevent unwary entrepreneurs who lack the resources to pay for professional advice from falling into a "liability trap" and therefore losing access to an exemption that is conditional on all of the requirements. The commenter was of the view that this would not amount to a safe harbour for fraudsters or incompetent users of the exemption, as incentives for due diligence would remain because issuers would not want to attract the scrutiny of securities regulators and potentially have their businesses put into a process of litigious review. One commenter proposed that in determining restrictions on issuers in the media industry, a distinction should be drawn between companies that are engaged in crowdfunding capital investment and those that may be involved in raising funds for multiple media projects where each project could be an "issuer".
Offering memorandum exemption		
43	Support for an offering memorandum exemption	***Support for an offering memorandum exemption*** Sixty-one commenters supported introducing an offering memorandum exemption in Ontario. One commenter was of the view that it is more difficult to raise capital in Ontario than in other provinces due to the lack of an offering memorandum exemption. The commenter indicated that issuers and dealers leave Ontario for western Canada to take advantage of the capital raising opportunities offered under the offering memorandum exemptions available in other provinces. Overall, the commenter was of the view that this harms Ontario's capital markets, diverts capital raising to other provinces and territories of Canada and has a deleterious impact on investment in Ontario. Commenters cited potential benefits of an offering memorandum exemption relating to issuers, investors, registrants, the economy and harmonization. <u>Issuers</u> • It would be an efficient tool for businesses to raise capital with lower costs (e.g., relative to a prospectus). • It would help start-ups, small businesses and SMEs and would create an intermediate sized source of funding for growing companies. • It would increase access to capital for SMEs.

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		• The costs of equity-based fundraising currently impacts start-ups and SMEs on a disproportionate basis, which are also impacted by Canada's decentralized structure of securities regulation. • It would be a viable financing option for many companies seeking growth capital and/or to transition to a business via a model that includes new management. • It would decrease capital raising costs without compromising investor protection. • It would provide flexibility to investors. • It would be especially helpful if a crowdfunding exemption was also adopted. As an issuer would be precluded from using the private issuer exemption after crowdfunding, it would be impractical for the issuer to be limited to only the accredited investor and minimum amount exemptions without some middle ground to bridge the gap. An offering memorandum exemption could do so. • It would help issuers that currently rely primarily on the accredited investor exemption to raise capital. <u>Investors</u> • It would provide investors with a simple to read document while still providing them with many of the rights afforded by a prospectus. • Investors are seeking out alternative investments. • It would level the playing field across Canada and increase investment opportunities to investors and ease some of the disparities between regions that are encountered when using the accredited investor exemption. • It would help the OSC to better fulfil its mandate and empower informed investors to make their own decisions, instead of imposing essentially arbitrary rules on investors based at times on inherited wealth, as is the case with the accredited investor and minimum amount exemptions. • It would likely be beneficial to the middle class and young people who are starting out and would like to invest. • It would offer investors access to investments that could increase or diversify their portfolios. • It would democratize information over the internet, as investors today are able to conduct fast, thorough and inexpensive due diligence on their own. • Given that registered dealers and their dealing representatives are subject to effectively identical requirements in terms of know-your-client and know-your product requirements, suitability criteria, Customer Relationship Model-mandated disclosure and other obligations, there is reasonable assurance that if an offering memorandum exemption is introduced that requires the intermediation of a dealer, the interests of investors will be suitably protected. • It was noted that there is currently an unfair benefit for individuals who hold corporate pension plans, as they are able to benefit from these funds' investments in exempt market securities (and the accompanying returns) that they could not personally invest in, while individuals who rely solely upon their own RRSP for their retirement have little or no access to these markets. • In many sectors, public markets have proven to be riskier and more volatile than private equities, and individual investors, like institutions, should be permitted where appropriate to invest in alternative markets for greater stability and improved possibility of higher returns. <u>Registrants</u> • Exempt market dealers offer similar, sometimes even the exact same, products as

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		investment dealers and have similar requirements with respect to know your client, know your product and suitability, so they should not be restricted to speaking to only 2% of the population. <u>Economy</u> • It would foster economic growth and development that is more regionally diversified within Ontario. <u>Harmonization</u> • It would provide consistency/harmonization across Canada. One of these commenters added the caveat that an offering memorandum exemption should be implemented provided that compliance can be reasonably assured. The commenter noted that if crowdfunding was restricted to portals, then it would make sense to adopt an offering memorandum exemption for securities that could be distributed everywhere else. However, if there is no portal equivalent for oversight, it could be difficult to ensure compliance. Two commenters supported the introduction of an offering memorandum exemption provided that proper protections are in place. Other positive comments included the following: • The offering memorandum is a key document from which small businesses are raising funds, largely because the costs are lower than those for a prospectus. • Residents of Ontario desire and should have the opportunity to purchase exempt market securities through an exempt market dealer responsible for ensuring suitability, and providing access to this market for investors meeting the criteria for "eligible investors" in other provinces would be in the public interest. ***Commenters unaware of evidence of harm*** Three commenters questioned the evidence of harm relating to use of the offering memorandum exemption in other jurisdictions in Canada where it is currently available. One of these commenters indicated that as there does not appear to be any evidence of harm, the onus should be on the government to demonstrate that what is being done in other jurisdictions is wrong, or adopt their practices. Another commenter noted that the exempt market in Ontario today has changed from the time that Ontario determined to not adopt an offering memorandum exemption, and the increased investor protection, disclosure and enforcement now present is such that there is no reason not to adopt it. Commenters noted that the following changes have taken place which should provide some comfort to the OSC, with some noting that these have occurred since the time the OSC decided not to adopt an offering memorandum exemption: • The inception of NI 31-103, which requires suitability and other obligations. Many of the losses that have taken place in the past in the exempt market were due to registration issues, not prospectus exemption issues, and the necessary changes have been made by implementing NI 31-103. • The offering memorandum is a vetted document and exempt market dealers are required to perform know your product assessments on the issuers they represent. • Investors now have greater access to information over the internet. One commenter indicated that they were unaware of any negative issues that have arisen in jurisdictions that have an offering memorandum exemption available and

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		therefore believe that any reservations the OSC has had regarding the exemption have been alleviated. One commenter noted that while the rationale in Ontario behind not adopting an offering memorandum exemption has related to investor protection concerns, this will not hold up if equity crowdfunding regulations are implemented. One commenter indicated that it was not clear as to the rationale for the elimination of the exemption in Ontario. One of these commenters also noted that offering memoranda are available for review at any time by regulators and further, that investors signing a risk acknowledgement form need to accept accountability for their investment decisions. ***Support for limited version of offering memorandum exemption*** One commenter supported the adoption of an offering memorandum exemption that is subject to the following conditions: • Limited to private companies or, if extended to public companies, it must be through a dealer that is a member of the Investment Industry Regulatory Organization of Canada (**IIROC**). • Prohibit commissions or other compensation from being paid to agents or finders that do not have IIROC dealer equivalent suitability, know your product and know your client responsibilities. • Subject to appropriate reporting and monitoring. • Allows for complementary documents that offer additional evidence of professional management rather than financial statements, including tax returns and bank confirmations. ***Reservations around introduction of offering memorandum exemption*** Other commenters expressed reservations around the introduction of an offering memorandum exemption in Ontario. One commenter noted that as the exemption is used infrequently where it is currently available, it is not clear how its usage would increase if it were to be introduced in Ontario. This commenter recommended focusing on exemptions that will assist in expanding access to investors rather than ones with limited effect. Another commenter noted that the offering memorandum is currently not used by venture issuers due to costs associated with preparation of the offering memorandum and compliance, and suggested that listed issuers be able to rely on their existing continuous disclosure record for raising capital. ***Commenters not in support of introducing an offering memorandum exemption*** One commenter did not support the adoption of an offering memorandum exemption in Ontario. The commenter noted that existing offering memorandum exemptions are used for accredited investors or other large exempt entities, and should stay this way as use of the exemption by SMEs would result in the costs hurting the initiative of raising capital from many investors. One commenter was strongly of the view that an offering memorandum exemption should not be adopted in Ontario. The commenter indicated that there are significant compliance issues with the exemption in other Canadian jurisdictions, and was of the view that similar compliance issues and fraud would occur under the exemption as set out in the Consultation Paper. Further, the commenter: • questioned whether the issuers the OSC has targeted to assist through its review,

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		particularly SMEs, have the sophistication and resources available to comply with the exemption, and • was of the view that the introduction of an offering memorandum exemption in Ontario has not been suggested to meet an investor need, is unprincipled, and would reduce investor protection and undermine confidence in the Ontario capital markets. The commenter also recommended that the CSA prioritize the undertaking of empirical research to determine the incidence of fraud, misrepresentation and resulting losses suffered by investors as a result of investing in securities through purported reliance on the offering memorandum exemption, noting that no such empirical data is currently available despite the serious compliance deficiencies that have occurred.
44	Concerns with offering memorandum concept idea	Many commenters that supported the adoption of an offering memorandum exemption were not in favour of an exemption based on the concept idea set out in the Consultation Paper. One commenter indicated that due to the limitations in the concept idea, it would have limited utility to issuers requiring material amounts of capital, and is unlikely to be a meaningful capital raising tool for SMEs. One commenter expressed concern with the concept idea for an offering memorandum exemption in the Consultation Paper, noting that it does not resemble the offering memorandum exemptions currently in use in other Canadian provinces but rather, contains the same monetary restrictions as the concept idea for a crowdfunding exemption. The commenter was of the view that these limitations are impractical and will result in the offering memorandum being of limited use to issuers requiring a significant amount of capital or SMEs in general in Ontario. One commenter expressed concern around the monetary limits set out in the Consultation Paper, and recommended adoption of an offering memorandum exemption with no monetary limits and with a requirement that it be marketed by a registrant. Two commenters introduced a proposal for an approach to an offering memorandum exemption based on the Alberta form of offering memorandum exemption but with two additional features: • Mandated use of a registered dealer (including an exempt market dealer). • Centralized website or repository to post offering memoranda. It was suggested that this would provide greater transparency and increase compliance and, over time, improve the quality of offering memoranda.
45	Harmonization	Fifteen commenters recommended introducing an offering memorandum exemption that is harmonized across Canada. It was noted that having different exemptions in different jurisdictions creates confusion and additional time and cost. Three of these commenters indicated specifically that they were not in favour of the adoption of an offering memorandum exemption in Ontario that differs from what is available in other jurisdictions in Canada.

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		Five commenters recommended using the existing exemption in NI 45-106 (either the British Columbia or Alberta model) as a starting point for a harmonized exemption, while another suggested implementing an offering memorandum exemption that is less restrictive than the concept idea set out in the Consultation Paper and that more closely mirrors the exemptions available in British Columbia or Alberta. Three commenters suggested that in adopting an offering memorandum exemption in Ontario, the OSC should move towards the model currently in place in Alberta while one recommended adopting the model currently in place in British Columbia. One commenter was of the view that the CSA should consider harmonizing the British Columbia and Alberta offering memorandum exemptions, and take into account investor protection features and limits being proposed under the crowdfunding exemption. Commenters in favour of adopting the current exemption in NI 45-106 indicated that: • It is well understood by industry. • Harmonization would reduce compliance costs for issuers and level the playing field. • It would provide investors across Canada with a simple to read document that is comprehendible while still providing many of the same rights to investors afforded by a prospectus. • It would allow SMEs greater access to capital in Ontario and greater investment opportunities for investors in Ontario which are currently unavailable due to the lack of an offering memorandum exemption. • It would stimulate investor democracy by allowing all Canadians a means of accessing exempt market securities while at the same time providing investor protection. • It would serve as a method for SMEs to bridge the financing gap for financings between $1.5 million, being the crowdfunding limit, and $5 million, which is often the lower limit for venture capital financing. • A harmonized offering memorandum exemption would be useful for the mineral exploration industry. One commenter supported harmonization generally but cautioned that as it should not come at the expense of investor protection, it is appropriate to impose offering and investment limits.
46	Offering memorandum concept should not be linked with crowdfunding concept	Ten commenters were of the view that consideration of an offering memorandum exemption or, at least, certain elements of an offering memorandum exemption, should be separate from consideration of a crowdfunding exemption. We heard that these exemptions are different, serve different purposes and target different tranches of the investing public and that the OSC should design separate approaches that are best for each. One commenter indicated that the offering memorandum exemption has been successfully utilized in every other Canadian jurisdiction for years, while the crowdfunding exemption has not even been implemented in the US, let alone tested. Some commenters were concerned in particular with the equivalent monetary limits in the two concept ideas. • Two of these commenters were of the view that monetary limits for an offering memorandum exemption should not be considered in connection with a potential crowdfunding exemption, with one indicating that an offering

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		memorandum exemption has been in place for years and should not be restrained by monetary caps. • One commenter indicated that the offering memorandum limits need to be greater than what would be workable under the crowdfunding model for reasons relating to costs, required disclosure and investor rights. One of these commenters recommended that the OSC first look at what exemptions are already working in other CSA jurisdictions to facilitate efficient capital markets and invigorate Canadian SMEs and then look to international jurisdictions for new ideas. However, one commenter was of the view that any limits imposed for an offering memorandum exemption be the same as those for a crowdfunding exemption.
47	Investment funds	One commenter supported extending the exemption to investment funds unlinked from crowdfunding, noting that investment funds play an important role in the economy in aggregating capital for investment, providing professional management and investment decision making and enabling investors to diversify risk.
48	Investment limits	A wide range of views were expressed with respect to the investment limits specified in the Consultation Paper. ***Commenters not in support of investment limits*** Fourteen commenters did not support imposing investment limits in connection with an offering memorandum exemption. Four of these commenters referred to the involvement of a registrant that will conduct suitability, know your product and know your client assessments, noting that this will provide sufficient protection and determine appropriate investment amounts based on an investor's circumstances. Other comments included the following: • Limits make the exemption less useful to issuers. • Limits increase the cost of capital and would stifle use of the exemption. • With the specified limits in place, there is a risk that issuers would not use the exemption due to the cost of preparing an offering memorandum. • Competent adults should be able to invest as much as they want; they are not subject to any limitations when it comes to other economic decisions such as gambling or investing in other assets or through a direct trading account. • Limits make the exemption ill-suited for SMEs and are not in line with the OSC's principle that business and regulatory costs should be proportionate to the benefits to issuers. • The limits are arbitrary and restrictive. • Imposing limits could lead investors to move towards publicly-traded investments. • Knowledgeable or serious investors would not be interested as it would not be worth their time. • The imposition of limits is arbitrary and prejudicial, and the one size fits all approach is contrary to the know your client, suitability and accountability processes required of exempt market dealers. • A $2,500 limit would create unwarranted investor fear towards exempt market offerings. • The limits would be punishing to the exempt market and SMEs and also embarrassing nationally and internationally, where alternative investments are

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		becoming more important. • There are currently no monetary limits under the offering memorandum exemption in any other jurisdiction in Canada and as part of the goal of harmonizing securities laws nationally, an offering memorandum exemption in Ontario should be equivalent. • The market should determine the best ranges for capital raising under the exemption. • Restricting an investor to $2,500 does not provide confidence but rather, fear of deal risk. • The projected revenue in terms of commissions would not be sufficient to motivate exempt market dealers and their dealing representatives to sell under the exemption. Small investors are already too risky and costly for many firms to service and implementing small thresholds such as these would not increase their choices. • A $2,500 investment is too small to be economically viable for exempt market dealers or issuers to handle. • The limits put a non-accredited investor in the situation of choosing between over-diversification in many products at $2,500, or to specialize in one product at a minimum of $150,000 through the minimum amount exemption. The best range would be somewhere in between the $2,500 and $150,000 range, where investment is not permitted under these proposals. The composition of an individual's portfolio should be based on individual circumstances, financial goals and portfolio diversification and asset allocation principles, and not determined by manoeuvring around arbitrary limits set by a regulator as this has the potential to put clients in danger of over-diversification or specialization of their life savings. • It is not in the best interest of the investor to advise that they can only invest $2,500 in a single asset backed investment and simultaneously allow them to invest $100,000 through a self-directed online brokerage in a high risk stock. • With such a small amount, an individual is less likely to read the offering memorandum or many any efforts to understand a prospective investment. • Limits do not take into account the varied circumstances of each investor. While not in favour of investment limits, two commenters indicated that if limits are adopted, they should be similar to those allowed through the offering memorandum exemption in the rest of Canada. ***Commenters in favour of increased investment limits*** Twenty-nine commenters supported (or were not opposed to) investment limits but recommended that they be increased. Commenters generally were of the view that the limits specified in the Consultation Paper were not practical or reasonable, and that use of the exemption would be minimal if these limits were imposed. Specifically, commenters noted the following: • Limits of this size do not foster confidence in markets but rather fear of deal risk. • Brokers and businesses would not waste time approaching the large number of investors required. • The limits may not make it feasible for an issuer to raise funds using the exemption. • Investors may not spend time doing due diligence/reading the offering memorandum for such a small amount and many would not bother with such an

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		investment. • The specified limits may lessen the appeal of the investment opportunity for many investors. • Where there is a registrant involved, a limit of $2,500 may result in a registrant not appropriately servicing clients, including not collecting sufficient know your client information or adequate suitability, due to the volume of transactions and higher costs vs. the benefit associated with each distribution. • Given suitability requirements, there should not be a need for caps on sales by an exempt market dealer as suitability should ensure that the client invests the right amount. • This would require a dealing representative to tell a non-accredited client that they can invest $2,500 or $150,000, making it difficult to provide suitable advice as they would not be given reasonable parameters to work within. • People are not restricted from making other economic decisions such as investing $10,000 on a penny stock through a discount broker with no disclosure or suitability advice, buying a car that depreciates 20% after driving off the lot, gambling as much as they want, etc., so it does not make sense to restrict them to investing $2,500 in a start-up after being given disclosure, rights and suitability advice. • There is a risk of under-capitalization due to the large number of shareholders an issuer would need to find. Specific proposals for increasing the investment limits included the following: • Three commenters recommended increasing the $2,500 per investment limit to $10,000. • Assuming the involvement of a registrant, one commenter recommended a per investment limit of $25,000 and a limit of $50,000 on an investor's total holdings of offering memorandum issuances, rather than a 12 month limit, which could be increased relative to net worth. • One commenter supported a limit of $50,000-$100,000, noting that limits could be removed if proper protections are in place. • One commenter suggested that further consideration be given to a limit based on an individual investor's particular circumstances, such as a concentration limit based on a percentage of investible assets. As there is no requirement to have a registrant involved, the commenter was of the view that an investor should be required to provide proof of investible assets or, at a minimum, self-certify that the investment concentration limit is not exceeded. • One commenter recommended that a limit of $100,000 per investor be set for the first three years of the exemption's operation, subject to the general principle that an investor's total exempt market holdings should not amount to more than 10% of the investor's total portfolio. After that period, absent significant fraud or investor losses due to failures in the exemption's investor protection requirements, the commenter suggested consideration of moving to an unlimited amount. ***Support for investment limits in Consultation Paper*** Two commenters were of the view that the limits set out in the Consultation Paper are sufficient.

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		Other proposals for investment limits Two commenters recommended that investment limits for an offering memorandum exemption be the same as those for a crowdfunding exemption. In the context of the crowdfunding exemption, one of these commenters suggested that the OSC consider imposing limits based on income, while the other suggested limits based more generally on median income. One commenter, although opposed to the adoption of an offering memorandum exemption in Ontario, suggested that if such an exemption is adopted, investment limits should be imposed that are based on the income of the investor or, if they choose not to provide their annual income, based on the average median income level in Canada. One commenter suggested increasing or eliminating investment limits if disclosure is provided in the form of Form 45-106F2 or Form 45-106F3. Two commenters supported imposing investment limits for non-accredited investors but did not comment on what those limits should be. One of these commenters noted that this would help to increase choice and make the risk associated with a product more bearable. The other commenter indicated that limits are necessary to provide investor protection for less sophisticated investors who might not be able to withstand such a loss. While not expressing a view as to whether any investment limits should be imposed, one commenter expressed concerns around the limits set out in the Consultation Paper, noting that such restrictions will limit investment choices and investor access to the exempt market. Additionally, while issuers would be forced to use a dealer to attract the number of investors needed to raise capital under the exemption, it is unlikely that many dealers would find the opportunity worthwhile with limits of this size as many would focus on offerings where larger investments are possible. ***Compliance with investment limits*** One commenter questioned how the OSC and issuers would address compliance with investment limits. One commenter questioned the value of self-certification and recommended the creation of a registry or centralized database maintained by the OSC, perhaps in addition to self-certification. The commenter was also of the view that registrants should have a responsibility to ensure compliance with investment limits. ***Harmonization of investment limits*** Sixteen commenters recommended harmonization of investment limits across Canada. While one of these commenters did not express a view as to whether limits should be imposed, they indicated that the thresholds in the Consultation Paper are overly restrictive, and that there is no evidence cited to support such limits. Additionally, it was noted that having different thresholds in different jurisdictions, coupled with the fact that some jurisdictions require a registrant while others do not, will cause an asymmetry in the investment opportunities of investors, further promote a jurisdictional advantage for certain investors, and create more confusion in application of the rules.

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49	Offering limits	***Commenters not in favour of limits on offering size*** Sixteen commenters did not support restricting the amount that an issuer could raise through an offering memorandum exemption. Generally, commenters indicated that a $1.5 million offering size limit is impractical and would restrict use of the exemption. Comments included the following: • Any limit on the size of the offering could harm investors as the high costs of preparing the offering memorandum and other regulatory requirements would impact their return. • There is no need for limits due to other protections that would be in place, including the use of a registrant that would perform suitability, know your product and know your client assessments. • Limits make the exemption less useful to issuers. • Limits increase the cost of capital. • There would be a risk that issuers would not use the exemption due to the cost of preparing an offering memorandum. • Limits should not be imposed by regulation but rather should be left to the market and/or the issuer. • Limits make the exemption ill-suited for SMEs and are not in line with the OSC's principle that business and regulatory costs should be proportionate to benefits to issuers. • The specified limit in the Consultation Paper is not nearly enough to absorb the costs associated with preparing an offering memorandum and other costs relating to the offering and otherwise. • The limit in the Consultation Paper is arbitrary. • The imposition of limits is prejudicial, and the one size fits all approach is contrary to the know your client, suitability and accountability processes required of exempt market dealers. • The $1.5 million limit is not enough to create issuer sustainability. • There are currently no monetary limits under the offering memorandum exemption in any other jurisdiction in Canada and as part of the goal of harmonizing securities laws nationally, the offering memorandum exemption in Ontario should be equivalent. • The proposed limit is too low and would not be used in Ontario. • The market should determine the best ranges of capital raising for the exemption. • A $1.5 million offering would not generally create enough economies of scale to cover the costs for an exempt market dealer to warrant doing due diligence, product training and market implementation on a product, which makes the exemption of little use for SMEs. Also, the cost of an increasing frequency of subscriptions based on decreasing subscription amounts would increase the cost of compliance for these firms, which is not ideal for exempt market dealers. • Placing such restrictions on an offering increases the risk of under-capitalization and presents difficulties for companies to compete, both of which raise investor protection concerns. While not in favour of investment limits, two commenters indicated that if limits are imposed, the OSC should at the very least adopt limits that are similar to those allowed through the offering memorandum exemption in the rest of Canada.

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		Commenters in support of increased offering limit Twenty-five commenters supported increasing the offering size limit specified in the Consultation Paper. Generally, commenters indicated that a $1.5 million offering size limit was not practical and would restrict use of the exemption. Specific comments included the following: • Due to the cost of preparing an offering memorandum, a limit of $1.5 million will not create an economic incentive to use the exemption and/or would not absorb the costs of preparing an offering memorandum and other ongoing costs. • One commenter indicated that the limit should be raised to accommodate different capital requirements of companies and in order to make it more cost-effective and efficient to raise capital under the exemption. • One commenter noted that the small commission that a trade would yield to an exempt market dealer and their dealing representative would likely preclude them from wanting to take on any liability and ongoing costs, and $1.5 million generally would not be a sufficient amount for an exempt market dealer to warrant doing due diligence, product training and market implementation on a product given how quickly that amount would be sold by their dealing representatives. Specific proposals for increased limits included the following: • An aggregate of $10 million per issuer would be appropriate if disclosure was provided in the form of Form 45-106F2 or Form 45-106F3. • $10 million raised by a single offering memorandum seems reasonable given that the directors and officers are attesting to the lack of misrepresentations. While not supportive of a limit on offering size, one commenter suggested that if limits were to be imposed, a tiered approach should be taken where an issuer could raise different amounts through different means (i.e., $2 million through crowdfunding, $20 million through an offering memorandum exemption, and anything above that through institutional financing). ***Harmonization of offering limits*** Seventeen commenters recommended that limits on offering size be harmonized across Canada. While one of these commenters did not express a view as to whether limits should be imposed, they indicated that the limits in the Consultation Paper are overly restrictive, and that there is no evidence cited to support such limits. Additionally, it was noted that having different thresholds in different jurisdictions, coupled with the fact that some jurisdictions require a registrant while others do not, will cause an asymmetry in the investment opportunities of investors, further promote a jurisdictional advantage to certain investors, and create more confusion in application of the rules. ***Commenters in favour of offering limit consistent with limit for crowdfunded offerings*** One commenter supported a limit of $1.5 million, noting that this limit should be the same as for crowdfunding. Another commenter indicated that the limits should be the same as the limits imposed for crowdfunding (the commenter recommended a $1 million limit for crowdfunding).

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		Other comments One commenter supported imposing offering size limits on private issuers, but did not comment on the appropriate size of such limits. While not expressing a view as to whether or not limits on offering size should be adopted, two commenters had concerns around the $1.5 million limit specified in the Consultation Paper, noting that the costs associated with preparing an offering memorandum, issuing securities, maintaining records and communicating with a large number of shareholders are prohibitive with a limit of this size. While not commenting directly on whether or not it was supportive of an offering memorandum exemption, one commenter indicated that a $1.5 million limit makes more sense in that context than it does for crowdfunding.
50	Practical concerns with investment and offering size limits	Twenty-six commenters expressed concern regarding the practical difficulties that the proposed limits would impose, as they would require that an issuer find a minimum of 600 investors in order to raise $1.5 million. It was suggested that no SME would be able to do this without involving a dealer, and there are few dealers who would find this worthwhile given the small investment size and proportionately small commissions.
51	Monetary limits – alternative proposal	One commenter indicated that if the OSC is not amenable to adopting the Alberta model of offering memorandum exemption, it should consider adopting an eligible investor regime with a capitalization limit, as follows: • Use modified eligible investor criteria that would protect small investors by limiting them to an investment of $10,000 and eligible investors by limiting them to a larger amount such as $50,000-$100,000. Further, the investor's principal residence could be excluded provided that it lowered the net worth requirement to less than $400,000. • Increase the proposed limits on how much an issuer can raise per year to $20 million at a minimum. • Distinguish between related party and arm's length transactions, and impose investor and issuer restrictions only on related party offerings and not those in which the exempt market dealer has no relationship with the issuer. • Use resources to educate registrants on proper regulatory procedures. • Use resources to enforce rules and punish fraudulent participants, including pre-approving offering memoranda and penalizing fraudulent behaviour by those that misuse the exemption.
52	Milestones and offering sizes	One commenter recommended that issuers be required to specify a minimum and maximum offering size. The minimum amount would be related to the amount needed to meet the issuer's business plan and if not reached, funds would be returned to investors (perhaps through use of an escrow agent). It was also suggested that the maximum offering size could be subject to limits (i.e., a certain percentage above the minimum offering size) in order to ensure that the issuer sets reasonable limits.
53	Receiving investment advice from an adviser	***Commenters not in favour of requiring advice from an adviser*** Eight commenters did not believe that a purchaser should be required to receive investment advice from an adviser in order to rely on an offering memorandum exemption. However, one of these commenters was generally not in favour of

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		adopting an offering memorandum exemption in Ontario. • One commenter indicated that this would not be feasible or economical for advisers in light of the due diligence required, especially with the investment limits specified in the Consultation Paper. • Two commenters indicated that this would increase costs associated with the exemption. • One commenter indicated that this could make it impractical or inefficient for an issuer to raise funds and prevent smaller issuers from accessing the exempt market through this exemption. However, the commenter suggested that investors be provided with a disclosure statement encouraging them to obtain professional investment advice before accepting the offer to purchase. • One commenter noted that the intent behind the offering memorandum exemption is that purchasers receive a document that provides all of the required disclosure in sufficient detail for a prospective purchaser to make an informed investment decision. • One commenter indicated that the other Canadian jurisdictions do not require the involvement of an adviser in order to rely on existing offering memorandum exemptions (except to the extent required for an investor to qualify as an "eligible investor" under the Alberta model). • One commenter indicated that if the information in the offering memorandum provides disclaimers and proper risk analysis, the adviser would not be providing anything additional. • One commenter indicated that rather than protect investors, this could lead to more abuse due to there being more people to regulate. Two commenters did not believe that a purchaser should be required to receive investment advice from an adviser in order to rely on the exemption if the purchaser is a sophisticated/accredited investor. One of these commenters indicated that in other cases, an eligibility adviser is a good alternative as, in addition to registrants, it allows an investor to obtain advice from an accountant or lawyer with whom he or she may already have a relationship. However, the commenter noted that to allow for the fees that would be required for such a review, the amounts permitted to be invested would need to be raised or the cost would be out of proportion to the potential benefit. While of the view that a mandatory requirement to receive investment advice should not be imposed, one commenter was of the view that if such a requirement were to be introduced, it should be limited to investments exceeding $50,000. ***Commenters in favour of requirement to receive advice from an adviser*** Five commenters supported a requirement for purchasers to receive advice from an adviser in order to rely on the exemption, with one commenter providing the caveat that it would support such a requirement provided that exempt market dealers and dealing representatives were included. • One commenter recommended that purchasers be required to receive investment advice from an exempt market dealer. • One commenter expressed support for the Alberta model of offering memorandum exemption, which allows investments to be made based on advice from an eligibility adviser. • One commenter noted that with the involvement of a registrant, along with provision of disclosure, the advisory process is not materially different from

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		investing in the public markets. One commenter supported a requirement for non-accredited investors to receive advice from an adviser in order to rely on the exemption. While opposed to the adoption of an offering memorandum exemption in Ontario, one commenter was of the view that if such an exemption is adopted, investors should be required to receive investment advice from a registrant who is an IIROC member and who has an obligation (either statutory or contractual) to act in the client's best interest. ***Requirement for advice may vary based on investor*** One commenter was of the view that investors should have all information that is available under the crowdfunding exemption made available to them under the offering memorandum exemption, noting that this may or may not warrant additional advice from an adviser and may not be necessary depending on the investor.
54	Use of registrant	***Commenters in favour of requiring registrant involvement*** Eleven commenters recommended that registrant involvement be a condition of an offering memorandum exemption, with one commenter providing the caveat that it would support such a requirement provided that exempt market dealers and dealing representatives were included and another indicating that such a requirement should only apply where distributions are to individual investors. Some commenters noted that registrant involvement will ensure that suitability, know your product and know your client assessments will be conducted. However, one commenter indicated that the registrant should not be required to provide advice but rather, only to facilitate the transaction and ensure compliance. It was recommended that a requirement of this nature include the following categories of registration: • dealing representative, • exempt market dealer, • registered investment dealer, and • portfolio manager. One of these commenters recommended differentiating between exempt market dealers that sell related and non-related issuers, noting that for those that exclusively sell non-related issuers, restrictions should not be imposed on arm's length transactions. Another recommended that the OSC should gather data from other jurisdictions on compliance issues related to use of the offering memorandum exemption where an exempt market dealer is involved and the underlying issuer is not a related party, noting that it is likely that there will be few deficiencies as past issues were largely addressed with the adoption of NI 31-103 and precedents set through enforcement. One commenter was of the view that registrant involvement should not be a condition of the exemption where sophisticated investors are purchasing under it. For other investors, the commenter recommended that an eligibility adviser be involved, as this category includes not only registrants but also lawyers and accountants with whom an investor might already have a relationship. One commenter, while opposed to the adoption of an offering memorandum exemption, was of the view that if such an exemption is adopted, purchasers should

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		be required to receive advice from a registrant who is an IIROC member and who has an obligation (either statutory or contractual) to act in the client's best interest. ***Commenters not in favour of requiring registrant involvement*** Five commenters were of the view that registrant involvement should not be a condition of the exemption. • Two commenters questioned whether such a requirement would be feasible for advisers economically, due to the monetary limits specified in the Consultation Paper. • Two commenters noted that registrant involvement would increase costs, including costs for issuers. • One commenter indicated that a proper offering memorandum should be sufficient for an investor to make an investment decision, noting that a registrant would not add any further value. • One commenter was of the view that registrant involvement would not be necessary in light of the minimum level of disclosure, investment limits and offering limits set out in the Consultation Paper. However, where a registrant is involved, the commenter suggested allowing for an increased investment size as the registrant would have an obligation to collect sufficient know your client information, assess suitability and conduct know your product assessments. • One commenter noted that the intent behind the offering memorandum exemption is that purchasers receive a disclosure document meant to provide all of the required disclosure in sufficient detail for a prospective purchaser to make an informed investment decision. • One commenter noted that the other Canadian jurisdictions do not require the involvement of a registrant in order to rely on the offering memorandum exemption (except to the extent required for an investor to qualify as an "eligible investor" under the Alberta model of offering memorandum exemption).
55	Disclosure requirements	***Commenters in favour of mandatory disclosure requirements*** Sixteen commenters supported mandatory disclosure in an offering memorandum. However, recommendations varied regarding the nature of this disclosure. ***Commenters in favour of disclosure consistent with other offering memorandum exemptions*** Nine commenters recommended disclosure requirements that are consistent with what is currently required in other jurisdictions (i.e., Form 45-106F2 and Form 45-106F3), with one suggesting that a modified version of the form of offering memorandum used in Alberta be adopted. Another commenter recommended using the current Client Relationship Model initiatives as a guide for length, complexity and content. One commenter recommended giving issuers an option between providing an information statement containing the disclosure set out in the Consultation Paper and providing disclosure in the form of Form 45-106F2. The commenter noted that the flexibility to do so would allow companies that raise capital in other jurisdictions using an offering memorandum in the form of Form 45-106F2 to also use it for Ontario distributions. However, commenters expressed differing views as to whether or not the financial statement requirements in other jurisdictions should be adopted. One commenter

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		supported requiring audited annual financial statements in a offering memorandum, while another indicated that audited financial statements provide no value if the issuer has no history of operations. A third commenter recommended removing the financial statement requirement for brand new issuers as it is an unnecessary cost with negligible benefits. ***Other disclosure requirements*** Three commenters recommended generally that a uniform level of disclosure should be imposed, below that of prospectus-level disclosure. One commenter recommended taking as a starting point the disclosure that was used when Ontario had an offering memorandum in place, and using this format but addressing any concerns the OSC may have had with it. The commenter was of the view that while disclosure should be less than what is in a prospectus, it should incorporate liability for misrepresentation similar to a prospectus. One commenter agreed with the disclosure contemplated in the Consultation Paper, but recommended that risk disclosure should also be included and that investors should be required to sign a risk acknowledgement form. One commenter recommended that where an exempt market dealer sells related issues, this should be disclosed to investors. One commenter recommended that the OSC consider harmonizing disclosure requirements for offering memoranda with the disclosure to be provided under the crowdfunding exemption, while another suggested that disclosure should be similar to that required under the crowdfunding exemption. One commenter recommended that at a minimum, the following should be disclosed: • business summary, • business model for which funding is being sought, • current and proposed products and services, • customer/market problem being addressed, • information on target market, • sales and marketing strategy, • customer concentration and channels of distribution, • management's experience in the industry, • description of competitors, • amount of money raised in return for what percentage of the company, • how the proposed funding will be used, and • key milestones for the next year. Two commenters recommended that the OSC consider implementing an ongoing disclosure regime for private issuers of a certain size, particularly mandating annual audited financial statements, as this could help to mitigate fraud. While not commenting directly on whether or not it was supportive of an offering memorandum exemption, one commenter suggested that if an offering memorandum exemption was introduced, it should be structured in a way that everyday entrepreneurs could draft an offering memorandum, with perhaps two to

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		three hours of review by an expert. It was noted that this would make the exemption more likely to be used, and more useful to small businesses. One commenter, who did not support adoption of an offering memorandum exemption in Ontario, indicated that while mandatory disclosure should not be required, if it is it should be prospectus-level disclosure for the purpose of maintaining a level playing field for liability documents. One commenter that was opposed to the adoption of an offering memorandum exemption in Ontario was of the view that prospectus-like information should be required to be provided. If such an exemption were to be adopted, the commenter recommended that issuers be required to file offering memoranda and that the OSC review each offering memorandum for compliance prior to permitting reliance on the exemption for a distribution.
56	Geographic restrictions	One commenter was of the view that limits should not be placed on the location of the issuer, noting that it should be left to the registrant involved and ultimately the investor to assume any risks related to this.
57	Type of security	Three commenters were of the view that the limits on the type of security set out in the concept idea should not be imposed. Two of these commenters indicated specifically that the restrictions prohibit capital raising from limited partnerships and trusts, which are often used to raise money for specific projects, and that this would force issuers to choose other investment vehicles that may not be as tax efficient. One commenter was of the view that precluding certain tax efficient securities such as limited partnership or mutual fund trust units under an offering memorandum exemption is ill advised. The commenter noted that these securities are regularly sold to retail investors in other jurisdictions and are quickly becoming as well understood as the proposed allowable securities. Additionally, it is a dealing representative's responsibility to understand the securities and communicate this information to the investor.
58	Other	One commenter noted that regulators in New Brunswick and Saskatchewan offer a voluntary pre-review program for offering memoranda to ensure that adequate disclosure has been provided. The commenter suggested that the OSC consider implementing a similar program to add an extra layer of investor protection, which could operate on a user fee basis with a 20 business day service standard for completion, as the New Brunswick Securities Commission is adopting.
Exemption based on investment knowledge		
59	Exemption would provide minimal benefit, if any	Ten commenters were of the view that an exemption based on investment knowledge would provide minimal additional benefit, if any. However, one of these commenters indicated that it did still support implementing the exemption. • Three of these commenters noted in particular that an exemption of this nature would not be necessary if an offering memorandum exemption were to be adopted. • Four commenters expressed the view that the exemption would create a narrow group of potential new investors as most people with the specified qualifications would be accredited investors.

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		• One commenter noted that introducing this exemption in the absence of an offering memorandum exemption would create a "micro market" of investors which would have unintended consequences for know your client and suitability assessments. • One commenter indicated that the exemption would likely not be used often due to the difficulty for issuers to identify whether purchasers have satisfied the work experience criteria, while another was of the view that it would be cumbersome for dealers to validate the education credentials claimed by individuals. • One commenter indicated that there would be a relatively small number of people who would qualify under the exemption. One commenter noted that while interesting, the exemption would be limited to the extent that a relatively small number of individuals will meet the criteria. Another commenter was of the view that the exemption would not be useful for investment funds specifically, due to existing exemptions and the fact that it would not be likely to significantly increase the investor pool. One commenter was of the view that this exemption would be used only in limited circumstances. However, the commenter indicated that it would allow distributions to investors who do not meet the tests of the accredited investor or minimum amount exemptions, which is of concern as those exemptions provide better protection with respect to risk exposure than an exemption based on investment knowledge. One commenter was of the view that creating an additional exemption for another class of investor would create further disparity with the rules in place in other provinces and additional confusion among dealers and investors, without significantly increasing access to capital for issuers. One commenter indicated that the exemption is problematic, noting that investment knowledge and experience can be subjective, resulting in uncertainty, inconsistent application and regulatory risk for those purchasing and selling. Additionally, the commenter was of the view that the specified criteria does not adequately capture who may have sufficient investment knowledge. One commenter recommended focusing on other exemptions that would have a more meaningful impact for issuers and investors.
60	Support for exemption	Twenty-two commenters supported introducing an exemption based on investment knowledge. • One commenter was of the view that investment knowledge and experience are the best available proxies for sophistication. • One commenter indicated that the exemption would broaden the potential base of investors without exposing the average investor to undue temptation to chase high returns. • One commenter referred to the exemption as sensible and long overdue, while another suggested that it would be useful for small businesses as their social networks are likely to include such sophisticated investors and the costs associated with these offerings are very low. • One commenter was of the view that the premise of the concept idea was conceptually sound and provides a reasonable justification for not providing the

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		full protection of registrant involvement and prospectus-level disclosure. The commenter however cautioned that in evaluating the appropriateness of prospectus exemptions, it is important to clarify the products and distribution channels to which exemptions would apply. The commenter indicated that it was of the understanding that the risks posed to investors vary considerably depending on: (i) whether the security is that of a listed issuer or not; (ii) whether the seller is a member of a self-regulatory organization (i.e., IIROC); and (iii) whether the security is straightforward or complex. The commenter believed that exemptions based upon sophistication and advice must specifically consider the aforementioned factors in order to ensure an appropriate level of investor protection. Further, given the commenter's principled opposition to the accredited investor exemption, the commenter did not agree that consistency with the accredited investor exemption is a basis for ignoring the different risks posed by different types of issuers and securities. • One commenter expressed support for additional exemptions generally as this creates more opportunities for investors and issuers while another indicated that any exemption that broadens the potential base of investors is going to be good for SMEs, noting that given the CSA's struggle to develop an appropriate proxy for sophistication this exemption would be a positive development. • Two commenters thought it would be very useful as investors that understand and industry and the opportunity are the most likely, in the absence of fraud or abuse, to invest wisely and be in positions to assist the investee. • Two commenters were of the view that it would be useful for start-ups or SMEs as the costs associated with preparing the underlying legal documentation should be minimal. • One commenter was of the view that it would provide greater investment opportunities for investors. • One commenter was of the view that it is important to facilitate investments by financial professionals who may not meet the income, financial or net asset tests of the accredited investor exemption but still have the proficiency and education level to purchase exempt securities. Similarly, one commenter indicated that the adoption of this exemption would help to eliminate the perverse outcome of the current exempt market framework whereby knowledgeable investors are unable to participate in the exempt market because they do not meet any of the accredited investor thresholds. • One commenter felt that the exemption would be welcomed and used frequently. • One commenter indicated that an individual's ability to understand the risk and return trade-off with a particular investment is of far greater importance and provides greater protection than his or her net worth. • One commenter noted that a similar exemption is available in the United Kingdom and has proven workable to date. However, several of the commenters recommended certain modifications to the exemption, as further discussed below. Generally, commenters were concerned that the qualifications set out in the Consultation Paper could be too restrictive. Additionally, one of the commenters who generally supported the exemption was not sure that it would be equitable.

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61	Harmonization	Three commenters expressed the view that an exemption of this nature should not be adopted in Ontario as this would not achieve harmonization. Two commenters indicated that if this exemption is adopted, it should be harmonized across Canada as it would be unfair to designate someone as a sophisticated investor in Ontario and see them lose that designation if they move to another province.
62	Difficult to define appropriate criteria	Acknowledging the difficulty in outlining criteria with subjective elements such as work experience, one commenter recommended that if an exemption based on education and work experience were to be introduced, it should be subject to meeting objective or bright line tests in order to avoid confusion in interpreting or relying on the exemption.
63	Relevant work experience	Eight commenters expressed concern regarding how to define relevant work experience. • Three commenters indicated that the concept idea does not consider other work experience that may contribute equally to the ability to assess the merits of an investment. In particular, commenters suggested that other industry experience could be more relevant than investment industry experience for some investments (e.g., medical industry for investments in bio-tech, engineer for industrial or mining investments). • One commenter noted that while work experience should require at least one year in the financial sector or financial services support sector in a position that requires knowledge of investing, it could be difficult to define what is relevant. • One commenter expressed concern that the work experience requirements appear overly restrictive and in some cases may not be a good proxy for sophistication. • One commenter was of the view that no relevant work experience exists. • One commenter recommended that “equivalency” definitions should be used that address qualifications such as making decisions on business strategies, investment decisions, budget decisions, etc. • One commenter recommended broadening the work experience criteria to include experience as an investor. One commenter suggested that the work experience requirements be the same as the experience requirements for registration as an advising representative and be directly related to investment management or analysis of securities. The commenter referred to the guidance in CSA Staff Notice 31-332 *Relevant Investment Management Experience for Advising Representatives and Associate Representatives of Portfolio Managers* (**Staff Notice 31-332**). One commenter was of the view that one year of “relevant” work experience would be sufficient. Another commenter suggested that two or three years might be a more appropriate amount of time to gain the requisite experience. A third commenter was of the view that one year of industry experience does not necessarily provide sufficient knowledge to be considered sophisticated. One commenter recommended that the criteria include work experience based on a number of years in a relevant business, including one that is securities-related or based on sector experience.

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		One commenter did not believe that a professional who has demonstrated proficiency in his or her field and regularly evaluates new technology should be required to interrupt a career to gain specific work experience in the investment industry, when much knowledge regarding portfolio management, diversification, investing at different lifestyle stages, the practices of the investment industry and financial planning can be acquired through completing the Canadian Securities Course. One commenter was of the view that the relevant work experience criteria should be as broad as possible, and should cover work in the financial sector as well as work in the sector in which the investor is making its investment. Additionally, the commenter noted that experience in the financial sector should include accounting and banking in addition to the investment industry, as in both of these industries people are required to know how to read financial statements. Further, it was suggested that work in industry sectors should be as broad as possible, and for investing in social enterprises, work in the charitable sector might be considered if directly applicable. One commenter recommended work experience criteria similar to that used for the corresponding exemption in the United Kingdom. This would involve requiring having worked in a "professional capacity" in the private equity sector or financing SMEs, or having been a director of a company with an annual turnover of at least £1 million. The commenter suggested that "professional capacity" be defined to mean having provided financial advice to institutional or individual clients on a fee or commission basis. One commenter suggested that when using the exemption, an issuer should require investors to sign a document indicating what type of work experience they have and confirming that they are comfortable that their work experience allows them to be comfortable in making the investment. One commenter expressed general support for requiring a work experience component to the exemption, noting that a person cannot truly have an understanding of the business of investment without having worked in the investment industry.
64	Educational qualifications	Seventeen commenters supported broadening the list of educational qualifications set out in the Consultation Paper. • One of these commenters recommended consistency with NI 31-103 so that there is consistency in the industry. Specifically, the commenter indicated that while a CA with requisite industry experience could be the chief compliance officer of a registrant, he or she would not be able to invest under the exemption, and suggested that as it is difficult to review and assess various educational qualifications and their relevance, where choices in this regard have already been made under NI 31-103 they should be maintained. • One commenter expressed concern that the Consultation Paper does not consider other educational qualifications that could equally contribute to the ability to assess the merits of an investment decision. • One commenter indicated that many people do not have any professional designation but are very successful investors, and should not be excluded from investing only because they do not have a designation. • One commenter was concerned that the education requirements appear overly restrictive and in some cases may not be a good proxy for sophistication.

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		• One commenter recommended including "equivalency" definitions to encompass educational qualifications that relate to research, analysis and decision making at the graduate level. • Two commenters noted that the educational requirements in the concept idea are primarily weighted towards educational programs that contain a certain level of financial education, and do not take into consideration the education and knowledge of individuals in other areas (i.e., geologists, computer programmers, software developers, individuals possessing scientific or technical knowledge, lawyers, other business professionals) that may be relevant to an investor in determining whether an offering is something the investor would like to participate in. Specific qualifications that were recommended for consideration included the following: • Chartered Accountant (**CA**), with some commenters noting in particular that a person with a CA is more likely to be a sophisticated investor than a person with an Master of Business Administration (**MBA**) in marketing (or an MBA generally), and one commenter indicating that CAs undergo a globally recognized examination process that includes testing the ability to assess a company's financial statements, including its viability and the risks associated with the business, which are important skills in assessing investment opportunities. Another commenter noted that the best entry-level investment bankers are CAs. • Accounting degree • Certified Financial Manager • Certified Financial Planner • Certified General Accountant • Certified Financial Consultant • Certified Management Accountant • Chartered Professional Accountant • Fellow of the Canadian Securities Institute • Financial Management Adviser • Juris Doctor • Bachelor of Laws • Securities lawyers • Master of Laws • Professional Engineer • Personal Financial Planner • Registered Financial Planner • Chartered alternative investment analysts • Master of Finance • Bachelor of Commerce • Financial Management Advisor • Chartered Life Underwriter • Education in relevant sector • Training in the industry in which the investment is being made, even in the absence of a formal degree • Canadian Securities Course or other specific securities industry courses; however, one commenter indicated that this qualification should be coupled with a limit on the amount investible under the exemption • All higher education degrees

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		One commenter was of the view that the only relevant educational qualification they were aware of was attendance at seminars offered by the National Capital Angel Association and its United States counterpart, the Angel Capital Association, noting that active participation in an angel group provides opportunities to learn from others as they review and invest in opportunities. The commenter was of the view that neither an MBA, Chartered Financial Analyst nor any degree or professional qualification they were aware of was sufficient in terms of enhancing one's ability to make an investment decision and, in fact, would more likely do harm than good. Accordingly, the commenter recommended that investors join a formal angel group and take one or more courses from the organizations noted above. One commenter recommended that in place of (or in addition to) the specified education qualifications, the OSC consider an accreditation program to accredit sophisticated investors that could be offered by a reputable financial services education provider such as the Canadian Securities Institute for a reasonable fee. The commenter noted that this would address the concerns outlined in the Consultation Paper that the relevant work assessment will require subjective determinations, and would also address the challenges of defining relevant work experience and educational qualifications in a manner that is neither over- nor under-inclusive. Alternatively, the commenter recommended permitting completion of the Canadian Securities Course, or the equivalent in other OECD jurisdictions, to satisfy the education requirement. One commenter was of the view that education is not necessarily an appropriate proxy for sophistication because some real life experience is required. One commenter indicated that the onus should be on the investor to declare that they meet the criteria for being exempt.
65	Both work experience and educational qualification criteria should be met	Four commenters indicated that both the work experience and educational qualification criteria should be met in order to rely on an exemption of this nature. One of these commenters noted that while for some designations (e.g., Chartered Financial Analyst) there is a work experience requirement in place, for others it is less obvious that a professional designation is sufficiently related to investment experience (e.g., an MBA in marketing is different than an MBA in finance). Another commenter was of the view that due to the broad range of complex exempt market products, one year of work experience may not be sufficient to enable an individual to make appropriate decisions and an educational requirement could be necessary to ensure that the person can undertake appropriate self-directed research. One commenter was of the view that including both could be too restrictive and likely to favour individuals with qualifications that are more applicable to the investment industry. Accordingly, the commenter recommended looking to educational qualifications and one year of "relevant" work experience in activities that would be commensurate with educational qualifications. The commenter also cautioned that as just one year of work experience in the investment industry may not be sufficient, more emphasis should be placed on the educational qualifications. The commenter also noted, however, that there could be instances where work experience alone would be sufficient (i.e., three or more years of work experience in the investment industry even if the educational qualifications have not been met).

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		One commenter was of the view that requiring both could be arbitrary and may not result in a more sophisticated base of potential investors. Another commenter indicated that an "either/or" approach to work and educational qualifications would be sufficient. One commenter recommended that there be no requirement to obtain relevant work experience, due to difficulties in determining what may be relevant, and the potential to broaden the availability of the exemption through this modification. In particular, the commenter noted that the combination of work experience and education would only allow investments by a restricted pool of investors and existing exemptions for employees and others may already cover those who would qualify. The commenter referred to the ambiguity in Staff Notice 31-332 around relevant investment management experience. One commenter indicated that both conditions should not always be required, as there are categories of professional qualification, industry experience or education that should suffice on their own. One commenter was of the view that one category should suffice, but suggested adding a category that is a combination of education and work (i.e., undergraduate degree in business, economics or similar field plus five years of relevant banking experience. One commenter was of the view that either category should suffice. Another commenter suggested that a greater emphasis be placed on relevant work experience as this could be a better proxy for sophistication. In addition to the qualifications set out in the Consultation Paper, the commenter recommended a qualification based solely on extensive relevant work experience. While the commenter acknowledged that this could raise challenges in creating rules that are understandable, enforceable and practical and limit the potential for abuse, it was suggested that some of these concerns could be addressed through self-certification or a reference letter requirement. While sceptical of the exemption generally, one commenter indicated that if there is an appropriate test for sophistication, it may be appropriate to increase and emphasize industry experience over education. One commenter recommended that the following combinations would be evidence of sophistication: • two years of work experience in the investment industry, • an MBA and two years of work experience in any industry plus passing the Canadian Securities Course, or • passing the Canadian Securities Course and being a professional such as a doctor, dentist, pharmacist, veterinarian, patent agent or architect, and those holding PhDs.
66	Investor protections built into the concept idea	***Sufficient investor protections are built into the concept idea*** Four commenters were of the view that if such an exemption were to be introduced, the investor protections outlined in the concept idea, including provision of basic disclosure and a risk acknowledgement form, would be sufficient. One of these

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		commenters also noted that for investment funds, protection would be enhanced through diversification and the registration regime set out in NI 31-103. Another commenter believed that sufficient investor protections have been built into the exemption, noting that knowledge is a much better protection than wealth. ***Suggestions to improve investor protections*** One commenter expressed concern that sufficient protections had not been incorporated, noting that the type of issuer and type of security, as well as membership in a self-regulatory organization, are relevant in determining whether sufficient investor protection is built into an exemption. Additionally, the commenter questioned whether one year of experience would ensure that an individual has a minimum acceptable level of sophistication to invest in the exempt market. Other commenters provided additional suggestions for improving investor protection: <u>Risk acknowledgement form or disclosure</u> One commenter was of the view that a risk acknowledgement form could help to address investor protection concerns, noting that the company should have received the form prior to funds being released. The commenter recommended that the form include the following and be kept in the issuer's minute book and share registry: • failure rates, • satisfaction that the CEO has the capacity to create and build a new business, • obtained reference checks on key persons in the company, • acknowledgement that loss of all funds is acceptable to the investor, and • acknowledgement that if their circumstances were to change unexpectedly, there would be no realistic possibility of getting their money back to meet such need for funds if it arises. Another commenter recommended that risks be disclosed to investors. <u>Investment limits</u> One commenter expressed concern that an individual's income and assets do not play a role at all in the exemption. However, as bringing in income and asset components could defeat the purpose of the exemption, the commenter suggested setting investment limits for unaccredited investors that are broader than the limits specified for the crowdfunding and offering memorandum exemptions (i.e., $15,000 for individual investments and $75,000 overall). Another commenter indicated generally that investor loss could be addressed through limiting the amount that could be raised under the exemption. <u>Trial period</u> One commenter suggested that the exemption be adopted on a three year trial period. In the event that some of the criteria do not appear to be ensuring the desired level of investor protection, the OSC could consider a sliding scale of investment limits tied to the accumulation of market experience (e.g., a person with one year of market experience could be limited to a $20,000 cap, a person with two years to a $30,000 cap, and so on). <u>Other</u> One commenter recommended the following additional investor protection measures:

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		• Maintenance by the OSC of a database of transactions under the exemption and/or of investors seeking a blanket exemption for early stage investing. • Requiring OSC or other third party accreditation. ***Regulation should not be overly protective*** One commenter was of the view that the OSC should balance the need for protection against the ability of investors to make their own investment decisions. Two commenters noted that when considering whether sufficient investor protections are built into the exemption, one has to balance the risks of highly trained people being mistaken against depriving those people of good investment opportunities and companies of knowledgeable capital. The commenters were of the view that an overly protective stance limits Ontario's innovation and economic potential and there is a danger that the compliance burden could outweigh any benefit.
67	Other proxies for sophistication	One commenter was of the view that work experience and educational qualifications are sufficient proxies for sophistication. One commenter suggested that investors be able to demonstrate their sophistication through an open exam that could be delivered through a third party, licensed by the OSC, with fees charged to participants. The commenter was of the view that this would be the fairest way for Ontarians to prove their sophistication without limiting access. One commenter noted that while an exemption based on education or professional designations is an interesting approach, a more effective way of identifying investor sophistication may be to measure their investment experience or, as a more focused solution, require prospective investors to attend accredited courses on angel investing that are offered by a qualified group, such as the National Angel Capital Organization. One commenter indicated that investor experience may be a suitable proxy for sophistication, particularly if the investor has had a discount self-directed investment account in which they have made most of their investment decisions.
68	Other	One commenter noted that due to the concerns raised by the OSC that exempt market dealers and others may do a poor job of ascertaining that an investor is accredited or sophisticated, the OSC should keep a registry of people who have elected to be treated as accredited or sophisticated with respect to their dealings with private companies. One commenter was of the view that difficulties in determining peoples' knowledge of a particular industry could be addressed through requiring investors to sign a waiver indicating that they are comfortable with their level of knowledge. One commenter was of the view that with respect to non-complex securities: • For securities of issuers listed on one or more Canadian exchanges sold through a non-SRO member intermediary and securities of issuers not listed on a Canadian exchange, sold through an SRO member intermediary, both the investment knowledge and the registrant advice provisions should apply. • For securities of issuers not listed on a Canadian exchange, sold through a non-

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		SRO member intermediary, both the investment knowledge and registrant advice requirements should apply, and in addition, independent certification of investment knowledge should be required.
Exemption based on registrant advice		
69	Support	Six commenters expressed qualified support for an exemption based on advice from a registrant. One commenter indicated that it should be considered but only if other CSA jurisdictions were to consider it as well, while three others were of the view that registrants other than those specified in the Consultation Paper should be included. One commenter was of the view that an exemption based on advice from a registrant, in conjunction with an investor having investment knowledge, could provide an appropriate level of protection for investors. Another commenter expressed support for the adoption of an exemption based on registrant advice, indicating that: • With the implementation of certain investment protection measures, particularly the Client Relationship Model, it makes sense to allow an exemption of this nature. • The exemption has the potential to help SMEs to quickly and more broadly access capital than through the other concept ideas introduced in the Consultation Paper. Eight commenters did not support introducing an exemption based on registrant advice, with one indicating that it was not clear how such an exemption would be implemented and the brokerage community would likely have significant issues with it as they would almost always be connected with the issuer. Another commenter noted that registrants can be eligibility advisers under an offering memorandum. One commenter indicated that the exemption is impractical, noting that it is unlikely that any compliance department would allow its brokers to sign a fiduciary obligation contract with a client. One commenter questioned whether the underlying thinking was that brokers cannot be trusted to give useful advice if they are receiving a commission, noting that if independent retail brokerage firms are unable to earn income from underwriting and raising capital for venture issuers, the entire venture market will disappear in Canada. One of these commenters did not support the suggestion that investment dealers with a managed account designation from IIROC are equivalent to a portfolio manager offering fully managed accounts to clients. One commenter that did not support the exemption indicated that it would effectively be an exemption for the “public”, being people who would not otherwise qualify to invest in the exempt market (other than by way of any crowdfunding exemption) and would not have access to statutory disclosure or liability provisions. The commenter was of the view that there is too much potential for conflict of interest without statutory protection for this type of investor. One commenter was of the view that an exemption of this nature is appropriate but not necessary if the managed account exemption is expanded and harmonized.

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		One commenter indicated that while the exemption could make more capital available to early stage firms, unless the registrant earns no direct fee and personally co-invests, there is not an alignment of interests. The commenter suggested not introducing the exemption or combining it with a knowledge-based exemption. One commenter did not express a view as to whether or not an exemption of this nature should be adopted, but did indicate that it would be unlikely to increase the size of the exempt market in any meaningful manner. One commenter indicated that while supporting the value of advice to investors, it had concerns with this concept idea and recommended further consultation and consideration of the interaction between the concept idea and the concepts considered in CSA Consultation Paper 33-403 *The Standard of Conduct for Advisers and Dealers: Exploring the Appropriateness of Introducing a Statutory Best Interest Duty when Advice is Provided to Retail Clients* before implementing an exemption of this nature.
70	Restriction on type of registrants	***Commenters in favour of restriction to investment dealers*** One commenter was of the view that the exemption should be limited to investment dealers, due to the significant compliance issues and concerning trends identified with certain types of exempt market dealers. Another commenter was of the view that the registrant would need to be qualified to give the relevant advice. ***Commenters not in favour of restrictions on type of registrant*** Six commenters did not agree with the restrictions on the type of registrant set out in the Consultation Paper. • Two commenters recommended that the provision of investment advice not be limited to individuals registered in the category of portfolio manager or investment dealer, noting that all investors should have access to exempt market securities when they have sought and received investment advice from any registrant they choose, provided that registrant has the requisite proficiency to understand and explain the product. • One commenter recommended making the exemption available based on advice from any registrant that is subject to a fiduciary duty. • One commenter indicated that there does not appear to be any justification for excluding all exempt market dealers (i.e., if regulators are concerned with certain exempt market dealers, they should deal with them specifically). • One commenter recommended considering participation of exempt market dealers and registered advisers who are members of a professional association which requires that they act in the best interest of the client, are subject to ongoing continuing education requirements and carry errors and omissions insurance. Further, the commenter recommended that participation be limited to transactions of certain classes of relatively straightforward exempt market products which could not comprise more than 10% of the individual's gross income for the year. It was also suggested that an investment limit for the investor could offer additional protection. While not supportive of the exemption, one commenter indicated that if it is adopted, independent third parties such as accountants and lawyers should also be permitted to be advisers.

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71	Fiduciary duty	Three commenters supported a requirement for registrants providing advice under this exemption to be subject to a fiduciary duty, with one noting that all registrants providing advice should be subject to such a duty. Another commenter also recommended that the exemption should only apply if the registrant has a fiduciary duty to act in the best interests of the client, and be prosecuted if they do not. While not supportive of the exemption, one commenter noted that if it were to be introduced, a fiduciary duty should be required. Another commenter that did not indicate whether or not it supports the exemption indicated that a fiduciary duty should be required. One commenter indicated that a fiduciary duty should not be based on the type of product being recommended to a client, noting that a separate consultation process on the standard of conduct of dealers and advisers has already taken place. One commenter did not support limiting the exemption to situations where the registrant has a fiduciary duty to act in the best interests of the client, indicating that there are appropriate protections in place that enable registrants under the exempt market dealer category to approve a trade. The commenter noted that if there is a concern with specific exempt market dealers, the OSC should focus on enforcement of the current rules. One commenter was of the view that a fiduciary duty could have serious implications or issuers and investors.
72	Whether or not exemption should be available for registrants that sell securities of "related issuers" or "connected issuers"	***Commenters not in favour of exemption being available for registrants that sell securities of "related issuers" or "connected issuers"*** One commenter was of the view that the exemption should not be available to registrants that sell securities of "related issuers" or "connected issuers" as this would be inconsistent with the registrant being subject to a fiduciary duty. While not supportive of the exemption, two commenters noted that if it were to be introduced, it should not be available in these circumstances as this is a conflict of interest. Another commenter that did not indicate whether or not it supports the exemption indicated that the OSC should seek to minimize any opportunity for conflicts of interest under such an exemption. ***Exemption could be available if certain conditions are put in place*** Three commenters were of the view that the exemption should be available for registrants that sell securities of "related issuers" or "connected issuers", provided that certain conditions are in place. • One commenter noted that while the conflict of interest that exists when dealers or advisers sell or recommend related party or proprietary products may result in the inability to recommend such products where a fiduciary duty exists, this should not automatically preclude the availability of the exemption in every scenario. In particular, the commenter suggested that the amount of money that could be invested in these circumstances could be limited. • One commenter indicated that as long as the conflicts are properly disclosed to the investor and there is proof that proper suitability has been met, this should not be an issue. • One commenter was of the view that the exemption should be available as long

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		as all potential or real conflicts of interest have been disclosed in writing beforehand to the investor, who must sign an acknowledgement form that he or she has been informed of and understands the conflict(s), and a right of rescission is available in the event a conflict is disclosed. The commenter was of the view that this would eliminate the need for a fiduciary duty to be a requirement of the exemption.
73	Would exemption an issuer from disclosure obligations have implications for a registrant's ability to conduct a meaningful know your product and suitability review?	***Exempting an issuer from disclosure obligations would have implications for know your product and suitability review*** Two commenters were of the view that exempting an issuer from disclosure obligations would have implications for a registrant's ability to conduct a meaningful know your product and suitability review. One of these commenters recommended that disclosure of the nature found in an offering memorandum should be mandatory when dealing with non-accredited investors. While not supporting the exemption, one commenter was of the view that an exemption from disclosure requirements could have such implications, as an adviser would likely need to investigate the issuer or state that he or she was unable to assess suitability. In the case of related issuers, the commenter suggested that the conflict of interest would likely bias a suitability review. Another commenter that did not indicate whether or not it supports the exemption indicated that an issuer should be required to provide a minimum amount of documentation so that the registrant can provide some advice to their client. ***Exempting an issuer from disclosure obligations would not have implications for know your product and suitability review*** One commenter was of the view that exempting an issuer from disclosure obligations would not have implications for a registrant's ability to conduct a meaningful know your product and suitability review. Specifically, it was noted that a lack of prescribed disclosure in this circumstance would be no different from use of the managed account or other exemptions that do not require disclosure at the time of sale and, accordingly, there should be no added difficulty here. ***Other*** One commenter was of the view that as registrants should only advise clients to purchase securities that are in their best interests, consistent with the fiduciary duty owed to the client, if the registrant were unable to conduct a meaningful know your product and suitability review they would not be permitted to rely on the exemption.
74	Ongoing relationship	***Support for requirement for ongoing relationship*** Four commenters agreed that an ongoing relationship should be required. One of these commenters suggested that the exemption not be used for "one-off" transactions. One commenter was of the view that an ongoing relationship is fundamental to retail investor protection as it is key to ensuring that the registrant can appropriately manage suitability and know your client requirements, while another noted more generally that a mutually beneficial relationship between the parties should act as a safeguard for preserving the efficacy of the registrant's activities on behalf of the client. One of these commenters indicated that there are a number of ways to determine if the relationship is ongoing, including a requirement that the parties be working

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		together for a minimum period of six or 12 months before the exemption could be relied on. One commenter that did not indicate whether or not it supports the exemption indicated that an ongoing relationship should be required, as the registrant would have some understanding of the investor's risk tolerance and long term goals. While not supporting the exemption, one commenter was of the view that while there should perhaps be an ongoing relationship, it would be preferable to provide investors with alternatives to registrants for eligibility advisers. Additionally, the commenter believes that sophisticated investors should be able to hire whatever representative or adviser they deem appropriate. ***Commenters not in favour of requirement for ongoing relationship*** One commenter did not agree that a registrant should be required to have an ongoing relationship with the client. The commenter indicated that these transactions should be viewed as "self-directed" and the assumption of the investor should be that proper suitability and know your product assessments were performed by the exempt market dealer approving the trade.
75	Type of security	***Commenters in favour of restrictions on type of security that could be purchased under the exemption*** Two commenters were of the view that there should be restrictions on the type of security that could be purchased under the exemption. One of these commenters recommended that the exemption not be available for the issuance of overly complicated or sophisticated products. The other commenter indicated that the type of security that could be purchased is relevant to determining whether a sufficient amount of investor protection is built into an exemption. While not supportive of the exemption, one commenter indicated it should not be available for investment funds. Another commenter that did not indicate whether or not it supports the exemption indicated that since the purpose of the exemption is to enhance the ability of SMEs to raise funds, limiting the exemption to simple products may be sufficient. The commenter noted that the borrower risk will be high enough without adding the further risk of a complex product. ***Commenters not in favour of restrictions on type of security that could be purchased under the exemption*** Three commenters did not support restricting the type of security that could be issued. One of these commenters noted that this would be subjective, that it is difficult to define "complex product", and that the nature of investment products is constantly evolving. Another commenter indicated that regulations should not take away from the freedom of people who are potentially willing to invest in a complex product, noting that proper disclosure to investors considered to be less sophisticated is sufficient and that those issuing more complex products must ensure that the complexities are properly relayed and understood.
76	Managed account	***Commenters in favour of expanding managed account exemption*** Six commenters were in favour of expanding the managed account exemption in

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		Ontario. Commenters in favour of this expansion referred to harmonization and increased diversification as factors behind their recommendation. It was noted that: • Permitting purchases of investment funds would be helpful as broadened access to managed alternatives increases investor choice and promotes investor protection by enabling diversification, and this would be the largest improvement to the exempt market in Ontario. • There are frequently situations where a pooled fund would be an appropriate investment choice (particularly for members of one family) but because of limitations on the exemption an adviser is required to open a segregated account that does not have the diversification and economies of scale of a pooled fund. • The exemption is only used where there is an adviser that owes a fiduciary duty to the client hired to provide discretionary investment management services, and is exercising its authority under a written contract to invest the client in the fund, which provides sufficient protection to investors. • The requirements set out in NI 31-103 regarding the regulation of portfolio managers addresses investor protection concerns that the OSC may have. • Allowing portfolio managers to invest in securities of investment funds for their clients under the exemption is beneficial for investors because of investment diversification without reliance on the minimum amount exemption for these types of investments. Restricting a portfolio manager's ability to diversify client accounts forces a higher risk concentration to the detriment of investors in Ontario. • The carve-out is problematic for portfolio managers that have clients across Canada as they are employing different investment strategies on a jurisdictional basis. • There is no evidence in any other province to suggest that there have been ongoing risks or systemic risks with allowing units of funds to be purchased using the managed account exemption. • The restriction causes unnecessary concern for portfolio managers in Ontario and no longer serves any apparent public policy purpose. One commenter also recommended providing companion policy guidance to address concerns around purchases of securities of investment funds under the exemption. One commenter suggested that the managed account exemption could be expanded on a trial basis with the mandatory collection of data from a special managed account exemption e-form to determine if there are significant harmful effects in terms of asset allocations made on behalf of retail clients. ***Commenters not in favour of expanding managed account exemption*** One commenter did not support expanding the managed account exemption in Ontario to permit purchases of securities of investment funds because the commenter did not believe in managed accounts for lightly regulated investments. One commenter indicated that the managed account exemption should probably not be expanded in Ontario to permit purchases of securities of investment funds since they are perceived by many along with complex securities as most amenable to overvaluation, excessive fees, fraud, abuse and unfair selling practices.
77	Other	While not supportive of an exemption based on advice from a registrant, one commenter noted that it was troubled by certain assertions in the Consultation Paper

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		which seem to suggest that significant distinctions exist between standards applicable to exempt market dealers and investment dealers. One commenter was of the view that with respect to non-complex securities: • For securities of issuers listed on one or more Canadian exchanges sold through a non-SRO member intermediary and securities of issuers not listed on a Canadian exchange, sold through an SRO member intermediary, both the investment knowledge and the registrant advice provisions should apply. • For securities of issuers not listed on a Canadian exchange, sold through a non-SRO member intermediary, both the investment knowledge and registrant advice requirements should apply, and in addition, independent certification of investment knowledge should be required.
Private issuer exemption		
78	Is the 50 security holder limit too restrictive?	***Commenters of the view that the limit is not too restrictive*** One commenter supported keeping the private issuer exemption "as is", while five others indicated that the current 50 security holder limit it is not too restrictive. However, the following comments were provided: • One commenter was of the view that the limit appears to be arbitrary and the definitions of certain types of enumerated investors are unclear. The commenter indicated that a closely-held issuer exemption with a 50 security holder limit would offer more clarity for issuers. • One commenter indicated that the exemption is of limited use due to the requirement that an investor who is not an accredited investor have a relationship with the issuer or its founding or controlling shareholders (i.e., it does not allow issuances to the "public"). ***Commenters of the view that the limit is too restrictive*** Nine commenters were of the view that the 50 security holder limit is too restrictive. • One of these commenters suggested that the limit could be increased or eliminated without the issuer selling securities to the public due to the list in the exemption of categories of potential private issuer security holders. • One commenter was of the view that the limit would have to be increased if an offering memorandum exemption was adopted. • One commenter noted that the category includes a wide range of individuals who may be considered to be knowledgeable because of an existing relationship, as well as accredited investors. • Two commenters indicated that the limit is too restrictive to fund growth and so small as to be inadvertently violated. • One commenter recommended that the limit be subject to the number of people that can meet the definition of private issuer security holders, noting that in some cases this may be less than 50 but in other cases could be higher. • One commenter indicated that SMEs require broader access to capital than what is offered under the private issuer exemption. • One commenter indicated that the limit is too restrictive as it is only available when other exemptions are not and therefore does not meaningfully add to an investor's options for raising capital. One commenter suggested that the limit be increased to 75 or 100 shareholders, while another suggested increasing it to 100-150 shareholders. Further, one

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		commenter recommended increasing the limit to 75 non-accredited investors, with no limit on the number of accredited investors.
79	Other	One commenter recommended that the exemption be available for not-for-profit enterprises that may not benefit from the existing exemption for not-for-profit issuers in NI 45-106. One commenter indicated that raising the limit will not increase its usefulness and instead recommended that it would be preferable to the previous private company exemption which leaves the discretion to the issuer to determine who is "not a member of the public". One commenter suggested that consideration be given to the parties that are captured in the private issuer exemption, noting that this could include other key stakeholders in the business raising funds, such as key clients, key suppliers, key investors or donors to the organization, or members (in the case of a cooperative). One commenter noted that there has been some misuse of the private issuer exemption by streaming investments through single-purpose holding companies. One commenter indicated that OSC Rule 62-504 *Take-over Bids and Issuer Bids* currently restricts the non-reporting issuer exemption for take-over and issuer bids to issuers with fewer than 50 non-employee shareholders. The commenter noted that this means that sales and buy-backs of shares must comply with the full formal take-over or issuer bid regime applicable to public companies. Since the private issuer exemption also covers resales of shares, investors in private companies operating under the exemption find it difficult to sell their shares when the issuer no longer qualifies for the exemption. Accordingly, the commenter recommended that the OSC consider lifting such resale restrictions when an accredited investor or a registrant is involved with such transactions.
Closely-held issuer exemption		
80	Support	***Commenters in favour of re-introducing the closely-held issuer exemption*** Five commenters recommended that the OSC re-introduce the closely-held issuer exemption as an alternative, or in addition, to the private issuer exemption. One of these commenters noted that issuers should have a choice in using either exemption and that the closely-held issuer exemption replaces the uncertainty and subjectivity of the private issuer exemption, and should greatly facilitate financing efforts of issuers and be another way the OSC can fill the prospectus exemption gap. One commenter indicated that it would useful, particularly in light of the potential for crowdfunding, while another was of the view that it would be helpful as the private issuer exemption is of limited use. However, one commenter was of the view that the number of investors eligible under the closely-held issuer exemption should be increased from 35 to 50, excluding accredited investors or current or former directors, officers and employees of the issuer (or an affiliated entity) or current or former consultants. One commenter indicated that if the OSC permits crowdfunding, it should in principle also reintroduce the closely-held issuer exemption as both are premised on there being no limit on the number of prospective investors an issuer can approach, and it

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		should not matter whether this takes place online or through other means. However, the commenter was of the view that if the exemption is reintroduced, the OSC should carefully consider whether the limits of $3 million and 35 shareholders should be increased, and whether an offering memorandum should be mandatory. One commenter was of the view that many small issuers would benefit from the addition of an exemption that facilitates raising early seed capital, noting that even if a crowdfunding exemption is introduced, it may not be appropriate for all such issuers. Accordingly, the commenter recommended introducing a modified version of the closely-held issuer exemption which is designed to meet the needs of very early stage issuers. Specifically, the commenter recommended putting limits on the amount that could be raised under the exemption (e.g., $1 million from up to 40 investors, or something more limited such as $100,000 from up to 10 investors), noting that further discussion would be required to determine appropriate limits, as well as whether any additional investor protection measures should be imposed (e.g., requiring the delivery of a risk acknowledgement or restricting the investment to $25,000 per investor). One commenter indicated that while not knowledgeable enough to comment specifically on the family exemption, it was supportive of providing more opportunities for private investors who do not satisfy the accredited investor thresholds. ***Commenters not in favour of re-introducing the closely-held issuer exemption*** Eight commenters were not in favour of re-introducing the closely-held issuer exemption in Ontario, primarily for reasons relating to harmonization and lack of utility. With respect to the latter, it was noted that: • Together with other reforms under consideration, this exemption would not add a significant additional basis for capital raising and need not be re-introduced. • It is not necessary to introduce another exemption based on the purchaser's relationship with the issuer as the private issuer exemption and family exemption in section 2.5 of NI 45-106 (if introduced in Ontario) would be sufficient. • There are investor protection concerns with the exemption as well as practical difficulties in determining who qualifies under a closely-held category. Additionally, one commenter was of the view that the exemption does not afford sufficient protection to investors and will hinder the efficient raising of capital. Further, the commenter indicated that the amount of informational asymmetry would be great relative to the private issuer exemption. Two of these commenters noted that an expanded private issuer exemption is preferable to a closely-held issuer exemption, as in today's market there is a need to move away from a view of SMEs as largely family businesses or rules that restrict companies from adding new talent as shareholders.
81	Other	One commenter was of the view that issuers should be free to engage exempt market dealers to assist them in raising capital under the closely-held issuer exemption and pay any commissions or promotional expenses relating to those services. One commenter recommended that the exemption be available to not-for-profit social enterprises that may not benefit from the existing exemption for not-for-profit issuers in NI 45-106.

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Family exemption		
82	Support	***Commenters in favour of adopting a broader family exemption*** Ten commenters expressed support for adopting the exemption set out in section 2.5 of NI 45-106. Five of these commenters made this recommendation in order to ensure consistency across Canada. It was noted that: • It is not apparent that there are specific market differences that would justify a different rule for Ontario. • Having additional exemptions expands access to capital for issuers, and on this basis the exemption should be adopted. • Family members and close personal friends are an important source of financing for small businesses, especially at the early stages. • If the exemption has worked successfully in other provinces, it should be considered for Ontario, provided that there is sufficient protection to ensure that investments are based on independent assessment, are within one's financial means and that risks are understood by the investor. • One commenter was unaware of any negative issues that have arisen in jurisdictions where the exemption is available. However, two of these commenters recommended considering limits on the total number of accredited and non-accredited investors similar to those in the private issuer exemption. One of these commenters recommended that the following conditions should apply if an exemption of this nature is adopted in Ontario: • No investment could be made by one family member for another family member under a power of attorney. • No investment could be made by one family member for another family member who is under 18 years of age. • Similar to the existing condition in Saskatchewan, the investor should sign a risk acknowledgement form. • Non-accredited investors should have to declare that a loss on the investment would not significantly affect their financial situation. One commenter did not specifically indicate support for the adoption of a broadened exemption, but did note that some of the OSC's objectives in exploring a crowdfunding exemption could be achieved by expanding existing exemptions available to investors in other jurisdictions, such as the family, friends and business associates exemption. One commenter expressed mixed views around the adoption of a broadened exemption, noting that while it would serve to harmonize regulations across Canada, it would allow securities to be issued to an unlimited group of unaccredited investors, and that there could be practical challenges with assessing close personal friendships. One commenter indicated that while not knowledgeable enough to comment specifically on the closely-held issuer exemption, it was supportive of providing more opportunities for private investors who do not satisfy the accredited investor thresholds.

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		Commenters not in favour of adopting a broader family exemption Four commenters did not support the adoption of a broader family, friends or business associates exemption. Of these commenters: • Two commenters stated that this is not appropriate as it permits an issuer to distribute to a wider group of individuals who may not be accredited investors. One of these commenters indicated that this was the rationale for not introducing it in Ontario in the past, and is still valid today. The commenter also requested that data on the experience of other CSA jurisdictions with respect to the exemption be made public before considering the adoption of it in Ontario. The other commenter noted that the financial qualification criteria of the accredited investor exemption provides a bright line test and demonstrates, to a certain extent, the investor's ability to tolerate financial risk in the exempt market. Given that there is no limit on capital that could be raised under a broadened family exemption, investors may be putting themselves in a position of greater risk. Further, the lack of clear definitions of "close personal friend" and "close business associate" is problematic and increases the risk of non-compliance. • One commenter was of the view that in the absence of a qualified investor requirement, it would be problematic to allow for the unlimited recruitment of family members into the issuer and its affiliates. The commenter suggested that familial pressures could lead to family members being brought into an exempted issuer at the expense of their making properly informed decisions. • One commenter was not aware of any issues that would be resolved by a change or expansion to the exemption.
83	Additional disclosure requirements	Two commenters suggested consideration of additional disclosure requirements. One of these commenters recommended requiring a Form 45-106F5 (Risk Acknowledgement), as this could make issuers more accountable and provide for further disclosure. The other commenter suggested that where an issuer provides an information document to potential investors in connection with a distribution under a different exemption, the issuer should make that document available to people purchasing under the family exemption so that they are not at an informational disadvantage.
84	Additional guidance	One commenter recommended that the CSA provide guidance in addition to what is currently found in the Companion Policy to NI 45-106 with respect to the meaning of "close personal friend".
Other exemptions		
85	Accredited investor exemption	***Support for accredited investor exemption*** One commenter indicated that the accredited investor exemption is essential to the continuance and growth of the angel investor class, and changes that seek to narrow the definition of an accredited investor could negatively impact angel investing. One commenter supported retaining the accredited investor exemption, noting that while perhaps imperfect, the existing income and asset criteria provide an objective test with a reasonable link to sophistication. ***Concerns with accredited investor exemption*** One commenter recommended that the accredited investor exemption be eliminated

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		as it is not working. One commenter was of the view that the rationale for the accredited investor exemption is unsound, noting in particular that wealth is a poor proxy for sophistication. Further, the commenter was of the view that consistency with the accredited investor exemption is not a basis for ignoring the risks posed by different types of issuers and securities. Finally, the commenter recommended that an OSC sanctioned accreditation program replace the current accredited investor exemption.
86	Minimum investment amount exemption	***Concerns with minimum investment amount exemption*** One commenter was of the view that the rationale for the minimum amount exemption is unsound. Two commenters recommended that the minimum amount exemption be eliminated, due to concerns around potential over-concentration. One of these commenters indicated that the exemption should be replaced with an exemption based on investment knowledge.
87	Other changes to current Ontario exemptions referred to in Consultation Paper	Two commenters recommended that non-founder employees be permitted to be shareholders under the private issuer exemption, provided that such distributions are not coercive, and apply practical means should be employed to ensure that coercion does not take place. The commenters noted that this would make it easier for companies to hire new talent or keep or reward existing talent who may not be a current executive office, founder or relative of a founder.
Data		
88	Mandating use of e-form	Sixteen commenters had no concerns with or expressed support for implementing electronic reporting through use of the e-form. However, one of these commenters noted that systems must be tested and resources to ensure functionality, especially around key submission dates. Until such systems are in place, the commenter did not believe that more frequent reporting would be appropriate. Additionally, one commenter indicated that the e-form should be designed in such a way that it does not repeat information that is already being provided elsewhere. Two commenters indicated that reporting through the e-form should be implemented as soon as possible. One commenter noted that the filing mechanism should allow for filers to automate as much as possible (e.g., through downloadable spreadsheets or other CSV filing options). One commenter was of the view that the implementation of a crowdfunding exemption and/or an offering memorandum exemption could lead to a significant increase in the number of filings to the OSC, and mandating electronic filing would provide data in a format that is consistent and comparable, and would free up some of the OSC's resources and reduce the risk of human error. One commenter noted that as all businesses use computers, technology should not be an impediment to electronic filing. Further, if a business is raising up to $1 million, it would not be unreasonable to require electronic filing as long as the required forms are browser-friendly.

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89	Additional data	***Commenters not concerned with requiring additional information*** Eight commenters supported or had no concerns with requiring that the additional information set out in the Consultation Paper be required in reports of exempt distribution. One of these commenters noted that the information would be useful in identifying which industries are benefitting from the crowdfunding exemption or offering memorandum exemptions, as well as potential practical or compliance issues. Another was of the view that the information being sought is necessary when it comes to the ability of regulators and, upon release of the collated information, the ability of issuers and investors, to make informed decisions. Accordingly, the commenter suggested that tabulated results be posted on the OSC's website on a semi-annual basis. However, one of these commenters added the caveat that consideration should be given to avoiding duplication of investment fund information that may be available through other regulatory disclosure mechanisms. Another commenter had no concerns with requiring additional information, but indicated that the OSC should specify all of the information it would like to receive and seek feedback. Two of these commenters encouraged the OSC to work with other CSA jurisdictions in reviewing the data from reports of exempt distribution that it receives and providing reports on this data. One commenter indicated that as only specified prospectus exemptions trigger a filing requirement, it is not clear whether available data captures all exempt market activity. However, the commenter believes that a complete snapshot of public and private capital raising over time is necessary to support good decision making. ***Recommendations for further information*** Six commenters suggested other information that should also be collected by regulators. These suggestions included the following: • Basic information similar to that required in a Form 45-106F1 should be filed by issuers relying on the private issuer exemption. • Disclosure of any party that has earned compensation from an offering (i.e., not just registrants) should be provided, as this could potentially detect unlicensed parties. • Information on the income bracket of investors would be useful, but it is unlikely that investors will be comfortable disclosing this. • Issuers' and investors' addresses, or at least postal codes, to identify where most activity under the crowdfunding or offering memorandum exemption is taking place. • Information about directors' and executive officers' previous positions and involvement with exempt or non-exempt issuances. • If payment of commissions or other compensation to finders or agents is permitted, the names of external agents and their relationship to the company or management. • Details of work any agents have done previously for the issuer or related companies. • The total amount of fees earned by the agent for similar work in the past 12 months and details of any fees paid to agents for other services provided to the issuer. • The size of the issuer. • The type of investor.

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		• The materials each investor received and the time and place the materials were available. ***Commenters in favour of requiring some additional information*** Two commenters supported gathering some of the additional data referred to in the Consultation Paper, but one did not agree with collecting information on the number of years a non-investment fund issuer has been in operation, as this could be irrelevant, or age and work status. ***Concerns with requiring additional data*** Five commenters indicated that that some of the additional information could result in privacy concerns. It was noted that: • While the Form 45-106F1 filing is confidential, it could be accessed through a request made under the *Freedom of Information and Protection of Privacy Act*, such that expanding the form's reporting or filing requirements for non-reporting issuers should be approached with care. • Form 45-106F1 currently requires an issuer to confirm that it has notified and obtained authorization from each purchaser, and to the extent the range of individuals is expanded, privacy law considerations will apply, including the ability to obtain similar authorizations in an efficient and timely manner. This is exacerbated by the fact that the Consultation Paper does not comment on the extent to which the information will be publicly available. The commenter recommended that the OSC clarify the circumstances under which such information would be made available under a freedom of information request. • For non-reporting issuers, the additional information would raise substantial issuers with respect to privacy and confidentiality. • Private investors are concerned with personal privacy and wish to limit the amount of information they give to "government". The commenter was of the view that information relating to age range and work status is likely to be particularly problematic. • Some of the information referred to in the Consultation Paper will be highly confidential and should only be available to regulators, while other data should be aggregated and available publicly. Four commenters indicated that requiring additional information could be unnecessary and result in duplication due to information that is already required to be provided. The following was noted: • Reporting issuers should not be required to provide additional information that is available in documents publicly filed pursuant to securities law disclosure obligations, as there is little utility in requiring an issuer to repeat information that is already publicly available. Similar considerations should be extended to foreign issuers where the issuer or its parent is subject to disclosure obligations under their local rules. • This information could be viewed as overly duplicative or burdensome for smaller issuers with limited resources where information that is already on the public record (e.g., the issuer's directors and officers) must be provided again. • While data on exempt market activity is necessary to inform decisions about regulatory changes or policy initiatives relating to the exempt market, the information already being reported should be sufficient to understand exempt market activity.

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		Two of these commenters expressed concerns around duplication specifically with respect to registrant information. One noted that information is currently collected through several sources, including the National Registration Database, National Instrument 33-109 *Registration Information*, risk assessment questionnaires and Form 31-103F1, which increases costs and frustration for registrants and prevents regulators from obtaining a complete view of information about a registrant and its activities. The commenter suggested that collecting data from yet another source would exacerbate this and in any event, regulators already have most of the information outlined in the Consultation Paper with respect to registrants. The other commenter indicated that disclosure and compliance around being related or connected to the issuer is already required under National Instrument 33-105 *Underwriting Conflicts*. Additional concerns around requiring further data included the following: • For non-reporting issuers, the additional information would require them to provide information that they otherwise have no obligation to publicly disclose. • To the extent additional information is required, the information sought to be collected should be clearly defined and explained, and some instructions or descriptions may not be readily applicable to all issuers. • With respect to offering memoranda, section 5.4 of OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions* and equivalent rules in other jurisdictions require an offering memorandum to be delivered to the regulator under similar time frames as the filing of the report of trade, and the commenter questioned the utility of confirming whether an offering memorandum was provided. • Requiring additional post-trade information has the potential to have a chilling effect on capital raising activities. For instance, shortly after the introduction of Form 45-106F6 in British Columbia, many of the expanded reporting requirements were retracted in that province. • The additional information could result in unintended consequences. • Some of the data (e.g., investor age range and work status) will be more difficult to collect and is more appropriate for a periodic survey. One commenter recommended that the OSC and other CSA members convene a working group with registrants to discuss in more detail matters such as what reporting is reasonable, in what format and what implementation period is workable. One commenter recommended that the OSC further explore any request for further information with industry participants through focused consultations, while another indicated that the benefits of further information should be further balanced against the additional burdens.
90	Additional reporting for investment funds	***Commenters in favour of more frequent reporting for investment funds*** Two commenters supported more frequent reporting for investment funds. One of these commenters supported more frequent reporting due to the volume of transactions they will be dealing with. One of the commenters was of the view that investment funds have the ability to bear the compliance burden and arguably pose a greater degree of potential harm to a larger pool of investors than other actors in the exempt market such as, for instance, SME start-ups. ***Commenters not in favour of more frequent reporting for investment funds*** Five commenters did not support additional reporting from investment funds.

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		• One commenter noted that the information contained in Form 45-106F1 is sufficient for these issuers and additional information should not be required. • One commenter indicated that information is readily available through other sources and further reporting could result in additional burdens and potential consistency issues, and, additionally, more frequent reporting should not be required as the current rules that require investment funds to report on an aggregate basis within 30 days of year end strike an appropriate balance and presumably provide information to regulators that can be aggregated and analyzed. • One commenter was of the view that investment funds should not have to report more than semi-annually, particularly as these are funds being raised for SMEs and as such, the investment funds are likely to be quite small in size. • One commenter noted that many investment funds are in continuous distribution and it would be an unnecessary burden to prepare and file reports on a more frequent basis. • One commenter indicated that more frequent reporting by investment funds would result in less money going to the fund holders.
91	Data – other	One commenter recommended that the CSA initiate a project to review and rationalize the collection of information from registrants through electronic means. One commenter recommended an increased focus on leveraging the technological processes available in collecting exempt market data, and expressed support for a more efficient automated reporting process.
Other proposals		
92	OSC compliance capabilities	One commenter urged the OSC to ensure that it has adequate resources in order to have robust compliance with respect to issuers and registrants that operate in the exempt market. The commenter was of the view that without compliance and sufficient punishment for those who do not comply, broadening the exemptions that can be relied upon to raise capital will result in greater harm to investors. The commenter was also of the view that compliance would be improved if registrants were made aware that they will be subject to an on-site review at some point in time, and queried whether the OSC's current risk-based approach could be augmented with other sources of information and other risk analytics. Specifically, the commenter recommended that benchmarking to other jurisdictions be undertaken.
93	Capital formation for listed issuers	One commenter suggested two additional measures the CSA should consider to facilitate capital formation for listed issuers while providing adequate investor protection. The two measures are: • A prospectus exemption for issuers listed on a recognized stock exchange placing their securities with their current shareholders on a private placement basis. • Amending relevant securities regulation including National Instrument 45-101 *Rights Offerings* to make rights offerings a more efficient and effective means of raising capital.
94	Angel networks	One commenter recommended that the OSC consider allowing certain exemptions for not-for-profit angel investor groups to enable them to collect modest fees from funding applicants to recover basic costs incurred (which would be deducted from the

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		collective funds placed by the investors on each investment). The commenter noted that there is a significant value to members in being part of an angel group because: • The groups attract and receive a reasonably good level of high quality deal flow which provides greater choice. • There is "safety in numbers" in evaluating investments and making decisions. • There is a collegial element to being part of a group. One commenter indicated that it hopes the OSC will continue to allow independent accredited investors to provide funds and support to pre-revenue and early stage companies in Ontario with a prospectus exemption, and recommended the following with respect to angel investments: • No limits should be placed on the amount of capital that can be raised as this falls within the negotiation process and should reflect the needs of the issuer and risk tolerance of the accredited investor. • No limits should be placed on the amount that an accredited investor can invest. • Issuers should not be required to spend the proceeds raised in Canada as the use of proceeds is focused on growth of the business and geographic restrictions would not be conductive to this. • No certified information should be required to be provided to investors at the time of sale, as the information that is gathered and shared among investors is normally addressed during the due diligence process and each investor is sophisticated and responsible for assessing their individual risk tolerance. • Ongoing disclosure should not be mandated as term sheets generally include a clause regarding access to information, and this should be left to the discretion of the investors. • Audited financial statements should not be required due to the cost and limited relevance for pre-revenue start-ups. The commenter indicated that ongoing financial statements are normally available to investors under the terms of the investment. • Rights and protections, such as anti-dilution protection, tag-along rights and pre-emptive rights should be left to the discretion of the parties involved as each transaction is unique.
95	Exemptions for angel investors	One commenter recommended that the OSC allow individual angel investors and others working with early stage companies to exempt themselves from securities legislation. The commenter recommended the following features of such an exemption: • To become an "angel investor", an individual would provide written notification to the OSC and the CSA in which they would acknowledge that they could lose all of their invested capital and could not avail themselves of remedies under securities legislation. • Angels could revoke their exempt status upon written notification to the OSC and the OSC would maintain a database of all such investors for the purpose of enabling issuers to confirm this. • Issuers would have to obtain confirmation of angel status from the OSC before accepting funds from angels. The commenter indicated that through this exemption, angels would become the preferred sources of capital for issuers seeking to use crowdfunding and would supply capital to small firms, particularly with high potential, in ways best suited to individual

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		opportunities. Another investor was concerned that angel groups not be considered registrants where they are non-profit entities consisting only of accredited investors and where the investors are required to do their own due diligence and the group does not provide investment advice or handle client funds and is governed by best practices that protect the interests of its members. The commenter suggested that angel groups should be exempt from registration requirements where there would be no reasonable expectation from an investor that material reliance could be made on the actions or reviews conducted by the group and where it is clear that the investor is both fully expected to conduct thorough due diligence on their own and is sophisticated enough to fully appreciate this dynamic. Where the structure or activities of the group does not fit all or most of the above, the commenter recommended that there be a customized form of registration reflecting the role that angel groups provide.
96	Complex products for retail investors	One commenter was of the view that unless they qualify to participate in the exempt market, retail investors should not be offered complex products without the participant regulation and investor information requirements that exist in the traditional prospectus-qualified distribution channel. Another commenter indicated that while some consumer advocates recommend an exemption for non-complex exempt market products, the commenter disagrees with this as such an exemption would lessen the incentive for issuers to offer new and creative products, while giving less scrupulous distributors and resellers the incentive to force products into the "non-complex" category. The commenter believes that the focus is more appropriately placed on protecting investors who need protection, without hampering access to suitable products for investors who can and are willing to bear risk.
97	Exemption for start-up companies	One commenter recommended the adoption of a new prospectus exemption for Ontario based (primarily Ontario or federally incorporated companies as well as companies from other Canadian jurisdictions and perhaps certain foreign jurisdictions, such as Delaware, having an active business presence in Ontario) that are start-ups. The proposal includes the following features: • Eligible start-up issuers could be defined to include any business that is not an investment fund, or could initially be limited to companies primarily engaged in the information technology, clean technology or life sciences industries, with less than 50 employees. • Issuers would become ineligible for use of the exemption five years after the date of incorporation. • Issuers would be permitted to issue securities of any kind for gross proceeds up to $1 million, subject to an aggregate lifetime limitation of $5 million during the period for which they qualify for the exemption. • Individual investors would be limited to a maximum investment in a particular issuer in a year (e.g., $5,000), and would be permitted to make multiple investments in the maximum amount per year, provided that no two investments were in the same issuer or related issuers. • Issuers would be required to maintain a simple capital structure. • Mandatory disclosure would include a term sheet containing certain required disclosure and a prescribed risk acknowledgement form.

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		• Issuers would be liable for misrepresentations in the term sheet provided to investors and investors could also be provided with rescission rights in the event of a misrepresentation. • Sales under the exemption would not be permitted to be the subject of a commission, finder's fee or similar payment (or, alternatively, such payments would be subject to a maximum of 3% of the value of the sale). • To monitor use of the exemption, issuers would be required to file a report of exempt distribution using the existing Form 45-106F1. • To ensure effective governance, and due to the potential for large groups of small shareholders, issuers could be required to adhere to certain elements of the governance requirements for public issuers. These would be in addition to statutory protections for shareholders under Canadian corporate law relating to delivery of financial statements (except where waived), annual meetings, proxy solicitations and oppression remedy relief. • At least one investor meeting the accredited investor definition (with a possible additional requirement that they be registered in an established angel network or registered venture capital fund) could be required to invest or, alternatively, such investors would be required to meet a minimum participation level. The aggregate amount of subscriptions from non-accredited investors would be limited to the aggregate of proceeds raised from the accredited investors.
98	Funding	One commenter recommended that low cost regulatory user fees paid by issuers and registrants be used to fund the development of regulations that promote capital market infrastructure and economic growth. It was suggested that the investor protection aspects of securities regulators should be funded out of general tax revenues. These were noted to be separate functions with different objectives that should be funded by appropriate users.
99	Capabilities of SEDAR	One commenter recommended updating the technical search and digital database capabilities of SEDAR. For example, it was suggested that it would be useful to have search capabilities that produce contact details of all directors and officers of issuing companies with accompanying resumes and compensation details. The commenter also recommended developing searchable databases for SEDAR filings of technical reports required under National Instrument 43-101 *Standards of Disclosure for Mineral Projects* and reports required under National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*.
100	Systems for shareholder meetings	One commenter recommended developing regulatory practices for digital information proxy circular and annual meeting voting systems that are directly linked to CDS shareholder databases. It was noted that while private operators currently complete portions of this process, further development could reduce overhead expenses.
101	Bi-annual reporting cycle	One commenter recommended adopting a bi-annual reporting cycle for venture issuers, noting that the funds that would otherwise be spent on the three and nine month financial reports would be better used for modernizing offering memoranda, continuous disclosure and crowdfunding portals.
102	Promote economic development and jobs	One commenter recommended making it a policy mandate of provincial securities regulators to develop regulatory initiatives that promote economic development and jobs in all parts of Canada.

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103	Provide a tax credit for regulatory costs	One commenter recommended providing a 50% tax credit for the first $250,000 of regulatory overhead for TSXV issuers that is related to audit, accounting, legal, annual meeting, disclosure, SEDAR filings, TSXV listing fees, technical reports and officer and director compensation.
104	Develop rules relating to mergers and acquisitions for smaller issuers	One commenter recommended the development of securities and corporate legislation that would allow low cost mergers and acquisitions for small less successful TSXV issuers.
105	Royalties	One commenter was of the view that access to capital would improve if the OSC were to make clear that a return in the form of a royalty does not constitute a security, and that royalties are beyond the scope of securities legislation.
106	Limit on investments in public markets	One commenter recommended that as public markets are riskier than private equities, a limit on what people can invest in the public markets should be implemented in order to protect investors. Additionally, the commenter recommended that people should be encouraged to invest in alternative markets for greater stability and returns.
107	Special arrangements for mortgage investment corporations	One commenter indicated that in order to help mitigate certain challenges and issues faced by mortgage investment corporations, the OSC should consider the following: • It should be made easier to provide information to investors in order to enable them to make their own investment decisions (i.e., without additional costs such as lawyers and accountants). • Being required to use exempt market dealers for most investments adds further costs and additional people to transactions, which can in turn result in greater abuse. Accordingly, the commenter recommended allowing mortgage investment corporations to conduct their own know your client and know your product assessments.
108	Managing enforcement	One commenter recommended that the OSC allocate enforcement efforts currently dedicated to reviewing the accredited investor status of investors towards compliance reviews of issuers who use the offering memorandum exemption.
109	Entertain foreign investment opportunities	One commenter noted that while the rationale of mandating that exempt market funds be spent in Canada will help stimulate economic growth and employment, this ignores investment demands and diversification opportunities.
110	Financial intermediaries	One commenter noted that the Consultation Paper does not address the potential need for not-for-profit financial intermediaries (or their affiliated companies) to raise pooled funding for social enterprises and not-for-profit companies, nor does it address the exemptions that such intermediaries would need in order to be viable. The commenter recommended prospectus and registration exemptions for these intermediaries.
111	Charitable/not-for-profit companies	One commenter was of the view that the exemptions set out in the Consultation Paper should be available for charitable or not-for-profit organizations seeking to raise debt financing and to funds that are established to lend to charitable and non-for-profit organizations, including social enterprises.

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112	Accelerated initial public offering process	One commenter recommended eliminating the current capital pool company program due to concerns around cost and efficiency, and implementing an accelerated initial public offering process that would allow smaller companies to raise up to $25 million. The commenter recommended that the following features be adopted: • Disclosure modelled on the current prospectus requirements but with less legalese. Principals of the company would be required to attest that the disclosure is full, fair and plain. • Due to cost, audited financial statements would need to be provided at the time of sale only if they had already been prepared. • The disclosure document could be posted on the website of a regulated investment dealer where potential investors could review the disclosure and make subscriptions. • The role of the investment dealer would be to provide cautionary advice around risk, affirm the minute books are current, affirm that tax and regulatory filings have been made, and affirm that the principals of the company have no negative history with legal, tax or securities matters. • On an ongoing basis, the company would be required to perform audits, hold annual meetings and follow routine disclosure rules. • Trades in these issuers could be dealt with through a special section of the TSX or other small issuer exchange, for market transparency. • Fees for all work should be variable within a specified limit (i.e., 10% of the amount raised).