

# The Guide to Canadian Securities Regulations for Social Impact Funds

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# Acknowledgements

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# Introduction

- The purpose of this presentation is to provide a guide to Canadian Securities Regulations for social impact funds. The content is for information purposes only and does not constitute advice. Social impact funds should seek their own advice, including tax advice, for any securities related activities.
- Securities legislation is a complex, highly regulated system to protect the investing public and foster fair and efficient capital markets
- There are two central requirements of securities laws applicable to firms undertaking securities transactions:
  - 1. Prospectus requirement** – no person or company can trade in a security if the trade is a “distribution”, unless, in the absence of an applicable exemption, a prospectus is filed in each province where the trade occurs and a receipt for the prospectus is issued.
  - 2. Registration requirement** – firms must register if deemed to be ‘in the business’ of trading or advising with respect to securities or such firms act as an underwriter or investment fund manager.
    - a) Registered firms must have registered individuals to carry out certain business activities for the firm
- The Registration and Prospectus requirements are costly, time consuming and require qualified individuals that are not necessarily suitable to all social impact funds.
- Exemptions from these requirements are premised on the view that in certain circumstances, the protections provided under securities legislation are not necessary in order to carry out the principles of such legislation.
- This presentation examines exemption options for social impact funds when undertaking securities transactions such as raising capital and making investments.

# The Prospectus Requirement

# Overview of Raising Capital in Canada

There are numerous options for SIF's to raise capital that generally will fall under a public offering or private placement

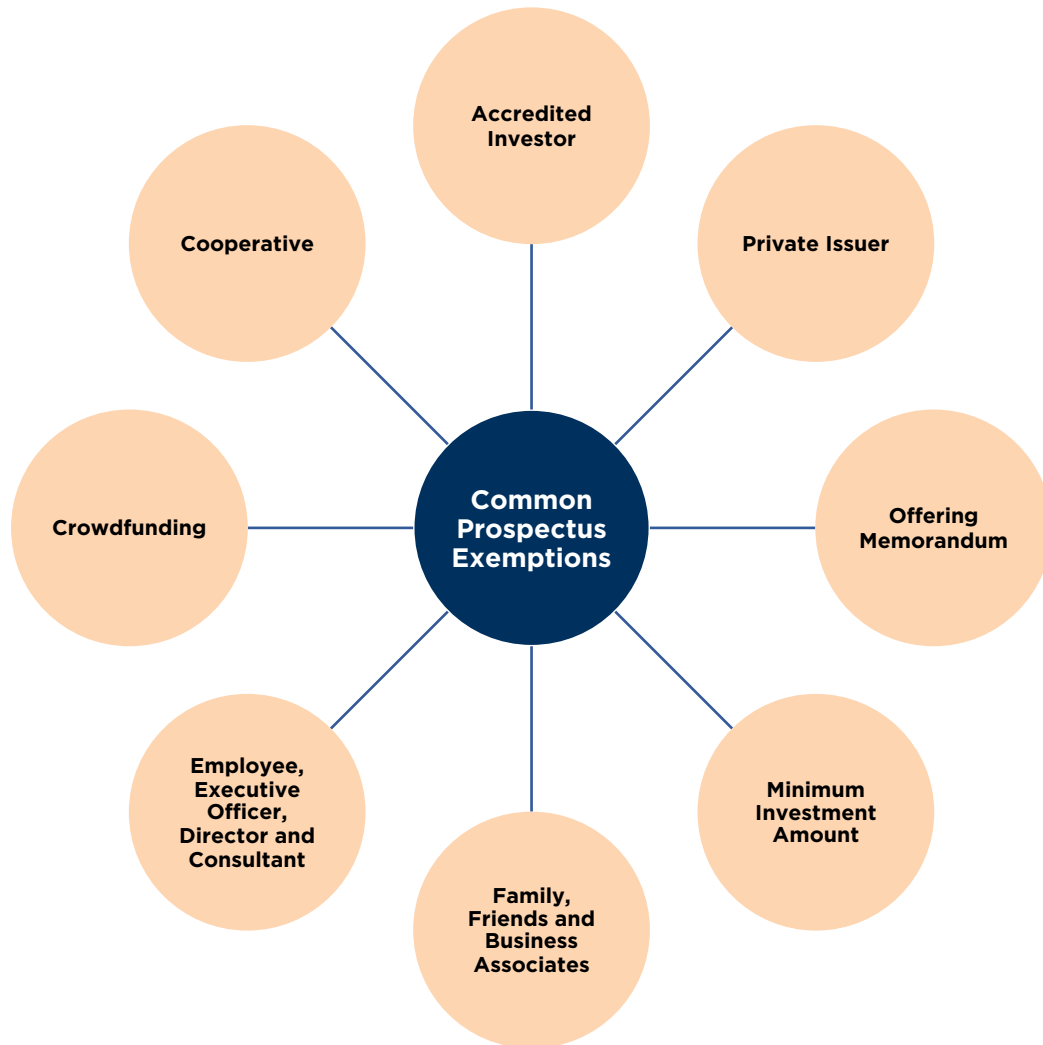
## Public Offering

- In most cases, if a SIF wants to distribute securities to the **public**, it must prepare a **prospectus**
- The objective of the prospectus requirement is to provide investors with “full, true and plain disclosure of all material facts relating to the securities issued” thereby enabling them to make an informed investment decision
  - The issuer will become a “reporting issuer” after filing its first final long form prospectus in each jurisdiction (province) in which a receipt is issued
  - The issuer will be subject to continuous disclosure rules and ongoing reporting requirements
- **If an exemption is not available**, a prospectus offering must be sold by a person with the appropriate registrations

## Private Placement

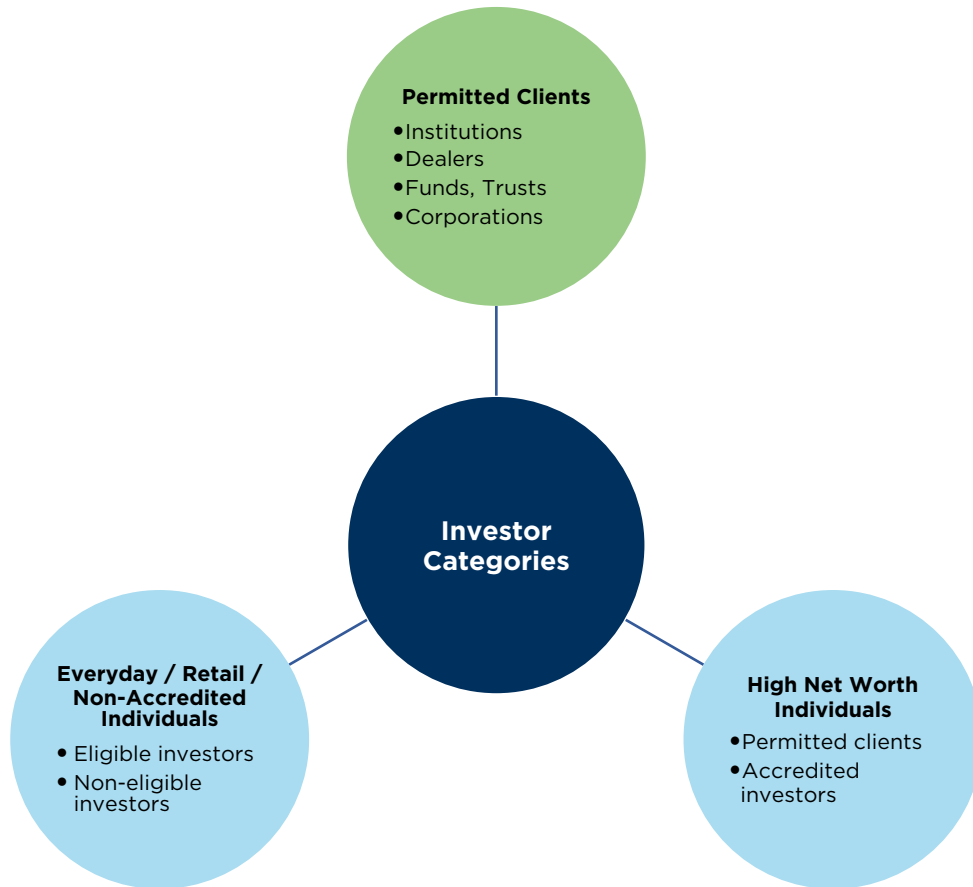
- Private placements are popular alternative ways of selling securities in Canada through prospectus exemptions
- Private placements tend to be simpler, less expensive and quicker to execute than a prospectus offering
- Social impact funds undertaking a private placement may trigger a requirement for registration that will be further described throughout this presentation. For example:
  - A SIF that goes to market frequently, employs persons that essentially act as securities dealers and directly solicits clients may be required to register as a dealer
- Securities sold in reliance on a prospectus exemption may be subject to resale restrictions

# Private Placement Prospectus Exemptions



- To avoid a prospectus requirement, SIF's primarily raise capital under these common private placement prospectus exemptions (NI 45-106)
- A combination of applicable exemptions can be used for a single offering
- These exemptions **have no limitations on the amount of capital** that can be raised, except the Crowdfunding and Cooperative exemptions
- These exemptions **have no limits on the number of investors** participating in the offering, except the Private Issuer exemption (50 investors) and Cooperative exemption (varies by province)

# Investor Categories



Institutional Investors (Permitted Clients)	Description
<b>Canadian financial institutions</b>	<ul style="list-style-type: none"> <li>• E.g. a Schedule III bank, BDC, etc.</li> </ul>
<b>Investment Dealers, Mutual Fund Dealer, Exempt Market Dealers</b>	<ul style="list-style-type: none"> <li>• Registered under securities legislation of a jurisdiction of Canada</li> <li>• Does not include Restricted Dealers</li> </ul>
<b>Pension funds</b>	<ul style="list-style-type: none"> <li>• Regulated either by the federal Office of the Superintendent of Financial Institutions or similar regulatory authority in Canada</li> </ul>
<b>Government</b>	<ul style="list-style-type: none"> <li>• GoC or any Crown Corporation</li> <li>• Any provincial, territorial, or municipal government</li> </ul>
<b>Trust companies</b>	<ul style="list-style-type: none"> <li>• Registered or authorized to carry on business under the Trust and Loan Companies Act</li> </ul>
<b>Investment Fund</b>	<ul style="list-style-type: none"> <li>• Funds managed by a registered Investment Fund Manger</li> <li>• Funds advised by a person authorized to act as an Advisor</li> </ul>
<b>Corporations</b>	<ul style="list-style-type: none"> <li>• Non-individuals</li> <li>• Must have &gt;\$25 million in net assets</li> </ul>
<b>Registered Charities</b>	<ul style="list-style-type: none"> <li>• Only if advised by an eligible Advisor</li> </ul>
<b>Individual Investors</b>	<b>Classified based on an Assets Test</b>
<b>Permitted Client</b>	<ul style="list-style-type: none"> <li>• &gt;\$5M in <u>financial</u> assets (cash and securities less associated debt)</li> </ul>
<b>Accredited Investor</b>	<ul style="list-style-type: none"> <li>• &gt;\$200k (\$300k with spouse) net income before tax</li> <li>• &gt;\$1M in <u>financial</u> assets</li> <li>• &gt;\$5M in <u>total</u> net assets</li> </ul>
<b>Eligible Investor</b>	<ul style="list-style-type: none"> <li>• &gt;\$75k (\$125k with spouse) net income before tax</li> <li>• &gt;\$400k in <u>total</u> net assets</li> </ul>
<b>Non-Eligible Investor</b>	<ul style="list-style-type: none"> <li>• Less than Eligible Investor test</li> </ul>



# Summary – Common Prospectus Exemptions for Raising Capital

Common Exemptions	Max Total Amount Raised	Max Number of Investors	Can Sell To	Investment Limits												
<b>Accredited Investor</b>	· No Limit	· No Limit	· Accredited Investors (including Permitted Clients)	· None												
<b>Private Issuer</b>	· No Limit	· 50 persons (excluding current and former employees)	· Accredited Investors (including Permitted Clients) · Directors, officers, employees, founders or control persons · Family members · Close friends or business associates · Existing shareholders	· None												
<b>Offering Memorandum</b>	· No Limit	· No Limit	· Accredited Investors (including Permitted Clients) · Eligible Investors · Non-Eligible Investors	· None - Accredited Investor <table border="1"> <thead> <tr> <th></th> <th>BC &amp; NL</th> <th>AB, SK, ON, QC, NB, NS:</th> <th>MB, NWT, NU, PE, YT:</th> </tr> </thead> <tbody> <tr> <td><b>Eligible Investor</b></td> <td>· None</td> <td>· \$30k or \$100k if receive advice</td> <td>· None</td> </tr> <tr> <td><b>Non-Eligible Investor</b></td> <td>· None</td> <td>· \$10k</td> <td>· \$10k</td> </tr> </tbody> </table>		BC & NL	AB, SK, ON, QC, NB, NS:	MB, NWT, NU, PE, YT:	<b>Eligible Investor</b>	· None	· \$30k or \$100k if receive advice	· None	<b>Non-Eligible Investor</b>	· None	· \$10k	· \$10k
	BC & NL	AB, SK, ON, QC, NB, NS:	MB, NWT, NU, PE, YT:													
<b>Eligible Investor</b>	· None	· \$30k or \$100k if receive advice	· None													
<b>Non-Eligible Investor</b>	· None	· \$10k	· \$10k													
<b>Minimum Amount</b>	· No Limit	· No Limit	· Any person who is not an individual	· Minimum \$150k												
<b>Family, Friends and Business Associates (FFBA) Employee, Executive Officer, Director and Consultant (Employee)</b>	· No Limit	· No Limit	· Family members · Close friends or business associates · Directors, officers, employees, certain consultants	· None												
<b>Crowdfunding (Proposed NI 45-110 Harmonized Rules)</b>	· \$1.0M/year	· No Limit	· No restrictions	· \$2,500; or · \$5,000 if receive advice												

*Note: a combination of applicable exemptions can be used for a single offering*

# Marketing Considerations for Social Impact Funds

Securities regulations impose strict restrictions on marketing an offering without being registered or requiring a prospectus

## Marketing Considerations

- Issuers can market securities if they are not considered to be “in the business of trading”, which would trigger a registration requirement
  - “Trading” is broadly defined and most marketing activities to promote a “distribution” are considered the same as the actual sale of the securities themselves
  - This conduct would therefore fall within the definition of a “trade” and is prohibited without a prospectus
  - Advertising or marketing activities subject to the prospectus requirement may be oral, written or electronic

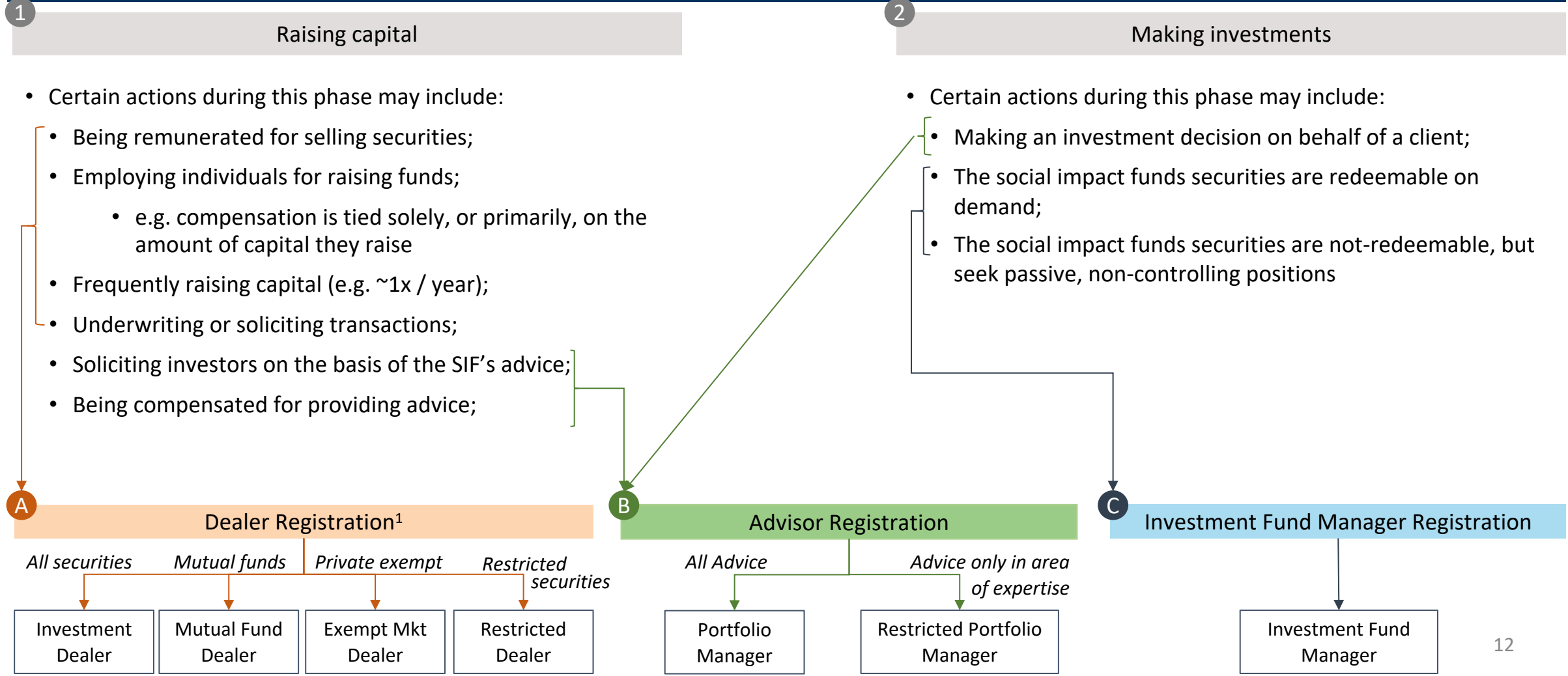
## How Can a Non-Registered SIF Promote an Offering?

- **Engage a registered Dealer to solicit investors on your behalf**
  - Acceptable to pay a commission under all prospectus exemptions, except the Family, Friends and Business Associates and Private Issuer (other than Accredited Investors)
- **Directly solicit investors that fall under a prospectus exemption**
  - A SIF can directly contact potential investors to inform them of the offering and provide marketing information to help them make an investment decision, however, they should ensure such investors fall within a prospectus exemption (e.g. are accredited investors)
  - Avoid paying a commission to any director, officer or employee otherwise this may trigger a Dealer registration requirement
- **Make factual, non-solicitation statements on social media**
  - General image advertising unrelated to a distribution
  - Communications should be released in a manner, timing and form that is consistent with the regular past communications practices of the issuer

# The Registration Requirement

# Firm Registration Requirements

SIF's engage in two primary business activities that may trigger registration requirements for the firm under securities laws (NI 31-103)



1. See page 18 for more details on the Dealer and Advisor categories

# Firm Registration Exemptions

SIF's are not Required to Register where...

A

## Dealer Registration

- Are not in the business of trading / does not act as an underwriter or agent:
  - Securities distributed solely for own account
  - Securities issued through a registered dealer
  - Capital raises are occasional
  - Capital raises are uncompensated
  - Employees are not compensated for raising capital
  - Activity is incidental to the management of portfolio companies/investments

B

## Portfolio Manager Registration

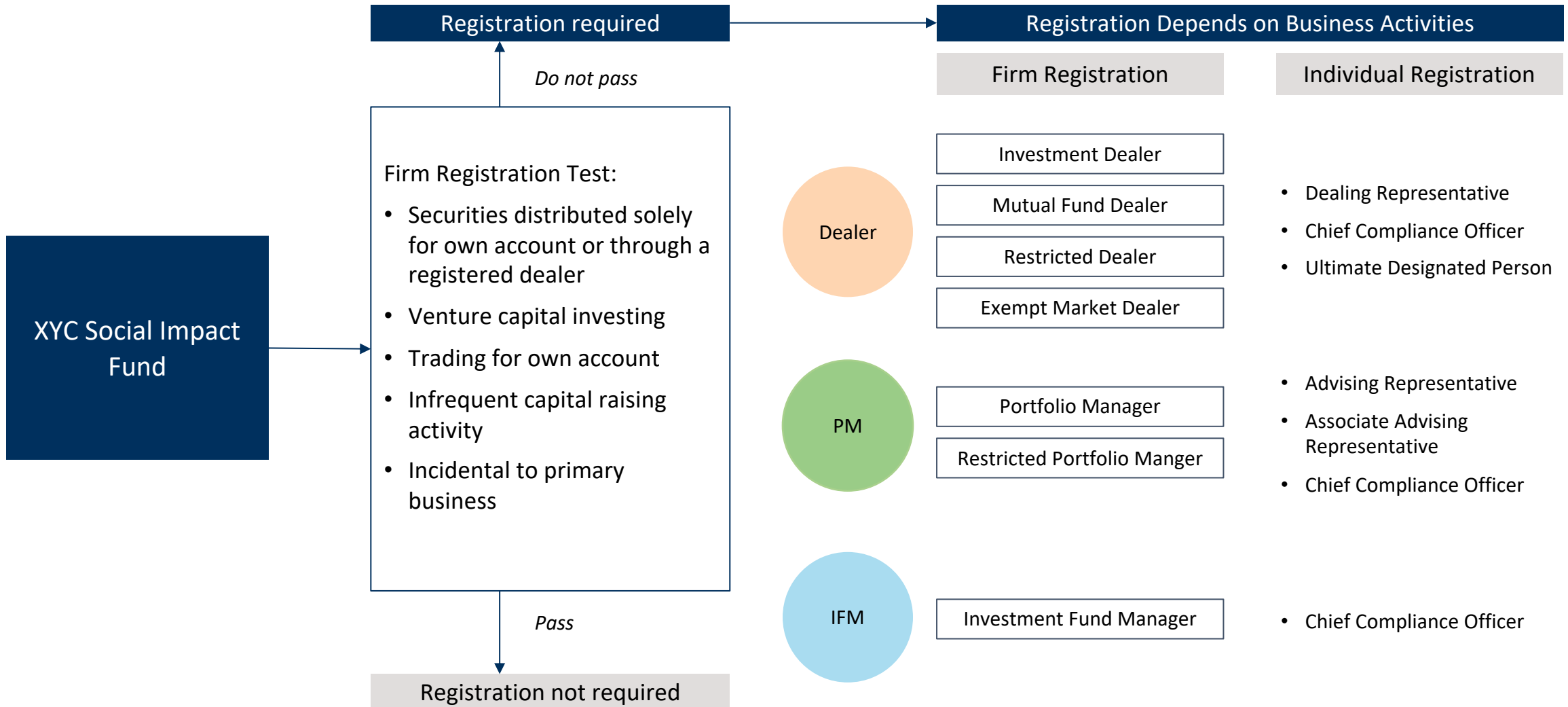
- Are not in the business of advising:
  - Advice is incidental to the management of portfolio companies/investments
  - No advice is provided when soliciting investors
  - No compensation for providing advice

C

## Investment Fund Manager Registration

- Do not qualify as an “investment fund”:
  - Exercise or seek to exercise control, or being actively involved in the management of its underlying investments
  - NI 31-103 Private Equity/ Venture Capital Exemption
  - NI 31-103CP describes “investment funds” as investing in a portfolio of securities, as such, funds that originate loans would not be considered “investment funds”

# Illustration: Firm Registration Test



# Investment Fund vs Private Equity / Venture Capital

- The applicable regulatory regime depends in part on whether a fund is characterized as an “investment fund” or a “private equity fund”

## Investment Fund

- **Passive Investor** that does not seek to exercise control\* over, or become involved in the management of, investee companies

## Private Equity / Venture Capital

- **Active Investor** that seeks to exercise control\* over, or become involved in the management of, investee companies

- \*Control is a factual determination that must be made on a case-by-case basis, some of the relevant indicators of control are as follows:
  - the fund holds securities representing more than 10% of the outstanding equity or voting securities of the investee company;
  - the fund may appoint board or board observer seats on the investee company;
  - the fund is able to place restrictions on management, or has approval or veto rights over decisions made by the management of the investee company; or
  - the fund may restrict the transfer of securities by other securityholders of the investee company

# Considerations for Accessing Dealers / Wealth Advisors

Registered Dealers and Advisors have certain regulatory obligations that may restrict a SIF's ability to access capital from their clients

## Suitability is Key

- Advisors have an obligation to ensure that investment products are suitable for their clients
- To make this determination, registrants must understand their clients (**Know Your Client**) and the products (**Know Your Product**) they recommend

*Note: only **Permitted Clients** can waive their KYC, KYP and Suitability requirements*

### Know Your Client

- Registrants must take reasonable steps to **identify** their clients and understand their **investment objectives, financial circumstances and risk tolerance**
- Must update/review due to certain events and at regular intervals

### Know Your Product

- Required to know the **attributes** (return, leverage, complexity etc.) and **associated risks** (liquidity, volatility, default, counterparty etc.) of products recommended to clients
- **Registered individuals:**
  - must take reasonable steps to understand securities to make a suitability determination
  - may only recommend securities approved by their firms to be made available to clients



# Canadian Securities Law

Purpose of Canadian Securities Laws

# What is the Purpose of Security Legislation?

## Principles of Securities Legislation

- Protection of the investing public from unfair, improper or fraudulent practices
- Foster fair and efficient capital markets and confidence in capital markets
- Contribute to the stability of the financial system and the reduction of systemic risk

## Two Central Requirements of Securities Laws

### Registration Requirement

#### General Rule:

- Firms are required to register if they are (i) in the business of or hold themselves out as being in the business of trading or advising; (ii) acting as underwriter; or (iii) acting as an investment fund manager
- Individuals are required to register if they trade, advise or underwrite on behalf of a registered dealer or adviser, or act as the ultimate designated person or chief compliance officer of a registered firm

### Prospectus Requirement

#### General Rule:

- No person or company can trade in a security if the trade is a “distribution” of the security, unless, in the absence of an applicable exemption, a prospectus is filed in each province where the trade occurs and a receipt for the prospectus is issued
- The definition of “trade” in securities legislation includes any act, advertisement, solicitation, conduct or negotiation, directly or indirectly, in furtherance of a trade
- The definition of “distribution” includes, among other things, a trade in securities of an issuer that have not been previously issued

Exemptions from both the registration requirement and prospectus requirement are premised on the view that in certain circumstances, the protections provided under securities legislation are not necessary in order to carry out the principals of such legislation

# Canadian Securities Law

The Prospectus Requirement

# Overview of Canadian Private Placements

## Overview of Private Placements

- A private placement is the issuance of securities by a company in reliance of an exemption from the prospectus requirement
- Both private and public companies can conduct a private placement
- NI 45-106 – *Prospectus Exemptions* sets out the exemptions:
  - Harmonized regime across Canada
  - Not all exemptions are applicable in all provinces

## Commonly used Prospectus Exemptions

1. Accredited Investor
2. Private Issuer
3. Offering Memorandum
4. Minimum Amount Investment (\$150,000)
5. Family, Friends and Business Associates
6. Employee, Executive Officer, Director and Consultant

### Other exemptions

1. Crowdfunding
2. Co-operative

# Common Prospectus Exemptions (NI 45-106) for Raising Capital

Exemption	Number of Investors	Type of Investor	Report of Exempt Distribution	Commissions / Finder's Fees	Resale Restriction
<b>Accredited Investor</b>	· No Limit	· Accredited Investors	· No	· Yes	· Restricted period
<b>Private Issuer</b>	· 50 persons (excluding current and former employees)	· Accredited Investors · Directors, officers, employees, founders or control persons · Family · Close friends or business associates · Existing shareholders	· No	· Except for a distribution to an accredited investor, no commission or finder's fee may be paid to any director, officer, founder or control person of an issuer	· Seasoning period
<b>Offering Memorandum</b>	· No Limit	· Eligible Investors (including accredited investors) · Non-Eligible Investors	· Yes	· No commission or finder's fee may be paid to any person, other than a registered dealer, in connection with a distribution to a purchaser in the NWT, Nunavut and Yukon	· Restricted period
<b>Minimum Amount</b>	· No Limit	· Any person that is not an individual and invests at least \$150k	· No	· Yes	· Restricted period
<b>Family, Friends and Business Associates</b>	· No Limit	· Family · Directors, officers, control persons · Close friends or business associates	· No	· No commission or finder's fee may be paid to any director, officer, founder or control person of an issuer or an affiliate of the issuer	· Restricted period

# Summary of Investor Investment Limits & Obligations (NI 45-106)

Prospectus Exemption	Investor Type	Assets Test	Investment Limits	Investors sign a Risk Acknowledgment Form	Investor option to waive KYC/Suitability obligations
Accredited Investor Private Issuer Offering Memorandum	Permitted Client	<ul style="list-style-type: none"> <li>&gt;\$5M in financial assets (cash and securities less associated debt)</li> </ul>	<ul style="list-style-type: none"> <li>No Limit</li> </ul>	<ul style="list-style-type: none"> <li>No</li> </ul>	<ul style="list-style-type: none"> <li>Yes</li> </ul>
	Accredited Investor	<ul style="list-style-type: none"> <li>&gt;\$200k (\$300k with spouse) net income before tax</li> <li>&gt;\$1M in financial assets</li> <li>&gt;\$5M net assets</li> </ul>	<ul style="list-style-type: none"> <li>No Limit</li> </ul>	<ul style="list-style-type: none"> <li>Yes (for certain AIs that are individuals)</li> </ul>	<ul style="list-style-type: none"> <li>No</li> </ul>
FFBA	Friend, Family, Business Associate	<ul style="list-style-type: none"> <li>n/a – relationship test</li> </ul>	<ul style="list-style-type: none"> <li>No Limit</li> </ul>	<ul style="list-style-type: none"> <li>Yes (in SK and ON); No in other provinces</li> </ul>	<ul style="list-style-type: none"> <li>No</li> </ul>
Employee	Employee, Executive Officer, Director and Consultant	<ul style="list-style-type: none"> <li>n/a – relationship test</li> </ul>	<ul style="list-style-type: none"> <li>No Limit</li> </ul>	<ul style="list-style-type: none"> <li>No</li> </ul>	<ul style="list-style-type: none"> <li>No</li> </ul>
Offering Memorandum	Eligible Investor	<ul style="list-style-type: none"> <li>&gt;\$75k (\$125k with spouse) net income before tax</li> <li>&gt;\$400k net assets</li> </ul>	<p><b>BC, NL, MB, NWT, NU, PE, YT:</b></p> <ul style="list-style-type: none"> <li>No limit</li> </ul> <p><b>AB, SK, ON, QC, NB, NS:</b></p> <ul style="list-style-type: none"> <li>\$30k over previous 12 months</li> <li>\$100k over previous 12 months if received suitability advice from a PM, ID or EMD</li> </ul>	<ul style="list-style-type: none"> <li>Yes</li> </ul>	<ul style="list-style-type: none"> <li>No</li> </ul>
	Non-Eligible Investor	<ul style="list-style-type: none"> <li>Less than Eligible Investor test</li> </ul>	<p><b>BC, NL:</b></p> <ul style="list-style-type: none"> <li>No limit</li> </ul> <p><b>MB, NWT, NU, PE, YT, AB, SK, ON, QC, NB, NS:</b></p> <ul style="list-style-type: none"> <li>\$10k over previous 12 months</li> </ul>	<ul style="list-style-type: none"> <li>Yes</li> </ul>	<ul style="list-style-type: none"> <li>No</li> </ul>

# Accredited Investor Exemption (Most Common)

The prospectus requirement does not apply to a distribution of a security if the purchaser purchases the security as principal and is an “accredited investor” (AI)

## Accredited Investors Include...

- Certain institutional investors (e.g. banks, trust companies, insurance companies, credit unions, governments, crown corporations, municipalities, school boards, pension funds etc.)
- Persons or companies registered as dealers or advisers
- Trust companies or trust corporations registered to carry on business under the *Trust and Loan Companies Act* (Canada) or comparable legislation, acting on behalf of a fully managed account managed by the trust company or trust corporation
- Registered charities under the *Income Tax Act* (Canada) that has obtained advice from an adviser
- A person, including a corporation, partnership or trust but excluding individuals and investment funds, with net assets of at least \$5M as shown on its most recently prepared financial statements (so long as the person wasn't created, or is used, solely to purchase or hold securities as an AI)
- Individuals who meet one of the specified tests: financial assets, net income, net assets

## Specified Tests for Individuals

### Financial Assets

- Individuals (alone or with a spouse) who beneficially own financial assets with a realizable value (before taxes, net of any related liabilities) of \$1M
- Individuals who beneficially own financial assets with a realizable value (before taxes, net of any related liabilities) of \$5M (i.e. permitted clients)

### Net Income

- Individuals whose net income (before taxes) exceeded \$200k in both the 2 most recent calendar years or, combined with that of a spouse, exceeded \$300k in both the 2 most recent calendar years and reasonably expects to exceed that net income level in the current calendar year

### Net Assets

- Individuals (alone or with a spouse) who have net assets of at least \$5M

# Accredited Investor Exemption (Most Common)

## Additional Requirements

### Risk Acknowledgment Forms

- Individual AIs, other than those who beneficially own financial assets with a realizable value (before taxes, net of any related liabilities) of \$5M, must complete a risk acknowledgement form in the required form at the same time or before signing the agreement to purchase the security
- The signed risk acknowledgement form must be retained by the person distributing the security for 8 years after the distribution

### Resale Restrictions – Restricted Period on Resale

- If a security is distributed pursuant to the AI exemption, the first trade of that security will be considered a distribution and subject to the prospectus requirement, unless all of the following are satisfied:
  - 1) The issuer is and has been a reporting issuer in a jurisdiction of Canada for the four months immediately preceding the trade.\*
  - 2) At least four months have elapsed from the distribution date.
  - 3) The certificate representing the security carries a specified legend.
  - 4) If the security was entered into a direct registration or other book-entry system, or if the purchaser did not directly receive a certificate representing the security, the purchaser received written notice containing the specified legend.
  - 5) The trade is not a control distribution.
  - 6) No unusual effort is made to prepare the market or create a demand for the security that is the subject of the trade.
  - 7) No extraordinary commission or consideration is paid to a person or company in respect of the trade.
  - 8) If the selling security holder is an insider or officer of the issuer, the selling security holder has no reasonable grounds to believe that the issuer is in default of securities legislation.
- Note that Items 3 and 4 do not apply to a trade if the underlying security is issued at least four months after the later of the distribution date and the date the issuer became a reporting issuer in any jurisdiction of Canada.
- If the resale restrictions aren't met, the trade will be subject to the prospectus requirement or must be made in reliance on another prospectus exemption



# Private Issuer Exemption

The prospectus requirement does not apply to a distribution of a security of a private issuer to certain specified persons that purchase the security as principal

## Definition of Private Issuers

Private issuer means an issuer:

- that is not a reporting issuer or an investment fund
- the securities of which, other than non-convertible debt securities,
  - are subject to restrictions on transfer (contained in shareholder's agreement or constating documents), and
  - are beneficially owned by not more than 50 persons (excluding current and former employees), and
- that has distributed its securities only to certain specified persons or has completed a transaction and immediately following the completion of the transaction, its securities were beneficially owned only by certain specified persons and since the completion of the transaction has distributed its securities only to certain specified persons

## Specified Persons Include...

- Accredited investors
- A person that is not the public
- Directors, officers or employees of the issuer or an affiliate
- Founders or control persons of the issuer
- Certain family members of directors, officers, founders or control persons of the issuer or selling security holder
- Close personal friends or close business associates of a director, officer, founder or control person of the issuer
- Existing shareholders of the issuer

# Private Issuer Exemption

## Additional Requirements

### Commissions and Finder's Fees

- Except for a distribution to an accredited investor, no commission or finder's fee may be paid to any director, officer, founder or control person of an issuer

### Resale Restrictions – Seasoning Period

- If a security is distributed pursuant to the private issuer exemption, the first trade of that security or the first trade of securities issued by a private company or private issuer after the issuer has ceased to be a private company or private issuer will be considered a distribution and subject to the prospectus requirement, unless all of the following are satisfied:
  - 1) The issuer is and has been a reporting issuer in a jurisdiction of Canada for the four months immediately preceding the trade.\*
  - 2) The trade is not a control distribution.
  - 3) No unusual effort is made to prepare the market or create a demand for the security that is the subject of the trade.
  - 4) No extraordinary commission or consideration is paid to a person or company in respect of the trade.
  - 5) If the selling security holder is an insider or officer of the issuer, the selling security holder has no reasonable grounds to believe that the issuer is in default of securities legislation.
- If the resale restrictions aren't met, the trade will be subject to the prospectus requirement or must be made in reliance on another prospectus exemption

# Offering Memorandum Exemption

The prospectus requirement does not apply to a distribution by an issuer of a security of its own issue to a purchaser that purchases the security as principal if the issuer delivers an offering memorandum (OM) to the purchaser and certain conditions are met. These conditions vary by jurisdiction.

## Offering Memorandum Requirements

### Overview:

- Document that provides information about the business or affairs of an issuer and that has been prepared primarily for delivery to and review by a prospective purchaser to assist the prospective purchaser in making an investment decision
- Document must be in the prescribed form and financial statements will also be required

### Conditions to Rely on Exemption:

- The acquisition cost of all securities acquired by the purchaser, who is an individual, in the preceding 12 months cannot exceed:

Investor Type	Assets Test	Investment Limits (Varies by Province)		
		BC & NL:	AB, SK, ON, QC, NB, NS:	MB, NWT, NU, PE, YT:
<b>Eligible Investor (includes Accredited Investors*)</b>	<ul style="list-style-type: none"> <li>• &gt;\$75k (\$125k with spouse) net income before tax</li> <li>• &gt;\$400k net assets</li> </ul>	<ul style="list-style-type: none"> <li>• No limit</li> </ul>	<ul style="list-style-type: none"> <li>• \$30k or \$100k if receive professional advice</li> </ul>	<ul style="list-style-type: none"> <li>• No limit</li> </ul>
<b>Non-Eligible Investor</b>	<ul style="list-style-type: none"> <li>• Less than Eligible Investor test</li> </ul>	<ul style="list-style-type: none"> <li>• No limit</li> </ul>	<ul style="list-style-type: none"> <li>• \$10k</li> </ul>	<ul style="list-style-type: none"> <li>• \$10k</li> </ul>

*Note: Accredited Investors and Family, Friends and Business Associates are not subject to investment limits*

- At the same time or before signing the agreement to purchase the security, the purchaser must be provided with the OM and sign a risk acknowledgment form

**FIRST TRADES ARE SUBJECT TO THE SAME RESALE RESTRICTIONS AS THE AI EXEMPTION**

## Cannot be Relied For:

- Specified derivatives or structured finance products
- Issuers that are investment funds (unless non-redeemable)
- Distributions to persons created/used, solely to purchase or hold securities in reliance on the exemption

## OM Capital Raises by Social Impact Funds



# Minimum Amount Exemption

The prospectus requirement does not apply to a distribution of a security to a person that purchases as principal and meets the following requirements.

## Minimum Amount Requirements

### Conditions to Rely on Exemption:

- Person (investor) must not be an individual (i.e. exemption permitted for a partnership, unincorporated association, unincorporated syndicate, unincorporated organization and trusts)
- The investment is at least \$150,000 paid in cash at the time of distribution
- The distribution is of a security of a single issuer

### Cannot be Relied on For:

- Distributions to persons created/used, solely to purchase or hold securities in reliance on the exemption

**FIRST TRADES ARE SUBJECT TO THE SAME RESALE RESTRICTIONS AS THE AI EXEMPTION**

# Family, Friends and Business Associates Exemption

The prospectus requirement does not apply to a distribution of a security to a person that purchases as principal and meets the following requirements.

## Family, Friends and Business Associates Requirements

### Conditions to Rely on Exemption:

- In general, the purchaser must fall into one of the following categories:
  - Director, executive officer or control person of the issuer or its affiliates
  - “Close personal friend” or “close business associate” of the foregoing
  - Founder of the issuer
  - Certain family members of the foregoing

**“Close personal friend”** means an individual who knows the person well enough and has known them long enough to be in a position to assess their capabilities and trustworthiness and to obtain information from them with respect to the investment.

**“Close business associate”** means an individual who has had sufficient prior business dealings with the individual to be in a position to assess their capabilities and trustworthiness and to obtain information from them with respect to the investment.

### Cannot be Relied on For:

- Investment funds (Ontario)
- Short-term securitized products and, in Ontario, distributions by private issuers

### Additional Requirements:

- Risk acknowledgement form is required in certain jurisdictions (SK and ON) and must be retained for 8 years after the distribution

**FIRST TRADES ARE SUBJECT TO THE SAME RESALE RESTRICTIONS AS THE AI EXEMPTION**

# Crowdfunding Exemption

In Canada, there are two prospectus exemptions used in the provinces to raise capital via crowdfunding 1) MI 45-535 Start-up Crowdfunding, and 2) MI 45-108 Crowdfunding. In early 2020, securities regulators announced plans to harmonize a new National Instrument (NI 45-110 – Start-Up Crowdfunding Registration and Prospectus Exemptions) that would replace all local start-up crowdfunding regimes across Canada.

## Proposed Start-Up Crowdfunding Prospectus Exemption

The prospectus requirement does not apply to a distribution by an issuer of its own eligible security through a funding portal if, among other things:

1. Issuer is not a reporting issuer or an investment fund
2. Aggregate funds  $\leq$  \$1,000,000 within 12 months ending on last day of distribution period
3. A compliant Crowdfunding Offering Document is used
4. Distribution period is not more than 90 days after the document is first made available
5. Each investor invests no more than:
  - a. \$2.5k; or
  - b. \$5k if received suitability advice from a registered dealer
6. Issuer's head office is in a participating jurisdiction

## Other Considerations

- The issuer is not required to provide financial statements to investors
- No continuous disclosure requirements

# Co-operative Exemption

Registered Co-operatives, under a provincial Cooperatives Act, may be eligible for a prospectus exemption, subject to various provincial securities laws

## Examples of Provincial Co-operative Securities Laws

Ontario	BC - Rule 45-530	Alberta - Rule 45-511
<ol style="list-style-type: none"><li>1. Co-op's with &gt; 35 members (pre or post offering) are required to file an Offering Statement (similar to an OM) with the FSCO</li><li>2. If <math>\leq 35</math> members, an Offering statement is not required if, among other things:<ol style="list-style-type: none"><li>a. Members do not purchase &gt; \$1k/year</li><li>b. Total held in the co-op by a member is <math>\leq</math> \$10k</li></ol></li></ol>	<ol style="list-style-type: none"><li>1. Co-op 'investment shares' can only be purchased by members who have been members for at least 12 months prior to the share purchase</li><li>2. Members limited to an aggregate investment in the co-op of \$5k</li><li>3. Co-op limited to 150 members (not including members employed in full time capacity)</li></ol>	<ol style="list-style-type: none"><li>1. Co-op 'investment shares' can only be purchased by members who have been members for at least 12 months prior to the share purchase</li><li>2. The aggregate acquisition cost to the members in any one calendar year cannot exceed:<ol style="list-style-type: none"><li>a. \$10k for co-op's with <math>\leq 100</math> members; or</li><li>b. \$5k for co-op's with &gt; 100 members</li></ol></li></ol>

# Canadian Securities Law

The Registration Requirement



# Firm Registration Requirements

- Unless an exemption is available, firms that carry out the activities noted below are required to be registered in the applicable category:

REGISTRATION CATEGORY	ACTIVITY REQUIRING REGISTRATION
<b>A Dealer</b> <i>(Investment Dealer, Mutual Fund Dealer, Exempt Market Dealer, Restricted Dealer)</i>	<ul style="list-style-type: none"><li>• In the business of trading securities*</li><li>• Acting as an underwriter (a person who agrees to purchase, as principal, securities with a view to distribution) or an agent (a person who offers securities for sale in connection with a distribution)</li></ul>
<b>B Adviser</b> <i>(Portfolio Manager, Restricted Portfolio Manager)</i>	<ul style="list-style-type: none"><li>• In the business of advising with respect to investing in, buying or selling securities*</li></ul>
<b>C Investment Fund Manager</b>	<ul style="list-style-type: none"><li>• Acting as an investment fund manager (a person or company that directs the business, operations or affairs of an investment fund)</li></ul>

\*Note: The CSA is in the process of developing a proposed registration regime for derivatives dealers, derivatives advisers and other derivative market participants.

# Firm Registration Requirements

- Unless an exemption is available, firms that are “in the business” of trading or advising must register in a dealer or adviser category, as applicable.

## Business Trigger for Dealer and Adviser Registration

- Only entities or individuals “in the business” of trading or advising are required to register with the securities regulators
- This is a factual determination which must be made on a case-by-case basis. The following factors may suggest a person is “in the business” of trading or advising:
  - engaging in activities similar to a registered dealer or adviser
  - acting as an intermediary or market maker
  - activity is repetitious, regular or continuous
  - activity is done with compensation or remuneration in mind
  - contacting someone to solicit trades or to offer advice
- Note: Investment funds are considered to be “in the business” of trading or advising

# Dealer and Advisor Registration Categories

Registered Firms acting as a dealer or adviser must register in the applicable registration category as follows:

REGISTRATION CATEGORY	PERMITTED ACTIVITIES
<b>DEALER</b>	
<b>Investment Dealer</b>	<ul style="list-style-type: none"> <li>Can act as a dealer or an underwriter for any type of securities and any type of client, including 'retail'</li> <li>Must be a member and follow IIROC rules</li> </ul>
<b>Mutual Fund Dealer</b>	<ul style="list-style-type: none"> <li>Can only deal in prospectus qualified mutual funds</li> <li>Must be a member and follow MFDA rules</li> </ul>
<b>Exempt Market Dealer</b>	<ul style="list-style-type: none"> <li>Can act as a dealer or an underwriter in respect of the distribution of securities that are prospectus exempt</li> <li>Can act as a dealer by trading a security if the trade is not a distribution, an exemption would be available to the seller if the trade was a distribution and the class of security is not listed, quoted or traded on a marketplace</li> </ul>
<b>Restricted Dealer</b>	<ul style="list-style-type: none"> <li>Can act as a dealer or an underwriter in accordance with the terms, conditions, restrictions or requirements applied to its registration</li> <li>For registrants that may not qualify under another dealer category</li> </ul>
<b>ADVISOR</b>	
<b>Portfolio Manager</b>	<ul style="list-style-type: none"> <li>Can act as an adviser with respect to investing in, buying or selling any type of security, based on client instructions or discretionary authority</li> </ul>
<b>Restricted Portfolio Manager</b>	<ul style="list-style-type: none"> <li>Can act as an adviser in respect of any security in accordance with the terms, conditions, restrictions or requirements applied to its registration</li> <li>Permits individuals or firms to advise in specific securities, classes of securities or securities of a class of issuers</li> </ul>

# Registration Requirements for Private Equity / Venture Capital Investing

- Private equity (PE) and venture capital (VC) investing involves a range of activities that may require registration. However, since such funds are typically **not found to be “in the business” of dealing or advising**, they typically do not require a registration in one of the dealer or adviser categories.
- Since the investment portfolio would generally not be considered an “investment fund” due to the PE / VC’s control over the investee company, such funds would also not need to be registered as an investment fund manager.

Key Characteristics of a PE / VC Firm	Firm Registration Categories
<ol style="list-style-type: none"><li>1. Typically raise money under prospectus exemptions in NI 45-106;</li><li>2. Investor capital remains invested for a period of time;</li><li>3. Investor capital is invested in the securities of portfolio companies that are not publicly traded;</li><li>4. PE/VC fund looks to realize on its investment either through a public offering or a sale of the business, at which point the investors’ money will generally be returned to them, along with any profit;</li><li>5. Investors rely on the expertise of the PE/VC fund and its manager to select and manage the portfolio companies it invests in; and</li><li>6. PE/VC fund manager typically receives a management fee and carried interest in the profits generated from its investments and does not receive compensation for raising capital or trading in securities</li></ol>	<p>PE / VC firms are not required to register as:</p> <ol style="list-style-type: none"><li>1. A <b>dealer</b>: if both the raising of money from investors and investing of that money by the PE/VC are occasional and uncompensated activities (not including management fees and carried interest);</li><li>2. An <b>adviser</b>: if the advice provided in connection with the purchase and sale of companies is incidental to the PE/VC’s active management of these companies; or</li><li>3. An <b>investment fund manager</b>: if the investment portfolio does not constitute an “investment fund”</li></ol>

# Individual Registration Requirements

An individual carrying out the following activities for a Registered Firm must register in the applicable registration category as follows:

REGISTRATION CATEGORY	PERMITTED ACTIVITIES
<b>Dealing Representative (DR)</b>	<ul style="list-style-type: none"><li>· Can act as a dealer or an underwriter in respect of securities</li><li>· Limited to those securities which their sponsoring firm is permitted to trade/underwrite (e.g. mutual fund securities, exempt market securities etc.)</li></ul>
<b>Advising Representative (AR)</b>	<ul style="list-style-type: none"><li>· Can act as an adviser in respect of securities</li><li>· Limited to those securities which their sponsoring firm is permitted to advise on</li></ul>
<b>Associate Advising Representative (AAR)</b>	<ul style="list-style-type: none"><li>· Can provide advice under the supervision of an AR</li></ul>
<b>Ultimate Designated Person (UDP)</b>	<ul style="list-style-type: none"><li>· The chief executive officer of a registered firm</li><li>· Responsible for their firm's overall compliance with securities law</li></ul>
<b>Chief Compliance Officer (CCO)</b>	<ul style="list-style-type: none"><li>· Manages a registered firm's day-to-day compliance with securities law (e.g. establishes and maintains policies and procedures, assesses ongoing compliance, reports to the UDP and provides annual reports to the board)</li></ul>

# Individual Registration Requirements

## Dealer

Investment		Mutual Fund		Exempt Market	
DR	CCO	DR	CCO	DR	CCO
<ul style="list-style-type: none"> <li>IROC proficiency</li> </ul>	<ul style="list-style-type: none"> <li>IROC proficiency</li> </ul>	1 of 5 options: <ol style="list-style-type: none"> <li>CIF</li> <li>CSC</li> <li>IFIC</li> <li>CFA + 12 mo's securities experience in the 36 mo's before applying</li> <li>AR req'ts for PM or exempt</li> </ol>	1 of 2 options: <ol style="list-style-type: none"> <li>CIF, CSC, or IFC; and PDO, MFDC or CCOQ; and 12 mo's securities experience in the 36 mo's before applying</li> <li>CCO req'ts for PM or exempt</li> </ol>	1 of 4 options: <ol style="list-style-type: none"> <li>CSC</li> <li>EMP</li> <li>CFA + 12 mo's securities experience in the 36 mo's before applying</li> <li>AR req'ts for PM or exempt</li> </ol>	1 of 2 options: <ol style="list-style-type: none"> <li>PDO or CCOQ; and EMP or CSC; and 12 mo's securities experience in the 36 mo's before applying</li> <li>CCO req'ts for PM or exempt</li> </ol>

## Portfolio Manager

AR	AAR	CCO
1 of 2 options: <ol style="list-style-type: none"> <li>CFA + 12 mo's investment management experience in the 36 mo's before applying</li> <li>CIM + 48 mo's investment management experience, 12 mo's of which was gained in the 36 mo's before applying</li> </ol>	1 of 2 options: <ol style="list-style-type: none"> <li>Level 1 of CFA + 24 mo's investment management experience</li> <li>CIM + 24 mo's investment management experience</li> </ol>	1 of 3 options: <ol style="list-style-type: none"> <li>CSC (except if have CFA); and PDO or CCOQ; and CFA or professional designation as a lawyer, CA, CGA, CMA, notary in Quebec or foreign equivalent, AND;               <ul style="list-style-type: none"> <li>36 mo's of securities experience at an investment dealer, registered adviser, or investment fund manager; or</li> <li>36 mo's providing professional services to the securities industry and 12 mo's working at a registered dealer, registered adviser, or investment fund manager</li> </ul> </li> <li>CSC; and PDO or CCOQ; and 5 yrs working at:               <ul style="list-style-type: none"> <li>an investment dealer or registered adviser (including 36 mo's in compliance capacity); or</li> <li>a Canadian financial institution in a compliance capacity relating to portfolio management and 12 mo's at a registered dealer or registered adviser</li> </ul> </li> <li>PDO or CCOQ; and AR req'ts for PM</li> </ol>

## Investment Fund Manager

CCO
1 of 3 options: <ol style="list-style-type: none"> <li>CSC (except if have CFA); and PDO or CCOQ; and CFA or professional designation as a lawyer, CA, CGA, CMA, notary in Quebec or foreign equivalent, AND;               <ul style="list-style-type: none"> <li>36 mo's of securities experience at a registered dealer, registered adviser, or investment fund manager; or</li> <li>36 mo's providing professional services in the securities industry and 12 mo's working at an investment fund manager</li> </ul> </li> <li>CIF, CSC or IFIC; and PDO or CCOQ; and 5 yrs of securities experience working at a registered dealer, registered adviser or an investment fund manager (including 36 mo's in compliance capacity)</li> <li>CCO req'ts for PM or exempt</li> </ol>

## Glossary

**AR:** Advising Representative  
**AAR:** Associate Advising Representative  
**CA:** Chartered Accountant  
**CCO:** Chief Compliance Officer  
**CCOQ:** Chief Compliance Officers Qualifying Exam  
**CFA:** CFA Charter  
**CGA:** Certified General Accountant Exam/Partners, Directors  
**CMA:** Certified Management Accountant

**CIF:** Canadian Investment Funds Course Exam  
**CIM:** Canadian Investment Manager designation  
**CSC:** Canadian Securities Course Exam  
**DR:** Dealing Representative  
**EMP:** Exempt Market Products Exam  
**IFIC:** Investment Funds in Canada Course  
**MFDC:** Mutual Funds Dealer Compliance Exam  
**PDO:** Officers', Partners' and Directors' and Senior Officers Course Exam

# Registrant – KYC and Suitability Obligations

To be compliant, registered Dealers and Advisers must collect and maintain certain information about their clients and complete suitability assessments of their clients and investments

## KNOW YOUR CLIENT (“KYC”)

- Identify the client and make reasonable inquiries as to the reputation of the client;
- Establish whether the client is an insider of a reporting issuer of publicly listed company;
- Understand the client’s investment needs and objectives, financial circumstances and risk tolerance;
- Establish the creditworthiness of the client if the registered firm is financing the client’s acquisition of a security
- If the client is a corporation, partnership or trust, establish:
  - The nature of the client’s business
  - Corporation - identity of any individual with beneficial ownership or control or direction over, directly or indirectly, >25% of the voting rights
  - Partnership/Trust – identity of individuals exercising control over the affairs
- Required to keep information current

## SUITABILITY

- Take reasonable steps to ensure that before making a recommendation to or accepting an instruction from a client, the purchase or sale is suitable for the client
- If the registrant’s reasonable opinion is it would not be suitable, the registrant must inform the client of its opinion and must not act on the instruction unless the client instructs the registrant to proceed nonetheless
- To make suitability determinations, registrants must understand the products (Know Your Product) they recommended to clients e.g.
  - return, leverage, conflicts of interest and overall complexity, transparency and uniqueness; risks such as default, liquidity, volatility and exposure to counterparties; and costs such as commissions, sales charges, trailer fees, management fees etc.

# Registrant – Incoming Amendments to KYC and Suitability Obligations and the Addition of New Explicit KYP Obligations

As of December 31, 2021, amendments to registrants' KYC and suitability obligations will come into force  
Registrants will also be subject to new explicit Know Your Product ("KYP") obligations

## KYC Amendments

- Amendments expand enumerated categories of KYC information that registrants must gather to include:
  - personal circumstances;
  - investment knowledge;
  - risk profile; and
  - investment time horizon
- Must take reasonable steps, within a reasonable time after receiving the information, to have clients confirm the accuracy
- Must update/review due to certain events & at regular intervals

- Amendments enhance and clarify registrants' suitability obligations
- New core component = registrants must **"put the client's interests first"** when opening an account or taking an investment action
- The amendments include a list of **five factors that must be considered when making a determination:** (i) KYC information; (ii) KYP information; (iii) the concentration of securities within the account and the liquidity of those securities; (iv) the potential and actual impact of costs on the client's return on investment; and (v) a reasonable range of alternative actions available to the registrant
- There are also a list of enumerated events that trigger the requirement for a suitability review

## Suitability Amendments

## New Explicit KYP Amendments

- Introduces express KYP requirements intended to support the enhanced suitability determination
- **Registered firms** will be required to know the **attributes** (return, leverage, complexity etc.) and **associated risks** (liquidity, volatility, default, counterparty etc.) of products recommended to clients, and must take reasonable steps to:
  - Assess the relevant aspects of the securities, including the securities' structure, features, risks, initial and ongoing costs and the impact of those costs
  - Approve the securities to be made available to clients
  - Monitor the securities for significant changes
- **Registered individuals** must take reasonable steps to understand securities to make a suitability determination for their client investments
- Registered individuals may only purchase or recommend securities approved by their firms to be made available to clients



# Registrant – Internal Controls and Systems

Registered firms must establish internal procedures to monitor their ongoing activities

## Compliance

A registered firm must:

1. Establish system of controls and supervision to ensure compliance with securities legislation and manage the risks associated with its business in accordance with prudent business practices
2. Appoint an ultimate designated person (UDP)
3. Appoint a chief compliance officer (CCO)
4. UDP and CCO must have access to board or persons acting in similar capacity
5. Maintain minimum working capital:
  - a. \$25k for registered adviser
  - b. \$50k for registered dealer
  - c. \$100k for registered investment fund manager
6. Maintain adequate insurance in accordance with securities laws
7. Deliver financial statements and excess working capital calculations and for IFMs, net asset value adjustments, to the regulator

## Books and Records

A registered firm must maintain records to:

1. Record its business activities, financial affairs & client transactions
2. Demonstrate compliance with securities legislation e.g. audited accounts, capital position, insurance, internal control procedures, compliance with firm policies, segregation of client property, identification of all transactions conducted by the firm
3. Provide an audit trail for client orders and transactions and each trade
4. Generate client account activity reports
5. Provide securities pricing as required by securities legislation
6. Document opening of client accounts (incl. any agreement)
7. Demonstrate reasonable steps taken to meet “Know Your Client” (KYC) and suitability obligations
8. Demonstrate compliance with complaint-handling requirements
9. Document correspondence with clients, and compliance and supervision actions taken by the firm
10. Keep records securely stored for 7 years from the date of their creation

# Illustrative Registration Process and Fees

## 5 Step - Registration Process

1. Enroll with the National Registration Database (“NRD”)
  - a. Obtain a NRD number
  - b. NRD enables the firm to submit individual registration filings and certain firm filings to the regulators electronically
2. Complete form 33-109F6 to register as a Dealer, Adviser or Investment Fund Manager. Requires:
  - a. business plan;
  - b. policies and procedures manual (the table of contents of which will be submitted with the firm’s filing);
  - c. organizational chart, including the firm’s reporting structure;
  - d. ownership chart;
  - e. calculation of excess working capital; and
  - f. audited financial statements. If the firm is a start-up company, you may attach an audited opening statement of financial position instead.
3. Apply for individuals to be registered with the firm
4. Obtain Ombudsman for Banking Services and Investments (“OBSI”) membership
  - a. Unless the firm is solely seeking registration as an investment fund manager or proposes to deal solely with permitted clients that are not individuals, the firm must seek OBSI membership

## Categories of Fees for Registration

5. Pay fees (note: varies by the complexity of each fund)

Start-Up Fees	
Accounting	Initial review and implementation of fund structure
Legal	Initial organization; registration applications; compliance manuals
Registration	~\$600-\$2,500 depending on registration type and province
Ongoing Fees	
Admin	Custodial fees; expenses associated with distributions; brokerage commissions and expenses associated with portfolio transactions; taxes; interest expense
Ongoing Accounting and Legal Fees	Legal compliance costs; ongoing financial reporting; legal and accounting advice in connection with offering documents and subscription agreements; regulatory filings for sales; audit fees