

Crowdfunding 2015 SURVEY RESPONSES REPORT



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EXECUTIVE SUMMARY

1. Introduction

The IOSCO Committee for the Regulation of Market Intermediaries (Committee 3 or C3) has carried out a fact-finding survey to accomplish two goals – first, to enhance IOSCO’s understanding of developments in members’ current or proposed investment-based crowdfunding regulatory programs and second, to highlight emerging trends and issues in this area. This Report provides a summary of the responses from the survey.

2. Responses

Jurisdictions surveyed reported a variety of approaches to regulate crowdfunding. Among other things, some jurisdictions apply their general securities regulatory framework, which often allows the use of certain built-in flexibilities, while others have either introduced (or have proposed to introduce) *ad hoc* regulatory crowdfunding regimes. While these measures are quite diverse and tailored to specific regulatory and market concerns in the respective jurisdictions, some high level similarities appear present.

One major commonality is the objective of achieving a balance between risks/investor protection related concerns and the positive role securities markets can play in supporting economic recovery and growth through the promotion of crowdfunding. It is clear, however, that the particular way this balance is shaped varies from one jurisdiction to another.

Among the regulatory measures to foster crowdfunding, the review demonstrated that most jurisdictions that have introduced (or have proposed to introduce) *ad hoc* regulatory crowdfunding regimes require:

- Lighter entry requirements and, less frequently, special conduct of business provisions for the funding portals; and
- Limited reporting requirements for issuers.

These flexibilities are usually counterbalanced by a number of focused restrictions or tailored rules meant to ensure integrity of information and protect investors. For instance, less onerous provisions on funding portals are usually counterbalanced by:

- A number of limitations on the services and activities the portal is permitted to perform;
- The duty to appoint a third party custodian to hold an investor’s assets;
- Limitations to an investor’s ability to access funding portals; and
- Imposing risk acknowledgement and investor education regimes.

Another commonality that emerged from the review is that restrictions may apply to cross-border crowdfunding fundraising. For instance, special crowdfunding regimes often provide that the issuer and/or the managers running the funding portal must be incorporated locally.

More broadly, jurisdictions employ a number of regulatory measures designed to address the major risks considered with crowdfunding:

❖ Risk of default and high failures of start-up businesses

Many members require funding portals / intermediaries to conduct some due diligence on the issuer and/or the crowdfunding offerings. This may consist of, for instance:

- Conducting a mandatory review of issuers' business plans to ensure that the issuers have genuine business ideas;
- Disclosing the criteria used in the project selection process; and
- Reporting to the regulator successfully completed offerings.

Another way members have designed measures to address this risk is that access to the funding portal maybe denied if:

- There is a reasonable basis to believe that an issuer is subject to a disqualification; or
- Professional investors do not undersign a percentage of the offer.

Also, a common mechanism adopted by many jurisdictions designed or proposed to be designed to protect investors against risk of default is to place a limit on investment amounts.

❖ Platform failure

Some respondents impose specific requirements on intermediaries to:

- Ensure the integrity of the information received and published through the funding portals;
- Establish proper IT systems and back-up facilities;
- Have sound procedures to ensure that in case of activity cessation, they continue to provide all or part of the services they committed to provide.

❖ Fraud and money laundering/terrorist financing

As a general rule, the responding jurisdictions address these risks by applying the same regulatory provisions on fraud and money laundering/terrorist financing generally applicable in the securities sector. Furthermore, steps such as conducting due diligence of the issuer and/or the offer and the appointment of third party custodians are also meant to reduce the risk of fraud.

❖ Lack of liquidity

To address liquidity risks, most jurisdictions impose specific disclosure requirements tailored to crowdfunding offerings. These requirements include, for instance, mandating publication -- on the funding portal -- of offering documents prepared in accordance with specific content and form prescribed by the regulator, even where the offering would trigger application of an exemption to the general prospectus publication requirements.

In some cases, the offering documents must be drafted in a concise and clear manner to allow comparison across the various offers on the portal.

Such offering documents include specific information on the liquidity risks and the absence of a secondary market, as well as other risks. In addition, investors are often given prominent risk warnings that must be acknowledged, including information on liquidity risks.

One jurisdiction introduced special retail investor rights, including tag-along rights allowing retail investors to withdraw from the offer or sell his/her stake in the event of a change in the control within three years the closure of the offering.

❖ Information asymmetry and investor inexperience

Special provisions dealing with these risks include requirements to ensure that investors have reviewed education materials or have completed a questionnaire demonstrating understanding of the essential features and main risks of the crowdfunding offer.

In some cases access to crowdfunding funding portals is restricted to investors who have been previously informed through warnings on the risks associated with investing in non-listed companies and have passed dedicated investor education interviews.

3. Main conclusions

The survey responses reveal that, despite certain commonalities and divergences in various jurisdictions, and the potential risks and positive rewards, crowdfunding regimes are in their infancy (or have not yet been launched) in most jurisdictions surveyed. Accordingly, this Report does not propose a common international approach to the oversight or supervision of on-going or proposed programs. As this new sphere of activity continues to develop, IOSCO may consider whether it is appropriate to evaluate the effects of the different approaches and may assess whether any further work is needed.

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I. BACKGROUND

The 2008 financial crisis resulted in a number of bank failures and, consequently, the implementation of new capital adequacy regulations for banks, such as Basel III. As a result, credit providers have become increasingly constrained in their ability to make loans available to worthy investment projects, particularly with respect to small and medium enterprises. To help address this problem, many jurisdictions have sought ways to expand equity investment in small firms and start-ups, which are often unable to raise capital through existing securities issuances, to stimulate growth and increase employment. One of these ways has been through the use of equity crowdfunding, which seeks to use technology, among other things, as an alternative way to raise capital¹.

Because crowdfunding is a new and developing area, particularly in the retail markets, in 2014, the IOSCO Research Department developed a Staff Working Paper “Crowdfunding: An Infant Industry Growing Fast,” (“IOSCO Staff Working Paper”), which provided economic analysis in this area and considered possible regulatory implications for this type of capital fundraising².

As the IOSCO Staff Working Paper found, crowdfunding platforms may adopt diverse business models, which depend on local regulatory regimes, as well as the legal structures by which the platforms organize themselves. Some jurisdictions see crowdfunding as an innovative way to facilitate funding for small and medium sized enterprises and seed capital to start-up companies, with a goal of promoting economic growth. In addition, other benefits of crowdfunding may include such things as:

- Lower cost of capital/high returns;
- Portfolio diversification;
- Cost efficiency of relatively simple infrastructure;
- Convenience of online platform; and
- Increased competition in a space traditionally dominated by a few providers.

At the same time, however, the IOSCO Staff Working Paper recognized that there may be a number of risks for investors³ with crowdfunding schemes, including:

¹ An IOSCO Staff Working Paper discussed below states that “*Crowd-funding is an umbrella term describing the use of small amounts of money, obtained from a large number of individuals or organizations, in order to raise funds for a project, business/personal loan or other financing needs through online web based platforms. Peer-to-peer lending is a form of crowd-funding used to fund loans, which are paid back with interest. Equity crowd-funding is the raising of capital through the issuance of stock to a number of individual investors using the same method as crowd-funding.*”

² Kirby and Worner, *Crowdfunding: An Infant Industry Growing Fast* (2014), IOSCO Research Department Staff Working Paper, available at <http://www.iosco.org/research/pdf/swp/Crowd-funding-An-Infant-Industry-Growing-Fast.pdf>. The views and opinions expressed in this Staff Working Paper are solely those of the IOSCO Research Department and do not necessarily reflect the views of IOSCO or its members.

³ In the EU the European Commission published a guide on risks on project owners as well: http://ec.europa.eu/growth/tools-databases/crowdfunding-guide/what-is/risks/index_en.htm

- Lending default and high failures of start-up businesses;
- Platform failure;
- Fraud and money laundering/terrorist financing;
- Lack of liquidity (*i.e.*, the absence of secondary market/exit strategy)
- Information asymmetry; and
- Investor inexperience and lack of due diligence.

While this Report does not address the relative benefits or risks of crowdfunding, it recognizes that a number of jurisdictions have either implemented or proposed crowdfunding regimes. As a result, in an effort to better understand these initiatives, IOSCO's Regulation of Market Intermediaries Committee 3 (C3) carried out a fact-finding survey on members' current or proposed crowdfunding programs in summer 2014. Because crowdfunding appears to raise questions on virtually all aspects of securities markets regulation, the survey requested information in the following eight areas:

1. **Crowdfunding activities covered by current or proposed securities regulation:** equity, collective investment schemes, bonds, convertibles (sometimes referred to as "Investment-based Crowdfunding"), peer-to-peer lending⁴ or some form of it.
2. **Market intermediaries/Portals:** registration requirements, permissions and prohibitions, business conduct rules (*e.g.*, customer due diligence, suitability, marketing/promotion), procedures for dealing with platform/intermediary failure, risk of fraud, availability of communication channels, handling of customers' funds and assets, liability attached to different parties (*e.g.*, which party has the obligation to conduct due diligence on the issuer, liability for disclosures made to investors), reporting obligations, cooling-off requirements, dispute resolution.
3. **Equity/Debt Issuers:** issuer's qualifications (*e.g.* size/ type of companies), limits on offering size, offering parameters, limits on securities, risk of default.
4. **Investors:** Investor protection, eligibility of investors (*e.g.* sophisticated investors only), restrictions regarding number of investors and maximum amount of investment, experience, education.
5. **Disclosure:** point of sale and on-going disclosure, prospectus requirements (*e.g.*, type of information to be included, exemption from prospectus requirements), and liability attached to materials.
6. **Possible cross-border implications**, if any.
7. **Mitigation of emerging risks:** cyber risk, interconnectedness, etc.
8. **Other aspects:** costs and benefits.

This Report describes current and proposed regulatory initiatives in the area of Investment-based Crowdfunding activities. The summary not only enhances IOSCO's understanding of current developments in crowdfunding regulation, but it also illuminates emerging trends and issues.

⁴ In line with the definition provided in the IOSOC Staff Working Paper in Note 1 above, in this Report peer-to-peer lending means the use of an online platform that matches lenders/investors with borrowers/issuers in order to provide unsecured loans.

II. KEY SURVEY RESPONSES

A. Overview of Regulatory Approaches to Crowdfunding

Twenty-three IOSCO members participated in this survey⁵. As discussed below, the results show a variety of approaches (current and proposed) in the regulation and supervision of crowdfunding.

1. Peer-to-Peer Lending

The remit of securities regulators and the sharing of responsibilities among authorities involved in the supervision of the financial sector vary from jurisdiction to jurisdiction. This survey asked members to specify if peer-to-peer lending, or some form of it, is covered by their regulation.

The survey results demonstrate that in the jurisdictions where financial market supervision is conducted by one integrated regulator, peer-to-peer lending falls under the remit of the regulator, provided that the activity is captured by financial regulations. This is the case, for instance, in Germany, where BaFIN supervises lending platforms and/or their users in those cases where the activities performed, and the relevant contractual arrangements, trigger application of licensing requirements. Likewise, in the United Kingdom, the UK FCA is responsible for the prudential and conduct regulation of peer-to-peer lending between individuals or between individuals and businesses.

Conversely, in jurisdictions that have adopted a twin-peaks regulatory model, where one authority is responsible for prudential supervision and a second authority is responsible for business conduct supervision, the two regulators usually share responsibility for the oversight of peer-to-peer lending, each within its own remit. In The Netherlands, the prudential and the business conduct regulators issued a joint interpretation on crowdfunding, including peer-to-peer lending, to develop a practical, step-by-step plan that helps assess whether activities fall within financial sector supervision.

In other jurisdictions supervisory responsibilities in the financial sector are divided on the basis of the type of entity and the activity conducted, and/or the financial product offered. In this context, there may be a number of responsible authorities with its specific remit for the securities market, or the banking, or the insurance and/or pension funds sectors. There may be also a mixture of twin peaks and sectorial-based division of responsibilities.

⁵ See Appendix A: «List of Respondents». This number includes the United States Commodity Futures and Trading Commission («United States CFTC») which provided a response to the survey indicating that since the survey related to securities-based products and that it appeared to have no application to derivatives, the survey was not within the remit of the CFTC

According to the survey responses, under these various supervisory models, peer-to-peer lending is typically under the purview of the prudential or the banking regulator, whenever the activity triggers application of licensing or registration requirements⁶. Involvement of the securities regulator is sometimes envisaged where the activities of the platform are qualified as asset management / management of investment schemes; this is the case, for instance, in Australia and in the EU⁷.

2. Investment-based Crowdfunding

All respondents indicated that they have some responsibilities concerning the regulation of Investment-based Crowdfunding (“CF”), as opposed to peer-to-peer lending, although the approaches vary from jurisdiction to jurisdiction.

In particular, the slight majority of respondents (12 out of 23)⁸ supervise CF only on the basis of their general, current securities regulatory framework and do not currently have plan to introduce a set of requirements specifically capturing CF. Depending on the business model adopted, CF-related activities may be subject to the vast majority of provisions applicable to market intermediaries, issuers and investment products. Broadly speaking, respondents mentioned that CF is captured by their supervision when and to the extent that:

- the activity of the funding portal⁹ manager triggers application of licensing or registration requirements (e.g., the portal manager holds client assets, provides investment advice and/or carries out other intermediation services, establishes secondary markets and / or offers services or products which may qualify as management of investment schemes); or
- the offering of investment products entails application of prospectus publication-related and/or authorization requirements.

In some instances, CF activities are typically subject to flexibilities in current law, such as waivers from licensing or registration and/or exemptions from authorization and/or prospectus publication related requirements¹⁰.

⁶ This is the case, for instance, in Brazil, France, Italy and the United States.

⁷ In the EU, on 26 February 2015 the European Banking Authority (EBA) issued an Opinion on peer to peer lending and concluded that EU law does not currently cover the lending-related aspects. As a result, several risks and risk drivers that the EBA had identified are unlikely to be addressed.

These risks include a lack of, or insufficient requirements on, any due diligence processes, assessments of borrowers’ creditworthiness conducted by a platform, and a lack of or insufficient safeguards against platform default. The Opinion is available at: [https://www.eba.europa.eu/documents/10180/983359/EBA-Op-2015-03+\(EBA+Opinion+on+lending+based+Crowdfunding\).pdf](https://www.eba.europa.eu/documents/10180/983359/EBA-Op-2015-03+(EBA+Opinion+on+lending+based+Crowdfunding).pdf)

⁸ Brazil, Germany, Hong Kong, Hungary, India, Mexico, Morocco, The Netherlands, Pakistan, Romania, Singapore, Turkey.

⁹ In this Report, the term funding portal refers to portals, web platforms, intermediary platforms or other similar terms. Funding portals are used by market intermediaries to complete CF offerings.

¹⁰ The issue has been mentioned, for instance, by the respondents from Brazil, Germany, Hong Kong, Singapore, and the Netherlands.

For example, some respondents mentioned that in their jurisdiction:

- CF offerings usually trigger exemptions from prospectus-related regulation, often because of the limited amount of securities subject to the offer;
- On-line portals where the CF offers are placed are managed by entities which are not subject to licensing and/or registration requirements because, for instance, they do not hold clients assets or provide intermediation services or are otherwise subject to exemptions; and
- The investment products offered do not qualify as “securities”, “transferable securities” and/or “financial instruments”¹¹.

In Brazil, for example, securities public offerings can take advantage of an automatic non-registration waiver¹², so long as:

- the issuer is classified as a micro or small sized company (maximum revenues of R\$360,000 and R\$3.6 million respectively per year), and
- the offerings made by such companies cannot exceed R\$2.4 million in a twelve-month period.

Similarly in Hong Kong, the following offerings are generally exempted from prospectus requirements:

- an offering to professional investors (generally entities such as recognized exchange companies, recognized clearing houses, regulated banks, insurance companies, brokers, asset managers, pension and certain other investment funds, government bodies other than municipal governments) and high net worth investors (as prescribed by the relevant subsidiary legislation),
- an offering to not more than 50 persons,
- an offering in respect of which the total consideration payable for the shares or debentures concerned does not exceed HK\$5 million (or its equivalent in other currency), or
- an offering in respect of which the minimum consideration payable by any person for the shares or, in the case of debentures, the minimum principal amount to be subscribed or purchased, is not less than HK\$500,000 (or its equivalent in another currency).

¹¹ For instance, in Germany, market participants make use of “participatory loans” or other instruments outside the scope of EU Directives, subject to lighter regulation.

¹² Other minor conditions apply. Refer to Instruction CVM 400/03 article 5th

Some respondents reported that supervision of CF activities is conducted according to special *ad hoc* regulatory regimes, which have been recently adopted to address the peculiarities of this innovative way of collecting capital. This is the case in Canada¹³, France¹⁴, Italy¹⁵, Japan¹⁶, Spain, United Kingdom¹⁷ and the US¹⁸.

In Korea¹⁹ rules on CF are proposed, but not yet adopted. In Australia, although no firm proposed regulation is yet in place, an advisory committee recommended a potential regulatory regime for equity CF²⁰.

¹³ In Canada, the two following CF regimes (the “Canadian CF regimes”) have been adopted:

- On May 14, 2015, Québec, along with other provincial jurisdictions, adopted the Start-up crowdfunding registration and prospectus exemptions, containing a prospectus exemption available to non-reporting issuers only and a registration exemption for funding portals (the “Québec CF regime”). and
- On November 5, 2015, Québec, along with Ontario and other provincial jurisdictions, also adopted Multilateral Instrument 45-108 *Crowdfunding*, containing a crowdfunding prospectus exemption available to both reporting and non-reporting issuers, as well as a registration regime for a crowdfunding portal (the “Québec and Ontario CF regime”).

¹⁴ In France the regime came into force on 1st October 2014:

- French Ordonnance n° 2014-559 of 30 May 2014
- French Décret n° 2014-1053 of 16 September 2014
- Book III of the AMF General Regulation
- AMF Position – Non-guaranteed placement and crowdfunding – DOC-2014-10
- AMF Instruction DOC-2014-11
- AMF Q&A on crowdfunding.

¹⁵ The Italian regulatory framework for equity crowdfunding is detailed below:

- Law Decree no. 179/2012 turned into law no. 221 of December 17, 2012;
- Consolidated Law on Finance (Legislative Decree no. 58/98, hereinafter also “CLF”): Article 1, para. 5-*novies* and para. 5-*decies*; Article 50-*quinquies*; art. 100-*ter*; (as introduced by the above mentioned decree);
- Consob Regulation no.18592 of June 26, 2013;
- Consob Communication no. 0066128 of August 1, 2013;
- Consob Communication no. 11720 of February 13, 2014.

¹⁶ The new law is enforced from spring 2015.

¹⁷ In the United Kingdom, the FCA introduced new financial promotion rules for securities-based CF in April 2014, which apply in addition to existing FCA prudential and conduct of business requirements.

¹⁸ Responses regarding the CF framework in the United States were provided by SEC staff for survey purposes and relate to CF under Title III of the Jumpstart Our Business Startups Act.

¹⁹ Korea’s regulatory framework on CF focuses on equity CF. Rule changes proposed for the Financial Investment Services and Capital Market Act, which regulates brokers and issuers of publicly offered securities, are currently pending at the National Assembly.

²⁰ In June 2013, the Australian Government initiated a review of the regulation of crowd sourced equity crowdfunding (CSEF). The Companies and Markets Advisory Committee (the Committee) that concluded the review reported to the Government in June 2014. The Australian Government consulted in December 2014 on a number of alternative regulations of CSEF, one of which is to adopt the Committee's recommendations. The Australian Government has announced that they will be proceeding with reforms to

In France, Italy, Spain and United Kingdom the specialized regimes do not, or would not, derogate from the general securities law provisions, which come primarily from the implementation of EU laws.

Rather, these regimes extend application of regulatory provisions into areas, which would otherwise be subject to exemptions and impose additional requirements on conduct of business so as to address investor protection concerns arising from CF.

Moreover, in the EU, on 18 December 2014 ESMA issued an opinion²¹ and advice²² on Investment based-Crowdfunding containing, among other things, an analysis of how the CF typical business models map across to the existing EU jurisdictions. In particular, the Prospectus Directive²³ requires the publication of a prospectus before the offer of transferable securities to the public, or the admission to trading of such securities on a regulated market, unless certain exclusions or exemptions apply, including in relation to the size of the offer.

Furthermore, where applicable, MiFID²⁴ would impose duties on the CF platform in its capacity as an investment intermediary carrying out MiFID services/activities in relation to financial instruments. Although at this stage CF platforms in the EU usually allow investors to choose individual projects in which to invest, it may well be that in the future they will structure themselves as managers of investment undertakings raising capital from a number of investors according to a defined investment policy, potentially triggering the application of the Alternative Investment Fund Managers Directive²⁵. ESMA also observed that many platforms seem to be structuring business models to avoid MiFID and Prospectus Directive requirements and calls for further actions at EU level to ensure investor protection, without limiting the potential for CF to raise funds and support the real economy.

B. Overview of specialized regimes or ad hoc special provisions dedicated to Investment-based Crowdfunding

In this section, we provide a summary description of the main features of specialized CF regimes, or national *ad hoc* provisions dedicated to CF, based on the survey responses. A summary table is attached to this Report with an overview of participants' responses in the various areas covered by the survey (See Appendix B).

1. Scope of CF specialized regimes

Certain jurisdictions place limitations on the types of investment that can be offered under the CF special regulatory regimes. For example,

facilitate CSEF by small public companies. In August 2015 the Australian Government consulted on facilitating CSEF by proprietary companies.

²¹ See ESMA/2014/1378 available at www.esma.europa.eu.

²² See ESMA/2014/1560 available at www.esma.europa.eu.

²³ Directive 2003/71/EC.

²⁴ Directive 2004/39/EC.

²⁵ Directive 2011/61/EU.

- in France, under a new intermediary status of «*conseiller en investissement participatif*» («CIP»), only «plain vanilla» bonds and ordinary shares are allowed²⁶,
- in Italy the special regime applies to offers through on-line portals of defined non-listed risk capital instruments issued by so called innovative start-ups, medium and small innovative enterprises, and collective investment schemes and companies chiefly investing in innovative start-ups and medium and small innovative enterprises;
- in Japan, only non-listed shares, non-listed stock option warrants and certain types of investment fund shares (e.g., anonymous partnership funds) are allowed under relaxed requirements;
- under the Canadian CF regimes, novel or complex securities are excluded, while common shares and some other non-complex securities²⁷ are allowed.

2. Market intermediary and funding portal requirements

i. Authorization or registration requirements

Some respondents have created new categories of registration specifically designed for CF activities. In France, for example, investment firms (under Investment Service Provider status) authorized to provide investment advice must comply with the general current framework for the offering of securities implementing EU laws (e.g., as mentioned, MiFID, Prospectus Directive, etc.). But under the recently adopted CF framework, two new specialized intermediary statuses were created: CIP for securities (MiFID exempted entities), and “*intermédiaire en financement participatif*” (IFP) for loan-based and donation offerings.

In Italy, under the CF regime, CF portals managed by MiFID exempted entities are subject to newly established entry requirements and mandatory registration with Consob. In addition, MiFID authorized investment firms and banks running a CF portal shall notify Consob in advance of their intention to manage a CF portal. Such intermediaries are also subject to all MiFID requirements.

Similarly, under the United States SEC rules, an intermediary could conduct CF activities under a broker-dealer registration or seek a funding portal registration.

Under the Québec and Ontario CF regime, the intermediary has to be registered as a «restricted dealer».

In most cases, requirements regarding «fit-and-proper» management, owners and control persons apply generally, without any specific revision for CF activities.

²⁶ However, under the pre-existent Investment Service Provider status (ISP) pursuant to MiFID regulation, a platform can offer complex products.

²⁷ The following securities could be offered: common shares; non-convertible preference shares; securities convertible into common shares or non-convertible preference shares; non-convertible debt securities linked to a fixed or floating interest rate; units of a LP; and flow-through shares under the Income Tax Act.

Under the Québec CF regime, no registration requirement applies, but information is required to be delivered to the regulator about the funding portal and defined funding portal related individuals 30 days before the CF operations begin.

ii. Capital and insurance

Four jurisdictions made specific revisions of capital requirements for CF activities.

In Japan, under the new specialized framework, intermediaries that handle only small CF offerings (i.e., total amount offered is less than ¥100 million and amount of investment per person is ¥500,000 or less) are subject to a lower minimum capital requirements.

In Korea, lower capital requirements are also proposed.

In France, in exchange for the absence of capital requirements, CIPs are excluded from engaging in other activities (i.e. they do not benefit from the MiFID passport), must have professional indemnity insurance, are prohibited from passporting activities outside of France, and may only offer securities for limited amounts (up to €1,000,000 per project per year).

In Spain, online web-based platforms must have initial capital of €60,000 or a qualified indemnity insurance. Such amount must be proportionally increased depending upon the financing sum. Also, financial statements of an online web platform will be required to be audited on an annual basis.

iii. Suitability and other conduct of business provisions

Some respondents have exempted (or propose to exempt) intermediaries carrying out CF activities from the suitability assessment: Canada, Korea, Spain²⁸.

Under the United States SEC rules, funding portals would be prohibited from providing investment advice and recommendations to investors, so suitability obligations would not apply.

Similarly, in Italy, portal managers, which are not MiFID firms, are prohibited from carrying out financial advisory services, dealing or underwriting and from holding investor funds and assets. They shall transmit their orders exclusively to authorized MiFID intermediaries, which will be responsible for their execution. Thus, their fundamental role is to ensure that investors can understand the features and risks of the proposed investments, examining the information given through the portal and investor education released by Consob. Conversely, if the portal manager is a MiFID intermediary, the bulk of ordinary MiFID conduct of business rules (e.g., know your customer, suitability assessment) shall apply, in addition to the special CF conduct of business rules.

In the Netherlands, if the platform is a MiFID intermediary, the full MiFID rules apply, including the conduct of business rules. If the platform is involved in extending loans to private persons, the platform is an offerer in consumer credit. The EU consumer credit requirements apply and the distance marketing of consumer financial service directive apply. The platform is subject to conduct of business rules, duty of care to the customer and requirements to mitigate risk. If the

²⁸ In Spain, for accredited investors.

platform is involved in extending loans to business entities, it is an intermediary in deposits and needs an exemption. The supervisory authority can make the exemption subject to fulfilling certain conditions, such as conduct of business rules or specific requirements tailored to mitigate risks in the business model of the relevant platform.

In Germany, if the platform falls under MiFID's remit, the entire MiFID rules, especially the conduct of business rules including the suitability assessment, apply.

In France, the platforms (under CIP or Investment Service Provider status) must provide investment advice to investors and allow only a restricted, gradual access of potential investors to the funding portal. Investors may access information on the securities offered only after confirming acceptance of the related risks that are disclosed to them, and may subscribe for securities only after the completion of a suitability assessment. In this context, the investor answers questions relating to his/her family, matrimonial and financial situation, knowledge and experience in financial matters as well as investment objectives. These questions allow the funding portal to confirm whether the investment recommended among the selected projects is suitable to the profile of the investor. Several projects should be selected at any time following predetermined and transparent criteria.

iv. Marketing of the market intermediary or the offering

With respect to marketing requirements, specific measures regarding solicitations and recommendations, disclosure of compensation as well as objective criteria for the selection of projects have been implemented or proposed.

For instance, CF portal managers are sometimes forbidden (or are proposed to be forbidden) from advising or making recommendations as well as from soliciting purchases (Australia, Canada, France, Italy²⁹, United States SEC rules for registered funding portals). In Japan, intermediaries who handle security-based crowdfunding are prohibited from making solicitations by telephone or visiting customers' homes.

In France, information on the characteristics of an offering may be provided only to investors who have explicitly accepted the risks that have been clearly disclosed to them.

In Italy CF portal managers cannot allow retail investors to subscribe to an offer presented on the portal unless such investor has previously:

- examined the investor education information given on Consob's web-site;
- responded positively to a questionnaire on the main features and risks of investing in innovative start-ups; and
- stated affirmatively that they are able to economically sustain the complete loss of the investment they intend to make.

In the United Kingdom, the FCA introduced new financial promotion rules for securities-based CF in April 2014, which apply in addition to existing FCA requirements. These changes limit the

²⁹ The prohibition applies if the portal is managed by a non-MiFID firm.

ability of firms to market CF offers of illiquid securities to the following types of consumers in the retail market:

- those who take regulated advice;
- those who qualify as high net worth or sophisticated investors; or
- those who confirm they will invest less than 10% of their net assets.

Past performance disclosure must also meet certain requirements. For example, it must include annualized performance data and disclose the effect of charges.

Under Spanish law, CF funding portals should operate according to the principles of neutrality, transparency and act in accordance with the best interest of their clients. They could advertise and conduct commercial communications on specific projects when the selection is based on objective and non-discriminatory criteria and neutrality and other principles. Under United States SEC rules, funding portals may advertise the existence of the funding portal and identify one or more issuers or offerings available on the portal on the basis of objective criteria, subject to certain conditions, including that the funding portal does not receive special or additional compensation for identifying the issuer or offering in this manner. Also, SEC rules permit a funding portal to determine whether and under what terms to allow an issuer to offer and sell securities through its platform.

Also, under the United States SEC rules, defined persons who promote an issuer's offering for compensation, whether past or prospective, are required to clearly disclose in all communications on the funding portal the receipt of the compensation and the fact that he or she is engaging in promotional activities on behalf of the issuer. Issuer disclosures have to be filed with the SEC, in addition to such information being made publicly available on the intermediary/funding portal website.

The information is required to be publicly available for at least 21 days prior to any sales under the offering and until the offering is completed or cancelled.

In a consultation paper on Facilitating Securities-Based CF issued by MAS Singapore on 16 February 2015, it was clarified that under Singapore's existing securities law, any person who makes offers of securities in reliance of prospectus exemptions is restricted from advertising, or making statements referring to specific offers published on the CF platform. Notwithstanding the restriction, a CF operator is not prohibited from advertising the existence of its platform. Such advertisement may include general information about the platform and its business model, so long as the advertisement does not include any information on specific offers.

v. Conducting due diligence on the offering

According to the survey results, regulators either have, or propose to have requirements related to an intermediary's role regarding the offering and the need to conduct some due diligence on the offerings in terms of mandatory review, disclosure and reporting to the regulator.

Under the Québec and Ontario CF regime, for instance, an intermediary is required to understand the general structure, features and risks of securities presented on its funding portal. It is required

to review the information presented by the issuer on its website to form a reasonable belief that the information adequately sets out the:

- general features and structure of the security,
- issuer-specific risks,
- parties involved and any inherent conflicts of interest, and
- intended use of funds.

An intermediary could assist an issuer in the preparation of an offering document, business plan or other document, in respect of an offering prior to posting on its website, provided that the service is limited to assisting the issuer in complying with its disclosure obligations and ensuring that the information is presented in a fair, balanced and reasonable manner. Also, the intermediary must notify the committed investors in case of a material change or cancellation of the offering. In addition, the Québec and Ontario CF regime includes reporting requirements to the regulator regarding successfully completed offerings as well as issuers who have been denied access to or have been removed from a portal.

In France, platforms (under CIP or Investment Service Provider status) must perform due diligence in selecting the projects and disclose the pre-determined criteria used in the selection process.

In Italy, the portal manager must check that the regulatory conditions for the offering and that the admission of the offer in the portal have been fulfilled (for the list of conditions, see below under «3. Issuer Requirements»).

In Japan, intermediaries are required to conduct due diligence on issuers and their business plans and to provide information through the funding portal in order to ensure that the issuers have genuine business ideas.

Under the Korean proposal, intermediaries would be required to verify the financial condition of the issuers and disclose relevant information on the funding portal.

Two notable exceptions to the due diligence requirements are Spain and the United States SEC rules. In Spain, an intermediary is not required to assess CF projects for investors. In the United States, the rules do not specify procedures for conducting due diligence, although an intermediary is required to deny access to its funding portal if it has a reasonable basis for believing that an issuer, or any of its officers, directors and other defined persons, is subject to a disqualification under the rules³⁰.

³⁰ While the United States SEC rules do not provide specific procedures for due diligence, they require that an intermediary take measures to reduce the risk of fraud including, but not limited to, having a reasonable basis for believing that an issuer is complying with the securities laws and obtaining background and securities enforcement regulatory history checks on the issuer.

vi. Use of a website

The survey results revealed that the frameworks for CF activities generally mandate or propose to mandate the use of a website (e.g., France, Italy, Japan, Korea, the Netherlands, Québec, Spain, and United States SEC rules). One significant exception is the United Kingdom, where the rules aim to be media-neutral.

vii. Communication channels

Three respondents specifically addressed the use of communications channels for CF offerings in terms of the traceability of comments and the use of electronic forums.

For example, under the Québec and Ontario CF regime, if a funding portal offers a discussion board or other means of communication between investors and/or an issuer and its investors (for example, chat rooms or a blog), the funding portal must monitor postings to confirm that the issuer is not making any statement or providing information that is inconsistent with the CF offering document or is not in compliance with the CF rule and remove any material that may contain a statement or information that is false, deceptive, misleading or that may constitute a misrepresentation or untrue statement of a material fact.

Australia is considering requiring intermediaries to facilitate a moderated electronic forum for investors and issuers. The forum will give investors an opportunity to comment on offers and issuers with issuers responding to questions publicly.

The United States SEC rules require an intermediary to provide, on its actual website or «platform», channels through which investors can communicate with one another and with representatives of the issuer about offerings made available on the intermediary’s funding portal, subject to certain conditions.

The intermediary (in the case of a registered funding portal) is prohibited from participating in any communications in the communication channels, apart from establishing guidelines for communication and removing abusive or potentially fraudulent communication.

viii. Custody of assets and processing of trading/subscription orders

A number of jurisdictions provide (or propose to provide) clear limitations on the custody of investor assets under their special CF regimes, primarily in terms of appointment of a qualified third party to hold client assets (Korea, Japan, Spain³¹, and United States SEC rules, for intermediaries acting under the new category of “funding portals”), prohibition to hold assets and/or funds (France, Italy³²) and the processing of trading/subscription orders.

In Italy, for example, for each offer, the funds necessary for processing orders are deposited in the escrow account held in the issuer's name at the MiFID intermediary, which will execute the orders.

³¹ Unless the platform is authorized as a hybrid payment service provider.

³² The prohibition applies if the portal is managed by a non-MiFID firm.

In France, intermediaries must not provide payment services. They can provide the auxiliary service of transferring the subscription forms to the issuers, provided that service does not fall within the scope of «Reception and Transmission of Orders» service under MiFID.

Under the United States SEC rules, an intermediary that is a funding portal is required to ensure that investors send money or other consideration directly to a third party that has agreed in writing to hold the funds for the benefit of, and to promptly transmit or return the funds to, the persons entitled. The third party may be a registered broker or dealer that carries customer or broker or dealer accounts and holds funds or securities for those persons. Alternatively, the third party may be a bank, or a credit union insured by the National Credit Union Administration, that has agreed in writing either (i) to hold the funds in escrow for the persons who have the beneficial interests and to send or return such funds directly to the persons entitled when so directed by the funding portal or (ii) to maintain a bank or credit union account (or accounts) for the exclusive benefit of investors and the issuer³³. Proceeds are to be transmitted to the issuer only if the target-offering amount is met or exceeded.

ix. Civil liability

The United States SEC rules specify a civil liability regime for CF activities. On the basis of the issuer definition, intermediaries, including funding portals, could be considered issuers for purposes of this liability provision. Under this liability provision, an investor could bring an action against the issuer to recover the consideration paid for the security, with interest, or for damages if the person no longer holds the security.

Australia is considering mandating that intermediaries be a member of an external dispute handling body.

x. Conflicts of interest management

A few jurisdictions directly addressed the issue of conflicts of interest: Italy, Canada, the United States SEC rules and France.

In Italy the portal manager is specifically required to act with diligence, fairness and transparency, avoiding any conflicts of interest, which could arise in the management of the portal that may affect the interests of the investors and the issuers. The manager shall ensure equal treatment of the beneficiaries of the offers who are in identical conditions. Moreover, the funding portal must contain information regarding the measures adopted to manage conflicts of interest.

France also provides for specific requirements regarding conflicts of interest. CIPs shall take all reasonable measures to detect conflicts of interest and shall establish and maintain an effective

³³ Registered broker-dealers have similar requirements except that registered broker-dealers – unlike funding portals – may receive the funds, but would then have to (i) promptly deposit them in a separate bank account, as agent or trustee for the persons who have the beneficial interests, until the appropriate contingency has occurred, and thereafter to promptly transmit or return the funds to the persons entitled or (ii) promptly transmit the funds to a bank which has agreed in writing to hold all such funds in escrow for the persons who have the beneficial interests and to transmit or return such funds directly to the entitled persons when the contingency has occurred.

conflicts of interest policy. Regarding fees, CIPs can only receive funds that remunerate their own activities.

Other jurisdictions have specific requirements regarding conflicts of interest management for CF activities in terms of the intermediary's financial interest in the issuer and compensation. For example, the Québec and Ontario CF regime prescribes that the intermediary:

- may not allow an issuer access to the funding portal's website if the funding portal, or any officer, director or significant shareholder of the funding portal or any affiliate of the funding portal has an ownership interest of more than 10% of the issued and outstanding securities of the issuer, and
- will disclose all compensation and fees paid by issuers to the funding portal.

In the United States, the SEC rules prohibit certain intermediary personnel from having financial interests in an issuer on its platform. However, an intermediary may have a financial interest in an issuer, provided that the intermediary receives the financial interest from the issuer as compensation for the services provided to, or for the benefit of, the issuer in connection with the offer or sale of such securities being offered or sold through the intermediary's platform; and the financial interest consists of securities of the same class and having the same terms, conditions and rights as the securities being offered or sold through the intermediary's platform. The intermediary is required to disclose compensation arrangements with the issuer. Particularly, the SEC rules require intermediaries, when establishing an account for an investor, to clearly disclose the manner in which they will be compensated in connection with offerings and sales of securities.

xi. Risk mitigation

The survey responses indicated that several jurisdictions adopted, or are considering adopting measures to mitigate risks inherent to the conduct of CF activities. The most common measures are addressed below.

a) Funding portal failure, back-up and IT systems, cyber risk

In Italy, a portal manager is required to ensure the integrity of the information received and published providing itself with reliable and secure operating systems. Particularly, the portal manager shall identify the sources of operating risks, adopt adequate procedures and controls, avoid operational interruptions, and provide suitable back-up facilities. Consob examines internal procedures (including IT) at registration and on an ongoing basis.

In Japan, intermediaries are required to provide information appropriately through the funding portal. This includes establishing proper IT systems and procedures for addressing system failures.

In France, the platform is required to have the necessary resources and procedures to carry out their activities and to implement those resources and procedures with efficiency. The AMF examines internal procedures and IT systems.

Under Spanish law, intermediaries are required to have sound procedures to ensure security, confidentiality, and reliability of service provided by electronic mechanisms to ensure that in

case of activity cessation, they continue to provide all or part of the services that are committed to provide.

b) Fraud, money laundering, financing terrorism

In Italy, the funding portal must contain, in a summarized and easily comprehensible form, the information regarding the measures adopted by the portal manager to reduce and manage fraud risks.

The responding jurisdictions have not mandated any specific measures to address risks regarding money laundering and financing terrorism in the context of CF activities. The general legal framework applies in this respect.

3. Issuer related requirements

i. Location of the issuer

A number of jurisdictions place (or propose to place) limitations on the location of an issuer that can benefit from the CF framework. This is the case in Australia (CF will be restricted to public companies incorporated in Australia, with its business predominantly operating in Australia and, with Australian major shareholders and directors), Canada (issuer is required to be organized or incorporated in Canada with a head office in Canada and with a majority of the directors resident in Canada), Italy (issuer shall have head office in Italy), Spain (incorporated either in Spain or another European Union member state), Québec (where the Québec CF regime provides that the issuer's head office has to be in a Canadian jurisdiction participating to a similar regime) and the United States SEC rules (need to be incorporated in one of the 50 states, a territory, or the District of Columbia).

ii. Size and limit of the offering

Similarly, almost all jurisdictions with a specialized CF regime place a limit on the size and timing of an offering. Canada is illustrative of this commonality.

Under the Québec and Ontario CF regime, an issuer group³⁴ cannot raise more than CA\$1.5 million that includes the proceeds to be raised under the distribution, and the aggregate proceeds received by the issuer group during the 12 month period ending on the last day of the distribution period.

Other jurisdictions with similar restrictions (or proposed restrictions) (albeit the precise amount raised differs) include Australia, Korea, Spain, and the United States SEC rules.

Under the Québec CF regime, only 2 raises per year are permitted, each for a maximum of CA\$250,000.

In Italy, equity CF offers must have a total amount lower than € million.

³⁴ Issuer group includes the issuer, an affiliate of the issuer and any other issuer that is engaged in a common enterprise with the issuer or with an affiliate of the issuer.

In France, the size of the offer cannot exceed €1 million per project (over a 12-month period) and offers up to this size are also exempt from the requirement to publish a prospectus.

In Japan, the limitation of the size of the CF offer is regulated not as an issuer requirement, but as a requirement for the CF portals.

iii. Type or size of the issuer

While most jurisdictions do not place limitations on the type or size of issuers that may avail themselves of a CF offering, four notable exceptions exist. In Italy, equity CF portals provide for the collection of risk capital only by innovative small and medium enterprises, innovative start-ups (i.e.: small Italian unlisted companies which have been operating only for a short time, and are engaged in innovative and technical sectors or which have a social purpose) and collective investment schemes and companies chiefly investing in innovative start-ups and medium and small innovative enterprises. Under the Québec and Ontario CF regime, investment funds and blind pools cannot use CF prospectus exemption. Similarly under the United States SEC rules, issuers that are subject to reporting requirements under certain sections of the federal securities laws in the United States, investment companies, issuers not eligible to offer and sell securities as a result of certain disqualifications, issuers that have not filed, to the extent required, certain ongoing reports, and issuers that have no specific business plan or that have indicated that their business plan is to engage in a merger or acquisition with an unidentified company or companies are not eligible to raise funds using the CF exemption. Finally, under Australia's latest proposal issuers could not be listed on a financial market and would need to have less than \$5million in assets and annual turnover.

iv. Other similarities

Additional similarities across regimes include:

- the need for the issuer to provide a business plan (or similar document) to the funding portal, the regulator and/or investors (France, Italy, United States SEC rules)³⁵,
- the requirement or proposed requirement that offerings are only open for a set period of time and if the targeted or minimum amount of funds have not been raised during the offering period, the offering must be withdrawn and funds returned to investors (Canada, Korea, Spain, United States SEC rules),
- the requirement that an issuer can only offer its securities under the CF regime on one funding portal during the distribution period established by the issuer (Canada, Spain, United States SEC rules), and
- no jurisdiction requires that an issuer keep “skin in the game.”

With respect to issuer requirements, there were a few other interesting points that arose from the survey results. In Italy, for example, recognition of tag-along rights for retail investors is a condition precedent for the admission of the offer on the funding portal. In particular, the portal manager must check that the issuer's articles of association or deed of incorporation provide for the right of retail investors to withdraw from the company or to sell the stake, in case the

³⁵ In Japan, instead of stipulating the issuer requirement to provide a business plan to the funding portal, the funding portal has the obligation to obtain the issuers' business plan.

controlling shareholders, after the closure of the offer, transfer the company's control to third parties. Such rights are recognized, in any case, for at least three years from the conclusion of the offer. Moreover, an offer can be successfully completed only provided that professional investors, banking foundations or innovative start-up incubators, undersign 5% of the financial instruments offered.

In the Netherlands, a CF funding portal must state on its website that these types of offerings are made outside the scope of supervision of the AFM.

In the United Kingdom, because the Companies Act prohibits the public offering of private company shares, the FCA expects investment-based CF funding portals to facilitate the sale of UK public limited company shares only (not private company shares). Where public limited company shares are being offered to the public, a prospectus may be required unless an exemption applies (for example, offers below €5 million may be exempt under the EU Prospectus Directive).

Under the Québec and Ontario CF regime, a CF offering cannot be completed unless, at the time of completion of the offering, the minimum amount indicated in the offering document which must be sufficient to accomplish the business objectives of the issuer has been subscribed for. Finally, in France, in practice, light corporate structures make up most of the companies interested in CF. Therefore, the legislation authorized investments in light corporate structures, such as the French “société par actions simplifiée”– a simplified limited liability corporation, under certain conditions.

4. Disclosure requirements

i. Offering document disclosure, other than financial disclosure

Some jurisdictions (Korea, United States SEC) prescribe (or have proposed rules with) specific disclosure requirements for CF offerings, where completed on a non-exempt basis (i.e. by prospectus). In addition, some other jurisdictions (Canada, France, and Italy) prescribe the form and content of CF offering documents. In Italy and in France, CF offering documents shall be published notwithstanding where the offer triggers an exemption from the general prospectus publication related provisions.

Under the United States SEC rules, disclosure of various items is required including the name and address of the issuer, directors and officers, holders of more than 20% of the issuer's securities, description of the business of the issuer, anticipated business plan of the issuer, financial condition, intended use of proceeds, target offering amount (and a deadline to reach the target offering amount), number and price of the securities being offered, capital structure and ownership of the issuer, referral fees, risk factors, information about an investor's right to cancel his/her investment, and certain related party transactions. The United States SEC rules also provide an optional question and answer format that an issuer could use to provide the required disclosures.

Under the Québec and Ontario CF regime, the CF offering document is required to be in a prescribed form with information provided under defined headings including:

- warnings to investors
- financing facts (offering summary, description of securities offered and relevant rights, ability to resell securities, right of action for misrepresentation and right of withdrawal, concurrent offerings, use of proceeds, description of the issuer’s business, other CF offerings, persons promoting and marketing the offering),
- issuer facts (business of the issuer, principal risks facing the business, financial information, ongoing disclosure, mining issuer disclosure, capital structure, executive officers, directors and other principals, management compensation, related party transactions, other relevant information),
- registrant facts (registered funding portal) and contact information (issuer and registered funding portal).

Other jurisdictions (France, Italy, and Québec) also have a template CF offering document disclosure.

In France, the AMF published a template-offering document for CF offerings. The information drawn up by the issuer and supplemented by the platform must be provided to investors by email prior to any subscription. The document must be short, easy to read, standardized for comparability and digital friendly (numerous HyperText links to give easy access to detailed information)³⁶.

In Italy, a special regime applies to on-line CF offers requiring publication on the funding portal of an information form compiled according to the model laid down in Consob regulations. The information shall be clear and concise (no more than five pages), expressed in non-technical language and shall allow for comparison across the offers in the portal. The form must contain a list of information concerning the risks and the terms and conditions of the offer and a warning on the highly risky nature of the investment.

ii. Disclosure regarding risks

A number of jurisdictions (Canada, Italy, France, Japan, United States SEC rules) have specific disclosure requirements relating to the risks of CF offerings.

These risks include such things as liquidity, the absence of a secondary market, restrictions on the ability of an investor to cancel the investment, the risk of not getting expected performance on the securities purchased, risk of not being able to influence management of the issuer, dilution risk, and inability to obtain a return on the investment.

In France, the platform must provide a description of the specific risks linked to the business and to the project owner. Australia is considering disclosure on the promoter's track record³⁷.

³⁶ In drawing up the template, the AMF took into account the models currently offered under EU law, namely the EU KID-UCITS and the summary of a prospectus.

³⁷ «Promoter» refers to the project owner, i.e. the directors of the company raising funds.

iii. Financial disclosure in offering documents

A number of jurisdictions (France, Germany, Korea, Singapore, United States SEC rules) require (or propose to require) financial statements in CF offering documents, either as part of the regulations relating to CF offerings or through company law or other regulations. Other jurisdictions, however, (Japan, Québec, United Kingdom) do not require financial statements in CF offering documents.

For some jurisdictions that require (or propose to require) financial statements in CF offering documents by non-reporting issuers, the nature of the review (if any) by external auditors depends on the size of the offering or other defined factors. For example:

- Under the United States SEC rules, CF offerings raising proceeds of less than US\$100,000 are required to disclose certain information from the issuer's federal income tax returns for the most recently completed year, if any, and its financial statements that are certified by the principal executive officer of the issuer to be true and complete in all material respects. Issuers offering more than US\$100,000, but not more than US\$500,000, are required to include financial statements reviewed by a public accountant that is independent of the issuer. Issuers offering more than US\$500,000 are required to include audited financial statements in their CF offering document. An issuer offering more than \$500,000 but not more than \$1 million of securities relying on these rules for the first time is permitted to provide reviewed rather than audited financial statements, unless financial statements of the company are available that have been audited by an independent auditor.
- In Korea, audited financial statements in CF offering documents would only be required where the offering size is more than KRW100 million. Offerings smaller than that size may include financial statements, accompanied by a confirmation letter from the chief executive officer of the issuer.
- Similarly under the Québec and Ontario CF regime, audited financial statements in CF offering documents are only be required if the non-reporting issuer has raised an aggregate of CA\$750,000 or more since its formation. Financial statements that have been reviewed by an independent public accounting firm are required if the non-reporting issuer has raised an aggregate of more than CA\$250,000 but less than \$750,000 since its formation.

Also, some jurisdictions require or propose to require *financial disclosure* in addition to *financial statements* in the CF offering document. For example, the United States SEC rules require an issuer to provide a narrative discussion of its financial condition in its offering document. The discussion should address, to the extent material, the issuer's historical results of operations in addition to its liquidity and capital resources. The discussion should take into account how the proceeds from the offering will affect the issuer's liquidity and whether these funds or any other additional funds are necessary to the viability of the issuer's business.

Most jurisdictions do not require or propose to require updated financial information or other information during the offering period for the CF offering. Three exceptions are Italy, France and

the United States SEC rules. Under the United States SEC rules, an issuer is required to amend its disclosure for any material change in the offering terms or disclosure previously provided to investors.

iv. Ongoing disclosure requirements

All jurisdictions require that CF issuers that are reporting issuers comply with customary continuous disclosure requirements. For CF issuers that are not reporting issuers, the requirements range from exemption to notification in case of changes and prescribed documentation.

Under the Québec and Ontario CF regime, a non-reporting issuer must deliver annual financial statements to the regulator and make them available to each purchaser. The financial statements must be accompanied by a notice of the issuer disclosing in reasonable detail the actual use of the gross proceeds of the distribution. In addition, a non-reporting issuer must make available to each of its security holders within 10 days of their occurrence a notice of each of the following events:

- a discontinuation of the issuer's business,
- a change in the issuer's industry, or
- a change of control of the issuer.

Under the United States SEC rules and in the United Kingdom, issuers are required to provide reports of the results of their operations and financial statements on an annual basis.

Under the Australian proposal, CF issuers that are newly created public companies would be eligible for some exemption for a certain limited time period or until the company meets certain criteria, such as net tangible assets over A\$5 million. During this exempt period, the issuer would be exempt from some of the requirements placed on public companies (or at least have the requirements modified), such as holding an annual general meeting, continuous disclosure and financial and other reporting. Australia is also considering requiring the communication to investors of any material adverse changes during the offer period.

In Japan, while CF issuers are not subject to special ongoing disclosure requirements, CF portals are required to assure that CF issuers provide investors information in relation to their business periodically.

v. Access to offering and ongoing disclosure documents

Canada, Italy, Spain, France and the United Kingdom require that offering and other disclosure documents be provided to investors either through the website of the intermediary/funding portal, or through other reasonable means.

In Italy the information shall be updated, accessible for at least 12 months after the closure of the offers and made available to the interested parties upon request for 5 years.

In addition, Italy and the United States SEC rules require or would require that this information also be posted on the issuer's website.

vi. When do ongoing disclosure requirements end?

Some jurisdictions have specific tests (based on factors like the number of security holders or specific events) for when ongoing disclosure requirements end.

For example, a non-reporting CF issuer under the Québec and Ontario CF regime is required to provide certain limited ongoing disclosure until the earliest of the following dates:

- the issuer becomes a reporting issuer (public issuer),
- the issuer has completed a winding up or dissolution, or
- Less than 51 security holders own the securities of the non-reporting issuer.

Under the United States SEC rules, a CF issuer is required to provide ongoing continuous disclosure related to its offering until:

- the issuer becomes a “reporting company,”
- where all of the CF securities are repurchased,
- the issuer dissolves or liquidates its business,
- the issuer has filed at least one annual report and has fewer than 300 holders of record, or
- the issuer has filed at least three annual reports and has total assets that do not exceed \$10 million.

Similarly, in the United Kingdom, public companies must continue to make certain information available, including their accounts, which is accessible to investors while they are in business.

5. Investor requirements

In virtually all of the jurisdictions with current or proposed special CF frameworks, there are a number of similarities in the general approach concerning how to protect investors. These protections range from limitations on the amount that may be invested, to education requirements, risk warnings, cancellation rights and/or other jurisdiction specific protections.

i. Investing Limits

Most of the participating jurisdictions place or propose to place limits on the investment amount as noted in the table below:

JURISDICTION	LIMITATION ON INVESTMENT
Australia (proposed)	A\$25,000 per annum with no more than A\$10,000 in a single issuer.
Canada (“Québec and	No more than CA\$2,500 per investment. In Ontario, no more than CA\$10,000 in total under the CF prospectus exemption in a calendar year

Ontario CF regime)	(higher limits apply to accredited investors).
Canada (“Québec CF regime)	No more than CA\$1,500 per investment in total under the CF prospectus exemption
Japan	¥500,000 in a single issuer per year by an investor per year. ¥100 million per year in an issuer by all the investors in total per year.
Korea (proposed)	200% of the investor’s annual income or property ownership. A cap of KRW2 million per issuer and a cap of KRW10 million for a twelve month period. However, there is no cap for sophisticated investors.
Netherlands	€40,000 for lending funding portals and €20,000 for equity/debt funding portals.
Spain	€3,000 per offering or €10,000 per year per funding portal, and equity securities cannot contain a derivative component for non-accredited investors.
United States	If either annual income or net worth is less than US\$100,000, then there is a limit of the greater of US\$2,000 or 5% of the lower of annual income or net worth. If both annual income and net worth are equal to or greater than US\$100,000, then a limit of 10% of the lower of annual income or net worth, but not to exceed US\$100,000.

ii. Rescission, cancellation and resale limits

A number of jurisdictions (Australia, Canada, Italy, Japan, Korea, United States SEC rules) provide (or propose to provide) certain cancellation or rescission rights to investors.

In Italy, retail investors shall enjoy a cooling off period of 7 days after order execution. Retail investors are also granted a rescission right in the event of a material change to the offering.

In Canada, investors have the right to withdraw any offer or agreement to purchase the security by delivering a notice to the issuer within 48 hours of the date of subscription.

A similar right exists in Korea where investors would be permitted to cancel their investment commitment prior to the end of the subscription period.

Similarly, under the United States SEC rules, investors have an unconditional right to cancel an investment commitment for any reason until 48 hours prior to the deadline identified in the issuer’s offering materials. Thereafter, an investor is only able to cancel in the event of a material change to the offering.

Regarding resale of CF securities, four jurisdictions (France, Italy, Spain, and United Kingdom) do not provide any limitations, while three jurisdictions do (or propose to) provide some limits (Canada, Korea, United States SEC rules).

In Canada, securities of a non-reporting issuer (for example, a private company) acquired through CF could not be resold until the issuer becomes a reporting issuer, unless the sale is made under another prospectus exemption. In Canada, securities of a reporting issuer acquired through CF are subject to a four-month hold period.

In Korea, investors in CF offerings must keep their securities under the management of a qualified third-party custodian and are prohibited from withdrawing or trading the securities for one year.

Finally, under the United States SEC rules, purchasers are not allowed to transfer their securities for a period of one year except if a transfer is:

- to the issuer of the securities,
- to an accredited investor,
- as part of an offering registered with the United States SEC, or
- to a family member of the purchaser (or the equivalent) or in connection with certain events such as death or divorce of the purchaser, in the discretion of the SEC.

IOSCO members were asked to identify requirements, if any, regarding secondary markets and operation of financial markets. In Canada, CF funding portals cannot act as intermediaries or facilitators of secondary trades between buyers and sellers. In Brazil, Japan and under United States SEC rules (in the case of registered broker-dealers), only CF portals registered as administrators of organized markets can act as intermediaries or facilitators of secondary trades.

iii. Risk acknowledgement form and education requirements

Six jurisdictions (Australia, Canada, France, Italy, United States SEC rules and United Kingdom) require (or propose to require) investors to sign the equivalent of a risk acknowledgement form that provides certain warnings to investors related to CF investments.

Under the Canadian CF regimes, for example, at or before the time an investor enters into an agreement to purchase the security, the issuer is required to obtain a signed risk acknowledgement form from the investor in which the investor confirms that he/she falls within the investment limits and acknowledges the risks associated with the investment, including the following:

- it is a risky investment,
- the investor could lose all of the money he/she invests,
- the investor may never be able to sell the securities,
- the investor will be provided with no disclosure or less disclosure than public companies, and
- the investor will not have the benefit of protections associated with an investment made under a prospectus.

From an educational perspective, CF funding portals must take reasonable steps to ensure that investors understand the risks of a CF investment. While not mandatory, funding portals operating under the Québec and Ontario CF regime could require investors to correctly answer questions via an interactive questionnaire conducted at the time of account opening to demonstrate that the investor understands the level of risk in this type of investment (and this should be done annually).

In Italy, the portal manager must ensure that retail investors may access sections of the portal where it is possible to adhere to the single offers only provided that they:

- have read the information of the investor education sections of the Consob website and of the Registry of Enterprises web-site;
- answered positively to a questionnaire demonstrating the full understanding of the essential features and main risks related to the investment in innovative start-ups via portals;
- stated that they can financially afford the possible entire loss of the investment they intend to make.

Under the United States SEC rules, potential investors are required to consent to electronic delivery of materials and complete a written questionnaire that acknowledges certain risks, and provides a representation that the investor has reviewed educational materials.

The United Kingdom also provides this protection in that a risk acknowledgement form is included in the statements signed by certified sophisticated investors, certified high net worth investors and restricted investors.

In Australia, intermediaries would have to issue a Financial Services Guide to retail investors.

In France, the suitability test takes into account the required risk warning and risk acknowledgement. That is, under French law, access to CF funding portals is restricted to registered investors who have been previously informed through two types of warnings regarding the risks associated with an investment in a non-listed company – risk of losing all or part of the capital invested and the risk of the lack of liquidity - and have explicitly accepted these risks. In addition, in France, the AMF published an educational guide for investors on its website.

iv. Unique, jurisdiction-specific protections

Regulators in various jurisdictions have established other protections for investors utilizing a CF funding portal.

Under the Québec and Ontario CF regime, for example, an issuer, a funding portal, and their respective directors and executive officers must not lend or finance, or arrange lending or financing (for example, from an affiliate), for an investor to purchase securities of the issuer under the exemption. Australia is considering a similar restriction.

In the Netherlands, CF funding portals are required to inform investors to actively and continuously spread their investments across projects. In addition, to help protect investors, funding portals must:

- actively and continuously inform investors of the risks of their investments,
- have a policy to assess the credit risk of loans offered,
- provide risk qualifications based on the debtor's ability to repay a loan,
- provide a range of interest rates corresponding to the risks of a project,

- charge no more than 15% interest on a loan to a consumer and have a policy to prevent consumers from over-extending on loan amounts,
- warn the consumer that wants to invest more than €5,000 actively about the risks of the investment,
- advise the consumer to invest a sensible amount of their fortune,
- provide enough information to the consumer so the consumer can make a well informed investment decision,
- include the financial/payment history of the project owner in the risk assessment of the loan,
- check if the information that is provided by project owners is correct, clear and not deceptive, and
- use a foundation for client assets or a payment service provider for the payments from the investors to the project owner and back.

Finally, under the United States SEC rules, intermediaries are required to take steps to protect the privacy of information collected from investors; there are limits on affiliate marketing and intermediaries are required to develop and implement a written identity theft prevention program.

6. Monitoring and enforcement

IOSCO members were asked to identify the manner in which CF regulations are (or would be) enforced, what monitoring mechanisms are (or would be) in place and how sanctions and other enforcement actions are (or would be) implemented. The survey results revealed a few interesting points.

The Hong Kong SFC has set up a cross-divisional workgroup to monitor and review individual CF funding portals that come to the SFC's attention, apply the relevant regulatory requirements to such funding portals, as well as to take regulatory action where appropriate.

The United Kingdom undertook a review of the securities-based CF market towards the end of 2014, following the implementation of new rules. The review found the CF market to be growing rapidly, but concluded that there was no need to change the United Kingdom's current regulatory approach. The UK FCA will conduct a more detailed review in 2016, unless a perceived market failure triggers earlier intervention.

In Japan, the specific framework includes CF funding portals in the ongoing monitoring activities performed by the Japan FSA, including off-site monitoring and on-site inspection. Enforcement is carried out by the Japan FSA through administrative sanctions, such as orders for business suspension and issuance of business improvement orders.

In Italy, Consob is responsible for monitoring compliance with securities CF related provisions. Supervision is carried out on an ongoing basis. Consob may request the communication of data and information and the transmission of documents, and may also carry out on-site inspections. Consob sanctions violations through pecuniary fines and other administrative measures,

including prohibition on a precautionary basis to carry out CF related activities and suspension from the CF register.

France stands out among the jurisdictions that have established a new specific oversight framework. CIP associations will determine written admission and disciplinary procedures applicable to their members. The associations will perform on-site inspections of each of their members at least once every three years and will be authorized/supervised by the AMF.

III. CONCLUSION

With this survey, IOSCO has enhanced its understanding of developments in members' current and/or proposed CF regulatory frameworks in various jurisdictions.

Jurisdictions use a variety of approaches to regulate CF. Among other things, some jurisdictions apply their general securities regulatory framework which often allows the use of certain built-in flexibilities, while others have either introduced (or have proposed to introduce) *ad hoc* regulatory CF regimes. While these measures are quite diverse and tailored to specific regulatory and market concerns, they do present some high level similarities.

One major commonality is the objective of achieving a balance between risks/investor protection related concerns and the positive role securities markets can play in supporting economic recovery and growth through the promotion of CF. It is clear, however, that the particular way this balance is shaped varies from one jurisdiction to another.

Another commonality that emerged from the review is that restrictions may apply to cross-border CF fundraising. For instance, special CF regimes often provide that the issuer and/or the managers running the funding portal must be incorporated locally.

The survey responses reveal that, despite certain commonalities and divergences in various jurisdictions, and the potential risks and positive rewards, CF regimes are in their infancy (or have not yet been launched) in most jurisdictions surveyed.

Accordingly, this Report does not propose a common international approach to the oversight or supervision of on-going or proposed programs. As this new sphere of activity continues to develop, IOSCO may consider whether it is appropriate to evaluate the effects of the different approaches and may assess whether any further work is needed.

APPENDIX A: LIST OF RESPONDENTS

1.	AUSTRALIA (Australian Securities and Investments Commission)	Australia ASIC
2.	BRAZIL (Comissão de Valores Mobiliários)	Brazil CVM
3.	CANADA (Ontario Securities Commission and Québec Autorité des marchés financiers)	Ontario OSC Québec AMF
4.	FRANCE (Autorité des marchés financiers)	France AMF
5.	GERMANY (Bundesanstalt für Finanzdienstleistungsaufsicht – German Federal Financial Supervisory Authority)	German BaFin
6.	HONG KONG (Securities and Futures Commission)	Hong Kong SFC
7.	HUNGARY (Central Bank of Hungary)	Hungary CBH
8.	INDIA (Securities and Exchange Board of India)	India SEBI
9.	ITALIA (Commissione Nazionale per le Società e la Borsa)	Italia CONSOB
10.	JAPAN (Financial Services Agency)	Japan FSA
11.	KOREA (Financial Supervisory Service)	Korea FSS
12.	MEXICO (Comisión Nacional Bancaria y de Valores)	Mexico CNBV
13.	MOROCCO (Conseil déontologique des valeurs mobilières)	Morocco CDVM
14.	NETHERLANDS (Authority for the Financial Markets)	Netherlands AFM
15.	PAKISTAN (Securities and Exchange Commission of Pakistan)	Pakistan SECP
16.	QUÉBEC (Autorité des marchés financiers)	Québec AMF
17.	ROMANIA (Financial Supervisory Authority)	Romania FSA
18.	SINGAPORE (Monetary Authority of Singapore)	Singapore MAS
19.	SPAIN (Comisión Nacional del Mercado de Valores)	Spain CNMV
20.	TURKEY (Capital Markets Board of Turkey)	Turkey CMB
21.	UNITED KINGDOM (Financial Conduct Authority)	UK FCA
22.	UNITED STATES (Commodity Futures Trading Commission)	US CFTC
23.	UNITED STATES (Securities and Exchange Commission)	US SEC

APPENDIX B: SUMMARY OF RESPONSES TO IOSCO C3 INVESTMENT-BASED CROWDFUNDING SURVEY

1. REGULATORY FRAMEWORK					
	CF currently subject only to general securities law	CF subject to special tailored regime (existing or proposed)	Scope of the (existing or proposed) special regime	Responsibility of securities regulator on peer-to-peer lending	Additional information
Australia	Yes	No, but an advisory committee recommended to the Government possible regulation of equity crowdfunding; no firm proposed regulation is in place, yet.	N/A Among key recommendations: CF restricted to public companies incorporated in Australia, offering limits per issuer up to \$5 mln in 12 months; temporary exemptions to reduce start-ups compliance costs for newly created public companies; licensing and minimum requirements to intermediaries; investor education; investment limits, cooling off rights	No, but if platform falls within the definition of managed investment scheme or a financial market or the loan is in the form of a debenture or another financial product ASIC is competent	General securities provisions potentially applicable depending on the particular business model includes: fund raising disclosure; licencing, rules on managed investment schemes, conduct of business
Brazil	Yes	No	N/A	No	General rules governing public offerings apply to all securities, thus CVM has competence on CF
Canada : Québec and Ontario CF regime	Yes	Yes (coming into force January 25, 2016)	Common shares and some other non-complex securities	No	The regime introduces a prospectus exemption for issuers and a registration framework tailored for crowdfunding portals.
Canada : Québec CF regime	Yes	Yes (existing)	Common shares and some other non-complex securities	No	The regime introduces a prospectus exemption for issuers and a registration exemption for crowdfunding portals.
France	No	Yes (existing)	Plain vanilla (fixed-rate) bonds and ordinary shares	No, but new regulation on loan-based and donation crowdfunding is in place falling within the competence of prudential regulator (ACPR)	The new special regime applies to firms outside the scope of EU Directives (so called CF Investment Advisors, "CIP"), which are prohibited, from holding client assets and carrying out investment services other than investment advising. Investment service provider (MiFID firms) must comply with some provisions of this new regime (e.g. they must provide investment advice) and general securities law.
Germany	Yes	No (but Government announced measures to classify participatory loans and similar grey mkt instruments within the scope of MiFID. If the investment is intermediated through an on-line platform, exemptions from prospectus and key investor information would apply)	N/A	No	CF may fall within the scope of the general securities framework transposing EU law (e.g. Prospectus Directive and MiFID) Trend for market participants to make use of "participatory loans" or other instruments outside the scope of EU Directives or subject to lighter regulation/grey market.
Hong Kong	Yes	No	N/A	No, but general securities law applies depending on the business model.	Depending on the type of business model several general securities provisions apply, including on authorization, prospectus registration and disclosure, licensing and conduct of business, as well as automated trading services and recognized exchange companies
Hungary	Yes	No	N/A	No	No equity or debt-based CF activity in HU. CF may fall within the scope of the general securities framework transposing EU law (e.g. Prospectus Directive and MiFID)
India	Yes	No	N/A	No	Sebi issued a consultation paper on CF in India

1. REGULATORY FRAMEWORK					
Italy	No	Yes (existing)	Non-listed shares and stocks issued by “innovative start-ups”, “innovative small or medium enterprises”, or collective investment schemes or companies chiefly investing in “innovative start-ups”, “innovative small or medium enterprises”	No	The special regime applies to firms (registered with Consob) outside the scope of EU Directives (CF on-line portals) which are prohibited from holding client assets and carrying out investment services other than reception and transmission of orders to licensed firms Where a CF portal is managed by a licensed firm, it will be subject also to the general securities provisions
Japan	Yes	Yes	Non-listed shares, non-listed stock option warrants and certain type of investment fund shares	Yes	Special rules to intermediaries/portals to favour the development of equity CF (e.g. lower entry requirements if the portal handle only small amount of offers).
Korea (proposed)	Yes	Yes (proposed)	Equity, debt securities and other type of investment securities	No (please note however that regulation on equity CF covers also bond issuances and offers)	Special rules to promote equity CF by alleviating reporting requirements for issuers and capital requirements for brokers
Mexico	No	No (but CNBV is willing to develop a specialized regulatory framework in future)	N/A (the proposal covers non-listed shares and securities, unsecured debt securities and peer-to-peer lending)	No	CF portals are not recognized as financial intermediary or authorized markets. Since 2012 there are 2 financial on-line portals supporting collection of funds from the American stock exchange under so called «Regulation S». The Association of Collective Financing (AFICO) has 11 affiliated platforms, 7 of which carry out CF credits and equity. All of them finance through private securities offerings to qualified investors or to less than 100 individuals.
Morocco	No	No	N/A	No	
The Netherlands	Yes	No	N/A	No	CF may fall within the scope of the general securities framework transposing EU law (e.g. Prospectus Directive and MiFID) AFM and DNB issued a joint interpretation on CF to help assessing whether the activity falls within scope of financial rules In addition, the AMF uses its discretionary powers to impose requirements on CF platforms when granting a licence.
Pakistan	No	No	N/A	No	
Romania	Yes	No	N/A	No	CF may fall within the scope of the general securities framework transposing EU law (e.g. Prospectus Directive and MiFID)
Singapore	Yes	No	N/A	Existing general securities regulation will apply for lending-based crowdfunding models that involve the offer of securities (which includes the offer of debentures). An invitation to a person to lend money to an entity is deemed to be an offer of debentures.	Depending on the type of business model general securities provisions may apply, including requirements on disclosure, licensing and conduct of business. The Monetary Authority of Singapore (MAS) issued a consultation paper on 16 Feb 2015 on regulatory proposals, which will facilitate securities-based crowdfunding for accredited and institutional investors. MAS is reviewing the feedback to the consultation, which closed on 18 Mar 2015.
Spain	Yes	Yes	Law covers equity securities, debt securities and peer-to-peer lending	Yes	On-line CF platforms cannot receive, transmit or execute clients’ orders, custody clients’ assets, manage investment projects, assess investors of crowdfunding projects, grant loans or credits
Turkey				No	
United Kingdom	No	Yes (existing)	CF offers of illiquid securities is limited to certain types of consumer in the retail market	Yes (loan-based CF btw ordinary individuals or other individuals or business)	FCA core requirements apply (both prudential and conduct of business). If consumers do not receive advice the firm must assess whether they have the knowledge or experience to understand the risks involved

United States ³⁸	Yes	Yes	No limits on the type of securities which may be offered	No	Regulation allows issuers and intermediaries to rely on certain exemptions in order to favor a lighter regulatory framework for CF
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2. INTERMEDIARIES / PORTALS					
	Entry requirements	Conduct of Business req.	Handling of client assets req.	Mandatory due diligence	Mitigation of risks
Australia	General securities law applies depending on the business model. Under CAMAC recommendations CF intermediaries should be subject to the Australian Financial Service licence requirements, which are lighter than the financial market licence regime, and include having in place adequate human and capital resources and risk management systems	General securities law applies depending on the business model. Under CAMAC recommendations CF intermediaries should ensure retail investors are given a clear risk warning and be provided with an optional knowledge test	General securities law applies depending on the business model	General securities law applies depending on the business model. Under CAMAC recommendations CF intermediaries should carry out some mandatory elementary checks on the issuers.	General securities law applies depending on the business model Under CAMAC recommendations CF intermediaries should have adequate human and IT resources; CF intermediaries shall moderate an electronic forum for investors
Brazil	No, unless the issuer chooses to avail himself of an intermediary (then general securities law would apply)	No, unless the issuer chooses to avail himself of an intermediary (then general securities law would apply)	No, unless the issuer chooses to avail himself of an intermediary (then general securities law would apply)	No, unless the issuer chooses to avail himself of an intermediary (then general securities law would apply)	No, unless the issuer chooses to avail himself of an intermediary (then general securities law would apply)
Canada : Québec and Ontario CF regime	Yes (registration of the portal where the issuer relies on a the Crowdfunding exemption; the portal cannot provide investment advice)	Yes, e.g. duty to act honestly, fairly and in good faith, provisions on conflicts of interest. A number of exemptions apply (e.g. suitability, KYC requirements applying only for client identification)	All funds shall be held in a trust account separated and apart from the funding portal's own property; the portal cannot release funds to the issuer until the min amount to close the offer has been reached.	Yes, the portal must understand the general structure, features and risks on the offer and review the information provided by the issuers	A portal must deny access to an issuer if it make a good faith determination that the business of the issuer may not be conducted with integrity. A portal must withdraw the offer if it becomes aware that the crowdfunding offering document or the materials may contain a statement or information that is false, deceptive, misleading or that may constitute a misrepresentation or untrue statement of a material fact. A number of checks must be carried out.
Canada : Québec CF regime	No requirement for the portal to be registered as a dealer under the Start-Up Exemption	The portal does not provide investment advice	All funds shall be held in a trust account separated and apart from the funding portal's own property; the portal cannot release funds to the issuer until the min amount to close the offer has been reached.	No	The Principal Regulator performs background checks.
France	Yes (the platform can be a traditional Investment Service Provider or a CIP, this latter being subject to a lighter regime e.g. no capital requirements, but restrictions on the permitted activities)	Yes, e.g.: CIP must provide investment advice and perform suitability assessments; detect conflicts of interest and maintain conflict policy	Yes, CIP cannot receive subscription money from investors	Yes, CIP and Investment Service Provider must perform due diligence when selecting projects according to pre-determined criteria and disclose such criteria	In addition, there are inter alia requirements on fit and proper management of the CIP and professional indemnity insurance.

³⁸ Responses regarding the CF framework in the United States were provided by SEC staff for the survey purposes and relate to CF under Title III of the Jumpstart Our Business Startups Act. Since the survey related to securities-based products and that it appeared to have no application to derivatives, the survey was not within the remit of the United States Commodity Futures and Trading Commission («United States CFTC»).

Germany	General securities law applies depending on the business model	General securities law applies depending on the business model	General securities law applies depending on the business model	General securities law applies depending on the business model	General securities law applies depending on the business model
Hong Kong	General securities law applies depending on the business model	General securities law applies depending on the business model	General securities law applies depending on the business model	General securities law applies depending on the business model	General securities law applies depending on the business model
Hungary	General securities law applies depending on the business model	General securities law applies depending on the business model	General securities law applies depending on the business model	General securities law applies depending on the business model	General securities law applies depending on the business model
India	N/A	N/A	N/A	N/A	N/A

2. INTERMEDIARIES / PORTALS					
Italy	Yes (the platform can be a traditional MiFID investment firm or a CF portal, this latter being subject to a lighter regime e.g. no capital requirements, but restrictions on the permitted activities)	Yes, e.g.: duty to act with diligence, fairness and transparency; management of conflicts of interests; provisions on orders handling and recordkeeping. Prohibition to carry out investment advice, dealing or underwriting	Investors' assets are held in an escrow account at a MiFID intermediary	The portal manager shall check that issuers satisfy regulatory conditions for the offer, e.g. that the issuers' articles of association provide for tag-along rights and at least 5% of the offer is undersigned by professional investors, banking foundations or start-ups incubators	Yes, duty to ensure integrity of the information through reliable and secure operating systems, avoid operational interruption, establish suitable back-up facilities and publish information regarding measures to reduce and manage frauds
Japan	Yes, but lower entry requirements apply if the portal handles small amount of offers only	Prohibition to solicit investors by telephone or visiting customers' homes.	Appointment of a third party custodian	Yes, duty to conduct checks on issuers and their business plans	Yes, duty to establish appropriate IT systems and procedures for system failures
Korea (proposed)	Yes, but less stringent entry requirements apply (e.g. lower minimum capital) since restrictions apply on permitted activities	Prohibition to carry out investment recommendations and trading for own financial gain	Prohibition to hold or manage investors' securities – Appointment of a third party custodian	Yes, duty to verify the financial conditions of the issuers and disclose relevant info on the web	
Mexico	N/A	N/A	N/A	N/A	N/A
Morocco	N/A	N/A	N/A	N/A	N/A
The Netherlands	General securities law applies depending on the business model.	General securities law applies depending on the business model	General securities law applies depending on the business model	General securities law applies depending on the business model	General securities law applies depending on the business model
Pakistan					
Romania	General securities law applies depending on the business model	General securities law applies depending on the business model	General securities law applies depending on the business model	General securities law applies depending on the business model	General securities law applies depending on the business model
Singapore	General securities law applies depending on the business model	General securities law applies depending on the business model	General securities law applies depending on the business model	General securities law applies depending on the business model	General securities law applies depending on the business model
Spain	Yes (e.g. initial capital of 60,000 fully paid in cash or hold a professional indemnity insurance - integrity and professional requirements)	The portal must establish a code of business rules including on conflicts of interests and have sound internal organization / administrative and accounting procedures	Prohibition to hold investors' assets – unless the platform is authorized as a hybrid payment service provider. Appointment of a licensed custodian	No	Yes, the portal must have sound procedures to ensure security, confidentiality and reliability of service provided by electronic media
Turkey					
United Kingdom	General securities law applies depending on the business model (regulation is media-neutral)	General securities law applies depending on the business model (regulation is media-neutral)	General securities law applies depending on the business model (regulation is media-neutral)	General securities law applies depending on the business model (regulation is media-neutral)	General securities law applies depending on the business model (regulation is media-neutral)

<p>United States</p>	<p>Yes (CF transactions must be conducted through a traditional broker or a funding portal registered with the SEC)</p>	<p>Yes, e.g., know-your-customer provisions (for identification and contact information) and recordkeeping / Rules on conflicts of interests, e.g., prohibition to have interests in the issuer (subject to certain conditions)</p>	<p>Prohibition on funding portals to handle investors' assets - Funds to be held by a bank, or credit union insured by the National Credit Union Administration, that has agreed in writing to hold the funds in escrow for the persons who have beneficial interests or to maintain an account for the exclusive benefit of investors and the issuer. Funds may also be held by a registered broker or dealer that carries customer or broker or dealer accounts and holds funds or securities for those persons.</p> <p>No such prohibition for broker-dealers on handling investors' assets. However, in connection with a contingency offering, a broker-dealer participating in the distribution is required to maintain the funds in certain ways (i.e., either in a separate bank account, as agent or trustee for the persons who have the beneficial interests or in a bank escrow account for the persons who have the beneficial interests).</p>	<p>Intermediaries shall deny access to a platform if they have reasonable basis to believe that the issuer or its directors/officials are subject to disqualification or there is the potential for fraud or investor protection concerns.</p>	<p>Intermediaries shall deny access to a platform if they have reasonable basis to believe that the issuer or its directors/officials are subject to disqualification or there is the potential for fraud or investor protection concerns. Intermediaries would also be required to provide investors with education materials.</p>
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3. ISSUERS			
	Restrictions on the type/size of issuer	Offering size or other restrictions on the offer	Other special requirements
Australia	Under CAMAC recommendations, fund raising through CF will be restricted to public companies incorporated in Australia. To be effective, the companies would also need Australian founders (major shareholders and directors)	Under CAMAC recommendations: Fund raising through CF will be capped by issuer to \$5million in any 12 month period and only to those companies that have not raised funds through other regulated means.	N/A
Brazil	N/A	N/A	N/A
Canada : Québec and Ontario CF regime	Incorporated in Canada with head office in Canada – the issuer cannot be an investment fund or a blind pool (for example an issuer that does not have a written business plan setting out its business or proposed business.)	An issuer group cannot raise more than C\$ 1.5 man during the 12 months period – offer cannot remain open for more than 90 days	The minimum amount must be sufficient to accomplish the business objectives of the issuer.
Canada : Québec CF regime	The issuer cannot be a reporting issuer (listed or non-listed) or an investment fund. The head office of the issuer must be located in Québec (or any of the other Canadian Securities Administrators participating jurisdictions)	An issuer group cannot raise more than C\$250,000 per distribution and is restricted to no more than two distributions in a calendar year. The distribution period is no longer than 90 days.	The minimum amount must be equal to the amount needed to carry out the purpose for which the funds are sought.
France	No	Size of offer for a single issuer cannot exceed € 1 million per project over a 12 month period (otherwise a full prospectus approved by the regulator is required).	The issuer/project owner must provide the platform with the business plan (which is communicated to potential investors).
Germany	N/A	N/A	N/A
Hong Kong	General securities law applies depending on the business model	General securities law applies depending on the business model	N/A
Hungary	N/A	N/A	N/A
India	N/A	N/A	N/A
Italy	Innovative (unlisted) start-ups (total annual production value of no more than 5 million euro) Innovative small or medium enterprises Collective investment schemes or companies chiefly investing in innovative start-ups and innovative small or medium enterprises Head office in Italy	Total amount lower than €5 mln	The issuer shall have a business plan At least 5% of the offered shares shall be subscribed by professional investors, banking foundations or start-up incubator. Issuers shall include tag-along provisions in their company articles to guarantee a way out in case of a change in the control. Manager of the platform is responsible to verify so and cannot execute the offer unless the above conditions precedent are met.
Japan	No	In order for intermediaries to enjoy the relaxed regime the offer shall be less than 100 mln yen per year and amount per person, 500,000 yen or less per year.	No
Korea (proposed)	No	Aggregate sale to any investor up to KRW 1 billion during 12 months period + duty to set a target amount and deadline by the issuer	
Mexico	N/A	The offers are targeted exclusively to institutional and qualified investors or, in the case of equity securities, to less than 100 people. Otherwise, Securities Market Law should be fully applied to issuers.	N/A
Morocco	N/A	N/A	N/A
The Netherlands	N/A	N/A	N/A
Pakistan	N/A	N/A	N/A
Romania	N/A	N/A	N/A
Singapore	N/A	N/A	N/A

3. Issuers			
Spain	Incorporated in Spain or other EU country	Max amount of fund raising per project equal to € 2mln per year (€ 5mln per project for accredited investors) + duty to set a funding target by the platform	N/A
Turkey	N/A	N/A	N/A
United Kingdom	N/A but as a general rule public offering of private company shares is prohibited	N/A	N/A
United States	Incorporated in one of the 50 states, a territory or District of Columbia – the issuer cannot be subject to reporting requirements or be an investment company – SEC may exclude additional categories as it determines appropriate	Aggregate amount sold to all investors is no more than \$ 1,000,000 during preceding 12 month period – only one intermediary can be used to conduct the offer – issuer’s duty to disclose a target amount and deadline	Specified disclosure about the issuer, including financial statements required. Special civil liability regime applies to issuers for misrepresentations in crowdfunding transactions

4. MARKETING AND DISCLOSURE					
	Offering documents	Periodic financial disclosure	Ongoing disclosure	Access to offering documents	Other
Australia	General prospectus requirements unless an exemption is available. Under considered proposals disclosure requirements will be prescribed at a reduced level than the general prospectus requirements	General securities and company law applies	General securities and company law applies		Under CAMAC recommendations CF intermediaries would be prohibited from promoting CF offerings.
Brazil	General prospectus requirements unless an exemption is available. In such a case marketing material should disclaim that CVM does not endorse the information	General securities and company law applies	General securities and company law applies		
Canada : Québec and Ontario CF regime	Yes, content and form prescribed by regulator	Yes for reporting and non-reporting issuers according to general securities and company law	Yes for reporting issuers according to general securities and company law, Non reporting issuers would have to comply with specific on-going information requirements.	Through the web-site of the funding portal	The offering materials can only be posted through the distribution portal
Canada : Québec CF regime	Yes, content and form prescribed by regulator	No financial statements required.	No. However, an issuer needs to comply with corporate law requirements.	Through the web-site of the funding portal	
France	Yes, according to a template prescribed by the regulator	General securities and company law applies	Yes. Any new fact, error or inaccuracy concerning the information contained in the information document, which is likely to have a significant influence on the investment decision gives rise to the drafting of an amended information document.	Through the web-site of the funding portal	Access to CF portals is restricted to registered investors who have previously been informed through 2 warnings on the risks of losing the investment and the lack of liquidity and have expressly accepted these risks
Germany	General prospectus and key investor information requirements unless an exemption is available	General securities and company law applies	General securities and company law applies	General securities and company law applies	
Hong Kong	General securities and/or company law (including prospectus requirements) applies unless an exemption is available	General securities and/or company law applies	General securities and/or company law applies	General securities and/or company law applies	

Hungary	General prospectus and key investor information requirements unless an exemption is available	General securities and company law applies			
India					

4. MARKETING AND DISCLOSURE					
Italy	Yes, to be drafted according to the regulator's template	The offering document shall contain a link to the issuer's web-site where, among others, financial statements are published	Duty to update the info during offering period. Info accessible on issuer's web-site for at least 12 months after offering closure and made available upon request after 5 years	Through the web-site of the funding portal and on the issuer's web-site	For each offer the on-line portal shall ensure that a warning, graphically highlighted, is published informing that the offering materials have not been approved by Consob and that the investment is highly illiquid
Japan	Yes, a securities notice to be filed with a local finance bureau if public offering exceeds 10 mln yen (but is less than 100 mln)	Yes, for issuers who are required to file an annual securities report.	Yes, for issuers who are required to file an annual securities report		CF portals must provide information on CF offerings through their web-sites. The information includes such items as issuer's business, financial condition, and intended use of proceeds
Korea (proposed)	Yes, disclosure of terms of securities through crowdfunding portals	Financial disclosure is less demanding compared to ordinary issuers			
Mexico	N/A	N/A	N/A	N/A	N/A
Morocco					
The Netherlands	General prospectus requirements unless an exemption is available (e.g. offer not exceeding €2.5 mln)				CF portals must state on its web-site that these types of offerings are outside the scope of regulator's supervision
Pakistan					
Romania	General prospectus and key investor information requirements unless an exemption is available	General securities and company law applies			
Singapore	General prospectus requirements unless an exemption is available	General securities and company law applies	General securities and company law applies	General securities and company law applies	Where offer of securities is made in reliance on a prescribed prospectus exemption, restrictions on advertising of the offer applies.
Spain	No special provisions except that platforms are required to include all information in its web-site in a prominent and clear way for at least twelve months.	General securities and company law applies		Through the web-site of the funding portal	CF portal must state on its web-site that these types of offerings are outside the scope of regulator's supervision and warn on the risks of losing the investment and the lack of liquidity.
Turkey					
United Kingdom	General prospectus and key investor information requirements unless an exemption is available.	General securities and company law applies			
United States	Yes, content and form prescribed by regulator	Yes, to be included in the CF offering documents. Ongoing disclosure after offering is completed also required annually.	Duty to update the info during offering period for material changes. Ongoing disclosure after offering is completed also required annually.	Info must be made available to investors, be posted on the issuers' web-site and filed with the regulator. Ongoing disclosure after offering is completed also required annually.	Restrictions on advertising and promotion by issuers

5. OTHER PROVISIONS ON INVESTOR PROTECTION					
	Restrictions on the type of investors/ Investment limits	Special investor rights	Limitations on resale	Investor education	Investor risk acknowledgement
Australia	Not now, but under CAMAC recommendations limits would apply on retail investors (no more than \$ 25,000 per year and no more than \$ 10,000 in a single issuer)	Not now, but under CAMAC recommendations investors would have cooling-off rights	Restrictions apply to the issuer's directors and officers to sell more than 10% of their holdings in the first 12 months. Under the CAMAC recommendation these restrictions will apply to CF investments.	Not now, but under CAMAC recommendations investors would be given an optional knowledge test by intermediaries. Currently all financial service licensees must give a financial services guide to their clients. Under the CAMAC recommendation this guide will need to be given by intermediaries to their clients.	Under the CAMAC recommendations investors will be given prominent risk warnings that must be acknowledged. They will also be given the option to undertake a knowledge test.
Brazil					
Canada : Québec and Ontario CF regime	No more than CA\$2,500 per investment; in Ontario, no more than CA\$10,000 in total under the CF exemption in a calendar year. (Higher limits apply to accredited investors)	Investors shall have a right to withdraw by delivering a notice within 48 hours from the date of subscription.	Yes	CF portals should take reasonable steps to ensure that the investor understand the risks	Yes, the issuer shall obtain the signed form
Canada : Québec CF regime	No person may invest more than \$1,500 in any one Start-Up crowdfunding distribution. There are no annual limits. (Limit applicable also to accredited investors)	Investors shall have a right to withdraw by delivering a notice within 48 hours from the date of subscription. There may be limited or no right of action for rescission or damages in the event of a misrepresentation in any materials made available to purchaser.	Securities are subject to an indefinite hold period and can only be resold under another prospectus exemption or when an issuer becomes a reporting issuer.	The portal makes the offering document and the risk warnings available to investors online. The Québec AMF (and other Canadian Securities Administrators participating jurisdictions) will publish a guide for retail investors.	Yes. A funding portal does not allow an investor to purchase securities until confirmation that he/she has read and understood the offering document and the risk warnings.
France	No	No	No	No, but suitability test must be carried out every time. The French authorities (AMF + ACPR) have also published a guide for retail investors	Yes (see above on disclosure)
Germany	No	No, but general securities and company law applies (including suitability assessment and client information requirements)	No	No, but general securities and company law applies (including suitability assessment and client information requirements)	No, but general securities and company law applies (including suitability assessment and client information requirements)
Hong Kong	General securities and/or company law applies depending on the business model		General securities and/or company law applies depending on the business model	General securities law applies depending on the business model	General securities law applies depending on the business model
Hungary					
India					

5. OTHER PROVISIONS ON INVESTOR PROTECTION					
Italy	No caps on retail investors, but at least 5% of the offered shares shall be subscribed by professional investors, banking foundations or start-up incubator.	Retail investors enjoy a cooling off period of 7 days, a rescission right in the event of a material change in the offer and tag-along rights in the event of a change in the issuer's control	No	Access to the funding portal possible only provided that the investor have read investor education related info and answered to a questionnaire to test his full understanding of CF related risks	Access to the funding portal possible only provided that the investor acknowledges, among others, his ability to financially afford the possible entire loss
Japan	500,000 yen in a single issuer per year by an investor + 100 mln yen per year in an issuer by all investors in total	Investors enjoy a regime similar to cooling off period of 8 days	No	The intermediaries provide the information such as important risk warnings available to investors online	Suitability test must be carried out
Korea (proposed)	200% of the investor's annual income or property ownership-a cap of KRW2 mln per issuer and a cap of KRW10 mln for a 12 month period (no caps for sophisticated investors)	Right to cancel their investment commitment prior to the end of the subscription period	Yes, for one year	No	No
Mexico	Exclusively institutional and qualified investors or, in the case of equity securities, less than 100 people. Otherwise, Securities Market Law should be fully applied to issuers.	N/A	N/A	N/A	N/A
Morocco					
The Netherlands	Although there is no special law regime devoted to equity CF, still the AMF uses its discretionary powers to impose requirements on CF platforms when granting a licence. Retail investment limits for equity/debt CF is € 20,000 per platform				
Pakistan					
Romania					
Singapore	No restrictions, but general securities law apply	No	Resale restrictions under existing general securities law apply.	No	No
Spain	€ 3,000 per offering or € 10,000 per year per funding portal for non-accredited investors.	No	No	No	No, but CF platforms shall ask accredited investors to declare in writing that they are aware of the greater risks and lower protection arising from them being considered accredited investors
Turkey					
United Kingdom		No	No	No	A statement is signed by certified sophisticated investors, certified high-net worth investors and restricted investors – who are not receiving advice – before they can see promotions for the investments.
United States	If either annual income or net worth is less than US\$100,000, then there is a limit of the greater of US\$2,000 or 5% of the lower of annual income or net worth. If both annual income and net worth are equal to or greater than US\$100,000, then a limit of 10% of the lower of annual income or net worth, but not to exceed US\$100,000.	Unconditional right to cancel an investment commitment for any reason until 48 hours prior to the deadline identified in the offering docs. Thereafter, cancellation is possible in the event of a material change to the offering	Yes, for one year unless the transfer is to the issuer, an accredited investor, or a family member, or the transfer is part of an SEC registered offering.	Intermediaries shall obtain a representation that the investor has reviewed the educational materials	Intermediaries shall obtain by investors consent to electronic delivery, a questionnaire completed by the investor demonstrating his understanding of risks and a representation that the investor has reviewed the educational materials

6. OTHER ISSUES			
	Restrictions on cross-border activities	Size of the CF market	Monitoring and enforcement
Australia	Depending on the business model, registration/licencing requirements may apply	Currently, CF activity mostly outside ASIC competence (reward based and donation based CF) – small no of web-based CF portals	Insofar as application of general securities law is triggered
Brazil	Depending on the business model, registration/licencing requirements may apply	Only one equity crowdfunding deal up to August 2014	Insofar as application of general securities law is triggered
Canada : Québec and Ontario CF regime	Registration requirements on the portal – Issuer incorporated in Canada, shall have head office in Canada and majority of directors resident in Canada	No data available	Insofar as application of general securities law is triggered
Canada : Québec CF regime	The head office of the issuer is located in Québec (or any of the other Canadian Securities Administrators participating jurisdictions).	No data available.	Even though portals are not registered, regulators still have the power to inspect. Sanctions and recourses under securities laws are available for enforcement.
France	Registration/licencing requirements apply on the portal (CIP/ investment services provider) which must be a French legal entity (a non-French MiFID firm may however benefit from the European passport). The issuer seeking funds may be French or not.	The AMF does not currently collect data. According to an industry association CF market has doubled in 2014 compared to 2013 and has reached €152M; France is the 2 nd market behind UK in EU	The AMF has enforcement powers (including on-site inspection powers). An annual report is due by each platform to the AMF. A new specific oversight framework for equity/plain vanilla debt will come into force once the AMF has authorized the first crowdfunding associations(s). Crowdfunding association (authorized and supervised by the AMF) will determine written admission and disciplinary procedures and will perform on-site inspections according to a 3 year cycle. Other investment-based CF activities may fall within its competence insofar as application of general securities law is triggered
Germany	Depending on the business model, registration/licencing requirements may apply	No own data, but according to market data collector as of the end of 2013 the volume of securities based CF grew 250% compared to 2012	Insofar as application of general securities law is triggered
Hong Kong	Depending on the business model, general securities law (including registration/licencing requirements) may apply	No data available	To monitor CF activities falling within the scope of its competence the regulator set up a cross-divisional working group and review individual portals that come to its attention and insofar as application of general securities law is triggered.
Hungary	Depending on the business model, registration/licencing requirements may apply	Only donation based CF operates	Insofar as application of general securities law is triggered
India			Insofar as application of general securities law is triggered
Italy	The portal shall be registered with Consob and shall have its head office in Italy – Start-ups must have head office in Italy	As of Feb 2015 14 funding portals are registered with Consob	Consob has full monitoring and enforcement powers on equity CF falling within the special regime. Other investment-based CF activities may fall within its competence insofar as application of general securities law is triggered
Japan	N/A	Not yet definitive statistics. CF institutions seem to have solicited approximately 4.4 bln yen and 280 funds as of the end of June 2014	The Japan FSA has on-going monitoring (on-site and off-site) and enforcement competences
Korea (proposed)	N/A	Donation and reward based CF have grown spontaneously since 2007. The market size is approximately KRW53 bln at the end of 2013	The regulator has the authority to examine the business and financial conduct of CF brokers and carry out enforcement actions
Mexico	N/A	The CNBV does not have own data. However, according to an industry association (Asociación de Financiamiento Colectivo or AFICO), there are 11 affiliated platforms and 7 of them operate Financing CF.	The current equity CF platforms operate through private offers. That means, the offers are targeted exclusively to institutional and qualified investors or, in the case of equity securities, to less than 100 people. In those cases, the CNBV does not have regulatory, supervisory or enforcement powers over issuers, platforms or participants.
Morocco			Insofar as application of general securities law is triggered
The Netherlands	Depending on the business model, registration/licencing requirements may apply	According to a Dutch CF consultancy firm. There are 63 active platforms and 20 internationally active. The business is growing very fast (in 2013 32 mln € raised, whilst only 2,5 in 2011)	Insofar as application of general securities law is triggered. Monitoring mostly take place at licensing.
Pakistan			Insofar as application of general securities law is triggered

6. OTHER ISSUES			
Romania	Depending on the business model, registration/licencing requirements may apply	Equity CF is developing by making use of the prospectus exemptions. No definitive data available.	Insofar as application of general securities law is triggered
Singapore	General securities law will apply if the activity of a person acting outside Singapore has a substantial and foreseeable effect in Singapore. Depending on the business model, registration/licensing requirements may apply.	There are currently no intermediary licensed by MAS that carry out securities-based crowdfunding.	Insofar as application of general securities law is triggered
Spain	Issuers to be incorporated in Spain or other EU country. The platform should be authorized and registered with CNMV and shall have its head office in Spain or other EU country.		Monitoring and sanction will be performed by the regulator in a similar way as for intermediaries
Turkey			Insofar as application of general securities law is triggered
United Kingdom		More than half of the CF market is regulated by the FCA. According to a report by Nesta in 2014, the amount raised on investment-based crowdfunding platforms was around £84 mln – three times more than the amount raised in 2013 (£28m) ³⁹	Insofar as application of general securities law is triggered. The FCA has conducted a review of securities based CF at the end of 2014, and will carry out a more detailed review in 2016
United States	Issuers to be incorporated in one of the 50 states, a territory or District of Columbia. Non-resident funding portals shall register with the SEC and FINRA	Equity-crowdfunding is currently not permitted until final rules go into effect in approximately May 2016. As of 2012, 191 CF platforms in the US. The number of platforms grew at about 29% annually from 2007 until 2011. The amount of funds raised grew at 90% annually from 2009 until 2011.	Yes, SEC and SROs tasked with monitoring and enforcement.

³⁹ Nesta, 'Understanding Alternative Finance: The UK Alternative Finance Industry Report 2014' (November 2014). Source: <http://www.nesta.org.uk/sites/default/files/understanding-alternative-finance-2014.pdf>