FAIR Canada Canada's Investor Rights Advocate | Promoteur des droits des investisseurs

January 5, 2026

Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Financial and Consumer Services Commission of New Brunswick
Manitoba Securities Commission
Nova Scotia Securities Commission
Ontario Securities Commission
Financial and Consumer Services Division, Department of Justice and Public Safety, Prince Edward Island
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Superintendent of Securities, Nunavut
Office of the Yukon Superintendent of Securities

The Secretary
Ontario Securities Commission
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22nd Floor, Box 55
Toronto, Ontario M5H 3S8
comments@osc.gov.on.ca

Re: Proposed Multilateral Instrument 45-111 *Self-Certified Investor Prospectus Exemption*

We thank you for the opportunity to comment on the Proposed Multilateral Instrument 45-111 Self-Certified Investor Prospectus Exemption (SCIPE).

FAIR Canada is a national, independent, non-profit organisation recognised for providing balanced and thoughtful commentary on public policy issues. Our work includes promoting the rights of investors and financial consumers across Canada through:

- Informed policy submissions to governments and regulators
- Relevant research focused on retail investors
- Public outreach, collaboration, and education
- Proactive identification of emerging issues.[1]

A. Addressing the Lack of Data

We support the CSA's approach to developing the SCIPE, which included pilot tests and extensive stakeholder engagement. This approach serves as a template for developing other exemptions.

[1] Visit www.faircanada.ca for more information.

However, the lack of data on SCIPE's use under existing blanket orders or local instruments makes it difficult to comment on the proposed Multilateral Instrument 45-111 (MI 45-111). Specifically:

- Only seven issuers appear to have used SCIPE in Ontario, raising less than $500,000 over 36 months (October 25, 2022, to April 21, 2025).
- The Consultation lacks data or analysis on SCIPE's use in other provinces.
- There is no information available regarding investors' experiences with SCIPE, whether they purchased the exempt securities directly from the issuer or through a registrant (typically an exempt market dealer (EMD)).

The lack of data impedes the ability to evaluate whether the proposed changes to SCIPE in MI 45-111 will achieve the regulator's objectives: expanding access, increasing flexibility, facilitating capital formation, and growing the angel investor ecosystem. It also makes it difficult to assess whether investors are being safeguarded from unsuitable investments or debilitating financial losses.

Conceptually, we agree that SCIPE may serve as a better indicator of an investor's sophistication than the Accredited Investor exemption, which primarily evaluates financial capacity rather than sophistication. We also agree with the CSA's assessment that SCIPE will likely be utilised by investors with net annual incomes below $200,000 and will mainly involve offerings marketed by EMDs. Lower net income levels and reliance on EMDs (who are often conflicted in these types of offerings) raise concerns about investor protections.

To address these concerns, we recommend:

- **Enhanced Data Collection:** Regulators should collect additional data on investors who purchase through registrants, including Know Your Client (KYC) data, cost and performance metrics, and portfolio holdings. This information will inform the cost-benefit analysis and help determine whether the use of SCIPE is harming investors.

- **Compliance Reviews:** Regulators should conduct reviews of registrants and issuers relying on the exemption, especially during the first three years of MI 45-111's introduction, to ensure compliance and intended outcomes. For registrants, reviews should specifically assess the suitability of their recommendations and their management of conflicts of interest.

- **Public Reporting:** Regulators should publicly disclose any compliance issues identified in retail investor trading of exempt securities, including SCIPE-related concerns.

B. Responses to Consultation Questions

Question # 1 – Annual Investment Limit

We support setting a cap on how much each investor can invest under the exemption. However, without more detailed data on SCIPE investors, it is difficult to determine whether raising the

overall annual limit from $30,000 to $50,000 is suitable. Since SCIPE is likely to be used by investors with limited financial resources, we recommend keeping the current limit unless reliable safeguards are put in place. Some of these safeguards are discussed below in relation to the eligibility criteria.

If credible alternatives are lacking and the increase to $50,000 is adopted, it should be limited to cases where a registrant is involved and provides a recommendation to the investor. Registrants' obligations, including prioritizing clients' interests, conducting KYC and Know Your Product (KYP) assessments, and making suitable recommendations, should, in theory, help mitigate concerns about loss capacity.

To ensure that these investor protections are applied appropriately, we further recommend that regulators provide additional guidance to registrants on how to fulfill these obligations in the context of SCIPE. Guidance from Companion Policy 45-106CP (subsections 3.8(1.1) and (1.2)), tailored to SCIPE's unique requirements, could serve as a model for MI 45-111. For example, guidance should clarify that the $50,000 annual limit does not mean such investments are suitable for every SCIPE investor, and that a signed attestation alone does not satisfy suitability obligations.

Additionally, Companion Policy 45-111CP (CP 45-111) should clarify that the $50,000 aggregate acquisition cost includes the self-certified investor's permitted designate.

When an issuer sells securities directly to investors, the suitability and conflicts of interest requirements do not apply. Given the absence of these investor protections, the annual investment limit should remain at $30,000 in aggregate for those securities purchased directly from issuers.

Question # 2 – Material Risks in Proposed Form 45-111F2

Form 45-111F2 should include a clear risk warning about borrowing to invest in exempt market securities. The warning must explain that purchasing on margin significantly increases financial risk. For example, if an investor borrows $50,000 to invest and the investment fails, the loss will be compounded by the investor's legal obligation to repay the loan principal and interest.

Question # 3 – Proposed Forms 45-111F2 and 45-111F3

We commend the regulators for using plain language in Forms 45-111F2 and 45-111F3. These forms are a notable improvement over many jargon-heavy investor-facing documents. As drafted, these forms will be much easier for investors to understand.

Both forms provide similar information, but in different ways and with varying levels of detail. Notably, Form 45-111F3 offers more general information about the risks involved in investing in

any exempt offering. However, it is unclear why issuers need to provide both forms to purchasers. It could also confuse investors who receive both.

Instead, we view proposed Form 45-111F3 as a more valuable educational tool for any investor considering investments in the exempt or private markets. Rather than requiring it for MI 45-111, we recommend that the information on Form 45-111F3 be included as part of investor education materials on regulators' websites.

Question # 4 – Eligibility Criterion (a)

We do not support including criterion (a) in the Qualifying Criteria. While related industry experience may provide insights, it does not equate to investor sophistication. For example, someone might be an excellent IT professional but lack the knowledge or experience to assess the merits of investing in a technology start-up. We are concerned that adding this criterion could lead some individuals to underestimate the risks or misinterpret the nature of the investment, potentially resulting in poor outcomes for those investors.

At a minimum, the criterion should be adjusted to focus on individuals serving in senior financial or management roles, thereby supporting a more reasoned basis for assessing investment risks. With this narrower scope, we believe maintaining a five-year time frame is appropriate; however, we recommend that the experience be relatively recent, such as within the past five years.

We are also concerned that the criterion, as drafted, is broad and subjective ("other relevant operational experience"), making it difficult for issuers or regulators to verify eligibility. This could result in individuals misrepresenting their experience or stretching the definition to qualify, thereby undermining the intended protection for investors.

If CSA members proceed with including a version of criterion (a), CP 45-111 should be revised to provide specific guidance on eligibility and examples of permitted and non-permitted experience. Without such guidance, there is a risk of an overly broad interpretation, which could undermine investor protection.

In addition to providing necessary guidance, regulators should monitor how the industry applies the final form of criteria and, if required, should revise it further to ensure it captures sophisticated investors as intended.

Question # 5 – Eligibility Criteria (b) and (c)

Criteria (b) and (c) refer to employment, founder, or director roles "in the past 5 years," which indicates recent experience. As drafted, as little as one year in respect of criterion (b), or a single day in respect of criterion (c), would qualify for the exemption. The intent, as clearly expressed in question 6a, is to identify individuals who have at least five years of experience in these roles. We agree that SCIPE investors should be required to have a minimum amount of experience, and that

their experience should be recent. Therefore, both criteria (b) and (c) should be revised to specify that an individual must, in addition to "in the past 5 years," have "at least five years" of employment experience in the roles outlined in the criteria.

Regarding criterion (b), the focus should be on the type of experience that would enable an investor to evaluate and decide whether to invest in exempt market enterprises. We believe this eligibility criterion should place more emphasis on an individual's employment role and responsibilities than it currently does (it is not clear what "participated in the investment activities" means).

Therefore, we recommend that criterion (b) be amended to require that the investor have, in connection with their regular functions and duties, participated in making decisions about investing in or extending credit to private issuers, private funds or small or medium-sized enterprises. This would more clearly relate the investor's employment experience to the ability to assess exempt market investments. Furthermore, we recommend that SCIPE investors be required to have at least two or three years of experience in making such investment or credit-related decisions as part of their job (one year is not sufficient).

In addition to the issue related to "at least 5 years" of experience in those roles, we believe the eligibility criterion (c) needs additional guardrails to be suitable for Canada's capital markets. As drafted, it assumes all business experience is equal. For example, the criterion assumes a bakery founder with $500,000 in annual revenues can assess the merits of investing $50,000 in an AI or crypto start-up. However, the bakery founder's experience probably would not directly translate to evaluating such investments. Therefore, at a minimum, the investment opportunity should be in the same sector or industry as the founder's or director's business.

We also question the $500,000 annual revenue benchmark. The equivalent UK exemption requires a yearly turnover of at least £1 million (about $1.86 million CAD), which indicates a higher standard for sophistication, experience, and investor protection. Therefore, we recommend raising the minimum annual revenue benchmark to $750,000 with periodic reassessments as data becomes available. $750,000 still appears to be achievable for many Canadian startups and growth companies, but it establishes a more robust benchmark than $500,000, striking a balance between inclusivity and the need for meaningful experience.

Similar to criterion (a), clear and specific guidance should be provided in CP 45-111 to ensure that issuers selling directly to the purchaser do not aggressively interpret the criteria under (b) and (c).

Question # 6 – Qualifying Criteria Enhancements

Regarding question 6a, a uniform standard should be applied across criteria (a) to (d). For example, while a lawyer practicing securities law would be knowledgeable about the regulatory regime, that does not necessarily make them a sophisticated investor. A longer, uniform experience requirement helps ensure that only those with more substantial exposure to

investment-related issues are eligible, thereby reducing the risk of admitting less sophisticated investors.

Regarding question 6b, we view the requirement that lawyers have practiced for at least 2 years as a positive change compared to the requirements under Ontario Instrument 45-507 (OI 45-507) and the orders currently in effect in the Prairie provinces. Those orders required that a lawyer be admitted to practice in Canada and have spent one-third of their practice providing advice regarding securities distributions or mergers and acquisitions (M&A). A lawyer who spent one day assisting a senior partner with a prospectus offering on the third day after their Bar Call would meet that threshold.

We commend the regulators for requiring at least two years of legal practice. Still, we would go further and require at least five years of legal practice experience, with at least two years of that practice devoted to securities distributions or M&A advice. This more closely aligns with criteria (a) to (c), as well as with the intent of SCIPE, namely that investors have some basis in real knowledge or experience for regulators to expect they can successfully navigate private markets.

Question # 7 – Alternative Report of Exempt Distribution (RED)

We see no value in allowing issuers to file the Alternative RED as was available under OI 45-507 and Ontario Instrument 45-509 (OI 45-509). It is less confusing for issuers to report all prospectus exemptions relevant to an exempt distribution on a single form.

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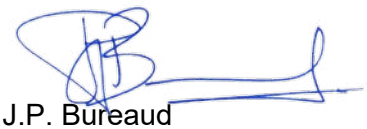
Thank you for considering our comments. As investor advocates, we value the opportunity to share our perspective and help shape policies that put investors' interests first. We welcome ongoing dialogue and collaboration with the provincial and territorial securities regulators addressed in this letter, as well as with other stakeholders, to create fair, transparent, efficient, and resilient capital markets for all Canadians. If you wish to discuss our submission further, please contact us. We are committed to working together to support better outcomes for investors.

Sincerely,



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