

Multilateral CSA Notice 45-316
Start-up Crowdfunding Registration and Prospectus Exemptions

May 14, 2015

Introduction

The securities regulatory authorities (the **participating regulators** or **we**) of British Columbia, Saskatchewan, Manitoba, Québec, New Brunswick and Nova Scotia (the **participating jurisdictions**) are adopting substantially harmonized registration and prospectus exemptions (together, the **start-up crowdfunding exemptions**) that allows start-up and early stage companies to raise capital in these jurisdictions, subject to certain conditions. The participating regulators have implemented, or expect to implement, the start-up crowdfunding exemptions by way of local blanket orders (the **start-up crowdfunding exemption orders**).

The start-up crowdfunding exemptions will be effective in each participating jurisdiction concurrently with, or as soon as possible after, the publication of this notice. Each start-up crowdfunding exemption order is or will shortly be available on the website of the respective securities regulatory authority of the participating jurisdiction.

Substance of the start-up crowdfunding exemptions

The start-up crowdfunding exemptions are comprised of an exemption from the prospectus requirement (the **start-up prospectus exemption**) and an exemption from the dealer registration requirement (the **start-up registration exemption**).

The start-up prospectus exemption permits non-reporting issuers to issue eligible securities, subject to a number of conditions. The key conditions are:

- the head office of the issuer is located in a participating jurisdiction;
- the issuer distributes eligible securities of its own issue through an online funding portal;
- the issuer distributes eligible securities using an offering document in the form required that is made available through the online funding portal. The offering document includes basic information about the issuer, its management and the distribution, including how the issuer intends to use the funds raised and the minimum offering amount;
- the issuer group cannot raise aggregate funds of more than \$250,000 per distribution and is restricted to not more than two start-up crowdfunding distributions in a calendar year;

- no person invests more than \$1,500 per distribution;
- the distribution may remain open to up to a maximum of 90 days
- the distribution must be made through a funding portal that is either relying on the start-up registration exemption or is operated by a registered dealer. Registered dealers that operate funding portals must meet their existing registration obligations under securities legislation and confirm to issuers that they meet or will meet certain conditions provided in the start-up registration exemption;
- the issuer provides each purchaser with a contractual right to withdraw their offer to purchase securities within 48 hours of the purchaser's subscription or notification to the purchaser that the offering document has been amended; and
- none of the promoters, directors, officers and control persons (collectively, the **principals**) of the issuer group is a principal of the funding portal.

The eligible securities are subject to an indefinite hold period and can only be resold under another prospectus exemption, under a prospectus or four months after the issuer becomes a reporting issuer.

The start-up registration exemption permits funding portals to facilitate distributions under the start-up crowdfunding exemptions, subject to a number of conditions. The key conditions are:

- the funding portal must deliver a funding portal information form and individual information forms for each of its principals to the participating regulators at least 30 days prior to facilitating its first start-up crowdfunding distribution;
- the head office of the funding portal is located in Canada;
- the majority of the funding portal's directors are Canadian residents;
- the funding portal does not provide advice to a purchaser or otherwise recommend or represent that an eligible security is suitable, or about the merits of the investment;
- the funding portal does not receive a commission, fee or any other amount from a purchaser of eligible securities;
- the funding portal makes the offering document of the issuer and the risk warnings available online to purchasers and does not allow a subscription until the purchasers have confirmed that they have read and understood these documents;
- the funding portal receives payment for an eligible security electronically through the funding portal's website;

- the funding portal holds the purchasers' assets separate and apart from its own property, in trust for the purchasers and, in the case of cash, at a Canadian financial institution;
- the funding portal maintains books and records at its head office to accurately record its financial affairs and client transactions, and to demonstrate the extent of the funding portal's compliance with the start-up crowdfunding exemption orders for a period of eight years from the date a record is created;
- the funding portal either
 - releases funds to the issuer after the minimum offering amount has been reached and provided that the 48-hour right of withdrawal has elapsed, or
 - returns the funds to purchasers if the minimum offering amount is not reached or if the start-up crowdfunding distribution is withdrawn by the issuer; and
- a participating regulator has not notified the funding portal that it cannot rely on the start-up registration exemption because its principals or their past conduct demonstrate a lack of integrity, financial responsibility or relevant knowledge or expertise.

The start-up exemption orders will expire on May 13, 2020.

Background

In a relatively short period of time, crowdfunding has become an important new method of raising capital through the internet for a broad range of purposes. It has been used to raise money for specific projects that do not generally involve the issuance of securities. However, in some foreign jurisdictions, equity crowdfunding is emerging as a way for businesses, particularly start-ups and small issuers, to raise capital.

A crowdfunding exemption has existed in Saskatchewan since December 2013 (General Order 45-925 – *Saskatchewan Equity Crowdfunding Exemption*). As a participating regulator, the Financial and Consumer Affairs Authority of Saskatchewan will adopt the start-up crowdfunding exemptions and repeal its current exemption in order to harmonize with other participating regulators. The current Saskatchewan exemption will not be repealed if there are distributions open under that exemption.

We think that crowdfunding can be a viable method for start-ups and small issuers to raise capital. Consequently, on March 20, 2014, the securities regulatory authorities of Saskatchewan, Manitoba, Québec, New Brunswick and Nova Scotia published for comment two different crowdfunding exemptions (the **2014 proposal**):

- the integrated crowdfunding prospectus exemption and crowdfunding portal requirements proposed under Multilateral Instrument 45-108 – *Crowdfunding* (the **45-108 crowdfunding exemption**); and
- the start-up crowdfunding exemptions.

Although the British Columbia Securities Commission did not participate in the 2014 proposal, it published a local notice, BC Notice 2014/03 *Notice and Request for Comment on Start-Up Crowdfunding*, soliciting comment on the start-up crowdfunding exemptions.

The 45-108 crowdfunding exemption would be available to reporting issuers and non-reporting issuers and provide a higher offering limit. The participating regulators that have published the 2014 proposal continue to work closely with the Ontario Securities Commission in developing the proposals relating to the 45-108 crowdfunding exemption.

The start-up crowdfunding exemptions are intended to provide an alternative source of capital to non-reporting issuers at an earlier stage of development. The participating regulators that have published the 2014 proposal have conceived both exemptions to coexist and be complementary.

Based on the feedback received from market participants, the participating regulators are adopting start-up crowdfunding exemption orders containing substantially harmonized terms and conditions for a period of five years. Issuers will be able to conduct a start-up crowdfunding distribution under the start-up crowdfunding exemptions simultaneously in all of the participating jurisdictions as well as any other jurisdictions of Canada that may adopt the start-up crowdfunding exemptions in the future.

Summary of the comments received

The comment period on the 2014 proposal ended on June 18, 2014. During that period, we received 26 written submissions in response to the 2014 proposal, 13 of which specifically discussed the start-up crowdfunding exemptions. We thank everyone who provided comments. A list of the names of the commenters on the start-up crowdfunding exemptions and a summary of the comments received on the start-up crowdfunding exemptions, together with Staff responses, are provided in Appendices A and B of this Notice.

Summary of changes to the start-up crowdfunding exemption orders

After considering the comments, we made some revisions to the start-up crowdfunding exemptions in the 2014 proposal. Those revisions are reflected in the form of the start-up crowdfunding exemption orders. The key changes we have made to the start-up crowdfunding exemptions in the 2014 proposal are described in Appendix C.

Questions

Please refer your questions to any of the following:

British Columbia

Elliott Mak
Senior Legal Counsel, Corporate Finance
British Columbia Securities Commission
(604) 899-6501
emak@bcsc.bc.ca

Denis Silva
Senior Legal Counsel, Capital Markets Regulation
British Columbia Securities Commission
(604) 899-6511
dsilva@bcsc.bc.ca

Saskatchewan

Liz Kutarna
Deputy Director, Capital Markets
Securities Division
Financial and Consumer Affairs Authority
of Saskatchewan
(306) 787-5871
liz.kutarna@gov.sk.ca

Mikale White
Legal Counsel
Securities Division
Financial and Consumer Affairs Authority
of Saskatchewan
(306) 787-5899
mikale.white@gov.sk.ca

Manitoba

Chris Besko
Director, General Counsel
The Manitoba Securities Commission
(204) 945-2561
chris.besko@gov.mb.ca

Québec

Gabriel Araish
Senior Analyst, Corporate Finance
Autorité des marchés financiers
514-395-0337, ext. 4414
gabriel.araish@lautorite.qc.ca

Marc-Olivier St-Jacques
Analyst, Corporate Finance
Autorité des marchés financiers
514-395-0337, ext. 4424
marco.st-jacques@lautorite.qc.ca

New Brunswick

Susan Powell
Deputy Director, Securities Division
Financial and Consumer Services
Commission
506-643-7697
susan.powell@fcnb.ca

Nova Scotia

Abel Lazarus
Securities Analyst
Nova Scotia Securities Commission
902-424-6859
abel.lazarus@novascotia.ca