

Multilateral CSA Notice 45-317*Amendments to Start-up Crowdfunding
Registration and Prospectus Exemptions*

January 25, 2016

Introduction

The securities regulatory authorities of Saskatchewan, Manitoba, Québec, New Brunswick and Nova Scotia (the **jurisdictions**) are adopting amendments to the substantially harmonized local blanket orders (the **start-up crowdfunding exemption orders**) that implement the start-up crowdfunding registration and prospectus exemptions (the **start-up crowdfunding exemptions**) in their jurisdiction.

The jurisdictions have implemented, or expect to implement, the amendments to the start-up crowdfunding exemptions by amending or replacing their local start-up crowdfunding exemption order initially adopted on May 14, 2015.

The amendments to the start-up crowdfunding exemptions will be effective in each jurisdiction concurrently with, or as soon as possible after, the publication of this notice.

Summary of the amendments

In the jurisdictions, the start-up crowdfunding exemption orders have been amended or replaced to allow a funding portal registered as a restricted dealer and authorized under the terms and conditions of Multilateral Instrument 45-108 *Crowdfunding (MI 45-108)*¹, to facilitate the distribution of securities under the start-up crowdfunding prospectus exemption. A black lined version of Blanket Order 45-506 *In the Matter of Start-up Crowdfunding Registration and Prospectus Exemptions* highlighting these changes is included with the notice.

Contents of Annexes

The following annex forms part of this CSA Notice:

Annex A - Blanket Order 45-506 *Start-Up Crowdfunding Registration And Prospectus Exemptions*- Blackline

¹ Manitoba, Québec, New Brunswick and Nova Scotia have implemented or expect to implement MI 45-108 on January 25, 2016. Saskatchewan expects to implement after this date. British Columbia is not implementing MI 45-108.

Questions

Please refer your questions to any of the following:

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

Noémie C. Girard
Analyst, Supervision of Intermediaries
Autorité des marchés financiers
418-525-0337, ext. 4806
noemie.corneau-girard@lautorite.qc.ca

New Brunswick

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

Jason Alcorn
Senior Legal Counsel, Securities
Financial and Consumer Services
Commission
506-643-7857
Jason.alcorn@fcnb.ca

Nova Scotia

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

ANNEX A

FINANCIAL AND
CONSUMER SERVICES
COMMISSION

regulation • education • protection



COMMISSION DES SERVICES
FINANCIERS ET DES SERVICES
AUX CONSOMMATEURS

réglementation • éducation • protection

I, Manon Losier, the duly appointed General Counsel and Secretary of the Financial and Consumer Services Commission, hereby certify that this blanket order was approved by Members of the Commission at a meeting held on ~~18²⁷ April-January 2016~~⁵, with an effective date of ~~25 January~~^{14-May 2016}⁵.

IN THE MATTER OF THE *SECURITIES ACT*, S.N.B. 2004, c. S-5.5 (the Act)

AND

IN THE MATTER OF
START-UP CROWDFUNDING REGISTRATION AND PROSPECTUS EXEMPTIONS

Blanket Order 45-506 (as amended)
Sections 55, 80 & 208

WHEREAS:

1. Terms defined in the *Securities Act* or National Instrument 14-101 *Definitions* have the same meaning in this Blanket Order.
2. In this Blanket Order:

“closing of the distribution” means, at the discretion of the issuer, any time after the minimum offering amount is reached;

“corresponding start-up crowdfunding order” means an order issued, or a rule adopted, by another securities regulatory authority or regulator, the terms of which are substantially similar to this Blanket Order;

“eligible security” means:

- (a) a common share,
- (b) a non-convertible preference share,
- (c) a security convertible into a security referred to in (a) or (b),
- (d) a non-convertible debt security linked to a fixed or floating interest rate, and
- (e) a unit of a limited partnership;

“funding portal” means a person that facilitates, or proposes to facilitate, online start-up crowdfunding distributions;

“issuer group” means

- (a) the issuer,
- (b) an affiliate of the issuer, and

- (c) any other issuer
 - (i) that is engaged in a common enterprise with the issuer or with an affiliate of the issuer, or
 - (ii) whose business is founded or organized, directly or indirectly, by the same person or persons who founded or organized the issuer;

“minimum offering amount” means the minimum amount disclosed in the offering document;

“offering document” means a completed Form 1 – *Start-up Crowdfunding - Offering Document*, including any amendment to the offering document;

“participating jurisdictions” means British Columbia, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia and any other jurisdiction whose securities regulatory authority or regulator has adopted a corresponding start-up crowdfunding order;

“principal” means a promoter, director, officer or control person;

“risk warning” means the risk warning document set out in Form 2 - *Start-up Crowdfunding - Risk Acknowledgement*; and

“start-up crowdfunding distribution” means a distribution through a funding portal of an eligible security that is exempt from the prospectus requirement under this Blanket Order or a corresponding start-up crowdfunding order.

3. Section 45 of the *Act* requires a person to register when trading securities.
4. A funding portal that trades in securities may be registered or rely on the exemption from the dealer registration requirement in this Blanket Order.
5. Section 71 of the *Act* requires a person to file a prospectus and to receive a receipt for that prospectus prior to distributing a security.

AND UPON the Commission being satisfied, having considered the interests of investors and the financing needs of early stage businesses and other small enterprises, that, subject to the conditions of this Blanket Order, it is appropriate to provide exemptions from the requirements of sections 45 and 71 of the *Act* to allow start-up crowdfunding distributions;

IT IS ORDERED, pursuant to section 208 and section 55 of the *Act* that:

6. the dealer registration requirement does not apply to a trade by a funding portal in connection with a start-up crowdfunding distribution if the funding portal:
 - (a) does not facilitate its first start-up crowdfunding distribution until:
 - (i) 30 days after it delivers to the Commission:
 - A. a completed Form 3 – *Start-up Crowdfunding - Funding Portal Information Form*,
 - B. a completed Form 4 – *Start-up Crowdfunding - Funding Portal - Individual Information Form* for each principal of the funding portal, and
 - C. such other documents as may be requested by the Commission; or
 - (ii) if the Commission notifies the funding portal that more time is required to review the documents required under ~~paragraph~~section 6(a)(i), the date the Commission confirms the review is complete;

- (b) delivers to the Commission any amendments to the documents referred to in subsection 6(a) as soon as practicable;
- (c) has not been notified by the Commission that the business of the funding portal is prejudicial to the public interest because the principals, or their past conduct, demonstrate a lack of
 - (i) integrity,
 - (ii) financial responsibility, or
 - (iii) relevant knowledge or expertise;
- (d) has its head office located in a jurisdiction of Canada;
- (e) has a majority of its directors resident in Canada;
- (f) 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 this Blanket Order for a period of eight years from the date a record is created;
- (g) is not registered under Canadian securities legislation;
- (h) does not provide advice to a purchaser or otherwise recommend or represent:
 - (i) that an eligible security is suitable, or
 - (ii) any information about the merits of the investment;
- (i) prior to allowing any person entry to its website, requires the person to acknowledge that they are entering a website of a funding portal:
 - (i) that it is not operated by a registered dealer under Canadian securities legislation, and
 - (ii) that does not provide advice about the suitability of any security or about the merits of any investment;
- (j) discloses on its website, for each principal of the funding portal, their full legal name, municipality and jurisdiction of residence, business mailing and email address, and business telephone number;
- (k) does not receive a commission, fee or other amount from a purchaser of an eligible security;
- (l) holds a purchaser's assets:
 - (i) separate and apart from the funding portal's own property,
 - (ii) in trust for the purchaser, and
 - (iii) in the case of cash, in a designated trust account at a Canadian financial institution;
- (m) receives payment for an eligible security electronically through the funding portal's website;
- (n) takes reasonable measures to ensure that an issuer and a purchaser are residents of a participating jurisdiction where the offering document is made available;
- (o) makes available to a purchaser through the funding portal's website the offering document and the risk warnings;

- (p) does not allow a purchaser to subscribe for an eligible security until the purchaser confirms that the purchaser has read and understood the offering document and the risk warnings;
- (q) notifies a purchaser of any amendment to the offering document and the right of the purchaser to withdraw their subscription after receiving notification of the amendment;
- (r) returns all funds to a purchaser within five business days of receiving a withdrawal notification from that purchaser; and
- (s) completes one the following:
 - (i) if the minimum offering amount has not been raised by the 90th day after the offering document is first made available on the funding portal's website or the start-up crowdfunding distribution is withdrawn, no later than five business days following such occurrence:
 - A. returns, or causes to return, all funds to a purchaser, and
 - B. notifies the issuer and each purchaser that funds have been returned,
 - (ii) if each 48 hour period in subsection 7(j) has elapsed,
 - A. releases, or causes to release, all funds due to the issuer at the closing of the distribution, and
 - B. no later than fifteen days after the closing of the distribution:
 - I. notifies each purchaser that the funds have been released to the issuer, and
 - II. provides the issuer with all information required to comply with the issuer's obligations in subsection 8(b).

IT IS ORDERED, pursuant to section 208 and section 80 of the Act that

7. The prospectus requirement does not apply to a distribution by an issuer if:

- (a) the distribution is of its own eligible security;
- (b) the distribution and payment for the eligible security is facilitated through a funding portal that is
 - (i) relying on the exemption in section 6, or
 - (ii) operated by a registered dealer, provided the issuer has obtained written confirmation from the registered dealer that
 - A. it has filed either a completed Form 33-109F5 *Change of Registration Information* or Form 33-109F6 Firm Registration that describes the change in its business to include operating a funding portal;
 - B. the funding portal meets or will meet the conditions set out in subsections 6(m) to 6(s); ~~and~~
 - C. prior to allowing any person entry to its website, requires the person to acknowledge that they are entering a website of a funding portal:
 - I. that is operated by a registered dealer under Canadian securities legislation, ~~and~~
 - II. that will provide advice about the suitability of the eligible security if it is required to do so under securities legislation;
 - ~~III. that will not provide advice about the suitability of the eligible security if subsection (II) does not apply;~~

- (c) the issuer is not a reporting issuer or an investment fund in any jurisdiction of Canada or foreign jurisdiction;
- (d) the head office of the issuer is located in a participating jurisdiction;
- (e) the aggregate funds raised in any start-up crowdfunding distribution by any person in the issuer group does not exceed \$250,000;
- (f) the issuer group is restricted to no more than two start-up crowdfunding distributions in a calendar year;
- (g) the distribution occurs no later than the 90th day after the first date the offering document is made available on the funding portal's website;
- (h) the issuer uses an offering document to conduct the distribution and provides the offering document to the funding portal for the purpose of making it available to a purchaser through the funding portal's website;
- (i) the issuer amends the offering document in the event the offering document is no longer true and provides it to the funding portal as soon as practicable for the purpose of making it available to a purchaser through the funding portal's website;
- (j) the issuer provides a purchaser with a contractual right to withdraw an offer to purchase an eligible security that may be exercised by the purchaser delivering a notice to the funding portal within 48 hours of (i) the purchaser's subscription or (ii) the funding portal notifying the purchaser that the offering document has been amended;
- (k) the offering document discloses how the issuer intends to use the funds raised and the minimum offering amount to close the distribution;
- (l) the issuer raises the minimum offering amount described in the offering document, which may be reduced by the amount of any concurrent distribution made under a prospectus exemption other than the prospectus exemption set out in this Blanket Order and a corresponding start-up crowdfunding order, provided that the funds from the concurrent distribution are unconditionally available to the issuer;
- (m) no concurrent start-up crowdfunding distribution is made by any person in the issuer group for the purpose described in the offering document;
- (n) no commission, fee or other amounts are paid to the issuer group or any of their principals, employees or agents with respect to the distribution;
- (o) a principal of the issuer group is not a principal of the funding portal;
- (p) no person invests more than \$1,500; and
- (q) within 30 days after the closing of the distribution, the issuer delivers or causes to be delivered to each purchaser a confirmation setting out the following:
 - (i) the date of subscription and the closing of the distribution;
 - (ii) the quantity and description of the eligible security purchased;

- (iii) the price per eligible security paid by the purchaser; and
 - (iv) the total commission, fee and any other amounts paid by the issuer to the funding portal in respect of the start-up crowdfunding distribution.
8. An issuer that distributes a security under this Blanket Order must file no later than the 30th day after the closing of the distribution
- (a) the offering document; and
 - (b) a report in Form 5 – *Start-up Crowdfunding - Report of Exempt Distribution*;
9. The first trade of a security acquired under this Blanket Order or a corresponding start-up crowdfunding order is subject to section 2.5 of National Instrument 45-102 *Resale of Securities*.
10. This order comes into effect on ~~25th January~~ ~~May~~ 201~~6~~~~5~~ and expires on 13 May 2020.

Dated at Saint John, New Brunswick, this 14th day of May 2015, as amended on the 25th day of January 2016.

Manon Losier
General Counsel and Secretary of the
Financial and Consumer Services Commission