

Start-up Crowdfunding Guide

For Funding Portals



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Alberta Securities Commission

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START-UP CROWDFUNDING GUIDE FOR FUNDING PORTALS

Crowdfunding is a process through which an individual or a business typically raises small amounts of money from a large number of people, usually through the Internet. The objective is generally to raise sufficient funds in order to carry out a specific project. There are different types of crowdfunding, such as by donation, pre-selling of products or by selling shares, loans or other securities, i.e., securities crowdfunding. This guide discusses securities crowdfunding.

Securities crowdfunding

With securities crowdfunding, a business raises funds through the Internet by selling securities (such as bonds or shares) to many people. This type of crowdfunding is overseen by the securities regulators of the provinces or territories where the business and potential purchasers are located.

Legal obligations

In Canada, the trading of securities is subject to securities law obligations. For example, a person or company (an **issuer**) seeking to raise capital by issuing securities must file a prospectus with the securities regulator of their province or territory or have an exemption from the prospectus requirement under securities law. A person or company in the business of trading securities must be registered as a dealer in each of the jurisdictions in which it is carrying on business unless there is an available exemption from the registration requirement.

These obligations can be costly for start-ups and early stage businesses.

Many issuers rely on prospectus exemptions to sell their securities. Most of these exemptions can be found in National Instrument 45-106 *Prospectus Exemptions*. However, the securities regulators in Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan (the **participating jurisdictions**) have provided an additional exemption to allow start-ups and small businesses to raise funds using securities crowdfunding by preparing a brief disclosure document that, significantly, does not require preparing financial statements. In this guide, we refer to this as the “**start-up crowdfunding exemptions**” or “**start-up crowdfunding**”.

The start-up crowdfunding exemptions provide an exemption to both issuers from the prospectus requirement and to the funding portal, the party that lists the investment opportunities and facilitates payment of the purchase price from the investor to the issuer, from the dealer registration requirement. The exemptions allow

- a start-up or early stage issuer to raise relatively small amounts of capital by distributing securities to investors without filing a prospectus (the **start-up prospectus exemption**) if they distribute their securities through a funding portal; and
- a funding portal to facilitate trades of those securities without having to register as a dealer (**start-up registration exemption**).

The purpose of this guide is to assist funding portals.

In this guide, “**regulator**” means the securities regulator or regulatory authority in a participating jurisdiction.

There are two types of funding portals that may facilitate start-up crowdfunding:

- funding portals operated by persons relying on the start-up registration exemption; and
- funding portals operated by registered dealers (e.g., investment dealers or exempt market dealers.)

A registered dealer may also operate a funding portal. It would not rely on the exemption.

FUNDING PORTALS OPERATING UNDER THE START-UP REGISTRATION EXEMPTION

A person or company operating a funding portal will not have to register as a dealer if they meet all the conditions of the start-up registration exemption. These conditions include, among other things, that the funding portal must:

- have its head office in Canada;
- have a majority of its directors be Canadian residents;
- not be registered under Canadian securities legislation;
- not tell any investor that an investment is suitable for the investor or otherwise discuss the merits of an investment;

(Note: This means the funding portal cannot tell an investor that the securities offered are a good investment or that the investor should make an investment. The funding portal must refrain from saying or doing anything that might lead an investor to think that they should buy the securities because the securities somehow meet their investment needs or objectives.)

However, the funding portal can give factual information about the securities. For example, it may tell investors about the information in the offering document such as the features of the securities, the risks of the investment, how start-up crowdfunding works, and other items of a general, factual nature.)

- make available the issuers’ offering document(s) and risk warning on its website;
- ensure that investors confirm online, by ticking a box, that they have read and understood the offering document and risk warning available on the funding portal;
- take reasonable measures to ensure that the head office of each issuer using the funding portal is in a participating jurisdiction and that each investor is a resident of a participating jurisdiction;
- not allow entry to its website by any prospective investor until that person or company acknowledges that they are entering a website of a funding portal:
 - that is not operated by a registered dealer under Canadian securities legislation; and
 - that will not provide advice about the suitability or the merits of any investment (for further details on the “**pop-up acknowledgement**” see the section in this guide entitled Pop-up Acknowledgement)
- not receive a commission or fee from an investor;

- disclose prominently on its website:
 - the full legal name, municipality and jurisdiction of residence, business mailing and e-mail address, and business telephone number of each promoter,¹ director, officer and control person² (principals) of the funding portal; and
 - the names of the participating jurisdictions where the funding portal is operating and relying on the start-up registration exemption
 (Note: Each of the participating jurisdictions has their own start-up crowdfunding exemptions order (**blanket order**). Each blanket order is substantially harmonized with the other participating jurisdictions but there are some differences. The funding portal must ensure that they comply with the blanket order in each participating jurisdiction where they operate. Please check the applicable blanket orders which can be found on the regulators' website.)
- hold investors' assets separate from the funding portal's property, in trust for the investor and, in the case of cash, at a Canadian financial institution;
 (Note: This requirement is a fundamental obligation of the start-up registration exemption. Funding portals should expect that regulators will assess how the funding portal is handling client assets at both the initial stage and during future compliance reviews. The regulators intend to ensure that these conditions are followed closely.)
- keep its books and records, including its compliance procedures, at its head office for eight years from the date a record is created;
- not facilitate the distribution of securities to purchasers under prospectus exemptions other than the start-up prospectus exemption.

In Ontario, a funding portal relying on the start-up registration exemption must also disclose on its website the process it will use to notify purchasers if it becomes insolvent or discontinues operations. It must also disclose how it will return any purchasers' assets it holds.

Before starting operations

Step one

A funding portal intending to rely on the start-up registration exemption must deliver the following forms to the regulator of each jurisdiction in which it intends to operate:

- a completed Form 3 *Start-up Crowdfunding - Funding Portal Information Form* (Form 3);
- a completed Form 4 *Start-up Crowdfunding - Funding Portal - Individual Information Form* (Form 4) for each principal of the funding portal; and
- any other completed documents and any additional information that may be requested by a regulator.

¹ A person who founded, organized or significantly reorganized the funding portal is generally considered to be a promoter.

² A person who holds a sufficient number of voting rights to control the funding portal or who holds 20% or more of the voting rights of the funding portal is generally considered a control person of the funding portal.

In Alberta, these documents should be submitted via email to registration@asc.ca

Alongside Form 3, the funding portal must submit to the regulators documents describing the funding portal's process and procedure for handling investors' funds, including the following details:

- the name of the Canadian financial institution where the trust account for investors' cash is located;
- the name of the signatories on that trust account and their role with the funding portal;
- how the investors' assets will be kept separate and apart from the funding portal's assets;
- how the cash will flow from: (i) the investors to the funding portal's trust account; (ii) from the funding portal's trust account back to the investors' bank accounts in the event that the offering does not close; and (iii) from the funding portal's trust account to the issuer in the event that the offering does close; and
- a copy of the trust agreement for the funding portal's trust account with a Canadian financial institution or details surrounding the establishment of this account.

The following documents may help expedite the process if the funding portal intends to facilitate start-up crowdfunding distributions in

- Québec: business plans and financial statements; and
- Saskatchewan, Manitoba, Québec, or Nova Scotia:
 - organizing documents such as articles and certificate of incorporation or partnership agreement; and
 - business registration numbers and proof of extra-provincial registration.

The regulators may also request access to the funding portal's website in a test environment when the website is complete and ready for viewing.

The funding portal must deliver the forms and documents by email to the regulator in each participating jurisdiction where the funding portal intends to facilitate start-up crowdfunding distributions. For example, a funding portal with a head office in Saskatchewan that intends to seek funds from investors in all participating jurisdictions must deliver the forms and documents described in this guide to the Financial and Consumer Affairs Authority in Saskatchewan and the regulators in each of the other participating jurisdictions.

In Alberta, these documents should be submitted via email to registration@asc.ca

Delivery of the forms and documents by the funding portal is only the first step and does not mean that the funding portal can start operations. The regulators may have questions for the funding portal regarding these forms and documents.

Step two

Before starting operations, the funding portal must receive written confirmation from the regulator in each jurisdiction in which it intends to conduct a start-up crowdfunding distribution that the forms and documents delivered to the regulator in step one are complete.

Please note that the regulator may notify the funding portal that it cannot use the start-up registration exemption because its principals, or their past conduct, demonstrate a lack of integrity, financial responsibility or relevant knowledge or expertise.

If a change occurs and the information in the forms or documents delivered to a regulator are no longer up-to-date, the funding portal must update the information by delivering a new form or document setting out the change. For example, if management at a funding portal changes, an updated funding portal information form as well as a funding portal individual information form for each new principal must be delivered to the regulators.

In Ontario, a funding portal relying on the start-up registration exemption must file Form 3, Form 4, and supporting documents, and then wait 30 days before soliciting investors. During the waiting period, staff of the Ontario Securities Commission (**OSC**) may notify the funding portal that they are not satisfied that the start-up registration exemption can be relied on. In that case, a funding portal would then file amended documents and wait a further 30 day period. Reasons for such a notification include:

- the documents submitted were incomplete;
- the funding portal or any of its promoters, directors, officers or control persons (principals), or any entity it or any of its principals has been the principal of has had a judgment, sanction or similar order imposed against it based on fraud, theft, breach of trust, insider trading, or allegations of similar conduct, or
- the policies and procedures for handling funds in relation to a start-up crowdfunding distribution do not satisfy the conditions of the start-up registration exemption.

Compliance with laws and regulations

The funding portal's activities are subject to the securities laws of the jurisdictions where its head office or other places of business are located, as well as the jurisdictions where the issuers and purchasers are resident.

If a funding portal intending to rely on the start-up registration exemption has its head office located in a jurisdiction where the start-up crowdfunding exemption is not available then the funding portal may be required to be registered as a dealer. Once registered as a dealer in any jurisdiction then the funding portal is no longer able to rely on the start-up registration exemption in any other jurisdiction (see later section on *Funding portals operated by registered dealers*).

Failing to comply with local securities laws is a serious offence and could prevent the funding portal from being able to rely on the start-up registration exemption. The funding portal must also ensure that it complies with all other applicable laws and regulations of a participating jurisdiction. We encourage funding portals to consult a lawyer for advice.

Regulators in the participating jurisdictions plan to periodically conduct compliance reviews of funding portals relying on the start-up registration exemption. If a funding portal does not meet the conditions of the start-up registration exemption, then it cannot rely on that registration exemption.

A funding portal relying on the start-up registration exemption that intends to operate in Ontario must certify within ten days of a calendar year-end that it has sufficient working capital to continue its operations for at least the next 12 months by filing a Form 5 with the OSC. See Form 5 to the OSC blanket order for details on calculating working capital and practices that will help demonstrate compliance with this condition.

A funding portal can carry out reviews of issuers before making their offering documents available on its website to protect the funding portal's own interests or reputation.

Funding portals will likely want to consider that their website could be used in ways not intended by the funding portal. For example, peer-to-peer messaging systems on a funding portal's website might be used by the funding portal's visitors to solicit the purchase and sale of other securities without the portal's knowledge. This may result in the funding portal indirectly facilitating illegal securities distributions.

Pop-up Acknowledgement

The start-up crowdfunding exemptions require investors to acknowledge certain information before entering a funding portal's online platform, e.g., website or app. This requirement does not distinguish between where or how the investor enters the funding portal's platform. As a result, funding portals must design their platform so that investors acknowledge the required information regardless of whether those investors enter the platform through the funding portal's home page or through another page on the funding portal's website.

The funding portal should also manage the risk that potential investors are visiting the funding portal's platform using a shared computer, tablet, or other mobile device. In other words, multiple people in a household may be entering the funding portal's website at different times using the same device. As a result, in order to comply with the pop-up acknowledgment requirements, the funding portal should consider designing their platform so that the required pop-up acknowledgements reappear each time the investor's internet browser is closed and re-opened.

We expect the pop-up acknowledgement to appear in the following circumstances:

The pop-up acknowledgement should appear upon the first and every subsequent time a person enters a funding portal's platform. This means that after opening their internet browser,

- (a) if a person lands on any page of a funding portal's platform (home page or other page) the pop-up acknowledgement should appear,
- (b) if the person clicks "I acknowledge" and later closes out of their browser, when the person goes back to any page on a funding portals' platform, the pop-up acknowledgement should appear. The result is that the same person will have to click on "I acknowledge" to go back into the funding portals' platform regardless of the fact that they had just been to that platform.

The pop-up acknowledgement should appear regardless of a person's entry point to the platform (home page or other page). For example:

- (a) If a person were to search the name of the funding portal and finds a link to the funding portal's platform, the link would take the person to the funding portal's home page and a pop-up acknowledgement would appear.
- (b) If a person were to search the name of a funding portal and finds a link to the funding portal's issuer-offering page, the link would take the person to that page of the funding portal's platform and a pop-up acknowledgement would appear.

Once a person clicks "I acknowledge" and enters the funding portal's platform, they can navigate from page to page within the platform without the re-appearance of the pop-up acknowledgment.

FUNDING PORTALS NOT OPERATING UNDER THE START-UP REGISTRATION EXEMPTION

Registered dealers (i.e., exempt market dealers and investment dealers) are allowed to operate start-up funding portals. Exempt market dealers and investment dealers that operate a funding portal must:

- meet their existing registration obligations under securities legislation (including the know-your-client, know-your-product and suitability obligations owed to investors);
- confirm to issuers that the funding portal meets certain of the conditions in the start-up prospectus exemption, such as making an offering document and risk warning available to investors on the funding portal's platform;
- prompt any person entering the funding portal's platform to acknowledge that the funding portal is operated by a registered dealer that will provide suitability advice;
- file a Form 33-109F5 *Change of Registration Information* that describes the change in its business to include operating a funding portal; and
- disclose all fees charged to investors in accordance with relationship disclosure requirements under National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*.

An offering conducted through a funding portal operated by a registered dealer is permitted to facilitate a larger investment by an investor. Typically, an investor may invest up to \$1,500 under the start-up crowdfunding prospectus exemption. However, if both the issuer and the investor are in Alberta, British Columbia, Ontario or Saskatchewan, investors can purchase up to \$5,000 if a registered dealer has determined that the investment is suitable for the investor.

HOW DOES START-UP CROWDFUNDING WORK?

Issuers are responsible for preparing an offering document that complies with Form 1 in the province they are based, and the province in which the investor resides. In particular, issuers must indicate the minimum amount necessary to close a start-up crowdfunding distribution. Issuers will provide the offering document to the funding portal to post online. The funding portal must take reasonable measures to ensure that the issuer is a resident of a participating jurisdiction where the offering document is made available. Investors will read the offering document and decide whether or not to invest.

Before accepting an investment, a funding portal must obtain confirmation from the investor that he or she has read and understood the offering document and the risks described in the risk acknowledgement form. A funding portal must obtain the investor's personal information and take reasonable measures to ensure the investor resides in a participating jurisdiction.

An issuer cannot close a distribution unless it has raised the minimum amount set out in its offering document and each purchaser's right to withdraw has expired. At the closing:

- the issuer distributes shares or other eligible securities to investors; and
- the funding portal releases funds to the issuer.

No later than 15 days following the closing of the distribution, the funding portal must notify investors that the funds have been released to the issuer, and it must provide the issuer with the following information about each investor:

- Full name
- Address
- Telephone number
- Email address
- Number of securities purchased
- Total purchase price.

The issuer requires this investor information in order to complete a report of exempt distribution. When providing investor information to the issuer, we encourage the funding portal to use the same spreadsheet that the issuer is required to use for filing. Please refer to the *Start-up Crowdfunding Guide for Businesses* for more information on the issuer's filing requirements.

If the issuer withdraws its start-up crowdfunding offering or does not raise the minimum amount within 90 days after the funding portal posts the offering document online, all the funds must be returned in full to investors within five business days. No deductions are permitted. The funding portal must also send a notice to the issuer and each investor confirming that the funds have been returned to investors.

The funding portal may send notices to investors and issuers by email.

RELATED-PARTY RESTRICTION

A funding portal cannot act in a start-up crowdfunding distribution if one of its principals is also a principal of the issuer group. The issuer group means the issuer, an affiliate of the issuer, and any other issuer that is engaged in a common enterprise with the issuer or an affiliate, or whose business is founded or organized by the same person or company who founded or organized the issuer.

INVESTOR'S RIGHT TO WITHDRAW

Investors have the right to withdraw their investment within 48 hours following the investor's subscription. Investors also have the right to withdraw their investment within 48 hours of the funding portal notifying the investor of an amendment to the offering document.

To exercise this right of withdrawal, an investor must notify the funding portal. The funding portal must give investors the opportunity to exercise this right. The funding portal must return the funds to an investor who exercises this right, without any deduction, within five business days after the notice.

AMENDMENTS TO THE OFFERING DOCUMENT

An issuer must amend its offering document after it has been posted online by the funding portal if the information it contains is no longer true. This could be the case if, for example, an issuer wants to change the price of the securities or the minimum or maximum offering amount. The issuer must send the amended version to the funding portal for posting on the funding portal's platform. The funding portal must notify investors about the amendment.

ISSUER'S FINANCIAL STATEMENTS

Under the start-up prospectus exemption, issuers are not required to provide financial statements to investors with the offering document.

If an issuer wants to voluntarily make its financial statements available to investors, it can place a hyperlink on the funding portal leading to the financial statements. Often issuers will not want the financial statements to form part of the offering document because then the financial statements will need to comply with specified accounting and auditing standards. To avoid the financial statements forming part of the offering document, the hyperlink must not appear in the offering document.

WHERE CAN I GET MORE INFORMATION?

For more information about the start-up crowdfunding exemptions in the participating jurisdictions, please refer to the following contact information:

Alberta	<p>Alberta Securities Commission Telephone: 403-355-4151 Email: inquiries@asc.ca Website: https://www.albertasecurities.com/</p>
British Columbia	<p>British Columbia Securities Commission Telephone: 604-899-6854 E-mail: inquiries@bcsc.bc.ca Website: www.bcsc.bc.ca</p>
Saskatchewan	<p>Financial and Consumer Affairs Authority of Saskatchewan Securities Division Telephone: 306-787-5645 E-mail: exemptions@gov.sk.ca Website: www.fcaa.gov.sk.ca</p>
Manitoba	<p>The Manitoba Securities Commission Toll-free in Manitoba: 1-800-655-2548 E-mail: exemptions.msc@gov.mb.ca Website: www.mbsecurities.ca</p>
Ontario	<p>Ontario Securities Commission Toll free: 1-877-785-1555 E-mail: inquiries@osc.gov.on.ca Website: www.osc.ca</p>
Québec	<p>Autorité des marchés financiers Direction du financement des sociétés Toll-free in Québec: 1-877-525-0337 E-mail: financement-participatif@lautorite.qc.ca Website: www.lautorite.qc.ca</p>
New Brunswick	<p>Financial and Consumer Services Commission Toll-free: 1-866-933-2222 E-mail: emf-md@fcnb.ca Website: www.fcnb.ca</p>

Nova Scotia

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