

**British Columbia Securities Commission**

**BC Instrument 45-535**

***Start-up Crowdfunding Registration and Prospectus Exemptions***

**Definitions**

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

2. In this Instrument:

“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 Instrument;

“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 Instrument or a corresponding start-up crowdfunding order.

### **Background**

3. Section 34 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 Instrument.
5. Section 61 of the Act requires a person to file a prospectus and to receive a receipt for that prospectus prior to distributing a security.
6. The Commission is 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 Instrument, it is appropriate to provide exemptions from the requirements of sections 34 and 61 of the Act to allow start-up crowdfunding distributions.

### **Exemption from dealer registration requirement for funding portals**

7. The Commission, considering that to do so would not be prejudicial to the public interest, orders under section 48(1) that 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 the Commission confirms in writing receipt of the following:
    - (i) a completed Form 3 – *Start-up Crowdfunding - Funding Portal Information Form*,

- (ii) a completed Form 4 – *Start-up Crowdfunding - Funding Portal - Individual Information Form* for each principal of the funding portal, and
  - (iii) such other completed documents and any additional information as may be requested by the Commission;
- (b) delivers to the Commission any amendments to the documents referred to in section 7(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 Instrument 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,
  - (i) 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, and

- (ii) that the funding portal is relying on the exemption in this Instrument from the dealer registration requirement;
- (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 under subsection 8(j) from that purchaser; and
- (s) completes one the following:
  - (i) if the minimum offering amount has not been raised by the 90<sup>th</sup> 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 each purchaser, and
    - (B) notifies the issuer and each purchaser that funds have been returned,
  - (ii) if each 48 hour period in section 8(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:

- (a) notifies each purchaser that the funds have been released to the issuer, and
- (b) provides the issuer with all information required to comply with the issuer's obligations in section 9(b).

**Exemption from prospectus requirements for issuers**

8. The Commission, considering that to do so would not be prejudicial to the public interest, orders under section 76 that 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 7, or
  - (ii) operated by an exempt market dealer or investment dealer provided that 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 its business as including operating a funding portal under this Instrument;
    - (B) the funding portal meets or will meet the conditions set out in subsections 7(m) to 7(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:
      - (a) that is operated by an investment dealer or an exempt market dealer, as applicable, under Canadian securities legislation, and
      - (b) that will provide advice about the suitability of the eligible security;
- (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 90<sup>th</sup> 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 Instrument 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.

9. An issuer that distributes a security under this Instrument must file no later than the 30<sup>th</sup> day after the closing of the distribution:
  - (a) the offering document; and
  - (b) a report in Form 45-106F1 *Report of Exempt Distribution*.

**Resale restrictions**

10. The first trade of a security acquired under this Instrument or a corresponding start-up crowdfunding order is subject to section 2.5 of National Instrument 45-102 *Resale of Securities*.

**Transition and Effective date**

11. This order comes into effect on May 14, 2015 and expires on May 13, 2020.
12. Despite section 11, paragraph 7(j)(ii) comes into effect on August 1, 2016.
13. The issuer may prepare an offering document in accordance with this Instrument as it read on the first date that the offering document was made available on the funding portal's website.

Dated May 14, 2015

Amended June 30, 2016

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(This part is for administrative purposes only and is not part of the Order)

Authority under which Order is made:

Act and section: *Securities Act*, sections 48 and 76