

## Start-up Crowdfunding Guide for Businesses

Crowdfunding is a process through which an individual or a business can raise money from a large number of people, typically through the Internet. The objective is usually 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 through selling shares or other securities. This guide discusses securities crowdfunding.

### *Securities crowdfunding*

Securities crowdfunding involves a business raising money by issuing securities (such as shares) to many people through the Internet using a funding portal. This type of crowdfunding must comply with the securities laws of the provinces and territories where the business and potential investors are located.

### *Legal obligations*

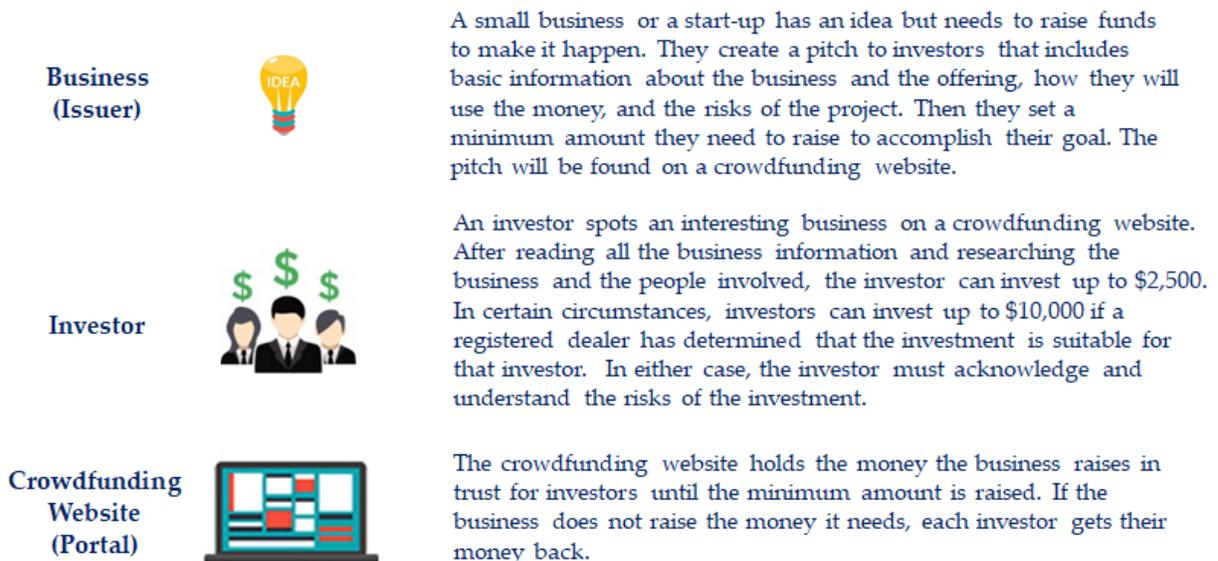
In Canada, trading of securities is subject to legal obligations. For example, a business seeking to raise capital by issuing securities must file a prospectus (a comprehensive disclosure document that includes financial statements) with the securities regulator of each of the provinces and territories where its business and its potential investors are located or have an exemption from the prospectus requirement under securities law.

These obligations can be costly for start-ups and early stage businesses. There are a number of exemptions from the prospectus requirement that businesses can use to conduct securities crowdfunding in Canada. However, these exemptions require a fairly comprehensive disclosure and/or limit the types of investors that can invest. Canadian securities regulators have created a streamlined system to allow start-ups and small businesses (**issuers**) to raise small amounts of money from the general public using securities crowdfunding, without filing a prospectus or preparing financial statements (**start-up prospectus exemption**). Instead, the issuer prepares an abbreviated disclosure document that does not require financial statements.

Under securities law in Canada, a business that intends to operate a funding portal, e.g., creating a website that brings together buyers and sellers of securities, must typically be registered as a dealer with the securities regulator. However, if the funding portal restricts itself to certain activities, it can facilitate trades of those securities without having to register as a dealer (**start-up registration exemption**). In this guide, we refer to the start-up prospectus exemption and the start-up registration exemption as the “**start-up crowdfunding exemptions**” or “**start-up crowdfunding**.”

The purpose of this guide is to assist issuers intending to raise funds by relying on the start-up prospectus exemption. In this guide, “**regulator**” means the applicable provincial securities regulator or regulatory authority.

## How Start-up Crowdfunding Works



In order to raise funds using the start-up prospectus exemption, issuers must prepare and post an offering document on a funding portal’s crowdfunding website. Investors can then read about the offering and decide whether to invest. Before investing, investors will have to confirm that they have read the offering document and understand that the investment is risky.

### *When should an issuer consider start-up crowdfunding?*

Before launching a start-up crowdfunding campaign, the management of the issuer will want to:

- evaluate other sources of funding, such as a loan from a financial institution,
- assess whether they are willing to invest the time and effort needed to prepare and run a start-up crowdfunding campaign,
- determine the type and characteristics of securities that will be sold,
- determine the number of securities to be sold and at what price, and
- assess if they can manage a greater number of security holders.

Issuers should also carefully consider the effect of raising capital through the issuance of securities. There are primarily two types of securities: debt instruments, such as non-

convertible debt securities linked to an interest rate, and equities, such as common shares. Both types of securities are permitted under the start-up crowdfunding instrument. While debt is essentially a loan from an investor to an issuer, equity provides holders with certain ownership rights in the issuer. Accordingly, if a start-up crowdfunding campaign that involves the sale of shares (or other equity) is successful, the founders or other individuals with an economic interest in the issuer may have to give up part of the ownership of the issuer to investors. Under corporate law, investors that purchase equity securities in an issuer may have certain rights to participate in key decisions relating to the management of the issuer. Investors may also want to be informed about successes and failures of the issuer's business. Management of the issuer should assess whether they are willing to spend the time and effort to maintain contact with investors.

The start-up prospectus exemption is not available to reporting issuers (public companies). Reporting issuers are required to provide ongoing public disclosure of their business activities by filing financial statements and other documents required by securities laws. These types of issuers are considered to be more established than the start-up or early stage issuers that are permitted to use start-up crowdfunding.

In addition, the start-up prospectus exemption is not available to issuers that are raising money without a specific business objective, commonly known as "blind pools". In particular, the start-up prospectus exemption is not available where:

- (a) the issuer has no operations other than to identify and evaluate assets or a business with a view to completing an investment in, merger with, amalgamation with or acquisition of a business, or a purchase of the securities of one or more other issuers; or
- (b) the proceeds of the distribution are intended to be used by the issuer to invest in, merge or amalgamate with or acquire a business that has not been described in the issuer's offering document.

In these circumstances, the issuer will need to raise capital using methods other than the start-up prospectus exemption.

When considering whether these conditions have been met, the regulators may consider, among other things, the disclosure in the offering document to determine what operations the issuer has and how the issuer intends to use the proceeds of the distribution.

### *Where is start-up crowdfunding available?*

The start-up prospectus exemption is available to issuers that have a head office in Canada.

If an issuer wants to raise funds using start-up crowdfunding in a particular province or territory, the funding portal must be permitted to operate in that particular province or territory (see “*Where can I find out more information on whether a funding portal is able to operate?*”, below).

### *What is the maximum amount that can be raised? How often can an issuer raise money using start-up crowdfunding?*

An issuer can raise up to \$1,500,000 in the 12-month period before closing of the distribution. It may complete as many distributions per calendar year as fits their business objectives.

For instance, if an issuer has already raised \$250,000 on June 1 and \$300,000 on December 31 using the start-up crowdfunding exemption, it can still raise up to \$950,000 at any point before May 31 of the following year under that exemption.

This maximum amount applies to the issuer, together with any related issuers in its issuer group. The “**issuer group**” has a broad meaning. In addition to the issuer, it also includes any affiliates of the issuer (e.g. related companies) 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.

### *Does the issuer have to distribute common shares in a start-up crowdfunding offering?*

The securities offered in a start-up crowdfunding offering must be among those permitted by the start-up prospectus exemption. An issuer can use start-up crowdfunding to distribute common shares, but it can also distribute non-convertible preference shares, non-convertible debt securities linked to a fixed or floating interest rate, or units of a limited partnership. If the issuer is an association (also commonly known as a co-operative), it can use start-up crowdfunding to distribute shares in the capital of that association provided that it is not restricted from doing so under its enabling legislation.

The issuer can also issue securities that convert into common shares or non-convertible preference shares. These securities may include certain types of warrants, options or simple agreements for future equity.

It is up to the issuer to decide what type of security distribution helps it best achieve its growth and development goals.

*Are there any time limitations for completing a crowdfunding offering?*

The offering document must indicate a minimum dollar amount that has to be raised before the offering can close. The issuer has a maximum of 90 days to raise the minimum amount, starting on the day the issuer's offering document is first made available to investors through the funding portal's website.

Investors will send the funds for their investment to the funding portal. The funding portal will then hold the money in trust. Before releasing the funds to the issuer, the following must have occurred:

- the issuer has secured the minimum amount of the offering and has decided to complete the offering; and
- the time for exercise of all withdrawal rights have expired (see "What if an investor changes their mind?", below).

If the minimum amount is not reached, or the start-up crowdfunding campaign is withdrawn, the funding portal must return all the money to the investors.

*Can an issuer or group of related issuers conduct more than one start-up crowdfunding at once?*

No. An issuer group cannot have more than one start-up crowdfunding campaign running at the same time or on different funding portals for the same purpose. The issuer group must wait until the first campaign has ended before launching a second one.

*What is the maximum amount an issuer can raise from each investor?*

The maximum investment an issuer can accept from an investor is \$2,500 per start-up crowdfunding distribution. However, this amount can be increased to \$10,000 if the investor has been advised by a registered dealer that the investment is suitable for the investor.

The issuer may require a minimum amount per investor, but this amount cannot be over \$2,500 if there is no registered dealer involved.

## Launching a Start-up Crowdfunding Campaign

Once an issuer has determined that it will launch a start-up crowdfunding campaign, it will need to prepare an offering document and choose a funding portal to post its offering document. Issuers are required to prepare the offering document using Form 45-110F1 *Offering Document*.

### *What is a funding portal?*

A funding portal is a website that brings buyers and sellers together by listing start-up crowdfunding campaigns on its website and facilitating the payment of the purchase price from the investor to the issuer. The funding portal has a number of responsibilities, including:

- posting the issuer's offering document;
- providing a risk warning form to potential investors;
- holding all investor funds in trust until the issuer is permitted to close the distribution; and
- returning funds to investors, without deduction, if the issuer does not reach its minimum funding target or if the issuer withdraws the start-up crowdfunding campaign.

Funding portals will generally charge issuers for hosting a start-up crowdfunding campaign on its website.

### *What types of funding portals are available?*

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

- funding portals that are operated by registered dealers (e.g. investment dealers or exempt market dealers) that must provide advice to investors on whether the investment is suitable to the investor, and
- funding portals that are operated by persons relying on the start-up registration exemption and that are prohibited from providing suitability advice.

An issuer has the choice of which type of funding portal to use for its start-up crowdfunding campaign.

A funding portal should be able to confirm to the issuer that it can provide certain services necessary for start-up crowdfunding, including that it will make the offering document and risk warnings available to the investor through its website.

### *Where can I find out information on whether a funding portal is able to operate?*

The Canadian Securities Administrators maintain a list of funding portals currently permitted to operate in one or more jurisdictions of Canada. The issuer may check to determine whether the funding portal is authorized to operate in jurisdictions in which it proposes to conduct start-up crowdfunding.

In addition, the issuer may want to evaluate other aspects of the funding portal's business, such as the individuals operating the funding portal, how it handles the funds collected from investors, and what fees it will charge the issuer for posting its start-up crowdfunding offering document.

### *What information needs to be in the offering document?*

An issuer must include all the information required by Form 45-110F1 *Offering Document*. This form requires the issuer to disclose basic information about the business and the offering, how it will use the money and the relevant risks of the business or project. The issuer must disclose the minimum amount needed to be raised to accomplish the issuer's business goals. The issuer must provide enough detail in the offering document about the business for an investor to clearly understand what the issuer does or intends to do.

If the issuer raises funds in Québec, the offering document and the risk acknowledgement form must be made available to investors in Québec in French or in French and English.

For additional details on the offering document, including instructions on how to prepare it, please refer to Form 45-110F1 *Offering Document*.

### *Do I need to include financial statements in the offering document?*

The issuer is not required to provide financial statements to investors in connection with a start-up crowdfunding distribution.

However, the issuer can choose to make financial statements available to investors. For example, many investors use financial statements to assess and compare investment opportunities and may be reluctant to invest in a business that does not provide this information. If an issuer chooses to disclose a measure of financial performance (such as sales or expenses), financial position (such as amount of equipment or debt) or cash flow in the offering document, it must make financial statements available for the most recently completed financial year. Any measure referred to in the offering document must be an amount presented in the financial statements or be reconciled to an amount presented in the financial statements.

If the issuer chooses to make financial statements available to investors, it must:

- prepare these financial statements in accordance with Canadian generally accepted accounting principles;
- present the issuer's results of operations for its most recently completed financial year; and
- include the statement provided in item 3.5 in Form 45-110F1 *Offering Document*.

As with any information provided to investors, the financial statements should not be misleading.

The issuer can post the financial statements on its website for the convenience of its investors. **However, if an issuer includes financial statements in its offering document or provides a link to the financial statements in the offering document, there will likely be an obligation under securities laws to prepare the financial statements using Canadian generally accepted accounting principles for publicly accountable enterprises.**

There may be other requirements outside securities laws. For example, corporate legislation in some jurisdictions may require issuers to prepare and disseminate audited annual financial statements to their shareholders. Further, such issuers may be required to hold annual meetings of shareholders and provide certain specified disclosure in an information circular. To determine whether these requirements apply, issuers can refer to applicable corporate law and consult their legal advisers.

#### *Do I need to disclose information about myself or other principals of the issuer?*

The offering document must include certain details about the residency, principal occupation, expertise and securityholdings of each founder, director, officer and control person of the issuer.

**Director:** An individual occupying the position of director with the issuer, or another person acting in a similar capacity.

**Officer:** Includes the CEO, president, a vice-president, corporate secretary, general manager or any other individual who performs similar functions for the issuer. If the issuer is a limited partnership, information should also be provided for the officers of the general partner.

**Founder:** A person who, acting alone, in conjunction, or in concert with one or more persons, directly or indirectly, takes the initiative in founding, organizing or substantially reorganizing the business of the issuer and at the time of the start-up crowdfunding distribution is actively involved in the business of the issuer.

**Control person:** A person that holds more than 20% of the voting rights, alone or with other persons acting in concert, is generally considered a control person of the issuer.

*Does the issuer need to provide information to the investor following the crowdfunding campaign?*

Canadian securities laws do not require that the issuer report to investors, but investors will want to be kept informed. The issuer should disclose to investors in the offering document whether and, if so, how it intends to keep investors informed about the business and their investment. Reporting can be through newsletters, social media sites, email, financial statements or similar documents.

*What if an investor changes their mind?*

Investors have the right to withdraw their investment within two business days following either:

- the investor's subscription; or
- the funding portal notifying the investor of an amendment to the issuer's offering document.

To exercise this right of withdrawal, an investor must deliver a notice to the funding portal not later than midnight on the 2<sup>nd</sup> business day after the investor's subscription or notification of the amendment, as applicable. The funding portal must return the funds to an investor who exercises this right, without any deduction, within five business days after receiving notice of the withdrawal.

*What if the information in the offering document is not, or is no longer, accurate?*

The issuer must certify that the offering document does not contain a **misrepresentation**.

A misrepresentation means:

- a statement of material fact that is not true, or
- omitting a material fact that is required or necessary to be stated to prevent a statement in the offering document from being false or misleading in the circumstances in which it was made.

To avoid misrepresentations, the information contained in the offering document may need to be updated during the start-up crowdfunding campaign. If the offering document is no longer accurate and contains a misrepresentation, the issuer must:

- immediately advise the funding portal of this fact; and

- amend the offering document and send the new version to the funding portal as soon as practicable.

The funding portal is required to post the new version of the offering document on its website and promptly notify investors about the amendment. Providing an amended offering document gives an investor the opportunity to withdraw their investment (see “*What if an investor changes their mind?*” above).

The offering document does not need to be updated after the start-up crowdfunding campaign is over.

### *What if an investor purchases securities when the offering document contained a misrepresentation?*

Securities laws in all provinces and territories of Canada provide investors with a **statutory right to sue for damages (typically limited to the amount paid for the securities) or rescission (to unwind or reverse the purchase)** in cases where an offering document contains a misrepresentation. These claims may be made against the issuer and in a number of provinces and territories, the directors and other persons that signed the offering document.

This statutory right to sue is available whether or not the investor relied on the misrepresentation. However, there may be various defenses available. In particular, a defense may be available if the investor knew of the misrepresentation when he or she purchased the securities.

## **Completing a Start-up Crowdfunding Campaign**

Once the minimum offering amount has been collected, the issuer may choose to “close the offering” by issuing the securities to investors. However, the issuer must wait until each investor’s 2-day withdrawal period has expired.

An issuer can continue raising additional funds up to the maximum amount indicated in the offering document provided it closes the offering within the 90-day maximum offering period. The issuer must disclose in the offering document what it intends to do with any extra funds raised above the minimum amount.

At the closing of the offering, the funding portal will release the funds raised to the issuer. The issuer should make note of the date on which it closes the offering because certain filings and deliveries must be completed within a certain number of days of the closing.

### *Can an issuer use another prospectus exemption to meet the minimum amount?*

Although an issuer cannot have more than one start-up crowdfunding campaign running at the same time, the issuer can raise funds using other prospectus exemptions during a start-up crowdfunding campaign. For example, the issuer may issue securities to an accredited investor. Other prospectus exemptions, such as the accredited investor exemption, are found in securities laws, including [National Instrument 45-106 Prospectus Exemptions](#). The funds raised under other prospectus exemptions can be counted towards the minimum offering amount if those funds are unconditionally available to the issuer. This would not trigger the requirement for the issuer to amend the offering document.

If an issuer raises funds under other prospectus exemptions, it must comply with the conditions of both the start-up crowdfunding exemptions and the other exemption(s). An issuer should seek professional advice if it has any questions regarding compliance.

## After the closing

### *What documents have to be filed with securities regulators?*

The offering document and a [Form 45-106F1 Report of Exempt Distribution](#) must be filed with the regulator in each jurisdiction where investors are located no later than 30 days after the closing of the distribution. For example, if the issuer has raised money in Québec and Nova Scotia, the offering document and report of exempt distribution must be filed with the Autorité des marchés financiers and the Nova Scotia Securities Commission.

In addition, the offering document and report of exempt distribution must be filed with the regulator of the jurisdiction where the issuer's head office is located, even if no investors were located in this jurisdiction.

When filing the offering document, the issuer must include all copies of the offering document including any amended versions.

Participating Jurisdiction	How to File
All CSA jurisdictions, except British Columbia and Ontario	<p>Electronically through <b>SEDAR</b>, in accordance with National Instrument 13-101 <i>System for Electronic Document Analysis and Retrieval</i> (SEDAR)</p> <p>The Canadian Securities Administrators (CSA) has information regarding the SEDAR filing requirements. Please see:</p> <p><a href="#">CSA Staff Notice 13-323 – Frequently Asked Questions About Making Exempt Market Offering and Disclosure Filings on SEDAR</a></p>



Saskatchewan	<p>Financial and Consumer Affairs Authority of Saskatchewan  Securities Division  Telephone: 306-787-5645  E-mail: <a href="mailto:exemptions@gov.sk.ca">exemptions@gov.sk.ca</a>  Website: <a href="http://www.fcaa.gov.sk.ca">www.fcaa.gov.sk.ca</a></p>
Manitoba	<p>The Manitoba Securities Commission  Toll free in Manitoba: 1-800-655-2548  E-mail: <a href="mailto:exemptions.msc@gov.mb.ca">exemptions.msc@gov.mb.ca</a>  Website: <a href="http://www.msc.gov.mb.ca">www.msc.gov.mb.ca</a></p>
Ontario	<p>Ontario Securities Commission  Toll free: 1-877-785-1555  E-mail: <a href="mailto:inquiries@osc.gov.on.ca">inquiries@osc.gov.on.ca</a>  Website: <a href="http://www.osc.ca">www.osc.ca</a></p>
Québec	<p>Autorité des marchés financiers  Direction du financement des sociétés  Toll free in Québec: 1-877-525-0337  E-mail: <a href="mailto:financement-participatif@lautorite.qc.ca">financement-participatif@lautorite.qc.ca</a>  Website: <a href="http://www.lautorite.qc.ca">www.lautorite.qc.ca</a></p>
New Brunswick	<p>Financial and Consumer Services Commission  Toll free: 1-866-933-2222  E-mail: <a href="mailto:emf-md@fcnb.ca">emf-md@fcnb.ca</a>  Website: <a href="http://www.fcnb.ca">www.fcnb.ca</a></p>
Nova Scotia	<p>Nova Scotia Securities Commission  Toll free in Nova Scotia: 1-855-424-2499  E-mail: <a href="mailto:nssc.crowdfunding@novascotia.ca">nssc.crowdfunding@novascotia.ca</a>  Website: <a href="http://www.nssc.novascotia.ca">www.nssc.novascotia.ca</a></p>