

ALBERTA SECURITIES COMMISSION

BLANKET ORDER 45-521

Citation: Re Start-up Crowdfunding Registration and Prospectus Exemptions, 2019 ABASC 150

Date: 20191002

Definitions

1. Terms defined in the *Securities Act* (Alberta) (the "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, the date that the issuer accepts subscriptions after the minimum offering amount is reached;

"Commission" means the Alberta Securities Commission;

"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 any of the following:

- (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;
- (e) a unit of a limited partnership;

"funding portal" means a person or company that facilitates or proposes to facilitate online start-up crowdfunding distributions;

"issuer group" means any of the following:

- (a) the issuer;
- (b) an affiliate of the issuer;
- (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 one or more of the same persons or companies who founded or organized the issuer;

"minimum offering amount" means the minimum amount to be raised, as required to be disclosed in the offering document;

"offering document" means a document prepared in accordance with Form 1 *Start-up Crowdfunding Offering Document*, including any amendment to the offering document;

"participating jurisdiction" means each of British Columbia, Alberta, 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*;

"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 75 of the Act requires a person or company that is engaged in or holds itself out as being engaged in the business of trading in securities to be registered in accordance with Alberta securities laws.
4. Section 110 of the Act requires a person or company to file a prospectus and to receive a receipt for that prospectus prior to distributing a security.

Exemption from Dealer Registration Requirement for Funding Portals

5. Considering that it would not be prejudicial to the public interest to do so, the Commission orders under section 213 of the Act that the dealer registration requirement in section 75 of the Act does not apply to a funding portal in connection with a start-up crowdfunding distribution if the funding portal complies with all of the following:
 - (a) it does not facilitate its first start-up crowdfunding distribution until Commission staff confirms in writing receipt of all 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;

- (iii) such other completed documents and any additional information as may be requested by Commission staff;
- (b) it delivers to Commission staff any amendments to the documents referred to in section 5(a) as soon as practicable;
- (c) it has not been notified by Commission staff that the business of the funding portal is prejudicial to the public interest because the principals of the funding portal or their past conduct demonstrate a lack of any of the following:
 - (i) integrity;
 - (ii) financial responsibility;
 - (iii) relevant knowledge or expertise;
- (d) it has its head office located in a jurisdiction of Canada;
- (e) it has a majority of its directors resident in Canada;
- (f) it maintains books and records at its head office to accurately record its financial affairs and client transactions, and to demonstrate the extent of its compliance with this Blanket Order for a period of eight years from the date a record is created;
- (g) it is not registered under securities legislation in any jurisdiction of Canada;
- (h) it 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 or company entry to its website, it requires the person or company to acknowledge that they are entering a website of a funding portal
 - (i) that is not operated by a registered dealer under securities legislation in any jurisdiction of Canada, and
 - (ii) that does not provide advice about the suitability of any security or about the merits of any investment;
- (j) it 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

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- (ii) that the funding portal is relying on the exemption in this Blanket Order from the dealer registration requirement;
 - (k) it does not receive a commission, fee or other amount from a purchaser of an eligible security;
 - (l) it 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) it receives payment for an eligible security electronically through the funding portal's website;
 - (n) it takes reasonable measures to ensure that each issuer and purchaser is resident of a participating jurisdiction where the offering document is made available;
 - (o) it makes available to a purchaser through the funding portal's website the required offering document and risk warning;
 - (p) it 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 warning;
 - (q) it notifies each purchaser of any amendment to the offering document and the right of the purchaser to withdraw their subscription after receiving notice of the amendment;
 - (r) it returns all funds to each purchaser within five business days of receiving a withdrawal notification under section 6(j) from that purchaser;
 - (s) it performs one of the following:
 - (i) if either 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, then no later than five business days following such occurrence
 - (A) it returns, or causes to return, all funds to each purchaser, and
 - (B) it notifies the issuer and each purchaser that funds have been returned;
 - (ii) if each 48 hour period in section 6(j) has elapsed,

- (A) it releases, or causes to be released, 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. it notifies each purchaser that the funds have been released to the issuer, and
 - b. it provides the issuer with all information required to comply with the issuer's obligations in section 7(b).

Exemption from Prospectus Requirement for Issuers

6. Considering that it would not be prejudicial to the public interest to do so, the Commission orders under section 213 of the Act that the prospectus requirement in section 110 of the Act does not apply to a distribution by an issuer if each of the following applies:

- (a) the distribution is of the issuer's own eligible security;
- (b) the distribution and payment for the eligible security is made through a funding portal that is either of the following:
 - (i) relying on the exemption in section 5;
 - (ii) operated by an exempt market dealer or investment dealer, provided that the issuer has obtained written confirmation of all of the following 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 Blanket Order;
 - (B) the funding portal meets or will meet, as applicable, all of the conditions set out in sections 5(m) to 5(s);
 - (C) prior to allowing any person or company entry to its website it requires the person or company 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, registered under securities legislation in any jurisdiction of Canada, 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 the equivalent in a 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 or company in the issuer group does not exceed \$250,000;
- (f) the issuer group completes 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 each purchaser with a contractual right to withdraw an offer to purchase an eligible security, which right may be exercised by the purchaser delivering a notice to the funding portal within 48 hours of either (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 or company 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 principal, employee or agent of a member of the issuer group with respect to the distribution;
- (o) a principal of the issuer group is not a principal of the funding portal;
- (p) each purchaser invests no more than
 - (i) \$1,500, or

- (ii) \$5,000, provided that the purchaser has obtained advice from a registered dealer that such investment is suitable for that person or company;
- (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 all of the following:
- (i) the date of subscription and the closing of the distribution;
 - (ii) the quantity and description of the eligible securities purchased;
 - (iii) the price per eligible security paid by the purchaser;
 - (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.
7. 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 45-106F1 *Report of Exempt Distribution*.

Resale Restrictions

8. 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*.

Effective Date

9. This Blanket Order takes effect on October 2, 2019.
10. This Blanket Order expires on the 90th day following the adoption in Alberta of a national or multilateral instrument respecting start-up crowdfunding.

For the Commission:

"original signed by"

Tom Cotter
Vice-Chair

"original signed by"

Kari Horn
Vice-Chair