

## Portal Registration Requirements

In a [previous bulletin](#) on the recently proposed crowdfunding securities regulations, we noted that start-ups using crowdfunding to raise money by offering securities to investors in certain provinces of Canada will be required to use a single website or online "funding portal" through which the offering is made. These portals may have to be "registered funding portals" depending on whether the offering is being made in accordance with the "Crowdfunding Exemption" or the "Start-Up Exemption".<sup>1</sup>

If the Crowdfunding Exemption is used, the portal must be registered with the applicable securities regulator as a restricted dealer. It cannot be registered in any other dealer or advisor category, and can only act as an intermediary in connection offerings of securities under the Crowdfunding Exemption. It will not be permitted to engage in other dealer activities, but may facilitate other crowdfunding activities that do not involve securities.<sup>2</sup>

Registered funding portals, and their "registered individuals", will need to comply with certain of the registration requirements that are applicable to registered exempt market dealers ("EMDs") and their registered individuals. However, some EMD registration requirements have been modified to take into account the nature of a crowdfunding offering. For example:

- a registered funding portal and its registered individuals are not subject to the "know your client" obligations of an EMD as they pertain to the "suitability" requirement;
- a registered funding portal is required to maintain a fidelity bond or insurance for a minimum of \$50,000 per employee, agent and dealing representative, or \$200,000, whichever is less (or such other amount as may be determined by the applicable securities regulatory authority);

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<sup>1</sup> Both exemptions allow for crowdfunding; our previous bulletin outlines the differences.

<sup>2</sup> This will be important to existing crowdfunding portals using the donation, reward or pre-purchase models that wish to register for equity crowdfunding.

- a registered funding portal cannot own more than 10% of the securities of a start-up using its website,<sup>3</sup> and the portal is required to provide certain relationship disclosure information to investors;
- a registered funding portal is not permitted to hold, handle or have access to client assets and, as such, is not subject to the requirements for holding client assets which are applicable to EMDs;
- a registered funding portal must make arrangements with a Canadian financial institution to hold in trust all funds/consideration received from investors, and to return all funds/consideration promptly if the investor exercises the right to cancel its agreement to purchase the offered securities;
- a registered funding portal and each of its registered individuals must deal fairly, honestly and in good faith with investors;
- registered individuals of registered funding portals are required to possess the education, training and experience that a reasonable person would consider necessary to competently perform the activities to be undertaken through the registered funding portal, including understanding the structure, features and risks of each security distributed (excluding the merits or expected returns of the investment and the commercial viability of a proposed business or offering);
- a registered funding portal and its registered individuals cannot provide recommendations or investment advice; however, provided that it would not be viewed by a reasonable person as an assessment of the quality or commercial viability of a crowdfunding offering, a portal may assist start-ups with the preparation of their disclosure documentation to ensure that information is presented in a fair, balanced and reasonable manner, provide general information and educational materials to potential investors about crowdfunding offerings, and provide monitored communication channels or discussion boards to enable potential investors to communicate with each other and with representatives of the start-up about the offering;
- a registered funding portal is required to enter into an "issuer access agreement" with all start-ups using the portal's website containing certain prescribed terms;

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<sup>3</sup> Neither the portal nor any of its officers, directors or significant shareholders can own more than 10% of the start-up's securities, or otherwise have an economic interest in the start-up.

- a registered funding portal and its registered individuals must ensure that the general structure, features and risks of the securities offered are adequately set out in the offering materials of the start-up;
- a registered funding portal and its registered individuals must collect a personal information form from all directors, executive officers and promoters of the start-up company, conduct criminal record and background checks on such persons, and submit the personal information forms and results of any criminal record and background checks to the principal securities regulatory authority;
- a registered funding portal must refuse access to the portal where it appears that the start-up is committing fraud, any information to be posted appears false or misleading, or the start-up's business may not be conducted with integrity or in the best interests of investors;<sup>4</sup>
- a registered funding portal and its registered individuals cannot advertise the offering or solicit investors except by posting offering materials on the portal's website (other than advertising that simply provides notice of the offering and directs potential investors to the portal's website);
- a registered funding portal must take reasonable steps to ensure investors understand the high risk nature of investments made under the Crowdfunding Exemption;<sup>5</sup>
- a registered funding portal is required to take reasonable steps to ensure that the requirements for the availability of the Crowdfunding Exemption are met ;<sup>6</sup>
- a registered funding portal is required to promptly deliver a trade confirmation to investors who purchase securities in reliance on the Crowdfunding Exemption; and
- a registered funding portal is not permitted to participate in referral arrangements except for compensation paid to third parties for referring start-up companies to the portal.

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<sup>4</sup> If fraud is discovered later, a portal must terminate an offering, and notify the principal securities regulator.

<sup>5</sup> In addition to ensuring required risk acknowledgement forms are signed and posting prescribed warning statements prominently on the website, the summary accompanying the proposed crowdfunding regulations suggests that investors might be required to answer questions to demonstrate they understand the risks.

<sup>6</sup> This would include, for example, ensuring that investors are resident in provinces that adopted the Crowdfunding Exemption, investment limits are not exceeded, and the offering documents comply with the rules.

If the Start-Up Exemption is used, the portal will not need to be registered with applicable securities regulatory authorities provided that it complies with various requirements, which include:

- the head office of the portal must be located in one of the provinces that adopted the Start-Up Exemption,<sup>7</sup> and each of its officers, directors, controlling shareholders and promoters must be residents of Canada;
- delivering prescribed forms setting out information regarding the portal and its officers, directors, controlling shareholders and promoters, at least 30 days prior to commencing any offering in reliance on the Start-Up Exemption;
- making the start-up's offering materials and risk acknowledgement in prescribed form available online, and limiting advertising and soliciting investors to the portal's website;
- taking reasonable steps to ensure that the start-up issuing securities and all investors are resident in the provinces in which the Start-Up Exemption is available; and
- not providing any investment advice.

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#### a cautionary note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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<sup>7</sup> The Start-Up Exemption is proposed to be adopted in Québec, Nova Scotia, New Brunswick, Saskatchewan, Manitoba and British Columbia.