

JUNE 2015

SECURITIES ALERT

Limited Crowdfunding Exemption Implemented in Six Provinces

In a relatively short period of time, crowdfunding has become a useful new method of fundraising for a broad range of purposes. To date it is more often used to raise money for specific projects. However, in some countries equity crowdfunding is being introduced as a way for businesses, particularly start-ups and small issuers, to issue shares and raise equity capital.

The securities regulatory authorities of British Columbia, Saskatchewan, Manitoba, Québec, New Brunswick and Nova Scotia (the “participating jurisdictions”) recently announced they are adopting substantially harmonized registration and prospectus exemptions for equity crowdfunding (the “start-up crowdfunding exemptions”).

The start-up prospectus exemption will permit non-reporting issuers in the participating jurisdictions to issue eligible securities exempt from the usual prospectus and dealer registration requirements, subject to a number of conditions. The key conditions include:

- the head office of the issuer must be located in a participating jurisdiction;
- the issuer must distribute its own eligible securities through an online funding portal;
- the issuer must distribute eligible securities using an offering document in a prescribed form made available through the online funding portal.
- the issuer cannot raise aggregate funds of more than \$250,000 per distribution and is restricted to not more than two start-up crowdfunding distributions in a calendar year;
- no person may invest more than \$1,500 per distribution;
- the distribution may remain open for a maximum of 90 days; and
- the issuer must provide each purchaser with a contractual right to withdraw their offer to purchase securities within 48 hours of the purchaser’s subscription or of notification to the purchaser that the offering document has been amended.

Securities issued under the start-up crowdfunding exemptions will be subject to an indefinite hold period and can only be resold under another prospectus exemption, under a prospectus or four months after the issuer becomes a reporting issuer.

The start-up registration exemption will allow online funding portals to facilitate distributions under the start-up crowdfunding exemptions, subject to a number of conditions. The key conditions include:

- the funding portal must deliver information about itself and its principals to appropriate regulators at least 30 days prior to facilitating its first start-up crowdfunding distribution;
- the head office of the funding portal must be located in Canada;
- the majority of the funding portal’s directors must be Canadian residents;
- the funding portal must not provide advice to a purchaser about the suitability of the offered security or the merits of the investment;



PERLEY-ROBERTSON,
HILL & McDOUGALL LLP/s.r.l.

- the funding portal must not receive a commission, fee or any other amount from purchasers;
- the funding portal must make the issuer's offering document and risk warnings available online to purchasers and cannot allow a subscription until purchasers confirm they have read and understood these documents;
- the funding portal must receive subscription payments electronically through its website.

This initiative from the participating jurisdictions is similar to but separate from the proposal for a more inclusive Multilateral Instrument ("MI") 45-108 crowdfunding exemption put forward by Canadian securities regulators in 2014. The proposed MI 45-108 crowdfunding exemption is expected to be available to both reporting and non-reporting issuers and to provide a higher offering limit.

The startup crowdfunding exemptions provide an additional capital raising option to non-reporting issuers in the participating jurisdictions. In addition, as regulators continue their efforts to extend and harmonize a crowdfunding regime throughout all Canadian jurisdictions, the startup crowdfunding exemptions will provide a certain amount of practical experience to assist regulators in developing and implementing the fuller MI 45-108 crowdfunding exemption. This new exemption should also provide issuers throughout Canada with a useful opportunity to reach their own conclusions about the benefits and the obligations of equity crowdfunding in practice.

For more than 40 years, Perley-Robertson, Hill and McDougall has provided financing solutions to a wide variety of clients, including privately held companies, public companies, reporting issuers and companies listed on NASDAQ, the Toronto Stock Exchange, the TSX Venture Exchange and various OTC and private markets. In addition to providing advice on securities registration and compliance, we have completed venture capital funding transactions, debt and/or equity private placements, initial public offerings, prospectus offerings, capital pool company listings and qualifying transactions, reverse takeovers and limited partnership fundings. Whatever your financing requirements, we are confident we can find a cost efficient solution tailored to your needs.

Contact us today and speak with a member of our securities law team.

Mike Gerrior Head, Securities Law Group mgerrior@perlaw.ca +1.613.566.2813	Rob Kinghan Partner rkinghan@perlaw.ca +1.613.566.2848
Lorraine Mastersmith Partner lmastersmith@perlaw.ca +1.613.566.2810	Dirk Bouwer Partner dbouwer@perlaw.ca +1.613.566.2850
Tim McCunn Partner tmccunn@perlaw.ca +1.613.566.2831	Dave Lowdon Lawyer djlowdon@perlaw.ca +1.613.566.2809
Phil Aubry Lawyer paubry@perlaw.ca +1.613.566.2746	Sue Kavanagh Manager, Corporate Services skavanagh@perlaw.ca +1.613.566.2824