

Annex B1

General Order 45-925

Saskatchewan Start-up Crowdfunding Prospectus and Registration Exemption

In the Matter of

*The Securities Act, 1988*

Order

WHEREAS the Financial and Consumer Affairs Authority of Saskatchewan (the Authority) has assigned to the Director of the Securities Division the power to make exemption orders under provisions of *The Securities Act, 1988* (the Act) including orders of general application;

AND WHEREAS an application has been received from the staff (the Staff) of the Authority pursuant to section 83 of the Act for an order that the registration requirements in section 27 of the Act and the prospectus requirements in section 58 of the Act do not apply to certain trades made through online funding portals;

AND WHEREAS in this Order:

1. Terms defined in *The Securities Act, 1988*, National Instrument 14-101 *Definitions*, and National Instrument 45-106 *Prospectus and Registration Exemptions* have the same meaning in this Order.

2. The following terms have the following meanings:

“accepted depository” means a lawyer, a Québec-licensed notary or a reputable third party;

“eligible securities” means any of the following:

- (a) a common share;
- (b) a non-convertible preference share;
- (c) a security convertible into securities referred to paragraphs (a) and (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 who:

- (a) facilitates or proposes to facilitate a start-up crowdfunding distribution made in reliance on this order; and
- (b) is in compliance with the restrictions and obligations imposed pursuant to paragraphs 21 to 27 of this Order;

“issuer access agreement” means a written agreement entered into between an issuer and a funding portal containing the terms and conditions under which the issuer proposes to distribute securities through the funding portal;

“issuer group” means a group of persons composed of the issuer, an affiliate of the issuer and any other issuer that is engaged in a common enterprise with the issuer or with an affiliate of the issuer;

“participating jurisdictions” means Manitoba, New Brunswick, Nova Scotia, Québec and Saskatchewan;

“risk warnings” means the *Important Risk Warnings* set out in Schedule A to this Order;

“start-up crowdfunding distribution” means a distribution of securities that is exempted from the prospectus and registration requirements pursuant to this Order;

“trust agreement” means a written agreement entered into between a funding portal and an accepted depository containing the terms and conditions under which the accepted depository will accept, hold and release funds in a start-up crowdfunding distribution;

AND WHEREAS it has been represented to the Authority that:

1. There may currently be a gap in the exemption regime under the Act that makes it burdensome for start-up and small business to raise capital;
2. Small businesses or creative projects are currently raising funds from the public in Saskatchewan through online portals from donations or the pre-selling of products;
3. Small businesses or creative projects could benefit from being able to raise capital in Saskatchewan through online portals by selling securities like shares, limited partnership units and promissory notes; and
4. It is possible to allow equity crowdfunding and adequately protect the public interest by placing conditions on such an exemption that limits the risk to investors;

AND WHEREAS the Director is of the opinion that it is not prejudicial to the public interest to make this Order;

IT IS HEREBY ORDERED pursuant to section 83 of the Act that section 58 of the Act does not apply to all start-up crowdfunding distributions provided that:

1. The start-up crowdfunding distribution is carried out through a funding portal and, subject to funding portal restrictions set out in paragraph 27(c) below, the payment for the securities is made through the funding portal;
2. The start-up crowdfunding distribution is a distribution by the issuer of securities of its own issue facilitated by the funding portal;
3. The issuer is not a reporting issuer or an investment fund;
4. The head office of the issuer is located in any of the participating jurisdictions;
5. The issuer delivers to the Authority a completed Form 1 – *Issuer Information* at least ten business days prior to the beginning of the distribution;
6. The distribution size is no more than \$150,000;
7. No person in the issuer group may use this exemption more than twice in a calendar year;
8. The securities being offered are eligible securities;
9. Each promoter, director, officer and control person of the issuer delivers to the Authority a completed Form 2 – *Individual Information* at least ten business days prior to the beginning of the start-up crowdfunding distribution;
10. The start-up crowdfunding distribution period is no longer than 90 days;
11. The issuer uses an offering document set out in Form 3 – *Offering Document* to conduct the start-up crowdfunding distribution, files the completed offering document with the Authority at least ten business days prior to the beginning of the start-up crowdfunding distribution and makes it available through the funding portal to investors;
12. The offering document discloses how the funds raised will be used and sets a minimum offering amount to close the start-up crowdfunding distribution, which must be equal to the amount needed to carry out the purpose for which the funds are sought as set out in the offering document;

13. The issuer delivers to the Authority an executed copy of the trust agreement and the issuer access agreement;
14. The minimum amount to close the start-up crowdfunding distribution set in paragraph 12 may be reduced by the amount of any concurrent distribution made under a prospectus exemption other than the one set out in this Order, as long as the offering document discloses that these other funds are unconditionally available to the issuer;
15. There can be no concurrent start-up crowdfunding distribution by any person of the issuer group or by any other person for the same project described in the offering document;
16. No commission or other amounts are paid to the issuer or its promoters, directors, officers, control persons, employees or agents with respect to the start-up crowdfunding distribution;
17. The funding portal can charge the issuer for its services under this Order;
18. No person may invest more than \$1,500 in any one start-up crowdfunding distribution;
19. The issuer files a report of distribution as set out on Form 4 – *Report of Distribution* within 30 days after the start-up crowdfunding distribution closes; and
20. The first trade of securities distributed pursuant to this Order is subject to the provisions of National Instrument 45-102 *Resale of Securities* as if they were acquired under section 2.5 of National Instrument 45-106.

IT IS HEREBY FURTHER ORDERED pursuant to section 83 of the Act that the registration requirements under section 27 of the Act do not apply to a funding portal facilitating a start-up crowdfunding distribution provided that:

21. The funding portal delivers to the Authority a completed Form 5 – *Portal Information* at least 30 days prior to beginning to facilitate any start-up crowdfunding distribution;
22. Each promoter, director, officer and control person of the funding portal delivers to the Authority a completed a Form 6 – *Portal Individual Information* at least 30 days prior to the funding portal beginning to facilitate any start-up crowdfunding distribution;
23. The head office of the funding portal is located in any of the participating jurisdictions;
24. Each of the funding portal's promoters, directors, officers and control persons is a resident of Canada;
25. The funding portal is not related to the issuer of the securities;

26. The funding portal provides no investment advice;

27. The funding portal:

- (a) Makes the offering document of the issuer and the risk warnings in the form set out in Schedule A separately available to investors online;
- (b) Does not allow an investment until the investor confirms online they have read and understood the offering document and risk warnings;
- (c) Ensures that all the funds received for the distribution are held in trust in any of the participating jurisdictions for the investors by an accepted depository;
- (d) Does not instruct the accepted depository to release funds to the issuer until the minimum amount to close the distribution has been reached;
- (e) Instructs the accepted depository to return all funds without deduction to investors no later than five business days after a start-up crowdfunding distribution is withdrawn or after the end of the start-up crowdfunding distribution period referred to in paragraph 10 above, if the minimum amount to close the start-up crowdfunding distribution has not been reached at that time;
- (f) Provides the issuer with the details of the investors (name, address, telephone number, email address, details of purchase) within 15 days of the successful closing of the start-up crowdfunding distribution; and
- (g) Takes reasonable measures to ensure that issuers and investors are residents of a participating jurisdiction.

IT IS HEREBY FURTHER ORDERED pursuant to section 83 of the Act that this Order expires two years from the date of this Order;

Dated December 5, 2013

Amended , 2014

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Dean Murrison  
Director  
Securities Division

## Schedule A

### **Important Risk Warnings**

- I understand that I might not make any money from this investment, I could lose my entire investment, and I will find it very difficult to sell this investment.
- I have read and understood the offering document.
- This investment opportunity has not been approved in any way by the *Autorité des marchés financiers* (Québec), the Financial and Consumer Affairs Authority of Saskatchewan, the Financial and Consumer Services Commission (New Brunswick), the Manitoba Securities Commission, the Nova Scotia Securities Commission<sup>1</sup> or by anyone else.
- I understand that I have not received any advice about this investment from this website or the Government of Manitoba, New Brunswick, Nova Scotia, Québec or Saskatchewan<sup>1</sup> or any of their governmental agencies. If I want guidance, I know that I need to seek professional investment advice.
- I understand that I do not have as many legal rights when purchasing this investment as I would when investing through a prospectus offering. If I want to know more, I know that I need to seek professional legal advice.
- I currently reside in Manitoba, New Brunswick, Nova Scotia, Québec or Saskatchewan.

Note 1: It is not necessary to include the name of the securities regulatory authority or government if the offering is not made in the corresponding jurisdiction.