

Start-up Crowdfunding Guide for Funding Portals

In Canada, issuing securities to the public is subject to legal obligations. These obligations, however, can be costly for start-ups and early stage issuers. British Columbia, Saskatchewan, Manitoba, Québec, New Brunswick and Nova Scotia (the participating jurisdictions) have made it easier for a start-up or early-stage issuer that wants to use crowdfunding to raise money through issuing securities if it meets certain conditions. The conditions are set out in registration and prospectus exemptions (the start-up crowdfunding exemptions).

Start-ups and early stage issuers intending to rely on the start-up crowdfunding exemptions must use a funding portal. A funding portal lists investment opportunities and facilitates the payment of the purchase price from the investor to the issuer.

The start-up crowdfunding exemptions exempt:

- a start-up or early stage issuer from having to file a prospectus
- a funding portal from having to register as a dealer (the start-up registration exemption), although a funding portal can be operated by a registered dealer

The purpose of this guide is to assist funding portals. In this guide, “regulator” means the securities regulator or regulatory authority in a participating jurisdiction.

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

- funding portals operated by persons relying on the start-up registration exemption, and
- funding portals operated by registered dealers

Funding portals operating under the start-up registration exemption

A person operating a funding portal does not have to register as a dealer if they meet all conditions of the start-up registration exemption. These conditions include:

- the head office of the funding portal is in Canada
- a majority of the funding portal’s directors are Canadian residents
- the funding portal is not registered under Canadian securities legislation
- the funding portal does not tell investors an investment is suitable for them or otherwise discusses the merits of an investment
- the funding portal keeps its books and records, including its compliance procedures, at its head office for eight years from the date a record is created

- the funding portal takes reasonable measures to ensure that the head office of each issuer using the funding portal is in a participating jurisdiction and that each investor is a resident of a participating jurisdiction
- investors confirm online, by ticking a box, that they have read and understood the offering document and risk warning available on the funding portal
- access to the funding portal's website is granted only to an investor who acknowledges it is accessing the website of a funding portal that is not registered under Canadian securities legislation and provides no advice about the suitability or the merits of an investment
- the funding portal does not receive a commission or fee from an investor
- the funding portal's website discloses, for each promoter,¹ director, officer and control person² (principals) of the funding portal, their full legal name, municipality and jurisdiction of residence, business mailing and e-mail address, and business telephone number
- investors' assets are held separate from the funding portal's property, in trust for the investor and, in the case of cash, at a Canadian financial institution

Before starting operations

A funding portal intending to rely on the start-up registration exemption must deliver certain forms to regulators at least 30 days before starting operations. These forms are:

- Form 3 – *Start-up Crowdfunding – Funding Portal Information Form* (Form 3)
- Form 4 – *Start-up Crowdfunding – Funding Portal - Individual Information Form* (Form 4) for each principal of the funding portal
- other documents regulators may request

Documents that may be requested include organizing documents of the funding portal, such as articles and certificate of incorporation or partnership agreement, business registration numbers, and documents that support the funding portal's process and procedure for handling of funds and meeting other conditions of the start-up crowdfunding exemptions.

¹ A person who founded, organized or significantly reorganized the funding portal is generally considered to be a promoter.

² A person who holds a sufficient number of voting rights to control the funding portal or who holds 20% or more of the voting rights of the funding portal is generally considered a control person of the funding portal.

If the forms are complete, the funding portal can start operations 30 days after the forms are delivered. However, if a regulator notifies the funding portal that it needs more time to review the documents, the funding portal must wait until the regulator confirms it has completed its review.

A regulator can ask questions if the forms are incomplete. A regulator can also notify the funding portal that it cannot use the start-up registration exemption because its principals or their past conduct demonstrate a lack of integrity, financial responsibility or relevant knowledge or expertise.

If a change in information occurs and the forms and documents delivered to a regulator are no longer up-to-date, the funding portal must update the information by delivering a new form or document setting out the change. For example, if management at a funding portal changes, an updated Form 3 as well as a Form 4 for each new officer must be delivered.

The funding portal must deliver by e-mail the forms to regulators in each participating jurisdiction in which the funding portal will facilitate start-up crowdfunding distributions. For example, a funding portal with a head office in Saskatchewan that seeks funds from investors in other participating jurisdictions must deliver the forms and documents described in this guide to regulators in each jurisdiction in which it will conduct its business.

Compliance with laws and regulation

If the funding portal's head office or other place of business is located in a jurisdiction where the start-up registration exemption is not available, the funding portal's activities may be subject to local securities laws. Failing to comply with local securities laws is a serious offence and could lead to delays in the start date of the funding portal's operations. We encourage funding portals to consult a lawyer for advice.

The funding portal must ensure that it complies with all other applicable laws and regulations of a participating jurisdiction.

No suitability advice

A funding portal relying on the start-up registration exemption must not give advice to investors. This means the funding portal cannot tell an investor that securities are a good investment or that the investor should, for whatever reason, enter into a subscription agreement. The funding portal must refrain from saying or doing anything that might lead an investor to think that they should buy the security because it somehow meets their investment needs or objectives.

However, it can give factual information about the security. For example, a funding portal may tell investors about the features of the security, the risks of the investment, how start-up crowdfunding works, and other items of a general, factual nature.

A funding portal can carry out reviews of issuers before making their offering document available on its website to protect its own interests or reputation.

Promoting a funding portal

A funding portal is not prevented from promoting its website and activities, as long as it does not promote the issuers that use the funding portal's services.

Funding portals operated by registered dealers

It is possible for registered dealers to operate a funding portal under the start-up crowdfunding exemptions. Registered dealers that operate funding portals must:

- meet their existing registration obligations under securities legislation (including the know-your-client, know-your-product and suitability obligations owed to investors)
- confirm to issuers that the funding portals meet certain of the conditions in the start-up crowdfunding exemption, such as making available to investors an offering document and risk warning
- receive an acknowledgement from any person entering the funding portal's website that the funding portal is operated by a registered dealer that will provide suitability advice
- be registered in an appropriate dealer category under National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103)
- file a Form 33-109F5 *Change of Registration Information* that describes the change in its business to include operating a funding portal

Registered dealers must disclose all fees charged to investors in accordance with relationship disclosure requirements under NI 31-103.

How does start-up crowdfunding work?

Issuers are responsible for preparing an offering document that complies with Form 1 – *Start-up Crowdfunding – Offering Document*. In the offering document, they must indicate, in particular, the minimum amount to be raised in order to close a start-up crowdfunding distribution. Issuers will provide the offering document so the funding portal can post it online. Investors will read the offering document and decide whether or not to invest.

Before accepting an investment, a funding portal must obtain confirmation from the investor that he or she has read and understood the offering document and the risks described in Form 2 – *Start-up Crowdfunding – Risk Acknowledgment*. A funding portal must obtain the investor's personal information, including e-mail address, and take reasonable measures to ensure the investor resides in a participating jurisdiction.

An issuer cannot close a distribution if it has not raised the minimum amount set out in its offering document. At the closing:

- the issuer issues shares or other eligible securities to investors
- the funding portal releases funds to the issuer provided the 48-hour withdrawal period mentioned below has expired

No later than 15 days following the closing of the distribution, the funding portal must notify investors that the funds have been released to the issuer, and it must provide the issuer with the following information on each investor:

- Full name
- Address
- Telephone number
- E-mail address
- Number of securities purchased
- Total purchase price

If the minimum amount is not raised within 90 days after the offering document was made available online or if the issuer withdraws its start-up crowdfunding offering, all the funds must be returned in full to investors. No deductions are permitted. The funding portal must also send a notice to the issuer and each investor confirming that the funds have been returned to investors.

The funding portal may send notices to investors and issuers by e-mail.

Related-party restriction

A funding portal cannot act in a start-up crowdfunding distribution if one of its principals is also a principal of the issuer group.

Investor's right to withdraw

Issuers that use the start-up crowdfunding exemptions must give investors the right to withdraw their investment within 48 hours following the investor's subscription.

Investors also have the right to withdraw their investment within 48 hours if the issuer amends the offering document before the closing.

To exercise this right of withdrawal, an investor must notify the funding portal. The funding portal must give investors the opportunity to exercise this right online. The funding portal must return the funds to an investor who exercises this right, without any deduction, within five business days after the notice.

Amendments to the offering document

An issuer must amend its offering document after it has been posted on-line if the information it contains no longer applies or is no longer true. This could be the case if, for example, an issuer wants to change the price of the securities or the minimum or maximum offering amount.

The amendment must be made during the 90 days after the initial offering document is made available by the funding portal.

Issuer's financial statements

Issuers that use the start-up crowdfunding exemptions do not have to provide financial statements to investors at the time of the start-up crowdfunding distribution. However, issuers may make their most recent financial statements available to investors.

If an issuer wants to make its financial statements available to investors, it can place a hyperlink on the funding portal leading to the financial statements. However, the hyperlink must not appear in the offering document because the financial statements do not form part of it. Investors must understand that the financial statements do not form part of the offering document.