

Blanket Order No. 45-524 (Amendment)

IN THE MATTER OF
THE *SECURITIES ACT*, R.S.N.S. 1989,
CHAPTER 418, AS AMENDED (the Act)

- AND -

IN THE MATTER OF START-UP CROWDFUNDING REGISTRATION AND
PROSPECTUS EXEMPTIONS

ORDER
(Sections 151 and 151A of the Act)

WHEREAS:

- A. Section 31 of the Act requires a person or company to register when trading securities.
- B. Section 58 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.
- C. In Blanket Order No. 45-524 *In The Matter Of Start-Up Crowdfunding Registration And Prospectus Exemptions*, as amended from time to time (BO 45-524), the Nova Scotia Securities Commission (the Commission) granted exemptions from the registration and prospectus requirements of sections 31 and 58 of the Act subject to the conditions contained therein being satisfied to allow start-up crowdfunding distributions.
- D. Pursuant to section 7 thereof, BO 45-524 expires on May 13, 2020 (the Expiry Date).
- E. On February 21, 2019, the staff of the Canadian Securities Administrators (CSA Staff) issued CSA Staff Notice 45-324 *Update on the Start-up Crowdfunding Registration and Prospectus Exemptions*, wherein it was announced that CSA Staff are developing a national instrument with similar key features as BO 45-524 (the Proposed National Instrument), that it is anticipated that the Proposed National Instrument will not be implemented prior to the Expiry Date, and that it is expected that start-up crowdfunding registration and prospectus exemptions, including BO 45-524, will be extended until after the adoption of the Proposed National Instrument.
- F. The Commission is of the opinion that to do so would not be prejudicial to the public interest.

IT IS ORDERED pursuant to Section 151 of the Act that BO 45-524 is revoked and replaced with the following:

IT IS ORDERED, pursuant to subsection 151A(1) of the Act, that:

Interpretation

1. Terms defined in the Act or National Instrument 14-101 *Definitions* have the same meaning in this order.
2. In this Order:

“closing of the distribution” means, at the discretion of the issuer, any time after the minimum offering amount is reached;

“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 order;

“eligible security” means:

- (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, and
- (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

- (a) the issuer,
- (b) an affiliate of the issuer, and
- (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 the same person or company who founded or organized the issuer;

“minimum offering amount” means the minimum amount disclosed in the offering document;

“offering document” means a completed Form 1 – *Start-up Crowdfunding – Offering Document*, including any amendment to the offering document;

“participating jurisdictions” means British Columbia, 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*; and

“start-up crowdfunding distribution” means a distribution through a funding portal of an eligible security that is exempt from the prospectus requirement under this order or a corresponding start-up crowdfunding order.

Exemption from dealer registration requirement for funding portals

3. The dealer registration requirement under section 31 of the Act does not apply to a trade by a funding portal in connection with a start-up crowdfunding distribution if the funding portal:
 - (a) does not facilitate its first start-up crowdfunding distribution until the Director confirms in writing receipt 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, and
 - (iii) such other completed documents and any additional information as may be requested by the Director;
 - (b) delivers to the Director any amendments to the documents referred to in subsection 3(a) as soon as practicable;
 - (c) has not been notified by the Director that the business of the funding portal is prejudicial to the public interest because the principals or their past conduct demonstrate a lack of:
 - (i) integrity,
 - (ii) financial responsibility, or
 - (iii) relevant knowledge or expertise;
 - (d) has its head office located in a jurisdiction of Canada;
 - (e) has a majority of its directors resident in Canada;

- (f) maintains books and records at its head office to accurately record its financial affairs and client transactions, and to demonstrate the extent of the funding portal's compliance with this order for a period of eight years from the date a record is created;
- (g) is not registered under Canadian securities legislation;
- (h) 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, requires the person or company to acknowledge that they are entering a website of a funding portal:
 - (i) that it is not operated by a registered dealer under Canadian securities legislation, and
 - (ii) that does not provide advice about the suitability of any security or about the merits of any investment;
- (j) 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
 - (ii) that the funding portal is relying on the exemption in this Order from the dealer registration requirement;
- (k) does not receive a commission, fee or other amount from a purchaser of an eligible security;
- (l) 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) receives payment for an eligible security electronically through the funding portal's website;
- (n) takes reasonable measures to ensure that an issuer and a purchaser are residents of a participating jurisdiction where the offering document is made available;
- (o) makes available to a purchaser through the funding portal's website the offering document and the risk warnings;

- (p) 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 warnings;
- (q) notifies a purchaser of any amendment to the offering document and the right of the purchaser to withdraw their subscription after receiving notification of the amendment;
- (r) returns all funds to a purchaser within five business days of receiving a withdrawal notification from that purchaser; and
- (s) completes one the following:
 - (i) if 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, no later than five business days following such occurrence:
 - (A) returns, or causes to return, all funds to each purchaser, and
 - (B) notifies the issuer and each purchaser that funds have been returned,
 - (ii) if each 48 hour period in subsection 4(j) has elapsed,
 - (A) releases, or causes to release, 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) notifies each purchaser that the funds have been released to the issuer, and
 - (b) provides the issuer with all information required to comply with the issuer's obligations in subsection 5(b).

Exemption from prospectus requirements for issuers

4. The prospectus requirement under section 58 of the Act does not apply to a distribution by an issuer provided the following conditions are met:
 - (a) the distribution is of its own eligible security;
 - (b) the distribution and payment for the eligible security is facilitated through a funding portal that is:
 - (i) relying on the exemption in section 3 of this order, or
 - (ii) operated by a registered dealer, provided the issuer has obtained written confirmation 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 order;
- (B) it meets or will meet the conditions set out in subsections 3(m) to 3(s); and
- (C) prior to allowing any person or company entry to its website, 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, an exempt market dealer or a restricted dealer, as applicable under Canadian securities legislation,
 - (b) that will provide advice about the suitability of the eligible security if it is required to do so under securities legislation,
 - (c) that will not provide advice about the suitability of the eligible security if subparagraph (b) does not apply;
- (c) the issuer is not a reporting issuer or an investment fund in any jurisdiction of Canada or 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 is restricted to 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 a purchaser with a contractual right to withdraw an offer to purchase an eligible security that may be exercised by the purchaser delivering a notice to the funding portal within 48 hours of (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 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 of their principals, employees or agents with respect to the distribution;
 - (o) a principal of the issuer group is not a principal of the funding portal;
 - (p) no person or company invests more than \$1,500; and
 - (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 the following:
 - (i) the date of subscription and the closing of the distribution;
 - (ii) the quantity and description of the eligible security purchased;
 - (iii) the price per eligible security paid by the purchaser; and
 - (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.
5. An issuer that distributes a security under this 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 5 - *Start-up Crowdfunding – Report of Exempt Distribution*.

Resale restrictions

6. The first trade of a security acquired under this order or a corresponding start-up crowdfunding order is subject to section 2.5 of National Instrument 45-102 *Resale of Securities*.

Effective Date

7. This order comes into effect on May 14, 2015 and expires on the date that is 90 days after the adoption of the Proposed National Instrument.
8. Despite section 7, subsection 3(j)(ii) comes into effect on August 1, 2016.

9. An issuer that makes an offering document available to a purchaser through a funding portal's website before June 30, 2016 may file an offering document in accordance with the securities legislation in effect on the first date the offering document was made available on the funding portal's website.

Dated at Halifax, Nova Scotia, this 14th day of May, 2015, as amended January 25, 2016 and further amended June 30, 2016, and further amended April 29, 2020.

NOVA SCOTIA SECURITIES COMMISSION

(signed) "Paul Radford"
Paul Radford Q.C., Chair