



WELCOME TO EQUITY CROWDFUNDING!

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“Equity crowdfunding is now allowed in Canada and adapted to start-up companies in Quebec, British Columbia, Saskatchewan, Manitoba, New Brunswick and Nova Scotia.”

Companies looking for financing on crowdfunding portals can quickly become the darlings of eager to invest internet users with just a few clicks. The snowball effect that sets in can later lead to significant and, for some, unexpected results. More and more companies achieve success, although perhaps more modestly but just as effectively, with the help of crowdfunding. The growing importance of this method of raising capital on the internet has led Canadian securities regulation authorities to institute measures to provide access to other sources of capital, by relaxing the registration rules and prospectus requirements for issuers of securities.

Context of the Proposed and Adopted Measures

As touched upon in the first article of our series on the subject, “equity” capital financing is one of three types of crowdfunding, along with “pledge” crowdfunding and “donation and reward” crowdfunding. It amounts to the collection of funds from a potentially high number of purchasers, by issuing shares or marketable securities with a return on investment (ROI), such as debt securities (bonds) or securities that confer the right to participate in the company (shares), through an internet portal. To issue securities to the public and receive capital, an issuer must normally file a prospectus with the appropriate authority in its province or territory. However, most emerging companies simply do not have the resources to fulfil this obligation, which can be costly. Until recently, the Canadian legal framework regarding equity crowdfunding was not at all adapted to the means or the needs of start-up companies.

In Quebec, Draft Regulation 45-108 Respecting Crowdfunding was filed on March 20th, 2014, and is still awaiting sanction from the competent federal bodies/agencies. This regulation proposes a solution to the problem mentioned above, by putting in

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place prospectus exemptions for companies who wish to use this type of financing. In the meantime, it is rather the Multilateral CSA Notice 45-316, adopted on May 14th, 2015, by the securities regulatory authorities of British Columbia, Saskatchewan, Manitoba, Quebec, New Brunswick and Nova Scotia, that introduced harmonized registration and prospectus exemptions, allowing start-up companies to raise capital in these jurisdictions, under certain conditions. The same Notice also establishes another type of exemption, applicable to funding portals this time, which precludes them from having to register as an eligible investment dealer. As for Ontario, it stands apart and promises to publish its own exemption. The province's project is said to draw strongly from the Regulation 45-108 in order to cover both start-ups and well established companies. It's adoption is scheduled for Fall 2015.

What Start-ups Need to Know

In Quebec, the Autorité des marchés financiers suggests validating a series of points for start-up companies who wish to take advantage of the prospectus exemptions under Notice 45-316 to launch a crowdfunding campaign. Ideally, these companies should evaluate other sources of financing, such as a loan from a financial institution, estimate the time and effort required to prepare the campaign, decide on the type of securities to be offered, as well as their quantity and subscription price, and above all, make sure that it will be possible to manage a high number of purchasers.

Once these elements have been checked, companies who wish to go ahead need to comply with the prospectus exemption conditions. They must:

- Have their head office in one of the six participating provinces;
- Be a non-reporting issuer, under the applicable securities legislation;
- Use an online funding portal that relies on a registration exemption for start-up companies, or which is operated by a registered investment dealer who meets the conditions of the applicable securities legislation;
- Provide an offering document on the portal that includes basic information on the company, its directors and executive officers, and their campaign, including how they intend to use the funds raised and the minimum offering amount;
- Issue eligible securities, such as common shares, non-convertible preference shares or non-convertible debt securities linked to an interest rate;
- Limit possible investments to \$1500 per purchaser;

- Provide to each purchaser a contractual right to withdraw their investment within 48 hours of either the purchaser's subscription or notification by the funding portal to the purchaser that the offering document has been amended;
- Raise a maximum of \$250,000 per crowdfunding campaign. No more than two campaigns are permitted per calendar year, for each company;
- Make sure that none of the promoters, control persons, officers or directors of the funding portal is one of the principals of the issuer;
- Raise the minimum amount of funds projected in the offering document within 90 days of the document being made available to purchasers on the portal. The portal keeps the funds in trust until the minimum amount is reached, after which the securities can be issued. If the minimum amount is not met, the portal reimburses the funds to purchasers.

The upcoming entry into law of Regulation 45-108 Respecting Crowdfunding will broaden the scope of prospectus exemptions offered under the 45-136 Notice to accommodate the corporate needs of wealthier companies or in a more advanced state of development. For example, both reporting and non-reporting issuers will be eligible to use them, and they will be able to secure funds of up to 1.5 million dollars per year, compared to 250 000\$ with the 45-316 Notice. However, sales will need to be made through a portal that is operated by a registered investment dealer, and companies will need to meet certain requirements regarding their current financial status, the use of the funded product, and other important events.

This concludes our third article on crowdfunding. In the first article, we gave an overview of the phenomenon itself, to subsequently bring to light the intellectual property issues at stake in the second article, only to conclude here with a detailed analysis of equity crowdfunding for start-ups. We will issue a fourth article on the subject, once Regulation 45-108 Respecting Crowdfunding comes into effect. Until then, may the equity crowdfunding begin!



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