

June 18th 2014

To: Autorité des marchés financiers

C/E: Mrs. Anne-Marie Beaudoin
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Ref: Response to AMF Staff Consultation Regulation Project Proposal 45-108 Crowdfunding Exemption

Dear Sir or Madam,

Please find enclosed our response with respect to the Crowdfunding Exemption Proposal Exemption REG 45-108 published March 20th 2014.

We commend the Autorité des marchés financiers (hereinafter «Autorité») on their initiative to expand the application of equity crowdfunding to established enterprises and start-ups. We would also like to thank the Autorité for giving us the opportunity to participate in the consultation process.

Joining me are Jean-François Hudon, partner-lawyer at Gascon & associates, François Noël, lawyer at Gascon & associates and Maxime Lévesque, founder of the crowdfunding portal Fundo.ca. We support innovation, SMEs and entrepreneurs striving to make a difference and believe that crowdfunding actors and ecosystem can be a major factor in raising capital and resources effectively and efficiently.

We hope we'll have the opportunity to continue this invaluable cooperation in planning and establishing the exemption in Quebec. We remain at your disposal for future enquiries.

Sincerely,

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Feedback on the proposed Regulation 45-108 respecting crowdfunding: Questions and Answers

#	Questions and answers
Equity crowdfunding exemption	
Issuers eligibility criteria	
1.	Should the equity crowdfunding exemption be limited to non-reporting issuers?
	<p>Comments:</p> <ul style="list-style-type: none"> No. The exemption should be available to all eligible participants who meet the due diligence and compliance requirements of the 45-108 draft regulation on equity crowdfunding.
2.	Is it appropriate to exclude, as proposed in the draft regulation, non-reporting issuers from the real estate industry?
	<p>Comments:</p> <ul style="list-style-type: none"> We do not have a definitive position on crowdfunding in the real estate industry. First of all, we are wondering why this industry should be included since it doesn't offer tangible products to the public. According to one source, making real estate assets opportunities easily accessible by putting them online is the objective. Therefore, we believe that an informational portal should suffice to meet this purpose. It's worth mentioning that the equity crowdfunding exemption is created to help start-up businesses. Including the real estate industry might be inconsistent with this objective.
3.	The crowdfunding exemption would require that a majority of the issuer's directors be Canadian residents. One of the main objectives of crowdfunding is helping Canadian issuers raise capital. We also think that this obligation would reduce risk investors are exposed to. Is this obligation appropriate and consistent with these objectives?
	<p>Comments:</p> <ul style="list-style-type: none"> No. Our opinion is that this restriction is unwarranted since foreign issuers are eligible to use the 45-106 regulation respecting prospectus and registration exemptions. We do recognize that the securities legislation's main objective is to protect the public and that the director's restriction has been created to achieve that goal. However, the restriction might conflict with the current «internationalization» trend in many businesses. We believe that a Canadian depositary is enough to reach this objective. In today's world, many businesses surround themselves with a board of directors both professionally and geographically diversified. With the virtualization of the communications, a business can be effectively managed from around the globe.

Distribution parameters	
4	Under the crowdfunding exemption, the maximum amount an issuer, a member of the same group as him, an issuer operating a business with him or with a member of the same group can raise within the 12 months preceding the distribution period is 1,5 million dollars. Is this limit appropriate? Should the amount raised by members of the same group as the issuer, by issuers operating a business with the issuer or with members of the same group be combined together? Is it appropriate to apply the limit to the 12 months preceding the distribution?
	<p>Comments:</p> <ul style="list-style-type: none"> • We believe that the maximum amount should be 5 million dollars. This number is based on the Australian portal, ASSOBS, which has been active for the past 7 years. The Australian legislation is also very close to ours. To this day, 3.5 millions of dollars is the biggest amount raised in Australia. Therefore, we consider that a 5 million dollars limit is appropriate and would gain interest from a larger spectrum of businesses. • Furthermore, increasing the maximum limit would give Canada a differential advantage over the USA which current inter-state exemptions are superior to 1.5 million. • We believe that every distribution should be treated separately for a business who operates under different names or in different industries. Indeed, depending of the name/industry and of the financing goals, the investor's profiles may differ significantly. • A 12 month period seems reasonable to us.
5.	Should the issuer be able to extend the distribution if he didn't raise the minimum funds required? If yes, should he have to raise a certain percentage of the minimum required?
	<p>Comments:</p> <ul style="list-style-type: none"> • Based on the main portals (ASSOB, Crowdcube) that have been active for the past 4 to 7 years, a fixed non-renewable term is necessary. Experience shows that a 90-day period is enough to raise the required funds. As for reward-based crowdfunding, a distribution will be successful if, even before the beginning of the campaign, the issuer starts doing public relation work. And if it's well done, the issuer should reach, at the start of the campaign, one third of the objective.
Restrictions concerning advertising and solicitation	
6.	Are the proposed restrictions concerning advertising and solicitation appropriate?
	<p>Comments:</p> <ul style="list-style-type: none"> • We agree with the fact that the funding portal cannot disclose information concerning the offer's conditions (share value, ROI, etc...) outside of his website. • However, in the era of social media, even if we impose restrictions on what issuers can share with the public, it won't be long before friends (and friends of friends) become aware of the offer and start communicating on their own networks. The fact is social media facilitates sharing which in itself is advertising. Consequently, the issuer should be able to share the offer's conditions in order to avoid possible misinterpretations induced by the «crowd». • The advertising restrictions should be reviewed in light of the above statement.

Investment restrictions	
7.	The crowdfunding exemption would prohibit investors from investing more than 2 500\$ by distribution and more than 10 000\$ during the same calendar year. Accredited investors can invest an unlimited amount in the securities of an issuer under the exemption for distribution to accredited investors. Should different restrictions be adopted for accredited investors investing through a funding portal?
	<p>Comments:</p> <ul style="list-style-type: none"> We believe that the maximum amount a non-accredited investor should be able to invest in the same distribution is 20 000\$ for a period of 12 months. Statistics show that the average investment on the two major portals are 20 000\$ and 4 500\$ respectively. By limiting the maximum amount to 2 500\$, the issuer would have to attract several hundreds of shareholders. It won't be ideal for small and medium sized enterprises that don't have enough resources to manage such a large scope.
Legal and contractual rights in case of false or misleading information	
8.	Under the crowdfunding exemption, an issuer would have to give the investor a right of action for damages or rescission for any documents or video made available to him containing false or misleading information if the securities legislation of the jurisdiction in which the investor resides does not provide a comparable right. Is this reasonable? How would this impact the length and the complexity of the offering document?
	<p>Comments:</p> <ul style="list-style-type: none"> We believe this requirement is reasonable. The current legislation requires that the issuer follows the laws of his jurisdiction and of the jurisdiction in which the investors resides. We believe that the inter-provincial regulation should be harmonious to facilitate the applicability of the law.
Ongoing information	
9.	What would be the best way to make the ongoing disclosure documents available to the investors? Who should have access to them?
	<p>Comments:</p> <ul style="list-style-type: none"> Every disclosure document should be available online to all potential and confirmed investors. When the issuer launches his campaign, he should be compelled to make the documents available on the portal or on his website through a URL link on the portal. Updates on the campaign should also be available to confirmed investors on the portal's or issuer's websites. The portal should mention how to access the different documents.
10.	Is obliging non-reporting issuers to submit financial statements reviewed or audited by an independent public accountant firm reasonable? Would the financial statements be appropriate for the investors without this level of insurance? Would the audit or reviewing be too expensive for non-reporting issuers?
	<p>Comments:</p> <ul style="list-style-type: none"> No. We believe this requirement should be a function of the business life cycle and a relief in the regulation would be welcomed.

	<ul style="list-style-type: none"> • Reviewed financial statements have to be mandatory for enterprises established since 5 years, who have reached their breakeven point, with a distribution goal of 3 million dollars or more. • For advanced-stage start-up businesses, an investment summary with financial statements compiled by a chartered accountant should provide enough insurance. • Financial statements have no value for pure early-stage start-up businesses. Knowing how much liquidity the enterprise has, how much it spends and how much it needs to reach its next deadline is what matters the most. The investment summary is important since investors want to know if the enterprise will use funds invested for production or reimbursement of the enterprise’s debt.
11.	<p>The capital the issuer raised and the amount he spent are used to determine if the financial statements of the issuer should be audited or reviewed. Is the data used appropriate for the obligation to disclose financial information? Is the amount chosen for each factor appropriate?</p>
	<p>Comments:</p> <ul style="list-style-type: none"> • See answer to question 10. We also believe that the operating expenses shouldn’t be a factor in the obligation to audit financial statements. An over-indebted enterprise who decides to raise funds by crowdfunding will be obligated to assure maximum transparency and investors will chose to invest or not with full knowledge of the facts.
<p>Other obligations</p>	
12.	<p>Should other obligations be imposed to protect the investors?</p>
	<p>Comments:</p> <ul style="list-style-type: none"> • These new financing methods create new risk factors. They also create new possibilities to protect investors. Therefore, the issuer’s transparency can be increased. • On April 13th 2013, in our response to the Crowdfunding Exemption Project, we submitted recommendations and are glad the Autorité took them into account: <ol style="list-style-type: none"> 1. Intermediaries operating a portal should have to either, obtain an exemption, or register in a new brokerage category (online by following basic steps). 2. Intemediaries operating a portal should have the obligation to be incorporated in a Canadian territory. 3. Senior executives and people involved in the control of the intermediaries should meet these criteria: <ul style="list-style-type: none"> • Not have criminal records in the past 10 years; • Not have declared bankruptcy in the past 10 years; • Not have bankruptcy records involving the commitment of a fault; • Not been involved in a securities law violation; • The intermediary, which is the portal’s manager, shouldn’t have the right to make any recommendation regarding the valuation . Consequently, obligations of neutrality and discretion for all issuers on his portal or a concurrent portal should be imposed to the intermediary. If he wishes to offer advice concerning valuation, he must be subject to the same certification as dealers who give advice and recommendations to clients or on specific projects.

	<ul style="list-style-type: none"> For example, the ASSOBS is simply a matchmaker (or intermediary) between the Australian investors and the issuers. It doesn't act as a dealer within the meaning of the Securities Act. We believe the portal should have the responsibility to ensure the quality of online offers. For example, the ASSOBS has a case manager who reviews the enterprises applying on his platform. He can also meet them if needed. It's essential for the platform's reputation.
Crowdfunding portal's obligations	
Registrant general obligations	
13.	The crowdfunding regulation will require that portals hold a minimum net capital of 50 000\$ and a fidelity or bonding insurance of at least 50 000\$. Is this obligation reasonable?
	<p>Comments:</p> <ul style="list-style-type: none"> No. We believe that a minimum net capital of 50 000\$ constitute a significant barrier to enterprises that have all the necessary assets and a strong business network to launch a portal. Only the wealthiest enterprises (professional investors) would be able to meet this requirement which is against the democratic principle of crowdfunding. We also believe the «public» will be reluctant to invest in an enterprise based on a portal managed by professional investors. Concerning the fidelity or bonding insurance, we consider it's a first step to preventing risk of fraud even if the statistics show less than 1% in fraudulent cases. However, the amount insured could be reduced.
Additional portal's obligations	
14.	Should the issuers, directors, senior executives, promoters and control persons in other territories background be reviewed by the portals to verify their qualifications and reputation?
	<p>Comments:</p> <ul style="list-style-type: none"> No. We believe that an international background check is a heavy financial burden for the portal and the issuers without adding much value. We agree with <u>the National Crowdfunding Association of Canada</u> position. Diana Yazidjian is one of the ambassadors of this Association.
Prohibited activities	
15.	Under the crowdfunding exemption, portals would be able to collect their fees in the form of issuer's securities up to a 10% participation. Is this threshold appropriate? Should collecting fees in the form of securities be prohibited considering the conflict of interest it may cause?
	<p>Comments:</p> <ul style="list-style-type: none"> Yes. We believe issuance of securities should not be used as a payment form. A success fee of 7 to 9% of the distribution shared between the portal and the dealer would not only be sufficient but it will also convince the potential investors of the portal's impartiality. Following the ASSOBS model, the portal should charge up-front costs to cover application and analysis fees.

16.	The portals cannot hold manage or access clients' funds. Is this obligation appropriate? What would be its effect on the portal's activities? Should alternatives be considered?
	<p>Comments:</p> <ul style="list-style-type: none"> • Yes. We believe that a trust account manager should manage the invested funds. The related costs would be included in the application fees quoted in the answer #15. Adding the management of investments to an already long list of obligations would not be consistent with the portal's main purpose.
Other obligations	
17.	Should portals be imposed other obligations to protect investors' interest?
	<p>Comments:</p> <ul style="list-style-type: none"> • Issuers (founders, directors, executives) must be visible on social media (Twitter profile and LinkedIn a minima) and have a corporate website. It will help transparency and build trust and confidence. Also, these profiles must be posted on the portal's and issuer's websites. • Yes, we believe that the portal should, just like Crowdcude, ensure the transactions security by using algorithms similar to credit cards companies. It should be mentioned on the portal's website. This obligation will reassure both the issuer and the investors. • We believe a 10 days reflection period from the subscription date, las in Australia, would be reasonable. • We also believe that, because the campaign duration is short, the investor should exercise his right at least 20 days prior to the campaign's end to give the issuer time to find a new investor. Outside of this period, the reflection period should not be granted. • Furthermore, opening the portal to potential investors would establish confidence relationships between them and the portal. CircleUp is contemplating giving investors access to offering documents, standard shareholders agreements and comments given by accredited investors on a particular enterprise. • We believe investors should be free to share on social medias information concerning a potential investment. <u>Jeff How, author of «crowdsourcing»</u>, shows how crowdsourcing elevates the collective intelligence and provides social protection. This phenomenon is expanding to fraud detection mechanisms through social medias. We invite you to read the article <u>How the Crowd detects Fraud</u> in which 4 exemplary cases are exposed.

18.	Will the portal’s regulation allow them to conduct their activities appropriately?
	<ul style="list-style-type: none"> • We share the <u>NCEA</u> position on the portal’s regulation, namely its objective capacity of selecting issuers. The portals should have flexibility in choosing the selection criterion and in exercising judgement based on strong business principles. They should not be legally accountable for the choices they made. • Granting a free access to online resources would ease the issuer background checks. Background check fees are expensive and it may take up to 3 months to receive the information. • The dealer’s role is essential. We are wondering what position he will have on the portal. The regulation states that a portal should be registered as a restricted dealer. The grant of this title needs further examination, namely the eligibility conditions, the related costs and if they create considerable barriers to entry. • We believe a portal can operate like a private incorporated enterprise with experienced professionals as founder(s). The founder will have the ability to do the due diligence and the «know your client» the same way the dealer does. Also, the founder will be able to insure that investors are aware of the potential risk so that he won’t be accountable if the investment doesn’t generate the expected results. • We also believe the portal should have the obligation to hire a sponsor to manage the distribution. • We believe that if the exemption is opened to accredited investors and allows them to invest larger amounts, the distribution objective would be easier to reach and, as is the case in Australia, there would be fewer shareholders making it easier to manage. • The secondary market would be one of the main drivers of equity crowdfunding. The benefits are clear: the investor will have another motivation to buy shares since he will be able to make profits by selling them and the issuer would have the choice between many economically interesting opportunities (enter, leave the exchange..). Without this, the equity crowdfunding potential will be limited and investors, for the most part, may not show interest. • The portal should be able to advertise his offers outside of his website using the call-to-action technique. This should not be confused with the offer’s conditions (see Q6) which have to remain only on the portal. Like we said previously, the conditions will be made public through social media. It would be way more effective and credible if the portal could also provide this information. We also recommend to l’Autorité to allow accepted practices like advertising on social medias and keyword optimization
Exemptions for start-up businesses	
19.	Since the start-up exemption will be very similar in all participating territories, our intention is allowing portals established in one of the territories to display distribution from issuers located in another one. Also, the portals established in a territory will be able to offer their products to investors from other territories. Do you think it will lead to problems?
	<p>Comments:</p> <ul style="list-style-type: none"> • We believe it’s a good approach. There are no boundaries to talent and innovation in neither start-ups nor SME.

20.	One of the main difference between the crowdfunding exemption and the start-up exemption is that portals don't have to be registered under the latter one. Do you think investors are sufficiently protected without registration? If not, could you suggest obligations that should be imposed to portals to properly protect investors?
	<p>Comments:</p> <ul style="list-style-type: none"> • We believe that registration shouldn't be imposed to portals and that, as mentioned in answer 18, all portals for every category of issuers shouldn't have to register. We believe that registration adds a level of complexity that will make crowdfunding less enviable. Therefore, we expose ourselves to another type of risk: slowing down Canadian entrepreneurship and innovation. • The crowdfunding portals are full part business entities. They share the same challenges of profitability, governance, business and financing models. The start-up enterprises success would be compromised by adding the registration obligation. Also, statistics show that fraud is less than 1% on donation crowdfunding websites and inexistent in equity crowdfunding, considering that first generation portals had neither structure, governance rules nor donator's protection. Today, portals are sophisticated and provide security (see answer 17). The collective intelligence also helps in maintaining a high level of integrity. • Today, the successful equity crowdfunding portals are the ones who copied the good practices of donation portals like Kickstarter.
21.	We consider limiting the number of times an issuer can raise capital during the same civil year to 2. The maximum amount raised each time would be 150 000\$. Are these limits appropriate? If not, could you suggest fair limits considering the exemption project parameters?
	<p>Comments:</p> <ul style="list-style-type: none"> • No. We believe the maximum allowed should be higher. Statistics suggest that it should be 1,5 million of dollars over a 12 month period. Start-ups have different capital needs depending of the industry in which they operate. A retailer who wants to open a sale's point will need to raise 500 000\$ while a pharmaceutical start-up may need to raise the double because of the R&D high costs. • We recommend raising the maximum so most enterprises can be included. • We believe one fundraising per year would be enough if the exemption is opened to accredited investors and allows them to invest larger amounts. As shown in the Australian model, there is a dual benefit: the distribution objective will be easier to reach and there would be fewer shareholders making it easier to manage them.
22.	Under the start-up exemption, investors would not be allowed to invest more them 1 500\$ in a distribution. Is this limit appropriate? Should a maximum annual amount be set?
	<p>Comments:</p> <ul style="list-style-type: none"> • Please refer to question #7.
23.	Should the obligation to disclose a minimum of yearly ongoing information to shareholders be imposed to issuers If yes, what should it be about?
	<ul style="list-style-type: none"> • Yes. The issuers should prepare and give non-audited financial statements to shareholders. They should also provide periodic updates regarding their activities, the usage of proceeds, their results and their projections. • The issuers should also keep a share register on their website or on the portal.

24.	We believe issuers using the start-up exemption will update their informational form and offering document during the distribution period. Should they keep these information updated outside of this period?
	<p>Comments:</p> <ul style="list-style-type: none"> No. Other than the information described at answer #23, the issuer using the start-up exemption shouldn't be imposed obligations not prescribed by the exemption.
25.	As proposed in the crowdfunding exemption, should investors have the right to withdraw any offer or agreement to purchase a security 48 hours prior to the date of completion of the distribution?
	<p>Comments:</p> <ul style="list-style-type: none"> We believe a 10 days period from the subscription date, like in Australia, would be more appropriate. We also believe that, because the distribution campaign's duration is short, the investor should exercise his right at least 20 days prior the campaign's end to give the issuer time to find a new investor. Outside of this period, the reflection period should not be granted.
26.	In Nova-Scotia, should the Community Economic Development Investment Funds (CEDIF) be entitled to use the crowdfunding exemption or the start-up exemption? Please provide explanations, whether you agree with that or not?
	No comment
27.	Should other obligations be imposed to protect investors depending of the development phase of the issuer likely to issue shares under the exemption?
	<p>Comments:</p> <ul style="list-style-type: none"> Issuers (founders, directors, executives) must be visible on social medias (Twitter profile and LinkedIn a minima) and have a corporate website. It will help transparency and build trust and confidence. Also, these profiles must be posted on the portal and the issuer websites. Portals should maintain traceability of every data flow (identity, exchanges, comments, updates, emails) on a secured «cloud» and on a private copy. This historical data is a reminder of the issuer's responsibility to his investors and of his obligation to achieve expected results.