



Canadian Securities Regulation of Online Lending Platforms

by Barbara Hendrickson | Nov 7, 2016

Background

On October 24, 2016, the Ontario Securities Commission (“OSC”) announced its new innovation hub “Launchpad” for market participants in the fintech area to “help companies navigate” and possibly “tailor” the securities regulatory framework. The OSC Launchpad, which is said to be a first for Canadian securities regulators, follows on the introduction of similar models in the UK and Australia, is designed to “accelerate time-to-market”.

On October 24, 2016, the OSC also approved the registration of an AngelList subsidiary as a restricted dealer to operate its online networking and capital raising platform for angel investors and start ups.

http://www.osc.gov.on.ca/en/SecuritiesLaw_ord_20161024_angellist.htm In addition, on October 24, 2016 the OSC approved the registration as of a Lending Loop subsidiary an exempt market dealer to operate its online lending platform. This follows on the registration by the OSC in September of this year of a Lendified subsidiary, Vault Circle Inc., as an exempt market dealer to operate an online lending platform.

The registration of all three fintech platforms follows a seven year hiatus in the registration of peer to peer lending platforms in Canada. The last and first registration of a P2P firm in Canada was CommunityLend Inc. which was registered by the OSC in 2009. During the seven year period between CommunityLend’s approval and the latest spat of registrations, a number of unregistered peer to peer firms initially attempted to start up shop in Canada, but later shut down their operations when faced with complying with securities requirements.

In 2015, in light of heightened activity and interest in this area, the OSC published its news release that warned warned this market that their activities may trigger dealer registration and prospectus requirements under Ontario Securities laws.

http://www.osc.gov.on.ca/en/NewsEvents_nr_20150619_peer-to-peer-lending.htm

OSC Staff Notice 33-747 Annual Summary Report for Dealers, Advisers and Investment Fund Managers – Compliance and Registrant Regulation further cautions the peer to peer

lending market to consider their securities regulatory obligations before operating a P2P or lending platform (July 21, 2016).

http://www.osc.gov.on.ca/en/SecuritiesLaw_20160721_sn_33-747_annual-rpt-dealers-advisers.htm

CommunityLend

The decision document for CommunityLend which was issued by the OSC on September 8, 2016 (“CommunityLend Order”) is long and complex. Many of the prescribed conditions in the CommunityLend Order have been adopted in the AngelList, Vault Circle and Lending Loop online platforms.

CommunityLend’s peer to peer model was extremely innovative when it was introduced. http://www.osc.gov.on.ca/en/SecuritiesLaw_ord_20090911_215_communitylend.jsp

CommunityLend Inc. was registered as a limited market dealer (the precursor of the exempt market dealer category) and as a restricted portfolio manager by the OSC, the British Columbia Securities Commission and the Autorite des marches financiers. Like AngleList and Vault Circle, CommuniytLend was only open to investors / lenders who were accredited investors. Its online bidding process allowed issuers / borrowers to syndicate short term consumer loans up to \$25,000 to multiple investors/ lenders.

Certain of the provisions of the CommunityLend Order reflect the fact that it was issued before the current NI 31-103 regime came into force. However, the majority of the provisions prescribe in detail how CommunityLend was required to operate its online peer to peer lending platform covering, among other things, the contents and structure of its website; the terms of agreements with borrowers and lenders; registration process for both lenders and borrowers; identity verification; terms of the loans; the loan request process; acceptable investment limits; certification of accredited investors; the loan default process; contents of disclosure; acceptable fees; advertising and related party considerations.

CommunityLend ceased operating its peer to peer lending platform in 2012 when its principals went in another direction – “Financeit” a cloud based point-of-sale financing platform.

Lendified / Vault Circle Inc.

The loans offered on the Vault Circle lending platform include “high yield Canadian small business loans from creditworthy businesses.” The Vault Circle registration as an exempt market dealer, which is not time limited, is subject to the following conditions. Vault Circle must:

- operate an online lending platform only in Ontario and only in reliance only on the accredited investor exemption; and

- have reasonable access to an issuer (borrower) books and records that it approves for the distribution on the lending platform.

Lending Loop/ Loop Securities Inc.

Loop Securities Inc., which is registered as an exempt market dealer in all Canadian jurisdictions, has a two-year time limited registration. Loop Securities is registered to distribute “payment dependent notes” (“Notes”) issued by an affiliate of Loop Securities Inc. – Loop Funding Inc. relying on the offering memorandum exemption. Loop Securities has a number of additional conditions on its registration due to the “novel” nature of its offering. Loop Securities must:

- maintain reasonable access to the books and records of any issuer on the platform;
- report the following information to the OSC on a quarterly basis: the amounts of the Notes that were successfully funded, the Notes that were removed from the platform because they were not funded; any amendments to the Notes; any defaults on the Notes or amendments to payment schedules;
- provide the OSC with 30 days advance notice of material changes to the credit assessment or underwriting process of Loop Funding Inc.;
- report the following to the OSC on a quarterly basis: investment transactions by investors; types of investors approved for access to the platform and the details of investor complaints.

Angellist / Angellist LLC and Angellist Advisors LLC

Angellist was registered to operate in Ontario an online platform that offers a number of services to start up businesses primarily in the technology sector including services to facilitate venture capital and angel investing. The OSC approved a start up funding platform for Angellist LLC (“Angellist LLC”) and Angellist Advisors, LLC (“ALA”) on October 24, 2016 on the basis of a two-year test period in light of the “novel” nature of their business. ALA was registered as a restricted dealer in Ontario to facilitate the syndication of offerings through the platform. Angellist LLC is responsible for operating the online platform. All investors on the Angellist platform must be accredited investors. The decision issued by the OSC on October 24, 2016 (“Angellist Order”) provides relief from certain registrant obligations in NI 31-103 and the prospectus requirements of the Ontario Securities Act.

Angellist has the most extensive conditions attached to its registration. The Angellist Order is reminiscent of the CommunityLend Order in that it sets out a detailed set of conditions respecting the operation of the funding platform and the process that Angellist must undertake with investors.

These provisions include detailed descriptions of each of the service areas to be delivered on the platform and how the platform will operate generally. Allowable services include “Public Services”; “Connection Services”; “Recruiting Services”; “Restricted Services”; “Syndicate Services”; a Professional Investor Program and an Approved Incubator Programs that include University of Toronto Rotman School of Management’s Creative Destruction Lab and NEXT Canada.

The AngelList Order also contains several conditions respecting how accredited investors can participate on the platform (for example, “Lead Investors”, “Permitted Clients”, “Ontario Quality Investors” and “Credible Investors”); information that must be retained with respect to accredited investors; disclosure that must be given to accredited investors (for example, prescribed risk disclosure); the process for verifying accreditator investor status; the role of “Lead Investors”; specific suitability criteria for accredited investors (for example, previous venture capital experience); identify verification and the use of algorithm scores to rate investors. The AngelList Order also contains several conditions for types of issuers that call sell securities on the platform (for example, “Eligible Canadian Startups”, “Venture Capital Funds”, “Private Syndicates” and “SPEs”).

The AngelList Order, CommunityLend Order and the conditions of registration imposed of all of these fintech firms provide insight into how fintech companies in the online lending space will be required to operate in Canada in the future.

Barbara Hendrickson has extensive experience providing corporate finance, securities and financial services advice to the fintech industry. Her clients have operated in the following areas: online lending marketplaces including peer to peer lending platforms, real estate based lending, equity crowdfunding, trading signal providers, robo-advisors, online mortgage syndication, financial services software providers, artificial intelligence and robotics providers, online commodity traders, online foreign exchange traders, regulatory compliance software, exempt market dealers with online trading systems, mobile apps in a number of areas and trading and clearing and settlement systems.

If you would like more information, please call Barbara Hendrickson at 416.601.1004.

BAX News Archives

2018 (43)

2017 (45)

2016 (28)

2015 (16)

2014 (11)

2013 (13)

Join Our Mailing List

 

[Privacy Statement](#) * [Terms Of Use](#) * [Disclaimer](#) * [Contact Us](#)

©2018 BAX Securities Law