

## **Notice relating to the operation of marketplace lending platforms**

### **Purpose**

This notice is intended to inform marketplace participants of certain positions and findings of the *Autorité des marchés financiers* (the “Authority”) relating to marketplace (peer-to-peer) lending platforms (“lending platforms”) seeking to operate in the Québec market.

The notice is the result of recommendations made by the Fintech Working Group set up by the Authority to analyze fintech developments and anticipate related regulatory and consumer protection issues.

### **Background**

Generally, lending platforms act as intermediaries, allowing investors to fund borrowing businesses or individuals, depending on the business model.

At the initial publication of the *Avis relatif à l'exploitation des plates-formes de prêts de personnes-à-personnes* (Notice relating to the operation of marketplace (peer-to-peer) lending platforms) (the “2008 Notice”) in section 6.1 of the Bulletin of the Authority dated December 19, 2008 (Vol. 5, No. 50), the general purpose of lending platforms was to match individuals seeking to act as borrowers or lenders. The market has since evolved toward lending platforms that allow borrowers to access funds from institutional investors and individuals.

In countries where lending platforms have been in operation for a number of years, particularly in the U.S. and the U.K., markets have matured and the number of businesses pursuing these activities has grown. Lending platforms have diversified and some have developed complex, sophisticated business models.

The Authority notes that the legislative and regulatory frameworks governing these lending platforms may vary considerably from one jurisdiction to another. In Québec, there is no legislative framework dedicated to lending platforms. However, these platforms may be subject to requirements under certain laws administered by the Authority, in particular the *Securities Act*, CQLR, c. V-1.1.

### **Main obligations under the *Securities Act***

In general, the Authority considers lending platforms that provide an opportunity to invest in loans, whether directly or indirectly, to involve one or more forms of investment referred to in section 1 of the *Securities Act*. Investments offered may take several forms, such as an instrument evidencing a loan of money or an investment contract. As well, a lending platform that carries on business as a securities dealer or adviser must be registered as such with the Authority.

The factors for determining if a natural person or a legal person is acting as a securities dealer or adviser include whether the person is carrying on activities, directly or indirectly, with repetition or on a regular or continuous basis as an intermediary or market maker, receiving or expecting to receive compensation, and engaging in direct or indirect solicitation.

In general, a lending platform that solicits investments on-line or actively operates as an intermediary in connection with investment activities is deemed to carry on business as a securities dealer or adviser and must be registered with the Authority.

In addition, where a lending platform is intended to make a distribution in a form of investment referred to in the *Securities Act*, a prospectus must be prepared and a receipt therefor obtained from the Authority, unless the platform benefits from a prospectus exemption, in particular:

- the exemption for accredited investors and the offering memorandum exemption provided for under Regulation 45-106 respecting Prospectus Exemptions, CQLR, c. V-1.1, r. 21;

- the crowdfunding exemptions under the Blanket Order on Start-up Crowdfunding Prospectus and Registration Exemptions issued by the Authority (Decision No. 2015-PDG-0077 of May 13, 2015 published in section 6.10 of the Bulletin of the Authority dated May 14, 2015, Vol. 12, No. 19) and Regulation 45-108 respecting Crowdfunding, CQLR, c. V-1.1, r. 21.02.

A lending platform that seeks to be exempted from a prospectus requirement must comply with the exemption conditions.

As well, due to the sometimes particular nature of transactions carried out on lending platforms, the Authority expects that the disclosure in an offering memorandum, or in any other disclosure document, be made in compliance with the requirements of the applicable regulation, along with any necessary changes.

Moreover a lending platform may constitute a “marketplace” within the meaning of Regulation 21-101 respecting Marketplace Operation, CQLR, c. V-1.1, r. 5 (“Regulation 21-101”), where it facilitates the transfer of securities from the original lender to another lender. Consequently, a marketplace participant seeking to operate a business model that allows transfers of securities will have to examine the platform’s compliance with related regulation, namely, whether the platform constitutes a “marketplace” within the meaning of Regulation 21-101.

Although lending platforms have certain characteristics in common, the Authority recognizes that their operation and the juridical acts derived directly or indirectly therefrom may vary from one business to another. Therefore, the Authority believes that the requirements of the *Securities Act* as they apply to lending platforms must be reviewed on an individual basis. Representatives of businesses seeking to operate lending platforms are asked to contact the Authority before starting to conduct activities in or from Québec so as to present a detailed analysis of the factual context and the *Securities Act* obligations applicable to the proposed business model. The representatives must demonstrate why they believe, as the case may be, that the *Securities Act* obligations do not apply.

### **Application for discretionary exemption from *Securities Act* obligations**

The Authority may, on the conditions it determines, exempt a person from certain obligations provided for under the *Securities Act* or by regulation. A business that seeks to obtain a discretionary exemption from the Authority must submit an application that is complete, thorough and detailed, and justified by sufficient reasons demonstrating that the granting of the exemption is not detrimental to investors. In particular, the application must provide a detailed analysis of measures in place to ensure investor protection.

### **Regulatory sandbox**

On February 23, 2017, the Canadian Securities Administrators (the “CSA”) launched a regulatory sandbox designed to support businesses seeking to test innovative products, services and applications in Canada that trigger securities legislation requirements, while ensuring investor protection. Operators of lending platforms that believe that their business model is truly innovative from a Canadian market perspective are asked to contact the Authority to discuss whether they are eligible to submit an application.

For further information, we invite you to consult the section dedicated to the regulatory sandbox on the CSA website at <http://www.securities-administrators.ca/>.

### **Other considerations**

The Authority intends to analyze, on a case-by-case basis, the applicability of legislative provisions that create solvency-related requirements, particularly those under the *Act respecting trust companies and savings companies*, CQLR, c. S-29.01 and the *Deposit Insurance Act*, CQLR, c. A-26.

The Authority notes that some lending platforms currently allocate a portion of the expenses charged to borrowers or lenders to a loan default fund. In this respect, any offering that involves a similar feature

should include a compliance analysis with respect to the requirements of applicable laws governing the offering and distribution of insurance products.

Lastly, as part of its mission, the Authority hereby notifies market participants that it is pursuing its analysis with respect to the development of a legislative and regulatory framework that is tailored to lending platforms.

Please note that this notice replaces the 2008 Notice.

**Additional information**

Additional information may be obtained from the Authority's Information Centre at:

Québec City: 418-525-0337

Montréal: 514-395-0337

Toll-free: 1-877-525-0337

Fax: 418-647-9963

[www.lautorite.qc.ca](http://www.lautorite.qc.ca)

**August 3, 2017**