

M.O., 2013-05**Order number V-1.1-2013-05 of the Minister of Finance and the Economy, April 30, 2013**

Securities Act
(chapter V-1.1)

CONCERNING the Regulation to amend Regulation 44-101 respecting short form prospectus distribution

WHEREAS subparagraphs 1, 3, 6, 8, 11 and 34 of section 331.1 of the Securities Act (chapter V-1.1) stipulate that the *Autorité des marchés financiers* may make regulations concerning the matters referred to in those paragraphs;

WHEREAS the third and fourth paragraphs of section 331.2 of the said Act stipulate that a draft regulation shall be published in the Bulletin of the Authority, accompanied with the notice required under section 10 of the Regulations Act (chapter R-18.1) and may not be submitted for approval or be made before 30 days have elapsed since its publication;

WHEREAS the first and fifth paragraphs of the said section stipulate that every regulation made under section 331.1 must be approved, with or without amendment, by the Minister of Finance and comes into force on the date of its publication in the *Gazette officielle du Québec* or any later date specified in the regulation;

WHEREAS Regulation 44-101 respecting short form prospectus distribution was approved by ministerial order no. 2005-04 dated November 30, 2005;

WHEREAS there is cause to amend this regulation;

WHEREAS the draft Regulation to amend Regulation 44-101 respecting short form prospectus distribution was published in the *Bulletin de l'Autorité des marchés financiers*, volume 8, no. 28 of July 15, 2011;

WHEREAS the *Autorité des marchés financiers* made, on April 3, 2013, by the decision no. 2013-PDG-0049, Regulation to amend Regulation 44-101 respecting short form prospectus distribution;

WHEREAS there is cause to approve this regulation without amendment;

CONSEQUENTLY, the Minister of Finance and the Economy approves without amendment the Regulation to amend Regulation 44-101 respecting short form prospectus distribution appended hereto.

April 30, 2013

NICOLAS MARCEAU,
Minister of Finance and the Economy

REGULATION TO AMEND REGULATION 44-101 RESPECTING SHORT FORM PROSPECTUS DISTRIBUTIONS

Securities Act

(chapter V-1.1, s. 331.1, par. (1), (3), (6), (8), (11) and (34))

1. Section 1.1 of Regulation 44-101 respecting Short Form Prospectus Distributions is amended:

(1) by adding, after the definition of the expression “permitted supranational agency”, the following:

““reverse takeover acquiree” has the same meaning as in section 1.1 of Regulation 51-102 respecting Continuous Disclosure Obligations;”;

(2) by replacing the definition of the expression “successor issuer” with the following:

““successor issuer” means

(a) except for an issuer which, in the case where the restructuring transaction involved a divestiture of a portion of a reporting issuer’s business, succeeded to or otherwise acquired less than substantially all of the business divested, an issuer that meets any of the following requirements:

(i) it was a reverse takeover acquiree in a completed reverse takeover;

(ii) it was formed as a result of a completed restructuring transaction;

(iii) it participated in a restructuring transaction and its existence continued following the completion of the restructuring transaction; or

(b) an issuer that issued securities to the securityholders of a second issuer that was a reporting issuer, in a reorganization that did not alter those securityholders’ proportionate interest in the second issuer or the second issuer’s proportionate interest in its assets;”.

2. Section 2.7 of the Regulation is replaced with the following:

“2.7. Exemptions for Reporting Issuers that Previously Filed a Prospectus and Successor Issuers

(1) Paragraphs 2.2(d), 2.3(1)(d) and 2.6(1)(b) do not apply to an issuer if

(a) the issuer is not exempt from the requirement in the applicable CD rule to file annual financial statements within a prescribed period after its financial year end, but the issuer has not yet been required under the applicable CD rule to file any annual financial statements, and

(b) unless the issuer is seeking qualification under section 2.6, the issuer has filed and obtained a receipt for a final prospectus that included the issuer’s or each predecessor entity’s comparative annual financial statements for its most recently completed financial year or the financial year immediately preceding its most recently completed financial year, together with the auditor’s report accompanying those financial statements and, if there has been a change of auditors since the comparative period, an auditor’s report on the financial statements for the comparative period.

(1.1) Subparagraphs 2.2(d)(ii), 2.3(1)(d)(ii) and 2.6(1)(b)(ii) do not apply to an issuer if

(a) the issuer has filed annual financial statements as required under the applicable CD rule, and

(b) unless the issuer is seeking qualification under section 2.6, the issuer has filed and obtained a receipt for a final prospectus that included the issuer’s or each predecessor entity’s comparative annual financial statements for its most recently completed financial year or the financial year immediately preceding its most recently completed financial year, together with the auditor’s report accompanying those financial statements and, if there has been a change of auditors since the comparative period, an auditor’s report on the financial statements for the comparative period.

(2) Paragraphs 2.2(d), 2.3(1)(d) and 2.6(1)(b) do not apply to a successor issuer if

(a) the successor issuer is not exempt from the requirement in the applicable CD rule to file annual financial statements within a prescribed period after its financial year end, but the successor issuer has not yet, since the completion of the restructuring transaction or the reorganization described in paragraph (b) of the definition of “successor issuer”, which resulted in the successor issuer, been required under the applicable CD rule to file annual financial statements, and;

(b) an information circular relating to the restructuring transaction or the reorganization described in paragraph (b) of the definition of “successor issuer”, in which the successor issuer participated or which resulted in the successor issuer was filed by the successor issuer or an issuer that was a party to the restructuring transaction or reorganization, and such information circular,

(i) complied with applicable securities legislation, and

(ii) in the case of a restructuring transaction, included disclosure in accordance with Item 14.2 or 14.5 of Form 51-102F5 of Regulation 51-102 respecting Continuous Disclosure Obligations (M.O. 2005-03, 05-05-19) for the successor issuer.

(3) Paragraphs 2.2(d), 2.3(1)(d) and 2.6(1)(b) do not apply to an issuer if

(a) the issuer is not exempt from the requirement in the applicable CD rule to file annual financial statements within a prescribed period after its financial year end, but the issuer has not yet, since the completion of a qualifying transaction or reverse takeover (as both terms are defined in the TSX Venture Exchange Corporate Finance Manual as amended from time to time) been required under the applicable CD rule to file annual financial statements, and

(b) a CPC filing statement as defined in the TSX Venture Exchange Corporate Finance Manual as amended from time to time, or other filing statement of the TSX Venture Exchange was filed by the issuer, and

(i) in the case of a CPC filing statement, the statement

(A) was filed in connection with a qualifying transaction,
and

(B) complied with the TSX Venture Exchange Corporate Finance Manual, as amended from time to time, in respect of the qualifying transaction; or

(ii) in the case of a TSX Venture Exchange filing statement, other than a CPC filing statement, the statement

(A) was filed in connection with a reverse takeover, and

(B) complied with TSX Venture Exchange Corporate Finance Manual, as amended from time to time, in respect of the reverse takeover.”.

3. Section 2.8 of the Regulation is amended:

(1) by deleting paragraph (5);

(2) by inserting, after paragraph (5), the following:

“(6) The 10 business day period referred to in subsection (1) does not apply if

(a) an issuer is relying on section 2.4 or 2.5 and the following requirements are met:

(i) the issuer satisfies section 2.4 or 2.5, as applicable, at the time of filing its short form prospectus;

(ii) the issuer files its notice of intention before or concurrently with the filing of its preliminary short form prospectus; and

(iii) the issuer’s credit supporter

(A) previously filed a notice of intention under subsection (1) which has not been withdrawn; or

(B) is deemed to have filed a notice of intention under subsection (4); or

(b) an issuer is a successor issuer and the following requirements are met:

(i) the issuer satisfies

(A) section 2.2, 2.3 or 2.6, and

(B) subsection 2.7(2);

(ii) the issuer files its notice of intention before or concurrently with the filing of its preliminary short form prospectus; and

(iii) the issuer has acquired substantially all of its business from a person that

(A) previously filed a notice of intention under subsection (1) which has not been withdrawn; or

(B) is deemed to have filed a notice of intention under subsection (4).”.

4. Section 4.1 of the Regulation is replaced with the following:

“4.1. Required Documents for Filing a Preliminary Short Form Prospectus

(1) An issuer that files a preliminary short form prospectus shall

(a) file the following with the preliminary short form prospectus:

(i) a signed copy of the preliminary short form prospectus;

(ii) a certificate, dated as of the date of the preliminary short form prospectus, executed on behalf of the issuer by one of its executive officers

(A) specifying which of the qualification criteria set out in Part 2 the issuer is relying on in order to be qualified to file a prospectus in the form of a short form prospectus, and

(B) certifying that

(I) all of those qualification criteria have been satisfied, and

(II) all of the material incorporated by reference in the preliminary short form prospectus and not previously filed is being filed with the preliminary short form prospectus;

(iii) copies of all material incorporated by reference in the preliminary short form prospectus and not previously filed;

(iv) a copy of any document required to be filed under subsection 12.1(1) of Regulation 51-102 respecting Continuous Disclosure Obligations (M.O. 2005-03, 05-05-19) or section 16.4 of Regulation 81-106 respecting Investment Fund Continuous Disclosure (M.O. 2005-05, 05-05-19), as applicable, that relates to the securities being distributed, and that has not previously been filed;

(iv.1) a copy of any material contract required to be filed under section 12.2 of Regulation 51-102 respecting Continuous Disclosure Obligations or section 16.4 of Regulation 81-106 respecting Investment Fund Continuous Disclosure that has not previously been filed;

(v) if the issuer has a mineral project, the technical reports required to be filed with a preliminary short form prospectus under Regulation 43-101 respecting Standards of Disclosure for Mineral Projects (M.O. 2005-23, 05-11-30);

(vi) a copy of each report or valuation referred to in the preliminary short form prospectus for which a consent is required to be filed under section 10.1 of Regulation 41-101 respecting General Prospectus Requirements (M.O. 2008-05, 05-11-30) and that has not previously been filed, other than a technical report that

(A) deals with a mineral project or oil and gas activities,
and

(B) is not otherwise required to be filed under paragraph
(v); and

(b) deliver to the regulator or, in Québec, to the securities regulatory authority, concurrently with the filing of the preliminary short form prospectus, the following:

(i) a completed personal information form for

(A) each director and executive officer of an issuer;

(B) if the issuer is an investment fund, each director and executive officer of the manager of the issuer;

(C) each promoter of the issuer; and

(D) if the promoter is not an individual, each director and executive officer of the promoter;

(ii) if a financial statement of an issuer or a business included in, or incorporated by reference into, a preliminary short form prospectus is accompanied by an unsigned auditor's report, a signed letter addressed to the regulator or, in Québec, to the securities regulatory authority from the auditor of the issuer or of the business, as applicable, prepared in accordance with the form suggested for this circumstance in the Handbook.

(2) Despite subparagraph (1)(b)(i), an issuer is not required to deliver to the regulator or, in Québec, to the securities regulatory authority a personal information form for an individual if the issuer, another issuer or, if the issuer is an investment fund, the manager of the investment fund issuer or another investment fund issuer, previously delivered a personal information form for the individual and all of the following are satisfied:

(a) the certificate and consent included in or attached to the personal information form was executed by the individual within three years preceding the date of filing of the preliminary short form prospectus;

(b) the responses given by the individual to questions 6 through 10 of the individual's personal information form are correct as at a date that is within 30 days of the filing of the preliminary short form prospectus;

(c) if the personal information form was previously delivered to the regulator or, in Québec, to the securities regulatory authority by another issuer, the issuer delivers to the regulator or, in Québec, the securities regulatory authority, concurrently with the filing of the preliminary short form prospectus, a copy of the previously delivered personal information form, or alternative information that is satisfactory to the regulator or, in Québec, the securities regulatory authority.

(3) Until May 14, 2016, subparagraph (1)(b)(i) does not apply to an issuer in respect of the delivery of a personal information form for an individual if the issuer or, if the issuer is an investment fund, the manager of the investment fund issuer, previously delivered to the regulator or, in Québec, the securities regulatory authority a predecessor personal information form for the individual and all of the following are satisfied:

(a) the certificate and consent included in or attached to the predecessor personal information form was executed by the individual within three years preceding the date of filing of the preliminary short form prospectus;

(b) the responses given by the individual to questions 4(B) and (C) and questions 6 through 9 or, in the case of a TSX/TSXV personal information form in effect after September 8, 2011, questions 6 through 10, of the individual's predecessor personal information form are correct as at a date that is within 30 days of the filing of the preliminary short form prospectus.”.

5. Section 4.2 of the Regulation is amended, in paragraph (a):

(1) in subparagraph (vi):

(a) by inserting, after paragraph (A), the following, and making the necessary changes:

“(A.1) each director of the issuer, and”;

(b) by replacing subparagraph (B) with the following:

“(B) any other person that provides or signs a certificate under Part 5 of Regulation 41-101 respecting General Prospectus Requirements or other securities legislation, other than an issuer,”;

(2) by replacing subparagraph (x) with the following:

“(x) if an agreement or contract referred to in subparagraph (iii) or a material contract under subparagraph (iii.1) has not been executed before the filing of the final short form prospectus but will be executed on or before the completion of the distribution, the issuer must file with the securities regulatory authority, no later than the time of filing of the final short form prospectus, an undertaking of the issuer to the securities regulatory authority to file the agreement, contract or material contract promptly and in any event no later than 7 days after the execution of the agreement, contract or material contract;

“(x.1) if a document referred to in subparagraph (iii) does not need to be executed in order to become effective and has not become effective before the filing of the final short form prospectus, but will become effective on or before the completion of the distribution, the issuer must file with the securities regulatory authority, no later than the time of filing of the final short form prospectus, an undertaking of the issuer to the securities regulatory authority to file the document promptly and in any event no later than 7 days after the document becomes effective; and”.

6. Section 7.1 of the Regulation is amended by replacing the words “filing of a” with the words “issuance of a receipt for”.

7. Section 7.2 of the Regulation is amended by replacing the words “filing of” with the words “issuance of a receipt for”.

8. Form 44-101F1 of the Regulation is amended:

(1) by replacing, in item 1.6, paragraphs (2) and (3) with the following:

“(2) Describe the terms of any over-allotment option or any option to increase the size of the distribution before closing.

“(2.1) If there may be an over-allocation position provide the following disclosure:

“A purchaser who acquires [*insert type of securities qualified for distribution under the prospectus*] forming part of the underwriters’ over-allocation position acquires those securities under this short form prospectus, regardless of whether the over-allocation position is ultimately filled through the exercise of the over-allotment option or secondary market purchases.

“(3) If the distribution of the securities is to be on a best efforts basis, and a minimum offering amount

(a) is required for the issuer to achieve one or more of the purposes of the offering, provide totals for both the minimum and maximum offering amount, or

(b) is not required for the issuer to achieve any of the purposes of the offering, state the following in boldface type:

“There is no minimum amount of funds that must be raised under this offering. This means that the issuer could complete this offering after raising only a small proportion of the offering amount set out above.”;

(2) by inserting, in paragraph (1) of item 1.9 and after the word “class”, the words “or series”;

(3) by replacing item 1.11 with the following:

“1.11. Enforcement of Judgments Against Foreign Persons

If the issuer, a director of the issuer, a selling securityholder, or any other person that is signing or providing a certificate under Part 5 of Regulation 41-101 respecting General Prospectus Requirements or other securities legislation, or any person for whom the issuer is required to file a consent under Part 10 of Regulation 41-101 respecting General Prospectus Requirements, is incorporated, continued, or otherwise organized under the laws of a foreign jurisdiction or resides outside of Canada, state the following on the cover page or under a separate heading elsewhere in the prospectus, with the bracketed information completed:

“The [issuer, director of the issuer, selling securityholder, or other person] is incorporated, continued or otherwise organized under the laws of a foreign jurisdiction or resides outside of Canada.

[the person named below] has appointed the following agent(s) for service of process:

Name of Person	Name and Address of Agent

Purchasers are advised that it may not be possible for investors to enforce judgments obtained in Canada against any person that is incorporated, continued or otherwise organized under the laws of a foreign jurisdiction or resides outside of Canada, even if the party has appointed an agent for service of process.”;

(4) by replacing, in item 4.2, paragraph (2) with the following:

“(2) If the closing of the distribution is subject to a minimum offering amount, provide disclosure of the use of proceeds for the minimum and maximum offering amounts.

“(3) If the following apply, disclose how the proceeds will be used by the issuer, with reference to various potential thresholds of proceeds raised, in the event that the issuer raises less than the maximum offering amount:

(a) the closing of the distribution is not subject to a minimum offering amount;

(b) the distribution is to be on a best efforts basis; and

(c) the issuer has significant short-term non-discretionary expenditures including those for general corporate purposes, or significant short-term capital or contractual commitments, and may not have other readily accessible resources to satisfy those expenditures or commitments.

“(4) If the issuer is required to provide disclosure under subsection (3), the issuer must discuss, in respect of each threshold, the impact, if any, of raising each threshold amount on its liquidity, operations, capital resources and solvency.

“INSTRUCTIONS

If the issuer is required to disclose the use of proceeds at various thresholds under subsections 4.2(3) and (4), include as an example a threshold that reflects the receipt of 15 % of the offering or less.”;

(5) by replacing, in paragraph (1) of item 4.10, the words “acquired on a short-form prospectus-exempt basis, describe the principal purposes for which the proceeds of the short form prospectus-exempt financing” with the words “acquired on a prospectus-exempt basis, describe the principal purposes for which the proceeds of the prospectus-exempt financing”;

(6) by replacing, in item 7.6, the first paragraph with the following:

“If the short form prospectus is used to qualify the distribution of securities issued upon the exercise of special warrants or other securities acquired on a prospectus-exempt basis, state the following.”;

(7) by replacing items 7A.1 and 7A.2 with the following:

“7A.1. Prior Sales

For each class or series of securities of the issuer distributed under the short form prospectus and for securities that are convertible or exchangeable into those classes or series of securities, state, for the 12-month period before the date of the short form prospectus,

(a) the price at which the securities have been issued or are to be issued by the issuer or sold by the selling securityholder;

(b) the number of securities issued or sold at that price;
and

(c) the date on which the securities were issued or sold.

“7A.2. Trading Price and Volume

(1) For the following securities of the issuer that are traded or quoted on a Canadian marketplace, identify the marketplace and the price ranges and volume traded or quoted on the Canadian marketplace on which the greatest volume of trading or quotation for the securities generally occurs:

(a) each class or series of securities of the issuer distributed under the short form prospectus;

(b) securities of the issuer into which those classes or series of securities are convertible or exchangeable.

(2) For the following securities of the issuer that are not traded or quoted on a Canadian marketplace, but are traded or quoted on a foreign marketplace, identify the foreign marketplace and the price ranges and volume traded or quoted on the foreign marketplace on which the greatest volume or quotation for the securities generally occurs:

(a) each class or series of securities of the issuer distributed under the short form prospectus;

(b) securities of the issuer into which those classes or series of securities are convertible or exchangeable.

(3) Provide the information required under subsections (1) and (2) on a monthly basis for each month or, if applicable, partial months of the 12-month period before the date of the short form prospectus.”;

(8) in item 11.1:

(a) by inserting, in paragraph (2) and after the words “clarify that”, the words “applicable portions of”;

(b) by adding, after paragraph (2), the following:

“(3) Despite paragraph 7 of subsection (1), an issuer may exclude from its short form prospectus a report, valuation, statement or opinion of a person contained in an information circular prepared in connection with a special meeting of securityholders of the issuer and any references therein, if

(a) the report is not an auditor’s report in respect of financial statements of a person; and

(b) the report, valuation, statement or opinion was prepared in respect of a specific transaction contemplated in the information circular, unrelated to the distribution of securities under the short form prospectus, and that transaction has been abandoned or completed.”;

(9) in item 11.3:

(a) by replacing paragraph (2) with the following:

“(2) If the issuer does not have a current AIF or current annual financial statements and is relying on the exemption in subsection 2.7(2) or 2.7(3) of the Regulation, include the disclosure, including financial statements, provided in accordance with

(a) Section 14.2 or 14.5 of Form 51-102F5, Information Circular, of Regulation 51-102 respecting Continuous Disclosure Obligations in the information circular referred to in paragraph 2.7(2)(b) of the Regulation; or

(b) the policies and requirements of the TSX Venture Exchange for disclosure of a qualifying transaction in a CPC filing statement or a reverse takeover in a filing statement referred to in paragraph 2.7(3)(b) of the Regulation.”;

(b) by replacing the instructions with the following:

“INSTRUCTIONS

(1) *If an issuer is required to include disclosure under subsection 11.3(2), it must include the historical financial statements of any entity that was a party to the restructuring transaction and any other information contained in the information circular, CPC filing statement or other filing statement of the TSX Venture Exchange that was used to construct financial statements for the issuer.*

(2) *The disclosure referenced in instruction (1) must be presented in a way that supplements, but does not replace, the disclosure required to be made for a transaction that constitutes a significant acquisition for the issuer or a reverse takeover in which the issuer was involved.”;*

(10) by adding, after item 11.4, the following:

“11.5. Additional Disclosure for Issuers of Asset-Backed Securities

If the issuer has not filed or has not been required to file interim financial statements and related MD&A in respect of an interim period subsequent to the financial year in respect of which it has included annual financial statements in the short form prospectus because it is not a reporting issuer and is qualifying to file the short form prospectus under section 2.6 of the Regulation, include the interim financial statements and related MD&A that the issuer would have been required to incorporate by reference under paragraph 3 of subsection 11.1(1) if the issuer were a reporting issuer at the relevant time.”;

(11) by replacing, in item 15.3, the word “that” with the word “the” and by adding, at the end, the words “and the disclosure is correct as at the date of the prospectus”;

(12) by replacing, in item 20.1, the words “revisions of the price of damages” with the words “revisions of the price or damages”;

(13) by adding, after item 20.2, the following:

“20.3. Convertible, Exchangeable or Exercisable Securities

In the case of an offering of convertible, exchangeable or exercisable securities in which additional amounts are payable or may become payable upon conversion, exchange or exercise, provide a statement in the following form:

“In an offering of [*state name of convertible, exchangeable or exercisable securities*], investors are cautioned that the statutory right of action for damages for a misrepresentation contained in the prospectus is limited, in certain provincial [and territorial] securities legislation, to the price at which the [*state name of convertible, exchangeable or exercisable securities*] is offered to the public under the prospectus offering. This means that, under the securities legislation of certain provinces [and territories], if the purchaser pays additional amounts upon [conversion, exchange or exercise] of the security, those amounts may not be recoverable under the statutory right of action for damages that applies in those provinces [and territories]. The purchaser should refer to any applicable provisions of the securities legislation of the purchaser’s province [or territory] for the particulars of this right of action for damages or consult with a legal adviser.”.

INSTRUCTION

For greater certainty, in the case of a short form prospectus that is a base shelf prospectus under Regulation 44-102 respecting Shelf Distributions, issuers must include the above statement, unless it is stated in the base shelf prospectus that no convertible, exchangeable or exercisable securities will be offered, or that such securities may be offered but no amounts will be payable to convert, exchange or exercise those securities.”.

9. This Regulation comes into force on May 14, 2013.