

M.O., 2015-10**Order number V-1.1-2015-10 of the Minister of Finance, 18 August 2015**

Securities Act
(chapter V-1.1)

CONCERNING the Regulation 45-107 respecting Listing Representation and Statutory Rights of Action Disclosure Exemptions

WHEREAS subparagraphs 1, 11 and 34 of section 331.1 of the Securities Act (chapter V-1.1) provide 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 provide that a draft regulation shall be published in the *Bulletin de l'Autorité des marchés financiers*, 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 provide 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 on any later date specified in the regulation;

WHEREAS the draft Regulation 45-107 respecting Listing Representation and Statutory Rights of Action Disclosure Exemptions was published in the *Bulletin de l'Autorité des marchés financiers*, vol. 10, no. 47 of November 28, 2013;

WHEREAS the *Autorité des marchés financiers* made, on July 14, 2015, by the decision no. 2015-PDG-0119, Regulation 45-107 respecting Listing Representation and Statutory Rights of Action Disclosure Exemptions ;

WHEREAS there is cause to approve this regulation without amendment;

CONSEQUENTLY, the Minister of Finance approves without amendment the Regulation 45-107 respecting Listing Representation and Statutory Rights of Action Disclosure Exemptions appended hereto.

18 August 2015

CARLOS LEITÃO,
Minister of Finance

REGULATION 45-107 RESPECTING LISTING REPRESENTATION AND STATUTORY RIGHTS OF ACTION DISCLOSURE EXEMPTIONS

Securities Act

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

Definitions

1. In this Regulation

“eligible foreign security” means a security offered primarily in a foreign jurisdiction as part of a distribution of securities in either of the following circumstances:

- (a) the security is issued by an issuer
 - (i) that is incorporated, formed or created under the laws of a foreign jurisdiction,
 - (ii) that is not a reporting issuer in a jurisdiction of Canada,
 - (iii) that has its head office outside of Canada, and
 - (iv) that has a majority of the executive officers and a majority of the directors ordinarily resident outside of Canada;
- (b) the security is issued or guaranteed by the government of a foreign jurisdiction;

“executive officer” means, for an issuer, an individual who

- (a) is a chair, vice-chair or president,
- (b) is a chief executive officer or chief financial officer,
- (c) is a vice-president in charge of a principal business unit, division or function including sales, finance or production, or
- (d) performs a policy-making function in respect of the issuer;

“exempt offering document” means:

- (a) in New Brunswick, Nova Scotia and Saskatchewan, an offering memorandum as defined under the securities legislation of that jurisdiction, and
- (b) in all other jurisdictions, a document including any amendments to the document, that
 - (i) describes the business and affairs of an issuer, and
 - (ii) has been prepared primarily for delivery to and review by a prospective purchaser to assist the prospective purchaser in making an investment decision in respect of securities being distributed pursuant to an exemption from the prospectus requirement;

“listing representation prohibition” means the prohibition in the securities legislation set out in Appendix A;

“permitted client” has the same meaning as in section 1.1 of Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations (chapter V-1.1, r. 10);

“statutory rights of action disclosure requirement” means the provision in the securities legislation set out in Appendix B.

Exemption from Listing Representation Prohibition

2. The listing representation prohibition does not apply to a representation made in an exempt offering document in connection with a distribution of an eligible foreign security if

- (a) the distribution is made only to one or more permitted clients,
- (b) the representation does not contain a misrepresentation, and
- (c) the representation is made in compliance with the by-laws and rules of the exchange or quotation and trade reporting system referred to in the representation.

Alternative Disclosure of Statutory Rights

3. (1) In New Brunswick, Nova Scotia and Saskatchewan, the statutory rights of action disclosure requirement is satisfied in respect of a distribution of an eligible foreign security to a prospective purchaser that is a permitted client if the disclosure specified by subsection (2) is provided in one of the following ways:

- (a) in the exempt offering document;
- (b) in a document delivered to the permitted client at the same time as the exempt offering document;
- (c) in a written notice that has been delivered to the permitted client by a registered dealer or international dealer that provides the disclosure required by paragraph 2(b) and advises that the notice will apply to all future distributions.

(2) A person relying on subsection (1) must include disclosure that is substantively similar to one of the following disclosure statements:

- (a) if the disclosure is included in an exempt offering document:

“Securities legislation in certain provinces or territories of Canada may provide a purchaser with remedies for rescission or damages if the offering memorandum (including any amendment thereto) contains a misrepresentation, provided that the remedies for rescission or damages are exercised by the purchaser within the time limit prescribed by the securities legislation of the purchaser’s province or territory. The purchaser should refer to any applicable provisions of the securities legislation of the purchaser’s province or territory for particulars of these rights or consult with a legal advisor.”

- (b) if the disclosure is provided other than in an exempt offering document:

“If, in connection with a distribution of an eligible foreign security, as defined in [*Regulation 45-107 respecting Listing Representation and Statutory Rights of Action Disclosure Exemptions*, or other applicable provision] we deliver to you an offering document that constitutes an offering memorandum under applicable securities laws in Canada, you may have, depending on the province or territory of Canada in which the trade was made to you, remedies for rescission or damages if the offering memorandum (including any amendment thereto) contains a misrepresentation, provided that the remedies for rescission or damages are exercised by you within the time limit prescribed by the securities legislation of your province or territory. You should refer to any applicable provisions of the securities legislation of your province or territory for the particulars of these rights or consult with a legal advisor.”

Limitation of Application

4. Sections 2 and 3 do not apply to a distribution of an eligible foreign security if a prospectus has been filed with a Canadian securities regulatory authority for the distribution.

Effective Date

5. This Regulation comes into force on September 8, 2015.

**APPENDIX A
LISTING REPRESENTATION PROHIBITION**

Alberta:	Subsection 92(3) of the Securities Act (Alberta)
Manitoba:	Subsection 69(3) of the Securities Act (Manitoba)
New Brunswick:	Subsection 58(3) of the Securities Act (New Brunswick)
Newfoundland and Labrador:	Subsection 39(3) of the Securities Act (Newfoundland and Labrador)
Northwest Territories:	Subsection 147(1) Securities Act (Northwest Territories)
Nova Scotia:	Subsection 44(3) of the Securities Act (Nova Scotia)
Nunavut:	Subsection 147(1) of the Securities Act (Nunavut)
Prince Edward Island:	Subsection 147(1) of the Securities Act (Prince Edward Island)
Quebec:	Subparagraph 4 of the first paragraph of section 199 of the Securities Act (Quebec)
Saskatchewan:	Subsection 44(3) of the Securities Act (Saskatchewan)
Yukon:	Subsection 147(1) of the Securities Act (Yukon)

**APPENDIX B
STATUTORY RIGHTS OF ACTION DISCLOSURE REQUIREMENT**

New Brunswick:	Section 2.2 of Local Rule 45-802 Implementing National Instrument 45-106 – Prospectus and Registration Exemptions
Nova Scotia:	Subsection 65(3) of the Securities Act (Nova Scotia)
Saskatchewan:	Subsection 80.2(1) of the Securities Act (Saskatchewan)