

Guidance

Issuers should be aware that disclosing a material change in the rights offering circular does not relieve the issuer of the requirement to issue a news release and file a material change report as required by Part 7 of Regulation 51-102 respecting Continuous Disclosure Obligations.

4. This Regulation comes into force on December 8, 2015.

102366

M.O., 2015-17**Order number V-1.1-2015-17 of the Minister of Finance dated 18 November 2015**

Securities Act
(chapter V-1.1)

CONCERNING the Regulation to amend Regulation 41-101 respecting General Prospectus Requirements

WHEREAS subparagraphs 3, 6, 8, 14 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 Regulation 41-101 respecting General Prospectus Requirements approved by ministerial order no. 2008-05 dated March 4, 2008 (2008, *G.O.* 2, 810);

WHEREAS there is cause to amend this regulation;

WHEREAS the draft Regulation to amend Regulation 41-101 respecting General Prospectus Requirements was published in the *Bulletin de l'Autorité des marchés financiers*, vol. 11, no. 47 of November 27, 2014;

WHEREAS the *Autorité des marchés financiers* made, on October 26, 2015, by the decision no. 2015-PDG-0167, Regulation to amend Regulation 41-101 respecting General Prospectus Requirements;

WHEREAS there is cause to approve this regulation without amendment;

CONSEQUENTLY, the Minister of Finance approves without amendment the Regulation to amend Regulation 41-101 respecting General Prospectus Requirements appended hereto.

18 November 2015

CARLOS LEITÃO,
Minister of Finance

REGULATION TO AMEND REGULATION 41-101 RESPECTING GENERAL PROSPECTUS REQUIREMENTS

Securities Act

(chapter V-1.1, s. 331.1, par. (3), (6), (8), (14) and (34))

1. Regulation 41-101 respecting General Prospectus Requirements (chapter V-1.1, r. 14) is amended by inserting, after section 8.3, the following:

“PART 8A RIGHTS OFFERINGS

“8A.1. Application and definitions

(1) This Part applies to an issuer that files a preliminary or final prospectus to distribute rights.

(2) In this Part,

“additional subscription privilege” means a privilege, granted to a holder of a right, to subscribe for a security not subscribed for by any holder under a basic subscription privilege;

“basic subscription privilege” means a privilege to subscribe for the number or amount of securities set out in a rights certificate held by the holder of the rights certificate;

“managing dealer” means a person that has entered into an agreement with an issuer under which the person has agreed to organize and participate in the solicitation of the exercise of the rights issued by the issuer;

“market price” means, for securities of a class for which there is a published market,

(a) except as provided in paragraph (b),

(i) if the published market provides a closing price, the simple average of the closing price of securities of that class on the published market for each of the trading days on which there was a closing price falling not more than 20 trading days immediately before the day as of which the market price is being determined, or

(ii) if the published market does not provide a closing price, but provides only the highest and lowest prices of securities of the class traded, the average of the simple averages of the highest and lowest prices of securities of the class on the published market for each of the trading days on which there were highest and lowest prices falling not more than 20 trading days immediately before the day as of which the market price is being determined, or

(b) if trading of securities of the class on the published market has occurred on fewer than 10 of the immediately preceding 20 trading days, the average of the following amounts established for each of the 20 trading days immediately before the day as of which the market price is being determined:

(i) the average of the closing bid and closing ask prices for each day on which there was no trading;

(ii) if the published market

(A) provides a closing price of securities of the class for each day that there was trading, the closing price, or

(B) provides only the highest and lowest prices, the average of the highest and lowest prices of securities of that class for each day that there was trading;

“published market” means, for a class of securities, a marketplace on which the securities are traded, if the prices at which they have been traded on that marketplace are regularly

(a) disseminated electronically, or

(b) published in a newspaper or business or financial publication of general and regular paid circulation;

“soliciting dealer” means a person whose interest in a distribution of rights is limited to soliciting the exercise of the rights by holders of those rights;

“stand-by commitment” means an agreement by a person to acquire the securities of an issuer not subscribed for under the basic subscription privilege or the additional subscription privilege.

(3) For the purpose of the definition of “market price”, if there is more than one published market for a security and

(a) only one of the published markets is in Canada, the market price is determined solely by reference to that market,

(b) more than one of the published markets is in Canada, the market price is determined solely by reference to the published market in Canada on which the greatest volume of trading in the particular class of securities occurred during the 20 trading days immediately before the date as of which the market price is being determined, and

(c) none of the published markets are in Canada, the market price is determined solely by reference to the published market on which the greatest volume of trading in the particular class of securities occurred during the 20 trading days immediately before the date as of which the market price is being determined.

“8A.2. Filing of prospectus for a rights offering

(1) An issuer must not file a prospectus for a distribution of rights unless all of the following apply:

(a) in addition to qualifying the distribution of the rights, the prospectus qualifies the distribution of the securities issuable upon the exercise of the rights;

(b) if there is a managing dealer, the managing dealer complies with section 5.9 as if the dealer were an underwriter;

(c) the exercise period for the rights is at least 21 days after the date on which the prospectus is sent to security holders;

(d) the subscription price for a security to be issued upon the exercise of a right is,

(i) if there is a published market for the security, lower than the market price of the security on the date of the final prospectus, or

(ii) if there is no published market for the security, lower than the fair value of the security on the date of the final prospectus unless the issuer restricts all of its insiders from increasing their proportionate interest in the issuer through the exercise of the rights distributed under the prospectus or through a stand-by commitment.

(2) If subparagraph (1)(d)(ii) applies, the issuer must deliver to the regulator or, in Québec, the securities regulatory authority independent evidence of fair value.

“8A.3. Additional subscription privilege

An issuer must not grant an additional subscription privilege to a holder of a right unless all of the following apply:

(a) the issuer grants the additional subscription privilege to all holders of a right;

(b) each holder of a right is entitled to receive, upon the exercise of the additional subscription privilege, the number or amount of securities equal to the lesser of

(i) the number or amount of securities subscribed for by the holder under the additional subscription privilege, and

(ii) the number calculated in accordance with the following formula:

$x(y/z)$ where

x = the aggregate number or amount of securities available through unexercised rights after giving effect to the basic subscription privilege;

y = the number of rights exercised by the holder under the basic subscription privilege;

z = the aggregate number of rights exercised under the basic subscription privilege by holders of the rights that have subscribed for securities under the additional subscription privilege;

(c) all unexercised rights have been allocated on a pro rata basis to holders who subscribed for additional securities under the additional subscription privilege;

(d) the subscription price for the additional subscription privilege is the same as the subscription price for the basic subscription privilege.

“8A.4. Stand-by commitments

If an issuer enters into a stand-by commitment for a distribution of rights, all of the following apply:

(a) the issuer must grant an additional subscription privilege to all holders of a right;

(b) the issuer must deliver to the regulator or, in Québec, the securities regulatory authority evidence that the person providing the stand-by commitment has the financial ability to carry out the stand-by commitment;

(c) the subscription price under the stand-by commitment must be the same as the subscription price under the basic subscription privilege.

“8A.5. Appointment of depository

If an issuer has stated in a prospectus that no security will be issued upon the exercise of a right unless a stand-by commitment is provided, or unless proceeds of no less than the stated minimum amount are received by the issuer, all of the following apply:

(a) the issuer must appoint a depository to hold all money received upon the exercise of the rights until either the stand-by commitment is provided or the stated minimum amount is received and the depository is one of the following:

- (i) a Canadian financial institution;
 - (ii) a registrant in the jurisdiction in which the funds are proposed to be held that is acting as managing dealer for the distribution of the rights, or, if there is no managing dealer for the distribution of the rights, that is acting as a soliciting dealer;
- (b) the issuer and the depository must enter into an agreement, the terms of which require the depository to return the money referred to in paragraph (a) in full to the holders of rights that have subscribed for securities under the distribution of the rights if the stand-by commitment is not provided or if the stated minimum amount is not received by the depository during the exercise period for the rights.

“8A.6. Amendment

If an issuer has filed a final prospectus for a distribution of rights, the issuer must not change the terms of the distribution.”.

2. Section 9.2 of the Regulation is amended by inserting, in paragraph (b) and after subparagraph (iii), the following subparagraphs, and making the necessary changes:

“(iv) the evidence of financial ability required to be delivered under section 8A.4 if it has not previously been delivered; and

“(v) the evidence of fair value required to be delivered under subsection 8A.2(2) if it has not previously been delivered.”.

3. Section 10.1 of the Regulation is amended, in the French text:

(1) by replacing, in subparagraph (ii) of subparagraph (d) of paragraph (2), the words “des déclarations fausses ou trompeuses” with the words “de l’information fausse ou trompeuse”;

(2) by replacing, in subparagraph (b) of paragraph (3), the words “des déclarations fausses ou trompeuses” with the words “de l’information fausse ou trompeuse”.

4. Section 13.4 of the Regulation is amended by replacing, in the French text of subparagraph (iii) of subparagraph (a) of paragraph (3), the words “informations fausses ou trompeuses” with the words “information fausse ou trompeuse”.

5. Appendix A of the Regulation is amended by replacing, in the French text of subparagraph (ii) of paragraph (A) of question 9, the words “informations fausses ou trompeuses” with the words “information fausse ou trompeuse”.

6. This Regulation comes into force on December 8, 2015.