

## Draft Regulation

Securities Act

(R.S.Q. c. V-1.1, s. 331.1, pars. (1), (2), (3), (8), (11), (18.1), (20), (20.1), (32) and (34), and s. 331.2)

### Regulation 51-105 respecting Issuers Quoted in the U.S. Over-the Counter Markets

Notice is hereby given by the *Autorité des marchés financiers* (the "Authority") that, in accordance with section 331.2 of the *Securities Act*, R.S.Q. c. V-1.1, the following Regulation, the text of which is published hereunder, may be made by the Authority and subsequently submitted to the Minister of Finance for approval, with or without amendment, after 90 days have elapsed since its publication in the Bulletin of the Authority:

- *Regulation 51-105 respecting Issuers Quoted in the U.S. Over-the Counter Markets.*

Also, the *Policy Statement to Regulation 51-105 respecting Issuers Quoted in the U.S. Over-the Counter Markets* is published hereunder.

### Request for comment

Comments regarding the above may be made in writing before **September 9, 2011**, to the following:

M<sup>e</sup> Anne-Marie Beaudoin  
Corporate Secretary  
Autorité des marchés financiers  
800, square Victoria, 22<sup>e</sup> étage  
C.P. 246, tour de la Bourse  
Montréal (Québec) H4Z 1G3  
Fax: (514) 864-6381  
E-mail: [consultation-en-cours@lautorite.qc.ca](mailto:consultation-en-cours@lautorite.qc.ca)

### Further information

Further information is available from:

Alexandra Lee  
Senior Policy Advisor  
Autorité des marchés financiers  
514-395-0337, ext. 4465  
Toll-free: 1 877 525-0337  
[alexandra.lee@lautorite.qc.ca](mailto:alexandra.lee@lautorite.qc.ca)

Edvie Elysée  
Analyst  
Autorité des marchés financiers  
514-395-0337, ext. 4416  
Toll-free: 1 877 525-0337  
[edvie.elysee@lautorite.qc.ca](mailto:edvie.elysee@lautorite.qc.ca)

**June 10, 2011**

## Notice and Request for Comment

### **Draft Regulation 51-105 respecting Issuers Quoted in the U.S. Over-the-Counter Markets and Policy Statement to Regulation 51-105 respecting Issuers Quoted in the U.S. Over-the-Counter Markets**

**Date: June 10, 2011**

#### **Introduction**

We, the Canadian Securities Administrators (CSA) except the Ontario Securities Commission, are publishing for a 90-day comment period the following proposed documents:

- *Regulation 51-105 respecting Issuers Quoted in the U.S. Over-the-Counter Markets* (the Regulation), including *Form 51-105F1, Notice – OTC Issuer Ceases to be an OTC Reporting Issuer, Form 51-105F2, Notice of Promotional Activities, Form 51-105F3A, Personal Information Form and Authorization of Indirect Collection, Use and Disclosure of Personal Information, Form 51-105F3B, Personal Information Form and Authorization of Indirect Collection, Use and Disclosure of Personal Information* and *Form 51-105F4, Notice – Issuer Ceases to be an OTC Reporting Issuer* (collectively, the Forms);
- *Policy Statement to Regulation 51-105 respecting Issuers Quoted in the U.S. Over-the-Counter Markets* (the Policy Statement);

(together, the OTC Regulation).

The Notice and OTC Regulation are available on the websites of CSA members, including the following:

[www.bcsc.bc.ca](http://www.bcsc.bc.ca)  
[www.albertasecurities.com](http://www.albertasecurities.com)  
[www.sfsc.gov.sk.ca](http://www.sfsc.gov.sk.ca)  
[www.lautorite.qc.ca](http://www.lautorite.qc.ca)  
[www.nbsc-cvmnb.ca](http://www.nbsc-cvmnb.ca)  
[www.gov.ns.ca/nssc](http://www.gov.ns.ca/nssc)

We are also proposing consequential changes to:

- National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions*
- CSA Staff Notice 12-307 *Applications for a Decision that an Issuer is not a Reporting Issuer*

#### **Substance and Purpose of the OTC Regulation**

The OTC Regulation would give us better legal tools to:

- improve disclosure by issuers with a significant connection to a Canadian jurisdiction whose securities are quoted in the U.S. over-the-counter markets
- discourage the manufacture and sale in a Canadian jurisdiction of U.S. over-the-counter quoted shell companies that can be used for abusive purposes

#### **Background to the OTC Regulation**

On September 15, 2008, BC Instrument 51-509 *Issuers Quoted in the U.S. Over-the-Counter Markets* and related amendments (the BC OTC Regulation) came into force as

a local rule in British Columbia. The BC OTC Rule regulates issuers that are quoted in the U.S. over-the-counter markets but not on another North American exchange listed in the rule and that have a significant connection to British Columbia.

The BC OTC Rule was an initiative to address the harm caused to the reputation of British Columbia's capital markets by market participants with a significant connection to British Columbia that engage in abusive activities through the over-the-counter markets in the United States. These markets consist of the OTC Bulletin Board and Pink OTC Markets quotation systems. Damage to British Columbia's market reputation, in turn, was harming legitimate issuers, investment dealers, and other British Columbia market participants.

Since then, some of the OTC reporting issuers migrated to other Canadian jurisdictions. As a result, we are proposing to adopt the OTC Regulation.

### **Application of the OTC Regulation**

The OTC Regulation would apply to any OTC issuer that has a significant connection to a local Canadian jurisdiction.

Under the OTC Regulation, an OTC issuer is an issuer whose securities are quoted on any U.S. over-the-counter markets unless the issuer is also listed or quoted on the TSX Venture Exchange, The Toronto Stock Exchange, the Canadian National Stock Exchange, the New York Stock Exchange, the NYSE Amex Equities, or the NASDAQ Stock Market. Those exchanges impose requirements on issuers that make it unnecessary for them to be subject to the OTC Regulation. An OTC reporting issuer also includes an issuer if trades in its securities are reported in the grey market.

Under the OTC Regulation, an OTC issuer has a significant connection to a Canadian jurisdiction if

1. it is directed or administered or promotional activities are conducted in or from the jurisdiction, in whole or in part, or
2. it distributed securities in a Canadian jurisdiction prior to obtaining a ticker-symbol for the purpose of having its securities quoted on an over-the-counter market in the U.S. and those securities became the issuer's OTC-quoted securities.

The OTC Regulation would apply to an OTC issuer when the U.S. Financial Industry Regulatory Authority (FINRA) assigns a ticker symbol to a class of its securities so that trades in those securities may be reported. Once an OTC issuer becomes an OTC reporting issuer under the OTC Regulation, the OTC Regulation will continue to apply to it for at least one year. After that, the OTC Regulation would apply only if the issuer is directed or administered or carries out promotional activities in or from a jurisdiction of Canada.

The OTC Regulation would apply to an OTC issuer that is a reporting issuer in a Canadian jurisdiction at the time the regulation comes into force. We considered excluding the application of the OTC Regulation to this class of OTC issuers but concluded, given the objectives of the OTC Regulation, that there is no persuasive policy reason to exclude its application to this class of OTC issuers.

### **Disclosure requirements**

#### *Issuers*

We intend the OTC Regulation's disclosure requirements to improve continuous disclosure for OTC reporting issuers. We will monitor and enforce compliance with the new requirements through continuous disclosure reviews and the use of compliance and enforcement tools when appropriate.

Under the OTC Regulation, OTC reporting issuers must:

- meet the same periodic disclosure requirements imposed on other domestic reporting issuers under *Regulation 51-102 respecting Continuous Disclosure Obligations*, including an annual information form (AIF), management's discussion and analysis (MD&A), and audited financial statements
- comply with Canadian timely disclosure requirements
- file their public disclosure on SEDAR

Other than the requirement to file an AIF, OTC reporting issuers would be treated as venture issuers, as defined in *Regulation 51-102 respecting Continuous Disclosure Obligations*.

OTC reporting issuers that are SEC filers – issuers that file disclosure with the United States Securities and Exchange Commission – could comply with the draft regulation's requirements to file financial statements, material change reports, MD&A and AIFs using documents they file with the SEC.

The OTC Regulation would also require an OTC reporting issuer to file

- in certain circumstances, the most recent registration statement it filed with the SEC, and
- information about persons it retains for promotional activities, the nature and scope of the engagement, compensation, and other material terms of the agreements entered into with those persons.

The OTC Regulation would also require OTC reporting issuers in the oil and gas business to comply with *Regulation 51-101 respecting Standards of Disclosure for Oil and Gas Activities*. The OTC Regulation does not impose additional requirements with respect to *Regulation 43-101 respecting Standards of Disclosure for Mineral Projects* because that regulation currently applies to OTC issuers.

#### *Insider reports*

The OTC Regulation would require an insider of an OTC reporting issuer to file an insider report on SEDI unless the insider is exempted from those requirements because it has filed its insider report in compliance with U.S. federal securities law. If an insider of an OTC reporting issuer is exempted from reporting requirements under U.S. federal securities law, the OTC Regulation will require that it file an insider report under Canadian law.

#### *Personal Information Forms*

Under the OTC Regulation, each director, officer, promoter or control person of an OTC reporting issuer would be required to deliver to the securities regulatory authorities a personal information form (PIF). This form would include the person's consent to a criminal record search. Directors and officers of issuers listed on the TSX Venture Exchange and the Toronto Stock Exchange must file a similar form with the Exchange. If a person has submitted a PIF to the TSX Venture Exchange or the Toronto Stock Exchange and the information contained in it has not changed, the person may deliver it to satisfy the requirements of the OTC Regulation.

#### *Foreign Issuer and MJDS Exemptions*

Under the OTC Regulation, an OTC reporting issuer may rely on exemptions from continuous disclosure requirements that are available to other reporting issuers that have a class of securities registered under section 12 of the United States *Securities Exchange Act of 1934* or are required to file reports under section 15(d) of that Act, except for the

exemption regarding material change reporting. An OTC reporting issuer must comply with the same timely disclosure requirements for material change reporting as domestic reporting issuers, except that it may use SEC Form 8-K *Current Report* as a material change report. The continuous disclosure and other exemptions for a designated foreign issuer under *Regulation 71-102 respecting Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* are available to an OTC reporting issuer that is a designated foreign issuer.

#### *Restriction of exemptions*

We intend the OTC Regulation to deter manufacturers of shell companies from delivering to buyers of shell companies, for abusive purposes, the “public float” that is created from shares sold in private placements to Canadian residents and registered in a US registration statement that an issuer files with the SEC prior to obtaining a ticker-symbol.

To effect this, the OTC Regulation would:

- deny the use of the private agreement take-over bid exemption that could be used for this purpose
- require a Canadian resident who acquired shares from an OTC issuer before it obtained a ticker-symbol to sell the shares only through a registrant, from an account in the person’s own name, into the market or into a formal take-over bid, amalgamation, merger, reorganization or other similar statutory procedure, and
- require a legend on the certificates or a legend restriction notation on the ownership statements representing the seed stock held by Canadian residents to that effect.

We also intend the OTC Regulation to deter insiders and persons who have close ties to issuers from dumping shares into a market that has been prepared with promotional disclosure. Therefore, the OTC Regulation provides security holders of OTC reporting issuers with a transparent, open-market resale regime for securities acquired in a private placement.

All of the usual capital raising exemptions would be available to an OTC issuer during both its private and public stages. However, the OTC Regulation would place restrictions on the use of prospectus exemptions when an OTC reporting issuer is issuing securities for services.

#### *Transition Provisions*

When the OTC Regulation comes into force, an OTC reporting issuer will have to begin making disclosure immediately. The first quarterly and annual filings would require reporting on periods prior to the effective date of the OTC Regulation.

Issuers that are not SEC filers may not have an auditor or the resources and experience to meet the OTC Regulation’s new disclosure requirements. To give these issuers more time to prepare for compliance with the new regulation, we are considering providing a transition period following the adoption of the OTC Regulation. This would give OTC reporting issuers more time to comply with their requirements to file annual and interim financial statements, related MD&A and AIFs.

#### *Proposed Fees*

The securities regulatory authorities propose to impose the same filing fees that reporting issuers, and insiders of reporting issuers, pay to the applicable securities regulatory authority. These fees are set out in the applicable securities legislation. OTC reporting issuers will also have to pay SEDAR fees as well as late fees for failure to meet filing deadlines.

## **Consequential changes**

We propose amending National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* to direct filers to the Policy Statement for the factors a filer should consider in identifying the principal regulator for an application for exemptive relief from the requirements of the Regulation or the Forms.

We also propose amending CSA Staff Notice 12-307 *Applications for a Decision that an Issuer is not a Reporting Issuer* to state that the simplified procedure for ceasing to be a reporting issuer detailed in that staff notice is not available for an OTC reporting issuer.

## **Anticipated costs and benefits of the OTC Regulation**

The disclosure requirements should not be onerous for OTC reporting issuers who are SEC filers, because they can use the documents they file with the SEC in lieu of the Canadian forms for material change reports, financial statements, MD&A and AIF.

OTC reporting issuers who are not SEC filers and who do not have audited financial statements may incur significant new costs to comply with the OTC Regulation.

OTC reporting issuers in the resource sector, like other reporting issuers, must comply with *Regulation 51-101 respecting Standards of Disclosure for Oil and Gas Activities* and *Regulation 43-101 respecting Standards of Disclosure for Mineral Projects*. Compliance with these regulations may result in significant new costs to OTC reporting issuers.

Since an OTC reporting issuer has a significant connection with a jurisdiction of Canada, we think it is appropriate that those issuers make disclosure to the same standard as other Canadian reporting issuers.

## **Request for Comment on the OTC Regulation and consequential changes**

We invite comment on the OTC Regulation and the consequential changes generally.

## **Alternatives Considered**

Since a similar regulation has worked effectively in British Columbia, we did not consider other alternatives.

## **Unpublished Materials**

In developing the OTC Regulation, we did not rely upon any significant unpublished study, report, or other written materials.

## **Local Notices**

Certain jurisdictions will publish other information required by local securities legislation in Appendix A to this Notice.

## **Publishing Jurisdictions**

The OTC Regulation and the consequential changes are initiatives of all CSA members except Ontario. Other than Ontario, each CSA member would adopt the Regulation and the Forms as a regulation, commission regulation, or regulation, and the Policy Statement and consequential changes as policies.

## How to Provide Your Comments

Please provide your comments by **September 9, 2011**.

Please address your submission to the following CSA member commissions, as follows:

British Columbia Securities Commission  
Alberta Securities Commission  
Saskatchewan Financial Services Commission – Securities Division  
Manitoba Securities Commission  
Autorité des marchés financiers  
New Brunswick Securities Commission  
Registrar of Securities, Prince Edward Island  
Nova Scotia Securities Commission  
Securities Commission of Newfoundland and Labrador  
Superintendent of Securities, Northwest Territories  
Superintendent of Securities, Yukon Territory  
Superintendent of Securities, Nunavut

You do not need to deliver your comments to all CSA members. Please deliver your comments **only** to the following addresses, and CSA members' staff will distribute your comments to all other jurisdictions.

Anne-Marie Beaudoin  
Corporate Secretary  
Autorité des marchés financiers  
800, square Victoria, 22<sup>e</sup> étage  
C.P. 246, tour de la Bourse  
Montréal, Québec H4Z 1G3  
Fax: 514-864-6381  
E-mail: [consultation-en-cours@lautorite.qc.ca](mailto:consultation-en-cours@lautorite.qc.ca)

Gordon Smith  
Senior Legal Counsel, Corporate Finance  
British Columbia Securities Commission  
PO Box 10142 Pacific Centre  
701 West Georgia Street  
Vancouver, BC V7Y 1L2  
Tel: 604-899-6656  
Fax: 604-899-6814  
E-mail: [gsmith@bcsc.bc.ca](mailto:gsmith@bcsc.bc.ca)

If you are not sending your comments by e-mail, please send a CD-ROM containing your comments in MS Word format.

We cannot keep submissions confidential because securities legislation in certain provinces requires that we publish a summary of the written comments received during the comment period.

## Questions

If you have any questions, please refer them to any of the following:

*Autorité des marchés financiers*  
Alexandra Lee  
Senior Policy Advisor  
Policy and Regulations Department  
Tel: 514-395-0337, ext: 4465  
E-mail: [alexandra.lee@lautorite.qc.ca](mailto:alexandra.lee@lautorite.qc.ca)

Edvie Elysée  
Analyst  
Investment Funds and  
Continuous Disclosure Department  
Tel: 514-395-0337, ext: 4416  
E-mail: [edvie.elysee@lautorite.qc.ca](mailto:edvie.elysee@lautorite.qc.ca)

*British Columbia Securities Commission*  
Adrienne Marskell  
Senior Compliance Counsel, Corporate  
Finance  
Tel: 604-899-6645  
E-mail: [amarskell@bcsc.bc.ca](mailto:amarskell@bcsc.bc.ca)

Gordon Smith  
Senior Legal Counsel, Corporate Finance  
Tel: 604-899-6656  
E-mail: [gsmith@bcsc.bc.ca](mailto:gsmith@bcsc.bc.ca)

*Alberta Securities Commission*  
Tracy Clark  
Legal Counsel  
Tel: 403-355-4424  
Email: [Tracy.Clark@asc.ca](mailto:Tracy.Clark@asc.ca)

*Saskatchewan Financial Services  
Commission*  
Ian McIntosh  
Deputy Director – Corporate Finance  
Tel: 306-787-5867  
E-mail: [ian.mcintosh@gov.sk.ca](mailto:ian.mcintosh@gov.sk.ca)

*New Brunswick Securities Commission  
Commission des valeurs mobilières du  
Nouveau-Brunswick*  
Wendy Morgan  
Legal Counsel / Conseillère juridique  
Tel: 506-643-7202  
E-mail: [wendy.morgan@nbsc-cvmnb.ca](mailto:wendy.morgan@nbsc-cvmnb.ca)

*Nova Scotia Securities Commission*  
Junjie (Jack) Jiang  
Securities Analyst, Corporate Finance  
Tel: (902) 424-7059  
E-mail: [jiangjj@gov.ns.ca](mailto:jiangjj@gov.ns.ca)

## **REGULATION 51-105 RESPECTING ISSUERS QUOTED IN THE U.S. OVER-THE-COUNTER MARKETS**

Securities Act

(R.S.Q., c. V-1.1, s. 331.1, par. (1), (2), (3), (8), (11), (18.1), (20), (20.1), (32) and (34))

### **PART 1 DEFINITIONS AND REPORTING ISSUER DESIGNATION AND DETERMINATION**

#### **1. Definitions**

In this Regulation

“effective date” means the date this Regulation comes into force under subsection 20(1);

“OTC issuer” means an issuer

- (a) that has issued a class of securities that are OTC-quoted securities, and
- (b) that has not issued any class of securities that are listed or quoted on one or more of the following exchanges:

- (i) TSX-Venture Exchange,
- (ii) The Toronto Stock Exchange,
- (iii) Canadian National Stock Exchange,
- (iv) New York Stock Exchange,
- (v) NYSE Amex Equities,
- (vi) NASDAQ Stock Market;

“OTC-quoted securities” means a class of securities that has been assigned a ticker symbol by the Financial Industry Regulatory Authority in the United States of America for use on any of the over-the-counter markets in the United States of America and includes a class of securities whose trades have been reported in the grey market;

“OTC reporting issuer” means an OTC issuer that is a reporting issuer;

“promotional activities” means activities or communications, by or on behalf of an issuer, that promote or could reasonably be expected to promote the purchase or sale of securities of the issuer, but does not include

- (a) the dissemination of information or preparation of records in the ordinary course of the business of the issuer
  - (i) to promote the sale of products or services of the issuer, or
  - (ii) to raise public awareness of the issuer; or
- (b) activities or communications necessary to comply with the requirements of
  - (i) the securities legislation of any jurisdiction of Canada,

- (ii) the securities laws of any foreign jurisdiction governing the issuer, or
- (iii) any exchange or market on which the issuer's securities trade;

“ticker-symbol date” means the date that an OTC issuer is first assigned a ticker symbol for any class of its securities;

“trade”, in Québec, for the purpose of this Regulation, refers to any of the following activities:

(a) the activities described in the definition of “dealer” in section 5 of the Securities Act (R.S.Q., c. V-1.1), including the following activities:

(i) the sale or disposition of a security by onerous title, whether the terms of payment be on margin, instalment or otherwise, but does not include a transfer or the giving in guarantee of securities in connection with a debt or the purchase of a security, except as provided in paragraph (b);

(ii) participation as a trader in any transaction in a security through the facilities of an exchange or a quotation and trade reporting system;

(iii) the receipt by a registrant of an order to buy or sell a security;

(b) a transfer or the giving in guarantee of securities of an issuer from the holdings of a control person in connection with a debt.

## **2. Regulation definitions apply**

Terms used in this Regulation that are defined or interpreted in Regulation 51-102 respecting Continuous Disclosure Obligations have the same meaning in this Regulation.

## **3. Reporting issuer designation and determination**

An OTC issuer is a reporting issuer under securities legislation if one or more of the following apply:

(a) on or after the effective date, its business has been directed or administered in or from the local jurisdiction,

(b) on or after the effective date, promotional activities have been carried on in or from the local jurisdiction,

(c) the ticker-symbol date is on or after the effective date, and, on or before the ticker-symbol date, the issuer distributed a security to a person resident in the local jurisdiction and that security is of the class of securities that became the issuer's OTC-quoted securities.

## **4. Ceasing to be an OTC reporting issuer**

(1) Except in Québec, an OTC issuer ceases to be a reporting issuer under section 3 if all of the following conditions are met:

(a) its business is not directed or administered, and has not been directed or administered for at least one year, in or from the local jurisdiction;

(b) promotional activities are not carried on, and have not been carried on for at least one year, in or from the local jurisdiction;

(c) more than one year has passed since the ticker-symbol date;

(d) it has filed Form 51-105F1 Notice – OTC Issuer Ceases to be an OTC Reporting Issuer.

(2) Except in Québec, an OTC reporting issuer that ceases to be an OTC issuer because it has a class of securities listed or quoted on an exchange or quotation system specified in the definition of “OTC issuer” in section 1 must file Form 51-105F4 *Notice – Issuer Ceases to be an OTC Reporting Issuer* at least 10 days before its next required filing under securities legislation in the local jurisdiction.

(3) In Québec, an OTC reporting issuer must apply to the securities regulatory authority to have its status as an OTC reporting issuer revoked in order to cease to be a reporting issuer under section 3.

## **PART 2 DISCLOSURE**

### **5. Additional disclosure requirements**

In addition to all other provisions of securities legislation that apply to a reporting issuer and its insiders, an OTC reporting issuer must comply with the provisions of the following Regulations:

(a) Regulations 13-101 respecting System for Electronic Document Analysis and Retrieval (SEDAR) that apply to an electronic filer, despite section 2.1 of that Regulation;

(b) Regulation 51-102 respecting Continuous Disclosure Obligations that apply to a reporting issuer that is a venture issuer;

(c) Part 6 of Regulation 51-102 respecting Continuous Disclosure Obligations despite section 6.1 of that Regulation;

(d) Regulation 52-109 respecting Certification of Disclosure in Issuers’ Annual and Interim Filings that apply to a reporting issuer that is a venture issuer;

(e) Regulation 52-110 respecting Audit Committees that apply to a reporting issuer that is a venture issuer;

(f) Regulation 58-101 respecting Disclosure of Corporate Governance Practices that apply to a reporting issuer that is a venture issuer.

### **6. Timely disclosure obligations**

(1) Section 14.2 of Regulation 71-101 respecting The Multijurisdictional Disclosure System and section 4.2 of Regulation 71-102 respecting Continuous Disclosure and Other Exemptions Relating to Foreign Issuers do not apply to an OTC reporting issuer.

(2) An OTC reporting issuer may file a copy of the Form 8-K Current Report that it files with the SEC to comply with its obligation in paragraph 7.1(1)(b) of Regulation 51-102 respecting Continuous Disclosure Obligations to file a Form 51-102F3 Material Change Report.

### **7. Registration statement**

(1) If an OTC issuer becomes a reporting issuer on the ticker-symbol date, the OTC reporting issuer must file, within 5 days of the date it became a reporting issuer, a copy of the most recent registration statement it filed with the SEC.

(2) The OTC reporting issuer must file the registration statement in electronic format under section 2.2 of Regulation 13-101 respecting System for Electronic Document Analysis and Retrieval (SEDAR).

## **8. Promotional activities**

(1) If a person will carry on promotional activities under an agreement, arrangement, commitment or understanding with an OTC reporting issuer, the OTC reporting issuer must file a notice in the form of Form 51-105F2 Notice of Promotional Activities naming the person and describing the activities and the relationship of the OTC reporting issuer with the person, and the particulars of their agreement, arrangement, commitment or understanding with the OTC reporting issuer.

(2) The OTC reporting issuer must file the notice under subsection (1)

(a) at least 1 day before the promotional activities commence, or

(b) if, on the date the OTC issuer became an OTC reporting issuer, promotional activities are being carried on, within 5 days of that date.

(3) The OTC reporting issuer must file the notice in electronic format in accordance with Regulation 13-101 respecting System for Electronic Document Analysis and Retrieval (SEDAR).

## **9. Technical reports – mineral properties**

Section 4.1 of Regulation 43-101 respecting Standards of Disclosure for Mineral Projects does not apply to an OTC reporting issuer.

## **10. Personal information form and authorization**

(1) Each director, officer, promoter and control person of an OTC reporting issuer must deliver to the securities regulatory authorities Form 51-105F3A Personal Information Form and Authorization of Indirect Collection, Use and Disclosure of Personal Information or Form 51-105F3B Personal Information Form and Authorization of Indirect Collection, Use and Disclosure of Personal Information within 10 days of the issuer becoming an OTC reporting issuer, except for a promoter of an OTC issuer that becomes an OTC reporting issuer more than two years after the ticker-symbol date.

(2) Each person that becomes a director, officer, promoter or control person of an OTC reporting issuer must deliver to the securities regulatory authorities a personal information form within 10 days of becoming a director, officer, promoter or control person of an OTC reporting issuer.

(3) If a promoter or control person is not an individual, then its directors, officers and control persons must deliver personal information forms to the securities regulatory authorities.

## **PART 3 RESALE OF PRIVATE PLACEMENT SECURITIES**

### **11. Resale of seed stock**

(1) After the ticker-symbol date, a person must not trade a security of an OTC reporting issuer that the person acquired on or after the effective date and before the ticker-symbol date unless

(a) the trade is in connection with one or more of the following:

(i) a take-over bid or an issuer bid in a jurisdiction of Canada;

(ii) an amalgamation, merger, reorganization or arrangement that is under a statutory procedure or court order; or

(iii) a dissolution or winding-up of the issuer that is under a statutory procedure or court order; or

(b) all of the following conditions are met:

(i) the certificate representing the security carries the legend, or the ownership statement issued under a direct registration system or other electronic book entry system relating to the security bears the legend restriction notation, set out in subsection 12(2);

(ii) the person trades the security through an investment dealer registered in a jurisdiction of Canada from an account at that investment dealer in the name of that person;

(iii) the investment dealer executes the trade through any of the over-the-counter markets in the United States of America.

## **12. Legends on seed stock**

(1) As soon as practicable after the ticker-symbol date, an OTC reporting issuer must place

(a) a legend on each certificate representing a security issued before the ticker-symbol date, and

(b) a legend restriction notation on each ownership statement issued under a direct registration system or other electronic book entry system relating to a security issued before the ticker-symbol date.

(2) The legend and legend restriction notation must state the following:

“Unless permitted under section 11 of Regulation 51-105 respecting Issuers Quoted in the U.S. Over-the-Counter Markets, the holder of this security must not trade the security in or from a jurisdiction of Canada unless

(a) the security holder trades the security through an investment dealer registered in a jurisdiction of Canada from an account at that dealer in the name of that security holder, and

(b) the dealer executes the trade through any of the over-the-counter markets in the United States of America.”

## **13. Resale of private placement securities acquired after ticker-symbol date –**

(1) A person must not trade a security of an OTC reporting issuer that the person acquired under an exemption from the prospectus requirement after the ticker-symbol date unless the following conditions are satisfied:

(a) unless the security was acquired under a director or employee stock option, a 4-month period has passed from one of the following:

(i) the date the OTC reporting issuer distributed the security;

(ii) the date a control person distributed the security;

(b) if the person trading the security is a control person of the OTC reporting issuer, the person has held the security for at least 6 months,

(c) the number of securities the person proposes to trade, plus the number of securities of the OTC reporting issuer of the same class that the person has traded in the preceding 12-month period, does not exceed 5% of the OTC reporting issuer's outstanding securities of the same class,

(d) the person trades the security through an investment dealer registered in a jurisdiction of Canada,

(e) the investment dealer executes the trade through any of the over-the-counter markets in the United States of America,

(f) there has been no unusual effort made to prepare the market or create a demand for the security,

(g) no extraordinary commission or other consideration is paid to a person for the trade,

(h) if the person trading the security is an insider of the OTC reporting issuer, the person reasonably believes that the OTC reporting issuer is not in default of securities legislation, and

(i) the certificate representing the security bears a legend, or the ownership statement issued under a direct registration system or other electronic book entry system relating to the security bears a legend restriction notation, stating the following:

“The holder of this security must not trade the security in or from a jurisdiction of Canada unless the conditions in section 13 of Regulation 51-105 respecting Issuers Quoted in the U.S. Over-the-Counter Markets are met.”

(2) Despite subsection (1), a person may trade a security of an OTC reporting issuer that the person acquired under an exemption from the prospectus requirement if the trade is in connection with one or more of the following:

(a) a take-over bid or an issuer bid in a jurisdiction of Canada,

(b) an amalgamation, merger, reorganization or arrangement that is under a statutory procedure or court order,

(c) a dissolution or winding-up of the issuer that is under a statutory procedure or court order.

#### **14. No other hold periods**

Sections 2.3, 2.4, 2.5 and 2.6 of Regulation 45-102 respecting Resale of Securities do not apply to the first trade of a security of an OTC reporting issuer distributed under an exemption from the prospectus requirement.

### **PART 4 OTHER RESTRICTIONS**

#### **15. Securities for services**

An OTC reporting issuer must not distribute a security to a director, officer, or consultant of the issuer for the provision of a service, unless

(a) the consideration for the services is commercially reasonable,

- (b) in the case of a debt, the debt is a bona fide debt, and
- (c) the securities are distributed for a price that is at least at their current market value.

#### **16. Take-over bid**

Section 4.2 of Regulation 62-104 respecting Take-Over Bids and Issuer Bids does not apply to a take-over bid for an OTC reporting issuer for 2 years after the ticker-symbol date.

#### **17. Insider reports**

A person that is exempt or otherwise not required to file an insider report under U.S. federal securities law relating to insider reporting may not rely on the exemption from insider reporting under section 17.1 of Regulation 71-101 respecting The Multijurisdictional Disclosure System or section 4.12 of Regulation 71-102 respecting Continuous Disclosure and Other Exemptions Relating to Foreign Issuers.

### **PART 5 EXEMPTION**

#### **18. Exemption**

The regulator or securities regulatory authority may, under the statute referred to in Appendix B of Regulation 14-101 respecting Definitions opposite the name of the local jurisdiction, grant an exemption from this Regulation.

### **PART 6 TRANSITION AND COMING INTO FORCE**

#### **19. Transition – financial disclosure for non-SEC filers**

For an OTC reporting issuer that does not have a class of securities registered under section 12 of the 1934 Act and is not required to file reports under section 15 (d) of the 1934 Act, the requirements of Regulation 51-102 respecting Continuous Disclosure Obligations and Regulation 52-109 respecting Certification of Disclosure in Issuers' Annual and Interim Filings concerning the filing of

(a) annual financial statements, related MD&A and annual certificates apply only to financial years beginning on or after January 1, 201X,

(b) interim financial statements, related MD&A and interim certificates apply only to interim periods that

(i) begin on or after January 1, 201X, and

(ii) end after September 15, 201X,

(c) AIFs apply only to financial years beginning on or after January 1, 201X.

#### **20. Coming into force**

(1) Subject to subsection (2), this Regulation comes into force on XX, 201X.

(2) Sections 5, 6, 7, and 8 come into force on XX, 201X.

**FORM 51-105F1**

**NOTICE – OTC ISSUER CEASES TO BE AN OTC REPORTING ISSUER**

This is the form required under paragraph 4(1)(d) of Regulation 51-105 respecting Issuers Quoted in the U.S. Over-the-Counter Markets for an OTC issuer to give notice that it has ceased to be an OTC reporting issuer under section 3 of the Regulation in a jurisdiction other than Québec.

In Québec, an OTC reporting issuer must apply to the securities regulatory authority to have its status as an OTC reporting issuer revoked in order to cease to be a reporting issuer.

**The Issuer**

Name of Issuer: \_\_\_\_\_ (the Issuer)

Head office address: \_\_\_\_\_

\_\_\_\_\_

Last head office address (if different from above): \_\_\_\_\_

\_\_\_\_\_

Telephone number: \_\_\_\_\_

Fax number: \_\_\_\_\_

E-mail address: \_\_\_\_\_

Ticker-symbol date: \_\_\_\_\_

**Ceasing to be a Reporting Issuer**

The Issuer certifies the following statements to be true:

1. The Issuer's business is not directed or administered, and has not been directed or administered for at least one year, in or from (insert name of local jurisdiction).

2. Promotional activities are not carried on, and have not been carried on for at least one year, in or from (insert name of local jurisdiction).

3 More than one year has passed since the ticker-symbol date.

If the foregoing are true, on filing this Notice, the Issuer is no longer an OTC reporting issuer in (insert name of local jurisdiction).

On filing this Notice, the Issuer **has ceased to be** a reporting issuer in (name of local jurisdiction).

**Certificate**

On behalf of the Issuer, I certify that the statements made in this Notice are true.

Date: \_\_\_\_\_

---

Name of Issuer

---

Print name, title and telephone number  
of person signing on behalf of the Issuer

---

Signature

**Warning:** It is an offence to make a statement in this Notice that is false or misleading in a material respect, or to omit facts that make this Notice false or misleading in a material respect.

**FORM 51-105F2  
NOTICE OF PROMOTIONAL ACTIVITIES**

This is the form required under subsection 8(1) of Regulation 51-105 respecting Issuers Quoted in the U.S. Over-the-Counter Markets for an OTC reporting issuer to give notice of promotional activities.

**Issuer Information**

Name of Issuer: \_\_\_\_\_ (the Issuer)

Head office address: \_\_\_\_\_

\_\_\_\_\_

Telephone number: \_\_\_\_\_

Fax number: \_\_\_\_\_

E-mail address: \_\_\_\_\_

**Notice of Promotional Activities**

1. Identify each person engaged in promotional activities and provide the person's address, telephone and fax number, and email address. If the person is not an individual, provide the name(s) of the individual(s) carrying on the activities.

\_\_\_\_\_  
\_\_\_\_\_

2. Describe the relationship between the Issuer and each person engaged in promotional activities.

\_\_\_\_\_  
\_\_\_\_\_

3. Include particulars of any agreement, arrangement, commitment or understanding between the Issuer and a person engaged in promotional activities. Include:

- i. the effective date and duration of the agreement,
- ii. the scope of activities being conducted, and
- iii. the compensation paid or to be paid by the Issuer, including any non-cash compensation

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**The Issuer [has / has not] issued a news release disclosing this information.**

If the Issuer has issued a news release, the Issuer may file it with this form.

**Certificate**

On behalf of the Issuer, I certify that the statements made in this Notice are true.

Date: \_\_\_\_\_

\_\_\_\_\_  
Name of Issuer

\_\_\_\_\_  
Print name, title and telephone number  
of person signing on behalf of the Issuer

\_\_\_\_\_  
Signature

**Warning:** It is an offence to make a statement in this Notice that is false or misleading in a material respect, or to omit facts that make this Notice false or misleading in a material respect.

## FORM 51-105F3A

### PERSONAL INFORMATION FORM AND AUTHORIZATION OF INDIRECT COLLECTION, USE AND DISCLOSURE OF PERSONAL INFORMATION

This Personal Information Form and Authorization of Indirect Collection, Use and Disclosure of Personal Information must be completed and delivered to the securities regulatory authority by each individual who is required to do so by section 10 of Regulation 51-105 respecting Issuers Quoted in the U.S. Over-the-Counter Markets. If an individual has submitted a personal information form (an "Exchange Form") to the Toronto Stock Exchange or the TSX Venture Exchange and the information has not changed, the Exchange Form may be delivered in lieu of this Form if the Certificate and Consent on page 9 of this Form is completed and attached to the Exchange Form.

**The securities regulatory authority does not make any of the personal information provided in this Form public, unless required under freedom of information legislation.**

#### GENERAL INSTRUCTIONS

##### All Questions

**All questions must have a response.** The response of "N/A" or "Not Applicable" for any questions, except Questions 1(B), 2B(iii) and 5, will not be accepted.

##### Questions 6 to 9

Please check (√) in the appropriate space provided. If your answer to any of questions 6 to 9 is "YES", you must, in an attachment, provide complete details, including the circumstances, relevant dates, names of the parties involved and final disposition, if known. **Any attachment must be initialed by the person completing this Form.** Responses must consider all time periods.

##### Delivery

**The issuer must deliver completed Forms electronically via the System for Electronic Document Analysis and Retrieval (SEDAR) under the document type "Personal Information Form and Authorization". Access to this document type is not available to the public.**

#### CAUTION

It is an offence to make a statement in this Form that is false or misleading in a material respect, or to omit facts that make this Form false or misleading in a material respect. Steps may be taken to verify the answers you have given in this Form, including verification of information relating to any previous criminal record.

#### DEFINITIONS

"Offence" An offence includes:

(a) a summary conviction or indictable offence under the Criminal Code (R.S., 1985, c. C-46);

(b) a quasi-criminal offence (for example under the Income Tax Act (R.S.C. 1985, c. 1 (5th Suppl.)), the Immigration Act (S.C., 2001, c. 27) or the tax, immigration, drugs, firearms, money laundering or securities legislation of any jurisdiction of Canada;

(c) a misdemeanor or felony under the criminal legislation of the United States of America, or any state or territory therein; or

(d) an offence under the criminal legislation of any other foreign jurisdiction;

**NOTE: If you have received a pardon under the Criminal Records Act (R.S., 1985, c. C-47) and it has not been revoked, you must disclose the pardoned offence in this Form. In such circumstances:**

(a) **the appropriate written response would be “Yes, pardon granted on (date)”;** and

(b) **you must provide complete details in an attachment to this Form.**

“Proceedings” means:

(a) a civil or criminal proceeding or inquiry before a court;

(b) a proceeding before an arbitrator or umpire or a person or group of persons authorized by law to make an inquiry and take evidence under oath in the matter;

(c) a proceeding before a tribunal in the exercise of a statutory power of decision making where the tribunal is required by law to hold or afford the parties to the proceeding an opportunity for a hearing before making a decision; or

(d) a proceeding before a self-regulatory organization authorized by law to regulate the operations and the standards of practice and business conduct of its members and their representatives, in which the self-regulatory organization is required under its by-laws or rules to hold or afford the parties the opportunity for a hearing before making a decision, but does not apply to a proceeding in which one or more persons are required to make an investigation and to make a report, with or without recommendations, if the report is for the information or advice of the person to whom it is made and does not in any way bind or limit that person in any decision the person may have the power to make;

“securities regulatory authority” means a body created by statute in any jurisdiction or in any foreign jurisdiction to administer securities law, regulation and policy (e.g. securities commission) but does not include an exchange or other self regulatory or professional organization;

“self-regulatory or professional organization” means:

(a) a stock, commodities, futures or options exchange;

(b) an association of investment, securities, mutual fund, commodities, or future dealers;

(c) an association of investment counsel or portfolio managers;

(d) an association of other professionals (e.g. legal, accounting, engineering); and

(e) any other group, institution or self-regulatory entity, recognized by a securities regulatory authority, that is responsible for the enforcement of rules, disciplines or codes under any applicable legislation, or considered a self-regulatory or professional organization in another country.

## **1. A. IDENTIFICATION OF INDIVIDUAL COMPLETING FORM**

<b>LAST NAME(S)</b>		<b>FIRST NAME(S)</b>			<b>MIDDLE NAME(S) (If none, please state)</b>	
<b>NAME(S) MOST COMMONLY KNOWN BY:</b>						
<b>NAME OF ISSUER</b>						
<b>PRESENT or PROPOSED POSITION(S) WITH THE ISSUER – check (√) all positions below that are applicable.</b>		<b>IF DIRECTOR / OFFICER DISCLOSE THE DATE ELECTED / APPOINTED</b>			<b>IF OFFICER – PROVIDE TITLE IF OTHER – PROVIDE DETAILS</b>	
			(√)	<b>Month</b>		
Director						
Officer						
Other						

**B. Other than the name given in Question 1A above, provide any legal names, assumed names, or nicknames, under which you have carried on business or have otherwise been known, including information regarding any name change(s) resulting from marriage, divorce, court order or any other process. Use an attachment if necessary.**

	<b>FROM</b>		<b>TO</b>	
	<b>MM</b>	<b>YY</b>	<b>MM</b>	<b>YY</b>

**C.**

	<b>DATE OF BIRTH</b>			<b>PLACE OF BIRTH</b>		
	<b>Month</b>	<b>Day</b>	<b>Year</b>	<b>City</b>	<b>Province/State</b>	<b>Country</b>
Male						
Female						

**D.**

<b>MARITAL STATUS</b>	<b>FULL NAME OF SPOUSE – include common-law</b>	<b>OCCUPATION OF SPOUSE</b>

**E. TELEPHONE AND FACSIMILE NUMBERS AND E-MAIL ADDRESS**

<b>RESIDENTIAL</b>	<b>( )</b>	<b>FACSIMILE</b>	<b>( )</b>
<b>BUSINESS</b>	<b>( )</b>	<b>E-MAIL</b>	

**F. RESIDENTIAL HISTORY – Provide all residential addresses for the past 10 YEARS starting with your current principal residential address. If you are unable to correctly identify the complete residential address for a period, which is beyond five years from the date of completion of this Form, the municipality and province or state and country must be identified. The regulator reserves the right to require the full address.**

<b>STREET ADDRESS, CITY, PROVINCE/STATE, COUNTRY &amp; POSTAL/ZIP CODE</b>	<b>FROM</b>			<b>TO</b>		
	<b>MM</b>	<b>YY</b>		<b>MM</b>	<b>YY</b>	


**2. CITIZENSHIP**

<b>A. CANADIAN CITIZENSHIP</b>	<b>YES</b>	<b>NO</b>
(i) Are you a Canadian Citizen?		
(ii) Are you a person lawfully in Canada as an immigrant but are not yet a Canadian citizen?		
(iii) If "Yes" to Question 2A(ii), the number of years of continuous residence in Canada:		

<b>B. OTHER CITIZENSHIP</b>	<b>YES</b>	<b>NO</b>
(i) Do you hold citizenship in any country other than Canada?		
(ii) If "Yes" to Question 2B(i), the name of the country(s):		
(iii) Please provide U.S. Social Security number, where you have such a number		

**3. EMPLOYMENT HISTORY**

Provide your employment history for the **10 YEARS** immediately prior to the date of this Form starting with your current employment. Use an attachment if necessary.

EMPLOYER NAME	EMPLOYER ADDRESS	POSITION HELD	FROM		TO	
			MM	YY	MM	YY

**4. POSITIONS WITH OTHER ISSUERS**

	<b>YES</b>	<b>NO</b>
<b>A.</b> While you were a director, officer or insider of an issuer, did any exchange or self-regulatory organization refuse approval for listing or quotation of that issuer (including a listing resulting from a qualifying transaction, reverse takeover, backdoor listing or change of business)? If yes, attach full particulars.		
<b>B.</b> Has your employment in a sales, investment or advisory capacity with any firm or company engaged in the sale of real estate, insurance or mutual funds ever been terminated for cause?		
<b>C.</b> Has a firm or company registered under the securities laws of any jurisdiction of Canada or of any foreign jurisdiction as a securities dealer, broker, investment advisor or underwriter, suspended or terminated your employment for cause?		
<b>D.</b> Are you or have you during the last 10 years been a director, officer, promoter, insider or control person for any reporting issuer?		

**E. If “YES” to 4D above, provide the names of each reporting issuer. State the position(s) held and the period(s) during which you held the position(s). Use an attachment if necessary.**

NAME OF REPORTING ISSUER	POSITION(S) HELD	MARKET TRADED ON	FROM		TO	
			MM	YY	MM	YY

**5. EDUCATIONAL HISTORY**

**A. PROFESSIONAL DESIGNATION(S) – Provide any professional designation held and professional associations to which you belong. For example, Barrister & Solicitor, C.A., C.M.A., C.G.A., P.Eng., P.Geol., and CFA, etc. and indicate which organization and the date the designations were granted.**

PROFESSIONAL DESIGNATION And MEMBERSHIP NUMBER	GRANTOR OF DESIGNATION And JURISDICTION OR FOREIGN JURISDICTION	DATE GRANTED			ACTIVE?	
		MM	DD	YY	YES	NO

**B. Provide your post-secondary educational history starting with the most recent.**

SCHOOL	LOCATION	DEGREE OR DIPLOMA	DATE OBTAINED		
			MM	DD	YY

**6. OFFENCES**

If you answer “YES” to any item in Question 6, you must provide complete details in an attachment.

	YES	NO
<b>A.</b> Have you ever pleaded guilty to or been found guilty of an offence?		
<b>B.</b> Are you the subject of any current charge, indictment or proceeding for an offence?		
<b>C.</b> To the best of your knowledge, are you or have you ever been a director, officer, promoter, insider, or control person of an issuer, in any jurisdiction of Canada or in any foreign jurisdiction, at the time of events, where the issuer:		
(i) has ever pleaded guilty to or been found guilty of an offence?		

(ii) is the subject of any current charge, indictment or proceeding for an offence?		
---	--	--

**7. BANKRUPTCY**

If you answer “YES” to any item in Question 7, you must provide complete details in an attachment and attach a copy of any discharge, release or other applicable document.

	YES	NO
<b>A.</b> Have you, in any jurisdiction of Canada or in any foreign jurisdiction, within the past <b>10 years</b> had a petition in bankruptcy issued against you, made a voluntary assignment in bankruptcy, made a proposal under any bankruptcy or insolvency legislation, been subject to any proceeding, arrangement or compromise with creditors, or had a receiver, receiver-manager or trustee appointed to manage your assets?		
<b>B.</b> Are you now an undischarged bankrupt?		
<b>C.</b> To the best of your knowledge, are you or have you ever been a director, officer, promoter, insider, or control person of an issuer, in any jurisdiction of Canada or in any foreign jurisdiction, at the time of events, or for a period of 12 months preceding the time of events, where the issuer:		
(i) has made a petition in bankruptcy, a voluntary assignment in bankruptcy, a proposal under any bankruptcy or insolvency legislation, been subject to any proceeding, arrangement or compromise with creditors or had a receiver, receiver-manager or trustee appointed to manage the issuer’s assets?		
(ii) is now an undischarged bankrupt?		

**8. PROCEEDINGS**

If you answer “YES” to any item in Question 8, you must provide complete details in an attachment.

	YES	NO
<b>A. CURRENT PROCEEDINGS BY SECURITIES REGULATORY AUTHORITY OR SELF-REGULATORY OR PROFESSIONAL ORGANIZATION</b> Are you now, in any jurisdiction or in any foreign jurisdiction, the subject of:		
(i) a notice of hearing or similar notice issued by a securities regulatory authority?		
(ii) a proceeding or to your knowledge, under investigation, by an exchange or other self- regulatory or professional organization?		
(iii) settlement discussions or negotiations for settlement with a securities regulatory authority or any self-regulatory or professional organization?		
<b>B. PRIOR PROCEEDINGS BY SECURITIES REGULATORY AUTHORITY OR SELF-REGULATORY OR PROFESSIONAL ORGANIZATION</b> Have you <u>ever</u> :		

(i) been reprimanded, suspended, fined, been the subject of an administrative penalty, or otherwise been the subject of any disciplinary proceedings, in any jurisdiction of Canada or in any foreign jurisdiction, by a securities regulatory authority or self-regulatory or professional organization?		
(ii) had a registration or licence for the trading of securities, exchange or commodity futures contracts, real estate, insurance or mutual fund products cancelled, refused, restricted or suspended?		
(iii) been prohibited or disqualified under securities, corporate or any other legislation from acting as a director or officer of a reporting issuer?		
(iv) had a cease trading or similar order issued against you or an order issued against you that denied you the right to use any statutory prospectus or registration exemption?		
(v) been the subject of any other proceeding?		

**C. SETTLEMENT AGREEMENT(S)**

Have you ever entered into a settlement agreement with a securities regulatory authority, self-regulatory or professional organization, an attorney general or comparable official or body, in any jurisdiction of Canada or in any foreign jurisdiction, in a matter that involved, actual or alleged, fraud, theft, deceit, misrepresentation, conspiracy, breach of trust, breach of fiduciary duty, insider trading, unregistered trading in securities or exchange or commodity futures contracts, illegal distributions, failure to disclose material facts or changes or similar conduct, or any other settlement agreement with respect to any other violation of securities legislation in a jurisdiction or in a foreign jurisdiction or the rules of any self-regulatory or professional organization?		
---	--	--

**D. To the best of your knowledge, are you now or have you ever been a director, officer, promoter, insider, or control person of an issuer at the time of such event, in any jurisdiction of Canada or in any foreign jurisdiction, for which a securities regulatory authority or self-regulatory or professional organization has:**

(i) refused, restricted, suspended or cancelled the registration or licensing of an issuer to trade securities, exchange or commodity futures contracts, or to sell or trade real estate, insurance or mutual fund products?		
(ii) issued a cease trade or similar order or imposed an administrative penalty against the issuer, other than an order for failure to file financial statements that was revoked within 30 days of its issuance?		
(iii) refused a receipt for a prospectus or other offering document, denied any application for listing or quotation or any other similar application, or issued an order that denied the issuer the right to use any statutory prospectus or registration exemptions?		
(iv) issued a notice of hearing, notice as to a proceeding or similar notice against the issuer?		
(v) taken any other proceeding against the issuer, including a trading halt, suspension or delisting of the issuer (other than in the normal course for proper dissemination of information, pursuant to a reverse takeover, backdoor listing or similar transaction)?		

(vi) entered into a settlement agreement with the issuer in a matter that involved actual or alleged fraud, theft, deceit, misrepresentation, conspiracy, breach of trust, breach of fiduciary duty, insider trading, unregistered trading in securities or exchange or commodity futures contracts, illegal distributions, failure to disclose material facts or changes or similar conduct by the issuer, or involved in any other violation of securities legislation in a jurisdiction or in a foreign jurisdiction or a self-regulatory or professional organization's rules?		
--	--	--

## 9. CIVIL PROCEEDINGS

If you answer "YES" to any item in Question 9, you must provide complete details in an attachment.

		YES	NO
<b>A.</b>	<b>JUDGMENT, GARNISHMENT AND INJUNCTIONS</b>		
	<b>Has a court in any jurisdiction of Canada or in any foreign jurisdiction:</b>		
	(i) rendered a judgment, ordered garnishment or issued an injunction or similar ban (whether by consent or otherwise) against <u>you</u> in a claim based in whole or in part on fraud, theft, deceit, misrepresentation, conspiracy, breach of trust, breach of fiduciary duty, insider trading, unregistered trading, illegal distributions, failure to disclose material facts or changes or allegations of similar conduct?		
	(ii) rendered a judgment, ordered garnishment or issued an injunction or similar ban (whether by consent or otherwise) against <u>an issuer</u> , for which you are currently or have ever been a director, officer, promoter, insider or control person, in a claim based in whole or in part on fraud, theft, deceit, misrepresentation, conspiracy, breach of trust, breach of fiduciary duty, insider trading, unregistered trading, illegal distributions, failure to disclose material facts or changes or allegations of similar conduct?		
<b>B.</b>	<b>CURRENT CLAIMS</b>		
	(i) Are <u>you</u> now the subject, in any jurisdiction of Canada or in any foreign jurisdiction, of a claim that is based in whole or in part on actual or alleged fraud, theft, deceit, misrepresentation, conspiracy, breach of trust, breach of fiduciary duty, insider trading, unregistered trading, illegal distributions, failure to disclose material facts or changes or allegations of similar conduct?		
	(ii) To the best of your knowledge, are you currently or have you ever been a director, officer, promoter, insider or control person of <u>an issuer</u> now subject, in any jurisdiction of Canada or in any foreign jurisdiction, of a claim that is based in whole or in part on actual or alleged fraud, theft, deceit, misrepresentation, conspiracy, breach of trust, breach of fiduciary duty, insider trading, unregistered trading, illegal distributions, failure to disclose material facts or changes or allegations of similar conduct?		
<b>C.</b>	<b>SETTLEMENT AGREEMENT</b>		
	(i) Have <u>you</u> ever entered into a settlement agreement, in any jurisdiction of Canada or in any foreign jurisdiction, in a civil action that involved actual or alleged fraud, theft, deceit, misrepresentation, conspiracy, breach of trust, breach of fiduciary duty, insider trading, unregistered trading, illegal distributions, failure to disclose material facts or changes or allegations of similar conduct?		
	(ii) To the best of your knowledge, are you currently or have you ever been a director, officer, promoter, insider or control person of <u>an issuer</u> that has entered into a settlement agreement, in any jurisdiction of Canada or in any foreign jurisdiction, in a civil action that involved actual or alleged fraud, theft, deceit, misrepresentation, conspiracy, breach of trust, breach of fiduciary duty, insider trading, unregistered trading, illegal distributions, failure to disclose material facts or changes or allegations of similar conduct?		

**CERTIFICATE AND CONSENT**

I, \_\_\_\_\_ hereby certify that:  
(Please Print – Name of Individual)

- (a) I have read and understand the questions, cautions, acknowledgement and consent in this Form, and the answers I have given to the questions in this Form and in any attachments to it are true and correct, except where stated to be to the best of my knowledge, in which case I believe the answers to be true;
- (b) I have read and understand Schedule 1;
- (c) I consent to the collection, use and disclosure of the information in this Form (or in a delivered Exchange Form if one is delivered in lieu of this Form) and to the collection, use and disclosure of further personal information in accordance with Schedule 1; and
- (d) I understand that I am delivering this Form with one or more securities regulatory authorities listed in Schedule 2 and it is an offence to make a statement in this Form that is false or misleading in a material respect, or to omit facts that make this Form false or misleading in a material respect.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of person named above

\_\_\_\_\_  
Name(s) of OTC reporting issuer(s) for which this form is delivered

## **SCHEDULE 1**

### **Collection of Personal Information**

The securities regulatory authorities listed in Schedule 2 are authorized, under securities legislation, to collect personal information. The securities regulatory authorities do not make any of the information provided in this Form public, unless required under freedom of information legislation.

By signing the Certificate and Consent in this Form, you are consenting to submitting your personal information in this Form (the “Information”) to the securities regulatory authorities and to the collection and use by the securities regulatory authorities of the Information, as well as any other information that may be necessary to administer securities legislation and assist in the administration of securities laws elsewhere. This may include the collection of information from law enforcement agencies, other government or non-governmental regulatory authorities, self-regulatory organizations, exchanges, and quotation and trade reporting systems in order to conduct background checks, verify the Information, perform investigations and conduct enforcement proceedings.

Under Regulation 51-105 respecting Issuers Quoted in the U.S. Over-the-Counter Markets, you are required to deliver the Information to the securities regulatory authorities because you are a director, officer, promoter or control person of an OTC Reporting Issuer. Under freedom of information and protection of privacy legislation, you have a right to be informed of the existence of personal information about you that is kept by a securities regulatory authority, to request access to that information, and to request that such information be corrected, subject to applicable freedom of information and protection of privacy legislation.

By signing the Certificate and Consent in this Form, you acknowledge that the securities regulatory authorities may disclose the Information they collect about you, as permitted by law, where its use and disclosure is for the purposes described above. The securities regulatory authorities may use a third party to process the Information, but when that happens, the third party is obligated to comply with the limited use restrictions described above and federal and provincial privacy legislation.

**Warning:** It is an offence to submit information that, in a material respect, and at the time and in the light of the circumstances in which it is submitted, is misleading or untrue.

### **Questions**

If you have any questions about the collection, use and disclosure of the information you provide to a securities regulatory authority, you may contact the securities regulatory authority at the address or telephone number listed in Schedule 2.

## **SCHEDULE 2**

### **Securities Regulatory Authorities**

#### **British Columbia Securities Commission**

P.O. Box 10142, Pacific Centre  
701 West Georgia Street  
Vancouver, British Columbia V7Y 1L2  
Telephone: 604-899-6500  
Toll free in British Columbia and Alberta 1-800-373-6393  
Facsimile: 604-899-6506

#### **Alberta Securities Commission**

4<sup>th</sup> Floor, 300 – 5<sup>th</sup> Avenue SW  
Calgary, Alberta T2P 3C4  
Telephone: 403-297-6454  
Facsimile: 403-297-6156

#### **Saskatchewan Financial Services Commission**

Suite 601 - 1919 Saskatchewan Drive  
Regina, Saskatchewan S4P 4H2  
Telephone: 306-787-5879  
Facsimile: 306-787-5899

#### **The Manitoba Securities Commission**

500 – 400 St Mary Avenue  
Winnipeg, Manitoba R3C 4K5  
Telephone: 204-945-2548  
Toll free in Manitoba 1-800-655-5244  
Facsimile: 204-945-0330

#### **Autorité des marchés financiers**

800, Square Victoria, 22<sup>e</sup> étage  
C.P. 246, Tour de la Bourse  
Montréal, Québec H4Z 1G3  
Telephone: 514-395-0337  
Or 1-877-525-0337  
Facsimile: 514-873-6155 (For delivery purposes only)  
Facsimile: 514-864-6381 (For privacy requests only)

#### **New Brunswick Securities Commission**

85 Charlotte Street, Suite 300  
Saint John, New Brunswick E2L 2J2  
Telephone: 506-658-3060  
Toll Free in New Brunswick 1-866-933-2222  
Facsimile: 506-658-3059

#### **Nova Scotia Securities Commission**

2<sup>nd</sup> Floor, Joseph Howe Building  
1690 Hollis Street  
Halifax, Nova Scotia B3J 3J9  
Telephone: 902-424-7768  
Facsimile: 902-424-4625

**Prince Edward Island Securities Office**

95 Rochford Street, 4<sup>th</sup> Floor Shaw Building  
P.O. Box 2000  
Charlottetown, Prince Edward Island C1A 7N8  
Telephone: 902-368-4569  
Facsimile: 902-368-5283

**Government of Newfoundland and Labrador**

Financial Services Regulation Division  
P.O. Box 8700  
Confederation Building  
2nd Floor, West Block  
Prince Philip Drive  
St. John's, NFLD A1B 4J6  
Attention: Director of Securities  
Telephone: 709-729-4189  
Facsimile: 709-729-6187

**Government of Yukon**

Department of Community Services  
Andrew A. Philipsen Law Centre, 3<sup>rd</sup> Floor  
2130 Second Avenue  
Whitehorse, YT Y1A 5H6  
Telephone: 867-667-5314  
Facsimile: 867-393-6251

**Government of the Northwest Territories**

Government of the Northwest Territories  
Office of the Superintendent of Securities  
P.O. Box 1320  
Yellowknife, NT X1A 2L9  
Attention: Deputy Superintendent, Legal & Enforcement  
Telephone: 867-920-8984  
Facsimile: 867-873-0243

**Government of Nunavut**

Department of Justice  
Legal Registries Division  
P.O. Box 1000, Station 570  
1<sup>st</sup> Floor, Brown Building  
Iqaluit, Nunavut X0A 0H0  
Telephone: 867-975-6590  
Facsimile: 867-975-6594

**FORM 51-105F3B**

**PERSONAL INFORMATION FORM AND AUTHORIZATION OF INDIRECT COLLECTION, USE AND DISCLOSURE OF PERSONAL INFORMATION**

This Personal Information Form and Authorization of Indirect Collection, Use and Disclosure of Personal Information must be completed and delivered to the securities regulatory authority by each individual who is required to do so by section 10 of Regulation 51-105 respecting Issuers Quoted in the U.S. Over-the-Counter Markets. If an individual has delivered either Form 51-105F3A Personal Information Form and Authorization of Indirect Collection, Use and Disclosure of Personal Information or a personal information form to the Toronto Stock Exchange or TSX Venture Exchange in connection with another OTC Reporting Issuer and the information has not changed, the individual may deliver this Form in satisfaction of the requirement in section 10 of Regulation 51-105 respecting Issuers Quoted in the U.S. Over-the-Counter Markets if the Certificate and Consent below is completed.

**The securities regulatory authority does not make any of the personal information provided in this Form public, unless required under freedom of information legislation.**

**CERTIFICATE AND CONSENT**

I, \_\_\_\_\_ hereby certify that:  
(Please Print – Name of Individual)

(a) I delivered form 51-105F3A Personal Information Form and Authorization of Indirect Collection, Use and Disclosure of Personal Information on \_\_\_\_\_ (insert date) for \_\_\_\_\_ (insert name of issuer). I have read and understood the questions, cautions, acknowledgement and consent in that Form, and the answers I have given to the questions in that Form and in any attachments to it are true and correct, except where stated to be to the best of my knowledge, in which case I believe the answers to be true;

(b) I have read and understand the attached Schedule 1;

(c) I consent to the collection, use and disclosure of the information in this Form and to the collection, use and disclosure of further personal information in accordance with Schedule 1; and

(d) I understand that I am delivering this Form to a securities regulatory authority, and it is an offence under securities legislation to provide false or misleading information to the securities regulatory authority.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of person named above

\_\_\_\_\_  
Name(s) of OTC reporting issuer(s) for which this Form is delivered

## **SCHEDULE 1**

### **Collection of Personal Information**

The securities regulatory authorities listed in Schedule 2 are authorized, under securities legislation, to collect personal information. The securities regulatory authorities do not make any of the information provided in this Form public, unless required under freedom of information legislation.

By signing the Certificate and Consent in this Form, you are consenting to submitting your personal information in this Form (the "Information") to the securities regulatory authorities and to the collection and use by the securities regulatory authorities of the Information, as well as any other information that may be necessary to administer securities legislation and assist in the administration of securities laws elsewhere. This may include the collection of information from law enforcement agencies, other government or non-governmental regulatory authorities, self-regulatory organizations, exchanges, and quotation and trade reporting systems in order to conduct background checks, verify the Information, perform investigations and conduct enforcement proceedings.

Under Regulation 51-105 respecting Issuers Quoted in the U.S. Over-the-Counter Markets, you are required to deliver the Information to the securities regulatory authorities because you are a director, officer, promoter or control person of an OTC Reporting Issuer. Under freedom of information and protection of privacy legislation, you have a right to be informed of the existence of personal information about you that is kept by a securities regulatory authority, to request access to that information, and to request that such information be corrected, subject to applicable freedom of information and protection of privacy legislation.

By signing the Certificate and Consent in this Form, you acknowledge that the securities regulatory authorities may disclose the Information they collect about you, as permitted by law, where its use and disclosure is for the purposes described above. The securities regulatory authorities may use a third party to process the Information, but when that happens, the third party is obligated to comply with the limited use restrictions described above and federal and provincial privacy legislation.

**Warning:** It is an offence to submit information that, in a material respect, and at the time and in the light of the circumstances in which it is submitted, is misleading or untrue.

### **Questions**

If you have any questions about the collection, use and disclosure of the information you provide to a securities regulatory authority, you may contact the securities regulatory authority at the address or telephone number listed in Schedule 2.

**SCHEDULE 2**  
**Securities Regulatory Authorities**

**British Columbia Securities Commission**

P.O. Box 10142, Pacific Centre  
701 West Georgia Street  
Vancouver, British Columbia V7Y 1L2  
Telephone: 604-899-6500  
Toll free in British Columbia and Alberta 1-800-373-6393  
Facsimile: 604-899-6506

**Alberta Securities Commission**

4<sup>th</sup> Floor, 300 – 5<sup>th</sup> Avenue SW  
Calgary, Alberta T2P 3C4  
Telephone: 403-297-6454  
Facsimile: 403-297-6156

**Saskatchewan Financial Services Commission**

Suite 601 - 1919 Saskatchewan Drive  
Regina, Saskatchewan S4P 4H2  
Telephone: 306-787-5879  
Facsimile: 306-787-5899

**The Manitoba Securities Commission**

500 – 400 St Mary Avenue  
Winnipeg, Manitoba R3C 4K5  
Telephone: 204-945-2548  
Toll free in Manitoba 1-800-655-5244  
Facsimile: 204-945-0330

**Autorité des marchés financiers**

800, Square Victoria, 22<sup>e</sup> étage  
C.P. 246, Tour de la Bourse  
Montréal, Québec H4Z 1G3  
Telephone: 514-395-0337  
Or 1-877-525-0337  
Facsimile: 514-873-6155 (For delivery purposes only)  
Facsimile: 514-864-6381 (For privacy requests only)

**New Brunswick Securities Commission**

85 Charlotte Street, Suite 300  
Saint John, New Brunswick E2L 2J2  
Telephone: 506-658-3060  
Toll Free in New Brunswick 1-866-933-2222  
Facsimile: 506-658-3059

**Nova Scotia Securities Commission**

2<sup>nd</sup> Floor, Joseph Howe Building  
1690 Hollis Street  
Halifax, Nova Scotia B3J 3J9  
Telephone: 902-424-7768  
Facsimile: 902-424-4625

**Prince Edward Island Securities Office**

95 Rochford Street, 4<sup>th</sup> Floor Shaw Building  
P.O. Box 2000  
Charlottetown, Prince Edward Island C1A 7N8  
Telephone: 902-368-4569  
Facsimile: 902-368-5283

**Government of Newfoundland and Labrador**

Financial Services Regulation Division  
P.O. Box 8700  
Confederation Building  
2<sup>nd</sup> Floor, West Block  
Prince Philip Drive  
St. John's, NFLD A1B 4J6  
Attention: Director of Securities  
Telephone: 709-729-4189  
Facsimile: 709-729-6187

**Government of Yukon**

Department of Community Services  
Andrew A. Philipsen Law Centre, 3<sup>rd</sup> Floor  
2130 Second Avenue  
Whitehorse, YT Y1A 5H6  
Telephone: 867-667-5314  
Facsimile: 867-393-6251

**Government of the Northwest Territories**

Government of the Northwest Territories  
Office of the Superintendent of Securities  
P.O. Box 1320  
Yellowknife, NT X1A 2L9  
Attention: Deputy Superintendent, Legal & Enforcement  
Telephone: 867-920-8984  
Facsimile: 867-873-0243

**Government of Nunavut**

Department of Justice  
Legal Registries Division  
P.O. Box 1000, Station 570  
1<sup>st</sup> Floor, Brown Building  
Iqaluit, Nunavut X0A 0H0  
Telephone: 867-975-6590  
Facsimile: 867-975-6594

**FORM 51-105F4**

**NOTICE – ISSUER CEASES TO BE AN OTC REPORTING ISSUER**

This is the form required under subsection 4(2) of Regulation 51-105 respecting Issuers Quoted in the U.S. Over-the-Counter Markets. This form must be completed and filed in jurisdictions other than Québec if an OTC reporting issuer has ceased to be an OTC issuer because it has a class of securities listed or quoted on an exchange or quotation system specified in the definition of “OTC issuer” in section 1 of the Regulation.

In Québec, an OTC reporting issuer that has a class of securities listed or quoted on an exchange or quotation system specified in the definition of “OTC issuer” in section 1 of the Regulation must apply to the securities regulatory authority to have its status as an OTC reporting issuer revoked in order to cease to be an OTC issuer.

**The Issuer**

Name of Issuer: \_\_\_\_\_ (the Issuer)

Head office address: \_\_\_\_\_

\_\_\_\_\_

Last head office address (if different from above): \_\_\_\_\_

\_\_\_\_\_

Telephone number: \_\_\_\_\_

Fax number: \_\_\_\_\_

E-mail address: \_\_\_\_\_

**Ceasing to be an OTC Reporting Issuer**

The Issuer’s \_\_\_\_\_ (describe class of securities) are listed or quoted on \_\_\_\_\_ (name of exchange or quotation system listed in definition of OTC issuer in section 1 of Regulation 51-105 respecting Issuers Quoted in the U.S. Over-the-Counter Markets).

If the Issuer has ceased to be an OTC issuer, the Issuer is no longer an OTC Reporting Issuer under Regulation 51-105 respecting Issuers Quoted in the U.S. Over-the-Counter Markets.

The Issuer [**will not be / will remain**] a reporting issuer in a jurisdiction of Canada.

**Certificate**

On behalf of the Issuer, I certify that the statements made in this Notice are true.

Date: \_\_\_\_\_

\_\_\_\_\_  
Name of Issuer

---

Print name, title and telephone number  
of person signing on behalf of the Issuer

---

Signature

**Warning:** It is an offence to make a statement in this Notice that is false or misleading in a material respect, or to omit facts that make this Notice false or misleading in a material respect.

# ***POLICY STATEMENT TO REGULATION 51-105 RESPECTING ISSUERS QUOTED IN THE U.S. OVER-THE-COUNTER MARKETS***

## **PART 1 GENERAL COMMENTS**

### **1.1. Introduction**

This Policy Statement sets out how the Canadian Securities Administrators (we) interpret or apply the provisions of *Regulation 51-105 respecting Issuers Quoted in the U.S. Over-the-Counter Markets* (Regulation) and related securities legislation.

Except for Part 1, the numbering of Parts and sections in this Policy Statement correspond to the numbering in the Regulation. Any general guidance for a Part appears immediately after the Part name. Any specific guidance on sections in the Regulation follows the general guidance. If there is no guidance for a section, the numbering in this Policy Statement will skip to the next provision that does have guidance.

The Regulation designates or determines as a reporting issuer (OTC reporting issuer) in a jurisdiction of Canada an issuer that:

- (a) has issued a class of securities that are quoted on any of the over-the-counter markets in the United States of America, including the OTC Bulletin Board, the Pink OTC Markets and reported in the grey markets, and has no securities listed or quoted on another North American exchange or quotation system listed in the Regulation (OTC issuer), and
- (b) meets one or more of the tests for a significant connection to that jurisdiction set out in section 3 of the Regulation.

An OTC reporting issuer must comply with the requirements of securities legislation that apply to reporting issuers in that jurisdiction generally. The Regulation requires an OTC reporting issuer to make some additional disclosure, and restricts the use of some of the prospectus, take-over bid and disclosure exemptions.

Because an OTC reporting issuer is likely to be an unlisted reporting issuer under *Regulation 45-106 respecting Registration and Prospectus Exemptions*, section 2.25 of that regulation applies to distributions of the issuer's securities by the issuer or a control person to a director, executive officer, employee, consultant or other person described in section 2.24 of that regulation. Section 2.25 of that regulation requires non-management shareholders to approve those distributions if the limitations in that section are exceeded.

### **1.2. Definitions**

Unless defined in the Regulation, terms used in the Regulation or in this Policy Statement have the meaning given to them in the securities legislation of each jurisdiction, in *Regulation 14-101 respecting Definitions* or in *Regulation 51-102 respecting Continuous Disclosure Obligations*. For example,

- (a) "reporting issuer" is defined in the securities legislation of each jurisdiction,
- (b) "1934 Act", "local jurisdiction", "jurisdiction of Canada", "prospectus requirement", "securities legislation", and "SEC" are defined in *Regulation 14-101 respecting Definitions*, and
- (c) "AIF" and "MD&A" are defined in *Regulation 51-102 respecting Continuous Disclosure Obligations*.

### **1.3. Reporting issuer designation and determination**

#### ***Direction and administration of business***

An OTC issuer's business may be directed or administered in or from more than one jurisdiction. For the purposes of section 3 of the Regulation, generally, we will consider that an OTC issuer's business is directed or administered in or from a jurisdiction if:

(a) its head office, or another office where executive functions take place, is located in that jurisdiction,

(b) some or all of its directors are located in that jurisdiction, or

(c) any director, officer, consultant or other person who carries out executive functions for the issuer does so from an office in that jurisdiction, or is resident in that jurisdiction.

Executive functions are those a president, a vice president, a secretary, a treasurer or a general manager of a corporation or other entity, or the chair of a board of directors, normally performs. These functions include responsibility for important corporate activities such as exploration, product development, asset acquisition and development, financing, investor relations and operations.

Generally, we will not consider that an OTC issuer's business is directed or administered in or from a jurisdiction if the only connection to the jurisdiction is the location, in the jurisdiction, of:

(a) an asset of the issuer, such as a mineral property or distribution or warehouse facility, or

(b) sales personnel, or an expert, none of whom performs executive functions for the issuer.

#### ***Promotional activities***

If an OTC issuer employs or retains an individual or a firm located in a jurisdiction of Canada to conduct promotional activities, we will likely conclude that the OTC issuer is carrying out promotional activities from that jurisdiction.

The Regulation defines "promotional activities." For the purposes of the Regulation, we will consider generally that these activities include communications through an investment newsletter or other publication that promotes, or reasonably could be expected to promote, the purchase or sale of securities of the OTC issuer. Generally, we will consider that these activities also include providing information to potential investors who request information, or to potential private placement investors.

We will consider that an OTC issuer is carrying out promotional activities in a jurisdiction of Canada if it communicates from anywhere with persons in that jurisdiction, or communicates from a jurisdiction of Canada with persons anywhere, in a way that promotes, or reasonably could be expected to promote, the purchase or sale of its securities.

#### ***Ticker-symbol date***

In the Regulation, the ticker-symbol date is the date an issuer is first assigned a ticker-symbol on any market or quotation system anywhere in the world. If an issuer's ticker-symbol changes, that is not a "ticker-symbol date" under the Regulation.

### *New OTC issuers*

If an OTC issuer has distributed a security to a resident of a jurisdiction of Canada before the ticker-symbol date, it will be a reporting issuer under paragraph 3(c) of the Regulation if the security distributed is of the class of securities that became the issuer's OTC-quoted securities. This provision applies only to an OTC issuer with a ticker-symbol date on or after the effective date of the Regulation in that jurisdiction. The effective date of the Regulation is \*\*, 2012. Issuers with ticker-symbol dates prior to \*\*, 2012 do not become OTC reporting issuers until the conditions in section 3(a) or (b) of the Regulation are met.

The condition in (c) which makes an issuer an OTC reporting issuer if it sells seed stock to a Canadian resident only applies to an issuer whose ticker-symbol date is on or after the effective date of the Regulation.

### *Application to existing reporting issuers*

The Regulation applies to a reporting issuer that is an "OTC issuer" as defined in section 1 of the Regulation and an issuer that has become a reporting issuer under section 3 of the Regulation.

#### **1.4. Ceasing to be an OTC reporting issuer**

OTC reporting issuers may cease to be OTC issuers as well as cease to be reporting issuers. In certain circumstances, they may cease to be OTC issuers but remain reporting issuers in one or many of the jurisdictions.

#### *Ceasing to be an OTC issuer and a reporting issuer in jurisdictions other than Québec*

Other than in Québec, an OTC reporting issuer may cease to be an OTC issuer and a reporting issuer under one of the following three circumstances:

(a) it satisfies all the conditions in subsection 4(1) of the Regulation, including filing Form 51-105F1 *Notice - OTC Issuer Ceases to be an OTC Reporting Issuer*, and it does not otherwise meet the definition of reporting issuer in securities legislation;

(b) it ceases to be an OTC issuer because a class of its securities becomes listed or quoted on one of the exchanges or quotation systems listed in section 1 of the Regulation and it does not otherwise meet the definition of reporting issuer in securities legislation;

(c) it receives an order from the securities regulatory authority in the jurisdiction that it is no longer a reporting issuer in that jurisdiction.

#### *Ceasing to be an OTC issuer and a reporting issuer in Québec*

In Québec, an OTC reporting issuer may cease to be an OTC issuer and a reporting issuer if pursuant to making an application for a decision to revoke its OTC reporting issuer status, it receives an order from the securities regulatory authority that it is no longer a reporting issuer. The application must be made pursuant to section 69 of the Québec *Securities Act*.

#### *Other cessation procedures unavailable*

BC Instrument 11-502 *Voluntary Surrender of Reporting Issuer Status* and CSA Staff Notice 12-307 *Applications for a Decision that an Issuer is not a Reporting Issuer* are not available to an OTC reporting issuer.

#### *Regaining OTC reporting issuer status*

An OTC reporting issuer that ceases to be an OTC reporting issuer might become an OTC reporting issuer again if its circumstances change. For example, an OTC reporting

issuer that ceased to be an OTC reporting issuer because it satisfied all the conditions in subsection 4(1) of the Regulation and did not otherwise meet the definition of reporting issuer in securities legislation, or, in Québec, obtained a decision revoking its reporting issuer status, would again become an OTC reporting issuer if it subsequently re-located its head office to a jurisdiction of Canada and was an OTC issuer at that time.

### ***Ceasing to be an OTC issuer but remaining a reporting issuer***

An OTC reporting issuer that ceases to be an OTC reporting issuer under the Regulation continues to be a reporting issuer under securities legislation if it meets the definition of reporting issuer in securities legislation. For example, if an issuer ceases to be an OTC reporting issuer because its securities have become listed on NASDAQ, it would remain a reporting issuer under securities legislation if it had filed and obtained a receipt for a prospectus in a jurisdiction of Canada or if it has exchanged its securities with another reporting issuer in a jurisdiction of Canada or with the holders of the securities of that other reporting issuer in connection with an amalgamation.

### ***Forms to be filed on ceasing to be an OTC reporting issuer in jurisdictions other than Québec***

Subsection 4(1) of the Regulation provides that, except in Québec, if an OTC reporting issuer has no significant connection to any jurisdiction of Canada for at least one year, it may cease to be an OTC reporting issuer on filing Form 51-105F1 *Notice - OTC Issuer Ceases to be an OTC Reporting Issuer*. Form 51-105F1 also requires the issuer to disclose whether or not it will remain a reporting issuer in a jurisdiction of Canada.

Form 51-105F4 *Notice - Issuer Ceases to be an OTC Reporting Issuer* is the form that is required to be filed, except in Québec, for an OTC reporting issuer that ceases to be an OTC issuer because a class of its securities becomes listed or quoted on one of the exchanges or quotation systems listed in section 1 of the Regulation. Form 51-105F4 requires the issuer to disclose whether or not it will remain a reporting issuer in a jurisdiction of Canada. If the issuer will not remain a reporting issuer in a jurisdiction of Canada, filing the form will help prevent the securities regulatory authorities from placing the issuer on the defaulting issuer list, or cease trading the issuer's securities, for failure to file documents.

## **PART 2 DISCLOSURE**

### **5. Additional disclosure requirements**

#### ***Regulations***

An OTC reporting issuer has the same disclosure obligations as other reporting issuers under securities legislation, subject to Part 2 of the Regulation. For example, an OTC reporting issuer is subject to requirements in addition to those described in the Regulation, including:

(a) *Regulation 43-101 respecting Standards of Disclosure for Mineral Projects*, which will require most OTC reporting issuers in the mineral business to file with their first AIF a technical report for each material mineral property;

(b) *Regulation 51-101 respecting Standards of Disclosure for Oil and Gas Activities*, which will require most OTC reporting issuers in the oil and gas business to file, when they first file audited annual financial statements, a statement of reserves data and other information, a report of an independent qualified reserves auditor, and a related report of management and directors;

(c) *Regulation 52-107 respecting Acceptable Accounting Principles and Auditing Standards* which sets out the accounting principles and auditing standards that must be used by reporting issuers;

(d) *Regulation 52-108 respecting Auditor Oversight* which sets out the requirements that must be satisfied by auditors of reporting issuers, including the requirement that an auditor must be a participating audit firm with the Canadian Public Accountability Board.

Most regulations that impose disclosure obligations have policy statements that also provide guidance.

### ***National Policies***

The following policies provide additional guidance to reporting issuers about disclosure obligations;

- (a) National Policy 51-201 *Disclosure Standards*;
- (b) National Policy 58-201 *Corporate Governance Guidelines*.

### ***Disclosure obligations of insiders of OTC reporting issuers***

Insiders of an OTC reporting issuer have the same disclosure obligations as insiders of other reporting issuers under Canadian securities legislation.

### ***Exemptions for SEC filers and their insiders***

An OTC reporting issuer that has a class of securities registered under section 12 of the *1934 Act* or is required to file reports under paragraph 15(d) of that Act may have exemptions from most continuous disclosure requirements available to it. However, section 6 of the Regulation and BC Instrument 71-503 *Material Change Reporting by OTC Reporting Issuers* provide that an OTC reporting issuer is not exempt from material change reporting requirements.

An OTC reporting issuer must comply with the same timely disclosure requirements for material change reporting as other reporting issuers. The requirements are to issue a news release and file the news release and a material change report on SEDAR. An OTC reporting issuer that files a Form 8-K *Current Report* with the SEC disclosing the material change may file the Form 8-K *Current Report* on SEDAR as its material change report.

An insider of an OTC reporting issuer that is incorporated outside of Canada and is an SEC filer is exempted from insider reporting requirements if the insider files insider reports with the SEC under U.S. federal securities law. However, an insider of an OTC reporting issuer that is exempted from filing insider reports under U.S. federal securities law must file insider reports in Canada.

The most common exemptions from continuous disclosure requirements for SEC filers and their insiders are in:

- (a) *Regulation 51-102 respecting Continuous Disclosure Obligations*;
- (b) *Regulation 52-107 respecting Acceptable Accounting Principles and Auditing Standards*;
- (c) *Regulation 52-109 respecting Certification of Disclosure in Issuers' Annual and Interim Filings*;
- (d) *Regulation 58-101 respecting Disclosure of Corporate Governance Practices*;
- (e) *Regulation 71-101 respecting The Multijurisdictional Disclosure System*;

(f) *Regulation 71-102 respecting Continuous Disclosure and Other Exemptions relating to Foreign Issuers.*

### ***Exemptions for designated foreign issuers and their insiders***

The continuous disclosure and other exemptions for a designated foreign issuer under *Regulation 71-102 respecting Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* are available to an OTC reporting issuer that is a designated foreign issuer.

#### **7. Registration statement**

The requirement to file a registration statement under section 7 of the Regulation applies only to an issuer that becomes an OTC reporting issuer under the Regulation on its ticker-symbol date. If it does, then it must file the last registration statement it filed with the SEC – generally speaking, this will be a registration statement to register the sale of previously issued, restricted securities.

#### **8. Promotional activities**

The required form under section 8 of the Regulation is Form 51-105F2 *Notice of Promotional Activities*. If the promotional activities are a material change then the requirements for material change reporting apply. In that case, the OTC reporting issuer may comply with its obligation to file a news release under section 7.1 of *Regulation 51-102 respecting Continuous Disclosure Obligations* by including in Form 51-105F2 *Notice of Promotional Activities* the information required by section 7.1(a) of *Regulation 51-102 respecting Continuous Disclosure Obligations*.

#### **10. Personal information form and authorization**

Securities regulatory authorities do not make any of the information provided in these forms public, unless required under freedom of information legislation.

### **PART 3 RESALE OF PRIVATE PLACEMENT SECURITIES**

#### **11. Resale of seed stock**

The restrictions on resale of seed stock in Part 3 of the Regulation apply only to seed stock that a person purchases after the effective date of the Regulation in the jurisdiction of Canada where the purchaser resides.

A person who acquires securities of the issuer after the effective date and before the ticker-symbol date, may sell his or her securities using any available exemption until the issuer's ticker-symbol date.

On and after an OTC reporting issuer's ticker-symbol date, a person who acquired securities of the issuer after the effective date and before the ticker-symbol date may trade those securities only under the circumstances and conditions set out in section 11 of the Regulation.

#### **13. Resale of private placement securities acquired after ticker-symbol date**

Section 13 of the Regulation restricts the resale of securities acquired in a private placement after the issuer's ticker-symbol date to trades that meet the conditions of the section, which include a hold period, volume limitations, and a requirement that the sale be made through an investment dealer who executes the trade through an over-the-counter market in the United States of America.

No other exemptions from the prospectus requirement(s) apply to the first trade by a holder of a security of an OTC reporting issuer distributed to that person after the ticker-symbol date under an exemption from the prospectus requirement(s).

## **PART 4 OTHER RESTRICTIONS**

### **15. Securities for services**

An OTC issuer may only issue securities for services to any of its directors, officers, or consultants if the conditions in this section are met and there is an available exemption from the prospectus requirements.

## **PART 6 TRANSITION AND COMING INTO FORCE**

### **19. Transition - financial disclosure for non-SEC filers**

The Regulation provides a transition period for an OTC reporting issuer that is not an SEC filer.

(a) **annual** – the issuer’s first financial year for which it must file annual financial statements and related MD&A is the financial year that begins on or after January 1, 20XX. Therefore, an issuer whose financial year ends on December 31, 20XX would be required to file its first annual audited financial statements and related MD&A for the financial year ended December 31, 20XX. The filing deadline would be 120 days later, on April 30, 20XX.

(b) **interim** – the issuer’s first period for which it must file interim financial statements and related MD&A begins on or after January 1, 20XX and ends after September 15, 20XX. Therefore, an issuer whose financial year ends on December 31, 20XX would be required to file its first interim financial statements and related MD&A for the nine-month period ended September 30, 20XX. The filing deadline would be 60 days later, on December 1, 20XX.

Section 4.1 of *Regulation 51-102 respecting Continuous Disclosure Obligations* requires an issuer to file annual financial statements that include comparative information for the immediately preceding year and that are audited. An OTC reporting issuer must ensure that it has financial statements for its comparative period audited.

## **PART 7 PROCESS FOR EXEMPTIVE RELIEF APPLICATIONS**

Exemptive relief requests from the application of the Regulation will be considered on a coordinated review basis under section 3.4 of National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions*. This section states that the principal regulator reviews the application, and each non-principal regulator coordinates its review with the principal regulator. The decision of the principal regulator to grant exemptive relief evidences the decision of each non-principal regulator that has made the same decision as the principal regulator.

For an application for an exemption from a requirement in the Regulation, the factors a filer should consider in identifying the principal regulator for the application based on the most significant connection test are, in order of influential weight:

(a) location of direction or administration of the OTC reporting issuer’s business; if direction or administration of the OTC reporting issuer’s business occurs in more than one location, the location of the OTC reporting issuer’s most senior officer,

(b) location of conduct of majority of promotional activities of the OTC reporting issuer, and

(c) location of majority of Canadian security holders of the OTC reporting issuer.