

AMF Notice on Reporting Issuer Defaults

Concurrently, with the publication of the Canadian Securities Administrators Notice 51-322 on a harmonized definition of “being in default,” the *Autorité des marchés financiers* (AMF) is publishing a *Notice on Reporting Issuer Defaults* to explain:

- the content of the list of reporting issuers;
- the procedure for identifying reporting issuers in default;
- the key deficiencies resulting in default;
- the procedure for removing a default status.

To determine an issuer’s standing with the AMF, interested persons must refer to the list of reporting issuers in Québec. This list is published pursuant to section 71 of the *Securities Act*, R.S.Q., c. V-1.1 (the “Act”).

The list is posted on the AMF website at www.lautorite.qc.ca, under A financial sector participant/Issuers – List of Reporting Issuers in Québec. The list is regularly updated.

PART 1 LIST OF REPORTING ISSUERS

1.1 The AMF maintains a list of reporting issuers for the purpose of identifying:

- reporting issuers in Québec;
- reporting issuers that have failed to provide periodic disclosure about their business and internal affairs in accordance with the conditions determined by regulation or any other disclosure prescribed by regulation or to pay the required fee;
- reporting issuers under a cease trade order.

The AMF will make every effort to ensure the accuracy of the list. However, reporting issuers should promptly contact the AMF if they do not appear on the list of reporting issuers in Québec or if they are inadvertently identified as being in default.

PART 2 CATEGORIES OF DEFAULT

2.1 Identifying reporting issuers in default

The AMF will generally consider a reporting issuer to be in default and thus identify the issuer as such on its list when the issuer:

- a) does not file a continuous disclosure document required under the Act;

- b) provides information in a continuous disclosure document that does not comply with the conditions determined by regulation or contains significant deficiencies;
- c) does not pay the required fees.

However, the fact that a reporting issuer has filed all its continuous disclosure documents and is not noted in default on the list does not guarantee that it has complied with all requirements under the Act since:

- a) some deficiencies may not be identified;
- b) identifying a deficiency in a continuous disclosure document does not mean that the issuer will immediately be noted in default on the list;
- c) the issuer may have received a notice of the time limit to remedy the deficiency before being noted in default on the list.

2.2 Key deficiencies resulting in default

Appendix A identifies a number of significant deficiencies. It is not an exhaustive list and, if the relevant facts come to the attention of staff, the AMF will consider a reporting issuer to be in default if it has clearly failed to comply with a significant requirement of the Act.

Appendix A lists documents that will result in the issuer being in default when they are not filed within the time period prescribed under the Act and describes significant deficiencies in a continuous disclosure filing for which the reporting issuer could be noted in default on the list of reporting issuers. Before noting a reporting issuer in default for a significant deficiency, staff will notify and ask the issuer to remedy the deficiency within a specified time period or present its observations.

If within the specified time period the issuer remedies the deficiency or satisfies staff that there was no deficiency, it will not be noted in default on the list of reporting issuers.

However, if the issuer does not remedy within the specified time period and does not provide staff with satisfactory observations, as the case may be, the issuer will be notified that it is considered to be in default of its obligations and that it will therefore be noted in default on the list of reporting issuers as long as an amended document has not been filed.

If the reporting issuer and AMF staff or a person exercising a delegated power disagree, the issuer will not be noted in default on the list provided it has notified its intention and taken the necessary steps to be heard by AMF staff or the person exercising a delegated power within the prescribed time period. Otherwise, it will be noted on the list as being in default.

Reporting issuers that fail to pay a fee required under the *Securities Regulation*, R.R.Q., c. V-1.1 r.1., are also noted in default on the list without prior notification.

Various default codes are used to identify the key deficiencies resulting in default on the list of reporting issuers.

2.3 Removing default status

The AMF will remove the default status from the list of reporting issuers referred to in Part 1 above when it determines that the issuer has addressed to its satisfaction the deficiency for which the issuer has been noted in default (e.g. by filing the required document, by remedying the documents containing the significant deficiencies or paying the applicable fees).

PART 3 CEASE TRADE ORDERS

The list will identify the reporting issuers that are under a cease trade order (CTO). The CTO date is under the heading "Cease Trade Order."

However, the list does not cover CTOs against specific senior executives. To determine whether a CTO has been issued against the senior executives of a reporting issuer, consult the website of the Canadian Securities Administrator under National CTO Database/Other CTOs.

PART 4 FILING CONSIDERATIONS

A reporting issuer may be noted in default if it fails to file a required document within the prescribed time period.

- a) Sections 2.6 and 2.7 of *Regulation 13-101 respecting the System for Electronic Document Analysis and Retrieval (SEDAR)* ("Regulation 13-101") stipulate the hours for transmission of filings through SEDAR. A document filed in electronic format is, for purposes of the Act, filed on the day that the document is retrieved in electronic format from SEDAR by the AMF. Reporting issuers should refer to Regulation 13-101 to determine applicable requirements for filing documents in electronic format.

- b) Electronic filers are required to comply with Regulation 13-101 by creating a SEDAR profile and an issuer profile supplement in the *System for Electronic Disclosure by Insiders* (SEDI). Reporting issuers should review the information contained in their SEDAR filer profile and their SEDI issuer profile supplement to ensure it is accurate in all material respects and that necessary corrections are made promptly.

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APPENDIX A

Key Deficiencies Resulting in Default

1. **The reporting issuer has failed to file the following continuous disclosure prescribed by the Québec *Securities Act*:**
 - a) annual financial statements;
 - b) interim financial statements;
 - c) annual or interim management's discussion and analysis (MD&A) or annual or interim management report of fund performance (MRFP);
 - d) annual information form (AIF);
 - e) certification of annual or interim filings under *Regulation 52-109 respecting Certification of Disclosure in Issuers' Annual and Interim Filings* ("Regulation 52-109");
 - f) proxy materials or a required information circular;
 - g) issuer profile supplement on the System for Electronic Disclosure by Insiders (SEDI);
 - h) material change reports;
 - i) written update after filing a confidential report of a material change;
 - j) business acquisition report;
 - k) the annual oil and gas disclosure prescribed by *Regulation 51-101 Standards of Disclosure for Oil and Gas Activities* ("Regulation 51-101") or technical reports for a mineral project required under *Regulation 43-101 respecting Standards of Disclosure for Mineral Projects* ("Regulation 43-101");
 - l) mandatory news releases as stipulated under the Act;
 - m) corporate governance disclosure as required by *Regulation 58-101 respecting Disclosure of Corporate Governance Practices*;
 - n) audit committee disclosure as required by *Regulation 52-110 respecting Audit Committees*; or
 - o) disclosure in a reporting issuer's MD&A relating to disclosure controls and procedures and their effectiveness that is referred to in a certificate filed under Regulation 52-109.

2. **The reporting issuer's continuous disclosure is deficient because:**
 - a) the financial statements of the reporting issuer, or the auditor's report accompanying the financial statements, do not comply with the requirements of *Regulation 51-102 respecting Continuous Disclosure Obligations* ("Regulation 51-102"), *Regulation 81-106 respecting Investment Fund Continuous Disclosure* ("Regulation 81-106") or *Regulation 52-107 respecting Acceptable Accounting Principles, Auditing Standards and Reporting Currency*;

- b) the reporting issuer has acknowledged that its financial statements, or the auditor's report accompanying the financial statements, may no longer be relied upon;
 - c) the reporting issuer's AIF, MD&A, MRFP, information circular, or business acquisition reports do not contain information for each of the content items required by Regulation 51-102 or Regulation 81-106; or
 - d) the reporting issuer's technical disclosure or other reports do not comply with the disclosure requirements of Regulation 43-101 or Regulation 51-101.
- 3. The reporting issuer has failed to pay a fee required by securities laws.**
- 4. The reporting issuer has failed to comply with any other requirement related to continuous disclosure.**