

## Notice and Request for Comment

### **Draft Regulation 33-105 respecting Underwriting Conflicts and Draft Policy Statement to Regulation 33-105 respecting Underwriting Conflicts**

The *Autorité des marchés financiers* (the “Authority”) is publishing today the following texts for comment:

- Draft Regulation 33-105 respecting Underwriting Conflicts (“Regulation 33-105”);
- Draft Policy Statement to Regulation 33-105 respecting Underwriting Conflicts (“Policy Statement”);
- Draft Regulation to amend the *Securities Regulation*;
- Draft Regulation to amend Policy Statement Q-27, *Protection of Minority Securityholders in the course of Certain Transactions*;
- Draft Regulation to amend National Instrument 45-101, *Rights Offerings*.

Collectively the “Draft Instruments”.

These Draft Instruments are being published for a 30-day comment period ending July 18, 2005. These Draft Instruments are also available on the website of the Authority at [www.lautorite.qc.ca](http://www.lautorite.qc.ca).

#### **Context and Harmonization with National System**

In January 2002, securities administrators in Canada published National Instrument 33-105 Underwriting Conflicts (“National Instrument”).

In Québec, conflicts of interest between a dealer and a related issuer in connection with a distribution of securities of the issuer through a firm underwriting were governed by sections 236.1 and 236.2 of the *Securities Regulation*, R.R.Q., c V-1.1, r-1.

Although Québec at the time had not adopted the National Instrument as a Regulation as a result of the legislative framework for conflicts of interest proposed in *An Act to amend the Securities Act*, S.Q. 2001, c. 38, the Authority upheld the requirements set out in the National Instrument. Thus, pursuant to decision no. 2001-C-0565 (replaced by decision no. 2003-C-0047 dated February 11, 2003), the Authority exempts dealers with an unrestricted practice from sections 236.1 and 236.2 of the *Securities Regulation*, provided they comply with the provisions of the National Instrument.

Today the Authority is proposing to adopt the requirements of the National Instrument by way of a Regulation.

#### **Substance and Scope of Draft Instruments**

Regulation 33-105 requires the involvement in a distribution of an independent underwriter acting as principal or agent in a related issuer situation, that is, having a corporate relationship with the underwriter. An independent underwriter acting as principal or agent is not required in a connected issuer situation. A connected issuer is in a relationship with the underwriter that may lead an investor to question the independence of the parties. Regulation 33-105 contains calculation rules for the involvement of an independent underwriter for distributions made in Canada and outside Canada.

The Policy Statement provides guidance as to how the Authority will interpret Regulation 33-105,

particularly with respect to the definitions of “connected issuer” and “related issuer.”

## **Consequential Amendments**

### ***Securities Regulation***

The draft Regulation to amend the *Securities Regulation* contains the amendments to the *Securities Regulation* required for the purpose of:

- repealing sections 230.2, 230.4, 236.1 and 236.2;
- amending section 237.1 and 237.3 as well as the definitions of “connected issuer” and “related issuer” provided for in section 230.1;
- deleting the definition of “influence” provided for in section 230.1.

### **Policy Statement Q-27, *Protection of Minority Securityholders in the course of Certain Transactions***

In light of the proposals to repeal certain sections of the *Securities Regulation*, the draft Regulation to amend Policy Statement Q-27, *Protection of Minority Securityholders in the course of Certain Transactions* contains conforming amendments to enable the application of Regulation 33-105.

### **National Instrument 45-101, *Rights Offerings***

Draft Regulation to amend National Instrument 45-101, *Rights Offerings* contains a conforming amendment to take into account the adoption of Regulation 33-105.

### **Repeal of Decision No. 2003-C-0047**

The adoption of these Draft Instruments will replace decision no. 2003-C-0047, which will be repealed when Regulation 33-105 comes into force.

### **Request for Comment**

Notice is given by the Authority that the Draft Instruments, the texts of which are appended hereto, may be made by the Authority and subsequently submitted to the Minister of Finance, as required, for approval, with or without amendment, after 30 days have elapsed since this publication.

### **How to Provide your Comments**

Comments regarding the above may be made in writing, before the 30-day period for this publication elapses on **July 18, 2005**, to the following:

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If you are unable to forward your comments by e-mail, please provide them on a diskette in a Word document.

We are unable to ensure the confidentiality of comments.

**Additional Information**

Please refer your questions to:

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**June 17, 2005**