

Notice of publication

Regulation to amend Regulation 41-101 respecting General Prospectus Requirements

Amendments to Policy Statement to Regulation 41-101 respecting General Prospectus Requirements

Regulation to amend Regulation 44-101 respecting Short Form Prospectus Distributions

Amendments to Policy Statement to Regulation 44-101 respecting Short Form Prospectus Distributions

Regulation to amend Regulation 44-102 respecting Shelf Distributions

Introduction

We, the Canadian Securities Administrators (the CSA or we), are implementing amendments to:

- *Regulation 41-101 respecting General Prospectus Requirements* (Regulation 41-101),
- *Policy Statement to Regulation 41-101 General Prospectus Requirements* (Policy Statement 41-101),
- *Regulation 44-101 respecting Short Form Prospectus Distributions* (Regulation 44-101),
- *Policy Statement to Regulation 44-101 respecting Short Form Prospectus Distributions* (Policy Statement 44-101),
- *Regulation 44-102 respecting Shelf Distributions* (Regulation 44-102), and

The Autorité des marchés financiers and the New Brunswick Securities Commission are also implementing amendments to *Policy Statement to Regulation 44-102 respecting Shelf Distributions* (Policy Statement 44-102). These amendments only contain IFRS-related French terminology changes.

This notice forms part of a series of notices which address changes to securities legislation arising from the upcoming changeover to International Financial Reporting Standards (IFRS).

At this time, we are not implementing amendments to Form 41-101F2 *Information Required in an Investment Fund Prospectus* (Form 41-101F2). Form 41-101F2 will be the subject of a separate notice.

Background

Regulation 41-101 provides a comprehensive set of prospectus requirements for issuers. Regulation 44-101 sets out requirements for an issuer to file a prospectus in the form of a short form prospectus. Regulation 44-102 sets out requirements for a distribution under a short form prospectus using shelf procedures (Regulation 41-101, Regulation 44-101 and Regulation 44-102 are collectively referred to in this notice as “the prospectus rules”).

The prospectus rules refer to and rely on references to Canadian generally accepted accounting principles (Canadian GAAP), which are established by the Canadian Accounting Standards Board (AcSB). In February 2006, the AcSB published a strategic plan to transition, over a period of five years, Canadian GAAP for public enterprises to

IFRS, as adopted by the International Accounting Standards Board (IASB). In March 2008, the timing of the transition was confirmed. IFRS will apply to most Canadian publicly accountable enterprises for financial years beginning on or after January 1, 2011.

The AcSB has incorporated IFRS into the Handbook of the Canadian Institute of Chartered Accountants (the Handbook) as Canadian GAAP for most publicly accountable enterprises. As a result, the Handbook contains two sets of standards for public companies:

- Part I of the Handbook – Canadian GAAP for publicly accountable enterprises that applies for financial years beginning on or after January 1, 2011, and
- Part V of the Handbook - Canadian GAAP for public enterprises that is the pre-changeover accounting standards (current Canadian GAAP).

The prospectus rules also refer to and rely on references to current Canadian generally accepted auditing standards (Canadian GAAS), which are established by the Canadian Auditing and Assurance Standards Board (AASB). The AASB published their strategic plan to adopt International Standards on Auditing as Canadian Auditing Standards in February 2007. These standards will continue to be known as Canadian GAAS in the Handbook. Canadian Auditing Standards are effective for audits of financial statements for periods ending on or after December 14, 2010.

Consistent with these changes, the CSA is repealing and replacing *Regulation 52-107 respecting Acceptable Accounting Principles, Auditing Standards and Reporting Currency* (to be renamed *Acceptable Accounting Principles and Auditing Standards*) (Regulation 52-107). The new version of Regulation 52-107 will require domestic issuers to comply with IFRS for financial years beginning on or after January 1, 2011 and will set out the accounting principles and auditing standards that apply to financial statements filed in a jurisdiction. The implementation of the new version of Regulation 52-107 is described in a separate notice (the Regulation 52-107 Notice).

The amendments do not reflect the impact of exposure drafts or discussion papers from the IASB prior to their adoption into IFRS. The CSA is implementing amendments to *Regulation 14-101 respecting Definitions* to include a definition of IFRS that incorporates amendments made to IFRS from time to time.

Substance and Purpose of the Amendments

The primary purpose of the changes to the prospectus rules is to accommodate the transition to IFRS and the new version of Regulation 52-107. A small number of housekeeping changes are also being made. The amendments:

- replace current Canadian GAAP terms and phrases with IFRS terms and phrases;
- change disclosure requirements in instances where IFRS contemplates different financial statements than current Canadian GAAP;
- provide a 30 day extension to the deadline for reporting issuers, other than investment funds, to include in a prospectus the first interim financial report in the year of adopting IFRS in respect of an interim period beginning on or after January 1, 2011, and
- clarify the current provisions or, where part or all of a provision is no longer accurate or appropriate, amend or delete it.

The regulations to amend Regulation 41-101, Regulation 44-101 and Regulation 44-102 as well as the amendments to Policy Statement 41-101, Policy Statement 44-101 and Policy Statement 44-102 are published with this notice. The amendments to Policy Statement 44-102 are being published only in Québec and New Brunswick, as they relate only to terminology changes to the French version of IFRS.

Transition

After the IFRS changeover date on January 1, 2011, non calendar year-end issuers will continue to prepare financial statements in accordance with current Canadian GAAP until the start of their new financial year. To accommodate for this, we have included transition provisions in the amendment regulations that provide that the amendments only apply to a preliminary prospectus, an amendment to a preliminary prospectus, a final prospectus or an amendment to a final prospectus of an issuer which includes or incorporates by reference financial statements of the issuer in respect of periods relating to financial years beginning on or after January 1, 2011. Thus, during the transition period,

- issuers only including or incorporating by reference financial statements prepared in accordance with current Canadian GAAP will be required to comply with the versions of the prospectus rules that contain current Canadian GAAP terms and phrases, and
- issuers including or incorporating by reference financial statements that comply with IFRS will be required to comply with the versions of the prospectus rules that contain IFRS terms and phrases.

After the transition period all issuers will be required to comply with the versions of the prospectus rules that contain IFRS terms and phrases.

To further assist issuers and their advisors and to increase transparency, during the transition period certain jurisdictions will post two different unofficial consolidations of the prospectus rules on their websites:

- the current versions of the prospectus rules that contain current Canadian GAAP terms and phrases, which apply to a preliminary prospectus, an amendment to a preliminary prospectus, a final prospectus or an amendment to a final prospectus of an issuer which includes or incorporates by reference financial statements of the issuer in respect of periods relating to financial years beginning before January 1, 2011; and
- the new versions of the prospectus rules that contain IFRS terms and phrases, which apply to a preliminary prospectus, an amendment to a preliminary prospectus, a final prospectus or an amendment to a final prospectus of an issuer which includes or incorporates by reference financial statements of the issuer in respect of periods relating to financial years beginning on or after January 1, 2011.

52/53 week financial years

Notwithstanding the above, the regulations to amend the prospectus rules now include a transition provision which provides the amendments may be applied by an issuer to a preliminary prospectus, an amendment to a preliminary prospectus, a final prospectus or an amendment to a final prospectus of the issuer which includes financial statements of the issuer in respect of periods relating to a financial year that begins before January 1, 2011 if the immediately preceding financial year ends no earlier than December 21, 2010 and if the issuer is relying on the exemption in section 5.3 of the new version of Regulation 52-107. That exemption in Regulation 52-107 permits issuers that have financial year ends close to, but not on December 31, 2010, the option to transition to IFRS when their new financial year begins.

Rate-regulated activities

Furthermore, subsection 1.3(6) of Policy Statement 41-101 provides that if a qualifying entity is relying on the exemption in paragraph 5.4(1)(a) of the new version of Regulation 52-107, then the qualifying entity may interpret any reference in Regulation 41-101 to a term or provision defined or used in Canadian GAAP applicable to publicly

accountable enterprises as a reference to the corresponding term or provision in Part V of the Handbook.

Summary of Written Comments Received by the CSA

The CSA, except the Autorité des marchés financiers and the New Brunswick Securities Commission, published the amendments to the prospectus rules for comment on September 25, 2009 (the September 2009 Materials). We only received submissions on the September 2009 Materials from commenters who submitted comment letters on the proposed changes to Regulation 52-107. The names of those commenters and a summary of their comments, together with our responses, are in Appendices A and B to the Regulation 52-107 Notice.

The Autorité des marchés financiers and the New Brunswick Securities Commission published the amendments to the prospectus rules for comment on March 12, 2010. No comments were received.

We thank the commenters for their comments.

Summary of Changes to the September 2009 Materials

See Appendix A for a detailed summary of the changes made to the September 2009 Materials.

Implementation

In some jurisdictions, Ministerial approval is required for these changes. Provided all necessary approvals are obtained, the amendments will come into force on January 1, 2011.

Questions

Please refer your questions to any of:

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Appendix A

Summary of Changes to the September 2009 Materials

A. Terms and Phrases

We replaced or revised the following terms or phrases used in the September 2009 Materials. In most cases, the new term or phrase provides greater clarity or better reflects IFRS and the new Canadian Auditing Standards.

Previous Term or Phrase	New Term or Phrase
Canadian GAAP	Canadian GAAP applicable to publicly accountable enterprises “Publicly accountable enterprise” has been defined in section 1.1 of Regulation 41-101.
an auditor’s report that does not contain a modified opinion	an auditor’s report that expresses an unmodified opinion
former auditor	predecessor auditor

B. Other Changes

We made the following additional changes:

Regulation 41-101

Section	Term, Phrase or Matter	Explanation of Change
1.1	“profit or loss attributable to owners of the parent”	The term has now been defined to have the same meaning as in Canadian GAAP applicable to publicly accountable enterprises.
1.1	“profit or loss from continuing operations attributable to owners of the parent”	The term has now been defined to have the same meaning as in Canadian GAAP applicable to publicly accountable enterprises.
1.1	“publicly accountable enterprise”	The term has now been defined to have the same meaning as in Part 3 of Regulation 52-107.
1.1	“retrospective” and “retrospectively”	Those terms have now been defined to have the same meaning as in section 1.1 of <i>Regulation 51-102 respecting Continuous Disclosure Obligations</i> .

Form 41-101F1

Section	Term, Phrase or Matter	Explanation of Change
5.1(1)	Describe the business	For clarity, we have added “as those terms are described in the issuer’s GAAP” after “operating

		segments that are reportable segments”.
8.7	Additional disclosure for junior issuers	We clarified the guidance to note that, for the purposes of this section, in determining cash flow from operating activities, the issuer must include <u>cash payments related to</u> dividends and borrowing costs.
9.1	profit or loss attributable to owners of the parent	In Instructions (2), (3)(a), (6) and (7) to Item 9.1, we replaced “profit or loss” with “profit or loss attributable to owners of the parent”. This change was made to be consistent with the disclosure requirements under IFRS.
34.1(g)	Definition of “summary financial information”	The definition has been amended to require the disclosure of profit or loss from continuing operations and profit or loss, both “attributable to owners of the parent”. This change is intended to require the disclosure of the same financial information as currently required in Form 41-101F1.
35.4	Financial performance consolidated in financial statements of issuer	We replaced “operations” with “financial performance”, as it is the equivalent IFRS term.

Policy Statement 41-101

Section	Term, Phrase or Matter	Explanation of Change
1.3(5)	Financial statements prepared in accordance with different accounting principles	We have added guidance that issuers intending to include financial statements that are prepared in accordance with different accounting principles should consider the guidance in section 2.8 of <i>Policy Statement to Regulation 52-107 respecting Acceptable Accounting Principles and Auditing Standards</i> .
4.3(1)	Use of Proceeds	We clarified the guidance to note that, for the purposes of this section, in determining cash flow from operating activities, the issuer must include <u>cash payments related to</u> dividends and borrowing costs.
5.5(3)	Issuer becoming aware of errors made in previous GAAP	<p>We deleted the following sentence: “If the issuer becomes aware of errors made under previous GAAP, the reconciliations summarized above must distinguish the correction of those errors from changes in accounting policies.”</p> <p>We made this change because we thought that this guidance could give the impression that in simply disclosing the error in a reconciliation note the issuer has satisfied its responsibility to comply with applicable securities legislation, policies and practices. Responsibility remains with the issuer and its advisors to assess the materiality of the error(s) to determine if</p>

		disclosure in the reconciliation(s) summarized in this subsection or restatement and, in the case of reporting issuers, refiling of prior period financial statements under previous GAAP will meet its obligations under applicable securities legislation, policies and practices.
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Form 44-101F1

Section	Term, Phrase or Matter	Explanation of Change
6.1	profit or loss attributable to owners of the parent	In Instructions (2), (3)(a), (6) and (7) to Item 6.1, we replaced “profit or loss” with “profit or loss attributable to owners of the parent”. This change was made to be consistent with the disclosure requirements under IFRS.
13.1(g)	Definition of “summary financial information”	The definition has been amended to require the disclosure of profit or loss from continuing operations and profit or loss, both “attributable to owners of the parent”. This change is intended to require the disclosure of the same financial information as currently required in Form 44-101F1.

Policy Statement 44-101

Section	Term, Phrase or Matter	Explanation of Change
4.4(1)	Use of Proceeds	We clarified the guidance to note that, for the purposes of this section, in determining cash flow from operating activities, the issuer must include <u>cash payments related to</u> dividends and borrowing costs.

C. Transition, Drafting and Housekeeping Changes

We also made certain drafting and housekeeping changes to various provisions.

We decided not to proceed with the proposal to add certain transition provisions as section 20.1 of Regulation 41-101, section 9.4 of Regulation 44-101 and section 12.2 of Regulation 44-102. We decided that these transition provisions were not necessary since section 13 of the Regulation to amend Regulation 41-101, section 7 of the Regulation to amend Regulation 44-101 and section 5 of the Regulation to amend Regulation 44-102 provide that the amendments only apply to a prospectus which includes financial statements of the issuer in respect of periods relating to financial years beginning on or after January 1, 2011.

52/53 week financial years

The regulations to amend the prospectus rules now include a transition provision which provides the amendments may be applied by an issuer to a preliminary prospectus,

an amendment to a preliminary prospectus, a final prospectus or an amendment to a final prospectus of the issuer which includes financial statements of the issuer in respect of periods relating to a financial year that begins before January 1, 2011 if the immediately preceding financial year ends no earlier than December 21, 2010 and if the issuer is relying on the exemption in section 5.3 of the new version of Regulation 52-107. That exemption in Regulation 52-107 permits issuers that have financial year ends close to, but not on December 31, 2010, the option to transition to IFRS when their new financial year begins.

Rate-regulated activities

Subsection 1.3(6) of Policy Statement 41-101 provides that if a qualifying entity is relying on the exemption in paragraph 5.4(1)(a) of the new version of Regulation 52-107, then the qualifying entity may interpret any reference in Regulation 41-101 to a term or provision defined or used in Canadian GAAP applicable to publicly accountable enterprises as a reference to the corresponding term or provision in Part V of the Handbook.