

REGULATION TO AMEND REGULATION 44-101 RESPECTING SHORT FORM PROSPECTUS DISTRIBUTIONS

Securities Act
(R.S.Q., c. V-1.1, s. 331.1, par. (1), (3), (6), (9) and (34))

1. Section 1.1 of Regulation 44-101 respecting Short Form Prospectus Distributions is amended:

(1) by replacing, in the definition of “short form eligible exchange”, the words “Canadian Trading and Quotation System Inc.” with the words “Canadian National Stock Exchange”;

(2) by replacing, wherever they occur in the French text of the definition of “current annual financial statements”, the words “de vérificateur” and “de vérification” with, respectively, the words “d’auditeur” and “d’audit”.

2. Paragraph (e) of section 2.2 of the Regulation is amended by replacing, in the French text, the words “titres de participation” with the words “titres de capitaux propres”.

3. Subparagraph (b) of paragraph (1) of section 2.7 of the Regulation is amended by replacing, in the French text, the words “rapport de vérification et, s’il y a eu changement de vérificateur depuis l’exercice précédent, d’un rapport de vérification” with the words “rapport d’audit et, s’il y a eu changement d’auditeur depuis l’exercice précédent, d’un rapport d’audit”.

4. Subparagraph (ii) of paragraph (b) of section 4.1 of the Regulation is amended by replacing, in the French text, the words “le vérificateur” with the words “l’auditeur”, and the words “rapport du vérificateur” with the words “rapport d’audit”.

5. Section 4.3 of the Regulation is amended:

(1) in the French text of the title, by replacing the word “**vérifiés**” with the word “**audités**”;

(2) in the French text of paragraph (1), by replacing the words “vérifiés” and “vérificateur” with, respectively, the words “audités” and “auditeur”;

(3) by replacing paragraph (2) with the following:

“(2) If Regulation 52-107 respecting Acceptable Accounting Principles and Auditing Standards approved by Ministerial Order (*indicate the number and date of the Ministerial Order approving the Regulation*) permits the financial statements of the person in subsection (1) to be audited in accordance with

(a) U.S. AICPA GAAS, the unaudited financial statements may be reviewed in accordance with the review standards issued by the American Institute of Certified Public Accountants,

(a.1) U.S. PCAOB GAAS, the unaudited financial statements may be reviewed in accordance with the review standards issued by the Public Company Accounting Oversight Board (United States of America),

(b) International Standards on Auditing, the unaudited financial statements may be reviewed in accordance with International Standards on Review Engagement issued by the International Auditing and Assurance Standards Board, or

(c) auditing standards that meet the foreign disclosure

requirements of the designated foreign jurisdiction to which the issuer is subject, the unaudited financial statements

(i) may be reviewed in accordance with review standards that meet the foreign disclosure requirements of the designated foreign jurisdiction, or

(ii) do not have to be reviewed if

(A) the designated foreign jurisdiction does not have review standards for unaudited financial statements, and

(B) the short form prospectus includes disclosure that the unaudited financial statements have not been reviewed.”.

6. Form 44-101F1 of the Regulation is amended:

(1) in instruction (3), by deleting the sentence “*This concept of materiality is consistent with the financial reporting notion of materiality contained in the Handbook.*”;

(2) in instruction (8), by replacing the words “*the Handbook*” with the words “*Canadian GAAP applicable to publicly accountable enterprises*”.

(3) in the French text of instruction (9), by replacing the words “*structure d'accueil*” with the words “*entité ad hoc*”;

(4) in instruction (14), by replacing the words “*disclose the currency in which the financial information is disclosed*” with the words “*display the presentation currency*”;

(5) in section 1.6.1, by deleting the word “reporting”;

(6) in the French text of the instructions of section 1.10, by replacing the words “*à base de*” with the words “*fondée sur des*”;

(7) by replacing item 6 with the following:

“Item 6 Earnings Coverage Ratios

“6.1. Earnings Coverage Ratios

(1) If the securities being distributed are debt securities having a term to maturity in excess of one year or are preferred shares, disclose the following earnings coverage ratios adjusted in accordance with subsection (2):

(a) the earnings coverage ratio based on the most recent 12-month period included in the issuer’s current annual financial statements included in the short form prospectus,

(b) if there has been a change in year end and the issuer’s most recent financial year is less than nine months in length, the earnings coverage calculation for its old financial year, and

(c) the earnings coverage ratio based on the 12-month period ended on the last day of the most recently completed period for which an interim financial report of the issuer has been included in the short form prospectus.

(2) Adjust the ratios referred to in subsection (1) to reflect

(a) the issuance of the securities being distributed under the short form prospectus, based on the price at which these securities are expected to be distributed;

- (b) in the case of a distribution of preferred shares,
 - (i) the issuance of all preferred shares since the date of the annual financial statements or interim financial report, and
 - (ii) the repurchase, redemption or other retirement of all preferred shares repurchased, redeemed, or otherwise retired since the date of the annual financial statements or interim financial report and of all preferred shares to be repurchased, redeemed, or otherwise retired from the proceeds to be realized from the sale of securities under the short form prospectus;
 - (c) the issuance of all financial liabilities, as defined in accordance with the issuer's GAAP, since the date of the annual financial statements or interim financial report; and
 - (d) the repayment, redemption or other retirement of all financial liabilities, as defined in accordance with the issuer's GAAP, since the date of the annual financial statements or interim financial report and all financial liabilities to be repaid or redeemed from the proceeds to be realized from the sale of securities distributed under the short form prospectus.
 - (e) (deleted)
- (3) (deleted)
- (4) If the earnings coverage ratio is less than one-to-one, disclose in the short form prospectus the dollar amount of the numerator required to achieve a ratio of one-to-one.
- (5) If the short form prospectus includes a pro forma income statement, calculate the pro forma earnings coverage ratios for the periods of the pro forma income statement, and disclose them in the short form prospectus.

INSTRUCTIONS

- (1) *Cash flow coverage may be disclosed but only as a supplement to earnings coverage and only if the method of calculation is fully disclosed.*
- (2) *Earnings coverage is calculated by dividing an entity's profit or loss attributable to owners of the parent (the numerator) by its borrowing costs and dividend obligations (the denominator).*
- (3) *For the earnings coverage calculation*
- (a) *the numerator should be calculated using consolidated profit or loss attributable to owners of the parent before borrowing costs and income taxes;*
 - (b) *imputed interest income from the proceeds of a distribution should not be added to the numerator;*
 - (c) *(deleted)*
 - (d) *for distributions of debt securities, the appropriate denominator is borrowing costs, after giving effect to the new debt securities issue and any retirement of obligations, plus the borrowing costs that have been capitalized during the period;*
 - (e) *for distributions of preferred shares*
 - (i) *the appropriate denominator is dividends declared*

during the period, together with undeclared dividends on cumulative preferred shares, after giving effect to the new preferred share issue, plus the issuer's annual borrowing cost requirements, including the borrowing costs that have been capitalized during the period, less any retirement of obligations, and

(ii) dividends should be grossed-up to a before-tax equivalent using the issuer's effective income tax rate; and

(f) for distributions of both debt securities and preferred shares, the appropriate denominator is the same as for a preferred share issue, except that the denominator should also reflect the effect of the debt securities being offered pursuant to the short form prospectus.

(4) The denominator represents a pro forma calculation of the aggregate of an issuer's borrowing cost obligations on all financial liabilities and dividend obligations (including both dividends declared and undeclared dividends on cumulative preferred shares) with respect to all outstanding preferred shares, as adjusted to reflect

(a) the issuance of all financial liabilities and, in addition in the case of an issuance of preferred shares, all preferred shares issued, since the date of the annual financial statements or interim financial report;

(b) the issuance of the securities that are to be distributed under the short form prospectus, based on a reasonable estimate of the price at which these securities will be distributed; and

(c) the repayment or redemption of all financial liabilities since the date of the annual financial statements or interim financial report, all financial liabilities to be repaid or redeemed from the proceeds to be realized from the sale of securities under the short form prospectus and, in addition, in the case of an issuance of preferred shares, all preferred shares repaid or redeemed since the date of the annual financial statements or interim financial report and all preferred shares to be repaid or redeemed from the proceeds to be realized from the sale of securities under the short form prospectus.

(d) (deleted)

(5) (deleted)

(6) For debt securities, disclosure of earnings coverage shall include language similar to the following, with the bracketed and bulleted information completed:

“[Name of the issuer]'s borrowing cost requirements, after giving effect to the issue of [the debt securities to be distributed under the short form prospectus], amounted to \$• for the 12 months ended •. [Name of the issuer]'s profit or loss attributable to owners of the parent before borrowing costs and income tax for the 12 months then ended was \$•, which is • times [name of the issuer]'s borrowing cost requirements for this period.”.

(7) For preferred share issues, disclosure of earnings coverage shall include language similar to the following, with the bracketed and bulleted information completed:

“[Name of the issuer]'s dividend requirements on all of its preferred shares, after giving effect to the issue of [the preferred shares to be distributed under the short form prospectus], and adjusted to a before-tax equivalent using an effective income tax rate of •%, amounted to \$• for the 12 months ended •. [Name of the issuer]'s borrowing cost requirements for the 12 months then ended amounted to \$•. [Name of the issuer]'s profit or loss attributable to owners of the parent before borrowing costs and income tax for the 12 months ended • was \$•, which is • times [name of the issuer]'s aggregate

dividend and borrowing cost requirements for this period.”.

(8) *(deleted)*

(9) *Other earnings coverage calculations may be included as supplementary disclosure to the required earnings coverage calculations outlined above as long as their derivation is disclosed and they are not given greater prominence than the required earnings coverage calculations.”;*

(8) in subparagraph (b) of paragraph (3) of section 7.3, by replacing the word “income” with the word “profit”;

(9) in subparagraph 3 of paragraph (1) of section 11.1, by replacing the words “interim financial statements” with the words “interim financial report”;

(10) in section 13.1:

(a) in paragraph (1):

(i) in subparagraph (c), by replacing the word “revenues” with the word “revenue”;

(ii) by replacing subparagraph (g) with the following;

“(g) “summary financial information” includes the following line items:

(i) revenue;

(ii) profit or loss from continuing operations attributable to owners of the parent;

(iii) profit or loss attributable to owners of the parent; and

(iv) unless the issuer’s GAAP permits the preparation of the credit support issuer’s statement of financial position without classifying assets and liabilities between current and non-current and the credit support issuer provides alternative meaningful financial information which is more appropriate to the industry,

(A) current assets;

(B) non-current assets;

(C) current liabilities; and

(D) non-current liabilities.”;

(iii) by adding, after paragraph (g), the following:

“INSTRUCTION

See section 1.1 of Regulation 41-101 respecting General Prospectus Requirements for the definitions of “profit or loss attributable to owners of the parent” and “profit or loss from continuing operations attributable to owners of the parent”.”;

(b) in the French text of subparagraphs (b) and (c) of paragraph (2), by replacing the words “à la valeur de consolidation” with the words “selon la méthode de la mise en équivalence”;

(11) in section 13.2:

(a) in the French text of the introductory paragraph, by replacing the words “couverture par les bénéfices” with the words “couverture par le résultat”;

(b) in the French text of subparagraph (d), by replacing the words “titres de participation” with the words “titres de capitaux propres”;

(c) in subparagraph (ii) of subparagraph (f), by replacing the words “interim and annual consolidated” with the words “consolidated interim financial report and consolidated annual”;

(12) by replacing, wherever they occur in the French text, the words “titres de participation” with the words “titres de capitaux propres”;

(13) by replacing, wherever they occur in the French text, the words “couverture par les bénéfices” with the words “couverture par le résultat”.

7. This Regulation only applies to a preliminary short form prospectus, an amendment to a preliminary short form prospectus, a final short form prospectus or an amendment to a final short form 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.

8. Despite section 7, an issuer may apply the amendments set out in this Regulation to a preliminary short form prospectus, an amendment to a preliminary short form prospectus, a final short form prospectus, or an amendment to a final short form prospectus of the issuer, which includes or incorporates by reference 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 Regulation 52-107 respecting Acceptable Accounting Principles and Auditing Standards.

9. This Regulation comes into force on January 1, 2011.