

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), (6), (11) and (34))

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

(1) by replacing the definition of the term “AIF” with the following:

““AIF” means

(a) for an issuer that at the applicable time

(i) was a reporting issuer but not a venture issuer, has the same meaning as in Regulation 51-102 respecting Continuous Disclosure Obligations,

(ii) was a venture issuer, an annual report,

(b) for an investment fund, an annual information form as that term is used in Regulation 81-106 respecting Investment Fund Continuous Disclosure;

““annual report” has the same meaning as in section 1 of Regulation 51-103 respecting Ongoing Governance and Disclosure Requirements for Venture Issuers;”;

(2) by replacing the definition of the term “applicable CD rule” with the following:

““applicable CD rule” means

(a) for an issuer that at the applicable time

(i) was a reporting issuer but not a venture issuer, Regulation 51-102 respecting Continuous Disclosure Obligations,

(ii) was a venture issuer, Regulation 51-103 respecting Ongoing Governance and Disclosure Requirements for Venture Issuers,

(b) for an investment fund, Regulation 81-106 respecting Investment Fund Continuous Disclosure;

““applicable time” has the same meaning as in section 3 of Regulation 51-103 respecting Ongoing Governance and Disclosure Requirements for Venture Issuers;”;

(3) by replacing the definition of the term “material change report” with the following:

““material change report” means

(a) for an issuer that at the applicable time

(i) was a reporting issuer but not a venture issuer, a completed Form 51-102F3 of Regulation 51-102 respecting Continuous Disclosure Obligations,

(ii) was a venture issuer, a completed Form 51-103F2 of Regulation 51-103 respecting Ongoing Governance and Disclosure Requirements for Venture Issuers,

(b) for an investment fund, a completed Form 51-102F3 of Regulation 51-102 respecting Continuous Disclosure Obligations adjusted as directed by Regulation 81-106 respecting Investment Fund Continuous Disclosure;”;

(4) by replacing the definition of the term “MD&A” with the following:

““MD&A”

(a) for an issuer that at the applicable time

(i) was a reporting issuer but not a venture issuer, has the same meaning as in Regulation 51-102 respecting Continuous Disclosure Obligations,

(ii) was a venture issuer, means the management’s discussion and analysis in a completed Form 51-103F1 of Regulation 51-103 respecting Ongoing Governance and Disclosure Requirements for Venture Issuers for an annual report or mid-year report, as applicable,

(b) for an investment fund, means an annual or interim management report of fund performance as defined in Regulation 81-106 respecting Investment Fund Continuous Disclosure;

““mid-year interim financial report” has the same meaning as in section 1 of Regulation 51-103 respecting Ongoing Governance and Disclosure Requirements for Venture Issuers;”.

2. Section 2.2 of the Regulation is amended by replacing paragraph (d) with the following:

“(d) the issuer has in at least one jurisdiction in which it is a reporting issuer,

(i) in the case of an issuer other than a venture issuer, current annual financial statements and a current AIF,

(ii) in the case of a venture issuer, a current AIF;”.

3. Section 2.3 of the Regulation is amended by replacing subparagraph (d) of paragraph (1) with the following:

“(d) the issuer has in at least one jurisdiction in which it is a reporting issuer,

(i) in the case of an issuer other than a venture issuer, current annual financial statements and a current AIF,

(ii) in the case of a venture issuer, a current AIF;”.

4. Section 2.7 of the Regulation is amended:

(1) by replacing subparagraph (a) of paragraph (1) with the following:

“(a) the issuer is not exempt from the requirement in the applicable CD rule to file

(i) in the case of an issuer other than a venture issuer, annual financial statements within a prescribed period after its financial year end, but the issuer has not yet been required under the applicable CD rule to file annual financial statements,

(ii) in the case of a venture issuer, a completed Form 51-103F1 of Regulation 51-103 respecting Ongoing Governance and Disclosure Requirements for Venture Issuers, within the prescribed period after its financial year end, but the issuer has not yet been required under the applicable CD rule to file an annual report, and”;

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

“(2) Subsection 2.2(d), and paragraphs 2.3(1)(d) and 2.6(1)(b) do not apply to a successor issuer if

(a) the successor issuer is not exempt from the requirement in the applicable CD rule to file

(i) in the case of an issuer other than a venture issuer, annual financial statements within a prescribed period after its financial year end, but the successor issuer has not yet, since the completion of the restructuring transaction which resulted in the successor issuer, been required under the applicable CD rule to file annual financial statements,

(ii) in the case of a venture issuer, a completed Form 51-103F1 of Regulation 51-103 respecting Ongoing Governance and Disclosure Requirements for Venture Issuers within the prescribed period after its financial year end, but the successor issuer has not yet, since the completion of the restructuring transaction which resulted in the successor issuer, been required under the applicable CD rule to file an annual report, and

(b) an information circular relating to the restructuring transaction that resulted in the successor issuer was filed by the successor issuer or an issuer that was a party to the restructuring transaction, and such information circular

(i) complied with applicable securities legislation, and

(ii) included disclosure for the successor issuer in accordance with

A. in the case of an issuer that was not a venture issuer at the applicable time, section 14.2 or 14.5 of Form 51-102F5 of Regulation 51-102 respecting Continuous Disclosure Obligations.

B. in the case of an issuer that was a venture issuer at the applicable time, section 17 of Form 51-103F4 of Regulation 51-103 respecting Ongoing Governance and Disclosure Requirements for Venture Issuers, unless exempted by section 19 of Form 51-103F4.”.

5. Section 4.1 of the Regulation is amended by replacing subparagraphs (iv) and (iv.1) of paragraph (a) with the following:

“(iv) a copy of any document that relates to the securities being distributed, and that has not previously been filed that is required to be filed under

A. subsection 12.1(1) of Regulation 51-102 respecting Continuous Disclosure Obligations,

B. section 16.4 of Regulation 81-106 respecting Investment Fund Continuous Disclosure,

C. any of paragraph (a), (b), (c) or (d) of subsection 34(1) of Regulation 51-103 respecting Ongoing Governance and Disclosure Requirements for Venture Issuers;

“(iv.1) a copy of any material contract that has not previously been filed that is required to be filed under

A. section 12.2 of Regulation 51-102 respecting Continuous Disclosure Obligations,

B. section 16.4 of Regulation 81-106 respecting Investment Fund Continuous Disclosure,

C. paragraph 34(1)(d) of Regulation 51-103 respecting Ongoing Governance and Disclosure Requirements for Venture Issuers;”.

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

(1) by inserting, after item 1.13, the following:

“1.14. Cover Page

A venture issuer must include in bold face type on the cover page of the prospectus the following statement:

“The issuer [is/will be] a venture issuer subject to the ongoing governance and disclosure requirements under Regulation 51-103 respecting Ongoing Governance and Disclosure Requirements for Venture Issuers.”;

(2) by replacing item 9.1 with the following:

“9.1. Mineral Property

(1) If, for an issuer other than a venture issuer, a material part of the proceeds of the distribution is to be expended on a particular mineral property and if the current AIF does not contain the disclosure required under section 5.4 of Form 51-102F2 of Regulation 51-102 respecting Continuous Disclosure Obligations for the property or that disclosure is inadequate or incorrect due to changes, disclose the information required under section 5.4 of Form 51-102F2.

(2) If, for a venture issuer, a material part of the proceeds of the distribution is to be expended on a particular mineral property and if the current AIF does not contain the disclosure required under subsection 16(2) or permitted under subsection 16(3) of Form 51-103F1 of Regulation 51-103 respecting Ongoing Governance and Disclosure Requirements for Venture Issuers for the property or that disclosure is inadequate or incorrect due to changes, disclose the information required under subsection 16(2) or subsection 16(3) of Form 51-103F1.”;

(3) in item 10.2:

(a) by inserting, after paragraph (1), the following:

“(1.1) Subsection 10.2(1) does not apply to an issuer that was a venture issuer at the acquisition date.”;

(b) by inserting, after paragraph (2), the following:

“(2.1) Subsection 10.2(2) does not apply to a venture issuer.”;

(4) by inserting, after item 10.3, the following:

“10.3. Major Acquisitions

(1) For an issuer that was a venture issuer at the acquisition date, describe any major acquisition of a “business” or “related businesses” (as those terms are

defined in Regulation 51-103 respecting Ongoing Governance and Disclosure Requirements for Venture Issuers)

(a) that the issuer completed within 75 days prior to the date of the short form prospectus;

(b) for which the issuer has not yet filed a Form 51-103F2 of Regulation 51-103 respecting Ongoing Governance and Disclosure Requirements for Venture Issuers or related financial statements.

(2) Describe any proposed major acquisition of a “business” or “related businesses” (as those terms are defined in Regulation 51-103 respecting Ongoing Governance and Disclosure Requirements for Venture Issuers) by a venture issuer that

(a) has progressed to a state where a reasonable person would believe that the likelihood of the issuer completing the acquisition is high; and

(b) would be a major acquisition if completed as of the date of the short form prospectus.

(3) If disclosure about a major acquisition or proposed major acquisition is required under subsection (1) or (2), include financial statements or other information about the acquisition or proposed acquisition if the inclusion of the financial statements is necessary for the short form prospectus to contain full, true and plain disclosure of all material facts relating to the securities being distributed.

(4) The requirement to include financial statements or other information under subsection (3) must be satisfied by including

(a) the financial statements or other information that will be required to be included in, or incorporated by reference into, a Form 51-103F2 of Regulation 51-103 respecting Ongoing Governance and Disclosure Requirements for Venture Issuers, or

(b) satisfactory alternative financial statements or other information.

INSTRUCTION

For the description of the major acquisition or proposed major acquisition, include the information required by Item 10 of Form 51-103F2 of Regulation 51-103 respecting Ongoing Governance and Disclosure Requirements for Venture Issuers. For a proposed major acquisition, modify this information as necessary to convey that the acquisition is not yet completed.”;

(5) by replacing, in item 11.1, paragraph (1) with the following:

“(1) In addition to any other document that an issuer may choose to incorporate by reference, an issuer must specifically incorporate by reference in the short form prospectus, by means of a statement in the short form prospectus to that effect, each of the documents set forth below, as applicable:

1. The issuer’s current AIF, if it has one.
2. Except in the case of a venture issuer, the issuer’s current annual financial statements, if any, and related MD&A.
3. Except in the case of a venture issuer, the issuer’s interim financial report most recently filed or required to have been filed under the applicable CD rule in respect of an interim period, if any, subsequent to the financial year in respect of

which the issuer has filed its current annual financial statements or has included annual financial statements in the short form prospectus, and the related interim MD&A.

3.1 In the case of a venture issuer, the issuer's mid-year report in Form 51-103F1 of Regulation 51-103 respecting Ongoing Governance and Disclosure Requirements for Venture Issuers most recently filed or required to have been filed under the applicable CD rule in respect of a mid-year period, if any, subsequent to the financial year in respect of which the issuer has filed its annual report or has included annual financial statements in the short form prospectus.

3.2 In the case of a venture issuer that has filed an interim financial report for an "optional interim period" (as that term is defined in Regulation 51-103 respecting Ongoing Governance and Disclosure Requirements for Venture Issuers), the issuer's interim financial report most recently filed in respect of an interim period, if any, subsequent to the financial year in respect of which the issuer has filed its current annual financial statements or has included annual financial statements in the short form prospectus and subsequent to any mid-year period for which the issuer has filed its current mid-year interim financial report or has included mid-year interim financial report in the short form prospectus, if applicable, and, if the venture issuer has filed related interim MD&A, the related MD&A.

4. Except in the case of a venture issuer, if, before the short form prospectus is filed, historical financial information about the issuer for a financial period more recent than the period for which financial statements are required under paragraphs 2 and 3 is publicly disseminated by, or on behalf of, the issuer through news release or otherwise, the content of the news release or public communication.

4.1 In the case of a venture issuer, if, before the short form prospectus is filed, historical financial information about the issuer is publicly disseminated by, or on behalf of, the issuer through news release or otherwise, the content of the news release or public communication, if the historical financial information is for a financial period more recent than

- (a) the period required to be covered by the financial statements required to be included in the current AIF under paragraph 1,
- (b) the mid-year report required under paragraph 3.1., or
- (c) an interim financial report for an "optional interim period" (as that term is defined in Regulation 51-103 respecting Ongoing Governance and Disclosure Requirements for Venture Issuers) required under paragraph 3.2.

5. Each material change report, except a confidential material change report, filed under Part 7 of Regulation 51-102 respecting Continuous Disclosure Obligations, Part 11 of Regulation 81-106 respecting Investment Fund Continuous Disclosure or Part 6 of Regulation 51-103 respecting Ongoing Governance and Disclosure Requirements for Venture Issuers, as applicable, and related financial statements since the end of the financial year in respect of which the issuer's current AIF is filed.

6. Each business acquisition report filed by the issuer under Part 8 of Regulation 51-102 respecting Continuous Disclosure Obligations for acquisitions completed since the beginning of the financial year in respect of which the issuer's current AIF is filed, unless the issuer

- (a) incorporated the BAR by reference into its current AIF, or
- (b) incorporated at least 9 months of the acquired business or related businesses operations into the issuer's current annual financial statements.

7. Each information circular filed by the issuer under Part 9 of Regulation 51-102 respecting Continuous Disclosure Obligations, Part 12 of Regulation 81-106 respecting Investment Fund Continuous Disclosure or Part 5 of Regulation 51-103 respecting Ongoing Governance and Disclosure Requirements for Venture Issuers, as applicable, since the beginning of the financial year in respect of which the issuer's current AIF is filed, other than an information circular prepared in connection with an annual general meeting if the issuer has filed and incorporated by reference an information circular for a subsequent annual general meeting.

8. The most recent Form 51-101F1, Form 51-101F2 and Form 51-101F3 of Regulation 51-101 respecting Standards of Disclosure for Oil and Gas Activities, filed by an SEC issuer, unless

(a) the issuer's current AIF is in the form of Form 51-102F2 of Regulation 51-102 respecting Continuous Disclosure Obligations or Form 51-103F1 of Regulation 51-103 respecting Ongoing Governance and Disclosure Requirements for Venture Issuers, as applicable, or

(b) the issuer is otherwise exempted from the requirements of Regulation 51-101 respecting Standards of Disclosure for Oil and Gas Activities.

9. Each other disclosure document that the issuer has filed pursuant to an undertaking to a provincial or territorial securities regulatory authority since the beginning of the financial year in respect of which the issuer's current AIF is filed.

10. Each other disclosure document of the type listed in paragraphs 1 through 8 that the issuer has filed pursuant to an exemption from a requirement under securities legislation since the beginning of the financial year in respect of which the issuer's current AIF is filed.”;

(6) by replacing the instructions of item 11.4 with the following paragraph:

“(3) This section does not apply to a venture issuer that was a venture issuer at the acquisition date.”;

(7) by inserting, after item 11.4, the following:

“11.5. Major Acquisition for which no Report of Material Change, Material Related Entity Transaction or Major Acquisition has been filed

(1) If the issuer has,

(a) since the beginning of the most recently completed financial year in respect of which annual financial statements are included in the short form prospectus; and

(b) more than 75 days prior to the date of filing the preliminary short form prospectus;

completed an acquisition of a “business” or “related businesses” (as those terms are defined in Regulation 51-103 respecting Ongoing Governance and Disclosure Requirements for Venture Issuers) that would have been a major acquisition if the issuer had been a venture issuer at the time of the transaction, and the issuer has not filed a Form 51-103F2 under Regulation 51-103 respecting Ongoing Governance and Disclosure Requirements for Venture Issuers in respect of the transaction, include the financial statements and other information in respect of the transaction that is prescribed by Form 51-103F2.

INSTRUCTION

Disclosure required by section 11.3, 11.4 or 11.5 to be included in the short form prospectus may be incorporated by reference from another document or included directly in the short form prospectus.”

7. This Regulation comes into force on (*indicate the date of coming into force of this Regulation*).