

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 inserting, after the definition of “AIF”, the following:

““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 “applicable CD rule” with the following:

““applicable CD rule” means

(a) for an issuer which was at the applicable time

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

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

(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 inserting, after the definition of “current annual financial statements”, the following:

““current annual report” means,

(a) if the venture issuer has filed an annual report for its most recently completed financial year, that annual report, or

(b) the venture issuer’s annual report filed for the financial year immediately preceding its most recently completed financial year if

(i) the venture issuer has not filed an annual report for its most recently completed financial year, and

(ii) the venture issuer is not yet required under the applicable CD rule to have filed its annual report for its most recently completed financial year;”;

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

““material change report” means

(a) for an issuer which was at the applicable time

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

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

(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;”;

(5) by inserting, in the definition of “successor issuer”, after each instance of “restructuring transaction”, “or, for a venture issuer, a transaction contemplated by subsection 32(6) of Regulation 51-103 respecting Ongoing Governance and Disclosure Requirements for Venture Issuers,”;

(6) by replacing, in the French text of the definition of “underlying interest”, the word “repère” with the words “indice de référence”.

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

“(d) the issuer has filed 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; or

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

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

“(d) the issuer has filed 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; or

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

4. Section 2.7 of the Regulation is amended:

(1) in subparagraph (a) of paragraph (1), by inserting, after the words “file annual financial statements”, “or, for a venture issuer, an annual report,”;

(2) in paragraph (2):

(a) in subparagraph (a):

(i) by inserting, after the first occurrence of “file annual financial statements”, “or, for a venture issuers, an annual report,”;

(ii) by inserting, after the second occurrence of “file annual financial statements”, “or, for a venture issuers, an annual report”;

(b) in subparagraph (ii) of subparagraph (b), by inserting, after “(M.O. 2005-03, 05-05-19)”, “or, for a venture issuer, disclosure required by section 32 of Regulation 51-103 respecting Ongoing Governance and Disclosure Requirements for Venture Issuers and subsection 22(1) of Form 51-102F4 of that Regulation”.

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; or

(C) any of paragraph (a), (b), (c) or (d) of subsection 36(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; or

(C) paragraph 36(1)(e) and subsection 36(2) of Regulation 51-103 respecting Ongoing Governance and Disclosure Requirements for Venture Issuers;”.

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

(1) by replacing paragraph (13) of the Instructions with the following:

“(13) *Forward-looking information included in a short form prospectus must*

(a) *in the case of an issuer other than a venture issuer,*

(i) *comply with section 4A.2 of Regulation 51-102 respecting Continuous Disclosure Obligations (c. V-1.1, r. 24);*

(ii) *include the disclosure described in section 4A.3 of Regulation 51-102 respecting Continuous Disclosure Obligations; and*

(iii) *in the case of FOFI or a financial outlook, as those terms are defined in Regulation 51-102 respecting Continuous Disclosure Obligations, comply with Part 4B of that Regulation; and*

(b) *in the case of a venture issuer, comply with section 39 of Regulation 51-103 respecting Ongoing Governance and Disclosure Requirements for Venture Issuers.”.*

(2) 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 a venture issuer subject to the ongoing governance and disclosure requirements under Regulation 51-103 respecting Ongoing Governance and Disclosure Requirements for Venture Issuers.”;

(3) by inserting, after paragraph (1) of item 4.1, the following:

“(1.1) If the issuer is a venture issuer, state the total funds available and the following breakdown of those funds:

(a) the estimated net proceeds from the sale of the securities offered under the prospectus;

(b) the estimated consolidated working capital (deficiency) as at the most recent month end before filing the prospectus;

(c) the total other funds available to be used to achieve the principal purposes identified pursuant to this Item.”;

(4) by inserting, in paragraph (1) of item 4.2 and after the words “net proceeds”, “or, for a venture issuer, the funds available,”;

(5) by inserting, in paragraph (1) of item 4.3 and after the words “net proceeds”, “or, for a venture issuer, the funds available,”;

(6) by inserting, in paragraph (1) of item 4.4 and after the words “net proceeds”, “or, for a venture issuer, the funds available,”;

(7) by inserting, in item 4.5 and after the words “net proceeds”, “or, for a venture issuer, the funds available,”;

(8) by inserting, in item 4.6 and after the words “net proceeds”, “or, for a venture issuer, the funds available,”;

(9) in paragraph (1) of item 4.7, by inserting, after “net proceeds of the distribution under section 4.1”, “or, for a venture issuer, the funds available”;

(10) by inserting, after item 4.10, the following:

“4.11. Actual use of financing proceeds

If the issuer is a venture issuer, unless previously disclosed, include a table comparing disclosure previously made by the issuer about how it was going to use financing proceeds to actual use of such funds, an explanation of any variances and a discussion of the impact of the variances, if any, on the issuer’s ability to achieve its business objectives and performance targets.

“4.12. Additional disclosure for venture issuers with negative cash flows

(1) For a venture issuer that had negative cash flow from operating activities in its most recently completed financial year for which financial statements have been included in the prospectus, disclose each of the following:

(a) the period of time the funds available are expected to fund the operations;

(b) the estimated total operating costs necessary for the issuer to achieve its stated business objectives during that period of time;

(c) the estimated amount of other material capital expenditures during that period of time.

(2) In determining cash flows from operating activities, the issuer must include cash payments related to dividends and borrowing costs.”.

(11) 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 annual report does not contain the disclosure required under subsection 17(2) or permitted under subsection 17(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 17(2) or subsection 17(3) of Form 51-103F1.”;

(12) in item 10.2:

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

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

(13) 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 business,

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

(b) for which the issuer has not 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 business 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 completed.”;

(14) in item 10.A1:

(a) by inserting, after the words “current AIF”, “or, for a venture issuer, the venture issuer’s current annual report,”;

(b) in paragraph 2, by inserting, after “Form 41-101F1”, “or, for a venture issuer, Form 41-101F4,”;

(15) in paragraph 2 of item 10.A2, by inserting, after “Form 41-101F1”, “or, for a venture issuer, Form 41-101F4,”;

(16) 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 following documents, as applicable:

1. in the case of an issuer other than a venture issuer, the issuer’s current AIF, if it has one;

1.1 in the case of a venture issuer, the venture issuer’s current annual report;

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 interim 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 annual report or has included annual financial statements in the short form prospectus;

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 annual report under paragraph 1.1, or

(b) the interim report required under paragraph 3.1.

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 5 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 or, for a venture issuer, current annual report 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 business acquisition report 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.

6.1 each completed Form 51-103F2 filed by the issuer under Part 5 and Part 6 of Regulation 51-103 respecting Ongoing Governance and Disclosure Requirements for Venture Issuers for acquisitions completed since the beginning of the financial year in respect of which the issuer's current annual report is filed, unless the issuer incorporated at least 9 months of the acquired business or related businesses operations into the annual financial statements included in the issuer's current annual report;

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, or for a venture issuer, current annual report, 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, for a venture issuer, current annual report is in the form of Form 51-103F1 of Regulation 51-103 respecting Ongoing Governance and Disclosure Requirements for Venture Issuers, 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 or, for a venture issuer, current annual report 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 or, for a venture issuer, current annual report is filed.”;

(17) in item 11.3:

(a) in paragraph (1):

(i) by inserting, after the first occurrence of the words “current annual financial statements”, “or, for a venture issuer, a current annual report,”;

(ii) by inserting, after the first occurrence of “related MD&A”, “or, for a venture issuer, a current annual report”, and, after the second occurrence of “related MD&A”, “or, for a venture issuer, a current annual report,”;

(b) in paragraph (2), by inserting, after the words “current annual financial statements”, “or, for a venture issuer, a current annual report,”;

(18) 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.”;

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

“11.5 Major Acquisition for which no Report of Material Change or Other Material Information has been filed

(1) Include the financial statements and other information that are prescribed by Form 51 103F2 of Regulation 51-103 respecting Ongoing Governance and Disclosure Requirements for Venture Issuers in respect of an acquisition of a business or related business that would have been a major acquisition if the issuer had been a venture issuer at the time of the transaction, for which the issuer has not filed a Form 51-103F2 and which was completed

(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.

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.”;

(20) by replacing item 15.2 with the following:

“15.2 Interest of Experts

For each person referred to in section 15.1, provide the disclosure that would be required under section 16.2 of Form 51-102F2 of Regulation 51-102 respecting Continuous Disclosure Obligations of Regulation or, for a venture issuer, section 34 of Form 51-103F1 of Regulation 51-103 respecting Ongoing Governance and Disclosure Requirements for Venture Issuers as of the date of the short form prospectus, as if that person were a person referred to in section 16.1 of Form 51-102F2.”.

(21) by replacing subparagraphs (a) and (b) of paragraph (4) of item 16 of the French text with the following:

“a) il est, à la date du prospectus provisoire, ou a été, au cours des 10 années précédentes, administrateur ou membre de la haute direction d’une personne qui, pendant que le promoteur exerçait ces fonctions ou au cours de l’année suivant la cessation de ses fonctions, a fait faillite, fait une proposition concordataire en vertu de la législation sur la faillite ou l’insolvabilité, fait l’objet ou été à l’origine d’une procédure judiciaire, d’un concordat ou d’un compromis avec des créanciers, ou pour laquelle un séquestre, un séquestre-gérant ou un syndic de faillite a été nommé afin de détenir l’actif;

b) il a, au cours des 10 années précédant la date du prospectus simplifié provisoire, selon le cas, fait faillite, fait une proposition concordataire en vertu de la législation sur la faillite ou l’insolvabilité, fait l’objet ou été à l’origine d’une procédure judiciaire, d’un concordat ou d’un compromis avec des créanciers, ou un séquestre, un séquestre-gérant ou un syndic de faillite a été nommé afin de détenir son actif;”.

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