

REGULATION TO AMEND REGULATION 44-102 RESPECTING SHELF DISTRIBUTIONS

Securities Act
(R.S.Q., c. V-1.1, s. 331.1, par. (1), (2), (6), (8) and (34))

1. Section 1.1 of Regulation 44-102 respecting Shelf Distributions is amended:

(1) in subsection (1):

(a) by replacing the words “National Instrument 81-102 Mutual Funds” in the definition of “clearing corporation” with the words “Regulation 81-102 Mutual Funds adopted by the *Commission des valeurs mobilières du Québec* pursuant to decision no. 2001-C-0209 dated May 22, 2001”;

(b) by replacing the definition of “novel” with the following:

““novel” means:

(a) for a specified derivative proposed to be distributed using the shelf procedures and that has an underlying interest that is not a security of the issuer

(i) a derivative of a type that has not been distributed by the issuer by way of prospectus in at least one jurisdiction before the proposed distribution, or

(ii) a derivative of a type that has been distributed by the issuer by way of prospectus in at least one jurisdiction before the proposed distribution, but

(A) the attributes of the derivative differ materially from the attributes of derivatives of the same type previously distributed by the issuer by way of prospectus,

(B) the structure and contractual arrangements underlying the derivative differ materially from the structure and contractual arrangements underlying derivatives of the same type previously distributed by the issuer by way of prospectus, or

(C) the type of the underlying interest for the derivative differs materially from the type of underlying interest for derivatives of the same type previously distributed by the issuer by way of prospectus, and

(b) for an asset-backed security proposed to be distributed using the shelf procedures

(i) a security of a type that has not been distributed by way of prospectus in at least one jurisdiction before the proposed distribution, or

(ii) a security of a type that has been distributed by way of prospectus in at least one jurisdiction before the proposed distribution, but

(A) the attributes of the security differ materially from the attributes of securities of the same type previously distributed by way of prospectus,

(B) the structure and contractual arrangements underlying the security differ materially from the structure and contractual arrangements underlying securities of the same type previously distributed by way of prospectus, or

(C) the type of financial assets servicing the security differ materially from the type of financial assets servicing securities of the same type previously distributed by way of prospectus;”

(c) by replacing, in the French text of the definition of “placement au cours du marché”, the words “à un prix non déterminé” with the words “à prix ouvert”;

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

“(2) All expressions defined in Regulation 41-101 respecting General Prospectus Requirements approved by Ministerial Order (*indicate the number and date of the ministerial order approving the regulation*) and in Regulation 44-101 respecting Short Form Prospectus Distributions and used, but not defined, in this Regulation have the respective meanings ascribed to them in the aforementioned Regulations.”.

2. Section 1.2 of the French text of the Regulation replaced with the following:

“1.2. Modifications

Dans le présent règlement, toute mention d'une modification apportée à un prospectus, à l'exception de celles de l'annexe A et de l'annexe B, désigne tant une simple modification, sans reprise du texte du prospectus, qu'une version modifiée du prospectus.”.

3. Paragraph 2.2(3)(c) of the Regulation is replaced with the following:

“(c) In Ontario, the lapse date prescribed by the securities legislation.”.

4. Paragraph 2.3(3)(c) of the Regulation is replaced with the following:

“(c) In Ontario, the lapse date prescribed by the securities legislation.”.

5. Paragraph 2.4(3)(c) of the Regulation is replaced with the following:

“(c) In Ontario, the lapse date prescribed by the securities legislation.”.

6. Paragraph 2.5(3)(c) of the Regulation is replaced with the following:

“(c) In Ontario, the lapse date prescribed by the securities legislation.”.

7. Paragraph 2.6(3)(c) of the Regulation is replaced with the following:

“(c) In Ontario, the lapse date prescribed by the securities legislation.”.

8. Section 2.8 of the Regulation is repealed.

9. Subparagraph 4.1(2)(b)(ii) of the Regulation is amended by replacing the numeral “21” with the words “10 business”.

10. Section 6.1 of the Regulation is amended by deleting the words “and, in Québec, to contain no misrepresentation that is likely to affect the value or the market price of the securities to be distributed.”.

11. Section 6.2 of the Regulation is amended:

(1) in subsection (3), by replacing the words “Any unaudited financial statements of an issuer or an acquired business” with the words “Subject to subsection (4), any unaudited financial statements, other than pro forma financial statements,” and by replacing, in the English text, the words “an entity's” with the words “a person or company's”;

(2) by replacing subsection (4) with the following:

“(4) If Regulation 52-107 respecting Acceptable Accounting Principles, Auditing Standards and Reporting Currency, approved by Ministerial Order no. 2005-08 dated May 19, 2005,

permits the financial statements of the person or company in subsection (3) to be audited in accordance with

(a) U.S. GAAS, the unaudited financial statements may be reviewed in accordance with U.S. review standards,

(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 base shelf prospectus includes disclosure that the unaudited financial statements have not been reviewed.”;

(3) in subsection (5), by inserting the words “, if applicable” after the words “The review specified in paragraph (3)”.

12. Section 6.7 of the Regulation is amended by deleting the words “and, in Québec, contain no misrepresentation that is likely to affect the value or the market price of the securities to be distributed.”.

13. Subsection 7.2(1) of the Regulation is amended:

(a) by replacing the introductory paragraph with the following:

“If any notary in Québec, solicitor, auditor, accountant, engineer or appraiser, or any other person or company or business whose profession gives authority to a statement made by that person or company, is”;

(b) in paragraph (b), by replacing, wherever they appear, the words “report or valuation” with the words “report, valuation, statement or opinion”;

(c) by adding the following after paragraph (b):

“(c) named in the document as having opined on financial statements from which selected information included in the base shelf prospectus or shelf prospectus supplement has been derived and which audit opinion is referred to in the base shelf prospectus or shelf prospectus supplement directly or in a document incorporated by reference”.

14. Section 9.2 of the Regulation is amended:

(1) by deleting the word “véritable” in subparagraph (1)(b)(ii) of the French text;

(2) by replacing subsections (2) and (3) of the French text with the following:

“2) Pour l'application du paragraphe 1, l'émetteur exclut du calcul du nombre total de titres de participation en circulation d'une catégorie les titres de participation de cette catégorie qui sont la propriété ou sous le contrôle de personnes qui, seules ou de concert avec les membres du même groupe et les personnes reliées, ont la propriété ou le contrôle de plus de 10 % des titres de participation en circulation de l'émetteur.

3) Malgré le paragraphe 2, lorsque le gestionnaire de portefeuille d'une caisse de retraite ou d'un fonds d'investissement a le contrôle de plus de 10 % des titres de participation en circulation de l'émetteur, seul ou de concert avec les membres du même groupe et les

personnes reliées, et que la caisse ou le fonds a la propriété ou le contrôle de plus de 10 % des titres de participation en circulation de l'émetteur, les titres dont la caisse ou le fonds a la propriété ou le contrôle ne sont pas exclus du calcul, à moins que le gestionnaire de portefeuille ne soit une personne du même groupe que l'émetteur.”.

15. Section 11.1 of the Regulation is amended by adding the following after subsection (2):

“(2.1) Except in Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101, Definitions, adopted by the *Commission des valeurs mobilières du Québec* pursuant to decision no. 2001-C-0274 dated June 12, 2001, opposite the name of the local jurisdiction.”.

16. Subsection 11.2(2) is replaced by the following:

“(2) The issuance of a receipt for a base shelf prospectus or an amendment to a base shelf prospectus is not evidence that the exemption is being granted unless

(a) the person or company that sought the exemption sent to the regulator

(i) the letter or memorandum referred to in subsection 11.1(3), on or before the date of the filing of the base shelf prospectus or an amendment to a base shelf prospectus, or

(ii) the letter or memorandum referred to in subsection 11.1(3) after the date of the filing of base shelf prospectus or an amendment to a base shelf prospectus and received a written acknowledgement from the regulator that the exemption may be evidence in the manner set out in subsection (1), and

(b) the regulator has not before, or concurrently with, the issuance of the receipt sent notice to the person or company that sought the exemption, that the exemption sought may not be evidenced in the manner set out in subsection (1).”.

17. The title of Part 12 and section 12.1 of the Regulation are repealed.

18. Appendix A to the Regulation is amended:

(1) by replacing section 1.1 with the following:

“**1.1. Issuer Certificate Form** - If a base shelf prospectus establishes an MTN program or other continuous distribution, or if method 2 has not been elected by an issuer, the preliminary base shelf prospectus and the base shelf prospectus shall contain an issuer certificate form stating:

“This short form prospectus, together with the documents incorporated in this prospectus by reference, will, as of the date of the last supplement to this prospectus relating to the securities offered by this prospectus and the supplement(s), constitute full, true and plain disclosure of all material facts relating to the securities offered by this prospectus and the supplement(s) as required by the securities legislation of [insert name of each jurisdiction in which qualified].”;

(2) by replacing section 1.2 with the following:

“**1.2. Underwriter Certificate Form** - If the base shelf prospectus establishes an MTN program or other continuous distribution or if method 2 has not been elected by the underwriter, the preliminary base shelf prospectus and a base shelf prospectus shall contain an underwriter's certificate form stating:

“To the best of our knowledge, information and belief, this short form prospectus, together with the documents incorporated in this prospectus by reference will, as of the date of the last supplement to this prospectus relating to the securities offered by this prospectus and the supplement(s), constitute full, true and plain disclosure of all material facts relating to the securities offered by this prospectus and the supplement(s) as required by the securities legislation of [insert name of each jurisdiction in which qualified].”;

(3) by replacing section 1.3 with the following:

“ **1.3. Credit Supporter’s Certificate** - A preliminary base shelf prospectus and base shelf prospectus shall contain a certificate in the form described in section 1.1, if

(a) Regulation 41-101 respecting General Prospectus Requirements or securities legislation requires a certificate from the credit supporter; and

(b) either

(i) the base shelf prospectus establishes an MTN program or other continuous distribution, or

(ii) method 2 has not been elected by the credit supporter.”;

(4) in section 1.4:

(a) in subsection (1):

(i) by replacing, in the French text, the words “tout prospectus préalable de base modifié et mis à jour” with the words “toute version modifiée du prospectus préalable de base”;

(ii) by deleting paragraph (c), and making the necessary changes;

(b) by replacing subsection (2) of the French text with the following:

“2) Dans chaque attestation exigée aux termes du paragraphe 1, le passage « le présent prospectus simplifié » est remplacé,

a) dans le cas d’une simple modification du prospectus préalable de base, par « le prospectus simplifié daté du [insérer la date], modifié par la présente modification, »;

b) dans le cas de la version modifiée du prospectus préalable de base, par « la présente version modifiée du prospectus simplifié ».”;

(5) by replacing section 2.1 with the following:

“**2.1. Issuer Certificate Form** - If an issuer certificate form described in section 1.1 was not included in the corresponding base shelf prospectus, a shelf prospectus supplement that establishes an MTN program or other continuous distribution shall contain an issuer certificate form stating

“The short form prospectus, together with the documents incorporated in the prospectus by reference, as supplemented by the foregoing, will, as of the date of the last supplement to the prospectus relating to the securities offered by the prospectus and the supplement(s), constitute full, true and plain disclosure of all material facts relating to the securities offered by the prospectus and the supplement(s) as required by the securities legislation of [insert name of each jurisdiction in which qualified.]”;

(6) by replacing section 2.2 with the following:

“**2.2. Underwriter Certificate Form** - If an underwriter’s certificate form described in section 1.2 was not included in the corresponding base shelf prospectus, a shelf prospectus supplement that establishes an MTN program or other continuous distribution shall contain an underwriter’s certificate form stating:

“To the best of our knowledge, information and belief, the short form prospectus, together with the documents incorporated in the prospectus by reference, as supplemented by the foregoing, will, as of the date of the last supplement to the prospectus relating to the securities offered by the prospectus and the supplement(s), constitute full, true and plain disclosure of all material facts relating to the securities offered by the prospectus and the

supplement as required by the securities legislation of [insert name of jurisdiction in which qualified].”;

(7) by replacing section 2.3 with the following:

(a) **“2.3. Credit Supporter’s Certificate - A shelf prospectus supplement that establishes an MTN program or other continuous distribution program shall contain a certificate in the form described in section 2.1, if**

(b) (a) Regulation 41-101 respecting General Prospectus Requirements or securities legislation requires a certificate from the credit supporter; and

(c) (b) a certificate of the credit supporter in the form described in section 1.3 was not included in the corresponding base shelf prospectus.”;

(8) by replacing, in the French text of subsection 2.4(1), the words “tout supplément de prospectus préalable modifié et mis à jour” with the words “toute version modifiée du supplément de prospectus préalable”.

19. Appendix B to the Regulation is amended:

(1) by replacing section 1.1 with the following:

“1.1. Issuer Certificate Form - If method 2 is elected by an issuer, the preliminary base shelf prospectus and the base shelf prospectus shall contain an issuer certificate form stating:

“This short form prospectus, together with the documents incorporated in this prospectus by reference, constitutes full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required by the securities legislation of [insert name of each jurisdiction in which qualified].”;

(2) by replacing section 1.2 with the following:

“1.2. Underwriter Certificate Form - If method 2 is elected by an underwriter, a preliminary base shelf prospectus and a base shelf prospectus shall contain an underwriter’s certificate form stating,:

“To the best of our knowledge, information and belief, this short form prospectus, together with the documents incorporated in this prospectus by reference, constitutes full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required by the securities legislation of [insert name of each jurisdiction in which qualified].”;

(3) by replacing section 1.3 with the following:

(10) “1.3. Credit Supporter’s Certificate - A base shelf prospectus shall contain a certificate described in section 1.1, if

(11) (a) Regulation 41-101 respecting General Prospectus Requirements or securities legislation requires a certificate of the credit supporter, and

(12) (b) method 2 is elected by the credit supporter.”;

(4) in section 1.4:

(a) in subsection (1):

(i) by replacing, in the French text, the words “tout prospectus préalable de base modifié et mis à jour” with the words “toute version modifiée du prospectus préalable de base”;

(ii) by replacing paragraph (b) with the following:

“(b) the certificate described in section 1.2 signed by each underwriter who has elected method 2;”;

(5) by replacing section 2.1 with the following:

“2.1. Issuer Certificate Form - If method 2 is elected by an underwriter, a shelf prospectus supplement shall contain an underwriter’s certificate form stating:

“To the best of our knowledge, information and belief, the short form prospectus, together with the documents incorporated in the prospectus by reference, as supplemented by the foregoing, constitutes full, true and plain disclosure of all material facts relating to the securities offered by the prospectus and this supplement as required by the securities legislation of [insert name of jurisdiction in which qualified].”;

(6) by replacing section 2.2 with the following:

“2.2. Underwriter Certificate Form - If method 2 is elected by an underwriter, a shelf prospectus supplement shall contain an underwriter’s certificate form stating:

“To the best of our knowledge, information and belief, the short form prospectus, together with the documents incorporated in the prospectus by reference, as supplemented by the foregoing, constitutes full, true and plain disclosure of all material facts relating to the securities offered by the prospectus and this supplement as required by the securities legislation of [insert name of jurisdiction in which qualified].”;

(7) by replacing section 2.3 with the following:

“2.3. Credit Supporter’s Certificate - Each shelf prospectus supplement shall contain a certificate in form described in section 2.1, if

(a) Regulation 41-101 respecting General Prospectus Requirements or securities legislation requires a certificate of a credit supporter; and

(b) method 2 is elected by the credit supporter.”;

(8) in section 2.4:

(a) in subsection (1):

(i) by replacing, in the French text, the words “tout supplément de prospectus préalable modifié et mis à jour” with the words “toute version modifiée du supplément de prospectus préalable”;

(ii) by replacing paragraph (b) with the following:

“(b) the certificate described in section 2.2 signed by each underwriter who has elected method 2”;

(b) by replacing subsection (2) of the French text with the following:

“2) Dans chaque attestation exigée aux termes du paragraphe 1, le passage « le présent supplément de prospectus préalable » est remplacé,

a) dans le cas d’une simple modification du supplément de prospectus préalable, par « le supplément de prospectus préalable daté du [insérer la date], modifié par la présente modification, »;

b) dans le cas de la version modifiée du supplément de prospectus préalable, par « la présente version modifiée du supplément de prospectus préalable ».”.

20. This Regulation comes into force on ●.