

REGULATION TO AMEND REGULATION 44-102 RESPECTING SHELF DISTRIBUTIONS

Securities Act

(R.S.Q., c. V-1.1, s. 331.1, par. (1), (6), (8), (9), (11) and (34))

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

(1) in paragraph (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 deleting, in the definition of “stabilization provisions”, the words “or companies” and “or company”;

(c) 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 a jurisdiction of Canada before the proposed distribution, or

(ii) a derivative of a type that has been distributed by the issuer by way of prospectus in a jurisdiction of Canada before the proposed distribution if

(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 a jurisdiction of Canada before the proposed distribution, or

(ii) a security of a type that has been distributed by way of prospectus in a jurisdiction of Canada before the proposed distribution if

(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;”;

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

(e) in the English text of the definition of “method 1”, by adding the words “forms of” before “prospectus certificates”;

(f) by deleting the definition of “shelf procedures”;

(g) in the English text of the definition of “method 2”, by adding the words “forms of” before “prospectus certificates”;

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

“(2) Every term that is defined or interpreted in Regulation 41-101 respecting General Prospectus Requirements approved by Ministerial Order (*indicate the number and date of the ministerial order approving the regulation*) or in Regulation 44-101 respecting Short Form Prospectus Distributions, the definition or interpretation of which is not restricted to a specific portion of these Regulations has, if used in this Regulation, the respective meaning ascribed to it in the aforementioned Regulations, unless defined or interpreted in this Regulation.”.

2. Section 1.2 of the French text of the Regulation is 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. Subparagraph (c) of paragraph (3) of section 2.2 of the Regulation is replaced with the following:

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

4. Subparagraph (c) of paragraph (3) of section 2.3 of the Regulation is replaced with the following:

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

5. Subparagraph (c) of paragraph (3) of section 2.4 of the Regulation is replaced with the following:

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

6. Subparagraph (c) of paragraph (3) of section 2.5 of the Regulation is replaced with the following:

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

7. Subparagraph (c) of paragraph (3) of section 2.6 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. Section 4.1 of the Regulation is amended:

(1) by replacing, wherever they appear in the English text, the words “security holder” with “securityholder”;

(2) in subparagraph (ii) of subparagraph (b) of paragraph (2), by replacing the numeral “21” with the words “10 business”.

10. Section 5.5 of the Regulation is amended:

(1) in the French text of paragraphs (1) and (2), by replacing the words “page frontispice” with “page de titre”;

(2) in the English text of paragraph (7), by replacing the words “security holder” with “securityholder”;

(3) by replacing paragraph (8) with the following:

“8. The prospectus certificates required by Part 5 of Regulation 41-101 respecting General Prospectus Requirements or other securities legislation, in the issuer certificate form or underwriter certificate form prescribed by

(a) method 1, if

(i) the base shelf prospectus is being used to establish an MTN program or other continuous distribution, or

(ii) method 2 has not been elected; or

(b) method 2, if method 2 has been elected.”.

11. Section 5.8 of the Regulation is replaced with the following:

“5.8 Amendments

Amendments - If a material change occurs at a time when no securities are being distributed under a base shelf prospectus, the provisions in Part 6 of Regulation 41-101 respecting General Prospectus Requirements or other securities legislation that require the filing of an amendment to a prospectus if a material change occurs are satisfied by

(a) the filing of a material change report; and

(b) the incorporation by reference in the base shelf prospectus of the material change report.”.

12. Section 6.1 of the Regulation is replaced with the following:

“6.1 Requirement to Use Shelf Prospectus Supplements

Requirement to Use Shelf Prospectus Supplements - An issuer or selling securityholder that distributes securities under a base shelf prospectus shall supplement the disclosure in the base shelf prospectus with a shelf prospectus supplement, or more than one shelf prospectus supplement, in order for the prospectus to contain full, true and plain disclosure of all material facts relating to the securities distributed under the prospectus.”.

13. Section 6.2 of the Regulation is amended:

(1) in paragraph (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’s”;

(2) by replacing paragraph (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 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 paragraph (5), by replacing the words “in paragraph (3)” with “in subsection (3), if applicable.”.

14. paragraph (1) of section 6.3 of the Regulation is amended:

(1) in the French text of subparagraphs (1) and (2), by replacing “page frontispice” with “page de titre”;

(2) in subparagraph (3):

(a) in the introductory sentence, by adding “required by Part 5 of Regulation 41-101 respecting General Prospectus Requirements and other securities legislation, in the issuer certificate form or underwriter certificate form” after “The prospectus certificates”;

(b) in the English text of subparagraph (b), by replacing the word “certificates” with “certificate forms”.

15. Section 6.7 of the Regulation is replaced with the following:

“6.7 Delivery Requirement

Delivery Requirement - The shelf prospectus supplement or supplements that, together with the corresponding base shelf prospectus, contain full, true and plain disclosure of all material facts relating to the securities being distributed shall be sent by prepaid mail or delivered to a purchaser of the securities with the base shelf prospectus.

“6.8 Disclosure that may be Omitted

Disclosure that may be Omitted - A shelf prospectus supplement may omit any prospectus certificates required by Part 5 of Regulation 41-101 respecting General Prospectus Requirements or other securities legislation, if the person required to sign the certificate signed a prospectus certificate in the issuer certificate form or underwriter

certificate form prescribed by method 1 included in a base shelf prospectus or a shelf prospectus supplement qualifying the securities being distributed.”.

16. Paragraph (1) of section 7.2 of the Regulation is replaced with the following:

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

(a) named in a document that is

(i) incorporated by reference into a base shelf prospectus, and

(ii) filed after the date of filing of the base shelf prospectus; and

(b) named in the document

(i) as having prepared or certified any part of the base shelf prospectus, amendment or shelf prospectus supplement,

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

(iii) as having prepared or certified a report, valuation, statement or opinion referred to in the base shelf prospectus, amendment, or shelf prospectus supplement, directly or in a document incorporated by reference,

the issuer shall file the written consent of the person to being named and to the use of that report, valuation, statement or opinion in accordance with subsection (2).”.

17. Section 9.1 of the Regulation is amended, in paragraph (1), by replacing the word “percent” with the symbol “%” and, in paragraphs (2) and (3), by deleting the words “or company”.

18. Section 9.2 of the Regulation is replaced with the following:

“(2) For the purposes of subsection (1), in calculating the total number of equity securities of a class outstanding, an issuer shall exclude those equity securities of the class that are beneficially owned, or controlled or directed, directly or indirectly, by persons that, alone or together with their respective affiliates and associated parties, beneficially own, or control or direct, directly or indirectly, more than 10% of the outstanding equity securities of the issuer.

“(3) Despite subsection (2), if a portfolio manager of a pension fund or investment fund, alone or together with its affiliates and associated parties, exercises control or direction, directly or indirectly, in the aggregate over more than 10% of the outstanding equity securities of an issuer, and the fund beneficially owns, or controls or directs, directly or indirectly, 10% or less of the issued and outstanding equity securities of the issuer, the securities that the fund beneficially owns, or controls or directs, directly or indirectly, are not excluded unless the portfolio manager is an affiliate of the issuer.”.

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

“(2.1) Except in Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of Regulation 14-101 respecting 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.”.

20. Paragraph (2) of section 11.2 is replaced with 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 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 the base shelf prospectus or an amendment to a base shelf prospectus and received a written acknowledgement from the regulator that the exemption may be evidenced 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 that sought the exemption, that the exemption sought may not be evidenced in the manner set out in subsection (1).”.

21. Appendix A to the Regulation is amended:

(1) in the English text of the title and subtitle, by adding the words “**FORM OF**” before “**SHELF PROSPECTUS CERTIFICATES**” and before “**CERTIFICATES**”;

(2) 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, an issuer certificate form in the preliminary base shelf prospectus and the base shelf prospectus must state:

“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 1.2 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, an underwriter certificate form in the preliminary base shelf prospectus and the base shelf prospectus must state:

“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].”;

(4) by repealing section 1.3;

(5) by replacing section 1.4 with the following:

“1.4 Amendments

(1) For an amendment to a base shelf prospectus in respect of a base shelf prospectus that included the issuer certificate form and underwriter certificate form in sections 1.1 and 1.2, and if the amendment does not restate the prospectus, change “this short form prospectus” to “the short form prospectus dated [insert date] as amended by this amendment” wherever it appears in the statements in sections 1.1 and 1.2.

(2) For an amended and restated base shelf prospectus in respect of a base shelf prospectus that included the issuer certificate form and underwriter certificate form in sections 1.1 and 1.2, change “this short form prospectus” and replace it with “this amended and restated short form prospectus” wherever it appears in the statements in sections 1.1 and 1.2.”;

(6) 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, an issuer certificate form in a shelf prospectus supplement that establishes an MTN program or other continuous distribution must state:

“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.]”;

(7) 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, an underwriter certificate form in a shelf prospectus supplement that establishes an MTN program or other continuous distribution must state:

“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].”;

(8) by repealing section 2.3;

(9) by replacing section 2.4 with the following:

“2.4 Amendments

(1) For an amendment to a shelf prospectus supplement in respect of a shelf prospectus supplement that included the issuer certificate form and underwriter certificate form in sections 2.1 and 2.2, and if the amendment does not restate the prospectus, add “, as it amends the shelf prospectus supplement dated [insert date]” after “the foregoing,” wherever it appears in the statements in sections 2.1 and 2.2.

(2) For an amended and restated shelf prospectus supplement in respect of a shelf prospectus supplement that included the issuer certificate form and underwriter certificate form in sections 2.1 and 2.2, include the issuer certificate form and the underwriter certificate form in sections 2.1 and 2.2.”.

22. Appendix B to the Regulation is amended:

(1) in the English text of the title and subtitle, by adding the words “**FORM OF**” before “**SHELF PROSPECTUS CERTIFICATES**” and before “**PROSPECTUS CERTIFICATES**”;

(2) by replacing section 1.1 with the following:

“**1.1 Issuer Certificate Form** - If method 2 is elected by an issuer, an issuer certificate form in the preliminary base shelf prospectus and the base shelf prospectus must state:

“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 1.2 with the following:

“**1.2 Underwriter Certificate Form** - If method 2 is elected by an underwriter, an underwriter certificate form in the preliminary base shelf prospectus and the base shelf prospectus must state:

“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].””;

(4) by repealing section 1.3;

(5) by replacing section 1.4 with the following:

“**1.4 Amendments**

(1) For an amendment to a base shelf prospectus in respect of a base shelf prospectus that included the issuer certificate form and underwriter certificate form in sections 1.1 and 1.2, and if the amendment does not restate the prospectus, change “this short form prospectus” to “the short form prospectus dated [insert date] as amended by this amendment” wherever it appears in the statements in sections 1.1 and 1.2.

(2) For an amended and restated base shelf prospectus in respect of a base shelf prospectus that included the issuer certificate form and underwriter certificate form in sections 1.1 and 1.2, change “this short form prospectus” to “this amended and restated short form prospectus” wherever it appears in the statements in sections 1.1 and 1.2.”;

(6) by replacing section 2.1 with the following:

“**2.1 Issuer Certificate Form** - If method 2 is elected by an issuer, an issuer certificate form in a shelf prospectus supplement must state:

“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 2.2 with the following:

“**2.2 Underwriter Certificate Form** - If method 2 is elected by an underwriter, an underwriter certificate form in a shelf prospectus supplement must state:

“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].””;

- (8) by repealing section 2.3;
- (9) by replacing section 2.4 with the following:

“2.4 Amendments

(1) For an amendment to a shelf prospectus supplement in respect of a shelf prospectus supplement that included the issuer certificate form and underwriter certificate form in sections 2.1 and 2.2, and if the amendment does not restate the prospectus, add “, as it amends the shelf prospectus supplement dated [insert date]” after “the foregoing,” wherever it appears in the statements in sections 2.1 and 2.2.

(2) For an amended and restated shelf prospectus supplement in respect of a shelf prospectus supplement that included the issuer certificate form and underwriter certificate form in sections 2.1 and 2.2, include the issuer certificate form and the underwriter certificate form in sections 2.1 and 2.2.”.

23. The Regulation is amended by replacing, wherever they appear in the English text, the words “security holder” with “securityholder”.

24. This Regulation comes into force on March 17, 2008.