

**Autorité des marchés financiers and New Brunswick Securities Commission Staff
Notice on Proposed Changes to:**

Regulation 45-106 respecting Prospectus and Registration Exemptions

Policy Statement to Regulation 45-106 respecting Prospectus and Registration Exemptions

Introduction

The Autorité des marchés financiers (AMF) and the New Brunswick Securities Commission (NBSC) are publishing for a 90-day comment period a notice that sets out the proposed substantive changes reflected in proposed amendments published by the Canadian Securities Administrators (CSA), except the AMF and the NBSC. The other CSA jurisdictions are publishing these proposed amendments today for a 90-day comment period. They are related to the following regulation and policy:

- *Regulation 45-106 respecting Prospectus and Registration Exemptions* (Regulation 45-106);
- *Policy Statement to Regulation 45-106 respecting Prospectus and Registration Exemptions* (Policy Statement 45-106).

The proposed amendments relate primarily to the upcoming changeover to IFRS in Canada and need to be in place before January 1, 2011.

The AMF and the NBSC support the proposed amendments. However, because of the legal obligation to publish amending regulations simultaneously in French and English in Québec and New Brunswick, and because the French IFRS terminology is still in a state of flux, publication for comment of amending regulations in these provinces is presently not feasible. It is expected that the AMF and the NBSC will publish for comment corresponding amending regulations, in French and in English, during the first quarter of 2010. Market participants in Québec and New Brunswick are encouraged to comment on the proposed substantive changes presented in this notice, and on the amendments published by the other CSA jurisdictions, that have been posted on the websites of certain securities regulatory authorities.

This notice uses the term “proposed amendments” to refer both to the proposed amendments to Regulation 45-106, the OM Forms and Policy Statement 45-106 collectively, as they are being published for comment today in the other CSA jurisdictions, and to the proposed corresponding amending regulations, as they are expected to be published for comment during the first quarter of 2010 in Québec and New Brunswick.

Background

Regulation 45-106 provides certain exemptions from the prospectus and registration requirements of Canadian securities legislation. Regulation 45-106 and the OM Forms refer to and rely on references to Canadian generally accepted accounting principles (GAAP), which are established by the Canadian Accounting Standards Board (AcSB) and published in the CICA (Canadian Institute of Chartered Accountants) Handbook. Following a period of public consultation, the AcSB adopted a strategic plan to move financial reporting for Canadian publicly accountable enterprises to IFRS as issued by the International Accounting Standards Board (IASB). For financial years beginning on or after January 1, 2011, Canadian GAAP for publicly accountable enterprises will be IFRS incorporated into the CICA Handbook.

Substance and Purpose of the Proposed Amendments

The purpose of these changes is to accommodate the transition to IFRS. We are proposing to update the accounting terms and references in Regulation 45-106, the OM Forms and Policy Statement 45-106 to reflect the fact that, for financial years beginning on or after January 1, 2011, Canadian GAAP for publicly accountable enterprises will be IFRS incorporated into the CICA Handbook.

Summary of the Proposed Amendments

The proposed amendments are a result of amendments to *Regulation 52-107 respecting Acceptable Accounting Principles, Auditing Standards and Reporting Currency* (to be renamed *Acceptable Accounting Principles and Auditing Standards*) (Regulation 52-107) proposed to require domestic issuers to comply with IFRS. Regulation 52-107 sets out the accounting principles and auditing standards that apply to financial statements filed in a jurisdiction. We have also proposed amendments similar to those being proposed to *Regulation 51-102 respecting Continuous Disclosure Obligations* (Regulation 51-102) and *Regulation 41-101 respecting General Prospectus Requirements* (Regulation 41-101) to maintain the harmony between the general prospectus requirements, the prospectus and registration exemptions and the continuous disclosure and short form prospectus disclosure regimes. We refer you to our notice and request for comment on the proposed amendments to Regulation 51-102 and the notice and request for comment on the proposed amendments to Regulation 41-101. Where appropriate, we have also included a number of amendments that result from changes to other CSA rules because of the changeover to IFRS.

As we discuss below, the proposed amendments primarily relate to changes to accounting terms used in the OM Forms. In addition to the changes that we propose to the OM Forms, we propose to add a definition of “financial statements” to Regulation 45-106 to clarify that financial statements include interim financial reports.

The proposed amendments we are publishing for comment will:

- Replace Canadian GAAP terms and phrases with IFRS terms and phrases.
- Change disclosure requirements in instances where IFRS contemplates different financial statements than existing Canadian GAAP.
- Provide a 30 day extension to the deadline for reporting issuers to include in an offering memorandum the first interim financial report in the year of adopting IFRS in respect of an interim period beginning on or after January 1, 2011.
- Clarify an existing provision or amend or delete it where part or all of the provision is no longer accurate or appropriate.

Accounting Terms and Phrases

The proposed amendments include new terms and phrases that are consistent with those used in IFRS and replace terms and phrases used in existing Canadian GAAP.

The proposed amendments do not reflect the impact of exposure drafts or discussion papers from the IASB prior to their adoption into IFRS. The proposed definition of IFRS in *Regulation 14-101 respecting Definitions* (Regulation 14-101) would take into account amendments made from time to time.

The proposed amendments are not intended to substantively alter securities law requirements. For example, we are proposing to replace the existing Canadian GAAP term “results of operations” with the corresponding IFRS term “financial performance”. This is intended to be a change in terminology only.

The proposed amendments also incorporate a number of new or revised definitions from Regulation 51-102. For example, we have incorporated a definition of “forward-looking information”. Currently, definitions of “forward-looking information” are found in the securities acts of the various provinces and territories. As all of the acts may not be amended prior to January 1, 2011 to reflect the changeover to IFRS, we have defined forward-looking information in a manner consistent with IFRS.

Changes to Financial Statement Requirements in Form 45-106F2

1. Reconciliations and transition opening statement of financial position required by IFRS 1 – First-time adoption of International Financial Reporting Standards

IFRS 1 requires the preparation of an opening IFRS statement of financial position at the date of transition to IFRS along with various reconciliations relating to the date of transition. We are requiring the opening IFRS statement of financial position to be presented in an issuer’s first IFRS interim financial report and first IFRS financial statements. We believe this disclosure is necessary to explain how the transition from previous GAAP to IFRS has affected an issuer’s reported financial position, financial performance and cash flows.

This disclosure may not be included in interim financial reports for the second and third quarters. However, an issuer may file an offering memorandum at a time when the second or third quarter interim financial report is required to be included in the offering memorandum. To obtain consistent disclosure in all offering memoranda in the year of adopting IFRS, we have added a disclosure requirement to include these reconciliations and the date of transition opening statement of financial position in an issuer’s offering memorandum.

2. Opening Statement of Financial Position

When an issuer applies an accounting policy retrospectively, makes a retrospective restatement of items in its financial statements or reclassifies items in its financial statements, IAS 1 *Presentation of Financial Statement* requires the disclosure of a statement of financial position as at the beginning of the earliest comparative period. Form 45-106F2 will require the disclosure of this opening statement of financial position in both annual financial statements and interim financial reports.

3. Presentation of Statement of Cash Flows

We have proposed amendments to reflect the financial statement presentation requirements in IFRS. Current Form 45-106F2 (and Canadian GAAP) requires issuers to present in their interim financial statements a cash flow statement for the three month period ending on the last day of the interim period and the corresponding comparative interim period and, for periods other than the first interim period, the year to date period. As IFRS requires only a statement of cash flows for the year to date period and the corresponding comparative period, we have proposed amendments to reflect this.

4. Presentation of Statement of Comprehensive Income

We added disclosure requirements in Form 45-106F2 for the statement of comprehensive income based on the presentation options available under IFRS. If a reporting issuer presents the components of profit or loss in a separate income statement, the separate income statement must be displayed immediately before the statement of comprehensive income.

Transition Provisions - Extension for Inclusion of First IFRS Interim Financial Report in Form 45-106F2

Part B, section 16 of *Form 45-106F2 Offering Memorandum for Non-Qualifying Issuers* includes transition provisions that provide reporting issuers with a 30 day extension

for including in the offering memorandum the first IFRS interim financial report filed with an offering memorandum dated before June 29, 2012. We believe this extension should be provided, as the first IFRS interim financial report will be due not long after the filing of the Canadian GAAP annual financial statements. We recognize that boards of directors, audit committees, and in some cases auditors, will require additional time to review and approve the first set of IFRS financial statements. Other jurisdictions that transitioned to IFRS also granted filing extensions for the first IFRS filing, even though they only require issuers to file on a half-yearly basis.

We have not provided reporting issuers with an extension to the deadline for including in an offering memorandum subsequent IFRS interim financial reports or the first annual financial statements prepared in accordance with IFRS as we believe the deadlines applicable to these financial statements are reasonable and appropriate after the initial changeover to IFRS.

The CSA regulators will generally not grant exemptive relief to an issuer to extend a deadline for including financial information in an offering memorandum. While we recognize that some issuers filing their offering memoranda may face difficulties in complying with the financial statement disclosure requirements as a result of the changeover to IFRS, we do not believe it is appropriate to grant exemptive relief to an issuer to allow it to proceed with an offering memorandum that does not include current financial information.

Amendments from Regulation 52-107

Proposed changes to other CSA rules, including Regulation 52-107 and Regulation 14-101, were published for comment on September 25, 2009.

In addition, Regulation 52-107 proposes, except in Ontario, that acquisition statements in respect of probable and completed acquisitions be permitted to be prepared in accordance with Canadian GAAP applicable to private enterprises in certain circumstances. Changes are being made to Part 8 of Regulation 51-102 and Policy Statement 51-102 to address this proposal. As a result, this option would be available to an offering memorandum filer in respect of financial statements included in the issuer's offering memorandum for probable and completed acquisitions. These proposed changes will apply to offering memoranda which include acquisition statements for any period relating to a financial year that begins on or after January 1, 2011.

Even though the proposed amendments replace existing Canadian GAAP terms and phrases with IFRS terms and phrases, the proposed amendments include references to "Canadian GAAP". This is because Regulation 14-101 will continue to define "Canadian GAAP" to mean generally accepted accounting principles determined with reference to the CICA Handbook. Once the AcSB incorporates IFRS into the Handbook, the Handbook will contain two versions of Canadian GAAP for publicly accountable enterprises:

- IFRS for financial years beginning on or after January 1, 2011 (the mandatory effective date) (proposed Part 1 of the Handbook), and
- the standards constituting Canadian GAAP before the mandatory effective date (proposed Part IV of the Handbook).

Certain offering memorandum filings require the presentation of both annual and interim financial information. During the IFRS transition period, we recognize that offering memoranda may contain financial information in respect of an issuer prepared using both existing Canadian GAAP and IFRS. For example, an offering memorandum filed in 2011 may include annual financial statements prepared in accordance with Canadian GAAP and an interim financial report that complies with IFRS.

Additional Amendments

The CSA's mandate in bringing forth the proposed amendments is to revise Regulation 45-106, the OM Forms and Policy Statement 45-106 to accommodate the adoption of IFRS. Where appropriate, we have also proposed certain grammatical changes to Regulation 45-106.

Transition

After the IFRS changeover date on January 1, 2011, non calendar year-end issuers will continue to prepare financial statements in accordance with existing Canadian GAAP until the start of their new financial year. To accommodate for this, we are proposing to include transition provisions that provide that the proposed amendments only apply to an offering memorandum 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. Thus, during the transition period,

- issuers only including or incorporating by reference financial statements that are prepared in accordance with existing Canadian GAAP will be required to comply with the versions of Regulation 45-106 and the OM Forms that contain existing Canadian GAAP terms and phrases.
- issuers including or incorporating by reference financial statements that comply with IFRS will be required to comply with the versions of Regulation 45-106 and the OM Forms that contain IFRS terms and phrases.

After the transition period all issuers will be required to comply with the versions Regulation 45-106 and the OM Forms that contain IFRS terms and phrases.

To further assist issuers and their advisors and to increase transparency, during the transition period certain jurisdictions will post two different unofficial consolidations of Regulation 45-106, the OM Forms and Policy Statement 45-106 on their websites:

- The existing versions of Regulation 45-106, the OM Forms and Policy Statement 45-106 that contain existing Canadian GAAP terms and phrases, which apply to an offering memorandum of an issuer which includes or incorporates by reference financial statements of the issuer in respect of periods relating to financial years beginning before January 1, 2011.
- The new versions of Regulation 45-106, the OM Forms and Policy Statement 45-106 that contain IFRS terms and phrases, which apply to an offering memorandum 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.

New Brunswick Blanket Order

Notwithstanding that the proposed amendments to Regulation 52-107 require domestic issuers to prepare financial statements in accordance with Canadian GAAP applicable to publicly accountable enterprises, the New Brunswick Securities Commission proposes to shortly publish for comment, a blanket order which would exempt certain New Brunswick based issuers from this requirement. New Brunswick based, non-qualifying, issuers would have the option of using Canadian GAAP applicable to private enterprises in their financial statements when using the offering memorandum exemption to sell securities to New Brunswick residents,

Comments

We request your comments on the proposed changes outlined above. Please provide your comments in writing by January 14, 2010. If you are not sending your comments by

email, an electronic file containing the submissions should also be provided (Windows format, Word).

Deliver your comments only to the following address. Your comments will be distributed to the other participating CSA member jurisdictions.

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Please note that comments received will be made publicly available and posted at www.osc.gov.on.ca and the websites of certain other securities regulatory authorities. We cannot keep submissions confidential because securities legislation in certain provinces requires that a summary of the written comments received during the comment period be published.

Questions

Please refer your questions to any of:

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