

## REGULATION TO AMEND REGULATION 45-106 RESPECTING PROSPECTUS AND REGISTRATION EXEMPTIONS

### Securities Act

(R.S.Q., c. V-1.1, s. 331.1, par. (1), (3), (11), (19) and (34))

1. Section 1.1 of Regulation 45-106 respecting Prospectus and Registration Exemptions is amended by adding the following after the definition of “financial assets”:

““financial statements” includes interim financial reports;”.

2. Subparagraph (C) of subparagraph (i) of paragraph (e) of section 5.2 of the Regulation is amended by replacing the word “statements” with the word “reports”.

3. Paragraph (1) of section 6.2 of the Regulation is amended by replacing the words “section 6.1(a)” with the words “section 6.1(1)(a)”.

4. Paragraph (1) of section 6.5 of the Regulation is amended by replacing the words “subsection 2.9(12) or subsection 3.9(12)” with the words “subsection 2.9(15)”.

5. Form 45-106F2 of the Regulation is amended:

(1) in the French text of section 1.1, by replacing the word “vérificateurs” with the word “auditeurs”;

(2) in section 4.2:

(a) in the title, by replacing the word “**Debt**” with the word “**Debt Securities**”;

(b) in the second sentence, by replacing the words “the current portion of the long-term debt” with the words “the portion of the debt”;

(3) in paragraph (b) of item 8, by replacing the word “sales” with the word “revenue”;

(4) in the part entitled “Instructions for Completing Form 45-106F2 Offering Memorandum for Non-Qualifying Issuers”:

(a) by replacing instruction B.1 with the following:

“1. All financial statements, operating statements for an oil and gas property that is an acquired business or a business to be acquired and summarized financial information as to the aggregated amounts of assets, liabilities, revenues and profit or loss of a business relating to an acquisition that is, or will be, an investment accounted for by the issuer using the equity method included in the offering memorandum must comply with Regulation 52-107 respecting Acceptable Accounting Principles and Auditing Standards approved by Ministerial Order (*indicate the number and date of the Ministerial Order approving the Regulation*) (Regulation 52-107), regardless of whether the issuer is a reporting issuer or not. Under Regulation 52-107, financial statements are required to be prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises. Regulation 52-107 does provide exemptions from this general requirement for foreign issuers or SEC issuers (as defined in Regulation 52-107). An issuer using this form cannot use Canadian GAAP applicable to private enterprises, except for financial statements for a business referred to in C.1.”;

(b) by replacing instructions B.3 to B.5 with the following:

“3. If the issuer has not completed one financial year or its first financial year end is less than 120 days from the date of the offering memorandum, include in the offering memorandum financial statements of the issuer consisting of:

(a) a statement of comprehensive income, a statement of changes in equity and a statement of cash flows for the period from inception to a date not more than 90 days before the date of the offering memorandum,

(b) a statement of financial position as at the end of the period referred to in paragraph (a), and

(c) notes to the financial statements.

4. If the issuer has completed one or more financial years, include in the offering memorandum annual financial statements of the issuer consisting of:

(a) a statement of comprehensive income, a statement of changes in equity and a statement of cash flows for

(i) the most recently completed financial year that ended more than 120 days before the date of the offering memorandum, and

(ii) the financial year immediately preceding the financial year in clause (i), if any,

(b) a statement of financial position as at the end of each of the periods referred to in paragraph (a),

(c) a statement of financial position as at the beginning of the earliest comparative period for which financial statements that are included in the offering memorandum comply with IFRS in the case of an issuer that

(i) discloses in its annual financial statements an explicit and unreserved statement of compliance with IFRS, and

(ii) does any of the following

(A) applies an accounting policy retrospectively in its annual financial statements,

(B) makes a retrospective restatement of items in its annual financial statements, or

(C) reclassifies items in its annual financial statements,

(d) in the case of an issuer's first IFRS financial statements (as defined in Regulation 51-102), the opening IFRS statement of financial position at the date of transition to IFRS (as defined in Regulation 51-102), and

(e) notes to the financial statements.

4.1 If an 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 filed under Item 4 above.

5. If the issuer has completed one or more financial years, include in the offering memorandum an interim financial report of the issuer comprised of:

(a) a statement of comprehensive income, a statement of changes in equity and a statement of cash flows for the most recently completed interim period that ended

offering memorandum, and (i) more than 60 days before the date of the

statements required under B.4(a)(i), (ii) after the year-end date of the financial

(b) a statement of comprehensive income, a statement of changes in equity and a statement of cash flows for the corresponding period in the immediately preceding financial year, if any,

(c) a statement of financial position as at the end of the period required by paragraph (a) and the end of the immediately preceding financial year, and

(d) a statement of financial position as at the beginning of the earliest comparative period for which financial statements that are included in the offering memorandum comply with IFRS in the case of an issuer that

(i) discloses in its interim financial report compliance with International Accounting Standard 34 *Interim Financial Reporting*, and

(ii) does any of the following (A) applies an accounting policy retrospectively in its interim financial report,

(B) makes a retrospective restatement of items in its interim financial report, or

(C) reclassifies items in its interim financial report,

(e) in the case of the first interim financial report in the year of adopting IFRS, the opening IFRS statement of financial position at the date of transition to IFRS, and

(f) for an issuer that is not a reporting issuer in at least one jurisdiction immediately before filing the offering memorandum, if the issuer is including an interim financial report of the issuer for the second or third interim period in the year of adopting IFRS include:

(i) the issuer's first interim financial report in the year of adopting IFRS, or

(ii) both

(A) the opening IFRS statement of financial position at the date of transition to IFRS, and

(B) the annual and date of transition to IFRS reconciliations required by IFRS 1 *First-time Adoption of International Financial Reporting Standards* to explain how the transition from previous GAAP to IFRS affected the issuer's reported financial position, financial performance and cash flows, and

(g) notes to the financial statements.

5.1 If an 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 filed under item 5 above.”;

(c) in instruction B.8, by adding the following sentence at the end:

“An issuer cannot rely on this exemption if the issuer previously prepared financial statements in accordance with a prior GAAP.”;

(d) in the French text of instruction B.9, by replacing the words “vérifiés”, “de vérifier” and “de vérification” with, respectively, the words “audités”, “d’auditer” and “d’audit”;

(e) in the French text of instruction B.10, by replacing the word “vérificateurs” with the word “auditeurs”;

(f) in the French text of instruction B.11, by replacing the word “vérifiés” with the word “audités”;

(g) in the French text of instruction B.12, by replacing the words “vérifiés” and “de vérification” with, respectively, the words “audités” et “d’audit”;

(h) in instruction B.13, by replacing the word “statements” with the word “reports”;

(i) in instruction B.14, by adding the words “, as defined in Regulation 51-102,” after the words “Forward looking information”;

(j) by adding the following after instruction B.15:

“16. Despite instruction B.5, an issuer may include a comparative interim financial report of the issuer for the most recent interim period, if any, ended:

(a) subsequent to the most recent financial year in respect of which annual financial statements of the issuer are included in the offering memorandum, and

(b) more than 90 days before the date of the offering memorandum.

This section does not apply unless:

(a) the comparative interim financial report is the first interim financial report required to be filed in the year of adopting IFRS,

(b) the issuer is a reporting issuer in any jurisdiction immediately before the date of the offering memorandum, and

(c) the offering memorandum is dated before June 29, 2012.”;

(k) in the French text of instruction C.1, by replacing the word “vérifiés” with the word “audités”;

(l) in instruction C.2:

(i) in paragraph (a), by replacing the words “date of acquisition” with the words “acquisition date”;

(ii) in paragraph (b), by replacing the words “date of acquisition” with the words “acquisition date” and by adding the following at the end:

“For information about how to perform the investment test identified in this section 2(b), please refer to subsections 8.3(4.1) and (4.2) of Regulation 51-102 and subsections 8.2(3.1) and (4) of the Policy Statement to Regulation 51-102.”;

(m) by replacing, in instruction C.2.1, the words “date of acquisition” with the words “acquisition date”;

(n) by replacing instruction C.4 with the following:

“4. If under C.2 you must include in an offering memorandum financial statements for a business, the financial statements must include:

(a) If the business has not completed one financial year or its first financial year end is less than 120 days from the date of the offering memorandum

(i) a statement of comprehensive income, a statement of changes in equity and a statement of cash flows

(A) for the period from inception to a date not more than 90 days before the date of the offering memorandum, or

(B) if the acquisition date precedes the ending date of the period referred to in (A), for the period from inception to the acquisition date or a date not more than 45 days before the acquisition date,

(ii) a statement of financial position dated as at the end of the period referred to in clause (i), and

(iii) notes to the financial statements.

(b) If the business has completed one or more financial years include

(i) annual financial statements comprised of:

(A) a statement of comprehensive income, a statement of changes in equity and a statement of cash flows for the following annual periods:

i. the most recently completed financial year that ended before the acquisition date and more than 120 days before the date of the offering memorandum, and

ii. the financial year immediately preceding the most recently completed financial year specified in clause i, if any,

(B) a statement of financial position as at the end of each of the periods specified in (A),

(C) notes to the financial statements, and

(ii) an interim financial report comprised of:

(A) the following financial information:

(i) a statement of comprehensive income, a statement of changes in equity and a statement of cash flows for the most

recently completed year-to-date interim period ending on the last date of the interim period that ended before the acquisition date and more than 60 days before the date of the offering memorandum and ended after the date of the financial statements required under C.4(b)(i)(A)i, and a statement of comprehensive income and a statement of changes in equity for the three month period ending on the last date of the interim period that ended before the acquisition date and more than 60 days before the date of the offering memorandum and ended after the date of the financial statements required under C.4(b)(i)(A)i, or

(ii) a statement of comprehensive income, a statement of changes in equity and a statement of cash flows for the period from the first day after the financial year referred to in C.4(b)(i) to a date before the acquisition date and after the period end in C.4(b)(ii)(A)i, and

(B) a statement of comprehensive income, a statement of changes in equity and a statement of cash flows for the corresponding period in the immediately preceding financial year, if any,

(C) a statement of financial position as at the end of the period required by subparagraph (A) and the end of the immediately preceding financial year, and

(D) notes to the financial statements.

Refer to Instruction B.7 for the meaning of “interim period”.”;

(o) in the French text of instruction C.5, by replacing the words “vérifiée”, “de vérification”, “de vérifier” and “vérifiés” with, respectively, the words “auditée”, “d’audit”, “d’auditer” and “audités”;

(p) in instruction C.6, by replacing the words “date of acquisition” with the words “acquisition date”;

(q) in instruction C.8, by deleting the words “accounted for as” and “, as that term is defined in the CICA Handbook,”;

(r) by replacing instructions D.2 and D.3 with the following:

« 2. Notwithstanding the requirements in section 3.3(1)(a)(i) of Regulation 52-107, an auditor’s report that accompanies financial statements of an issuer or a business contained in an offering memorandum of a non-reporting issuer may contain a qualification of opinion relating to inventory if

(a) the issuer includes in the offering memorandum a statement of financial position that is for a date that is subsequent to the date to which the qualification relates, and

(b) the statement of financial position referred to in paragraph (a) is accompanied by an auditor’s report that does not contain a qualification of opinion relating to closing inventory, and

(c) the issuer has not previously filed financial statements for the same entity accompanied by an auditor’s report for a prior year that contained a qualification of opinion relating to inventory.

3. If an issuer has, or will account for a business referred to in C.1 using the equity method, then financial statements for a business required by Part C are not required to be included if:

(a) the offering memorandum includes disclosure for the periods for which financial statements are otherwise required under Part C that:

(i) summarizes information as to the aggregated amounts of assets, liabilities, revenue and profit or loss of the business, and

(ii) describes the issuer's proportionate interest in the business and any contingent issuance of securities by the business that might significantly affect the issuer's share of profit or loss;

(b) the financial information provided under D.3(a) for the most recently completed financial year has been audited, or has been derived from audited financial statements of the business; and

(c) the offering memorandum discloses that:

(i) the financial information provided under D.3(a) for any completed financial year has been audited, or identifies the audited financial statements from which the financial information provided under D.3(a) has been derived; and

(ii) the audit opinion with respect to the financial information or financial statements referred to in D.3(c)(i) was issued without a reservation of opinion.”;

(s) in instruction D.4:

(i) in paragraph (b), by replacing the words “accounted for as a “reverse take-over”” with the words “reverse take-over”, and by adding “and” after “Regulation 51-102.”;

(ii) by deleting paragraph (c);

(iii) in subparagraph (i) of paragraph (d):

(A) by replacing, in the French text of the introductory sentence, the words “l'état des résultats d'exploitation” with the words “le compte de résultat opérationnel”;

(B) in subparagraph (D), by inserting the words “, as defined in Regulation 51-102” after the words “operating income”;

(C) by replacing, in the French text of the sentence following subparagraph (D), the words “l'état des résultats” with the words “le compte du résultat opérationnel”, and the word “vérifié” with the word “audité”;

(t) in instruction D.5:

(i) by replacing, in the introductory sentence, the words “date acquisition” with the words “acquisition date”;

(ii) by replacing the French text of subparagraphs (i) to (iii) with the following:

“i) malgré des efforts raisonnables pendant les négociations relatives à l'acquisition, l'émetteur n'a pu faire inclure dans la convention d'achat les droits d'obtention d'un compte de résultat opérationnel audité du terrain;

*ii)* la convention d'achat contient des déclarations et garanties du vendeur selon lesquelles les montants présentés dans le compte de résultat opérationnel correspondent à l'information consignée dans ses documents comptables;

*iii)* la notice d'offre indique :

1. que l'émetteur n'a pas pu obtenir de compte de résultat opérationnel audité;
2. les motifs de cette incapacité;
3. que la convention d'achat contient les déclarations et garanties visées au paragraphe *ii*;
4. que les résultats présentés dans le compte de résultat opérationnel auraient pu différer de façon importante si ce compte avait été audité.”.

**6.** Form 45-106F3 of the Regulation is amended:

(1) by replacing, in the French text of section 1.1, the word “vérificateurs” with the word “auditeurs”;

(2) in paragraph (b) of item 8, by replacing the word “sales” with the word “revenue”;

(3) in the part entitled “Instructions for Completing Form 45-106F3 Offering Memorandum for Qualifying Issuers”:

(a) in instruction B.1, by replacing the words “Regulation 52-107 respecting Acceptable Accounting Principles, Auditing Standards and Reporting Currency” with the words “Regulation 52-107 respecting Acceptable Accounting Principles and Auditing Standards”;

(b) in the French text of instruction C.1, by replacing the word “vérifiés” with the word “audités”;

(c) in instruction C.2, by replacing the word “statements” with the word “reports”;

(d) in instruction D.1:

(i) in paragraph (c), by replacing the word “statements” with the word “report” and the words “interim financial statements that are” with the words “an interim financial report that is”;

(ii) in the French text of paragraph (d), by replacing the words “de vérification” with the words “d’audit”;

(iii) in the French text of paragraph (g), by replacing the word “vérifiés” with the word “audités”.

**7.** Sections 5 and 6 of this Regulation 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.

**8.** This Regulation comes into force on January 1, 2011.