

## Notice of publication

### *Regulation to amend Regulation 45-106 respecting Prospectus and Registration Exemptions*

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

#### Introduction

We, the Canadian Securities Administrators (CSA or we), are implementing amendments to:

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

This notice forms part of a series of notices that address changes to securities legislation arising from the upcoming changeover to International Financial Reporting Standards (IFRS).

#### Background

Regulation 45-106 provides certain exemptions from the prospectus requirements of Canadian securities legislation. Regulation 45-106 refers to and relies on references to Canadian generally accepted accounting principles (Canadian GAAP), which are established by the Canadian Accounting Standards Board (AcSB). In February 2006, the AcSB published a strategic plan to transition, over a period of five years, Canadian GAAP for public enterprises to IFRS, as adopted by the International Accounting Standards Board (IASB). In March 2008, the timing of the transition was confirmed. IFRS will apply to most Canadian publicly accountable enterprises for financial years beginning on or after January 1, 2011.

The AcSB has incorporated IFRS into the Handbook of the Canadian Institute of Chartered Accountants (the Handbook) as Canadian GAAP for most publicly accountable enterprises. As a result, the Handbook contains two sets of standards for public companies:

- Part I of the Handbook – Canadian GAAP for publicly accountable enterprises that applies for financial years beginning on or after January 1, 2011, and
- Part V of the Handbook - Canadian GAAP for public enterprises that is the pre-changeover accounting standards (current Canadian GAAP).

Regulation 45-106 also refers to and relies on references to current Canadian generally accepted auditing standards (Canadian GAAS), which are established by the Canadian Auditing and Assurance Standards Board (AASB). The AASB published their strategic plan to adopt International Standards on Auditing as Canadian Auditing Standards in February 2007. These standards will continue to be known as Canadian GAAS in the Handbook. Canadian Auditing Standards are effective for audits of financial statements for periods ending on or after December 14, 2010.

Consistent with these changes, the CSA is repealing and replacing *Regulation 52-107 respecting Acceptable Accounting Principles, Auditing Standards and Reporting Currency* (to be renamed *Acceptable Accounting Principles and Auditing Standards*) (Regulation 52-107). The new version of Regulation 52-107 will require domestic issuers to comply with IFRS for financial years beginning on or after January 1, 2011 and will set out the accounting principles and auditing standards that apply to financial

statements filed in a jurisdiction. The implementation of the new version of Regulation 52-107 is described in a separate notice (Regulation 52-107 Notice).

The amendments do not reflect the impact of exposure drafts or discussion papers from the IASB prior to their adoption into IFRS. The CSA is implementing amendments to *Regulation 14-101 respecting Definitions* to include a definition of IFRS that incorporates amendments made to IFRS from time to time.

#### **Substance and Purpose of the Amendments**

The purpose of these changes is to accommodate the transition to IFRS and the new version of Regulation 52-107. A small number of housekeeping changes are also being made. The amendments:

- replace current Canadian GAAP terms and phrases with IFRS terms and phrases,
- change disclosure requirements in instances where IFRS contemplates different financial statements than current 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, and
- clarify an existing provision or, where part or all of the provision is no longer accurate or appropriate, amend or delete it.

The regulation to amend Regulation 45-106 as well as the amendments to Policy Statement 45-106 are published with this notice.

#### **Transition**

After the IFRS changeover date on January 1, 2011, non calendar year-end issuers will continue to prepare financial statements in accordance with current Canadian GAAP until the start of their new financial year. To accommodate for this, we have included transition provisions in the amendment instruments that provide that the 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 in an offering memorandum prepared in accordance with current Canadian GAAP will be required to comply with the version of Regulation 45-106 that contains current Canadian GAAP terms and phrases, and
- issuers including or incorporating by reference financial statements in an offering memorandum that comply with IFRS will be required to comply with the version of Regulation 45-106 that contains IFRS terms and phrases.

After the transition period all issuers will be required to comply with the version of Regulation 45-106 that contains 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 and Policy Statement 45-106 on their websites:

- the existing versions of Regulation 45-106 and Policy Statement 45-106 that contain current 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; and

- the new versions of Regulation 45-106 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.

#### ***52/53 week financial years***

Notwithstanding the above, the regulation to amend Regulation 45-106 now includes a transition provision which provides the amendments may be applied by an issuer to an offering memorandum or an amendment to an offering memorandum of the issuer which includes or incorporates by reference financial statements of the issuer in respect of periods relating to a financial year that begins before January 1, 2011 if the immediately preceding financial year ends no earlier than December 21, 2010 and if the issuer is relying on the exemption in section 5.3 of the new version of Regulation 52-107. That exemption in Regulation 52-107 permits issuers that have financial year ends close to, but not on December 31, 2010, the option to transition to IFRS when their new financial year begins.

#### **Written Comments**

The CSA, except the Autorité des marchés financiers and the New Brunswick Securities Commission, published the amendments to Regulation 45-106 and Policy Statement 45-106 for comment on October 16, 2009 (the October 2009 Materials). No comments were received.

The Autorité des marchés financiers and the New Brunswick Securities Commission published the amendments to Regulation 45-106 and Policy Statement 45-106 for comment on March 12, 2010. No comments were received.

#### **Summary of Changes to the October 2009 Materials**

See Appendix A for a summary of the changes made to the October 2009 Materials. The changes include terminology changes to maintain consistency with Regulation 52-107.

#### **Implementation**

In some jurisdictions, Ministerial approval is required for these changes. Provided all necessary approvals are obtained, the amendments will come into force on January 1, 2011.

#### **Questions**

Please refer your questions to any of:

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October 1, 2010

## Appendix A

### Summary of Changes to the October 2009 Materials

#### A. Changes to the October 2009 Materials

We made the following changes.

##### Regulation 45-106

Section	Term, Phrase or Matter	Explanation of Change
1.1	“acquisition date”	We moved this definition from Part C Section 2 of the F2 form to Regulation 45-106. The term has now been defined to have the same meaning as in an issuer’s GAAP.
1.1	“issuer’s GAAP”	The term has now been defined to have the same meaning as in Regulation 52-107.
1.1	“private enterprise”	The term has now been defined to have the same meaning as in Part 3 of Regulation 52-107.
1.1	“publicly accountable enterprise”	The term has now been defined to have the same meaning as in Part 3 of Regulation 52-107.
1.1	“retrospective” and “retrospectively”	Those terms have now been defined to have the same meaning as in Canadian GAAP applicable to publicly accountable enterprises.

##### Form 45-106F2

Section	Term, Phrase or Matter	Explanation of Change
Instructions B.1	Acquisition statements prepared by non-reporting issuers	Non-reporting issuers may prepare acquisition statements in accordance with the requirements of <i>Regulation 52-107 respecting Acceptable Accounting Principles and Auditing Standards</i> as if the issuer was a venture issuer as defined in Regulation 51-102. We clarified that for the purposes of Form 45-106F2, the “applicable time” in the definition of a venture issuer is the acquisition date.
Instructions B.1, D.2	“Regulation 52-107”	We now refer to the full name of the regulation in the materials.
Instructions B.4(c)(i)	“explicit and unreserved statement of compliance with IFRS”	We deleted the reference to “explicit” to conform with Regulation 52-107.
Instructions B.5(d)(i)	“unreserved statement”	We added a reference to “unreserved statement” to conform with Regulation 52-107.
Instructions B.8	Omission of comparative information	We revised the text of this section to clarify that an issuer cannot omit comparative information if it previously prepared financial statements in accordance with either its current GAAP or, if applicable, its previous GAAP.
Instructions D.3(c)(ii)	Change reference from “reservation of	We made this change to be consistent with Regulation 52-107.

Section	Term, Phrase or Matter	Explanation of Change
	opinion” to “unmodified opinion”	
Instructions D.4(d)(i)	Operating statement for an oil and gas property	We deleted the specific line items to be included in an operating statement for an oil and gas property and made reference to subsection 3.11(5) of Regulation 52-107 where the specified requirements are noted.

#### **B. Transition, Drafting and Housekeeping Changes**

We also made certain drafting and housekeeping changes to various provisions.

##### ***52/53 week financial years***

The regulation to amend Regulation 45-106 now includes a transition provision which provides the amendments may be applied by an issuer to an offering memorandum or an amendment to an offering memorandum of the issuer which includes or incorporates by reference financial statements of the issuer in respect of periods relating to a financial year that begins before January 1, 2011 if the immediately preceding financial year ends no earlier than December 21, 2010 and if the issuer is relying on the exemption in section 5.3 of the new version of Regulation 52-107. That exemption in Regulation 52-107 permits issuers that have financial year ends close to, but not on December 31, 2010, the option to transition to IFRS when their new financial year begins.