

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), (11) and (34))

1. Section 1.1 of Regulation 45-106 respecting Prospectus and Registration Exemptions is amended:

(1) by replacing the definition of the term “AIF” with the following:

““AIF” has the same meaning as in section 1.1 of Regulation 51-102 respecting Continuous Disclosure Obligations;

““alternate AIF” means either:

(a) a prospectus filed in a jurisdiction, other than a prospectus filed under a CPC instrument, if the issuer has not filed or been required to file an AIF or annual financial statements under Regulation 51-102 respecting Continuous Disclosure Obligations or an annual report under Regulation 51-103 respecting Ongoing Governance and Disclosure Requirements for Venture Issuers, as applicable;

(b) a QT circular if the issuer has not filed or been required to file annual financial statements under Regulation 51-102 respecting Continuous Disclosure Obligations or an annual report under Regulation 51-103 respecting Ongoing Governance and Disclosure Requirements for Venture Issuers, as applicable, subsequent to filing a QT circular;

““annual report” has the same meaning as in section 1 of Regulation 51-103 respecting Ongoing Governance and Disclosure Requirements for Venture Issuers;

““applicable time” has the same meaning as in section 3 of Regulation 51-103 respecting Ongoing Governance and Disclosure Requirements for Venture Issuers;”;

(2) by replacing the definition of the term “MD&A” with the following:

““material change report” means for an issuer that at the applicable time,

(a) was a reporting issuer but not a venture issuer, a completed Form 51-102F3 of Regulation 51-102 respecting Continuous Disclosure Obligations,

(b) was a venture issuer, a completed Form 51-103F2 of Regulation 51-103 respecting Ongoing Governance and Disclosure Requirements for Venture Issuers;

““MD&A” means, for an issuer that at the applicable time,

(a) was a reporting issuer but not a venture issuer, has the same meaning as in Regulation 51-102 respecting Continuous Disclosure Obligations,

(b) was a venture issuer, means the management’s discussion and analysis in a completed Form 51-103F1 of Regulation 51-103 respecting Ongoing Governance and Disclosure Requirements for Venture Issuers for an annual report or mid-year report, as applicable;

““mid-year period” has the same meaning as in Regulation 51-103 respecting Ongoing Governance and Disclosure Requirements for Venture Issuers;

““mid-year report” has the same meaning as in Regulation 51-103 respecting Ongoing Governance and Disclosure Requirements for Venture Issuers;”;

(3) by replacing, in the definition of the term “qualifying issuer”, paragraph (c) with the following:

“(c) if not required to file an AIF, annual report or alternate AIF, has filed in the jurisdiction,

(i) one of the following,

(A) an AIF for its most recently completed financial year for which annual statements are required to be filed,

(B) an annual report for its most recently completed financial year, or

(C) an alternate AIF, and

(ii) copies of all material incorporated by reference in the AIF not previously filed;”;

(4) by inserting, after the definition of the term “TFSA”, the following, and marking the necessary changes:

““venture issuer” has the same meaning as in Regulation 51-103 respecting Ongoing Governance and Disclosure Requirements for Venture Issuers;”.

2. Sections 2.11 and 3.11 of the Regulation are amended by inserting, in subparagraph (i) of paragraph (b) and after “Regulation 51-102 respecting Continuous Disclosure Obligations”, “, Regulation 51-103 respecting Ongoing Governance and Disclosure Requirements for Venture Issuers”.

3. Section 5.2 of the Regulation is amended:

(1) by inserting, in paragraph (a) and after “AIF”, “, annual report or alternate AIF”;

(2) in subparagraph (i) of paragraph (e):

(a) by inserting, in subparagraph A) and after “AIF”, “, annual report or alternate AIF”;

(b) by inserting, in subparagraph B) and after the words “those financial statements”, “, if any”;

(c) by replacing, in subparagraph C), “AIF but before or on the date of the TSX Venture exchange offering document” with “AIF, annual report or alternate AIF but before or on the date of the TSX Venture exchange offering document, if any”;

(d) by inserting, in subparagraphs D) and E) and after “AIF”, “, annual report or alternate AIF”;

(e) by inserting, after subparagraph E), the following:

“F) a mid-year report, if any.”.

4. The Regulation is amended by inserting, after section 5.3, the following:

“5.4. Cover page

A venture issuer must include in bold face type on the cover page of the offering document the following statement:

“[Insert name of venture issuer] is a venture issuer subject to the governance and disclosure regime applicable to venture issuers under Regulation 51-103 respecting Ongoing Governance and Disclosure Requirements for Venture Issuers. Consequently, it is not required to provide certain disclosure applicable to issuers that are not venture issuers, such as three and nine month interim financial reports and associated management’s discussion and analysis. Further, although management is responsible for ensuring processes are in place to provide them with the information they need to comply with disclosure obligations on a timely basis, [insert name of venture issuer] is not required to establish and maintain disclosure controls and procedures and internal control over financial reporting. [Insert name of venture issuer] will also be subject to certain other obligations not applicable to issuers that are not venture issuers.

The disclosure provided by [insert name of venture issuer] will not necessarily be comparable in some ways to that provided by issuers that are not venture issuers.”.”.

5. Form 45-106F3 of the Regulation is amended, in the part entitled “Instructions for Completing Form 45-106F3 – Offering Memorandum for Qualifying Issuers”:

(1) by replacing instruction 13 of part A with the following:

“12. During the course of a distribution of securities, any material forward-looking information disseminated must only be that which is set out in the offering memorandum. If an extract of FOFI, as defined in Regulation 51-102 respecting Continuous Disclosure Obligations (Regulation 51-102) or Regulation 51-103 respecting Ongoing Governance and Disclosure Requirements for Venture Issuers, as applicable, is disseminated, the extract or summary must be reasonably balanced and have a cautionary note in boldface stating that the information presented is not complete and that complete FOFI is included in the offering memorandum.”;

(2) in part B:

(a) by replacing instructions 1 and 2 with the following:

“1. All financial statements incorporated by reference into the offering memorandum must comply with Regulation 52-107 respecting Acceptable Accounting Principles and Auditing Standards and either, for an issuer that at the applicable time was:

(a) a reporting issuer but not a venture issuer, Regulation 51-102,

(b) a venture issuer, Regulation 51-103 respecting Ongoing Governance and Disclosure Requirements for Venture Issuers.

“2. Forward-looking information included in an offering memorandum must

(a) in the case of an issuer that was not a venture issuer at the applicable time,

(i) comply with section 4A.2 of Regulation 51-102,

(ii) include the disclosure described in section 4A.3 of Regulation 51-102, and

(iii) in the case of FOFI or a financial outlook, as those terms are defined in Regulation 51-102, comply with Part 4B of Regulation 51-102,

(b) in the case of an issuer that was a venture issuer at the applicable time, comply with section 37 of Regulation 51-103 respecting Ongoing Governance and Disclosure Requirements for Venture Issuers.”;

(3) by inserting, in instruction 1 of part C and after “AIF”, “, annual report or alternate AIF”;

(4) in part D:

(a) in instruction 1:

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

“(a) one of the following, as applicable:

(i) the issuer’s AIF for the issuer’s most recently completed financial year for which annual financial statements are either required to be filed or have been filed,

(ii) the issuer’s annual report for the most recently completed financial year which is required to be filed or has been filed,

(iii) the issuer’s alternate AIF,”;

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

“(b) material change reports and related financial statements, except confidential material change reports, filed since the end of the financial year in respect of which the issuer’s AIF, annual report or alternate AIF is filed,”;

(iii) by replacing, in paragraph (c), the words “the interim financial report for the issuer’s most recently completed interim period for which the issuer prepares an interim financial report” with the words “the interim financial report or mid-year report for the issuer’s most recently completed mid-year period, as applicable, for the issuer’s most recently completed interim period for the issuer’s most recently completed interim period for which the issuer prepares an interim financial report or mid-year report”;

(iv) by replacing, in paragraph (d), the words “the comparative financial statements” with the words “in the case of an issuer that was not a venture issuer at the applicable time, the comparative financial statements”;

(v) by replacing, in paragraph (e), the word “if” with the words “in the case of an issuer that was not a venture issuer at the applicable time, if”;

(vi) by inserting, after paragraph (e), the following:

“(e.1) in the case of a venture issuer, if, before the offering memorandum is filed, financial information about the issuer is publicly disseminated by, or on behalf of, the issuer through news release or otherwise, the content of the news release or public communication, if the financial information is for a financial period more recent than either

(i) the period required to be covered by the financial statements required to be included in the AIF, annual report or alternate AIF in (a),

(ii) the mid-year report required under (c),”;

(vii) by replacing, in paragraph (f), “management’s discussion and analysis (MD&A)” with “in the case of an issuer that was not a venture issuer at the applicable time, management’s discussion and analysis (MD&A)”;

(viii) by replacing paragraph (g) with the following:

“(g) each business acquisition report filed by the issuer under Part 8 of Regulation 51-102 for acquisitions completed since the beginning of the financial year in respect of which the issuer’s current AIF, annual report or alternate AIF is filed, unless the issuer either

(i) incorporated the business acquisition report by reference into its current AIF, annual report or alternate AIF,

(ii) incorporated at least 9 months of the acquired business or related businesses operations into the issuer’s current annual financial statements,”;

(ix) by inserting, in paragraph (h) and after “AIF”, “, annual report or alternate AIF”;

(x) by replacing paragraph (i) with the following:

“(i) if the issuer has oil and gas activities, as defined in Regulation 51-101 respecting Standards of Disclosure for Oil and Gas Activities, the most recent Form 51-101F1, Form 51-101F2 and Form 51-101F3, filed by an SEC issuer, unless one of the following applies:

(i) the issuer’s AIF is in the form of Form 51-102F2 of Regulation 51-102,

(ii) the issuer included in its annual report disclosure in accordance with subsection 16(4) of Form 51-103F1 of Regulation 51-103 respecting Ongoing Governance and Disclosure Requirements for Venture Issuers;

(iii) the issuer is otherwise exempted from the requirements of Regulation 51-101 respecting Standards of Disclosure for Oil and Gas Activities,”;

(xi) by inserting, in paragraphs (j) and (k) and after “AIF”, “, annual report or alternate AIF”;

(b) by inserting, after instruction 1, the following:

“1.1. **Additional Documents Incorporated by Reference** – An issuer may incorporate any additional document provided that the document is available for viewing on the SEDAR website and that, on request by a purchaser, the issuer provides a copy of the document to the purchaser, without charge.”;

(c) by replacing instruction 2 with the following:

“2. **Mineral Property** – If a material part of the funds available as a result of the distribution is to be expended on a particular mineral property and if the issuer’s most recent AIF, annual report or alternate AIF does not contain the disclosure

required under section 5.4 of Form 51-102F2 of Regulation 51-102 or subsection 16(2) of Form 51-103F1 of Regulation 51-103 respecting Ongoing Governance and Disclosure Requirements for Venture Issuers for the property or that disclosure is inadequate or incorrect due to changes, disclose the information required under section 5.4 of Form 51-102F2 or under section subsection 16(2) of Form 51-103F1.”;

(d) by adding, after instruction 2, the following:

“3. A venture issuer must include in bold face type on the cover page of the offering memorandum the following statement:

“[Insert name of venture issuer] is a venture issuer subject to the governance and disclosure regime applicable to venture issuers under Regulation 51-103 respecting Ongoing Governance and Disclosure Requirements for Venture Issuers. Consequently, it is not required to provide certain disclosure applicable to issuers that are not venture issuers, such as three and nine month interim financial reports and associated management’s discussion and analysis. Further, although management is responsible for ensuring processes are in place to provide them with the information they need to comply with disclosure obligations on a timely basis, [insert name of venture issuer] is not required to establish and maintain disclosure controls and procedures and internal control over financial reporting. [Insert name of venture issuer] will also be subject to certain other obligations not applicable to issuers that are not venture issuers.

The disclosure provided by [insert name of venture issuer] will not necessarily be comparable in some ways to that provided by issuers that are not venture issuers.

“4. If a venture issuer has decided to file interim financial reports for optional interim periods, also include the following statement in bold type on the cover page of the offering memorandum:

“[Insert name of venture issuer] intends to file 3 and 9 month interim financial reports”.

“5. If a venture issuer incorporates any other documents by reference into the offering memorandum, the document must be available for viewing on the venture issuer’s profile on the SEDAR website and, on request of a purchaser, the issuer must provide a copy of that document without charge.”.

6. This Regulation comes into force on (*indicate the date of coming into force of this Regulation*).