

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 Regulation 51-102 respecting Continuous Disclosure Obligations;

““alternate AIF” means

(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, or

(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 Regulation 51-103 respecting Ongoing Governance and Disclosure Requirements for Venture Issuers;

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

(2) by inserting, after the definition of “fully managed account”, the following:

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

(3) by inserting, after the definition of “marketplace”, the following:

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

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

(b) a venture issuer, a report completed as required by section 19 of Regulation 51-103 respecting Ongoing Governance and Disclosure Requirements for Venture Issuers;”;

(4) 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:

(C) an alternate AIF, and

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

(5) 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. Section 2.11 of the Regulation is 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 2.18 of the Regulation is amended, in subparagraph (a) of paragraph (5) of the French text, by replacing the words “frais de souscription différés ou éventuels” with the words “frais d’acquisition reportés”.

4. Section 3.18 of the Regulation is amended, in subparagraph (a) of paragraph (5) of the French text, by replacing the words “frais de souscription différés ou éventuels” with the words “frais d’acquisition reportés”.

5. 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 clause A and after “AIF”, “, annual report or alternate AIF”;

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

(c) by replacing, in clause 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 clauses D and E and after “AIF”, “, annual report or alternate AIF”;

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

“F) all interim reports filed after the date of the annual report but before or on the date of the TSX Venture Exchange offering document.”.

6. 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. 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.””.

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

(1) in instruction (12) of part A, by inserting, after the words “as defined in Regulation 51-102 respecting Continuous Disclosure Obligations (Regulation 51-102)”, the words “or Regulation 51-103 respecting Ongoing Governance and Disclosure Requirements for Venture Issuers (Regulation 51-103), as applicable,”;

(2) in part B, 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

(a) Regulation 51-102 for a reporting issuer that is not a venture issuer, or

(b) Regulation 51-103 for a venture issuer,.

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, and

(b) in the case of an issuer that was a venture issuer at the applicable time, comply with section 39 of Regulation 51-103.

2.1. Additional guidance may be found in the Policy Statement to Regulation 51-102 respecting Continuous Disclosure Obligations (Decision 2006-PDG-0223, 2006-12-12).”;

- (3) in instruction 1 of part C:
 - (a) by inserting, after “AIF”, “, annual report or alternate AIF”;
 - (b) by inserting, after the words “audited financial statements”, “or, for a venture issuer, annual report,”;
 - (c) by inserting, after the words “any financial statements”, “or, for a venture issuer, any annual report or interim reports,”;
- (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 for which an annual report is required to be filed or has been filed;
 - (iii) the issuer’s alternate AIF for the most recently completed financial year for which annual financial statements are either required to be filed or have been filed;”;
 - (ii) in paragraph (b), by inserting, after “AIF”, “, annual report or alternate AIF”;
 - (iii) in paragraph (c), by inserting, after each occurrence of the words “interim financial report”, the words “or interim report”, and by replacing the words “have been filed” with the words “has been filed”;
 - (iv) in paragraph (d), by replacing the words “the comparative financial statements” with the words “in the case of an issuer that was not a venture issuer, the comparative financial statements”;
 - (v) in paragraph (e), by replacing the word “if” with the words “in the case of an issuer that was not a venture issuer, 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
 - (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), or
 - (ii) the interim 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, management’s discussion and analysis (MD&A)”;

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

“(g) in the case of an issuer that was not a venture issuer, each business acquisition report required to be 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 or alternate AIF is filed, unless the issuer incorporated the business acquisition report by reference into its current AIF or alternate AIF or incorporated at least 9 months of the acquired business or related businesses operations into the issuer’s current annual financial statements,

(g.1) in the case of an issuer that was a venture issuer, each report required to be filed by the issuer under sections Parts 5 and 6 of Regulation 51 103 for major acquisitions completed since the beginning of the financial year in respect of which the issuer’s annual report is filed, unless the issuer incorporated at least 9 months of the acquired business, or related businesses operations into the issuer’s current annual financial statements included in its annual report,”;

(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’s annual report is in the of Form 51-103F1;

(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 if 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 significant 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 17(2) of Form 51-103F1 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 17(2) of Form 51-103F1 as applicable.”;

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. 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.”.

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