

REGULATION TO AMEND REGULATION 45-102 RESPECTING RESALE OF SECURITIES

Securities Act
(chapter V-1.1, s. 331.1, par. (1))

1. Appendix E of Regulation 45-102 respecting Resale of Securities (chapter V-1.1, r. 20) is amended by inserting, in the first paragraph and after the bullet “ – section 2.42 [*Conversion, exchange or exercise – security of a reporting issuer*] for a security being traded in the circumstances referred to in clause (b) of subsection 2.42 (1);” the following:

“ – section 5A.2 [*Listed Issuer Financing Exemption*];”.

2. This Regulation comes into force on the date of its publication in the *Gazette officielle du Québec*.

106032

M.O., 2022-11

Order number V-1.1-2022-11 of the Minister of Finance dated 7 November 2022

Securities Act
(chapter V-1.1)

CONCERNING the Regulation to amend Regulation 45-106 respecting Prospectus Exemptions

WHEREAS paragraphs 1, 3, 8, 11, 14, 32.1, 32.2 and 34 of section 331.1 of the Securities Act (chapter V-1.1) provide that the *Autorité des marchés financiers* may make regulations concerning the matters referred to in those paragraphs;

WHEREAS the third and fourth paragraphs of section 331.2 of the said Act provide that a draft regulation shall be published in the *Bulletin de l'Autorité des marchés financiers*, accompanied with the notice required under section 10 of the Regulations Act (chapter R-18.1) and may not be submitted for approval or be made before 30 days have elapsed since its publication;

WHEREAS the first and fifth paragraphs of the said section provide that every regulation made under section 331.1 must be approved, with or without amendment, by the Minister of Finance and comes into force on the date of its publication in the *Gazette officielle du Québec* or on any later date specified in the regulation;

WHEREAS the Regulation 45-106 respecting Prospectus Exemptions was approved by ministerial order no. 2009-05 dated 9 September 2009 (2009, G.O. 2, 3362A);

WHEREAS there is cause to amend this Regulation;

WHEREAS the draft Regulation to amend Regulation 45-106 respecting Prospectus Exemptions was published for consultation in the *Bulletin de l'Autorité des marchés financiers*, vol. 18, no. 30 of 29 July 2021;

WHEREAS the *Autorité des marchés financiers* made, on 14 October 2022, by the decision no. 2022-PDG-0042, Regulation to amend Regulation 45-106 respecting Prospectus Exemptions;

WHEREAS there is cause to approve this Regulation with amendment;

CONSEQUENTLY, the Minister of Finance approves with amendment the Regulation to amend Regulation 45-106 respecting Prospectus Exemptions appended hereto.

7 November 2022

ERIC GIRARD
Minister of Finance

REGULATION TO AMEND REGULATION 45-106 RESPECTING PROSPECTUS EXEMPTIONS

Securities Act

(chapter V-1.1, s. 331.1, par. (1), (3), (8), (11), (14), (32.1), (32.2) and (34))

1. Section 1.1 of Regulation 45-106 respecting Prospectus Exemptions (chapter V-1.1, r. 21) is amended:

1) by inserting, after the definition of the expression “marketplace”, the following:

““market price” means, for securities of a class for which there is a published market,

(a) except as provided in paragraph (b),

(i) if the published market provides a daily closing price, the average of the daily closing price of securities of that class on the published market for each of the trading days on which there was a daily closing price falling not more than 20 trading days immediately before the day as of which the market price is being determined, or

(ii) if the published market does not provide a daily closing price, but provides only the highest and lowest daily prices of securities of the class traded, the average of the averages of the highest and lowest daily prices of securities of the class on the published market for each of the trading days on which there were highest and lowest daily prices falling not more than 20 trading days immediately before the day as of which the market price is being determined, or

(b) if trading of securities of the class on the published market has occurred on fewer than 10 of the immediately preceding 20 trading days, the average of the following amounts established for each of the 20 trading days immediately before the day as of which the market price is being determined:

(i) the average of the closing bid and closing ask prices for each day on which there was no trading;

(ii) if the published market

(A) provides a closing price of securities of that class on the published market for each day that there was trading, the closing price, or

(B) provides only the highest and lowest prices, the average of the highest and lowest prices of securities of that class on the published market for each day that there was trading;”;

2) by inserting, after the definition of the expression “publicly accountable enterprise”, the following:

““published market” means, for a class of securities, a marketplace on which the securities are traded, if the prices at which they have been traded on that marketplace are regularly

(a) disseminated electronically, or

(b) published in a newspaper or business or financial publication of general and regular paid circulation;”.

2. The Regulation is amended by inserting, after section 1.8, the following:

“1.9. Interpretation of “market price”

For the purpose of the definition of “market price”, if there is more than one published market for a security and

(a) only one of the published markets is in Canada, the market price is determined solely by reference to that market,

(b) more than one of the published markets are in Canada, the market price is determined solely by reference to the published market in Canada on which the greatest volume of trading in the particular class of securities occurred during the 20 trading days immediately before the day as of which the market price is being determined, and

(c) none of the published markets are in Canada, the market price is determined solely by reference to the published market on which the greatest volume of trading in the particular class of securities occurred during the 20 trading days immediately before the day as of which the market price is being determined.”.

3. Section 2.1 of the Regulation is amended:

(1) by striking out, in paragraph (1), the definitions of the expressions “market price” and “published market”;

(2) by striking out paragraph (2);

(3) by replacing “or, in Québec,” in subparagraphs (ii) and (iii) of subparagraph (b) of paragraph (3), by “, except in Québec, or”.

4. Section 2.42 of the Regulation is amended by replacing “or, in Québec,” in subparagraphs (a) and (b) of paragraph (2) by “, except in Québec, or”.

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

“PART 5A LISTED ISSUER FINANCING EXEMPTION

5A.1. Interpretation

- (1) In this Part,

“listed equity security” means a security of a class of equity securities of an issuer listed for trading on an exchange recognized by a securities regulatory authority in a jurisdiction of Canada;

“restructuring transaction” has the same meaning as in Regulation 51-102 respecting Continuous Disclosure Obligations (chapter V-1.1, r. 24);

“secondary market liability provisions” means the provisions of securities legislation set out in Appendix D opposite the name of the local jurisdiction.

(2) For the purpose of this Part, the aggregate market value of an issuer’s listed equity securities is calculated by multiplying the total number of listed equity securities outstanding, by the market price.

(3) For the purpose of this Part, “cash equivalents” has the same meaning as in the Handbook.

5A.2. Listed issuer financing exemption

Refer to Appendix E of Regulation 45-102 respecting Resale of Securities (chapter V-1.1, r. 20). First trades are subject to a seasoning period on resale.

This text box does not form part of this Regulation and has no official status.

The prospectus requirement does not apply to a distribution by an issuer of a security of the issuer’s own issue if all of the following apply:

(a) the issuer is a reporting issuer and has been a reporting issuer in at least one jurisdiction of Canada for the 12 months immediately before the date that the issuer files the news release referred to in paragraph (k);

(b) the issuer has listed equity securities;

(c) the issuer is not, or during the 12 months immediately before the date the issuer files the news release referred to in paragraph (k) the issuer or any person with whom the issuer completed a restructuring transaction was not, either of the following:

(i) an issuer whose operations have ceased;

(ii) an issuer whose principal asset is cash, cash equivalents, or its exchange listing, including, for greater certainty, a capital pool company, a special purpose acquisition company, a growth acquisition corporation or any similar person;

- (d) the issuer is not an investment fund;
- (e) the issuer has filed all periodic and timely disclosure documents that it is required to have filed under each of the following:
 - (i) applicable securities legislation;
 - (ii) an order issued by the regulator, except in Québec, or securities regulatory authority;
 - (iii) an undertaking to the regulator, except in Québec, or securities regulatory authority;
- (f) the issuer does not allocate the available funds as disclosed in item 9 of the completed form referred to in paragraph (k) to the following:
 - (i) an acquisition that is a significant acquisition under Part 8 of Regulation 51-102 respecting Continuous Disclosure Obligations (chapter V-1.1, r. 24);
 - (ii) a restructuring transaction;
 - (iii) any other transaction for which the issuer seeks approval of any security holder;
- (g) on the date of the issuance of the news release referred to in paragraph (k), the total dollar amount of the distribution, combined with the dollar amount of all other distributions made by the issuer under this section during the 12 months immediately before the date of the news release, will not, assuming completion of the distribution, exceed the greater of the following:
 - (i) \$5 000 000;
 - (ii) 10% of the aggregate market value of the issuer's listed securities, on the date the issuer issues the news release announcing the offering, to a maximum of \$10 000 000;
- (h) the distribution, combined with all other distributions made by the issuer under this section during the 12 months immediately before the date of the issuance of the news release referred to in paragraph (k), will not result in an increase of more than 50% in the issuer's outstanding listed equity securities, as of the date that is 12 months before the date of the news release;
- (i) at the time of the distribution, the issuer reasonably expects that the issuer will have available funds to meet its business objectives and liquidity requirements for a period of 12 months following the distribution;

- (j) the security being distributed is either of the following:
 - (i) a listed equity security;
 - (ii) a unit consisting of a listed equity security and a warrant convertible into a listed equity security;
- (k) before soliciting an offer to purchase, the issuer
 - (i) issues and files a news release that
 - (A) announces the offering, and
 - (B) includes the following statement: “There is an offering document related to this offering that can be accessed under the issuer’s profile at www.sedar.com and at [*include website address and provide link, if the issuer has a website*]. Prospective investors should read this offering document before making an investment decision.”;
 - (ii) files a completed Form 45-106F19;
 - (iii) if the issuer has a website, posts the completed form referred to in subparagraph (ii) on its website;
- (l) the completed form referred to in paragraph (k) is filed before soliciting an offer to purchase and no later than 3 business days after the date of the form;
- (m) the completed form referred to in paragraph (k), together with any document filed under securities legislation in a jurisdiction of Canada on or after the earlier of the date that is 12 months before the date of the document and the date that the issuer’s most recent audited annual financial statements were filed, contains disclosure of all material facts relating to the securities being distributed under this section and does not contain a misrepresentation;
- (n) in Québec, the completed form referred to in paragraph (k) is prepared in French or French and English.

5A.3. Material changes during distribution

If an issuer issues a news release announcing its intention to make a distribution under section 5A.2 and a material change occurs in respect of the issuer before the completion of the distribution, the issuer must cease the distribution until the issuer

- (a) complies with Regulation 51-102 respecting Continuous Disclosure Obligations (chapter V-1.1, r. 24) in connection with the material change,
- (b) files an amendment to the completed form filed under paragraph 5A.2(k), and
- (c) issues and files a news release that states that an amendment to the completed form referred to in paragraph 5A.2(k) addressing the material change has been filed.

5A.4. Additional requirements

(1) An issuer must

(a) take reasonable steps to ensure that a prospective purchaser is aware of the means of accessing the completed form referred to in paragraph 5A.2(k), and

(b) include the statement referred to in subparagraph 5A.2(k)(i)(B) in any initial written communication with a prospective purchaser.

(2) An issuer must close the distribution referred to in section 5A.2 no later than the 45th day after the date the issuer issues and files the news release referred to in paragraph 5A.2(k).

5A.5. Special application – Alberta, British Columbia, New Brunswick and Québec

(1) In Alberta, a document that purports or appears to be completed in accordance with Form 45-106F19 and is filed with respect to a distribution referred to in section 5A.2 is a prescribed offering document for purposes of section 204 of the Securities Act (R.S.A. 2000, c. S-4).

(2) In British Columbia, a document that purports or appears to be completed in accordance with Form 45-106F19 and is filed with respect to a distribution referred to in section 5A.2 is a prescribed disclosure document for purposes of section 132.1 of the Securities Act (R.S.B.C. 1996, c. 418).

(3) In New Brunswick, a document that purports or appears to be completed in accordance with Form 45-106F19 and is filed with respect to a distribution referred to in section 5A.2 is an offering memorandum for purposes of section 150 of the Securities Act (S.N.B. 2004, c. S-5.5).

(4) In Québec, a document that purports or appears to be completed in accordance with Form 45-106F19 and is filed with respect to a distribution referred to in section 5A.2 is a document authorized by the Autorité des marchés financiers for use in lieu of a prospectus under the Securities Act (CQLR, c. V-1.1).

5A.6. Core document

(1) A document that purports or appears to be completed in accordance with Form 45-106F19 and is filed with respect to a distribution referred to in section 5A.2 is a “core document” pursuant to the secondary market liability provisions.

(2) For greater certainty, in British Columbia, documents that purport or appear to be completed in accordance with Form 45-106F19 and are filed with respect to a distribution referred to in section 5A.2 are a prescribed class of documents for the purpose of the definition of “core document” under section 140.1 of the Securities Act (R.S.B.C. 1996, c. 418).”

6. Section 6.1 of the Regulation is amended by adding, after subparagraph (j) of paragraph (1), the following:

“(k) section 5A.2.”

7. Form 45-106F15 of the Regulation is amended, in part 3:

(1) by replacing, in item 18, the table with the following:

“

		Assuming minimum offering or stand-by commitment only	Assuming 15% of offering	Assuming 50% of offering	Assuming 75% of offering	Assuming 100% of offering
A	Amount to be raised by this offering	\$	\$	\$	\$	\$
B	Selling commissions and fees	\$	\$	\$	\$	\$
C	Estimated offering costs (e.g., legal, accounting, audit)	\$	\$	\$	\$	\$
D	Available funds: D = A - (B+C)	\$	\$	\$	\$	\$
E	Working capital as at most recent month end (deficiency)	\$	\$	\$	\$	\$
F	Additional sources of funding	\$	\$	\$	\$	\$
G	Total: G = D+E+F	\$	\$	\$	\$	\$

”;

(2) by replacing “d’espèces ou de quasi-espèces” wherever they appear in the French text of items 19 and 20 by “de trésorerie ou d’équivalents de trésorerie”.

8. The Regulation is amended by adding, after Form 45-106F18, the following:

**“FORM 45-106F19
LISTED ISSUER FINANCING DOCUMENT**

INSTRUCTIONS

1. Overview of the offering document

This is the form an issuer must use as the offering document for a distribution under section 5A.2 of the Regulation. In these instructions, the form is also referred to as the “offering document.”

The objective of the offering document is to provide information about the offering.

Present information in the offering document using a question-and-answer format.

2. Incorporating information by reference

Do not incorporate information into the offering document by reference.

3. Plain language

Use plain, easy to understand language in preparing the offering document. Avoid technical terms but if they are necessary, explain them in a clear and concise manner.

4. Format

Except as otherwise stated, use the questions presented in this form as headings in the offering document. To make the document easier to understand, present information in tables.

5. Date of information

Unless this form indicates otherwise, present the information in this form as of the date of the offering document.

6. Forward-looking information

If the issuer discloses forward-looking information in the offering document, the issuer must comply with Part 4A.3 of Regulation 51-102 respecting Continuous Disclosure Obligations (chapter V-1.1, r. 24).

PART 1 SUMMARY OF OFFERING**1. Basic disclosure about the distribution**

On the cover page, state the following with the bracketed information completed:

“Offering Document under the Listed Issuer Financing Exemption [Date]

[Name of Issuer]”

2. Details of the offering

On the cover page, state the following in bold:

“**What are we offering?**”.

Provide the following details about the offering:

(a) the type and number of securities the issuer is offering, and a description of all significant attributes of the securities;

(b) the offering price;

(c) the minimum and maximum amount of securities that the issuer may offer;

(d) whether the offering may close in one or more closings and the date by which the offering is expected to close (if known);

(e) the exchange and quotation system, if any, on which the securities are listed, traded or quoted;

(f) the closing price of the issuer's securities on the most recent trading day before the date of the offering document.

3. Required statement

On the cover page, state the following in bold with the bracketed information completed:

***“No securities regulatory authority or regulator has assessed the merits of these securities or reviewed this document. Any representation to the contrary is an offence. This offering may not be suitable for you and you should only invest in it if you are willing to risk the loss of your entire investment. In making this investment decision, you should seek the advice of a registered dealer.*”**

[Name of issuer] is conducting a listed issuer financing under section 5A.2 of Regulation 45-106 respecting Prospectus Exemptions. In connection with this offering, the issuer represents the following is true:

- **The issuer has active operations and its principal asset is not cash, cash equivalents or its exchange listing.**
- **The issuer has filed all periodic and timely disclosure documents that it is required to have filed.**
- **The total dollar amount of this offering, in combination with the dollar amount of all other offerings made under the listed issuer financing exemption in the 12 months immediately before the date of this offering document, will not exceed [Insert the greater of \$5 000 000 and the amount that is equal to 10% of the issuer's market capitalization, to a maximum of \$10 000 000].**
- **The issuer will not close this offering unless the issuer reasonably believes it has raised sufficient funds to meet its business objectives and liquidity requirements for a period of 12 months following the distribution.**
- **The issuer will not allocate the available funds from this offering to an acquisition that is a significant acquisition or restructuring transaction under securities law or to any other transaction for which the issuer seeks security holder approval.”**

PART 2 SUMMARY DESCRIPTION OF BUSINESS

4. Summary description of business

State the following in bold:

“What is our business?”

Provide a brief summary of the business the issuer carries on or intends to carry on.

5. Recent developments

State the following in bold:

“Recent developments”.

Provide a brief summary of key recent developments involving or affecting the issuer.

6. Material facts

If there is a material fact about the securities being distributed that has not been disclosed elsewhere in this offering document or in any other document filed since the date that is the earlier of the date that is 12 months before the date of this offering document and the date that the issuer’s most recent audited annual financial statements were filed, disclose that material fact.

7. Business objectives and milestones

State the following in bold:

“What are the business objectives that we expect to accomplish using the available funds?”.

State the business objectives that the issuer expects to accomplish using the available funds disclosed under item 8. Describe each significant event that must occur for the business objectives described to be accomplished and state the specific period in which each event is expected to occur and the cost related to each event.

PART 3 USE OF AVAILABLE FUNDS**8. Available funds**

State the following in bold:

“What will our available funds be upon the closing of the offering?”.

Using the following table, disclose what the issuer’s available funds will be after the offering. If the issuer plans to combine additional sources of funding with the offering proceeds to achieve its principal purpose for raising capital, provide details about each additional source of funding.

If there has been a significant decline in working capital since the most recently audited annual financial statements, explain the decline.

		Assuming minimum offering only	Assuming 100% of offering
A	Amount to be raised by this offering	\$	\$
B	Selling commissions and fees	\$	\$
C	Estimated offering costs (e.g., legal, accounting, audit)	\$	\$
D	Net proceeds of offering: $D = A - (B+C)$	\$	\$
E	Working capital as at most recent month end (deficiency)	\$	\$
F	Additional sources of funding	\$	\$
G	Total available funds: $G = D+E+F$	\$	\$

9. Use of available funds

State the following in bold:

“How will we use the available funds?”.

Using the following table, provide a detailed breakdown of how the issuer will use the available funds. Describe in reasonable detail each of the principal purposes, with approximate amounts.

Description of intended use of available funds listed in order of priority	Assuming minimum offering only	Assuming 100% of offering
	\$	\$
	\$	\$
Total: Equal to G in the available funds in item 8	\$	\$

Instructions:

1. *If the issuer will use more than 10% of available funds to reduce or retire indebtedness and the indebtedness was incurred within the 2 preceding years, describe the principal purposes for which the indebtedness was used. If the creditor is an insider, associate or affiliate of the issuer, identify the creditor and the nature of the relationship to the issuer and disclose the outstanding amount owed.*

2. *If the issuer will use more than 10% of available funds to acquire assets, describe the assets. If known, disclose the particulars of the purchase price being paid for or being allocated to the assets or categories of assets, including intangible assets. If the vendor of the asset is an insider, associate or affiliate of the issuer, identify the vendor and nature of the relationship to the issuer, and disclose the method used to determine the purchase price.*

3. *If any of the available funds will be paid to an insider, associate or affiliate of the issuer, disclose in a note to the table the name of the insider, associate or affiliate, the relationship to the issuer, and the amount to be paid.*

4. *If the issuer will use more than 10% of available funds for research and development of products or services,*

(a) describe the timing and stage of research and development that management anticipates will be reached using the funds,

(b) describe the major components of the proposed programs the issuer will use the available funds for, including an estimate of anticipated costs,

(c) state if the issuer is conducting its own research and development, is subcontracting out the research and development or is using a combination of those methods, and

(d) describe the additional steps required to reach commercial production and an estimate of costs and timing.

5. If the issuer's most recently filed audited annual financial statements or interim financial report included a going concern note, disclose that fact and explain how this offering is anticipated to address any uncertainties that affect the decision on whether a going concern note is included in your next annual financial statements.

10. Use of funds from previous financings

State the following in bold:

“How have we used the other funds we have raised in the past 12 months?”

Provide a comparison, in tabular form, of disclosure the issuer previously made about how the issuer would use available funds or proceeds from any financing in the past 12 months, an explanation of the variances, and the impact of the variances, if any, on the issuer's ability to achieve its business objectives and milestones.

PART 4 FEES AND COMMISSIONS

11. Involvement of dealers or finders and their fees

State the following in bold:

“Who are the dealers or finders that we have engaged in connection with this offering, if any, and what are their fees?”

If any dealer, finder or other person has or will receive any compensation (e.g., commission, corporate finance fee or finder's fee) in connection with the offering, provide the following information to the extent applicable:

(a) the name of the dealer, finder, or other person;

(b) a description of each type of compensation and the estimated amount to be paid for each type;

(c) if a commission is being paid, the percentage that the commission will represent of the gross proceeds of the offering (assuming both the minimum and maximum offering);

(d) details of any broker's warrants or agent's option (including number of securities under the warrants or option, exercise price and expiry date);

(e) if any portion of the compensation will be paid in securities, details of the securities (including number, type and, if options or warrants, the exercise price and expiry date).

12. Dealer conflicts

If the issuer has engaged a dealer in connection with the offering, state the following in bold with the bracketed information completed:

“Does [identify dealer(s)] have a conflict of interest?”.

If disclosure is required under Regulation 33-105 respecting Underwriting Conflicts (chapter V-1.1, r. 11), include that disclosure.

PART 5 PURCHASERS' RIGHTS

13. Purchasers' rights

State the following in bold with the bracketed information completed:

“Rights of Action in the Event of a Misrepresentation

If there is a misrepresentation in this offering document, you have a right

(a) to rescind your purchase of these securities with [insert name of issuer or other term used to refer to the issuer], or

(b) to damages against [insert name of issuer or other term used to refer to the issuer] and may, in certain jurisdictions, have a statutory right to damages from other persons.

These rights are available to you whether or not you relied on the misrepresentation. However, there are various circumstances that limit your rights. In particular, your rights might be limited if you knew of the misrepresentation when you purchased the securities.

If you intend to rely on the rights described in paragraph (a) or (b) above, you must do so within strict time limitations.

You should refer to any applicable provisions of the securities legislation of your province or territory for the particulars of these rights or consult with a legal adviser.”.

PART 6 ADDITIONAL INFORMATION**14. Additional information**

State the following in bold:

“Where can you find more information about us?”.

State that a security holder can access the issuer’s continuous disclosure at www.sedar.com. If applicable, provide the issuer’s website address.

PART 7 DATE AND CERTIFICATE**15. Certificate**

Include the following statement in bold with the bracketed information completed:

“This offering document, together with any document filed under Canadian securities legislation on or after [insert the date which is the earlier of the date that is 12 months before the date of this offering document and the date that the issuer’s most recent audited annual financial statements were filed], contains disclosure of all material facts about the securities being distributed and does not contain a misrepresentation.”.

16. Date and signature

Provide the signature, date of the signature, name and position of the chief executive officer and chief financial officer of the issuer.”.

9. This Regulation comes into force on the date of its publication in the *Gazette officielle du Québec*.

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