

**M.O., 2007-08****Order number V-1.1-2007-08 of the Minister of Finance dated 14 December 2007**

Securities Act  
(R.S.Q., c. V-1.1)

CONCERNING Regulation to amend Regulation 51-102 respecting Continuous Disclosure Obligations

WHEREAS subparagraphs 1, 2, 3, 8, 9, 20 and 34 of section 331.1 of the Securities Act (R.S.Q., c. V-1.1) stipulate 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 stipulate that a draft regulation shall be published in the Bulletin of the Authority, accompanied with the notice required under section 10 of the Regulations Act (R.S.Q., c. 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 stipulate 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 any later date specified in the regulation;

WHEREAS the Regulation 51-102 respecting Continuous Disclosure Obligations was made by ministerial order 2005-03 dated May 19, 2005;

WHEREAS there is cause to amend this regulation;

WHEREAS the draft Regulation to amend Regulation 51-102 respecting Continuous Disclosure Obligations was published in the Bulletin de l'Autorité des marchés financiers, volume 3, No. 48 of December 1st, 2006 and in the Bulletin de l'Autorité des marchés financiers, volume 4, No. 13 of March 30, 2007;

WHEREAS on November 30, 2007, by the decision No. 2007-PDG-0208, the Authority made Regulation to amend Regulation 51-102 respecting Continuous Disclosure Obligations;

WHEREAS there is cause to approve this regulation without amendment;

CONSEQUENTLY, the Minister of Finance approves without amendment Regulation to amend Regulation 51-102 respecting Continuous Disclosure Obligations appended hereto.

December 14, 2007

MONIQUE JÉRÔME-FORGET,  
*Minister of Finance*

## Regulation to amend Regulation 51-102 respecting continuous disclosure obligations\*

Securities Act  
(R.S.Q., c. V-1.1, s. 331.1, par. (1), (2), (3), (8), (9), (20) and (34))

**1.** Paragraph (1) of section 1.1 of Regulation 51-102 respecting Continuous Disclosure Obligations is amended by:

(1) replacing, in the definition of “approved rating organization”, the words “Dominion Bond Rating Service Limited” with the words “DBRS Limited”;

\* Regulation 51-102 respecting Continuous Disclosure Obligations, approved by Ministerial Order No. 2005-03 dated May 19, 2005 (2005, *G.O.* 2, 1507), was last amended by the regulation approved by Ministerial Order No. 2006-04 dated December 13, 2006 (2006, *G.O.* 2, 4125). For previous amendments, refer to the *Tableau des modifications et Index sommaire*, Éditeur officiel du Québec, 2007, updated to September 1, 2007.

(2) replacing, in the definition of “venture issuer”, the words “the market known as OFEX” with the words “the PLUS markets operated by PLUS Markets Group plc”;

(3) deleting the definition of “investment fund” and of “non-redeemable investment fund”;

(4) adding the following after the definition of “executive officer”:

““financial outlook” means forward-looking information about prospective results of operations, financial position or cash flows that is based on assumptions about future economic conditions and courses of action and that is not presented in the format of a historical balance sheet, income statement or cash flow statement;”;

(5) adding the following after the definition of “executive officer”:

““FOFI”, or “future-oriented financial information”, means forward-looking information about prospective results of operations, financial position or cash flows, based on assumptions about future economic conditions and courses of action, and presented in the format of a historical balance sheet, income statement or cash flow statement;”.

**2.** Section 4.10 of the Regulation is amended by replacing, in subparagraph (a) of paragraph (2), subparagraph (ii) with the following:

“(ii) if the reporting issuer did not file a document referred to in subparagraph (i), or the document does not include the financial statements for the reverse takeover acquirer that would be required to be included in a prospectus, the financial statements prescribed under securities legislation and described in the form of prospectus that the reverse takeover acquirer was eligible to use prior to the reverse takeover for a distribution of securities in the jurisdiction;”.

**3.** The Regulation is amended by adding the following after section 4.11:

### “PART 4A FORWARD-LOOKING INFORMATION

#### “4A.1 Application

This Part applies to forward-looking information that is disclosed by a reporting issuer other than forward-looking information contained in oral statements.

**“4A.2 Reasonable Basis**

A reporting issuer must not disclose forward-looking information unless the issuer has a reasonable basis for the forward-looking information.

**“4A.3 Disclosure**

A reporting issuer that discloses material forward-looking information must include disclosure that

- (a) identifies forward-looking information as such;
- (b) cautions users of forward-looking information that actual results may vary from the forward-looking information and identifies material risk factors that could cause actual results to differ materially from the forward-looking information;
- (c) states the material factors or assumptions used to develop forward-looking information; and
- (d) describes the reporting issuer's policy for updating forward-looking information if it includes procedures in addition to those described in subsection 5.8(2).

**“PART 4B FOFI AND FINANCIAL OUTLOOKS****“4B.1 Application**

(1) This Part applies to FOFI or a financial outlook that is disclosed by a reporting issuer.

(2) This Part does not apply to disclosure that is

(a) subject to requirements in Regulation 51-101 respecting Standards of Disclosure for Oil and Gas Activities approved by Ministerial Order no. 2005-15 dated August 2, 2005, or Regulation 43-101 respecting Standards of Disclosure for Mineral Projects; or

(b) made to comply with the conditions of any exemption from the requirements referred to in paragraph (a) that a reporting issuer received from a securities regulatory authority unless the securities regulatory authority orders that this Part applies to disclosure made under the exemption; or

(c) contained in an oral statement.

**“4B.2 Assumptions**

(1) A reporting issuer must not disclose FOFI or a financial outlook unless the FOFI or financial outlook is based on assumptions that are reasonable in the circumstances.

(2) FOFI or a financial outlook that is based on assumptions that are reasonable in the circumstances must, without limitation,

(a) be limited to a period for which the information in the FOFI or financial outlook can be reasonably estimated, and

(b) use the accounting policies the reporting issuer expects to use to prepare its historical financial statements for the period covered by the FOFI or the financial outlook.

**“4B.3 Disclosure**

In addition to the disclosure required by section 4A.3, if a reporting issuer discloses FOFI or a financial outlook, the issuer must include disclosure that

(a) states the date management approved the FOFI or financial outlook, if the document containing the FOFI or financial outlook is undated; and

(b) explains the purpose of the FOFI or financial outlook and cautions readers that the information may not be appropriate for other purposes.”

**4.** The Regulation is amended by adding the following after section 5.7:

**“5.8 Disclosure Relating to Previously Disclosed Material Forward-Looking Information**

(1) This section applies to material forward-looking information that is disclosed by a reporting issuer other than

(a) forward-looking information contained in an oral statement, or

(b) disclosure that is

(i) subject to the requirements in Regulation 51-101 respecting Standards of Disclosure for Oil and Gas Activities or Regulation 43-101 respecting Standards of Disclosure for Mineral Projects, or

(ii) made to comply with the conditions of any exemption from the requirements referred to in subparagraph (i) that a reporting issuer received from a securities regulatory authority unless the securities regulatory authority orders that this Part applies to disclosure made under the exemption.

(2) A reporting issuer must discuss in its MD&A or MD&A supplement if one is required under section 5.2,

(a) events and circumstances that occurred during the period to which the MD&A relates that are reasonably likely to cause actual results to differ materially from material forward-looking information for a period that is not yet complete that the reporting issuer previously disclosed to the public; and

(b) the expected differences referred to in paragraph (a).

(3) Subsection (2) does not apply if the reporting issuer

(a) includes the information required by subsection (2) in a news release issued and filed by the reporting issuer before the filing of the MD&A or MD&A supplement referred to in subsection (2); and

(b) includes disclosure in the MD&A or MD&A supplement referred to in subsection (2) that

(i) identifies the news release referred to in paragraph (a);

(ii) states the date of the news release; and

(iii) states that the news release is available on www.sedar.com.

(4) A reporting issuer must disclose and discuss in its MD&A or MD&A supplement if one is required under section 5.2, material differences between

(a) actual results for the annual or interim period to which the MD&A relates, and

(b) any FOFI or financial outlook for the period referred to in paragraph (a) that the reporting issuer previously disclosed.

(5) If during the period to which its MD&A relates, a reporting issuer decides to withdraw previously disclosed material forward-looking information,

(a) the reporting issuer must, in its MD&A or MD&A supplement if one is required under section 5.2, disclose the decision and discuss the events and circumstances that led the reporting issuer to that decision, including a discussion of the assumptions underlying the forward-looking information that are no longer valid, and

(b) subsection (4) does not apply to the reporting issuer with respect to the MD&A or MD&A supplement

(i) if the reporting issuer complies with paragraph (a); and

(ii) the MD&A or MD&A supplement is filed before the end of the period covered by the forward-looking information.

(6) Paragraph 5(a) does not apply if the reporting issuer

(a) includes the information required by paragraph (5)(a) in a news release issued and filed by the reporting issuer before the filing of the MD&A or MD&A supplement referred to in subsection (5); and

(b) includes disclosure in the MD&A or MD&A supplement referred to in subsection (5) that

(i) identifies the news release referred to in paragraph (a);

(ii) states the date of the news release; and

(iii) states that the news release is available on www.sedar.com.”.

**5.** Section 8.1 of the Regulation is amended by deleting, in paragraph (1), the words “approved by Ministerial Order No. 2005-15 dated August 2, 2005”.

**6.** Part 1 of Form 51-102A1 of the Regulation is amended by:

(1) deleting paragraph (g);

(2) renumbering paragraphs (h) to (p), which become, respectively, paragraphs (g) to (o).

**7.** Form 51-102F2 of the Regulation is amended by:

(1) in item 10.2:

(a) replacing paragraph (1) with the following:

“(1) If a director or executive officer of your company is, as at the date of the AIF, or was within 10 years before the date of the AIF, a director, chief executive officer or chief financial officer of any company (including your company), that:

(a) was subject to an order that was issued while the director or executive officer was acting in the capacity as director, chief executive officer or chief financial officer, or

(b) was subject to an order that was issued after the director or executive officer ceased to be a director, chief executive officer or chief financial officer and which resulted from an event that occurred while that person was acting in the capacity as director, chief executive officer or chief financial officer,

state the fact and describe the basis on which the order was made and whether the order is still in effect.

“(1.1) For the purposes of subsection (1), “order” means

(a) a cease trade order;

(b) an order similar to a cease trade order; or

(c) an order that denied the relevant company access to any exemption under securities legislation,

that was in effect for a period of more than 30 consecutive days.

“(1.2) If a director or executive officer of your company, or a shareholder holding a sufficient number of securities of your company to affect materially the control of your company

(a) is, as at the date of the AIF, or has been within the 10 years before the date of the AIF, a director or executive officer of any company (including your company) that, while that person was acting in that capacity, or within a year of that person ceasing to act in that capacity, became bankrupt, made a proposal under any legislation relating to bankruptcy or insolvency or was subject to or instituted any proceedings, arrangement or compromise with creditors or had a receiver, receiver manager or trustee appointed to hold its assets, state the fact; or

#### Form 51-102F5 Reference

**Item 6** - Voting Securities and Principal Holders of Voting Securities

**Item 7** – Election of Directors

**Item 8** – Executive Compensation

(b) has, within the 10 years before the date of the AIF, become bankrupt, made a proposal under any legislation relating to bankruptcy or insolvency, or become subject to or instituted any proceedings, arrangement or compromise with creditors, or had a receiver, receiver manager or trustee appointed to hold the assets of the director, executive officer or shareholder, state the fact.”;

(b) adding, in Instruction (i), “, (1.2)” after “subsections (1)”, wherever it appears;

(c) replacing Instruction (ii) with the following:

“(ii) A management cease trade order which applies to directors or executive officers of a company is an “order” for the purposes of paragraph 10.2(1)(a) and must be disclosed, whether or not the director, chief executive officer or chief financial officer was named in the order.”;

(d) adding the following after Instruction (iii) :

“(iv) The disclosure in paragraph 10.2(1)(a) only applies if the director or executive officer was a director, chief executive officer or chief financial officer when the order was issued against the company. You do not have to provide disclosure if the director or executive officer became a director, chief executive officer or chief financial officer after the order was issued.”;

(2) replacing item 18.1 with the following:

#### “18.1 Additional Disclosure

For companies that are not required to send a Form 51-102F5 to any of their securityholders, disclose the information required under Items 6 to 10, 12 and 13 of Form 51-102F5, as modified below, if applicable:

#### Modification

Include the disclosure specified in section 6.1 without regard to the phrase “entitled to be voted at the meeting”. Do not include the disclosure specified in sections 6.2, 6.3 and 6.4. Include the disclosure specified in section 6.5.

Disregard the preamble of section 7.1. Include the disclosure specified in section 7.1 without regard to the word “proposed” throughout. Do not include the disclosure specified in section 7.3.

Disregard the preamble and paragraphs (a), (b) and (c) of Item 8. A company that does not send a management information circular to its securityholders must provide the disclosure required by Form 51-102F6.

**Form 51-102F5 Reference****Modification**

<b>Item 9</b> – Securities Authorized for Issuance under Equity Compensation Plans	Disregard subsection 9.1(1).
<b>Item 10</b> – Indebtedness of Directors and Executive Officers	Include the disclosure specified throughout; however, replace the phrase “date of the information circular” with “date of the AIF” throughout. Disregard paragraph 10.3(a).
<b>Item 12</b> – Appointment of Auditor	Name the auditor. If the auditor was first appointed within the last five years, state the date when the auditor was first appointed.”.

**8.** Form 51-102F5 of the Regulation is amended by:

(1) replacing item 7.2 with the following:

**“7.2** If a proposed director

(a) is, as at the date of the information circular, or has been, within 10 years before the date of the information circular, a director, chief executive officer or chief financial officer of any company (including the company in respect of which the information circular is being prepared) that,

(i) was subject to an order that was issued while the proposed director was acting in the capacity as director, chief executive officer or chief financial officer; or

(ii) was subject to an order that was issued after the proposed director ceased to be a director, chief executive officer or chief financial officer and which resulted from an event that occurred while that person was acting in the capacity as director, chief executive officer or chief financial officer,

state the fact and describe the basis on which the order was made and whether the order is still in effect; or

(b) is, as at the date of the information circular, or has been within 10 years before the date of the information circular, a director or executive officer of any company (including the company in respect of which the information circular is being prepared) that, while that person was acting in that capacity, or within a year of that person ceasing to act in that capacity, became bankrupt, made a proposal under any legislation relating to bankruptcy or insolvency or was subject to or instituted any proceedings, arrangement or compromise with creditors or had a receiver, receiver manager or trustee appointed to hold its assets, state the fact; or

(c) has, within the 10 years before the date of the information circular, become bankrupt, made a proposal under any legislation relating to bankruptcy or insolvency, or become subject to or instituted any proceedings, arrangement or compromise with creditors, or had a receiver, receiver manager or trustee appointed to hold the assets of the proposed director, state the fact.”;

(2) in item 7.2.2:

(a) replacing Instruction (ii) with the following:

*“(ii) A management cease trade order which applies to directors or executive officers of a company is an “order” for the purposes of paragraph 7.2(a)(i) and must be disclosed, whether or not the proposed director was named in the order.”;*

(b) adding the following after Instruction (iii):

*“(iv) The disclosure in paragraph 7.2(a)(i) only applies if the proposed director was a director, chief executive officer or chief financial officer when the order was issued against the company. You do not have to provide disclosure if the proposed director became a director, chief executive officer or chief financial officer after the order was issued.*

**“7.2.3** For the purposes of subsection 7.2(a), “order” means

(a) a cease trade order;

(b) an order similar to a cease trade order; or

(c) an order that denied the relevant company access to any exemption under securities legislation,

that was in effect for a period of more than 30 consecutive days.”;

(3) replacing the second paragraph of item 14.2 with the following:

“The disclosure must be the disclosure (including financial statements) prescribed under securities legislation and described in the form of prospectus that the entity would be eligible to use immediately prior to the sending and filing of the information circular in respect of the significant acquisition or restructuring transaction, for a distribution of securities in the jurisdiction.”.

**9.** This Regulation comes into force on December 31, 2007.

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