

M.O., 2005-11**Order number V-1.1-2005-11 of the Minister of Finance dated 7 June 2005**

Securities Act
(R.S.Q., c. V-1.1 ; 2004, c. 37)

CONCERNING the Regulation 58-101 respecting disclosure of corporate governance practices

WHEREAS the Securities Act (R.S.Q., c. V-1.1) has been amended by the chapter 37 of the statutes of 2004 ;

WHEREAS paragraphs 1, 2, 8 and 34 of section 331.1 of the Securities Act 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 sections 691 and 696 of chapter 45 of the statutes of 2002 stipulate, in particular, that sections 331.1 and 331.2 of the Securities Act are amended by replacing “Commission” wherever it appears by “Agency”, and making the necessary modifications;

WHEREAS sections 37 and 38 of chapter 37 of the statutes of 2004 stipulate, in particular, that sections 331.1 and 331.2 of the Securities Act are amended by replacing “Agency” wherever it appears by “Authority”;

WHEREAS the draft Regulation 58-101 respecting disclosure of corporate governance practices was published in the Supplement to the Bulletin concerning securities of the Agence nationale d’encadrement du secteur financier, volume 1, No. 39 of October 29, 2004;

WHEREAS on June 3, 2005, by the decision No. 2005-PDG-0155, the Authority made the Regulation 58-101 respecting disclosure of corporate governance practices;

WHEREAS there is cause to approve this regulation without amendment;

CONSEQUENTLY, the Minister of Finance approves without amendment the Regulation 58-101 respecting disclosure of corporate governance practices appended hereto.

June 7, 2005

MICHEL AUDET,
Minister of Finance

Regulation 58-101 respecting disclosure of corporate governance practices

Securities Act
(R.S.Q., c. V-1.1, s. 331.1, par. (1), (2), (8) and (34);
2004, c. 37)

PART 1 **DEFINITIONS AND APPLICATION**

1.1 Definitions

In this Regulation,

“AIF” has the same meaning as in Regulation 51-102 respecting Continuous Disclosure Obligations approved by Minister’s Order No. 2005-03 dated May 19, 2005;

“CEO” means a chief executive officer;

“code” means a code of business conduct and ethics;

“executive officer” has the same meaning as in Regulation 51-102 respecting Continuous Disclosure Obligations;

“marketplace” has the same meaning as in Regulation entitled National Instrument 21-101, Marketplace Operation adopted by the Commission des valeurs mobilières du Québec pursuant to decision No. 2001-C-0409 dated August 28, 2001;

“MD&A” has the same meaning as in Regulation 51-102 respecting Continuous Disclosure Obligations;

“SEDAR” means the computer system for the transmission, receipt, acceptance, review and dissemination of documents filed in electronic format pursuant to Regulation 13-101 respecting the System for Electronic Document Analysis and Retrieval (SEDAR) adopted by the Commission des valeurs mobilières du Québec pursuant to decision No. 2001-C-0272 dated June 12, 2001;

“significant security holder” means, in relation to an issuer, a security holder that

(a) owns or controls 10% or more of any class of the issuer’s voting securities, or

(b) is able to affect materially the control of the issuer, whether alone or by acting in concert with others;

“subsidiary entity” has the meaning set out in Regulation 52-110 respecting Audit Committees approved by Minister’s Order No. 2005-10 dated June 7, 2005;

“U.S. marketplace” means an exchange registered as of the effective date of this Regulation as a ‘national securities exchange’ under section 6 of the 1934 Act, or the Nasdaq Stock Market; and

“venture issuer” means an issuer that, at the end of its most recently completed financial year, does not have any of its securities listed or quoted on the Toronto Stock Exchange, a U.S. marketplace, or a marketplace outside of Canada and the United States of America.

1.2 Meaning of Independence

(1) In a jurisdiction other than British Columbia, a director is independent if he or she would be independent within the meaning of section 1.4 of Regulation 52-110.

(2) In British Columbia, a director is independent if

(a) a reasonable person with knowledge of all the relevant circumstances would conclude that the director is independent of management of the issuer and of any significant security holder, or

(b) the issuer is a reporting issuer in a jurisdiction other than British Columbia, and the director is independent under subsection (1).

1.3 Application

This Regulation applies to a reporting issuer other than:

(a) an investment fund or issuer of asset-backed securities, as defined in Regulation 51-102 respecting Continuous Disclosure Obligations;

(b) a designated foreign issuer or SEC foreign issuer, as defined in Regulation 71-102 respecting Continuous Disclosure and Other Exemptions Relating to Foreign Issuers approved by Minister’s Order No. 2005-07 dated May 19, 2005;

(c) a credit support issuer or exchangeable security issuer that is exempt under sections 13.2 and 13.3 of Regulation 51-102 respecting Continuous Disclosure Obligations, as applicable; and

(d) an issuer that is a subsidiary entity, if

i. the issuer does not have equity securities, other than non-convertible, non-participating preferred securities, trading on a marketplace, and

ii. the person or company that owns the issuer is

(A) subject to the requirements of this Regulation, or

(B) an issuer that has securities listed or quoted on a U.S. marketplace, and is in compliance with the corporate governance disclosure requirements of that U.S. marketplace.

PART 2 DISCLOSURE AND FILING REQUIREMENTS

2.1 Required Disclosure

(1) If management of an issuer, other than a venture issuer, solicits a proxy from a security holder of the issuer for the purpose of electing directors to the issuer’s board of directors, the issuer must include in its management information circular the disclosure required by Form 58-101F1.

(2) An issuer, other than a venture issuer, that does not send a management information circular to its security holders must provide the disclosure required by Form 58-101F1 in its AIF.

2.2 Venture Issuers

(1) If management of a venture issuer solicits a proxy from a security holder of the venture issuer for the purpose of electing directors to the issuer’s board of directors, the venture issuer must include in its management information circular the disclosure required by Form 58-101F2.

(2) A venture issuer that does not send a management information circular to its security holders must provide the disclosure required by Form 58-101F2 in its AIF or annual MD&A.

2.3 Filing of Code

If an issuer has adopted or amended a written code, the issuer must file a copy of the code or amendment on SEDAR no later than the date on which the issuer’s next financial statements must be filed, unless a copy of the code or amendment has been previously filed.

PART 3

EXEMPTIONS AND EFFECTIVE DATE

3.1 Exemptions

(1) The securities regulatory authority may grant an exemption from this rule, in whole or in part, subject to any conditions or restrictions imposed in the exemption.

(2) Despite subsection (1), in Ontario, only the regulator may grant an exemption.

(3) In Québec, this exemption is granted pursuant to section 263 of the Securities Act (R.S.Q., c. V-1.1).

3.2 Effective Date

(1) This Regulation comes into force on June 30, 2005.

(2) Despite subsection (1), sections 2.1 and 2.2 only apply to management information circulars, AIFs and annual MD&A, as the case may be, which are filed following an issuer's financial year ending on or after June 30, 2005.

FORM 58-101F1

CORPORATE GOVERNANCE DISCLOSURE

1. Board of Directors

(a) Disclose the identity of directors who are independent.

(b) Disclose the identity of directors who are not independent, and describe the basis for that determination.

(c) Disclose whether or not a majority of directors are independent. If a majority of directors are not independent, describe what the board of directors (the board) does to facilitate its exercise of independent judgement in carrying out its responsibilities.

(d) If a director is presently a director of any other issuer that is a reporting issuer (or the equivalent) in a jurisdiction or a foreign jurisdiction, identify both the director and the other issuer.

(e) Disclose whether or not the independent directors hold regularly scheduled meetings at which non-independent directors and members of management are not in attendance. If the independent directors hold such meetings, disclose the number of meetings held since the beginning of the issuer's most recently completed financial year. If the independent directors do not hold

such meetings, describe what the board does to facilitate open and candid discussion among its independent directors.

(f) Disclose whether or not the chair of the board is an independent director. If the board has a chair or lead director who is an independent director, disclose the identity of the independent chair or lead director, and describe his or her role and responsibilities. If the board has neither a chair that is independent nor a lead director that is independent, describe what the board does to provide leadership for its independent directors.

(g) Disclose the attendance record of each director for all board meetings held since the beginning of the issuer's most recently completed financial year.

2. Board Mandate

Disclose the text of the board's written mandate. If the board does not have a written mandate, describe how the board delineates its role and responsibilities.

3. Position Descriptions

(a) Disclose whether or not the board has developed written position descriptions for the chair and the chair of each board committee. If the board has not developed written position descriptions for the chair and/or the chair of each board committee, briefly describe how the board delineates the role and responsibilities of each such position.

(b) Disclose whether or not the board and CEO have developed a written position description for the CEO. If the board and CEO have not developed such a position description, briefly describe how the board delineates the role and responsibilities of the CEO.

4. Orientation and Continuing Education

(a) Briefly describe what measures the board takes to orient new directors regarding

i. the role of the board, its committees and its directors, and

ii. the nature and operation of the issuer's business.

(b) Briefly describe what measures, if any, the board takes to provide continuing education for its directors. If the board does not provide continuing education, describe how the board ensures that its directors maintain the skill and knowledge necessary to meet their obligations as directors.

5. Ethical Business Conduct

(a) Disclose whether or not the board has adopted a written code for the directors, officers and employees. If the board has adopted a written code :

i. disclose how a person or company may obtain a copy of the code ;

ii. describe how the board monitors compliance with its code, or if the board does not monitor compliance, explain whether and how the board satisfies itself regarding compliance with its code ; and

iii. provide a cross-reference to any material change report filed since the beginning of the issuer's most recently completed financial year that pertains to any conduct of a director or executive officer that constitutes a departure from the code.

(b) Describe any steps the board takes to ensure directors exercise independent judgement in considering transactions and agreements in respect of which a director or executive officer has a material interest.

(c) Describe any other steps the board takes to encourage and promote a culture of ethical business conduct.

6. Nomination of Directors

(a) Describe the process by which the board identifies new candidates for board nomination.

(b) Disclose whether or not the board has a nominating committee composed entirely of independent directors. If the board does not have a nominating committee composed entirely of independent directors, describe what steps the board takes to encourage an objective nomination process.

(c) If the board has a nominating committee, describe the responsibilities, powers and operation of the nominating committee.

7. Compensation

(a) Describe the process by which the board determines the compensation for the issuer's directors and officers.

(b) Disclose whether or not the board has a compensation committee composed entirely of independent directors. If the board does not have a compensation committee composed entirely of independent directors, describe what steps the board takes to ensure an objective process for determining such compensation.

(c) If the board has a compensation committee, describe the responsibilities, powers and operation of the compensation committee.

(d) If a compensation consultant or advisor has, at any time since the beginning of the issuer's most recently completed financial year, been retained to assist in determining compensation for any of the issuer's directors and officers, disclose the identity of the consultant or advisor and briefly summarize the mandate for which they have been retained. If the consultant or advisor has been retained to perform any other work for the issuer, state that fact and briefly describe the nature of the work.

8. Other Board Committees

If the board has standing committees other than the audit, compensation and nominating committees, identify the committees and describe their function.

9. Assessments

Disclose whether or not the board, its committees and individual directors are regularly assessed with respect to their effectiveness and contribution. If assessments are regularly conducted, describe the process used for the assessments. If assessments are not regularly conducted, describe how the board satisfies itself that the board, its committees, and its individual directors are performing effectively.

INSTRUCTION:

(1) *This Form applies to both corporate and non-corporate entities. Reference to a particular corporate characteristic, such as a board, includes any equivalent characteristic of a non-corporate entity.*

Income trust issuers must provide disclosure in a manner which recognizes that certain functions of a corporate issuer, its board and its management may be performed by any or all of the trustees, the board or management of a subsidiary of the trust, or the board, management or employees of a management company. In the case of an income trust, references to "the issuer" refer to both the trust and any underlying entities, including the operating entity.

(2) *If the disclosure required by Item 1 is included in a management information circular distributed to security holders of the issuer for the purpose of electing directors to the issuer's board of directors, provide disclosure regarding the existing directors and any proposed directors.*

(3) Disclosure regarding board committees made under Item 8 of this Form may include the existence and summary content of any committee charter.

FORM 58-101F2
CORPORATE GOVERNANCE DISCLOSURE
(VENTURE ISSUERS)

1. Board of Directors

Disclose how the board of directors (the board) facilitates its exercise of independent supervision over management, including

- i. the identity of directors that are independent, and
- ii. the identity of directors who are not independent, and the basis for that determination.

2. Directorships

If a director is presently a director of any other issuer that is a reporting issuer (or the equivalent) in a jurisdiction or a foreign jurisdiction, identify both the director and the other issuer.

3. Orientation and Continuing Education

Describe what steps, if any, the board takes to orient new board members, and describe any measures the board takes to provide continuing education for directors.

4. Ethical Business Conduct

Describe what steps, if any, the board takes to encourage and promote a culture of ethical business conduct.

5. Nomination of Directors

Disclose what steps, if any, are taken to identify new candidates for board nomination, including :

- i. who identifies new candidates, and
- ii. the process of identifying new candidates.

6. Compensation

Disclose what steps, if any, are taken to determine compensation for the directors and CEO, including :

- i. who determines compensation, and
- ii. the process of determining compensation.

7. Other Board Committees

If the board has standing committees other than the audit, compensation and nominating committees, identify the committees and describe their function.

8. Assessments

Disclose what steps, if any, that the board takes to satisfy itself that the board, its committees, and its individual directors are performing effectively.

INSTRUCTION:

(1) This form applies to both corporate and non-corporate entities. Reference to a particular corporate characteristic, such as a board, includes any equivalent characteristic of a non-corporate entity.

Income trust issuers must provide disclosure in a manner which recognizes that certain functions of a corporate issuer, its board and its management may be performed by any or all of the trustees, the board or management of a subsidiary of the trust, or the board, management or employees of a management company. In the case of an income trust, references to "the issuer" refer to both the trust and any underlying entities, including the operating entity.

(2) If the disclosure required by Items 1 and 2 is included in a management information circular distributed to security holders of the issuer for the purpose of electing directors to the issuer's board of directors, provide disclosure regarding the existing directors and any proposed directors.

(3) Disclosure regarding board committees made under Item 7 of this Form may include the existence and summary content of any committee charter.

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