

**Autorité des marchés financiers and New Brunswick Securities Commission Staff
Notice on Proposed Changes to:**

National Instrument 41-101 respecting General Prospectus Requirements

Companion Policy to National Instrument 41-101 respecting General Prospectus Requirements

National Instrument 44-101 respecting Short Form Prospectus Distributions

Companion Policy to National Instrument 44-101 Short Form Prospectus Distributions

National Instrument 44-102 respecting Shelf Distributions.

Introduction

The Autorité des marchés financiers (AMF) and the New Brunswick Securities Commission (NBSC) are publishing for a 90-day comment period a notice that sets out the proposed substantive changes reflected in proposed amendments published by the Canadian Securities Administrators (CSA), except the AMF and the NBSC. The other CSA jurisdictions are publishing these proposed amendments today for a 90-day comment period. They are related to the following instruments and policies:

- *National Instrument 41-101 respecting General Prospectus Requirements* (NI 41-101);
- *Companion Policy to National Policy 41-101 respecting General Prospectus Requirements* (41-101CP);
- *National Instrument 44-101 respecting Short Form Prospectus Distributions* (NI 44-101);
- *Companion Policy to National Instrument 44-101 respecting Short Form Prospectus Distributions* (44-101CP); and
- *National Instrument 44-102 respecting Shelf Distributions* (NI 44-102).

The proposed amendments relate primarily to the upcoming changeover to IFRS in Canada and need to be in place before January 1, 2011.

The AMF and the NBSC support the proposed amendments. However, because of the legal obligation to publish amending instruments simultaneously in French and English in Québec and New Brunswick, and because the French IFRS terminology is still in a state of flux, publication for comment of amending instruments in these provinces is presently not feasible. It is expected that the AMF and the NBSC will publish for comment corresponding amending instruments, in French and in English, during the first quarter of 2010. Market participants in Québec and New Brunswick are encouraged to comment on the proposed substantive changes presented in this notice, and on the amendments published by the other CSA jurisdictions, that have been posted on the websites of certain securities regulatory authorities.

This notice uses the term “proposed amendments” to refer both to the proposed amendments to NI 41-101, 41-101CP, NI 44-101, 44-101CP and NI 44-102 collectively, as they are being published for comment today in the other CSA jurisdictions, and to the proposed corresponding amending instruments, as they are expected to be published for comment during the first quarter of 2010 in Québec and New Brunswick.

Background

NI 41-101 provides a comprehensive set of prospectus requirements for issuers. NI 44-101 sets out requirements for an issuer to file a prospectus in the form of a short form prospectus. NI 44-102 sets out requirements for a distribution under a short form prospectus using shelf procedures (NI 41-101, NI 44-101 and NI 44-102 are collectively referred to in this notice as “the prospectus rules”).

The prospectus rules refer to and rely on references to existing Canadian generally accepted accounting principles (GAAP), which are established by the Canadian Accounting Standards Board (AcSB) and published in the CICA (Canadian Institute of Chartered Accountants) Handbook. Following a period of public consultation, the AcSB adopted a strategic plan to move financial reporting for Canadian publicly accountable enterprises to IFRS as issued by the International Accounting Standards Board (IASB). For financial years beginning on or after January 1, 2011, Canadian GAAP for publicly accountable enterprises will be IFRS incorporated into the CICA Handbook.

Substance and Purpose of the Proposed Amendments

The primary purpose of these changes is to accommodate the transition to IFRS. A small number of housekeeping changes are also being made. The AMF, the NBSC and the other CSA jurisdictions (or “we”) are proposing to update the accounting terms and phrases in the prospectus rules to reflect the fact that, for financial years beginning on or after January 1, 2011, Canadian GAAP for publicly accountable enterprises will be IFRS incorporated into the CICA Handbook.

Summary of the Proposed Amendments

The proposed amendments are a result of amendments to *National Instrument 52-107 respecting Acceptable Accounting Principles, Auditing Standards and Reporting Currency* (to be renamed *Acceptable Accounting Principles and Auditing Standards*) (NI 52-107) proposed to require domestic issuers to comply with IFRS. NI 52-107 sets out the accounting principles and auditing standards that apply to financial statements filed in a jurisdiction. We have also proposed amendments similar to those being proposed to *National Instrument 51-102 respecting Continuous Disclosure Obligations* (NI 51-102) to maintain the harmony between the general prospectus requirements and the continuous disclosure and short form prospectus disclosure regimes. We refer you to our notice and request for comment on the proposed amendments to NI 51-102. Where appropriate, we have also included a number of amendments that either result from changes to other CSA rules as a result of the changeover to IFRS or are housekeeping amendments.

The amendments we are publishing for comment will:

- Replace existing Canadian GAAP terms and phrases with IFRS terms and phrases.
- Change disclosure requirements in instances where IFRS contemplates different financial statements than existing Canadian GAAP.
- Provide a 30 day extension to the deadline for reporting issuers, other than investment funds, to include in a prospectus the first interim financial report in the year of adopting IFRS in respect of an interim period beginning on or after January 1, 2011.
- Clarify the existing provisions or amend or delete it where part or all of a provision is no longer accurate or appropriate.

Accounting Terms and Phrases

The proposed amendments include new terms and phrases that are consistent with those used in IFRS and replace terms and phrases used in existing Canadian GAAP.

The proposed amendments do not reflect the impact of exposure drafts or discussion papers from the IASB prior to their adoption into IFRS. The proposed definition of IFRS in *National Instrument 14-101 respecting Definitions* (NI 14-101) would take into account amendments made from time to time.

The proposed amendments to the prospectus rules are not intended to substantively alter securities law requirements. For example, we are proposing to replace the existing Canadian GAAP term “results of operations” with the corresponding IFRS term “financial performance”. This is intended to be a change in terminology only.

The proposed amendments to the prospectus rules also include a number of new or revised definitions. For example, we have included a definition of “financial statements” to clarify that interim financial reports should be considered when interpreting references to financial statements in the prospectus rules. We have also included a definition of “forward-looking information”. Currently, definitions of “forward-looking information” are found in the securities acts of the various provinces and territories. As all of the acts may not be amended prior to January 1, 2011 to reflect the changeover to IFRS, we have defined forward-looking information in a manner consistent with IFRS.

Issuers that prepare financial statements in accordance with acceptable accounting principles other than IFRS may interpret any reference in the rules to a term or provision defined, or referred to, in IFRS as a reference to the corresponding term or provision in the other acceptable accounting principles. This is clarified in subsection 1.3(4) of 41-101CP.

Changes to Financial Statement Requirements

1. Reconciliations and transition opening statement of financial position required by IFRS 1

IFRS 1 requires the presentation of an opening IFRS statement of financial position at the date of transition to IFRS along with various reconciliations relating to the date of transition. We are requiring the opening IFRS statement of financial position to be presented in an issuer’s first IFRS interim financial report and first IFRS financial statements. We believe this disclosure is necessary to explain how the transition from previous GAAP to IFRS has affected an issuer’s reported financial position, financial performance and cash flows. This disclosure may not be included in interim financial reports for the second and third quarters. However, an issuer may file an IPO prospectus at a time when the second or third quarter interim financial report is required to be included in the prospectus, and the first quarter interim financial report is no longer required to be included in the prospectus. To obtain consistent disclosure in all prospectuses in the year of adopting IFRS, we have added a disclosure requirement to include these reconciliations and the opening IFRS statement of financial position in an issuer’s IPO prospectus.

2. Opening Statement of Financial Position

In certain instances, when an issuer applies an accounting policy retrospectively, makes a retrospective restatement of items in its financial statements or reclassifies items in its financial statements, IAS 1 *Presentation of Financial Statement* requires the disclosure of a statement of financial position as at the beginning of the earliest comparative period. Form 41-101F1 will require the disclosure of this opening statement of financial position in both annual financial statements and interim financial reports.

3. Presentation of Statement of Cash Flows

We have proposed amendments to reflect the financial statement presentation requirements in IFRS. NI 41-101 and existing Canadian GAAP require issuers to present a cash flow statement in their interim financial statements for the three month period ending on the last day of the interim period and the corresponding comparative interim period and, for periods other than the first interim period, the year to date period. As IFRS requires only a statement of cash flows for the year to date period and the corresponding comparative period, we have proposed amendments to only require a statement of cash flows for those periods.

4. Presentation of Statement of Comprehensive Income

We added disclosure requirements for the statement of comprehensive income based on the presentation options available under IFRS. If an issuer presents the components of profit or loss in a separate income statement, the separate income statement must be displayed immediately before the statement of comprehensive income.

Transition Provision – Extension for Inclusion of First IFRS Interim Financial Report

To maintain the harmony between the prospectus regime and the continuous disclosure regime, Item 38 of Form 41-101F1 includes transition provisions that provide reporting issuers with a 30 day extension to the deadline for including in a prospectus the first IFRS interim financial report in respect of an interim period beginning on or after January 1, 2011. This extension only applies to reporting issuers (other than investment funds). We believe this extension should be provided as the first IFRS interim financial report will be due not long after the filing of the Canadian GAAP annual financial statements. We recognize that boards of directors, audit committees, and in some cases auditors, will require additional time to review and approve the first set of IFRS financial statements. It should also be noted that other jurisdictions which transitioned to IFRS also granted filing extensions for the first IFRS filing, even though they only require issuers to file on a half-yearly basis.

We have not provided reporting issuers with an extension to the deadline for including in a prospectus subsequent IFRS interim financial reports or the first IFRS annual financial statements as we believe the deadlines applicable to these financial statements are reasonable and appropriate after the initial changeover to IFRS.

The CSA regulators will generally not grant exemptive relief to an issuer to extend a deadline for including financial information in a prospectus. While we recognize that some issuers filing their IPO prospectuses may face difficulties in complying with the financial statement disclosure requirements as a result of the changeover to IFRS, we do not believe it is appropriate to grant exemptive relief to an issuer to allow it to proceed with an IPO with a prospectus that does not include current financial information.

Amendments from NI 52-107

Among other things, the proposed changes to NI 52-107 eliminate the requirement in section 4.1 of that rule for an SEC issuer that previously used Canadian GAAP and changed to US GAAP to reconcile its financial statements to Canadian GAAP for two years. Consequently, we propose to remove the related requirements for an MD&A supplement in Item 8.3 of Form 41-101F1. This change will apply in respect of any period relating to a financial year that begins on or after January 1, 2011.

In addition, NI 52-107 proposes, except in Ontario, that acquisition statements in respect of probable and completed acquisitions be permitted to be prepared in accordance with Canadian GAAP applicable to private enterprises in certain circumstances. The CSA has made changes to Part 8 of NI 51-102 and 51-102CP to address this proposal. As a result, this option would be available to an issuer in respect of acquisition statements included in the issuer's prospectus for probable and completed acquisitions. These

proposed changes will apply to a prospectus which includes or incorporates by reference acquisition statements for any period relating to a financial year that begins on or after January 1, 2011.

Proposed changes to other CSA rules, including NI 52-107 and NI 14-101, are being published for comment concurrently with this notice.

Even though the proposed amendments to the prospectus rules replace existing Canadian GAAP terms and phrases with IFRS terms and phrases, the proposed amendments include references to “Canadian GAAP”. This is because NI 14-101 will continue to define “Canadian GAAP” to mean generally accepted accounting principles determined with reference to the CICA Handbook. Once the AcSB incorporates IFRS into the Handbook, the Handbook will contain two versions of Canadian GAAP for publicly accountable enterprises:

- IFRS for financial years beginning on or after January 1, 2011 (the mandatory effective date) (proposed Part I of the Handbook), and
- the standards constituting Canadian GAAP before the mandatory effective date (proposed Part IV of the Handbook).

Certain prospectus filings require the presentation of both annual and interim financial information. During the IFRS transition period, we recognize that prospectuses may contain financial information in respect of an issuer prepared using both existing Canadian GAAP and IFRS. For example, an IPO prospectus filed in 2011 may include annual financial statements prepared in accordance with Canadian GAAP and an interim financial report that complies with IFRS.

Transition

After the IFRS changeover date on January 1, 2011, non calendar year-end issuers will continue to prepare financial statements in accordance with existing Canadian GAAP until the start of their new financial year. To accommodate for this, we are proposing to include transition provisions in the prospectus rules and the amendment instruments that provide that the proposed amendments only apply to a preliminary prospectus, an amendment to a preliminary prospectus, a final prospectus or an amendment to a final prospectus of an issuer which includes or incorporates by reference financial statements of the issuer in respect of periods relating to financial years beginning on or after January 1, 2011. Thus, during the transition period,

- issuers including or incorporating by reference financial statements prepared in accordance with existing Canadian GAAP will be required to comply with the versions of the prospectus rules that contain existing Canadian GAAP terms and phrases.
- issuers including or incorporating by reference financial statements that comply with IFRS will be required to comply with the versions of the prospectus rules that contain IFRS terms and phrases.

After the transition period all issuers will be required to comply with the versions of the prospectus rules that contain IFRS terms and phrases.

To further assist issuers and their advisors and to increase transparency, during the transition period certain jurisdictions will post two different unofficial consolidations of the prospectus rules on their websites:

- The existing versions of the prospectus rules that contain existing Canadian GAAP terms and phrases, which apply to a preliminary prospectus, an amendment to a preliminary prospectus, a final prospectus or an amendment to a final prospectus of an issuer which includes or incorporates by reference financial statements of the issuer in respect of periods relating to financial years beginning before January 1, 2011.

- The new versions of the prospectus rules that contain IFRS terms and phrases, which apply to a preliminary prospectus, an amendment to a preliminary prospectus, a final prospectus or an amendment to a final prospectus of an issuer which includes or incorporates by reference financial statements of the issuer in respect of periods relating to financial years beginning on or after January 1, 2011.

Comments

We request your comments on the proposed changes outlined above. Please provide your comments in writing by December 24, 2009. If you are not sending your comments by email, an electronic file containing the submissions should also be provided (Windows format, Word).

Deliver your comments **only** to the following address. Your comments will be distributed to the other participating CSA member jurisdictions.

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Please note that comments received will be made publicly available and posted at www.osc.gov.on.ca and the websites of certain other securities regulatory authorities. We cannot keep submissions confidential because securities legislation in certain provinces requires that a summary of the written comments received during the comment period be published.

Questions

Please refer your questions to any of:

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