

PUBLIC MARKETS BULLETIN

September 2005

NEW OPPORTUNITIES IN QUÉBEC'S FINANCIAL MARKETS

In an ongoing effort by the *Autorité des marchés financiers* (“AMF”) to harmonize Québec’s securities laws with other Canadian jurisdictions, the AMF will adopt *Regulation 45-106 Respecting Prospectus and Registration Exemptions* (“NI 45-106”) on September 14, 2005. Combined with the repeal of certain sections of the *Regulation Respecting Securities* (“Regulation”) on August 24th, 2005, issuers and brokers in Québec will now have access to a greater pool of potential investors and a capital raising process that is as efficient and cost-effective as that of any other Canadian jurisdiction. Issuers can look forward to the elimination of certain pre-authorizing exemptions from the AMF and a uniform post closing filing document. In addition, advertising for private placements will now be permitted for the first time.

This bulletin highlights some of the key changes to the most frequently used private placement registration and prospectus exemptions in Québec and outlines several new exemptions that will now be available in Québec. For a more detailed discussion of the impact of NI 45-106 in Ontario, please refer to our bulletin entitled “Preparing for National Instrument 45-106 – Prospectus and Registration Exemptions”.

PRIVATE PLACEMENTS IN QUÉBEC PRIOR TO SEPTEMBER 14, 2005

Until recently, private placements in Québec were completed utilizing sophisticated purchaser exemptions or by exemptions for minimum placement amounts of \$150,000. A “sophisticated purchaser” was very narrowly defined in the *Securities Act* to include banks, crown corporations and public agencies. The definition notably excluded important non-institutional investors such as investment funds and high net worth individuals. The block of \$150,000 exemption required a placement to a person acting for his own account and purchasing securities with a minimum total acquisition cost of \$150,000. Both the sophisticated purchaser and block of \$150,000 placements had to be executed without advertisement and required the filing of a form of post-closing document found in the Regulation. In most cases, although the pool of potential investors was limited, capital raising via these two exemptions was relatively easy and cost-efficient. Nonetheless, the process was slightly more complicated for investment fund issuers which still had to seek exemptive orders from the AMF for lower increment additional unit subscriptions; deferred disclosure and relief from certain applicable provisions of the Regulation.

On April 23, 2004, the AMF published a notice (“Notice”) stating that Québec would now allow distributions to “accredited investors”, as defined in Multilateral Instrument 45-103 *Capital Raising Exemptions*. The Notice still required approval from the AMF in the form of an exemption prior to any distribution to an accredited investor, as well as a post-closing filing, within 10 days of the distribution, containing information prescribed in the Notice. In practice, obtaining such prior relief was often fairly routine. Nevertheless, many issuers, while welcoming the increased pool of potential investors in Québec, viewed the prior approval procedure as a hindrance and an unnecessary cost, as other Canadian jurisdictions did not require this additional step.

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PRIVATE PLACEMENTS IN QUÉBEC AFTER SEPTEMBER 14, 2005

Key changes to existing private placement exemptions:

Minimum Amount Exemption – While the advertising restrictions have been lifted (see below), the minimum amount of \$150,000 must now be paid in cash at the time of the distribution, and the distribution must be in a security of a single issuer.

Accredited Investor Exemption - Sophisticated purchasers and accredited investors (as defined in the Notice) will now be consolidated under the definition of “accredited investor” under NI 45-106, and no exemption prior to distribution is required.

Private Issuer Exemption – The term “closed company” will no longer exist under the *Securities Act*, save for application of the Charter of the French Language. The private issuer exemption is designed to replace the closed company exemption, although the definition of a private issuer is slightly more stringent and distributions under this exemption can no longer be made to anyone. Trades in the securities of private issuers will be allowed to persons who purchase as principal, and fall within a number of specified categories.

New private placement exemptions in Québec:

Family, Friends and Business Associates Exemption – Exempt distributions may now be made to immediate family, close friends and business associates of a director, executive officer or control person of the issuer, provided that there is no commission or finder’s fee paid in respect of such distribution. With respect to such distributions, the Canadian Securities Administrators (“CSA”) recommend that the purchaser provide a signed statement at the time of distribution describing the purchaser’s “close” relationship.

Offering Memorandum Exemption – This exemption is available provided that the purchaser purchases as principal, the acquisition cost is less than \$10,000 or the purchaser is an “eligible investor” (as defined in NI 45-106), the issuer delivers an Offering Memorandum in the prescribed form and obtains a risk acknowledgement from the purchaser. If an issuer is an investment fund, the exemption will only be available if it is a non-redeemable investment fund or a mutual fund that is a reporting issuer and listed for trading on an exchange or over-the-counter market. Of particular interest in Québec is that the use of this exemption requires the issuer to grant a contractual right of rescission, with prescribed language to be included in the Offering Memorandum.

As a note of interest, the prohibition on advertising for private placements has been eliminated, which should allow issuers broader access to potential investors. Nonetheless, the CSA cautions that securities regulations otherwise applicable to advertising are still in effect (for example, with respect to misrepresentations), and the use of certain exemptions such as the Family, Friends and Business Associates exemption may be called into question if advertising is used to solicit purchasers.

Uniform Procedure:

Issuers will no doubt welcome the elimination of the prior approval requirements for distributions to accredited investors. In addition, exemptions are now available for subscriptions for additional units of investment funds where such units were acquired under the minimum purchase exemption, provided that the additional units are of the same class and the purchaser’s net asset value of securities held in the fund is not less than \$150,000.

In addition, investment funds will no longer have to seek exemptive relief from the application of Title VII of the Regulations, which was repealed on August 24th, 2005.

Finally, issuers in Québec will only have to deal with one post-closing document (Form 45-106F1), to be filed within 10 days of the distribution. This form will not have to be filed in connection with a distribution of a debt security of the issuer's own issue, or in connection with the distribution of an equity security of its own issue to a Canadian financial institution or a Schedule III bank. In addition, investment funds will not have to file a report within 10 days for distributions to accredited investors, minimum amount placements and exempt additional unit subscriptions, provided that the investment fund files a consolidated report no later than 30 days after its financial year-end. As a note of interest, Item 1 of Form 45-106F1 (containing personal information of the investors) will not be made public in Québec, as the AMF views such disclosure as a breach of privacy laws.

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The foregoing provides only an overview. Readers are cautioned against making any decisions based on this material alone. Rather, a qualified lawyer should be consulted.

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