

General Prospectus Requirements

By René Branchaud and Johanne Duchesne



The Ontario Securities Commission has adopted Rule 41-501 on general prospectus requirements. This rule came into force on December 31st, 2000.

To maintain the efficient operation of the markets, the Quebec Securities Commission adopted Policy Statement Q-28 which mirrors the Ontario Rule 41-501 for the Province of Quebec. The current rules however remain in force so that the issuer who files a prospectus only in the Province of Quebec has the option to use the existing regime if he so wishes.

This rule covers the preparation, presentation, content, certification as well as the filing and receipting of preliminary prospectuses and final prospectuses.

The major changes from the current regime concern financial statements of the issuer, significant acquisitions or dispositions of business, completed or intended to be completed as well as the generally accepted auditing standards (GAAS) other than Canadian GAAS.

A prospectus must contain audited financial statements of the issuer for each of the three most recently completed financial years ended more than 90 days before the date of the preliminary prospectus. It must also contain interim financial statements for any period ended more than 60 days before the date of the preliminary prospectus.

The time allowed for disclosure of financial information in the prospectus are extended compared with the current requirements in force. However, the time allowance must be calculated as of the date of the preliminary prospectus and as of the date of the final prospectus while the current regime provides for the calculation as of the date of the preliminary prospectus only.

Furthermore, the rule provides for the obligation of the issuer to include financial statements more recent than those required by the rule if, prior to filing the preliminary prospectus or final prospectus, these financial statements were filed with the Commission.

The rule provides, on the other hand, specific requirements as to the financial statements to be included in the prospectus in the case of acquisitions or dispositions of business.

The rule creates disclosure obligations which vary according to the time of the acquisition or disposition as well as the relative significance of said acquisition or disposition. The relative significance is established according to three tests (two only in the case of a disposition) calculated as at the date of the last audited financial statements of the issuer. These tests are: the asset test, the investment test as well as the income test. Inasmuch as one of the tests exceeds the 20 per cent threshold, the issuer is required to comply with the financial disclosure requirements. However, an issuer is permitted, in some circumstances, to recalculate the significance at a more recent date and if none of those tests are met, then the acquisition will not be considered a significant acquisition.



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The basic requirement for an acquisition of business is to include in the prospectus the audited financial statements of the acquired business as well as a pro forma balance sheet and pro forma income statement consolidating the financial statements of the issuer to those of the acquired business. The financial statements required may cover a maximum of three financial years depending on the relative significance of the acquisition.

In the case of a disposition of business, only a pro forma balance sheet and pro forma income statement are required from the issuer.

Finally, in the case of financial statements set up according to foreign GAAP, the foreign auditor's report shall be accompanied by a statement disclosing any material differences between the foreign auditor's report and the Canadian auditor's report and confirming that the auditing standards applied are substantially equivalent to the Canadian GAAS.

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