



FROM “CLOSED COMPANY” TO “PRIVATE ISSUER” – A SMALL REVOLUTION FOR PRIVATE BUSINESSES

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The deadline of October 12, 2007 is quickly approaching. It is therefore important to keep in mind the modifications brought to the Québec securities regulatory framework as further explained herein.

Most companies and corporations doing business in Québec (collectively the "corporations") consider themselves as "private" corporations, in other word words "closed companies", since their securities are not listed for trading on the stock exchange or otherwise publicly traded. However, as of September 14, 2005, important modifications were brought to the Québec securities regulatory framework, namely (i) the amendment of the Québec *Securities Act* (the "Act") removing most of its prospectus and registration exemptions, including the exemption pertaining to "closed companies" and (ii) the adoption of *Regulation 45-106 – Prospectus and Registration Exemptions* ("NI 45-106") and *Regulation 45-102 – Resale of Securities* ("MI 45-102").

Amongst all these modifications, NI 45-106 provides for certain exemptions for "private issuers", which can be compared to the former "closed company" exemption, as long as corporations meet regulatory requirements.

The definition of "private issuer" is found at Section 2.4 of NI 45-106 and is similar, in many respects, to that of the "closed company", but also encompasses a major difference. The transfer restriction contained in the issuer's constating documents now extends to *all* types of securities that may be issued by a corporation, and not only to shares. In particular cases, this modification requires certain corporations created before NI 45-106's coming into force to amend their articles prior to October 12, 2007, which is the expiry date of the delay granted by the *Autorité des marchés financiers* ("AMF") to proceed with such amendment and, consequently, to be able to benefit from the "private issuer" exemption.

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It is important to remember that meeting the requirements of the restriction on transfer of securities mentioned above does not automatically provide an issuer the benefit of the exemption in Subsection 2.4(3) of NI 45-106. One must also analyze each security issuance performed by the private issuer to determine if it meets the exemption's other requirements, particularly those relating to persons to whom securities may be issued. Furthermore, transfers of securities acquired under NI 45-106 exemptions are governed by MI 45-102. Therefore, a holder wishing to resell its securities must have knowledge of and refer to the exemption under which it acquired the said securities. In such case, the seller has the obligation to ensure that the applicable conditions of MI 45-102 are met. Such modifications represent a major departure from the former rules, under which as soon as a corporation met the requirements of the closed company definition, it was automatically exempted from the application of most of the Act.

As a consequence of such new regulations, all corporations active in Québec are now subject to and must abide by these securities regulations. In this respect, it is highly recommended to comply with the requirements allowing companies to benefit from the new "private issuer" exemption under NI 45-106 when required, failing which, certain corporations may, in certain cases, irrevocably lose their "private issuer" status, a situation which could have adverse repercussions, such as substantial costs and obligations in cases of issuance and transfer of securities.

Please do not hesitate to contact us in order to obtain more information regarding this matter or to evaluate whether your corporation must comply with the above-mentioned requirements prior to October 12, 2007.



