



Document Type: Implementing Instrument
Document N°: 41-802
Subject: General Prospectus and Certificate Requirements
Amendments:
Published Date: 29 November 2005
Effective Date: 29 November 2005

IMPLEMENTING INSTRUMENT 41-802 ADOPTING ONTARIO LOCAL RULE 41-501 *GENERAL PROSPECTUS REQUIREMENTS*, FORMS 41-501F1, 41-501F2, 41-501F3 AND 41-501F4

PART 1 DEFINITIONS

1.1 "OSC Rule 41-501" means Ontario Local Rule 41-501 *General Prospectus Requirements* of the Ontario Securities Commission, made effective 31 December 2000 and further amended 30 September 2003 and 30 March 2004 (by Ontario Local Rule 51-801).

PART 2 PROSPECTUS FORM AND CONTENT REQUIREMENTS

2.1 Content Requirements

Subject to section 2.2, 2.3 and 2.4 of this Rule, the requirements under Part 6 of the *Securities Act* as to the form and content of a preliminary prospectus, a prospectus or an amendment to a prospectus and accompanying filings or deliveries to the Commission may be satisfied, in respect of any distribution, by compliance with the requirements as to form, content and accompanying filings or deliveries to the Commission applicable to a preliminary prospectus, a prospectus or an amendment to a prospectus, as the case may be, under OSC Rule 41-501.

2.2 Interpretation and Variation of OSC Rule

(a) For the purpose of section 2.1, references in OSC Rule 41-501, or in the form referred to in section 1.1 of OSC Rule 41-501, to the provisions of securities legislation of Ontario set out in column 1 of the table below shall be interpreted as references to the corresponding provisions of securities legislation of New Brunswick set out in column II of the table below.

I
Securities Act (Ontario)

subsection 57(1)
subsection 61(2)
section 62
subsection 65(1)
section 67

II
Securities Act (New Brunswick)

subsection 76(1) or 77(1), as the case may be
subsection 75(2)
section 78
subsection 82(1)
section 84

I
Securities Act (Ontario)

subsection 58(1)
subsection 58(2)
section 59

II
New Brunswick Implementing Instrument 41-802

paragraph 2.3(a)(i)
paragraph 2.3(a)(ii)
paragraph 2.3(c)(i)

(b) For the purpose of section 2.1, Part 15 of OSC Rule 41-501 shall be varied by replacing references to the "Director" under securities legislation of Ontario by references to the "Executive Director" under New Brunswick securities law.

(c) For the purpose of section 2.1, the form referred to in paragraph 13.2(2)2 of OSC Rule 41-501 shall be varied by replacing

(i) references to the "Director" under securities legislation of Ontario by references to the "Executive Director" under New Brunswick securities law, and

(ii) the information concerning the public official set out in paragraph (a)(iv) of the form by the following:

Executive Director
New Brunswick Securities Commission
133 Prince William Street, Suite 606
Saint John, New Brunswick
E2L 2B5

(d) For the purposes of section 2.1, the forms referred to in paragraphs 13.3(1)2 and 3 of OSC Rule 41-501 shall be varied by replacing or supplementing references to "Ontario" and to "Ontario securities law" by references to "New Brunswick" and "New Brunswick securities law", as the case may be.

2.3 Certification Requirements

(a) Certificate by issuer

(i) Subject to paragraph (iii) of this section and subsection (d) and subject to any waiver or variation consented to in writing by the

Executive Director, a prospectus filed under subsection 71(1) or subsection 78(1) of the Act shall contain a certificate in the following form, signed by the chief executive officer, the chief financial officer, and, on behalf of the board of directors, any two directors of the issuer, other than the foregoing, duly authorized to sign, and any person who is a promoter of the issuer:

The foregoing constitutes full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required by Part 6 of the Securities Act and the regulations thereunder.

- (ii) Subject to paragraph (iii) of this section and subsection (d), a prospectus filed under subsection 71(2) shall contain a certificate in the following form, signed by the chief executive officer, the chief financial officer, and, on behalf of the board of directors, any two directors of the issuer, other than the foregoing, duly authorized to sign, and any person who is a promoter of the issuer:

The foregoing constitutes full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required by Part 6 of the Securities Act and the regulations thereunder.

- (iii) Where the issuer has only three directors, two of whom are the chief executive officer and the chief financial officer, the certificate may be signed by all the directors of the issuer.
- (iv) Where the Executive Director is satisfied upon evidence or on submissions that either, or both of, the chief executive officer or chief financial officer of the issuer is for adequate cause not available to sign a certificate in a prospectus, the Executive Director may permit the certificate to be signed by any other responsible officer or officers of the issuer in lieu of either, or both of, the chief executive officer or chief financial officer.
- (v) With the consent of the Executive Director, a promoter or a guarantor need not sign the certificate in a prospectus.

(b) Certificate of promoter

- (i) The Executive Director may, in his or her discretion, require any person or company who was a promoter of the issuer within the two preceding years or who is a guarantor of the securities being distributed to sign the certificate required by paragraphs (a)(i) or (ii) subject to such conditions as the Executive Director may consider proper.
- (ii) With the consent of the Executive Director, a promoter or a guarantor may sign a certificate in a prospectus by his, her or its agent duly authorized in writing.

(c) Certificate of underwriter

- (i) Subject to subsection (d), where there is an underwriter, a prospectus shall contain a certificate in the following form, signed by the underwriter or underwriters who, with respect to the securities offered by the prospectus, are in a contractual relationship with the issuer or security holder whose securities are being offered by the prospectus:

To the best of our knowledge, information and belief, the foregoing constitutes full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required by Part 6 of the Securities Act and the regulations thereunder.

- (ii) With the consent of the Executive Director, an underwriter may sign a certificate in a prospectus by his, her or its agent duly authorized in writing.

(d) Alternative certificates

A short form prospectus may contain one or more forms of certificate to be signed as alternatives to the forms of certificate set out in paragraphs (a)(i) and (ii) and (c)(i) and, where any such certificate in a short form prospectus is used in accordance with the regulations, it is not necessary to use the alternative certificate required by paragraphs (a)(i) and (ii) and (c)(i), as the case may be.

2.4 Notification

An issuer that intends to rely on this Rule in respect of a distribution shall state that intention in a covering letter filed prior to or concurrently with the filing of the preliminary prospectus for that distribution.

PART 3 ADOPTION AS A RULE

- 3.1 OSC Rule 41-501 *General Prospectus Requirements*, as amended by this instrument, is adopted as a Rule under the *Securities Act*.

PART 4 REPEAL

- 4.1 Emergency Rule 41-802 is repealed by this instrument.

PART 5 EFFECTIVE DATE

- 5.1 This instrument comes into force on 29 November 2005.