



## Regulation 45-106 : Latest Developments

### New: Regulation 45-106 Amendment Kit

CRAC helps you to amend the articles of your clients so that they may maintain their private issuer status by providing you with its Regulation 45-106 amendment kit, free of charge. The kit includes pre-completed Amendment forms and examples of schedules ([click here to get the kit](#)).

### Erratum

In our last issue, we wrote that "October 12, 2007, is only a deadline for companies that have already issued securities since September 14, 2005." We should have added that the deadline also applies to companies who have issued securities, other than shares, still in circulation on September 14, 2005.

### Discretionary Exemption

On July 13, 2007, the Autorité des marchés financiers (hereinafter the "AMF") issued a new notice in which it offered a "way out" for "closed companies" unable to confirm that their securities were placed solely with the persons listed in section 2.4 of Regulation 45-106.

Under certain conditions, the AMF may, pursuant to section 263 of the *Securities Act* (hereinafter the "SA"), exempt a person or a group of persons from any or all of the requirements under Titles II to VI of the SA. Consequently, the AMF stated that it may, on a case-by-case basis, grant a company in the kind of situation described above a discretionary prospectus and registration exemption. Such exemption will only be granted if an exceptional circumstance is established as the reason for the company's inability to trace back the identity of past investors as a result of the time that has gone by or determine whether they appear in the list of persons mentioned in section 2.4 of Regulation 45-106. This discretionary exemption may also be granted to a company that has used an exemption other than that set out under section 2.4 of Regulation 45 106 since September 14, 2005, because it did not believe it would meet the condition in question.

The discretionary exemption is very limited in scope: it would only apply in

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### FOOD FOR THOUGHT

"The highest result of education is tolerance."

*Helen Keller*

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connection with distributions conducted in Quebec to Quebec-based investors, which means that the exemption does not grant the status of private issuer in other Canadian territories. Furthermore, companies must pay a fee of \$500.00 when submitting a request for discretionary exemption.

Other cases are covered in the AMF notice, and we invite you to read their notice: [http://www.lautorite.qc.ca/userfiles/File/reglementation/valeurs-mobilieres/autres-reglements-texte-vigueur/placement-valeurs/45-106\\_dispense\\_discretionnaire\\_ang.pdf](http://www.lautorite.qc.ca/userfiles/File/reglementation/valeurs-mobilieres/autres-reglements-texte-vigueur/placement-valeurs/45-106_dispense_discretionnaire_ang.pdf)

## To Act or Not to Act Before October 12, 2007: That Is The Question!

The table below summarizes our interpretation of Regulation 45-106 as regards the need or not to modify the articles of a company or the agreements between security holders to introduce a clause regarding restrictions on the transfer of securities so as to go from "closed company" to "private issuer" status. This, of course, is valid if the company in question meets the other conditions set out in Regulation 45-106! We hope you will find it useful:

### Interpretive Table

|  | In the case there is no issuance between September 14, 2005 and October 12, 2007, if the entity had: | Issuance between September 14, 2005, and October 11, 2007 <sup>(1)</sup>                                 | Issuance after October 12, 2007 <sup>(1)</sup>   |
|--|--|--|--|
| <b>SCENARIO 1 :</b><br>The entity only has shares in circulation on September 13, 2005 | <b>Shares only:</b><br>The amendment of corporate articles is not required.                          | <b>Shares only:</b> The amendment of articles is not required.   | <b>Shares only:</b> The amendment of articles is not required.   |
|  |  | <b>Securities<sup>(2)</sup> :</b><br>Amendment of articles or of the agreement between security holders. | <b>Securities<sup>(2)</sup> :</b><br>Amendment of articles or of the agreement between security holders prior to the issuance. |

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### Come see us

CRAC invites you to two important events this fall:

The Association des avocats et des avocates de province's 2007 conference  
September 27-30, 2007, at Château Bromont.

The Canadian Bar Association's annual national conference  
Monday, October 15, at Delta Montréal.

Come see us at our kiosk. We eagerly await your questions and comments.

Looking forward to seeing you!

|  |   |   |  |
|--|---|---|--|
| <p><b>SCENARIO 2 :</b><br/>The entity has securities<sup>(2)</sup> in circulation on September 13, 2005</p> <p><b>Note:</b> In this scenario it is presumed that there is not already present in a shareholders' or security holders' agreement a clause restricting the transfer of securities.</p> | <p><b>Securities<sup>(2)</sup> :</b><br/>Amendment of articles or of the agreement between security holders by October 12, 2007, if the entity intends to issue shares or securities in the future.</p> | <p><b>Shares or Securities<sup>(2)</sup> :</b><br/>Amendment of articles or of the agreement between security holders.</p> <p><b>Note:</b> Even if the entity issues only shares in this period, because it had already placed securities<sup>(2)</sup> that were in circulation on September 14, 2005, it must amend its articles.</p> | <p><b>Shares or Securities<sup>(2)</sup> :</b><br/>Amendment of articles or of the agreement between security holders prior to the issuance.</p> |
|--|---|---|--|

(1) This applies to an entity that existed before September 14, 2005. We want to remind you that the incorporating documents available from CRAC starting on September 14, 2005, contain a restriction on the transfer of securities

(2) For the purposes of this table, the term "securities" excludes "shares" and "non-convertible debt securities". Securities include, for example, stock options, convertible debentures into stock, promissory notes, etc.

**Following are various links to consult previous editions of Info-CRAC on this topic:**

[June/July 2007 - SPECIAL BULLETIN: New Notice for Regulation 45-106](#)

[April/May 2007 - Regulation 45-106 - 7 months left!](#)

[October/November 2005 - New in Quebec: Introduction of Private Issuer Exemption](#)



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**Land Surveyors Soon Able to Become Incorporated**

Indeed, starting on September 6, 2007, the *Règlement sur l'exercice de la profession d'arpenteur-géomètre en société* will be taking effect. This new regulation authorizes members of the Ordre des arpenteurs-géomètres du Québec to carry out their professional activities within a corporation or limited liability partnership (LLP), subject to the conditions set out in the regulation.

You can now consult this new regulation on the Office des professions du Québec's website using the following link (in French version only): <http://www.opq.gouv.qc.ca/fileadmin/docs/PDF/Lois-reg-recents/GOO-22aout07-Arp-geo-Exercice-en-societe.pdf>

Schedules adapted to the incorporation of land surveyors are available from CRAC. For more information, please contact Annie Fredette at 514-861-2799, ext. 355 or via e-mail at [afredette@crac.com](mailto:afredette@crac.com)



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### **Incorporation of Physicians: Latest News**

In the April/May 2007 edition of Info-Crac, we mentioned the possibility for physicians of becoming incorporated. Here are a few developments drawn from our experience in this matter. Incorporation pursuant to the *Companies Act*, a Quebec law, is no problem. However, when physicians expressed their desire to become incorporated under the *Canada Business Corporations Act*, they met with refusal as a result of the similarities between their corporate names and official marks of the Canadian Medical Association (hereinafter the "CMA").

In the examination process, the Director of Corporations Canada will verify whether federal corporate names are in conflict with trade-marks that are in the trade-marks register. In trade-mark law, there are what have been called "super marks" i.e., official marks. Since the area of activity is irrelevant, the Director of Corporations Canada can deem that there is a similarity to an official mark and thus refuse the proposed corporate name. It is usually possible to get around the objection by presenting an argument showing that there is no confusion. However, in the case of incorporation by a physician, the Director of Corporations Canada requires that the CMA's consent be given to use one of their official marks.

Among the official marks published for the CMA, the most likely to be used in a corporate name are the following:

DR.  
DR  
DOCTEUR  
DOCTOR  
MD  
PHYSICIAN  
L'INSTITUT MD  
GESTION MD

We can now count on speedy collaboration from the CMA to obtain such consent. The procedure is as follows:

- A short letter must be written to the CMA, indicating the desired corporate name as well as a short description of the company's activities.
- This letter can be submitted to the CMA by fax or e-mail. The most recent requests were generally processed within 24 to 48 hours. However, the process might take a few days more if your corporate name includes the term MD or M.D. You must sign a letter in which the company undertakes, in particular, not to contest the MD official mark or use it to offer or sell financial services.
- You can reach the CMA by fax: (613) 526-7571 or via e-mail: [bonnie.holmyard@cma.ca](mailto:bonnie.holmyard@cma.ca).
- Written consent signed by the CMA will be sent to you by fax or e-mail.
- If applicable, a waiver will also be sent to you by fax or e-mail.;
- This consent must then be submitted along with your corporate statutes when applying to Corporations Canada.

You can also communicate with the CMA in writing at the following address:

Canadian Medical Association  
1867 Alta Vista Drive  
Ottawa, Ontario  
K1G 3Y6

Lastly, if you need to draw up a provincial charter, part 1A, or file a declaration of registration with the Quebec Enterprise Registrar, please remember that the title of MD (without periods) in the corporate name will lead to refusal of the name, since this is the professional title for physicians in English. The correct French title is M.D. (with periods).



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### **Classique Juri Golf 2007**

On June 19, the Classique Juri Golf was held again this year at the beautiful Saint-Raphaël Golf Club located on Ile Bizard. Participants helped the Fondation Jean Marc Paquette, who organized the event, raise a net sum of \$157,000 in support of the fight against cancer.

True to the cause, CRAC and its partners were proud to sponsor this event, where the joy of golf was pleasantly combined with a noble cause.

Want to take part? Don't miss the 20th anniversary edition, taking place on Tuesday, June 17, 2008.



Pictured here, in the second row, a few CRAC members: (extreme left) Denis Livernoche, followed by Annie Fredette, Thérèse Fredette and Ronaldo Belliveau (extreme right), accompanied by their guests.



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## **CAP General Assembly**

The CAP's (Canadian Association of Paralegals) general assembly took place last June 15 at the Hilton Bonaventure Hotel.

CRAC gladly met with numerous participants at its information kiosk.

Among the numerous presentations that day, Johanne Muzzo, attorney and trade-mark agent at CRAC, gave a lecture on the registration of rights affecting trade-marks. According to our sources, her lecture was highly appreciated by attendees.

Our congratulations go to Catia Veglia of Davies Ward Phillips & Vineberg, who won one of several beautiful door prizes randomly drawn throughout the day: a basket of Clarins products, courtesy of CRAC



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