

Securities Law Update

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Fasken Martineau DuMoulin LLP

Canadian Securities Administrators announce amendments to National Instrument 51-102 Continuous Disclosure Obligations.

The Canadian Securities Administrators (CSA) have decided to make amendments to the continuous disclosure requirements set forth in financial statements, the business acquisition report (BAR), proxy solicitation information circulars, the management discussion and analysis (MD&A), the annual information form (AIF), material change reports, and statement of executive compensation. The CSA has also sought to increase the disclosure relating to reporting issuers with equity investees and has clarified disclosure for credit support issuers.

What follows is a summary of the principal amendments to NI 51-102:

1. Financial Statements

- To the extent that an issuer relies on the exemption from having to send a request form for the financial statements by sending out the financial statements to all its shareholders then the issuer must send those statements within 140 days of the financial year-end instead of the shorter delay of 10 calendar days from filing of the Annual Statements where a shareholder so requests the financial statements (i.e. 90 days post year-end), in order to permit issuers to send the statements with their proxy materials.

2. Business Acquisition Report (BAR)

- Reverse takeovers are now exempted from the BAR – the disclosure has to be set out in an information circular, material change report or under the financial statements.
- The optional test relating to the determination of significant acquisitions using the asset test has been revised and may now be based on the acquired business' most recently completed interim period.

3. Proxy Solicitation and Information Circulars

- Issuers will no longer be required to include in the proxy circular information a statement on executive compensation and on equity compensation plans if the circular sent out is for a meeting that is not an annual general meeting, or one in which directors are not being elected or where the company's securityholders are not being asked to vote on a matter relating to executive compensation.

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- Description of any penalties or sanctions imposed on a proposed director is to be disclosed but “penalties” or “sanctions” do not include late filing fees such as a fee applying to the late filing of an insider report.
4. Form 51-102F1 MD&A
 - The amendments provide for additional disclosure for significant equity investees. An equity investee of an issuer is a business that the issuer has invested in and accounted for using the equity method. An equity investee will be treated as significant if the equity investee would meet the thresholds for the significant tests (asset, investment or income) using the financial statements of the equity investee and the issuer as at issuer’s financial year-end. The additional disclosure to be included in the MD&A is:
 - Summarized information as to assets, liabilities and results of operations of the equity investee;
 - Reporting issuer’s proportionate interest and any contingent issuance of securities by the equity investee that may significantly affect the reporting issuer’s share of earnings;
 - Disclosure required in annual MD&A, for two most recently completed financial years;
 - For interim MD&A’ disclosure is required for most recent year-to-date interim period and comparative year-to-date period presented;
 - Additional disclosure not required if information is presented in financial statements or if issuer files separate financial statements of the equity investee.
 - Inclusion of potential defaults or arrears by issuers under certain agreements.
 5. Form 51-102F2 (AIF)
 - Removal of the requirement to incorporate the BAR by reference into the AIF.
 - Requirement to disclose bankruptcy and similar procedures that are proposed for the current financial year.
 6. Form 51-102F3 Material change report
 - Revision to provide disclosure for restructuring transactions so that the disclosure applies only in the case where the issuer retains an interest in the resulting entity. In this regard, the definition of a restructuring transaction is now made consistent with the TSX definition of back door listing and the TSX Venture Exchange definition of a reverse take-over.
 7. Form 51-102F6 Statement of executive compensation
 - Guidance has been provided with respect to disclosing where a company’s executive management is employed or retained by an external management company including guidance on the allocation of compensation where such external management company derives its revenues from more than one client.
 8. Additional disclosure requirements
 - Restatements of financial information will be the object of a news release only if such restatement is due to reasons other than a retroactive application of a change in an accounting standard or policy.
 9. Exemption for certain issuers of exchangeable securities
 - The amendments provide for exemptions for issuers of exchangeable securities in certain circumstances to the extent the parent of the exchangeable security issuer is either an SEC issuer and complies with the rules applicable to it or such parent issuer is a reporting issuer in

Canada and has filed all documents that are required to be filed under NI 51-102.

10. Credit support issuers

- The amendments have added the concept of “alternative credit support” from National Instrument 44-101 (Short Form Prospectus Distribution).
- New additional disclosure, also to a large extent borrowed from NI 44-101 as to the “summary financial information” required to be filed by a credit support issuer.
- New additional disclosure, on the specific column information that the credit support issuer is to provide in its selective financial information.
- New exemptions include, among others:
 - The credit supporter owns all of the voting shares of the credit support issuer;
 - List of exempted securities issued share capital of credit support issuer expanded to include “short term debt” with maturity of less than one year;
 - If the credit supporter not a reporting issuer in Canada or US,

then obligation to file a news release disclosing material change in its affairs;

- Adoption of exemption in cases of where credit support issuer has minimal assets and each item of the summary financial information of the subsidiaries of the credit supporter, represent less than 3% of the corresponding items on the consolidated financial statements of the credit supporter.

In Ontario, if the Minister of Government Services does not approve or reject the amendments to the rules or return them for further consideration, the amendments will come into force on December 29, 2006 and in Québec, they will come into force on the date of their publication in the Gazette officielle du Québec on any later date specified.

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