

AN UPDATE ON CSA POLICY INITIATIVES TO REDUCE REGULATORY BURDEN FOR REPORTING ISSUERS

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On March 27, 2018, the Canadian Securities Administrators (the “**CSA**”) published CSA Staff Notice 51-353 *Update on CSA Consultation Paper 51-404 Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers* (the “**Notice**”). The Notice outlines the CSA’s plan to pursue several policy projects which could reduce regulatory burden for public companies in Canada.

Background on the Consultation Paper

The CSA’s announcement of the policy projects follows comments received by the CSA in response to CSA Consultation Paper 51-404 – Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers (the “**Consultation Paper**”). For further information regarding the Consultation Paper, please see our April 2017 bulletin, [Reducing Regulatory Burdens for Reporting Issuers](#).

Policy Initiatives

The Notice announces the CSA’s intention to pursue the following six policy initiatives:

1. An alternative prospectus model

The CSA will consider the merits of an alternative prospectus offering model which would include more concise and focused disclosure than the current regime. As the majority of trading occurs on the secondary market, the CSA notes that an alternative prospectus model may put more focus on a reporting issuer’s continuous disclosure while de-emphasizing the traditional focus on primary market disclosure.

2. Facilitating at-the-market offerings

The CSA intends to review options to facilitate at-the-market (“**ATM**”) offerings in Canada. Currently, reporting issuers wishing to conduct an ATM offering must obtain exemptive relief from certain securities legislation requirements. The CSA’s policy project will include a review of whether codifying certain elements of the exemptive relief would be appropriate, as well as options to relax (or possibly eliminate) certain other restrictions on ATM offerings.

3. Revisiting the primary business requirements

As a result of certain comments received on the Consultation Paper, the CSA intends to revisit the historical financial statement requirements in an IPO prospectus which are listed in Item 32 of Form 41-101F1 Information Required in a Prospectus. The CSA received several comments which indicated inconsistencies between staff interpretation of these requirements across jurisdictions in Canada. Accordingly, the CSA plans to review and provide greater clarity to issuers regarding these requirements.

4. Removing or modifying the criteria to file a business acquisition report

Commenters provided a wide range of suggestions on how the CSA can reduce regulatory burden for reporting issuers regarding the requirement to file a business acquisition report ("**BAR**"). Reporting issuers are currently required to file a BAR within 75 days after completion of an acquisition that meets the significance tests set out in Part 8 of National Instrument 51-102 *Continuous Disclosure Obligations*. However, preparation of a BAR can involve significant time and costs on the part of the issuer and the information required is often difficult to obtain. Reporting issuers are frequently granted certain relief from the BAR requirements. The CSA plans to initiate a policy project to review various ways in which the regulatory burden regarding BAR requirements can be reduced.

5. Revisiting certain continuous disclosure requirements

The CSA also announced a policy project to review certain continuous disclosure requirements for options to reduce regulatory burden associated with continuous disclosure, including but not limited to the following:

- a. eliminating duplicative disclosure among the financial statements, management's discussion and analysis ("**MD&A**"), and other continuous disclosure forms;
- b. consolidating two or more of the financial statements, MD&A and annual information form ("**AIF**") into one reporting document; and
- c. examining whether the volume of information in annual and interim filings can be reduced in order to prevent excessive disclosure from obscuring key information or otherwise enhance the quality and accessibility of disclose.

6. Enhancing electronic delivery of documents

Under the current "notice-and-access" method of document delivery, reporting issuers must deliver printed notice and voting documents to beneficial owners who have not given their prior consent to delivery. In response to several comments regarding the significant costs which may be incurred by reporting issuers in order to comply with printing and delivery requirements, the CSA will review options which could facilitate further electronic delivery of documents, including the suggestion by commenters of switching the current

default to electronic delivery, provided that investors retain an option to receive paper documents.

Next Steps

The CSA intends to initiate the six policy projects in the near future and will establish working groups to identify the scope and timelines of each initiative. Any potential changes to securities legislation will be published for comment.

by Jason Haley

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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