

REDUCING REGULATORY BURDENS FOR REPORTING ISSUERS – CSA SEEKS PUBLIC COMMENT

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On April 6, 2017, the Canadian Securities Administrators (the “**CSA**”) published CSA Consultation Paper 51-404 – *Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers* (the “**Consultation Paper**”), which seeks public comment on a variety of proposals for reducing the regulatory burden on non-investment fund reporting issuers.

The Consultation Paper identifies a number of potential changes which may reduce regulatory burden associated with capital raising in the public market and the ongoing costs of remaining a reporting issuer, without compromising investor protection or market efficiency. What follows is a brief summary of the proposals for which the CSA is seeking public comment.

Extending Streamlined Rules to Smaller Reporting Issuers

Under current securities legislation, there are less onerous continuous disclosure obligations placed on venture issuers than on other reporting issuers. Among other things, venture issuers have longer filing deadlines, reduced management’s discussion and analysis (“**MD&A**”) disclosure requirements, and no requirement to file an annual information form (“**AIF**”). The distinction between “venture issuers” and “non-venture issuers” is based on the exchange listings of reporting issuers. In the Consultation Paper, the CSA suggests an alternative size-based distinction to reduce reporting requirements for smaller reporting issuers. Under this scenario, smaller reporting issuers, even those listed on senior securities exchanges, could take advantage of reduced regulatory requirements that are currently restricted to venture issuers.

The U.S. Securities and Exchange Commission (“**SEC**”) currently uses a form of sized-based distinction with respect to reporting requirements and the Consultation Paper suggests that a number of TSX-listed reporting issuers could benefit from reduced reporting obligations if Canada adopted a size-based distinction similar to the criteria for smaller reporting companies under current SEC rules. The CSA asks commenters to provide feedback on which metrics and thresholds could be used and how to ensure year to year consistency for each reporting issuer. Alternatively, if a sized-based distinction is not preferable to the current distinction based on exchange listing, the CSA queries whether certain less onerous venture issuer requirements could be extended

to non-venture issuers.

Changing the Prospectus Rules and Offering Process

(a) Reducing the Audited Financial Statement Requirements in an IPO Prospectus:

Currently, issuers filing a venture issuer IPO prospectus are only required to produce two years of financial information rather than the three years required in other IPO prospectuses. There is also an exemption, based on size, from the requirement to audit the second and third most recently completed financial years.

The Consultation Paper queries whether an issuer that intends to list on a non-venture exchange should be permitted to present a reduced number of years of audited financial statements in their IPO prospectus, from three to two years, if they have pre-IPO revenues under a certain threshold. Alternatively, the CSA asks whether all issuers should benefit from this reduced financial reporting. The CSA requests commenters provide feedback on what criteria and thresholds could be used to determine whether two years of financial statements are required and what impact having less financial information on non-venture issuers would have on potential investors.

(b) Streamlining Various Prospectus Requirements:

The CSA is also considering, and asks commenters for feedback on, a number of other options to streamline prospectus requirements in order to reduce preparation costs of a prospectus while providing potential investors with clear and adequate disclosure, including:

- increasing business acquisition report ("**BAR**") thresholds for non-venture issuers;
- removing the requirement for interim financial statements to be reviewed by an auditor;
- removing the requirement to include pro forma financial statements for significant acquisitions; and
- tailoring disclosure requirements for non-IPO prospectuses to focus on more limited information.

(c) Streamlining Public Offerings:

The Consultation Paper identifies several potential options for streamlining public offerings, including modifying the short form prospectus offering system, an alternative prospectus model, and facilitating at-the-market ("**ATM**") offerings.

The CSA is considering whether to eliminate or modify certain short form prospectus disclosure requirements that are duplicative, not providing investors with timely, relevant information, or may be misaligned with current market practices. In addition, the CSA is examining short form eligibility requirements to determine whether to extend the short form prospectus offering system to other reporting issuers.

The Consultation Paper also discusses an alternative prospectus model similar to those which have previously been proposed by the CSA in 2000 and by the British Columbia Securities Commission in 2002. The 2000 and 2002 proposals were intended to de-emphasize the traditional focus on primary market disclosure and put increased focus on a reporting issuer's continuous disclosure, in recognition of the fact that the majority of trading was taking place in the secondary rather than primary markets. The goal of the current proposal under consideration by the CSA is to provide investors with more concise and focused disclosure than under the current short form prospectus regime.

ATM offerings are less common in Canada than in the United States. The Consultation Paper suggests the cause of the limited number of ATM offerings in Canada may be at least partially attributed to the regulatory burden associated with the requirement to obtain exemptive relief from the requirements of Part 9 of National Instrument 44-102 Shelf Distributions, which requires ATM offerings to comply with securities legislation applicable to all prospectus offerings, including the prospectus delivery requirement and statutory rights of rescission and withdrawal. The CSA suggests that some of the current restrictions on ATM offerings could be relaxed and asks for comments on potential rule amendments to streamline the process, including codification of certain elements of exempted relief granted for ATM offerings.

Reducing Ongoing Disclosure Requirements

(a) Removing/Modifying BAR Criteria:

Reporting issuers are 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. There are currently higher thresholds for venture issuers than non-venture issuers.

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. Accordingly, reporting issuers are frequently granted certain relief from the BAR requirements. The CSA is considering whether to conduct a broader review of the BAR requirements, including potential changes such as removing the requirement to file a BAR in certain circumstances, removing parts of the significance tests, increasing the thresholds applied to non-venture issuers, and providing for alternative significance tests based on specific industry criteria.

(b) Reducing Disclosure in Annual and Interim Filings:

The CSA is also considering whether to modify certain requirements for annual and interim filings to re-emphasize key information. Options include removing the discussion regarding prior period results and the summary of quarterly results for the eight most recently completed quarters from the MD&A and allowing all reporting issuers, not just venture issuers, to meet interim MD&A requirements by preparation of a quarterly

highlights document.

(c) Semi-Annual Reporting:

Certain discussions over the past few years suggest that quarterly reporting encourages reporting issuers to focus too much on short-term financial results, which could be harmful to the issuer's business over the long-term. Less frequent reporting obligations are currently available in Australia and the United Kingdom. The CSA is considering whether to provide the option to report on either quarterly or semi-annual basis, and whether such an option should be made available to all reporting issuers or be more limited to smaller reporting issuers.

Eliminating Regulatory Overlap

The Consultation Paper identifies certain similarities between the disclosure requirements of IFRS and an issuer's MD&A, including financial instruments, critical accounting estimates, changes in accounting policies and contractual obligations. In addition, there is certain overlap between the forms of MD&A and AIF. The CSA is considering the removal of these duplicative disclosure requirements or whether to consolidate the requirements of the MD&A, AIF, and financial statements into one document.

Expanding Electronic Delivery of Documents

Under the "notice-and-access" method, reporting issuers must deliver printed notice and voting documents to beneficial owners who have not given their prior consent to delivery. Beneficial owners may also request a paper copy of certain documents at no charge. These requirements have caused some reporting issuers to incur significant costs associated with printing and delivering the various documents required to be delivered under securities laws.

The CSA is considering whether new methods of electronic delivery should be permitted, including whether it would be appropriate for a reporting issuer to satisfy the delivery requirements under securities legislation by making materials electronically available without prior notice or consent and only deliver paper copies of these documents when specifically requested by the investor.

Comment Period

Comments on the Consultation Paper are requested to be made in writing and should be delivered to:

- The Secretary, Ontario Securities Commission, at comments@osc.gov.on.ca; and
- Anne-Marie Beaudoin, Corporate Secretary, at consultation-en-cours@lautorite.qc.ca.

Comments should be submitted by July 7, 2017. For a full list of the specific consultation questions, please see the Consultation Paper.

For further information with respect to the Consultation Paper or the comment process, please contact us.

by Will Van Horne and 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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