

SIGNIFICANT REGULATORY RELIEF FOR MARKET PARTICIPANTS ANNOUNCED IN RESPONSE TO COVID-19

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In response to disruptions caused by the COVID-19 pandemic, securities regulators, stock exchanges and business registries have taken significant steps to temporarily relieve regulatory obligations applicable to public and private Canadian companies. We summarize below notable relief that has been granted by the Canadian Securities Administrators (the “**CSA**”), Canadian stock exchanges and business registries to date.

Securities Law

On March 18, 2020, the CSA announced that it would provide market participants with a 45-day extension to make certain period filings that would have been due on or before June 1, 2020 (the “**CSA Filing Relief**”).^[1] On March 23, 2020, the CSA stated that the CSA Filing Relief would be implemented through local blanket orders (the “**Local Blanket Orders**”) to be made by securities regulators across the country.^[2] While not identical, the Local Blanket Orders provide substantially harmonized relief.

Pursuant to the Local Blanket Orders, the following relief is generally available:

- Reporting issuers will have an additional 45-days to file annual and interim financial statements, financial statements required to be filed in connection with becoming a reporting issuer (via reverse takeover or otherwise), annual and interim MD&A, annual information forms, executive compensation disclosure required under National Instrument 51-102 – *Continuous Disclosure Obligations*, information regarding oil and gas reserves as required by *National Instrument 51-101 – Standards of Disclosure for Oil and Gas Activities*, technical reports as required by *National Instrument 43-101 – Standards of Disclosure for Mineral Projects* and any similar disclosure required pursuant to exemptive relief orders granted by any securities regulatory authority (collectively, the “**Periodic Disclosure Documents**”), provided that:^[3]
 - A reporting issuer relying on the CSA Filing Relief issues and files a news release (the “**Extension News Release**”) as soon as reasonably practicable in advance of the filing deadline for the relevant Periodic Disclosure Documents (the “**Filing Deadline**”) that discloses:
 - A regulatory filing requirements for which the CSA Filing Relief is being relied on;
 - That management and other insiders of that reporting issuer are subject to an insider

trading black-out policy that reflects the principles in section 9 of National Policy 11-207 – *Failure to File Cease Trade Orders and Revocations in Multiple Jurisdictions*;

- The estimated date by which the relevant Periodic Disclosure Documents are expected to be filed; and
 - An update of any material business developments since the date of the last annual financial statements or interim financial reports that were filed (or confirmation that there have been no material business developments since that date).
- The reporting issuer relying on the CSA Filing Relief issues and files a news release (the “**First Update News Release**”) no later than 30 days after the Filing Deadline, providing an update of any material business developments since the date of the Extension News Release (or confirming that no material business developments have occurred).
 - The reporting issuer issues and files a news release no later than 30 days following the date of the First Update News Release, if the reporting issuer has not yet filed the relevant Periodic Disclosure Documents, providing an update of any material business developments since the date of the First Update News Release (or confirming that no material business developments have occurred).
- Reporting issuers will have an additional 45-days to file change of auditor reporting packages, notices of change in year end, business acquisition reports and notices of change in corporate structure that otherwise would have been due on or before June 1, 2020, provided that reporting issuers relying on the CSA Filing Relief in respect of these documents issue and file a news release in advance of the original filing deadline that discloses each regulatory filing requirement for which the CSA Filing Relief is being relied on.
 - Persons and companies will have an additional 45-days to file any annual financial statements and disclosure regarding use of proceeds required to be filed on or before June 1, 2020 under the offering memorandum exemption in National Instrument 45-106 – *Prospectus Exemptions* or under *Multilateral Instrument 45-108 – Crowdfunding*, provided that, if the person or company relying on the CSA Filing Relief is a SEDAR filer, it files a news release in advance of the original filing deadline that discloses each regulatory filing requirement for which the CSA Filing Relief is being relied on.
 - Reporting issuers will be permitted to extend the lapse date of final base shelf prospectuses lapsing on or before June 1, 2020 by 45-days, provided that:
 - The relevant reporting issuer issues and files, as soon as reasonably practicable, a news release in advance of the lapse date that discloses the regulatory requirement for which the CSA Filing Relief is being relied on; and
 - The relevant reporting issuer is not also relying on the CSA Filing Relief in respect of any Periodic Disclosure Document.

The Ontario Securities Commission and British Columbia Securities Commission have both indicated that they will not charge reporting issuers relying on the CSA Filing Relief late filing fees, provided that all filings are made by the relevant extended filing deadline.

The CSA Filing Relief is broadly similar to the blanket relief granted by the Securities and Exchange Commission (the “**SEC**”) on March 4, 2020, pursuant to which the SEC granted registrants and other filers a 45-day extension for virtually all regulatory filings that otherwise would have been due between March 1, 2020 and April 30, 2020, subject to certain requirements.

Stock Exchange Rules

The Toronto Stock Exchange (the “TSX”)

On March 23, 2020, the TSX announced that it would be providing TSX listed companies with temporary blanket relief from a number of TSX policies (the “**TSX Relief**”).^[4] The most notable of the TSX Relief is the following:

- TSX listed companies will not be required to file a Form 9 – *Request for Extension or Exemption for Financial Reporting/Annual Meeting* (a “**TSX Form 9**”) in connection with the late filing of their annual financial statements and/or interim financial statements during 2020;
- TSX listed companies will be permitted to hold their annual meeting of securityholders (their “**AGM**”) on any date in 2020 up to and including December 31, regardless of an issuer’s fiscal year end. Prior to the granting of this relief, TSX policies required TSX listed companies to hold their AGMs within 6-months of their fiscal year-end. TSX listed issuers that hold their AGM 6-months or more from their fiscal year-end, in reliance on the TSX Relief, will not be required to submit a TSX Form 9;
- TSX listed companies will be permitted to obtain securityholder approval of all unallocated options, rights and other entitlements (“**Awards**”) under security based compensation arrangements (“**Plans**”) at their 2020 AGM, notwithstanding that TSX policies may require security holder approval to be obtained at an earlier date. TSX listed companies will be permitted to continue granting Awards under a Plan until the earlier of (i) their 2020 AGM and (ii) December 31, 2020. Awards granted under a Plan during this timeframe may be exercised by recipients without securityholder ratification;
- TSX listed companies making normal course issuer bids (“**NCIBs**”) between March 23, 2020 and June 1, 2020 will be permitted to acquire listed securities pursuant to their NCIB where purchases do not, when aggregated with all other purchases by the relevant company during the same trading day on the TSX, aggregate more than the greater of (i) 50% of the average daily trading volume of the listed securities of that class, and (ii) 1,000 securities; and
- From March 23, 2020 until December 31, 2020, the TSX will not apply the delisting criteria set out in

sections 712(a) and 712(b) of the TSX Company Manual. These sections of the TSX Company Manual allow the TSX to delist securities from the exchange if: (i) the market value of a TSX listed company's securities is less than \$3,000,000 over any period of 30 consecutive trading days, or (ii) the market value of a TSX listed company's freely tradeable, publicly held securities is less than \$2,000,000 over any period of 30 consecutive trading days.

The TSX is not requiring TSX listed companies to submit any form of application in order to rely on the TSX Relief.

The TSX Venture Exchange (the "TSXV")

On March 23, 2020, the TSXV announced that it would provide TSXV listed companies with temporary blanket relief from certain requirements prescribed by TSXV policies relating to the holding of AGMs (the "**TSXV Meeting Relief**").^[5] Specifically, the TSXV Meeting Relief permits the following:

- TSXV listed companies that are required to hold an AGM in 2020 under TSXV policies may hold their AGM on any date up to and including December 31, 2020; and
- TSXV listed companies may obtain shareholder approval for rolling stock option plans at their 2020 AGM, notwithstanding that TSXV Policy 4.4 – Incentive Stock Options may require that shareholder approval be obtained at an earlier date.

Mirroring the TSX, the TSXV will not require TSXV listed companies to submit any form of application in order to take advantage of the TSXV Meeting Relief.

On March 25, 2020, the TSXV granted further relief, announcing that it would extend the deadline by which TSXV listed companies are required to submit annual sustaining fees to May 31, 2020.^[6] The TSXV will further permit TSXV listed companies to pay their 2020 annual sustaining fees in installments, with 50% being due on May 31, 2020 and the balance being due on July 31, 2020.

On April 8, 2020, the TSXV announced that, in certain circumstances, it has reduced the minimum price at which TSXV listed companies may issue shares from \$0.05 to \$0.01 (the "**TSXV Pricing Relief**").^[7] The TSXV Pricing Relief broadly applies to the issuance of shares in connection with private placements, prospectus offerings, shares for debt transactions and as "bonuses" to the providers of loans or guarantees.

The Canadian Securities Exchange (the "CSE")

On March 20, 2020, the CSE confirmed that the CSA Filing Relief would apply to CSE listed issuers.^[8] In the same notice, the CSE highlighted that, notwithstanding the CSA Filing Relief, CSE listed issuers will still be expected to make timely public disclosure of all material information resulting from the COVID-19 pandemic, in

accordance with CSE Exchange Policy 5 – *Timely Disclosure*. Similarly, CSE listed issuers will still be expected to regularly file a Form 7 – *Monthly Progress Report* (a “**CSE Form 7**”), in accordance with CSE policies. The CSE expects that issuers’ CSE Form 7s will contain a discussion of the impact of the COVID-19 outbreak, even if the anticipated impact is relatively minimal.

Corporate Statutes

A number of regulators have provided relief from certain requirements imposed by corporate statutes, the most notable of which are summarized below.

Alberta

Corporations governed by the *Business Corporations Act* (Alberta) (the “**ABCA**”) are generally required to hold an AGM no later than 18 months after their date of incorporation or amalgamation, as applicable, and subsequently, no later than 15 months after their previously held AGM.

The Alberta Corporate Registry has suspended these statutory deadlines. The Alberta Corporate Registry has also suspended all deadlines by which ABCA corporations are required to file their annual returns.

British Columbia

Corporations governed by the *Business Corporations Act* (British Columbia) (the “**BCBCA**”) are generally required to hold an AGM no later than 18 months after the date they are recognized, and subsequently, at least once every calendar year and no later than 15 months after the previous year’s annual reference date.

On March 31, 2020, BC Registries and Online Services announced that corporations would be permitted to extend the period within which they are required to hold an AGM by 6 months. In order to take advantage of this extension, BCBCA corporations must send a written request by e-mail, including both their corporate name and incorporation number, to BC Registries and Online Services. BCBCA corporations taking advantage of this extension are further expected to ensure that their shareholders are informed of the delay.

Ontario

Corporations governed by the *Business Corporations Act* (Ontario) (the “**OBCA**”) are generally required to hold an AGM no later than 18 months after the date that they come into existence, and subsequently, no later than 15 months after their previously held AGM.

On March 30, 2020 and in connection with Ontario’s declaration of emergency, the province of Ontario issued an emergency order (the “**Ontario Emergency Order**”), pursuant to which OBCA corporations have been granted the following extensions to the periods within which they would generally be required to hold their

AGMs:

- OBCA corporations that would have generally been required to hold an AGM within the period of the declared emergency may now hold their AGM up to 90 days after the declared emergency period has been terminated; and
- OBCA corporations that would have generally been required to hold an AGM within 30 days of the termination of the declared emergency period may now hold their AGMs up to 120 days after the termination of the declared emergency period.

The Ontario Emergency Order further allows OBCA corporations to hold their AGM virtually, regardless of any restrictions in their articles or by-laws, and provides that all shareholders that vote at or connect to a virtual AGM will be deemed to be present for the purposes of establishing quorum.

Similarly, the Ontario Emergency Order also allows OBCA corporations to hold meetings of directors virtually, deeming any director that participates in a virtual meeting to be present notwithstanding any applicable restrictions in a corporation's articles or by-laws.

The Ontario Emergency Order is retroactive to March 17, 2020, the date that the province's declaration of emergency first came into effect.

Federal

Corporations governed by the *Canada Business Corporations Act* (the "**CBCA**") are generally required to hold an AGM no later than 18 months after the date that they come into existence, and subsequently, no later than 15 months after their previously held AGM and within 6 months of the corporation's preceding financial year.

On March 26, 2020, Corporations Canada announced that it continues to expect CBCA corporations to comply with these statutory requirements. Corporations Canada will only permit non-compliance with these statutory requirements if the relevant CBCA corporation has received court approval. Corporations Canada has suggested that, to the extent possible, CBCA corporations required to hold AGMs during the COVID-19 outbreak do so virtually. Further guidance on holding virtual AGMs can be found in our bulletin entitled "[COVID-19 Pandemic Prompts Canadian Companies to Consider Virtual Shareholder Meetings](#)".

On April 1, 2020, Corporations Canada announced that CBCA corporations with an anniversary date between February 1 and June 20 would be granted an extension to the time within which they are required to file their annual return. Such CBCA corporations will now be required to file their annual return by September 30, 2020.

by Jeffrey P. Gebert and Christopher Tworzyanski

[1] [CSA Press Release – March 18, 2020](#) [ps2id id='1' target='']

[2] [CSA Press Release – March 23, 2020](#) [ps2id id='2' target='']

[3] This CSA Filing Relief also provides reporting issuers with an additional 45-days to send annual request forms and deliver annual and interim financial statements and MD&A as required under National Instrument 51-102 – *Continuous Disclosure Obligations*. [ps2id id='3' target='']

[4] [TSX Staff Notice 2020-0002](#)[ps2id id='4' target='']

[5] [TSXV Bulletin – March 23, 2020](#)[ps2id id='5' target='']

[6] [TSXV Bulletin – March 25, 2020](#)[ps2id id='6' target='']

[7] [TSXV Bulletin – April 8, 2020](#)[ps2id id='7' target='']

[8] [CSE Notice 2020-004](#)[ps2id id='8' target='']

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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