

Allen & Allen Update on Securities Law

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March 31, 2002

Enacted:

Alberta and BC adopt new exemptions - 45-103 Enacted

Alberta and BC have adopted the expanded and harmonized distribution exemptions of Multilateral Instrument 45-103 effective March 30th 2002, as summarized in our December 31st 2001 newsletter (posted on our website: <http://www.virtual-law.com/news/sec/dec2001.pdf>) The exemptions are these: (1) Private Issuer Exemption; (2) Family, Friends and Business Associates Exemption; (3) Accredited Investor Exemption; and (4) a new Offering Memorandum Exemption, which would allow issuers to raise any amount from anyone provided that the investor acknowledges the risks of investing and receives an offering memorandum - a short, simple disclosure document, in prescribed form.

As a transition for the next six months, BC will retain the following exemptions: (1) the 50 purchaser exemption, (2) the \$25,000 sophisticated purchaser exemption, (3) the \$25,000 registrant consultation exemption, (4) the friends and relatives exemption, (5) the private issuer exemption, (6) the financial institutions exemption, and (7) the \$97,000 exemption. Following the six month transition period, the \$97,000 exemption will remain available for a longer period in the form of a blanket order.

Underwriting Conflict Rule Approved – National – Enacted

Under the National Rule, no registrant shall act as an underwriter in a distribution if the registrant is the issuer or selling securityholder, and no registrant shall act as a “direct underwriter” in a distribution of a “connected” or a “related” issuer, unless the offering document contains specified information, including: a statement naming the connected or related registrant, the basis and details by which the registrant is connected or related, the involvement of the registrant in the decision to distribute, the extent to which the proceeds of the issue will be applied for the benefit of the registrant or related issuer, and any other material facts regarding the relationship or connection between the issuer and the registrant. There are exemptions, and the rule is somewhat complex, so please call if you have any questions.

SEDI system delayed – temporary measures

Due to technical difficulties, the Canadian Securities Administrators have asked the SEDI system developer to suspend the operation of SEDI (The System for Electronic Disclosure by Insiders). While SEDI is suspended, insiders must continue to comply with their insider reporting obligations. Insiders can file in paper using Form 55-102F6, which has new codes both in respect of the nature of the transaction and the type of ownership. Insiders will not have to file amendments to existing insider profiles during the suspension. Insiders will have 10 days from when SEDI becomes operational to file these amendments in SEDI.

Applications for Relief from the Insider Reporting Requirements by certain Vice-Presidents

CSA Staff Notice 55-306 outlines the circumstances in which staff will support applications for relief from the requirements under Canadian securities legislation to file insider reports by persons who are technically insiders by virtue of holding the title of "vice-president" but who do not have access to confidential inside information.

Non-GAAP earnings measures must be clearly defined and not misleading, says OSC

OSC staff will require issuers to clearly define non-GAAP earnings measures, demonstrate their relevance and ensure they are not potentially misleading in public disclosure documents. Specifically, issuers should:

1. state explicitly that the non-GAAP earnings measures do not have any standardized meaning prescribed by GAAP and are therefore unlikely to be comparable to similar measures presented by other issuers;
2. present prominently with the non-GAAP earnings measures the earnings measures for the period determined in accordance with GAAP;
3. describe the objectives of the non-GAAP earnings measures and discuss the reasons for excluding individual items required by GAAP to be included in determining net income or loss;
4. provide a clear quantitative reconciliation from the non-GAAP earnings measures to the GAAP financial statements, referencing the reconciliation when the non-GAAP earnings measures first appear in the disclosure document;
5. limit the number of non-GAAP earnings measures provided and avoid using multiple similar non-GAAP earnings measures that differ from each other only slightly;
6. present the non-GAAP earnings measures on a basis that is consistent from period to period and explain any changes in the composition of the measures when compared to previously published measures.

STAFF NOTICE 52-303, January 7, 2002

Proposed:

BC Commission to discuss replacing the prospectus-based system with an enhanced continuous disclosure system

The BC Commission is publishing for comment its "New Concepts for Securities Regulation". The concepts being discussed are:

- (1) *Continuous Market Access System.* This would replace the prospectus-based system and allow certain issuers to access the market at any time based on their continuous disclosure record. There would be no mandated offering document, except for an issuer's IPO. For issuers in the system, the prospectus exemptions regime, hold periods, and resale restrictions would disappear. An enhanced continuous disclosure regime would be introduced, requiring issuers in the system to maintain "evergreen" disclosure of all material facts.
- (2) *Simpler Registration System.* A general code of conduct would replace the many detailed and prescriptive registration rules.
- (3) *Better Mutual Funds Regime.* A general code of conduct would be adopted, similar to Concept 2.
- (4) *Trade disclosure:* Insiders would be defined in terms of their access to material non-public information, rather than title or salary. The existing early warning reporting system would be replaced with a "significant shareholder" reporting regime. Control persons and shareholders with 10% or more of an issuer's outstanding shares would have to report significant changes in their holdings by press release. The current reporting system for eligible institutional investors would be maintained.
- (5) *New Enforcement and Public Interest Powers.* The Commissions would be empowered to order that persons who breach securities law must disgorge their profits, or make restitution to those they have harmed. Anyone could apply to the Commission for a compliance or restraining order if they could show a breach of securities law was imminent or in progress.
- (6) *New Civil Remedies.* Investors could sue: (a) issuers who do not keep their continuous disclosure record up to date and accurate, (b) registrants and others who do not comply with the applicable code of conduct, (c) people who trade illegally on insider information, and (d) anyone who commits fraud or market manipulation or uses unfair practices. A class action regime for these actions would be included in the legislation. Defendants would have due diligence and other defences and appropriate procedural protections.

Comments are due April 22, 2002. BC NOTICE 2002/12

CSA Notice 11-303 - The Uniform Securities Legislation Project

The Canadian Securities Administrators have established a senior level committee to develop uniform securities legislation across Canada - the "USL Project". The objective is to develop a uniform Act and uniform Rules within two years.

Proposed NI 51-101 Standards of Disclosure for Oil and Gas Activities

The CSA are proposing new standards for public disclosure by reporting issuers in the oil and gas sector, and the repeal of the existing national policy statement. The proposed new National Instrument 51-101 would establish a regime of continuous disclosure for reporting issuers engaged in exploring for, developing or producing oil or gas, including the extraction of oil from oil sands or shale. The new instrument would repeal National Policy Statement No. 2-B Guide for Engineers and Geologists Submitting Oil and Gas Reports to Canadian Provincial Securities Administrators.

Standards Of Disclosure For Mineral Projects – Revised CSA Frequently Asked Questions

The CSA have published a February 8, 2002 update of its “Frequently Asked Questions” regarding the standards of disclosure for mineral projects under its National Instrument.

See: National Instrument 43-101.

Please call if you have any questions - 416-865-0303

Allen and Allen

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JOHN ALLEN: A graduate of law from Queen's University, John was called to the Bar in 1991, clerked with the Ontario Superior Court, and has a Masters of Law in securities law from Osgoode Hall. He is a graduate of the "Canadian Securities Course", "Financial Planning Course", and has all academic requirements for the designation of Certified Financial Planner (CFP). He is also the author of a monthly securities "Netletter" available only on Quicklaw (www.quicklaw.com), a fee-based legal database service.