Allen & Allen Update on Securities Law

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Enacted:

Ontario new fee regime in force

The OSC new fee regime took effect March 31, 2003. The Rule replaces current fees with "participation fees" and "activity fees" for reporting issuers, registrants and unregistered investment fund managers.

CNQ trading system expected to launch in the summer of 2003

The Ontario Securities Commission has recognized CNQ (the Canadian Trading and Quotation System) as a quotation and trade reporting system under the *Securities Act* (Ontario). CNQ will operate an electronic, automated marketplace for participating dealers to trade Ontario equity securities not listed on a recognized Canadian exchange. CNQ expects to start operations in the summer of 2003.

CNQ will post the junior issuer's stock quotes and trading volumes on the CNQ website (www.cnq.ca), along with an enhanced disclosure record. Currently, Ontario dealers report "over-the-counter" trades on the Canadian Unlisted Board, or "CUB". CUB is a dealer reporting system only, and, unlike the former Canadian Dealing Network, trade information is not publicly available.

CNQ is designed for emerging companies and their investors. The listing requirements are lower than other exchanges. For example, the public float required will be 500,000 publicly-held free-trading shares worth at least $50,000, 150 public shareholders with board lots, and a 10% public float (in some cases, 5%). This contrasts with the TSX Tier 2 requirements of 500,000 publicly-held free-trading shares worth at least $500,000, 200 public shareholders with board lots, 10% public float, with 20% of issued shares in hands on public shareholders. The funding thresholds are also lower.

CNQ's philosophy is enhanced disclosure rather than transaction-based regulation. Issuers will post on the CNQ website a prospectus-like base disclosure document (the "Quotation Statement"), quarterly and monthly updates and reports, press releases and notices of transactions, subject to permitted confidential filings. CNQ will review filings after-the-fact to ensure compliance - issuers will not need to seek prior CNQ approval for transactions other than fundamental changes.

System for Electronic Disclosure by Insiders via Internet to launch May 5, 2003

The System for Electronic Disclosure by Insiders (SEDI) will be launched May 5, 2003. SEDI is an insider trade reporting system, available over the Internet at www.sedi.ca. It will replace the current, paper-based reporting system, and will require SEDI insiders and issuers to file reports via the Internet using the SEDI website. Investors will be able to access insider reports on the SEDI website 24 hours a day, seven days a week, at no charge. Such reports will include:

- a weekly summary that displays all transactions filed in SEDI in the preceding week;
- the details of individual transactions by insiders;
- a list of insiders who have registered for each SEDI issuer and the closing balance of all that issuer's securities they hold; and
- an "issuer event history", which includes a stock dividend, stock split, consolidation, amalgamation, reorganization, merger or other similar event reported on SEDI.

The launch will be "staged". For example, reporting issuers, other than a mutual fund, must file an issuer profile by May 30th, and insiders must file an "insider profile" starting June 9, 2003 and thereafter within 10 calendar days of any change. SEDI was operational from October 29, 2001 to January 31, 2002, but was suspended due to technical difficulties.

FAQ regarding National Instrument 54-101

New "Frequently Asked Questions" have been published regarding National Instrument 54-101, which deals with "Communication with Beneficial Owners of Securities of a Reporting Issuer".

The Rule allows issuers to send proxy-related materials to those who have not objected to being identified on a list of recipients. It also allows an issuer, other than a mutual fund, to send interim financial statements and reports only to shareholders who specifically request the documents, provided the issuer (i) releases and files a news release containing a summary of the information in the statement or report; (ii) files the statement or report with the securities regulatory authority; and (iii) files the statement or report on all exchanges on which the securities of the issuer are listed.

Proposed:

Exempt Distribution Rule 45-501 - Proposed Amendments in Ontario

The Ontario Commission has proposed a number of "technical amendments" to its exempt distribution Rule 45-501, which would:

Amend the definition of "accredited investor":

- paragraph (q) would be amended to include brothers and sisters (of an officer, director or promoter of the issuer);
- paragraph (t) would be amended to include a limited liability company (with net assets of at least $5 million);
- paragraph (w) would be expanded to include a mutual fund or a non-redeemable investment fund that has previously distributed securities under a prospectus; and
- paragraph (y) would include trust corporations governed by the Trust and Loan Corporations Act (Canada) or under comparable legislation in any other jurisdiction.

Amend the definition of "closely-held issuer" in order that current and former directors and officers do not count towards the limit of 35 non-accredited investors, regardless of how such directors and officers acquired their securities (currently, they need to acquire securities as compensation by, or under an incentive plan of, the issuer or an affiliated entity of the issuer)

Amend the closely-held issuer exemption by deleting existing clause 2.1 (1)(b) which restricts the use of the exemption in circumstances where a promoter is participating (currently, no promoter can act as promoter of any other issuer in reliance on the same exemption during the last twelve months).

Amend section 2.8 to clarify that this exemption includes court-approved reorganizations under bankruptcy and insolvency legislation. The amendments to this section will also allow many exchangeable share transactions to be completed without obtaining exemptive relief.

Add a new section 2.15. This exemption will allow trades in a security pursuant to an offer to acquire made by a person or company that would have been a take-over bid or issuer bid if the offer to acquire was made to a security holder in Ontario. This exemption will facilitate private company sales in circumstances where all of the selling shareholders are not resident in Ontario.

Add a new section 2.16 to allow for the purchase of "business assets" from a person or company if the fair value of the business assets purchased is not less than $100,000. A new definition of "business assets" has been included in the Proposed Rule.

Part 7 would be amended to reflect the consequential amendments as a result of Rule 13-502 - Fees coming into force, and a new Part 9 has been added to provide the Director with the authority to grant exemptions from the requirements of Part 7 of the Proposed Rule, which deals with the required forms.

Comments are due July 18, 2003

Alberta proposing to amend $97,000 exemption

The Alberta Commission is publishing for comment amendments to the $97,000 prospectus and registration exemption. It is also proposing to allow mutual funds and non-redeemable investment funds to report distributions under the $97,000 exemption on an annual basis, and a replacement of Form ASC 20 and ASC Rule 45-802.

Under proposed amendments to the $97,000 exemption, an issuer need no longer deliver an offering memorandum if it advertised the sale of its securities. This would be more consistent with the accredited investor exemption in Multilateral Instrument 45-103, which does not impose restrictions on advertising. (However, if an offering memorandum is given to prospective investors, it would still need to meet certain form requirements and include a statutory right of action.)

In determining whether to eventually replace or modify the $97,000 exemption, the Alberta Commission is seeking comment as to who is using it, and why they are not using the accredited investor exemption. Concerns have been raised that some investors who are using the $97,000 exemption are not wealthy enough to withstand the loss of their investment.

Comments are due April 28, 2003.

Research analysts conflict of interest rule proposed by Investment Dealers Association

Proposed Policy 11 would establish standards for analysts when publishing research reports or making recommendations, to minimize potential conflicts of interest. For example,

- Each Member would require written conflict of interest policies and procedures, in order to minimize conflicts faced by analysts. All such policies must be approved by and filed with the Association.

- Each Member shall prominently disclose in any research report, (a) any information regarding its business with, or its or its agents' relationships to, any issuer which is the subject of the report which might reasonably be expected to indicate a potential conflict of interest on the part of the Member or the analyst in making a recommendation with regard to the issuer, and (b) the Member's system for rating investment opportunities and how each recommendation fits within the system; and shall disclose on their websites or otherwise, quarterly, the percentage of their recommendations that fall into each category of their recommended terminology; and (c) its policies and procedures regarding the dissemination of research.

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.

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