

Allen & Allen Update on Securities Law

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Enacted:

Update on CDNX

October 2, 2000 marked the first day of trading on the CDNX for 167 companies previously listed on the quoted issuer market of the Canadian Dealing Network (CDN) and November 23, 2000 marked the first day for approximately 22 companies previously listed on the Winnipeg Stock Exchange (WSE).

CDNX was to have reviewed Tier 3 listed companies by Dec. 31, 2000 to determine whether they are able to meet the tier maintenance requirements of Tier 2. Tier 3 companies that do not meet Tier 2 maintenance requirements will have up to 18 months to take the necessary steps to meet these requirements. CDNX plans to cease the operation of Tier 3 by Jan. 1, 2004.

On December 20, 2000, CDNX received a tax ruling that its "Tier 3" is not a "prescribed stock exchange" for federal income tax purposes. This means that former CDN companies which were classified as private corporations or Canadian-controlled private corporations would continue to be so classified, thus qualifying for certain private company tax deductions or credits. However, this also means that Tier 3 companies are not automatically qualified investment for registered retirement savings plans (RRSPs), registered retirement income funds (RRIFs) and other types of deferred income plans.

Mutual Fund Dealer membership – Ontario

Rule 31-506 will require all mutual fund dealers registered with the Commission to:

Become members of the MFDA (Mutual Fund Dealers Association of Canada) if the MFDA is recognized by the Commission as a SRO (self-regulatory organization) for mutual fund dealers, by the end of one year and 75 days after the Date of Recognition (this term is defined in the Rule); and

Prepare and submit to the MFDA an application for membership in the form prescribed by the MFDA, together with the MFDA's prescribed fees by certain specified deadlines.

The Rule is enacted. However, the MFDA filed a revised application for recognition as a SRO with the Alberta, British Columbia, Ontario and Saskatchewan Commissions on December 15, 2000, so the implementation date is uncertain. Rule 31-506.

Continuous disclosure – Financial Statements – Ontario

Ontario Rule 52-501 expands the financial disclosure required in interim and annual financial statements. Issuers (other than mutual funds) are now required to prepare: (i) an interim balance sheet, (ii) an interim statement of retained earnings, (iii) an income statement and cash flow statement for each three-month period of its financial year, other than the last three-month period of the year, (iv) notes to the interim financial statements, and (v) certain line items in their annual and interim balance sheets. In the Commission's view, the boards of directors and audit committees of issuers should engage an external auditor to review interim financial statements.

The Rule applies beginning on or after January 1, 2001.

Annual Information Forms and MD&A - Ontario

The Rule reformulates Policy 5.10. Policy 5.10, which came into force on November 10, 1989, recognized that important transactions, events and conditions are not always fully reflected in financial statements. Policy 5.10 prescribed an AIF (annual information form), with supplemental analysis and background material to allow a fuller understanding of the nature of the issuer, its operations and known prospects for the future.

The new Rule reformulates Policy 5.10 and also introduces a requirement for MD&A to be provided in relation to interim financial statements ("interim MD&A"). The following issuers are exempt - those with equity and revenues less than \$10 million, and whose aggregate market value was less than \$75 million, in the preceding year.

Rule 51-501 came into force on January 1, 2001

Prospectus Disclosure In Certain Information Circulars – Ontario

The Rule requires prospectus-equivalent circulars be sent to voting securityholders when proxies are being solicited for meetings to consider the following transactions: a statutory amalgamation, statutory arrangement, statutory merger or reorganization involving the reporting issuer and another issuer, under which securities are to be distributed or transferred to security holders of the reporting issuer. Rule 54-501.

Proposed:

Exempt distributions for small and medium businesses – Ontario

On September 8, 2000, Ontario proposed Rule 45-501, to replace the private company exemption, private issuer exemption, \$150,000 exemption, seed capital exemption and government incentive security exemption with the following new exemptions:

The “Closely-Held Issuer Exemption”, permitting issuers to raise a total of \$3.0 million, through any number of financings, from up to 35 investors (excluding employees who acquire securities under a compensation or incentive plan) without concern for the investor’s “qualifications” or “sophistication”.

The “Family Member Exemption”, permitting issuers to raise funds from spouses, parents, grandparents or children of its officers, directors and promoters.

The “Accredited Investor Exemption”, permitting issuers to raise any amount at any time from any person or company that meets the following qualifications: individuals who, either alone or jointly with a spouse, beneficially own financial assets having an aggregate net realizable value exceeding \$1.0 million; or whose net income exceeded \$200,000 in each of the two most recent years; or whose joint net income with a spouse exceeded \$300,000 in each of those years and who, in either case, has a reasonable expectation of exceeding the same net income level in the current year.

Resale restrictions would apply – see proposed Rule 45-102. Public comments were due December 8, 2000.

Resale restrictions – four month holds – National

On September 8, 2000, all jurisdictions, except Quebec, proposed Rule 45-102 - a harmonization of resale restrictions in exempt distributions. Unless pursuant to a prospectus or a further exemption:

Securities of a “qualifying issuer” shall be held for 4 months. A “qualifying issuer” would be a reporting issuer (or equivalent), who is an electronic filer under SEDAR, who has filed a current AIF (annual information form), and either has a class of equity securities listed or quoted on certain specified exchanges or markets, or outstanding securities that have received an approved rating.

Securities of a “non-qualifying” issuer must be held for 12 months from the later of the date of the distribution and the date the issuer becomes a “reporting issuer”.

Securities in issuers that are not “reporting issuers” can never be resold, absent a further exemption.

Public comments were due December 8, 2000.

Mineral Projects – Disclosure requirements – National

National Instrument 43-101, will establish standards for all oral statements and written disclosure made by an issuer concerning mineral projects reasonably likely to be made public. All disclosure concerning mineral projects, including oral statements and written disclosure in news releases, prospectuses and annual reports, would need to be prepared by, or under the supervision of, a “qualified person”. The qualified person must be “independent”: (1) on first becoming a reporting issuer; (2) on filing a long form prospectus or valuation; and (3) if the document discloses mineral resources or mineral reserves for the first time or discloses a 100 percent or greater change from the most recently filed independent technical report.

Much of the proposed Rule has already been adopted by the TSE and CDNX. The policy is expected to come into force in Ontario on February 1, 2001.

Communication with Beneficial Owners of Securities – National

The CSA are proposing new obligations on reporting issuers to send proxy-related materials to the beneficial, unregistered, owners of its securities, and to impose obligations on various intermediaries in the securityholder communication process. Proposed 54-101

System For Electronic Data On Insiders (SEDI) – National

The Canadian Securities Administrators have proposed a mandatory, Canada-wide, Internet-based insider reporting system. The System for Electronic Data on Insiders – “SEDI” – is to work in much the same way as SEDAR currently disseminates corporate disclosure. SEDI was originally to be implemented December 4, 2000, but for a variety of reasons, has been postponed to spring 2001.

Distributions Outside of the Local Jurisdiction – National

Proposed National Instrument 72-101 would harmonize policies regarding whether trades outside a local jurisdiction are subject to local regulation. The objective is to control “backdoor underwritings”. The Policy describes “connecting factors” to the local jurisdiction, including (1) where the mind and management of the issuer are primarily located, (2) whether a significant percentage of the outstanding securities of the class of securities being distributed are directly or indirectly held of record by residents of the local jurisdiction, (3) the location of the principal register of the equity securities of the issuer, and (4) where the operations of the issuer are principally conducted.

Distributions outside the local jurisdiction, which might be subject to local regulation, would be exempt if: (1) a prospectus is received in any jurisdiction in Canada, the U.K., or the U.S., or (2) specified controls are taken to prohibit the sale, and delay the resale, of securities into the local jurisdiction.

This is a proposed National policy. Ontario required written comments by December 8, 2000.

Please call if you have any questions - 865-0303

Allen and Allen

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JOHN ALLEN has a general practice. He co-authored the 1999 Estate Planning Handbook. He was called to the Bar in 1991 and clerked with the Ontario Superior Court. A graduate of Queen's University, he has a Bachelor of Arts, Bachelor of Science, is a graduate of the "Canadian Securities Course" and "Professional Financial Planning" course, is designated as a Certified Financial Planner, and recently completed a Masters of Law (LL.M.), specializing in securities law, at Osgoode Hall.