

Allen & Allen Update on Securities Law

www.virtual-law.com

July 31, 2002

Enacted:

Capital Pool Company - Policy in Force - Ontario

The Capital Pool Program came into force in Ontario on June 15, 2002. As noted in our newsletter of September 2001, the Program permits an initial public offering with a TSX Venture exchange listing (formerly CDNX listing) by a newly created capital pool company (a "CPC") which has no assets, other than cash, and which has not commenced commercial operations. The CPC uses the pool of funds to identify and evaluate assets or businesses which, when acquired, qualify the resulting issuer for listing as a regular Tier 1 or Tier 2 issuer on the TSX (a "Qualifying Transaction"). The CPC has 18 months to complete a Qualifying Transaction. The Program is not available to issuers if, prior to the completion of its IPO, an agreement in principle has been reached for a proposed Qualifying Transaction. Both TSX and securities regulators are of the view that, if the issuer has reached an agreement in principle, it should prepare a regular prospectus. Ontario Policy 41-601

Alberta expands exemption for voluntary trades to Senior Officers, Directors and Consultants

Alberta Blanket Order 45-506 expands the exemption for voluntary trades to employees, to include voluntary trades to consultants and to holding entities, spouses, RRSPs and RRIFs of directors, senior officers, employees and consultants, and to the RRSPs and RRIFs of their spouses. Securities issued under the Blanket Order will typically be subject to a seasoning period under Multilateral Instrument 45-102 Resale of Securities, although in some cases securities issued to directors, senior officers and investor relations persons of unlisted issuers will be subject to a restricted period under MI 45-102.

Uniform escrow regime– In Force – National (except Quebec)

Effective June 30, 2002, the Canadian Securities Administrators ("CSA") other than Quebec, are implementing the uniform escrow regime set out in National Policy 46-201 "Escrow for Initial Public Offerings". This is the final implementation of the uniform escrow regime that came into effect on an interim basis on September 21, 2001. Quebec is currently reviewing a regulation that parallels the National Policy.

New Rules concerning shareholder communication in force

New National rule 54-101 allows issuers to better identify their beneficial, unregistered shareholders, allowing them to send proxy-related materials to those who have not objected to being identified on a list of recipients. Previously, an issuer could not generally obtain the names of its unregistered shareholders who hold its securities through a broker or other intermediary. Also, the rule 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.

Disclosure Standards - New National Policy

The CSA have adopted National Policy 51-201 which provides guidance and best practices on corporate disclosure, and assists public companies in avoiding selective disclosure. Guidance is given about setting up a disclosure committee, an authorized company spokesperson, and other matters. The company's Website should be up-to-date and accurate, and should concurrently post all documents that are filed on SEDAR, as well as all supplemental information given to analysts, institutional investors and other market professionals. The company and its employees should not participate in, host, or link to, Internet chat rooms or bulletin boards.

Guidance is given about selective disclosure under the "necessary course of business" exemption, which generally covers communications with: (a) vendors, suppliers, or strategic partners on issues such as research and development, sales and marketing, and supply contracts; (b) employees, officers, and board members; (c) lenders, legal counsel, auditors, underwriters, and financial and

other professional advisors to the company; (d) parties to negotiations; (e) labour unions and industry associations; (f) government agencies and non-governmental regulators; and (g) credit rating agencies (provided that the information is disclosed for the purpose of assisting the agency to formulate a credit rating and the agency's ratings generally are or will be publicly available). The exemption would not generally permit selective disclosure of material corporate information to an analyst, institutional investor or other market professional. However, disclosure by a company in connection with private placement communications or to a controlling shareholder may, in certain circumstances, be in the "necessary course of business", provided confidentiality is maintained by the recipient and the material information is disclosed to the public at the earliest opportunity.

Proposed:

Harmonization of prospectus requirements across Canada - Proposed

The Canadian Securities Administrators (CSA) are reviewing prospectus regimes across Canada. The plan is to harmonize the long form prospectus across Canada, in keeping with continuous disclosure requirements being considered. Changes will likely reflect a more flexible approach to U.S. and international accounting and auditing standards. The CSA are also considering to what extent foreign issuers may use the International Organization of Securities Commissions International Disclosure Standards to satisfy the long form prospectus form requirements.

Continuous disclosure requirements to be harmonized – National - Proposed

The Canadian Securities Administrators (CSA) are proposing a new harmonized continuous disclosure rule for all reporting issuers, other than investment funds. The proposed rule sets out requirements regarding financial statements, annual information forms, management discussion and analysis (MD&A), material change reporting, information circulars, proxies and proxy solicitation, restricted share disclosure, and other matters.

New fees regime proposed in Ontario - Proposed Rule 13-502

The proposal would require payment of "participation fees" and "activity fees" for reporting issuers, registrants and unregistered investment fund managers. For a reporting issuer, the annual "CF Participation Fee" would depend on its market capitalization - from a minimum fee of \$1,000 for a capitalization under \$25 million to a maximum fee of \$85,000 for a capitalization over \$25 billion.

For a registrant firm or an unregistered investment fund manager, the annual "CM Participation Fee" would depend on its "specified Ontario revenues" - from a minimum fee of \$1,000 for revenues under \$500,000 to a maximum fee of \$850,000 for revenues over \$1 billion.

Where an investment fund has an investment fund manager, the fund does not have to pay CF Participation Fees. Instead, the investment fund manager will be paying the CM Participation Fees in respect of revenues generated from managing the fund.

Additional "activity fees" would represent the direct cost of OSC staff resources for taking a specific action or providing a specific service. Such fees would be payable when filing a prospectus or other distribution-related documents, filing a take-over bid or issuer bid document, applying for registration or related documents, applying for discretionary relief, or requesting copies of Commission documents or a search of Commission records.

The Commission asserts that the proposed rule would reflect the changing nature of the securities industry, from a business based on primary offerings to one where 95% of the activity takes place in the secondary markets. Some commentators, however, express the view that the proposal is more concerned with the predictability of Commission revenues. Submissions on the new Rule received before September 27, 2002 will be considered.

New Trade and Quotation Reporting System for small issuers proposed in Ontario - "CNQ"

Canadian Trading and Quotation System Inc. ("CNQ") has applied to the Ontario Commission for recognition as a quotation and trade reporting system. CNQ would operate an electronic, automated marketplace for participating dealers to trade Ontario equity securities not listed on a recognized Canadian exchange.

CNQ would post the junior issuer's stock quotes and trading volumes on the CNQ website, along with an enhanced disclosure record. This would increase exposure for Ontario unlisted issuers. 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.

Issuers would be required to 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.

Each CNQ Issuer would need a public float of freely-tradeable shares worth at least \$50,000 and consisting of at least 150 public holders holding at least a board lot each of the security. The public float must constitute at least 10% of the total issued and outstanding of that security, provided that a CNQ Issuer may have a public float that constitutes at least 5% of the total issued and outstanding if it has at least 200 public holders of at least a board lot each of the security. CNQ shall designate as a "thin float issuer" any CNQ Issuer that has less than 10% of the total issued and outstanding held by the public holders as freely tradeable shares. There are other requirements, which are not summarized here.

CNQ's current fees are as follows: For issuers, an initial fee (or fundamental change fee) of \$10,000; plus monthly fees of \$300. However, prior to launch of the CNQ, the application fee is reduced to \$8,000 - \$2,000 deposit and \$6,000 on launch. For dealers, there is an initial fee of \$2,500, monthly access fees of \$1,250, plus trading fees.

Market Regulation Services Inc., an independant market regulation service provider owned by the TSE and the IDA, will provide market surveillance and regulatory oversight services to CNQ. (See ALLN/2002-016 and ALLN/2001-124 for a summary of the recognition of Market Regulation Services Inc.)

The comment period will run for 30 days, following which CNQ will provide the OSC with a written response to the public's input. Formal recognition is the last stage in the process, which CNQ officials anticipate will be completed by early Fall 2002.

TSE to create exchange for small firms - Proposed

According to a July 19th 2002 Globe and Mail article by Richard Blackwell and Andrew Willis, the Toronto Stock Exchange also plans to create a “micro-cap” exchange. The “J2 market” (the Junior Junior market) would absorb some of the stocks currently on the TSX Venture Tier 3, and compete directly with the proposed CNQ (see above).

TSX Inc. reorganization and IPO - Proposed

TSX Inc. (formerly The Toronto Stock Exchange Inc.) has applied to the Ontario Commission for the recognition of TSX Inc. as a stock exchange and for the recognition of TSX Group Inc. (a new holding company for TSX Inc.) as a stock exchange. This is to reflect a reorganization prior to the initial public offering of TSX Group. In addition, the Canadian Venture Exchange Inc. (CDNX) has applied for a name change to TSX Venture Exchange Inc.

TSX Inc. is also requesting to increase the permitted limit on ownership of TSX Group shares from the existing limits applied to TSX Inc. shares. Currently, share ownership of TSX Inc. is limited to 5 per cent of outstanding shares unless the prior consent of the Commission is obtained. TSX Inc. proposes that the restriction be increased to 10 per cent. The Commission is publishing for comment the application of TSX Inc. and related documents.

New Independent Public Oversight for Auditors of Public Companies

Federal and provincial regulators and Canada's chartered accountants have announced the creation of a new system to oversee the auditors of public companies in Canada. The “Canadian Public Accountability Board” (“CPAB”) will annually review major accounting firms conducting public company audits; they will be subject to a more comprehensive examination of their quality control policies and procedures. Failure to remedy significant deficiencies identified by the CPAB will result in sanctions and will also be communicated to the appropriate regulators, who may take action. Canada's major CA firms have voluntarily agreed to implement the new requirements in October 2002, which will coincide with the establishment of the CPAB. The CPAB requirements will apply to all other firms auditing public companies within three years.

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

Allen and Allen

WILLIAM ALLEN: A graduate of the University of Toronto, Bill was called to the Bar in 1954. He later obtained a Masters of Law (LL.M.) from Osgoode Hall. He has lectured for the Canadian Bar Association and the Law Society of Upper Canada. He is the author of the Estate Planning Handbook (with three editions, published in 1985, 1991 and 1999) and has worked in the area of securities law since the early 1960s.

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 the Certified Financial Planner (CFP) designation. He is also the author of a monthly securities "Netletter" available only on Quicklaw (www.quicklaw.com), a fee-based legal database service.