

# Update on Securities Law

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## Enacted:

### **Reverse Takeovers to Become a Reporting Issuer:**

The Ontario Act was recently amended to prevent an issuer from automatically becoming a reporting issuer by filing a take-over bid circular. The OSC became "concerned" because the circular is not subject to OSC review and is not certified by management regarding "full, true and plain disclosure of all material facts". On application, however, the OSC can still deem an issuer to be a reporting issuer if the circular contains prospectus-equivalent disclosure.

### **Insider Trading Reports:**

In Ontario, insider reports must now be filed within 10 days of trades, rather than within 10 days of the end of the month of a trade.

### **Four Month Hold Periods in BC and Alberta:**

British Columbia and Alberta have shortened the hold periods for private placements and exempt offerings from twelve months to four months (the Ontario hold period is generally 18 months, unless the issuer is listed on the TSE or Montreal Exchange), provided the issuer files an Annual Information Form, meets certain revenue or expenditure tests, and is listed on a recognized exchange (including the CDNX, but not the CDN over-the-counter market).

### **CDNX and Junior Capital Pools:**

British Columbia and Alberta, along with the CDNX, have created the Capital Pool Company ("CPC") program. The program allows a newly created company to do an IPO with a CDNX listing even if the company has no assets, no business and no operations (other than cash). The CPC has, generally, 18 months to identify and evaluate assets or businesses which, when acquired, qualify the CPC for a Tier 1 or Tier 2 Issuer listing on the CDNX (a "Qualifying Transaction"). The CPC program is not a "short-cut", since it is a two stage process, rather than just one stage for the traditional IPO. The first stage involves the filing and clearing of a CPC Prospectus, the completion of the IPO and the listing of the CPC's common shares on the Exchange. The second stage involves the identification of a business or asset that can be acquired as a Qualifying Transaction, the preparation and filing of a CPC Information Circular containing prospectus level disclosure for the Qualifying Transaction and the holding of a shareholders' meeting to approve the Qualifying Transaction. Ontario is apparently considering a similar program.

### **Canadian Dealing Network and the CDNX:**

The CDNX now has a Toronto office, at Suite 600 First Canadian Place, Tel. 367-2369. The CDNX expects to merge the *quoted* CDN over-the-counter market into a new auction-based Tier 3 on the CDNX by October 2, 2000 (plans to complete the merger by June were postponed, mainly because of the need for a Revenue Canada tax ruling). Those quoted CDN companies that move will be required to sign a new listing agreement with the CDNX, but there will be no additional fee. During the merger, companies can apply for a Tier 1 or Tier 2 listing, which may require additional escrow or corporate finance requirements, but which won't require additional listing fees.

## Proposed:

### **Financial Reporting:**

Ontario Proposed Rule 52-501 would expand the financial disclosure required in interim and annual financial statements. Issuers (other than mutual funds) would be 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 OSC is requesting comments by June 9, 2000.

### **Standards of Disclosure For Mineral Projects:**

Proposed National Instrument 43-101, which is expected to come into force by the end of the year, 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 (although the CDNX does not require independent verification in all circumstances. Instead, there is a sliding scale of verification that increases with the significance of a company's claim.)

**New Disclosure System to Speed Access to Capital:**

Canadian Securities Administrators are proposing an "Integrated Disclosure System". Issuers on a major exchange would be able to file upgraded annual information forms, quarterly forms (with enhanced financial and MD&A reporting), and more detailed material change forms. Each filing would be certified by senior officers and directors. Because of the enhanced, management certified, disclosure base, issuers would be able to access the markets with simplified prospectuses incorporating by reference the public record -- in the style of a term sheet, with the risk factors listed. Commission reviews would be limited and faster, and pre-marketing would be permitted. The advantage, of course, would be speedier access to the markets. The disadvantage would be increased costs and liabilities associated with continuous filings. The Commissions are seeking public comment on the proposal by June 1, 2000.

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

## Allen and Allen

**WILLIAM ALLEN** has a general practice, including estate planning, estate administration, business law, and securities law. A graduate of the University of Toronto, William Allen 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 Estate Planning Handbook (with three editions, published in 1985, 1991 and 1999).

**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", the "Professional Financial Planning" course, is designated as a Certified Financial Planner, and is completing a Masters of Law (LL.M.) specializing in securities law.

**ASSOCIATIONS** We work in association with Gaylanne Phelan and Marsha Onyett and with Michael Woods. John and Michael publish another newsletter entitled "The Legal Edge", which deals with small business and estate planning. All these newsletters are available on our website: [www.virtual-law.com](http://www.virtual-law.com)