

Allen & Allen Update on Securities Law

www.virtual-law.com

November 1, 2003

Enacted:

CNQ issuers eligible for four month holds on private placements

Canadian Trading and Quotation System Inc. (CNQ), Canada's newest stock market for emerging companies, has received orders from the securities commissions of Alberta, British Columbia, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut and Saskatchewan effectively making CNQ-quoted issuers "qualifying issuers" under Multilateral Instrument 45-102. A similar application is pending with the Ontario and Quebec Commissions.

This means that CNQ issuers who otherwise meet the requirements of MI 45-102 (including filing an Annual Information Form), will be eligible for a four-month hold periods in those jurisdictions on prospectus-exempt offerings of securities. Prior to these commission orders, such offerings by CNQ issuers were subject to a 12-month hold period.

For further information, see: www.cnq.ca

Trades to Employees, Senior Officers, Directors, and Consultants - Technical Amendments - Multilateral

On August 15, 2003, Multilateral Instrument 45-105 Trades to Employees, Senior Officers, Directors, and Consultants came into force in every jurisdiction in Canada, other than Quebec. Technical limitations have since been adopted which do not materially change the Instrument.

With the exception of Ontario (where the amendments may come into force earlier) the amendments will become effective in all jurisdictions on or after November 18, 2003.

Oil and Gas Disclosure Rule in force - National

National Instrument 51-101 Standards of Disclosure for Oil and Gas Activities and Companion Policy 51-101CP has been adopted as a rule in each of British Columbia (except Form 3), Alberta, Ontario and Manitoba and as a Commission regulation in Saskatchewan, effective September 30, 2003.

Identifying the offeror in a take-over bid - CSA Staff Notice

The Canadian Securities Administrators have issued a notice to clarify who should be considered, and identified as, the offeror in a take-over bid when a company, income trust or other entity uses an acquisition entity, subsidiary or other affiliate to make the bid. Where a take-over bid is made by a wholly-owned entity, CSA staff regard the entity's parent to be a joint offeror. In that case, both parties must sign the circular as offerors. If the named offeror is not a wholly-owned entity, CSA staff will consider whether the primary party is a joint offeror under the bid by examining its role in that bid. CSA Staff Notice 62-303

Proposed:

Canadian Public Accountability Board proposed registration process for auditors

The Canadian Public Accountability Board (CPAB) has released for comment a proposed registration process for auditors of reporting issuers. This is further to proposed Multilateral Instrument 52-108, which would require auditors of reporting issuers to be participants in good standing with the CPAB when they issue an auditor's report.

The two-step registration process proposed by the CPAB requires firms to file a notice of their intent to participate by December 31 2003 and to complete their registration by February 29, 2004. Fees will be payable to CPAB at each stage of the registration process.

Comments are due November 10, 2003

Auditor oversight rule – BC Commission seeks further comment

The BC Commission is seeking further comment on proposed Multilateral Instrument 52-108, as well other “investor confidence” instruments (all of which are modeled on the US *Sarbanes-Oxley Act of 2002*) by November 3, 2003. BC Notice 2003/35

Communication with Beneficial Owners of Securities - Proposed amendments - National

The Canadian Securities Administrators are publishing for comment proposed amendments to National Instrument 54-101 -- Communication with Beneficial Owners of Securities of a Reporting Issuer. If passed, the Rule would:

- amend the definition of "legal proxy" to clarify that a beneficial owner may designate a person to have voting power under a legal proxy.
- allow beneficial owners to decline to receive all proxy-related materials. Also, allow beneficial owners to choose to receive only proxy-related materials relating to special meetings, i.e. meetings where shareholder approval of fundamental changes to the issuer is being sought.
- clarify the obligations of persons or companies that are not reporting issuers
- a new Part 7 that sets out both permitted uses for a NOBO list and the permitted uses of the indirect delivery scheme

Comments are due January 2, 2004

Income Trusts and Other Indirect Offerings - Proposed - National

The Canadian Securities Administrators (CSA) are publishing for comment proposed National Policy 41-201, which would regulate a trust or other entity (including corporate and non-corporate entities) that issues securities entitling the holder to substantially all of the net cash flows generated by: (i) an underlying business owned by the trust or other entity, or (ii) the income-producing properties owned by the trust or other entity.

The Policy would provide guidance on prospectus disclosure relating to distributable cash, short-term debt, stability ratings, determination of unit offering price, and executive compensation. The policy would also provide guidance on continuous disclosure, possibly including a requirement that issuers who disclosed expected distributable cash to provide, on an annual basis, an updated comparison of distributed and distributable cash to the expected distributable cash figure.

The Policy also outlines the CSA concerns about others that may possess material undisclosed information about the income trust. Specifically, these persons may: (i) not fall within the definition of "insider", or (ii) not be contemplated by the undertaking. In these types of situations, the CSA may request that additional undertakings be provided. For example, when an income trust does not control the operating entity (such as when the income trust owns less than 50% of the operating entity's voting securities), the CSA would request that "insiders" of the operating entity report all trades in units of the income trust as if they were insiders of the income trust.

Comments are due December 23, 2003

Analyst conflicts of interest and research reports - Proposed disclosure amendments by IDA

The Investment Dealer Association (IDA) has published for comment amendments to Policy 11 regarding analyst standards, which would harmonize Canadian rules with NASD Rule 2711. The amendments would permit US research to be available in Canada and Canadian research relating to Canadian firms to be distributed in the US. The amendments are being filed in Alberta, BC, Ontario, Nova Scotia and Saskatchewan.

The Pro Group requirements for the purpose of Policy No. 11 has been removed and replaced with a disclosure requirement for the Member and its affiliates (there is also a disclosure requirement for the analyst and the associate of the analyst). The amendment was required as the current definition of Pro Group is extremely broad and captures individuals that are not in a position where conflicts would arise in the context of research reports. In addition to amending whose holdings need to be disclosed, the threshold for required disclosure has been reduced from 5% to 1% which brings the requirement in line with what is required under NASD Rule 2711. See: IDA Proposed Policy 11

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 is a Certified Financial Planner (CFP). He is also the author of a monthly securities "Netletter" available only on Quicklaw (www.quicklaw.com), the largest computer library service for lawyers in Canada.