

Allen & Allen Update on Securities Law

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Enacted:

The transfer from CDN to CDNX

The CDN is the Ontario based, over-the-counter, dealer market. CDN's quoted issuers are eligible for transfer to a new "Tier 3" on the CDNX exchange. All CDNX companies, including Tier 3, trade on a fully electronic auction. Tier 3 issuers must meet Tier 2 ongoing disclosure requirements. For small Ontario issuers who are not invited to the CDNX or who cannot maintain its listing, the CDNX is proposing a new Internet-based reporting system.

CDN issuers must apply to the CDNX by Sept 15th to trade on the Tier 3 on Oct 2nd. Issuers that file between Sept 15th and Sept 29th will trade on the Tier 3 after Oct 10th. Those that apply after Sept 29th will not be eligible for transfer to Tier 3, but must apply and meet higher listing requirements as a Tier 1 or Tier 2 issuer, including a dealer/sponsor, corporate governance policies, and escrow requirements.

Recognition of the CDNX for Ontario hold periods

Effective August 29, 2000, Ontario recognized the CDNX as a stock exchange for the purpose of computing hold periods on private placements. In other words, hold periods for a new private placement of a CDNX issuer are now 12 months, rather than 18 months.

Proposed:

System For Electronic Data On Insiders (SEDI)

The Canadian Securities Administrators have proposed a mandatory, Canada-wide, Internet insider reporting system, to begin December 4, 2000. The System for Electronic Data on Insiders – "SEDI" – will work in much the same way as SEDAR currently disseminates corporate disclosure.

Insider Bids, Issuer Bids, Going Private Transactions and Related Party Transactions

Proposed Rule 61-501 will replace Ontario Policy 9.1. It will continue to regulate insider bids, issuer bids, going private transactions and related party transactions. Independent valuations, majority of minority approval and enhanced disclosure, form the basis of the proposed Rule. It is a complex Rule, so please call if you have any questions.

Proposal For a National Escrow Regime applicable to Initial Public Distributions

The Canadian Securities Administrators have proposed a “National Escrow Regime” applicable to IPOs. At the time of its IPO, an issuer will be classified for purposes of escrow as an “exempt issuer”, an “established issuer” or an “emerging issuer”.

- for exempt issuers — those conditionally listed or listed on the TSE in its exempt category, and those conditionally listed or listed on the TSE, the ME, the WSE or the CDNX that raise minimum gross proceeds of \$75 million in their IPO: no escrow;
- for established issuers — those conditionally listed or listed on the TSE in its non-exempt category, on Tier 1 of the CDNX, or on the ME or the WSE that meet requirements equivalent to the CDNX's Tier 1 requirements: escrow releases in equal tranches at 6-month intervals over 18 months (i.e., 25% of each principal's holding released in each tranche) with 25% of each principal's holding exempt from escrow; and
- for emerging issuers — those conditionally listed or listed on Tier 2 of the CDNX, or on the ME or the WSE that meet requirements equivalent to the CDNX's Tier 2 requirements but not Tier 1 requirements — escrow releases in equal tranches at 6-month intervals over 36 months (i.e., 15% of each principal's holding released in each tranche) with 10% of each principal's holding exempt from escrow.

Additional escrow requirements can be imposed if no underwriter is involved in an IPO, an issuer's equity securities will not be listed on a Canadian exchange upon completion of its IPO, or in other circumstances.

Rights Offerings

Proposed National Instrument 45-101 provides that the rights offering prospectus exemption is unavailable where:

- (a) as a result of the exercise of the rights under the offering and the exercise of rights issued within the previous 12 months there would be an increase of more than 25 percent in the number, or, in the case of debt, the principal amount, of the outstanding securities of the class to be issued upon the exercise of the rights;
- (b) the rights are exercisable for securities of a class which were not previously outstanding;
- (c) there is an agreement to compensate dealers in a manner which encourages solicitation of the exercise of rights by holders of rights that were not securityholders of the issuer immediately prior to the rights offering;
- (d) there is a minimum amount of proceeds necessary to conduct the purpose for which the funds are being raised and the offering is open for more than 30 days;
- (e) the issuer is not a reporting issuer in the local jurisdiction and the offering is open for more than 45 days;
- (f) the issuer is a reporting issuer in the local jurisdiction and the offering is open for more than 90 days; and
- (g) the issuer is not a reporting issuer in the local jurisdiction but is a reporting issuer in another jurisdiction and the issuer has not filed in the local jurisdiction the continuous disclosure documents that were required to be filed in the jurisdiction in which it was a reporting issuer and the offering is open for more than 90 days.

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