

Allen & Allen Update on Securities Law

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Enacted:

Deeming an Issuer from other Canadian Jurisdictions to be a Reporting Issuer in Ontario

The OSC has adopted Policy 12-602 "Deeming a Reporting Issuer in Certain other Canadian Jurisdictions to be a Reporting Issuer in Ontario". The Policy is effective June 27, 2001.

As explained in our July 1st 2001 newsletter, the OSC will generally grant the order if the issuer has been a reporting issuer or equivalent, in good standing, for at least 12 months in one or more of British Columbia, Alberta, Saskatchewan, Manitoba, Quebec or Nova Scotia. In addition, the OSC will generally grant the order to an issuer, in good standing, who has securities listed and posted for trading on CDNX. In reviewing an application, Commission staff may review the applicant's continuous disclosure record from another jurisdiction and require any deficiencies to be addressed before recommending the application.

Proposed:

More amendments to proposed exemptions in Ontario

The OSC has proposed more changes to Rule 45-501 regarding exempt distributions. The new exemptions (which the OSC has been considering since the 1996 Report of the Task Force on Small Business Financing) would replace the private company, private issuer, \$150,000, seed capital and existing government incentive security exemptions. In addition to the new exemptions for "closely-held issuers" and "accredited investors" (summarized in the July 1st, 2001 Allen & Allen newsletter), two further exemptions were proposed on July 13, 2001: (1) the "private pooled fund" and (2) a new "government incentive security" exemption.

(1) The “private pooled fund” is a mutual fund or non-redeemable investment fund. The exemption would apply if (a) the purchaser purchases as principal; (b) either (i) the security has an aggregate acquisition cost to the purchaser of not less than \$150,000 or (ii) the purchaser then owns securities having either an aggregate acquisition cost or an aggregate net asset value of not less than \$150,000 (a “top up”); and (c) the mutual fund or non-redeemable investment fund is managed by a portfolio adviser or a trust corporation registered under the *Loan and Trust Corporations Act*.

(2) A “government incentive security” is a security, or an interest in a partnership or joint venture, which passes along unused income tax deductions for Canadian exploration or development expenses. The current exemption would largely be preserved, which limits solicitations to 75 persons and sales to 50, provided investors are given an offering memorandum with prospectus equivalent information and a contractual right of action.

“Direct Purchase Plans” proposed in Ontario, allowing reporting issuers to sell directly to investors

Reporting issuers in Ontario will be able to sell securities directly to investors without a dealer, under proposed Rule 32-501, which is expected to come into force on October 10th 2001. To be eligible, an issuer (or its administrator) must send each purchaser the latest prospectus relating to the Direct Purchase Plan, along with a two-day withdrawal right. Also, each investor must receive a short statement, indicating that only a dealer can give investment advice. Funds raised and securities issued must be segregated. Advertising would be restricted.

Capital Pool Companies in Ontario – Proposed

Issuers participating in the CDNX capital pool company program (“CPC Program” - CDNX Policy 2.4) will be able to offer securities to the public in Ontario, under proposed Policy 41-601. The CPC Program permits an initial public offering with a CDNX exchange 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 CDNX (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 CDNX and securities regulators are of the view that, if the issuer has reached an agreement in principle, it should prepare a regular prospectus.

Ontario CDNX issuers exempt from Ontario's special transaction rule (formerly Policy 9.1) - Proposed

Ontario Rule 61-501, formerly Ontario Policy 9.1, has regulated Insider Bids, Issuer Bids, Going Private Transactions and Related Party Transactions in Ontario for a number of years, requiring independent valuations, minority shareholder approval and enhanced disclosure. The proposed amendment would exempt Ontario CDNX issuers from obtaining independent, formal valuations for related party transactions if the issuer meets the "Exchange Valuation Exemption" in CDNX Policy 5.9.

TSE's acquisition of CDNX – what about "over-the-counter" issuers formerly on CDN?

On July 31st 2001, the OSC approved the TSE's acquisition of the CDNX. The CDNX will continue to operate as a separate national exchange for junior issuers, and the Alberta and BC Commissions will remain as "lead regulators".

Regarding Ontario over-the-counter issuers formerly reported on the CDN, on October 2, 2000, quoted CDN issuers were invited to a temporary Tier 3 listing on the CDNX, with 18 months to meet Tier 2 requirements. Eventually, Tier 3 will be eliminated.

Regarding Ontario CDN issuers not invited to the CDNX and those unable to meet or maintain CDNX Tier 2 requirements, the CDNX currently operates an Internet web-based system for the reporting by registered dealers of over-the-counter trading (the Canadian Unlisted Board, or "CUB", at www.cub.ca). However, CUB is a dealer reporting system only, and unlike the former CDN, trade information is not publicly available.

A new “Canadian Trading and Quotation System” (“CNQ”) has been proposed, for publicly reporting, via the Internet, of dealer trades of Canadian equity securities not listed on an exchange. It is being promoted as a “hybrid market maker system”, between a full auction, as in an exchange, and a dealer-to-dealer market, as in NASDAQ. In deciding whether to recognize the new “marketplace”, the OSC may consider its news release of December 22, 2000, which stated that: “In approving the transfer of the reported market to CUB, the Commission was persuaded that the reporting of last sale price afforded investors limited transparency that may not have been related to the actual value of securities because of the extremely low volume of trading in these [over-the-counter CDN] securities... such limited transparency gave investors a false comfort in the liquidity and value of the securities and created an opportunity for market manipulation.”

System For Electronic Data On Insiders (SEDI) - Proposed

The Canadian Securities Administrators (“CSA”) have proposed a mandatory, Canada-wide, Internet based, insider reporting system. The System for Electronic Data on Insiders – “SEDI” (to be posted at www.sedi.ca) – would work in much the same way as SEDAR currently disseminates corporate disclosure. It will apply to reporting issuers, other than mutual funds, that are currently required to file disclosure documents in electronic format through SEDAR. The Rule is expected to come into force on October 29, 2001, but a two week transition period is planned, so the compliance date is expected to be November 13, 2001.

Issuers will be required to file an “issuer profile”, with information about outstanding securities as well as the name of an insider affairs contact. Issuers will also file an “issuer event report” no later than one business day following the occurrence of an “issuer event”, which includes a stock dividend, stock split, consolidation, amalgamation, reorganization, merger or other similar event that affects all holdings of a class of securities.

Insiders will be required to file an “insider profile”, similar to the existing paper form, and an “amended insider profile” within 10 days of a change. However, personal information will not be viewable on the public website, such as the insider’s address (including postal code but excluding municipality, province, territory, state and/or country), telephone number, facsimile number, e-mail address and any election to receive correspondence in French or English.

Insiders will be required to electronically report their trades within 10 days after the date of the trade. Since the reports will be filed as data, and prepared within the system, SEDI will be able to pre-populate certain form information (e.g. opening balances of securities held), automatically perform certain calculations (e.g. closing securities balances) and perform various edit checks (e.g. ensure all required fields have been completed with valid data) prior to allowing transmission of the completed online report through SEDI. It is expected that this function will significantly reduce the number of deficient insider reports filed.

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

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