

CLIENT ALERT

March 30, 2020

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CANADIAN SECURITIES LAW UPDATE

TEMPORARY EXEMPTIVE RELIEF FROM CERTAIN SECURITIES REGULATORY FILING REQUIREMENTS DURING THE COVID-19 PANDEMIC

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To accommodate difficulties that reporting issuers and other issuers or persons may have in meeting filing requirements due to the COVID-19 pandemic, the regulators that make up the Canadian Securities Administrators have each issued multiple orders granting 45-day extensions in respect of certain filing and other requirements under applicable securities laws, regulations and National Instruments. While consistent in intention, the orders introduce nuances that vary based on the legislation or instrument that created the reporting obligation.

The 'extension period' applies to certain filings required to be made and certain documents required to be sent during the period from March 23, 2020 to June 1, 2020 and extends the filing deadline to a date which is 45 days from the date on which the filing was required to be made.

Continuous Disclosure Reporting Obligations – Corporate Finance

The blanket relief granted applies to reporting issuers and other issuers for making certain filings and for sending or delivering certain documents under continuous disclosure requirements and under prospectus exemption requirements.

Reporting issuers or other persons are provided a 45-day extension to the filing obligation, provided that they issue and file on SEDAR a news release in advance of the filing deadline disclosing:

- i. the applicable requirement,
- ii. that insiders and management are subject to a trading black-out,
- iii. the estimated date on which the filing or delivery of the disclosure material is expected to be made, and
- iv. an update on any material business developments since the last filing or confirmation that there have been none.

Thereafter, the reporting issuer or other person must issue and file on SEDAR news releases, within 30 days after the first day of the extension period and subsequently within 30 days after the previous news release, an update on material business developments or confirmation that there have been none.

This relief applies to certain annual, interim and other financial statements, certain annual and interim management discussion and analysis reports, annual information forms, certain technical reports and reserve data listed in the orders issued by the commissions.

Similar relief was granted for certain filings in respect of changes of auditors, changes of year-end, business acquisition reports and changes of corporate structure provided that the person or company issues and files on SEDAR a news release in advance of the filing deadline disclosing each applicable requirement for which it is relying on this relief.

Continuous Disclosure Reporting Obligations – Investment Funds

Similar to the relief granted to Corporate Finance issuers, relief has been granted to Investment Fund issuers from certain financial and other reporting filing, sending or delivery requirements that are required to be made during the period March 23, 2020 and June 1, 2020.

Investment Funds are provided an additional 45 days from the deadline otherwise applicable provided that in advance of the filing deadline they:

- i. notify the regulator by e-mail; and
- ii. post a statement on the Investment Fund's website or on the website of the investment fund manager

stating that the Investment Fund is relying on the blanket order and each applicable requirement for which it is relying on the blanket order.

Exempt Distribution Filings – OM Exemption, Crowdfunding Portals and Designated Rating Organizations

Relief was also granted in respect of certain filings due during the period from March 23, 2020 to June 1, 2020.

Filing deadlines for certain forms and documents are being extended by an additional 45 days from the deadline otherwise applicable provided that (i) the issuer issues a news release prior to the filing deadline, and files it on SEDAR, disclosing each requirement for which the person is relying on the relief, and (ii) if the person is a rating agency, the news release must provide reference to information previously issued that has become materially inaccurate or confirmation that there is no such materially inaccurate information.

This relief is limited to annual financial statements, initial and annual notices of use of proceeds and certain annual filings (and amendments thereto) of designated rating organizations.

Reports of Exempt Distributions Not Extended

For capital raising activities in the exempt market that have continued to occur during the COVID-19 pandemic it is important to note that the blanket relief orders do not extend the timeframe for filings required in connection with issuance of securities by way of an exempt distributions.

Shelf Prospectus Lapse Dates – Corporate Finance

Certain shelf prospectuses that would otherwise lapse during the period from March 23, 2020 to June 1, 2020 may add an additional 45 days to that lapse date provided that they issue and file on SEDAR a news release prior to the lapse date, disclosing the requirement that the person is relying on for relief and further provided that the person is not relying on the *Continuous Disclosure Reporting Obligations – Corporate Finance* relief described above.

Prospectus Lapse Dates – Investment Funds

An Investment Fund distributing securities under a prospectus that would otherwise lapse during the period from March 23, 2020 to June 1, 2020 may continue to distribute under its existing prospectus and add an additional 45 days to that lapse date when meeting the prospectus renewal requirements, provided that in advance of the filing deadline they:

- i. notify the regulator by e-mail; and
- ii. post a statement on the Investment Fund's website or on the website of the investment fund manager

stating that the Investment Fund is relying on the blanket order in respect of its lapse date.

Financial Reporting Obligations – Registrants and unregistered capital markets participants

Registrants and unregistered capital markets participants that would otherwise have financial reporting obligations under National Instrument 31-103 or the *Commodity Futures Act* (Ontario) during the period from March 23, 2020 to June 1, 2020 are exempt from the filing requirement provided they deliver the required information no later than 45 days after the original delivery deadline.

Reporting Obligations – Marketplaces, Clearing Agencies, Designated Trade Repositories, Designated Information Processors and Commodity Futures Exchanges (“Regulated Entities”)

Regulated Entities that would otherwise be required to make certain specified filings between March 23, 2020 and June 1, 2020 are able to provide the filing on a date that is no later than 45 days after the original due date, provided that when it provides the document or other information it discloses that it is relying on the order and states the reasons why it could not submit the document or other information by the original due date.

For complete details of the relief and lists of applicable filings, please refer to:

https://www.osc.gov.on.ca/en/SecuritiesLaw_rule_20200323_25-502_general-order-temporary-exemption-reporting-requirements-regulated-entities.htm;

https://www.osc.gov.on.ca/en/SecuritiesLaw_sn_20200323_31-510_general-order-temporary-exemption-certain-financial-statement.htm;

https://www.osc.gov.on.ca/en/SecuritiesLaw_sn_20200323_51-502_general-order-temporary-exemption-certain-corporate-finance-requirements.htm; or

https://www.osc.gov.on.ca/en/SecuritiesLaw_rule_20200323_81-503_general-order-extension-investment-funds.htm

Or contact your securities counsel at Dickinson Wright LLP.

Stock Exchanges

Certain stock exchanges have also announced relief from some of their regulatory requirements.

The TSX has granted temporary blanket relief from certain provisions of the TSX Company Manual (“Manual”). The TSX has granted, without an application, an extension of the time for filing or mailing an issuer's annual financial statements in 2020, consistent with the extended deadlines announced by Canadian Securities Administrators. In respect of normal course issuer bid limitations, the TSX increased the limit on the number of shares that can be acquired on any trading day,

from 25% to a temporary maximum of 50% of the issuer's average daily trading volume for the six calendar months preceding the date of acceptance by the TSX of the notice of the normal course issuer bid. In addition, for the balance of 2020, the TSX will not apply two of the usual delisting criteria, namely (i) if the market value of the issuer's listed securities is less than \$3 million over 30 trading days, or (ii) if the market value of the issuer's freely-tradeable, publicly-held securities is less than \$2 million over 30 trading days. Due to the recent market volatility, on a case-by-case basis, the TSX will depart from the definition of “market price” as it is used in the Manual. The Manual defines “market price” as the volume weighted average trading price (or VWAP) on the TSX for the five trading days immediately preceding the relevant date. During this temporary period, the TSX may use a shorter time period for determining “market price”. For example, three trading days will be used when the first two days of the usual five-day period are no longer representative of market price.

The TSX Venture Exchange has announced relief from some shareholder meeting requirements and shareholder approval of incentive stock options without applying to the Exchange for such relief. Issuers that must hold an annual shareholder meeting in 2020 may, subject to compliance with applicable corporate and securities laws, hold the meeting at any time on or before December 31, 2020. Similarly, annual shareholder approvals required for rolling stock option plans in 2020 may be obtained at annual shareholder meetings held at any time on or before December 31, 2020. In addition, the TSX Venture Exchange has extended the deadline by which listed companies must pay their 2020 annual sustaining fees from March 31, 2020 to May 31, 2020. As well, for listed companies requiring additional relief, the Exchange will permit them to pay their 2020 annual sustaining fees in two instalments – 50% by May 31, 2020 and the remaining 50% by July 31, 2020.

RECONCILING SHAREHOLDER MEETING REQUIREMENTS WITH SOCIAL DISTANCING MEASURES

Canadian public companies are reassessing their plans for annual meetings of shareholders (“AGMs”) in an effort to implement measures designed to limit the spread of COVID-19. Delaying previously called meetings in order to permit electronic participation may be necessary for some issuers. Some of the necessary, urgent decisions that issuers have had to make at this time with respect to their shareholder meetings may be facilitated by temporary relief measures announced by the Toronto Stock Exchange and TSX Venture Exchange as well as flexibility on the part of Canadian regulators. In addition to the commentary below regarding holding shareholder meetings in whole or in part through electronic means, please refer to the commentary above regarding certain relief in respect of the timing for holding AGMs.

Alternatives to In-Person Meetings

A virtual-only meeting is held entirely through electronic means, without the option of in-person participation. Virtual-only meetings can be successfully conducted with the use of remote-meeting technology. In contrast, hybrid meetings offer the option of in-person attendance as well as the opportunity to participate electronically.

Given the limited accessibility of air travel as well as public health calls for physical distancing, a virtual-only meeting or a hybrid meeting are alternatives that issuers may choose use to facilitate shareholder and proxyholder participation in annual meetings this year.

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Enbridge Inc. was one of the first Canadian issuers to adopt a virtual-only AGM when it announced that it will be holding its 2020 AGM online. Many other issuers are following suit.

Considerations for Issuers

Issuers contemplating holding a virtual-only or hybrid meeting should review their by-laws or other applicable constating documents to determine quorum requirements, including whether shareholders and proxyholders who attend the meeting electronically are considered to be present at the meeting for the purpose of establishing quorum.

On aggregate, companies incorporated under the *Canada Business Corporations Act* ("CBCA") must be authorized by their articles or bylaws to hold virtual meetings. In contrast, companies incorporated under the *Ontario Business Corporations Act* ("OBCA") can hold virtual meetings, unless their articles or by-laws expressly provide otherwise.

Provided that a company's articles and by-laws permit virtual meetings (in the case of CBCA companies) or do not prohibit them (in the case of OBCA companies), it is likely that virtual meetings will not be able to be successfully challenged in a subsequent legal proceeding.

Regulators and the Exchange

The Canadian Securities Administrators have provided ongoing guidance for issuers navigating changes to their AGM procedures in response to the pandemic. Details are provided here: [Canadian securities regulators provide guidance on conducting Annual General Meetings during COVID-19 outbreak](#). Regulators' actions thus far indicate a concerted effort to proceed with "business as usual" by taking a flexible approach for the time being.

This announcement may be a relief to issuers contemplating a delay of annual general meetings; however, it is important to note that the obligation to adhere to relevant corporate law deadlines remains intact.

PRACTICAL STEPS

Technology. It is essential that issuers hoping to hold virtual meetings without delay or deferral are prepared with adequate virtual meeting tools. Issuers should consider postponement upon an assessment of any practical deficiencies in this respect.

Disclosure. If issuers make the decision to hold a virtual-only or hybrid meeting, they should notify shareholders and other market participants of their plans in a timely manner. The issuer's proxy materials should clearly explain the shift in meeting format has been made due to COVID-19 and provide detailed information about any other changes to its meeting format or procedures. Clear instructions to shareholders on how to access and participate electronically in the meeting are essential.

Encourage Participation. Issuers should ensure that their shareholders have the ability to attend, participate in and vote at the meeting to the same extent that they otherwise would if it were held in person. Technology solutions should be used to allow for shareholder communication of questions and concerns so as to meet the standards in place for in-person meetings.

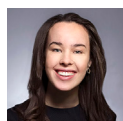
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