

CSA Notice 62-307**Update on Draft Regulation to amend Regulation 62-104 respecting Take-Over Bids and Issuer Bids, Draft Regulation to amend Regulation 62-103 respecting the Early Warning System and Related Take-Over Bid and Insider Reporting Issues and Draft Amendments to Policy Statement 62-203 respecting Take-Over Bids and Issuer Bids**

October 10, 2014

Introduction

On March 13, 2013, the Canadian Securities Administrators (the **CSA** or **we**) published for comment draft amendments and changes to:

- *Regulation 62-104 respecting Take-Over Bids and Issuer Bids* (Regulation 62-104),
- *Regulation 62-103 respecting the Early Warning System and Related Take-Over Bid and Insider Reporting Issues* (Regulation 62-103), and
- *Policy Statement 62-203 respecting Take-Over Bids and Issuer Bids* (Policy Statement 62-203) (collectively, the **Draft Amendments**).

The purpose of the publication was to address concerns about the level of transparency of significant holdings of issuers' securities under the early warning reporting system: in particular, the reporting threshold of 10%, and the adequacy of disclosure in early warning reports filed in Canada.

This notice provides an update to market participants on the status of the Draft Amendments.

Background

The Draft Amendments proposed a lower early warning reporting threshold of 5%, requiring disclosure of decreases in ownership of 2% or more of securities and enhancing the content of the disclosure in the early warning news releases and reports. We also proposed changes so that certain hidden ownership and empty voting arrangements would be disclosed, and we proposed that eligible institutional investors that solicit proxies on matters relating to the election of directors or corporate actions involving an issuer's securities be unable to use the alternative monthly reporting system.

Summary of Comments

The comment period on the Draft Amendments ended on July 12, 2013. We received over 70 comment letters from various market participants that reflected a broad range of opinions. We wish to thank all of the commenters for their contributions.

We have reviewed and discussed the comments received. Many commenters provided helpful substantive submissions, information and perspectives on the Draft Amendments. We note that the commenters generally agreed with the enhanced transparency objective of the Draft Amendments. However, a majority of commenters raised various concerns about potential unintended consequences of certain Draft Amendments.

The comment process has assisted the CSA in re-considering certain elements of the Draft Amendments. Some factors that commenters suggested we should consider are the:

- unique features of the Canadian market, compared to the United States and other markets, including the large number of smaller issuers and the limited liquidity of these smaller issuers and of our market;
- potential detrimental or inadvertent impact of certain Draft Amendments, such as hindering an investor's ability to rapidly accumulate or reduce a large position and the signalling of investment strategies to the market;
- complexity and difficulty of applying a new early warning reporting trigger in respect of "equity equivalent derivatives";
- significant administrative and compliance burden associated with implementing additional reporting obligations; and
- potential benefits of the enhanced disclosure being outweighed by the potential negative impact of implementing certain Draft Amendments.

We intend to provide a summary of comments received in respect of the Draft Amendments in our next publication.

Final Amendments

In light of the comments received and following further reflection and analysis, the CSA have re-considered the proposals and have determined not to proceed with certain of the Draft Amendments. Instead, the CSA intend to proceed to publish final amendments to Regulation 62-104 and Regulation 62-103 as well as guidance in Policy Statement 62-203 (collectively, the **Final Amendments**) that will address certain key issues identified in the Draft Amendments.¹

The CSA have concluded that it is not appropriate at this time to proceed with:

- the proposal to reduce the reporting threshold from 10% to 5%; and
- the proposal to include "equity equivalent derivatives" for the purposes of determining the threshold for early warning reporting disclosure.

Nonetheless, subject to necessary approvals, we are proceeding with the following Final Amendments. These amendments will enhance transparency by:

¹ In Ontario, we anticipate that amendments to the *Securities Act* (Ontario) and Ontario Securities Commission Rule 62-504 *Take-Over Bids and Issuer Bids* will be proposed in order to allow the substance of the Final Amendments to apply fully.

- requiring disclosure of 2 % decreases in ownership;
- requiring disclosure when a shareholder's ownership interest falls below the reporting threshold;
- making the alternative monthly reporting system unavailable to eligible institutional investors as described in the Draft Amendments, with additional clarification on the circumstances when they would be precluded;
- exempting lenders from disclosure requirements if they lend shares pursuant to a specified securities lending arrangement;
- exempting borrowers, in certain circumstances, from disclosure requirements if they borrow shares under a securities lending arrangement;
- providing guidance clarifying the current application of early warning reporting requirements to certain derivatives and requiring disclosure of derivatives in the early warning report;
- enhancing and improving the disclosure requirements in the early warning report; and
- clarifying the timeframe to file the early warning report and news release.

The CSA believe that the intended Final Amendments, while not as extensive as the Draft Amendments, will enhance the quality and integrity of the early warning reporting regime in a manner that is appropriate for the Canadian public capital markets.

Next Steps

We are in the process of completing the Final Amendments and, subject to necessary approvals, intend to publish them in the second quarter of 2015.

Questions

Please refer your questions to any of the following:

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