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Update

Corporate Securities Law

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Insider Reporting Regime in Line for an Overhaul

The Proposals

The Canadian Securities Administrators (the "**CSA**") have published for comment proposals for significant changes to the insider reporting regime across Canada. The key changes include the following:

- ***Reduction in the scope of persons required to file insider reports*** - Under the existing framework, insider reporting applies to significant (10% plus) shareholders and to insiders who are directors and/or officers and who in the normal course have access to material undisclosed information. Under the CSA's proposals insider reporting obligations would be imposed only on a truly core group of insiders – significant shareholders would continue to have to report, but persons with access in the ordinary course to material non-public information would only be required to report if they exercise, or have the ability to exercise, significant power or influence over the business, operations, capital or development of the reporting issuer (or a major subsidiary). The proposals would also change the definition of "major subsidiary" from a subsidiary with 20% of consolidated assets or revenues to 30% thresholds, which would have the effect of reducing the number of insiders required to insider report.
- ***Accelerated five (5) day filing deadline*** - The proposals contemplate accelerating the filing deadline for insider reports from ten (10) calendar days to five (5) calendar days (for all but the initial reports, which would continue to have a ten (10) day filing deadline).
- ***Harmonization and integration*** – The proposals would harmonize insider reporting requirements nationally and centralize the rules relating to insider reporting (for example, the requirements for insider reporting of equity monetization transactions, today forming a discrete regulatory instrument, would be integrated into the new rule).
- ***Permitting issuers to report on behalf of their insiders for certain matters*** - To assist insiders with the reporting of stock-based compensation arrangements, the proposals would permit issuers to publicly file "issuer grant reports," the filing of which would exempt affected insiders from making their own prompt filing obligations. Instead, affected insiders would only be obligated to file an alternative report on an annual basis.
- ***Incorporating the concept of "post-conversion beneficial ownership"*** – The 10% threshold at present does not capture convertible securities. The proposals contemplate utilizing the concept of "post-conversion beneficial ownership." This concept would deem a person to own securities underlying their convertible securities where the convertible securities are convertible within a period of 60 days. This proposal would harmonize the insider reporting regime with the early warning regime.
- ***Requiring issuers to disclose in their information circulars any late filings by their insiders*** - To boost transparency and add further incentive to comply with the insider report filing deadlines, the proposals suggest that issuers would be required to disclose in their information circulars whether any of their insiders have been subject to late filing fees.

- ***Harmonizing the Requirements for Deemed Look-back Reporting*** – The proposals would nationalize the "deemed insider look-back provisions" in securities legislation in some jurisdictions. These provisions stipulate that where an issuer acquires a significant interest in a second issuer, the directors and officers of the first issuer may, in certain cases, be deemed to be insiders of the second issuer and be required to report transactions involving the securities of the second issuer for a historical period of up to six months. The purpose of this requirement is to address concerns that such individuals may have been "front-running" the acquisition by the first issuer.

Coming Developments

The CSA indicated that it is continuing to examine the use of derivatives to avoid disclosure requirements. The CSA noted that, by using derivatives, market actors can accumulate substantial economic interests in issuers without triggering disclosure obligations, then quickly convert into the underlying securities in the event that there is a vote (the "hidden ownership" phenomenon). Similarly, voting rights themselves can be severed from the underlying security, meaning that ownership of those voting rights may not be reported ("empty voting"). The CSA observed that other jurisdictions have been considering and proposing initiatives to address these practices, and indicated that it is also reviewing possible regulatory responses.

We will provide an update as developments with respect to the reformulation of the insider reporting rules occur. Please contact any member of the Goodmans corporate securities team should you wish to discuss the proposed changes to the insider reporting regime further:

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