

## Corporate Securities Law

February 26, 2016

### CSA Adopt Amendments to the Early Warning Regime

Concurrently with the final amendments to Canada's takeover bid rules (see our February 25, 2016 Update, *Amendments to Takeover Bid Rules Alter Canada's M&A Landscape*), the Canadian Securities Administrators (CSA) have announced the publication and adoption of final amendments to Canada's early warning regime (the "**Amendments**"). The Amendments provide for additional disclosure requirements and enhance the level of disclosure required in early warning reports.

The Amendments will come into force on May 9, 2016, except in Ontario, where they will come into force on the later of May 9, 2016, and the day on which the relevant legislation is proclaimed into force.

#### Background

Amendments to the early warning regime were first proposed in March of 2013 (see our March 14, 2013 Update, *CSA Proposes Significant Amendments to Early Warning Regime*). In October of 2014, the CSA published an update on the proposed amendments, in which they abandoned certain of the key proposals, including the reduction of the reporting threshold from 10% to 5% (see our October 14, 2014 Update, *CSA Publish Update on Proposed Amendments to the Early Warning Regime*).

#### Final Amendments

The Amendments, which do not differ materially from those proposed in 2014, will:

- require disclosure where ownership, control or direction of a person required to report under the regime decreases by 2% or falls below the 10% reporting threshold;
- preclude institutional investors who solicit proxies from securityholders so as to contest director elections or certain transactions involving the securities of the reporting issuer from relying on the alternative monthly reporting system that is available to "passive" eligible institutional investors;
- not require disclosure by lenders of shares pursuant to a specified securities lending arrangement or borrowers of shares, in certain circumstances, under a securities lending arrangement;
- provide guidance regarding the circumstances in which an investor may be required to include certain derivatives in the early warning threshold calculation; and
- enhance disclosure by (i) requiring more detailed information regarding the intentions of the acquiror and the purpose of the transaction in early warning reports, (ii) requiring early warning reports to be certified and signed, (iii) permitting a news release filed in connection with an early warning report to reference that report for certain details and (iv) clarifying that early warning news releases must be issued and filed no later than the opening of trading on the next business day.

For further information regarding the Amendments or the early warning regime in Canada, please contact any member of our Corporate Securities Group.