

Goodmans^{LLP} Update

Impact of the Coronavirus on Canadian Public Company Disclosure Obligations

The outbreak of COVID-19 (commonly known as the Coronavirus) has significantly impacted the global economy. As the virus continues to spread and affect businesses across a variety of sectors, it raises complex disclosure and other considerations for reporting issuers. It is important for issuers to consider whether, and to what extent, disclosure or other measures are required to address the potential impact of the outbreak on their business operations and financial results. Set out below is a summary of some important considerations for Canadian public companies during the outbreak.

Market Updates

Reporting issuers must consider whether the Coronavirus outbreak has had or may have a material impact on their business requiring them to update the market. Generally, changes in a company's business caused by external developments do not constitute a "material change" requiring disclosure under Canadian securities law. However, under [National Policy 51-201 – Disclosure Standards](#), disclosure may be required if a development has a material effect on the issuer that is uncharacteristic of the effect generally experienced by other companies engaged in the same business or industry.

The Ontario Securities Commission (OSC) may find an issuer has contravened its continuous disclosure obligations where it fails to adequately update the market regarding an external development that has or may have a disproportionate impact on its business. In [Coventree Inc., Re](#), the OSC found that Coventree Inc., a reporting issuer that specialized in structured finance products including asset-backed commercial paper, had not complied with its continuous disclosure obligations when it failed to disclose the impact on its business of a change in DBRS's rating requirements. Coventree maintained it did not have a disclosure obligation because the changes to its business operations resulted from external events and developments in credit markets that were widely reported in the media. Although the OSC agreed the change in rating requirements was an external event, the event had a direct effect on Coventree's business that was uncharacteristic of the effect generally experienced by other issuers engaged in the same industry, and as a result disclosure was required. The OSC noted that, although the public was largely aware of the credit crisis, investors would not have been able to accurately assess the impacts of these external developments on Coventree's business in particular.

The Coventree decision makes it clear that reporting issuers must assess whether their business is uncharacteristically impacted by the Coronavirus outbreak, therefore potentially triggering public disclosure requirements. For example, public disclosure may be required where an issuer in a particular industry is the only company or one of a few companies with operations in a geographic region highly affected by the virus (such as an airline specializing in flights to an affected area or a global technology company with a key manufacturing facility in that area).

Forward-Looking Information

With the continued spread of the Coronavirus, some reporting issuers are becoming concerned they may not meet their previously disclosed earnings guidance, leading them to assess whether they should withdraw or revise that earlier guidance. [National Instrument 51-102 – Continuous Disclosure Obligations](#) ("NI 51-102") requires a reporting issuer to address in its management discussion & analysis (MD&A) (or by press release

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filed ahead of the issuer's MD&A) events and circumstances that are reasonably likely to cause actual results to differ materially from previously disclosed material forward-looking information (FLI) for a period that is not yet complete. Under NI 51-102, an issuer that chooses to withdraw previously disclosed material FLI must disclose in its MD&A the decision to withdraw, and discuss the events and circumstances that led it to that decision, including a discussion of the assumptions underlying the FLI that are no longer valid.

The unpredictable nature of the Coronavirus outbreak means that reporting issuers should consistently monitor updates regarding the spread of the virus to determine when an update to, or in some cases a withdrawal of, FLI may be required.

Risk Factors

Issuers should consider whether the risk factors presented in their annual information form and MD&A adequately address the specific risks faced by the business as a result of the Coronavirus outbreak. It is important for issuers to avoid using boilerplate language where more specific and detailed disclosure is necessary to allow investors to accurately assess those risks as they relate to the business.

Depending on the nature of the business, specific risks may include:

- disruptions to business operations resulting from quarantined employees, customers and suppliers in areas affected by the outbreak, and closures of manufacturing facilities, warehouses and logistics supply chains;
- disruptions to business operations resulting from travel restrictions and reduced consumer spending; and
- uncertainty around the impact of the virus's spread.

Since the outbreak began, Canadian reporting issuers have generally been including Coronavirus-related disclosure within existing risk factors related to natural disasters, public health or uncertainty regarding global economic conditions.

Shareholder Meetings

As annual general meeting season approaches, reporting issuers may consider holding virtual shareholder meetings or allowing shareholders to attend virtually. Before doing so, issuers will have to consider whether their jurisdiction of incorporation and constating documents allow for this.

Trading Restrictions

While the Coronavirus outbreak is widely and publicly known, its evolving impact on a particular company may constitute material non-public information. Issuers should consider whether to impose a blackout on trading in the company's securities due to the outbreak. The uncertain nature of the outbreak means that, for certain issuers, a material change may arise suddenly, making it difficult for the company to manage the information flow.

The rapidly evolving nature of the Coronavirus outbreak, and its impacts on businesses across a variety of sectors, presents reporting issuers with unique and challenging public disclosure and other considerations. Issuers are encouraged to continually assess the impact the outbreak may be having on their business and whether further or revised public disclosure is required as a result.

For further information on the issues discussed in this update, please contact any member of our [Corporate Finance and Securities Group](#).

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