

Corporate Securities Law

October 14, 2014

CSA Publish Update on Proposed Amendments to the Early Warning Regime

The Canadian Securities Administrators (CSA) published an update of their proposed changes to the early warning regime (Canada's equivalent to the Schedule 13D regime in the United States). The update abandons some of the key proposals, such as reducing the reporting threshold, put forward by the CSA in March 2013 (see our March 14, 2013 update, *CSA Proposes Significant Amendments to Early Warning Regime*) and reflects what appears to be a firm intention to proceed with other changes to the system in the second quarter of 2015.

Background

On March 13, 2013, the CSA published for comment draft amendments to the early warning regime that would have, among other things, reduced the reporting threshold from 10% to 5% and required enhanced disclosure to address concerns about, "hidden ownership", "empty voting arrangements" and limited disclosure by eligible institutional investors that might be engaged in the solicitation of proxies under the current regime.

Comments

The amendments proposed by the CSA elicited more than 70 comment letters. Those providing comments on the proposed amendments generally agreed with the CSA's objective of "enhanced transparency". However, a majority expressed concern that potential unintended consequences of certain elements of the increased transparency might outweigh the benefits of the enhanced disclosure as a result of, among other things:

- the potential hindering of an investor's ability to accumulate or reduce a large position as a result of the signalling of investment strategies to the market, and

- the complexity and difficulty of applying a new early warning reporting trigger in respect of "equity equivalent derivatives".

Final Amendments

The CSA indicated that, based on the comments received, they concluded that they will not proceed at this time with their proposals to:

- bring the Canadian regime in line with the regime in the United States by reducing the reporting threshold to 5%, or
- include "equity equivalent derivatives" for the purposes of the reporting threshold.

The CSA will, subject to necessary approvals (which may not include a further round of comment), publish final amendments to the early warning regime in the second quarter of 2015 that will:

- require disclosure where ownership of a person reporting under the regime decreases 2% or falls below the 10% reporting threshold,
- preclude eligible institutional investors that solicit, or intend to solicit, proxies on matters relating to the election of directors or a reorganization, amalgamation, merger, arrangement or similar corporate action involving the securities of a 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,
- require disclosure of derivatives in the early warning report; and
- clarify the application of early warning reporting requirements to certain derivatives and the timeframe for filing the early warning reports and news releases.

Please contact any member of our Corporate Securities Group to discuss the implications of these anticipated amendments.