

Corporate Securities Law

January 29, 2010

Changes to the Regulatory Framework for Insider Reporting

On January 22, 2010, the Canadian Securities Administrators (the CSA) announced changes to the regulatory framework for insider reporting. The new regime, which will come into force on April 30, 2010 (possibly later in Ontario), embodies the following key changes:

- reducing the number of individuals required to insider report to a core group of “reporting insiders”;
- accelerating the filing requirement to five calendar days (from the current 10-day reporting requirement), after a six-month transition period;
- having the reporting requirement give effect to the conversion of convertible securities (in a manner consistent with the “early warning” reporting requirements); and
- simplifying stock-based compensation reporting requirements, and giving issuers the option to file reports on stock-based compensation on behalf of their insiders.

The new rule also clarifies and harmonizes the application of insider reporting requirements to transactions in derivative securities.

Reducing the Scope of Individuals Required to Report

While significant (10%) shareholders, directors and certain specified officers will continue to have insider reporting obligations, under the new rule not all officers will have to insider report. Specifically, individuals holding non-specified offices will only have to report if they (i) have access in the ordinary course to undisclosed

material information concerning the reporting issuer, and (ii) directly or indirectly exercise, or have the ability to exercise, significant power or influence over the business, operations, capital or development of the reporting issuer. (The specified officers include the CEO, CFO, COO, persons with responsibility for principal business units and individuals with similar functions.)

Acceleration of Filing Deadline

Effective October 31, 2010 the deadline for filing insider reports (other than initial reports) will contract from ten calendar days to five. Initial insider reports must still be filed within ten calendar days of becoming a reporting insider.

Dealing with -Convertible Securities

Under the “early warning” requirements parties are considered to beneficially own securities that could be acquired within sixty days on the exercise of convertible securities. The new insider reporting rule adopts the same framework.

Stock-Based Compensation Requirements

The new instrument includes two changes intended to simplify and facilitate reporting of stock based compensation.

First, the rule provides a broad definition of “compensation arrangements” to ensure consistent application of reporting requirements to all types of stock-based compensation arrangements, including stock options, stock appreciation rights, phantom shares, restricted shares or restricted share units, deferred share units, performance units or performance shares, stock dividends, warrants, convertible securities, or similar instruments, which may be received or purchased as compensation for services rendered or in connection with holding an office or employment with a reporting issuer or a subsidiary.

Second, the new instrument allows reporting issuers to file an issuer grant report with respect to any acquisi-

tion of securities by its directors and officers or by the directors or officers of a major subsidiary, pursuant to a compensation arrangement. In such cases, provided that the reporting issuer has also previously disclosed the existence and material terms of the compensation arrangement, the directors and officers who are also reporting insiders of the reporting issuer will be exempt from the insider reporting requirement and administrative efficiencies can be achieved.

Reporting Derivative Transactions

Under the current regulatory framework the requirement for an insider to report his, her or its interests in derivatives was set forth in a separate instrument, Multilateral Instrument 55-103 *Insider Reporting for Certain Derivative Transactions (Equity Monetization)*.

The new rule consolidates the insider reporting requirements, requiring disclosure not only of a reporting insider's securityholdings but also of:

- his, her or its interests in, or rights associated with, related financial instruments involving securities of the reporting issuer (a "related financial instrument" includes derivatives and other instruments that affect the reporting insider's economic interest in securities of a reporting issuer or economic exposure to a reporting issuer), and
- any other agreement, arrangement or understanding that has the effect of altering a reporting insider's economic exposure to a reporting issuer that involves a security of the reporting issuer or a related financial instrument.

Effectively reporting insiders are required to disclose all dealings that affect their interests in the reporting issuer.

Notably, the new instrument does not address all concerns relating to derivative transactions. For example, economic interests acquired by entities that are not reporting insiders need not be disclosed, notwithstanding the extent of such interests. Consequently, an investor may be able to acquire a substantial interest in a reporting issuer (through derivative arrangements) without public disclosure if it does not meet the "significant shareholder" 10% threshold. The CSA has indicated that it is continuing to review issues relating to these concerns as part of a separate policy initiative.

Consequential Amendments for Passive Institutional Investors

Consequential amendments have been made to the rule governing reporting requirements for certain exempt institutional investors (NI 62-103 *The Early Warning System and Related Take-Over Bid and Insider Reporting Issues*). Eligible institutional investors will continue to be exempt from the general insider reporting requirements, and will continue to be required to file under the early warning or alternative monthly reporting regimes, provided that in their early warning or alternative monthly reports disclosure is provided of any positions under related financial instruments and that any significant change to such positions is reported. The amendments define a "significant change" to mean any change in the entity's interest in, or rights or obligations associated with, the related financial instrument that has a similar economic effect to an increase or decrease in the entity's securityholding percentage of voting or equity securities of the reporting issuer by 2.5% or more. (The threshold for a change in material fact relating to actual securityholdings is 2%.)

To maintain their eligibility for the insider reporting exemption eligible institutional investors must ensure that their early warning or alternatively monthly reports disclose their position under related financial instruments by April 30, 2010.

Please contact any member of the Goodmans corporate securities team to discuss these amendments.