

Corporate Securities Law

February 23, 2016

OSC Releases Report on Review of Insider Reporting

The Ontario Securities Commission (OSC) has released the findings of its review of insider reporting practices and provided recommendations to ensure compliance with Ontario's insider reporting regime.

Staff Notice 51-726 – *Report on Staff's Review of Insider Reporting and User Guides for Insiders and Issuers* (the "Notice") summarizes the OSC's review of the insider reporting practices of 100 reporting issuers and approximately 1,500 reporting insiders. Based on its review, the OSC identified two main areas where improvement is needed: (1) the quality of insider reporting; and (2) insider trading policies.

1. Quality of Insider Reporting

In Ontario, reporting obligations are imposed on "reporting insiders" - generally, insiders of an issuer that have access to material, undisclosed information and that exercise (or have the ability to exercise) significant influence over the issuer. National Instrument 55-104 – *Insider Reporting Requirements*, for instance, requires reporting insiders to file an initial insider report within ten calendar days of becoming a reporting insider and a subsequent report within five calendar days of any change in their holdings of the issuer.

Material Reporting Deficiencies

The OSC found material reporting deficiencies in approximately 15% of reporting insiders reviewed, and in approximately 70% of the issuers reviewed, at least one reporting insider was required to file a remedial filing to address a material deficiency, generally due to:

- (i) discrepancies between a reporting insider's holdings as reported on SEDI versus the issuer's continuous disclosure records;

- (ii) reporting insiders failing to create or update insider profiles; and
- (iii) reporting insiders failing to file insider reports on SEDI.

One reason identified for material deficiencies was that some reporting insiders relied on third parties to make their filings. Since the responsibility to file insider reports remains with the reporting insider regardless of whether a third party agent is used, Staff recommends that reporting insiders periodically review their SEDI profiles for accuracy.

Non-Material Reporting Deficiencies

In approximately 45% of the issuers reviewed, at least one reporting insider was required to file a correctional filing to address a non-material deficiency, including inaccurate transaction codes and dates, inaccurate reporting regarding type of ownership, not reporting the name of the registered holder and use of incorrect security designations by issuers.

Other Common Findings and Recommendations

Staff also made the following recommendations based on other common findings from their review:

- Reporting insiders and issuers should periodically review their insider profiles and issuer profile supplements for accuracy.
- Issuers should refer to Staff Notice 55-316 *Questions and Answers on Insider Reporting and SEDI* for guidance on creating security designations or contact the OSC or legal counsel for assistance.
- Issuers should communicate information about a grant in a timely manner and consider filing an issuer grant report within five days of a grant to help avoid late fees being charged against its insiders.
- Issuers should implement a process to annually verify the securities holdings communicated to them by reporting insiders to reconcile public records.

Goodmans^{LLP} Update

- Reporting insiders should review information circulars annually and other public disclosure on a regular basis to ensure their security holdings are properly reflected.

2. Insider Trading Policies

In accordance with National Policy 51-201 *Disclosure Standards* (“NP 51-201”), most issuers reviewed by the OSC had written insider trading policies that provided for “blackout periods” around regularly scheduled earnings calls. In certain cases, however, these “blackout periods” did not extend to derivative-based transactions or the granting of stock options. While not required under NP 51-201, the OSC recommends that all reporting issuers adopt written policies that prohibit these activities during the “blackout period.”

For further information regarding the Notice, the insider reporting regime in Ontario or corporate finance in general, please contact any member of our Corporate Securities Group.