

Goodmans^{LLP} Update

Canadian Securities Administrators to Allow Confidential Prospectus Reviews

On March 5, 2020, the Canadian Securities Administrators (CSA) published *Staff Notice 43-310 Confidential Pre-File Review of Prospectuses (for non-investment fund issuers)* which sets out a harmonized process for confidential reviews of prospectuses on a pre-file basis.

The confidential pre-file review process will benefit non-investment fund issuers conducting prospectus offerings, particularly initial public offerings, as a significant portion of the regulatory review can be completed on a confidential basis before publicly filing a preliminary prospectus or commencing marketing for an offering.

Overview of the Confidential Pre-File Process

The confidential pre-file review process will be available for long form prospectuses, short form prospectuses, and base shelf prospectuses but is not generally available for non-offering prospectuses or prospectuses filed solely to qualify the issuance of securities on the conversion of convertible securities (such as special warrants).

To utilize the confidential pre-filing process, the terms and conditions of the offering and any related transactions should be determined and disclosed, and the underwriters should have substantially completed their review of the prospectus before pre-filing.

The CSA expects a pre-filed prospectus will: (i) be in the same form and of the same quality as if it were a publicly-filed preliminary prospectus, (ii) contain the disclosure (including financial statements) as prescribed under securities legislation and the applicable form of prospectus the issuer intends to use, and (iii) generally include all documents required to be filed with the publicly-filed prospectus. The CSA also requests that an estimate of the offering price and other information derived from the offering price be included in the pre-filed prospectus. This will allow the regulator to identify any potential concerns related to that information. The regulator may request a re-filing of the pre-filed prospectus if it considers the prospectus to be materially non-compliant or incomplete.

CSA Staff will use best efforts to deliver first comments on the pre-filed prospectus within 10 working days of receiving it, subject to the filing's complexity and the quality of the issuer's disclosure. Issuers can expect the same level of review under the confidential pre-file process as they would receive for a publicly-filed preliminary prospectus.

The confidential pre-file process is a significant development for Canadian securities regulators that should help reduce execution risk on certain prospectus offerings, particularly in volatile markets.

Please contact any member of our [Corporate Finance and Securities Group](#) to discuss the confidential pre-file process.

All Updates are available at www.goodmans.ca. This Update is intended to provide general comment only and should not be relied upon as legal advice.

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