

# Goodmans<sup>LLP</sup> Update

## Canadian Securities Regulators and TSX Issue Temporary Exemptions From Certain Requirements in Response to COVID-19

As we reported in our March 19, 2020 Update, *Canadian Securities Regulators Offer Filing Relief for Market Participants and Support Virtual Meetings*, the Canadian Securities Administrators (CSA) announced they would provide all Canadian public companies (and other market participants) a temporary 45-day extension of the filing deadline for most securities regulatory filings otherwise required to be made on or before June 1, 2020 (the “**Filing Relief**”). On March 23, 2020, **blanket relief orders** were issued by securities commissions in each of the provinces and territories of Canada to provide the Filing Relief. In tandem, the Toronto Stock Exchange (TSX) announced its own temporary blanket relief package.

### Scope

The Filing Relief applies to various filings required to be made by Canadian public companies, including interim and annual financial statements, Management Discussion and Analysis (MD&As), Annual Information Forms (AIFs), and Business Acquisition Reports (BARs). In addition, the 45-day extension also applies to the lapse date of a final base shelf prospectus (the “**Lapse Date Relief**”).

### Availability

For Canadian non-investment fund reporting issuers (“**Reporting Issuers**”)<sup>1</sup> to avail themselves of the Filing Relief, the issuers must meet the requirements set out in the blanket relief order. The requirements vary, depending on the type of regulatory filing for which the Reporting Issuer requires the Filing Relief. The most stringent requirements are placed on financial statements, MD&As and AIFs. These requirements include:

1. As soon as practicable, disseminate and file a news release on SEDAR before the relevant filing deadline containing:
  - a. each applicable filing requirement for which it is relying on the Filing Relief;
  - b. a statement that its management and other insiders are subject to an insider trading black-out policy that reflects the principles set out in section 9 of National Policy 11-207 *Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions*;
  - c. the estimated date by which the regulatory filing is expected to be filed and/or delivered; and
  - d. an update on any material business developments since the date the most recent financial statements were filed (or an affirmative statement that no material developments have taken place since that date).
2. Within 30 days following the original filing deadline and every 30 days thereafter, disseminate and file on SEDAR a news release that contains an update on any material business developments since the date of the last news release disseminated pursuant to the Filing Relief (or an affirmative statement that no material developments have taken place since that date).

## Authors



John Connon  
jconnon@goodmans.ca  
416.597.5499



Jonathan Feldman  
jfeldman@goodmans.ca  
416.597.4237



Hari Marcovici  
hmarcovici@goodmans.ca  
416.849.6894

<sup>1</sup> Different blanket orders, containing different requirements, were issued for investment funds, registrants and regulated entities.

Reporting Issuers cannot rely on the Filing Relief while filing a preliminary or final prospectus, thus no new public offerings of securities may be made by such issuers until all of the required documents have been prepared and filed (although it appears that offerings under an existing base shelf prospectus may continue).

Lastly, the mailing election form available to Reporting Issuers pursuant to subsection 4.6(1) of National Instrument 51-102 – *Continuous Disclosure Obligations* (allowing shareholders to elect to receive the financial statements and/or MD&A of the Reporting Issuer) must be mailed out before the Reporting Issuer's record date of the next annual general meeting, and any financial statements or MD&As that were not delivered in reliance on the Filing Relief, must be mailed out before, or in conjunction with, the delivery of the management information circular for the Reporting Issuer's next annual general meeting.

In contrast to the above requirements, the Lapse Date Relief and the relief from the obligation to file a BAR otherwise due on or before June 1, 2020, only require the dissemination and filing on SEDAR of a news release indicating the Reporting Issuer is relying on the Filing Relief. With respect to the Lapse Date Relief, however, a Reporting Issuer cannot rely on this relief if it is also relying on the Filing Relief more generally (i.e., all of its regulatory filings must be up to date to rely on the Lapse Date Relief).

## TSX Relief

In parallel, the TSX issued [Staff Notice 2020-002](#) (the “**TSX Staff Notice**”) waiving the requirement to file a Form 9 to request an exemption for the filing of financial statements for Reporting Issuers relying on the Filing Relief, thereby eliminating a step for TSX-listed Reporting Issuers that wish to rely on the Filing Relief.

1. The TSX Staff Notice contains the following additional accommodations for TSX-listed Reporting Issuers in light of the COVID-19 epidemic:
2. The waiver of the requirement for a Reporting Issuer to hold its annual general meeting within six months of the end of its fiscal year, as long as the meeting is held on any date in 2020. This can also be viewed in light of the potential availability of [virtual shareholder meetings](#).
3. The extension of the timeframe Reporting Issuers have to obtain shareholder approval for any awards granted under an evergreen security-based compensation arrangement that was otherwise scheduled to expire, as long as this approval is obtained on the earlier of (i) the 2020 annual general meeting; and (ii) December 31, 2020.
4. The modification to the normal course issuer bid (NCIB) rules such that a Reporting Issuer may purchase a number of its own securities equal up to 50% of the average daily trading volume of the securities (up from 25%) during a single day under a NCIB.
5. The suspension of the application of the delisting criteria that would otherwise permit the delisting of a Reporting Issuer in circumstances where the market value of its securities is less than \$3,000,000 and/or the market value of its freely-tradable, publicly-held securities is less than \$2,000,000 up to and including December 31, 2020.
6. The acknowledgement that the 5-day volume weighted average price methodology used for the calculation of “Market price” may not be suitable in the current volatile market environment such that the TSX, on a case-by-case basis, may allow for a shorter time frame for the determination of the “Market price” for the purposes of pricing securities for private placements.

Measures to mitigate the COVID-19 outbreak are having a profound and rapidly evolving impact on Reporting Issuers' obligations. The CSA and TSX indicated they will adapt their response as necessary. We will continue to provide updates as developments unfold.

For further information, please contact any member of our [Corporate Finance and Securities Group](#).