

Goodmans^{LLP} Update

Canadian Securities Regulators Propose Guidance on Financial Statement Disclosure for IPOs

On August 12, 2021, the Canadian Securities Administrators (CSA) released proposed guidance on financial statement disclosure required for acquisitions completed before or concurrently with an IPO. If implemented, the guidance would clarify when acquisitions will be considered the “primary business” of an issuer and therefore require issuer-level financial statement disclosure in a prospectus.

We welcome the clarification of the IPO requirements for companies that have operated for over three years, but we believe modifications are appropriate to afford similar treatment to entities like REITs, roll-up issuers and other entities formed less than three years before their IPOs, and to treat all IPO issuers consistently.

Background and Proposed Guidance

Historically, Canadian financial statement requirements for IPOs have not been interpreted by the different provincial securities commissions in the same way.

In particular, the Ontario Securities Commission has taken a strict view of when an acquisition constitutes the “primary business” of an issuer and generally requires historical financial statements for all acquisitions completed at the time of, or during the three-year period¹ before, an IPO, *regardless of the acquisition's significance*. This interpretation has imposed a significant burden on issuers in obtaining or preparing audited financial statements for small acquisitions or undertaking an exemptive relief process. This may entail increased costs, delays and uncertainty for market participants.

The proposed guidance would clarify that for all provincial regulators, an acquisition will be the “primary business” of an issuer if its assets, income or investment exceed 100% of any of these measures applied to the issuer before the acquisition. Acquisitions that fall below the 100% threshold would be subject to business acquisition requirements, which are less onerous than “primary business” financial statements.

Anomalies

In contrast to the business acquisition requirements, which are only triggered if at least two of the three measures is exceeded, the test for a “primary business” is triggered if *any* of the three measures is exceeded.

Further, the proposed guidance does not consistently apply the clarified requirements to entities like REITs, roll-up issuers and other entities formed less than three years before their IPOs. Currently, an issuer that has not existed for three years¹ must include audited financial statements in its IPO prospectus for each entity that is considered a predecessor to its business *regardless of significance*. Although the guidance provides for an exemptive relief process where predecessor entity financial statements are not available or they are immaterial, this may result in increased costs, delays and uncertainty for market participants.

Our Proposals

Accordingly, Goodmans is making a submission to the CSA recommending additional modifications to the disclosure requirements to treat IPOs consistently and further reduce the regulatory burden on issuers.

¹ A two-year period for venture issuers.

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In particular, we propose that:

- the significance test for “primary businesses” be harmonized with the two-part significance test under the business acquisition rules so that additional financial statement disclosure is not unnecessarily required.
- a materiality threshold or coverage ratio be introduced for REITs or other roll-up issuers that have not existed for three years¹ to address the inconsistency between the treatment of different types of IPO entities.

If you would like to discuss the proposed guidance or our submission, please contact any member of our [Corporate Finance and Securities Group](#).

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