

Corporate Securities

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Proposed New Continuous Disclosure Rules

Introduction

In June 2002, the Canadian Securities Administrators (“CSA”) released for comment proposed new rules to simplify continuous disclosure requirements and make them uniform for reporting issuers which file in multiple provinces. The CSA has just released for further comment a revised proposal in response to comments received on the original draft.

The new requirements are contained in proposed National Instrument 51-102 *Continuous Disclosure Obligations* (the “Rule”). Proposed Companion Policy 51-102 provides guidance on how the CSA will interpret and apply the Rule.

The Rule, when implemented, will establish consistent disclosure standards across Canada dealing with financial statements, management’s discussion and analysis (MD&A), reporting of material changes and significant business acquisitions (a new requirement), annual information forms (AIFs), executive compensation disclosure, shareholder meeting circulars, restricted share disclosure requirements and other filing requirements.

Summary of Significant Changes to Existing Continuous Disclosure Requirements

- **Filing Deadlines** - Filing deadlines for annual and interim financial statements will be shortened. Under the proposed Rule, a reporting issuer, other than a venture issuer, will have to file its annual financial statements within 90 days after the end of its most recently completed financial year, and must file interim financial statements within 45 days after the end of interim periods.
- **Delivery** - Mandatory delivery of financial statements and MD&A to all securityholders will be eliminated. Issuers will only be obligated to deliver copies of these documents to securityholders that request them. Issuers will have to disclose annually in their AIFs and information circulars that the financial statements and MD&A are available without charge and how to obtain them.
- **Significant Acquisitions** - The Rule includes new requirements for disclosure concerning completed significant business acquisitions. (No equivalent report is contemplated in respect of significant dispositions.) Reporting issuers will be required to file a business acquisition report (BAR) within 75 days after completion of a significant business acquisition. The BAR will be required to include financial statements of the acquired business and *pro forma* financial information. A BAR will not be required in certain circumstances if an information circular concerning the acquisition has been filed.
- **U.S. GAAP** - Reporting issuers that have a class of securities registered under section 12 of the U.S. *Securities Exchange Act of 1934* or that are required to file reports under section 15(d) of the *1934 Act* and that are not investment companies under the U.S. *Investment Company Act of 1940* (“SEC issuers”) will be permitted under proposed National Instrument 52-107 to file financial statements prepared in accordance with U.S. GAAP, provided that for a two-year period after starting to use U.S. GAAP, statements will have to be reconciled to Canadian GAAP. SEC issuers are presently permitted to make application to securities regulators in order to file in accordance with U.S. GAAP. (There are complications for issuers incorporated under the *Canada Business Corporations Act*, which requires the use of

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Canadian GAAP for annual financial statements.) The Rule now provides that an SEC issuer will have to restate and re-file any interim financial statements it has filed during its current financial year that have been prepared in accordance with Canadian GAAP, if the issuer changes to U.S. GAAP during the financial year.

- **AIFs** - Issuers of a specified size will be required to file an AIF across the country, as already required in Ontario, Quebec and Saskatchewan.

- **MD&A** - All issuers will be required to file annual and interim MD&A, including issuers that currently have exemptions based on size in some jurisdictions. An issuer's board of directors will be required to review and approve its annual and interim MD&A which will have to disclose critical accounting policies that impact on the financial condition, results of operations and cash flows.

- **Discussion of Forward-Looking Information in MD&A** - MD&A will have to include a discussion of any forward-looking information disclosed in prior MD&A if, in light of intervening events and without that discussion, the earlier disclosure could mislead.

- **Disclosure Relating to Liquidity and Capital Resources and Non-Independent Relationships in MD&A** - MD&A will have to contain disclosure relating to liquidity and capital resources (including off-balance sheet arrangements), and relationships and transactions with persons or entities that derive benefits from their non-independent relationship with the issuer or its related parties.

- **Equity Compensation Disclosure** - Information circulars will have to disclose new equity compensation plans.

- **Annual Filings** - The requirement to make an annual filing in lieu of an information circular (Form 28 in most jurisdictions) will be eliminated. The AIF will include supplementary disclosure items for issuers that do not distribute information circulars.

- **Material Documents** - The Rule will require issuers to file certain constating documents and other instruments that define or materially affect the rights of securityholders.

- **Venture Issuer** - A simplified concept of "venture issuer" is now proposed that would replace a variety of categories of junior or small issuers. Venture issuers are defined as issuers whose securities are not listed or quoted on certain senior exchanges in Canada or the United States, and are not listed or quoted anywhere outside Canada or the United States. Venture issuers

will be subject to relaxed treatment in a number of areas. Perhaps most significantly, venture issuers will be given 120 days to file annual financial statements and 60 days to file interim financial statements.

Please contact any member of the Goodmans corporate securities team to discuss the continuous disclosure issues.

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