

Temporary relief from securities requirements due to COVID-19

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In response to the COVID-19 outbreak, the Canadian Securities Administrators (the **CSA**) have recently issued guidance on annual securityholder meetings (**AGMs**) and provided coordinated relief for market participants from certain continuous disclosure filing requirements. The Toronto Stock Exchange (the **TSX**) and the TSX Venture Exchange (the **TSXV**) have also announced temporary relief measures in response to COVID-19 pandemic. A summary of such guidance and relief is discussed in detail below. As the situation evolves, each of the CSA, the TSX and the TSXV has advised that it will continue to monitor the impact of COVID-19 and market conditions on Canadian capital markets and issuers and may issue further guidance, relief, extensions and updates as required.

CSA provides guidance on AGMs

The CSA has provided the following guidance for reporting issuers in respect of AGMs:

- **Changing the date, time or location of an AGM:** if a reporting issuer has decided to change the date, time, or location of an in-person AGM due to difficulties from COVID-19 and has already sent and filed proxy related materials, the reporting issuer does not have to update such proxy-related materials or send additional materials, provided that the reporting issuer promptly and sufficiently in advance of the AGM:
 - issues a news release announcing the change in date, time or location;
 - files the news release on SEDAR; and
 - takes all reasonable steps to inform all the parties involved in the proxy voting infrastructure of the change.

If the proxy-related materials have not yet been sent and filed, the reporting issuer should consider including disclosures in its proxy materials regarding the possibility of such changes due to COVID-19.

- **Virtual or Hybrid AGMs:** if planning a virtual AGM (i.e. an AGM through the internet or other electronic means in lieu of an in-person AGM) or hybrid AGM (i.e. an in-person AGM that also permits securityholder participation through electronic means), the reporting issuer must:
 - notify all parties involved of such plans in a timely manner, and disclose all clear logistical details of the meeting, including how to remotely access, participate and vote; and
 - include such information in the reporting issuer's proxy materials or follow the steps provided above for announcing a change in the AGM date, time or location if the proxy materials have already been sent to securityholders.

Any information regarding changes to the details of a reporting issuer's AGM must be provided to both registered holders and beneficial owners of the reporting issuer's securities.

See also "*Applicable Legislation – AGMs*" below.

CSA blanket relief for market participants from periodic reporting and filing requirements

The CSA has implemented, through local blanket orders in each of the provinces and territories, relief for issuers, investment funds, registrants, certain regulated entities and designated rating agencies from certain periodic reporting and filing requirements, which blanket orders are substantially harmonized across the country (collectively, the **Blanket Orders**).

A summary of the Blanket Order issued by the Alberta Securities Commission in respect of issuers, and also the CSA's views on certain recent questions provided by reporting issuers related to the Blanket Orders, is as follows:

- **General relief:** A 45 day extension (the **extension period**) is granted for periodic filings normally required to be made during the period from March 23, 2020 to June 1, 2020, including financial statements, management discussion and analysis, annual information forms (**AIFs**), technical reports, and certain other ancillary documents normally required to be filed in a timely manner under securities legislation and listed in the Blanket Order (the **Filing Exemption**). The extension period starts on the next calendar day following the reporting deadline (i.e. if the filing deadline is May 15, the first day of the extension period is May 16 and the extension period would end on June 29).
- **Corporate finance requirements:** the reporting issuer relying on the Filing Exemption must, as soon as reasonably practicable issue a news release in advance of its normal filing deadline that discloses certain information, including:
 - each disclosure or filing requirement for which it is relying on the Filing Exemption;
 - that its management, directors and other insiders are subject to an insider trading black-out policy whereby they are restricted from trading securities of the issuer due to an increased risk that these individuals have access to material undisclosed information;
 - the estimated date by which required disclosure is expected to be filed or delivered; and
 - an update on whether or not there have been any material business developments since the last annual or interim financial report filed by the reporting issuer.

On April 27, 2020, the Alberta Securities Commission issued a reminder notice to reporting issuers that if they intend to rely on the Filing Exemption, they must provide advance notice to the market by issuing the above noted news release and filing it on SEDAR in advance of the issuer's normal filing deadline.

The issuer will also be required to file a subsequent news release, no later than 30 days after the extension period begins, updating any material business developments since the first news release was issued and a further news release no later than 30 days following such subsequent news release if it has not yet filed each document for which it is relying on the Filing Exemption.

A reporting issuer's AIF is required under applicable securities laws to be dated no earlier than the date of the auditor's report of the issuer's financial statements. If the issuer is delaying the filing of its annual financial statements pursuant to the Filing Exemption, it cannot file its AIF prior to the filing of its annual financial statements and will need to rely on the Filing Exemption with respect to the filing of its AIF as well.

- **Prospectus offerings:** reporting issuers will be prohibited from filing a preliminary or final prospectus and will also be precluded from completing a prospectus offering which requires or will require the filing of a prospectus supplement to an existing base shelf prospectus, until the

continuous disclosure record of the reporting issuer is current. The Blanket Orders do not provide an extension of the 90 and 180 day lapse date period contained in applicable securities laws. Reporting issuers in the 90-day distribution period for a best efforts prospectus offering should cease the distribution and contact their principal regulator to discuss.

- **AGMs:** as noted below, the TSX and TSXV have extended the deadline for reporting issuers to hold their AGMs in 2020. The CSA has advised that the Blanket Orders do not provide a deadline extension for the filing, sending or delivery of management information circulars or proxy materials for an AGM. The CSA are considering issues related to the interplay between the Blanket Orders and a delay of an AGM, including matters relating to executive compensation, management information circulars and other proxy materials, annual meeting request forms, and delivery of financial statements in conjunction with the delivery of management information circulars, but currently have not provided any guidance in respect of such matters.
- **Normal course issuer bids:** an issuer relying on the Filing Exemption should not make purchases of its own securities pursuant to a normal course issuer bid if there is a risk that the issuer and its insiders will have access to material undisclosed information. The CSA expects any normal course issuer bid to be suspended if reliance by the issuer on the Filing Exemption means that the issuer, its management and/or insiders are in possession of material undisclosed information, except where such purchases are made pursuant to an automatic purchase plan.
- **Insider reporting:** the Blanket Orders do not provide an extension period for filing of insider reports, including those related to compensation plans, and insiders and issuers are still required to file within the specified time periods.
- **Reports of exempt distribution:** the Blanket Orders do not provide an extension period for filing of reports of exempt distribution and such reports are still required to be filed within the specified time period (which is generally 10 days following the distribution).

The Blanket Orders issued by the Alberta Securities Commission provide similar relief in respect of investment funds, registrants, certain regulated entities, and designated rating organizations and are available [here](#).

TSX and TSXV temporary relief

The TSX and TSXV have also provided guidance on measures each is undertaking in response to the COVID-19 pandemic and the Blanket Orders issued by the CSA summarized above. Such measures include the following:

TSX Relief

- **Financial statements:** issuers will not be required to file a *Form 9 – Request for Extension of Exemption for Financial Reporting/Annual Meeting*, as is normally required by the TSX Company Manual (the **TSX Manual**), during 2020 for a late filing of annual financial statements and/or interim financial statements.
- **Annual meeting:** issuers who are required, in accordance with the TSX Manual, to hold their AGM during 2020, are permitted to hold their AGM on any date in 2020 up to and including December 31, 2020. Issuers are not required to submit a Form 9 in connection with this relief.
- **Security based compensation arrangements:** issuers who are required, as per the TSX Manual, to obtain security holder approval every three years for all unallocated options, rights or other entitlements (**Awards**) under a security based compensation arrangement that does not have a

fixed maximum number of securities issuable (the **Three Year Renewal**), may seek approval later than the Three Year Renewal. Additionally, an issuer may continue to grant Awards under the security based compensation arrangement until the earlier of the issuer's AGM in 2020 and December 31, 2020. Awards granted during this timeframe may be exercised absent ratification by security holders.

- **Normal course issuer bid (NCIB):** from March 23, 2020 up to and including June 30, 2020 (the **Effective Period**), the TSX is modifying the volume of purchases condition in the TSX Manual and the *TSX Rule Book* such that an issuer will be permitted to acquire listed securities pursuant to an NCIB where the purchases do not, when aggregated with all other purchases by the issuer during the same trading day on the TSX exceed 50%, rather than the greater of 25% or 1,000 securities, of the average daily trading volume of the listed securities of that class. This relief applies to any relevant NCIB purchase made during the Effective Period and to purchases made under NCIBs renewed or launched during the Effective Period.
- **Delisting criteria – market value:** from March 23, 2020 up to and including December 31, 2020, when determining whether to initiate a delisting review of an issuer's securities, the TSX will not apply the delisting criteria in section 712(a) or section 712(b) of the TSX Manual, which provide that the TSX may delist securities if the market value of the issuer's securities is less than \$3,000,000 or if the market value of the issuer's freely-tradable, publicly held securities is less than \$2,000,000, over any period of 30 consecutive trading days.
- **"Market Price" definition:** the TSX will use a shorter time period for the determination of market price for the purposes of pricing securities (including warrants) for private placements, rather than using the five day volume weighted average trading price of the listed securities.

TSXV Relief

- **Annual meeting:** issuers who are required to hold an annual meeting of shareholders during 2020 are permitted to hold their AGM in 2020 on any date up to and including December 31, 2020.
- **Option plans:** issuers who are required to obtain annual shareholder approval of rolling stock option plans are permitted to obtain such approval at its AGM in 2020, which as stated above, may be held on any date in 2020 up to and including December 31, 2020.
- **Fees:** the deadline by which issuers must pay their 2020 annual sustaining fees to the TSXV has been extended by the TSXV from March 31, 2020 to May 31, 2020. The TSXV will also permit issuers to pay their 2020 annual sustaining fees in installments, with the first installment of 50% of the annual sustaining fees due on May 31, 2020 and the balance due on July 31, 2020.
- **Minimum Pricing Requirement:** if the market price (as determined in accordance with TSXV policies) of an issuer's shares or other securities listed on the TSXV (**Listed Shares**) is less than \$0.05, in certain circumstances, the price at which Listed Shares may be issued is the market price or discounted market price, as applicable, subject to a minimum price of \$0.01 (rather than \$0.05). For Listed Shares with a market price greater than \$0.05, the minimum pricing requirements are unchanged. This relief applies to Listed Shares issued on or before September 30, 2020 pursuant to private placements, public offerings, shares for debt transactions, and in determining the number of Listed Shares and warrants that may be issued as a bonus for a loan or guarantee. The relief does not provide for any changes to incentive stock options, warrants or

convertible securities, which remain subject to minimum \$0.05 exercise/conversion pricing. An issuer can rely on such relief if the following criteria are satisfied:

- the proposed price is protected/reserved by way of a news release and not a price reservation form;
- the number of shares issued at a price below \$0.05 is less than 100% of the Issuer's outstanding shares as at April 7, 2020;
- the proceeds of any financing will not primarily be used to pay management fees or for investor relations activities;
- the Issuer will fully disclose the proposed use of proceeds, including any proposed payments to related parties; and
- all securities issued at a price below \$0.05 are subject to a four month resale restriction and are legended accordingly.

Applicable Legislation - AGMs

Notwithstanding the above noted guidance issued by the CSA in respect of AGMs and the relief provided by the TSX and TSXV in respect of the timing of holding AGMs, and the conduct of AGMs is primarily subject to applicable corporate law and the reporting issuer's constating documents, which do not fall under the jurisdiction of the securities commissions or stock exchanges.

At this time neither the *Canada Business Corporations Act* (the **CBCA**) nor the *Business Corporations Act* (Alberta) (the **ABCA**) has been amended or modified to extend the deadline for a company to hold an AGM under such legislation. Under the CBCA, a company is required to hold its AGM not later than eighteen months after the company comes into existence, and subsequently, not later than fifteen months after holding its last preceding annual meeting but no later than six months after the end of the company's preceding financial year. Under the ABCA, a company is required to hold an AGM not later than eighteen months after its date of incorporation, and subsequently, not later than fifteen months after holding its last preceding annual meeting. Currently, a Court order would be required to extend either of these deadlines.

Further, issuers considering virtual or hybrid AGMs should confirm that applicable legislation and the issuer's bylaws and other constating documents allow the issuer to hold an AGM by partial or fully electronic means and any additional notice or supplemental documentation requirements under such legislation. For example, under the ABCA, at least 21 days notice of the time and place of the AGM is required to be provided to shareholders and, unless consent to electronic delivery has been obtained from shareholders, such notice is to be delivered by mail or personal delivery. Such 21 day notice period would also apply in the circumstance where the issuer has already delivered proxy materials to shareholders and is advising shareholders that there has been a change to the location of the AGM or a change from a physical location to a fully virtual or hybrid meeting. If the issuer is unable to provide at least 21 days notice of the change, an order from the Court may be required to allow a shorter notice period and/or a modified form of delivery of such notice to shareholders. Given the limited number of applications being heard as a result of Court closures due to COVID-19, an issuer may be unable to obtain a Court order in a timely manner or at all, in which case issuers must decide whether to proceed without a Court order and/or discuss with their legal advisors whether steps may be taken at a later time to ratify and confirm any actions. It is also a requirement under the ABCA and CBCA that an electronic meeting must permit all participants to communicate

adequately with each other during the meeting. The Courts have not previously considered issues relating to this requirement, including whether currently available meeting platforms are sufficient.

The above noted guidance relates only to conduct of AGMs. Issuers involved in proxy contests, holding special meetings for M&A transactions, or obtaining securityholder approval for a transaction for which Multilateral Instrument 61-101 Protection of Minority Securityholders in Special Transactions applies, should contact a member of our Business Law Group to discuss appropriate next steps.

This bulletin is intended as general information only and is not to be taken as legal advice.

Resources

CSA provides guidance on AGMs:

<https://www.securities-administrators.ca/aboutcsa.aspx?id=1879>)

CSA Blanket Orders:

<https://www.securities-administrators.ca/aboutcsa.aspx?id=1886>)

<https://www.albertasecurities.com/securities-law-and-policy/blanket-orders-and-designation-orders>)

<https://www.albertasecurities.com/securities-law-and-policy/regulatory-instruments/51-360>)

TSX and TSXV temporary relief:

<https://decisia.lexum.com/tsx/sn/en/item/466093/index.do>)

<https://www.tsx.com/resource/en/2230>)

<https://www.tsx.com/listings/tsx-and-tsxv-issuer-resources/tsx-venture-exchange-issuer-resources/tsx-venture-exchange-corporate-finance-manual/tsxv-corporate-finance-bulletins>)