

CSA provides additional temporary relief for issuers due to COVID-19

By Jessica Brown, Lindsay Cox and Mike Chernos (Student-at-Law)

On Wednesday, May 20, 2020, the Canadian Securities Administrator (**CSA**) announced additional temporary relief for non-investment fund issuers from certain regulatory filings to be made on or between June 2, 2020 and August 31, 2020 as a result of the COVID-19 outbreak (the **May Relief**) through blanket orders in each of the provinces and territories which are substantially harmonized throughout the country (collectively, the **May Blanket Orders**). The relief is substantially similar to the temporary relief announced by the CSA on March 23, 2020 (the **March Relief**) in relation to filings to be made on or between March 23, 2020 and June 1, 2020.

An issuer who relied on the March Relief to extend one or more of its periodic filings normally required to be made on or between March 23, 2020 and June 1, 2020 cannot rely on the May Relief as a further extension for those already extended deadlines under the March Relief. Issuers are reminded that the May Relief is only applicable to those filings ordinarily required to be made on or between June 2, 2020 and August 31, 2020. The CSA will consider an application made by a non-investment fund issuer for a management cease trade order (**MCTO**) if such issuer relied on the March Relief and is unable to complete certain filings by their extended deadline, but anticipates being able to complete such filings shortly thereafter. In considering such application, the CSA may reduce the usual time period for a MCTO to take into account the 45-day extension. A summary of the May Blanket Order issued by the Alberta Securities Commission in respect of non-investment fund issuers, and also the CSA's views on certain questions provided by reporting issuers related to the March Relief, as updated, 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 June 2, 2020 to August 31, 2020, including financial statements, management's discussion and analysis (**MD&A**), 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 May 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 August 14, the first day of the extension period is August 15 and the extension period would end on September 28).

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;
- confirmation 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.

Reporting issuers are reminded 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.

Responding to requests for paper copies of filings and filing of executive compensation disclosure:

The May Relief does not address the temporary blanket relief announced by the CSA on May 1, 2020 in respect of certain other delivery and filing requirements, including responding to requests for paper copies of certain financial statements and MD&A and the filing by issuers of a statement of executive compensation. Such matters will continue to be addressed by the blanket orders issued on May 1, 2020 and in particular, Alberta Securities Commission Blanket Order 51-518: *Temporary Exemptions from Certain Requirements to File or Send Securityholder Materials*, which relief is subject to issuers meeting certain requirements. For further information, see our bulletin dated May 5, 2020, available [here](#).

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 May 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.

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.

Consistent with the March Relief, the May Blanket Orders do not provide an extension period for the filing of insider reports or reports of exempt distribution.

The May Blanket Order issued by the Alberta Securities Commission provides similar relief in respect of investment funds, registrants and certain regulated entities and is available [here](#).

For other considerations and commentary in respect of the temporary relief provided by the CSA, the Alberta Securities Commission, the TSX and the TSX Venture Exchange in response to the ongoing COVID-19 pandemic, see our other bulletins dated April 20, 2020, April 21, 2020, April 22, 2020, April 27, 2020 and May 5, 2020, all available [here](#).

This bulletin is general information only, not legal advice. If you have any questions please contact any member of our [Business Law Group](#).