

CSA implements previously proposed amendments to the BAR requirements

By Jessica Brown and Katy Josephs (Student-at-Law)

On August 20, 2020, the Canadian Securities Administrator (**CSA**) published a notice announcing amendments to National Instrument 51-102 (*Continuous Disclosure Obligations*) and the companion policies related to the Business Acquisition Report (**BAR**) requirements under Canadian securities laws. The amendments and any changes to related companion policies will come into force on November 18, 2020.

Current BAR requirements

Under the current BAR requirements, any reporting issuer that is not an investment fund is required to file a BAR after completing an acquisition that is a "significant acquisition". There are three tests that have been established to determine the significance of an acquisition: the asset test, the investment test and the profit or loss test. The asset test measures the assets of the acquired business against the assets of the reporting issuer. The investment test measures the reporting issuer's investments in, and advances to, the acquired business against the assets of the reporting issuer. Lastly, the profit or loss test measures the income from continuing operations of the acquired business against the income from continuing operations of the reporting issuer.

Presently, an acquisition will qualify as a "significant acquisition" if: (i) for a reporting issuer that is not a venture issuer, the result from any one of the three significance tests exceeds 20%; or (ii) for a venture issuer, the result of either the asset test or investment test exceeds 100%.

If an acquisition triggers the BAR requirement, the issuer is required to provide certain details of the acquisition, including, among others: (i) any valuation opinions obtained in the 12 months prior to the acquisition; (ii) audited financial statements for the most recently completed financial year and unaudited financial statements of the preceding year; (iii) interim financial statements for the most recently completed interim period and interim financial statements for a comparative interim period in the year prior; and (iv) pro forma financial statements.

The new requirements implement a two-trigger test

The amendments to the BAR requirements will implement two material changes that serve to increase the threshold of the significance test for non-venture reporting issuers. Specifically:

- the threshold for the significance tests will be increased from 20% to 30%; and
- instead of requiring an issuer to file a BAR if one of the significance tests meeting the threshold, a BAR will only need to be filed if a business acquisition triggers at least two of the significance tests.

It is expected that these changes will result in a significant decrease in the number of BARs required to be filed by non-venture reporting issuers.

Purpose of the amendments

The CSA has noted that these amendments will reduce the regulatory burden imposed on issuers by the BAR requirements without compromising investor protection by "narrowing the circumstances under which a BAR must be filed to transactions that are the most relevant to investors' decision-making."

The CSA has announced these changes just short of a year after asking for industry comment on the amendments in a notice published September 5, 2019. Through the year, the CSA has evaluated comment letters, sought out other stakeholder feedback and evaluated historical data to determine

the likely impact of the amendments and whether they will successfully address feedback the CSA received regarding the burden that the current BAR requirements impose on issuers.

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

