

# COVID-19 Updates: Canadian Securities Regulators and Exchanges

March 20, 2020

By ,

As the world fights to stop the spread of COVID-19 by implementing social distancing measures, companies are faced with the challenges of ensuring the health and safety of their employees are maintained, business continuity plans are implemented and functioning, and in the case of public companies, that they are continuing to meet their regulatory reporting obligations.

In response to the outbreak of COVID-19, Canadian securities regulators and exchanges have taken actions and provided guidance to public companies. As the pandemic situation itself is unprecedented and constantly evolving, regulatory and exchange expectations and responses are as well. This article summarizes the updates from these entities released to date and aims to provide some practical considerations to public companies for navigating the current uncertainties.

## Securities Regulators

### Canadian Securities Administrator ("CSA")

The CSA issued press releases this week laying out measures the CSAs would take in order to assist market participants with the challenges they may face in attempting to meet their continuous disclosure reporting requirements such as filing of financial statements, MD&A and management proxy materials, among other things.

On March 18, 2020 the CSAs announced that due to the COVID-19 developments and the impact on market participants, the CSAs will provide temporary blanket relief from certain regulatory filings required to be made by market participants on or before June 1, 2020.

### ***45-Day Extension of Periodic Filings***

The blanket relief will provide a 45-day extension for periodic filings normally required to be made by issuers, investment funds, registrants, certain regulated entities and designated rating organizations on or before June 1, 2020. This will include:

- financial statements
- management's discussion and analysis
- management reports of fund performance
- annual information forms
- technical reports
- certain other filings (to be specified by CSAs)

This blanket relief will not require a reporting issuer to apply for management cease-trade orders (MCTOs) if they foresee being

unable to file annual or interim financial statements before the applicable prescribed deadlines. While the 45-day extension may relieve some of the pressure that companies are faced with, we encourage issuers to consider the broader implications of extended filing deadlines including the effects of delayed filing on credit facilities, contractual obligations, black-out periods and subsequent event disclosure required in certain filings.

The CSA also noted that all proposals currently out for comment will also have their comment periods extended by 45 days.

The full text of the CSA's March 18, 2020 press release can be found [here](#).

### ***Annual General Meetings***

On March 20, 2020, the CSAs published guidance on conducting annual general meetings (“AGMs”) during the COVID-19 outbreak. While the manner in which AGMs are held is predominantly subject to applicable corporate law and a reporting issuer's constating documents, the CSA encouraged reporting issuers to review these laws and documents when considering changes or alternatives to their upcoming AGMS in light of the current situation.

The below information summarizes the CSA's guidance with regards to AGMs. It is important to note that the guidance provided relates to all business transacted at AGMs, such as election of directors and amendments to equity incentive plans. Reporting issuers involved in proxy contests, holding special meetings for merger and acquisition transactions, or obtaining securityholder approval for transactions must contact their principal regulator to discuss appropriate steps in these circumstances.

#### **Option #1: Changing the date, time or location of an in-person AGM**

If a reporting issuer has decided to change the date, time or location of its in-person AGM due to concerns relating to COVID-19, the CSA recommends the following steps be taken by the issuer:

If proxy-related materials **have** already been sent and filed...

- Promptly issue a news release announcing the change
- File the news release on SEDAR
- Take all reasonable steps necessary to inform all the parties involved in the proxy voting infrastructure of the change including:
  - intermediaries,
  - transfer agents, and
  - proxy service providers
- No need for additional or updating proxy-related materials

If proxy-related materials **have not** been sent and filed...

- Consider including disclosures in its proxy-related materials regarding the possibility of such changes due to COVID-19

#### **Option #2: Virtual or hybrid AGMs**

Subject to corporate law and their constating documents, reporting issuers may have the option to hold virtual or hybrid AGMs. A virtual AGM is considered to be an AGM held through the internet or other electronic means in lieu of an in-person AGM. A hybrid AGM is considered to be an in-person AGM that also permits securityholder participation through electronic means.

If a reporting issuer plans to conduct a virtual AGM or hybrid AGM the CSA recommends the following steps be taken by the issuer:

If proxy-related materials **have** already been sent and filed...

- Promptly issue a news release providing clear directions on the logistical details of the virtual or hybrid AGM, including how securityholders can
  - remotely access,
  - participate in, and
  - vote
- File the news release on SEDAR
- Take all reasonable steps necessary to inform all the parties involved in the proxy voting infrastructure of the change including:
  - intermediaries,
  - transfer agents, and
  - proxy service providers
- No need for additional or updating proxy-related materials

If proxy-related materials **have not** been sent and filed...

- Provide clear directions on the logistical details of the virtual or hybrid AGM within the reporting issuer's proxy-related materials, including how securityholders can
  - remotely access,
  - participate in, and
  - vote

The CSA further advised that no exemptive relief from the notice requirements under 2.15 of *National Instrument 54-101 Communication with Beneficial Owners of Securities of a Reporting Issuer* is required or will be provided to reporting issuers that are considering changes or alternatives to their AGMs. Registered holders and beneficial owners are to be treated equally and receive the same information.

The full text of the CSA's March 20, 2020 press release can be found [here](#).

### **Ontario Securities Commission ("OSC")**

On March 16, 2020, the OSC announced its operational changes in response to COVID-19. While most OSC staff have begun working from home, all essential and core operations of the OSC will continue. The OSC's updates to date include the following:

- On-site compliance reviews and planned Risk Assessment Questionnaire postponed until further notice;
- Normal-course registration and compliance activities to continue as planned, however there will be flexibility on deadlines for information;
- All in-person outreach sessions have been cancelled, while upcoming webinars have been re-scheduled for later dates;
- Consultation with advisory committees, market participants and investors have been re-scheduled as teleconference meetings; and
- In-person hearings will not be held until at least April 30, 2020, the OSC is reaching out to parties to determine if a hearing may proceed via teleconference or in writing.

The full text of the OSC's March 16, 2020 news release can be found [here](#).

## **Investment Industry Regulatory Organization of Canada ("IIROC")**

On March 10th, 2020, IIROC advised its members ("**Members**") that they expect firms to continue to meet their regulatory obligations, however it recognizes that some level of regulatory flexibility may be required to enable its Members to best serve investors and maintain market stability in light of the COVID-19 situation. In its guidance published, IIROC expressed no objection to Members meeting requirements from back up sites or with staff working from home as long as appropriate measures are in place for supervisory, confidentiality and other regulatory requirements.

IIROC continues to carry out all critical and core regulatory responsibilities. Their offices continue to operate with limited staff on site, with examinations and meetings being conducted remotely via video or teleconference where possible. IIROC will adapt plans and issue further communication, as appropriate, as the situation develops.

The full text of the CSA's March 10, 2020 guidance can be found [here](#).

## **The Exchanges**

### **Toronto Stock Exchange & TSX Venture Exchange ("TMX Group")**

The TMX Group remains committed to both the continuity of its operations and the safety of its staff. At this time, the majority of TMX Group's employees, including the Relationship Management team (Company Services) and Listed Issuer Services, are now working from home. The TMX Group advises reporting issuers to submit all documents, and where possible all filing fees associated with submissions, to their staff electronically until further notice. The TMX Group is working diligently with issuers to ensure that any disruptions to their review and approval of transactions as a result of this measure are kept to a minimum.

Other preventative measures implemented by the TMX Group to help mitigate the risk of exposure and ensure the business is able to operate and service the marketplaces include:

- Splitting critical operations between offices,
- Providing additional dedicated business continuity seats for each critical business area at their backup facilities;
- Ensuring TMX hosted events are cancelled; and
- Prohibiting employees from attending or hosting external meetings or events.

The full text of the TMX Group's March 13, 2020 press release can be found [here](#).

***The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.***

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