

Are you ready for Canada's new insider reporting regime?

April 26, 2010

By Michael Dolphin

Changes to Canada's insider reporting regime will come into force in all Canadian jurisdictions on Friday. Ontario must still approve amendments to the *Securities Act* but is expected to do so by this date.

The new insider reporting regime under national instrument 55-104 will harmonize requirements across the country while reducing the number of insiders who must file. It will also improve the timeliness of these filings.

The purpose of these changes is to make it easier for issuers and insiders to understand their obligations and to promote timely and effective compliance. The new regime includes shortening the insider reporting deadline to five from 10 calendar days. These new rules should also have the effect of clarifying some aspects of the current scheme, such as whether the rules apply to certain types of derivative-based transactions, and simplifying reporting on stock-based compensation arrangements. The procedural filing requirements for insider reports haven't changed and are still found in national instrument 55-102 dealing with the system for electronic disclosure by insiders (also known as SEDI).

Here is quick overview of the key changes the new rules will entail:

- Fewer insider filings by introducing a new "reporting insider" concept that should reduce the number of people required to submit a report. For example, under the current rules, all officers are required to file insider reports if they have access to undisclosed material information in the ordinary course of business. Under the new rules, they must also have the ability to exercise "significant power or influence" over the issuer to be a reporting insider.
- New deadlines. While the new rules maintain the current 10-day deadline for filing an insider's initial report, the time frame decreases to five calendar days for disclosing all changes in direct or beneficial ownership of securities. This change will take place on October 31 and will apply to all transactions that occur after that date.
- New definition of major subsidiary. The new rules increase the threshold for defining a major subsidiary to 30 per cent from 20 percent of a reporting issuer's consolidated assets or revenues.
- Simplified reporting for some stock-based compensation arrangements. The changes introduce a separate exemption for certain grants of securities to directors and officers of a reporting issuer as part of a compensation arrangement. This exemption is only available if the reporting issuer has previously disclosed information about the compensation arrangement in an information circular or other System for Electronic Document Analysis and Retrieval (SEDAR) filing and the reporting issuer has filed an "issuer grant report" on SEDI. In addition, the insider must file a report within five days of the disposition or transfer of any acquired security or on or before March 31 of the next calendar year for any acquired securities that have not been disposed of.

Are you prepared for these changes?

We suggest reporting issuers take the following steps before the new rules come into force:

- Review your current list of insiders and determine if reporting changes are needed under the new rules.
- Advise insiders about the new rules, including the requirement to report all outstanding unreported security-based compensation by this Friday and the accelerated filing deadlines that take effect October 31.
- Decide whether you will file issuer grant reports for securities granted under compensation arrangements, such as option grants.
- Revise your insider-trading policy to reflect changes to insider reporting obligations.

The new regime involves significant changes for reporting issuers. As a result, it's important they be aware of them and what they mean for their business.

For more information or inquiries:



Michael Dolphin

Toronto
416.947.5005

Email:
mdolphin@weirfoulds.com

Michael Dolphin is a Partner at WeirFoulds and Co-Chair of the Securities & Public Companies and Corporate Practice Groups. He is a corporate and securities lawyer with extensive experience in financings, public offerings, mergers and acquisitions, and corporate reorganizations.

WeirFouldsLLP

www.weirfoulds.com

Toronto Office

4100 – 66 Wellington Street West
PO Box 35, TD Bank Tower
Toronto, ON M5K 1B7

Tel: 416.365.1110
Fax: 416.365.1876

Oakville Office

1320 Cornwall Rd., Suite 201
Oakville, ON L6J 7W5

Tel: 416.365.1110
Fax: 905.829.2035