

Canadian Securities Regulators Abandon Certain Key Amendments to Early Warning System

Further to our *March 2013 bulletin*, we are reporting an update on the 2013 Proposals of the Canadian Securities Administrators (the “CSA”) to amend the reporting threshold, triggers and related disclosure requirements under the “early warning system”. These proposals would have, among other things, lowered the early warning threshold and required the inclusion of certain derivatives in the reporting calculation.

On October 10, 2014, the CSA announced¹ that they are abandoning the following two key amendments:

- Reducing the reporting threshold from 10% to 5%; and
- Including “equity equivalent derivatives” for the purposes of determining the threshold for early warning reporting disclosure.²

The CSA received over 70 comment letters in response to the 2013 Proposals. The CSA noted that some of the comments they considered in their reasons for abandoning the two amendments included the large number of small issuers in the Canadian market

¹ Canadian Securities Administrators, “Update on Proposed Amendments to Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids*, National Instrument 62-103 *Early Warning System and Related Take-Over Bid and Insider Reporting Issues* and National Policy 62-203 *Take-Over Bids and Issuer Bids*”, CSA Notice 62-307 (10 October 2014).

² An “equity equivalent derivative” would have been defined as a derivative that was referenced to or derived from a voting or equity security of an issuer and that provided the holder, directly or indirectly, with an economic interest that was substantially equivalent to the economic interest associated with beneficial ownership of the security (examples included cash-settled total return swaps and contracts for differences).

and the limited liquidity of such issuers, the potential hindrance of an investor's ability to rapidly accumulate or reduce a large position, the desire to avoid signalling investment strategies to the market, the difficulty of applying the term "equity equivalent derivatives", and the significant administrative and compliance burdens associated with additional reporting obligations.

The CSA stated that they plan to proceed with the remainder of their proposed amendments, including requiring disclosure of 2% decreases in ownership as well as requiring disclosure when a shareholder's ownership interest falls below the reporting threshold. In addition, the proposals will address security lending arrangements by exempting lenders from disclosure requirements if they lend shares pursuant to a specified securities lending arrangement and by exempting borrowers, in certain circumstances, from disclosure requirements if they borrow shares under a securities lending arrangement.

The final amendments will also clarify the current application of early warning reporting requirements to certain derivatives and enhance disclosure requirements relating to derivatives. In addition, the amendments will prohibit eligible institutional investors from using the alternative monthly reporting system if they solicit proxies on the election of directors or corporate actions involving an issuer's securities. The scope of such prohibition was not described in the CSA's announcement, but it was noted that additional clarification would be included in the final amendments.

The CSA intend to publish their final amendments in the second quarter of 2015.

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[a cautionary note](#)

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