

COVID-19 Update: Securities Regulators Grant Temporary Filing Relief

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The COVID-19 pandemic continues to present challenges for everyone, and corporations are no exception. In a normal year, the period between March and June can be particularly busy for many public companies as many have to file annual continuous disclosure documents and are required to hold annual meetings of securityholders during this period. However, the COVID-19 outbreak and consequent social distancing requirements have made these activities extremely challenging for companies.

Consequently, regulatory bodies have responded to the current crisis by providing temporary relief from certain filing obligations. As we reported in a recent post, the Toronto Stock Exchange and TSX Venture Exchange have provided issuers with temporary blanket relief relating to certain filing obligations under the TSX Company Manual and the TSXV Corporate Finance Manual, respectively, without requiring issuers to make an application for such relief.

On March 18, 2020, the Canadian Securities Regulators (“**CSA**”) announced that they would be providing blanket relief for market participants in all provinces due to COVID-19 by allowing 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. The CSA indicated that the relief would be implemented through the issuance of local blanket orders in each province and territory, and that such orders would be substantially harmonized across the country.

In this article, we will focus on the blanket orders issued by the Ontario Securities Commission (“**OSC**”) under Ontario Instrument 51-502 *Temporary Exemption from Certain Corporate Finance Requirements* (the “**Temporary Order**”) on March 23, 2020. Issuers should consider the relevant laws of all applicable jurisdictions in determining filing requirements.

What does the OSC’s Temporary Order entail?

The Temporary Order provides a 45-day extension for periodic filings or delivery requirements, including annual and interim filings, other continuous disclosure filings, and filings for exempt distributions and designated rating organizations, as well as a 45-day extension of a lapse date for a final base shelf prospectus. The Temporary Order applies to all such deadlines during the period from March 23, 2020 to June 1, 2020, for issuers, investment funds, registrants, certain regulated entities and designated rating organizations.

The Temporary Order also provides that in certain circumstances if the OSC considers that it would not be prejudicial to the public interest to do so, it may grant exemptive relief orders from any requirement under Ontario securities law effective for a period of no longer than 18 months. An interested person or company must submit an application to the OSC for the exemptive relief order, and such order can apply to a class of persons or companies, trades, intended trades, securities or derivatives.

How long will the Temporary Relief be available?

The Temporary Order came into effect on March 23, 2020 and will last for a period of 120 days.

What periodic filings or deliveries are subject to the extension provided by the Temporary Order?

1. **Annual and interim financial statements** including:

- the filing of annual and interim financial statements management’s discussion & analysis, annual information forms, executive compensation disclosure, financial statements after becoming a reporting issuer and financial statements of a reverse takeover acquirer, statement of reserves data, technical reports, or any similar annual or interim disclosure document of a reporting issuer required pursuant to an exemption from one of the documents listed above included in an exemptive relief decision made by a securities regulatory authority or regulator prior to the date of the Temporary Order;
 - the sending of an annual request form; and
 - the delivery of annual financial statements and management’s discussion & analysis;
2. **Other continuous disclosure filings** including the filing of a change of auditor reporting package, notice of change in year-end, business acquisition report or notice of change in corporate structure;
 3. **Filings related to exempt distributions and designated rating organizations** including the filing of annual financial statements, a notice of use of proceeds, annual disclosures of use of proceeds or an annual filing of a designated rating organization and any amendment to that filing; and
 4. **The lapse date for a final base shelf prospectus** that is set to lapse before June 1, 2020.

Are there any requirements or conditions for relying on the Temporary Relief?

Pre-deadline news release (for annual and interim filings or delivery exemptions)

If the exemption sought relates to an annual and interim filing or delivery requirement, before the applicable filing deadline, the issuer must publish and file a news release on SEDAR as soon as reasonably practicable and in advance of the earliest applicable filing deadline for which relief is required. The news release must:

- Disclose each requirement from which the issuer will be relying on the Temporary Order for relief;
- Provide an estimated day by which the required disclosure is expected to be filed, delivered or sent (as applicable);
- Provide an update on any material business developments since the issuer’s last financial statements were filed (or confirm that there have been no material business developments since such date); and
- Disclose that management and certain insiders are subject to an insider trading blackout policy that reflects the principles in section 9 of National Policy 11-207 *Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions*.

Post-deadline news release (for annual and interim filings or delivery exemptions)

In addition to the pre-deadline news release, if an exemption is sought for annual and interim filings or deliveries, the issuer must issue a second news release no later than 30 days following the first day of the extension period. Such release must provide an update on any material business developments since the date of the pre-deadline news release (or confirmation that there have been no material business developments since such date).

Further update news release

A further updating news release containing similar disclosure about material business developments must also be filed no later than 30 days following the prior news release if the person or company has not yet filed each document for which it is relying on the Temporary Order.

Restriction on prospectus filing

Issuers relying on the Temporary Order may not file a prospectus for an offering of securities until all documents filed in reliance on the Temporary Order have been filed.

Timing of filings

Annual financial statements and annual MD&A must be delivered before, or in conjunction with, the delivery of the issuer's management information circular for its next annual meeting of securityholders.

Requirements for annual filings by designated ratings organizations

Designated rating agencies must also issue a news release in advance of the filing deadline, which must provide a brief discussion of any information in the previous annual filing that is now materially inaccurate or include confirmation that no such information is materially inaccurate. The designated rating organization is not required to file the news release on SEDAR provided the designated rating organization sends the news release to the securities regulatory authority that was its principal regulator for the purposes of its designation as a designated rating organization.

The Capital Markets Group at Aird & Berlis has the expertise to assist you with your annual filings and reporting requirements during this challenging time. If you have any questions, please reach out to Melanie Cole or Adria Leung Lim.

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