

# Lowering the BAR by Raising the BAR

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By Danny Kharazmi

On August 20, 2020, the Canadian Securities Administrators (the “CSA”) published amendments to the business acquisition report (the “BAR”) requirements for reporting issuers that are not venture issuers.<sup>1</sup> The amendments will impact National Instrument 51-102 *Continuous Disclosure Obligations* (“NI 51-102”) and its companion policy by: (i) increasing the threshold for each of the significance tests from 20 per cent to 30 per cent of the applicable measurement threshold; and (ii) moving from a one-trigger test and adopting a two-trigger test to determine the “significance” of the acquisition for the reporting issuer (together, the “Amendments”).<sup>2</sup>

## ***Background***

On September 5, 2019, the CSA published a Notice and Request for Comment proposing the Amendments. The Amendments were developed over the course of an extensive consultation process, including comment letters and other stakeholder feedback received with respect to the existing BAR requirements in response to CSA Consultation Paper 51-404 *Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers*.

## ***Impact of the Amendments***

A reporting issuer that is not an investment fund is required to file a BAR after completing a “significant acquisition”. Part 8 of NI 51-102 sets out three significance tests: (i) the asset test; (ii) the investment test; and (iii) the profit or loss test. Prior to the Amendments, an acquisition of a business or related businesses is a significant acquisition that requires the filing of a BAR under Part 8 of NI 51-102:

- for a reporting issuer that is not a venture issuer, if the result from any one of the three significance tests exceeds 20% of the applicable measurement threshold; and
- for a venture issuer, if the result of either the asset test or investment test exceeds 100% (collectively, the “BAR Requirements”).

The Amendments impact the BAR Requirements for reporting issuers that are not venture issuers in two ways: (i) revise the determination of significance such that an acquisition of a business or related businesses is a significant acquisition only if at least two of the existing significance tests are met; and (ii) increase the threshold of the significance tests from 20% to 30% of the applicable measurement threshold. Notably, there are no changes to the BAR Requirements applicable to venture issuers.

The CSA noted that the Amendments are aimed at reducing the regulatory burden imposed by the BAR Requirements in certain instances, without compromising investor protection.

Provided all necessary ministerial approvals are obtained, the Amendments will take effect on November 18, 2020.

For more information, please contact a member of our Capital Markets Group.

<sup>1</sup> Generally speaking, this will be issuers who have securities listed on the Toronto Stock Exchange, the NEO Exchange, an exchange registered as a “national securities exchange” under section 6 of the

Securities Exchange Act of 1934 or the Nasdaq Stock Market or a market place outside of Canada and the United States.

<sup>2</sup> The Amendments also affect related financial disclosure in both long-form and short-form prospectuses.

## Author



**Danny Kharazmi**  
Associate  
T 416.865.3449  
dkharazmi@airdberlis.com

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