

Securities Law Bulletin

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Amendments Require Additional Disclosures Under Canada's Early Warning Regime

By: Daniel Overall

The Canadian Securities Administrators (“CSA”) have announced final amendments (the “**Amendments**”) to the early warning system designed to provide greater transparency about the securities holdings of Canadian reporting issuers.

The Current Early Warning System

The current early warning system is designed to disseminate information to market participants once certain security holders obtain ownership, control or direction over 10% of a certain class of voting or equity securities of a Canadian reporting issuer, and each subsequent 2% increase thereafter.

The Approved Amendments

Effective as of May 9, 2016,¹ the Amendments will alter Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids*; National Instrument 62-103 *The Early Warning System and Related Take-Over Bid and Insider Reporting Issues*; and National Policy 62-203 *Take-Over Bids and Issuer Bids*.

Once in effect, the Amendments will:

1. require disclosure of decreases in ownership, control or direction of 2% or more for security holders subject to reporting;
2. require disclosure when a security holder's ownership, control or direction falls below the early warning reporting threshold of 10%;

¹ Except in Ontario, where the amendments will come into force on the later of (a) May 9, 2016, and (b) the day on which certain sections of Schedule 18 of the *Budget Measures Act, 2015* (Ontario) are proclaimed in force.

² This exemption is designed to exclude the ordinary course activities of short-sellers who borrow securities for commercial or investment purposes and not with a view of influencing voting or intending to vote the borrowed securities.

3. exempt lenders and borrowers, in certain circumstances, from including the securities lent or borrowed for the purposes of determining the early warning reporting threshold trigger;²
4. make the alternative monthly reporting system unavailable to eligible institutional investors who solicit proxies from security holders in certain circumstances;
5. require disclosure in the early warning report of an interest in a related financial instrument, a securities lending arrangement and other agreement, arrangement or understanding in respect of a security of the class of securities for which disclosure is required;
6. enhance the disclosure in the early warning report by requiring more detailed information regarding the intentions of the acquiror and the purpose of the transaction;
7. require the early warning report to be certified and signed;
8. require the news release to be issued and filed no later than the opening of trading on the next business day (rather than simply “promptly”); and
9. streamline the information required in a news release.

The Corporate Finance Group at Aird & Berlis LLP has extensive experience in advising clients on continuous disclosure and governance obligations. For more information, please contact any member of the Corporate Finance Group. Details can be found on our **Corporate Finance Group** web page, by clicking on **members**.

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