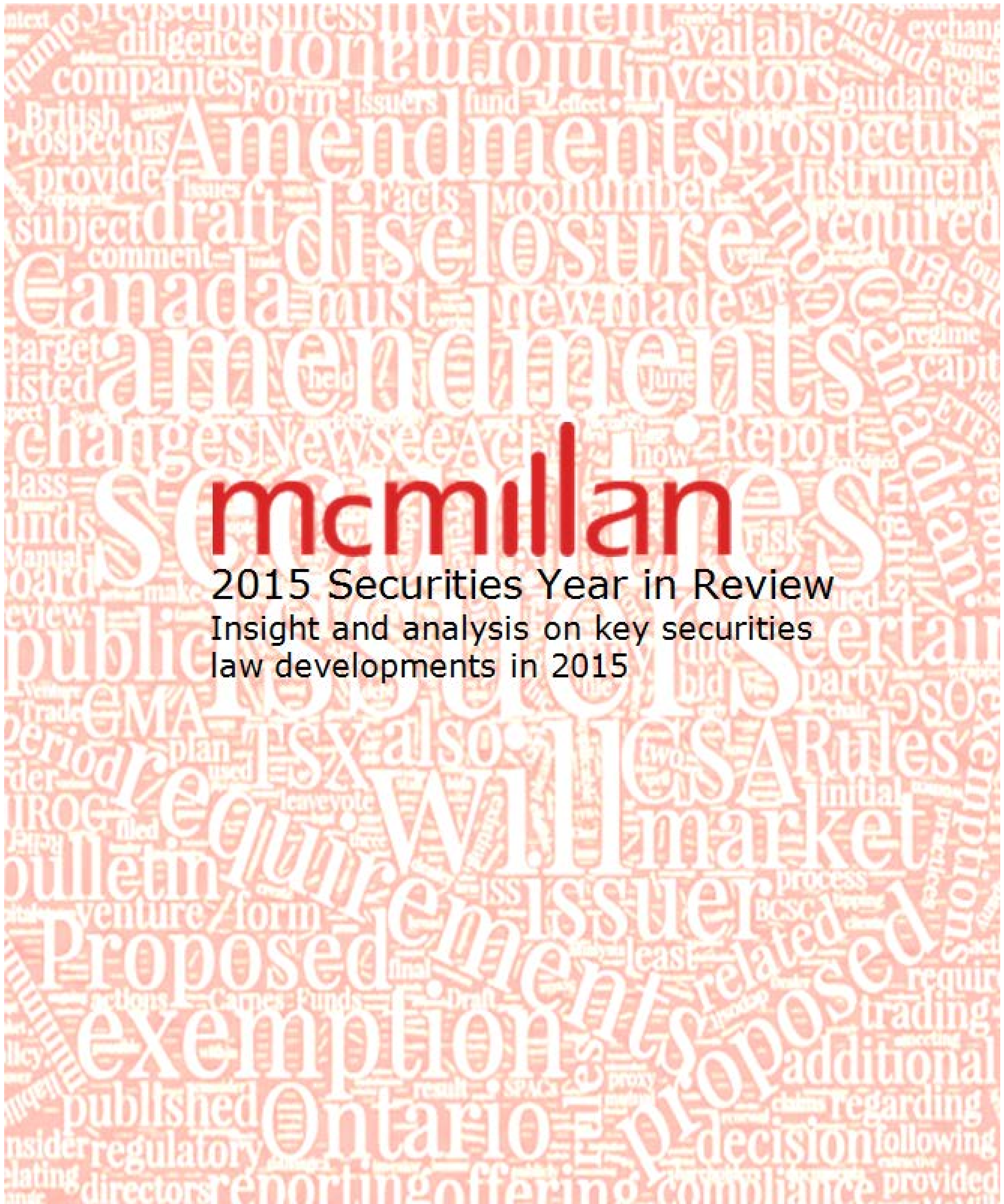
mcmillan
2015 Securities Year in Review
Insight and analysis on key securities
law developments in 2015

FOREWORD

Through our annual *Securities Year in Review* publication we seek to highlight key changes in the capital markets sector, particularly with respect to significant changes in securities laws.

In this respect, 2015 was a notable year for capital markets in Canada with important developments in several areas, including a continuing march towards a national securities regulator, numerous reforms to the exempt market system and notable changes to public disclosure requirements. Although most of the amendments were evolutionary rather than revolutionary, they are nonetheless significant for issuers and other stakeholders and hold promise for certain landmark changes in the future.

As we move into 2016, we continue to regularly monitor securities laws developments. Updates on issues relating to capital markets and corporate law are routinely published by McMillan lawyers on our website. In case you require information about specific issues please do not hesitate to get in touch with us.

Amandeep Sandhu
Andjela Vukobrat

Cautionary Note: This publication only provides an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained. © McMillan LLP 2016

EXECUTIVE SUMMARY

Move Towards a National Securities Regulator

2015 was marked by a number of noteworthy developments in Canadian securities laws, including a continued push forward by a number of the provinces and the federal government to create a common securities regulatory regime and a uniform Capital Markets Act (CMA). The past year saw various revisions to the draft CMA, including amendments to the regulatory and criminal enforcement provisions, significant proposed amendments to the Canadian takeover bid regime, revisions to the provisions of the CMA pertaining to civil liability for insider trading, and changes to the draft derivatives regulations.

Reforms to Exempt Market System

The past year also saw a number of noteworthy revisions to the exempt market system in Canada, including the introduction of a new existing security holder exemption and a revised rights offering regime designed to streamline and facilitate the rights offering process. Other developments include a series of amendments to the exemptions available to accredited investors and to the minimum amount investment prospectus exemption, as well as changes in Ontario intended to harmonize the exemptions relating to offering memorandums and family, friends and business associates with those of other jurisdictions.

Changes to Disclosure Requirements

Significant changes were announced to disclosure and record keeping requirements with the aim of streamlining disclosures rules for venture issuers as well as improving accountability and transparency in the extractive sector. For venture issuers, changes were made to the disclosure requirements relating to executive compensation, business acquisition reports, and prospectuses. For issuers in the extractive sector, the *Extractive Sector Transparency Measures Act* came into force. Changes were also made to the TSX Manual to give security holders a vote before their securities were voluntarily delisted.

We also witnessed the introduction of certain proposed legislative changes to disclosure requirements, including the CSA's proposal for a single, harmonized exempt distribution reporting form for all provinces, as well proposed changes to National Instrument 41-101 *General Prospectus Requirements* pertaining to the disclosure requirements for mutual funds and exchange-traded mutual funds.

Rules for Foreign and Interlisted Issuers

A number of revisions were also made to securities laws applicable to foreign and interlisted issuers. The TSX Company Manual was amended to expand the exemptions available to TSX interlisted issuers, and blanket orders issued in certain Canadian provinces resulted in enhanced relief for certain issuers in connection with obligations under Multilateral Instrument 51-105 *Issuers Quoted on the U.S. Over-the-Counter Markets*. Additional relief for foreign issuers followed in the form of amendments that reduce the disclosure burden on foreign issuers privately placing securities in Canada by reducing the type of disclosure typically required in a Canadian "wrapper" to an offering document.

The Arrival of Crowdfunding in Canada

Another notable amendment included the creation of a crowdfunding prospectus exemption adopted by certain provinces in the form of Multilateral Instrument 45-108 – *Crowdfunding*. This exemption provides a legal framework for crowdfunding as a means for early-stage companies to raise capital by balancing the need for fewer disclosure requirements with a continuing commitment to investor protection.

TSX Company Manual – Requirements for Non-Corporate Issues

On September 17, 2015, the TSX amended the TSX Company Manual (the Manual) to codify existing practices of the TSX with respect to listing and other requirements for certain types of non-corporate issuers, namely closed-end funds, exchange traded products (ETPs) and structured products. It also introduced certain which are generally consistent with current Ontario Securities Act requirements for these types of issuers.

Amendments to OTC Derivative Trade Reporting Rules

In late 2015, the Ontario Securities Commission published proposed amendments relating to the regulation of the over-the-counter (OTC) derivatives market in Ontario, Manitoba and Quebec (the MOQ Authorities). In January of 2016, the provinces of Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, and Saskatchewan adopted their own rules relating to the regulation of the OTC derivatives market which are substantively harmonized with the OTC derivative trade reporting rules adopted by the MOQ Authorities.

Judicial and Administrative Decisions

The past year witnessed several noteworthy decisions from the courts and securities regulators dealing with a number of interesting subject matters relevant to regulation of the capital markets - from the scope of the public interest authority of securities regulators to the fairness of a plan of arrangement. These notable developments should be of interest to capital markets participants and are discussed below.

Noteworthy Proposed Amendments

In addition to the above noted proposed amendments to disclosure requirements, the past year also witnessed a number of noteworthy proposed amendments, including a proposed Whistleblower Policy by the Ontario Securities Commission (OSC). The Whistleblower Policy is designed to encourage reporting to the OSC of misconduct or possible breaches of Ontario securities laws and would if implemented be the first of its kind among Canadian securities regulators. In early 2015, the CSA also published an update on the proposal for a comprehensive regulatory framework for publicly offered alternative investment funds.

Guidance from Regulatory Authorities

In the past year, several securities regulatory authorities provided useful guidance relating to various matters of importance to capital markets participants, including the following:

CSA: Corporate Governance Disclosure

The Canadian Securities Administrators (CSA) released a report discussing its review of compliance with the new corporate governance disclosure rules introduced in October 2014, and provided further guidance for issuers on improving compliance.

OSC: Related Party Transaction Reporting

In February 2015, the OSC released a report based on a review of related party transaction disclosure in which it identified disclosure issues and provided guidance to issuers preparing required related party disclosure. While financial and MD&A disclosure met most key disclosure requirements, a number of deficiencies were identified.

IIROC: Underwriting Due Diligence

In December 2014, the Investment Industry Regulatory Organization of Canada (IIROC) issued its final guidance regarding due diligence conducted by underwriters on public offerings of securities in Canada. The proposed guidance was originally published by IIROC in March 2014 and was amended to address a number of comments. The final guidance promotes consistency and enhanced standards by setting out the elements of the underwriting due diligence process as well as the types of policies and procedures dealer members need to follow.

CSA: Proxy Voting

The CSA have been engaged in a review of the Canadian voting infrastructure since August 2013. In January of 2015, the CSA issued a report that discusses the progress made to date in their review and outlines next steps. The progress report confirms that the CSA believes the current system to be fragmented and requiring modernization and improvement.

IIROC: Priorities for Upcoming year

In April 2015, IIROC published a Notice setting out its key priorities for the upcoming year, including a list of strategic goals and a comprehensive list of activities and projects it plans to undertake. The Notice is a result of IIROC's efforts to adjust its strategic objectives and priorities in order to better fulfill its regulatory mandate.

ISS: Proxy Voting Guidelines

Institutional Shareholder Services (ISS) released its 2016 Proxy Voting Guidelines Updates for shareholder meetings held in 2016. The Guidelines are a product of ISS' 2015 global policy survey, which solicited the views of investors, companies, and other interested parties with respect to corporate governance issues. Among the topics considered are director overboarding, proxy access, compensation programs and compensation disclosure at externally-managed issuers.

mcmillan

CONTENTS

A. MOVE TOWARDS NATIONAL SECURITIES REGULATOR – REVISED CAPITAL MARKETS ACT 3
I. Amendments to Regulatory and Criminal Enforcement Provisions 3
Increased Procedural Protections 3
Augmented Investigative Powers 4
Increased Whistleblower Protection 4
II. New Takeover Bid Regime 4
III. Civil Damages For Insider Trading Revisited 5
Reversal of Proposed Changes to the Definition of "Misrepresentation" 5
Expansion and Clarification of Liability for Insider Trading 5
Changes to Ontario Securities Act Insider Trading Provisions 6
IV. Draft Derivatives Laws 6
B. LEGISLATION –OTHER AMENDMENTS IN 2015 7
I. Reforms to the Exempt Market System for Capital Raising 7
OSC Adopts Existing Security Holder Prospectus Exemption 7
Changes to Rights Offering Prospectus Exemption 8
Amendments to National Instrument 45-106 – Prospectus and Registration Exemptions 8
II. Disclosure and Recordkeeping 10
Streamlined Disclosure Rules for Venture Issuers 10
Extractive Sector Transparency Measures Act 11
Voluntary Delisting: Changes to TSX Company Manual 11
New Recordkeeping Requirements (Ontario) 12
III. Relief for Foreign or Interlisted Issuers 12
Deference-Based Amendments to TSX Company Manual 13
Enhanced Blanket Relief in Connection With MI 51-105 13
Streamlining Foreign Private Placements 14
IV. Crowdfunding 15
V. New Listing Requirements for Non-Corporate Issuers 15
VI. Amendments to OTC Derivative Trade Reporting Rules 17
Manitoba, Ontario and Quebec 17
Alberta, British Columbia, Saskatchewan, New Brunswick and Nova Scotia 17
C. NOTABLE JUDICIAL DECISIONS 18
I. Kingsway Financial Services Inc. v. Kobex Capital Corp 18
II. Theratechnologies Inc v 121851 Canada Inc. 18
III. Re Carnes 19
IV. 9171665 Canada Ltd. and Connacher Oil and Gas Ltd. 19
V. Re Red Eagle 20
VI. Coffin v. Atlantic Power Corp. 20
D. LEGISLATION – PROPOSED AMENDMENTS IN 2015 21
I. Disclosure 21
Proposed Single Exempt Distribution Reporting Regime 21
Proposed New Disclosure Requirement for Exchange Traded Funds 21
Proposed Amended Risk Disclosure for Mutual Funds and ETFs 22
II. OSC Whistleblower Initiative 22

III. Alternative Funds Proposal Update 23
E. OTHER NOTABLE DEVELOPMENTS 23
I. CSA Guidance on Corporate Governance and Gender Diversity 23
Gender Diversity 24
Number of Women on Boards and in Executive Officer Positions 24
Targets 24
Adoption of a Written Policy Regarding the Representation of Women 24
Consideration of the Representation of Women 24
Conclusions 25
Term Limits and Other Mechanisms of Board Renewal 25
II. Related Party Transaction Reporting 25
III. IIROC Issues Final Guidance on Underwriting Due Diligence 26
IV. CSA: Proxy Voting in Canada Needs Modernization 27
V. IIROC Announces Priorities for Up Coming Year 27
VI. ISS Proxy Voting Guidelines for 2016 28
VII. SPACs – The "New" Private Equity Vehicle in Canada 29
AUTHORS 30
ABOUT MCMILLAN LLP 31

A. MOVE TOWARDS NATIONAL SECURITIES REGULATOR – REVISED CAPITAL MARKETS ACT

2015 saw a continued push forward by a number of the provinces and the federal government to create a common securities regulatory regime—the Cooperative Capital Markets Regulatory System (the Cooperative System). Specifically, an updated draft of the uniform *Capital Markets Act* (the CMA), the initial draft having been published in December 2014, as well as draft initial regulations and related materials (together, the Draft Regulations), were published for comment on August 25, 2015, with the comment period closing on December 23, 2015. The governments of Ontario, British Columbia, New Brunswick, Saskatchewan, Prince Edward Island and the Yukon (the Participating Jurisdictions) intend to participate in the Cooperative System and to adopt the Draft Regulations. The introduction of the Cooperative System will fundamentally overhaul the Canadian securities and derivatives regulatory landscape.

The Participating Jurisdictions and the federal government have agreed to use their best efforts to enact the CMA by June 30, 2016. For general background on the Cooperative System, please see here.

Highlighted below are the most notable changes proposed by the Draft Regulations.

I. Amendments to Regulatory and Criminal Enforcement Provisions

Following the consultation period, several adjustments were made to the regulatory and criminal enforcement provisions of the initial draft CMA, including changes to the procedural protections afforded to parties in regulatory proceedings, changes to investigative powers and additional whistleblower protections.

Increased Procedural Protections

The initial draft CMA provided that the tribunal to be established in accordance with the Memorandum of Agreement[1] (the Tribunal) may order a respondent to pay administrative penalties, disgorgement of profits, and compensation or restitution. The revised draft CMA clarifies that the Chief Executive Officer of the Authority's Regulatory Division (the Chief Regulator) may, with the consent of a party, order a party to make a payment in connection with the settlement of a proceeding or prospective proceeding. This change could provide an avenue for resolving regulatory allegations without protracted public proceedings.

The initial draft of the CMA also provided that the Capital Markets Regulatory Authority (Authority) can make an order according or removing certain designations where the public interest would not be prejudiced. The revised draft CMA provides persons directly affected by such an order an opportunity to be heard prior to an order being made. This change provides added procedural protections for market participants.

Finally, the initial draft of the CMA provided that each of the Authority, the Chief Regulator and the Tribunal can vary or revoke their decisions where, they consider, doing so would not be prejudicial to the public interest. The revised draft CMA gives persons directly affected by the

---

[1] The Memorandum of Agreement Regarding the Cooperative Capital Markets Regulatory System signed by the governments of British Columbia, Ontario, Saskatchewan, New Brunswick and Canada in 2014.

initial decision or the proposed varied decision of the Authority or the Chief Regulator the opportunity to be heard prior to the variation decision being made. This right is not provided for Tribunal decisions, which can only be varied by application of a party.

Augmented Investigative Powers

The revised draft CMA enables investigators to compel any person to preserve information under that person's control for the purpose of an investigation. It also allows peace officers and other investigators to apply to a judicial officer for a preservation order against any person (other than the target of an investigation) with information that will assist an investigation. This has potential implications in the form of increased costs for market participants who become involved in regulatory investigations. Also important to note is that the revised draft CMA clarifies that the increased investigative powers do not override solicitor-client privilege.

Increased Whistleblower Protection

The protections for "whistleblowers" have also been amended to include anti-reprisal protection for reporting contraventions of capital markets law to employers, in addition to the proposed protections for reporting to regulators. This change reflects the broader criticism of whistleblower programs that they encourage employees to circumvent their employers' internal compliance systems in favour of reporting to regulatory authorities for possible compensation.

II. New Takeover Bid Regime

In March 2015, the Canadian Securities Administrators (CSA) published proposed amendments to the Canadian takeover bid regime. As part of the Draft Regulations, these proposed amendments will result in changes to the current rules governing takeover bids by extending the mandatory minimum deposit period and putting in place certain mechanisms designed to address the perceived coercive features of the current rules. Three key features of the takeover bid amendments are as follows:

*120-day minimum deposit period * (subject to exceptions.)* Takeover bids will have to remain open for a longer minimum deposit period of 120 days (as opposed to the current 35-day minimum deposit period), subject to the following two exceptions:

- the target issues a press release regarding a bid announcing that a shorter deposit period (which cannot be less than 35 days) is adequate to the target board for the bid, in which case all outstanding or subsequent concurrent take-over bids must remain open for at least such shorter deposit period; or revise
- the target issues a press release announcing that it has agreed to or has determined to effect a specified "alternative transaction", in which case all outstanding or subsequent concurrent take-over bids will be subject to a shorter 35-day minimum period.

According to the CSA, the 120-day minimum deposit period is intended to afford target boards sufficient time to respond to an unsolicited bid.

50% minimum tender condition. Before the bidder can take up shares under a takeover bid, more than 50% of the outstanding securities owned by persons other than the bidder and any joint actors must be tendered and not withdrawn.

Mandatory 10-day extension. Once the minimum tender condition is achieved and all other conditions of a takeover bid have been either complied with or waived, the bid period must be extended by 10 days.

The stated objectives of the Proposed Amendments include the facilitation of shareholders' ability to make voluntary, informed, and coordinated tender decisions while providing target boards with additional time to respond and seek out value-maximizing alternatives. The rules surrounding issuer bids will remain unchanged.

* Update: On February 25, 2016, the CSA published its final amendments (the Final Amendments) to the Canadian take-over bid regime, which include an adjusted 105-day minimum deposit period. The Final Amendments also clarify that if an offeror chooses to further extend its bid after expiry of the mandatory 10-day extension for a period of more than 10 days, the offeror will be required to take up securities deposited during the extension period not later than 10 days after the deposit of the securities. In the case of a partial take-over bid, the mandatory 10-day period must not exceed 10 days and may not be further extended. The Final Amendments go into effect on May 9, 2016.

III. Civil Damages For Insider Trading Revisited

While not many substantive changes have been made to the provisions of the CMA pertaining to civil liability (parts 12 and 13), there have been notable revisions to the definition of "misrepresentation" and to provisions relating to civil liability for insider trading and related conduct.

Reversal of Proposed Changes to the Definition of "Misrepresentation"

The new definition of "misrepresentation" has been changed from "a false or misleading statement of a material fact" to the definition used in the original draft CMA, being "an untrue statement of material fact". The reversal was effected to achieve harmony with the current definition in the securities legislation of the Participating Jurisdictions.

Expansion and Clarification of Liability for Insider Trading

The revised draft CMA has expanded the tipping and recommending offences to also prohibit tipping or recommending by a person who is "considering or evaluating whether to take, or proposes to take" certain prescribed actions and are no longer limited to a person who "proposes to take" such actions. These changes were made to follow recent amendments to the Ontario *Securities Act*[2] and be consistent with the definition of "special relationship" in the CMA.

Furthermore, changes have been made to the provisions relating to insider trading damages in the revised draft CMA which clarify and limit the civil damages that may be recoverable for insider trading, tipping and recommending. The court's broad judicial discretion to determine damages under the original draft CMA has been removed, with the revised draft CMA mandating that damages be "equal to the amount of the loss incurred by the plaintiff as a result of the contravention" but are capped at an amount equal to "triple the amount of the profit made or loss avoided by all persons as a result of the contravention" minus "the aggregate of all damages assessed after appeals, if any, against the person in all other actions brought

[2] RSO 1990, c S5.

under this section and under comparable legislation in other provinces and territories in Canada with respect to the same contravention" minus "any amount paid in settlement of those actions."

Finally, the revised draft CMA includes sections providing for joint and several liability for insider-trading related activities, meaning that in situations involving concerted action by multiple defendants, individual defendants could become liable for the acts of co-defendants.

Changes to Ontario Securities Act Insider Trading Provisions

In the context of the ongoing discussion and development of the Draft Regulations, the Ontario *Securities Act* (the Act) has been amended to expand the scope of prohibited insider trading and enhance the record-keeping requirements imposed on capital market participants.

Prior to the amendment, insider trading and tipping prohibitions set out in section 76 of the Act only applied to the securities of Ontario reporting issuers, meaning that securities of companies that were not reporting issuers in Ontario were not subject to the insider trading prohibitions.

Under the amendments, insider trading and tipping prohibitions have been expanded to also apply to any other issuers whose securities are publicly traded. Consequently, trading in the securities of foreign companies whose securities are listed on foreign exchanges will now be subject to the insider trading and tipping prohibitions in the Act.

In the event the Draft Regulations adopt both the expanded prohibition on insider trading and the expanded civil liability provisions (as discussed above), the scope of potential civil claims alleging insider trading, including class actions, would be significantly expanded.

IV. Draft Derivatives Laws

The 2014 draft CMA had provisions relating to derivatives regulation. It gave authority to the Capital Markets Regulatory Authority (CMRA) to make national regulations regarding data reporting and trade repositories for the purpose of identifying and mitigating systemic risk.

The current draft CMA issued in 2015 includes some minor changes to the treatment of derivatives, including a new Part 6 of the draft CMA which prohibits a person from trading in a designated derivative unless a prescribed disclosure document has been filed and, where required, a receipt has been issued by the Chief Regulator. The current draft CMA is accompanied by two new draft regulations focused on derivatives trading: Regulation 91-501 *Derivatives and Strip Bonds* (Regulation 91-501) and Regulation 91-502 *Trade Repositories and Derivatives Data Reporting* (Regulation 92-502):

Regulation 91-501 *Derivatives and Strip Bonds*

Regulation 91-501 deals with exchange contracts and over-the-counter (OTC) derivatives. The regulation stipulates that exchange contracts are not securities, thereby foregoing the prospectus requirements (as the draft CMA does not contain a separate prospectus requirement for derivatives). The regulation also requires registered dealers and advisers to deliver a written risk disclosure statement. It provides that all dealers and advisers must be registered unless an exemption is applicable. For exchange contracts, it sets out exemptions from registration requirements that reflect exemptions currently existing in a number of provinces. It also exempts international persons dealing in or advising on exchange contracts traded on an

exchange located outside of Canada that are cleared through one or more clearing agencies also located outside of Canada.

Under current legislation, OTC derivatives in British Columbia and Saskatchewan are subject to prospectus requirements and OTC derivatives in Ontario and New Brunswick generally are not. Under Regulation 91-501, the prospectus and registration requirements apply to OTC derivatives unless there is an exemption. The registration and prospectus exemptions currently available in British Columbia and granted on a discretionary basis in Ontario are carried forward into Regulation 91-501, which provides for a exemption from the registration and prospectus requirements where each party to the trade is a qualified party or a permitted client, each acting as principal.

Regulation 91-502 *Trade Repositories and Derivatives Data Reporting*

Regulation 91-502 is derived from the OSC Rule 91-507 *Trade Repositories and Derivatives Data Reporting* and OSC Rule 91-506 *Derivatives: Product Determination*. It will primarily require derivatives dealers and clearing agencies to report derivatives transactions involving local counterparties. Under the regulations most OTC derivative transactions will be required to be reported, whereas exchange contracts will generally be exempt from the data reporting requirements.

B. LEGISLATION –OTHER AMENDMENTS IN 2015

I. Reforms to the Exempt Market System for Capital Raising

2015 saw a number of noteworthy revisions to the exempt market system in Canada which will have a significant impact on prospectus-exempt financings. Smaller issuers who face a constrained financing environment will benefit from two such initiatives, one being the introduction of a new existing securityholder exemption and the other a revised rights offering regime designed to streamline and facilitate the rights offering process. Other developments include a series of amendments to the exemptions available to accredited investors and to the minimum amount investment prospectus exemption, as well as changes in Ontario intended to harmonize the exemptions relating to offering memorandums and family, friends and business associates with those of other jurisdictions.

OSC Adopts Existing Security Holder Prospectus Exemption

Further to our March 2014 update, the Ontario Securities Commission (the OSC) has followed suit with the majority of Canadian reporting jurisdictions by adopting a prospectus exemption for existing securities holders.
Reporting issuers in Ontario will now be able to raise funds more efficiently by issuing securities directly to their existing shareholder base without a prospectus, an especially welcome development for junior companies looking to raise additional capital in a cost-effective manner. To rely on the exemption, a number of conditions must be met, including that the issuer's shares must be listed on the Toronto Stock Exchange (TSX), TSX-V, or Canadian Securities Exchange (CSE), the issuer must make the offering available to all existing security holders, the offering may not increase the number of outstanding listed securities of the issuer by more than 100% and the offering must be disclosed in a press release. For a full list of conditions, see our bulletin on the exemption here.

Unlike other jurisdictions, the Ontario exemption will not be available for distributions in Ontario where the issuer is an investment fund.

Changes to Rights Offering Prospectus Exemption

On September 24, 2015, the Canadian Securities Administrators (CSA) announced a long anticipated change to the rights offering prospectus exemption, which is expected to result in greater access and use of the exemption by reporting issuers. As the previous exempt rights offering regime had several drawbacks that made it an unappealing option for issuers, the following changes are intended to create a streamlined prospectus exemption for rights offerings that continues to offer shareholder protection:

- *Notice.* A notice must be filed on SEDAR and sent to applicable securityholders and must include information on how the securityholders will access the rights offering circular electronically.
- *Circular.* The form of circular will be simplified into a question and answer format, which the CSA expects to be no longer than ten pages in length, that must be filed concurrently with the notice, but does not need to be sent to securityholders and is not subject to commission review.
- *Dilution Limit.* The dilution limit will be increased to 100% (from 25% under the old system) within a 12-month period, allowing for greater use of the exemption.
- *Statutory Secondary Market Civil Liability.* Investors will have a statutory right of damages for any misrepresentations of the issuer made pursuant to the use of the rights offering prospectus exemption. Further, failure to make timely disclosure can also attract liability. The liability is not limited to the responsible issuer, but can be extended to directors, officers, and other parties such as experts and influential persons, in accordance with applicable legislation.

The anticipated result of these changes to the rights offering regime is increased use of such offerings for capital raising purposes. For additional information, see our bulletin: Rights (offering) on the money: CSA announces changes to rights offering prospectus exemptions.

Amendments to National Instrument 45-106 – Prospectus and Registration Exemptions

On February 19, 2015, the CSA announced the adoption of amendments (the Amendments) to National Instrument 45-106 – *Prospectus and Registration Exemptions* (NI 45-106). The changes were initially published for comment in February 2014.

The AI and MA exemptions and amendments

There were significant changes in respect of the accredited investor prospectus exemption (AI exemption) and the minimum amount investment prospectus exemption (MA exemption). While thresholds for individuals to qualify as accredited investors and the threshold of the amount for the MA exemption have not changed with the Amendments, the following are the most notable amendments to the AI and MA exemptions:

- Individual accredited investors are now required to complete a new risk-acknowledgment Form 45-106F9 – *Form for Individual Accredited Investors* (Form 45-106F9).
- Additional guidance has been provided on what an issuer or other seller of securities should do to ensure that prospective purchasers meet the requirements for a prospectus exemption.
- Trusts established by accredited investors for family members are now also included in the definition of "accredited investor" for the purposes of the AI exemption.
- The MA exemption has been restricted to only be available for distributions to non-individuals, meaning that natural persons are excluded from being able to rely on this exemption.
- Ontario's fully managed accounts that purchase investment fund securities are now included under the AI exemption's managed account category, aligning Ontario with other CSA jurisdictions.
- The categories of those who must sign Form 45-106F9 have been clarified and the form has been revised to try to make it easier for investors to understand.
- Companion Policy to NI 45-106 has been modified to provide more detail on practices used to verify when purchasers satisfy the conditions for the exemptions.

Ontario's Family, Friends and Business Associates Exemption

The Amendments also introduced to Ontario a family, friends and business associates exemption (FFBA exemption), published initially for comment in March 2014. The FFBA exemption is available for distributions to directors, executive officers, control persons and founders of the issuer as well as family members, close personal friends and close business associates of the directors, executive officers, control persons or founders of the issuer (see section 2.5(1) of NI 45-106). The FFBA exemption requires a separate risk acknowledgment form, Form 45-106F12 – *Risk Acknowledgment Form for Family, Friend and Business Associate Investors*.

The exemption allows early-stage issuers to benefit more from cost-effective capital from family, friends and business associates. While the Amendments harmonize Ontario law with other CSA jurisdictions, the Ontario exemption is not available for investment funds.

Short-term Debt Prospectus Exemption and Short-Term Securitized Products Prospectus Exemption

The Amendments also include several changes to the short-term debt prospectus exemption and the introduction of a short-term securitized products prospectus exemption, first published for comment in January 2014.The Amendments modify the credit ratings that are needed to distribute short-term debt (primarily commercial paper) and also make the short-term debt prospectus exemption unavailable for securitized products like asset-backed commercial paper. The Amendments also create a new short-term securitized products prospectus exemption

under section 2.35.1 of NI 45-106, which may only be used if a number of conditions are satisfied. The short-term debt, private issuer, FFBA exemption and the offering memorandum exemptions cannot be used for the distribution of short-term securitized products.

For additional information regarding the Amendments, see our bulletin: CSA Adopts Amendments to Accredited Investor and Minimum Amount Investment Prospectus Exemptions.

II. Disclosure and Recordkeeping

In 2015, significant changes were announced to the disclosure and record keeping requirements with the aim of streamlining disclosure rules for venture issuers as well as improving accountability and transparency in the extractive sector. For venture issuers, changes were made to the disclosure requirements relating to executive compensation, business acquisition reports, and prospectuses. For issuers in the extractive sector, the *Extractive Sector Transparency Measures Act*[3] came into force. Changes were also made to the TSX Company Manual to give security holders a vote before their securities were voluntarily delisted.

Streamlined Disclosure Rules for Venture Issuers

The CSA have streamlined venture issuer disclosure rules by making targeted amendments to various national instruments and companion policies, with the majority of the amendment having gone into effect June 30, 2015. In general, the rules made disclosure obligations in respect of management discussion & analysis (MD&A), executive compensation, business acquisition reports, and prospectuses more suitable and manageable for companies at the venture stage of development. At the same time, they substantively strengthen corporate governance by requiring venture issuers to have more independent audit committees.

McMillan discussed the proposed amendments in May 2014. The final amendments do not differ substantially from the May 2014 proposals, but there are some notable differences that will benefit all venture issuers. The key amendments include:

- *Quarterly Highlights*: All venture issuers may opt to provide their investors with "quarterly highlights" documents for interim financial periods, focused on operations and liquidity, in place of a full MD&A. Under the initial May 2014 proposal, only venture issuers without significant revenue would have been able to issue these highlights.

- *Executive Compensation Disclosure*: Venture issuers may opt to use the new Form 51-102F6 *Statement of Executive Compensation – Venture Issuers*, which makes some of the executive compensation disclosure less onerous and gives venture issuers 180 days from their financial year-end to file executive compensation disclosure.

- *Business Acquisition Report (BAR) Disclosure*: The significance test for venture issuers to file BARs for acquisitions has been raised from 40% to 100%, and BARs filed by venture issuers will no longer need to contain pro forma financial statements.

---

[3] SC 2014, c 39, s 376.

- *General Prospectus Requirements:* Venture issuers are now relieved from certain prospectus requirements, primarily that only two (and not three) years of audited financial statements are now required to be disclosed in an IPO prospectus, and only two (and not three) years of a venture issuer's business history needs to be described.
- *Audit Committees*: There will now be a new requirement for venture issuers to have an audit committee consisting of at least three members, the majority of whom must be independent, a requirement comparable to the policies of the TSX Venture Exchange.

The final amendments also require non-venture issuers to file statements of executive compensation 140 days from their financial year-end and contain certain housekeeping amendments to Form 51-102F2 *Annual Information Form* to comply with previously enacted mineral project disclosure amendments (affecting venture and non-venture issuers).

For additional information on these streamlined disclosure rules, see our bulletin: A Tailored Fit: Streamlined Disclosure Rules to Suit Venture Issuers.

Extractive Sector Transparency Measures Act

On June 1, 2015, the *Extractive Sector Transparency Measures Act* (the Act) came into force, establishing "publish what you pay" standards for Canadian extractive businesses. As a result, all businesses engaged in the commercial development of oil, gas or minerals in Canada or elsewhere that meet certain criteria are required to report payments such as taxes, royalties, fees, production entitlements and bonuses of $100,000 or more made to any level of government in Canada and abroad.

The businesses subject to the Act will be required to provide annual reports not later than 150 days after the end of each financial year commencing after July 1, 2015. The Act includes a two year deferral to June 1, 2017 of the obligation to report payments made to Aboriginal governments in Canada. In order to minimize the administrative burden, the Canadian federal government may permit reporting entities to meet the Canadian reporting requirements by substituting reports prepared in another jurisdiction whose requirements are determined to be an acceptable substitute.

On July 29, 2015, the Federal government released draft guidance to help businesses in the exploration and extractive sectors understand the requirements of the Act. The guidance is intended to be practical and illustrative rather than prescriptive. For a summary of the draft guidance, see our bulletin: Federal Government Issues Guidance under the Extractive Sector Transparency Measures Act

Voluntary Delisting: Changes to TSX Company Manual

On April 30, 2015, section 720 of the TSX Company Manual, which deals with the voluntary delisting of an issuer, was amended to provide security holders with a vote on whether the securities that they hold should be voluntarily delisted.

In addition to requiring an issuer to submit an application for voluntary delisting to the TSX, the TSX will generally require approval by the holders of an affected class or series of securities for the voluntary delisting application for certain types of securities. The TSX may waive security holder approval if it is satisfied that:

- an acceptable alternative market exists or will exist for the listed securities;
- security holders have a near term liquidity event for which all material conditions have been satisfied and which is very likely to occur;
- the listed issuer is under delisting review and it is unlikely that TSX will be satisfied that the deficiencies will be cured within the prescribed period; or
- in the case of listed securities other than shares, if the listed securities are convertible, exercisable or exchangeable at the holder's option into another class of listed securities.

A security holder that controls 50% or more of the affected class or series of securities of an issuer will generally be ineligible to vote on the delisting. In addition, any insider that has an interest which materially differs from other security holders will not be eligible to vote.

An additional requirement stipulated under the amendments is the dissemination of a press release pre-cleared by TSX announcing the voluntary delisting. This provision is designed to enhance public disclosure and provide notice of the issuer's intention to voluntarily delist. This amendment is in line with practices for voluntary delisting at other peer exchanges.

For additional background information on the delisting amendments, see our McMillan bulletin: Voluntary Delisting and Deference: TSX Proposes Changes to the Company Manual.

New Recordkeeping Requirements (Ontario)

In June 2015, the Ontario government amended the Ontario's *Securities Act* (Act) to enhance the record-keeping requirements imposed upon capital market participants in the province. Pursuant to the new requirements, Ontario market participants are now subject to a broad obligation under to keep "such books, records and other documents as may reasonably be required to demonstrate compliance with Ontario securities law."

Given the broad definition of "market participants" set out in the Act and the broad nature of the record-keeping obligation itself, the potential scope of the situations in which record keeping may "reasonably be required to demonstrate compliance with Ontario securities law" will conceivably become very broad.

III. Relief for Foreign or Interlisted Issuers

2015 also witnessed several changes to securities laws applicable to foreign and interlisted issuers. The TSX Company Manual was amended to expand the exemptions available to TSX interlisted issuers. Blanket orders issued in certain Canadian provinces resulted in enhanced relief for certain issuers in connection with obligations under Multilateral Instrument 51-105 *Issuers Quoted on the U.S. Over-the-Counter Markets*. Additional relief for foreign issuers followed in the form of amendments that reduce the disclosure burden on foreign issuers privately placing securities in Canada by reducing the type of disclosure typically required in a Canadian "wrapper" to an offering document. These and other developments impacting foreign and interlisted issuers are discussed below.

Deference-Based Amendments to TSX Company Manual

On September 10, 2015, the TSX implemented amendments to its Company Manual to modify and expand the exemptions available to TSX issuers listed on one or more other exchanges (interlisted issuers) where the primary market is an exchange other than the TSX. The TSX will defer to the regulatory authority of specified exchanges or jurisdictions for an expanded number of transactions and corporate governance issues. The purpose of the Amendments is to alleviate the regulatory burden on eligible interlisted issuers and to facilitate foreign issuer listings on the TSX.

These amendments should be of interest to issuers who are listed on more than one exchange with less than 25% of their securities trading within Canada, and will potentially reduce current overlapping exchange obligations for such issuers. The amendments aim to align TSX practices with those of other major exchanges, the majority of which have formalized rules and frameworks for exempting issuers who are listed on two or more exchanges or marketplaces from certain exchange requirements.

For additional background information on the delisting amendments, see our bulletin: Voluntary Delisting and Deference: TSX Proposes Changes to the Company Manual.

Enhanced Blanket Relief in Connection With MI 51-105

The past year saw enhanced relief in connection with blanket orders issued in British Columbia, Nova Scotia, New Brunswick, Yukon and Saskatchewan, which allow distributions to permitted clients to be exempt from Multilateral Instrument 51-105 *Issuers Quoted on the U.S. Over-the-Counter Markets* (MI 51-105) obligations under certain conditions. MI 51-105 is intended to discourage the manufacture and sale of over-the-counter (OTC) quoted shell companies that can be used to facilitate abusive market practices. Under MI 51-105, which is adopted by every province other than Ontario, issuers who carry out certain types of investment activities in certain provinces can become subject to Canadian public company-type obligations.

In response to the concern that MI 51-105 would have an overreaching impact, regulators in most Canadian jurisdictions have issued blanket orders to exempt certain issuers from the application of the MI 51-105. Four types of blanket relief are available:

- Relief for distributions to permitted clients, as defined in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*.
- Relief for issuers listed on certain exchanges. Issuers who have a "primary listing" on any of the North American stock exchanges prescribed MI 51-105 are already exempt from the instrument; the blanket orders expand on the list of exchanges associated with this exemptive relief.
- Relief related to non-convertible debt securities. Most Canadian jurisdictions provide for an exemption from MI 51-105 for issuers that distribute certain securities to investors resident in the relevant jurisdiction, provided the issuer does not have any class of securities, other than non-convertible debt securities, listed on an exchange or quoted on a quotation and trade reporting system.

- Relief for investment funds in Quebec. The blanket order issued by the Autorité des Marchés Financiers (AMF) also exempts any issuer that is an investment fund from the application of MI 51-105 in its entirety.

Streamlining Foreign Private Placements

In June of this year, Canadian securities regulators made a number of amendments designed to reduce the disclosure burden on foreign issuers privately placing securities in Canada by reducing the type of disclosure typically required in a Canadian "wrapper" to an offering document. Relief from the wrapper requirements has been implemented through amendments to National Instrument 33-105 *Underwriting Conflicts* , OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions* and a new Multilateral Instrument 45-107 *Listing Representation and Statutory Rights of Action Disclosure Exemptions*.

These amendments, which took effect on September 8, 2015, provide relief from the disclosure requirements related to underwriter conflicts of interest and statutory rights of action, as well as prohibitions on making certain listing representations, where securities are sold to permitted clients provided certain conditions are satisfied. Relief from all three requirements will only be available in respect of "eligible foreign securities" if all of the following requirements are met:

- the offering is being conducted primarily in a foreign jurisdiction;
- the security being distributed is either:
    - issued by an issuer that (i) is incorporated, formed or created under the laws of a foreign jurisdiction, (ii) is not a reporting issuer in Canada, (iii) has its head office outside of Canada, and (iv) has a majority of its executive officers and of its directors ordinarily resident outside Canada; or
    - is issued or guaranteed by the government of a foreign jurisdiction; and
- all the investors in Canada are permitted clients.

Historical information on the wrapper relief amendments can be found in our bulletin here. While the amendments provide welcome relief for foreign companies privately placing their securities in Canada to permitted clients, the same cannot necessarily be said for foreign issuers who are classified as investment funds under Canadian securities law and their international investment fund managers (IFMs). In a number of circumstances, including where international IFMs employ an affiliated dealer to distribute securities in Canada, a slimmed-down Canadian wrapper may still be required or advisable.

For additional information on what these rule changes mean for international investment funds and their international IFMs, see our bulletin Shrink-wrapped: Why foreign issuers may still require a Canadian wrapper.

IV. Crowdfunding

In May 2015, securities regulators in British Columbia, Saskatchewan, Manitoba, Québec, New Brunswick and Nova Scotia adopted substantially harmonized registration and prospectus exemptions proposed under Multilateral Instrument 45-108 – Crowdfunding. The exemptions aim to provide start-up and early stage companies with an alternative to raise capital with fewer disclosure requirements. The exemptions will be available for five years, expiring on May 13, 2020.

The crowdfunding prospectus exemption allows non-reporting issuers to distribute eligible securities to investors, subject to a series of conditions.Under the crowdfunding regime:

- issuers will be required to prepare an offering document containing all information that investors should know about their business;
- investors will be subject to an investment limit on each individual investment and overall annual limits that vary depending on the investor's accreditation status;
- investors will be required to sign a prescribed risk acknowledgement form confirming they are aware of the risks of the investment; and
- issuers will be required to continue to make annual financial statements and certain other information available to investors on an ongoing basis, even if they are not subject to public company reporting obligations.

The crowdfunding amendments also provide an exemption from the registration requirement for trades through Canadian online funding portals in connection with a start-up distribution provided the portal meets certain conditions. For a full list of conditions to the exemptions, see our bulletin here.

For individual investors, this is an interesting and relatively low-risk way to invest in startup companies. For start-up companies, this exemption is branded as an attractive method to raise funds because it is relatively inexpensive and accessible. The exemptions will be available for five years, expiring on May 13, 2020.

For additional information regarding the crowdfunding exemption, see our bulletin here.

V. New Listing Requirements for Non-Corporate Issuers

On September 17, 2015, the TSX amended the TSX Company Manual (the Manual) to codify existing practices of the TSX with respect to listing and other requirements for closed-end funds, exchange traded products (ETPs) and structured products (collectively, Non-Corporate Issuers). It also introduced certain new requirements for these issuers, as discussed below, which are generally consistent with current Ontario *Securities Act* requirements for these types of issuers.

These amendments create listing requirements for Non-Corporate Issuers in a new Part XI to the Manual. The most notable amendments are as follows:

Closed End Funds. The initial listing requirement for closed end funds has been set to $10-million, and the fund must have, in addition to certain specified net asset value (NAV) calculation requirements, the following:

- A CEO, CFO, secretary and an independent review committee;
- At least 1 million freely tradable securities held by at least 300 public board lot holders; and
- A $2-million market value and at least 100,000 securities held by at least 100 public holders, each holding one board lot or more, for a new class of securities that is convertible into listed securities.

ETPs. The listing requirements for exchange traded products (ETPs) include a $1 million minimum market capitalization, as well as the following:

- The issuer of an ETP, if not a financial institution, must have a CEO, CFO, secretary and independent review committee
- An ETP issued by a financial institution is required to identify the individuals responsible for day-to-day management and operations of the ETP
- NAV must be calculated at least each trading day and be available on a publicly accessible website

Structured Products. The listing requirements for structured products include:

- An initial public offering or market value of freely tradeable securities of at least $1-million
- The issuer of a structured product, if not a financial institution, must have a CEO, CFO, secretary and two independent directors
- NAV must be calculated on a weekly basis and available on a publicly accessible website

The amendments also address various other issues relating to changes in capital structure, reporting requirements, dividends and other distributions, securityholder approval for amendments, preclearance of materials with the exchange, termination or voluntary delisting, management fees and continued listing requirements. The full language of the amendments can be found here. For a McMillan analysis of the proposed amendments, please see our bulletin: TSX Proposes New Listing Requirements for Exchange Traded Products, Closed-End Funds and Structured Products.

VI. Amendments to OTC Derivative Trade Reporting Rules

Manitoba, Ontario and Quebec

On December 31, 2013, the securities regulators in the provinces of Manitoba, Ontario and Quebec (the MOQ Authorities) enacted rules to regulate the over-the-counter (OTC) derivatives market in their respective provinces (the MOQ Rules). These rules placed a new obligation on OTC derivatives market participants to report their transactions. In response to feedback by market participants, the MOQ Authorities have released a number of amendments to the MOQ Rules in attempts to strike a balance between market effectiveness and efficiency and the underlying policy aim of the MOQ Rules to provide transparency in the OTC derivatives market in Canada (as described in our earlier bulletin).

On November 5, 2015, in the latest round of amendments to the MOQ Rules, the OSC published a Notice of Amendments and Request for Comment on OSC Rule 91-507 *Trade Repositories and Derivatives Data Reporting* and the Companion Policy 91-507CP *Trade Repositories and Derivatives Data Reporting*.

The proposed amendments to the MOQ Rules deal with publicly disseminated transaction-level data, a new inter affiliate transactions exclusion, the requirement for legal entity identifiers, substituted compliance for end-user transactions with foreign affiliates, and the ability of market participants to "port" to a new designated trade repository. The proposed amendments, through exemptions and substituted compliance, are intended to scale back some of the unintended regulatory capture initially imposed. The comment period for the proposed amendments is 90 days, ending on February 3, 2016.

Further information regarding the proposed amendments to the MOQ Rules can be found in our bulletin: Leak Tweak: Regulators Balance Post-trade Transparency and Market Efficiency with Latest Amendments to OTC Derivative Trade Reporting Rules.

Alberta, British Columbia, Saskatchewan, New Brunswick and Nova Scotia

The securities regulators in Alberta, British Columbia, Saskatchewan, New Brunswick and Nova Scotia (the Authorities) followed suit, first publishing Model Provincial Rule 91-302 *Updated Model Provincial Rules – Derivatives: Product Determination and Trade Repositories and Derivatives Data Reporting* and, more recently, on January 22, 2015, publishing proposed Multilateral Instrument 91-101 *Derivatives: Product Determination* and proposed Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting*, along with their accompanying companion policies (the Proposed Rules) for comment.

Although the Proposed Rules are substantially similar to the MOQ Rules, there are several differences. These relate to the definitions of "local counterparty" and "affiliated entity", as well as to the hierarchy rules relating to which party to a derivative transaction will be required to report a trade. For additional information regarding how the Proposed Rules differ from the MOQ Rules, see our bulletin Different But The Same: Five Additional Provinces Propose OTC Derivatives Trade Reporting Rules.

On January 22, 2016, the Proposed Rules were implemented in Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, and Saskatchewan. Together, these instruments form a derivatives reporting regime that is substantively harmonized with the MOQ Rules.

C. NOTABLE JUDICIAL DECISIONS

2015 was a busy year for securities regulators and market participants and we witnessed several important decisions ranging from the scope of public interest authority of securities regulators to the fairness of plan of arrangements. These and other notable decisions that provide informative guidance for securities laws in Canada are discussed below.

I. Kingsway Financial Services Inc. v. Kobex Capital Corp.[4]

In a decision released on November 10, 2015, the British Columbia Supreme Court (Court) considered certain issues relating to a proxy battle involving a TSX Venture Exchange (TSX-V) listed issuer, Kobex Capital Corp. (Kobex). The Court's decision in this case demonstrates a deferential approach to the internal decisions of a company in the context of a contested shareholders' meeting.

The Court noted that in the context of a contentious meeting, consideration should be given to the appointment of an independent chair. However, the Court concluded that "mere self-interest" of a meeting chair would not be sufficient to appoint an independent chair. The duties of the meeting chair to be honest and fair to all individual interests were cited by the Court as a safeguard militating against Court intervention absent evidence of potential impropriety. Without such evidence in this case, the Court did not appoint an independent chair.

The Court's decision will be viewed favourably by companies structuring their affairs in advance of a contentious shareholders' meeting. Despite the Court's acknowledgment that it was plain from the evidence that the Kobex Chair supported the incumbent Kobex board over the dissident group's slate of directors, the Court refused to appoint an independent chair. The Court made it clear in this case that mere self-interest of a meeting chair is not enough to warrant court intervention.

II. Theratechnologies Inc v 121851 Canada Inc.[5]

In a decision released on April 17, 2015, the Supreme Court of Canada (SCC) overturned the Québec Court of Appeal's judgment in *Theratechnologies Inc. v 121851 Canada Inc.* In considering for the first time the standard for granting a plaintiff leave to proceed with a statutory secondary market securities class action, the SCC held that courts must undertake a reasoned consideration of the evidence presented on the leave motion to ensure that the proposed class action has some merit.

This decision is noteworthy not only under Quebec law, but under Canadian law in general, since all provinces adopted similar rules governing secondary market civil liability in securities matters. We expect to see courts taking a more rigorous approach when considering the evidence presented by the plaintiff at the leave stage to ensure that there is a reasonable possibility that the action will be resolved in the claimant's favour. In *Theratechnologies*, the SCC held that the plaintiffs failed to meet this standard.

---

[4] 2015 BCSC 2155, [2015] BCWLD 8232.

[5] 2015 SCC 18, [2015] 2 SCR 106.

III. Re Carnes[6]

The recent decision by a panel of the British Columbia Securities Commission (the Panel) in *Re Carnes*, released on May 14, 2015, has been the most detailed examination to date of the basis for the exercise of the public interest power absent a breach of securities laws.

Staff of the BCSC alleged that Jon Carnes (Carnes) perpetrated a fraud, contrary to the British Columbia *Securities Act* (the Act) and engaged in conduct contrary to the public interest. The allegations focused on a report Carnes had posted online (the Report) suggesting that Silvercorp Metals Inc. (Silvercorp) was exaggerating its silver resources. The Report was posted immediately prior to a presentation by Silvercorp at an investment conference in order to do as much harm to Silvercorp as possible, causing Silvercorp's stock to fall 20% immediately thereafter and allowing Carnes to close out his short position the following day and make a profit of $2.8 million. Staff argued that the misstatements in the report—in terms of actual statements as well as omissions—constituted prohibited acts for the purpose of fraud.

Although the Panel found that the Report "did not give a full and fair picture" and questioned Carnes' credibility on various matters, it nevertheless concluded that there was not sufficient evidence to prove fraud under the Act. The Panel noted that while Carnes' conduct was "unsavory," it was not clearly abusive of the capital markets and therefore the exercise of its public interest jurisdiction was unwarranted. It refused to sanction conduct merely because it was "morally unsupportable" and noted that to exercise such power in this case "would, in effect, be creating a new requirement for statements which would be something akin to 'fair presentation.'"

The Panel remarked that market participants should be able to structure their affairs without fear of enforcement actions alleging wrongdoing that is not encoded in the Act.

While not the final word on the public interest power, the decision in *Carnes* is an important part of the ongoing debate regarding the exercise of the public interest power by securities regulatory authorities.

Further commentary on the decision can be found in the McMillan bulletin: British Columbia Securities Commission Seeks to Limit Exercise of Public Interest Power in the Enforcement Context.

IV. 9171665 Canada Ltd. and Connacher Oil and Gas Ltd.[7]

In early 2015, 9171665 Canada Ltd. and Connacher Oil and Gas Ltd. (together Connacher) applied to the Alberta Court of Queen's Bench (Court) for a final order pursuant to section 192 of the *Canada Business Corporations Act* (CBCA) for the approval of a plan of arrangement to restructure Connacher (Arrangement). On April 2, 2015, the Court rejected Connacher's restructuring proposal as it was not satisfied that Connacher would emerge from the Arrangement solvent or that the Arrangement was fair and reasonable.

The Court held that non-insolvency post-emergence is a requirement for the exercise of judicial authority under section 192 of the CBCA and was concerned that Connacher—as restructured—

[6] 2015 BCSECCOM 187.

[7] 2015 ABQB 633, [2016] AWLD 3.

would not remain a going concern absent an improvement in oil prices and the Canadian dollar's exchange rate. The Court further held that it was unable to find a valid business purpose for the transaction and that the Arrangement was unfair and unreasonable because it purported to extinguish a right that may have accrued to certain noteholders without the chance for them to even vote on the Arrangement.

This decision provides insight as to the Court's application of section 192 of the CBCA. First, it proposes that section 192 should only be used to affect a plan of arrangement where a court is satisfied that the emerging entity will be solvent. Second, it suggests that a plan of arrangement that significantly impacts the rights and claims of third parties may be better dealt with under the insolvency statutes rather than the CBCA.

V. Re Red Eagle[8]

On November 3, 2015, the British Columbia Securities Commission (BCSC) released its reasons in *Re Red Eagle*, in which it cease-traded a rights plan in the face of a hostile bid. The BCSC rejected the target's position that the rights plan should be maintained because the bid was not compliant with the policy rationale behind the regime contemplated by proposed CSA amendments to Multilateral Instrument 62-104 – Take-Over Bids and Issuer Bids (the Proposed Amendments). The BCSC's approach of not applying the Proposed Amendments is consistent with past decisions of Canadian securities regulators, which have generally resisted applying rules during a comment or review period in order to avoid inconsistencies if changes are subsequently made to the draft rules. It does however appear that the BCSC's analysis was in part guided by its consideration of the policy rationale behind the 50% minimum tender condition in the Proposed Amendments.

The BCSC also had to weigh the fiduciary duties of the target's directors and the BCSC's public interest mandate in considering whether or not to, in the fact of a hostile take-over bid, unwind a private placement of common shares by the target to a white knight. The BCSC's decision not to unwind the private placement was guided by its finding that it was not clear that the target, which needed the private placement for legitimate financing purposes, conducted the private placement solely as a defensive tactic. The BCSC here reiterated that the threshold for exercising its public interest jurisdiction in the context of a hostile bid is a high one, meaning that the conduct must amount to a clear abuse of target shareholders or capital markets generally.

VI. Coffin v. Atlantic Power Corp.[9]

In its July 24, 2015 decision in *Coffin v. Atlantic Power Corp.* (*Coffin*), the Ontario Superior Court of Justice denied a proposed securities class action leave to proceed as a statutory secondary market action and refused to certify the remaining related common law claims.

The decision in *Coffin* adds to the growing body of case law that a class action is not the preferable procedure for resolving common law secondary market securities claims. The *Coffin* decision follows *Theratechnologies*, showing that the more stringent application of the leave requirements for statutory misrepresentation claims has gained a firm foothold. The *Coffin* decision further shows that filing comprehensive evidence can be an effective strategy in

---

[8] 2015 BCSECCOM 401.

[9] 2015 ONSC 3686, 127 OR (3d) 199.

opposing motions for leave to proceed with statutory misrepresentation claims, whereas the more common strategy is for defendants to file little or no evidence. *Coffin* also offers further support for the proposition that common law negligent misrepresentation claims in securities class actions are not suitable for certification, particularly when leave to proceed with a parallel statutory claim has been denied.

D. LEGISLATION – PROPOSED AMENDMENTS IN 2015

I. Disclosure

The past year also saw a number of important proposed legislative changes to disclosure requirements. Key amongst them was the CSA's proposed amendment to National Instrument 45-106 *Prospectus Exemptions.* If implemented, the amendment will introduce a single, harmonized exempt distribution reporting form for all provinces. Other developments include proposed changes to National Instrument 41-101 *General Prospectus Requirements* that will require exchange-traded mutual funds (ETFs) to file and deliver a summary disclosure document to investors called "ETF Facts". The last set of proposed amendments require mutual funds and ETFs to use a standard deviation measure of risk when disclosing investment risk levels in existing fund facts documents and in proposed ETF Facts documents, respectively.

Proposed Single Exempt Distribution Reporting Regime

On August 13, 2015, the CSA published proposed amendments (Proposed Amendments) to National Instrument 45-106 *Prospectus Exemptions* (NI 45-106). If implemented, the Proposed Amendments will introduce a single, harmonized exempt distribution reporting form (the "Proposed Report") for all provinces and territories.

NI 45-106 currently requires issuers that have distributed securities in reliance on certain prospectus exemptions to file a report of exempt distribution in the jurisdiction where the distribution occurred. The required form of the report is Form 45-106F1 *Report of Exemption Distribution* in all provinces except British Columbia, which uses Form 45-106F6 *British Columbia Report of Exempt Distribution*. This dual reporting regime results in duplicative efforts and added expense, particularly for smaller issuers.

The Proposed Amendments will replace Form 45-106F1 and Form 45-106F6 with the Proposed Report – a single report that must be filed in each jurisdiction in which the distribution occurred. The Proposed Report will result in a single, harmonized form that can be filed across Canada. However, the Proposed Report will now require the disclosure of additional information not required by either of the current forms. For additional information regarding how the requirements of the Proposed Report differ from the current regime, please see our bulletin:

2 Become 1: CSA Proposes Creation of Single Exempt Distribution Reporting Regime

Proposed New Disclosure Requirement for Exchange Traded Funds

On June 18, 2015, the CSA published proposed amendments (the Amendments) to National Instrument 41-101 *General Prospectus Requirements* (the NI 41-101), Companion Policy 41-101CP to NI 41-101 and related consequential amendments for a 90-day comment period. The Amendments will require ETFs to file and deliver a summary disclosure document to investors called "ETF Facts". The publication of the Amendments marks Stage 3 of the CSA's implementation of its point of sale disclosure project.

The Amendments codify the exemptive relief which is applicable to all dealers acting as agents of investors purchasing ETFs. The Amendments will require ETFs to create an ETF Facts document which contains key information investors require when trading in ETFs (i.e., risk, part performance, and the costs of investing in an ETF). Since ETFs are traded over an exchange, the CSA proposes the inclusion of additional information related to market price, bid-ask spread, and premium/discount of market price to net asset value. The form requirements for the ETF Facts are set out in the Amendments as Form 41-101F4.

For additional information regarding the Amendments, including ETF Facts filing requirements, delivery requirements, investor rights resulting from non-compliance, and transition phases for implementing the Amendments, see our bulletin: CSA Proposes New Disclosure Requirement for Exchange Traded Funds

Proposed Amended Risk Disclosure for Mutual Funds and ETFs

On December 10, 2015, the CSA published proposed amendments (the Proposed Amendments) to risk disclosure requirements for mutual funds and ETFs. The Proposed Amendments will require mutual funds and ETFs to use a standard deviation measure of risk when disclosing investment risk levels in existing Fund Facts documents and in proposed ETF Facts documents, respectively.

The Proposed Amendments would require all mutual funds, and eventually ETFs, to calculate their standard deviation using monthly returns on a 10-year historical basis. This standard deviation number would be used to place the fund into one of five investment risk levels from "Low" to "High" and this risk level would be disclosed in the Fund Facts or ETF Facts document. A fund may increase (but not decrease) its risk level if doing so is reasonable in the circumstances.

Risk level disclosure must occur at least annually, and within 60 days from the filing of a Fund Facts or ETF Facts document, or whenever the current risk level is no longer reasonable in the circumstances. The CSA would generally consider a change to the fund's risk level disclosed on the most recently filed Fund Facts or ETF Facts document to be a material change under securities legislation. For mutual funds and ETFs that do not have the sufficient 10-year history, a reference index can be used as a proxy.

The final rules implementing the Proposed Amendments are expected to be implemented in the Fall of 2016 and to be in force three months later. The CSA seeks feedback on the Proposed Amendments. The deadline for submitting comments to the CSA is March 9, 2016.

For additional information regarding the Proposed Amendments, please see our bulletin: CSA Proposes Amended Risk Disclosure for Mutual Funds and ETFs.

II. OSC Whistleblower Initiative

On February 3, 2015, the OSC issued a Consultation Paper on proposed whistleblower program (Whistleblower Program) seeking input on a proposed whistleblower program, which follows similar approaches previously adopted by the U.S. Securities Exchange Commission and the Canada Revenue Agency, and is designed to encourage reporting to the OSC of misconduct or possible breaches of Ontario securities law.

On October 28, 2015, the OSC published its whistleblower policy for comment. The proposed OSC Policy 15-601 Whistleblower Program (the Proposed Policy) is designed to encourage reporting to the OSC of misconduct or possible breaches of Ontario securities law. Under the Proposed Policy, those whistleblowers who satisfy certain stipulated criteria may be eligible for monetary bounties. One moderately surprising development announced through the Proposed Policy is that the maximum monetary award is up to $5 million, which is substantially more than the $1.5million proposed in the earlier Consultation Paper.

The whistleblower program would only be applicable to whistleblowers who report serious misconduct that results in an administrative proceeding or settlement pursuant to the Ontario *Securities Act*. If implemented, it would be the first of its kind among Canadian securities regulators. The OSC's comment period on the Proposed Policy closed on January 12, 2016.

Additional information regarding the Proposed Policy can be found in our bulletin: Blowing the Whistle: The OSC Proposes Canada's First Whistleblower Program.

III. Alternative Funds Proposal Update

On February 12, 2015, the CSA published an update on the proposal for a comprehensive regulatory framework for publicly offered alternative investment funds (Alternative Funds Proposal). The Alternative Funds Proposal is the final phase of the CSA's ongoing effort to modernize regulation of investment fund products.

The CSA completed their public consultations in 2015 and further updates in the form of proposed rule amendments are expected from the CSA as it considers the comments provided and feedback given by stakeholders.

For additional information regarding the Alternative Funds Proposal, please see our bulletin: CSA Publishes Update on Proposal for Alternative Investment Funds.

E. OTHER NOTABLE DEVELOPMENTS

I. CSA Guidance on Corporate Governance and Gender Diversity

In October 2014, the CSA announced the implementation of new corporate governance disclosure rules (New Rules) aimed at increasing gender diversity on boards and in senior management. In December 2014, McMillan provided an in-depth analysis of the New Rules and suggested possible approaches for compliance. On September 28, 2015, the CSA released CSA Multilateral Staff Notice 58-307 Staff Review of Women on Boards and in Executive Officer Positions – Compliance with NI 58-101 Disclosure of Corporate Governance Practices (the Report), which reports the findings of its review of compliance with the New Rules and provides guidance to assist issuers in areas where the quality of their disclosure needs improvement. Issuers are required to provide this disclosure in their information circular or annual information form (AIF).[10] In light of the Report, issuers should ensure they have sufficiently familiarized themselves with the New Rules and that their corporate governance disclosure meets the requirements thereof.

[10] If the management solicits proxies for the purpose of electing directors, then the disclosure must be included in the management information circular; if it does not send out a management information circular then the disclosure must be in the AIF.

Gender Diversity

Although the Report indicates that issuers, particularly smaller ones, have some work to do to engage with the aims of the New Rules, it also offers hopeful signs for gender diversity in corporate Canada as some progress has clearly been made in the one proxy season that the New Rules have been in effect. The Report's findings are summarized below.

Number of Women on Boards and in Executive Officer Positions

The Report reveals that 15% of the issuers sampled added one or more women to their board in the past year, and that the utilities and retail industries had the most women on boards while issuers in the extractive and technology industries had the least. Additionally, issuers with a market capitalization over $2 billion had the most women on their boards and most female executive officers while a significant portion of those with a market capitalization under $1 billion had neither.

Targets

The CSA found that a very low percentage of issuers had set a target for women directors (7%) and executive officers (2%). The major reasons given for not setting targets were that issuers consider all candidates based on merit, targets would not be effective or would be arbitrary, and targets would be unduly restrictive or would reduce flexibility.

Adoption of a Written Policy Regarding the Representation of Women

Only 14% of issuers disclosed the adoption of a written policy for the identification and nomination of women directors and 65% disclosed that they had decided not to adopt a written policy. The CSA generally found that the larger an issuer is, the more likely it is to have adopted a written policy. The review also found that issuers in the insurance, utility, communications and entertainment industries had the highest adoption policy rates, while those in the oil and gas, technology, biotech, hospitality, and environmental industries had the lowest.

Consideration of the Representation of Women

In general, while a majority of issuers disclosed that they consider the representation of women when identifying new candidates for director (60%) and executive officer (53%) positions, the CSA found that only approximately 40% of these issuers explained how they make this consideration.

The CSA stated that disclosure under Form 58-101F1 requires an explanation of whether, and how, the board or nominating committee of a non-venture issuer considers the level of representation of women on the board and in executive officer positions in identifying and nominating candidates for executive officer positions. The CSA provided examples of certain steps that an issuer can follow to address the representation of women in director positions including having at least one female candidate in the list of potential candidates for the nomination to the board. Similarly, for executive officer positions, the CSA listed measures such as: proactively identifying talented individuals, developing flexible scheduling programs as well as identifying and implementing development plans for high-potential women.

Conclusions

Although the Report indicates that issuers, particularly smaller ones, have some work to do to engage with the aims of the New Rules; it also offers hopeful signs for gender diversity in corporate Canada as some progress has clearly been made in the one proxy season that the New Rules have been in effect.

Term Limits and Other Mechanisms of Board Renewal

Along with increasing gender diversity, the New Rules aim to facilitate board renewal. In response to comments, the CSA revised the New Rules to allow issuers to disclose other board renewal mechanisms they employ, recognizing that term limits are not the only way to achieve board renewal. The Report reveals that only 19% of issuers in the sample adopted director term limits, while 56% preferred other mechanisms of board renewal. The most commonly cited mechanism was some form of annual board assessment. The Report reminds issuers that descriptions of board assessment processes should discuss how the assessment process relates to board renewal.

For a more in-depth discussion of the Report, please refer to our bulletin: Progress on gender diversity, but still work to be done: CSA reports on compliance with the new gender diversity disclosure rule.

II. Related Party Transaction Reporting

In February 2015, the OSC released a report based on a review of related party transaction disclosure in which it identified disclosure issues and provided guidance to issuers preparing required related party disclosure.

Generally, a related party transaction is a transaction between an issuer and a person that is a related party of the issuer at the time the transaction is agreed to, as a consequence of which the issuer directly or indirectly enters into certain specified transactions. Such transactions include instances where the issuer purchases an asset from or sells an asset to the related party, assumes or becomes subject to a liability of the related party, or issues securities to the related party. Related parties of an issuer include shareholders holding more than 10% of voting securities, directors, senior officers and each of their affiliates. In Canada, related party transaction disclosure is required pursuant to financial statement disclosure requirements under IFRS (IAS 24), Form 51-102F1 Management's Discussion & Analysis and MI 61-101 Protection of Minority Security Holders in Special Transactions.

The OSC staff reviewed 100 issuers to assess compliance with disclosure requirements with a view to understanding the range of practice in respect of issuers' approval and disclosure of related party transactions. Ultimately, the report found that while financial and MD&A disclosure met most key disclosure requirements, a number of deficiencies were identified, including the following:

- In 17% of the financial statements reviewed, a prospective improvement in disclosure relating to the relationship between an issuer and its parent or subsidiaries was requested.

- In 47% of MD&A reviewed, the related party transaction disclosure was generic and lacking sufficient details (for instance, using generic term such as a "director" instead of naming the specific individual).
- A significant percentage of issuers reviewed had not filed their code of conduct that described how the board of directors should address related party transactions on SEDAR.

III. IIROC Issues Final Guidance on Underwriting Due Diligence

In December 2014, the Investment Industry Regulatory Organization of Canada (IIROC) issued its final guidance regarding due diligence conducted by underwriters on public offerings of securities in Canada. The proposed guidance was originally published by IIROC in March 2014 and was amended to address a number of comments. The final guidance promotes consistency and enhanced standards by setting out the elements of the underwriting due diligence process as well as the types of policies and procedures dealer members need to follow. The guidance is explained through the following nine principles:

1. *Policies and Procedures*: Dealer members should have written policies and procedures for the underwriting process and have effective oversight of these activities. Policies and procedures should reflect what a reasonable due diligence review involves in the context of the circumstances of the offering.

2. *Due Diligence Plan*: Dealer members should have a due diligence plan that reflects the context of the offering. A written due diligence plan may not be necessary if an underwriter's written policies and procedures adequately set out the matters to be considered.

3. *Due Diligence Q&A Sessions*: Dealer members should hold "Q&A" sessions at appropriate points during the offering process which should allow the parties to address any "red flags" that arise during the due diligence process.

4. *Business Due Diligence*: Dealer members should perform business due diligence to understand the business of the issuer and key factors affecting the issuer's business.

5. *Legal Due Diligence*: Dealer members should understand the boundary between business due diligence and legal due diligence and should supervise the legal due diligence performed by underwriters' counsel.

6. *Reliance on Experts*: Underwriters should consider the qualifications, experience, independence and reputation of an expert; the extent to which a dealer member should rely on an expert opinion is a contextual determination.

7. *Reliance on Lead Underwriter*: Each syndicate member is subject to the same liability for misrepresentation under securities legislation and each syndicate member should satisfy itself that the lead underwriter performed the kind of due diligence that it would have performed on its own.

8. *Due Diligence Record-Keeping:* Each dealer member should document the due diligence process to demonstrate compliance with its policies, IIROC requirements, and securities laws.

9. *The Role of Supervision and Compliance*: Each dealer member should have a supervisory and compliance framework to ensure compliance with policies and procedures, IIROC requirements and applicable securities laws. A senior investment banking professional should be involved throughout the due diligence process to ensure proper supervision and compliance.

IV. CSA: Proxy Voting in Canada Needs Modernization

The CSA have been engaged in a review of the Canadian voting infrastructure since August 2013, in the wake of various concerns expressed by market participants regarding the integrity and reliability of the network of organizations, systems, legal rules and market practices that support the solicitation, collection, submission and tabulation of proxy votes for shareholder meetings in the context of the Canadian beneficial share ownership system.

CSA staff issued a report in January 2015 that discusses the progress made to date in their review and outlines next steps. The progress report confirms that the CSA believes the current system to be fragmented and requiring modernization and improvement, and identifies a number of specific improvements that must be made in the vote reconciliation process. We expect this review process to continue in 2016 and beyond. In the spring of 2015, the CSA also chose not to regulate proxy advisory firms such as ISS and Glass Lewis, opting instead to issue guidance on best practices that proxy advisory firms should follow.

For a McMillan bulletin on this topic please see: Proxy Voting in Canada Needs Modernization.

V. IIROC Announces Priorities for Up Coming Year

In order to assist market participants with dealing with the challenges and changes in the capital markets experienced over the last several years, IIROC is reviewing how it can fulfill its regulatory mandate and adjusting its strategic objectives and priorities for the upcoming year. In a Notice published on April 28, 2015 (the Notice) IIROC set out its key priorities from the date thereof until March 31, 2016.

One of IIROC's priorities is to continue to respond to the 2013 Member Survey, focusing on two key findings: timeliness of compliance examination findings, and IIROC's consideration of the potential impact and consequences of its regulatory actions on stakeholders.

In the Notice, IIROC noted that it will ensure its mandate is met through setting high proficiency standards and education requirements, rule-making, compliance examinations, enhanced surveillance, member and investor education, proactive guidance and enforcement of rules to hold dealers and registrants accountable for their actions. IIROC will continue to take a risk-based approach to conduct reviews of IIROC-regulated firms to foster a culture of compliance. IIROC listed its strategic goals as being to:

- Promote a culture of compliance;
- Protect and educate the investing public;
- Deliver effective and expert regulation;
- Strengthen the fairness, integrity, efficiency and competitiveness of Canadian capital markets;

- Act in an accountable, transparent and fair manner;
- Be a cost effective and efficient organization; and
- Be an employer of choice.

To accomplish these goals IIROC has published a list of 27 activities and projects it will undertake over the next year that fall under the following categories:

- Member regulation projects;
- Market regulation projects;
- Responding to Member Survey;
- Working with other regulators and stakeholders; and
- Improving IIROC operations.

A detailed list of the projects and their timelines is available in the Notice. For further analysis please see our bulletin on this topic please see: IIROC Announces Priorities for Up Coming Year.

VI. ISS Proxy Voting Guidelines for 2016

On November 20, 2015, Institutional Shareholder Services (ISS) released its 2016 Americas Proxy Voting Guidelines Updates (the Guidelines) for meetings held in 2016. The Guidelines are a product of ISS' 2015 global policy survey, which solicited the views of investors, companies, and other interested parties with respect to corporate governance issues. Among the topics considered are director overboarding, proxy access, compensation programs and compensation disclosure at externally-managed issuers. The Guidelines include the following changes:

Equity Plan Scorecard for equity compensation plans – TSX companies:

- ISS will evaluate equity plan proposals using three categories of factors: plan cost, plan features, and grant practices;
- Equity compensation plans for S&P/TSX and Non-Composite TSX-listed companies will be evaluated using separate models;
- ISS' vote recommendation will be based upon the overall construction of the plan and historic use of equity, not a series of pass/fail tests; and
- There will still be a small number of negative factors that will prevent ISS support.

Compensation-related votes at externally-managed issuers – TSX and TSXV companies:

- ISS will generally recommend against say-on-pay proposals where there is an external management structure in place, and there is insufficient detail in the company's disclosures for ISS to perform a comprehensive pay-for-performance analysis.

The Guidelines also include certain changes relating to Director overboarding which go into effect next year. As of February 1, 2017, ISS will issue a negative vote recommendation for directors who are not public company CEOs who sit on more than four public company boards *and* attend fewer than 75% of meetings without valid reason. ISS will also issue negative vote recommendation for sitting public company CEOs who sit on more than one board in addition to their own board *and* attend fewer than 75% of meetings without valid reason.

VII. SPACs – The "New" Private Equity Vehicle in Canada

Special purpose acquisition corporations (SPACs) are publicly-traded holding companies with no operating business at the time of going public. Instead, SPACs are marketed on the strength of an experienced management team, sophisticated investors and a sponsor (the Founders). After completing an initial public offering (IPO) SPACs use the proceeds raised to acquire an operating business.

On April 21, 2015, Dundee Acquisition Ltd. completed its IPO of $100 million Class A restricted voting units, making it the first SPAC to go public in the Canadian capital markets. A couple of months later, on June 24, 2015, Acasta Enterprises Inc. announced that it had filed a prospectus for an IPO of $275 million. These were just two of the five TSX listings that raised over $1 billion in capital utilizing the SPAC program to go public. Other issuers included INFOR Acquisition Corp., Alignvest Acquisition Corporation, and Gibraltar Growth Corporation.

SPACs require a minimum IPO of $30 million and there must be at least one million freely tradable securities held by public holders and at least 300 public holders of securities, holding at least one board lot each. Generally, the proceeds of the IPO (or a significant portion thereof) are held in trust (or escrowed) while management seeks an appropriate target business to effect an undetermined future acquisition (a qualifying acquisition), which needs to be completed within 36 months from the date of the IPO. If a qualifying acquisition is not completed prior to the deadline, the escrowed IPO proceeds are returned to shareholders (other than the Founders).

The utilization of the SPAC asset class in Canada is new and it will be interesting to see how it develops. While the future of this asset class looks promising, long-term success will no doubt be linked directly to the achievements of the early market entrants, and more specifically to the quality of the qualifying acquisitions completed by these early market entrants.

For further information on SPACs, please see our bulletin on the topic please refer to: SPACs, The "New" Private Equity Vehicle in Canada – An Asset Class of $800M and Growing.

AUTHORS

Amandeep Sandhu
604.691.7448
amandeep.sandhu@mcmillan.ca

Amandeep Sandhu is a partner in the firm's Capital Markets and M&A Group, working out of McMillan's Vancouver office. Amandeep advises a broad range of companies on mergers and acquisitions, initial public offerings, private placements, public equity and debt financings, as well as stock exchange listings on the Toronto Stock Exchange and the TSX Venture Exchange. Amandeep also provides detailed advice to companies with respect to securities regulatory compliance, continuous disclosure requirements and corporate governance matters.

Andjela Vukobrat
778.328.1491
andjela.vukobrat@mcmillan.ca

Andjela Vukobrat is an associate in the Capital Markets and M&A Group in McMillan's Vancouver office. Andjela's practice focuses primarily on transactional, regulatory and general corporate and commercial matters. Andjela also assists public and private companies with general securities compliance, corporate governance matters, and continuous disclosure requirements.

Ravipal Bains
236.826.3262
ravipal.bains@mcmillan.ca

Ravipal Bains is an articled student in McMillan's Vancouver office with an interest in capital markets.

ABOUT MCMILLAN LLP

McMillan is a modern, ambitious business law firm committed to client service and professional excellence. With recognized expertise and leadership in major business sectors, McMillan provides definitive Canadian legal advice and solutions to businesses, financial institutions, governments and individuals in Canada, the United States and internationally. McMillan operates from offices in Vancouver, Calgary, Toronto, Ottawa, Montréal and Hong Kong.

McMillan's Capital Markets Group helps clients in Canada, the United States and around the world to navigate the capital markets and reach the destination they have set for themselves—all while remaining in compliance with applicable regulations. Our understanding of the law, and our relationships with regulatory bodies and exchanges, helps us deliver unmatched value to our capital markets clients.

We act for a variety of clients, including domestic and foreign issuers of debt and equity securities; municipal, territorial and provincial governments; multinationals; financial institutions; investment banks; investment advisers; securities dealers; and other market participants. Our legal teams are skilled at structuring and closing complex transactions in Canadian, U.S. and international capital markets, and providing innovative transactional advice and solutions

For further information, please contact:

Teresa Dufort
Chief Executive Officer
416.865.7145
teresa.dufort@mcmillan.ca