

Securities Law Update

The Securities Law Update is a periodic publication of the Securities and Corporate Law Practice Group of McLean & Kerr LLP.

New System for Electronic Disclosure by Insiders

Beginning *November 13, 2001*, insiders will be required to file insider disclosure reports electronically and the public will have timely access to those reports over the Internet thanks to the implementation of National Instrument 55-102 – The System for Electronic Disclosure by Insiders (“SEDI”) by the Canadian Securities Administrators (“CSA”). The CSA is the umbrella organization representing the 13 provincial and territorial securities commissions.

To facilitate this new disclosure system CSA commissioned CDS Inc. (“CDS”), a subsidiary of the Canadian Depository for Securities, Ltd. to develop and operate the \$12.2 million SEDI. SEDI will be available to insiders, reporting issuers and investors 24 hours a day, 7 days a week, subject to service interruptions for maintenance and other technical requirements.

In this Securities Law Update, we discuss various important aspects of SEDI from the point of view of three groups affected by the new system: insiders, reporting issuers and investors. In addition, we briefly address the SEDI user registration requirements.

SEDI for Insiders

The term “insider” is defined in the securities legislation of each jurisdiction in Canada and

typically includes directors, senior officers and shareholders holding 10% or more of all voting securities of a company that is a reporting issuer under the applicable securities legislation. Each jurisdiction requires insiders to disclose certain trading-related activities in a timely manner.

National Instrument 55-102 (“NI 55-102”) requires that each insider file an insider profile in SEDI format through an individual who has registered as a SEDI user under the National Instrument (defined in NI 55-102 as a “SEDI user”). The insider profile must contain the information required under Form 55-102F1 and must be kept current by the filing of amended insider profiles in SEDI format when necessary i.e. there has been a change in the information previously disclosed.

Once an insider profile has been filed in SEDI, insider reports may be filed electronically by or on behalf of the profiled insider through a SEDI user. If, at any time on or after *November 13, 2001*, an insider of a SEDI issuer (defined on page 2 hereof) is filing an insider report, including an amended insider report, in respect of a relationship to, or a transaction in securities of, the SEDI issuer which arose or occurred prior to or after that date, the insider must file the insider report in SEDI format.

The insider report must contain the information prescribed in Form 55-102F2. The required information is substantially similar to that contained in the existing paper form of insider report, except for the addition of a separate section for third party derivatives to facilitate insider reporting of trades in exchange-traded or over-the-counter options or other derivatives.

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SEDI incorporates time savings and quality control mechanisms. For example, since the reports will be filed as data, and prepared within the system, SEDI will be able to pre-populate certain form information (e.g. opening balances of securities held), automatically perform certain calculations (e.g. closing securities balances) and perform various edit checks (e.g. ensure all required fields have been completed with valid data) prior to allowing transmission of the completed online report through SEDI. The CSA anticipates that this functionality will significantly reduce the number of deficient insider reports filed.

Securities legislation in several CSA jurisdictions currently requires insiders to report their trades within 10 days after the date of the trade. Securities legislation in other jurisdictions, such as British Columbia, requires insiders to report their trades within 10 days after the end of the month in which the trade occurs. In conjunction with the implementation of the National Instrument, the securities legislation in British Columbia and other jurisdictions will be harmonized, requiring insider reports to be filed with 10 days after a trade is made.

It should be noted that the NI 55-102 does not affect the operation of Part 17 of National Instrument 71-101 the *Multijurisdictional Disclosure System* ("NI 71-101"). Part 17 of NI 71-101 provides that Canadian insider reporting requirements do not apply to an insider of a "U.S. issuer" that has a class of securities registered under section 12 of the United States Securities Act of 1934, as amended (the "1934 Act"), provided that the insider complies with the requirements of United States federal securities law regarding insider reporting and the insider files with the Securities and Exchange Commission of the United States ("SEC") those insider reports required to be filed under section 16(a) of the 1934 Act and any rules and regulations thereunder.

It should also be noted that different reporting requirements apply to insiders of foreign issuers other than U.S. issuers who are subject to U.S. reporting requirements. These insiders, who are permitted to file the SEC prescribed forms under existing securities commission rules, blanket orders or policies permitting the filing of these forms in lieu of the Canadian insider report forms, may continue to file the SEC forms. In Ontario, the Ontario Securities Commission ("OSC") may amend existing OSC Policy 7.1 and the related blanket order, as amended (currently being reformulated as OSC Rule 72-502), which permit insiders of foreign

issuers other than U.S. issuers that are subject to U.S. reporting requirements to file insider reports using SEC forms. Under the proposed amendments (prior to reformulation as a rule), insiders of foreign issuers other than U.S. issuers will not be permitted to rely upon the exemption and must comply with SEDI insider reporting requirements.

SEDI for Issuers

Commencing *October 29, 2001*, reporting issuers, other than mutual funds, that are required to comply with National Instrument 13-101 – System for Electronic Document Analysis and Retrieval (SEDAR) (called a "SEDI issuer" in NI 55-102) must file a supplement to their SEDAR issuer profiles, called an issuer profile supplement, within 3 business days after the date that they become SEDI issuers. The issuer profile supplement, which must contain the information prescribed in Form 55-102F3, requires information about the SEDI issuer's outstanding securities and the name and contact particulars for an individual who will serve as an insider affairs contact for the SEDI issuer. Detailed information regarding each outstanding security or class or series of outstanding securities issued by the issuer is also required, to assist insiders select the correct designations when filing insider reports.

Upon implementation of SEDI on *October 29, 2001*, as a transitional matter an existing SEDI issuer will be required to file an issuer profile supplement within 5 business days rather than the standard 3 day requirement which will be mandated for issuers that become SEDI issuers after *October 29, 2001*.

If a SEDI issuer distributes a security or class or series of securities that is not already disclosed in its issuer profile supplement, or if there is any change in the designation of any security or class of securities of the SEDI issuer disclosed in its issuer profile supplement, or if any such security or class of securities has ceased to be outstanding and is not subject to issuance at a future date, or if there is any other change in the information disclosed or required to be disclosed in the issuer profile supplement, including any change in a SEDI issuer's insider affairs contact, the SEDI issuer must file an amended issuer profile supplement in SEDI format immediately.

Every SEDI issuer must also file an issuer event report no later than 1 business day following the occurrence of an "issuer event" which includes a stock dividend, stock split, consolidation, amalgamation, reorganization, merger or other

similar event that affects all holdings of a class of securities of the SEDI issuer in the same manner. Issuer event reports must include the information prescribed by Form 55-102F4. Issuer event reports will be displayed for the issuer's insiders in SEDI, thereby assisting these insiders to report changes in their security holdings resulting from issuer events.

Under the National Instrument 55-101 Exemption From Certain Reporting Requirements ("NI 55-101"), implemented on May 15, 2001, insiders are exempt from the obligation to report a change in direct or indirect ownership of, or control or direction over, securities of a reporting issuer resulting from an "issuer event" provided that these changes are reported by the insider within the time prescribed by securities legislation for reporting any other subsequent change in direct or indirect ownership of, or control or discretion over, securities of the reporting issuer.

SEDI for Investors

SEDI is intended by the CSA to facilitate timely public access to insider trading activity. To this end, the public will have access to the following information from SEDI filings on the SEDI web site, except for certain confidential personal information such as insider contact particulars:

- (i) insider profiles;
- (ii) summary reports of insider information, consisting of (a) insider profiles and (b) insider reports; and
- (iii) information relating to SEDI issuers, consisting of (a) issuer profiles and supplements and (b) issuer event reports.

This information will be available on a timely basis, 24 hours a day, seven days a week.

SEDI User Registration

Any individual wishing to access SEDI to make a filing for itself or for another must register by completing an online user registration form on the SEDI website. The information required to be provided by the individual is set out in Form 55-102F5. For security purposes, SEDI requires would-be registrants to sign a paper copy of the registration form and deliver same to CDS by prepaid mail, personal delivery or facsimile for verification. NI 55-102 requires that the registration process be completed in order for a filing to be considered valid.

How McLean & Kerr LLP Can Help

We are available to answer any questions you may have regarding SEDI or any related matter. In addition, we will be registering as a SEDI user under NI 55-102 and would be pleased to handle your insider or issuer filings.

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