

NOTICE

Selective Review of Prospectus Filings

Effective August 1, 1998, staff of the British Columbia and Alberta securities commissions ("staff") will be implementing a system of selective review for prospectuses (other than mutual fund prospectuses) filed with them. This joint selective review system is an important initiative resulting from the Letter of Accord between the two commission (see (1996) 5 ASCS at 2977).

Background

The commissions have recognized the need to focus more effort on reviewing continuous disclosure information, given that secondary market trading in equity securities makes up over 94% of trading in the equity markets today. In addition, the commissions were faced with increasing demands by industry participants for timely service. As a result, the commissions considered a number of initiatives to improve regulatory efficiencies.

One recent initiative was the development of a Canada-wide mutual reliance system for a number of operational areas, including prospectus filings (see (1998) 7 ASCS at 1959 and (1998) 7 ASCS at 1972). In the course of developing the mutual reliance system, staff had an opportunity to review the selective review system in Ontario (originally adopted in 1994). Recognizing the efficiencies of a selective review procedure, staff have developed a common system of selective review for implementation in British Columbia and Alberta, designed specifically to suit our markets.

Another initiative will be to implement a stepped up program of continuous disclosure review. Issuers may be subject to an in depth continuous disclosure review where staff will review all of an issuer's continuous disclosure filings (including annual and interim financial statements, quarterly reports, annual information forms, annual reports, take over bid circulars, offering memoranda, information circulars, insider reports, news releases, material change reports and most recent prospectus).

The objective of the selective review system for prospectuses is to focus resources on the review of material issues in an efficient and cost effective manner and to encourage issuers to provide quality disclosure in all prospectus and continuous disclosure filings.

The Selective Review System

Application

The selective review system applies to all prospectuses filed by non-mutual fund issuers ("prospectuses"). Staff is currently working on developing a selective review model for mutual fund prospectuses.

Types of Review

All prospectuses will be subject to a basic review. This includes a review of the issuer's directors and officers, the issuer's compliance history with securities legislation, forms, policies and notices, and selection criteria to determine whether further review is warranted. The selection criteria are structured to identify those issuers with a record of quality public disclosure. These types of issues would not generally warrant the significant regulatory oversight provided by a detailed review although staff retains the discretion to select documents for further review that do not meet the selection criteria.

Issuers selected for further review will be subject to either a detailed review or an issue oriented review.

Under a detailed review, staff will conduct a complete review of all documents included in the filing package.

All accounting, legal and financial aspects of the documents that have been filed will be examined for compliance with applicable securities legislation, policies, notices and other related legislation.

Under an issue oriented review, staff will focus only on one or more specific issues or aspects of disclosure, rather than the full filing package. This type of review may be undertaken where the basic review has identified material issues such as changes in key management, change in auditor or engineer, material acquisitions, volatile trading or a prospectus containing future oriented financial information. In addition, issues may arise from time to time that warrant special attention as a result of recent Commission policy initiatives; the circumstances, developments or activities of a specific issuer, industry or market segment; or political developments in jurisdictions where the issuer's principal business operations are located. Issuers and their advisers should note that any filing subjected to an issue-oriented review could become subject to a detailed review if warranted by the results of the issue-oriented review.

Review of Engineering Reports

The extent of review of an engineering report is independent of the extent of review of the prospectus. All reports will be subject to a limited initial review except where a report by the same author on the same property has recently been reviewed, there were no material problems identified and there have been no significant changes in the reserve or resource estimates contained in the prior report. Based on the results of the initial review, certain reports or portions of reports will be given a detailed review.

Change in Status

A prospectus qualifying an initial public offering of an issuer's securities would generally be subject to a detailed review unless the issuer is of sufficient size and there is sufficient information about the issuer in the market to justify not conducting a detailed review. Similarly an initial AIF that is filed to qualify the issuer for entry into the POP System will be subject to a detailed review. In both cases, the issuer is acquiring a new status and its disclosure to attain that status should generally be reviewed.

Scope of Review

Where the issuer is of a certain size or has had a recent review of its prospectus or continuous disclosure filings, and where that review did not disclose fundamental problems (an "acceptable recent review"), and where there are no new material issues, staff is likely to conduct only a basic review. What is considered a recent review depends on the issuer's stage of development. In any case, the issuer must continue to be in the same business as at the time of the acceptable recent review.

Implications for Issuers

Responsibility for Compliance

Responsibility for compliance with applicable securities legislation, forms, policies and notices remains with issuers and their advisers. The fact that a document is not selected for review does not relieve an issuer from that responsibility. Should it come to the attention of staff that there was material non-compliance by an issuer in a document that was not selected for review, any of a wide range of compliance actions may be taken, from issuing a cease trading order against the issuer's securities, to initiating appropriate enforcement proceedings against the issuer or its directors and officers.

Restricted Reliance on Precedents

Issuers are cautioned that it may not be appropriate to rely on a prospectus as a precedent, even though a receipt has been issued for it. Accordingly, issuers and their advisers are encouraged to consult staff on a pre-filing basis if they have any questions about their filing.

Impact on National Policy Statement No. 1 ("NP 1")

The procedures set out in NP 1 for a principal or non-principal jurisdiction remain unchanged under the selective review system. Issuers are reminded that NP 1 is expected to be replaced by the Mutual Reliance Review System for Prospectuses (see (1998) 7 ASCS at 1972).

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