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The decision to go public:

Key factors to consider

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Introduction

Going public is among the most critical decisions an issuer can make. It is an intensive and complex process that affects virtually every facet of the issuer's character and its operations. Before proceeding with an initial public offering, an issuer must reflect upon whether it is in a position to make a successful public issue of securities and it must consider very seriously the implications and reality of being a public issuer.

The success or failure of a public offering depends on the state of the financial markets, domestic and abroad. Market conditions can change in a matter of days, sometimes even hours. Adequate preparation allowing for quick decision-making can prove critical in this process.

The purpose of this memorandum is to provide an overview of the factors that should be taken into account when deciding whether to go public.

While this memorandum discusses most of the material aspects of the topic at hand, it is only a brief outline of some of the issues involved. It does not contain a full analysis of the law nor does it constitute an opinion of Norton Rose Fulbright Canada LLP or any member of the firm on the points of law discussed.

Issuer suitability

In deciding whether to go public, an issuer must determine whether it is realistically in a position to support a successful public offering. The following are some of the factors that should be considered in the decision-making process and are elements that could prove critical to the success of the offering.

Size of the issuer

Consider whether the issuer will have a market value after the issue that is large enough to attract institutional investors. While public offerings may sometimes be structured for issues as small as $1m, institutional investors and major underwriters usually take interest only in issues of $15m and up.

Growth history and potential

While it is clear that ideal candidates for successful public offerings are issuers with a consistent record of growth over several years, many development stage issuers with innovative products and services (such as the software or biotechnology fields) have successfully raised funds based on the potential of their business and management. Thus, an issuer with a short financial history can attract investor interest by showing a strong momentum in sales and profits and by being able to identify anticipated growth opportunities and competitive advantages.

Asset base

A potential issuer should have either a solid net worth supported by tangible assets or, if technology based, solid proprietary intellectual property with strong business prospects. The quality of an issuer's patent portfolio and other intellectual property protection are critical.

Management and board of directors

An issuer's management must possess sufficient depth and experience to carry out a successful public offering. Prospective underwriters and investors are particularly interested in the strength of the management team. An issuer must therefore ensure that management is willing and able to assume the responsibilities involved in going public. In addition, changes to the board of directors and the establishment of appropriate committees of the board are recommended such as fully independent compensation and nominating committees. Boards of directors play a significant role in both the management of public issuers and in their public image. An issuer will often need to add to its board individuals with experience, expertise or the necessary independence. Canadian securities laws require issuers to disclose whether they comply with such practices or if not, why not. Lesser disclosure standards apply where the issuer is a venture issuer.

Securities policies which provide governance practices for public issuers recommend that an issuer's board consists of a majority of "independent" directors. Certain relationships between the issuer and a nominee or existing director (for eg. employment with the issuer) will deem that director or nominee not to be independent. A director or nominee will also not be independent if the board of directors determines that he or she has a "material relationship" with the issuer which would affect the independent judgment of the director or nominee.

Certain Canadian securities regulators have recently issued gender diversity guidelines intended to increase transparency for investors and other stakeholders regarding the representation of women on boards and in senior management of certain public issuers. TSX-listed and other non-venture reporting issuers in the participating jurisdictions must make annual disclosure of any director term limits in place and other mechanisms of board renewal; whether or not the issuer has adopted a written policy for identifying and nominating women directors; how the board or the nominating committee considers the representation of women in the director appointment process; whether targets have been set for the representation of women; and the number and percentage of directors and executive officers of the issuer (including its subsidiaries) who are women.

Business plan and use of proceeds

An issuer must think about its longer term business goals and whether going public is the best way to finance its growth. Prospective underwriters and investors as well as securities regulators will require that an issuer have a clear plan for the use of the proceeds from the issue. On occasion, a two-step process whereby a smaller private placement precedes the initial public offering may be more appropriate and financially advantageous as it may reduce dilution to the founding shareholders.

Market and competition

The going public process is typically heavily influenced by precedent. Having a good grasp of an issuer's industry and market, as well as its competitive strengths and weaknesses, is critical to building a credible "case" with underwriters and potential investors.

Internal systems and procedures

An issuer must have internal systems and procedures that are capable of supporting the demands associated with both the process of going public and the requirements to report reliable financial information to investors following the public issue.

Suitable accounting practices

An issuer must determine early on whether there are any accounting issues that must be dealt with and whether it is in a position to meet the financial disclosure requirements of a prospectus. More particularly, historical audited financial statements (three years) must be prepared under Canadian rules.

Corporate structure and governance

An issuer must consider whether its existing internal, capital, management and governance structures are appropriate for a public issuer and whether all of its corporate records and contracts are in order.

Underwriters

The choice of underwriters is critical to the success of an initial public offering, for it is the underwriters who will take the issue to the public market. It is important therefore that the underwriters have a solid reputation in both the financial community and in the particular industry of the issuer. An issuer should generally look for underwriters who have a wide distribution network nationally and, if necessary, internationally, underwriters who have or have access to good research facilities and underwriters who have a track record of bringing past issues successfully to market. The quality of an underwriting firm's research teams and analysts should also be considered as a going-forward concern.

Other experts

The involvement of experienced legal counsel and auditors early on in the process is also critical to the success of an initial public offering. When selecting these experts, an issuer must consider their familiarity with the complex securities law and stock exchange requirements both in Canada and abroad. The legal counsel, the auditors and the underwriter(s) each play equally important roles and the whole offering process can grind to a halt if any one of these links is too weak.

In addition issuers operating in certain sectors such as mining and oil and gas will generally be required to produce technical or geological reports prepared by independent qualified persons.

Advantages of going public

Financing growth

The principal motivation for going public is to raise cost efficient funds with which to finance operating and growth objectives without the restrictions associated with bank debt financing. Such financing objectives may include the financing of research projects, new product development, expansion into new markets, acquisition of other businesses, plant construction or modernization, restructuring of capital, repayment of debt and working capital requirements.

Access to future capital

Going public can help a company or other entity such as a limited partnership or trust obtain future capital. As a public issuer, a company's current financial results as well as its future prospects are disclosed to the public on an ongoing basis. If the issuer is well-run and makes good use of its skills and resources, the market may respond favourably to its business success through upward pricing and acceptance of future share issuances.

Liquidity to shares of company

Shares or other securities that are publicly traded generally command higher prices because they are more marketable, because public issuers are seen as more sophisticated and because a great deal of information about public companies is made available to investors. Being public provides a company's shareholders or other issuer's securityholders with access to an active market, thus enhancing the liquidity and value of their investment.

Exit strategy

An initial public offering provides founding shareholders and venture capitalists with access to an organized market in which to eventually dispose of their investment. It is also possible in certain circumstances to combine an initial public offering of new treasury shares with a simultaneous sale of shares held by existing shareholders, however such sales are subject to certain restrictions. See section “Other considerations — Escrow requirements”.

Being public also brings a certain degree of flexibility for the founders in the medium and long term by helping them to diversify their investment portfolio and to simplify their financial, fiscal and estate planning.

Access to financing alternatives

A public issuer has access to a wider range of financing alternatives, including the issue of additional common shares and the issue of convertible debt obligations, convertible preferred shares or subscription rights. Also, by acquiring an expanded equity base, going public may lead to an improved debt/equity ratio, which in turn may make it possible to obtain additional debt on more favourable terms.

Mergers and acquisitions

Going public facilitates subsequent mergers and acquisitions through the sale and exchange of shares or other securities. Subject to certain statutory restrictions, public issuers have the advantage of being able to issue securities with a publicly quoted value (instead of paying a negotiated cash or securities value) to acquire other businesses.

Employee share incentives

Being public makes it easier for an issuer to offer to its executives, directors and employees certain incentives, such as stock option and share purchase plans, stock bonuses or other profit-sharing schemes. In general, the security based incentives of public issuers are more attractive because the public market values securities independently and thus enhances their marketability. Such securities incentives can therefore help a public issuer attract and retain key management personnel and develop a stronger sense of loyalty among employees.

Prestige and visibility

Going public may help increase an issuer's prestige and visibility in the business and financial community. Through press releases and other types of continuous disclosure, the issuer's name and products or services become better known to investors, the press, the public and, invariably, to its customers and suppliers.

Other considerations

Costs

Going public is a costly undertaking and an issuer must take into consideration both the initial costs of going public as well as the annual costs that come with being a reporting issuer.

The direct expenses of an initial public offering will vary depending on the capital market selected and the size and complexity of the offering. The costs involved typically include legal and accounting fees, filing fees with the applicable provincial securities commissions, promotional expenses such as information meetings (road shows), translation costs for offerings in Quebec, transfer agents' fees, printing costs for the prospectus and stock exchange listing fees and underwriters' commissions. The underwriters' commission generally accounts for 5 per cent or more of the proceeds from the offering and may range upward of 10 per cent for smaller, more speculative issues.

An issuer must also consider the time and effort required of management to assist in the preparation and realisation of the public offering. The going public process may take up to three or four months depending upon the amount of advance preparation undertaken, the complexity of the issuer's business and the offering, the state of the financial markets and the responsiveness of the securities regulators. Even after the offering is completed, management will be involved in meetings of the boards of directors and the audit committee, shareholders' meetings, meetings with analysts and meetings with journalists.

Once an initial public offering is completed and the securities are trading on a stock market, an issuer must be aware of the significant ongoing costs that come with being a reporting issuer. These include the costs associated with the filing and distribution of periodic disclosure documents and proxy statements, such as printing costs, the costs of mailing documents to shareholders, legal and auditing fees and the fees paid to registrars and transfer agents.

Loss of confidentiality

An issuer will lose a great deal of confidentiality once it becomes public. The disclosure obligations in the prospectus and the continuous disclosure required of public issuers forces issuers to sometimes divulge highly sensitive information, such as the compensation paid to their five (for venture issuers three) highest paid officers, special incentives offered to management, special arrangements with key personnel or related parties and many strategic business plans and operations.

One obvious disadvantage to this increased publicity is that an issuer's competitors will have access to the information it discloses. Also, with financial disclosure requirements, the successes and failures of a public issuer are made public. This type of information is reflected rapidly in the marketplace and may have an adverse effect on an issuer's public image and on the market price of its securities. Increased visibility also leads to the potential for unwanted publicity, particularly in such areas as litigation, potential liabilities and regulatory or environmental matters. Such publicity could be damaging to an issuer's reputation and its customer, supplier and community relations.

Restrictions on management decision-making

Compared with that of a privately held issuer, management of a public issuer acts with less freedom. A certain degree of spontaneity is due to the increased regulatory burden. Directors' and securityholders' meetings must be convened, information regarding the meeting must be sent in advance and a certain amount of time must be given to allow for review of the material.

Increased pressure for short-term results

Securityholders who trade on public markets put more pressure on the issuers in which they invest to increase their short-term return. They tend to focus more on an issuer's quarterly performance in terms of profits, dividends and stock prices than would certain private investors. As a result, management often feels pressured to present short-term strategies in addition to long-term objectives.

Restraints on transactions by majority securityholders

While shareholders of public issuers generally benefit from increased liquidity of their shares, there are a number of regulatory rules that govern the rights of majority securityholders and issuer insiders to sell or transfer their securityholdings. These restrictive rules may have a significant impact on the size and nature of the founders' equity positions and their ability to deal freely with their securities both during and after the initial offering. See section "Continuous disclosure requirements for public issuers — Insider trading and reporting".

Potential loss of controlling interest

If enough shares are issued in the initial public offering and purchased by an investor or group of investors, the founding shareholders risk losing their controlling interest in the issuer. The founding shareholders can sometimes avoid or delay such a result by issuing shares with limited voting rights to the public; however, such shares are less appealing to investors and may sell for less than would fully voting common shares. Also, certain regulators restrict an issuer's ability to issue subordinate voting shares and thus this option is not always available.

Escrow requirements

In order to guarantee the continued interest and involvement of founding shareholders in the management of the issuer Canadian securities regulators have adopted an escrow policy which may require a founding securityholder to place securities owned into escrow which will effect the ability to dispose of such securities for a period after the issuer has become public.

In general, directors, senior officers, promoters and securityholders holding more than 20 per cent of issuer's securities after the offering will be subject to escrow requirements when the issuer goes public unless the issuer will be listed as an exempt issuer on the TSX or has a market capitalization of at least $100m. Canadian securities regulators require these holders to place a percentage of their securities in escrow with an independent third party upon certain conditions. These shares must remain in escrow after the initial public offering for a period that may last up to three years. The escrowed shares are released progressively over the escrow period.

Underwriters will sometimes insist on additional contractual restrictions negotiated on a case by case basis.

Potential liability for disclosure

Directors and officers of companies (and persons acting in a similar capacity in other issuers) must be aware of the responsibilities they will be assuming if their company or other entity goes public. Directors and officers may be subject to both personal liability and penal sanctions for any misrepresentations in the prospectus. In addition, following the listing of the issuer, directors and officers (and persons who act in a similar capacity) will be potentially liable to investors who trade in securities of the issuer in the secondary market during a period when there is a misrepresentation contained in any continuous disclosure made by the issuer which has not been publicly corrected. Liability may also arise where there has been a failure to make timely disclosure of a material change.

The IPO process

The following is a brief outline of the main events that are involved in the initial public offering process. These steps are quite standard and have been refined over time. They are designed to comply with the complex regulatory framework which has been created to protect the investing public by providing standardised and complete disclosure about the proposed investment.

Organisational meeting

Once underwriters have been retained and an engagement letter executed, the process typically begins with an organisational meeting between representatives of the issuer, the issuer's auditors and legal counsel, the underwriters and the underwriters' legal counsel. At that point a timetable is set and initial responsibilities are assigned.

Due diligence

Both the issuer and the underwriters are required to attest to the fact that the prospectus will contain "full, true and plain disclosure". Extensive due diligence is therefore required by all parties to discharge this legal obligation. The scope and content of each due diligence investigation will vary and must be tailored to such determinants as the nature of the offering, the size of the issuer and the availability of information. For example, legal counsel will review the issuer's minute books and other corporate records to ensure that filings are correctly made and that decisions by the issuer were properly authorized and documented. Counsel will also review material contracts to which the issuer is a party and documentation relating to various aspects of the issuer's business, such as employment, property ownership, litigation, environmental matters, insurance, financial and tax issues. Specialized due diligence will also be required, for eg. where the issuer is involved in the mining or oil and gas industries.

The due diligence process is ongoing and lasts the duration of the public offering. The findings must be regularly updated and confirmed because the discovery of a material fact not properly disclosed in the prospectus can trigger liability and may require the filing of an amended prospectus before any purchase orders are confirmed.

Prepare preliminary prospectus

Preparation of the preliminary prospectus for filing is a lengthy process which can take between one to three months, largely depending on the issuer's resources. The form and content of the prospectus are largely governed by securities laws, although the most pertinent information may vary depending upon the nature of the issuer involved.

The disclosure in the prospectus is open-ended in that it requires full, true and plain disclosure of all "material" facts relating to the securities being offered. The issuer and the underwriters must decide what information is "material", keeping in mind that they assume responsibility for the accuracy and adequacy of the disclosure.

In short, the purpose of the prospectus is to provide potential investors with a comprehensive, accurate and informative description of all matters an investor might reasonably take into account in reaching a decision on whether to invest in the issuer.

"Testing of the Waters"

Securities laws allow an underwriter(s) on behalf of an issuer who has a "reasonable expectation" of filing a preliminary prospectus to solicit expressions of interest from accredited investors to ascertain if there would be sufficient interest in an IPO before a preliminary prospectus is filed. Such communication must be made on a confidential basis and must comply with certain prescribed requirements including the requirement that only accredited investors (ie. institutional and other high net worth investors) be approached. The purpose of "testing the waters" is to allow an issuer to avoid incurring significant costs in connection with an IPO prior to actually determining whether there is investor interest. It is not intended to allow the dealer to "pre-sell" the offering.

Prepare financial statements

The preliminary and final prospectus must contain certain prescribed financial information, which generally includes two years of audited balance sheets, three years of audited statements of income, retained earnings and cash flow and unaudited financial statements for the issuer's last interim period. The annual financial statements must be audited by an independent auditor who must be registered with the Canadian Public Accountability Board and such auditor must express an unqualified audit opinion. Prospective issuers that do not typically audit their statements should begin to do so well before the public offering process begins so as to avoid having previous years audited while the process is underway.

Translate prospectus

For public offerings in Quebec, a French language version of the prospectus must also be prepared. Time should be allocated for translating the prospectus to avoid filing delays in Quebec.

Formal due diligence session with management and auditors

Immediately prior to the filing of the preliminary prospectus, the underwriters meet with the issuers' management and auditors to conduct a formal due diligence session and to carefully review the prospectus to ensure that its disclosure is complete and accurate and does not contain any misrepresentation.

File preliminary prospectus with Securities Commission

When the issuer and the underwriters are satisfied with the disclosure in the preliminary prospectus and it has been approved by the board of directors, it is filed with the provincial securities commissions in those jurisdictions where the offering will be made. A press release is usually issued announcing the filing and the securities commissions in each jurisdiction will issue a receipt upon the filing. Where the offering is to be made in more than one province, the issuer will designate a principal jurisdiction. The principal jurisdiction will lead the prospectus review process and will co-ordinate it with the other provincial securities commissions.

Marketing

Canadian securities laws impose restrictions on how an IPO may be marketed. Prior to the filing of the preliminary prospectus, the underwriters may explore interest in the proposed offering with accredited investors by "testing the waters". Such activities are subject to restrictions.

Marketing activities are also permitted during the period between the receipt for the preliminary prospectus and the receipt for the final prospectus (the **waiting period**). During the waiting period, underwriters may provide marketing materials (which contain material facts regarding the issuer, its securities and the IPO) and standard term sheets (which only contain limited prescribed information regarding the IPO) to potential investors and may conduct road shows. Marketing materials and term sheets are defined in the legislation. Generally, any materials provided to investors other than standard term sheets and the prospectus itself will be considered marketing materials and must be filed publicly. The information in both standard term sheets and marketing materials must be derived from the prospectus.

The issuer and the underwriter(s) will have liability for such information in the event of a misrepresentation in the marketing materials. Such materials must include "waiting period legends" which refer the potential investor to the preliminary prospectus, and indicate that the preliminary prospectus is subject to completion. A warning should be included that the standard term sheet or marketing materials do not provide full disclosure of all material facts relating to the securities offered.

During the waiting period, "road shows" will typically be arranged whereby the investment dealers, on behalf of the issuer, conduct presentations to potential investors regarding the public offering of the issuer's securities. The investment dealer(s) must establish and follow certain procedures when conducting a road show, including procedures regarding investors' identity and information supplied to investors. Underwriters must have procedures in place to ensure investors are provided with copies of the relevant prospectus and any amendment.

Following the receipt for the final prospectus and prior to the closing of the IPO, similar rules apply to marketing activities as those in the waiting period.

Stock exchange listing

Shortly after filing the preliminary prospectus, application is made for listing of the offered securities on one or more stock exchanges. If the issuer meets the minimum listing requirements under the stock exchange rules, conditional listing approval will be granted.

Prepare underwriting agreement

The underwriting agreement between the issuer and the underwriters sets out such matters as the obligations of the underwriters, various covenants and representations of the issuer and the conditions relating to the underwriters' obligations and rights of termination, including the "market out" clause that outlines the circumstances in which the underwriters can choose to terminate their obligation to purchase shares and proceed with the offering.

Receive and respond to comment letters of the securities commissions

The securities commission in the principal jurisdiction usually issues a first comment letter within ten working days of the filing of the preliminary prospectus. The securities commissions in the other jurisdictions then typically provide the principal jurisdiction with any additional comments within five working days of receipt of the first comment letter. The principal jurisdiction forwards these additional comments to the issuer or its counsel as a second comment letter.

Legal counsel to the issuer and underwriters will then contact the staff of the principal jurisdiction to resolve the deficiencies in the preliminary prospectus. The period required to settle the deficiencies normally takes several weeks. When the principal jurisdiction is satisfied that all the comments have been resolved, a draft final prospectus, blacklined to highlight the changes made, is typically sent to the securities commissions before filing of the final prospectus.

Pricing and board meeting

Once all the deficiencies in the preliminary prospectus are cleared and the securities commissions have indicated that they are "clear for final" (ready to receive the final materials) and the marketing efforts of the underwriters have been successfully completed, the underwriters and the issuer will agree on the issue price of the securities and the number of securities to be issued. The underwriters and the issuer will then execute the formal underwriting agreement, which is submitted to the board of directors of the issuer for approval.

Second formal due diligence session with management and auditors

Immediately prior to the filing of the final prospectus, the underwriters meet with the issuers' management and auditors to conduct another formal due diligence session and to carefully review the prospectus to ensure that its disclosure is complete and accurate and does not contain any misrepresentation.

File final prospectus

The issuer must file the final prospectus, together with required supporting documentation, with the securities commissions in each province in which the issue is to be distributed.

Upon receipt of the final prospectus, the principal jurisdiction will advise the securities commissions in the other jurisdictions of its intention to accept the prospectus for filing. Once the other jurisdictions have indicated that the final prospectus is acceptable to them a receipt for the final prospectus will be issued.

Confirmation of orders by underwriters

Once the receipts for the final prospectus have been issued, the waiting period ends. At this point the underwriters can distribute the final prospectus, accept orders for the issuer's securities and collect funds from their customers in payment therefor.

Closing

The closing is the final formal step in the transaction and it typically occurs three to five days after the receipt for the final prospectus has been issued. It is at the closing that the issuer issues the securities and the underwriters pay the issuer the price of the issue (less commission).

Continuous disclosure requirements for public issuers

Once an issuer has completed a distribution of its securities to the public by way of prospectus, it becomes a "reporting issuer" and must comply with all the provisions of the various provincial securities laws and regulations that are applicable to it. Reporting issuers must also comply with local policies of the applicable provincial securities regulators, the rules and policies of each stock exchange on which its securities are listed for trading and the National Instruments and National Policy Statements adopted by the Canadian securities administrators and applicable in all jurisdictions.

The obligation to make continuous disclosure typically consists of public dissemination, either through the issuance of a press release, the filing of a notice or other document with the securities regulators or the distribution to shareholders of a particular document.

As a general rule, all material required to be filed with a securities commission is open for public inspection. A commission may, however, allow for confidential filings if public disclosure of the information would be unduly detrimental to the issuer.

The following is a brief description of the most common continuous disclosure obligations required by the Canadian provincial securities commissions and The Toronto Stock Exchange (TSX) and the TSX Venture exchange.

Periodic reporting

Annual information form

A reporting issuer is required to prepare and file an annual information form (**AIF**) and a management's discussion and analysis of the financial conditions and results of operations of the reporting issuer (**MD&A**). Issuers whose securities are not listed on the TSX, certain senior US exchanges or any marketplace outside the US and Canada (**venture issuers**) are exempt from this requirement. However if venture issuers wish to use the short-form prospectus offering system for future issuances of securities they must have a current AIF. Venture issuers would include TSX Venture Exchange listed issuers.

AIF disclosure is intended to provide relevant background to the business and affairs of the reporting issuer as a whole. Consequently, the reporting issuer is required to disclose material information about the general development of an issuer's business over the past three years, presently known trends, commitments, events or uncertainties that are reasonably expected to have a material impact on its business, financial condition or results of operation. The AIF must include separate disclosure of all risk factors relating to the issuer and its business. In addition, the AIF must contain information regarding the issuer's capital structure, its incorporation or organisation, its subsidiaries, a description of its business, the market(s) and trading history for the issuer's securities, the directors, officers and any promoter of the issuer, the issuer's audit committee, legal proceedings, interests of management in material transactions, material contracts and certain other additional information. The AIF must state that additional financial information is available in the issuer's financial statements and MD&A.

TSX listed issuers must file an AIF with the commissions within 90 days of the end of the reporting issuer's financial year and will be publicly available. Material contracts which are outside the ordinary course of business of the issuer must be filed with an issuer's AIF unless they have been previously filed.

Annual MD&A

The MD&A is a supplemental analysis and explanation that accompanies issuers but does not form part of the reporting issuer's financial statements. In this document, management discusses and analyses the reporting issuer's current financial situation and future prospects, including such information as its liquidity and capital resources, details of any off-balance sheet arrangements, results of operations, risks and uncertainties, trends in the issuer's business, related party transactions, critical accounting estimates and any prior MD&A if such disclosure could now be misleading without further discussion. The MD&A is typically inserted into the AIF under a distinct heading, although it may be distributed as a stand-alone document. It must also be filed within 90 days of the issuer's year end unless the issuer is a venture issuer in which case the relevant period is 120 days.

Annual and interim financial disclosure

Reporting issuers listed on the TSX are required to prepare audited annual financial statements and MD&A, file them with the commissions and with the stock exchanges within 90 days of the issuer's financial year end. Venture issuers must file their annual financial statements and MD&A within 120 days of their year-end. These annual financial statements must be accompanied by the auditors' report thereon and must contain an income statement, a statement of retained earnings, a statement of changes in financial position, a balance sheet and comparative annual financial statements.

Within 45 days of the end of each of the reporting issuer's first three quarters of the financial year, unaudited interim financial statements and MD&A must be filed with the commissions and the stock exchanges. Venture issuers have a 60 day period from the end of each interim period to file their interim financial statements and MD&A. Venture issuers have the option, subject to certain conditions, of preparing a simplified quarterly highlights document in lieu of MD&A.

Reporting issuers may mail the financial statements and MD&A only to shareholders who request them in which case the mailing must be made at the time of filing. If an issuer chooses to deliver the annual statements and MD&A to all registered and beneficial shareholders, the mailing must be made within 140 days of such year-end.

Certification of annual and interim filings

To further ensure the integrity of a reporting issuer's disclosure, the chief executive officer and chief financial officer will be required to certify that the issuer's AIF, annual and interim financial statements and accompanying MD&A do not contain any misrepresentation or omit to state a material fact. The CEO and CFO will also be required to certify that the financial statements and other financial information contained in such filings fairly present the financial condition of the issuer and that, in the case of a TSX issuer, they have designed effective disclosure controls and procedures (**DC&P**) and internal controls over financial reporting (**ICFR**). The CEO and CFO of a TSX listed issuer must also provide further certifications regarding DC&P and ICFR, including certification that they have evaluated the effectiveness of DC&P and ICFR and that the issuer has disclosed management's conclusion regarding the effectiveness of such systems and any material weaknesses of its ICFR. The CEO and CFO of a venture issuer are not required to certify with respect to DC&P or ICFR.

Annual report

Reporting issuers may also prepare an annual report which is generally less detailed than the AIF and is often focused more towards marketing. The annual report explains in narrative form the current financial situation of the reporting issuer as well as its future prospects. In addition, the annual report will normally contain the reporting issuer's audited annual financial statements, on a comparison basis, and the auditors' report, but not the MD&A.

Securityholder communication — meetings and proxy documents

The Canada Business Corporations Act requires that boards of directors call an annual meeting of shareholders no later than fifteen months after holding the last annual meeting. The TSX requires reporting issuers to hold the annual meeting of securityholders within six months from the end of their financial year. In addition, special meetings may be called throughout the year to deal with business other than the usual annual items such as the election of directors or approval of financial statements. Prior notice of the shareholders' meeting and the record date, which is used to determine the holders of securities who are entitled to receive notice of the meeting, must be sent to all shareholders of the reporting issuer and to the exchanges.

Notices of securityholders' meetings must be accompanied by management proxy circulars and related material in compliance with applicable securities and corporate law.

In response to an increase in the indirect ownership of shares through such intermediaries as brokers, nominees, plans, mutual funds and other similar instruments, certain procedures have been put in place for the calling and holding of shareholders' meetings. These procedures seek to ensure that shareholder information is passed on to the beneficial owners of the shares who wish to receive them through the various levels of intermediaries in time for such beneficial shareholders to give voting instructions on the matters presented to them. Electronic delivery of materials is permitted in certain instances.

Ongoing obligations

Material change disclosure

Reporting issuers are also required to disclose "material changes" in the business, operations or capital of the reporting issuer that would reasonably be expected to have a significant effect on the market price or value of any of the securities of the reporting issuer. A material change includes a decision to implement a change made by the directors or by senior management who believe that confirmation of the decision by the directors is probable.

The provincial securities regulators and the stock exchanges require reporting issuers to issue and file a press release, as soon as practicable, which discloses the nature and the substance of the change. The subsequent filing of a material change report is required within ten days of the date on which the material change occurred.

Business Acquisition Reporting

Reporting issuers will be required to publicly report on an ongoing basis any significant business acquisition made by the issuer. Such reports will require a full description of the acquisition and will include financial statements of both the acquired target and proforma statements of the issuer showing the effect of the acquisition.

Insider trading and reporting

The term "insider" is defined to include the directors and senior executives of a reporting issuer, the senior executives and insiders of the reporting issuer's subsidiaries, any other person or issuer having direct or indirect beneficial ownership of or control over securities of the reporting issuer carrying more than 10 per cent of the voting rights attached to all the reporting issuer's outstanding voting securities, and the reporting issuer itself where it holds its own shares. In addition, the directors and senior executives of the reporting issuer are deemed to have been insiders for the six months preceding the initial public offering.

Certain insiders who are known as "reporting insiders" must disclose their security holdings and any changes thereto, including positions in derivative transactions, by filing "insider reports". Reporting insiders include the CEO, CFO or COO of the reporting issuer or a 10 per cent shareholder or major subsidiary of the issuer and any 10 per cent shareholder of the issuer. Anyone who becomes a reporting insider is required to file an initial insider report within ten days from the date on which they became a reporting insider disclosing any direct or indirect beneficial ownership of or control over the securities of the reporting issuer (including derivatives). Also, where there is a change in an insider's direct or indirect beneficial ownership of or control over securities of the reporting issuer (including derivatives), the insider must file a subsequent insider report disclosing such change within five days from the date on which the change took place.

Securities laws also impose restrictions on the trading of securities of issuers that have securities that are publicly traded (including reporting issuers) (an **issuer**) by persons or issuers that are in a "special relationship" with the issuer. This term includes insiders, but also extends to affiliates, employees and associates of the issuer as well as any person or issuer that is engaging in or proposes to engage in any business or professional activity with or on behalf of the issuer and persons who are not in a special relationship with an issuer but who have been informed of material undisclosed information by a person who was in a special relationship with an issuer. Accordingly, persons or issuers found to be in a special relationship with an issuer are prohibited from purchasing or selling the securities of the issuer with the knowledge of a material fact or material change with respect to the issuer that has not been generally disclosed to the public. Breach of the insider trading restrictions contained in both the securities legislation and in Canadian criminal law may lead to penal, administrative and/or civil sanctions.

Stock exchange requirements

Reporting issuers whose shares are listed on a stock exchange must comply with certain additional stock exchange rules in order to maintain their listing privilege. In general, these rules require an issuer to make certain public disclosures and keep the stock exchanges fully informed of both routine and unusual events and decisions that affect its shareholders. The exchanges require that each reporting issuer file certain forms providing information about the reporting issuer, such as forms regarding change in outstanding and reserved securities, change in general issuer information, change in directors/officers/trustees, personal information form, dividend/distribution declaration, change in principal business and notice of private placement.

Reporting issuers listed on stock exchanges must also comply with timely disclosure requirements. The stock exchange disclosure rules require reporting issuers to notify the exchanges of any material information relating to the business and affairs of the reporting issuer as soon as the information becomes known to management.

Finally, reporting issuers must pay an annual sustaining fee comprised of a base charge plus an assessment based on the market value of the reporting issuer's listed securities.

Corporate governance for public issuers

Once an issuer goes public it will be subject to greater scrutiny with respect to its corporate governance practices. Such practices will be influenced not only by the mandatory and suggested practices of the securities regulators but also by practices of its institutional shareholders.

The securities regulators require every reporting issuer (other than a venture issuer) to have a fully independent audit committee of at least three members, all of whom are financially literate. Venture issuers are not required to have a fully independent audit committee however for financial years beginning on or after January 1, 2016, venture issuers will be required to have an audit committee of three members all of whom are directors and a majority of whom are not executive officers, employees or control persons of the issuer or affiliates. To ensure the independence of an issuer's external auditors from management of the issuer, the audit committee must undertake certain functions including oversight of the external auditor.

In addition to the mandatory governance requirements, the securities regulators have published guidance on governance practices for public issuers. This guidance outlines suggested practice concerning board independence, board interaction with management, board effectiveness and assessment, gender diversity and compensation of directors and senior officers. While the guidelines are not mandatory, disclosure as to governance practices in light of such practices is required. Finally reporting issuers should be aware of the existance of proxy firms such as Institutional Shareholder Services and Glass-Lewis who issue voting guidelines on which institutional shareholders may rely.

NORTON ROSE FULBRIGHT

Contacts

If you would like further information please contact:

Montréal

Elliot Shapiro
Partner
Norton Rose Fulbright Canada
Tel +1 514 847 4516
elliot.shapiro@nortonrosefulbright.com

Toronto

Paul Fitzgerald
Partner
Norton Rose Fulbright Canada
Tel +1 416 216 3941
paul.fitzgerald@nortonrosefulbright.com

Ottawa

Geoffrey G. Gilbert
Partner
Norton Rose Fulbright Canada
Tel +1 613 780 3764
geoffrey.gilbert@nortonrosefulbright.com

Calgary

Marcus W. Archer
Partner
Norton Rose Fulbright Canada
Tel +1 403 267 9547
marcus.archer@nortonrosefulbright.com

Québec

Jean-Philippe Buteau
Partner
Norton Rose Fulbright Canada
Tel +1 418 640 5069
jean-philippe.buteau@nortonrosefulbright.com

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