

# Canadian Securities Law News

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## CANADIAN SECURITIES REGULATORS REVAMP EARLY WARNING REGIME

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On February 25, 2016, concurrent with the publication of major changes to the take-over bid regime, the Canadian Securities Administrators ("CSA") announced significant amendments to the early warning reporting rules. Market participants who take large positions in public issuers, along with their advisers, should pay careful attention to the changes.

Since 2013, the CSA has been considering changes to the early warning system with the intent of enhancing public disclosure about significant holdings of reporting issuers' securities. One of the major proposed changes was to lower the early warning reporting threshold from 10% to 5% thus requiring disclosure when a securityholder reached an ownership level of 5%. After receiving comments on the proposal, the CSA noted various concerns and a lack of overall support concerning the lower threshold and the CSA concluded not to adopt the lower threshold in the final amendments. However, the CSA decided to implement many of the other changes it had proposed.

The key changes that come into force on May 9, 2016 (or in Ontario, the date of proclamation of regulations), include the following:

- **Disclosure of Decreases in Ownership.** Currently, persons who hold more than 10% ownership (convertible securities are used in this calculation) in a reporting issuer are required to issue an additional news release and file an early warning report when an additional 2% or more of outstanding securities is acquired. Disclosure will now be required for decreases in ownership, control or direction of 2% or more of outstanding securities. In addition, should a person decrease ownership to less than 10%, disclosure is also required.
- **Enhanced Disclosure in Early Warning Report.** Early warning reports will now require more detailed disclosure. The new Form 62-103F1 will require more information regarding the purposes and intentions of the acquirer for the acquisition or disposition of securities. In addition, the report will require disclosure of an interest in a related financial instrument, a securities lending arrangement and other agreement in respect of the security of the class for which disclosure is required. The Early Warning Report will need to be certified and signed.
- **News Release Dissemination Timeline.** The current rules require a news release to be issued "promptly" once the early warning thresholds are crossed. The changes now require a news release to be issued promptly and in any event, no later than the opening of trading on the business day following the acquisition or disposition.
- **Monthly Reporting not Available for Institutional Investors Soliciting Proxies.** Entities that qualify as "eligible institutional investors" (e.g. financial institutions, pension funds, mutual funds that are not reporting, certain investment managers)

have been able to report their holdings on a monthly basis under the Alternative Monthly Reporting System ("AMRS"). The changes disqualify such entities from the AMRS if they solicit proxies in support of actions not supported by management of the reporting issuer.

- **Exemptions for Lenders and Borrowers.** As part of the amendments, when a person is a lender of securities or acquires securities as a borrower in certain lending arrangements, calculation of such securities are excluded from the early warning thresholds (for example, generally, if the owner of the securities is a lender and it has a written agreement which provides that it has an unrestricted right to recall all securities it has transferred or lent before the record date for voting at any meeting of shareholders or the lender requires the borrower to vote the securities transferred or lent in accordance with the lenders instructions then it will not trigger the early warning report requirement).

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