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SUBMITTED VIA EMAIL

Dear Ms. Bent and Ms. Beaudoin,

RE: COMMENTS ON PROPOSED NATIONAL INSTRUMENT 55-104 INSIDER REPORTING REQUIREMENTS AND EXEMPTIONS

ICSA – Chartered Secretaries Canada is the Canadian Division of the Institute of Chartered Secretaries and Administrators, an international organization that promotes the highest standards in corporate secretaryship. ICSA – Chartered Secretaries Canada currently has over 1,000 members and is committed to strengthening and advancing good governance procedures and the efficient administration of every type of organization in business and government.

ICSA – Chartered Secretaries Canada is providing comments on the proposed material changes regarding National Instrument 55-104 (“NI 55-104”) based on the feedback from and the practical experience of its members.

Harmonized Insider Reporting Requirements

ICSA – Chartered Secretaries Canada acknowledges certain advantages exist when harmonizing the insider reporting requirements into a single instrument and notes the importance of CSA being able to provide insiders with the necessary tools to complete accurate and timely insider reports.

Recommendation

As not every insider is afforded the opportunity to have an agent complete insider filings on his or her behalf, the CSA should give consideration to developing online tutorial opportunities and user-friendly handbooks written in layman’s terms. ICSA – Chartered Secretaries Canada believes by doing so, more insiders would have a better understanding of the filing requirements and be better equipped to file insider reports within the reporting guidelines.

Period for Filing Insider Reports

Part of the material changes proposed to NI 55-104 is to accelerate the filing requirements for insider reports from 10 calendar days to five calendar days. However, ICSA – Chartered Secretaries Canada believes this accelerated timeframe may not be realistic or fair to insiders.

Statutory Holiday and Weekend Considerations

The United States and United Kingdom may be considered to have tighter insider reporting guidelines (two business days and five business days respectively); however, the current Canadian “calendar day” requirement is quite stringent. For these foreign regulators, “business day” guidelines are exclusive of weekends and statutory holidays, while under the current Canadian structure, weekends and statutory holidays are considered part of the overall timeframe.

In certain circumstances, such as the upcoming Easter holiday, an insider could complete a transaction on the Thursday prior to Good Friday (a statutory holiday). Based on the Canadian 10 calendar day system, four of the 10 calendar days would have already lapsed (as a result of the weekend and potentially Easter Monday); whereas, for an American or British counterpart, the Tuesday would simply represent one business day after the transaction date.

Under the CSA’s proposed accelerated structure, the same Canadian insider would have to complete his or her insider filing on same day returning to work (Tuesday), whereas the American insider would have until Wednesday to file an insider report, while the British insider would have until the following Monday to file an insider report. On this basis, ICSA – Chartered Secretaries Canada believes an unrealistic burden would be placed on insiders to file the appropriate insider reports within the proposed accelerated filing environment.

Third Party Service Providers

In instances where insiders rely on third parties to provide transaction details (such as with Solium Capital, a third party service provider that administers stock option plans), ICSA – Chartered Secretaries Canada notes further considerations against adopting an accelerated reporting structure.

In some instances, a third-party vendor will often take up to four days (transaction date plus three days, which does not include weekends or statutory holidays) to confirm transaction details to an insider. Although an insider determines when to exercise his or her options, he or she cannot readily confirm the share price on the open market. As such, the insider must rely on the reporting timeline of his or her third-party vendor to communicate the transaction details in a timely manner.

Under the current 10 calendar day guidelines, sufficient time often exists for insiders to receive the transaction details necessary to complete the required insider filings. However, ICSA – Corporate Secretaries Canada believes that under the proposed accelerated system it could be difficult in many situations for insiders relying on third-party vendors to receive the pertinent transaction details within the accelerated timeframe and be able to file accurate and timely insider reports on SEDI.

Recommendation

If its CSA's intention to reduce the time insiders are allowed to file respective insider reports then, for the reasons listed above, ICSA – Chartered Secretaries Canada would recommend adopting a “business day” measurement rather than maintaining its current “calendar day” standard.

If the purpose of the proposed accelerated reporting structure is to deter improper trading based on material undisclosed information, ICSA – Chartered Secretaries Canada has a concern that adopting an accelerated model will not deter those insiders likely to default on the insider reporting guidelines and would more likely capture those insiders simply unable to gather the appropriate information necessary to file complete, accurate and timely insider reports.

Narrowing of Insider Definition

In wanting to narrow down the list of insiders, ICSA – Chartered Secretaries Canada does have a concern that implementing a dual criteria system may inadvertently limit the number of insiders, leaving out individuals who should remain classified as insiders.

ICSA – Chartered Secretaries Canada is supportive of the first criterion where “the insider in the ordinary course has access to material undisclosed information concerning the reporting issuer prior to general disclosure.” However, having the CSA potentially require the definition of a reporting insider also satisfy the second criterion, namely, “the insider, directly or indirectly, exercises, or has the ability to exercise, significant power or influence over the business, operations, capital or development of the reporting issuer” causes ICSA – Chartered Secretaries some concern.

Recommendation

ICSA – Chartered Secretaries Canada appreciates CSA's desire to reduce the number of insiders to a manageable level; however, using phrases such as ‘significant power and influence’ within its criterion is ambiguous and by its very nature open to broad interpretation. ICSA – Chartered Secretaries Canada is concerned that an inherent dilemma may exist between the way in which an issuer determines ‘significant power or influence’ and how a shareholder may perceive ‘significant power or influence’. As such, the CSA should give consideration on developing its definition of ‘significant’ if it considers moving forward with this ‘reporting insider’ distinction.

Issuer Grant Report

ICSA – Chartered Secretaries Canada is unsure of the benefit of having an ‘issuer grant report’ filed on SEDAR under the proposed material changes to NI 55-104. As noted currently on the CSA website, “usually the board of director's resolution date is the reportable transaction date. However, if this date precedes the date of regulatory approval or when [the insider] became aware of [his or her] allotment, the later date should be used for reporting purposes.”

Under the current insider reporting guidelines relating to option grants, insiders are provided the opportunity to use the date they were notified of the option grant rather than the date the option grant received Board approval. As such, ICSA – Chartered Secretaries Canada believes that having

an ‘issuer grant report’ filed on SEDAR filing would pose an undue administrative burden on issuers, especially since no other SEDAR filings of this nature are otherwise required.

Recommendation

ICSA – Chartered Secretaries Canada favours CSA taking a proactive role in developing and communicating reference guides for issuers and insiders, that would outline best practices when issuing and reporting option grants. Doing so would provide a greater understanding of the regulations and the expectations insiders should have of their respective issuers.

Reporting of Late Insider in Issuer’s Information Circular

Under the proposed material changes to NI 55-104, consideration is being given to requiring issuers to list all late filing insiders in their Information Circulars. With the increased level of disclosure required for a majority of issuers, most recently the new disclosure requirements regarding executive compensation, the standard Information Circular is often well in excess of 30 pages.

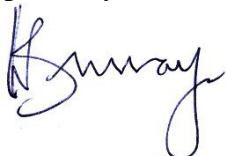
Recommendation

ICSA – Chartered Secretaries Canada is concerned that Information Circulars are becoming very detailed and complex thereby running the risk of salient information being overlooked. Although, ICSA –Chartered Secretaries Canada agrees shareholders should readily be able to find information on late filing insiders if they so choose to, ICSA – Chartered Secretaries Canada would recommend that a listing of late filing insiders be filed on SEDAR by issuers, similar to the SEDAR filing currently used for an issuer’s annual report on voting. Such a stand-alone SEDAR filing would be accessible and easily searchable by any shareholder wanting to find such information. Such a report could be completed annually by issuers and filed under a special report name.

Conclusion

ICSA – Chartered Secretaries Canada appreciates the CSA’s desire to harmonize the insider reporting requirements in Canada and is supportive of some of the material changes provided in CSA’s proposal; however, ICSA – Chartered Secretaries Canada is concerned that other proposed material changes to NI 55-104 are not practical and would prove to be administratively burdensome for insiders in large and small organizations alike.

Respectfully submitted,



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