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1 hot issues

Dematerialization In Canada (book-entry registered share ownership recordkeeping) and new proposed regulatory changes

Paper share certificates are becoming an outdated and inefficient way to reflect share certificate or registered share ownership. Canada has lagged behind other first tier markets; now Canadian issuers are recognizing the need for the **Direct Registration System (DRS)**.

DRS has been operating in the US markets for over ten years now. It's supported by the Securities and Exchange Commission (SEC), the broker dealer members of the SIFMA, the Depository Trust Company (DTC) and by the three national US stock exchanges (NYSE, AMEX, and NASDAQ). Effective January 2007, DRS became a listing requirement for all newly listed issues on US exchanges and as of January 2008 for all companies (including foreign listed companies) who were already listed on US exchanges.

What is direct registration?

DRS is a system that allows shareholders of registered securities to hold their shareholdings in "book-entry" form **without having a physical security certificate** issued as evidence of ownership. Instead, securities are held in the shareholder's name and registered electronically on the transfer agent's records. Shareholders receive a statement showing their registered ownership position. Holders of securities in DRS have all the traditional rights and privileges as holders of securities in share certificate form.

For shareholders, how does it work?

The first time the securities are recorded under DRS, shareholders will receive an initial **DRS Statement** acknowledging the number of securities held in book entry in the shareholders' DRS account. Each time there is movement of securities into, or out of, the shareholders' DRS account; shareholders are mailed an updated DRS Statement within two business days of the transaction. On an annual basis DRS shareholders will receive a DRS Statement showing their book-entry registered holdings.

Is there a fee for shareholders to participate in DRS?

No, there is no fee for shareholders to participate.

For issuers—how does it work?

Here is a list of items to consider if you are considering abandoning paper certificates and moving to DRS:

- Review your corporate governing documents/by-laws to ensure that these documents permit the issuance of book-entry registered shares.
- Prepare the consent letter on your letterhead, authorizing your transfer agent to offer DRS to your investors.
- If applicable, advise your existing registered shareholders of the impending change.

What is the cost and how does it work?

For issuers, there are some specific new costs or fees associated with DRS as follows:

- One time cost with the Transfer Agent in providing DRS advice regarding the issuer's corporate identity
- Issuance of annual DRS Statements to registered shareholders

In summary, issuers should review their existing Transfer Agent agreement and compare the costs of maintaining traditional paper share certificate inventory and issuing share certificates for their shareholder base versus the costs associated with DRS.

Annual Meeting Materials could soon be Posted Online

The Canadian Securities Administrators (**CSA**) have proposed changes to National Instrument 54-101 - *Communication with Beneficial Shareholders of Securities of a Reporting Issuer* and related policies and instruments (the **Proposals**) which will simplify the delivery of annual meeting ("AGM") materials to beneficial shareholders. The Proposals would permit reporting issuers to satisfy annual meeting material delivery requirements by posting such materials online. Public comments on the Proposal expire on August 31, 2010.

Notice-and-Access for Annual Meeting Materials

The Proposals for this "Notice-and-Access" method allow for but will not require that reporting issuers to post their annual meeting materials on a website other than SEDAR (www.sedar.com). One of the purposes of securities laws relating to shareholder communications is to ensure that those

who own securities through intermediaries and nominees have the chance to receive annual meeting materials and exercise their voting rights. Reporting issuers may choose to continue to deliver such materials via the mail, and beneficial owners will continue to be entitled to require delivery of a paper copy of the information circular at the issuer's expense.

Reporting issuers electing to follow the proposed method of delivering shareholder meeting materials to beneficial owners would:

- Begin by issuing a press release and send a notice and voting instruction form to beneficial shareholders at least 30 days before the date of the AGM setting out the time, location of and business to be conducted at the AGM, instructions on how to access the meeting materials and how paper copies of such materials can be obtained, and, if the issuer has opted to use notice-and-access in respect of certain beneficial owners but not others, an explanation of why it has done so;
- post the materials on the same day as notice is given;
- establish a toll-free telephone number which beneficial owners may use to request paper copies of the meeting materials. Copies must be sent at the issuer's expense no later than 3 business days after receipt of such request; and
- post on the same website as the meeting materials any other materials or written communications the issuer has sent to shareholders or made available to the public which pertain to the meeting (whether sent to registered holders or beneficial owners of its securities or not).

The Proposals do not apply to US SEC issuers who send their proxy-related materials in accordance with US Notice-and-Access requirements, or, when sending materials to an intermediary, who receive confirmation from such intermediary that it will abide by the US rules.

A reporting issuer may only use the notice-and-access provisions for delivering materials for meetings at which **no special business** will be conducted. This is a departure from the US rules and the CSA have requested comments on this point.

Simplified Beneficial Owner Proxy Appointment Process

The Proposals simplify the process of appointing a proxy where securities are held by a nominee or intermediary. Now, beneficial owners must instruct their intermediary or the issuer to appoint them as proxy holder in respect of the securities they own. The intermediary or issuer must then send the beneficial owner a legal proxy, which the beneficial owner deposits by the relevant proxy cut-off for the meeting. The Proposals simplify this procedure by making the intermediaries and issuers responsible for arranging the appointment of beneficial owners as proxy holders.

Stricter Rules on Use by Third Parties of NOBO Information and the Indirect Sending Procedures

In order to minimize the potential misuse of information regarding non-objecting beneficial owners (“**NOBO**”) and the indirect delivery procedures, the Proposals restrict a person or company other than the reporting issuer from using NOBO information or the indirect sending procedure for the following purposes:

- an attempt to influence security holder voting of the reporting issuer; and/or
- an offer to acquire securities of the reporting issuer.

New TSX-V reporting requirements

The securities regulators in British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick and Nova Scotia recently published a consultation paper designed to assess market interest in developing a more tailored approach to regulating venture issuers. Comments on the proposals which are set out in **Multilateral Consultation Paper 51-403 Tailoring Venture Issuer Regulation** are due by September 17, 2010. Consultation sessions are also being held by these regulators.

Highlights of the Consultation Paper include proposals to:

- eliminate **three and nine month interim financial statements and MD&A** and require a mid-year report with **six month** interim financial statements and MD&A;
- enhance certification for annual and mid-year filings;
- enhance corporate governance standards including requiring issuers to adopt procedures which address conflicts of interest and related party transactions and reduce trading on undisclosed material information;
- replace business acquisition reporting with enhanced material change reporting;
- introduce an annual report which would include details of the issuer's business and its annual financial statements and MD&A;
- simplify offering disclosure.

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