

# Securities Law Update

September 2001

## Significant changes to insider reporting rules

**T**HE ONTARIO SECURITIES COMMISSION and other Canadian securities regulators have now adopted, or are in the process of adopting, the new System for Electronic Disclosure by Insiders (to be known as SEDI), which is expected to come into force between October 29, 2001 and November 13, 2001, and which will significantly change current insider reporting practices.

These changes are reviewed in this edition of the Securities Law Update.

### Electronic Filing System

The basic change is that insiders of so-called "SEDI issuers" will be required to file their insider reports in electronic form through SEDI, rather than using the current paper filing methods.

SEDI issuers are reporting issuers, other than mutual funds, that are required to file their disclosure documents in electronic format through SEDAR, the System for Electronic Document Analysis and Retrieval, which has been operational since January 1997 and is available on the Internet at [www.sedar.com](http://www.sedar.com). This generally applies to all Canadian public companies, although there are exceptions in

certain cases for foreign companies whose connection with Canada is limited. It may also include issuers of exchangeable shares, even though their insiders will generally have been exempted from insider reporting requirements.

SEDI too will have a web site, at [www.sedi.ca](http://www.sedi.ca). SEDI is intended to be available, subject to maintenance and related requirements, 7 days a week, 24 hours a day. The SEDI system will be funded through a charge on SEDI issuers, ranging from \$250 to \$2,500 per annum. Insiders will not be required to pay a fee.

In addition to insiders of SEDI issuers being required to file their insider reports through SEDI, the issuers themselves will also have to file and update certain information electronically to facilitate the filing of insider reports, including confidential contact information and information regarding their outstanding securities. These reports will have to be filed within 5 business days of October 29, 2001. Immediate updates will be required of changes in outstanding securities, and events, such as stock dividends, stock splits, stock consolidations and mergers, that affect all holdings.

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Insiders of non-SEDI issuers will continue to be required to file their insider reports in paper format.

Insiders of SEDI issuers, on the other hand, will have to electronically file, and update, "insider profiles" identifying themselves and their relationship with the issuer. Once the insider profile has been filed, the insider in question can file insider reports electronically. Insider reports will be required to be filed electronically commencing on November 13, 2001. Certain categories of information will be maintained in confidence. The SEDI system forms also purport to answer a number of interpretational questions, such as when a holding is direct (direct holdings are said to include broker or depositary holdings), that the trade date rather than the settlement date should be reported, and that prices should not be reduced by commissions paid.

## **Derivatives**

The information required to be reported is substantially the same as for the existing paper form, except that a separate section has been added for third-party derivatives to facilitate insider reporting of trades in exchange-traded derivatives or over-the-counter options or other derivatives. We believe that the OSC's intention is, among other things, to capture, as appropriate, *equity monetization transactions* by insiders under which they part with economic risk in their security positions while retaining beneficial ownership, control and direction of the securities in question. Anecdotally, many such transactions have not been reported to date in insider reports. As the underlying legal obligation has not changed, however, the revised form should not be viewed as changing the reporting requirement as a matter of law. Accordingly, if a particular equity monetization transaction was properly not reportable in the past, that should remain the case. Having said that, the policy and spirit of insider reporting rules, as well as the letter in certain cases, may capture certain equity monetization transactions, even today. In particular, the CSA note the provisions applicable to puts, calls and other transferable options under Ontario securities law, as well as the even broader provisions applicable to puts, calls and other rights or obligations under B.C. securities law. Expiry or maturity dates, as well as the

price and number of underlying securities, among other things, will have to be disclosed, which may affect unwindings. The paper form has also been revised to reflect derivatives.

## **Timing of Filing Insider Reports**

The timing of reports will be accelerated to 10 days following the date of the trade in all provinces, whereas at present that requirement does not apply in all provinces, including British Columbia.

## **Certain Paper Filings will Continue**

Certain reports, including reports of transfers of securities into the name of an agent, custodian or nominee, and certain reports by mutual fund management companies, will continue to be required to be filed in paper form.

## **U.S. MJDS Issuers Unaffected; Other Foreign Issuers may be Affected**

Canada-U.S. MJDS exemptions for insiders of U.S.-incorporated public companies who comply with U.S. insider reporting requirements will continue to be available, although it appears that issuer profiles may be required to be filed. However, current exemptions for insiders of non-U.S.-incorporated public companies subject to U.S. requirements to file U.S. forms are proposed to be repealed, and therefore require SEDI filings of such issuers (unless they are not SEDI issuers).

## **Early Warning Reports Unaffected**

Early warning reports, including alternative monthly reports, will continue to be filed under SEDAR, rather than SEDI.

## **Filing through Authorized Agents, including Stikeman Elliott**

In general, reporting will likely be accomplished through authorized agents such as law firms, as with SEDAR, and a security access system is being developed for insiders and issuers. Stikeman Elliott intends to become an authorized agent and thus will be in a position to assist its clients and their insiders with their SEDI filings.

For further information, please contact your usual Stikeman Elliott contact.