Regulatory responses to COVID-19 disruption to financial market participants

March 19, 2020

For registrants in all jurisdictions of Canada

The filing deadlines for specified documents set out in sections 12.12 – 12.14 of National Instrument 31-103 falling on or before September 30, 2020 have been extended by 45-days or 60-days (depending on the time period) after the applicable delivery/filing deadline. This includes annual and interim financial statement filings and working capital reports (and NAV error reports, if any). There are no conditions to relying on the relief, other than a statement that a deadline can only be extended once.

The instrument evidencing the relief granted in Ontario for the period March 23, 2020 to June 1, 2020 (OSC Instrument 31-510) is available here. The Instrument evidencing the relief granted in Ontario for the period June 2, 2020 to September 30, 2020 (OSC Instrument 31-513) is available here.

Similar extensions under the *Derivatives Act* in Québec have been granted to registrants under that regime. View the Décision n° 2020-PDG-0022 here.

For registrants in Ontario – additional information

The filing deadlines for specified filings to be made by registrants with the OSC under OSC Rule 13-502 *Fees,* OSC Rule 13-503 *Commodity Futures Act (Fees)* and under certain other specified Ontario instruments have been extended by 45 days or 60 days (depending on the time period) after the applicable filing deadline. This relief, in Ontario, is provided in OSC Instrument 31-510 and OSC Instrument 31-513 as above.

The OSC has issued orders providing for temporary relief from the accrual of late fees for certain regulatory filings made after the applicable deadlines during the period commencing April 17, 2020 and ending September 30, 2020. The instruments evidencing the relief are available here: Ontario Instrument 13-504 and Ontario Instrument 13-505.

In addition, the OSC has announced the following operational changes:

- No on-site compliance reviews will take place, although we understand that virtual compliance reviews will be undertaken commencing the week of May 25.
- The Risk Assessment Questionnaire which was to be sent out for responses in April 2020 has been postponed, but is expected to be sent out in June. Responses will be requested within 45 days.
- Normal-course registration and compliance activities will continue, but the OSC will be flexible with respect to deadlines for information
- All in-person outreach sessions are cancelled (Registrant Outreach, OSC LaunchPad and OSC in the Community). The OSC is proceeding with registrant outreach webinars with the first one scheduled for June 10.
- In-person consultations will proceed via conference calls
- No in-person hearings will be held until further notice.

For investment funds

Mutual funds investing in fixed income securities may take advantage of relief that has been granted by all members of the CSA to allow for additional borrowings - to a maximum of 10 per cent of its net asset value at the time of borrowing - to allow the affected funds to facilitate an orderly liquidation of fixed income securities to accommodate requests for redemption. This relief was granted in recognition of the short-term dislocation in the fixed income markets due to the COVID-19 pandemic. The relief is available for additional borrowings made from April 17, 2020 to July 31, 2020. Ontario Instrument 81-504 is available here.

There are a number of conditions that must be met in conjunction with this relief, including:

- A requirement to reduce outstanding indebtedness to 10 per cent as soon as commercially reasonable, if the outstanding amount of all borrowings made by a fund exceeds 15 per cent of its net asset value at any time after the borrowing
- IRC approvals in advance of any borrowing in reliance on the temporary relief
- Specific enumerated written policies and procedures establishing the parameters for when a mutual fund will use the temporary relief to increase borrowings
- Disclosure of the reliance on the relief in the fund's next MRFP
- Specified record keeping on the additional borrowings
- Notice to the OSC staff (or other applicable staff of the CSA) in advance of using the exemption, and further notice if the borrowings exceed 15 per cent of NAV for a period of five consecutive business days
- Website disclosure of the potential use of the exemption, in advance of its use.
- Funds with borrowings in excess of 5 per cent of NAV as of August 14, 2020 will be required to notify the OSC staff (or other applicable staff of the CSA) as soon as reasonably practicable.

On March 23, 2020, the CSA announced an extension of the deadlines for filing and delivering specified regulatory documents for investment funds that fall before June 1, 2020, by 45 days. This includes specified documents and notices required to be sent to securityholders of investment funds under National Instrument 81-106. For any investment fund distributing securities under a prospectus with a lapse date that falls during the period of March 23 to June 1, 2020, the lapse date may be extended by 45 days, at the option of the fund.

For any investment fund distributing securities under a prospectus with a lapse date that falls during the period of March 23 to June 1, 2020, the lapse date may be extended by 45 days, at the option of the fund.

There are terms and conditions for taking advantage of the relief. Each fund relying on the relief must "as soon as reasonably practicable and in advance of" the applicable deadline:

- Notify the Director of the Investment Funds and Structured Products Branch of the OSC (funds based in Québec, must notify the AMF) that the fund is relying on the relief, and specify each applicable requirement for which it is relying on the relief. If the Director is so notified, there is no need to notify all of the other regulators where the fund is a reporting issuer; and
- Post on its website a statement describing that it is relying on the relief.

The instrument evidencing the relief in Ontario (OSC Instrument 81-503) is available here.

On May 20, 2020, the CSA announced a further extension for certain filing, delivery and prospectus renewal obligations for investment funds normally due or required to be made during the period from June 2, 2020 to September 30, 2020. The same conditions noted above apply to funds relying on this relief. In addition, if a deadline falling on or before June 1, 2020 was extended under the March relief, it cannot be further extended under the June relief. The instrument evidencing the relief in Ontario (OSC Instrument 81-505) is available here.

The CSA have also provided guidance on the measures that issuers may wish to take to hold virtual annual general meetings. Some of this guidance may be useful for investment funds who wish to hold virtual securityholder meetings for any reason.

For reporting issuers (Non-investment funds)

- All persons or companies required to make certain specified filings or deliveries pursuant to National Instrument 51-102, National Instrument 51-101 and National Instrument 43-101 during the period from March 23, 2020 to June 1, 2020 will have an additional 45-days to make such filings or deliveries.
- In addition, any such specified filings or deliveries otherwise required during the period from June 2, 2020 to August 31, 2020, may be made within an additional 45-days. If a deadline falling between the period from March 23, 2020 to June 1, 2020 was extended, it cannot be further extended.
- Examples of the specified filings include annual financial statements and interim financial reports, management's discussion & analysis, annual information forms and executive compensation disclosure, statement of reserves data and technical reports. The delivery of annual financial statements, management's discussion & analysis and the sending of annual request forms to shareholders are also subject to the extension provided certain conditions are met.
- In order to rely on the temporary exemptions, persons or companies must as soon as reasonably practicable:
    - Issue and file a news release on SEDAR prior to its filing deadline disclosing:
        - each requirement for which it is relying on the exemption

        - that its management and other insiders are subject to an insider trading black-out policy
        - the estimated filing date of the required disclosure or date of delivery of the required document and
        - either an update of any material business developments since the date of the last financial report, or confirmation that there have been no material business developments since that date; and
    - Issue and file a news release on SEDAR within 30 days of the first day of the extension period.
        - A subsequent news release must be issued no later than 30 days following the first news release if the person or company has not yet filed each document for which it is relying on the temporary exemptions, providing an update of any material business developments since the date of the last news release, or confirmation that there have been no material business developments since that date.
- Persons or companies relying on the 45-day exemptions may not file a preliminary prospectus or a final prospectus for a securities offering until it has filed all documents for which it is relying on the exemptions.
- For exemptions relating to the sending of an annual request form, the company must be send to its securityholders its annual financial statements and MD&A on or before December 31, 2020 and in accordance with NI 54-101.
- Certain other continuous disclosure filings including change of auditor reporting packages, notice of change in year end, business acquisition reports and notices of change in corporate structure will also have an additional 45 days from the applicable filing deadline. This is if that the person or company issues and files a news release, prior to its filing deadline, disclosing each requirement for which it is relying on the exemption.
- Filings related to certain exempt distributions due pursuant to National Instrument 45-106 and Multilateral Instrument 45-108 will have an additional 45 days from the deadline if a news release is issued and filed prior to the filing deadline disclosing the requirement for which the person or company is relying on the exemption.
- Designated rating agencies filing Form 25-101F1 will have 45 extra days to make any filings provided certain disclosures are made.
- The lapse date for a final short form base shelf prospectus pursuant to National Instrument 44-102 may also be extended for an additional 45 days. Provided that the person or company issues and files a news release disclosing the specific requirements for which it is relying on the exemption, and it is not otherwise relying on the exemption relating to annual and interim filings discussed above.

The instrument evidencing the relief granted in Ontario (OSC Instrument 51-502) is available here, and the FAQs subsequently published by the CSA is available here. The instrument evidencing the additional extensions granted in Ontario (OSC Instrument 51-505) is available.

The CSA have also provided guidance on conducting shareholder meetings during the COVID-19 outbreak. The CSA also have provided temporary exemptions from certain requirements to file or send securityholder material. The instrument evidencing the relief granted in Ontario (OSC Instrument 51-504) is available here.

The temporary exemptions include exemptions related to disclosure of executive compensation, annual request forms and send-on-request requirements required for reporting issuers under National Instrument 51-102. The exemptions take effect on May 1, 2020 and expire on December 31, 2020.

Members of IIROC and the MFDA

The initial measures taken by IIROC and the MFDA in respect of their members are described in this publication by our Disputes Group.

Both the MFDA and IIROC have COVID-related pages on their websites with information for members, including tips and information on regulatory exemptions, including certain fee waivers, and actions. Regulatory activity is continuing within these organizations, although the release date for the client focused reform rule amendments has been pushed back until June 2020 at the earliest.

IIROC has also postponed the implementation of its plain language rule book until December 31, 2021.

Regulated entities in Ontario

Separate relief in Ontario extends filing deadlines for certain documents and information for regulated entities such as marketplaces, clearing agencies, designated trade repository, designated information processor and a commodity futures exchange. Similar to the other relief, the extensions are for 45 days after the original due date for the document and the regulated entity must disclose to the OSC when it provides the applicable document or information that it is relying on the order and give reasons why it could not submit the document by the original due date. The relief provides for a list of the requirements to which it applies.

The instrument evidencing the relief in Ontario (OSC Instrument 25-502) is available here.

Issuers listed on the Toronto Stock Exchange and the TSX Venture Exchange

The TSX has provided temporary blanket relief with respect to certain filings:

- It will not require an issuer to file a Form 9 during 2020 for a late filing of its annual financial statements and/or its interim financial statements;
- An issuer that must hold an annual meeting of security holders during 2020 is permitted to hold its 2020 Annual Meeting on any date up to and including December 31, 2020, regardless of the issuer's fiscal year end;
- An issuer may continue to grant security based awards under a plan until the earlier of the 2020 Annual Meeting and December 31, 2020. Awards granted during this timeframe may be exercised absent ratification by security holders;
- Up to and including June 30, 2020, TSX is modifying the volume of purchases condition so that the amount of normal course issuer bid purchases does not

exceed 50 per cent of the average daily trading volume of the listed securities of that class; and
- Up to and including December 31, 2020, TSX will not apply certain specified delisting criteria when determining whether to initiate a delisting review of an issuer's securities.

On a case-by-case basis, TSX will use a shorter time period to determine the "market price" for the purposes of pricing securities (including warrants) for private placements.

The TSXV has granted temporary extensions of deadlines:

- Annual meetings for issuers that are required to hold an annual meeting during 2020 can be held at any date in 2020, up to and including December 31, 2020.
- Shareholder approval of rolling stock option plans can be obtained at any time during 2020, up to and including December 31, 2020.

The TSXV has also revised the minimum price at which listed shares may be issued from $0.05 to $0.01 in certain circumstances.

Annual meetings for corporations incorporated under the *Business Corporations Act* (Ontario)

The Ontario Government passed new legislation entitled *COVID-19 Response and Reforms to Modernize Ontario Act* (the Act) on May 12, 2020, which among other things extends the Declaration of Emergency to June 2, 2020 and provides public companies incorporated under the *Business Corporations Act* (Ontario) (OBCA) extensions for holding their annual meetings.

Under the OBCA, the directors of a corporation are required to call an annual meeting of shareholders not later than eighteen months after the corporation comes into existence and subsequently not later than fifteen months after holding the last preceding annual meeting. However, the OBCA also provides that a public company must place before its annual meeting the audited financial statements in respect of the fiscal year that ended no more than six months before the annual meeting. This effectively requires that the annual meeting must be held no later than 6 months after the end of the period covered by its most recent audited financial statements. This effectively requires reporting issuers with a December 31st fiscal year end to hold their annual meetings no later than June 30th in the following year.

Despite this, the Act provides that the directors of a corporation may call a meeting that is to be held on a day contemplated by the new requirements under the Act for holding an annual meeting described below at a time that enables the corporation to comply with the requirements below, and that is reasonable in the circumstances.

Among other things, the Act provides that if the last day on which an annual meeting is required to be held is a day that falls within:

> (a) the period of the declared emergency, the last day on which the meeting is required to be held is no later than the 90th day after the day the emergency is terminated, or

(b) the 30-day period that begins on the day after the day the emergency is terminated, the last day on which the meeting is required to be held is no later than the 120th day after the day the emergency is terminated.

Electronic designations of beneficiaries under registered tax plans in Ontario

The Ontario government also amended the *Succession Law Reform Act* (Ontario) pursuant to the Act referred to above, to explicitly permit electronic designation of beneficiaries for registered tax plans, provided that such designations are done in accordance with the *Electronic Commerce Act, 2000* (Ontario).

Other measures

The comment deadline for all regulatory publications (draft rules and policies) currently out for comment has been extended by 45 days. The CSA have also said that they will not be publishing any new proposals for comment until at least May 30, 2020.

The CSA acknowledge that the situation is fluid and we expect there may be more action required. We will continue to monitor the situation and keep you posted.

We understand that CSA staff are working remotely, but based on experience to date, they are available via usual email channels and are responding to telephone calls and filings. Work is being processed in the usual manner.

For advice with respect to securities regulatory issues arising from COVID-19, please get in touch with our team listed below, who are ready and available to assist with navigating through these unprecedented times. BLG has also created a COVID-19 Resource Centre to assist businesses on a variety of topics, including contractual risks, public disclosure requirements, education and criminal law.

By

Jason Brooks, Rebecca A. Cowdery, Lynn McGrade, Manoj Pundit, Krstina Skocic, Philippe Tardif, Prema K. R. Thiele

Expertise

Investment Management, Mutual Funds, Registrant Regulation & Markets, Securities Disputes, Capital Markets

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 800 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2026 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.