

Securities North and South

Canadian Securities Research In a “New York State of Mind”

Louis Mirando, Director, Library Services, Torys LLP, Toronto
Michael Hoffman, Librarian, Torys LLP, New York

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I. SECURITIES REGULATION

1. Basic Principles

- We live in a capitalist society; free enterprise is valued, and market participants should have unobstructed access to capital.
- All investors must be provided with equal access to capital markets.
- Investors require timely, comprehensive information to provide them with the facts necessary to permit them to make reasoned investment decisions
- Issuers may not distribute securities unless an adequate level of disclosure is provided about the securities, or unless the purchaser is deemed not to require such disclosure (sophisticated purchaser of insider)
- Investors must be protected from fraudulent or misleading behaviour or disclosure practices by issuers.
- All persons and entities purporting to act as agents for the purchase and sale of securities and who provide investment advice must be appropriately qualified to act in that capacity.
- When any of these principles break is violated, a body or bodies must have appropriate jurisdiction and powers to enforce securities regulations, to impose sanctions, and to provide remedies to persons injured by the violation.

2. Regulatory Authorities

- Foster fair and efficient capital markets
 - Formulate regulations (rules) and policy
 - Monitor continuous and timely disclosure by reporting issuers
 - Review prospectuses for new distributions (and grant exemptions from prospectus requirements)
 - Register all individuals and entities who give advice about or trade in securities (brokers/dealers)
 - Investigate possible violations of securities laws
 - Conduct enforcement proceedings before the Commission or a court

3. Major Securities Laws

Canada

- In Canada, securities regulation is a provincial jurisdiction
- Each province has its own:
 - *Securities Act*
 - Ontario: *Securities Act*, R.S.O. 1990, c. S.5
 - http://192.75.156.68/DBLaws/Statutes/English/90s05_e.htm
 - Regulation(s)
 - Ontario: General Regulation, R.R.O. 1990, reg. 1015
 - http://www.e-laws.gov.on.ca/DBLaws/Regs/English/901015_e.htm
 - Forms (Schedules to the Act and Regulation)

United States

- In the US, securities regulation is a federal jurisdiction (interstate commerce)
- *Securities Act of 1933* (<http://www.law.uc.edu/CCL/33Act/index.html>)
 - Often referred to as the "truth in securities" law, the Securities Act of 1933 has two basic objectives:
 - require that investors receive financial and other significant information concerning securities being offered for public sale; and
 - prohibit deceit, misrepresentations, and other fraud in the sale of securities.
 - Regulates the initial distribution of securities (registrations, IPOs, prospectuses)
 - Requires full & fair disclosure of the character of securities sold in interstate & foreign commerce
 - Prevents fraud in the sale of securities
 - Requires one-time disclosure prior to initial distribution
- *Securities Exchange Act of 1934* (<http://www.law.uc.edu/CCL/34Act/index.html>)
 - Regulates trading of securities after initial distribution
 - Provides for continuous disclosure by issuers of publicly-traded securities
 - Created the US Securities and Exchange Commission
 - Provides for regulation of securities exchanges operating in interstate & foreign commerce
 - Prevents inequitable and unfair practices on such exchanges
- *Trust Indenture Act of 1939*
 - applies to debt securities such as bonds, debentures, and notes that are offered for public sale
- *Investment Company Act of 1940* (<http://www.law.uc.edu/CCL/InvCoAct/index.html>)
 - regulates the organization of companies, including brokers, dealers and mutual funds, that engage primarily in investing, reinvesting, and trading in securities
- *Investment Advisers Act of 1940* (<http://www.law.uc.edu/CCL/InvAdvAct/index.html>)
- *Sarbanes-Oxley Act of 2002* (<http://www.law.uc.edu/CCL/SOact/toc.html>)
 - see below
- "Blue Sky" laws (state laws)
 - regulate "securities" (e.g., shares in a condominium) not marketed outside of one state.
- All laws have Regulations (referred to as Rules) issued by the regulatory agencies to guide companies and their advisors in complying with the securities laws

II. SARBANES-OXLEY ACT OF 2002

- <http://www.law.uc.edu/CCL/SOact/toc.html>
- Enacted with dispatch by the US Congress in the summer of 2002, in response to several large and high-profile corporate scandals (Enron, Worldcom, others)
- Imposes new duties on public companies, their directors and executives, and their auditors
 - CEO & CFO certification of annual & quarterly reports
 - Prohibition of loans unavailable to outsiders
 - Forfeiture of executive bonuses and securities trading profits when there are accounting restatements based on misconduct
 - Accelerates reporting deadlines for insider trades of company stock
 - Prohibits “improper influence” in conduct of audits
 - Audit committee independence and criteria
 - Establishes Public Accounting Oversight Board (PCOAB) to oversee auditing firms
 - Auditor independence
 - More and more timely disclosure of material changes
 - Imposes *Rules of Professional Responsibility* (17 CFR Part 206) for attorneys representing public companies
 - <http://www.law.uc.edu/CCL/p205/index.html>
 - Requires SEC and/or stock exchanges to adopt rules on analysts’ conflicts of interest
 - Lawyers as gatekeepers
- For more information about Sarbanes-Oxley, refer to the following Client Memos from Torys LLP, which can be retrieved from the Torys website:
 - <http://www.torys.com/publications/index.html>
 - CM2002-21T: To Keep Your Company Onside Sarbanes-Oxley, Start Here (Sept. 19, 2002)
 - CM2002-20S: The US *Sarbanes-Oxley Act of 2002*: What Canadian Issuers Need to Know (Aug. 8, 2002)

III. REGULATORY AGENCIES & REGULATORY MATERIALS

Canada (Ontario)

- Ontario Securities Commission (OSC) <http://www.osc.gov.on.ca/>
 - OSC Bulletin
 - Rules
 - Policies
 - Notices
 - By-laws
 - Rules of Practice
 - Decisions, Orders, Rulings
- Canadian Securities Administrators (CSA) <http://www.csa-acvm.ca/home.html>
 - National Instruments
 - National Policies
 - Multilateral Instruments
 - Uniform Act Policies
- Toronto Stock Exchange (TSX) <http://www.tse.ca/>
 - *Rules and Policies* <http://142.201.0.1/en/pdf/TSXRulebook.pdf>
 - govern the conduct of member companies (brokers/dealers)
 - *Company Manual* <http://www.tsx.com/en/pdf/CompanyManual.pdf>
 - governs the conduct of listed companies (companies whose shares are listed for trading on the TSX)
 - Market Regulation Services (RS Inc.) <http://www.regulationservices.com/>
 - *Uniform Market Integrity Rules (UMIR)*
 - <http://www.regulationservices.com/home/regUmir.asp?location=home&location2=homeReg&location3=regUmir>
- Investment Dealers Association of Canada (IDA) http://www.ida.ca/WhatsNew_en.asp
- Mutual Fund Dealers Association of Canada (MFDA) <http://www.mfda.ca/>
- Canadian Depository for Securities (CDS) <http://www.mfda.ca/>

OSC Reformulation Project

- http://www.osc.gov.on.ca/en/Regulation/Rulemaking/Notices/staffnotices/rulemakingOntario_19951020.html
- Consequence of *Ainsley Financial Corp v. Ontario (Securities Commission)* (1994), 21 O.R. (3d) 104
- All Rules, Policies, Notices, Blanket Orders, etc., are being redrafted as:
 - Rules (Binding, with the force of regulations)
 - Policies (Non-binding, for interpretation and instruction purposes only)
 - Notices (Non-binding, for giving notice of impending developments)
- Uniform numbering system of all instruments
 - All instruments are organized by topic, and systematically and uniformly numbered:
 - E.g., National Instrument **14-101** (National Definitions)
 - The first digit of each instrument represents the Subject Matter:
 1. **Procedure and related matters**
 2. Certain capital market registrants
 3. Registration requirements and related matters
 4. Distribution requirements
 5. Ongoing requirements for issuers and insiders
 6. Take-over bids and special transactions
 7. Securities transactions outside the jurisdiction
 8. Mutual funds
 9. Derivatives

- •The second digit of each instrument represents the Sub-category for subject matter (different for each subject matter):
 1. General
 2. Applications
 3. Filings with securities regulatory authority
 - 4. Definitions**
- •The third digit of each instrument represents the Type of Instrument:
 - 1. National/Multilateral Instrument (and any Companion Policy or Form)**
 2. National/Multilateral Policy
 3. CSA Notice
 4. Concept Release
 5. Local Rule
 6. Local Policy
 7. Local Notice
 8. Implementing Instrument
 9. Miscellaneous
- The fourth-fifth digits of each instrument are for simple numbering purposes (01-99)
 - This topical, uniform numbering system has been adopted and is being used by all Canadian securities regulators except Quebec.

United States

- U.S. Securities & Exchange Commission (SEC) <http://www.sec.gov/>
 - Interpretive “Releases” <http://www.sec.gov/rules/interp.shtml>
 - No-Action Letters <http://www.sec.gov/interps.shtml>
 - Telephone Interpretations <http://www.sec.gov/interps/telephone.shtml>
 - Orders (SEC) and Decisions (Federal courts)
- New York Stock Exchange (NYSE) <http://www.nyse.com/>
 - Rules, By-laws
 - Company Manual
 - <http://www.nyse.com/listed/p1020656067970.html?displayPage=/listed/1020656067970.html>
- National Association of Securities Dealers (NASD) <http://www.nasd.com/>
 - Nasdaq <http://www.nasdaq.com/>
 - Rules, By-laws, Notices (NASD Manual) <http://cchwallstreet.com/NASD/>

IV. SOURCES

Canada

- Butterworths <http://www.butterworths.ca/>
 - Johnston, David & Kathleen Doyle Rockwell, *Canadian Securities Regulation*, 3rd ed., 2003
 - excellent 1-volume treatise
- Carswell http://www.carswell.com/law_index.asp
 - Alboini: *Securities Law & Practice*
 - Comprehensive securities statutes and regulations for all provinces, regulatory materials from all provincial securities commissions and stock exchanges, and detailed commentary to the Ontario *Securities Act*
 - SecuritiesPartner CD-ROM
 - CD-ROM equivalent of the Alboini print service (above)
 - Gillen, Mark R, *Securities Regulation in Canada*, 2nd ed., 1998
 - excellent 1-volume treatise
 - Annual consolidations (print)
 - 1-volume consolidations of the securities acts, regulations, and regulatory (securities commission) materials for Ontario, British Columbia and Alberta
- CCH Canadian <http://www.cch.ca/english/index.asp>
 - *Canadian Securities Law Reporter*
 - Print, CD-ROM & online (web)
 - Comprehensive securities statutes and regulations for all provinces, regulatory materials from all provincial securities commissions and stock exchanges, and detailed commentary to the Ontario *Securities Act*
 - Annual consolidation (print)
 - 1-volume consolidation of the *Securities Act*, regulations, and regulatory materials for Ontario
- Quicklaw <http://www.quicklaw.ca/en/home.html>
 - extensive coverage of securities commission bulletins (decisions and regulatory materials) for ON, BC and AB
- WestlawCARSWELL SecuritiesSource (www.westlawecarswell.com)
 - the single most comprehensive resource for securities research available; includes complete statutes and regulations for all Canadian jurisdictions, regulatory materials from all Canadian securities commissions and stock exchanges, weekly securities commission bulletins (ON, BC, AB), and Alboini's commentary on the Ontario *Securities Act*
 - this is the only source that includes securities-related case law and tribunal decisions integrated with
- Ontario Securities Commission Bulletin (OSCB) <http://www.oscbulletin.carswell.com/>
 - available in print (from Carswell), CD-ROM (Carswell), and on the online (Quicklaw, WestlawCarswell)
- Commission Websites
 - The websites of the various Canadian provincial securities commissions provide access to their securities acts, regulations, regulatory materials, and weekly "bulletin" or "report"
 - Ontario Securities Commission <http://www.osc.gov.on.ca/>
 - Alberta Securities Commission <http://www.albertasecurities.com/>
 - BC Securities Commission <http://www.bcsc.bc.ca/>
 - Quebec Securities Commission http://www.cvmq.com/index_en.asp

United States

- CCH *Federal Securities Law Reporter*
 - Print, CD-ROM & Online (web)
 - Comprehensive securities acts, regulations, and regulatory materials (releases, etc.) from the SEC, updated weekly (7-volume loose-leaf)
 - Includes voluminous annotations from CCH editors
 - Also available in a reduced, 3-volume version (securities acts and regulations)
- West
 - Bloomenthal & Wolff, *Securities and Federal Corporate Law* (2nd ed.), 1998+
 - 9-volume loose-leaf treatise (no legislation), updated annually
 - Hazen, Thomas Lee, *Treatise on the Law of Securities Regulation*, 1995
 - excellent 3-volume treatise – recommended for any library
 - Ratner, David L., *Securities Regulation in a Nutshell*, 6th ed., 1998
 - superb paperback-size introduction – recommended
 - Ratner, David L. & Thomas Lee Hazen. *Securities Regulation: Selected Statutes, Rules and Forms*. [annual]
 - annual consolidation of essential primary materials, attractively priced
 - Securities Law Series
 - numerous loose-leaf titles in series, covering all aspects of securities law
 - 1-volume consolidation of securities acts & regulations (soft-bound) – very good value
- Aspen
 - *Securities Act Handbook*
 - 1-volume, loose-leaf consolidation of securities acts and regulations, updated quarterly.
 - Loss, Louis & Joel Seligman, *Securities Regulation*, 3rd ed., 1989+
 - 11-volume bound treatise (no legislation), annual supplement
 - Loss, Louis & Joel Seligman, *Fundamentals of Securities Regulation*, 4th ed., 2001
 - 1-volume “précis” of the above work
- Lexis
 - comprehensive access to all legislative and regulatory materials and case law
- Westlaw
 - comprehensive access to all legislative and regulatory materials and case law
- Securities Lawyer’s Deskbook
 - <http://www.law.uc.edu/CCL/sldtoc.html>
 - collection of primary resources (laws, regulations, etc.), free on the web, compiled and maintained by the University of Cincinnati College of Law
- RealCorporateLawyer.com (R.R. Donnelly Financial)
 - <http://www.realcorporatelawyer.com/secrules.html>
 - collection of primary resources, free on the web
 - includes free access to the *SEC Handbook* and other resources at:
 - http://www.rrdfin.com/./services/ref_pubs.cfm
- Websites: SEC, NYSE, NASD, etc.

V. TYPES OF DISCLOSURE FILINGS

Canada

- Prospectus
 - Required for all initial distributions or trades
 - Preliminary vs. Final
 - Long-Form vs. Short-Form
 - “Prompt Offering” Prospectus (POP System)
 - “Shelf Offering” Prospectus
 - Prospectus Supplements
 - Mutual Reliance Review System (MRRS)
- Prospectus Exemptions (The “Closed System”)
 - Regulatory exemptions, exemption by application to OSC
 - Sophisticated investors, Insiders
 - Private Placements (Form 20 Reports)
- Continuous/Timely Disclosure
 - Financial Statements (Annual & Interim/Quarterly)
 - Annual Information Form (AIF)
 - Management’s Discussion & Analysis (MD&A)
 - Annual Report
 - Insider Report (SEDI)
 - Early Warning Report
 - Material Change Report
 - Management Proxy/Information Circular

Multijurisdictional Disclosure System (MJDS)

- Effective July 1, 1991
- Permits qualified Canadian issuers to file with the SEC and distribute to US investors disclosure documents prepared and reviewed in accordance with applicable Canadian law
- When the SEC adopted MJDS, the Canadian Securities Administrators adopted MJDS for US issuers in Canada Effective July 1, 1991
- Canadian issuers must adhere to US GAAP (Generally Accepted Accounting Principles)

United States

- **Securities Act of 1933:** Initial listing requirements for new securities
 - Registration Statements (equivalent of Canadian prospectuses)
 - S-1: Initial registration (prospectus)
 - S-2: Simplified registration (simplified prospectus)
 - S-3: Secondary offerings
 - S-4: Merger or exchange
 - S-8: Company securities (stock option plans, etc.)
 - F-1 to F-4: Foreign issuers
 - F-7 to F-10: Canadian Issuers (MJDS)
 - Exhibits
- **Securities Exchange Act of 1934:** Continuous disclosure requirements for all public companies
 - Annual Reports
 - 10-K
 - 20-F (foreign issuers)
 - 40-F (Canadian MJDS issuers)
 - Exhibits

- Quarterly Reports
 - 10-Q
 - 6-K (foreign issuers)
 - Exhibits
- Monthly Reports
 - 8-K (material event)
 - 6-K (foreign issuers)
 - Exhibits
- Annual Report to Shareholders (ARS)
- Proxy Statements

VI. SOURCES FOR PUBLICLY-FILED DISCLOSURE DOCUMENTS

Canada

SEDAR <http://www.sedar.com>

- “System for Securities Electronic Document Analysis and Retrieval”
- Jointly administered by the Canadian Securities Administrators (CSA) and the Canadian Depository for Securities (CDS)
- Facilitates the electronic filing and public dissemination of securities information by issuers, as required by the securities regulatory agencies in Canada
- Allows free access by the public to all documents the public to Canadian securities information collected in the securities filing process, including prospectuses and continuous disclosure documentation (annual reports, etc.)

Other sources for SEDAR documents:

- CanCorp Documents (IHS Micromedia)
 - Subscription service (not cheap)
 - Includes many documents (confirmations, etc.) not included in SEDAR (required mostly for work by securities law clerks or agents)
- Stockwatch <http://new.stockwatch.com>
 - comprehensive “investor service”, including access to SEDAR filings, stock quotes for Canadian exchanges, analytical services,
 - this is the only Canadian service that allows full-text searching of SEDAR documents
 - the SEDAR document retrieval and full-text search functions are currently “free” while in beta-test stage; this will probably eventually be a subscription service.

United States

EDGAR <http://www.sec.gov/edgar.shtml>

- “Electronic Data Gathering Analysis and Retrieval”
- Electronic filing of all required forms and documents from 12/19/1994
- Foreign issuers originally exempt; but, effective 11/4/2002, foreign issuers required to file via EDGAR

Sources of EDGAR filings:

- EDGAR Database (Securities & Exchange Commission)
 - <http://www.sec.gov/edgar/searchedgar/webusers.htm>
 - Free, comprehensive access to all EDGAR filings, with full-text search function
 - Downloads, especially tables, must be manually reformatted to fit normal-sized paper
- LIVEDGAR (Global Securities Information, Inc.)
 - www.gsionline.com (pay-as-you-go or subscription)
 - Comprehensive access to all EDGAR filings
 - Sophisticated, value-added search functions provided, especially the “Research Library” of customized searches for precedent research
 - Downloads are easy and fast, formatted for standard paper size (8.5” x 11”)
 - “pre-EDGAR”
- Lexis, Westlaw
- 10kwizard
 - www.10kwizard.com (subscription)
- Free Edgar
 - www.freeedgar.com (some portions free, some subscription)
- Company Websites
 - Annual reports (10-K), quarterly reports (10-Q) and Annual Reports to Shareholders (ARS) can usually be found on the “investor relations” page of most corporate websites.

VII. PRECEDENT RESEARCH

- Prospectuses, annual reports, and other securities public disclosure filings have enormous “precedent” value for securities and corporate practitioners.

Canada

- There is currently only one service that permits full-text searching of Canadian securities public disclosure documents (from SEDAR):
- **Stockwatch “SEDAR Search”**
 - http://new.stockwatch.com/newsit/newsit_sedar_search.pasp
 - the SEDAR document retrieval and full-text search functions are currently “free” while in beta-test stage; this will probably eventually be a subscription service
 - Stockwatch provides a sophisticated Boolean, key-word, full-text search function of SEDAR documents filed since 1999; there is also a menu-driven search function; all documents are in pdf format
 - this service is in beta-test; searches often time out and must be re-executed, and documents sometimes will not open
- **LIVEDGAR** <http://www.gsonline.com>
 - Coming soon to Canada (July 31, 2003?) -- see below for info about LIVEDGAR

United States

- US public disclosure documents are especially rich sources for precedent research, because of the requirement that all material contracts (i.e., contracts materially affecting the filer’s financial status and operations) must be appended to filings; these material contracts will usually be found appended to the filings as “**Exhibits**”
- **Lexis, Westlaw**
 - Both Lexis and Westlaw provide access to full-text EDGAR filings, with their own proprietary search interfaces. Especially on Lexis, there are special “files” of particular types of documents (registration statements, 10-Ks, proxies, etc.). Most important are the separate files of “Exhibits”, which are the richest source of precedent material for corporate and securities practitioners.
- **LIVEDGAR** <http://www.gsonline.com>
 - Designed specifically for the corporate and securities practitioner, LIVEDGAR features comprehensive coverage of EDGAR public disclosure filings and sophisticated Boolean keyword and menu-driven search interfaces, with a variety of formatted print, download and email document delivery options (pdf, html and text formats).
 - Most significant is LIVEDGAR’s **Research Library** of pre-formatted precedent searches, which facilitate searching for and retrieving copies of relevant precedent materials.
 - **LIVEDGAR will soon also provide complete full-text search functionality for Canadian SEDAR filings; expected release date is July 31, 2003.**