Lang Michener LLP
Lawyers – Patent & Trade Mark Agents

Document hosted at JDSUPRA
http://www.jdsupra.com/post/documentViewer.aspx?fid=fbe7d750-1aad-43f7-8743-9446105d1096

SecuritiesBrief

Spring 2008

In This Issue

page

OSC Clarifies Material Change Reporting Obligations 1
The Passport System: Efficiency Without Tears 3
SEC Adopts New Rules 3
Automatic Securities Trading Plans 6
News and Announcements 7

In this issue Khorshid Hakemi and Leo Raffin analyze a timely decision of the OSC that gives guidance as to when disclosure of pending transactions is required, Susan Goscoe introduces the new passport system for prospectus review in Canada, Karim Lalani provides information on new rules adopted in the United States that will be of interest to Canadian companies, and Stephen White discusses how to structure an automatic securities trading plan.

As well, we introduce you to four new members of our securities team.

OSC Clarifies Material Change Reporting Obligations

Khorshid Hakemi

Leo Raffin

In a highly anticipated decision, the Ontario Securities Commission ("OSC") provided new guidance to the business community as to when a public issuer is required to disclose its intention to complete an M&A transion.

Chronology of Events

In 2002, AiT Advanced Information Technologies Corporation ("AiT") began discussing a potential transaction with 3M Canada Company ("3M").

On April 25, 2002 3M verbally offered $2.88 per share of AiT. AiT's board unanimously passed a resolution and agreed to recommend 3M's offered price to its shareholders, subject to receipt of a fairness opinion and satisfaction of AiT's board with the other terms of the transaction.

On April 26, 2002 AiT and 3M entered into a non-binding letter of intent giving exclusivity to 3M but which was subject to significant conditions to closing, many of which were beyond AiT's control, including 3M's due diligence review and the parties entering into a definitive agreement.

On May 9, 2002 the staff at Market Regulation Services Inc. ("MRS") contacted AiT to inquire into the unusual increase in the trading volume and price of AiT shares. AiT issued a press release that same day indicating that AiT was "exploring strategic alternatives that would ultimately enhance value" for its shareholders, without mentioning the possible transaction with 3M.

On May 14, 2002 3M's board approved the transaction, subject to the approval by 3M's CEO of the due diligence report and the integration plan.

Following further negotiation of the merger agreement, on May 22, 2002 AiT's board received a favourable fairness opinion and approved the formal merger documentation.

On May 23, 2002 AiT and 3M signed a definitive merger agreement and AiT issued a news release and filed a material change report announcing the transaction.

Document hosted at JDSUPRA
http://www.jdsupra.com/post/documentViewer.aspx?fid=fbe7d750-1aad-43f7-8743-9446105d1096

OSC Ruling

In its statement of allegations, the OSC staff contended that a material change had occurred by April 25, 2002 (the date AiT's board conditionally approved the transaction) and in any event, had occurred not later than May 9 (the date MRS contacted AiT and AiT issued its first news release). The OSC's February 2007 notice of hearing was issued against AiT, Bernard Ashe (AiT's CEO and a director) and Deborah Weinstein (AiT director and a partner at LaBarge Weinstein LLP, AiT's legal counsel).

AiT (now owned by 3M) and Ashe entered into settlement agreements with the OSC (the "Settlement Agreements"). AiT agreed to pay costs and a $40,000 fine; Ashe agreed to pay costs and a $15,000 fine.

Weinstein, thankfully, chose to fight the allegations. Absent her actions and the subsequent favourable ruling of the OSC, the settlement agreed to by AiT and Ashe would have left considerable tension in business transactions between the very practical desire to make a public announcement only after binding agreements were entered into and the regulator's view that, in certain circumstances, transactions that were still in the negotiation stage should be announced.

In its ruling, the OSC panel held that no material change occurred for AiT until the definitive merger agreement was signed and all final approvals were granted. The OSC stated that the determination whether a material change has occurred is not a "bright line test." Instead, the assessment is driven by the particular facts of each case, whether there is "sufficient commitment" from *both* parties to proceed with a merger and if there is a "substantial likelihood" that the merger would be completed.

According to the decision, a resolution by the board of directors of one party to pursue a potential transaction is not a material change unless there is reason to believe that the other party is also committed to completing the transaction. In the AiT case, the OSC concluded that the purpose of the April 25th AiT board meeting was to obtain directors' support for 3M's valuation and study of AiT, an initial step in negotiations that were still in a preliminary stage. At this point, nothing had been received in writing on the proposed transaction and key items still had to be negotiated.

Similarly, the OSC concluded that the signing of the letter of intent did not constitute a material change. The OSC found that the AiT letter of intent was non-binding and did not contain any commitment on the part of 3M to complete the acquisition. Further, the OSC determined that the proposed price of $2.88 per share was not a firm commitment and was subject to renegotiation downwards if 3M's due diligence review identified problems or if AiT's financial condition worsened. While it was clear to the OSC that AiT's board would support the completion of a transaction with 3M at the offered price, it was unclear whether 3M was also committed to the transaction at the letter of intent stage and whether there was a substantial likelihood that the transaction would be completed.

The OSC agreed with its staff that in certain circumstances, however, it might well be appropriate to conclude that a material change has occurred at the letter of intent stage and, in that case, a company should make disclosure based on a determination of the level of commitment of the parties to complete the transaction and the likelihood that completion would occur.

Practical Considerations

Although the OSC decision does not purport to provide a bright line test, it does provide considerable comfort to public issuers that sale or acquisition transactions will not be a material change requiring disclosure until all parties are firmly committed. In almost all commercial cases, we expect that the "firm commitment" time will be when definitive agreements are signed.

The decision is also helpful in confirming the generally accepted practice of not disclosing non-binding letters of intent. However, the OSC decision suggests the issuer is likely to have a disclosure obligation when, in what we expect would be a highly unusual circumstance, the letter of intent contains all of the key terms of the transaction and such terms are binding. Additionally, the AiT fact pattern serves as a caution to drafters of resolutions that appear to approve transactions before the terms have been fully negotiated or finally settled.

The OSC staff's statement of allegations and the Settlement Agreements led many to believe that, if the OSC decision followed the reasoning behind the Settlement Agreements, public issuers would be required to disclose non-binding letters of intent, or even M&A negotiations, at an early stage. However, issuers can now breathe a sigh of relief as the OSC decision departed from the staff's recommendation and, instead, confirmed the current practice in the context of M&A transactions.

Khorshid Hakemi is an associate in the Securities Group in Vancouver. Contact her directly at 604-691-7426 or khakemi@lmls.com.

Leo Raffin is a partner in the Technology/Intellectual Property Group in Vancouver. Contact him directly at 604-691-7450 or lraffin@lmls.com.

Document hosted at JDSUPRA
http://www.jdsupra.com/post/documentViewer.aspx?fid=fbe7d750-1aad-43f7-8743-8446105d1096

The Passport System: Efficiency Without Tears

Susan Goscoe

The Canadian Securities Administrators ("CSA") will implement the "Passport System" for prospectus review on March 17, 2008. The good news is that for users the Passport System will likely feel much like the current Mutual Reliance Review System ("MRRS"), albeit slightly improved. The bad news is that for prospectus offerings, fees will still be paid in all the jurisdictions where securities will be offered.

Documents will be filed in all the offering jurisdictions and with the principal regulator as before. With respect to the review process:

- If the Ontario Securities Commission ("**OSC**") is the principal regulator, only the OSC will review and comment on the prospectus in the time frame we are currently accustomed to: 10 working days for a long form prospectus and three working days for a short form prospectus (subject to any extensions for novel or complex issues). The OSC will issue the final receipt.
- If an offering includes Ontario but the OSC is not the principal regulator, two regulators will be involved ("**dual review**"), namely the principal regulator and the OSC. The time frame for the first comment letter will still be 10 and three working days, for a long form prospectus and short form prospectus, respectively. Except where the OSC opts out of dual review, only the principal regulator will issue a final receipt.
- If the offering does not include Ontario and Ontario is not the principal regulator, the principal regulator alone will review and comment on the prospectus in the applicable time frame and issue the final receipt.

The principal regulator will issue one final receipt for all jurisdictions included in the offering. The sole exception, as noted above, will be where the OSC, as a non-principal regulator, has opted out of a dual review, in which case a separate receipt from the OSC will be required.

The Passport System should eliminate or reduce the delays that occasionally occur under MRRS due to the involvement of securities regulators in all the jurisdictions included in the offering. Currently, all jurisdictions must sign off. Under the Passport System, at most two regulators will be involved in reviewing routine prospectus filings and at most two final receipts will be issued. (However, if there is a novel issue, the principal regulator may decide to consult with other jurisdictions. As mentioned above, the usual review timeframes may be extended for complex or novel issues.)

Whether or not costs will decrease will likely depend on whether the various jurisdictions decrease prospectus filing fees.

The CSA also expects to implement the Passport System for exemptive relief applications in March 2008. For these applications, filings will be made only with the principal regulator or, for a dual application, with the principal regulator and the OSC, as described above for a dual review prospectus. Fees will be payable only to the principal regulator and, if applicable, the OSC, so for exemptive relief applications, in contrast to prospectus filings, there should be an immediate reduction in costs for applicants.

Susan Goscoe is counsel in the Securities Group in Toronto. Contact her directly at 416-307-4101 or sgoscoe@langmichener.ca.

SEC Adopts New Rules

Karim Lalani

Over the past few weeks, the United States Securities and Exchange Commission (the "SEC") has adopted new rules to streamline the capital formation process for smaller public companies. The new rules expand the availability of "small business" filer disclosure, simplify compliance with SEC Rules 144 and 145, and expand the availability of the short form registration statements on Form S-3 and Form F-3. These rules are intended to significantly reduce the cost of capital for smaller public companies, lessen the reporting burdens faced by them and reduce the liquidity risk for investors who purchase securities of reporting companies privately. A summary of these rules is set out below.

Amendments to Small Business Issuer Disclosure Regime

Currently, only issuers that have revenues of less than US$25 million as well as a market capitalization that does not exceed this amount qualify for the SEC's small business issuer disclosure regime. Such issuers are permitted to file annual, quarterly and current reports on Forms 10-KSB, 10-QSB and 8-K, respectively, and to prepare proxy statements and information statements on Schedules 14A and Schedule 14C, respectively, each of which prescribe that the issuer's disclosure comply with the relevant items of Regulation S-B, rather than the more comprehensive disclosure requirements of Regulations S-K and S-X. In addition, small business issuers may file registration

Document hosted at JDSUPRA™
http://www.jdsupra.com/post/documentViewer.aspx?fid=fbe7d750-1aad-43f7-8743-9446105d1096

statements under the United States *Securities Act of 1933*, as amended (the "Securities Act") on Forms SB-1 or SB-2, which similarly prescribe disclosure with reference to Regulation S-B.

Canadian issuers that qualify as small business issuers are eligible to prepare their disclosure documents under the SEC's small business issuer regime as well. Accordingly, some Canadian issuers voluntarily choose to file reports on Forms 10-KSB, 10-QSB and 8-K, in lieu of filing annual reports on Form 20-F and furnishing reports on Form 6-K, particularly since they remain exempt from the SEC's proxy rules so long as they continue to qualify as "foreign private issuers."

Under the new rules, Regulation S-B will be eliminated, and Regulations S-K and S-X will be amended to provide for scaled disclosure requirements currently provided under Regulation S-B, which will be available to a new category of "smaller reporting companies." The existing small business issuer forms will be rescinded and consolidated with existing forms applicable to larger companies.

Current SEC rules distinguish between "non-accelerated" and "accelerated" filers. Non-accelerated filers are issuers with a public float of less than US$75 million, and benefit from longer reporting deadlines for filing annual and quarterly reports with the SEC, but otherwise file the same reports as larger companies (accelerated filers) unless they qualify as small business issuers. Thus, such issuers must file annual, quarterly and current reports on Forms 10-K, 10-Q and 8-K, respectively, and prepare proxy statements and information statements on Schedules 14A and 14C, respectively, with reference to the disclosure requirements of Regulations S-K and S-X.

The new rules essentially combine "non-accelerated" filers with "small business" issuers into a new category of "smaller reporting companies." Thus, companies with a public float of less than US$75 million may comply with the less comprehensive requirements of the new scaled disclosure system contemplated by Regulations S-K and S-X, as amended, which will closely follow the disclosure currently applicable to small business issuers under Regulation S-B.

These changes will significantly expand the range of companies that will be able to choose, on an item-by-item basis, whether to take advantage of the scaled disclosure requirements, or provide the same disclosure as larger companies. In addition, the new rules will permit all foreign issuers to voluntarily file registration statements and periodic reports with the SEC as "smaller reporting companies" if they otherwise qualify, on the forms mandated for use by U.S. domestic companies, provided that any financial statements included in such filings comply with Regulation S-X and are prepared under U.S. generally accepted accounting principles.

These new rules are effective as of February 4, 2008. However, small business issuers will continue to be eligible to use Form 10-QSB (and related forms) during a transitional period ending on October 31, 2008 and Form 10-KSB (and related forms) until March 15, 2009.

Amendments to Rule 144 and Rule 145

Rule 144

Securities Act Rule 144 currently provides a "safe harbour" to facilitate the resale of restricted securities by investors, provided that, among other things: (i) the securities have been held for at least a year; (ii) there is adequate current information about the issuer of the securities in the public domain; (iii) the number of shares sold in any three-month period does not exceed certain volume restrictions; (iv) the securities are sold in ordinary brokers' transactions; and (v) a Form 144 is filed with the SEC if the sale involves more than 500 shares or the aggregate dollar amount of securities sold in any three-month period is greater than US$10,000. These restrictions cease to apply to persons who are not affiliates of the issuer after two years.

Rule 144 has been amended effective February 15, 2008 to shorten the holding period applicable to the resale of restricted securities from one year to six months. Under the amended Rule 144, if the issuer of the securities to be resold has been subject to reporting obligations under the United States *Securities Exchange Act of 1934*, as amended (the "Exchange Act") for at least 90 days before the sale of the securities, persons who have not been affiliates of the issuer for at least three months will be able to freely resell their restricted securities after a six-month holding period without any volume or manner of sale restrictions, provided that there is adequate current information concerning the issuer in the public domain under Rule 144(c). In addition, Rule 144, as amended, will allow non-affiliates of reporting and non-reporting companies to freely resell restricted securities after satisfying a 12-month holding period.

The amended Rule 144 will likewise be available for resales of equity securities held by affiliates after a six-month holding period, but the current public information requirement, the volume limitations, the manner of sale requirements and the Form 144 filing requirements would continue to apply. However, with respect to resales by affiliates, the manner of sale requirements for equity securities will be revised to permit their resale through riskless principal transactions and to permit a broker to insert bid and ask quotations for the security in an "alternative trading system," provided that certain conditions are met. In addition, the thresholds that trigger Form 144 filing requirements will be increased to 5,000 shares or US$50,000.

Document hosted at JDSUPRA
http://www.jdsupra.com/post/documentViewer.aspx?fid=fbe7d750-1aad-43f7-8743-9446105d1096

The amendments to Rule 144 prevent securities issued by a reporting or non-reporting issuer that is or previously was a "shell company" from being resold pursuant to Rule 144, for at least one year after the issuer files information (the so-called "Form 10 Information") with the SEC (normally on a Form 8-K for a U.S. domestic company) confirming that it has ceased to be a shell company and providing the level of disclosure about the new business that would be appropriate for an initial registration statement under the Exchange Act. This one-year waiting period represents a significant change from the original proposal, announced in November 2007, which contemplated a waiting period of only 90 days after the filing of the Form 10 information with the SEC.

The amendments should greatly simplify compliance with the requirements of Rule 144 for securities of public reporting companies and make it easier for smaller companies to raise capital given the shorter hold periods for resales.

Rule 145

Currently under Securities Act Rule 145, affiliates of a party to a business combination transaction are presumed to be "underwriters" and are subject to certain post-transaction restrictions on resale of securities received in the transaction for up to two years following the transaction. This applies even if the securities issued in the transaction were registered on Form S-4. Effective February 15, 2008, Rule 145 was amended to eliminate this "presumptive underwriter" doctrine unless one of the parties to the transaction is a "shell company" (other than a business combination shell company) and the restricted period for securities issued in these types of transactions has been shortened to conform to the changes to Rule 144 described above.

Summary of Amendments to Rules 144 and 145

The table below summarizes the most significant changes to Rules 144 and 145, to take effect on February 15, 2008.

Amendments to Forms S-3 and F-3

Effective January 28, 2008, the SEC adopted amendments that allow smaller issuers with less than US$75 million in public float to use short-form registration statements on Form S-3 and Form F-3, with the view to facilitating more efficient access to the public securities markets by such issuers. These forms permit eligible issuers to incorporate by reference into the registration statement the disclosure contained in the issuer's past and future Exchange Act filings, which allows for the automatic updating of the registration statement.

Currently, Forms S-3 and F-3 may only be used for primary offerings (an offering of securities by or on behalf of an issuer for its own account) by issuers that have been public for at least one year, have timely filed all reports required to be filed by them under the Exchange Act for the past 12 months, and have a public float of at least US$75 million. The new rules allow domestic issuers and foreign private issuers to conduct primary offerings on Forms S-3 or F-3, respectively, without regard to the public float requirement, as long as, among other things: (i) the issuer has a class of common equity securities listed on a national securities exchange in the United States; (ii) the issuer does not sell more than one-third of its outstanding public float during a rolling 12-month period prior to the sale; and (iii) the issuer is not a "shell company" and has not been a "shell company" for at least 12 calendar months immediately preceding the filing of the registration statement (unless it has a public float of at least US$75 million).

	Current Rules	Amended Rules
Resales of Restricted Securities by Non-Affiliates	Limited resales after a one-year hold period and unlimited resales after two years, as long as the seller has not been an affiliate of the issuer for three months prior to the sale.	For reporting companies, unlimited resales after six months, as long as the seller has not been an affiliate of the issuer for three months prior to the sale; subject to current public information requirement for resales after holding period of more than six months but less than one year. For reporting and non-reporting companies, unlimited resales after one year, as long as seller has not been an affiliate of the issuer for three months prior to the sale.
Resales by Affiliates	Limited resales after one-year holding period.	Limited resales after six-month holding period, or one year for non-reporting companies; subject to current public information, manner of sale and other requirements of Rule 144.
Manner of Sale Restrictions	Apply to resale of any type of security under Rule 144.	Do not apply to resales by non-affiliates.
Form 144	Filing threshold at 500 shares or $10,000.	With respect to affiliates, filing threshold at 5,000 shares or $50,000. No Form 144 requirement for non-affiliates.
Rule 145	Presumptive underwriter provision applies to all Rule 145(a) transactions.	Presumptive underwriter provision applies only to Rule 145(a) transactions involving shell companies (other than business combination shell companies), with shortened holding periods under Rule 145(d).

Document hosted at JDSUPRA™
http://www.jdsupra.com/post/documentViewer.aspx?fid=fbe7d750-1aad-43f7-8743-9446105d1096

In addition, the amended Forms S-3 and F-3 permit eligible smaller issuers to register "shelf" offerings, whereby the issuer can register a specified number of its securities for sale in one or more tranches (commonly called "take-downs") on a delayed or continuous basis over a two-year period, at an offering price to be determined at the time of each take-down.

Karim Lalani is an associate in the Securities Group in Vancouver. Contact him directly at 604-691-6834 or klalani@lmls.com.

Automatic Securities Trading Plans

Stephen J. White

Under Ontario law, insiders are prohibited from purchasing or selling securities of an issuer with knowledge of a material fact or material change with respect to the issuer that has not been generally disclosed ("material undisclosed information"). However, the purchase or sale by insiders of securities of issuers with material undisclosed information may be exempt from this prohibition where the purchase or sale is effected pursuant to "automatic securities dispositions plans" or "automatic securities purchase plans" (referred to in this article collectively as "automatic securities trading plans" or "ASTPs"). Ontario Securities Commission ("OSC") Staff Notice 55-701 – *Automatic Securities Disposition Plans and Automatic Securities Purchase Plans* (the "Staff Notice") sets out the view of the staff of the OSC in this regard.

Background

An ASTP is generally an arrangement whereby an insider will instruct his or her broker to purchase or sell securities on the insider's behalf in accordance with a pre-determined set of instructions. The ASTP will usually contemplate that the broker will continue to purchase or sell securities on behalf of the insider regardless whether a "blackout" period established by the issuer is in effect or whether the insider is in possession of material undisclosed information at the time of the purchase or sale.

Ontario law provides that an insider will be exempt from the prohibition against purchasing or selling with knowledge of material undisclosed information where the purchase or sale is made by the insider through an "automatic dividend reinvestment plan, share purchase plan or other similar automatic plan" which the insider entered into *before* he or she acquired the material undisclosed information.

When is the Exemption Available?

The Staff Notice provides that an ASTP will be considered "automatic" when the insider no longer has the ability to make decisions relating to the trading of the securities held under the ASTP, and when the following conditions are met:

1. At the time of entry into the plan, the insider is not in possession of any material undisclosed information in relation to the issuer.
2. At the time of entry into the plan, in the case of plans that have not been established by the issuer, the insider provides the broker with a certificate from the issuer confirming that the issuer is aware of the plan and certifying that, to the best of its knowledge, the insider is not in possession of material undisclosed information about the issuer.
3. The trading parameters and other instructions are set out in a written plan document at the time of the establishment of the plan.
4. The plan contains *meaningful restrictions on the ability of the insider to vary, suspend or terminate the plan* that have the effect of ensuring that the insider cannot profit from material undisclosed information through a decision to vary, suspend or terminate the plan. [emphasis added]
5. The plan provides that the broker is not permitted to consult with the insider regarding any sales under the plan and that the insider cannot disclose to the broker any information concerning the issuer that might influence the execution of the plan.
6. The plan to purchase or sell securities was given or entered into in good faith and not as part of a plan or scheme to evade the insider trading prohibitions.

The Staff Notice states that meaningful restrictions on the insider's ability to vary, suspend or terminate the ASTP could include, for example, a requirement that the insider notify the issuer and the public (via a filing of an insider report) of a change in instruction, which filing would include a representation that the insider is not in possession of any material undisclosed information.

Other restrictions might include: (a) implementing a mandatory wait period after an ASTP is established before purchases or sales can be made under the ASTP; (b) implementing mandatory delay periods (such as 30 or 45 days) in the implementation of instructions to vary, suspend or terminate the ASTP; and (c) limiting the number of amendments which may be made to the ASTP to, say, one amendment during the life of the ASTP.

Insiders (and issuers who establish an ASTP for their insiders) should ensure that the ASTP contains clear trading

Document hosted at JDSUPRA™
http://www.jdsupra.com/post/documentViewer.aspx?fid=fbe7d750-1aad-43f7-8743-8446105d1096

instructions to avoid potential misinterpretations by the broker or other plan administrator. Another factor to be considered is the timing of trades – an ASTP which results in trades being made at regular intervals over a period of time may be easier to defend in regulatory review than one which results in large sales over short periods of time, as advantageous trades will be analyzed in hindsight.

Moreover, issuers whose insiders wish to initiate such ASTPs should consider implementing a policy setting out the rules and parameters with which insiders must comply.

What Disclosure is Required?

According to the Staff Notice, whether the insider's entry into an ASTP will trigger a disclosure obligation will depend on the circumstances of the ASTP. In making this determination, the following questions should be considered:

1. Where the plan is established by the issuer, the issuer should consider whether establishing the plan constitutes a "material change" thereby triggering the requirement for a news release and a material change report.

2. The issuer and insider should consider whether the establishment of the plan is a "material fact," with the result that no person with knowledge of such a material fact, which has not been generally disclosed, can trade until general disclosure is made.

3. The insider should consider whether entering into the arrangement involves a change in "direct or indirect… control or direction" over the insider's securities. If yes, then an insider report is required at the time the arrangement is entered into.

4. The insider should consider whether entering into an arrangement involves a change in the insider's "economic interest" in a security of the issuer, or the insider's "economic exposure" to the issuer. If yes, then entering into the arrangement will trigger a disclosure requirement under MI 55-103 – *Insider Reporting for Certain Derivative Transactions (Equity Monetization)*, unless an exemption to that instrument is available.

The Staff Notice provides further that, even if the issuer and insider conclude that there is no legal requirement to disclose the existence of the ASTP at the time the ASTP is established, it may nevertheless be advisable to disclose the existence of the ASTP on a voluntary basis in order to eliminate questions about apparent trading activity by insiders during blackout periods and periods when the insiders may have access to material undisclosed information.

The insider will generally be required to file insider reports each time there is a purchase or sale under an ASTP. However, as a result of amendments to NI 55-101 – *Insider Reporting Exemptions*, certain purchases and sales under an ASTP may be reported on an annual basis. NI 55-101 should be consulted to determine what the applicable reporting requirements are with respect to particular purchases and sales made pursuant to an ASTP.

ASTPs can help limit the exposure of insiders to allegations or charges of purchasing or selling an issuer's securities with knowledge of material undisclosed information. However, a number of factors should be considered by issuers and insiders when implementing, varying, suspending or terminating an ASTP, or by issuers when establishing policies relating to ASTPs.

Stephen J. White is an associate in the Corporate Finance and Securities Group in Toronto. Contact him directly at 416-307-4143 or swhite@langmichener.ca.

News and Announcements

Announcements

Lang Michener Welcomes New Lawyers

Rod Kirkham joined the Vancouver office at the beginning of February as a partner and member of the Securities Group. Rod regularly advises public companies on a variety of issues from regulatory compliance to corporate governance. He is a leading practitioner in media financing, and his practice also includes mine financing and Asian based work.

Sean O'Neill joined the Vancouver office at the beginning of January as a member of the Securities and Venture Capital Groups to continue his private equities and securities practice. Sean has an MBA in addition to his law degree, and is a registered Professional Engineer in B.C. and Alberta.

Document hosted at JDSUPRA
http://www.jdsupra.com/post/documentViewer.aspx?fid=fbe7d750-1aad-43f7-8743-9446105d1096

Darrell Podowski joined the Vancouver office mid-February as a partner, Chair of the Mining Group and member of the Venture Capital Group. Darrell practices mining and securities law. In addition to significant private practice experience in Canada, Darrell has three years' experience practicing law in Bermuda and four years' experience as in-house counsel at Teck Cominco Limited.

Stephen White joined the Corporate Finance & Securities Group of the Toronto office in November, 2007. Stephen's practice is primarily in securities law. He also has two years' experience working for a law firm in London, England and has mediation experience.

China Activities

Recent and Upcoming Speaking Engagements

Fall, 2007

Michael Taylor and **Sandy Wang** participated in the 2007 China Roadshow of the Toronto Stock Exchange, a series of presentations in China to provide information to Chinese companies considering listing on foreign stock exchanges

Sergio Marchi, President of the Canada China Business Council and strategic adviser to Lang Michener LLP, presided over the Council's 30th anniversary events in Beijing, China.

Michael Taylor moderated a panel discussion on investment in Western China in Beijing, China as part of the Canada China Business Council's 30th anniversary event.

Stephen Wortley and **Sandy Wang** addressed approximately 250 undergraduate and graduate students of the business school of Soochow University, in Suzhou, China.

February 13, 2008

Leo Raffin participated in a panel discussion on mergers and acquisitions for the Vancouver Chapter of the Women Presidents' Organization.

February 21–23, 2008

Linda Hogg and **Gary Floyd** participated as members of faculty at the Public Companies course in Simon Fraser University's Management and Professional Programs. The course is offered again May 8–10, 2008.

February 22, 2008

Leo Raffin co-chaired the British Columbia Continuing Legal Education Securities Update 2008 in Vancouver, and spoke on case law updates at that conference.

February 25–26, 2008

Mark Skwarok chaired the Federated Press Advanced Securities Compliance Conference in Vancouver and will speak on "Practical Lessons from *Kerr* v. *Danier Leather* for Avoiding and Prevailing in Litigation."

April 29, 2008

Mark Skwarok will speak on "The Business Judgment Rule – Fact or Fiction" at Insight's Litigation and Shareholder Disputes Conference in Calgary.

SecuritiesBrief

Editor: Charlotte A. Morganti
604-691-7458
cmorganti@lmls.com

RETURN UNDELIVERABLE CANADIAN ADDRESSES TO:

1500 Royal Centre
1055 West Georgia Street
P.O. Box 11117
Vancouver, BC V6E 4N7
Tel.: 604-689-9111 Fax.: 604-685-7084
e-mail: info@lmls.com

Publication Mail Agreement Number 40007871

Lang Michener LLP
Lawyers – Patent & Trade Mark Agents

Vancouver
1500 Royal Centre
1055 West Georgia Street
P.O. Box 11117
Vancouver, BC V6E 4N7
Tel.: 604-689-9111 Fax.: 604-685-7084

Toronto
Brookfield Place
181 Bay Street, Suite 2500
P.O. Box 747
Toronto, ON M5J 2T7
Tel.: 416-360-8600 Fax.: 416-365-1719

Ottawa
Suite 300
50 O'Connor Street
Ottawa, ON K1P 6L2
Tel.: 613-232-7171 Fax.: 613-231-3191

Lang Michener publishes newsletters on current developments in specific areas of the law such as Competition and Marketing, Employment & Labour, Insurance, Intellectual Property, International Trade, Mergers & Acquisitions, Privacy, Real Estate, Securities and Supreme Court of Canada News.

Brief offers general comments on legal developments of concern to business and individuals. The articles in *Brief* are not intended to provide legal opinions and readers should, therefore, seek professional legal advice on the particular issues which concern them. We would be pleased to elaborate on any article and discuss how it might apply to specific matters or cases.

Our privacy policy is available on-line at www.langmichener.ca

©2008 Lang Michener LLP Brief may be reproduced with acknowledgement.

This and other publications are available on-line at **langmichener.ca.** To receive complimentary copies, register through the "Request Publications" feature in the publications section.