

APPROACHING ASSESSMENT DATE FOR CANADIAN COMPANIES SEEKING TO MAINTAIN FOREIGN PRIVATE ISSUER STATUS IN THE UNITED STATES

Corporate & Securities Alert
June 24, 2013

For many Canadian companies, it is time to assess their foreign private issuer status. The foreign private issuer rules, among other things, relieve foreign companies that meet the conditions set out below from some of the impediments to tapping the U.S. capital markets. In the case of Canadian foreign private issuers, additional relief may be available under the Multijurisdictional Disclosure System.

A foreign private issuer is an entity (other than a foreign government) incorporated under the laws of a non-U.S. jurisdiction unless more than 50 percent of its outstanding voting securities are directly or indirectly owned of record by a U.S. resident and any of the following apply:

- The majority of its executive officers or directors are U.S. citizens or residents.
- More than 50 percent of its assets are located in the United States.
- Its business is administered principally in the United States.

Foreign private issuer status is assessed under these conditions as of the last business day of the issuer's most recently completed second fiscal quarter (not continually). As most issuers' fiscal year coincides with the calendar year, June 28, 2013, would be this year's assessment date. Note, however, a company that loses its foreign private issuer status does not have to begin complying with U.S. public company reporting obligations until the first day of the company's next fiscal year. In that event, the company has six months to prepare to do so. On the other hand, a company currently subject to the U.S. public company disclosure regime that determines that it qualifies for foreign private issuer status may immediately begin to comply with the foreign private issuer regime.

On February 13, 2013, the U.S. Securities and Exchange Commission released an overview on foreign private issuers, entitled "Accessing the US Capital Markets – A Brief Overview for Foreign Private Issuers." In the overview, the staff of the Division of Corporation Finance of the SEC outline many of the securities law issues foreign private issuers confront. The overview serves as a useful guide for Canadian and other non-U.S. companies seeking to raise capital in the United States.

Attorneys

John Zak

Practices & Industries

Canada-U.S. Cross-Border
Corporate & Business