Volume 22 | Number 1 Article 14

1988

Canada

REGIONAL DEVELOPMENTS

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In 1987 significant changes occurred in the securities field, as well as with respect to "pay equity" legislation.

I. Globalization of Canadian Securities Markets

In December 1986 the Ontario government, which has jurisdiction over the Ontario securities industry, introduced new rules to dismantle further the "four pillars" principle, which prohibited cross-ownership among chartered banks, trust companies, insurance companies, and investment dealers, and limited the powers of the first three entities in the securities field. Shortly thereafter, the federal government, which regulates Canadian banks and federal loan, trust, and insurance companies, issued a policy paper entitled "New Directions for Financial Institutions," to complete the dismantling of the cross-ownership rules.

The new Ontario rules, which became effective on June 30, 1987, provide that Canadian financial institutions—banks, insurance companies, and trust companies—as well as other Canadian investors, will be allowed to own up to one hundred percent of a securities dealer. The new rules provide further, that nonresidents will be permitted to hold a fifty percent interest in a Canadian securities dealer until June 30, 1988, when they will be allowed to own up to one hundred percent. Prior to June 30, 1988, nonresidents may have options or agreements to acquire up to one hundred percent.

One of the objects of the rules is to give domestic institutions a one-year head start. Foreign dealers who wished to enter the Ontario market directly were allowed to do so on June 30, 1987. While there will be no capital limits on foreign dealer registrants from that date onward, their activities will be limited to the exempt market for a one-year period. From June 30, 1988, foreign dealer registrants will be able to engage in the full range of activities in Ontario securities markets.

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To ensure effective control over the Ontario market, federal financial institutions, including banks, will be allowed to enter the securities business in Ontario only if the core functions of the business are carried on by a separate subsidiary registered with and subject to the rules of the Ontario Securities Commission.

II. New Rules on Insider Trading and Takeovers

The Ontario Minister of Financial Institutions has initiated major changes to the Ontario securities laws covering insider trading. These changes came into force in 1987. The new regulations reflect Ontario's response to the recently publicized illegal insider trading activity in the United States. They substantially increase the maximum penalties for trading in securities using "insider information," i.e., facts not available to the general public.

The legislation also expands the definition of an "insider" to include a broader range of people who have access to confidential information. Previously, only those people with close connections to a company that issued securities could be prosecuted for making trades or giving tips based on confidential information. A person unrelated to the company who profited from an insider's tip did not face prosecution. The new legislation is designed to catch both "tippers" and "tippees." A "tipper" is an insider who, by virtue of being a corporate director, officer, employee, professional, or business consultant, has insider information. A "tippee" is a person who receives information from an inside source.

The Ontario government has also made amendments to its securities legislation to ensure fairer treatment of all shareholders in takeover bids. Previously, under Ontario legislation a buyer of shares who held more than twenty percent of a company's outstanding voting shares had to make a pro rata offer to all shareholders, except when the company was owned by fewer than fifteen vendors and the premium over the market price was less than fifteen percent. Under federal legislation the threshold was ten pecent.

As a result of the new rules, the number of vendors in a "private-agreement exemption" is limited to five. The private-agreement exemption is not available, however, if the price paid exceeds market price by more than fifteen percent. In addition, any such acquisition at a price more than fifteen percent above market must take place through one offer to all shareholders.

III. The Estey Commission Report—Chartered Banks

Mr. Justice Estey of the Supreme Court of Canada recently produced an analysis of the 1985 failures of two Alberta banks, the Canadian Commercial Bank and the Northland Bank. His report included recommendations for the regulation of the banking system. In conclusion, he says: "The overriding impression from the national point of view is that banking is still a business in which Canadians excel and the national system as a whole still ranks with the leaders on the world scene."

Considerable attention was given by earlier investigations and by the press to the accounting practices followed by the two banks in the years immediately preceding their failure. The report concludes that the primary cause of the failures was the poor quality of the loans in the portfolios of the two banks. This problem was exacerbated by excessive concentration of loans in the volatile energy and real estate sectors and extensive reliance on the wholesale money market. Wholesale depositors deserted these banks in droves when troubles arose. The excessive concentration of loans to a relatively small number of borrowers in the cyclical real estate and energy market meant that the banks in practical terms were lending long and borrowing short. Mr. Justice Estey, in his recommendations for improvement, concluded that the so-called "tripartite system" by which the management and directors of banks, their auditors, and the regulatory authorities share responsibility for the solvency of the banking system is essentially a sound one.

IV. Ontario "Pay Equity" and Federal Employment Equity Legislation

Major changes in Ontario's employment legislation have occurred as a result of the new legislation dealing with equal pay for work of equal value. The legislation (which has quickly become known as "pay equity" legislation) affects all employers in the public sector as well as all private sector employers with ten or more workers. The legislation remedies discrimination in pay for work performed by female employees. The legislation identifies pay inequities by making "gender neutral" comparisons between female and male job classes in terms of their relative compensation and the relative value of the work performed. Value of work is determined by criteria relating to employees' skill, effort, responsibility, and working conditions. The legislation, however, does not indicate what weight is to be given to each criterion.

In order to be eligible for the comparisons, a female job class must be sixty percent female dominated and the male job class must be seventy percent male dominated. The comparison is limited to particular work establishments within a municipalility. Employees represented by unions or associations are not compared with those who are unrepresented, and casual employees are not included.

Differences in compensation are permitted if the employer can demonstrate that the differences results from a legitimate seniority system, a temporary-employee training program, a merit compensation plan, "red circling," or a skills shortage. Such systems or plans, however, must be "formal" (i.e., well documented), gender neutral, and made known to the female employee class in question.

Recent developments at the federal level clarify the federal "equal pay for work of equal value" legislation and require large employers within federal jurisdiction to adopt affirmative action plans. The legislation imposes similar affirmative action obligations on those who bid on large contracts with the federal government.

The Canadian Human Rights Commission issued new Equal Wages Guidelines binding on any human rights tribunal that deals with equal pay complaints under the Canadian Human Rights Act. The Guidelines are intended to interpret section 11 of that Act, which provides that women and men must be paid equally for work of equal value in the same establishment. The new Guidelines build on existing Equal Wages Guidelines, which define the four criteria that section 11 provides for calculating the value of work: skill, effort, responsibility, and working conditions. The existing Guidelines also prescribe "reasonable factors" that justify differences in pay between men and women.

The new Guidelines are most relevant to large employers as they indicate, for the most part, how the Commission will deal with complaints involving occupational groupings of employees rather than individual employees.