



Material Change Disclosures and COVID-19

The Novel Coronavirus (“COVID-19”) pandemic has caused disruption of varying levels and continues to affect many nations across the globe. This widespread disruption has impacted companies in different ways and has resulted in new and innovative ways to ensure business continuity and in some cases, has caused a negative impact on operations and profitability. In the case of impacted entities which are registered as reporting issuers with the Trinidad and Tobago Securities and Exchange Commission (TTSEC) certain disclosure based legislative reporting requirements are required to be completed in order to maintain transparency and for the benefit of the investing public. In this article, we will focus on the issue of material change disclosures during this unprecedented period and its importance to investors when assessing the affairs of a reporting issuer.

A reporting issuer is an entity that is registered with the Commission pursuant to Section 61(1) of the Securities Act, 2012 (“the Act”). A reporting issuer can be broadly defined as an issuer that issued securities under a prospectus or has its securities traded in a securities market. Reporting issuers are obligated to provide investors with complete, accurate and timely information as part of their continuous disclosure requirements.

To issue securities, generally a prospectus is required which is meant to provide investors with the necessary information to make informed investment decisions. Thereafter, reporting issuers are required to disclose significant events with respect to their business affairs in a timely fashion. These events are commonly referred to as material changes and the intent of disclosure is to provide investors with access to up-to-date information in relation to the company. In light of the COVID-19 situation, it is extremely critical for reporting issuers to properly evaluate the effects of the pandemic on their respective entities so as to ensure that their security holders and

prospective investors are supplied with all pertinent information that may qualify as material changes in the affairs of the said reporting issuers.

A material change¹ can be broadly defined as a change in the business, operations, assets or ownership of an issuer, the disclosure of which would be considered important to a reasonable investor in making an investment decision and includes a decision to implement such a change made by the directors of the issuer or other persons acting in a similar capacity. A material fact, when used in relation to the affairs of a reporting issuer, is a fact or series of facts, the disclosure of which would be considered important to a reasonable investor in making an investment decision. Some broad, non-exhaustive example of events which are considered material changes are changes in corporate structure or capital structure; changes in financial results; changes in business and operations; acquisitions and disposals; and changes in credit arrangements².

Material change disclosures seek to ensure the release of all information about a reporting issuer that may influence an investor's decision. It reveals both positive and negative news, data, and operational details that impact its business and seeks to ensure that all parties have equal access to the same set of facts in the interest of fairness since selective release of information places some security holders at a disadvantage. Further, timely disclosures contribute to investors having information which company insiders already possess. This is important as reporting issuers must also be extremely cautious in revealing any material, non-public COVID 19-related information privately or selectively which may result in potential insider trading violations.

Governmental or other measures taken to reduce the spread of COVID-19 may significantly disrupt a reporting issuer's workforce and operations, thus resulting in changes that are material in the context of the Act. The uncertainty surrounding the scale and duration of this pandemic may pose a challenge for some reporting issuers to quantify the overall impact on their businesses. However, it is the reporting issuers who are the ones with access to all the information pertaining to their respective businesses and are therefore best placed to determine the materiality of a change or fact in relation to COVID-19. As a result, the onus is on each individual entity to carefully

¹ Section 4 of the Securities Act, 2012, contains the definition of Material Change and Material Fact

² Material Change guidance is also available on the Commission's website

assess the likely impact of the COVID-19 pandemic on its business and to comply with the material change disclosure requirements of the Act, if applicable.

In performing these materiality assessments, where exact information is not currently available or possible, it is expected that the reporting issuer would use estimates and make projections based on all information within its possession. If such an assessment suggests that the impact resulting, or that will likely result, from COVID-19 pandemic is significant enough to influence the decision-making of a reasonable investor, then the requisite disclosures pursuant to Section 64(1) of the Act becomes mandatory.

Accordingly, reporting issuers should consider all significant issues that they may face due to the pandemic when assessing materiality. Reporting issuers must also be cognizant of the fact that, given their specific business model, they may be more vulnerable to certain events than compared to other entities within the same industry or even across industries. As such, the impact will not be the same for all reporting issuers, whether or not they operate in the same industry. Some disruptions in business operations which entities should be mindful of during this pandemic period are:

- Government mandated decisions implemented by the reporting issuer to reduce the spread of the virus;
- Voluntary actions taken by the reporting issuer to reduce the spread of the virus, including reduced hours of operation, location closures, having employees work remotely from home and cancelling all in-person meetings;
- Constraints or other impacts on human capital resources or productivity;
- Travel restrictions and border closures;
- Regulatory changes implemented, which may affect the operations of the reporting issuer;
- Any material impairments (e.g., with respect to goodwill, intangible assets, long-lived assets, right of use assets, investment securities), increases in allowances for credit losses, restructuring charges and other expenses;
- Supply chain, production and distribution delays as a result of scarcity of certain materials and closures of manufacturing facilities, warehouses and distribution centers;
- Challenges in implementing business continuity plans; and

- Financial impact, dividend changes, credit and liquidity risks due to volatility in financial markets, covenant breaches and lower consumer spending.

It is important to note that this list is by no means exhaustive and each reporting issuer will need to carefully assess COVID-19's impact and any related material disclosure obligations. It is expected that reporting issuers and their legal advisers would act responsibly and fulfill their obligations to their security holders by performing an objective and honest assessment of the COVID-19 impact on their respective businesses. In the event that the reporting issuer is unclear, Staff of the Commission is available to assist with the conduct of an assessment of materiality. To conduct an assessment of materiality, Staff must be provided with the specific, pertinent details of the COVID-19 related matter in a timely manner. In the event that assistance is sought from Staff of the Commission in the determination of the materiality of an event, it must be noted that materiality is assessed by Staff of the Commission on a case by case basis and in the context of the information available at the particular point in time.

When materiality of a COVID-19 related matter is determined, if compliance with Section 64(1) of the Act is required, reporting issuers are required to file a report [Form 10- Material Change Report] with the Commission disclosing the nature and substance of the material change within three days of the occurrence of the material change. Further, a notice must be published in two daily newspapers of general circulation disclosing the nature and substance of the material change within seven days of the occurrence of the material change and copies of the published notice must also be filed with the Commission within seven days of the occurrence of the material change.

The onset of the COVID-19 pandemic was a highly unanticipated global event and the circumstances surrounding it is ever changing. Despite this, reporting issuers have a responsibility to continuously monitor their respective operations and make decisions in the best interest of the entity and its investors. It is the impact of COVID-19 and the associated decisions taken by entities which must be constantly evaluated to determine what disclosures are required in the interest of transparency and the reporting issuer's obligation to investors.

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Published Article – Business Express Newspaper
July 15th, 2020