

## **SEC Revises Policy on Confidential Submissions by Foreign Private Issuers**

Andrew Beck, Cheryl Reicin, Daniel Raglan and Christopher Roehrig of Torys LLP

On December 8, 2011, the U.S. Securities and Exchange Commission announced that it had revised its policy relating to confidential submissions of registration statements (and amendments) by foreign private issuers.

In contrast to U.S. issuers, foreign private issuers registering their securities for the first time in certain circumstances can generally submit registration statements to the SEC on a confidential basis. This allows foreign private issuers to resolve any complicated issues with the SEC before publicly filing a registration statement. Many Canadian companies undertaking a cross-border initial public offering or an initial offering of securities in the United States have taken advantage of the SEC's confidential filing policy.

Effective as of December 8, 2011, the SEC has revised this policy to limit confidential submissions of initial registration statements by foreign issuers to

- (i) foreign governments registering their debt securities;
- (ii) foreign private issuers that are listed or are concurrently listing their securities on a non-U.S. securities exchange;
- (iii) foreign private issuers that are being privatized by a foreign government; or
- (iv) foreign private issuers that can demonstrate that the public filing of an initial registration statement would conflict with the law of an applicable foreign jurisdiction.

Shell companies, blank check companies and issuers with no or substantially no business operations will be unable to make confidential submissions.

Nevertheless, even if a foreign issuer falls within one of the categories described above, the SEC may still request a foreign issuer to file publicly if the SEC believes circumstances warrant public disclosure (such as when there has already been significant publicity about the offering or registration).

The new policy applies to all confidential submissions made after December 8, 2011 and to all amendments to confidential submissions that had been originally submitted before December 8, 2011.

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**Andrew Beck, Partner, [abeck@torys.com](mailto:abeck@torys.com)**

Andy Beck's practice focuses on corporate and securities law in the area of public and private financings, corporate governance, and mergers and acquisitions. Experienced in

domestic and international debt and equity financings, he has handled initial public offerings and Rule 144A offerings, as well as acquisitions and divestitures of both public and private businesses.

**Cheryl Reicin, Partner, [creicin@torys.com](mailto:creicin@torys.com)**

Cheryl Reicin's practice focuses on biotechnology, medical device, health information and other technology-based companies, and representation of private equity/venture capital funds and investment banks that fund such companies. She also represents academic medical centers and universities. Her practice centers on U.S., Canadian and Israeli entities.

**Daniel Raglan, Partner, [draglan@torys.com](mailto:draglan@torys.com)**

Daniel Raglan is a partner in Torys' Corporate and Capital Markets Practice, and is based in the New York office. He represents corporate clients and financial institutions in U.S. domestic and cross-border capital markets transactions, and mergers and acquisitions.

**Christopher Roehrig, Associate, [croehrig@torys.com](mailto:croehrig@torys.com)**

Christopher Roehrig's practice focuses on corporate law with an emphasis on U.S. domestic and cross-border capital markets transactions, as well as mergers and acquisitions. He also has extensive experience advising clients on corporate governance matters.

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