

## The Stock Exchange Corner

### Disclosures required by the Securities Industry Act

*by George Edwards*

This week we shall continue to look at the Regulations pertaining to disclosures required of issuers.

The Directors and Management of companies have a fiduciary duty to their shareholders to run the companies for their benefit. If shareholders and prospective investors are to have the confidence that the Directors and Management are acting in the best interests of the shareholders, it is necessary that adequate disclosures be made in a timely manner. We have seen on the international front (Enron, WorldCom) that there can be disastrous results for stakeholders, especially shareholders and employees, when the truth is hidden by those entrusted with ensuring the profitability of the companies that they run. Regulators try to prevent hidden agendas by implementing and enforcing regulations to protect investors.

In Guyana, the ultimate regulator of the securities industry is the Guyana Securities Council, drawing their power from the Securities Industry Act 1998. Here are more disclosures required from issuers quoted from Regulation No.8 of 2002:

9. (1) Where a transaction specified in paragraph (2) takes place between-
  - (a) the issuer and its holding company;
  - (b) the issuer and any subsidiary of its holding company other than a subsidiary of the issuer;
  - (c) a subsidiary of the issuer, and the holding company of the issuer;  
or
  - (d) a subsidiary of the issuer and any subsidiary of its holding company other than the issuer or any of its subsidiaries,

the issuer shall comply with the disclosure requirements of paragraph (3).

- (2) For the purpose of the regulation, "transaction" means –
  - (a) an arrangement or agreement whereby the issuer directly or indirectly grants a loan or gives other financial assistance;
  - (b) an arrangement or agreement whereby the issuer provides security, whether by guarantee or otherwise, for the discharge of any obligation; or
  - (c) any transaction other than in the ordinary course of business.

- (3) The issuer shall, where paragraph (1) applies, notify the securities exchange, the Council and every member and holder of its securities without delay of the transaction including the following details –
    - (a) the date of the transaction and the parties;
    - (b) the general nature of the transaction and, where the transaction involves the making of a loan, the giving of financial assistance or the giving of any security, its amount or value.
10. An issuer shall ensure that all the necessary facilities and information are available to enable holders of its securities to exercise their rights and, in particular –
  - (a) shall publish, in at least two daily newspapers, notice of every general meeting;
  - (b) inform holders of securities of the holding of meetings which they are entitled to attend;
  - (c) enable them to exercise their right to vote, where applicable;
  - (e) publish notices or distribute circulars giving information on –
    - (i) the allocation and payment of dividends and interest;
    - (ii) the issue of new securities, including arrangements for the allotment, subscription, renunciation, conversion or exchange of the securities; and
    - (iii) redemption or repayment of the securities.
11. An issuer shall notify the securities exchange, the Council and every member and holder of its securities without delay of any notification received by the issuer concerning substantial shareholdings pursuant to section 126 or 127 of the Companies act 1991.
12. The date for a meeting of the board of directors at which decisions on dividends, the annual results or the half-yearly report are expected to be made or at which any announcement of such matters is to be approved shall be notified to the securities exchange at least ten days in advance.
13. The issuer shall inform the securities exchange and the Council immediately after approval by or on behalf of its board of directors –

- (a) a decision to declare, recommend or pay any dividend or to make any other distribution on its securities, and the rate and amount thereof;
  - (b) a decision not to declare, recommend or pay any dividend which would otherwise have been expected to have been declared, recommended or paid in due course;
  - (c) a preliminary announcement of profits or losses for any year, half-year or other period;
  - (d) a proposed change in the capital structure, including any redemption of its convertible securities; and
  - (e) a decision to change the general character or nature of the business of the issuer or its subsidiaries.
14. The issuer shall notify the securities exchange and the Council immediately of any decisions made in regard to –
- (a) an alteration of the issuer's constitution;
  - (b) any proposed change in its capital structure including the structure of its debt securities;
  - (c) a change in the rights attaching to any class of securities and any change in the rights attaching to any shares into which any debt securities are convertible or exchangeable; and
  - (d) a change in its board of directors.
15. The issuer shall inform the securities exchange and the Council of its basis of allotment of securities offered to the public for subscription or sale and of the results of any rights issue and, if applicable, of the basis of acceptance of excess applications, not later than the morning of the business day next after the allotment letters or other relevant documents of title are posted.
16. (1) The issuer shall inform the securities exchange and the Council on the happening of any of the following events as soon as the same shall come to the attention of the issuer –
- (a) default on debt interest or repayment of principal;
  - (b) the appointment of a receiver or administrator;
  - (c) the presentation of any winding-up petition, or equivalent application in the country of incorporation or other establishment, or the making of any winding-up order or the appointment of a

provisional liquidator in respect of the issuer, its holding company or any major subsidiary;

- (d) the passing of any resolution by the issuer, its holding company or any major subsidiary that it be wound-up by way of members' or creditors' voluntary winding-up;
- (e) the entry into possession of or the sale by any mortgagee of any of the issuer's assets; or
- (f) the making of any judgment, declaration or order by any court or tribunal of competent jurisdiction whether on appeal or at first instance, which may adversely affect the issuer's enjoyment of any material part of its assets which in aggregate value represents an amount in excess of fifteen per cent of the consolidated net tangible assets of the group.

- (2) For the purposes of paragraph (1) a "major subsidiary" means a subsidiary representing fifteen per cent or more of the consolidated net tangible assets or pre-tax profits of the group.

- 17. (1) The Council may, at any time, require an issuer to –
  - (a) provide to the Council such information in the form and within the time limits as the Council may require; and
  - (b) publish that information in the form and within the time as the Council considers appropriate for the purpose of protecting investors and maintaining the smooth operation of the market.
- (2) If an issuer fails to comply with a requirement to publish information, the Council may itself publish the information.

**Next week: Sanctions that may be applied by the Guyana Securities Council**

**N.B. – More information may be accessed on our website: [www.gasci.com](http://www.gasci.com)**