

How to Avoid Being Required to Obtain Audit Partner Consents

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SEC registration statements and certain annual reports require consents of experts (e.g., technical experts, audit firms, and investment banks that provide fairness opinions) named in the disclosure document. A recent development in Canada is that audit partners are now named in audit reports filed with audited financial statements. From an SEC perspective, the naming of both the audit partner and the audit firm in the audit report could require both parties to provide consent to the inclusion of the audit report in an SEC filing.

The SEC has recently provided our firm informal guidance that in accordance with the principles of the multijurisdictional disclosure system (“MJDS”), the SEC will not require a separate consent of the audit partner for an issuer’s initial MJDS registration statement and for any subsequent MJDS registration statement filed before the issuer’s first SEC annual report, if the issuer was required to include the name of the audit partner in the Canadian filing and the audit partner did not provide a consent when the audit report was originally filed in Canada. This guidance only applies to U.S. filings made in accordance with MJDS (e.g., Form 40-F, F-7, F-8, F-10 and F-80). We understand that the SEC is not extending this informal exemption to an issuer’s first SEC annual report or to any subsequent filings, because Canadian issuers can choose to follow PCAOB guidelines for audit reports included with the issuer’s first annual report filed with the SEC and audit partners are not required to be named in a PCAOB compliant audit report. The SEC is also not extending this informal exception to issuers who file with the SEC on non-MJDS forms. SEC registered Canadian issuers should discuss the consent requirements with their auditors and determine if they are permitted, and it makes sense, to prepare a PCAOB audit report going forward to eliminate the need for a consent of the audit partner.

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