

CSA PUBLISHES RESULTS OF ANNUAL CONTINUOUS DISCLOSURE REVIEWS

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The Canadian Securities Administrators (CSA) recently published [CSA Staff Notice 51-346 – Continuous Disclosure Review Program Activities for the fiscal year ended March 31, 2016](#) (Staff Notice) which summarizes the results of the CSA's annual continuous disclosure (CD) review of reporting issuers, highlights common disclosure deficiencies and suggests best practices to help reporting issuers comply with their CD obligations.

Overview

During the fiscal year ended March 31, 2016, the CSA conducted 902 CD reviews, of which 62 per cent uncovered deficiencies that either required issuers to take action to improve and/or amend their disclosure, or resulted in the issuer being referred to enforcement, cease traded or placed on the default list. This represents a slight increase from 59 per cent of the 1,058 CD reviews conducted during fiscal 2015.

The CD reviews identified several financial statement, MD&A and other regulatory deficiencies that resulted in issuers enhancing their disclosure and/or refilling their CD documents. The Staff Notice highlights the following particular areas, among others, where common disclosure deficiencies were noted and provides guidance and considerations to help issuers better understand and comply with their CD obligations.

Common Deficiencies

MD&A Deficiencies

Liquidity and Capital Resources. The CSA observed that some issuers failed to provide sufficient analysis of liquidity and capital resources. Issuers should avoid the use of boilerplate discussion of liquidity and capital resources, or merely reproducing amounts from their statements of cash flows without providing any analysis. This section of the MD&A should discuss an issuer's ability to generate sufficient financial resources in the short term and the long term, to maintain its capacity, to meet its planned growth or to fund development activities.

Forward Looking Information (FLI). The CSA noted that some issuers failed to update disclosure relating to FLI. Issuers should discuss the events and circumstances that occurred during the period that are reasonably likely to cause actual results to differ materially from material FLI that has been previously disclosed to the

public and the expected differences. In addition, if issuers decide to withdraw previously disclosed material FLI, they must disclose this in their MD&A.

Overall Performance (Discussion of Operating Segments). The CSA observed that some issuers identify segments in their MD&A that are inconsistent with those identified in their financial statements. The discussion of operating segments should be based on the operating segments as disclosed in the issuer's financial statements.

Investment Entities. The CSA observed that some issuers relying on the investment entity definition in IFRS 10 Consolidated Financial Statements do not provide sufficient information, both qualitative and quantitative, for their material investments and related investment and operating activities. Issuers should note that except in limited circumstances, an investment entity must measure its investments at fair value through profit and loss, including its investments in subsidiaries.

Other Regulatory Disclosure Deficiencies

Material Contracts. The CSA noted prohibited redactions, failure to provide a description of the type of information redacted and failure to file all material contracts listed in the Annual Information Form (AIF) on SEDAR. Issuers are reminded that they cannot make certain redactions in material agreements, such as redactions of debt covenants and ratios in financing or credit agreements, or key terms necessary for an understanding of the impact of the contract on the business. While some redactions may be permitted (e.g. to preserve confidentiality provisions and to avoid disclosure that would be seriously prejudicial to the interest of the issuer), the issuer ought to be able to explain the basis for why such disclosure would be seriously prejudicial. Issuers are also reminded that if the issuer's business is substantially dependent on a contract, then the issuer does not meet the ordinary course exemption and must file the material contract on SEDAR.

Audit Committee Composition – Venture Issuers. The CSA observed that some venture issuers have not met audit committee composition requirements. Effective for financial years beginning on or after January 1, 2016, a venture issuer's audit committee must be composed of at least three members, each of whom must be a director. The majority of such members cannot be executive officers, employees, control persons or affiliates of the venture issuer, with some limited exceptions.

Management Information Circular. The CD reviews identified a common failure to provide prospectus-level disclosure in management information circulars prepared in a situation of restructuring under which securities are to be changed, exchanged, issued or distributed. Management information circulars prepared in such situations should provide disclosure described in the form of prospectus the issuer is eligible to use (i.e. NI 41-101F1 – *Information Required in a Prospectus* or NI 44-101F – *Short Form Prospectus Distributions*).

Annual Information Form. The CD reviews identified a common failure among AIF filers to provide sufficient description of the business or applicable risk factors in the AIF. The AIF should describe the issuer's business and its operating segments that are reportable segments and disclose various aspects of the business, including: production and services, specialized skills and knowledge, competitive conditions, new products, any economic dependence, and changes to contracts. The AIF should also provide a detailed discussion of risk factors that affect the issuer.

Moving Forward

To illustrate some of the common deficiencies set out above, the Staff Notice provides examples of deficient disclosure contrasted against more robust entity-specific disclosure and a more in-depth explanation of the matters observed by the CSA. Issuers are encouraged to review their own disclosure practices and to use the CSA's guidance and findings to strengthen their compliance with their CD obligations.

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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