

CSA PUBLISHES RESULTS OF CONTINUOUS DISCLOSURE REVIEW PROGRAM ACTIVITIES

Posted on January 26, 2023

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The Canadian Securities Administrators (the “**CSA**”) recently published CSA Staff Notice 51-364 – *Continuous Disclosure Review Program Activities for the fiscal years ended March 31, 2022 and March 31, 2021* (the “**Staff Notice**”) to report on the results of the reviews conducted by CSA staff under its Continuous Disclosure Review Program with the goal of improving the completeness, quality and timeliness of continuous disclosure provided by reporting issuers. The Staff Notice summarizes the key findings and outcomes of the review program for the fiscal years ended March 31, 2022 and 2021 and describes common deficiencies and includes some illustrative examples to assist issuers address these deficiencies and understand expectations.

Financial Reporting and Disclosure During Economic Uncertainty

The CSA recognizes that issuers are preparing disclosure in evolving and uncertain times resulting in increased estimation uncertainty with assumptions used to prepare such disclosure possibly changing materially in the near term. Issuers are cautioned to carefully evaluate and explain how economic uncertainty and changes in assumptions affect their operations and the amounts reported in their financial statements.

It is important to identify and highlight the potential impacts of the current economic environment on financial reporting and other disclosures. Supply chain issues, the COVID-19 pandemic, labour shortages, high energy costs, inflationary pressures, rising interest rates, the global financial climate and the conflict in Ukraine are some of the factors that are impacting on current economic conditions and increasing economic uncertainty that could have an effect on an issuer’s operating performance, financial position and future prospects.

Issuers are reminded that non-GAAP financial measures that attempt to “adjust” for certain aspects of the current environment must, among other things, be entity-specific and clearly explain how such adjustments were attributable to the current environment and/or “non-recurring”, “infrequent” or “unusual”.

Results for Fiscal 2022 and Fiscal 2021

For the fiscal year ended March 31, 2022, 466 reviews were conducted (572 in fiscal 2021), 70% of which (74% in

fiscal 2021) consisted of specific issue-oriented reviews (focusing on specific accounting, legal or regulatory issues, emerging industries or issues, and implementation of recent rules or areas believed to be a heightened risk of potential investor harm and those that are at higher risk of non-compliance). In fiscal 2022, 61% of reviews (51% in fiscal 2021) resulted in the issuer being required to take action to improve and/or amend its disclosure, refile a previously filed document or to file unfiled documents. Some of these reviews also resulted in the issuer being referred to enforcement, ceased traded or placed on the default list.

The Staff Notice highlighted some of the key areas where common deficiencies were observed during the reviews in fiscal 2022 and fiscal 2021 with respect to financial statements, MD&A and other regulatory requirements.

Financial Statement Deficiencies

The CSA noted that some issuers failed to comply with certain International Financial Reporting Standards requirements. The CSA observed that some issuers do not consider whether the consideration promised includes a variable amount and that some issuers include the amount of estimated variable consideration in the transaction price without assessing whether it is highly probable that a significant reversal of cumulative revenue recognized will not occur when the uncertainty associated with the variable consideration is subsequently resolved. The CSA observed that some issuers do not disclose sufficient information to enable readers to understand the nature, amount, timing and uncertainty of revenue and cash flows arising from contracts with customers. The CSA also observed that some issuers do not provide disclosures that disaggregate revenue recognized from contracts with customers into categories; do not provide enough information for readers to understand the effect of credit risk; do not provide the factors used to identify the entity's reportable segments, the basis of organization and the judgements made by management in applying aggregation criteria; or do not disclose certain information related to business combinations which occurred during the reporting period.

MD&A Deficiencies

Venture Issuers and Early-stage/Development-stage Issuers

The CSA observed that some venture and early-stage/development-stage issuers announce significant projects but fail to disclose sufficient information concerning timing and costs associated with the project that would allow readers to understand the project sufficiently. Such issuers are expected to provide certain information including, among other items, the issuer's plan for the project and updates on the status of the project. Issuers should describe each project in sufficient detail, including, but not limited to, information relating to the issuer's plan for the project and the status of the project relative to that plan; identification of concrete milestones in the plan and what specific events need to occur to meet each milestone; for each

project/stage/milestone, a description of the expenditures made to date; and updates on the status of the project in each MD&A (including any delays in the disclosed timeline and/or anticipated cost overruns).

The CSA observed that some venture issuers that have not yet generated significant revenue from operations do not provide sufficient disclosure about costs incurred in operations, explorations or research and development. The CSA reminds issuers that venture issuers without significant revenue from operations are required to disclose a breakdown of the material components of (i) exploration and evaluation assets or expenditures, (ii) expensed research and development costs, (iii) intangible assets arising from development and (iv) general and administration expenses.

Forward-looking Information (“FLI”), Future-oriented Financial Information and Financial Outlooks

The CSA noted that some issuers are disclosing FLI without a reasonable basis for the disclosure and are disclosing an overly optimistic financial outlook of revenue projections without support from reasonable assumptions about future economic conditions. The CSA reminds issuers that when disclosing FLI, issuers must have a reasonable basis for the FLI and state the material factors and/or assumptions as well as the material risk factors that are relevant to their disclosed FLI. In addition, the CSA observed that some issuers failed to provide updated FLI disclosure when actual results were or would likely become materially different from previously disclosed FLI. Where it is clear that issuers are not going to achieve disclosed targets and objectives, issuers must update their FLI to assist readers with understanding how an issuer is progressing towards achieving its disclosed targets and objectives and to understand how actual results differ materially from previously disclosed FLI.

Other Regulatory Deficiencies

Business Acquisitions

The CSA observed that some issuers did not file a business acquisition report for a significant acquisition under which securities of the acquired business were exchanged for the issuer’s securities. An acquisition of securities of a separate entity is generally considered to be an acquisition of a business regardless of the type of consideration paid or transferred. Issuers are required to determine whether an acquisition of a business or related business is a significant acquisition by performing the required significance tests and may re-calculate the significance of the acquisition using the optional significance test if applicable. Issuers seeking relief from the filing requirement need to apply for exemptive relief before the filing deadline and before the closing of the transaction if applicable.

The CSA also observed that some issuers filed a business acquisition report where the transaction or series of transactions met the definition of a restructuring transaction such that the issuer was required to file a material

change report of an information circular for which prospectus level disclosure is required. Issuers are required to determine whether a transaction or series of transactions meet the definition of a restructuring transaction, which includes a reverse takeover, which includes a reverse acquisition, determined under Canadian GAAP applicable to publicly accountable enterprises.

Inconsistencies and Outdated Information

The CSA observed that a number of issuers provided inconsistent disclosure between documents that are required to be filed under securities legislation and voluntary disclosure, such as investor presentations, sustainability reports and public surveys. Information should be consistently disclosed in all public documents including voluntary disclosures. Including material information in voluntary disclosure but omitting it from continuous disclosure documents may indicate that the issuer has failed to provide the disclosure required in the continuous disclosure documents.

The CSA also observed that some issuers failed to provide up-to-date information in their reporting documents. Issuers are required to update disclosures on a timely basis and disclosure in the MD&A must be current so that it will not be misleading when it is filed.

Audit Committees

The CSA observed that some issuers do not have the appropriate audit committee composition and inappropriately relied on exemptions to appoint less than three members. Every audit committee must be composed of a minimum of three members, and each audit committee member of a non-venture issuer must be a director of the issuer. Additionally, except in very limited circumstances, each non-venture issuer audit committee member must be independent and financially literate. Except in very limited circumstances, a majority of the members of a venture issuer audit committee must not be executive officers, employees or control persons of the venture issuer or an affiliate of the issuer. The responsibilities of an audit committee member are extensive and should be considered before taking on an appointment.

Overly Promotional Disclosure (Greenwashing)

The CSA noted that there has been rapid growth in recent years of the use of disclosures pertaining to ESG or sustainability factors. The CSA has observed that there has been an increase in issuers making potentially misleading, unsubstantiated or otherwise incomplete claims about business operations or the sustainability of a product or service being offered, conveying a false impression commonly referred to as “greenwashing”. The CSA reminds issuers that it is important to ensure that all public disclosures are factual and balanced, and, when issuers are describing current and proposed ESG-related activities, misleading promotional language should be avoided.

For more information on the CSA's observations concerning greenwashing, please read our bulletin [Reporting Issuers Need to be Factual and Balanced, Striving for Accurate and Comprehensive ESG reporting](#).

Mineral Project Disclosure

The CSA noted that some issuers failed to comply with requirements concerning disclosure of mineral projects and technical reports. The CSA observed that, due to travel restrictions related to the COVID-19 pandemic, some issuers had difficulty bringing qualified persons (“QPs”) to mineral projects to complete required personal inspections and issuers were choosing to “self-exempt” from this requirement. The Staff Notice reminds issuers that there is no mechanism for issuers to override the personal inspection required and only issuers with “early-stage exploration properties” may temporarily defer the personal inspection under certain circumstances.

The CSA observed that issuers disclosing equivalent metal grades entirely by price-weighting is potentially misleading. The CSA takes the view that this should be avoided by calculating grade equivalents based on the results of metallurgical tests or, where such test results are not available, by including reasonable assumptions for recovery of the constituent species.

The CSA also observed that some disclosure of technical information about mineral projects in technical reports appeared to have been approved by professionals lacking the relevant experience. QPs must have experience relevant to the subject matter of the mineral project and the technical report.

For more information on the CSA's observations concerning mineral projects and technical reports, please read our bulletin [Canadian Securities Administrators Comment on Disclosure Related to Mineral Projects and Technical Reports](#).

Non-GAAP and Other Financial Measures

The Staff Notice also included the results of recently completed reviews to assess compliance with certain aspects of National Instrument 52-112 – *Non-GAAP and Other Financial Measures Disclosure* and described the common deficiencies noted in the reviews and provides guidance for meeting the requirements of NI 52-110 – *Audit Committees*.

The CSA identified that some issuers had disclosed a non-GAAP financial measure, a total of segments measure, or a capital management measure in an earnings release, but did not include a quantitative reconciliation in the issuer's earnings release as required. The CSA also noted that some issuers failed to do the following: (i) properly identify total of segments measures, (ii) label a supplementary financial measure with a term reflecting its composition, (iii) incorporate by reference only publicly filed information for investor presentations, (iv) describe the significant differences between forward-looking and historical non-GAAP

financial measures and (v) avoid presenting a non-GAAP financial measure with equal or greater prominence than that of the most directly comparable financial measure.

The CSA observed that some issuers failed to include the required quantitative reconciliation and failed to comply with no more prominence in an earnings release. An earnings release that discloses a non-GAAP financial measure, a total of segments measure, or a capital management measure must, among other things, include the required quantitative reconciliation in the earnings release. Reference to a quantitative reconciliation disclosed in the MD&A is not permitted.

The CSA observed that some issuers failed to describe the significant differences between the forward-looking non-GAAP financial measure and its equivalent historical non-GAAP financial measure. The material factors and assumptions that were used to develop the FLI will complement this disclosure, but are not necessarily sufficient on their own to satisfy the requirement of a description of any significant difference.

The CSA observed that some issuers did not appropriately identify a total of segments measure and consequently, did not include the required disclosures. A total of segments measure is a measure that, among other things, is disclosed in the notes to the financial statements. The inclusion of a financial measure among information on reportable segments is not sufficient, on its own, to conclude that the financial measure is disclosed in accordance with IFRS 8 and therefore eligible for consideration as a total of segments measure under NI 52-112. If there is a financial measure that is inconsistent with the core principle of IFRS 8 and needs to be removed from the financial statements, it results in that financial measure being classified as a non-GAAP financial measure if disclosed outside of the financial statements.

The CSA also observed that some issuers used confusing labels to name supplementary financial measures. An issuer must not disclose a supplementary financial measure in a document unless, among other things, the supplementary financial measure is labelled using a term that, given the measure's composition, describes the measure. Issuers should avoid labelling a supplementary financial measure using a well-established term when its composition is inconsistent with well-established expectations on that term's composition.

For more information on the CSA's observations concerning non-GAAP and other financial measures disclosure, please read our bulletin [Mind the \(Non-\)GAAP: Review of Financial Measures Disclosure Under NI 52-112](#).

Moving Forward

To illustrate some of the common deficiencies set out above, the Staff Notice provides certain 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 continuous disclosure obligations.

by [Grant Y. Wong](#), [Adam Jones](#) and [Jade Cassivi](#).

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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