

CSA PUBLISHES RESULTS OF CONTINUOUS DISCLOSURE REVIEWS

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The Canadian Securities Administrators (the “**CSA**”) recently published CSA Staff Notice 51-355 *Continuous Disclosure Review Program Activities for the fiscal years ended March 31, 2018 and March 31, 2017* (the “**Staff Notice**”), which summarizes the results of the CSA’s review of reporting issuers’ continuous disclosure and highlights common deficiencies and best practices.

For the fiscal year ended March 31, 2018, 840 reviews were conducted (1,014 in fiscal 2017), the majority of which (approximately 80%) consisted of specific issue-oriented reviews (focusing on specific accounting, legal or regulatory issues, emerging industries or issues, and implementation of recent rules). In fiscal 2018, 51% of reviews (43% in fiscal 2017) resulted in the issuer being required to take action to improve and/or amend their disclosure, or being referred to enforcement, ceased traded or placed on the default list.

The Staff Notice identifies several financial statement, MD&A and other regulatory deficiencies that resulted in issuers enhancing their disclosure and/or refilling their continuous disclosure documents, and provides guidance on compliance with continuous disclosure obligations, including the following:

Financial Statement Deficiencies

Statement of Cash Flows

The CSA noted that some issuers incorrectly classified cash flows as investing or financing activities, when they should be classified as operating activities. Cash flows primarily derived from the main revenue-producing activities of an issuer should be classified as from operating activities.

Adoption of New Accounting Policies

In addition, some issuers failed to provide sufficient qualitative and quantitative disclosure regarding the possible impact that the initial adoption of an IFRS standard is expected to have. Where a new IFRS standard is adopted, issuers should provide detailed qualitative and quantitative information about the expected effect it will have on their financial statements, including noting where adoption of a new standard is not expected to have an effect.

MD&A Deficiencies

Entities that Record Investment at Fair Value

The CSA noted that it continues to see investment entities and non-investment entities that record investments at fair value not provide sufficient qualitative and quantitative information about their investments. Such issuers are expected to provide sufficient disclosure about material investments, including, where a material investee is a private company, summary financial information about such material investee in the issuer's MD&A. In addition, the CSA noted that some issuers with a portfolio of investments do not provide a sufficient breakdown of the investment portfolio. Issuers with investment portfolios should present sufficient disaggregation and transparency to allow an investor to understand the key characteristics of the portfolio composition.

Disclosure of Capital Spending & Milestones

The CSA also noted that issuers, in particular those who had a change of business and/or are in emerging industries, commonly disclose significant projects in their infancy, without sufficient information about the project. In order to meet requirements of the MD&A, issuers should disclose the overall plan for the project, a timeline, budget, regulatory and licensing requirements, and as well as provide updates in each subsequent MD&A.

Forward Looking Information

Some issuers disclosed forward-looking information ("FLI") for a period beyond the issuer's next fiscal year without reasonable or sufficient assumptions to support the FLI. Issuers should be careful to limit FLI to a period for which the information in the financial outlook can be reasonably estimated. In addition, issuers should disclose the assumptions, both qualitative and quantitative, used to develop the FLI, as well as related material risk factors.

Non-GAAP Financial Measures

The CSA noted an increased prevalence of non-GAAP financial measures ("NGMs") where the stated purpose and usefulness of the measure is unclear and/or does not align with the nature of the adjustments that are being made in the reconciliation. When presenting NGMs, it may be misleading to present a NGM without an accompanying statement explaining why the NGM presents useful information to investors. In addition, where multiple NGMs are disclosed, issuers should ensure that the narrative discussion in the MD&A is not solely focused on the NGMs; the discussion of the GAAP measures should be presented with equal or greater prominence.

Other Regulatory Deficiencies

Statement of Executive Compensation – External Management Companies

Some issuers did not disclose amounts paid to the named executive officers (“**NEOs**”) in an external management company that provided services to the issuer in the Summary Compensation Table. Issuers must disclose compensation paid by the external management company to any NEOs that is attributable to the services they provided to the issuer, whether directly or indirectly.

Social Media

The CSA noted that some issuers disclosed material information on social media before it was generally disclosed to all investors, or provided misleading or unbalanced information on social media that is inconsistent with what it posted on SEDAR. The CSA reminded issuers that they should have rigorous social media governance policies, and, where it is difficult to provide balanced disclosure due to inherent character limitations on social media platforms, issuers should include a link to additional information.

Climate change

Many issuers that could be materially impacted by climate change provided boilerplate disclosure or failed to provide disclosures of climate change-related risks and opportunities. When assessing materiality of climate change-related risks, issuers should consider a wide range of risks, including physical, regulatory, reputational and business model risks. Issuers should provide specificity and additional quantitative discussion with respect to any material climate change-related risks, and should discuss the potential impact on the issuer or its business resulting from climate change.

Mineral Project Disclosure

In the context of mining and mineral exploration projects and the disclosure required by National Instrument 43-101 Standards of Disclosure for Mineral Projects (“**NI 43-101**”), the CSA noted that some technical reports did not include adequate disclosure of criteria the qualified person used to determine if there is a reasonable prospect for eventual economic extraction. In other instances, the qualified person improperly relied on the information provided by other qualified persons or other experts. In addition, the CSA noted that many issuers disclosed historical estimates on their websites or in corporate presentations, but failed to identify the source of such information or to identify the estimate as historical. The CSA cautioned issuers to ensure compliance with NI 43-101.

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.

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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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