



**Public Companies Hot Topic: Highlights from the Canadian
Securities Administrators' (CSA) Continuous Disclosure
Review Program for the Year Ended March 31, 2015**
July 2015

On July 16, 2015, the Canadian Securities Administrators (CSA) published the results of their continuous review program for the fiscal year ended March 31, 2015 in the CSA Staff Notice 51-344. The CSA Staff Notice highlights the common deficiencies that CSA staff observed in the financial statements, Management's Discussion & Analysis (MD&A) and other regulatory disclosures (e.g. mining/oil and gas).

The key deficiencies identified are summarized below. Readers should refer to the CSA Staff Notice for further information, which is available on various provincial regulator websites. Please click [here](#) to access the Alberta Securities Commission's link to the CSA Staff Notice.

Financial Statement Deficiencies

The CSA identified four areas of International Financial Reporting Standards (IFRS) requirements where issuers could improve compliance: operating segments; business combinations; fair value measurement; and impairment of assets.

Operating Segments

The CSA noted disclosure deficiencies in operating segment information. Issuers failed to disclose information regarding:

- Geographic areas, specifically, revenues from external customers.
- Major customers, in particular, when revenues from a single external customer amount to 10% or more of the issuer's revenues.

Business Combinations

The CSA observed that issuers reported a significant portion of the purchase price from acquisition of a business in goodwill without separately identifying and assigning a value to other intangible assets (e.g. customer lists, intellectual property, etc.). The CSA emphasized the importance of the allocation to the appropriate identifiable assets, as it may result in a different impact to the financial statements (e.g. only intangibles with finite useful lives are amortized which impacts income).

Fair Value Measurement

During the review, CSA staff continued to see issuers fail to disclose a description of the valuation technique and inputs used for fair value measurements within Level 3 of the fair value hierarchy. Issuers are reminded of the importance of the disclosure requirements within IFRS 13 *Fair Value Measurement* in assisting users to understand the measurement uncertainty inherent in fair value measurements.

Impairment of Assets

The CSA continued to observe that some issuers did not disclose all of the information required by paragraph 130 of IAS 36 *Impairment of Assets*. Issuers are expected to disclose how they determined the amount of impairment loss, specifically:

- Whether the recoverable amount of the asset or cash-generating unit (CGU) is its fair value less costs of disposal or value in use.
 - If fair value less costs of disposal:
 - The level of the fair value hierarchy in which the fair value measurement is categorized.
 - The valuation technique and key assumptions used if the fair value measurement is categorized in Level 2 or Level 3 of the fair value hierarchy.
 - If value in use, the discount rate(s) used in current and previous estimates (if any) of value in use.
- Significant judgments and uncertainties involved in estimating the recoverable amount in accordance with paragraphs 122 and 125 of IAS 1 *Presentation of Financial Statements*.

The CSA also noted that some issuers, who measured the recoverable amount of the asset or CGU as value in use, did not base cash flow projections on reasonable and supportable assumptions representing management's best estimate of the range of economic conditions that will exist over the remaining useful life of the asset or CGU.

MD&A Deficiencies

In the 2015 fiscal year, the CSA identified six areas in the MD&A where deficient disclosures were noted: liquidity and capital resources; results of operations; forward looking information/non-GAAP measures; real estate investment trust distributions; related party transactions; and compliance with National Instrument (NI) 52-109 *Certification of Disclosure in Non-Venture Issuers' Annual and Interim Filings*.

Liquidity and Capital Resources

During the review, it was noted that issuers failed to provide sufficient analysis of their liquidity and capital resources as they often reproduced information readily available in the financial statements. The CSA highlighted that this section of the MD&A should discuss and analyze:

- The issuer's ability to generate sufficient liquidity in the short and long term for funding of planned growth, development activities or expenditures required to maintain capacity.
- The issuer's capital resources, including the amount, nature and purpose of commitments, and expected sources of funds to meet these commitments.

Results of Operations

CSA staff observed the use of boilerplate disclosure and the repetition of information readily available in the financial statements in an issuer's discussion of their results of operations. In addition, issuers did not provide sufficient detail in explaining the key drivers and reasons contributing to the year over year change in balances. The CSA noted that this section of the MD&A should include:

- A narrative explanation of how the issuer performed during the period including trends, commitments, risks and uncertainties that will impact the company.
- A trend analysis that discusses the significant factors that caused the change in the related financial statement balance(s).

Forward Looking Information (FLI)/Non-GAAP Measures (NGM)

The CSA continued to see issuers include FLI and NGM in public documents (e.g. MD&A, news releases, marketing documents, etc.) without clearly identifying them as such or including appropriate disclosures. The CSA reminded issuers that the disclosure requirements and guidance for FLI and NGM applies regardless of where they may be included.

Real Estate Investment Trust (REIT) Distributions

The CSA observed that some REITs that declared distributions in excess of cash flow from operations did not provide relevant disclosure in their MD&A and Annual Information Form. In such circumstances, REITs are required to disclose that excess distributions occurred, how they were financed, and that they represented a return of capital, amongst other things.

Related Party Transactions

MD&A disclosure of related party transactions should include specific and detailed, qualitative and quantitative information, beyond that disclosed in the financial statements. The CSA emphasized that MD&A disclosures of related party transactions must be in accordance with Form 51-102F1 *Management's Discussion and Analysis* which, although similar to IAS 24 *Related Party Disclosures*, includes additional requirements (e.g. the identity of the related party, business purpose of transaction, etc.).

NI 52-109 Certification of Disclosure in Non-Venture Issuers' Annual and Interim Filings

The CSA's review identified three common areas of deficiencies with regard to compliance with NI 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*:

i) Inconsistency Between a Certificate and MD&A Disclosure

The two most common deficiencies identified were:

- The Annual Certificate specified the existence of a material weakness while the MD&A was silent.
- The Annual Certificate stated the conclusion about the effectiveness of internal controls over financial reporting (ICFR) was disclosed in the MD&A; however, the MD&A conclusions were incomplete or qualified.

ii) Material Weakness Disclosure

The CSA observed issuers that:

- Identified a material weakness but provided a vague description of the weakness and insufficient discussion about the impact on the issuer's financial reporting.
- Identified the same material weakness for a number of consecutive years and did not update its discussion of the un-remediated material weakness despite significant growth in operations. Although an issuer is not required to remediate an identified weakness, discussion of an un-remediated material weakness should be reviewed and updated in each MD&A to ensure its impact is properly reflected in light of growth, or other changes, in operations.

iii) Limitations on Scope of Design Relating to an Acquired Business

NI 52-109 permits a non-venture issuer to limit its design of disclosure controls and procedures (DC&P) and ICFR of a business the issuer acquired 365 days or less before the issuer's financial year end. In such circumstances, those issuers must disclose the scope limitation and separate meaningful summary financial information for each underlying entity in the MD&A. The CSA noted that certain issuers, with scope limitations relating to two or more unrelated entities, presented combined financial summary information. The CSA emphasized that combined financial information is only allowed when businesses are related (Section 14.2 of 52-109CP).

Other Regulatory Deficiencies

The CSA discussed four main areas where compliance issues were noted: material contracts; selective disclosure; mineral projects; and filing of news releases and material change reports (MCR).

Material Contracts

During the review, it was noted that some issuers failed to file material contracts no later than: 1) the time the issuer files a MCR if it constitutes a material change; and 2) when the AIF is filed or if an AIF is not required to be filed, 120 days after the end of the issuer's most recently completed financial year. Subsection 12.2(2) of NI 51-102 *Continuous Disclosure Obligations* lists contracts required to be filed, even if entered in the ordinary course of business.

Selective Disclosure

Selective disclosure arises when material non-public information is disclosed by a company to one or more individuals and not broadly to the investing public. For example, this may occur when holding private meetings with analysts or at industry conferences. The CSA noted the following with regards to identifying and correcting selective disclosure:

- Maintain detailed meeting notes to determine if unintentional selective disclosure has occurred.
- If unintentional selective disclosure occurs, issuers must make a full public announcement including contacting the relevant stock exchange and asking that trading be halted.

Mineral Projects

Issuers engaged in mineral exploration and mining activities must comply with the requirements set out in NI 43-101 *Standards of Disclosure for Mineral Projects*. During the review of mining issuers' investor presentations, several areas were identified where issuers need to improve disclosure, including:

- Naming the qualified person who approved technical information and their relationship to the issuer.
- Providing cautionary statements to highlight the limitations of preliminary economic assessments.
- Making a clear statement on whether mineral resources include/exclude mineral reserves.
- Discussing the potential quantity and grade as a range and the exploration target limitations.
- Providing the source, date, reliability and key assumptions used in determining historical estimates along with the required cautionary statements.
- Avoiding overly promotional terms and potentially misleading information especially exploration stage and mineral resource stage issuers.

Filing of News Releases and MCRs

CSA staff continued to observe that issuers failed to issue and file news releases and/or MCRs within the appropriate time period. It is the CSA's view that it is inappropriate for issuers to delay the filing of a news release until the next scheduled Audit Committee and/or Board meeting. Therefore, Audit Committee and/or Board members may need to be engaged prior to the next scheduled meeting to ensure the timely issuance of a news release. The CSA reminds issuers that news releases and announcements of material changes should be factual and balanced, and should avoid promotional commentary.



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