

Corporate Securities Law

August 11, 2014

CSA Announces Results of Continuous Disclosure Review for Fiscal 2014

The Canadian Securities Administrators (CSA) recently published the results of their annual Continuous Disclosure Review Program for the fiscal year ended March 31, 2014.¹ The CSA completed 770 issue-oriented reviews and 221 full reviews, as a result of which 76% of the reporting issuers reviewed were required to take action to improve their disclosure or were referred to enforcement, cease traded or placed on the defaulting issuers list, up from 47% in 2013.

Observed deficiencies included: (i) financial statements; (ii) Management Discussion and Analysis (MD&A); and (iii) several other areas of disclosure including mineral projects, executive compensation, news releases and material change reports.

Financial Statements

Disclosure of Interest in Other Entities. International Financial Reporting Standards 10, 11 and 12 came into effect for the annual period beginning on or after January 1, 2013 and changed the definition of control and joint control. They also require additional disclosure for all entities with subsidiaries, joint arrangements, associates and structured entities. Where these standards require significant reporting changes for an issuer, the CSA found many examples of insufficient disclosure explaining the issuer-specific factors that led to the changes, such as underlying structure, agreements in place or relevant activities. In many cases, the issuer only disclosed what the change was and how it was accounted for, but did not explain the significant

judgments and assumptions made in arriving at management's conclusion.

Revenue Recognition. In certain instances, issuers recognized revenues as either a principal or an agent but their financial statements, MD&A and other periodic disclosure documents contradicted or did not support the accounting treatment. The CSA expects issuers to provide sufficient disclosure of the accounting policies and judgments applied in making revenue recognition determinations, including any applicable facts and circumstances surrounding such a determination.

Impairment of Assets. Issuers often neglected to disclose the following information in connection with an impairment of assets: (i) the events and circumstances that led to the recognition of the impairment; (ii) whether the recoverable amount of the assets is its fair value less cost of disposal or its value in use; (iii) if the recoverable amount is fair value less cost of disposal, how the fair value was determined; and (iv) if the recoverable amount is value in use, the discount rate(s) used.

Management Discussion and Analysis

Non-GAAP Measures. Earnings Before Interest, Taxes, Depreciation and Amortization (EBITDA) is a Non-GAAP measure often used in MD&A, news releases, prospectus filings, corporate websites and marketing materials. The CSA reported that often EBITDA was used inconsistently with its commonly understood meaning by including adjustments to make the metric look more positive which could be misleading or confusing for investors. More transparent disclosure is required where adjustments are made to an EBITDA calculation that deviate from its commonly understood meaning.

¹ The results are described in CSA Staff Notice 51-341 *Continuous Disclosure Review Program Activities for the fiscal year ended March 31, 2014*.

Goodmans^{LLP} Update

Forward Looking Information. The CSA identified four areas requiring improvement in the disclosure of material forward-looking information (FLI): (i) clear identification of the FLI; (ii) disclosure of the material assumptions used to develop the FLI; (iii) updates on previously disclosed FLI; and (iv) comparison of actual results to the financial outlook previously disclosed.

Additional Disclosure for Venture Issuers without Significant Revenue. Venture issuers without significant revenues from operations for the last two financial years must make specific disclosure concerning their properties. The CSA reported that when venture issuers disclose their exploration expenditures on a property-by-property basis they would often fail to disclose the material components of those expenditures preventing investors from understanding where and how the money was spent.

Other Regulatory Disclosure Deficiencies

Mineral Properties. Common deficiencies in complying with the technical report requirements of Form 43-101F1 Technical Report included: (i) not clearly disclosing how “reasonable prospects for economic extraction” were established for projects with mineral resource estimates; (ii) insufficient discussion concerning social or community-related requirements and the status of any related negotiations; (iii) failure to provide the required context and justification for capital and operating cost estimates; (iv) inadequate economic

analysis information for advanced properties, particularly disclosing only pre-tax cash flows or upside sensitivity analyses; (v) lack of disclosure related to project-specific risks and uncertainties; (vi) incomplete disclosure of key findings about mineral properties in the summary section; and (vii) missing statements required in a qualified person’s certificate.

Executive Compensation. A number of issuers did not include a sufficient explanation in their compensation discussion and analysis concerning how each element of compensation was tied to a named executive officer’s performance and how executive compensation decisions were made.

News Release and Material Change Reports. Common deficiencies in news releases and material change reports included: (i) filing documents when the timing is inappropriate and/or the content is inadequate (e.g., announcing a change in the issuer’s business before meeting the regulatory requirements for such change and failing to disclose the existence of such requirements); (ii) inconsistency concerning the circumstances under which disclosure is made (e.g., announcing the appointment but not resignations of officers or directors); and (iii) failing to make filings on a timely basis.

Please contact any member of our Corporate Securities Group to discuss the Staff notice or any continuous disclosure requirements.