

Corporate Securities Law

July 27, 2015

CSA Announce Results of Continuous Disclosure Review for Fiscal 2015

The Canadian Securities Administrators (CSA) recently published the results of their annual Continuous Disclosure Review Program for the fiscal year ended March 31, 2015. The CSA completed 778 issue-oriented reviews and 280 full reviews, as a result of which 59% required action by the reporting issuer to improve its disclosure or resulted in the issuer being referred to enforcement, cease traded or placed on the defaulting issuers list, down from 60% in 2014.

The CSA noted common deficiencies, and identified certain “hot button” issues, in the following disclosure documents: (i) financial statements; (ii) Management’s Discussion and Analysis (MD&A); and (iii) several other areas of disclosure including material contracts, material change reports, news releases and disclosure relating to mineral projects.¹ Within those common deficiencies, described in further detail below, was a recurring theme that the CSA expect meaningful disclosure from issuers, not boilerplate.

Financial Statements

Operating Segments. A number of issuers failed to disclose sufficient information regarding (i) geographic areas (particularly revenues from external customers), and (ii) major customers (particularly where a single customer represents 10% or more of total revenues). The CSA noted that such information is required in

order to enable investors to evaluate the nature and financial effects of an issuer’s business activities and the economic environments in which it operates.

Business Combinations. A significant portion of the purchase price of an acquired business was commonly reported in goodwill, without separate identification and assignment of a value to other intangible assets. The CSA noted that proper allocation is important as it may impact an issuer’s accounting for intangibles in its financial statements.

Fair Value Measurement. A number of issuers failed to disclose a description of the valuation technique and inputs used for certain fair value measurements.

Impairment of Assets. In the view of the CSA, some issuers did not meet the requirements for disclosure relating to impairment of assets, including the use of reasonable and supportable assumptions in making projections and disclosure of significant judgments and uncertainties.

Management’s Discussion and Analysis

Liquidity and Capital Resources. Some issuers failed to provide sufficient analysis of their liquidity and capital resources, in some cases reproducing information from financial statements without meaningful discussion and analysis. The CSA noted

¹ The results are described in detail in *CSA Staff Notice 51-344 Continuous Disclosure Review Program Activities for the fiscal year ended March 31, 2015*.

Goodman's^{LLP} Update

that this section of the MD&A is meant to enable investors to assess how the issuer will meet its obligations and objectives and should, therefore, especially for issuers with negative cash flows from operations, a negative working capital position or a deteriorating financial condition, provide an analysis of the issuer's ability to generate sufficient liquidity and its capital resources.

Results of Operations. The CSA continued to identify boilerplate disclosure, repetition of information from financial statements and insufficient explanation of year-over-year changes. The CSA noted that this section of the MD&A should provide a narrative explanation of how the issuer performed during the period, including analysis of applicable commitments, risks, uncertainties and trends.

Related Party Transactions. The CSA identified deficiencies in issuers' disclosure of related party transactions, noting that disclosure must be specific and detailed, not a repetition of the financial statements, and must disclose the identity of the related party and the transaction's business purpose.

Certification of Disclosure. The CSA identified common inconsistencies between certificates of annual and interim filings required by National Instrument 52-109 – *Certificate of Disclosure in Issuers' Annual and Interim Filings* and the disclosure in the same issuer's MD&A.

Forward Looking Information (FLI) and Non-GAAP Measures. Issuers continued to use FLI and Non-GAAP Measures in MD&A, as well as in news releases, websites, marketing materials and other documents, without clear identification or the required disclosure or cross-reference. The CSA noted that investors may be misled by a failure to provide the required disclosure or cross-reference.

REIT Distributions. A number of REITs that declare distributions exceeding cash flow from operations did not disclose, among other things, the nature of such excess distributions and how they were financed.

Other Regulatory Disclosure Deficiencies

Material Contracts and Material Change Reports (MCRs). Issuers continued to not file material contracts and MCRs either within the required timelines or at all. The CSAs' analysis in this regard was based on their view of whether a particular contract was material or a particular event was a material change.

Filing of News Releases. The CSA identified news releases containing unbalanced and promotional disclosure and reminded issuers that news releases should provide investors with comprehensive, factual and balanced disclosure, without promotional commentary. In addition, the CSA noted a common failure to issue a news release upon deciding to refile or restate a continuous disclosure document. The requirement to issue such a news release is triggered by the decision to refile the document, where the information differs materially from the information originally filed, and not by the refiling itself.

Mining Issuer Investor Presentations. The CSA reviewed investor presentations available on the websites of certain mining issuers and identified deficiencies relating to several items that must be included in order to comply with National Instrument 43-101 – *Standard of Disclosure for Mineral Projects*.

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