

Goodmans^{LLP} Update

CSA Announces Results of Continuous Disclosure Review for Fiscal Years 2019 and 2020 Emphasizing COVID-19 Related Disclosure

The Canadian Securities Administrators (CSA) recently published Staff Notice 51-361 (the “**Staff Notice**”), summarizing the results of its Continuous Disclosure Review Program for fiscal years ending March 31, 2019 and March 31, 2020. The Staff Notice included guidance on reporting the impact of COVID-19 on issuers’ operating performance, financial position, liquidity, and future prospects.

During fiscal years 2020 and 2019, the CSA reviewed a total of 1,097 issuers. Fifty-five percent of these issuers were either required to take some type of remedial action (including refile historical documents or improving disclosure on a prospective basis) or they were referred to enforcement, were cease traded or placed on the default list.

The CSA categorized the primary areas of deficiencies as relating to: (i) financial statements; (ii) management’s discussion and analysis (MD&A); or (iii) “other regulatory requirements,” including overly promotional disclosure, insider and early warning reporting, material change reporting, and mineral project disclosure. The CSA continues to focus on the disclosure relating to non-GAAP financial measures (“**NGMs**”) and forward-looking information (“**FLI**”). Many of the deficiencies identified in the Staff Notice were identified as areas of concern in previous CSA continuous disclosure reviews. Notably, however, the Staff Notice identifies disclosure considerations flowing from the impact of COVID-19. These are summarized below.

Financial Statements

Significant Judgments and Estimation Uncertainties in the Context of COVID-19. The CSA acknowledged the impact of COVID-19 on issuers and noted that the rapidly changing environment caused by the pandemic may require issuers to update their judgments and estimates in their interim financial reports, particularly regarding going-concern assessments, impairment assessments, fair value calculations, government assistance, revenue recognition, and deferred tax recoverability. Issuers must use the best available information to make well-reasoned judgments and estimates to provide detailed entity-specific disclosure in annual and interim financial statements, while also providing the disclosure of significant judgments and estimation uncertainties required by IAS 1, *Presentation of Financial Statements*.

MD&A

Discussion of Operations and the Impact of COVID-19. The CSA advised that disclosure should be entity-specific and transparent, with a detailed explanation and breakdown of the impact of COVID-19 and any other factors contributing to period-over-period variances. An issuer should discuss the pandemic’s specific impact on their operations, as well as provide detailed disclosures regarding the methodology used to determine the impact. An issuer should not generally list COVID-19 as the sole reason for any period-over-period variances or other negative news and should disclose any mitigation measures put in place.

Authors



Bill Gorman
bgorman@goodmans.ca
416.597.4118



Daniela Cerrone
dcerrone@goodmans.ca
416.597.4138

Non-GAAP Financial Measures – Prominence and Labelling. The CSA expressed continued concern with the proliferation of NGMs unaccompanied by the appropriate explanatory disclosures contemplated in CSA's Staff Notice 52-306. Issuers must properly label NGMs and present, with equal or greater prominence to that of the NGM, the most directly comparable measure specified under the issuer's GAAP. Issuers should be cautious to label the effects of COVID-19 as non-recurring, infrequent, or unusual, particularly where the impact of COVID-19 crosses over multiple reporting periods and there is little basis for management to conclude that similar costs are unreasonably likely to occur within the next two years. Management must explain how adjusted amounts are specifically associated with COVID-19.

Forward-Looking Information. The CSA expressed continued concern with issuers providing boilerplate disclosure rather than specifically identifying the future-oriented financial information and the material risk factors or assumptions that are relevant to the FLI. Issuers must disclose their policies for updating FLI and speak to the material differences between previously disclosed FLI and the actual outcome. This information should be in close proximity to the FLI statement rather than in a separate section of the disclosure document. Due to the uncertainty of COVID-19, issuers should consider whether it is appropriate to withdraw previously published outlooks that can no longer be supported by reasonable assumptions or be accurately updated or achieved.

Liquidity and Capital Resources. Some issuers continue to provide boilerplate discussions of their liquidity rather than critical contextual information, including what an issuer's cash requirements are, how the issuer intends to fund them, and any associated trends, fluctuations, and risks. Issuers must analyze the impact of a negative cash flow on their operations and state how they intend to manage this risk. In light of COVID-19's substantial impact on liquidity and capital resources, issuers must provide a comprehensive discussion of the current and expected effects of the pandemic and quantify the impact where possible. Issuers may need to disclose any subsidies or funding received from government programs, increased counterparty risk, reduced cash flow from operations due to decreased demand, delays in capital project plans, the impact of cost-cutting initiatives, and changes in the issuer's dividend policy, among others.

Other Regulatory Disclosure Deficiencies

Material Change Reporting. The CSA observed issuers fail to issue material change reports as needed or in a timely manner. The CSA further considered the impact of COVID-19 on material change reporting and advised issuers to be aware of how COVID-19 or resulting governmental and regulatory policies may affect some issuers more than others in their industry. Potentially material information that may result in a material change due to COVID-19 includes: significant disruptions to the workforce; negative changes in the markets, economy or laws; supply chain delays or disruptions that are critical to an issuer's business; changes in credit arrangements; increased cost of goods or services; and suspension of exports.

For further information concerning the CSA's continuous disclosure review, please contact any member of our [Corporate Finance and Securities Group](#).