

## CSA Staff Notice 51-326 Continuous Disclosure Review Program Activities for Fiscal 2008

### Purpose of this Notice

This notice summarizes the results of the Canadian Securities Administrators (CSA) continuous disclosure (CD) review program of reporting issuers other than investment funds for the fiscal year ended March 31, 2008 (fiscal 2008). It also gives an overview of how the CD review program works.

### Background

Under Canadian securities law, reporting issuers must provide timely CD about their businesses and affairs. Market participants, including investors, rely on this information to make informed investment decisions. CD obligations are found primarily in National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102).

Each year, staff of the jurisdictions of the CSA (we) conduct a selective review of CD documents of reporting issuers other than investment funds. Our CD review program has two main objectives:

- to determine, to the extent reasonably possible within the scope of the review conducted, whether issuers are complying with their CD obligations by providing complete, accurate and timely information to investors
- to help issuers better understand their disclosure obligations under NI 51-102

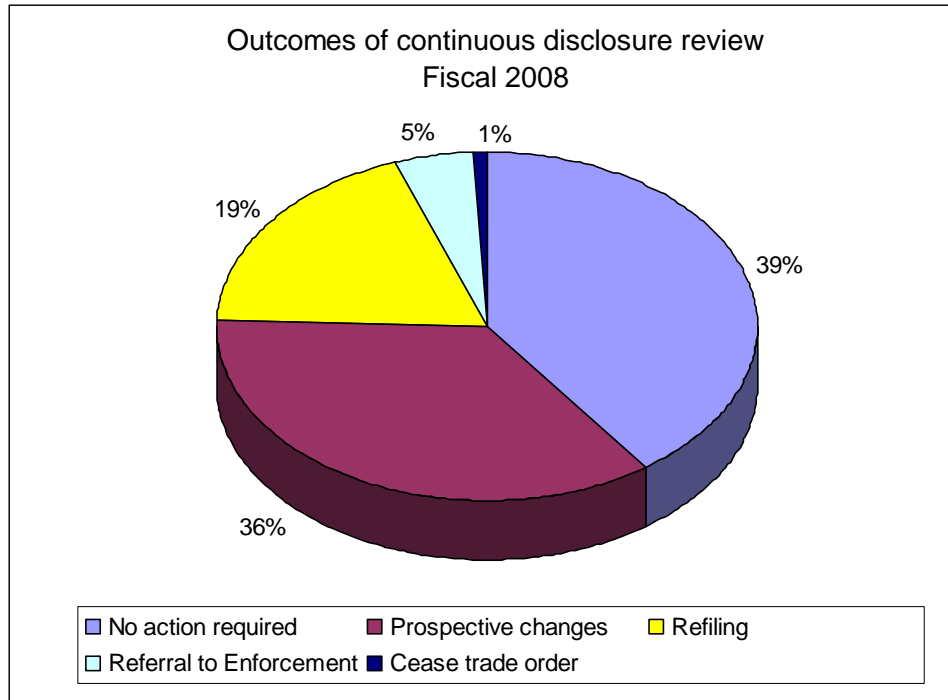
For more information, see CSA Staff Notice 51-312 *Harmonized Continuous Disclosure Review Program* (CSA Staff Notice 51-312).

### Results for fiscal 2008

There are over 4,200 reporting issuers other than investment funds in Canada. In fiscal 2008, we completed 854 CD reviews, consisting of 442 full reviews and 412 issue-oriented reviews among other scrutiny.

For more information on the types of reviews we conduct and how we select issuers for review please refer to the section entitled "About our CD review program".

The following chart shows the outcomes of the reviews for fiscal 2008. Some of the reviews had more than one outcome (e.g., refilings, referral to enforcement).



The possible outcomes of a CD review are:

- **No action required.** The issuer does not need to make any changes or additional filings.
- **Prospective changes.** The issuer has been asked to make certain changes in its next filing.
- **Refiling.** The issuer must amend or refile certain CD documents.
- **Cease trade order.** If the issuer has critical CD deficiencies, CSA regulators may issue a cease trade order.
- **Referral to Enforcement.** The review results in further work being conducted by an Enforcement branch.

Prospective changes and refilings occur as a result of deficiencies found in CD documents. A significant portion of prospective changes and refilings in 2008 resulted from deficiencies in Management’s Discussion and Analysis (MD&A). What differentiates a prospective change from a refiling is a function of the nature of the deficiency and its severity. Refilings are necessary when one or more CD documents are significantly deficient because they fail to comply with securities regulation. In situations where deficiencies are not significant enough to warrant a refiling of one or more CD document, we expect the issuer to correct the CD document(s) in future filings.

*Common deficiencies*

Common problems that we found in MD&A included boilerplate disclosure and repeating information from the financial statements without providing sufficient analysis.

Some recurring deficiencies in MD&A included:

- inadequate disclosure of liquidity and capital resources
- lack of quantitative analysis in the results of operations discussion
- no or limited disclosure of the adoption of new accounting policies
- inadequate related party disclosure
- absent or insufficient discussion about the risks and uncertainties expected to affect the issuer's future performance

Areas and topics within the financial statements where we have noted measurement issues and common deficiencies in the disclosure of accounting policies included:

- cash flow statements
- financial instruments
- revenue recognition
- stock-based compensation

Other deficiencies found in CD documents included:

- failing to file certificates in accordance with Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*, improper certificates or insufficient discussion about disclosure controls and procedures in the MD&A
- failing to file or filing a significantly deficient technical report (oil and gas and mining industries)
- failing to file or filing a deficient business acquisition report (BAR) (e.g., no reconciliation to Canadian GAAP, incorrect pro forma information)
- unsatisfactory executive compensation disclosure in Form 51-102F6

### *Issue-oriented reviews*

In fiscal 2008, issue-oriented reviews were conducted by one or more jurisdictions on the following topics:

#### **A. Asset-backed commercial paper (ABCP)**

The CSA conducted reviews of issuers that held a material amount of non-bank ABCP. The reviews focused on valuation, presentation and disclosure of the non-bank ABCP in financial statements and MD&A.

Issuers who did not take into account appropriate factors when determining fair value of non-bank ABCP holdings were asked to restate their financial statements. Many issuers were requested to provide further disclosure in future filings on:

- the methods and assumptions used to determine fair market value, and
- the impact of non-bank ABCP holdings on the issuer's ability to meet cash needs and planned growth objectives.

## **B. Business acquisition reports (BARs)**

Some jurisdictions conducted reviews of filings to assess compliance with the BAR requirements of NI 51-102. Other jurisdictions reviewed BARs when they conducted full CD reviews.

While there was general compliance in this area, we found common deficiencies among BARs of venture issuers. For instance, many BARs did not include the required periods of financial statements for the acquired business. In other instances, the audit report expressed a qualified opinion.

## **C. Environmental reporting**

Staff of the Ontario Securities Commission completed a targeted review of environmental disclosure in 2006 annual filings. This review focused on compliance with existing requirements to disclose environmental matters. Please refer to OSC Staff Notice 51-716 *Environmental Reporting* for details about the results of these reviews.

## **D. Financial instruments**

While financial instruments was an area of focus for all jurisdictions this year, some jurisdictions conducted specific reviews on the implementation of the financial instruments accounting standards effective for fiscal years beginning on or after October 1, 2006. These standards require that all financial assets and liabilities, including derivatives, be measured at fair value and include extensive disclosure requirements.

A number of issuers did not adopt the new standards and were required to restate their financial statements and MD&A. Certain issuers that adopted the financial instruments standards and were selected for review incorrectly recorded investments at cost and not fair value and had insufficient disclosure relating to fair value.

## **E. Mining technical disclosure**

Some jurisdictions conducted reviews on the filings of mining issuers to assess compliance with National Instrument 43-101 *Standards of Disclosure for Mineral Projects* (NI 43-101). While there was general compliance among these issuers, several issuers were required to:

- name the qualified person in all documents containing scientific and technical information
- file amended or new technical reports
- file or amend certificates or consents for the qualified person, or
- remove corporate presentations or other content from their website that did not comply with NI 43-101.

## **F. Oil and gas technical disclosure**

Staff from the Alberta Securities Commission conducted reviews on issuers engaged in oil and gas activities to assess compliance with requirements set out in National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*. Common issues identified include non-compliant reserve and resource classification and non-compliant use of oil and gas terminology.

## **G. Options backdating**

In September 2006, we issued Staff Notice 51-320 *Options Backdating*. We continue to focus on this area. To date, our reviews of the timing of option grants have resulted in a number of referrals to an Enforcement branch.

### **About our CD review program**

In general, a reporting issuer selected for review will be subject to a “full” review or an “issue-oriented” review.

#### ***Full review***

The reviews we refer to as “full” reviews are broader than issue-oriented reviews, and cover more areas of disclosure. Among other things, this type of review usually includes a review of:

- annual financial statements and MD&A
- interim financial statements and MD&A
- technical disclosure, including technical reports for oil and gas and mining issuers
- annual information forms (AIF)
- annual reports
- information circulars
- press releases, material change reports and BARs
- issuer websites

We may also review media coverage and analysts’ reports, if warranted.

#### ***Issue-oriented review***

Issue-oriented reviews are in-depth reviews that focus on particular disclosure that we believe warrants regulatory scrutiny. They may be conducted locally by individual jurisdictions or co-ordinated across the CSA.

#### ***How we select issuers for review***

In general, we use a risk-based approach to select issuers for review and to determine the type of review to conduct on each one. This risk-based approach takes into account the potential harm to Canadian capital markets if an issuer fails to provide complete, accurate and timely disclosure about its business and affairs.

We apply risk-based selection criteria, such as market capitalization and trading activity. We also consider specific issues and concerns affecting each industry. The selection criteria may change as certain disclosure-related issues gain greater public prominence, or as consensus or concerns develop over particular accounting issues or disclosure practices.

We also select issuers for review on a rotational basis.

### ***Conducting CD reviews by industry***

The CD review program has continued to evolve since we published CSA Staff Notice 51-312. In the past year we have started to focus our CD reviews by industry. This approach allows us to better understand issues and concerns that are specific to each industry. It also helps us conduct CD reviews more efficiently and address the key risk areas, accounting issues and general disclosure issues affecting each industry.

The CSA has established the following industry groups for CD reviews:

- banking and insurance
- biotechnology and pharmaceuticals
- entertainment/communications
- mining
- oil and gas
- real estate
- technology
- utilities

We may create more industry groups in the future.

### **Potential review areas for fiscal 2009**

In any given year, reporting issuers are affected by new accounting standards and regulatory changes. Some of the topics that may receive greater attention by our CD review program for fiscal 2009 include:

- inventories (see CICA Handbook (HB) 3031)
- going concern (see CICA HB 1400)
- forward-looking information (see NI 51-102, Parts 4A and 4B)
- financial instruments and capital disclosures (see CICA HB 3862, 3863 and 1535)
- financial instruments - recognition and measurement (see CICA HB 3855)

### **Results by jurisdiction**

The Alberta Securities Commission, the Ontario Securities Commission and the Autorité des marchés financiers publish reports summarizing the results of the CD review program in their jurisdictions. See the individual regulator's website for a copy of its report:

[www.albertasecurities.com](http://www.albertasecurities.com), [www.osc.gov.on.ca](http://www.osc.gov.on.ca), [www.lautorite.qc.ca](http://www.lautorite.qc.ca).

### For more information

For more information, contact one of the following people:

<p>Allan Lim Manager, Corporate Finance British Columbia Securities Commission (604) 899-6780 Toll-free 800-373-6393 (in BC and Alberta) <a href="mailto:alim@bcsc.bc.ca">alim@bcsc.bc.ca</a></p> <p>Scott Pickard Senior Securities Analyst, Corporate Finance British Columbia Securities Commission (604) 899-6720 Toll-free 800-373-6393 (in BC and Alberta) <a href="mailto:spickard@bcsc.bc.ca">spickard@bcsc.bc.ca</a></p>	<p>Cameron McInnis Manager, Corporate Finance Ontario Securities Commission (416) 593-3675 <a href="mailto:cmcinnis@osc.gov.on.ca">cmcinnis@osc.gov.on.ca</a></p> <p>Marie-France Bourret Accountant, Corporate Finance Ontario Securities Commission (416) 593-8083 <a href="mailto:mbourret@osc.gov.on.ca">mbourret@osc.gov.on.ca</a></p>
<p>Jonathan Taylor Manager, CD Compliance &amp; Market Analysis Alberta Securities Commission (403) 297-4770 Direct Fax: 403.297.2082 <a href="mailto:jonathan.taylor@seccom.ab.ca">jonathan.taylor@seccom.ab.ca</a></p>	<p>Benoît Crowe Chef du Service de l'information financière Autorité des marchés financiers (514) 395-0337 ext. 4331 <a href="mailto:benoit.crowe@lautorite.qc.ca">benoit.crowe@lautorite.qc.ca</a></p>
<p>Ian McIntosh Deputy Director, Corporate Finance Saskatchewan Financial Services Commission (306) 787-5867 <a href="mailto:imcintosh@sfsc.gov.sk.ca">imcintosh@sfsc.gov.sk.ca</a></p>	<p>Bill Slattery Director, Corporate Finance and Administration Nova Scotia Securities Commission (902) 424-7355 <a href="mailto:slattejw@gov.ns.ca">slattejw@gov.ns.ca</a></p>
<p>Bob Bouchard Director, Corporate Finance Manitoba Securities Commission (204) 945-2555 <a href="mailto:bbouchard@gov.mb.ca">bbouchard@gov.mb.ca</a></p>	<p>Kevin Hoyt Director, Regulatory Affairs &amp; Chief Financial Officer New Brunswick Securities Commission (506) 643-7691 <a href="mailto:kevin.hoyt@nbsc-cvmnb.ca">kevin.hoyt@nbsc-cvmnb.ca</a></p>