CSA / ACVM

Canadian Securities Administrators

Autorités canadiennes en valeurs mobilières

CSA Staff Notice 51-312

Harmonized Continuous Disclosure Review Program

Purpose

The staff of the Canadian Securities Administrators have established a program of harmonized continuous disclosure review with a view to improving the completeness, quality and timeliness of continuous disclosure by reporting issuers in Canada.

The program, the harmonized continuous disclosure review program (the CDR program), is being adopted at this time by the staff of the following jurisdictions: British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec and Nova Scotia.

Under the CDR program, staff of the participating jurisdictions will generally follow principles of mutual reliance similar to the principles that underlie the mutual reliance review systems that have been developed for applications for exemptive relief[1] and for prospectuses and annual information forms.[2] As is the case with the mutual reliance review systems that are currently in place, it is generally expected that issuers will deal only with staff of a principal regulator, and that staff of the non-principal regulators will rely on the staff of the principal regulator on matters related to continuous disclosure reviews.

The purpose of this notice is to provide issuers, investors and other market participants with information about the CDR program.

Background

Under Canadian securities legislation, reporting issuers are required to provide continuous disclosure about their businesses and affairs on a timely basis. Market participants, including investors, rely upon this information to make informed investment decisions.

Currently, certain members of the Canadian Securities Administrators (the CSA) maintain their own continuous disclosure (CD) review programs to focus on the completeness, quality and timeliness of CD material provided by issuers that are reporting issuers in their jurisdictions.

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1 See National Policy 12-201 *Mutual Reliance Review System for Exemptive Relief Applications*.

2 See National Policy 43-201 *Mutual Reliance Review System for Prospectuses and Annual Information Forms*).

The members of the CSA recently introduced a new continuous disclosure rule, National Instrument 51-102 *Continuous Disclosure Obligations* (the CD rule). The CD rule, which came into force on March 30, 2004,[3] harmonizes CD obligations across Canada and aims to ensure that investors receive better disclosure on a timelier basis.

The CDR program is intended to complement the CD rule by enhancing consistency in the scope and level of reviews carried out by staff across Canada. We believe that greater consistency in the treatment of issuers will improve the overall quality and timeliness of continuous disclosure by reporting issuers in Canada.

Two objectives of the CDR program: Education and Compliance

While the CD rule seeks to ensure that Canadian investors receive a uniformly high level of continuous disclosure across the country, it is critical to the success of the rule that issuers understand their obligations under the rule and comply with them. Accordingly, two fundamental objectives underlie the CDR program: education and compliance.

The first objective is to help issuers better understand the nature and extent of their disclosure obligations under the CD rule. We will attempt to do this through our interaction with issuers during the course of our CD reviews. We will also provide additional guidance through our publications, seminars, webcasts and other forums that will address specific aspects of the CD rule.

The second objective is to determine, through the continuous disclosure review process, whether issuers are in fact complying with their disclosure obligations under the CD rule. The CDR program is designed to identify material disclosure deficiencies and questionable transactions that impact the reliability and accuracy of an issuer's disclosure record. It should be noted, however, that while the objective of a continuous disclosure review is to improve the overall quality of disclosure provided to the marketplace, the fact that an issuer has been the subject of such a review does not guarantee the accuracy of its disclosure.

Introducing the concept of a principal regulator for CD purposes

Currently, when a filer seeks exemptive relief from a requirement of Canadian securities law in more than one jurisdiction, the filer may file an application for such relief under National Policy 12-201 *Mutual Reliance Review System for Exemptive Relief Applications* (NP 12-201).

Similarly, an issuer seeking to make a public offering in more than one jurisdiction can file a prospectus with various securities regulators across Canada and have the prospectus reviewed by one of those regulators on behalf of the others under National Policy 43-201 *Mutual Reliance Review System for Prospectuses and Annual Information Forms*. (NP 43-201.)

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[3] The CD rule is not yet in effect in Québec. However, the Autorité des marchés financiers has issued a blanket order exempting reporting issuers from the local continuous disclosure requirements if they comply with the requirements of the CD Rule.

The MRRS system expedites the review process and eliminates the duplication of work that would otherwise occur when each jurisdiction reviews the application or prospectus, as the case may be, on its own.

Under the mutual reliance review systems that are currently in place, a filer or issuer will generally deal only with a single regulator, referred to as the principal regulator. We are introducing a similar concept to manage the CDR program in Canada. Under this approach, staff of one of the regulators will act as principal regulator (PR) for a particular issuer. The determination as to which jurisdiction will act as PR will generally be based upon similar principles to those set out in NP 12-201 and NP 43-201. For the most part, this means that the PR will be the regulator in the jurisdiction where the head office of the reporting issuer is located.

The PR will be responsible for reviewing an issuer's CD information and, when necessary, take steps to ensure that the issuer complies with its CD obligations. Generally, an issuer will only have to deal with staff of a single regulator on CD-related matters. We believe that this will allow staff in each jurisdiction to develop greater familiarity with their respective issuers and enhance the efficiency and quality of their CD reviews.

How will issuers be selected under the program, and how often will they be reviewed?

We will apply risk-based selection criteria, including market capitalization and trading activity, among others, to select the majority of issuers for review. These criteria may change from time to time as certain disclosure-related issues achieve greater public prominence, or as consensus or concerns develop over particular accounting issues or disclosure practices. This risk-based approach takes into account the potential damage that could occur to Canadian capital markets in the event an issuer fails to provide complete, accurate and timely disclosure about its business and affairs.

Generally, the risk-based selection criteria will not be made public. An exception to this principle will be made for the largest issuers, due to their significance to the market, and for issuers that have recently gone public. We will review the largest issuers, consisting of those issuers with a market capitalization in excess of $750 million, on average, once every three years. We will also review the CD record of all issuers within twelve months of their initial public offering.

Issuers that do not come within either of these categories will be subject to reviews in accordance with the non-public risk-based criteria and other criteria that may be developed on a jurisdiction-by-jurisdiction basis. For example, staff in a jurisdiction may adopt additional criteria that are specific to that jurisdiction, such as a commitment to review *all* reporting issuers with a head office in that jurisdiction within a specified time period. Finally, issuers will also be selected on a purely random basis for review. Accordingly, all issuers should assume that they may become subject to a CD review at any time.

What do we look at under the program?

Generally, a reporting issuer will be subject to either an *issue-oriented* review or a *full* review.

Issue-oriented reviews are in-depth, focused reviews. They focus on a particular disclosure issue or industry that we believe warrants regulatory scrutiny. For example, staff in several jurisdictions have recently conducted issue-oriented reviews relating to executive compensation disclosure,[4] and income trusts.[5]

A full review is broader than an issue-oriented review, and encompasses more sources of public disclosure. A full review usually includes, among other things, the following information of an issuer:

- Annual financial statements and Management's Discussion and Analysis (MD&A)
- Interim financial statements and MD&A
- Technical disclosure, and where warranted, technical reports (for oil and gas and mining issuers)
- Annual Information Forms (AIF)
- Annual Reports
- Information Circulars
- Press releases and material change reports
- Issuer websites.

Media coverage and analysts' reports may also be reviewed if circumstances warrant it.

What reporting periods will be reviewed?

Full Reviews

The reviews will generally cover an issuer's most recent annual and interim financial statements and MD&A filed prior to the start of the review. For all other disclosure, the review will cover a twelve to fifteen month period prior to the start of the review. In certain cases, we may extend the scope of the review to cover prior periods. We will monitor a reporting issuer's continuous disclosure until the review has been completed.

Issue-oriented Reviews

The nature of the issue(s) identified will determine the period(s) to be reviewed.

What is the review process?

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[4] See CSA Staff Notice 51-304 *Report on Staff's Review of Executive Compensation Disclosure* (November 2002).

[5] See CSA Multilateral Staff Notice 51-310 *Report on Staff's Continuous Disclosure Review of Income Trust Issuers* (February 2004).

The primary focus of a continuous disclosure review is to check for an issuer's compliance with securities legislation. During the course of a review we may identify accounting and other disclosure issues. When such issues are identified, we will communicate those issues to the issuer, usually through a comment letter. When a comment letter is issued, we will request that management of the issuer promptly forward a copy of the letter to the issuer's audit committee. Similarly, we would expect that a copy of the issuer's response be forwarded to the audit committee on the date it is sent to us.

Comment letters will generally request that issuers respond either by correcting the problem or by explaining why management believes that no revision is necessary. We expect a response from the issuer within two weeks from the date of the comment letter. A complete and comprehensive response will assist us to conclude the review in an efficient and timely manner and reduce the need for additional follow up.

How will issues identified during the review be resolved?

We will work with issuers to ensure that the issues identified during our review are resolved in a timely and appropriate manner. Depending upon the circumstances, this may require the publication of clarifying news releases, the correction and re-filing of financial statements and other continuous disclosure materials, and, in some cases, delivering such amended materials to shareholders. In other cases we may permit companies to amend the disclosure prospectively, i.e., in the next filing. It should be noted that although timely correction of a disclosure problem will not in all cases eliminate the need for enforcement action, it will minimize the harm to investors and will generally be a factor in considering what other action, if any, is necessary.

When we are unable to resolve material breaches of securities legislation, we will consider recommending enforcement action against those issuers.

How can issuers correct a disclosure problem?

When material deficiencies or errors relating to financial statements are identified during a CD review, issuers will generally be expected to correct that default by restating and re-filing the financial statements. We expect that at least the most recent annual financial statements and subsequent interim financial statements will be restated and re-filed. Depending upon the nature and extent of the deficiency or error, we may require that financial statements for preceding periods also be restated and re-filed. If the deficiency or error affects information included in a related MD&A, we will generally require that the issuer restate and re-file the affected MD&A as well.

Issuers will also be expected to correct any material deficiencies or errors relating to other CD information such as AIF, technical disclosure, press releases and material change reports. Generally issuers will have to correct the default by restating and re-filing the information and documentation in question.

Questions?

Please refer any questions you may have regarding this notice to the following people:

British Columbia Securities Commission:
Andrew Richardson, Deputy Director, Corporate Finance: (604) 899-6730
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