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mcmillan securities bulletin

CSA releases results from its 2012 continuous disclosure review program

The Canadian Securities Administrators ("CSA") recently released staff notice 51-337 summarizing the results of its Continuous Disclosure ("CD") review program for fiscal 2012. This notice contains examples of common deficiencies in issuers' CD filings and guidance regarding disclosure obligations.

Of the approximately 4,200 issuers in Canada, the CSA completed 1,248 reviews. Of these reviews, 44% required no further action from the issuer, an increase from 30% of reviews in fiscal 2011.Where the CSA required further action, the most common outcome involved a requirement for the issuer to include certain changes or enhancements in its next filing (28%). The second most common outcome involved the issuer refiling certain CD documents (17%).

issue oriented reviews

The CSA divided its reviews between Issue-Oriented Reviews and Full Reviews. Issue-Oriented Reviews involved the CSA examining the issuers' financial statements and MD&As. Common deficiencies included failure to clearly label and identify the accounting principles used, and failure to include a statement of changes in equity for the comparative interim periods.

The CSA found that only a few issuers presented a risk of not being ready to file their first IFRS financial report on time.

full reviews

Full reviews focused on material deficiencies and disclosure enhancements.

financial statements

For first time adoption of IFRS, the CSA found several common deficiencies in issuers' financial statements. These included failures to (a) provide all required reconciliation, (b) provide explanations of material adjustments, and (c) change accounting policies to IFRS. The CSA noted the use of boilerplate in accounting policies, and warned that issuers must provide entity-specific accounting policy disclosure.

Other deficiencies in financial statements included liability classification under IFRS. The CSA gave the example of an obligation with no arrangement for refinancing at the reporting date as being incorrectly classified as non-current. Issuers further failed to properly disclose information relating to business combinations. These deficiencies included failing to provide:

a) the amount of revenue and profit or loss of the acquiree since the acquisition date or of the combined entity for the current reporting period as though the acquisition had been as of the beginning of the annual reporting period;

b) the primary reasons for a business combination;

c) qualitative descriptions of the factors that make up the goodwill recognized;

d) why the transaction resulted in a gain (for bargain purchases); and

e) gross contractual amounts receivable and estimates of contractual cash flows not expected to be collected, among other things.

MD&As

Common MD&A deficiencies included failure to (a) discuss and quantify all material variances, or provide meaningful analysis in their discussions of operations in the MD&A, (b) provide better disclosure around liquidity, particularly in the identification and discussion of known or expected fluctuations and trends, and (c) properly describe operations, particularly in specialized or high tech industries.

regulatory deficiencies

The CSA cited several common regulatory deficiencies in the reviews, including disclosure for mineral projects. The notice directs issuers to NI 43-101, the governing regulation for disclosure of scientific or technical information on mineral projects. Some common deficiencies included: (a) inadequate disclosure of preliminary economic assessments, mineral resources, or mineral reserves; (b) non-compliant certificates and consents of qualified persons for technical reports; and (c) incomplete or inadequate disclosure of historical estimates and exploration targets.

areas of focus for fiscal year 2013

In fiscal 2013, the CSA will focus on the first annual IFRS report and continue their use of the high level screening system that considers risk factors to determine the issuers selected. Some topics the CSA identifies for possible attention are (a) judgments and sources of estimation uncertainty disclosure; (b) asset impairments; and (c) business combinations.

For more information, see CSA Staff Notice 51-337.

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a cautionary note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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