1.1.4 OSC Staff Notice 51-706 - Corporate Finance Report (2006)

OSC STAFF NOTICE 51-706

CORPORATE FINANCE REPORT (2006)

Introduction

The Corporate Finance Branch (Corporate Finance or the Branch) of the Ontario Securities Commission is responsible for issuer regulation. Among other things, staff in Corporate Finance (we or staff) are responsible for overseeing offerings of securities through:

- reviewing prospectuses and rights offering documents
- analyzing applications for exemptive relief
- reviewing the ongoing dissemination of information by reporting issuers
- educating market participants on their disclosure obligations
- regulating transactions in the exempt market

The Branch also monitors compliance with securities laws relating to take-over bids and other mergers and acquisitions.

This report highlights our activities in the above areas and outlines issues that we consider to be of interest to issuers and their advisors. While the discussion about our risk-based reviews relates to our fiscal year ended March 31, 2006, the remainder of the report covers issues beyond that date.

A key theme underlying this report is transparency. This report summarizes the results of our prospectus and continuous disclosure reviews and provides insight into our approach on other Corporate Finance matters. For ease of reporting, our findings and recommendations are divided into the following six areas:

- risk-based reviews
- accounting and disclosure matters
- prospectus matters
- application matters
- insider reporting issues
- improvements in communication

Table of Contents

I. RISK-BASED REVIEWS

A. Types of reviews

We believe that a risk-based approach is the most efficient way to focus our resources. This is consistent with the approach taken by other securities regulators and has become fundamental to the way we operate.

We use various selection criteria to identify for review issuers whose disclosure is most likely to be materially improved or brought into compliance with securities laws or accounting standards as a result of staff review or issuers who may have a significant impact on the capital markets. Our criteria for identifying risk continue to evolve based on a variety of factors, including public prominence of disclosure requirements and consensus or controversy around accounting or disclosure practices.

An issuer's prospectus and continuous disclosure (CD) filings may be subject to full, issue-oriented, screening, targeted or basic reviews. Generally, the level of review is determined using a risk-based approach. The different types of reviews are discussed in more detail below. For more information, please refer to OSC Staff Notice 11-719 *A Risk-Based Approach for More Effective Regulation*.

(i) Full review

A full CD review consists of an examination of the issuer's disclosure record for at least the past year. This includes an issuer's financial disclosure (interim and annual financial statements and related management's discussion and analysis (MD&A)), as well as other types of corporate disclosure (annual information forms (AIFs), material change reports, information circulars, business acquisition reports and press releases). In addition to all regulatory filings, we may examine trading activity, industry data and analyst reports. These reviews usually involve correspondence with the issuer.

Full prospectus reviews involve a complete review of the prospectus and any documents incorporated by reference.

(ii) Issue-oriented review

This type of review focuses on a specific legal, accounting or other regulatory issue.

(iii) Screening review (CD)

We screen prospectuses to determine whether a full, issue-oriented or basic review is most appropriate. We carry out CD screening reviews to determine whether an issuer's CD record warrants further scrutiny through either a full or issue-oriented review. Screening reviews involve examining an issuer's disclosure record for the past year and do not usually result in any correspondence with the issuer.

(iv) Targeted review

This is a review of a sample of issuers. A targeted review will generally relate to a particular industry, or result from policy developments or changes in accounting standards.

(v) Basic review (Prospectus)

A basic review is largely limited to an administrative processing of the file.

B. Evolution of our risk based approach - industry specialization

In the spring, we reorganized our Corporate Finance accounting resources into industry-specific groups. As a result, we have begun to perform CD reviews on a more specialized basis and are gaining a greater understanding of industry-specific issues.

To date, we have established specialized industry groups in the following areas:

- bio-technology
- entertainment and communications
- financial services
- hospitality and healthcare

- insurance
- manufacturing
- mining
- real estate
- retail and other services
- technology
- transportation

We have also created groups that focus on the income trust sector and on issues relevant to smaller-sized issuers.

A key element to our industry specialization strategy is establishing open communication channels with relevant industry associations, organizations and groups. *We encourage these groups to contact us any time to discuss potentially relevant issues.*

The following are examples of recent industry-specific activities:

- *Insurance.* We began a targeted review of issuers in the insurance industry, addressing both life insurance, and property and casualty insurance segments. One element of our review focuses on transparency in company disclosure. The accounting used by insurance companies can be quite complex and many of the assumptions in the financial statements are based on actuarial assumptions about the future.

- *Real estate.* To gain a greater understanding of the accounting and practical issues faced by the real estate sector, we have been consulting with staff at the Real Property Association of Canada (REALPac), the successor to the Canadian Institute of Public and Private Real Estate Companies. REALPac members include some of the larger real estate reporting issuers in the Canadian marketplace.

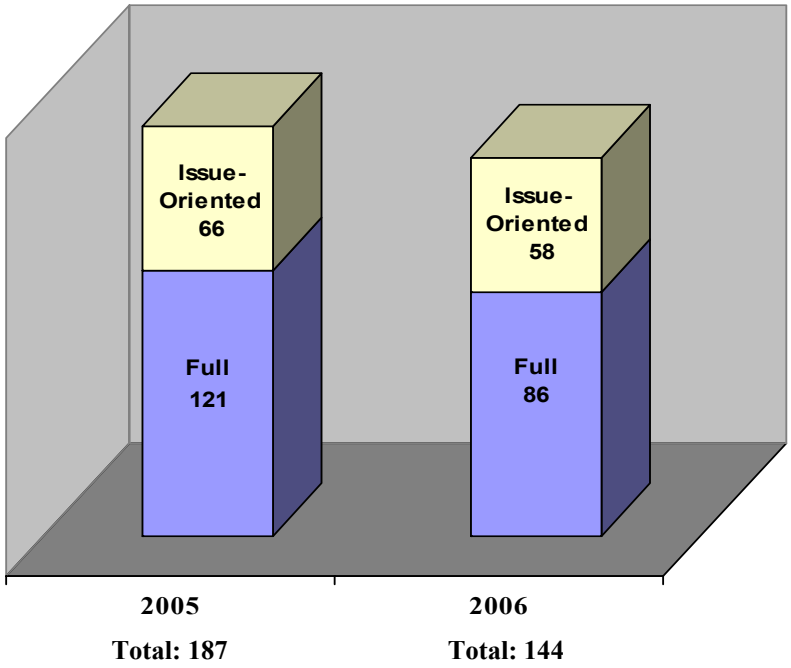
As part of its mandate, REALPac prepares and publishes guidance on accounting matters that affect the real estate industry. By maintaining an open dialogue with REALPac, we can ensure that issues and concerns specific to this sector are identified and addressed at an early stage.

C. Types of reviews completed

The graphs below illustrate the full and issue-oriented reviews we conducted for the year ending March 31, 2006.

(i) Prospectus reviews

Prospectus reviews

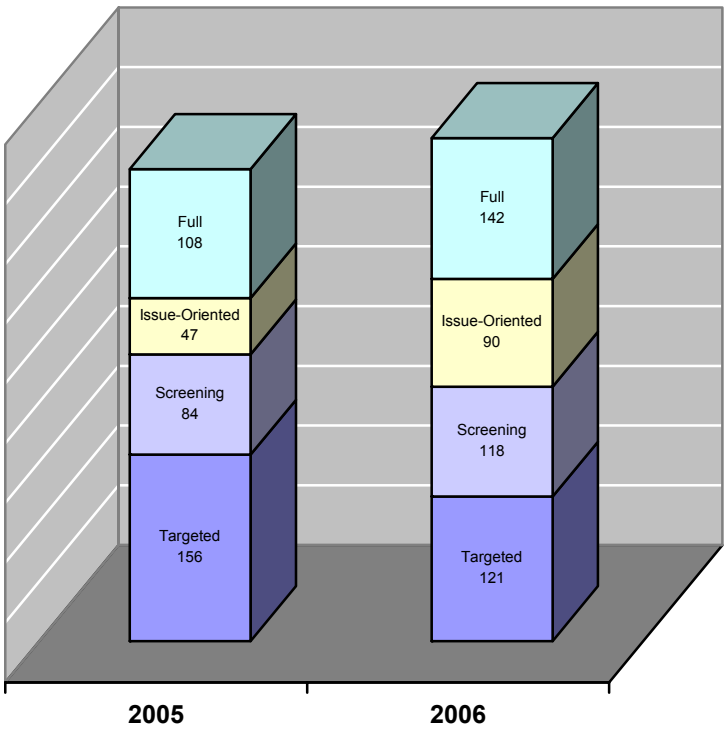


In fiscal 2006, we completed 144 full and issue-oriented reviews of prospectuses and rights offering documents, which is lower than fiscal 2005. Approximately 45% of the prospectuses we reviewed in fiscal 2006 were long form and 52% were short form. In fiscal 2005, approximately 54% were long form and 38% were short form.

The increase in our review of short form offerings was partly due to recently implemented changes in National Instrument 44-101 *Short Form Prospectus Distributions* (NI 44-101). Effective December 30, 2005, the qualification criteria for issuers that are permitted to use the short form regime changed resulting in an increased number of reporting issuers using the short form system.

(ii) Continuous disclosure reviews

Continuous disclosure reviews



We completed 471 CD reviews in 2006, up 19% from the previous year. Sixty-two per cent of the CD reviews related to issuers listed on the Toronto Stock Exchange (TSX) and 26% related to issuers listed on the TSX Venture Exchange. The remaining 12% related to issuers with securities listed over-the-counter or on other trading forums.

We completed a substantial number of targeted reviews in 2006. These reviews tended to focus on a specific industry or were initiated as a result of recently implemented rules or policies. The targeted reviews focused on the following areas:

- We reviewed the filings of 95 issuers across the country to assess compliance with the audit committee composition requirements and responsibilities set out in Multilateral Instrument 52-110 *Audit Committees*. We found the level of compliance with these provisions of the Instrument to be unacceptable. See Canadian Securities Administrators (CSA) Staff Notice 52-312 *Audit Committee Compliance Review* for details.

- We reviewed the filings of 47 issuers to assess compliance with the requirement to file a technical report triggered by the filing of a news release or a directors' circular pursuant to subsection 4.2(j) of National Instrument 43-101 *Standards of Disclosure for Mineral Projects* (NI 43-101). More specifically, subsection 4.2(j) requires the filing of a technical report if a news release or directors' circular contains:

  - first time disclosure of a preliminary assessment, mineral resources or mineral reserves on a property material to the issuer that constitutes a material change, or

  - disclosure of a change in the preliminary assessment, in mineral resources or mineral reserves from the most recently filed technical report that constitutes a material change.

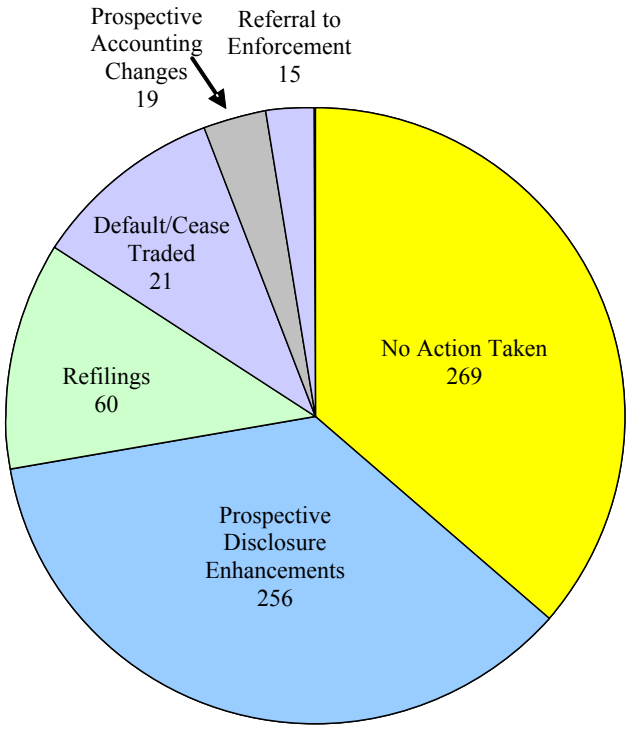
  Seventy-five per cent of the issuers we reviewed were in compliance. For the remaining 25%, we conducted a full CD review, required the filing of a technical report or ensured that these issuers committed to changes in future filings.

- We initiated a review to assess compliance with Accounting Guideline 15 Consolidation of Variable Interest Entities (AcG-15). Based on our review, we found compliance in this area to be adequate. See the variable interest entity review section of the report for more details.

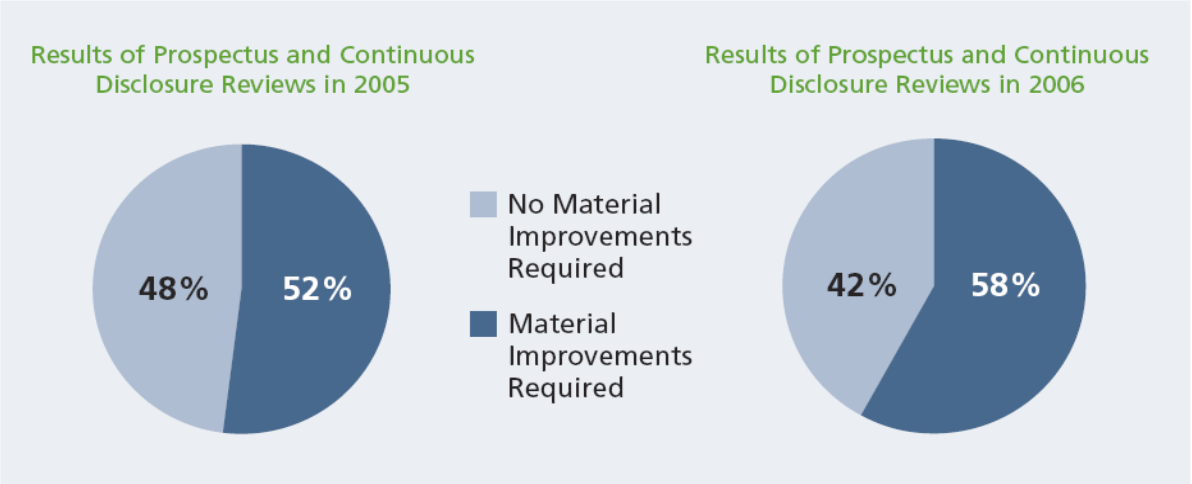
D. Summary of review results

The chart below illustrates the outcomes of our reviews. More than one outcome can be associated with a particular file.

Outcomes of prospectus and continuous disclosure reviews



Total outcomes: 640



(i) Refilings

Issuers that fail to comply with CD requirements may be required to amend and refile documents that have been previously filed with the Commission (a refiling). Refilings generally result from significant financial statement deficiencies or a clear lack of compliance with securities laws. Our reviews resulted in approximately 60 refilings in fiscal 2006. The names of issuers that refile are placed on the Refilings and Errors list for a three-year period. Please refer to OSC Staff Notice 51-711 *Refilings and Corrections of Errors* for more information on our expectations on refilings.

Most of the refilings related to the following:

- Management's Discussion and Analysis – The MD&A continues to be an area of weakness with approximately half of the refilings related to MD&A deficiencies. We discuss MD&A issues in greater detail in the accounting and disclosure matters section of this report.

- Accounting changes – We also requested refilings to correct measurement or significant financial statement disclosure errors that resulted from non-compliance with the Canadian Institute of Chartered Accountants Handbook (CICA HB).

- Auditor oversight – Approximately 10% of refilings were made to comply with National Instrument 52-108 *Auditor Oversight*. Most of the issuers in this category were smaller companies that had engaged an auditor not registered with the Canadian Public Accountability Board.

(ii) Prospective disclosure enhancements

The outcomes in this category related to a variety of financial statement and other disclosure concerns, including insider reporting. Some areas where we have requested disclosure enhancements are:

- Segmented information – enhanced note disclosures of revenue from external customers and capital assets attributed to the issuer's country of domicile

- Business acquisition note – further details of assets and liabilities related to an acquisition as required by CICA HB 1581

- Pension plan disclosures – further details of actuarial valuation and investment asset categories

We also asked insiders to:

- create and update information on the System for Electronic Disclosure by Insiders (SEDI) if they had not yet set up a profile

- update information on balances to reflect recent transactions

(iii) Prospective accounting changes

The outcomes in this category related to changes to the issuer's financial statements that did not result in a refiling, but were corrected in the issuer's next periodic filing.

(iv) Referral to Enforcement

We referred a number of files to the Enforcement Branch.

(v) Default or cease traded

This category represents issuers that were found to be in default or were cease traded as a result of our reviews. This outcome generally arises if an issuer cannot adequately address the major deficiencies discovered during our review process.

II. ACCOUNTING AND DISCLOSURE MATTERS

The following highlights some of the significant accounting and general disclosure issues we found in prospectus and CD reviews.

A. Disclosure of accounting policies

We found that many issuers did not provide satisfactory accounting policy disclosure, particularly with respect to revenue recognition. Several of the disclosure requirements outlined in the Emerging Issues Committee Abstract (EIC) 141 *Revenue Recognition* were not adequately met. For example, some issuers did not disclose their separate accounting policies for each of their revenue arrangements. In addition, CICA HB 1505 *Disclosure of Accounting Policies* requires that an enterprise provide a clear and concise description of its significant accounting policies. We asked many issuers to revise or enhance disclosure of certain policies to provide greater clarity to the financial statement user.

We will continue to focus on adequate disclosure of accounting policies and to ensure that issuers' accounting policies comply with Generally Accepted Accounting Principles (GAAP).

B. Revenue recognition

We raised various questions on practices when it appeared that revenue resulted from the delivery or performance of multiple products or services. EIC-142 *Revenue Arrangements with Multiple Deliverables* (EIC-142) contains guidance on how to determine whether an arrangement consists of more than one unit of accounting and how to account for the multiple deliverables in these revenue arrangements.

Issuers should carefully consider each component of bundled arrangements to ensure separate elements are accounted for individually. Examples include:

- software that has stand alone value when packaged together with non-software elements
- installation and maintenance services that have stand alone value when packaged together with equipment sales

Issuers should also carefully review complex contracts for multiple deliverables because this could affect the timing of revenue recognition. It is also equally important that these deliverables meet the criteria specified in EIC-142 to qualify as separate units of accounting. In certain cases, we may raise questions on how an issuer concluded under EIC-142 that:

- the items delivered in an arrangement have value to its customers on a stand alone basis
- there is objective evidence for the fair value of the undelivered items in an arrangement

Issuers must also consider the impact of other primary sources of GAAP with a higher level of authority than EIC-142 when determining how to account for arrangements with multiple deliverables. For example, the appendix to EIC-142 explains the application of this abstract when a primary source of GAAP, such CICA 3065 *Leases* or AcG-12 *Transfers of Receivables*, applies to multiple deliverable arrangements.

When using the percentage-of-completion method for revenue recognition, issuers should ensure that they have a sufficient basis to reasonably estimate the costs and degree of completion. If issuers cannot estimate costs associated with providing future services (e.g., software upgrades that are part of long-term contracts), the percentage-of-completion method may not be appropriate and issuers may have to use the completed contract method for revenue recognition.

C. Variable interest entity review

In June 2003, the Canadian Institute of Chartered Accountants (CICA) issued AcG-15, which applies when an entity is subject to control on a basis other than ownership of voting interest. AcG-15 is effective for annual and interim periods beginning on or after November 1, 2004. A variable interest entity (VIE) is essentially an entity that does not have sufficient equity at risk to finance its activities without financial support. AcG-15 requires that an issuer consolidate a VIE when it has a contractual, ownership or other pecuniary interest that will absorb a majority of the VIE's expected losses or receive a majority of the VIE's expected residual returns.

We completed a targeted review of selected issuers to assess compliance with AcG-15. We focused on industries where issuers are more likely to have an interest that may require consolidation and reviewed the financial statements of each issuer to gain an understanding of whether and how the guideline was applied. As part of our review, we raised comments asking issuers for a detailed description of the process undertaken to identify any potential variable interests, as well as an analysis to support their decision. We also requested information about the types of controls issuers had in place to ensure that all variable interests were correctly identified. Based on the responses we received and our review of the analysis provided, we found that compliance with AcG-15 was adequate.

D. Goodwill and other intangible assets

We continued to pay particular attention to goodwill impairment issues during our prospectus and CD reviews. In several instances, issuers did not recognize an impairment of goodwill despite potential indicators such as:

- a history of losses
- a significant decline in revenue or net earnings
- a reduction or cancellation of distributions
- payments of distributions in excess of cash flows from operations

In several cases, the issuer wrote down goodwill as a result of our review. In two cases, the write down followed an external valuation.

We remind issuers and their advisors to follow the guidance in CICA HB 3062 *Goodwill and Other Intangible Assets*. In performing their goodwill impairment assessment, many issuers use a valuation technique based on multiple of earnings, multiple of revenue or a similar performance measure regardless of whether this technique is appropriate in their particular situation. A valuation technique based on multiples is not appropriate when the operations or activities of an enterprise are not comparable in nature, scope or size to the business unit for which fair value is estimated.

We continue to encounter instances where a significant portion of the purchase price of an acquisition is allocated to goodwill. We pay particular attention to whether all acquired intangible assets have been appropriately identified and assigned a useful life as required by CICA HB 1581 *Business Combinations*, as well as whether the valuation of the acquisition was appropriately done. For example, in one case the issuer included the value of a customer list with goodwill. Based on our comments, the issuer refiled its financial statements and presented the customer list as an intangible asset.

We have noted a greater instance of issuers using external valuators to provide valuations. We encourage issuers to continue to do so as this provides additional support and objective evidence, reducing the number of restatements.

We also asked many issuers to justify the useful life of their intangible assets, particularly when the amortization period was long or when intangible assets were considered to have indefinite lives.

E. Related party transactions

CICA HB 3840 *Related Party Transactions* addresses the measurement and disclosure of related party transactions. We commented on both aspects of these requirements in our reviews.

(i) Measurement

When issuers recorded related party transactions at the exchange amount (i.e., the amount of consideration paid or received as established and agreed to by the related parties), we asked issuers to explain how the accounting treatment is supported. The two situations where we commented on the exchange amount treatment are:

- *Transactions in the "normal course".* In certain situations, GAAP permits valuing the related party transaction at the exchange amount when the transaction has commercial substance and is in the normal course of operations. We have raised questions when it appears that the transaction is not regularly undertaken by the issuer for the purpose of generating revenue. Issuers should also be prepared to respond to questions on whether the transaction has commercial substance.

- *Transactions not in the "normal course".* GAAP permits valuing these related party transactions at the exchange amount when the transaction has commercial substance, when the change in ownership is substantive and when the exchange amount is supported by independent evidence. We have asked issuers about the independent evidence to support a transaction's exchange amount. If we believe that a transaction lacks external support, we may ask the issuer to restate and refile its financial statements and related MD&A to reflect the transaction at its carrying value.

(ii) Disclosure

We identified deficiencies in related party transaction disclosure that resulted in commitments by issuers to enhance future filings. We noted inadequate or cursory financial statement disclosure about the relationship between the parties along with the absence of substantive disclosure in the MD&A about the transaction and the business purpose behind the transaction. As well,

some issuers did not provide sufficient disclosure of the measurement basis they used and, in particular, information about the exchange amount when the transaction was not in the normal course.

For example, disclosure that indicates "The related party transaction was measured at the exchange amount, which is the amount of consideration as established and agreed to by the related parties" is, by itself, not helpful to a reader trying to understand the economic substance of the transaction.

F. Accounting for modifications to stock option plans

We have encountered situations where issuers have changed the terms of their stock option plans, but have not adequately assessed if the changes represent a modification under CICA HB 3870 *Stock-based Compensation and Other Stock-based Payments* and if so, whether the modification should result in an incremental expense being recorded. Issuers should determine whether these changes represent equity restructurings (i.e., modifications that may require recognition of an incremental expense), or if the changes in terms are in accordance with anti-dilution provisions which are designed to equalize an option's value after an equity restructuring (i.e., not a modification). Issuers should also compare the fair values of the modified option awards to the original option awards immediately before modification to determine whether an incremental expense should be recorded.

G. Future income tax assets

CICA HB 3465 *Income Taxes* requires future income tax assets to be recognized for unused tax losses, among other things. It also requires that these assets be limited to the amount that is "more likely than not" to be realized and that the future realization of the tax benefit of an unused loss depends on the existence of sufficient taxable income.

Staff have raised comments when future tax assets have been recognized and it appears that an insufficient valuation allowance has been provided for. In determining an appropriate valuation allowance, issuers must carefully consider the indicators that are outlined in CICA HB paragraphs 3465.27 – 3465.30, which include a history of tax losses. Issuers should be prepared to explain why a valuation allowance is sufficient when tax losses continue and a future tax asset remains on the balance sheet.

We may also question issuers who have provided significant or full valuation allowances against future tax assets when there does not appear to be sufficient unfavourable evidence to support the full extent of the valuation allowance. For example, a premature write down of a tax asset during a year that an issuer incurs a one-off operating loss may unnecessarily increase a GAAP loss in a bad year and may result in inappropriate income effects in subsequently profitable years as a result of tax asset increases.

H. Relevance of U.S. GAAP and IFRS for Canadian GAAP issuers

Given the extensive amount of interpretative guidance that exists under U.S. GAAP, information can often be found on a particular accounting topic through a U.S. GAAP interpretation (such as an *Emerging Issues Task Force Abstract*), where none exists under Canadian GAAP. Therefore, in the past, we have commented on the relevance and the applicability of U.S. GAAP for reporting issuers that prepare financial statements solely in accordance with Canadian GAAP.

Accounting issues that public companies face may not always be directly addressed by CICA recommendations, and may require the application of professional judgment. When issuers are faced with these types of accounting concerns, we expect them to arrive at a conclusion that is supported by the intent of the relevant Canadian GAAP standards and that is consistent with CICA HB 1000 *Financial Statement Concepts*, and CICA HB 1100 *Generally Accepted Accounting Principles*.

When exercising professional judgment to determine an accounting solution in an area of Canadian GAAP that has been harmonized with either U.S. GAAP or International Financial Reporting Standards (IFRS), an appropriate examination of the issue should involve a review of interpretations and pronouncements contained in the harmonized standards of U.S. GAAP or IFRS. CICA HB 1100 indicates that pronouncements issued by bodies authorized to issue accounting standards in other jurisdictions may be useful sources to consult. We remind issuers that an interpretation should not be followed if it is derived from non-Canadian GAAP sources that are inconsistent with primary Canadian GAAP and the concepts contained in CICA HB 1000.

To illustrate, Statement of Position 93-7 *Reporting on Advertising Costs* issued by the American Institute of Certified Public Accountants requires deferral of direct-response advertising expenditures, which results in the creation of an asset as opposed to expensing the amount immediately. While this accounting treatment may be acceptable under U.S. GAAP, it is inconsistent with the basic principles contained within Canadian GAAP. Except during the pre-operating period described in EIC-27 *Revenues and Expenditures in the Pre-operating Period*, the principles in CICA HB 1000 effectively preclude the capitalization of any advertising expenditures under Canadian GAAP.

I. Non-GAAP financial measures

CSA Staff Notice 52-306 *Non-GAAP Financial Measures* (SN 52-306) provides guidance to issuers that disclose financial measures other than those prescribed by GAAP. Based on our reviews, we identified the following:

- *Failure to identify a non-GAAP financial measure.* While issuers often identify EBITDA, operating earnings and distributable cash as a non-GAAP financial measure, we found that they did not consider the guidelines of SN 52-306 when disclosing other calculations that differ from amounts in the GAAP financial statements. These calculations are often specific to an issuer's industry and have included items such as "imputed revenues", "field margins", "net debt", "initial fees" (a specific component of revenue) and "underwritten net operating income". Although a particular calculation may be a common industry term, we remind issuers to consider SN 52-306 when presenting numerical measures that are not prescribed by GAAP.

- *Failure to provide equal prominence of GAAP measures.* We continue to see the most directly comparable GAAP measure displayed with less prominence than the non-GAAP measure. We have requested that issuers restate and refile disclosure documents when they have provided non-GAAP financial information that we believe is misleading.

- *Failure to explain why the non-GAAP measure is meaningful for investors.* Although disclosure in this area is improving, we continue to raise comments when issuers fail to provide this disclosure or when they provide boiler-plate disclosure about why non-GAAP measures are presented. After raising this comment, we have observed that some issuers discontinued the practice of providing the non-GAAP measure because they could not determine its usefulness and relevance.

We will continue to raise concerns about non-GAAP financial measures as a routine part of our reviews. We will require issuers to refile disclosure documents when we consider disclosures to be misleading to the public.

J. MD&A

Our aim in reviewing MD&A is to ensure that it meets the objective of improving the overall financial disclosure of an issuer by providing a balanced discussion of operations and financial condition. During the year, MD&A deficiencies resulted in 32 refilings and 75 commitments from issuers to provide prospective changes. We have also noted that financial statement deficiencies frequently lead to deficiencies in the MD&A. We continue to encounter the following major deficiencies in interim and annual MD&A filings:

(i) *Liquidity.* Many issuers do not provide a meaningful discussion of liquidity. We continue to see instances where issuers indicate that they have adequate working capital without specifically explaining what their working capital requirements are. In many instances, the MD&A also does not contain a detailed and quantified discussion of capital resources needed to achieve the issuer's ongoing business objectives or any analysis of cash flows.

We remind issuers that an analysis of liquidity should include a discussion of:

- the issuer's ability to generate sufficient amounts of cash and cash equivalents to meet capacity or fund growth
- trends or expected fluctuations in liquidity, taking into account demands, commitments, events or uncertainties
- working capital requirements
- the issuer's ability to meet obligations as they become due when an issuer has or expects to have a working capital deficiency
- the balance sheet conditions, income or cash flow items that may affect liquidity
- impact arising from any legal or practical restrictions on the ability of a subsidiary to transfer funds to the issuer
- defaults, arrears or anticipated defaults

(ii) *Lack of meaningful discussion.* Some issuers repeated financial statement disclosure in the operational and liquidity discussion without providing any additional information or analysis.

(iii) *Lack of quantitative information.* Some issuers did not provide a quantified discussion of the various factors that led to increases or decreases in revenue or expenses. For example, it is inadequate to indicate that certain line items have increased without also disclosing the amount of the increase and the reason for the increase.

(iv) *Lack of conclusion on the effectiveness of disclosure controls and procedures.* Some issuers failed to include their certifying officers' conclusions about the effectiveness of disclosure controls and procedures, as represented in the modified or annual certificates or full annual certificates. See CSA Staff Notice 52-315 *Certification Compliance Review* for details.

K. Executive compensation disclosure

For some time now, we have found that the requirements in Form 51-102F6 *Statement of Executive Compensation* (51-102F6) do not always adequately capture all material executive compensation information for named executive officers. As a best practice, a number of issuers have started to provide information that goes beyond the specific disclosure requirements of 51-102F6.

For example, in several instances, issuers have provided one total compensation number (reflecting both cash and other forms of compensation) for CEOs in addition to the other information required by 51-102F6. Providing one total compensation number along with numerous other supporting details will be a requirement for all U.S. issuers under the recently finalized Securities and Exchange Commission (SEC) Rule. The existing 51-102F6 requirements are also being considered for revision.

We believe that supplementary information is valuable to investors. Until the revised requirements are in place, we encourage issuers to provide supplementary disclosure and to fully disclose the key assumptions used in compiling this information or a cross-reference to where the assumptions are disclosed.

We have encountered some common compensation practices that are not specifically or comprehensively addressed in 51-102F6. As a result, different issuers may treat them in different ways. These include:

- *Performance-based share units.* The initial grant may or may not be reflected in the summary compensation table, and the ultimate payout may or may not be specifically disclosed.
- *"Top hat" pensions.* In these arrangements, the years credited against an executive for calculating his or her pension entitlement exceed those actually worked without an explanation of why this was done.
- *Payments on termination or change of control.* All the situations in which payments may be triggered are not being disclosed.

We remind issuers that the broader purpose of 51-102F6 requires an explanation of where and how these types of practices are disclosed, including major assumptions used, whether or not 51-102F6 specifies all these details. We approach non-compliance with the substantive requirements of the form in the same way that we approach other material disclosure deficiencies. This may include requesting that deficient disclosure be amended and refiled.

L. Income trusts

During fiscal 2006, the income trust structure continued to be a preferred vehicle for a diverse range of businesses completing their initial public offerings. As a result, income trusts comprised many of our prospectus reviews. Some of the more significant issues we identified are highlighted in CSA Staff Notice 51-319 *Report of Staff's Continuous Disclosure Review of Income Trust Issuers*.

M. Errors and restatements

On occasion, we are approached by issuers who have detected errors and misstatements in their current or historical financial statements. In these situations, we work with issuers to understand the impact of the errors and the process management followed to uncover these errors. We are concerned not only about correcting the errors and misstatements, but also about learning how management intends to ensure that material errors do not recur.

While issuers are working to correct their financial statements, we expect them to provide staff with regular updates on their progress. These updates should include information about the corrections and the implementation of appropriate financial controls and procedures.

We remind issuers that in instances where financial statement errors are corrected and revised statements are filed, issuers must also refile their certificates pursuant to Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*.

III. PROSPECTUS MATTERS

A. Timing on short form prospectus distributions

NI 44-101 was amended, effective December 30, 2005, to significantly expand the class of issuers that are eligible to file a short form prospectus. As a result, many issuers that historically have filed "long form" prospectuses, i.e., a prospectus in the form of Form 41-501F1, may now file a short form prospectus. These issuers may have an expectation that the prospectus will be reviewed in accordance with time periods traditionally associated with short form prospectus filings.

We would like to remind issuers and other market participants that short form eligibility under NI 44-101 is premised on the issuer having filed all periodic and timely disclosure documents that it is required to have filed.

We have recently noted a number of situations where this has not been the case, resulting in delays in the offering process. Examples of these situations include, among others:

- a failure to file, or a substantively deficient filing of, a technical report required under NI 43-101
- a failure to file or incorporate by reference, or a substantively deficient filing of, a business acquisition report required under NI 51-102 *Continuous Disclosure Obligations*
- a failure to include disclosure in the issuer's annual MD&A about the certifying officers' conclusions on the effectiveness of disclosure controls and procedures, as represented in Form 52-109F1 *Certification of Annual Filings*.

We have also seen a number of situations where an issuer has filed a short form prospectus to finance a material undertaking or significant transaction that would constitute a material departure from the business or operations as of the date of the issuer's current annual financial statements and current AIF. In these cases, the issuer's short form prospectus often includes or incorporates by reference a significant amount of new disclosure not previously filed, including new technical reports and acquired company information.

While staff uses its best efforts to review materials relating to a preliminary short form prospectus and issue a comment letter within the three-day review period contemplated by NP 43-201 *Mutual Reliance Review System for Prospectuses and Annual Information Forms* (NP 43-201), in some cases, this may not be possible.

We remind issuers that, in accordance with subsection 5.3(2) of NP 43-201, Staff may apply long form timing where a proposed distribution by way of short form prospectus is too complex to be reviewed adequately within the short form prospectus time periods. This may occur in the following situations, among others:

- The issuer is proposing or has recently completed a significant acquisition of an issuer or business or property and the issuer is filing a significant amount of new material at the time of filing. The acquired company in this case is often the main operating business of the issuer.
- The issuer is proposing, or has recently completed, a significant restructuring, amalgamation or takeover.
- The issuer's CD record appears to be deficient in a material respect.
- The offering is otherwise novel or complex.

While we anticipate that long form timing will only be applied in limited circumstances, issuers are encouraged to consider the above guidance when structuring their transactions and may wish to consider the pre-file procedures in Part 9 of NP 43-201.

B. Use of proceeds

Form 44-101F1 and Form 41-501F1 each prescribe specific disclosure regarding the use of proceeds in a prospectus. However, when there is a lack of compliance with these requirements we ask issuers to enhance their disclosure to describe the principal purposes for which the net proceeds from the offering are intended to be used and the approximate amount intended to be used for each purpose. If an issuer has no specific plan for a significant portion of the proceeds, the prospectus should clearly disclose this and discuss the principal reasons for the offering. If the distribution of an offering is subject to a minimum subscription, the use of proceeds for both the minimum and maximum subscriptions must be disclosed. Similarly, if the offering is structured as "up to a maximum amount", the disclosure should provide adjustments in spending if the proceeds raised are less than the maximum. We also remind issuers that under subsection 61(2)(c) of the *Securities Act* (Ontario) (the Act), the Director will refuse to issue a receipt for a prospectus if it appears to the Director that the proceeds from the offering and the issuer's other resources are insufficient to accomplish the purpose of the offering stated in the prospectus.

C. Common deficiencies in prospectus filings

We continue to see certain deficiencies that can cause unnecessary delays in issuing a receipt on a preliminary prospectus or prospectus. Accordingly, we remind issuers and their advisors to ensure:

(i) *Prior discussions with staff are set out in the cover letter.* Any discussions and outcomes from discussions with staff on a preliminary prospectus should be clearly disclosed in the cover letter.

(ii) *All documents incorporated by reference are filed by the date the short form preliminary prospectus is filed.* NI 44-101 requires that all documents incorporated by reference be filed with **each** offering jurisdiction no later than the date of filing the preliminary short form prospectus. Please refer to subsection 2.1(3) of NI 44-101Companion Policy for details. We remind issuers that where a prospectus is filed in Quebec, a French version of the prospectus is required unless relief is obtained.

(iii) *Activity fees and participation fees are paid.* Activity fees must be paid at the time of filing a preliminary prospectus. Participation fees, on the other hand, apply at the time of filing a final prospectus and apply only if a new reporting issuer is created. Fees should be attached to the applicable fee code and a description completed for each type of filing. Please refer to the OSC Rule 13-502 *Fees*, as amended March 31, 2006 (revised OSC Rule 13-502) for details.

(iv) *Compliance with red herring requirements.* Please ensure that red herrings on all preliminary prospectuses and National Instrument 81-101 *Mutual Fund Prospectus Disclosur*e comply with the appropriate prospectus forms. The red herring language varies on a long form, short form, simplified prospectus and AIF. In addition, each offering jurisdiction must be clearly identified in the red herring. It is inappropriate to simply state “in certain provinces in Canada” in the red herring.

(v) *Compliance with certificate requirements on preliminary and final prospectuses.* Please ensure that the language on the certificate pages complies with the applicable requirements and that the correct form of certificate page is used. As well, please ensure that the date on the certificate pages is the same date as the face page.

(vi) *Use of correct names and dates on preliminary and final prospectuses.* Please ensure that the auditor’s comfort and consent letters, mutual reliance review system (MRRS) confirmation letters and qualification certificates refer to the correct name and date of the preliminary prospectus or prospectus.

D. Common deficiencies relating to filings on SEDAR®

There are a number of issues we frequently encounter in reviewing filings on The System for Electronic Document Analysis and Retrieval (SEDAR). The following technical deficiencies may delay the issue of a prospectus receipt because of the need for additional communication between us, issuers and/or their advisors:

(i) *Blacklined documents incorrectly filed on SEDAR as “Amendments”.* Other than the blackline of the final prospectus, please file blacklined documents under the category “Other Correspondence” on SEDAR (see SEDAR Filer Manual s. 9.7).

(ii) *Multiple subtypes incorrectly filed under one submission on SEDAR.* Please file only one filing subtype under each submission (see SEDAR Filer Manual s. 8.3(e)).

(iii) *Confidential or personal information incorrectly filed under the “CD” filing category on SEDAR.* This is an auto public filing category. Any documents filed under this category will automatically be available on www.SEDAR.com.

(iv) *Keep SEDAR profile up to date.* For example, when an issuer ceases reporting, update the “Reporting Jurisdictions” field in the issuer’s SEDAR profile to “Cease Reporting”.

(v) *Complete all applicable information on SEDAR cover pages.* When filing a prospectus, please check off all appropriate filing procedures before submitting the project.

(vi) *Use the applicable SEDAR fee codes.* Please ensure that the SEDAR fee code corresponds with the filing type and description.

E. Disclosing risks of vendor indemnity caps

In a number of recent prospectus filings, staff have requested additional risk factor disclosure in the prospectuses relating to vendor indemnity caps. These caps are contractual provisions that limit the ability of issuers to seek indemnification from vendors of businesses they are acquiring.

The following comments are intended to refer to the situation where:

- An issuer files a prospectus in connection with an offering of securities to finance the acquisition of another issuer or business (the proposed target).
- The proposed target is significant to the issuer in terms of the significance tests under Canadian prospectus and continuous disclosure rules.
- The vendors of the proposed target are not otherwise required to sign the prospectus as promoters or in another capacity.

These comments do not refer to the situation where vendors may be viewed as acting as promoters of the issuer in the circumstances described in National Policy 41-201 *Income Trusts and Other Indirect Offerings*.

In a number of recent prospectus filings to finance the acquisition of a proposed target, staff have noted that a substantial amount of the prospectus disclosure relates to the proposed target and that an investor's decision to participate in the prospectus offering may in large part be based on the disclosure about the proposed target.

However, if the vendors have not signed the prospectus and the acquisition agreement includes a significant vendor indemnity cap, the vendors of the proposed target may have little or no liability to investors or to the issuer if there is a misrepresentation in the target-related disclosure. We have recently reviewed a number of prospectus filings where the vendor indemnity caps have purported to limit the vendors' liability from 5% to 10% of the proceeds paid to the vendors.

We have questioned whether this situation undermines the statutory requirement that the prospectus contain full, true and plain disclosure of all material facts relating to the securities to be issued under the prospectus. The parties receiving the proceeds of the offering and the parties with the best information about the proposed target, namely the vendors, may not be motivated to ensure that the prospectus does in fact contain full, true and plain disclosure in relation to the proposed target.

We are concerned that, in effect, the vendors may be protected from the consequences of a misrepresentation in the disclosure relating to the proposed target, and that the risk that this disclosure may contain a misrepresentation may fall primarily on the issuer and ultimately the shareholders of the issuer, including the investors in the prospectus offering.

We recognize, however that the issuer in an arm's length transaction may only have a limited ability to negotiate the terms of the vendor indemnity cap and that the inclusion of the cap may have been reflected in the acquisition price for the proposed target.

In view of this, it is current staff practice to raise a comment as part of the review process when a prospectus indicates that the acquisition agreement includes a vendor indemnity cap. Staff will request risk factor disclosure that highlights the following facts:

- The proceeds of the offering will be paid out to the vendors following closing.
- The vendors have not reviewed the disclosure in the prospectus relating to the proposed target and have not represented that:

  (i) the disclosure represents full, true and plain disclosure, and

  (ii) does not contain a misrepresentation.
- The vendors will have no liability to investors in the offering if the prospectus disclosure relating to the proposed target contains a misrepresentation.
- The vendors' liability to the issuer is capped at $●, representing ●% of the proceeds of the offering if there is a misrepresentation in any of the representations and warranties relating to the proposed target.

F. Representations regarding listing or quotation of securities

Subsection 38(3) of the Act generally prohibits any person or company that intends to trade in a security from making any representation that the security will be listed on a stock exchange or quoted on a quotation and trade reporting system, or that application has been made to list or quote such security (listing representations). However, subsection 38(3) does permit listing representations where the stock exchange or quotation and trade reporting system has granted approval to the listing or quoting of the securities, conditional or otherwise, or has consented to, or indicated that it does not object to the representation (Exchange Approval).

Notwithstanding that subsection 38(3) permits listing representations in limited circumstances, we continue to receive a number of applications made on behalf of issuers that wish to include listing representations. In most cases, these applications are made by applicants who did not seek Exchange Approval before making the application. We have found that, in most instances where we request that applicants seek Exchange Approval, they are able to obtain it in a timely manner and relief becomes unnecessary.

We recommend that parties considering applications for relief from the provisions of subsection 38(3) seek Exchange Approval instead. If it becomes necessary to make an application to us, the application should disclose:

(i) when Exchange Approval was requested, and

(ii) the outcome of that request.

G. Cross-border "quiet filings"

Foreign private issuers may be permitted to initially submit their U.S. registration statement (including the embedded prospectus) to the SEC on a confidential "quiet filing" basis. We have observed that where a foreign private issuer satisfies the U.S. requirements, it may request approval to concurrently pre-file a preliminary prospectus with us on a confidential basis.

In the limited circumstances set out above, issuers may concurrently pre-file preliminary prospectuses on a confidential basis with us if:

- The preliminary prospectus filed with the SEC and with us is substantially the same, with some minor differences resulting from different form requirements.
- The preliminary prospectus is pre-filed in all Canadian jurisdictions where the issuer is proposing to do the offering.
- The principal regulator and the non-principal regulators have at least 10 working days to review the pre-filed preliminary prospectus and issue a comment letter.
- There is no specified date by which we must resolve our comments on the pre-filed preliminary prospectus or the related publicly filed preliminary prospectus.
- Any waiting period, which would begin when the preliminary prospectus is publicly filed, is preserved.
- The pre-filed preliminary prospectus is not used for marketing purposes and is not provided to anyone other than those directly involved with preparing it.
- The filing fees associated with a preliminary prospectus are paid when the preliminary prospectus is pre-filed.
- When the preliminary prospectus is publicly filed on SEDAR, all comment letters and the corresponding responses on the pre-filed preliminary prospectus are filed, but are not made public.

H. Use of electronic roadshow materials in connection with cross-border offerings

In a recent decision, a filer's use of electronic roadshow materials in connection with a filer's cross-border initial public offering was permissible where the offering was registered with the SEC and complied with the U.S. *Securities Act of 1933* (the 1933 Act).

Under changes to the 1933 Act that came into effect in December 2005, SEC issuers can use electronic roadshow materials as long as these materials are posted on a website without restriction (such as password protection) or filed with the SEC, either of which would result in unrestricted access. Under the 1933 Act, these materials are considered to be a "free writing prospectus" and the issuer and its underwriters are liable for any misrepresentation in the materials.

Under Canadian securities laws, providing unrestricted access to electronic roadshow materials is not a permissible marketing activity during the waiting period between a preliminary and final prospectus. As a result, issuers that comply with the U.S. offering rules on free writing prospectuses are not in compliance with the current Canadian regime.

In order to provide Canadian investors with the same protections U.S. investors have for electronic roadshow materials, staff will consider recommending relief from the prospectus and registration requirements relating to the posting of these materials. The filer and its Canadian underwriters would be required to provide a contractual right of action relating to the roadshow materials in the prospectus that is equivalent to section 130 of the Act. To mirror the rights provided to U.S. investors, this contractual right should provide that, if the website materials contain a misrepresentation, any Canadian investor who views the materials and

later buys the securities under the Canadian prospectus will have a right to sue the filer and the Canadian underwriters without having to prove that the investor relied on the misrepresentation. The filer would also need to represent that all sales to Canadian investors would be made through a Canadian registrant.

IV. APPLICATION MATTERS

A. Deeming a substantial issuer to cease to be a reporting issuer

We have received applications from large, foreign-incorporated issuers seeking an order under section 83 of the Act that the issuer be deemed to have ceased to be a reporting issuer. Typically, these issuers have shareholders in Ontario, their securities are not listed on an exchange in Canada, but are listed on one or more exchanges outside of Canada, and they do not intend to make any further distributions of securities in Canada.

Historically, staff have recommended this relief when the reporting issuer can demonstrate that ownership of its securities in Canada is *de minimis* compared to the total ownership of its securities. This would typically be measured by:

- fewer than 300 beneficial securityholders in Canada, and
- a small percentage of securities beneficially owned in Canada.

We have recently adopted a modified approach to "deem to cease" applications received from substantial issuers that report in the U.S. and are listed on a U.S. exchange. This new approach, explained below, is reflected in the Commission's decisions *Re DaimlerChrysler AG* (2005), 28 O.S.C.B. 8109 and *Re Imperial Tobacco Canada Limited* (2006), 29 O.S.C.B. 2047.

Generally, we will recommend relief if the issuer provides representations and undertakings to the Commission that include the following:

- Securityholders resident in Canada do not:
  - beneficially own more than 2% of each class or series of outstanding securities of the issuer worldwide, and
  - represent, directly or indirectly, more than 2% of the total number of securityholders of the issuer worldwide.
- The issuer files reports under U.S. securities law and is listed on a U.S. exchange or, in certain cases, is subject to other foreign securities laws and is listed on a foreign exchange.
- The issuer has not taken steps within the preceding 12 months that would suggest that there may be a market for its securities in Canada (such as conducting a prospectus offering in Canada or establishing or maintaining a listing on a Canadian marketplace or stock exchange).
- The issuer provides advance notice in a press release to Canadian resident securityholders that it has applied to be deemed to have ceased to be a reporting issuer in Canada and, if relief is granted, the issuer will not be a reporting issuer or the equivalent in any jurisdiction in Canada.
- The issuer undertakes to continue to deliver to its securityholders in Canada, in the same manner and at the same time as delivered to U.S. securityholders, all disclosure material required by U.S. securities law and exchange requirements to be delivered to securityholders resident in the United States.

In particular, staff have noticed that some filers have difficulty in representing that residents of Canada do not:

- beneficially own directly or indirectly more than 2% of a class or series of the issuer's outstanding securities worldwide, and
- represent more than 2% of the total number of owners who own, directly or indirectly, a class or series of the issuer's securities worldwide.

Staff will not generally recommend granting the relief without the issuer satisfying the "2% test". In addition, staff will not generally recommend granting the relief where the representations are qualified or limited to the knowledge of the issuer, unless the issuer can demonstrate that it has made diligent enquiry to support this representation.

B. Common deficiencies with exemptive relief applications

Certain deficiencies in applications for exemptive relief often delay the granting of the requested relief. We remind issuers and their advisors of the following to support the timely processing of their applications:

(i) *Ontario as principal regulator. If Ontario is the principal regulator, please provide:*

(a) a hard copy of the application letter

(b) a hard copy of the draft decision document

(c) copies of the verification statements

(d) the correct fees, if applicable, pursuant to the revised OSC Rule 13-502

(e) a compact disc or floppy diskette containing the application letter and decision document in Word format, and

(f) on MRRS decisions, a table of concordance.

(ii) *Ontario as non-principal regulator.* If Ontario is not the principal regulator, please email the application letter and decision document, in Word format, to the analyst once he or she is identified.

(iii) *Separate heads of relief.* We remind issuers to set out each head of relief *separately* in both the application letter and in the draft decision document.

(iv) *Requests for confidentiality during review period.* Requests for confidentiality *during* the review process must set out the substantive reasons for the request.

(v) *Requests for confidentiality post-decision.* Requests for confidentiality *after* the review process must be set out as a separate head of relief in the application letter and in the draft decision document. A timeline for lifting a grant of confidentiality must also be included in the decision document.

(vi) *Timing constraints.* Clearly set out any timing constraints in the application letter.

(vii) *Ensure that the draft decision document is in the prescribed form.* In particular, issuers are reminded of the format contained in Schedule A to NP 12-201 for decisions under MRRS.

(viii) *Cite relevant precedent decisions.* Issuers should highlight and explain in the application letter any variations between the requested relief and the precedents.

C. Expedited treatment of applications

In many circumstances, filers are not filing applications for exemptive relief on a timely basis.

The OSC's service standard is that if you file an application with Corporate Finance and we are your principal regulator or the only regulator you need relief from, we will generally complete your application within 40 working days. Novel, complex or unusual matters will require more time. An abridgement will not be granted unless the filer has made compelling arguments in the application that immediate attention is absolutely necessary and reasonable under the circumstances.

D. Pre-filings - applications

Before making a formal application for exemptive relief, filers are encouraged to submit a pre-filing if the potential application involves a novel and substantive issue or raises a novel public policy issue. Part 4 of NP 12-201 sets out the requirements for pre-filings under MRRS for exemptive relief applications. The pre-filing process allows regulators to provide a filer with their initial views on the requested relief so that the filer can determine whether to make a formal application or pursue an alternative approach.

V. INSIDER REPORTING ISSUES

A. Common issues on SEDI

We have noticed that many insiders and their agents file insider reports on SEDI that do not correctly report their transactions in the manner required by Form 55-102F2 *Insider Report* and other applicable securities laws. For example, an insider may report

the exercise of an option without also reporting the acquisition of the underlying common shares received on exercise of the option and the subsequent sale of those shares. Other frequently occurring errors include:

- Failing to report compensation arrangements that are "securities" within the meaning of the Act because they constitute evidence of an option, subscription or other interest in, or to, an underlying security (e.g., failing to report deferred share units that provide for the possibility of a payout in shares or other securities).

- Improper reliance on the automatic securities purchase plan exemption in Part 5 of National Instrument 55-101 *Insider Reporting Exemptions* (e.g., a board of directors deciding to grant themselves options, but not reporting the grant within 10 days).

- Insiders placing a successful order to purchase or sell securities with a broker, but not reporting the trade until they receive a confirmation slip or account statement from the broker after the 10-day reporting period.

- Insiders purchasing securities in a private placement, but not reporting the purchase until they receive certificates representing the securities from the issuer or its transfer agent after the 10-day reporting period.

- Insiders failing to report securities over which they have control or direction (e.g., securities owned by a corporation controlled by the insider or securities held by a trust of which the insider is a trustee).

- Insiders using transaction codes that do not best describe the transaction being reported.

In addition to the instructions in Form 55-102F2, we remind insiders, reporting issuers and their agents that the following resources are available for guidance on insider reporting requirements:

- SEDI Online Help at www.sedi.ca

- SEDI User Guide available on the CSA website at www.csa-acvm.ca

- CSA Staff Notice 55-308 *Questions on Insider Reporting*

- CSA Staff Notice 55-310 *Questions and Answers on SEDI*

We have also noticed that some filers are not keeping their profiles up-to-date on SEDI:

Insider profiles

- Insiders must file an amended insider profile on SEDI within 10 days of a change in the insider's name or the insider's relationship to any reporting issuer, or if the insider ceases to be an insider of any reporting issuer.

- If there has been any other change in the information disclosed in the insider's insider profile (e.g., a change of contact information), an amended insider profile must be filed at the time of the next filing on SEDI.

Issuer profile supplements

- A reporting issuer must file an amended issuer profile supplement on SEDI immediately if a new class of security is issued, if there is a change in the designation of any security, if any security has ceased to be outstanding and is not subject to issuance at a future date, or if there is any other change in the information disclosed in the issuer profile supplement.

B. Late fees and late fee waivers

We remind insiders that OSC Rule 13-502 *Fees* imposes a fee when an insider report is filed late. The fee is $50 per day per insider per issuer up to $1,000 within any one year beginning on April 1 and ending on March 31. The late fee does not apply to an insider if:

- the head office of the issuer is located outside Ontario, and

- the insider is required to pay a late fee for the filing in a jurisdiction in Canada other than Ontario.

The OSC does not charge late fees if the issuer's head office is located in British Columbia, Manitoba or Quebec as those jurisdictions charge late fees to insiders of those issuers.

Insiders who file an application under OSC Rule 13-502 for a waiver of the late filing fee should note the following:

- The application must include the insider name, the issuer name, the SEDI invoice number and the detailed reasons why the late fee should be waived.

- Late fee waivers may be granted for filing errors such as a typographical error in the transaction date.

- *Waivers for late fees for insider reports will generally NOT be granted for the following:* (i) insiders or agents who misunderstand the 10-day reporting requirement (e.g., reporting within 10 business days rather than 10 calendar days); (ii) delays caused by vacations or business trips; (iii) miscommunication between the insider and their agent or broker (e.g., failure of a broker to provide the insider with the details of a trade); (iv) negligence of filing agents; or (v) unfamiliarity with the legal obligations of an insider. Insiders have a legal obligation to file an insider report within 10 days of any change in their holdings (unless an exemption is available), and we expect insiders and their filing agents to take this obligation seriously.

VI. IMPROVEMENTS IN COMMUNICATION

A. SEDAR

(i) Enhancements

Over the past year, SEDAR has undergone a number of changes to reflect new laws and to provide improved service to users. Enhancements have been made to facilitate the following filings:

- National Instrument 81-106 *Investment Fund Continuous Disclosure*

- Multilateral Instrument 11-101 *Principal Regulator System*

- National Instrument 44-101 *Short Form Prospectus Distributions*

- National Instrument 58-101 *Disclosure of Corporate Governance Practices*

- OSC Rule 13-502 *Fees*

In July, we made a significant system enhancement through Release 8.0 that allows subscribers to connect to the SEDAR server via an existing internet connection, thus replacing the Network Dialer. In addition, a robot blocker was installed to prevent automated downloading of information. Moreover, the system was updated to allow for items such as the addition of an e-mail address in the issuer profile page. Changes that are planned focus on an improved searchability function in a variety of areas.

(ii) Making documents private

We received an increased number of requests to make documents private after we make the documents public on www.sedar.com. Except in exceptional circumstances, it is our practice not to make documents private once we have made them public on www.sedar.com.

Parts 9.1 (d) and (e) of the SEDAR Filer Manual contain guidance on making public documents private. We are revising our policy for making documents private to clarify the limited circumstances where this is permissible. This will ensure consistent and fair treatment of requests received both within the Branch and across jurisdictions.

For example, we will change the status from public to private on documents that contain personal or confidential information or that are filed under the incorrect issuer profile. We will not change the status from public to private on documents that have typographical errors or that are filed twice.

B. Service enhancements

Corporate Finance has undertaken a number of initiatives to demonstrate our commitment to deliver dependable, prompt and high quality service. These include:

(i) Enhancements to the National Cease Trade Order (CTO) database - The CTO database is a vital one-stop resource intended to help protect investors and dealers from unintentional violations of CTOs. Subscribers to the database receive real-time electronic feed of CTOs as they are issued by participating jurisdictions. Previously, the database included a listing of issuer-only CTOs. Enhancements to the database were made to include a listing of management

CTOs in addition to issuer CTOs. The database was originally launched through the Market Regulation Services Inc. website and now resides on the CSA website.

(ii) *Enhancement of reporting issuer information on OSC website* - We have provided more frequent replication of information relating to defaults and CTOs on the OSC website. In addition, the website provides a centralized location for issuers or registrants to complete filings along with instructions for filing on SEDAR.

(iii) *Greater use of plain language in various forms of our communication to market participants.* - With a focus on clarity and comprehension, we hope that the use of plain language will improve our communication with market participants.

Questions

Please refer any questions you may have to:

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