



ONTARIO
SECURITIES
COMMISSION

OSC Staff Notice 11-784 Burden Reduction

The OSC is seeking suggestions on ways to further reduce unnecessary regulatory burden, as provided in OSC Staff Notice 11-784.

We invite your comments on the Staff Notice through the survey below. Please note that each question has a 4000 character response limit.

Closing date: March 1, 2019

Thank you for sharing your thoughts with the OSC Burden Reduction Task Force.

* Required

1. Please provide your name. *

2. What is the name of your firm or company, if applicable?

3. What is your role in the capital markets? *

4. Do you have any general comments on the topic of regulatory burden reduction related to securities regulation? If so, please enter only the legislative reference for your suggestions in the box below (for example 31-103 1.1)

5. Please use the space below to provide your general comments.

We believe that reducing ongoing disclosure requirements, embracing disclosure effectiveness principles and eliminating overlap are the top priorities to reduce unnecessary regulatory burden.

Streamlining of the rules associated with the prospectus offering process should also be considered.

6. Are there operational or procedural changes that would make market participants' day-to-day interaction with the OSC easier or less costly? If so, please enter only the legislative reference for your suggestions in the box below.

NI 51-102 - Continuous Disclosure Obligations, OSC web site, especially Section 5 (ongoing requirements for issuers and insiders)

7. Please use the space below to provide your suggestions for operational or procedural changes.

An official and up-to-date version of current in-force regulations should be available on the OSC website.

The website is not very user-friendly; we see opportunities to improve navigation and effectiveness:

- There should be a clear distinction between in-force regulations and superseded or outdated materials. Superseded and outdated amendments should be either removed or stored in a separate section for information.
- Staff notices should be organized by topic (continuous disclosure review program activities, ESG, MD&A, etc.) and industry/type of issuers, as well as numerically for easy reference. Note that the logic of the numbering for staff notices is not obvious.

8. Are there ways in which we can provide greater certainty regarding regulatory requirements or outcomes to market participants? If so, please enter only the legislative reference for your suggestions in the box below.

NI 51-102 Continuous disclosure obligations

OSC web site Section 5 – Ongoing requirements for issuers and insiders

9. Please use the space below to provide your suggestions regarding how the OSC could provide greater certainty regarding regulatory requirements or outcomes.

NI 51-102 should integrate the concept of disclosure effectiveness. Specifically, disclosure requirements should be geared towards:

- best practices for use of disclosure incorporated by reference in separate documents (MD&A, Financial statements and AIF for example);

- optimizing updates of year-end disclosure from quarter to quarter when there is no change during the remainder of the year. Reporting issuers should be encouraged to cross-reference their Q1 reporting to avoid repeating the same information in the Q2 and Q3 reporting;
- optimizing use of an issuer's corporate web site to host director and corporate governance disclosure that can be referenced in the AIF and Proxy Circular (see recent web site governance disclosure requirements for TSX-listed issuers for example); and
- a review of existing continuous disclosure requirements in NI 51-102 and removal of requirements that do not focus on key information and assist or protect the investor in their investment decision-making process. Issuers should maintain their role in assessing the materiality threshold for disclosure.

10. Are there forms and filings that issuers, registrants or other market participants are required to submit that should be streamlined or required less frequently? If so, please enter only the legislative reference for your suggestions in the box below.

NI 51-102 Continuous disclosure obligations

11. Please use the space below to provide your suggestions regarding forms and filings.

We believe that there is room to reduce the regulatory requirements on many fronts:

- Streamlining quarterly disclosure requirements and focusing on key information would enhance the quality of disclosure.

While quarterly reporting provides more frequent opportunities for fulsome and transparent disclosure to investors as well as greater discipline and increased control over financial reporting, we believe that there is room to reduce the quarterly regulatory requirements, while still achieving these objectives. To this end, offering issuers the option of adopting a semi-annual reporting regime that would include the production of a quarterly highlights disclosure document (in the form of enhanced press release) as opposed to a full quarterly MD&A in Q1 and Q3 would ease the current regulatory burden on reporting issuers while providing investors with pertinent and relevant information between semi-annual reporting periods. In so doing, issuers would be free to retain the option of maintaining full quarterly reporting if they so choose.

Other jurisdictions such as the U.K., certain European countries and Australia have had positive experiences with respect to permitting semi-annual reporting. In addition, the SEC in the United States is holding a consultation and studying the possibility of moving from quarterly to semi-annual reporting. The outcome of the SEC consultation process should be in our view a determining factor on whether the OSC should provide the option of semi-annual reporting regime.

While we believe it is important for the OSC to set minimum disclosure requirements, we believe that streamlining and focusing on key information

would enhance the quality of disclosure provided while maintaining comparability among issuers.

- Eliminating disclosure overlap

We do not favour combining the AIF, MD&A and financial statements into one document, particularly as the financial statements are subject to external auditor review. However, we strongly encourage the OSC to revisit the ongoing disclosure requirements to eliminate disclosure overlaps and centralize disclosure requirements into the most relevant document.

With respect to risk disclosure, we believe there is overlap between the AIF and MD&A and other disclosure documents. We encourage the OSC to clarify the purpose of the AIF versus the MD&A to eliminate disclosure overlap.

Disclosure overlap between the MD&A and financial statements should also be addressed with respect to financial instruments, critical accounting estimates, changes in accounting policies, financial risks, transactions between related parties, capital management, off-balance sheet arrangements and liquidity and capital resources. There is an explicit mention that the MD&A should be read in conjunction with the financial statements and as such the MD&A should complement and not be required to repeat disclosure contained in the accompanying financial statements. Cross-references and incorporation by reference are key supports in this regard.

- Focusing on key information

The AIF and Management Proxy Circular disclosure should be limited to two years of historical information only. Any investor requiring more information has access to previous filings on SEDAR.

We also encourage the OSC to revisit and simplify the MD&A requirements to focus on key information. For example: remove disclosure of eight quarter summary results.

- Use of cross-references

Given the ubiquity of technology and online access, consider replacing requirements for information on dividends, trading price and volume, and lists of directors and officers in the AIF with references to the reporting issuer's web site.

We see opportunities to allow for incorporation by reference and adoption of a standard referencing vocabulary.

12. Are there particular filings with the OSC that are unnecessary or unduly burdensome? If so, please enter only the legislative reference for your suggestions in the box below.

NI 51-102 Part 8 - Business acquisition report (BAR), and NI 44-101 General prospectus requirements

13. Please use the space below to provide your comments regarding burdensome filings.

BAR is a post transaction filing and serves as a “for your information” only document. We do not believe that it has considerable use and as part of the regulatory burden review, its elimination should be considered. Quarterly reporting addresses all pre- and post-acquisition disclosure. Notably, the BAR requirement to report multiple years of historical data of the acquiree is quite onerous. We view that the BAR provides limited “timely” data as it is reported after the transaction has been completed and therefore has limited use as opposed to prospectus disclosure.

In addition, the distinction in filing deadline requirements should be rationalized such that the 90- and 120-day post-acquisition deadlines for non-venture and venture issuers, respectively, is maintained and the 75-day post-acquisition deadline is eliminated. An issuer’s quarterly disclosure ensures a minimum level of disclosure with respect to the acquisition, which can fill gaps in any BAR as well as be incorporated by reference.

Finally, if the BAR is maintained, the requirements under Item 14.2 of 51-102F5 and those under the BAR should be aligned.

The current short form system is effective in balancing investor protection and facilitating efficient capital raising for all reporting issuers. It should be the general rule with long form information required only in certain specific cases.

OSC should consider streamlining the rules associated with the prospectus offering process. As described in the alternative prospectus model, disclosure should be limited to relevant items concerning the offering and the offered securities, including description of securities offered, use of proceeds, plan of distribution, material risk factors and conflicts of interest, if any. The incorporation of continuous disclosure documents in the prospectus offering process is a good example of leveraging the existing public disclosure record in this regard, with information that is disclosed elsewhere in other filed documents incorporated by reference or updated as needed.

We believe that auditor review of interim/semi-annual financial statements should continue to be required in a short form prospectus as it provides credibility to the information presented and reduces the potential liability of directors and officers.

Where applicable, consideration should be given to recognition of documents filed in foreign jurisdictions such as the United States, the United Kingdom, the European Union and Australia to allow for incorporation by reference of such disclosure in prospectus documents. In a similar vein, disclosure requirements such as inclusion of quarterly financial statements for target entities whose jurisdiction features a reporting regime where quarterly statements are not produced creates significant challenges for acquiring issuers.

14. Is there information that the OSC provides to market participants that could be provided more efficiently?

See our responses to Questions 7 and 9.

15. Are there requirements under the OSC rules that are inconsistent with the rules of other jurisdictions and that could be harmonized? If so, please enter only the legislative reference for your suggestions in the box below.

NI 51-102 Continuous disclosure obligations

16. Please use the space below to provide your comments and suggestions around harmonization of rules.

To the greatest extent possible, OSC rules should be harmonized with those of all other Canadian provincial and territorial jurisdictions as well as the SEC in the U.S. to ensure alignment of North American capital markets. In addition, we believe there is significant opportunity for dialogue among regulators responsible for different market sectors to coordinate, align and reduce regulatory overlap. For example, in the insurance sector, regulators including the Financial Services Regulatory Authority of Ontario (FSRA), the Office of the Superintendent of Financial Institutions (OSFI), and members of the Canadian Council of Insurance Regulators (CCIR) impose significant regulatory requirements which in some cases overlap or duplicate requirements for reporting issuers under OSC regulations. Substituted compliance rules where compliance with one regulator’s rule is deemed equivalent compliance with the same requirement of another regulator could be one way to ease the overall burden on the market participant.

In all instances, the OSC requirements should not interfere with the existing IFRS. Proposed NI 52-112 Non-GAAP and other financial measures disclosures: the definition of what constitutes a non-GAAP financial measure and the distinction between “primary” financial statements and financial statements (including Notes to financial statements) is very confusing and the requirements can be considered misaligned with the desire for regulatory burden reduction.

Increased sustainability disclosures and narratives are intended to enhance long-term decision-making and value creation. Companies are being burdened with various investor expectations for sustainability information. However, there isn’t clear guidance and standards for public companies to disclose sustainability information. Currently, much of the performance is focused on non-financial performance issues. Comparability amongst peer companies also remains difficult. Several frameworks are being circulated that are adding to complexity. We believe that any requirements related to ESG disclosure should be limited to the disclosure of key material information only.

17. Are there specific requirements that no longer serve a valid purpose? If so, please enter only the legislative reference for your suggestions in the box below.

n/a

18. Please use the space below to provide your comments and suggestions around requirements that may no longer serve a valid purpose.

n/a

19. Are there ways to enhance and improve how investors experience disclosure provided: (i) before they invest; (ii) as part of ongoing public disclosure; and (iii) by registrants?

We believe that disclosure effectiveness and reducing disclosure overload enhance investor experience and focus on key information.

As previously mentioned, the ability to incorporate by reference and cross-reference existing or concurrently filed documents into disclosure such as the MD&A would enhance the investor experience by avoiding unnecessary duplication or the potential for inconsistencies across a wider number of documents.

The proposed NI 52-112 Non-GAAP and Other Financial Measures Disclosures ("Proposed NI 52-112") seems misaligned with the desire for burden reduction. For instance, we believe that some of the elements in the Proposed NI 52-112 will increase the disclosure burden, while simultaneously diluting key messages and potentially confusing investors (see response to Question 21 below).

We also believe that the SEDAR system is outdated and cumbersome to navigate. SEDI is also not user-friendly and the reports generated are not easy to interpret.

20. Please use the space below to provide your suggestions for modernizing information provided to investors because of regulatory requirements. For example, specific areas where we could promote the use of plain language?

We support efforts to enhance electronic delivery of disclosure documents by reporting issuers to investors. We believe that electronic delivery should be the prevailing standard, while ensuring that investors retained an option to receive paper documents. We further support the use of notice-and-access to deliver investor materials in the context of shareholder meetings.

Thought should be given to offering a more effective system for investors to search and collate filed documents, particularly where the increased use of cross-references and incorporation by reference is permitted and encouraged.

21. Do you have any other comments for the OSC Burden Reduction Task Force?

We applaud the OSC's efforts to examine the regulatory burden faced by reporting issuers.

We believe that, in the context of an ever-evolving marketplace and regulatory environment, it is important that the OSC prioritize at a minimum the maintenance of the overall regulatory burden on marketplace participants, notably reporting issuers, such that any new requirements are not simply added to the existing set of regulatory obligations. Where new regulations are proposed, these should be considered in the context of the necessity of rationalizing existing regulatory requirements and taking the opportunity to ensure that they are focused on material information key to investor protection and decision-making. Absent such consideration, the regulatory burden can

quickly increase and nullify any gains made through the present laudable exercise.

As an example, we believe that the Task Force should consider the impact of the Proposed NI 52-112 Non-GAAP and other financial measures disclosures in its quest to reduce regulatory burden. We are concerned that the Proposed NI 52-112 will result in unnecessarily heavy disclosure that will dilute key messages and potentially confuse investors. In addition, some elements of the Proposed NI 52-112 are in contradiction with disclosure effectiveness principles, which have been supported and promoted in recent years by Canadian and U.S. standard setters. Please refer to our Comment letter on Proposed NI 52-112 for details.

Finally, it is our firm belief that by reducing regulatory overlap, adopting innovative disclosure practices accepted in other jurisdictions, and maintaining a commitment to a disclosure system based upon principles, the Canadian public markets will continue to be a leading option for companies in Canada and around the world.

22. If you don't have enough space for your response to any question above, please use the space below to continue your comments. Please indicate which question these comments relate to.