ONTARIO SECURITIES COMMISSION

OSC Staff Notice 51-730

Corporate Finance Branch

2019 Annual Report

December 18, 2019

Ontario

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Director's Message and Executive Summary

With the legalisation of recreational cannabis, the establishment of the OSC Burden Reduction Task Force, and the continued progress of previously announced Canadian Securities Administrators (CSA) regulatory burden reduction initiatives, the fiscal year ended March 31, 2019 (fiscal 2019) was an eventful year for the Corporate Finance Branch (the Branch).

I am proud to share our Annual Report (the Report) which sets out the Branch's operational and policy work for 2019.

This year was illustrative of the dynamic nature of the Ontario capital markets and underscored the importance of being able to provide responsive regulation to support the Ontario Securities Commission's broader mandate to protect investors, foster fair and efficient capital markets and contribute to the stability of the financial system and the reduction of systemic risk.

For example, we saw the cannabis industry continue to emerge as an important player in Canadian public markets. In October 2018, CSA Staff Notice 51-357 *Staff Review of Reporting Issuers in the Cannabis Industry* was published which details the CSA's findings following a review of disclosure of 70 reporting issuers operating in the cannabis sector and highlights best practices for issuers in this industry to provide investors with information that will help them make informed investment decisions.

A second notice relating to the cannabis industry, CSA Multilateral Staff Notice 51-359 *Corporate Governance Related Disclosure Expectations for Reporting Issuers in the Cannabis Industry*, was published this past November. This multilateral notice identifies specific problem areas in connection with governance practices in the cannabis industry and sets out staff expectations in these areas. We continue to actively oversee this emerging sector with timely guidance to support disclosure best practices and improved corporate governance.

Responsive Regulation

Following consultations undertaken by the OSC Burden Reduction Task Force, the Branch quickly responded to provide greater deal certainty to mining issuers through the publication of OSC Staff Notice 43-706 *Pre-filing Review of Mining Technical Disclosure*. Now, mining reporting issuers can seek staff's preliminary views on certain technical disclosure documents helping them avoid potentially costly and disruptive delays in the offering process.

In November, the OSC published *Reducing Regulatory Burden in Ontario's Capital Markets*. This report contains decisions and recommendations on how to reduce regulatory burden for Ontario market participants, 13 of which relate to Corporate Finance issuers. Some key new initiatives include the development of a process for issuers to request confidential staff review of an entire prospectus prior to announcing an offering, a review of options for extending the filing deadline for Reports of Exempt Distribution, and providing clearer information on issuer and management cease-trade orders.

We also worked with other CSA regulators to publish two notices and requests for comment on proposed amendments in connection with at-the-market distributions and business acquisition reporting requirements which aim to reduce the regulatory burden on reporting issuers. These, and other CSA regulatory burden reduction initiatives relating to primary business requirements, alternative offering models, continuous disclosure (CD) requirements and electronic delivery of documents, will continue to be part of the Branch's main policy focus in 2020.

Compliance
This Report provides insight into how the Branch has undertaken its operations throughout fiscal 2019, including the following:

- ***Continuous Disclosure Review Program***

Key compliance trends noted in reviews carried out through our CD review program in fiscal 2019 included trends relating to MD&A disclosure, mining technical reports, the use of non-GAAP financial measures, forward-looking information and executive compensation.

- ***Offerings – Public***

In fiscal 2019, the Branch receipted approximately 440 prospectuses, representing an increase from the prior year, primarily due to a greater number of filings by cannabis issuers. Key issues noted by staff during prospectus reviews included issues relating to an issuer's primary business, sufficiency of proceeds and financial condition, as well as issues relating to audit committees in the context of an IPO, among others.

- ***Offerings – Exempt Market***

This year, the Branch conducted a joint review with the Compliance and Registrant Regulation branch of issuers that accessed the exempt market without using a dealer, the focus of which were issuers relying on new prospectus exemptions in Ontario. Compliance issues noted related to reliance on the family, friends and business associates exemption, reliance on the accredited investor exemption, non-compliance with the investment limits under the offering memorandum exemption, and discrepancies between the reporting of trades under reports of exempt distribution and an issuer's records of securities issued.

- ***Exemptive Relief Applications***

We reviewed over 280 applications for exemptive relief in fiscal 2019. This report includes guidance for applications relating to reporting issuer status, revocations of cease trade orders, business acquisition reports, and relief from certain financial statement requirements in connection with reverse takeovers.

In addition to the above, you will also find in this report insider reporting tips for issuers and insiders, an update on designated rating organizations and financial benchmarks, as well as information relating to other administrative matters that may be of interest to issuers and their advisors.

Engagement with our stakeholders continues to be a critical component of our work. We hope that this Report will serve as a guide to better understand disclosure and other regulatory obligations under Ontario securities laws.

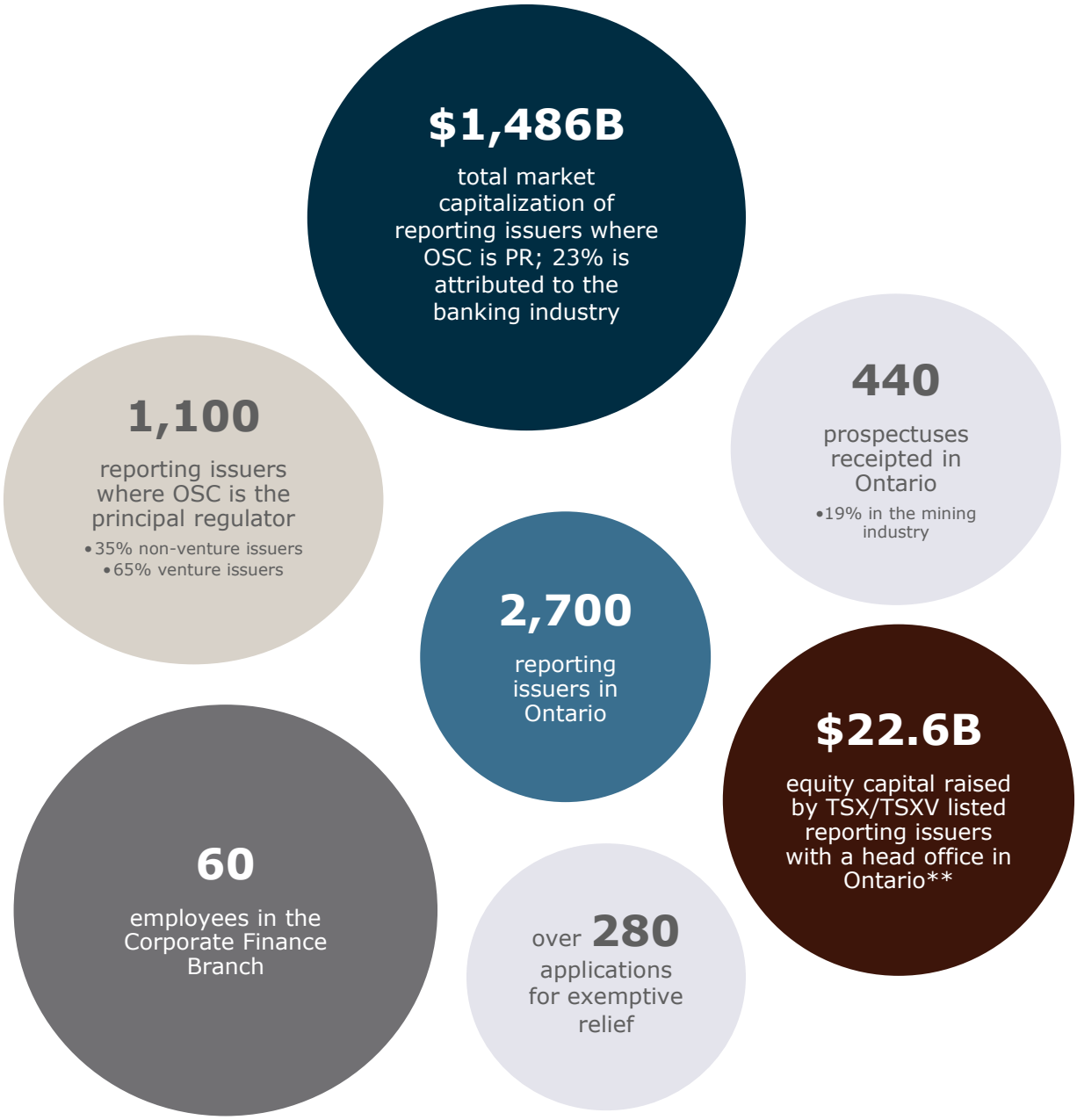
As in previous years, we welcome any questions or feedback that you may have.

I would like to conclude by thanking Branch staff for their continued dedicated support and professionalism in carrying out their regulatory roles in a manner consistent with the OSC mandate.

Kind regards,

Sonny Randhawa
Director, Corporate Finance
Ontario Securities Commission

Fiscal 2019 Snapshot*



** Note: all figures are as at / for the fiscal year ended March 31, 2019 and are approximate or rounded.*
*** Includes listed convertible debt.*

Part A: Introduction

- Objectives
- Branch Mandate

Objectives

This Report provides an overview of the Branch's operational and policy work during fiscal 2019, discusses future policy initiatives, and sets out how we interpret and apply our rules in certain areas. The Report is intended for individuals and entities we regulate, their advisors, as well as investors.

This Report aims to

- reinforce the importance of compliance with regulatory obligations
- improve disclosure in regulatory filings
- provide insights on trends
- provide guidance on novel issues
- inform on key policy initiatives

Branch Mandate

As a regulatory agency, the OSC administers and enforces the *Securities Act* (Ontario) (the Act) and the *Commodity Futures Act* (Ontario). Specifically, the OSC works to

Investor protection	• provide protection to investors from unfair, improper or fraudulent practices.
Efficient capital markets	• foster fair and efficient capital markets and confidence in capital markets.
Stability and reduction of systemic risk	• contribute to the stability of the financial system and the reduction of systemic risk.

The Act was recently amended to include facilitating innovation as a fundamental principle for the OSC to consider in carrying out its mandate.

A key part of the mandate of the Branch is issuer regulation. Regulation in this area is broad and takes many forms, including

Issuer regulation	• review of public distributions of securities, • review of exempt market activities and related policy development, • continuous disclosure reviews of reporting issuers, • review and consideration of applications for relief from regulatory requirements, and • issuer related policy initiatives.

Other areas covered by our Branch mandate include

Insider reporting	• review of insider reporting,
Designated rating organizations (DROs)	• review of credit rating agencies designated as DROs,
Listed issuer regulation	• oversight of the listed issuer function for OSC recognized exchanges, and • policy initiatives for listed issuer requirements.

We regularly consult and partner with other branches across the OSC in executing our functions. For example, we partner with the Market Regulation branch for oversight of the listed issuer function and the Compliance and Registrant Regulation branch (CRR Branch) for oversight of the exempt market. We also regularly consult with the Enforcement branch on matters of non-compliance.

Part B: Compliance

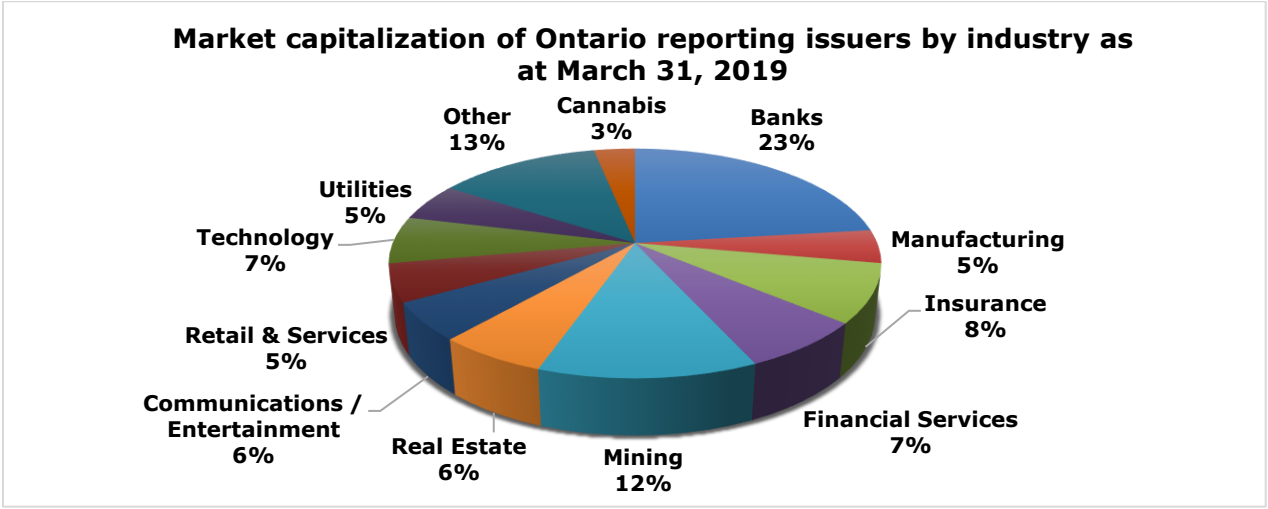
- Continuous Disclosure Review Program
- Offerings - Public
- Exempt Market
- Exemptive Relief Applications
- Insider Reporting
- Administrative Matters
- Designated Rating Organizations

Continuous Disclosure Review Program

Under Canadian securities laws, reporting issuers must provide timely and periodic continuous disclosure about their business and affairs. Where an issuer has a head office in Ontario, or has a significant connection to Ontario, the OSC has primary responsibility as principal regulator for reviewing that issuer's CD. Disclosure documents include periodic filings such as

- interim and annual financial statements,
- management's discussion and analysis (MD&A),
- certifications of annual and interim filings,
- management information circulars,
- annual information forms (AIFs), and
- technical reports.

The aggregate market capitalization of Ontario reporting issuers was approximately $1,486 billion as at March 31, 2019 ($1,260 billion as at March 31, 2018). The three largest industries by market capitalization were banking, mining, and insurance.



Overview of the CD review program

Our CD review program is risk-based and outcome focused. It includes planned reviews based on risk criteria as well as ongoing issuer monitoring through news releases, media articles, complaints and other sources. The CD review program is conducted pursuant to the powers in section 20.1 of the Act and is part of a harmonized CD review program conducted by the CSA.

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

Objectives of the CD review program

The CD review program has two main objectives

Compliance	to assess whether reporting issuers are complying with their disclosure obligations, and
Issuer education and outreach	to help reporting issuers better understand their disclosure obligations.

We assess issuer compliance with CD requirements through a review of an issuer's filed documents, website and social media. This review function is critical to facilitating fair and efficient markets, investor protection, and informed investment decision making and trading. CD reviews also support the raising of new capital, as many issuers raise funds through short form prospectuses which incorporate CD documents by reference.

Types of CD reviews

In general, we conduct either a "full" review or an "issue-oriented" review (IOR) of an issuer's CD.

IOR	An in-depth review focusing on a specific accounting, legal or regulatory issue that we believe warrants regulatory scrutiny.
Full review	Broad in scope and generally covering an issuer's most recent annual and interim financial statements and MD&A, AIF, annual reports, information circulars, news releases, material change reports, website, social media disclosure, investor presentations, and SEDI filings.

In planning our full reviews, we draw on our knowledge of issuers and their industries and use risk-based criteria to identify issuers with a higher risk of non-compliant disclosure. We may also select an issuer for review based on a complaint. The criteria are designed to identify issuers whose disclosure is likely to be materially improved or brought into compliance with securities laws or accounting standards as a result of our intervention. Our risk-based procedures incorporate both qualitative and quantitative criteria which we review regularly to keep current

with market changes. We also monitor novel and high growth areas of financing activity when developing our review program.

IORs can be focused on a specific issue related to an individual issuer or on an emerging area of risk related to a broad number of issuers (in some cases, industry specific). Conducting IORs broadly allows us to

- monitor compliance with requirements and provide a basis for communicating interpretations, staff disclosure expectations and areas of concern,
- quickly address specific areas where there is heightened risk of investor harm,
- identify common deficiencies,
- provide industry specific disclosure examples to assist preparers in complying with requirements, and
- assess compliance with new accounting standards.

CD review program outcomes for fiscal 2019

For each issuer, we measure outcomes of a CD review by tracking the following

- prospective disclosure enhancements,
- education and awareness, and
- outcomes where immediate action was required by the issuer, such as a refiling.

Immediate action was required by the issuer in 28% of our full CD reviews and 21% of our IORs (fiscal 2018: 31% and 8%, respectively). Given our risk-based criteria to identify issuers, the outcomes on a year-over-year basis should not be interpreted as trends since the issues and issuers reviewed each year are generally different.

Prospective disclosure enhancements address disclosures that were either not presented or not sufficiently detailed to allow for an informed investment decision but did not reach a level of materiality where immediate action would be necessary.

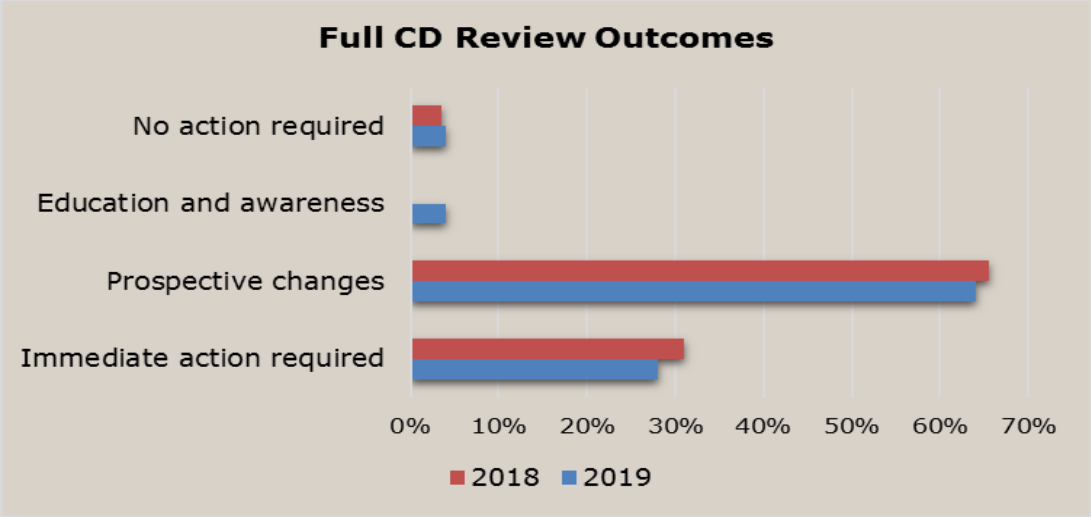
Refilings

Staff generally request that a document be refiled when it contains material deficiencies. Examples of instances where staff have requested refilings include

- refiling of an MD&A by cannabis issuers to comply with the disclosure expectations summarized in CSA Staff Notice 51-352 (Revised) *Issuers with U.S. Marijuana-Related Activities*,
- refiling of financial statements to correct material misstatements,

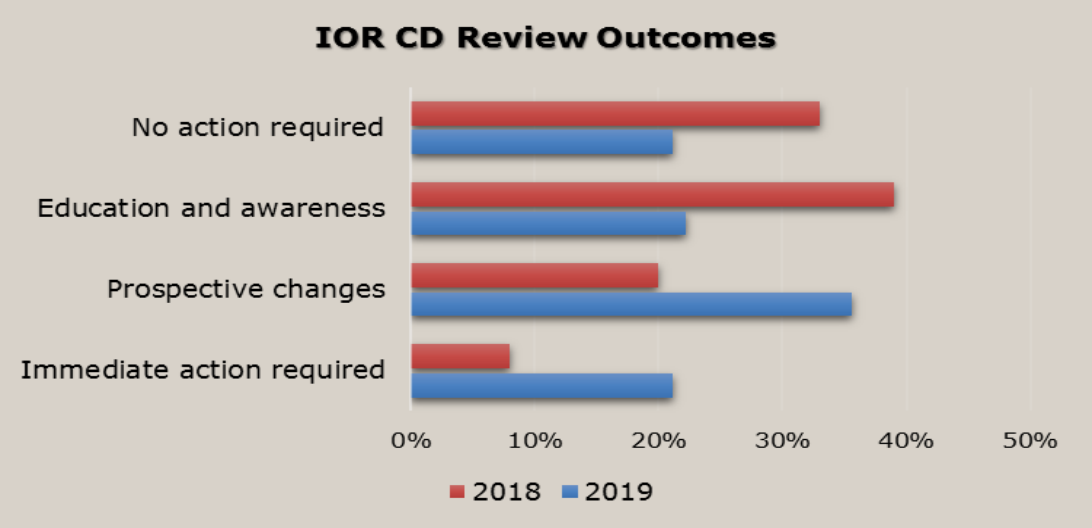
- refiling of an MD&A to provide further detail regarding investment portfolio holdings,
- filing of a clarifying news release when an issuer failed to include sufficient disclosure on material assumptions, milestones and risk factors pertaining to forward-looking information (FLI) or failing to update the market on FLI, and
- refiling of a technical report where the report filed was not in compliance with National Instrument 43-101 *Standards of Disclosure for Mineral Projects* (NI 43-101).

28% of full reviews and **21%** of IORs resulted in immediate action being required by the issuer



Significant fluctuations in outcomes from year to year are anticipated due to the differing nature of IORs conducted in a given fiscal year. For example, in fiscal 2019 we reviewed reporting issuers in the cannabis industry, while in fiscal 2018 we reviewed (i) the climate change-related disclosure of issuers and (ii) the distribution disclosures and non-GAAP financial measures in the real estate industry.

Specifically, the climate change-related disclosure reviews were "research oriented" for which few staff comment letters were sent out; however, these reviews resulted in the publication of a staff notice and the outcomes were categorized as "education and awareness". These reviews raise market awareness through the publication of staff notices discussing review findings, staff disclosure expectations and providing examples of better industry specific disclosure.



Generally, MD&A and mining technical reports (and related news releases) continue to be the documents we most often request issuers to refile or file (in instances when documents were not filed in the first place). We encourage issuers to continue to review and improve their disclosure, including in those areas noted below which we frequently comment on as part of our reviews.

Trends and guidance

Management's Discussion and Analysis

MD&A is the cornerstone of a reporting issuer's overall financial disclosure that provides an analytical and balanced discussion of the issuer's results of operations and financial condition through the eyes of management. MD&A disclosure should be specific, useful and understandable.

The MD&A requirements are set out in National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102), specifically in Part 5 *Management's Discussion and Analysis* and in Form 51-102F1 *Management's Discussion and Analysis* (Form 51-102F1). The following table presents a summary of certain key issues, observations and best practices identified in our reviews.

Issue	Observations	Best practices
Liquidity and capital resources	Issuers disclose that "management believes the issuer has adequate working capital to fund operations" or "has adequate cash resources to finance future	Provide insight beyond the numbers by • discussing material cash requirements, • explaining how liquidity obligations have been settled or will be settled, and • quantifying working capital needs and how these needs relate to future business plans or milestones.

Issue	Observations	Best practices
	foreseeable capacity expansions".	Be specific about the period(s) to which the discussion applies and when additional financing is relied upon.
Discussion of operations	The variances in financial statement line items are stated with limited narrative discussion of the factors resulting in the variance and any trends or potential trends.	The discussion should • include a detailed, analytical and quantified discussion of the various factors that affect revenues and expenses beyond the percentage change or amount, • provide insight into the issuer's past and future performance, and • be clear and transparent to be informative. Be specific and disclose information that readers need to make informed investment decisions.
Risks and uncertainties	Itemized lists of risks are provided that are general in nature.	Be specific about • the material risks and uncertainties applicable to the issuer, and • the anticipated significance and impact those risks may have on the issuer's financial position, operations and cash flows. Explain how the issuer is mitigating the risk and update risk disclosures when circumstances change.
Business plan	Early stage or development issuers do not provide sufficient detail regarding their business plans	Identify concrete milestones in the issuer's business plans. For each milestone, describe the steps and associated costs required to complete and identify the anticipated timing of completion.

Reminder: Issuers that have significant projects that have not yet generated revenue are required by Item 1.4(d) of Form 51-102F1 to describe each project including the plan for the project and status of the project relative to that plan, and expenditures made and how these relate to anticipated timing and costs to take the project to the next stage of the project plan. This requirement is applicable to all issuers with significant projects that have not yet generated revenue, not just development stage issuers or venture issuers.

Mining disclosures

When filing a technical report supporting a mineral resource estimate, NI 43-101 requires disclosure of the key assumptions, parameters, and methods used by the qualified person in determining that the mineralization has reasonable prospects for eventual economic extraction, and therefore meets the 2014 CIM Definition Standards for Mineral Resources & Mineral Reserves definition of a "mineral resource".

For a reasonably informed reader to understand the basis used by the qualified person to determine the mineral resource estimate, disclosure should include the following criteria

- cut-off grade, and continuity of mineralization at the selected cut-off grade,
- metallurgical recovery of the commodities or products of interest,
- smelter payments,
- commodity price or product value,
- methods for mining and processing the mineralization, and
- costs related to mining, processing, and general and administration.

In addition, specific information about constraining boundaries, such as pit shells for open pit deposits, potentially mineable shapes for underground deposits, and practical surface limitations need to be considered and should be used in conjunction with the above criteria for the preparation of mineral resource estimates.

If legacy data (collected by previous project operators) forms part of the dataset for a mineral resource estimate, disclosure about the qualified person's efforts to adequately verify that data needs to be sufficiently disclosed in the technical report.

Issuers that disclose potential economic outcomes based on mineral resources should be aware that forecasts of cash flows, operating costs, capital costs, production rates, or mine life are all considered to be the results of a preliminary economic assessment (PEA). Such disclosure may trigger the requirement to file a technical report supporting these potential economic outcomes.

We also continue to see non-compliant disclosure in technical reports of PEAs based on inferred mineral resources which combine potential economic outcomes from PEAs with economic outcomes based on more advanced mining studies used to support mineral reserves. Issuers that combine or integrate these economic outcomes together in their disclosure may be required to amend and refile their technical report.

Reminder: Issuers that disclose a PEA on an advanced property containing mineral reserves should follow the guidance outlined in CSA Staff Notice 43-307 *Mining Technical Reports – Preliminary Economic Assessments*.

We encourage public mining issuers to request a review of the issuer's publicly filed technical disclosure, as discussed in OSC Staff Notice 43-706 *Pre-filing Review of Mining Technical Disclosure*.

In addition, issuers with mineral reserves on undeveloped mineral projects should regularly determine whether that mineral reserve is still economically viable, typically by applying a discounted cash flow analysis with updated assumptions.

Non-GAAP financial measures

Non-GAAP financial measures continue to be included by many issuers in news releases, MD&A, prospectus filings, marketing materials, investor presentations and on issuers' websites, as issuers believe this information provides additional insight into their overall performance.

As in past years, we continue to be concerned by the prominence given to disclosure of non-GAAP financial measures, the lack of transparency about the various adjustments made in arriving at non-GAAP financial measures, and the appropriateness of the adjustments themselves. Issuers should consider the guidance in CSA Staff Notice 52-306 (Revised) *Non-GAAP Financial Measures* (SN 52-306) and in prior Corporate Finance Branch Annual Reports.

As the volume and nature of non-GAAP financial measures vary by industry and issuer, we note below a few examples and reminders of staff's expectations on an industry basis.

Example: cash cost per gram

- *clearly explain the nature of adjustments made in arriving at non-GAAP financial measures and any judgements used in calculating them*
- *ensure that all financial measures which are non-GAAP in nature are identified as such and are accompanied by the disclosures outlined in SN 52-306*

Cannabis

Example: AFFO

- *apply the measure consistently from period to period*
- *clarify how management uses each measure*
- *clearly identify the most directly comparable GAAP measure*
- *present GAAP information with equal or greater prominence than non-GAAP financial information*

Real Estate

Examples: EBITDA, adjusted EBITDA

- *do not describe adjustments as non-recurring, infrequent or unusual, when a similar loss or gain is reasonably likely to occur within the next two years or occurred during the prior two years*
- *when presenting EBITDA, it is misleading to exclude amounts for items other than interest, taxes, depreciation and amortization*

Technology

Regulatory Developments

To improve the disclosure surrounding non-GAAP financial measures and certain other financial measures, the CSA is intending to replace SN 52-306 with a Proposed National Instrument 52-112 *Non-GAAP and Other Financial Measures Disclosure* and a related proposed Companion Policy (Proposed Instrument).

The Proposed Instrument, published on September 6, 2018 for a 90-day comment period sets out disclosure requirements for non-GAAP financial measures and other financial measures (i.e., segment measures, capital management measures, and supplementary financial measures as defined in the Proposed Instrument). We plan to publish an update to the Proposed Instrument in the near future.

Forward-looking information

Many issuers disclose FLI in news releases, MD&A, prospectus filings, marketing materials, investor presentations or on their website. FLI should provide valuable insight about the issuer's business and how the issuer intends to attain its corporate objectives and targets.

We continue to see deficiencies in FLI disclosure including a lack of balanced discussion of the key assumptions used and the risk factors inherent in the FLI. Issuers should consider the guidance in prior Corporate Finance Branch Annual Reports.

Executive compensation

If a reporting issuer is required to send an information circular to security holders, the reporting issuer must disclose executive compensation information as required by section 9.3.1 of NI 51-102 and Item 8 of Form 51-102F5 *Information Circular* (Form 51-102F5). Non-venture issuers must file this disclosure within 140 days after the issuer's most recently completed financial year and venture issuers must file this disclosure within 180 days after the issuer's most recently completed financial year. A reporting issuer that is not required to send an information circular to security holders must comply with section 11.6 of NI 51-102, which requires the same executive compensation information to be disclosed within the above-noted timeframes.

A reporting issuer may rely on the exemption from executive compensation disclosure under section 9.5 of NI 51-102 only in instances where the proxy solicitation requirements of the laws under which the reporting issuer is incorporated are substantially similar to the requirements of Part 9 of 51-102. In this regard, staff may take the position that a reporting issuer should file executive compensation disclosure in the context of a CD review or a prospectus review, if such disclosure has not been filed close to 140 days after the end of the issuer's most recently completed financial year for non-venture issuers, or 180 days after the end of the issuer's most recently completed financial year for venture issuers.

Women on boards and in executive officer positions

The disclosure requirements regarding women on boards and in executive officer positions are set out in National Instrument 58-101 *Disclosure of Corporate Governance Practices* and have been in place for five annual reporting periods. The disclosure requirements are intended to increase transparency for investors and other stakeholders regarding the representation of women on boards and in executive officer positions and the approach that specific TSX-listed issuers take in respect of such representation. This transparency is intended to assist investors when making investment and voting decisions.

On October 2, 2019, CSA Multilateral Staff Notice 58-311 *Report on Fifth Staff Review of Disclosure regarding Women on Boards and in Executive Officer Positions* (CSA Staff Notice 58-311) was published. CSA Staff Notice 58-311 reports the findings of our fifth review of disclosure regarding women on boards and in executive officer positions. Of note, 73% of issuers in the review sample had at least one woman on their board and the overall percentage of board seats occupied by women was 17%.

The CSA will continue to monitor trends in this area.

Corporate governance related disclosure expectations for reporting issuers in the cannabis industry

On November 12, 2019, we along with other participating CSA jurisdictions published CSA Multilateral Staff Notice 51-359 *Corporate Governance Related Disclosure Expectations for Reporting Issuers in the Cannabis Industry*.

The notice outlines some of the specific problems we are seeing with governance practices in the cannabis industry and provides our expectations in these areas. In particular, we have observed instances of

- inadequate transparency relating to the cross-ownership of financial interests by cannabis reporting issuers (or their directors and officers) involved in mergers, acquisitions or other significant corporate transactions (M&A Transactions). Staff are of the view that, in the context of these transactions, the cross-ownership of financial interests is material information for investors and their investment/voting decisions and should be disclosed.

- reporting issuers identifying board members as being independent, without giving adequate consideration to potential conflicts of interest, or other factors that may compromise their independence. The notice discusses considerations with regard to the independence of board members, including the development of a written code of business conduct and ethics that addresses these and other governance related matters.

The notice provides good governance and disclosure-related practices for reporting issuers in the cannabis industry, including in the context of M&A Transactions. This will allow security holders

to make their own determination about the merits of these transactions, considering any cross-ownership of financial interests as well as disclosure about how the parties addressed any governance concerns.

As stated in the notice, we will continue to monitor governance practices and related disclosure in the cannabis industry through our review program activities moving forward.

While the notice has been directed towards cannabis reporting issuers, its content is equally relevant to other issuers, including those in emerging growth industries.

Issue-oriented review staff notices published in fiscal 2019

During fiscal 2019, 78% of our reviews were issue-oriented (fiscal 2018: 91%). We published a staff notice summarizing the findings from an IOR on issuers operating in the cannabis industry.

Disclosures in the Cannabis Industry

The cannabis industry has benefited from increasingly permissive legal frameworks and has grown significantly as an emerging public market sector. Cannabis issuers need to provide investors with transparent information about financial performance and risks and uncertainties to support informed investing decisions.

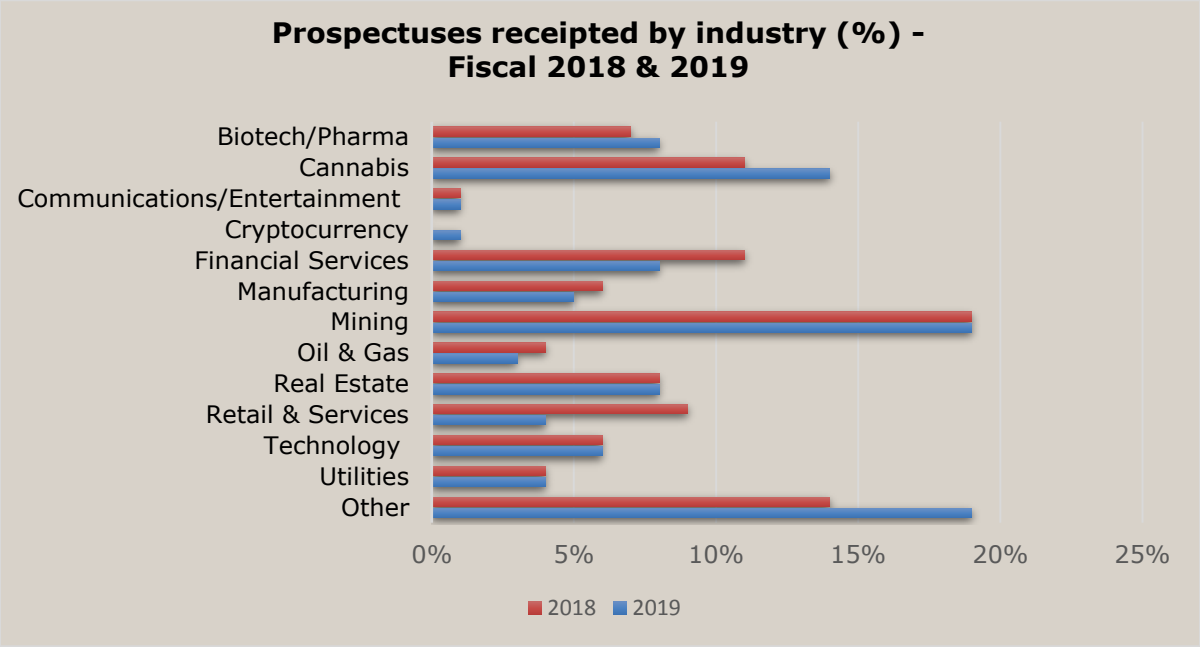
For more information see CSA Staff Notice 51-357 *Staff Review of Reporting Issuers in the Cannabis Industry*.

We continue to monitor the issues identified in the IOR as well as issues identified in full reviews. This includes reviewing disclosure to confirm that issuers have provided prospective disclosure enhancements as requested by staff. Where an issuer fails to make an agreed prospective disclosure enhancement, staff will consider whether an alternative action such as a refiling is necessary.

Offerings - Public

Statistics

Another key component of our compliance work stream is the review of offering documents. In fiscal 2019, approximately 440 prospectuses that were filed in Ontario were receipted, higher than in fiscal 2018 (400). These filings covered a wide range of industries with mining, cannabis and financial services being the most active sectors based on the number of offerings.



Trends and guidance

In fiscal 2019, the number of prospectuses we reviewed where the OSC was the principal regulator was higher than the prior fiscal year. While the mining industry continued its strong performance in the Canadian capital markets in fiscal 2019, a significant factor in the increase in volume was the interest in the cannabis sector given the legalization of cannabis for recreational use in October 2018.

Tip: The guidance in this section also applies to prospectus-level disclosure included in an information circular in connection with a proposed significant acquisition or a restructuring transaction as required by Item 14.2 of Form 51-102F5.

Key takeaways from our work reviewing offering documents in fiscal 2019 are set out below. Many of the matters highlighted could benefit from pre-file discussions between issuers and staff to avoid delays at the time of the prospectus filing.

Reminder: The process to submit a pre-file to staff is outlined in National Policy 11-202 *Process for Prospectus Reviews in Multiple Jurisdictions*.

Primary business in an initial public offering (IPO)

The disclosure requirements for an issuer's primary business are one of the areas currently under consideration as part of the *Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers* policy initiative (see Part C for further details). Until this project is completed, the guidance issued for primary business in OSC Staff Notice 51-728 *Corporate Finance Branch 2016-2017 Annual Report* continues to apply.

Disclosure improvements

Disclosure enhancements, where we required material disclosure changes to a prospectus, remained our most consistent outcome. Highlighted below are areas where we frequently find deficiencies.

Description of the business and regulatory environment	Issues may arise in circumstances where an issuer • appears to have no business or the offering is a blind pool, • has a complex corporate structure, • has a significant change in business or operations, is in the cannabis industry or cryptocurrency sector and lacks disclosure about its specific regulatory environment, or • has recently completed a significant acquisition or capital restructuring where a securities regulatory review has not been carried out.
Risk factors relating to the business and/or offering	Avoid boilerplate language and tailor the disclosure to the issuer's situation (e.g. assess political/regulatory risk, discuss factors that may affect the issuer's title to its assets). • Be specific about any new risks affecting the issuer's business. • Discuss any steps the issuer has taken to mitigate the risk. • Do not include risk factors that do not apply to the issuer just because another issuer in the same industry does.

MD&A disclosure in a long form prospectus	• Include relevant information and provide sufficient detail, especially regarding those items highlighted in this report under the heading "Part B: Compliance – Continuous Disclosure Review Program – Trends and Guidance". • MD&A included in a long form prospectus should be just as comprehensive as a stand-alone MD&A.
Use of proceeds	• Provide sufficient detail (via an itemized list) and be comprehensive. Generic phrases such as "for general corporate purposes" are insufficient disclosure. • If proceeds are being raised to take advantage of favourable market conditions, state so clearly in the prospectus. • Use a table format to explain and disclose variances between the intended and actual uses of proceeds from prior financings, if not already disclosed in the MD&A.

Sufficiency of proceeds and financial condition of an issuer

The Act sets out specific circumstances under which a receipt for a prospectus shall not be issued. One example is where the aggregate of the proceeds being raised under the prospectus together with the other resources of the issuer are insufficient to accomplish the purpose of the offering as stated in the issuer's prospectus. The same considerations apply for a non-offering prospectus.

As such, a critical part of every prospectus review is considering the issuer's financial condition and intended use of proceeds (or available funds for a non-offering prospectus). A prospectus must contain clear disclosure of how the issuer intends to use the proceeds raised in the offering as well as disclosure of the issuer's financial condition, including any liquidity concerns. We may request issuers to include disclosure to describe an issuer's financial condition, including for example disclosure about negative cash flows from operating activities, working capital deficiencies, net losses and significant going concern risks. This disclosure is important to investors because it provides appropriate warnings about significant risks that the issuer is facing or may face in the short term and may help investors avoid or minimize negative consequences when making investment decisions.

In some instances, an issuer's representations about its ability to continue as a going concern and the period during which it expects to be able to continue operations may be inconsistent with the issuer's historical statements of cash flows (in particular, its cash flows from operating activities). In these cases, we may request that the issuer provide a cash flow forecast or financial outlook-type disclosure to support its expected period of liquidity (i.e., ability to continue operations). However, disclosure on its own may not be sufficient to satisfy our receipt refusal concerns in certain circumstances, particularly where the issuer's assumptions on future changes in operations are not objective and supportable.

Reminder: A principal purpose of the sufficiency of proceeds receipt refusal provision is to protect the integrity of the capital markets, which would be harmed if an issuer ceased operations on account of insufficient funds shortly after completing a public offering.

An issuer may need to change the structure of an offering to address concerns regarding the issuer's financial condition (e.g. setting a minimum subscription or finding additional sources of financing).

For issuers filing a base shelf prospectus, we may take the view that the structure of a base shelf prospectus is not appropriate given the issuer's financial condition and uncertainty of financing. Typically, receipt refusal concerns on financial condition arise if the issuer does not appear to have sufficient cash resources to continue operations for the next 12 months or to meet concrete developmental milestones expected to be completed in the next 12 months given the business plan and intention of the issuer. In these cases, to address our concern that incremental drawdowns may be insufficient to satisfy the issuer's short-term liquidity requirements, we may request that the issuer

- withdraw the base shelf and file a short form prospectus with a minimum subscription amount,
- withdraw the base shelf and file a short form prospectus with a fully underwritten commitment, or
- arrange for additional committed sources of financing.

Staff note that any additional financing should be closed before an issuer is cleared for final.

For more information and guidance, issuers, including those filing a base shelf or non-offering prospectus, should review CSA Staff Notice 41-307 *Corporate Finance Prospectus Guidance - Concerns regarding an issuer's financial condition and the sufficiency of proceeds from a prospectus offering*.

Audit committees in place in IPOs

Where an issuer files an IPO prospectus, it must have an audit committee in place that meets the composition requirements prescribed in National Instrument 52-110 *Audit Committees* (NI 52-110) no later than the date of the receipt for the final prospectus.

Non-venture issuers: must have an audit committee in place that is composed of at least three members, all of whom are independent and financially literate as defined in NI 52-110 (subject to exemptions set out in NI 52-110).

Venture issuers: must have an audit committee in place that is composed of at least three members, a majority of whom are not executive officers, employees or control persons of the issuer or of an affiliate of the issuer (subject to exemptions set out in NI 52-110).

Reverse takeover transactions (RTO)

Issuers conducting their first public offering following an RTO should be mindful of the requirements in Item 10A.1 of Form 44-101F1 *Short Form Prospectus*. If the RTO was completed after the end of the financial year in respect of which the issuer's current AIF is incorporated by reference into the short form prospectus, the prospectus is required to include the same disclosure about the RTO acquirer that would be contained in Form 41-101F1 *Information Required in a Prospectus* (Form 41-101F1) if the RTO acquirer were the issuer of the securities being distributed.

Issuers should consider whether their current CD and documents incorporated by reference into the prospectus satisfy the disclosure requirements in National Instrument 41-101 *General Prospectus Requirements* (NI 41-101) in respect of the RTO acquirer, including financial statements for the required periods. Some of the most common deficiencies we note include

- predecessor entity financial statements or primary business financial statements are omitted,
- missing MD&A for the relevant annual and interim periods for the RTO acquirer,
- missing comparative years' auditor's report incorporated by reference (if a change of auditors has occurred),
- deficient description of the business and the regulatory environment, and
- auditors are not named as experts.

Timing for inclusion of financial statements in an IPO venture issuer's prospectus

Under Form 41-101F1, annual financial statements are required to be included in a prospectus for completed financial years ended more than (i) 90 days before the date of the prospectus, or (ii) 120 days before the date of the prospectus if the issuer is a venture issuer. Interim financial statements are subject to a similar requirement for periods ended within 45 and 60 days, respectively. Importantly, the extended deadlines applicable to venture issuers do not apply to IPO venture issuers. This includes an RTO acquirer in the context of a restructuring transaction that is subject to the requirements of Form 41-101F1.

Type of issuer	Deadline for inclusion of annual financial statements	Deadline for inclusion of interim financial statements
Non-venture issuer	90 days	45 days
IPO venture issuer	90 days	45 days

RTO acquirer (i.e. target)	90 days	45 days
Venture issuer (i.e. an existing reporting issuer)	120 days	60 days

Reminder: The 90 and 45 day deadlines are also applicable to any "issuer" financial statements that are included in an IPO venture issuer's prospectus or similar document in compliance with Item 32 of Form 41-101F1.

Auditor's report required in a preliminary prospectus

Subsection 54(1) of the Act states that a preliminary prospectus shall substantially comply with the requirements of Ontario securities law respecting the form and content of a prospectus, except that the report or reports of the auditor or accountant required by securities regulations need not be included. In staff's view, this language does not impact the requirement in section 4.2 of NI 41-101 which requires that any financial statements included in a long form prospectus filed in the form of Form 41-101F1 must be audited, and subparagraph 9.1(1)(b)(iii) of NI 41-101 which requires the provision of an auditor's comfort letter when an audit report included in the preliminary prospectus is unsigned.

Cannabis industry

The cannabis industry continues to have significant growth as an emerging public market sector. We note that issuers in the cannabis industry may operate in several different jurisdictions and the regulatory uncertainty, differences in legal and regulatory frameworks across jurisdictions, and other potential risks should be disclosed to investors. Staff will continue to review cannabis filings on a case-by-case basis to determine if there are any novel business models which may give rise to public interest concerns which cannot be addressed by disclosure.

As general guidance, issuers considering entering the cannabis industry, or issuers considering new investments in the cannabis industry, should ensure that announcements about these new opportunities are balanced and that they are not potentially misleading to investors as a result. Also, issuers who are substantially dependent on licenses to cultivate or sell cannabis, or on leased facilities in which those activities are performed, should file the related licenses/agreements as material contracts on SEDAR.

For ease of reference, we have included specific guidance by jurisdiction for issuers operating in the cannabis industry as noted below.

Jurisdiction	Guidance
Canada	We expect that the growth of the Canadian cannabis industry will continue given the legalization of cannabis for recreational use in October 2018. Under the current framework, the production, distribution and sale of cannabis is tightly controlled by the Canadian federal, provincial and territorial governments. The Government of Canada has also published regulations which, among other things, outline additional rules for the cultivation, processing, research, analytical testing, distribution, sale, importation and exportation of cannabis, hemp and related products in Canada, including the various classes of licences that can be granted depending on the nature of the activity being undertaken. The Government of Canada also released its proposed amendments to the cannabis regulations that contemplate the production of cannabis edibles, extracts and topicals, among a variety of other amendments that came into force in October 2019. Canadian licensed cannabis producers have conducted significant public equity financings over the last few years and are investing heavily in a number of activities, including • production capacity expansion projects at their Canadian facilities, • expansion into new international markets, • research and development projects, • acquisitions, • development of new assets, and • joint venture arrangements or other business combinations. The disclosure of such activities should be qualified, as appropriate, by specific risk factor disclosure. Cannabis issuers who make announcements about anticipated production capacity in a new facility under construction should disclose the material factors and assumptions related to that projection. Assumptions for financial projections should be specific and comprehensive, particularly with respect to quantitative details, such that an investor is able to clearly understand how each assumption contributes to the projection. Cannabis issuers should also ensure that this forward-looking information is updated, as required by securities law.
United States of America (U.S.)	Issuers that have, or are in the process of developing, cannabis-related activities in the U.S. should also review the specific disclosure expectations set out in CSA Staff Notice 51-352 (Revised) *Issuers with U.S. Marijuana-Related Activities*. Issuers with cannabis-related activities in the U.S. assume certain risks due to conflicting state and federal laws. While certain U.S. states have authorized the use and sale of cannabis, it remains illegal under U.S. federal law. The federal law relating to cannabis could be enforced at any time, and this would put issuers with U.S. cannabis-related activities at risk of being

	prosecuted and having their assets seized. We expect issuers with cannabis-related activities in the U.S. to address the current legal and regulatory environment in their disclosures as well as any related risks that result from potential government policy changes or the introduction of new or amended guidance, laws or regulations regarding cannabis.
Other Foreign Jurisdictions	The growing trend towards legalization of cannabis laws has created opportunities for Canadian reporting issuers to engage, directly or indirectly (through investments or otherwise), in foreign cannabis operations that operate legally within the confines of a foreign regulatory framework. We encourage issuers and their advisors to consult with staff on a pre-file basis in these circumstances to discuss the appropriate level of disclosure and potential risks and other novel considerations that may arise. Issuers involved in cannabis activities in foreign jurisdictions should specifically describe the regulatory and legal framework of cannabis in these foreign jurisdictions including details about the nature of their involvement in such foreign jurisdictions. Issuers that are engaged in cannabis-related activities in emerging market (EM) jurisdictions that have legalized cannabis should also review our guidance related to emerging market issuers as set out in OSC Staff Notice 51-720 - *Issuer Guide for Companies Operating in Emerging Markets* (SN 51-720) to ensure all necessary disclosures are addressed. Staff expect strong internal controls to be in place to reflect the particular risks of having significant cannabis-related business operations located in an EM jurisdiction. Staff also expect to see risks appropriately identified, understood and managed by the board of directors including risks related to, among others • political factors, such as government instability and changing governmental policy related to cannabis regulation that may affect legal rights, such as property ownership, • the legal, regulatory and licensing framework, given that EM jurisdictions may have less robust regulatory regimes regarding the ownership of cannabis licenses and controls around distribution channels and other safeguards, • the movement and conversion of currency out of the foreign jurisdiction, which could hinder the repatriation of profits to Canadian investors, and • legal title to assets and the legal vehicles through which the issuer has accessed the Ontario market. As noted in SN 51-720, we expect auditors, underwriters, exchanges and all other advisors to the issuer to establish appropriate due diligence practices to effectively discharge their responsibilities to protect investors in Ontario.

Along with recent rapid growth, the cannabis industry has experienced significant share price volatility, high multiples, rapid consolidation and legislative and regulatory uncertainty. These challenges reinforce the need for cannabis companies to focus on good governance practices. Implementing a corporate governance structure in accordance with high ethical and legal standards will provide confidence to investors and regulators. Issuers may also refer to CSA Staff Notice 51-357 *Staff Review of Reporting Issuers in the Cannabis Industry* which highlights good disclosure practices, so that investors are provided with transparent information about financial performance and risks and uncertainties, to support informed investing decisions.

On November 12, 2019, we along with other participating CSA jurisdictions published CSA Multilateral Staff Notice 51-359 *Corporate Governance Related Disclosure Expectations for Reporting Issuers in the Cannabis Industry*. The notice outlines some of the specific problems we are seeing with governance practices in the cannabis industry and provides our expectations in these areas. Please see page 20 of the Report for further information regarding this notice.

For more information:

CSA Multilateral Staff Notice 51-359 *Corporate Governance Related Disclosure Expectations for Reporting Issuers in the Cannabis Industry*

CSA Staff Notice 51-357 *Staff Review of Reporting Issuers in the Cannabis Industry*

CSA Staff Notice 51-352 (Revised) *Issuers with U.S. Marijuana-Related Activities*

CSA Staff Notice 51-342 *Staff Review of Issuers Entering Into Medical Marijuana Business Opportunities*

CSA Staff Notice 51-356 *Problematic Promotional Activities by Issuers*

IPO issuers with hybrid business structures

In instances where an IPO issuer's proposed business model is a public/private equity fund consisting of investments both in publicly traded securities and private investments, we may take the view that the portfolio invested in publicly traded securities should be subject to certain investment fund requirements, while the portfolio invested in privately traded securities should be subject to corporate finance requirements. Such requirements may include measures relating to the deployment of IPO proceeds destined for the private portfolio, certain investment restrictions such as a concentration restriction, and the required use of a custodian.

The guidance outlined in CSA Multilateral Staff Notice 51-349 *Report on the Review of Investment Entities and Guide for Disclosure Improvements* should also be considered by such IPO issuers.

Subsequent offerings by an IPO blind pool issuer

Certain issuers that hold minimal assets at the time of their IPO and have not identified any acquisitions are considered "blind pools". The audited financial statements included in the IPO prospectus of a blind pool issuer generally do not reflect any meaningful results. Staff may have concerns where these types of issuers seek to conduct a follow-on public capital financing before they have filed audited financial statements reflecting business operations. An issuer may be able to address staff's concerns by providing audited financial statements for an interim period ended after its operations commenced to provide investors with some audited financial history of the underlying operating business. We encourage issuers to submit a pre-file and consult with staff in these circumstances.

Base shelf prospectuses qualifying distributions of specified derivatives or asset backed securities

Where an issuer's base shelf prospectus contemplates distributions of specified derivatives or asset-backed securities that are novel (as such terms are defined in National Instrument 44-102 *Shelf Distributions* (NI 44-102) or NI 41-101, as applicable), we will issue comments and, if appropriate, require the issuer to file an undertaking to pre-clear any prospectus supplements that will qualify distributions of novel specified derivatives or asset-backed securities. To avoid unnecessary delays relating to this matter, issuers that do not plan to distribute such novel securities should include disclosure in its base shelf prospectus similar to the following:

> *This Prospectus does not qualify for issuance specified derivatives or asset-backed securities that are novel (as such terms are defined in National Instrument 44-102 Shelf Distributions or NI 41-101 General Prospectus Requirements, as applicable).*

Asset vs. business acquisitions: IFRS 3 amendments

In October 2018, the International Accounting Standards Board (IASB) issued amendments to the definition of a business in IFRS 3 *Business Combinations* (IFRS 3). IFRS 3 sets out different accounting requirements for a business combination versus an acquisition of an asset or group of assets that does not constitute a business under the standard. The amendments apply to relevant transactions that occur on or after the beginning of the first annual reporting period beginning on or after January 1, 2020.

Notwithstanding the issuer's determination under IFRS 3, reporting issuers must make a separate determination of whether the acquisition constitutes an asset or business acquisition under securities law. Part 8 of Companion Policy 51-102CP and OSC Staff Notice 51-728 *Corporate Finance Branch 2016-2017 Annual Report* provide guidance regarding this determination.

Acquisition of intangible assets

IAS 38 *Intangible Assets* requires that an issuer, when determining whether to recognize a purchased intangible asset, assess if (i) it is probable that the future economic benefits that are attributable to the asset will flow to the entity; and (ii) the cost of the asset can be measured reliably. The probability of future economic benefits must be based on reasonable and supportable assumptions that will exist over the life of the asset.

As part of our CD and prospectus reviews, in circumstances where an issuer has acquired intangible assets and has recognized such assets within its financial statements, we may request that the issuer provide both its quantitative and qualitative analyses that it has previously prepared or provided to its auditors to support the probability of economic benefits attributed to each of the acquired intangible assets flowing to the issuer, as well as the issuer's corresponding purchase price allocation to each of the assets based on such analyses. Additionally, for acquisitions involving non-cash consideration (i.e. shares), staff may also request the issuer to explain how the consideration was valued and how the resulting purchase price allocations reconcile to the original book values of the acquired intangible assets. Finally, where necessary, we may request that the issuer disclose certain supporting assumptions of the above analyses in order to provide a clearer understanding of how the assigned values for these intangible assets were determined by the issuer.

This is an area of heightened interest to staff in circumstances where the fair values assigned to certain intangible assets upon acquisition by an issuer are substantially higher than their respective original book values (e.g., acquired licenses, etc.). This is especially the case for certain internally generated intangible assets (e.g., brands, titles, customer lists, etc.), which are only permitted to be recognized as assets upon acquisition by another entity.

Promoter liability

Where a promoter exists at the time of an issuer's IPO, we remind issuers to consider whether promoter status continues for subsequent offerings irrespective of whether it has been two years since the IPO. This assessment should consider whether the promoter's relationship with the issuer has changed since the IPO in terms of the promoter's continued involvement in the governance and management of the issuer, including the promoter's ownership and *de facto* control of the issuer, among other factors. How and when a promoter ceases to be a promoter is determined on a case by case basis. The analysis should consider how the facts and circumstances upon which the issuer determined that a promoter is a promoter of the issuer have changed.

Relief to be evidenced by receipt of a final prospectus

When seeking relief in connection with an offering where the relief will be evidenced by receipt, issuers should provide written submissions explaining why relief is required. The application letter itself will be made available to the public on request unless the Commission grants a request for confidentiality that is included in the application letter (see the 'Requests for confidentiality' section below). To facilitate this, an application letter should be a stand-alone document satisfying the guidance set out in OSC Staff Notice 41-703 *Corporate Finance Prospectus Practice Directive #2 – Exemption from Certain Prospectus Requirements to be Evidenced by a Receipt*.

An issuer should inform staff if there are any concerns about making the application letter or the OSC acknowledgement letter, if applicable, available to the public.

Testing the waters exemption

As stated in the recently published *Reducing Regulatory Burden in Ontario's Capital Markets* report, we will consider whether the expanded "testing the waters" exemption recently adopted in the U.S. will affect financing activity by Canadian issuers who are also trading in the U.S., or will impact Canadian-based institutional investors, and whether changes to our requirements are necessary. Market participants are encouraged to contact staff with any questions relating to this issue.

Prospectus filings - timing

Reminder: A preliminary prospectus, together with all accompanying materials in acceptable form, should be filed before 12:00 p.m. on the day that the receipt is required. If materials are filed after 12:00 p.m., the receipt will normally be issued before 12:00 p.m. on the next business day and dated as of that day.

If issuers anticipate filing a preliminary prospectus within a reasonable period of time after 12:00 p.m. (or 3:00 p.m. for a bought deal prospectus) and need a receipt issued that day, they should advise the prospectus review officer by email at *prospectusreviewofficer@osc.gov.on.ca* and explain the reason for not filing before the applicable deadline. We will attempt to accommodate these requests, but there is no assurance that a receipt will be issued on the same day.

Where an issuer plans to conduct an overnight marketed deal, the issuer should (a) advise the prospectus review officer by email no later than the morning of the day on which the receipt is required (but prior to filing the materials), and (b) file all materials in acceptable form before

12:00 p.m. that day. In such cases, we will make reasonable efforts to issue a receipt for the preliminary prospectus at or just after 4:00 p.m. on the day of the filing.

Each year, we receive requests to issue a receipt for a preliminary prospectus at a specific time of the day. In rare circumstances, staff may consider this request where the issuer can demonstrate that there would be a material adverse consequence to an issuer if a preliminary receipt is not issued at the specific time. The issuer should make such a request along with reasons in its cover letter accompanying the filing of the preliminary prospectus. The cover letter should also acknowledge that the issuer bears the risk of the receipt being issued at a time other than the requested time. Issuers should note that we cannot guarantee that the request will be satisfied and there is a practical risk that the receipt will be issued at a time other than the requested time.

Exempt Market

The OSC recognizes the need to be vigilant in its oversight of the exempt market as it evolves under the new regulatory framework. Our Branch and the CRR Branch have primary responsibility for oversight of compliance in the exempt market. Both branches are working to coordinate and conduct the compliance reviews of issuers and registrants.

Offerings

Frequent market activity without involvement of a registered dealer

We conducted a joint review with CRR staff of issuers that accessed the exempt market repeatedly without using a dealer. Our focus in these reviews was whether issuers relying on the new prospectus exemptions in Ontario may be misunderstanding how to use these exemptions.

We focused on issuers who

- filed multiple Form 45-106F1 *Report of Exempt Distribution* (Form 45-106F1) identifying that no compensation was paid to a registered dealer or registered individual in connection with the distribution(s),
- submitted multiple Form 45-106F1 filings within a short period of time – indicating that the trading activity was being done with repetition, regularity or continuity,
- appeared to be directly soliciting investments through advertising over the internet and social media, and/or
- distributed securities and had large capital raised from Ontario investors.

We found several issues with exemption compliance, including

- reliance on the family, friends and business associates (FFBA) exemption where the purchaser lacked the requisite relationship with a director, executive officer, or control

person of the issuer. We remind issuers that a relationship between the purchaser and an officer of the related dealer is not sufficient to satisfy the requirements of the exemption.

- reliance on the accredited investor exemption without taking reasonable steps to verify that the purchaser meets the definition of an accredited investor. Issuers are required to maintain adequate records to demonstrate compliance with securities law and in several cases it appears that inadequate steps were taken to verify the accredited investor status and inadequate documentation was maintained.

- non-compliance with the investment limits under the offering memorandum (OM) exemption

    - issuers are required to take reasonable steps to determine whether an investor is an eligible investor and to confirm compliance with the appropriate investment limit for purchases under the exemption.

    - a positive suitability assessment by a registrant is required for an eligible investor to exceed the $30,000 annual limit for purchases under the exemption. Issuers that are offering securities directly, without the involvement of a registered dealer, cannot sell securities to an eligible investor in excess of the $30,000 annual limit.

- failure to provide or correctly complete the required risk acknowledgement forms under the accredited investor, OM and FFBA exemptions.

- discrepancies between the reporting of trades under the report of exempt distribution and the issuer's records of the securities actually issued.

We remind issuers that offer their own securities regularly to assess whether they are trading in, or advising on, securities for a business purpose and, therefore may be subject to the dealer or adviser registration requirements. A discussion of the factors relevant to that determination is included in section 1.3 of the Companion Policy to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103CP).

Disclosure requirements

Issuers relying on the OM exemption frequently have complex structures with funds being raised by one issuer that are loaned or otherwise invested in another entity that conducts the business activities intended to produce a return on investment. We note that where such a structure is used, it is the issuer's responsibility to ensure that the OM contains sufficient information to allow a potential purchaser to make an informed investment decision in relation to the securities being distributed.

Marketing materials

Any marketing materials used in connection with a distribution under the OM exemption must be incorporated by reference into the prescribed form of OM and filed with the OSC (either as an attachment to a report of exempt distribution or through the OSC electronic filing portal) at the same time as filing the OM or, if the marketing materials are prepared after the OM was filed, within 10 days of the first use of the materials. This requirement is subject to a limited exception that allows the use of an "OM standard term sheet". We found in several instances where issuers have delivered or made available materials to prospective investors without filing those materials.

Reminder: Issuers that use exemptions other than the OM exemption, such as the accredited investor exemption, FFBA exemption, private issuer exemption or minimum amount exemption, should consider the requirements of OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions* (OSC Rule 45-501) regarding disclosure provided in connection with the distribution of securities.

Materials purporting to describe the business and affairs of an issuer that are prepared primarily for prospective investors will generally fall within the definition of "offering memorandum" in subsection 1(1) of the Act. While the use of such documents is voluntary and not subject to specific form requirements, Part 5 of OSC Rule 45-501 provides that statutory rights of action in favour of a purchaser of securities will apply if the materials contains a misrepresentation. Furthermore, an issuer is required to include a description of these statutory rights and deliver the material to the OSC within 10 days. These requirements may apply to materials such as investor presentations, letters or brochures.

Reporting

Form 72-503F Report of Distributions Outside Canada

In Ontario, the OSC made consequential amendments to Form 72-503F *Report of Distributions Outside Canada* (Form 72-503F) to align certain parts of Form 72-503F with the amendments to Form 45-106F1. The amendments also came into effect on October 5, 2018.

We have received several inquiries about whether an issuer may file a Form 45-106F1 instead of a Form 72-503F. Section 4.3 of OSC Rule 72-503 specifically provides that an investment fund may file a Form 45-106F1 instead of a Form 72-503F if the other conditions in that provision are satisfied. Please note that staff would not object to an issuer that is **not** an investment fund filing a Form 45-106F1 instead of a Form 72-503F provided

- the issuer completes Form 45-106F1 within the time frame required for the filing of that form,
- the Form 45-106F1 includes the information that would otherwise be required in Form 72-503F,
- Form 45-106F1 is completed in its entirety (including the schedules), and
- the issuer pays the prescribed filing fee for Form 45-106F1.

Issuers that have relied on the OM exemption

We remind issuers that have relied on the OM exemption in subsection 2.9(2.1) of National Instrument 45-106 *Prospectus Exemptions* (NI 45-106) (OM issuers) that they are subject to ongoing reporting obligations to both the OSC and their securityholders.

OM issuers are required to deliver annual financial statements and a Form 45-106F16 *Notice of Use of Proceeds* (Form 45-106F16) to the OSC and make them reasonably available to investors, within 120 days after the issuer's financial year end. The financial statements are required to be audited and prepared in accordance with IFRS. The documents must be delivered to the OSC through our Electronic Filing Portal.

When completing the Form 45-106F16, OM issuers must provide a reasonable breakdown of all proceeds used in section 2 of the table. The breakdown should be specific enough and provide sufficient detail for an investor to understand how the proceeds have been used.

OM issuers must continue to deliver these documents each year until the earliest of

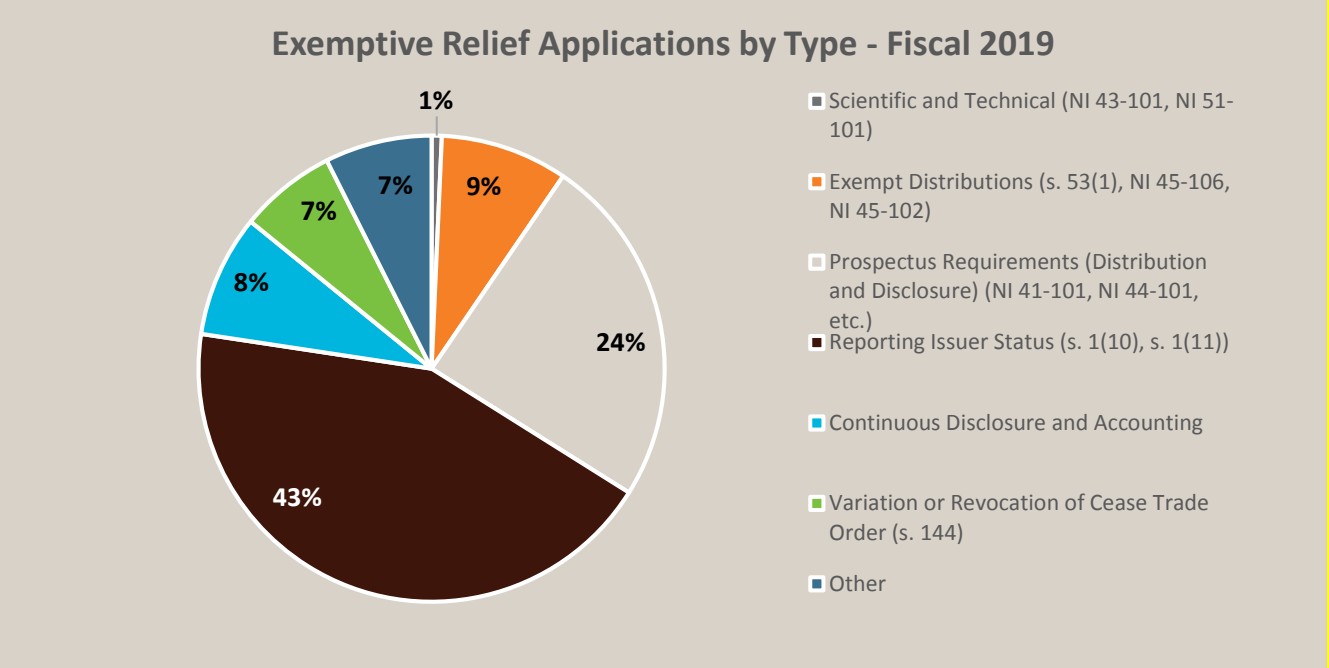
- the date the issuer becomes a reporting issuer in any jurisdiction of Canada, and
- the date the issuer ceases to carry on business.

Exemptive Relief Applications

Staff review and make recommendations to appropriate decision makers on applications for exemptive relief. The review standard for granting relief varies, but it generally requires a decision maker to determine that granting the requested relief would not be prejudicial to the public interest.

Statistics

In fiscal 2019, we reviewed over 280 applications for exemptive relief from various securities law requirements (fiscal 2018: over 250[1]).



Trends and guidance

We have noted an increase in the number of applications received in fiscal 2019 and that the proportion of the various types of applications changed slightly compared to previous fiscal years. While applications for relief in connection with reporting issuer status remained the predominant type of application, fiscal 2019 saw an increase in the number of applications for

[1] The prior year figure has been revised to include applications where relief would be evidenced by receipt of a prospectus and certain cease to be reporting issuer applications.

relief from certain prospectus requirements and a decrease in the number of applications relating to exempt distributions.

We will continue to monitor the types of applications we receive and the exemptive relief granted to determine whether we should consider changes to our rules or policies.

Key takeaways from our exemptive relief work in fiscal 2019 are set out below.

Tip: Prior OSC orders and exemptive relief decisions can be found on the OSC website or on CanLII at https://canlii.org/en/on/onsec/.

Applications for a decision that an issuer is not a reporting issuer

We receive a significant number of these applications each fiscal year and our process for reviewing them is currently set out in National Policy 11-206 *Process for Cease to be a Reporting Issuer Applications*. The process for Ontario-only applications for such a decision is set out in OSC Staff Notice 12-703 *Applications for a Decision that an Issuer is not a Reporting Issuer*.

Foreign issuers who seek a decision that they are no longer a reporting issuer should review the "modified procedure" to consider details that help support such an application. Staff will generally ask issuers to describe the due diligence that was conducted in order to make the representations that residents of Canada do not own more than 2% of each class of outstanding securities and do not comprise more than 2% of the total number of securityholders.

Reminder: There should be sufficient time between the news release announcing that the issuer has applied to cease to be a reporting issuer and the date of the order to provide securityholders with the opportunity to object to the order.

Revocation of failure-to-file cease trade orders

Under Multilateral Instrument 11-103 *Failure-to-file Cease Trade Orders in Multiple Jurisdictions* and local statutory provisions adopted by certain CSA jurisdictions: (i) a failure-to-file cease trade order will generally result in the same prohibition or restriction in other participating jurisdictions; and (ii) a reporting issuer will generally deal only with the regulator that issued the failure-to-file cease trade order if it is seeking a revocation or variation of this order that has the same result in multiple jurisdictions.

National Policy 11-207 *Failure-to-file Cease Trade Orders and Revocations in Multiple Jurisdictions* outlines the interface process for Ontario to opt into decisions to issue and revoke

failure-to-file cease trade orders made by other CSA regulators. We remind issuers that in Ontario, the OSC can treat the filing of the CD document referred to in a failure-to-file cease trade order that has been in effect for 90 days or less as an application for the revocation of the cease trade order. An application and related fee is not required in this circumstance.

Revocation of a cease trade order that has been breached

If an issuer has breached the terms of a cease trade order, it can still seek a revocation. However, we will ask for disclosure of the circumstances surrounding the breach in the draft decision document which staff will consider in making a recommendation in connection with the issuer's application. In some cases, staff will not recommend granting a revocation order in the face of one or more breaches of the cease trade order and may also consider whether breaches of a cease trade order warrant enforcement action.

Reminder: The definition of "trade" in the Act includes acts in furtherance of a trade such as advertising or soliciting investors, directly or indirectly.

Revocation of a long-standing cease trade order

Where an issuer with a long-standing cease trade order seeks a revocation, the review process may take longer than a short-term cease trade order as staff will review the issuer's updated CD record to consider whether it is in compliance with applicable securities laws including compliance with applicable audit committee composition requirements under NI 52-110. As well, we may require an issuer to provide a written undertaking that it will not execute an RTO of, a restructuring transaction involving, or a significant acquisition of, a business outside of Canada unless the issuer files with the OSC, and obtains, a receipt for a final prospectus containing the disclosure required for the transaction.

Management Cease Trade Orders (MCTO)

National Policy 12-203 *Management Cease Trade Orders* (NP 12-203) provides guidance as to when we will consider issuing a management cease trade order rather than a failure-to-file cease trade order. Issuers that can satisfy the eligibility criteria for an MCTO should file an application for an MCTO at least 2 weeks in advance of the deadline and issue a default announcement. We believe that, in most cases, an issuer exercising reasonable diligence at least 2 weeks in advance of the deadline should have discussions with their auditors about timing and be able to determine whether it can comply with a specified requirement.

An element of the eligibility criteria set out in section 6 of NP 12-203 is whether there is an active, liquid market for the issuer's securities. In our review of this element, we consider the trade volume, trade value, and number of trades of the issuer's securities. If the majority of

trading days have a low trade value and/or low number of trades, we are likely to conclude there is an absence of an active, liquid market for an issuer's securities and would therefore not grant a MCTO.

For issuers seeking to obtain an MCTO, we require fully completed Personal Information Forms (PIFs) for an issuer's CEO and CFO (see Appendix "A" to NI 41-101). If an issuer has submitted PIFs for these individuals within the last 3 years, the issuer should provide the SEDAR project number and submission number where the PIF can be found.

MCTO applications should be filed through the OSC Electronic Filing Portal - General PDF Submissions, not the Applications portal.

Business acquisition report (BAR)

The number of applicants seeking relief from the BAR requirements in Part 8 of NI 51-102 has decreased in the last two fiscal years. Notwithstanding this, the criteria to file a BAR is one of the areas currently under consideration as part of the policy initiative *Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers* (see Part C for further details).

Tip: Issuers should file their BAR relief applications early to avoid going into default. The cost or time involved in preparing and auditing the financial statements required to be included in the BAR are not generally viewed by staff as relevant factors when considering whether to recommend relief.

Requests for confidentiality

A filer requesting that an application and supporting materials be held in confidence during the application review process under National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* should provide substantive reasons for the confidentiality request in its application. If a filer is also requesting that the decision be held in confidence after the effective date of the decision, the filer should explain why the confidentiality request is reasonable in the circumstances, not prejudicial to the public interest, and should specify the length of time the filer wishes to maintain confidentiality. Generally, staff is of the view that a decision should not be held in confidence for a period of greater than 90 days following the date of the decision. In instances where a request to hold a decision in confidence after the effective date of the decision has been granted, it is the filer's responsibility to notify staff if an event that would cause confidentiality to expire, as set out in the decision, has occurred.

Reverse takeover transactions – relief from financial statements

If an issuer prepares an information circular in respect of a significant acquisition or a restructuring transaction, including an RTO, under which securities are to be changed,

exchanged, issued or distributed, the information circular is required to include prospectus level disclosure (including financial statements) for the entities referred to in Item 14.2 of Form 51-102F5.

While exchanges can waive certain listing requirements, they cannot waive financial statement requirements in respect of information circulars. In these circumstances, if an issuer is requesting relief from a financial statement requirement, the issuer must obtain the exemptive relief prior to mailing their information circular.

Tip: Issuers and their advisors may wish to consider whether a pre-file is appropriate for novel applications. See National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions*.

Automatic Securities Disposition Plans

On October 24, 2019, the CSA announced that it is undertaking a review of the regulatory framework governing Automatic Securities Disposition Plans (ASDPs). ASDPs enable insiders to make preplanned sales of securities of an issuer through an arms-length administrator, according to a predetermined set of instructions.

Until the CSA completes its review and updates the market on its conclusions, OSC staff are unlikely to recommend new insider reporting relief for trades done under ASDPs. Such relief, while not requested by all issuers setting up ASDPs, has been granted several times in the last decade. Existing insider reporting relief will be unaffected.

Insider Reporting

We review compliance of reporting insiders and issuers with insider reporting requirements through a risk-based compliance program. We actively and regularly assist filers and their advisors by providing guidance on filing matters.

The objective of our insider reporting oversight work is twofold

- **compliance**
- **education and outreach**

Insider reporting serves a number of functions, including deterring improper insider trading based on material undisclosed information and increasing market efficiency by providing investors with information about the trading activities of insiders, and, by inference, the insiders' views of the issuer's future prospects. Non-compliance affects the integrity, reliability and effectiveness of the insider reporting regime, which in turn has a negative impact on market efficiency. Where we identify non-compliance, we reach out to filers and request remedial filings. Filers should make remedial filings as soon as they become aware of an error to accurately inform investors of their activities and to avoid any further late filing fees.

We educate filers through our compliance reviews and we also reach out to new reporting issuers directly to inform them of insider reporting obligations. We encourage issuers to implement insider trading policies and monitor insider trading to meet best practice standards in National Policy 51-201 *Disclosure Standards*.

Reminder: the definition of "reporting insider" can be found in National Instrument 55-104 *Insider Reporting Requirements and Exemptions* (NI 55-104).

We remind issuers and their insiders that they should also refer to the definition of "significant shareholder" and the interpretation of "control" in NI 55-104 as well as the interpretation of "beneficial ownership" in the Act when determining who is required to file on SEDI. Understanding these definitions and interpretations will help filers identify and comply with their obligations.

Insiders are also reminded to check their insider profile to ensure the contact information is correct and file an amended insider profile within ten days of any change in name, relationship to an issuer, or if the insider has ceased to be a reporting insider of the issuer.

For more information and guidance issuers and insiders should also review guidance provided in OSC Staff Notice 51-726 *Report on Staff's Review of Insider Reporting and User Guides for Insiders and Issuers*.

Administrative Matters

Participation fee form

Under OSC Rule 13-502 *Fees* if a reporting issuer files its annual financial statements before they are due, the participation fee must also be paid on the same date. If the participation fee is not paid at the same time the annual financial statements are filed, late fees will be applied starting from the date that the annual financial statement were filed.

Each issuer must select the participation fee form applicable to its reporting issuer classification as the forms and related fees are substantively different.

Tip: The class of the issuer is based on their status as at the end of their previous financial year, not at the time of filing. Issuers must also ensure that the correct form for Ontario participation fees is completed as other jurisdictions have fee forms that look very similar to the OSC form.

Refiling CD documents

If an issuer must correct a material typographical or administrative error (or omission) in an electronic filing, the issuer must refile the entire corrected document using the appropriate cover page for the filing type as well as a covering letter or a face page for the corrected document describing the correction with the date of the correction.

If information in the refiled document is materially different from information in the originally filed document, please refer to Part 11.5 of NI 51-102 for the procedure to be followed for refiling.

When refiling a document with materially different information or when filing restated information, the document should be attached to the document type that is identified as "Amended" or "Restated". For example, if an amended material change report is being filed, it should be filed using the document type "Material change report (amended)". If an amended NI 43-101 technical report is being filed, it should be filed using the document type "Amended & restated technical report (NI 43-101)".

Making documents private on SEDAR

We often receive requests from issuers and SEDAR filers to make certain documents private on SEDAR. Generally, we will make a document private on SEDAR if it has been filed on the wrong issuer profile or if the document contains errors caused by redaction software. We may also make a document private if the document contains confidential information that is potentially detrimental to the issuer.

In order to request a document be marked private, issuers will need to complete a request form and send it to the financial examiners at finrepnotifications@osc.gov.on.ca. Please note that we only consider requests to make CD private from those issuers whose principal regulator is Ontario. We cannot guarantee that a request will be approved immediately as we require time to review each individual request and consult internally, if necessary.

If an issuer's request is denied, we recommend that the issuer refile the document including a note to the reader on the face page or cover page of the document explaining the reason for refiling. Making a document private on SEDAR does not mean that it has not already been disseminated in the public domain. Certain requests to mark a document private may require a formal application under subsection 140(2) of the Act.

Designated Rating Organizations (DROs)

In April 2012, the CSA implemented a regulatory oversight regime for credit rating agencies (CRAs) through National Instrument 25-101 *Designated Rating Organizations* (NI 25-101). The regime recognizes and responds to the role of CRAs in our credit markets, and the role of CRA-issued ratings which are referred to in securities rules and policies. Under the regime, the OSC has the authority to designate a CRA as a DRO, to impose terms and conditions on a DRO, and to revoke a designation order, or change its terms and conditions, where the OSC considers it in the public interest to do so.

There are currently five CRAs that have been designated as DROs in Canada under NI 25-101:

1. DBRS Limited
2. Fitch Ratings, Inc.
3. Kroll Bond Rating Agency, Inc. (Kroll)
4. Moody's Canada Inc.
5. S&P Global Ratings Canada

Kroll has only been designated as a DRO for the purposes of the alternative eligibility criteria in section 2.6 of National Instrument 44-101 *Short Form Prospectus Distributions* and section 2.6 of NI 44-102 for issuers of asset-backed securities to file a short-form prospectus or shelf prospectus, respectively.

In Canada, the OSC is the principal regulator of these DROs. We conduct reviews of DROs using a risk-based approach. Our reviews focus on credit rating activities of the CRAs in Canada or in respect of Canadian issuers.

When we identify a concern, or an area of material non-compliance, we may take various actions depending on the nature of the observation and the perceived or potential harm to the marketplace.

This may include, but is not limited to, recommending changes to the DRO's policies, procedures or information and documents on the DRO's website, or requiring training or specified oversight of DRO staff in areas where we have seen non-compliance with the DRO's policies or procedures.

Financial benchmarks

In the OSC's statement of priorities for 2018-2019, it was announced that we would be developing an OSC/CSA regulatory regime for financial benchmarks and publishing for comment a proposed rule to establish a Canadian regulatory regime for financial benchmarks. On March 14, 2019, the CSA published for comment a proposed rule, National Instrument 25-102 *Designated Benchmarks and Benchmark Administrators* (NI 25-102), intended to implement a comprehensive regime for the designation and regulation of benchmarks and those that administer them.

We are pursuing this initiative since we believe there is a need for regulation due to conduct lapses in other jurisdictions and the potential for similar misconduct in Canada, and we need to reflect global developments in benchmarks regulation, including the IOSCO *Principles for Financial Benchmarks* and the European Union's *Benchmarks Regulation.*

Recent rule amendments and policy changes

March 14, 2019

As noted above, on March 14, 2019, the CSA published for comment proposed NI 25-102, which is intended to implement a comprehensive regime for the designation and regulation of benchmarks and those that administer them. The comment period ended on June 12, 2019 and the CSA are considering the comments received.

Upcoming

The CSA plans to publish final NI 25-101 amendments in 2020 so that NI 25-101 will be recognized for purposes of the European Union (EU) "equivalence/certification" regime under the EU CRA Regulation. The NI 25-101 amendments will reflect changes to the EU CRA Regulation that came into effect in 2018 and that are required for purposes of the EU "equivalence/certification" regime.

The existing DROs in Canada are only relying on the EU "endorsement" regime and NI 25-101 continues to be recognized for purposes of that regime. The NI 25-101 amendments would be required if a DRO wanted to instead rely on the EU "equivalence/certification" regime.

Part C: Responsive Regulation

- Burden Reduction Task Force
- Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers
- Exempt Distribution Reporting
- Syndicated Mortgages
- Problematic Promotional Activities by Issuers
- Climate Change-related Disclosure
- Branch Advisory Committees

Burden Reduction Task Force

The Branch is part of the OSC Burden Reduction Task Force, as described in OSC Staff Notice 11-784 *Burden Reduction*. We have actively engaged with market participants on ways to reduce unnecessary regulatory burden through written comments, public roundtables, advisory committees and in-person meetings. As a result of these consultations, this past November, we published *Reducing Regulatory Burden in Ontario's Capital Markets*, a report containing decisions and recommendations on how to reduce regulatory burden for Ontario market participants.

The report sets out 13 decisions and recommendations relating to Corporate Finance issuers. Seven items relate to existing burden reduction policy projects that were announced in 2018. Some key new initiatives are: development of a process for issuers to request confidential staff review of an entire prospectus prior to announcing an offering, a review of options for extending the filing deadline for Reports of Exempt Distribution, and providing clearer information regarding issuer and management cease-trade orders.

One initiative has already been completed, which is development of a process for mining issuers to request confidential staff review of publicly-filed mining disclosure prior to commencing an offering. On June 6, 2019 we issued OSC Staff Notice 43-706 *Pre-filing Review of Mining Technical Disclosure*. The program introduced with this staff notice provides increased certainty for public mining companies – the largest population of Ontario public companies. Pre-filing reviews allow mining issuers to avoid potentially disruptive delays during the offering process. These companies can now ask the OSC to review their public technical disclosure before they file a preliminary short-form prospectus. This gives them the opportunity to address any material comments, and increase deal certainty, before an offering goes to market.

Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers

In collaboration with the CSA, the OSC published CSA Consultation Paper 51-404 *Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers* (the Consultation Paper) on April 6, 2017. The purpose of the Consultation Paper was to identify and consider areas of securities legislation applicable to non-investment fund reporting issuers that could benefit from a reduction of undue regulatory burden, without compromising investor protection or the efficiency of the capital markets.

In consideration of all feedback received and together with its CSA partners, the OSC initiated key policy initiatives to streamline reporting issuer requirements, including potential draft rule amendments (where applicable), related to

- the criteria to file a business acquisition report (BAR requirements),
- primary business requirements,
- at-the-market offerings (ATM offerings),

- identification of opportunities to reduce CD requirements,
- consideration of a potential alternative prospectus model, and
- identified opportunities to use technology and data to reduce regulatory burden (e.g. electronic delivery of documents).

2019 saw the publication of two CSA notices on proposed amendments to the BAR requirements and ATM offerings respectively. Subject to the CSA's consideration of all comments received and receipt of the necessary approvals, the proposed amendments are expected to be effective in 2020.

CSA notices on the policy initiatives relating to primary business requirements, CD requirements, an alternative prospectus model, and electronic delivery of documents are expected to be published in 2020.

We note that there are a number of steps that must occur in connection with any changes to our regulatory regime. As such, there is no assurance that any changes to our regulatory regime will ultimately be adopted in any of the CSA jurisdictions.

For more information see CSA Staff Notice 51-353 *Update on CSA Consultation Paper 51-404 Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers.*

Business Acquisitions Reports (BARs)

On September 5, 2019, the CSA published a Notice Proposed Amendments to National Instrument 51-102 *Continuous Disclosure Obligations* and Changes to Certain Policies Related to the Business Acquisition Report Requirements for a 90-day comment period relating to BAR requirements for reporting issuers that are not venture issuers (the proposed BAR amendments).

In response to the consultation paper, we received feedback that in some cases the significance tests may produce anomalous results, that preparation of a BAR may entail or take significant time and cost, and that the information necessary to comply with the BAR requirements may, in some instances, be difficult to obtain.

If adopted, the proposed BAR amendments would

- alter the determination of significance for reporting issuers that are not venture issuers such that an acquisition of a business or related businesses is a significant acquisition only if at least two of the existing significance tests are triggered, and
- increase the significance test threshold for reporting issuers that are not venture issuers from 20% to 30%.

It is expected that the proposed BAR amendments would reduce regulatory burden for reporting issuers that are not venture issuers by limiting the application of the BAR requirements while still providing investors with relevant and appropriate information following such transactions.

The comment period for the proposed BAR amendments and related changes ended on December 4, 2019.

At-the-Market Offerings

On May 9, 2019, the CSA published a Notice of Proposed Amendments to NI 44-102 *Shelf Distributions* and Change to Companion Policy 44-102CP relating to ATM offerings (the proposed ATM amendments).

An ATM offering is a distribution of securities by an issuer under a base shelf prospectus into the secondary market (i.e. over an exchange and at prevailing market prices) using a registered investment dealer acting as an agent. ATM requirements are currently found in Part 9 of NI 44-102 but do not contemplate necessary exemptions from certain prospectus requirements that are not practical in the context of an ATM distribution.

The proposed ATM amendments aim to replace relief that has been required by issuers conducting ATM offerings of equity securities and liberalize the current ATM distribution regime in Canada.

It is expected that the proposed ATM amendments would reduce the regulatory burden for issuers and agents who wish to conduct ATM offerings. Stakeholders would no longer have to incur costs associated with obtaining relief and would be able to conduct ATM offerings more quickly, as such distributions would be readily available to qualifying market participants.

The proposed ATM amendments would also apply to closed-end investment funds as that industry has recently expressed interest in conducting ATM offerings.

The comment period for the proposed ATM amendments and change ended on August 7, 2019 and the CSA are considering the comments received. The new rules are expected to come into force (subject to receipt of the necessary approvals) in 2020

For more information see CSA Notice and Request for Comment Proposed Amendments to National Instrument 44-102 *Shelf Distributions* and Change to Companion Policy 44-102CP *Shelf Distributions* relating to At-the-Market Distributions

Exempt Distribution Reporting

On October 5, 2018, amendments to Form 45-106F1, including the Schedule 1 Excel template, came into force. A related change to Companion Policy 45-106CP *Prospectus Exemptions* came into effect on the same date. Issuers and underwriters who rely on certain prospectus exemptions to distribute securities are required to file the report within the prescribed timeframe.

The revisions

- provide greater clarity and flexibility regarding the certification requirement of the report while still supporting the regulatory objectives of filed reports being true and complete, and
- streamline certain information requirements to assist filers in completing the report while still providing us with the information necessary for oversight and policy development.

The revisions are primarily intended to address concerns expressed by foreign dealers conducting offerings into Canada and Canadian institutional investors about the unintended effects of the certification requirement and other information requirements in the report on these offerings. However, we believe the revisions will be beneficial to all filers.

The CSA also concurrently published a revised version of CSA Staff Notice 45-308 (Revised) *Guidance for Preparing and Filing Reports of Exempt Distribution under National Instrument 45-106 Prospectus Exemptions* to reflect the amendments and a revised Excel template for Schedule 1 to the report (Confidential Purchaser Information).

On February 7, 2019, the CSA published CSA Staff Notice 45-325 *Filing Requirement and Fee Payable for Exempt Distributions involving Fully Managed Accounts* to clarify when a Form 45-106F1 is required to be filed for exempt distributions involving fully managed accounts. In Ontario, the requirement to file a Form 45-106F1 in respect of a distribution involving a fully managed account is based on the location of the trust company, trust corporation or registered adviser deemed to be purchasing the securities as principal. Accordingly, in Ontario, there is no requirement to file a Form 45-106F1, or to pay the associated fee, based on the location of the beneficial owner of a fully managed account. Issuers should refer to the notice for guidance on requirements in other jurisdictions of Canada.

For more information:

CSA News Release: Canadian Securities Regulators Publish Final Amendments on Report of Exempt Distribution

Revised Schedule 1 Excel template (effective October 5, 2018)

CSA Staff Notice 45-325 *Filing Requirement and Fee Payable for Exempt Distributions involving Fully Managed Accounts*

Syndicated Mortgages

Subsections 35(4) and 73.2(3) of the Act provide that mortgages sold by persons registered or exempt from registration under mortgage brokerage legislation are exempt from the registration and prospectus requirements in Ontario. These exemptions currently include syndicated mortgages, which are defined as mortgages in which two or more persons participate, directly or indirectly, as the mortgagee. As such, syndicated mortgage investments are primarily regulated by the Financial Services Regulatory Authority of Ontario (FSRA).

Concerns have been raised about the current regulatory framework, including in a 2016 expert report to the Ministry of Finance reviewing the mandate of the Financial Services Commission of Ontario (FSCO). In response to these concerns, on April 27, 2016, the Ontario government announced its plan to update regulatory oversight of syndicated mortgage investments. Effective June 8, 2019 the FSRA assumed the regulatory functions of the FSCO.

On March 8, 2018, the OSC, along with the CSA published for comment proposed amendments to NI 45-106 and National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103), which together with changes to the Act that have not yet been proclaimed in force, would substantially harmonize the treatment of syndicated mortgages across the CSA.

In response to comments from market participants, revised proposals were published for a second comment period on March 15, 2019.

The proposed amendments would replace subsections 35(4) and 73.2(3) of the Act with harmonized exemptions in NI 31-103 and NI 45-106 that would no longer include syndicated mortgages other than qualified syndicated mortgages. These types of syndicated mortgages are not expected to present significant investor protection concerns because of various restrictions relating to property type, loan-to-value ratio and other mortgage characteristics.

The proposed amendments also provide for additional investor protections, such as

- enhancing disclosure and requiring the delivery of a current property appraisal prepared by an independent professional appraiser to investors who purchase syndicated mortgage investments under the offering memorandum exemption, and
- removing the private issuer exemption for syndicated mortgage investments.

The second comment period for the proposed amendments ended on June 14, 2019, with additional comments provided by 11 commenters.

We continue to work with other branches of the OSC, FSRA staff and Ministry of Finance staff to coordinate the oversight of investments in the syndicated mortgage sector.

Problematic Promotional Activities by Issuers

CSA Staff Notice 51-356 *Problematic promotional activities by issuers* was published on November 29, 2018. The notice highlights staff's concerns with certain promotional practices, including dissemination of unbalanced or unsubstantiated material claims, and cautions issuers to avoid promotional activities that may artificially increase an issuer's share price or trading volume, or may mislead investors. Examples of promotional activities that may be misleading include

- disseminating presentations, marketing materials, social media posts, or other information that describe early-stage plans with unwarranted certainty, or make unsupported assertions about growth of markets or demand for a product,
- announcing an issuer name or business change to reference an emerging industry or technology without a supporting business plan or comprehensive risk disclosure, and
- compensating third parties who use social media and general investing blogs to promote issuers, but do not disclose their agency, compensation or financial interest

Problematic promotional activities may result in enforcement action or other regulatory responses such as requiring an issuer to

- issue a clarifying news release,
- retract or remove overly promotional language from their disclosure record including their website and/or social media, and
- refile CD documents.

Misleading promotional activity by issuers undermines the integrity of our capital markets and puts investors at risk of harm. The notice reminds issuers of our staff expectations in this area.

Climate Change-related Disclosure

The focus on climate change-related issues in Canada and internationally has grown rapidly in recent years. In order to make informed investment and voting decisions, investors, particularly institutional investors, are seeking improved disclosure on the material risks, opportunities, and financial impacts related to climate change.

Securities legislation in Canada requires reporting issuers to disclose the material risks affecting their business and, where practicable, the financial impacts of such risks. In addition to addressing regulatory requirements, these disclosures provide issuers with an opportunity to inform investors about the sustainability of their business model and to provide insights into how they are mitigating and adapting to these risks.

As outlined in CSA Staff Notice 51-354 *Report on Climate change-related Disclosure Project* (SN 51-354), which was published on April 5, 2018, we found that issuers needed further guidance on identifying and disclosing material climate change-related risks. In response, on August 1, 2019, we published CSA Staff Notice 51-358 *Reporting of Climate Change-related Risks* (SN 51-358), which is intended to assist companies in identifying and improving their disclosure of material risks posed by climate change.

SN 51-358 does not create any new legal requirements or modify existing ones. It reinforces and expands upon the guidance provided in CSA Staff Notice 51-333 *Environmental Reporting Guidance* (SN 51-333) and should be read in conjunction with SN 51-333, which continues to provide guidance to issuers on existing CD requirements relating to a broad range of environmental matters, including climate change.

We encourage boards of directors and management of issuers to review SN 51-358 as it

- provides an overview of the responsibilities of boards and management relating to risk identification and disclosure,
- outlines relevant factors to consider in assessing the materiality of climate change-related risks,
- provides examples of some of the types of climate change-related risks to which issuers may be exposed,
- includes questions for boards and management to consider in the climate change context, and
- provides an overview of the disclosure requirements if an issuer chooses to disclose forward-looking climate change-related information.

We will continue to monitor disclosure of climate change-related matters as part of our ongoing CD review program.

Branch Advisory Committees

The Branch has several committees that have been constituted to advise OSC staff on matters related to a range of projects and policy initiatives. A list of the current advisory committees and their members can be found here.

Continuous Disclosure Advisory Committee (CDAC)

The CDAC advises staff on a range of projects, including the planning, implementation and communication of its CD review program, as well as related policy initiatives. The CDAC also serves as a forum to advise OSC staff on emerging issues, and to critically assess procedures. The CDAC consists of 10 to 15 members who meet approximately four times annually. Members serve two-year terms and are selected for their extensive knowledge of CD issues and a strong interest in related policy. The CDAC is currently chaired by Michael Balter, Manager of the Branch.

Small and Medium Enterprises Committee (SMEC)

The SMEC advises staff on matters related to small and medium enterprises (SMEs). Committee members discuss the development, implementation and communication of policies and practices to address issues affecting SMEs, in the pursuit of capital market efficiency, investor protection and economic growth. The SMEC meets approximately four times a year. The committee consists of 10 to 15 members with a variety of perspectives. The SMEC is chaired by Jo-Anne Matear, Manager of the Branch.

Mining Technical Advisory and Monitoring Committee (MTAMC)

The MTAMC provides advice to the CSA on technical issues relating to disclosure requirements for the mining industry. The committee also serves as a forum for continuing communication between the CSA and the mining industry. The MTAMC consists of approximately 15 members who meet three times annually. Members typically serve three-year terms and are drawn from across Canada and different sectors of the mining industry, ranging from early stage exploration to commercial production. Members typically have significant technical experience and a strong interest in securities regulatory policy as it relates to the mining industry. The MTAMC is currently co-chaired by Craig Waldie, Senior Geologist of the Branch.

Part D: Additional Resources

Online Resources

Issuer Education and Outreach

A part of our Branch's mandate is to foster a culture of compliance through outreach and other initiatives. Although we cannot provide legal, financial accounting or other advice, we try to assist issuers in meeting their regulatory requirements by providing the following resources.

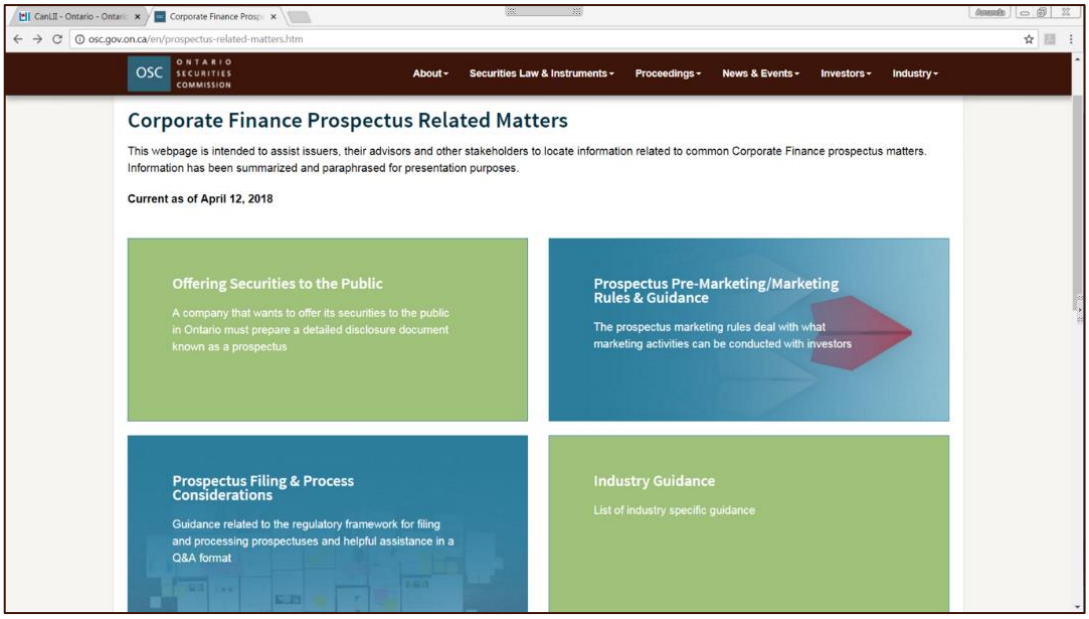
Online Resources

Corporate Finance section of OSC website - The Corporate Finance section of the OSC website provides a basic outline for issuers on how to comply with Ontario securities law and file certain documents with the OSC. It describes the steps an issuer needs to take to

- distribute and market securities,
- disclose information on a timely and accurate basis, and
- apply for regulatory exemptions.

In particular, there is a page that contains links to information for smaller issuers (both reporting issuers and other issuers) that want to learn more about Ontario securities law. The "Information for Companies" section of the OSC website can be found here.

OSC Corporate Finance Prospectus Webpage - On May 16, 2018, the Branch launched a webpage focused exclusively on Corporate Finance Prospectus Related Matters.



This webpage is intended to assist issuers, their advisors and other stakeholders in locating information related to common Corporate Finance prospectus matters. This webpage will serve as a useful guide to easily access prospectus related information articulated in the form of guidance, notices, policies and branch reports. We encourage issuers and their advisors to review the webpage for helpful prospectus related details.

OSC Exempt Market Webpage - The OSC exempt market webpage provides access to the OSC Electronic Filing Portal and electronic form to file reports of exempt distribution. The webpage also provides links, information, and guidance for issuers including

- a summary and comparison of the key capital raising exemptions in Ontario,
- exempt market activity data,
- forms and filing requirements,
- tips on completing Form 45-106F1 and frequently asked questions, and
- exempt market publications.

Issuer Education and Outreach

Issuer education and outreach occurs at both a micro level through direct communication with an issuer, as well as at a macro level through broad communications, such as staff notices. We also share the observations and findings of our review program through the Branch's outreach program for SMEs called the OSC SME Institute. Through the institute, we offer SMEs a series of free educational seminars to help them and their advisors understand the securities regulatory requirements for being or becoming a public company in Ontario and participating in the exempt market. Anyone interested in attending an event or consulting past presentations can visit the section Information for Small and Medium Enterprises on the OSC's website. A summary of the seminars we have conducted during fiscal 2019 is included in the table below (along with links to the presentation).

Date of seminar	Topic
February 21, 2019	Current Trends in Prospectus Filings
January 15, 2019	Hot Topics in Continuous Disclosure
December 6, 2018	Report of Exempt Distribution: How to complete it, when to file it, what to avoid, and what's new

Finally, staff of the Branch give presentations from time to time at industry conferences, professional advisory firms' offices and provide staff views and commentary through various media forums.

APPENDIX A – Key Staff Notices

Topic	Reference
Prospectus Practice Directives	• OSC Staff Notice 41-702 – *Prospectus Practice Directive #1 – Personal Information Forms and Other Procedural Matters Regarding Preliminary Prospectus Filings* • OSC Staff Notice 41-703 – *Corporate Finance Prospectus Practice Directive #2 – Exemption from Certain Prospectus Requirements to be Evidenced by a Receipt*
Disclosure Obligations	• OSC Staff Notice 51-711 (Revised) – *Refilings and Corrections of Errors* • OSC Staff Notice 51-723 – *Report on Staff's Review of Related Party Transaction Disclosure and Guidance on Best Practices*
Forward-Looking Information	• OSC Staff Notice 51-721 – *Forward-Looking Information Disclosure* • CSA Staff Notice 51-356 – *Problematic promotional activities by issuers*
Non-GAAP Financial Measures	• CSA Staff Notice 52-306 (Revised) – *Non-GAAP Financial Measures* • CSA Staff Notice 52-329 – *Distribution Disclosures and Non-GAAP Financial Measures in the Real Estate Industry* • OSC Staff Notice 52-722 – *Report on Staff's Review of Non-GAAP Financial Measures and Additional GAAP Measures*
Industries	• CSA Staff Notice 43-307 – *Mining Technical Reports – Preliminary Economic Assessments* • CSA Staff Notice 43-309 – *Review of Website Investor Presentations by Mining Issuers* • CSA Staff Notice 51-327 – *Revised Guidance on Oil and Gas Disclosure* • CSA Staff Notice 51-342 – *Staff Review of Issuers Entering Into Medical Marijuana Business Opportunities* • CSA Multilateral Staff Notice 51-349 – *Report on the Review of Investment Entities and Guide for Disclosure Improvements* • CSA Staff Notice 51-352 (Revised) – *Issuers with U.S. Marijuana-Related Activities* • CSA Staff Notice 51-357 – *Staff Review of Reporting Issuers in the Cannabis Industry* • OSC Staff Notice 51-720 – *Issuer Guide for Companies Operating in Emerging Markets* • OSC Staff Notice 51-722 – *Report on a Review of Mining Issuers' Management's Discussion and Analysis and Guidance* • OSC Staff Notice 51-724 – *Report on Staff's Review of REIT Distributions Disclosure*

Insider Reporting and SEDI	• OSC Staff Notice 51-726 – *Report on Staff's Review of Insider Reporting and User Guides for Insiders and Issuers* • CSA Staff Notice 55-316 – *Questions and Answers on Insider Reporting and the System for Electronic Disclosure by Insiders (SEDI)*
Use of the Internet and Cyber Security	• CSA Multilateral Staff Notice 51-347 – *Disclosure of cyber security risks and incidents* • CSA Staff Notice 51-348 – *Staff's Review of Social Media Used by Reporting Issuers*
Corporate Governance	• CSA Multilateral Staff Notice 58-310 *Report on Fourth Staff review of Disclosure regarding Women on Boards and in Executive Officer Positions* • CSA Multilateral Staff Notice 58-311 *Report on Fifth Staff Review of Disclosure regarding Women on Boards and in Executive Officer Positions* • CSA Multilateral Staff Notice 51-359 *Corporate Governance Related Disclosure Expectations for Reporting Issuers in the Cannabis Industry*.
Climate Change	• CSA Staff Notice 51-354 – *Report on Climate change-related Disclosure Project* • CSA Staff Notice 51-358 – *Reporting of Climate Change-related Risks*

APPENDIX B – Staff Contact Information

Topic	Staff Contact
Administrative matters including insider reporting and cease trade orders	Eden Williams Manager, Regulatory Administration ewilliams@osc.gov.on.ca (416) 593-8338
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The OSC Inquiries & Contact Centre operates from
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