

# INVESTOR ADVISORY PANEL

February 14, 2019

Maureen Jensen  
Chair and CEO  
Ontario Securities Commission  
20 Queen Street West  
20<sup>th</sup> Floor  
Toronto, ON M5H 3S8

Dear Ms. Jensen,

## **RE: Issuer Continuous Disclosure**

I am writing to you on behalf of the Investor Advisory Panel regarding findings of the Continuous Disclosure Review Program, including those most recently reported in *CSA Staff Notice 51-355*.

For the past 9 years, these reviews have documented a disturbingly high rate of deficiency in issuer continuous disclosure. We note the following:

- During every year except 2013 and 2017, more than half of all disclosures examined were found to be deficient to some degree. The deficiency rates ranged as high as 76%; and they were above 70% almost half the time.
- Restatement and refiling has been ordered in nearly 17% of cases annually on average. It has exceeded that level in 3 of the last 4 years.
- Cease trading orders or referrals to enforcement occurred, on average, in more than 6% of cases. The incidence of these most serious deficiencies has been closer to 8% or 9% for 4 of the last 5 years.

In short, repeatedly during the past 9 years a substantial majority of examined disclosure needed improvement and fully one-quarter or more proved so inadequate or hazardous that immediate corrections or sanctions were necessary.

We realize issuers are selected for continuous disclosure review using a risk-based approach and therefore these outcomes may over-represent bad disclosure to some extent. We also understand that issuers selected may differ from year to year and consequently one year's statistics cannot be precisely compared to or contrasted with another year's numbers.

Still, the persistence of these levels of deficiency year after year is cause for concern – especially if the subset of examined issuers varies from year to year. That indicates the problem is not narrowly confined to a handful of issuers. And it appears to be worsening.

We are concerned, therefore, about whether Canadian investors increasingly are at risk of being misinformed and misled by deficient issuer disclosure. We believe this risk should be examined, and, at the same time, the effectiveness of methods currently being used to foster compliance with continuous disclosure requirements should be re-evaluated.

None of this is intended, in any way, as a criticism of efforts being made by the CSA, the Commission or its staff to address the problem. On the contrary, we believe those efforts reflect a very high degree of dedication and tremendous diligence. What worries us is the fact that the numbers remain high, despite conscientious application of current regulatory controls.

Accordingly, we recommend that an examination and re-evaluation of current methods and controls be undertaken by the OSC, preferably in conjunction with the other members of the CSA.

Thank you for taking the time to review and consider this letter. Please let us know if you have any questions or require clarification of our recommendation.

Sincerely,



Neil Gross  
Chair, Investor Advisory Panel