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Continuous Disclosure: Hot Topics and More

(for non-investment fund reporting issuers)

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OSC ONTARIO SECURITIES COMMISSION

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Presentation Outline

Topic	Page
Continuous Disclosure (CD) Review Program Overview	5
CD Review Program Results	9
Working Through a Comment Letter	17
Management's Discussion & Analysis (MD&A)	19
Disclosure Standards	43
Annual Information Form	53
Information Circular	57
Cease Trade Orders	67
Recent Initiatives	75
Upcoming Projects	89

OSC SME Institute — Objectives

- Help SMEs navigate the regulatory waters
- Demystify disclosure requirements so issuers can focus on building their business
- Help SME's to reduce their cost of compliance
- Provide an opportunity for informal dialogue with OSC staff

Disclosure requirements, including those for technical reporting, are a cornerstone of investor confidence

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Continuous Disclosure (CD) Review Program Overview

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CD Review Program

- Our CD review program is critical to investor protection as it monitors issuer compliance with CD obligations.
- We help companies understand and comply with their CD obligations through our compliance programs and issuer outreach and education initiatives.
- Types of reviews
  - Full reviews are broad in scope and generally involve a detailed review of an issuer's CD record for at least 12 months.
  - Issue-oriented reviews ("IOR") focus on specific accounting, legal or regulatory issues that we believe warrant scrutiny.

CD Review Program (cont'd)

- Issuers are generally selected for review using a risk-based approach
- May also select an issuer for review if:
  - Filing appears to be substantially non-compliant with a requirement of the Act or regulations
  - Filing appears to contain information that is misleading, false, deceptive or a misrepresentation
  - Assess compliance with new regulatory or accounting requirements
  - Issuers impacted by emerging risks and market conditions

CD Review Program (cont'd)

- Correspondence with issuers is primarily done through comment letters
- Outcomes of reviews
  - Prospective disclosure enhancements in filings
  - Issuer outreach and education
  - Refilings and other regulatory actions for significant deficiencies
    - OSC's 3-year Refilings and Errors List
    - Enforcement referral / cease trade order / default list

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CD Review Program Results

CSA Staff Notice 51-346
Continuous Disclosure Review Program Activities for the fiscal year ended March 31, 2016

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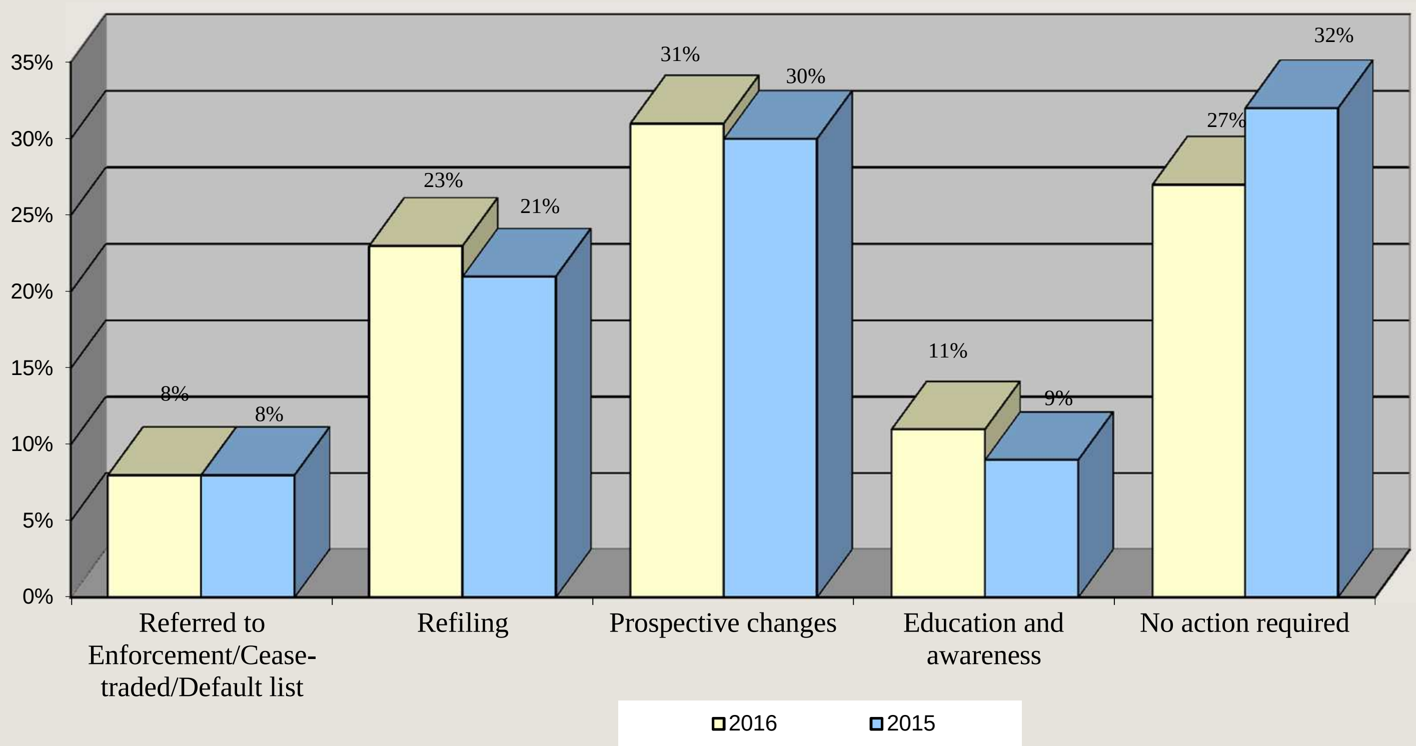
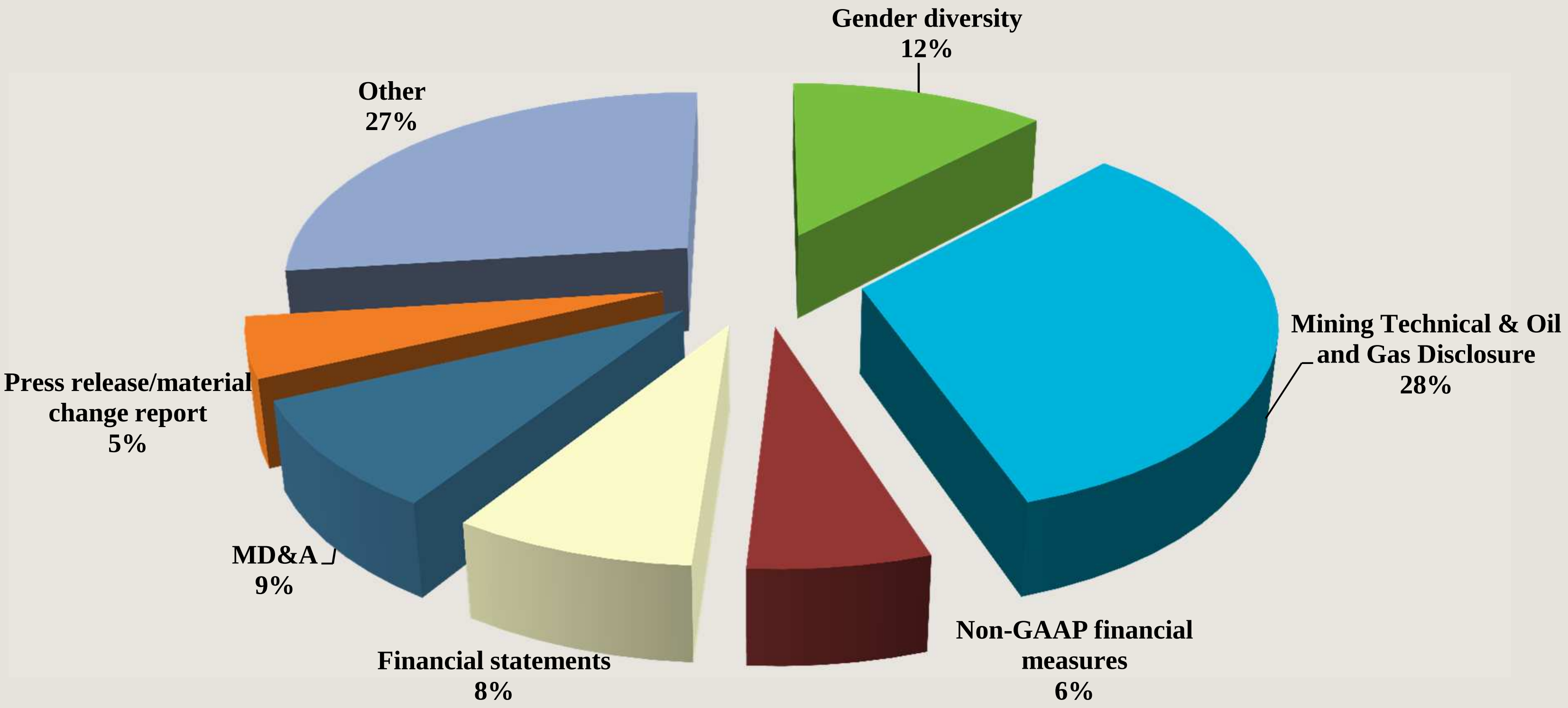
CSA CD Staff Notice — Background

- CD Review Program based on CSA Staff Notice 51-312 (revised) Harmonized Continuous Disclosure Review Program.
- CSA Staff Notice 51-346 contains the results of the CD reviews conducted by the CSA within the scope of their CD review program for the fiscal year ended March 31, 2016.
- Published July 18, 2016.
- 902 continuous disclosure reviews were completed by CSA staff in fiscal 2016, of which 31% were full reviews and 69% were IORs.

CSA CD Review Outcomes for Fiscal 2016



Issue Oriented Reviews (IORs) in Fiscal 2016



IORs (cont'd)

- Across the CSA, Staff conducted the following IOR that resulted in the publication of a CSA staff notice:
  - Gender Diversity
    - CSA Multilateral Staff Notice 58-307, Staff Review of Women on Boards and in Executive Officer Positions – Compliance with the gender diversity disclosure requirements under NI 58-101 Disclosure of Corporate Governance Practices
- In Ontario, Staff conducted the following IOR that resulted in the publication of the following staff notice:
  - Insider Reporting
    - OSC Staff Notice 51-726, Report on Staff's Review of Insider Reporting and User Guides for Insiders and Issuers

Common Deficiencies Identified

- Hot Buttons Chart
  - Includes various financial statement, MD&A and regulatory deficiencies we have encountered during our reviews.
- Disclosure Examples and Discussion
  - Financial Statement Deficiencies
    - Credit Risk disclosures
  - MD&A Deficiencies
    - Non-GAAP measures
    - Venture issuers without significant revenue
  - Other Regulatory Disclosure Deficiencies
    - Insider reporting
    - Oil & Gas reporting

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OSC CD Review Program Results

OSC Staff Notice 51-727

Corporate Finance Branch 2015-2016 Annual Report

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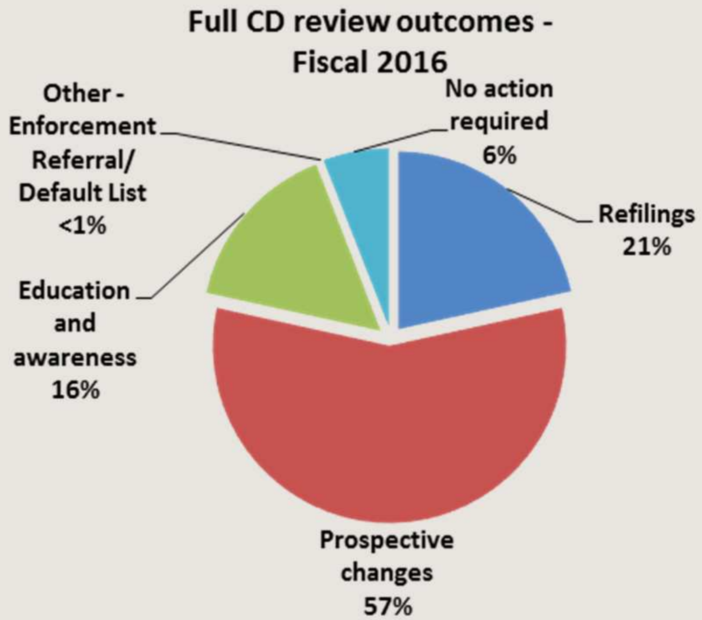
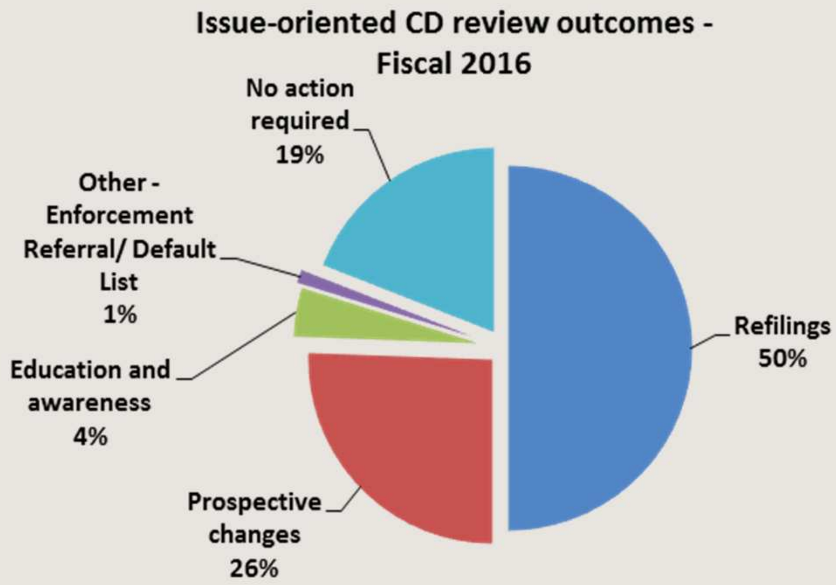
Ontario-Only Outcomes for Fiscal 2016





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Working Through a Comment Letter

Managing Interactions with Corporate Finance Staff

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Top Practice Points

1. Comply with the noted response timeline
2. Involve the right people
3. Clarify with staff if unsure
4. Provide a fulsome response
5. Filing documents on SEDAR during comment letter process
6. Be aware of review outcomes

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Management's Discussion and Analysis (MD&A)

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Background

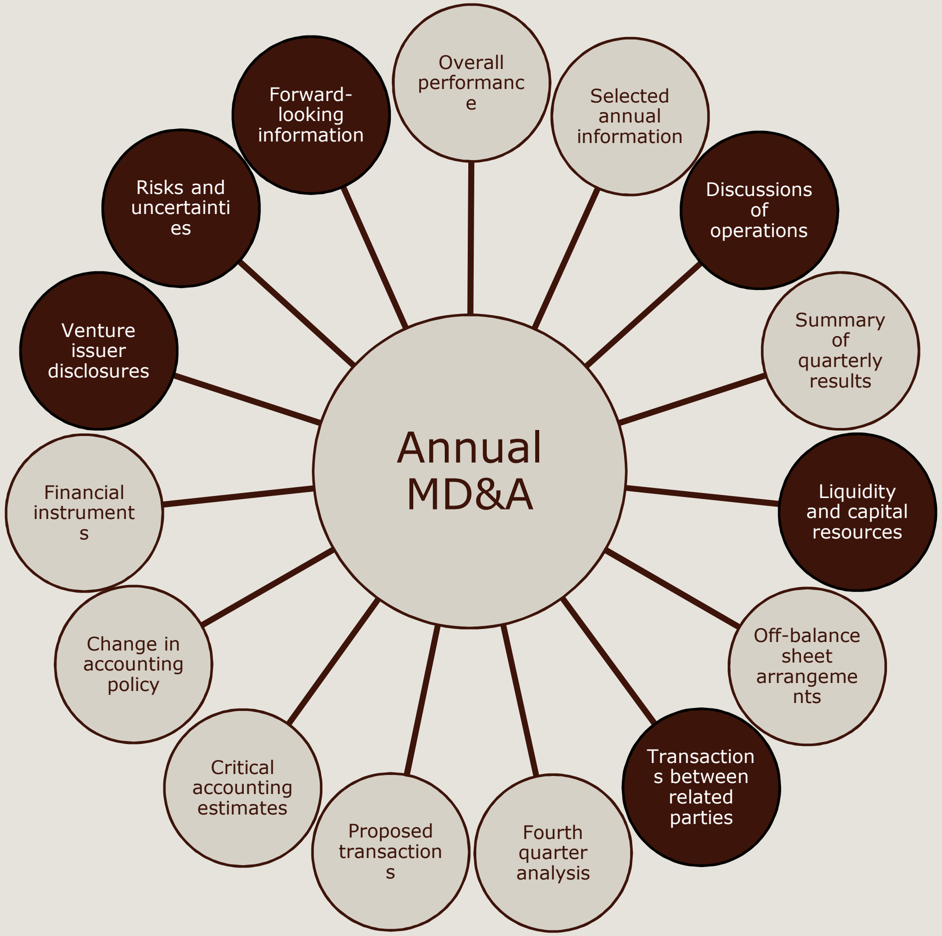
- MD&A is a narrative explanation "through the eyes of management" which:
  - Provides a balanced discussion of a company's results, financial condition and future prospects – openly reporting bad news as well as good news
  - Helps current and prospective investors understand what the financial statements show and do not show
  - Discusses trends and risks that have affected or are reasonably likely to affect the financial statements in the future
  - Provides information about the quality and potential variability of company's earnings and cash flow

The MD&A should complement and supplement the company's financial statements.

General Considerations

- Focus on material information
- Would a reasonable investor's decision whether or not to buy, sell or hold securities of the Company likely be influenced or changed if the information in question was omitted or misstated?
  - Yes, then likely material
- Explain the whys
- Ensure that financial information readily reconciles with financial statements
- Ensure that discussion reconciles with technical report, if one has been filed
- Use plain language

Annual MD&A



Annual MD&A
Overall performance
Selected annual information
Discussions of operations
Summary of quarterly results
Liquidity and capital resources
Off-balance sheet arrangements
Transactions between related parties
Fourth quarter analysis
Proposed transactions
Critical accounting estimates
Change in accounting policy
Financial instruments
Venture issuer disclosures
Risks and uncertainties
Forward-looking information

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MD&A

Liquidity

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Hot Buttons

Areas	Considerations
Ability to generate sufficient cash	▪ Is there an analysis of the company's ability to generate sufficient cash in the short term and the long term to: • meet funding needs? • meet planned growth? • fund development activities?
Working capital requirements	▪ Are the company's working capital requirements disclosed? ▪ If a working capital deficiency exists, or is expected, is there a discussion on the company's: • ability to meet obligations as they become due? • plans, if any, to remedy the deficiency?
Covenants	▪ Has the company disclosed where they have breached or are nearing a breach of a covenant? ▪ If the company is in breach or nearing breach of a financial covenant, is there a discussion on the company's: • Plans, if any, to cure the default or address the significant risk of default?

Example of Boilerplate Disclosure — Working Capital Requirements

- Identifies working capital deficiency
- No explanation of how deficiency will be remedied
- No explanation of how they will meet obligations

At year end, the company had cash of $10,000, total current assets of $500,000 and total current liabilities of $700,000. This resulted in a working capital deficiency of $200,000. Nonetheless, management is confident that the company has adequate financial resources to address its requirements and can arrange alternative sources of financing, if necessary.

Example of Entity-specific Disclosure — Working Capital Requirements

Ability to generate cash

Ability to meet working capital obligations

Expected sources of funds

The company, which is involved in early stage exploration, has no sources of revenue and does not anticipate receiving revenue in the foreseeable future. At year end, the company had cash of $10,000, total current assets of $500,000 and total current liabilities of $700,000. This resulted in a working capital deficiency of $200,000. Subsequent to year end, the company has entered into an agreement to borrow an additional $3 million from shareholders to meet current and future working capital requirements.

In the short term, the company intends to principally rely on advances from shareholders and the exercise of options to fund operating costs. However, there is no assurance that shareholders will advance a sufficient amount of funds to the company or that a sufficient number of options will be exercised.

Example of Entity-specific Disclosure — Working Capital Requirements (cont'd)

The company is also exploring other financing alternatives to address both its short term operating and long term financing requirements, such as optioning out interests on its properties and the sale and leaseback of capital assets.

Cash burn rate

Working capital / capex requirements

The company's monthly cash operating costs are approximately $100,000. In addition, in accordance with the provisions of the option agreement with Explorco, the company must spend $25,000 per month for each of the next 12 months in order to exercise its option to acquire a 50% interest in the ABC property. If it is unable to meet its exploration obligations, it will lose its interest in the property. The company has also budgeted $650,000 to conduct exploration on its WXY Property over the next 12 months.

Example of Boilerplate Disclosure — Covenants

Identifies what the covenant is linked to

Identifies the Company is close to breaching

No discussion on how the Company plans to address the Potential default

At September 30, 2016, the Company had drawn $10 million of the loan facility (Q3 2015 – $4.5 million). The Company is required to maintain certain covenants with the bank and is close to breaching those covenants as at September 30, 2016.

Example of Entity-specific Disclosure — Covenants

Identifies what the covenant is

Identifies the Company is close to Breaching and quantifies the ratio

Discussion on how the Company plans to address the Potential default

At September 30, 2016, the Company had drawn $10 million of the loan facility (Q3 2015 – $4.5 million). The Company is required to maintain certain covenants with the bank and is close to breaching those covenants as at September 30, 2016. The financial covenant is the Company's **debt to equity ratio, which must be less than 0.8**. The current calculation **results in a ratio of 0.75**. The Company **is currently in discussions with the bank to waive the covenant; if the bank cannot waive the covenant, the Company will use the proceeds of the ABC disposition to reduce its debt**, and in turn, reduce the debt to equity ratio.

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MD&A

Non-GAAP Financial Measures

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What are Non-GAAP Financial Measures?

- A "non-GAAP financial measure" (NGM) is defined in CSA Staff Notice 52-306:
  - Numerical measure of an issuer's historical or future financial performance, financial position or cash flow
  - NGMs are not specified, defined or determined under the issuer's GAAP
    - Exclude amounts that are included in or include amounts that are excluded from the most directly comparable GAAP measure
- In other words, non-GAAP financial measures are not based on generally accepted accounting principles (GAAP)
- Examples commonly include:
  - EBITDA
  - Free Cash Flow
  - Adjusted Earnings Per Share

1. Does the disclosure explicitly state that there is no standardized meaning of the non-GAAP financial measure?

Company #1	Company #2	Company #3
Net income + interest + taxes + depreciation and amortization		
= EBITDA		
- Other income + Deemed interest on operating leases	+ Severance, acquisition, and other costs + Interest on post-employment benefit obligations + Other expenses	+ Impairment of retail assets held for sale + Labour agreements + Inventory measurement differences + Fixed asset impairment - Modified franchise fees + Pension annuities - FV adjustment on fuel and FX contracts - Restructuring costs

= **Adjusted EBITDA**

2. Has the non-GAAP financial measure been named in a way that distinguishes it?

- EBITDA excludes more than just "I-T-D-A"

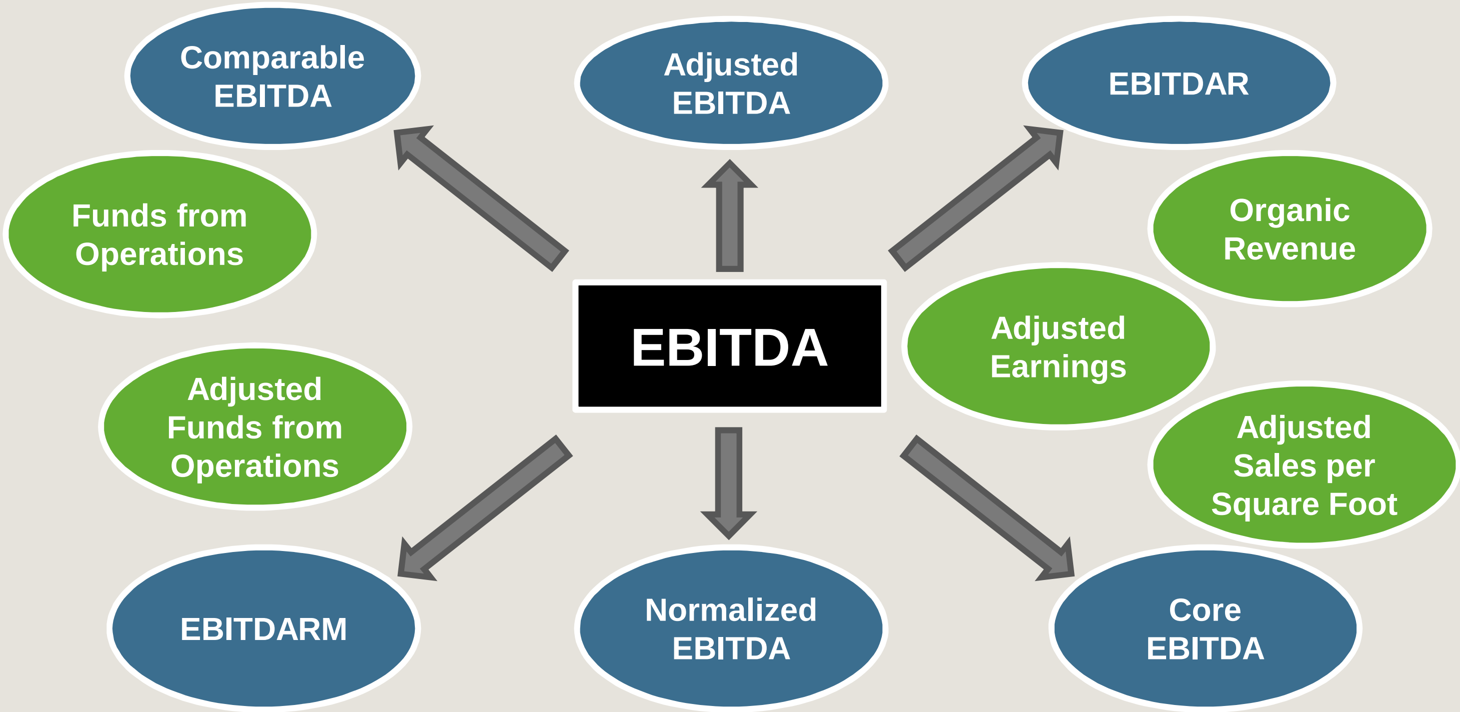
ABC Co.
Consolidated Income Statement
For the year ended December 31

(millions $CDN)	**2015**
Operating revenues	7,000
Operating costs	(3,000)
EBITDA	**4,000**
Depreciation and amortization	(1,200)
Severance, acquisition, and other costs	(275)
Interest expense	(450)
Expected return on pension plan assets	300
Other income (expense)	60
Earnings before income taxes	2,435
Income taxes	(245)
Net earnings	**2,190**

3. Has the company disclosed:

(a) why the non-GAAP financial measure is useful to an investor?

(b) why management considers the non-GAAP financial measure to be useful?



4. Has the comparable GAAP measure been presented with equal or greater prominence to the non-GAAP financial measure?

Results of Operations for the year ended December 31, 20XX	
	December 31, 20XX
Revenues	2,000,000
Cost of Goods	1,000,000
Gross margin	1,000,000
SG&A expenses	200,000
Adjusted EBITDA	800,000
EBITDA	700,000
Net income	200,000

5. Is a reconciliation between the non-GAAP financial measure and the most directly comparable GAAP measure provided?

EBITDA Reconciliation	
	December 31, 20XX
Net income	200,000
Interest	50,000
Depreciation	200,000
Amortization	200,000
Taxes	50,000
EBITDA	700,000

6. Are adjustments described 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?

7. If composition of the non-GAAP financial measure has changed from the previous year, has disclosure of the reasons for these changes been made?

Types of Potential Non-GAAP Financial Measure Deficiencies

Potential Deficiencies	Examples
Measures that are presented with greater prominence than GAAP measures	▪ Disclose non-GAAP measure in press releases without providing the most directly comparable GAAP measure in the press release.
Measures that spotlight the good and play down the bad	▪ Disclose positive adjusted working capital, calculated by excluding a negative net non-financial assets/liabilities amount, when the company has a working capital deficit. ▪ Disclose more positive adjusted operating cash flow, by excluding certain negative amounts.
Multiple measures used and explanation of why they are used is not sufficient	▪ Disclosing multiple non-GAAP measures with no clear reason for why they provide useful information can convolute the MD&A.

Non-GAAP Financial Measures

- Example #1 – Prominence placed on non-GAAP measures

Only discusses adjusted EBITDA

Highlights the positives of the adjusted EBITDA

The Company achieved record financial results and met its financial targets. Adjusted EBITDA[1] which excludes the impact of interest, taxes, depreciation, amortization and restructuring charges totaled $65 million in 2015, an increase of 12% from $59 million in 2014. The year-over-year increase in adjusted EBITDA is attributable to lower cash operating expenses, primarily from synergies achieved in the Company's cost structure.

[1] Refer to the "Non-GAAP financial measures section on page X for more information about this measure and for a reconciliation of the NGM to the most directly comparable GAAP measure.

Non-GAAP Financial Measures

- Example #2 – Equal prominence placed on GAAP measures

Discussion of net income comes before adjusted EBITDA

Variance analysis is focused on GAAP measure

The Company's **net income for the year decreased by 32% to $44 million (2014 - $65 million). The year-over-year decrease in net income is attributable to an increase in amortization and depreciation of $6.5 million due to a reduction in the estimated useful life of certain IT systems, and a restructuring charge of $15 million related to Company-wide efforts to improve efficiencies and centralize certain processes.** Adjusted EBITDA[1], which excludes the impact of interest, taxes, depreciation, amortization and restructuring charges totaled $65 million in 2015, an increase of 12% (2014 – $58 million).

[1] Refer to the "Non-GAAP financial measures" section on page X. for more information about this measure and for a reconciliation of the NGM to the most directly comparable GAAP measure.

Non-GAAP Financial Measures

- *Example #1 – Boilerplate explanation of non-GAAP financial measure*

Does not indicate why the measure is useful to investors

Adjusted EBITDA is a non-GAAP financial measure, which is defined as earnings before income tax expense, financing costs, depreciation and amortization, and impairment charges.

Does not provide a fulsome explanation of why management uses the measure

In management's opinion, Adjusted EBITDA **is the most useful measure of performance because it provides a normalized picture of financial condition.**

Non-GAAP Financial Measures

- *Example #2 – Fulsome explanation of non-GAAP financial measure*

Describes in detail why management uses the measure, and also includes a description of why the measure is useful to investors.

Adjusted EBITDA is a non-GAAP financial measure, which is defined as earnings before income tax expense, financing costs, depreciation and amortization, and impairment charges.

Management believes that Adjusted EBITDA is an **important indicator of the Company's ability to generate liquidity through operating cash flow to fund future working capital needs, service outstanding debt, and fund future capital expenditures and uses the metric for this purpose.** The exclusion of impairment charges eliminates the non-cash impact. Adjusted EBITDA is also **used by investors and analysts for the purpose of valuing a company**. The intent of Adjusted EBITDA is to provide additional useful information to investors and analysts and the measure does not have any standardized meaning under IFRS. Adjusted EBITDA should therefore not be considered in isolation or used in substitute for measures of performance prepared in accordance with IFRS. Other companies may calculate Adjusted EBITDA differently.

Non-GAAP Financial Measures — Other

- The non-GAAP financial measures guidance set out in CSA SN 52-306 (Revised) are applicable to all continuous disclosure documents, as well as website materials and investor presentations
- Non-GAAP forward-looking information (FLI) is subject to the FLI requirements in Part 4A and 5.8 of National Instrument 51-102 Continuous Disclosure Obligations
- SEC published helpful compliance and disclosure interpretations on the use of non-GAAP financial measures in May 2016
- In December 2013 Ontario staff published a staff notice on our review of these measures (OSC Staff Notice 52-722)

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National Policy 51-201
Disclosure Standards

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National Policy 51-201 Disclosure Standards

- In addressing the importance of effective disclosure practices, National Policy 51-201 includes a discussion of the following themes:
  - Timely disclosure, including material change reporting
  - Prohibition against selective disclosure
  - The importance of balanced disclosure
  - Determining whether events are material
  - Other best disclosure practices

Timely Disclosure

- When is timely disclosure, as opposed to continuous disclosure, required?
- What is the definition of a material change?
- What is required when a material change occurs?
  - Press release – immediately upon information becoming known to management
  - Material change report – within 10 days

A material change includes "a change in the business, operations or capital of the issuer that would reasonably be expected to have a significant effect on the market price or value of any of the securities of the issuer".

Selective Disclosure

- Securities legislation prohibits a reporting issuer and any person or company in a special relationship with a reporting issuer from informing, other than in the necessary course of business, anyone of a "material fact" or a "material change" before that material information has been generally disclosed.
- How is the 'generally disclosed' requirement satisfied?
  - For material changes
  - For other material information, such as a material fact
- How can information which is neither a material change nor a material fact be disclosed?

A material fact includes "a fact that significantly affects, or would reasonably be expected to have a significant effect on, the market price or value of… securities".

Balanced Disclosure

- Balanced Disclosure should include the following:
  - It should be factual and balanced
  - Unfavorable news should not be withheld
  - Unfavorable news should be given no less prominence than favorable news
  - It should contain enough detail for investors to understand the substance of the issue
- Balanced disclosure should not include:
  - Unnecessary detail
  - Exaggerated reports or promotional commentary
- Unbalanced disclosure often lacks a discussion of:
  - Risks & uncertainties
  - Contingencies
  - Costs & barriers

Balanced Disclosure (cont'd)

- CSA Staff Notice 51-342 Staff Review of Issuers Entering Into Medical Marijuana Business Opportunities
  - Discussion of balanced disclosure concerns applicable to issuers in all industries
- OSC Staff Notice 51-727 Corporate Finance Branch 2015-2016 Annual Report
  - Importance of disclosures conveyed by issuer's outside of their normal continuous disclosure filings
    - Press releases
    - Investor presentations
    - Website materials
    - Social media websites

Balanced Disclosure (cont'd)

- Example #1 - Unbalanced disclosure

No discussion of risks or contingencies

Promotional in the absence of additional detail re the terms of the arrangement

On October 3, 2016 the Company signed a letter of understanding with a major retail company listed on the London stock exchange. The agreement has a 10 year term and is anticipated to result in up to $1 billion in sales of the Company's products over that term.

Balanced Disclosure (cont'd)

- Example #2 - Balanced disclosure

Additional detail about arrangement terms

On October 3, 2016 the Company signed a non-binding letter of understanding with a ~~major~~ retail company listed on the London stock exchange. The agreement has a 10 year term. Under the agreement, the potential customer has indicated its interest to purchase up to $1 billion of the Company's products over the 10 year term.

Risks and contingencies

Product specifications and customization on behalf of the customer will continue to be developed over the next 6 months or longer. There can be no assurance that an agreement on product specifications, or subsequently a binding definitive sales arrangement, will be reached. If they are reached, there is no guarantee that any specific amount of product will be sold. The potential customer has made no firm commitment to purchase any of the Company's products at this time.

The $1 billion figure noted above is based on an indication of anticipated demand as provided by the potential customer. The Company is not in a position to verify such estimate, or the potential customer's ability to absorb such demand.

Determining Whether Events Are Material

- Examples of potentially material information are provided in National Policy 51-201 Disclosure Standards.
  - Changes in corporate structure
  - Changes in capital structure
  - Changes in financial results
  - Changes in business and operations
  - Acquisitions and dispositions
  - Changes in credit arrangements
- This list is not exhaustive. Issuers should exercise judgment in making materiality determinations.

Other Best Disclosure Practices

- Establishing a corporate disclosure policy
- Analyst reports
- Insider trading policies and blackout periods
- Overseeing and coordinating disclosure

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Form 51-102F2
Annual Information Form

Risk Factor Disclosure

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Annual Information Form

- Purpose and content of an Annual Information Form
- Commonly observed disclosure deficiencies:

Hot topic	Guidance
Description of the business	Include sufficient detail, as well as a robust discussion of each operating segment identified in the financial statements.
Description of the business	Provide information on various aspects of the business, including but not limited to production and services, specialized skills and knowledge, competitive conditions, new products, economic dependence and changes to contracts.
Risk factors	If a particular risk, for example cash flow and liquidity, has become particularly prevalent in the current year then issuers should update their disclosure to address this change.
Risk factors	Risks should be listed in order of seriousness with the most serious risks listed first.
Risk factors	Disclose strategies to manage risks, but avoid de-emphasizing a risk factor.
Risk factors	Risk factors should include sufficient detail and they should be entity specific – not generic. The potential impact of the risk (qualitative and/or quantitative) should be disclosed.

Annual Information Form (cont'd)

- Example #1 - Boilerplate risk factor disclosure

Additional entity specific information could be provided

De-emphasizing or qualifying language

60% of the Company's revenues are generated by Downstream Corporation, a wholly owned subsidiary of the Company which was acquired in March of the current year. 50% of the revenues of Downstream Corporation are derived from a single customer. Our business would be materially adversely impacted if such customer went to a competitor. As a result of the Company's strong relationship with this customer, and based on our discussions, the risk of loosing this customer in the foreseeable future is remote.

Annual Information Form (cont'd)

• Example #1 - Entity specific risk factor disclosure

Additional entity Specific detail

60% of the Company's revenues are generated by Downstream Corporation, a wholly owned subsidiary of the Company which was acquired in March of this year. 50% of the revenues of Downstream Corporation are derived from a single customer, who was the former owner of Downstream Corporation prior to it being acquired by the Company earlier this year.

Prior to the Company's acquisition of Downstream Corporation earlier this year, the customer had an economic incentive to purchase goods from Downstream Corporation as they were the owner of Downstream Corporation at that time. Given that this individual no longer owns Downstream Corporation, there is a risk that they we may not be able to retain their business.

Strategies to mitigate the risk

While the Company is in the process of negotiating pricing with this customer under a long term contract structure, no agreement has been reached at this time and there is no assurance that one will be reached.

Qualifying language removed

~~The Company has a strong relationship with this customer.~~ Our business would be materially adversely impacted if such customer went to a competitor. ~~As a result of the Company's strong relationship with this customer, and based on our discussions, the risk of losing this customer in the foreseeable future is remote.~~

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Form 51-102F5
Information Circular

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Information Circular

- Regulatory hot topics relating to the preparation of an information circular:

Hot topic	Guidance
When is prospectus level disclosure required in a circular?	Circulars prepared in connection with a share acquisition or a restructuring transaction (including a reverse takeover, merger, amalgamation) require prospectus level disclosure. See item 14.2 of Form 51-102F5.
Executive compensation disclosure – compensation discussion and analysis.	Provide an entity specific narrative overview that explains how and why the company arrived at specific compensation decisions and policies. Describe and explain all significant elements of compensation.
Executive compensation disclosure – all compensation disclosed.	All direct and indirect compensation provided in connection with services provided to the company (or one of its subsidiaries) must be disclosed.

Executive Compensation Disclosure

- Compensation Discussion and Analysis – General Requirements
- Describe & explain all significant elements of compensation in order to put in to perspective the executive compensation disclosure that follows, including quantitative disclosures.
- Focus on how and why compensation decisions were arrived at, including:
  - The objectives of any compensation program or strategy
  - What the compensation program is designed to reward
  - How the company determines the amount for each element
  - How each element of compensation and the company's decisions about that element fit into the company's overall compensation objectives
  - Each element of compensation and why the company chooses to pay each element

Executive Compensation Disclosure (cont'd)

- Compensation Discussion and Analysis – Benchmarking
- The compensation discussion and analysis should describe any benchmark group used, including its components (ie. which companies were included in the benchmark group, why were they included and how are they considered to be relevant).
- Examples of relevant selection criteria for benchmarking may include:
  - Geography or country where the benchmark company is located
  - Similar industry
  - Similar revenue range
  - Similar market capitalization range
  - Others entities which the company competes with for executive talent

Executive Compensation Disclosure (cont'd)

• Example #1 – Boilerplate benchmarking disclosure

No discussion of how the benchmark Is used

Benchmark group is not disclosed

The CEO's compensation is based upon compensation ranges for comparable positions at other TSX listed entities, or on directly comparable companies in the industry.

Executive Compensation Disclosure (cont'd)

- Example #1 – Entity specific benchmarking disclosure

Describes selection criteria

Describes how benchmark is used

Lists benchmark group

The CEO's compensation is based upon compensation ranges for comparable positions at publicly traded, TSX-listed companies or directly comparable companies in the industry. The criteria considered for the selection of comparator or peer group of companies was total revenue, market capitalization and net income. The benchmark group is used by the company to confirm whether the company has established comparable executive compensation levels to their peers. The Company's compensation is positioned at the median of its peer group and is consistent with the Company's stated compensation philosophy. The list of comparable companies that the Compensation Committee reviewed consisted of the following:

- *ABC Co.*
- *XYZ Ltd.*
- *Peanut Co.*
- *Almond Ltd.*

Executive Compensation Disclosure (cont'd)

- Disclosing Performance Goals or Other Similar Conditions
- Disclose performance goals or similar conditions that are based on objective, identifiable measures, such as the company's share price or earnings per share.
- If based on non-GAAP financial measures, explain how the company calculates these performance goals from its financial statements.
- If performance goals or similar conditions are subjective, the company may describe the performance goal or similar condition without providing specific measures.
  - Examples of subjective measures may include milestones, agreements or transactions.
- Discuss how any performance goals link to actual compensation awarded.

Executive Compensation Disclosure (cont'd)

- Example #2 – Boilerplate disclosure of performance goals

No quantification of objective measures

No disclosure of achievement of measures

In determining annual bonuses under the short term incentive plan and long term incentive plan, the Board takes into consideration both corporate and individual performance measures of the NEO. 50% of the STIP is based on achievement of specific corporate performance measures such as net earnings, share price performance, among others, and the remaining component relates to the individual performance of the NEO, which is more subjective and is based on individual measures established at the beginning of the year.

Executive Compensation Disclosure (cont'd)

- Example #2 – Entity specific disclosure of performance goals

In determining annual bonuses under the short term incentive plan and long term incentive plan, the Board takes into consideration both corporate and individual performance measures of the NEO. The Compensation Committee does not have discretion to award the short term incentive component without attainment of relevant individual and corporate performance goals. Under the terms of the plan, the NEO's maximum short term incentive as a percentage of base salary is 50%. The following is the structure and objectives for the NEO's short term incentive program:

	Performance Measure	Relative Weighing	Achievement in Fiscal Year
Corporate Performance Financial Measures (50% of total)	Net Earnings above $XX million	15%	XX%
	Share price performance above XX%	10%	XX%
	Cash Flow from Operations > $XX million	10%	XX%
	Growth of sq. footage of leasing	15%	XX%

Executive Compensation Disclosure (cont'd)

- Disclosing All Elements of Compensation
- If an external management company provides executive management services to the company directly or indirectly, disclose:
  - Any compensation that the external management company paid to the individual that is attributable to services provided to the company directly or indirectly
  - If the management company allocates the compensation paid to an NEO or director, disclose the basis or methodology used to allocate this compensation.

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Cease Trade Orders

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Cease Trade Orders (CTO)

National Policy 11-207 *Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions*

- What is a specified default?
  - Failure to file the following documents within the time period prescribed
    - Annual or interim financial statements
    - Annual or interim MD&A
    - Annual information form
    - Certification of filings under NI 52-109
- How do regulators respond to specified defaults?
  - Failure-to-File CTO (**FFCTO**)
  - Management Cease Trade Order (MCTO)
- Issuer should make sure that it continues to satisfy all of its other continuous disclosure obligations during the period of default

Management Cease Trade Orders (MCTO)

National Policy 12-203 *Management Cease Trade Orders*

- How is a MCTO different than a CTO?
  - Voluntary process
  - Insiders and management subject to CTO rather than issuer
  - All other investors can continue trading
- We will consider granting an MCTO if all of the following apply:
  - The outstanding filings will be filed within a reasonable period
  - The issuer is generating revenue from its principal business or is actively pursuing the development of products or properties
  - The issuer has necessary financial and human resources in place to address the default and comply with other CD requirements for the duration of the default
  - The issuer's securities are listed on a Canadian stock exchange and there is an active liquid market for the securities
  - The issuer is not on defaulting RI list in any jurisdiction

Management Cease Trade Orders (MCTO) (cont'd)

- Application
  - Two weeks prior to filing deadline
- News Release and Material Change Report (Default Announcement)
  - Issue immediately to marketplace when an issuer determines that it will not comply, or subsequently determined that it has not complied, with a specified requirement
  - NP 12-203 identifies information to include in Default Announcement
- Default Status Reports
  - Bi-weekly status reports issued by way of news release
  - NP 12-203 identifies information to include in bi-weekly status reports

Revoking a FFCTO (in effect for **less** than 90 days)

- Staff will generally revoke a FFCTO if within 90 days of the date of the FFCTO the default is remedied and the issuer’s continuous disclosure is brought up to date
- Formal application and application activity fees are not required
- Participation fees and late fees still apply!

Revoking a FFCTO (in effect for **more** than 90 days)

- Application Fee
- Full Revocation
  - Compliance Review
  - Outstanding continuous disclosure has been filed
  - Outstanding fees are paid
  - Annual meeting
  - News release announcing revocation and future plans
- s. 144 of the *Securities Act (*Ontario)
  - "The Commission may make an order revoking or varying a decision of the Commission, on the application of the Executive Director or a person or company affected by the decision, if in the Commission's opinion the order would not be prejudicial to the public interest"

Revoking a FFCTO (in effect for **more** than 90 days) (cont'd)

- National Policy 12-202 *Revocation of a Compliance-related Cease Trade Order*
  - Generally issued prior to June 23, 2016
  - FFCTOs do not include a reference to NP 11-207
  - File application in each jurisdiction that has issued a FFCTO
- National Policy 11-207 *Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions*
  - Generally issued after June 23, 2016
  - FFCTOs include a reference to NP 11-207
  - File application with Ontario or principal regulator and ON
- Applications submitted through OSC's electronic filing portal

Partial Revocation of a FFCTO

- Partial Revocation
  - To permit certain transactions
  - Issuer intends to apply for a full revocation
  - Use of proceeds
  - Conditions to partial revocation – acknowledgement and copies of FFCTO and revocation
  - Continuing effect of FFCTO

Recent Initiatives

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Venture Issuer Regulation

Amendments to NI 51-102, NI 41-101, and NI 52-110

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Why Did the Rules Change?

- Targeted changes
- Recognize stage of development
- Reduce burden

What Changed?

- MD&A quarterly highlights
- Business acquisition reporting
- Executive compensation disclosure
- Prospectus disclosure
- Audit committee requirements

MD&A Quarterly Highlights

- Tailored and focused
- Discusses material information
- Only for interim periods
- Optional

Expectations for Quarterly Highlights

- Where to start?
  - Remember the goal of MD&A

- Keys to success
  - Focus only on material information
  - Balanced and accurate
  - Narrative

- How will success be measured?
  - Will investors understand the business?
  - Operating milestones
  - Liquidity and capital resources

Business Acquisition Reporting

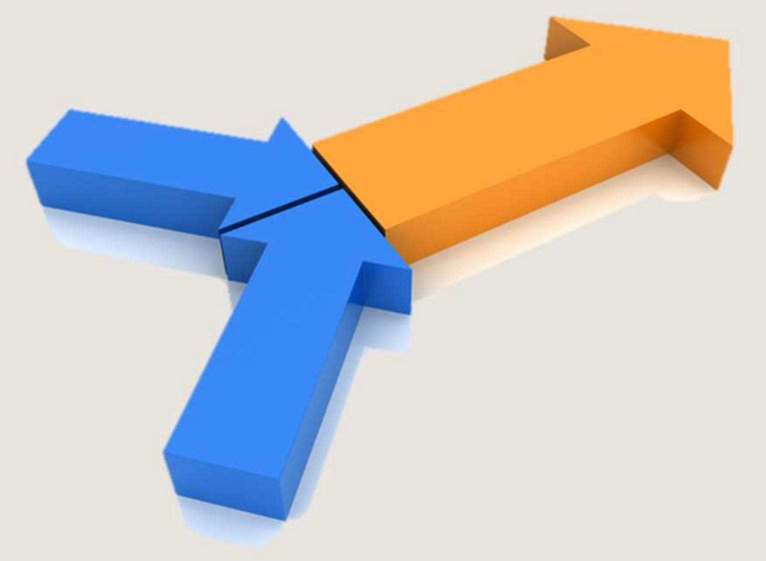
- Significance threshold moving from 40% to 100%
- Requirement for pro forma financial statements removed
- Consistent approach among filing types

Executive Compensation

- New optional venture issuer form (Form 51-102F6V)
- Disclosure for three NEOs instead of five
- Information covers only two years
- No grant date fair value

Prospectus Changes

- Reduce annual F/S history from three to two years
- Harmonize:
  - MD&A
  - BAR
  - Executive compensation



Audit Committee Changes

- Enhanced Governance Requirements
- Alignment with existing TSXV requirements

Timing and Use of Amendments To Date

- Amendments to venture issuer reporting as are currently in effect
- Things we have seen:
  - Not making use of the Quarterly Highlights
  - Not providing a focused discussion

CSA Multilateral Staff Notice 58-308

Year 2 Staff Review of Women on Boards and in Executive Officer Positions – Compliance with National Instrument 58-101 Disclosure of Corporate Governance Practices.

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CSA Multilateral Staff Notice 58-308

- Reported on compliance with the corporate governance requirements related to women on boards by 677 TSX listed issuers
- Reported on year over year changes since the publication of our last staff notice.
- Objectives:
  - Increase transparency
  - Encourage more effective boards and better decision making
- Application: Non-venture issuers

Corporate Governance Disclosure Requirements

- Number and proportion of women on boards and in executive officer positions
- Director term limits and other mechanisms of board renewal
- Policies regarding the representation of women on the board
- Director identification and selection process
- Executive officer appointments
- Targets

Key Findings

- 55% have at least one women on their board up from 49%
- 59% have at least one women in an executive officer position based on the issuers that reported, compared to 60% last year
- Women hold 12% of all board seats compared to 11% last year
- Of the 521 board seats that were vacated last year, 76 were filled by women

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Upcoming Projects

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Reducing regulatory burden

CSA Business Plan 2016-2019

- Review requirements applicable to reporting issuers to:
  - Identify areas that would benefit from a reduction of any undue regulatory burden
  - Seek to streamline these requirements without reducing investor protection or the efficiency of markets
- Securities regulators are facing growing pressures to respond appropriately to market issues while avoiding over-regulation
- While regulators have always focused on the need for regulatory balance, that focus has been magnified by the current market environment, which has impacted many market participants

Reducing regulatory burden (cont'd)

Recent policy initiatives to support public market

- Liberalized the prospectus marketing regime by increasing the range of permissible pre-marketing and marketing activities in connection with public offerings
- Introduced new exemptions for use by reporting issuers and amended or harmonized certain existing prospectus exemptions available to reporting issuers
- Tailored disclosure and other requirements to benefit venture issuers in the prospectus, continuous disclosure and governance regimes

Ongoing initiatives

- Reviewing the current resale regime for prospectus-exempt securities
- Creating a new national filing system to replace the core CSA national systems

Appendix

Key References and Contact Information

ONTARIO SECURITIES COMMISSION

Appendix A – Key References

Topic	Reference
MD&A	▪ Form 51-102F1 of NI 51-102 *Continuous Disclosure Obligations*
MD&A: Liquidity	▪ Item 1.6 of Form 51-102F1 of NI 51-102 *Continuous Disclosure Obligations*
Non-GAAP Financial Measures	▪ CSA Staff Notice 52-306 (Revised) – *Non-GAAP Financial Measures* ▪ OSC Staff Notice 52-722 *Report on Staff's Review of Non-GAAP Financial Measures and Additional GAAP Measures*
Forward Looking Financial Information	▪ CSA Staff Notice 51-721 *Forward Looking Information Disclosure*
Disclosure Standards	▪ National Policy 51-201 *Disclosure Standards*
Venture Issuer Regulation	▪ NI 51-102 *Continuous Disclosure Obligations*, NI 41-101 *General Prospectus Requirements* and NI 52-110 *Audit Committees*
Women on Boards	▪ CSA Multilateral SN 58-308, NI 58-101 *Disclosure of Corporate Governance Practice*

Appendix B – Contact Information

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Appendix B – Contact Information (cont'd)

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