

1.1.4 OSC Staff Notice 51-711 - List of Refilings and Corrections of Errors as a Result of Regulatory Reviews

**STAFF NOTICE 51-711
LIST OF REFILINGS AND CORRECTIONS OF ERRORS
AS A RESULT OF REGULATORY REVIEWS**

This is an amended version of Staff Notice 51-709, Refilings And Corrections of Errors as a Result of Regulatory Reviews, which has now been withdrawn.

In June 2000, we published Staff Notice 51-703 *Implementation of Reporting Issuer Continuous Disclosure Review Program* announcing the creation of a continuous disclosure review program by the Corporate Finance Branch of the Ontario Securities Commission. The goal of this review program is to ensure compliance with periodic and timely disclosure requirements, as well as to improve the quality of disclosure generally.

Since then, we have reviewed the continuous disclosure records of numerous issuers and some of these reviews have resulted in issuers amending and refile financial statements or other documents. Prospectus reviews have also identified issues that required a corresponding correction of the continuous disclosure record of several issuers.

Specific examples of where issuers have had to restate and refile financial statements include the following situations:

- revenue was recognized at the time of delivery, as opposed to at the time of installation,
- no tax provision was recorded in the quarterly financial statements,
- a tax contingency was accounted for as a prior period adjustment,
- an income tax asset was inappropriately accounted for,
- there was no accrual for liabilities in the context of an acquisition,
- a new accounting standard respecting goodwill was not adopted by the issuer and it failed to perform an impairment test, and
- non-cash flow items were included in the cash flow statement.

In certain limited cases, our reviews were resolved through the issuer agreeing to restate financial information for previous periods retroactively in their next set of financial statements. This was done in order to correct an error in the statements that have already been filed with the Commission.

When an issuer amends and refiles a document previously filed with the Commission, or implements an accounting change on a retroactive basis in order to correct an error, it is our view that these are significant events that should be generally disclosed to the market.

Company Disclosure

We remind issuers that it is their responsibility to ensure that the details of any amended and refiled information, or retroactive accounting change that represents the correction of an error, are clearly and broadly disclosed to the market in a timely manner. This responsibility is the same whether the refiling or change is made in the context of a staff review or at any other time.

It is our view that a refiling or a retroactive accounting change that represents the correction of an error will generally represent a material change that should be immediately communicated to the market place by way of a news release and report of the material change in accordance with section 75 of the Act. Even where the correction may not represent a material change, we take the view that investors should be informed immediately by way of a news release.

The news release should clearly describe the revisions to the previously filed information and the reasons for making the changes. This information should be released in a way that ensures it is widely and publicly disseminated and a copy should be concurrently provided to the Commission. Finally, the documents that are amended and refiled should be clearly labelled as "revised" or "restated", should identify and describe the nature of the revisions and, in the case of refiled financial statements or MD&A, should be filed under the applicable "amended" document type on SEDAR.

Public List on OSC Website

On October 25, 2002, we started posting a Refilings and Errors list on the Commission's Web site (<http://www.osc.gov.on.ca>). This list includes issuers that, after a staff review,

- (1) restate and refile financial statements;
- (2) implement accounting changes in their financial statements on a retroactive basis, where such an accounting change represents the correction of an error in the financial information as originally filed; or
- (3) amend and refile other continuous disclosure documents.

Any deficiency in an issuer's disclosure record that is identified during a staff review and that leads to a refiling, or the implementation of an accounting change retroactively, will result in that issuer being placed on the Refilings and Errors list. In this regard, it makes no difference whether (i) the deficiency was identified by staff or by the issuer and its advisors during the review process,

or (ii) the Commission ordered the refiling or the issuer made the refiling voluntarily. A staff review is considered to begin when an issuer receives a comment letter from staff and ends when the issuer is notified that staff has completed its review.

Once placed on the Refilings and Errors list, an issuer's name will be kept on the list for a period of three years from the date of refiling or the date of filing financial statements that contain a retroactive change in order to correct an error. After the three-year period, the issuer's name will be archived.

Questions or comments concerning this notice should be provided to:

John Hughes
Manager, Continuous Disclosure
Corporate Finance
(416) 593-3695
jhughes@osc.gov.on.ca

Jean-Paul Bureaud
Legal Counsel, Continuous Disclosure
Corporate Finance
(416) 593-8131
jbureaud@osc.gov.on.ca