OSC Staff Notice 51-725

Corporate Finance Branch

2014-2015 Annual Report

July 14, 2015

OSC ONTARIO SECURITIES COMMISSION

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Part A: Introduction

Introduction

What is our Branch mandate?

The Corporate Finance Branch (the Branch or we) of the Ontario Securities Commission (OSC) has a broad regulatory mandate which we execute in pursuing the two purposes of the *Securities Act* (Ontario) (the Act):

Investor protection	•to provide protection to investors from unfair, improper or fraudulent practices
Efficient capital markets	•to foster fair and efficient capital markets and confidence in capital markets

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

Issuer regulation	•review of public distributions of securities (prospectuses) •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 •issuer-related policy initiatives

Other areas covered by our mandate include:

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

In executing our functions, we consult and partner with other OSC branches in many areas, including the exempt market and listed issuer regulation.

What are the objectives of the report?

This report provides an overview of the Branch's operational and policy work during the fiscal year ended March 31, 2015 (fiscal 2015). The report is intended for individuals and entities we regulate, their advisors, as well as investors.

The report aims to:

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

Part B: Compliance

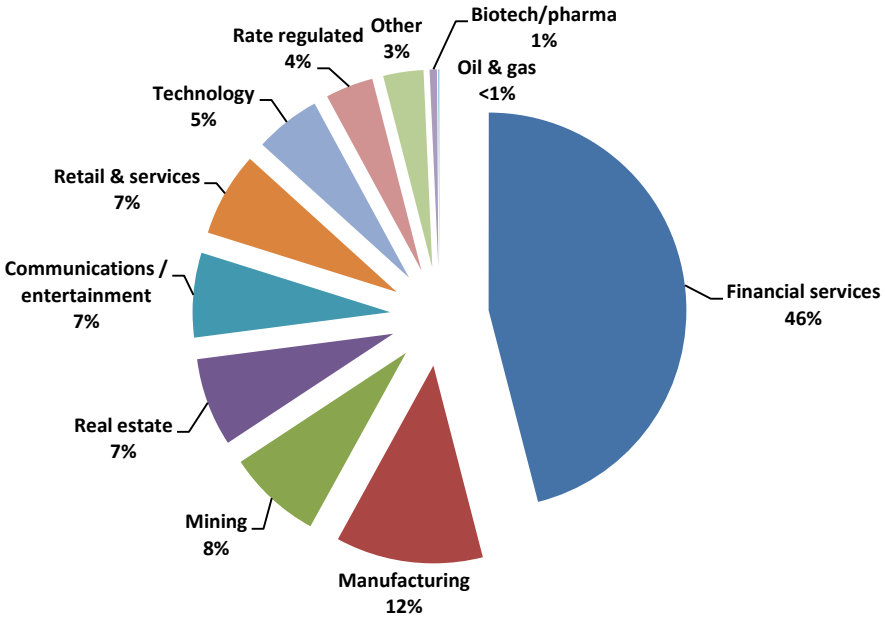
Compliance

Continuous Disclosure Review Program

Under Canadian securities laws, reporting issuers must provide timely continuous disclosure (CD) about their business and affairs. Where a reporting issuer has a head office in Ontario, or has a significant connection to Ontario, we have primary responsibility as principal regulator for reviewing that issuer's CD. Disclosure documents include periodic filings such as interim and annual financial statements and management's discussion and analysis (MD&A) as well as certifications of annual and interim filings, management information circulars and annual information forms (AIF).

The market capitalization of Ontario reporting issuers is approximately $1,100 billion (as at March 31, 2015). The three largest industries by percentage market capitalization are financial services, manufacturing and mining.

Market capitalization of Ontario reporting issuers, broken down by industry as at March 31, 2015



Overview of the program

Our review program is risk-based and outcome focused. It includes planned reviews based on risk criteria, discussed below, as well as monitoring through news releases, media articles, complaints and other sources. We conduct the program through powers in section 20.1 of the Act and the program is part of a harmonized CD program conducted by the Canadian Securities Administrators (CSA). See CSA Staff Notice (Revised) 51-312 *Harmonized Continuous Disclosure Review Program*.

The program has two main objectives:

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

Our CD review program is critical to investor protection as it monitors issuer compliance of CD documents which are available to investors in making investment decisions. This function also supports new capital raises, as many issuers raise funds through short form prospectuses which must incorporate CD documents.

Issuer education and outreach from the program happens 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 use the observations and findings in our review program to inform the Branch's outreach program for small and medium enterprises (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. For further details see Information for Small and Medium Enterprises on the OSC's website.

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

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 and the issuer's website
Issue-oriented review	•an in-depth review focusing on a specific accounting, legal or regulatory issue that we believe warrants regulatory scrutiny

We use risk-based criteria to identify issuers with a higher risk of disclosure non-compliance and the level of review required. 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 stay relevant with market changes. We also monitor novel and high growth areas of financing activity when developing our review program.

Issue-oriented reviews are conducted to focus on a specific issue of an individual issuer or to focus broadly on an emerging area of risk across issuers (in some cases, industry specific). Conducting issue-oriented reviews 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
- provide deficient and industry specific disclosure examples to assist preparers in complying with requirements
- assess compliance with new accounting standards

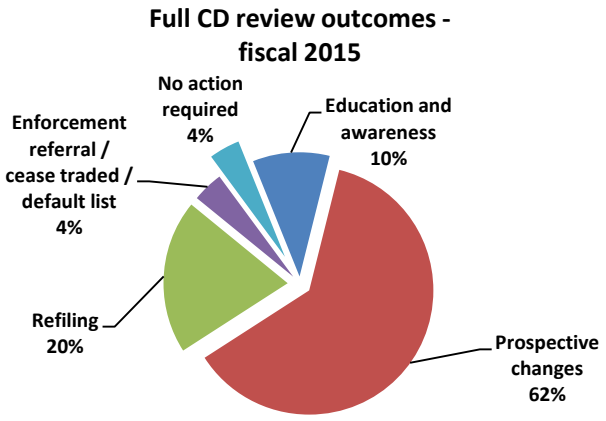
Outcomes for fiscal 2015

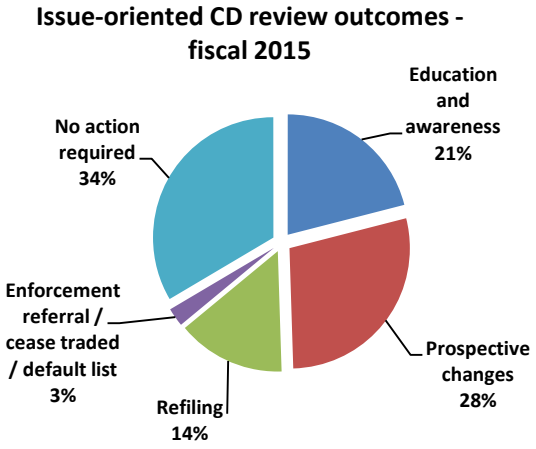
We measure outcomes of a CD review by tracking the following for each issuer:

- prospective disclosure enhancements
- refilings
- education and awareness
- other, such as enforcement referrals

We had at least one outcome in 96% of our full CD reviews and 66% of our issue-oriented reviews.

The difference between the number of outcomes for full and issue-oriented reviews noted below is not unusual. Issue-oriented reviews typically result in lower refilings as we focus the review on a narrow issue for compliance and education awareness.





We encourage issuers to continue to review and improve their disclosure, including in those areas below which we frequently comment on as part of our reviews.

❖ ***MD&A –*** MD&A improves an issuer's overall financial disclosure by providing an analytical and balanced discussion of its results of operations and financial condition. We remind issuers that disclosure must be useful and understandable. The MD&A is a narrative explanation, through the eyes of management, about the issuer's performance during the financial period to supplement and complement the financial statements. Issuers should avoid boilerplate disclosure where the MD&A merely repeats information from the financial statements.

We encourage issuers to review MD&A requirements (Form 51-102F1 *Management's Discussion and Analysis*) as well as the areas noted below.

- *Results of operations* – Include a detailed, analytical and quantified discussion of the various factors that affect revenues and expenses, beyond the percentage change or amount.

- *Liquidity and capital resources* – Do not provide general statements such as "have adequate working capital to fund operations" or "have adequate cash resources to finance future foreseeable capacity expansions". Rather, provide sufficient analytical details, explaining how liquidity obligations have been settled or will be settled.

- *Risks and uncertainties* – Be specific about the risks and uncertainties the issuer is facing, including the significance and impact those risks have on the issuer's financial position, operations and cash flows.

- *Cross-references to other documents* – Do not simply cross-reference in the MD&A to other documents (e.g. AIF, financial statements). In most instances, doing so does not satisfy the MD&A requirements.

❖ ***Website disclosure*** **–** In addition to the required CD filings, issuers often provide stakeholders with information about their business and operations in news releases, investor presentations and on their website. We remind issuers to carefully review any such additional disclosure to ensure the information disclosed does not contradict information contained in required CD filings.

❖ ***Mining disclosure*** **–** Issuers with mineral projects in production should be aware that their AIFs should disclose mineral resource and reserve estimates as at their last financial year end, reflecting depletion, additions from exploration and development, and technical or economic revisions. Issuers with coal projects are reminded that coal quality information is required by National Instrument 43-101 *Standards of Disclosure for Mineral Projects* whenever resources or reserves are disclosed. The material results of proximate analysis (moisture, sulfur, and either fixed carbon or gross calorific value) provide a reasonable picture of coal quality in mining disclosure.

Additional details on outcomes from fiscal CD reviews across the CSA are published in an annual CSA notice in the summer.

Issue-oriented review staff notices published in fiscal 2015

During fiscal 2015, 83% of our reviews were issue-oriented. We published staff notices summarizing the findings from our four issue-oriented reviews covering broad issues.

Consistency of investor presentations on mining issuer websites with technical report disclosure	•Mining issuers should avoid using overly promotional terms and can improve disclosure in several areas including historical estimates, preliminary economic assessments and exploration targets.
Transparency of source of distributions for REITs	•REITs need to improve disclosure where distributions exceed cash flow from operations as well as when presenting metrics such as adjusted funds from operations.

Disclosure of issuers entering the medical marijuana industry	• Issuers entering this industry need to ensure their disclosure is balanced and includes details on their plans in the industry, resource commitments and regulatory approvals.
Disclosure for related party transactions	• Issuers need to improve related party transaction disclosure in their MD&A and ensure that related party transaction codes of conduct are accessible to investors.

See the following links for the full staff notices:

CSA Staff Notice 43-309 *Review of Website Investor Presentations by Mining Issuers*

OSC Staff Notice 51-724 *Report on Staff's Review of REIT Distributions Disclosure*

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

OSC Staff Notice 51-723 *Report on Staff's Review of Related Party Transaction Disclosure and Guidance on Best Practices*

We will continue to monitor the issues identified in the issue-oriented reviews noted above as well as issues identified in full reviews. This includes reviewing disclosure to ensure issuers have provided prospective disclosure enhancements as requested by staff. Where an issuer fails to make a prospective disclosure enhancement staff will consider whether an alternative outcome such as a refiling is now necessary.

Participation fees

We remind issuers that OSC Rule 13-502 *Fees* (the Fee Rule) came into force on April 6, 2015, implementing a new method for calculating annual participation fees.

Under the Fee Rule, participation fees will be based on the market capitalization of a reporting issuer in its previous financial year and not the market capitalization in its reference fiscal year. To streamline the market capitalization calculation, an issuer will no longer be required to include in its calculation any equity securities that are not listed or quoted on a marketplace. However, an issuer must continue to include in its calculation all capital market debt distributed under a prospectus or prospectus exemption, including those that are not listed or quoted on a marketplace.

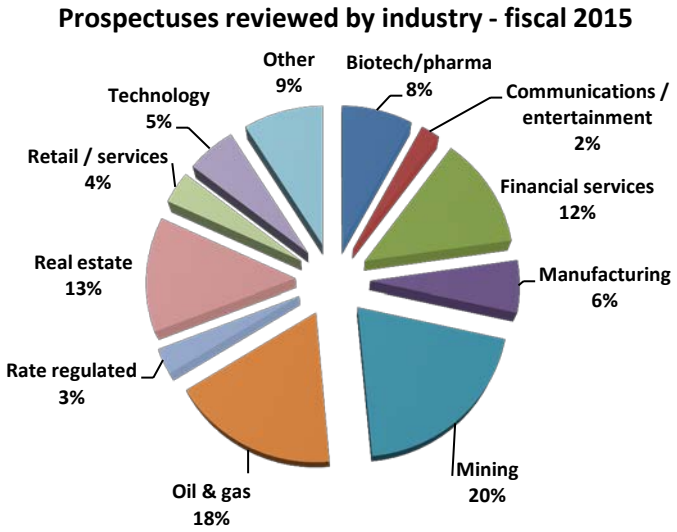
The Fee Rule also implemented a new definition of Class 3B reporting issuer. If an issuer is not a designated foreign issuer or an SEC foreign issuer as those terms are defined in National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*, it generally will not meet the definition of Class 3B reporting issuer under the Fee Rule. If you were a Class 3B reporting issuer under the rule in force prior to April 6, 2015, you should review your status to confirm whether it meets the new definition.

Offerings – Public

Another key component of our compliance work is reviewing offering documents. Securities legislation enumerates specific circumstances under which a receipt for a prospectus shall not be issued. One example is where the aggregate proceeds being raised by the issuer through the prospectus (together with other resources) are insufficient to accomplish the purpose of the offering as stated in the prospectus.

Statistics

In fiscal 2015, we reviewed over 400 prospectuses and rights offering circulars. These reviews covered a wide range of industries with mining and oil & gas being the most active sectors followed by real estate and financial services.



Trends and guidance

In fiscal 2015, the number of prospectuses we reviewed where Ontario was the principal regulator was consistent with the prior fiscal year. While the resources, real estate and financial services industries have consistently been active over the years, we have started to see offerings in industries new to the Canadian capital markets such as medical marijuana and gaming. These less mature industries often require enhanced disclosure due to regulation, differences in legal status across jurisdictions and other novel considerations that should be disclosed to investors.

In fiscal 2015, we received the first initial public offering (IPO) prospectus filed by a special purpose acquisition corporation (SPAC) pursuant to *Part X Special Purpose Acquisition Corporations* of the Toronto Stock Exchange (TSX) Company Manual (SPAC Rules). The SPAC Rules, which were adopted in 2008, provide the framework for the IPO and listing of an issuer that has no operating business. SPACs bear some similarity to capital pool companies (CPCs) in that both involve the creation of publicly-traded shell companies which later acquire an operating business using the initial proceeds raised. However, SPACs are much larger than CPCs and have enhanced investor protections. This first SPAC obtained relief from certain of the requirements of the SPAC Rules from the TSX, including

relief that required the concurrence of the OSC. We have received four SPAC IPO prospectuses to date, all of which have received the same relief.

Key takeaways from our work reviewing offering documents in fiscal 2015 are set out below. Many of the matters highlighted below would benefit from pre-file discussions with staff. This process is outlined in National Policy 11-202 *Process for Prospectus Reviews in Multiple Jurisdictions*. We also remind issuers that an application fee is required for any relief sought in connection with an offering where the relief will be evidenced by the prospectus receipt.

- ***Disclosure improvements –*** Disclosure outcomes, where we required material disclosure changes to a prospectus, remained our most consistent outcome.

  We encourage issuers to review prospectus requirements, noting the following areas where we frequently find deficiencies.

  - *Description of business and regulatory environment* – This needs to be clear and comprehensive as 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/operations,
    - is in the medical marijuana industry and lacks disclosure about its specific regulatory environment, or
    - has recently completed a significant acquisition or capital restructuring where a regulatory review has not been done.

  - *Risk factors relating to the business and/or offering* – Be specific. Avoid boiler plate language and tailor the disclosure to the issuer's situation (i.e. assess political/regulatory risk and enhanced controls over finance if operations are in a foreign country).

  - *MD&A disclosure in a long form prospectus* – Include relevant information and provide sufficient detail.

  - *Use of proceeds* – Provide sufficient detail and be comprehensive. Phrases such as "for general corporate purposes" may not be sufficient disclosure.

- ***Financial statement disclosure for certain significant acquisitions –*** Where an issuer is raising proceeds to fund an acquisition that would be regarded as the issuer's primary business or a material portion of its primary business, or is larger than the issuer's existing business, the issuer should consider whether the financial statement disclosure that is normally required for a significant acquisition (as that term is used in securities legislation) is sufficient for the prospectus to contain full, true and plain disclosure. Venture issuers should also consider this notwithstanding the recent amendments to the significant acquisition thresholds for business acquisition reports from 40% to 100%.

  Specifically, issuers should consider whether inclusion of more than two years of financial statements is necessary, and whether more than one of those years should be audited. We encourage issuers and their advisors to consult with staff on a pre-file basis on this issue.

- ***Primary business in an IPO –*** An issuer doing an IPO must include in its prospectus a three-year financial history (two years for an IPO venture issuer) of the business an investor is investing in, even if this financial history spans multiple legal entities over the three-year period. This includes the financial history for those businesses acquired or that will likely be acquired if those businesses are in the same primary business of the issuer. This provides investors with information on the issuer's entire business, which is the subject of their investment.

As a result, with one exception, there is no significance test for acquisitions that fall within the definition of an issuer under item 32.1 of Form 41-101F1 *Information Required in a Prospectus*. The only exception to the significance threshold is if the business is over 100% when compared to the primary business of the issuer, in which case, it is important for investors to have the financial history of this business even though it is not the same as that of the primary business of the issuer. In instances where there are multiple acquisitions in the same primary business of the issuer, we encourage issuers and their advisors to consult with staff on a pre-file basis as smaller acquisitions are also likely to form part of the primary business of the issuer.

- ***Promoters –*** Where a promoter exists at the time of an issuer's IPO, we remind issuers to consider whether promoter status continues for subsequent offerings. 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.

  With respect to the interpretation of subsection 58(6) of the Act and specifically the reference to the fact that the Director may require any person or company to sign a certificate, as promoter, in a prospectus where such person or company "was a promoter of the issuer within the two preceding years", staff is of the view that this reference does not necessarily lead to the conclusion that such status must automatically terminate after two years. 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.

- ***Sufficiency of proceeds and financial condition of an issuer –*** We remind issuers that a critical part of every prospectus review is considering an issuer's financial condition and intended use of proceeds. A prospectus must contain clear disclosure on 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. However, disclosure on its own may not be sufficient to satisfy receipt refusal concerns in certain circumstances.

  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*.

- ***Material contracts –*** We remind issuers to review all contracts entered into in connection with an offering, including financing arrangements, to determine whether the contract is a "material contract" and must be filed with the OSC.

  We also remind issuers that if a material contract is not executed at the time the final prospectus is filed, the issuer must file an undertaking with the OSC to file the contract no later than seven days after the document becomes effective.

- ***Assess terms of securities to be qualified by a shelf prospectus –*** In creating financing options, issuers may unintentionally seek to qualify securities (such as "special shares"), the issuance of which could result in an issuer's common shares effectively becoming "restricted securities" depending on the terms of the special shares. As a result, when special shares exist, are offered, or are contemplated to be offered, staff will consider the terms of the special shares to determine whether "restricted security" issues arise.

- ***MJDS and WKSIs –*** We understand that under U.S. securities law, certain registration statements of well-known seasoned issuers (WKSIs) become effective immediately upon filing. This may have an adverse market impact on northbound offerings under the multijurisdictional disclosure system (northbound MJDS) as set out in National Instrument 71-101 *The Multijurisdictional Disclosure System*.

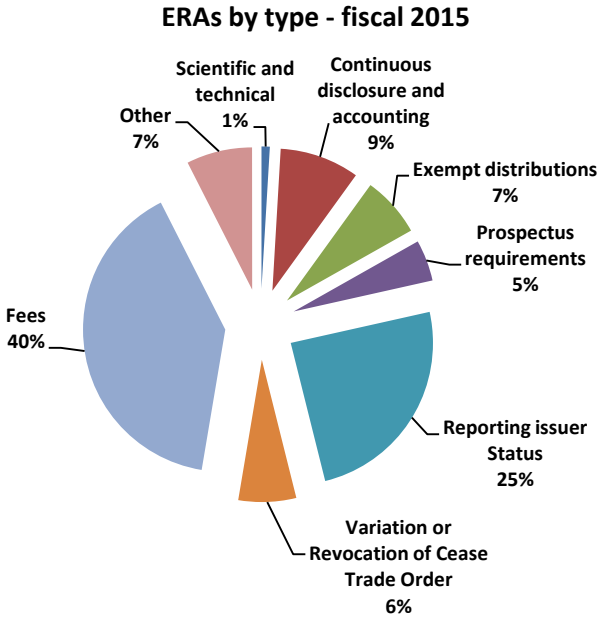
We encourage issuers and their advisors to consult with staff prior to filing a northbound MJDS prospectus to discuss any timing concerns.

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 2015, we reviewed over 300 applications for exemptive relief, with 40% of the applications relating to one-time limited fee relief for issuers pursuant to OSC Staff Notice 13-704 *Applications for Participation Fee Relief for Certain Small Registered Firms and Reporting Issuers*. These applications resulted in the OSC granting one-time fee reductions of approximately $300,000 to issuers.



Trends and guidance

Outside of the one-time participation fee relief, common applications filed in fiscal 2015 included relief in connection with reporting issuer status, continuous disclosure and exempt distributions as well as applications for partial or full revocations of cease trade orders.

We 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 2015 are set out below.

- ***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, it must disclose the circumstances surrounding the breach in the draft decision document and staff will consider the breach (or breaches) 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 a breach of the cease trade order. Staff may also consider whether breaches of a cease trade order warrant enforcement action.

  We remind issuers and their advisors that "trade" is defined broadly in the Act and includes acts in furtherance of a trade.

- ***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 usual. In these cases, staff view the dormant issuer as "re-entering" the market. In some cases, the issuer has significant gaps in its CD record and staff must review the issuer's updated CD record to consider whether it is sufficient to support trading.

  Staff may also require an issuer to provide a written undertaking that it will not execute a reverse takeover of a business outside of Canada unless it files a non-offering prospectus with the OSC.

- ***Applications 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 set out in CSA Notice 12-307 and OSC Notice 12-703, both titled *Applications for a Decision that an Issuer is not a Reporting Issuer*.

  We remind foreign issuers who seek a decision that they are no longer a reporting issuer to review the "modified approach" to consider details that help support such an application. This includes executing an undertaking in respect of ongoing disclosure to Canadian securityholders.

- ***Business acquisition report (BAR) relief –*** Relief from the BAR requirements continues to represent a significant number of applications reviewed by the Branch. We remind issuers that the cost or time involved in preparing and auditing the financial statements required to be included in the BAR are not reasons favourably looked upon when considering whether relief is appropriate. These applications should be filed early and not near the filing deadline of the BAR so an issuer can avoid going into default.

- ***Applications for prospectus relief –*** Many of the novel applications we review relate to exempt market relief such as not filing a prospectus to distribute securities. Issuers and their advisors should carefully consider whether the OSC has granted the requested relief in facts and circumstances similar to those of the applicant. Where relief is novel, staff's review time will take longer and this process often involves consulting with the CSA. Issuers and their advisors may wish to consider whether a pre-file is appropriate for such applications. See National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions*.

Insider Reporting

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

The objective of our insider reporting oversight work is two-fold:

- compliance
- education and outreach

Insider reporting contributes to market efficiency by providing investors with information concerning the trading activities of insiders of a reporting issuer, and, by inference, the insiders' views of their issuer's future prospects. Non-compliance compromises this 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 monitor insider trading to meet best practice standards in National Policy 51-201 *Disclosure Standards*.

Guidance and filing tips

We remind issuers and their insiders that the definition of "reporting insider" can be found in National Instrument 55-104 *Insider Reporting Requirements and Exemptions* (NI 55-104).

Issuers and insiders 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 the System for Electronic Disclosure by Insiders (SEDI). We had several files this past fiscal year where 10% or more holdings in a reporting issuer were not properly disclosed on SEDI. Understanding these definitions and interpretations will help filers identify and comply with their obligations.

We encourage issuers and insiders to review the details below, which provide filing tips to assist filers in avoiding some of the common errors we observed during the most recent fiscal year.

Tips for issuers:

- Does your issuer profile supplement show all securities ***and*** ***related financial instruments*** held by your reporting insiders?
- Have you recently checked your issuer profile supplement to ensure your insider affairs contact is up to date?
- The exemption in Part 5 of NI 55-104 does not apply to the acquisition of options or similar securities or related financial instruments (e.g. deferred share units, restricted share awards or stock appreciation rights) granted to a director or an officer. Rather, you must comply with Part 6 of NI 55-104 and file an issuer grant report if you want insiders to have the benefit of the delayed reporting exemption available for these transactions.

- In filing an issuer grant report, have you disclosed all of the details required by NI 55-104? If you have not, your reporting insiders cannot rely on the exemption in Part 6 of NI 55-104 and may be subject to late filing fees.

- Have you created deferred share units, restricted share awards and other similar securities under the security category of "issuer derivative" on SEDI? Creating these under the category of "equity" is incorrect.

Tips for insiders:

- Have you recently checked your insider profile to ensure the contact information is correct?

- You must file an amended insider profile within 10 days of any change in your name, your relationship to an issuer or if you have ceased to be a reporting insider of an issuer.

- You must file reports on transactions in securities over which you have ***control or direction or beneficial ownership*** of.

- Carefully consider whether you can rely on any of the exemptions in Part 9 of NI 55-104. For example, the "corporate group" reporting exemption in section 9.5 of NI 55-104 is not available where securities representing 10% or more of voting rights in a reporting issuer are held for an individual through a corporation which the individual controls. In such cases, both the individual and the corporation must file insider reports.

Designated Rating Organizations

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 legislation. 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 four CRAs that have been designated as DROs in Canada under NI 25-101: DBRS Limited, Fitch Ratings, Inc., Moody's Canada Inc., and Standard & Poor's Rating Services (Canada). 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 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.

Part C:
Responsive Regulation

Responsive Regulation

Overview

The OSC continues to play a leading role in several significant policy initiatives with other securities regulators in the CSA. This section reports on the status of significant policy initiatives including:

- exempt market
- venture issuer regulation
- women on boards and in executive officer positions

Exempt Market

Exempt market as integral part of Ontario's capital markets

The exempt market continues to be an important part of Ontario's capital markets. Based on filings made with the OSC, in 2013, non-investment fund issuers raised approximately $45 billion through prospectus-exempt distributions in Ontario.

- Non-investment fund issuers raised capital through approximately 27,000 purchases made by Ontario residents in 2013.

- Total filing activity also increased in 2013 compared to the previous year but remained below 5,000 filings per year.

- The accredited investor prospectus exemption is the most widely used prospectus exemption in Ontario by amount of capital raised (90%), number of filings (81%) and purchases (79%). The minimum amount investment prospectus exemption is the second most used prospectus exemption by amount of capital raised (6%).

Regulatory reform initiative

The OSC has been engaged in a review of several aspects of the exempt market regulatory regime for a number of years. This review began as a CSA review of the accredited investor and minimum amount investment prospectus exemptions with the publication of a consultation paper in November 2011.

In June 2012, the OSC announced that it was expanding the scope of its exempt market review to consider whether the OSC should introduce any new prospectus exemptions that would facilitate capital raising for businesses while protecting the interests of investors. In particular, the OSC indicated that it would consider whether there was potential to foster greater access to capital for start-ups and SMEs.

New capital raising tools

The OSC recently introduced two new tools for businesses to raise capital.

- ***Family, friends and business associates prospectus exemption –*** Start-ups and early stage businesses could benefit from greater access to capital from their network of family, friends and business associates. This exemption allows businesses to raise capital from

principals of the business or people who have certain relationships with principals of the business. It came into force in Ontario on May 5, 2015.

- ***Existing security holder prospectus exemption –*** Businesses continue to face capital raising challenges after they have become reporting issuers and are listed on an exchange. This exemption allows publicly listed issuers on specified Canadian exchanges to cost-effectively raise capital from their existing investors in reliance on the issuer's continuous disclosure record. It came into force in Ontario on February 11, 2015.

These tools are available in substantially similar form in other CSA jurisdictions. For additional information, see the OSC notices at Notice of Amendments to NI 45-106 *Prospectus and Registration Exemptions* Relating to the Family, Friends and Business Associates Exemption and Notice of Amendments to OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions*.

Changes to existing capital raising tools

In collaboration with the CSA, the OSC has made changes to existing capital raising tools, which came into force on May 5, 2015.

- ***Accredited investor prospectus exemption –*** Among other things, amendments were made to the accredited investor prospectus exemption to require those persons relying on the exemption to obtain a signed risk acknowledgment form from individual accredited investors (who are not permitted clients). The amendments also provide additional guidance on steps sellers could take to verify the status of purchasers who acquire securities under certain prospectus exemptions, including the accredited investor exemption. The amendments are intended to address investor protection concerns as well as concerns regarding compliance. The amendments do not include changes to the net income, net financial asset or net asset thresholds that must be satisfied for an individual to qualify as an accredited investor.

- ***Minimum amount investment prospectus exemption –*** Amendments to the minimum amount investment prospectus exemption restrict the exemption to distributions to non-individual investors in order to address investor protection concerns.

For additional information, see the CSA notice at CSA Notice of Amendments to National Instrument 45-106 *Prospectus and Registration Exemptions* Relating to the Accredited Investor and Minimum Amount Investment Prospectus Exemptions.

Ongoing work – new tools to raise capital from broad investor base

There are two other initiatives intended to facilitate capital raising by businesses from a broad investor base.

- ***Offering memorandum prospectus exemption (OM exemption) –*** In March 2014, the OSC published for comment an OM exemption, which would allow businesses to raise capital based on a comprehensive disclosure document being made available to investors. The exemption would be available for a wide range of businesses at different stages of development and would provide businesses with access to a broad investor base.

- ***Crowdfunding regime –*** At the same time, the OSC published for comment a crowdfunding regime that would enable early stage businesses to raise capital from a large number of investors through a registered online funding portal. The proposed regime included both a

crowdfunding prospectus exemption and regulatory requirements applicable to an online crowdfunding portal.

We worked closely with other CSA jurisdictions in formulating the OM exemption and the crowdfunding regime. The securities regulatory authorities in Alberta, New Brunswick, Québec and Saskatchewan published for comment proposed amendments to the existing OM exemption currently available in those jurisdictions that were similar to the OM exemption that the OSC published for comment. The securities regulatory authorities in Manitoba, New Brunswick, Nova Scotia, Québec and Saskatchewan published for comment the crowdfunding regime.

The comment period ended in June 2014 and the participating CSA jurisdictions collectively received approximately 916 comment letters regarding the OM exemption and approximately 45 comment letters regarding the crowdfunding regime.

We have reviewed the comment letters and discussed the feedback from stakeholders with the other participating CSA jurisdictions in order to move forward in a collaborative, harmonized manner, where possible. In addition, we have consulted with our advisory committees, including the Exempt Market Advisory Committee and the Small and Medium Enterprises Committee, to develop responses to the feedback that appropriately balance efficient capital formation and investor protection.

Two key themes emerged in the comment letters.

- ***Need for greater harmonization –*** Several stakeholders highlighted the benefits of harmonized regulation of the exempt market. In response to those comments, we have worked closely with the other participating CSA jurisdictions to achieve greater harmonization, where possible.

- ***Concerns regarding restrictions on capital raising –*** Several stakeholders expressed concerns that certain aspects of the proposals, such as the proposed investment limits, may have been too restrictive to significantly facilitate capital formation. As a result, we plan to make changes to respond to those concerns.

We last provided an update on these initiatives in the backgrounder published on February 19, 2015. Since that time, we have received several inquiries from our stakeholders regarding both our timing for moving forward with these initiatives and our planned direction for the OM exemption and crowdfunding regime.

To address these questions, we would like to share with stakeholders our plan for moving forward.

- ***Timing –*** The OSC intends to publish the OM exemption and crowdfunding regime in final form and deliver the rules to the Minister of Finance for decision in fall 2015.

- ***Planned direction –*** After taking into account the feedback from stakeholders, our intention is that the final form of these capital raising tools in Ontario will include the following key elements.

OM exemption

- comprehensive disclosure document at point of sale
- no limit on the amount of capital an issuer can raise
- investment limits for investors, other than those who would qualify as accredited investors or investors who would qualify to invest under the family, friends and business associates exemption, substantially along the following:
  - in the case of a purchaser that is not an eligible investor, $10,000 in a 12-month period
  - in the case of a purchaser that is an eligible investor, $30,000 in a 12-month period
  - in the case of a purchaser that is an eligible investor and that receives advice from a portfolio manager, investment dealer or exempt market dealer that an investment above $30,000 is suitable, up to $100,000 in a 12-month period
- risk acknowledgement form signed by investors
- ongoing disclosure made available to investors, including audited annual financial statements, annual notice regarding the use of the money raised and notice of a limited list of significant events

Crowdfunding regime

- streamlined offering document at point of sale
- limit of $1.5 million on amount an issuer group can raise in a 12-month period
- all investments through a funding portal that is registered with securities regulators
- low investment limits for investors who do not qualify as accredited investors ($2,500 in a single investment and $10,000 under the exemption in a calendar year) with higher investment limits for accredited investors and no investment limits for permitted clients
- risk acknowledgement form signed by investors
- ongoing disclosure made available to investors, including annual financial statements, annual notice regarding the use of the money raised and notice of a limited list of significant events

Ongoing work – other exempt market initiatives

The OSC is also currently engaged in two other related exempt market initiatives.

- ***Rights offering prospectus exemption –*** In November 2014, the CSA published for comment amendments to the prospectus-exempt rights offering regime intended to streamline the process for conducting a rights offering and reduce the time and cost that have been noted as barriers to its use. We are currently working with the CSA to develop final amendments to the existing rights offering prospectus exemption. Our goal is to publish the final amendments and deliver them to the Minister of Finance for decision in fall 2015.

- ***Reports of exempt distribution –*** We are working with the CSA to develop a harmonized form of report of exempt distribution. This initiative is intended to reduce the compliance burden for issuers and underwriters in reporting exempt distributions by having a harmonized report of exempt distribution, as well as provide securities regulators with the necessary information to facilitate more effective regulatory oversight of the exempt market and improve analysis for policy development purposes. Our goal is to publish the proposed report for comment in summer 2015.

Enhanced compliance program

In anticipation of the adoption of new prospectus exemptions discussed above, we are developing a new type of compliance program to oversee non-reporting issuers that use these exemptions. We are doing so in parallel with our Compliance and Registrant Regulation Branch, which is also reviewing current compliance measures with respect to registrants involved in the exempt market to consider how existing compliance oversight may need to be adapted once the new exemptions are in force.

Our program will consider compliance with the scope of available exemptions and review selected offering documents to assess that appropriate disclosure has been made. The program will have the following objectives:

- inform stakeholders of our monitoring activities
- compile data to understand the market as it develops
- develop risk-based criteria to identify high risk issuers and registrants for review
- take appropriate compliance, enforcement and cross-branch referral action

Reports of exempt distribution as key component of compliance program

Issuers or underwriters that sell securities under certain prospectus exemptions are required to file a report of exempt distribution on Form 45-106F1 *Report of Exempt Distribution* with securities regulators. These reports are our primary source of information about activity in the exempt market. They include information about the issuer, the underwriter (if any), the distribution, commissions and finders' fees and the investors.

This information provides us with a more comprehensive understanding of activity in the exempt market, helps us to effectively oversee that market, and informs any future changes we may recommend to the exempt market regulatory regime. As a result, it is important that complete and accurate reports are filed with the OSC in a timely manner.

We remind issuers and underwriters of the following resources available to them when preparing and filing these reports.

- ***E-form –*** In June 2012, the OSC launched an electronic version of the report (the e-form) which can be filed through the OSC's website. Our goal in providing the e-form is to both make it easier for filers to prepare and file the report and also to facilitate the OSC's ability to review the information contained in the report. As of February 19, 2014, issuers and underwriters that are required to prepare and file a report must file the report using the e-form, instead of in paper format. Please see OSC Staff Notice 45-708 *Introduction of Electronic Report of Exempt Distribution on Form 45-106F1* and Form 45-106F1 (Non-Investment Fund Issuers), Form 45-106F1 (Investment Fund Issuers), Form 45-501F1 (Non-Investment Fund Issuers) and Form 45-501F1 (Investment Fund Issuers) for further information.

- ***Filing tips –*** OSC Staff Notice 45-709 (Revised) *Tips for Filing Reports of Exempt Distribution* sets out tips to assist issuers, underwriters and their advisors in filing reports in Ontario.

- ***Filing and late fees –*** Based on our current fee schedule, a $500 fee must be filed with each report by the filing deadline and if a report is filed after the deadline, a late fee of $100 per business day applies, up to a maximum of $5,000 per fiscal year of an issuer for all of the issuer's reports. See OSC Staff Notice 45-713 *Reports of Exempt Distribution - Compliance with Filing Requirements* for further information.

Venture Issuer Regulation

The OSC has been involved with other CSA jurisdictions for many years on rule amendments designed to streamline and tailor venture issuer disclosure while improving requirements for corporate governance. On June 30, 2015, amendments to National Instrument 51-102 *Continuous Disclosure Obligations*, National Instrument 41-101 *General Prospectus Requirements* and National Instrument 52-110 *Audit Committees* came into force creating this streamlined and tailored disclosure. See CSA Notice of Amendments to National Instrument 51-102 *Continuous Disclosure Obligations*, National Instrument 41-101 *General Prospectus Requirements* and National Instrument *52-110 Audit Committees* for further information.

The amendments streamline and tailor disclosure by venture issuers, including streamlined quarterly financial reporting, executive compensation disclosure and business acquisition reporting. They are intended to make the disclosure requirements for venture issuers more suitable and manageable for issuers at their stage of development. Specifically, the amendments:

- allow all venture issuers to meet interim MD&A requirements by preparing a "quarterly highlights" document,

- allow venture issuers to use a new tailored form of executive compensation disclosure, Form 51-102F6V *Statement of Executive Compensation – Venture Issuers*,

- increase the significance threshold of an acquisition from 40% to 100% in determining whether an acquisition is significant for purposes of filing a BAR,

- reduce the number of years of company history and audited financial statements required in a venture issuer IPO prospectus from three to two years, and

- enhance corporate governance by requiring venture issuers to have an audit committee of at least three members, the majority of whom cannot be executive officers, employees or control persons of the venture issuer or of an affiliate of the venture issuer.

The amendments are designed to focus disclosure of venture issuers on information that reflects the needs and expectations of venture issuer investors without compromising investor protection.

Women on Boards and in Executive Officer Positions

The OSC published proposed disclosure requirements relating to women on boards and in executive officer positions on January 16, 2014. In addition, a multilateral CSA notice was published for comment on July 3, 2014, which proposed the same disclosure requirements.

On December 31, 2014, rule amendments to National Instrument 58-101 *Disclosure of Corporate Governance Practices* and Form 58-101F1 *Corporate Governance Disclosure* came into effect in Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Ontario, Québec, Saskatchewan and Yukon (participating jurisdictions).

The amendments are intended to increase transparency for investors and other stakeholders regarding the representation of women on boards of directors and in senior management. This transparency is intended to assist investors in making investment and voting decisions and applies to all non-venture issuers reporting in the participating jurisdictions.

The amendments require non-venture issuers to provide annual disclosure regarding the following items in their proxy circular or AIF:

- director term limits and other mechanisms of renewal of the board,
- policies regarding the representation of women on the board,
- the board's or nominating committee's consideration of the representation of women in the director identification and selection process,
- the issuer's consideration of the representation of women in executive officer positions when making executive officer appointments,
- targets regarding the representation of women on the board and in executive officer positions, and
- the number and proportion of women on the board and in executive officer positions.

We are currently conducting a comprehensive issue-oriented review of compliance with these new rule amendments and will publish the results.

The OSC Inquiries & Contact Centre operates from
8:30 a.m. to 5:00 p.m. Eastern Time, Monday to Friday,
and can be reached on the Contact Us page.

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