CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA Staff Notice 51-329
Continuous Disclosure Review Program Activities
for the fiscal year ended March 31, 2009

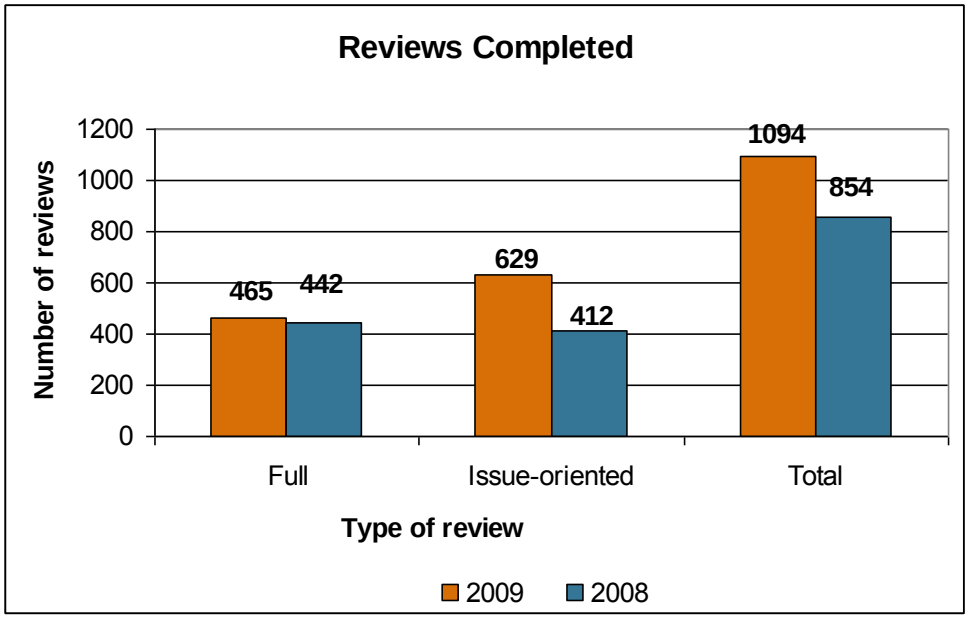
July 24, 2009

Purpose of this Notice

This notice summarizes the results of the Canadian Securities Administrators (CSA) continuous disclosure (CD) review program of reporting issuers other than investment funds for the fiscal year ended March 31, 2009 (fiscal 2009). It also highlights certain elements to assist issuers with their accounting and CD requirements as applicable to financial statements and management's discussion and analysis (MD&A).

Results for fiscal 2009

There are approximately 4,300 reporting issuers (excluding issuers that have been cease-traded) other than investment funds in Canada. Staff of the jurisdictions of the CSA (we) continue to use a risk-based approach to select issuers for review and to determine the type of review to conduct (i.e. full or issue-oriented). Our risk-based approach allows us to focus on issues important to investors and respond to changing market conditions. This approach is discussed in CSA Staff Notice 51-312 (Revised) *Harmonized Continuous Disclosure Review Program*. In fiscal 2009, we completed 1,094 CD reviews among other scrutiny. This is a 28% increase from fiscal 2008, when we conducted a total of 854 CD reviews. The increase in total reviews reflects our increased focus on CD reviews in response to the current market conditions.



The above chart illustrates the composition of the type of reviews we conducted in fiscal 2009 compared to fiscal 2008. The level of full reviews conducted in fiscal 2009 is consistent with the previous year. The number of issue-oriented reviews increased by 53%. The majority of the increase in issue-oriented reviews (approximately 200 reviews) is a result of our increased scrutiny of the quality of the issuers' disclosure in the last half of the year in response to the credit crisis and market turmoil.

Common deficiencies identified in full reviews

Generally, the deficiencies that we found in our full reviews were either in the MD&A (Form 51-102F1 *Management's Discussion and Analysis* of National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102)) or financial statements. The remaining deficiencies cover a cross section of the other CD documents. We have highlighted below some of the more common deficiencies.

1. *MD&A*

- repeating information from financial statements without providing sufficient analysis
- inadequate disclosure of liquidity and capital resources, including insufficient disclosure of working capital requirements and circumstances that could affect an issuer's sources of financing
- no or insufficient discussion about the risks and uncertainties expected to affect the issuer's future performance given the current economic conditions
- insufficient discussion of critical accounting estimates, including a lack of disclosure of assumptions underlying the accounting estimate
- lack of quantitative analysis in the results of operations' discussion
- no or limited disclosure of the adoption of new accounting policies
- inadequate related party disclosure
- disclosure of non-GAAP financial measures that do not meet the expectations of CSA Staff Notice 52-306 (Revised) *Non-GAAP Financial Measures*

2. *Financial statements*

- failing to appropriately measure financial instruments in accordance with accounting standards (e.g. fair value)
- failing to disclose the credit, liquidity and market risks associated with financial instruments, and the methodology and assumptions used to determine fair value
- lack of meaningful disclosure of an issuer's capital and how it is managed
- inadequate revenue recognition and lack of disclosure of an issuer's accounting policies on this topic
- lack of compliance with Section 3870 of the CICA Handbook *Stock-based Compensation and Other Stock-based Payments*
- non-compliance with segments disclosure, including failing to disclose the revenue allocation method and aggregating or omitting information about major customers
- failing to properly identify and account for variable interest entities

3. *Other CD documents*

- failing to prepare certificates in accordance with Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*, improper certificates or insufficient discussion about disclosure controls and procedures in the MD&A
- failing to provide the disclosure required in National Instrument 52-110 *Audit Committees* and in National Instrument 58-101 *Disclosure of Corporate Governance Practices*
- failing to file mining and oil and gas technical reports in accordance with National Instrument 43-101 *Standards of Disclosure for Mineral Projects* (NI 43-101) and National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* (NI 51-101) respectively

Issue-oriented reviews

In any given year, one or more CSA jurisdictions conduct issue-oriented reviews on topics we believe warrant regulatory scrutiny. CSA jurisdictions that do not participate in the issue-oriented reviews assess the issues while conducting their full CD reviews. In fiscal 2009, issue-oriented reviews were conducted by one or more jurisdictions on the following topics.

- market turmoil and credit crisis reviews
- defined benefit pension plan disclosures
- forward-looking information
- material contracts
- asset-backed commercial paper
- financial instruments
- inventory
- mining and oil & gas

The following section provides an overview of the issue-oriented reviews we conducted and the types of deficiencies we identified.

A. *Market turmoil and credit crisis reviews*

During the last six months of fiscal 2009, we focused our resources on issues related to the market turmoil and credit crisis. We conducted over 250 reviews of issuers to assess the transparency and completeness of disclosures. Areas of particular focus included financial services sector issuers and highly leveraged issuers at risk of liquidity problems. We requested issuers to include disclosure in future filings on:

- specific exposures to credit risk
- the methodology used to determine the allowance for credit losses
- the policies for managing capital in the current environment
- the assumptions used to determine fair value for financial instruments, including the process for assessing impairment
- additional disclosures of risks and exposures to loss related to off-balance sheet entities
- additional discussion related to liquidity and sources of cash.

In addition to these reviews, we published CSA Staff Notice 51-328 *Continuous Disclosure Considerations Relating to Current Economic Conditions* to assist reporting

issuers in preparing their financial statements and MD&A in the current market environment.

B. *Asset-backed commercial paper (ABCP)*

We have closely monitored issuers with material holdings of ABCP since the market froze in August 2007. In fiscal 2009, we reviewed the valuation assumptions and disclosure of those issuers, given the additional information about the restructuring and underlying assets supporting the ABCP included in the March 2008 *Proposed Restructuring of Canadian Third-Party Structured Asset-backed Commercial Paper, Information for Noteholders* document and the guidance provided by the Accounting Standards Board in this area.

In the majority of these reviews we requested prospective enhancements of disclosures of assumptions to determine fair value. We also identified situations where issuers did not appropriately take into account all relevant inputs in their valuation models.

C. *Defined benefit pension plan*

The market turmoil has impacted the pension funding obligations of several issuers that we identified as having material defined benefit pension plans. In the majority of these reviews, we requested enhanced disclosure in the MD&A of:

- the risks related to the issuer's funding status
- the impact of the pension funding obligation on the issuer's capital, liquidity and financial position for the issuer's 2008 year end filing

D. *Financial instruments*

We conducted reviews to assess compliance with the implementation of the financial instruments disclosure standards effective for fiscal years beginning on or after October 1, 2007. These disclosure requirements focus on exposures to credit, liquidity and market risks, how these risks are managed, and policies and procedures for managing capital. Most of the issuers reviewed did not provide all of the required disclosures which resulted in prospective disclosure changes in the issuer's next financial statements filing.

The disclosures that were most consistently missed included a failure by issuers to:

- provide a meaningful discussion of the credit, liquidity and market risks facing an issuer
- discuss the methodology and assumptions used to determine fair market value
- provide a sensitivity analysis of an issuer's market risks

E. *Forward-looking information (FLI)*

We conducted reviews of filings to assess compliance with the FLI requirements of NI 51-102 which came into force on December 31, 2007. Common issues identified include a failure by issuers to:

- clearly identify material FLI statements included in their written disclosures
- state the material factors or assumptions used to support the material FLI
- separately disclose the material assumptions and the material risk factors

In addition, we reviewed the disclosure relating to previously disclosed material FLI and the issuers' policy for updating FLI. We reminded several issuers of their obligation to update previously disclosed material FLI. Among other things, we required issuers to remove from written statements any disclaimer indicating that the issuer does not intend to update the FLI.

F. *Inventory*

We conducted reviews to assess compliance with the new accounting requirements for inventory in CICA Handbook Section 3031 *Inventories*, effective for interim and annual financial statements for fiscal years beginning on or after January 1, 2008. The new standard reduces the number of alternatives for measurement of inventories, permits reversal of prior write-downs, requires impairment testing at each period and has increased disclosure requirements.

These reviews resulted in prospective enhancements including:

- disclosure in accounting policies adopted to measure inventory
- the carrying amount of inventory in classifications appropriate to the issuer
- the amount of inventory recognized as an expense

G. *Material contracts*

We conducted reviews to assess compliance with new and existing provisions in NI 51-102 concerning the redaction and omission of information from material contracts. As a result of the provisions, issuers are now prohibited from redacting or omitting information that would be necessary to understanding the contract. In addition, where information is redacted or omitted, the issuer must describe the missing information in the copy of the material contract that is filed. These reviews resulted in many issuers having to either refile or file material contracts.

H. *Mining technical disclosure*

We have conducted reviews on issuers engaged in mineral projects to assess compliance with requirements set out in NI 43-101. While there was general compliance among issuers, common issues identified include a failure to:

- name the qualified person in all documents containing scientific and technical information
- include the required disclosure for historical estimates, such as the source and date of the estimate
- file amended or new technical reports
- file or amend certificates or consents for the qualified person, or
- remove corporate presentations or other content from their website that did not comply with NI 43-101

I. *Oil and gas technical disclosure*

We have conducted reviews on issuers engaged in oil and gas activities to assess compliance with requirements set out in NI 51-101. While there was general compliance among issuers, common issues identified include a failure to:

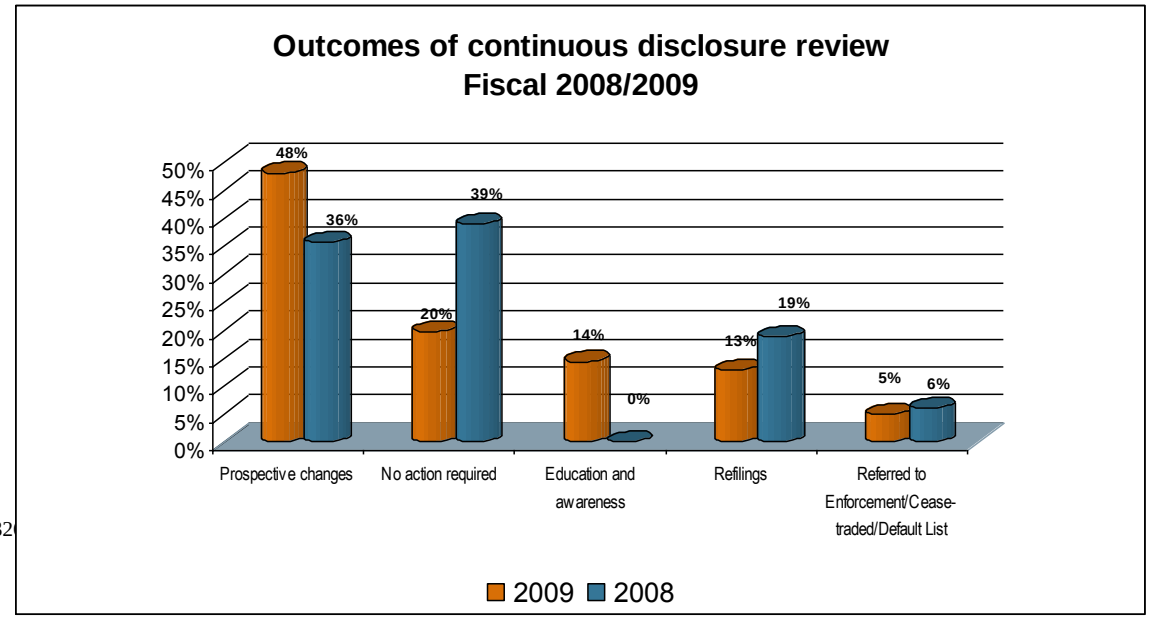
- include all of the information required under NI 51-101
- ensure that the information provided under NI 51-101 is consistent throughout the disclosure
- use terminology set out in the Canadian Oil and Gas Evaluation Handbook (COGEH)
- be consistent and accurate in the use of units of measurement within and between disclosure documents
- include gross or net values when required in annual oil and gas filings
- provide disclosure that is accurate and proportionate in respect of undeveloped reserves
- classify down to the most specific reserves or resources category
- include all required signatures on Form 51-101F3 *Report of Management and Directors on Oil and Gas Disclosure*
- disclose proved or probable reserves when disclosing possible reserves

Outcomes for fiscal 2009

We classify the outcomes of the full and issue-oriented reviews into the following five categories:

	Category	Description
1.	Prospective Changes	The issuer has been informed to make certain changes or enhancements in its next filing as a result of deficiencies identified.
2.	No action required	The issuer does not need to make any changes or additional filings.
3.	Education and Awareness	The issuer has been selected based on its particular risk profile and has received a proactive letter alerting it to certain disclosure enhancements that should be considered in its next filing.
4.	Refiling	The issuer must amend or refile certain CD documents.
5.	Cease trade order/Default list/Enforcement Referral	If the issuer has critical CD deficiencies, CSA regulators may add the issuer to their default lists, issue a cease trade order, or refer the issuer to Enforcement.

Given that we employ a risk-based approach to the selection of issuers for review, we generally select issuers at higher risk of requiring improvements in their disclosure.



The chart on the previous page shows the types of outcomes of the reviews for fiscal 2009 compared to fiscal 2008. Some of the reviews had more than one outcome (e.g. prospective changes, refilings). The prospective changes category increased to represent 48% of total outcomes, up from 36% in fiscal 2008. This increase is largely attributed to our focus on new accounting and disclosure requirements. The large decline in "no action required" outcomes is a result of the focus placed on the credit crisis reviews and targeting issuers with technical disclosure requirements. We also created a new category of "education and awareness" in fiscal 2009. This category captures the outcomes from the proactive reviews we conducted in the last half of the year in response to the market turmoil and credit crisis. For these proactive reviews, we identified issuers at higher risk of a specific disclosure issue and contacted them in advance of either their third quarter or annual CD filings to highlight specific areas where disclosure enhancements should be considered. This new proactive approach was employed to assist issuer in providing complete, transparent and timely disclosure to their investors.

Areas of focus for fiscal 2010

Our CD review program is risk based and is designed to respond to issues currently impacting issuers that are important to investors. In any given year, reporting issuers are affected by new accounting standards and regulatory changes and these are areas that we would generally incorporate into our CD review program. Some of the topics that may receive greater attention by our CD review program for fiscal 2010 include:

- valuation of goodwill, intangibles and asset impairments (CICA Handbook Section 3063 *Impairment of Long-lived Assets* and Section 3064 *Goodwill and intangible assets*)
- going concern issues including the new accounting requirements (CICA Handbook Section 1400.08A and 1400.08B *General Standards of Financial Statement Presentation*)
- disclosure relating to executive compensation in accordance with Form 51-102F6 *Statement of Executive Compensation (in respect of financial years ending on or after December 31, 2008)*
- disclosures of IFRS changeover plans in the MD&A (CSA Staff Notice 52-320 *Disclosure of Expected Changes in Accounting Policies Relating to Changeover to International Financial Reporting Standards)*
- disclosures and valuation of restructured ABCP Notes
- material contract requirements in NI 51-102
- National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* requirements

Results by jurisdiction

The Alberta Securities Commission, the Ontario Securities Commission and the Autorité des marchés financiers publish reports summarizing the results of the CD review program in their jurisdictions. See the individual regulator's website for a copy of its report: www.albertasecurities.com, www.osc.gov.on.ca, www.lautorite.qc.ca.

For more information

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