

Corporate Disclosure Information Session

January 16, 2025



Today

- **Mergers and acquisitions disclosure**
- **Share-based payments in acquisitions**
- **Selective disclosure**
- **Cyber security disclosure requirements**
- **Listed issuer financing exemption**
- **Regulatory update**

Disclaimer

The following information is intended only as general introductory information to address some common questions.

It is not intended to be and must not be relied on as legal advice.

Please refer to the specific provisions of Alberta securities laws.

We encourage you to seek legal advice from legal counsel familiar with Alberta securities laws.



CPD confirmation of attendance



If you wish to obtain continuing professional development (CPD) credits for this session, you must enter the code words disclosed during the information session in the survey at the end of the presentation.

Please ensure that you correctly enter your name and email address so that the attendance confirmation can be emailed to you.

Mergers and acquisitions

Required disclosures and best practices

Jennifer Pearson, Securities Analyst

Roger Persaud, Senior Securities Analyst



Key items covered

- Voluntary disclosure
- Balanced disclosure
- Forward-looking information (FLI)
- Non-GAAP measures (NGMs)
- Material Change Reports
- Management discussion and analysis (MD&A) disclosure
- Related party transactions
- Business acquisition reports
- Material contracts
- Notices



Voluntary disclosures

- Investor presentations, websites and social media
- Material information must be in the MD&A, financial statements, information circular, news releases, AIF, etc.
- Avoid selective disclosure

Balanced disclosures

- Required **and** voluntary disclosure
- Positives, negatives, and risks of the transaction
- Prohibitions against false or misleading statements
- Guidance in CSA Staff Notice 51-356 *Problematic Activities by Issuers* and 51-348 *Staff's Review of Social Media Used by Reporting Issuers*



Forward-looking information (FLI) and Non-GAAP measures (NGMs)

- Pro forma financial information, financial projections, key performance indicators
- Disclosure required in continuous disclosure and voluntary filings
- NGMs - NI 52-112 *Non-GAAP and Other Financial Measures Disclosure*
- FLI - Parts 4A & 4B of NI 51-102 *Continuous Disclosure Obligations*
 - Must have reasonable basis
 - State material factors and assumptions
 - Obligation to update

Material Change Reports

- Form 51-102F3 *Material Change Report*
- File within 10 business days
- Guidance on determining materiality – Part IV of NP 51-201 *Disclosure Standards*
- Section 5.2 – Details of the restructuring transaction
 - Does not apply if information circular, prospectus, or takeover bid circular sent/filed
 - Prospectus-level disclosure for each entity (14.2 of Form 51-102F5 *Information Circular*)
 - May incorporate information by reference

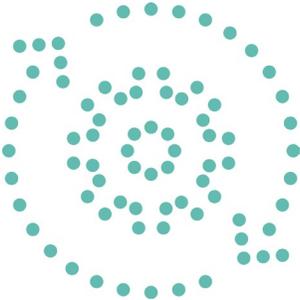
Management discussion and analysis

Proposed probable transactions (section 1.11 of Form 51-102F1)

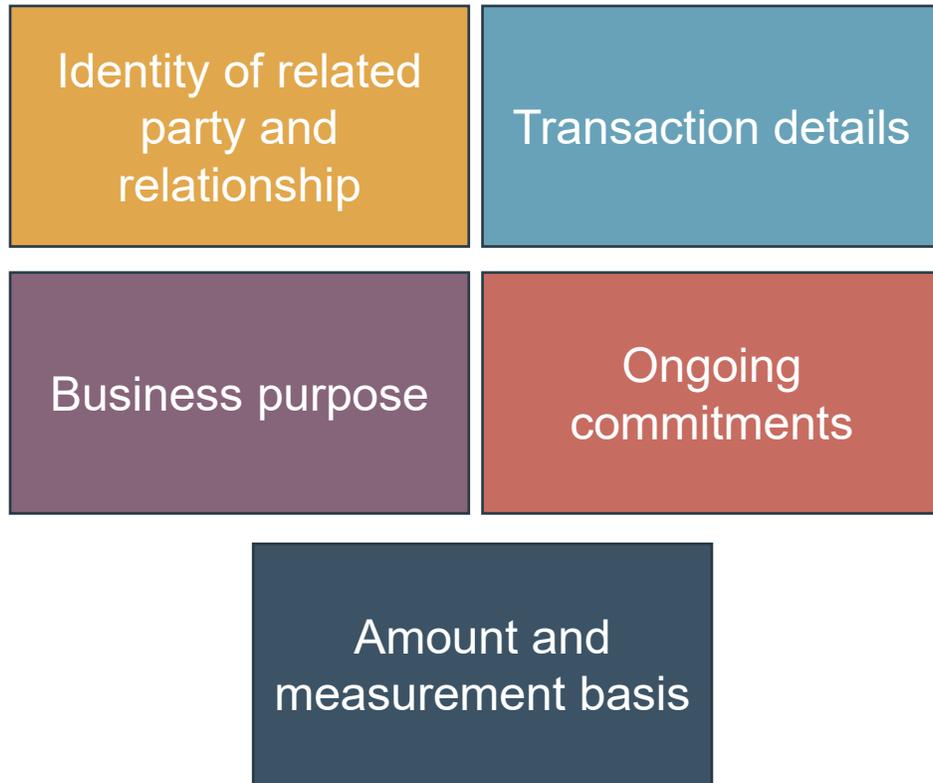
- Expected effect on financial condition, performance, and cash flow
- Status of shareholder or regulatory approvals

Completed transactions (sections 1.2 to 1.4 of Form 51-102F1)

- Impact on continuing operations, financial condition, performance, and cash flow
- Quantitative and qualitative analysis to demonstrate impact of transaction



Related party transactions



- Material due to inherent risk
- MD&A (Form 51-102F1) requires more than financial statements
- Consider if MI 61-101 applies

Business acquisition report (BAR)

- Form 51-102F4 required for significant acquisitions
- Part 8 of NI 51-102
 - Significance tests
 - Filing deadline
 - Financial statement disclosure
- Definition of a business under securities law may be different from IFRS

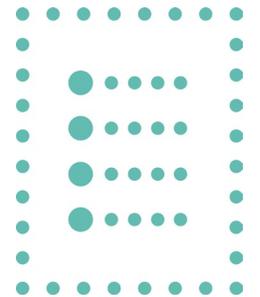


Material contracts

- Purchase and sale agreement
- Related ancillary agreements
- Required to be filed under section 12.2 of NI 51-102
- Review agreements to determine if material

Notices

- Notices required under NI 51-102 must be filed
 - Change in Corporate Structure (s. 4.9)
 - Change in Year-End (s. 4.8)
 - Change in Auditor (s. 4.11)



Acquisitions: Share-based payments

Chris Andrews, Senior Securities Analyst

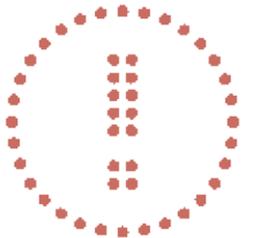
Acquisitions – Share-based payments

Situation

- Acquire private company (or asset)
- Issues significant number of its own securities
- Limited financial disclosure
- Business acquisition report (BAR) not filed or filed late
- Impairment expense recorded in audited annual financial statements

Market Impact

- Lack of transparency
- Lack of timely information
- Asymmetric market information
- Harm to the fairness of the market
- Disrupts long-term value incentive
- Corporate law compliance considerations



Example

- Reporting Issuer – ABC Co.
- Announced agreement to acquire 100 per cent of Private Co. for 15 million shares (approx. \$5 million). Private Co. holds intellectual property assets.
- Private Co. acquired the assets 21 days prior for \$75,000 in cash and 100,000 Private Co. shares; appear to have nominal value.
- Issuer provided a "calculation valuation report," which assumed \$22 million in revenue in year-one.
- No patents have been issued and technology remains under development.



Regulatory response

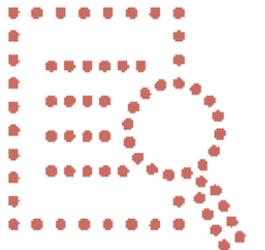
CSA Staff Notice 51-365 Continuous Disclosure Review Program Activities for the fiscal years ended March 31, 2024 and March 31, 2023

Financial statement considerations

- Business combination disclosure requirements
- Intangible asset recognition criteria
- Intangible asset disclosure requirements
- Impairment loss and related disclosure requirements

IFRS references

- IFRS 3.59; B64-67; B64(e)
- IAS 38.21
- IAS 38.118-128
- IAS 36.126-137



Regulatory response

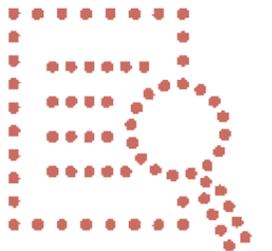
CSA Staff Notice 51-365 Continuous Disclosure Review Program Activities for the fiscal years ended March 31, 2024 and March 31, 2023

MD&A considerations

- Regulatory scrutiny over fair value discrepancies
- Recognition of goodwill and/or intangible assets
- Venture issuer without significant revenue
- Impairment of goodwill/intangible assets

MD&A references

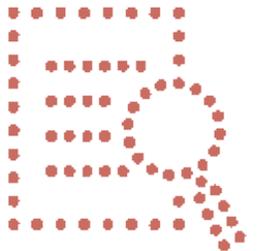
- Form 51-102F1
- Part 1(d); Item 1.2, 1.3(2), & 1.4(j)
- Section 5.3 of NI 51-102
- Items 1.2, 1.3(2), & 1.4(j)



Regulatory response

Continuous disclosure and prospectus reviews: Staff considerations

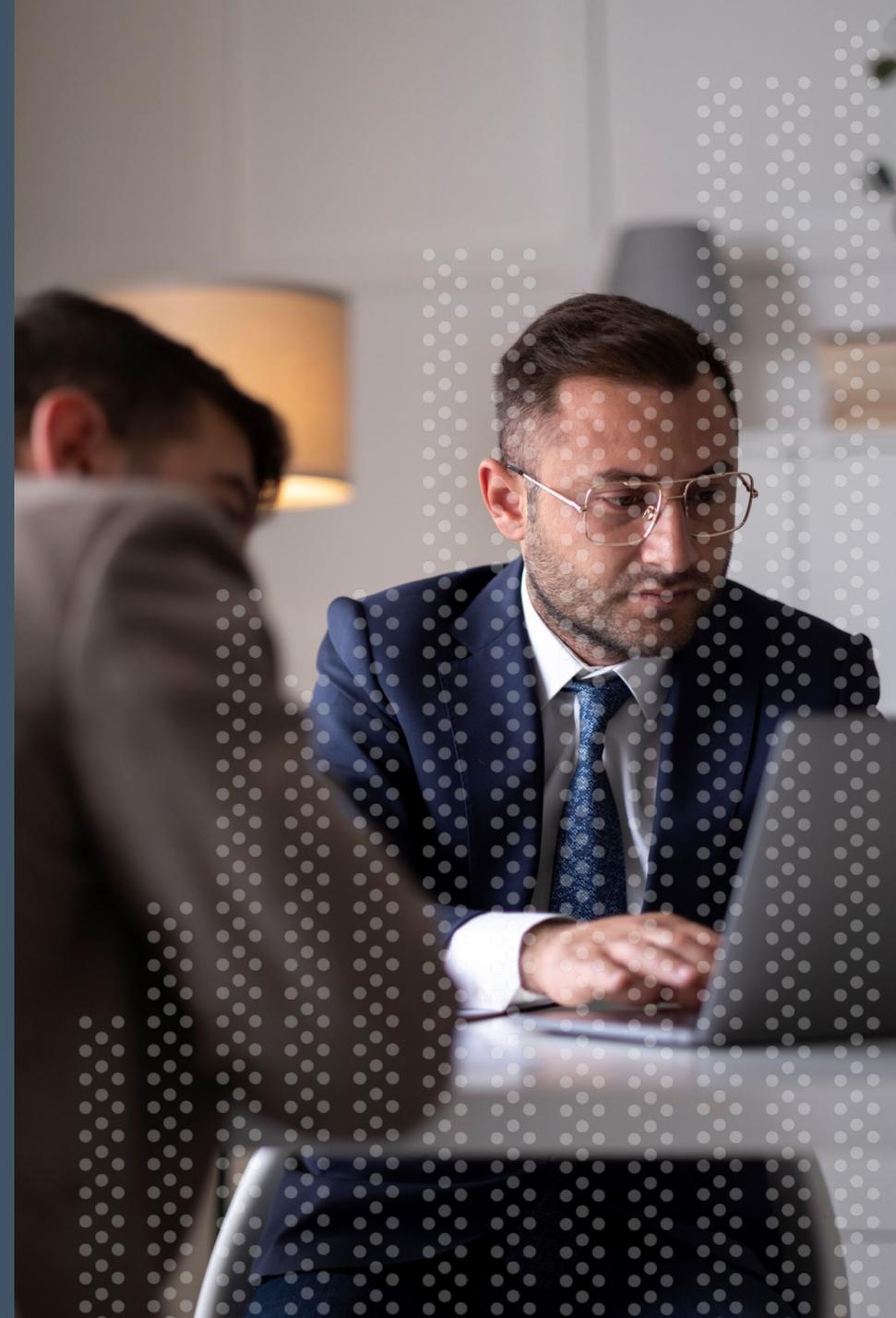
- Rebuttable presumption that the fair value of goods or services received can be estimated reliably (IFRS 2.13)
- Valuation Reports: Assurance considerations
- Description of the business: Target Co. (IAS 1.138)
- Prospectus receipt refusal: Unconscionable consideration



CPD Learning Code

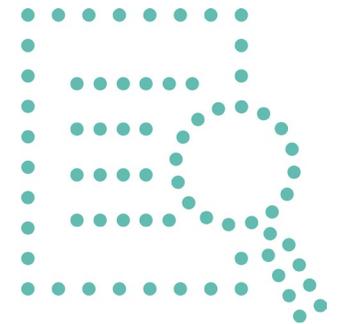
Disclosure

Selective disclosure



Selective disclosures

One of the key principles underpinning a fair and efficient capital market is that **all investors** have **equal access** to **material information** that could influence their investment decisions.



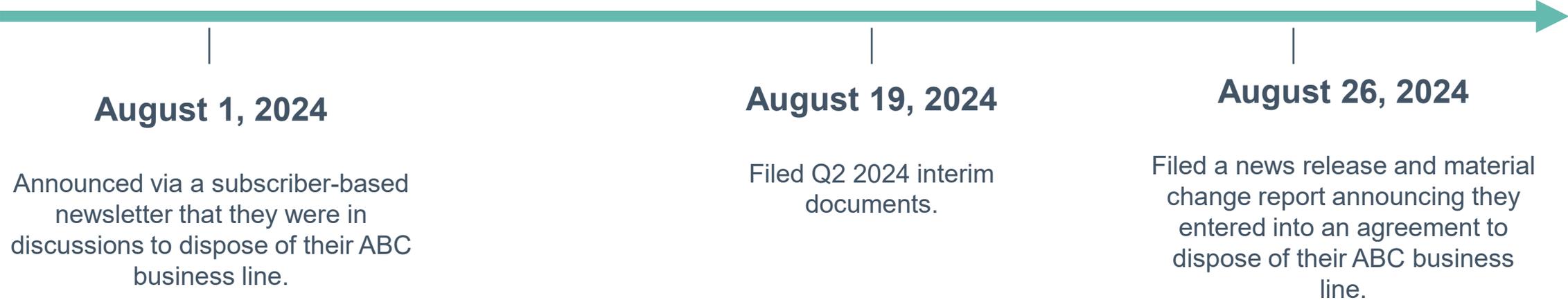
Selective disclosures



Sources of selective disclosure



Example: Timing of disclosure



Example: Breadth of disclosure

An issuer completed a significant acquisition of an oil and gas property:

Material change report

- ✓ Acquisition date
- ✓ Purchase price
- ✓ Description of property

Corporate presentation

- ✓ Acquisition date
- ✓ Purchase price
- ✓ Description of property
- ✓ Counterparty
- ✓ History of project
- ✓ Reserve information
- ✓ Projected revenue and production
- ✓ Future development plans

Best practices

- Ensure all material information is “generally disclosed.”
- Issue a news release via a widely-distributed news or wire service.
- File the news release on SEDAR+.
- Hold a conference call (when appropriate).
- Implement policies and procedures regarding disclosure of information outside of continuous disclosure filings.
- Actively monitor disclosure being made by investor relations firms on the company’s behalf.

*Refer to NP 51-201 *Disclosure Standards* for additional information.



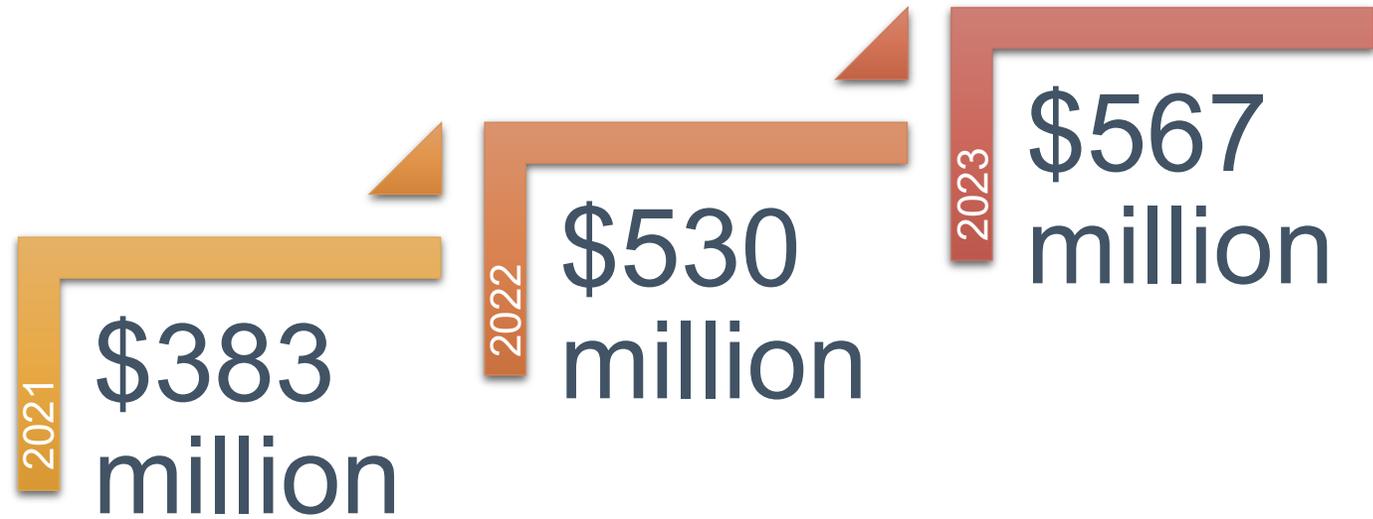
Disclosure of cyber security risks and incidents

Nicole Law, Senior Securities Analyst



Cyber security landscape in Canada

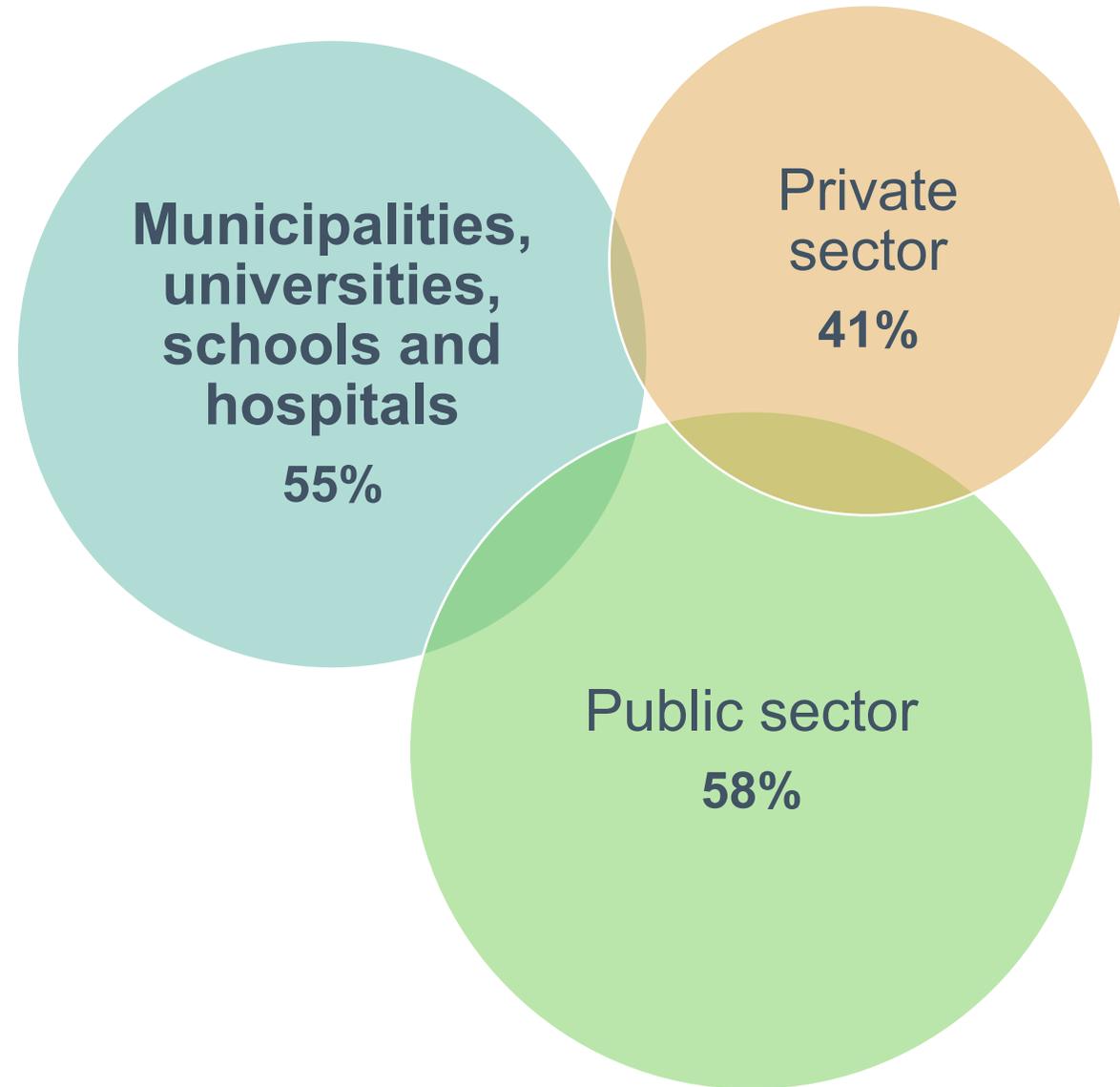
Losses from fraud in Canada:



Source: Government of Canada. (2024, December 17). *National Cyber Threat Assessment 2025 – 2026*. cyber.gc.ca/en/guidance/national-cyber-threat-assessment-2025-2026

Cyber security landscape in Canada

44 per cent of respondents reported a cyber attack in the past year



Source: Government of Canada. (2024, December 17). *How Canadian organizations are navigating cyber security in 2024*. getcybersafe.gc.ca/en/canadian-organizations-are-navigating-cyber-security-2024

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Overview of disclosure requirements

- Risk factors
- Risk management and oversight
- Material cyber incident
- Other matters



Risk factor disclosure

Management's discussion and analysis

Annual Information Form

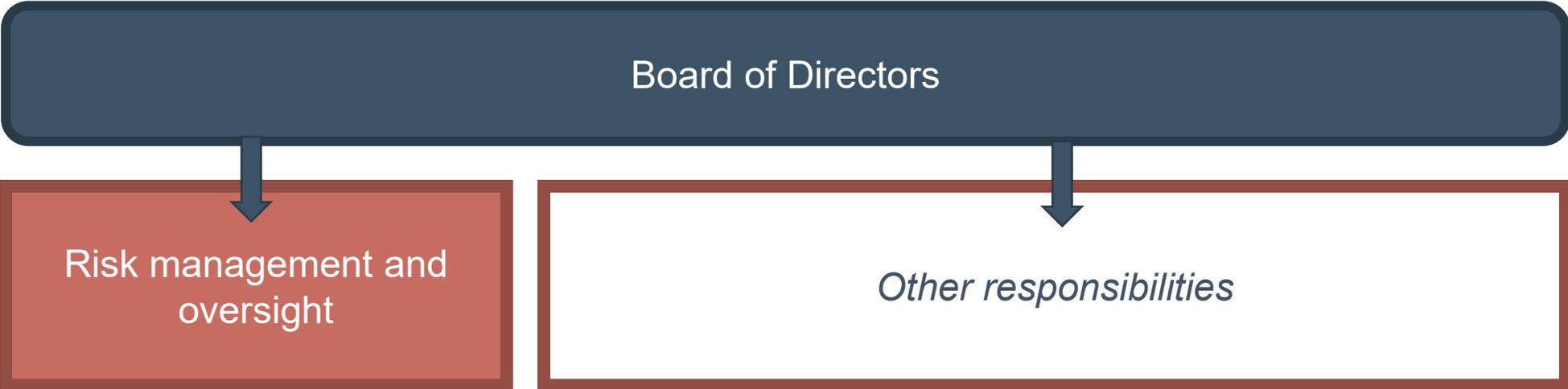
Entity-specific risk factor considerations:

- Sources of cyber security risk;
- Potential consequences of a cyber incident;
- Preventative measures; and
- Effect of prior material cyber security incidents.

Risk factor disclosure



Risk management and oversight



Risk management and oversight

Cyber security internal controls

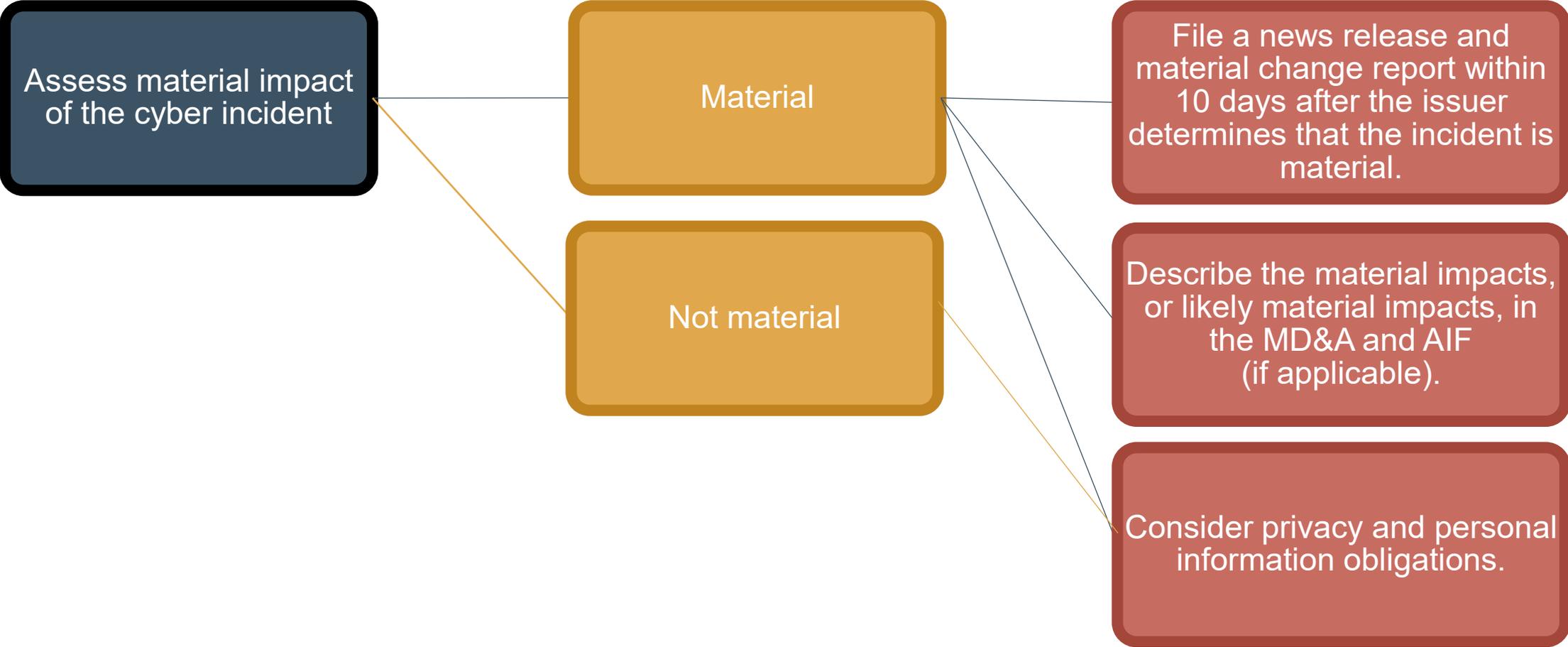
Cyber incident recovery plan

Unauthorized access

Secure third-party platforms

Please note that this list is not exhaustive

Material cyber incident



Other disclosure matters

Forward-looking information

Non-GAAP and other financial measures

Overview of disclosure requirements (SEC issuer)

Cybersecurity risk management, strategy, governance and incident disclosure

Timely disclosure of material incidents

- Report a material cybersecurity incident in Form 8-K within four business days after the company determines that the incident is material.
- Describe the material aspects of the nature, scope, and timing of the incident and the material impact, or reasonably likely material impact on the company, including its financial condition and results of operations.



Risk management and strategy

- In the annual report (Form 10-K or Form 20-F), describe the processes, if any, for assessing, identifying and managing material risks from cybersecurity threats.



Governance

- In the annual report (Form 10-K or Form 20-F), describe the board of directors oversight of risks from cybersecurity threats and management’s role in assessing and managing the company’s material risks from cybersecurity threats



Cyber security summary



Resources available:

Staff Notice 11-332 *Cyber Security*

Staff Notice 51-347 *Disclosure of cyber security risks and incidents*

Listed issuer financing exemption

What is the listed issuer financing exemption?

What is it?

- The listed issuer financing exemption (LIFE) is an efficient tool for smaller issuers to raise capital.
- Adopted by all CSA members and came into effect on November 21, 2022.

Key characteristics of LIFE

- Issuers are limited to raising the greater of \$5,000,000 or 10 per cent of the issuer’s market capitalization to a maximum total dollar amount of \$10,000,000.
- Issuers can distribute freely tradeable listed equity securities to the public (subject to exchange policies).
- Offering document not subject to approval.

What are the key conditions of LIFE?

Conditions of LIFE

- Have been a reporting issuer in Canada for at least 12 months prior to the news release announcing the offering;
- Have a class of equity securities listed for trading on a Canadian stock exchange;
- Have filed all periodic and timely disclosure documents;
- Have active business operations and its principal asset is not cash, cash equivalents or its exchange listing;
- Exchange listing cannot be a capital pool company;
- Reasonably expect to have available funds to meet all business objectives and liquidity requirements for 12 months after the offering; and
- Be an issuer that is not an investment fund.

What are the key areas of deficiencies noted?

Key topics to be discussed

1. Sufficiency of funds.
2. Number of allowable securities under LIFE.
3. Certification of the LIFE Form.

Key topic: Sufficiency of funds

Requirement: Have sufficient available funds to meet the issuer's business objectives and liquidity requirements for a period of 12 months after the offering closes.

- Minimum offering amount must be sufficient to meet business objectives and liquidity requirements.
- Items 8 and 9 of Form 45-109F19 require the issuer to provide disclosure regarding available funds, significant decline to working capital, and any risks to going concern.
- ASC staff may review continuous disclosure documents to ensure issuer satisfies requirement.

Key topic: Securities limit

Requirement: Distribution combined with other distributions under the LIFE exemption during the 12 months preceding the offering was announced will not result in an increase of more than 50 per cent of the issuer's outstanding securities.

- Period to consider is 12 months **before** the date of the news release that announces the offering.
- Only distributions under LIFE are included in the calculation.
- Common shares that are issuable on exercise of warrants must be included in the calculation of the 50 per cent dilution limit.

Key topic: Certification of form

Requirement: CEO and CFO of the issuer are required to certify the listed issuer financing document.

- The date included in the certification paragraph of Form 45-109F19 and the date of the completed form will never be the same.

PART 7 DATE AND CERTIFICATE

15. Certificate

Include the following statement in bold with the bracketed information completed:

“This offering document, together with any document filed under Canadian securities legislation on or after *[insert the date which is the earlier of the date that is 12 months before the date of this offering document and the date that the issuer’s most recent audited annual financial statements were filed]*, contains disclosure of all material facts about the securities being distributed and does not contain a misrepresentation.”

16. Date and signature

Provide the signature, date of the signature, name and position of the chief executive officer and chief financial officer of the issuer.

Filing requirements and issues

What are the documents to be filed?

- A news release announcing the offering and location of the offering document;
- Completed Form 45-106F19 *Listed Issuer Financing Document*; and
- Form 45-106F1 *Report of Exempt Distribution*.

Common filing issues

- Documents are incorrectly only being filed in jurisdictions where the issuer is a reporting issuer, as opposed to all the jurisdictions where the offering takes place.
- Completed Form 45-106F19 is not made available on issuer's website.
- News release does not announce or make reference to the issuer's website.

CPD Learning Code

SEDAR+

Regulatory update

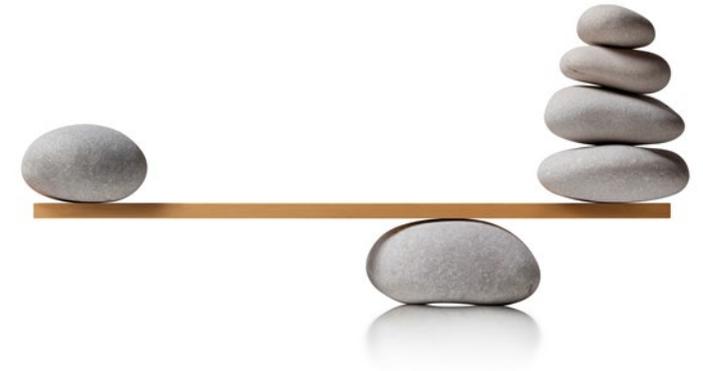
Anthony Potter

Manager, Corporate Disclosure and Financial Analysis

Corporate Finance

Regulatory update

- **Climate-related disclosure**
- **Diversity disclosure**
- **Well-known seasoned issuer regime**
- **Access equals delivery**
- **Streamlining of annual and interim continuous disclosure obligations**
- **Investment funds**
- **IFRS 18 presentation and disclosure in financial statements**



Climate-related disclosure

- Canadian Sustainability Standards Board (CSSB)
 - In March 2024, the CSSB published proposed Canadian Sustainability Disclosure Standard (CSDS) 1 *General Requirements for Disclosure of Sustainability-related Financial Information* and CSDS 2 *Climate Related Disclosures* that were largely aligned with IFRS S1 and S2.
 - In October 2024, the CSSB provided its overview of the comments received.
 - CSDS 1 and CSDS 2 issued on December 18, 2024.
- Implications for National Instrument 51-107 *Disclosure of Climate-Related Matters*
 - Requirements and timing.

Diversity disclosure

- Form 58-101F1 *Corporate Governance Disclosure* and National Policy 58-201 *Corporate Governance Guidelines*
 - In 2023, the CSA published for comment two alternative approaches to broaden diversity disclosure.
 - Objective was to provide investors with decision-useful information that enables them to better understand how diversity ties into an issuer’s strategic decisions.
 - The main differences between the two proposals were related to the definition of diversity and designated/identified groups and presentation of data.
 - CSA has reviewed the comment letters received and is continuing to work towards a harmonized national disclosure framework.

Well-known seasoned issuer (WKSI) regime

- In early 2022, each CSA jurisdiction issued a blanket order creating a WKSI regime on an interim basis.
- The Blanket Orders allow an issuer that meets the WKSI qualifications and certain conditions to file a final base shelf prospectus with its principal regulator and obtain a receipt for that prospectus on an accelerated basis without first filing a preliminary base shelf prospectus.
- On September 21, 2023, the CSA published proposed amendments to implement a permanent WKSI regime that would permit issuers who satisfy certain conditions to:
 - File a final base shelf prospectus and be deemed to receive a receipt for that prospectus without first filing a preliminary base shelf prospectus or undergoing any regulatory review; and
 - Benefit from receipt effectiveness for a period of 37 months from the date of its deemed issuance, subject to the requirement for the issuer to reassess its qualification to use the WKSI regime annually.

Access equals delivery

- In spring 2022, the CSA published proposed amendments aimed at implementing an electronic access model for prospectuses generally and financial statements and MD&A for non-investment fund reporting issuers.
- Under the proposed model, providing access to the documents and alerting investors that the documents are available would have constituted delivery of the documents.
- Modernizes the way information is communicated to investors and recognizes that investors are increasingly consuming information electronically.
- The proposed access model for prospectuses came into effect in April 2024.
- CSA recently re-published for comment proposed amendments to implement an access model for certain continuous disclosure documents. The proposal would allow investors to sign up to receive an email notification through SEDAR+ of the filing of documents but allow investors to continue to request or provide standing instructions to receive the documents in paper or electronic form.
- The comment period will end on February 17, 2025.

Streamlining of continuous disclosure obligations

- In 2021, the CSA published proposed amendments to NI 51-102 to combine the financial statements, AIF (if any) and MD&A into a single annual or interim disclosure statement, as applicable.
- These amendments would also eliminate overlap and duplication within these documents.
- Amendments remain on hold until the access equals delivery amendments are complete.



Investment funds

- CSA has implemented amendments effective March 3, 2025 to:
 - Allow an investment fund in continuous distribution to file a new prospectus every two years rather than annually (no change to when fund facts and exchange-traded fund facts must be filed and delivered); and
 - Eliminate the requirement for an investment fund to obtain a final receipt for a prospectus within 90 days of the preliminary receipt.

- CSA has proposed amendments to:
 - Replace the existing annual and interim Management Report of Fund Performance (MRFP) with a new annual and interim Fund Report.
 - Also eliminate some class- or series-level disclosure from investment fund financial statements that are not required by IFRS.

- Access model for delivering financial statements and MRFP continues to be evaluated.

IFRS 18 presentation and disclosure in financial statements

- IFRS 18 introduces the concept of management-defined performance measures (MPMs).
- MPMs are to be disclosed in a note to the financial statements and prior to the introduction of MPMs; such measures have traditionally been considered non-GAAP financial measures (e.g. adjusted operating income).
- Assessing the implications of IFRS 18 and exploring what amendments are necessary to NI 52-112 *Non-GAAP and Other Financial Measures Disclosure*.
- RIs may want to reflect on the nature, extent and manner of non-GAAP financial measures they disclose outside the financial statements as they may consequently be required to be disclosed inside the financial statements.

Questions?

Contact us



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Resources available



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