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1 hot issues

Continuous Disclosure Considerations in today's Current Economic Conditions

Last month the Canadian Securities Administrators (CSA) published Staff Notice 51-328 **Continuous Disclosure Considerations Related to Current Economic Conditions**.

This notice addresses the challenges that reporting issuers may have given the current market conditions when preparing their upcoming financial statements and Management's Discussion and Analysis (MD&A). The notice is in the form of a **sample continuous disclosure review letter** which might have been issued by the relevant Canadian securities authorities to a reporting issuer. It outlines specific areas where the CSA are of the view that appropriate disclosure will be important to allow investors to understand the risks and circumstances facing an issuer. This notice was crafted to assist issuers in ensuring their disclosure clearly reflects the impact of the uncertain market conditions.

Some highlights from the Staff Notice 51-328 are:

MD&A

General Considerations

The MD&A should identify and evaluate information that would give investors an accurate understanding of your company's current and prospective financial position and operating results. This would include the potential effects of known trends, commitments and uncertainties that have arisen due to the current market conditions, such as the:

- demand for products and services, including any changes or expected changes to volume, selling prices or other revenue drivers;
- costs, including changes in prices or constraints on supply, volume discounts, inventory adjustments or other factors that alter the relationship between costs and revenues;
- revenue and expenses, due to changes in interest rates, borrowing costs, foreign exchange rates and commodity prices;
- financial results, due to unusual transactions or events including charges, gains or losses that have not been typically reflected in historical results;
- the company's overall strategy or changes to strategies, including cost saving measures, restructuring initiatives or a realignment of operational and financial resources; and
- any other relevant factors not mentioned above.

Provide this discussion for any operating segments or other parts of the business that have a significant impact on revenues, income or cash needs in the current environment. Part 1(b) *Date of Information* of Form 51-102F1 also requires that, in preparing MD&A, you take into account information available up to the date of the MD&A and that you ensure the disclosure is current so that it will not be misleading when it is filed.

Liquidity and Capital Resources

Items 1.6 *Liquidity* and 1.7 *Capital Resources* of Form 51-102F1 require an analysis of your company's ability to generate sufficient cash and to access financial resources to meet operating needs in the current market environment. This discussion should not include "boilerplate" statements. It should disclose and quantify the following in sufficient detail for investors to understand the company's financial circumstances:

- cash necessary to fund current operations and the ability to satisfy obligations including debt maturities;
- commitments or planned expenditures necessary to maintain growth objectives and performance targets such as acquisition targets, new product launches or project milestones;
- future cash requirements associated with known trends and uncertainties due to current market conditions;

For Income Trusts – Discussion of Distributed Cash

As set out in Part 6.5.2 of National Policy 41-201 *Income Trusts and Other Indirect Offerings*, income trust issuers should provide disclosure that compares cash distributions paid to cash flow from operating activities and net income. Where cash distributions paid exceeds cash flow from operating activities and net income, a discussion of how the resulting shortfall will be funded and whether cash distributions will continue to exceed net income or cash flow from operating activities in the foreseeable future is required. Income trust issuers must also discuss whether this level of cash distribution is sustainable or whether cash distributions are anticipated to be suspended in the foreseeable future.

Forward-Looking Information

Recent economic and market events will cause actual results for many issuers to differ significantly from previously disclosed material forward-looking information. If this has happened to your company, you are required under Part 5.8 *Disclosure Relating to Previously Disclosed Material Forward-Looking Information* of NI 51-102 to discuss in the MD&A or in a press release these events and circumstances and the expected differences between actual and forecasted results.

Impairment of Goodwill, Intangible Assets and Long-Lived Assets

Accounting guidance for impairment testing of goodwill, intangible assets and long-lived assets can be found in the following CICA HB Sections: Section 3062 Goodwill and other Intangible Assets (replaced by Section 3064 Goodwill and Intangible Assets for annual and interim financial statements relating to fiscal years beginning on or after October 1, 2008) and Section 3063 Impairment of Long-lived Assets.

In the CSA's view, the current economic and market conditions represent circumstances that are likely to affect the carrying amount of assets. Examples of impairment indicators to consider when testing goodwill, intangible assets and long-lived assets include:

- a significant decrease in the company's share price;
- a significant adverse change in the business climate and/or the industry your company operates in;
- a current-period operating or cash flow loss combined with a history of operating or cash flow losses, or a projection or forecast that demonstrates continuing losses; and
- an accumulation of costs significantly in excess of the amount originally expected for its acquisition or construction.

If your company incurs an impairment charge, your MD&A should not only discuss the financial impact of the charge but also provide meaningful insight into the reasons and business circumstances surrounding the impairment as required by Item 1.2 **Overall Performance of Form 51-102F1**.

Junior Resources Companies – Additional Considerations

Asset Impairments

If your company is a resource exploration company in the development stage, you need to consider the additional asset impairment guidance in CICA HB Accounting Guideline 11 *Enterprises in the Development Stage* (paragraphs 12 to 20) and in CICA HB EIC-126 *Accounting by Mining Enterprises for Exploration Costs* for capitalized exploration costs. Factors that may indicate the need for a write-down of a capital asset held by an enterprise in the development stage engaged in extractive operations include:

- unfavourable changes in the project economics such as declining metal or oil and gas prices;
- delay in development activity extending beyond three years; and
- poor exploration results and no planned work in the foreseeable future.

These factors would suggest that future benefits are uncertain. Similarly, declining metal or oil and gas prices could result in goodwill being impaired. If an asset's value is impaired, it should be written down immediately, which may be before the project is abandoned.

Other

The topics covered in this CSA letter do not include all accounting and disclosure issues. Your company should consider the accounting and disclosure issues specific to its circumstances in the current economic environment

Check it out

The link to the CSA letter is as follows:

http://www.osc.gov.on.ca/Regulation/Rulemaking/Current/Part5/csa_20090108_51-328_continuous-disclosure.pdf

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