

## **CSA Multilateral Staff Notice 51-361 *Continuous Disclosure Review Program Activities for the fiscal years ended March 31, 2020 and March 31, 2019***

**October 29, 2020**

### **Introduction**

The Canadian Securities Administrators<sup>1</sup> (CSA) have prepared this Staff Notice (**Notice**) to report on the results of the reviews conducted by the CSA within the scope of its Continuous Disclosure Review Program (**CD Review Program**). The goal of the program is to improve the completeness, quality and timeliness of continuous disclosure (CD) provided by reporting issuers<sup>2</sup> (**issuers**) in Canada. This program was established to assess the compliance of CD documents with securities laws, including CD rules, and to help issuers understand and comply with their obligations under the CD rules so that investors receive high quality disclosure to assist them in making informed investment decisions.

In this Notice, we summarize the key findings and outcomes of the CD Review Program for the fiscal year ended March 31, 2020 (**fiscal 2020**) and the fiscal year ended March 31, 2019 (**fiscal 2019**). Appendix A - *Financial Statement, MD&A and Other Regulatory Deficiencies* (**Appendix A**) describes common deficiencies and includes some disclosure examples to help issuers address these deficiencies and to illustrate our expectations.

Given the impact of the COVID-19 pandemic (**COVID-19**) on the Canadian and global economy and potential impact on issuers' operating performance, financial position, liquidity and future prospects, Appendix A includes guidance on reporting the impact of COVID-19.

For further details on the CD Review Program, see CSA Staff Notice 51-312 (revised) *Harmonized Continuous Disclosure Review Program*.

### **Results for Fiscal 2020 and Fiscal 2019**

Issuers selected for a CD review (full or issue-oriented review (**IOR**)) are identified using a risk-based and outcomes-focused approach using both qualitative and quantitative criteria. IORs are focused on a specific accounting, legal or regulatory issue, an emerging issue or industry, implementation of recent rules or areas where we believe there may be a heightened risk of potential investor harm. A review may also stem from general monitoring of our issuers through news releases, media articles, complaints and other sources.

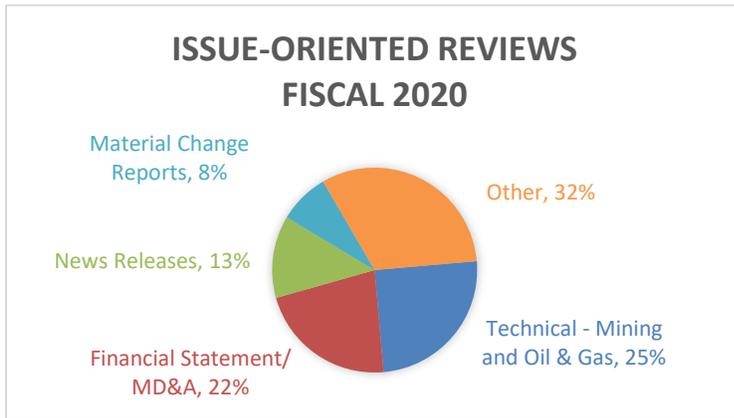
During fiscal 2020, a total of 583 CD reviews (fiscal 2019 – 514 CD reviews) were conducted with IORs consisting of 73% of the total (fiscal 2019 - 70%). The nature of an IOR will impact the time spent and outcome obtained from the review. The following charts outline the focus areas of the IORs conducted:

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<sup>1</sup> This Notice is being published in all jurisdictions except British Columbia. It includes the results of the reviews conducted by the British Columbia Securities Commission (**BCSC**) as a result of its participation in the CD Review Program. The BCSC will advise of their approach after the final provincial interregnum period is over in mid-November.

<sup>2</sup> In this Notice “issuers” means those reporting issuers contemplated in National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**).

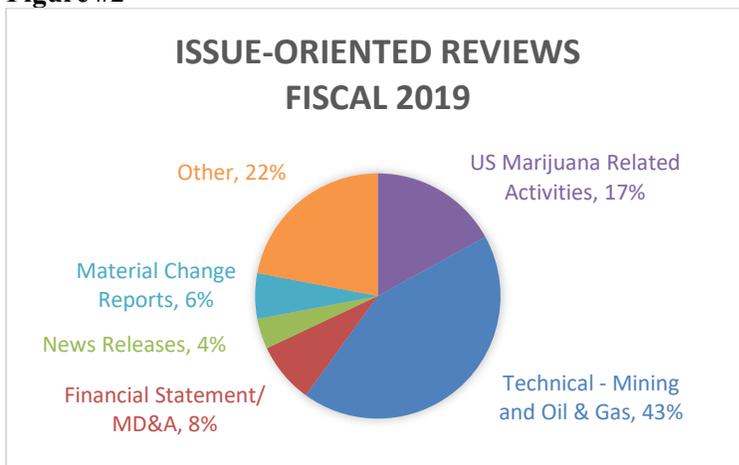
**Figure #1**



The “Other” category includes, but is not limited to, reviews of:

- Emerging industries (including cryptocurrencies and cannabis)
- Change of auditor notice

**Figure #2**



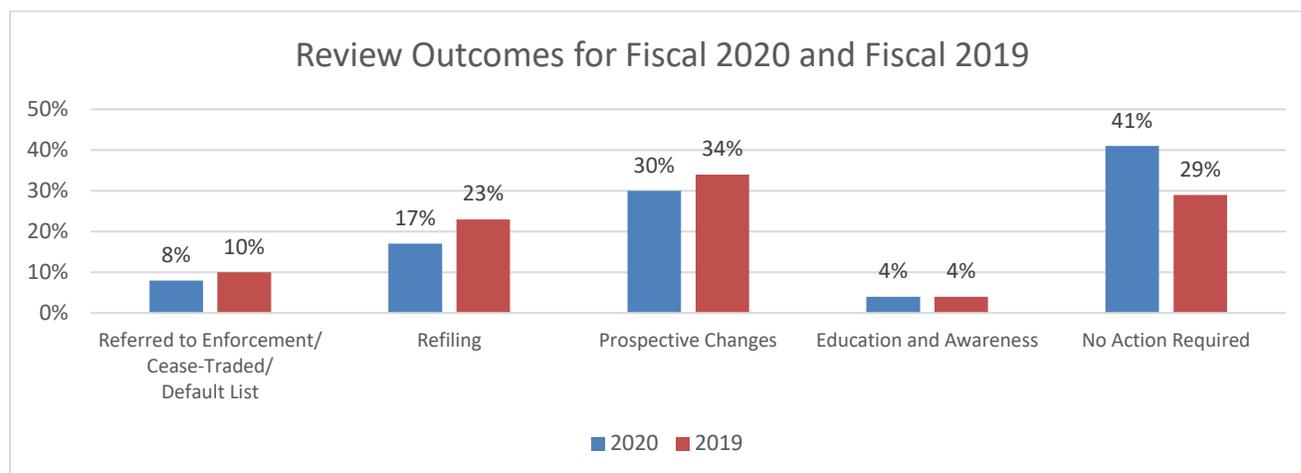
The “Other” category includes, but is not limited to, reviews of:

- Corporate governance
- Review of quarterly highlights
- Change of auditor notice

***CD Outcomes for Fiscal 2020 and Fiscal 2019***

In fiscal 2020, 55% (fiscal 2019 – 67%) of our review outcomes required issuers to improve and/or amend their disclosure, refile certain documents, or to file unfiled documents. Some of our reviews resulted in the issuer being referred to enforcement, cease-traded or placed on the default list. The chart below summarizes the key outcomes.

**Figure #3**



We classify the outcomes of the full reviews and IORs into five categories as described in Appendix B - *Categories of Outcomes*. Some CD reviews may generate more than one category of outcome. For example, an issuer may have been required to refile certain documents and also make certain changes on a prospective basis.

Given our risk-based approach noted above, the outcomes on a year to year basis may vary and cannot be interpreted as an emerging trend as the issues as well as the issuers reviewed each year are different. In fiscal 2020 and fiscal 2019, we continued to see substantive outcomes being obtained as a result of our reviews.

### Common Deficiencies

We have highlighted below some of the deficiencies that were encountered during our CD reviews in fiscal 2020 and fiscal 2019. We have discussed these deficiencies in further detail in Appendix A to this Notice.

- **Financial Statements:** compliance with recognition, measurement and disclosure requirements in International Financial Reporting Standards (**IFRS**) including impairment of non-financial assets, recognition and measurement of intangible assets, and disclosure of operating segments.
- **Management’s Discussion and Analysis (MD&A):** compliance with Form 51-102F1 including forward-looking information, liquidity and capital resources, transactions between related parties, discussion of operations, and non-GAAP financial measures.
- **Other Regulatory Requirements:** compliance with other regulatory matters including overly promotional disclosure, insider reporting, early warning reporting, material change reporting, and mineral project disclosure.

In addition, Appendix A discusses disclosure considerations flowing from the impact of COVID-19.

### Results by Jurisdiction

All CSA jurisdictions participate in the CD review program and some local jurisdictions may publish staff notices and reports communicating results and findings of the CD reviews conducted in their jurisdictions. Refer to the individual regulator’s website for copies of these notices and reports.

## APPENDIX A

### FINANCIAL STATEMENT, MD&A AND OTHER REGULATORY DEFICIENCIES

Our CD reviews identified a number of financial statement, MD&A and other regulatory disclosure deficiencies that resulted in issuers enhancing their disclosure and/or refiling their CD documents. To help issuers better understand and comply with their CD obligations, we present the key observations from our reviews. The Hot Buttons sections below include observations along with considerations for issuers including the relevant authoritative guidance. We have also included some examples of deficient disclosure contrasted against improved examples of entity-specific disclosure or a more in-depth explanation of the matters we observed.

Issuers must ensure that their CD record complies with all relevant securities laws. The quantity of disclosure filed does not necessarily equate to quality or level of compliance.

The following observations are provided for illustrative purposes only. This is not an exhaustive list and does not represent all the requirements that could apply to a particular issuer's situation.

#### Impact of COVID-19

COVID-19 is impacting the economy and posing business challenges for some issuers, including reporting on and disclosing the effects of COVID-19. To support investors in making informed investment decisions, issuers should provide transparent and entity-specific disclosures, including information about the impact of COVID-19 on their operating performance, financial position, liquidity, and future prospects. Relevant regulatory guidance can be accessed at the CSA COVID-19 Information Hub at <https://www.securities-administrators.ca/aboutesa.aspx?id=1885>.

The Hot Buttons and examples of deficient disclosure describe additional potential disclosure considerations in the context of the current environment; however, the observations below do not represent an exhaustive list. Issuers should consider their business and operations to provide clear and transparent disclosure of the impact of COVID-19.

#### 1. FINANCIAL STATEMENT DEFICIENCIES

##### HOT BUTTONS

	OBSERVATIONS	CONSIDERATIONS
<b>FINANCIAL STATEMENTS</b>		
<b>Intangible Assets: Recognition and Measurement</b>	<ul style="list-style-type: none"> <li>❖ For issuers who acquire intangible assets as part of a business combination, the cost of that intangible asset is its fair value at the acquisition date. Some issuers do not measure the fair value in accordance with IFRS 13 <i>Fair Value Measurement</i>. This deficiency is often observed when the purchase price of a business or specific intangible asset is based on a fixed number of shares, and there is a significant fluctuation in the</li> </ul>	<ul style="list-style-type: none"> <li>❖ An intangible asset shall be recognized if, and only if: it is probable that the expected future economic benefits that are attributable to the asset will flow to the entity; and the cost of the asset can be measured reliably.</li> <li>❖ Examples of future economic benefits from an intangible asset may include: revenue from the sale of products or services, cost savings, or other benefits resulting from the use of the asset by the issuer.</li> <li>❖ IFRS specifically prohibits issuers from recognizing intangible assets for most costs incurred on self-developed assets including</li> </ul>

	OBSERVATIONS	CONSIDERATIONS
	<p>share price between the agreement date and the date the transaction closes. In this scenario, we observed issuers that inappropriately assigned the increase in the value of the shares to the acquired intangible assets, without using valuation techniques that were appropriate in the circumstances and for which sufficient data was available to measure fair value.</p>	<p>brands, mastheads, publishing titles, customer lists and items similar in substance, as they cannot be distinguished from the cost of developing the business as a whole.</p> <ul style="list-style-type: none"> <li>❖ Measurement of intangible assets acquired as part of a business combination should be based on the fair value of the asset on the acquisition date. Fluctuations in the purchase price as a result of variations in the acquiror’s stock price should not influence the valuation of the acquired intangible assets.</li> <li>❖ Issuers should consult with their advisors regarding the recognition and measurement of intangible assets through both asset and business acquisitions.</li> </ul> <p><b>References: IAS 38 Intangible Assets, paragraphs 21, 33-37 and 63; IFRS 3 Business Combinations; IFRS 13 Fair Value Measurement.</b></p>
<b>Impairment of Non-Financial Assets</b>	<ul style="list-style-type: none"> <li>❖ Some issuers only test for impairment of non-financial assets on an annual basis and do not consider possible indicators of impairment at the end of each interim period.</li> </ul>	<ul style="list-style-type: none"> <li>❖ Issuers should consider whether any triggers for impairment are present for non-financial assets at the end of each reporting period. Examples of impairment indicators include: market value declines, volatile markets with negative trends, poor economic conditions, adverse changes to laws, net assets of the company higher than market capitalization, assets becoming idle, or poorer than expected performance.</li> <li>❖ Issuers are reminded that impairment tests for goodwill and intangible assets with an indefinite useful life are required to be done annually and whenever there is an indicator of impairment. Other non-financial assets (e.g., property, plant and equipment, non-indefinite life intangible assets) are required to be tested whenever there is an indicator of impairment.</li> </ul> <p><b>References: IAS 36 Impairment of Assets, paragraphs 9-14; IFRIC 10 Interim Financial Reporting and Impairment.</b></p>
<b>Operating Segments: Disclosure</b>	<ul style="list-style-type: none"> <li>❖ Some issuers do not provide required entity-wide disclosures related to products and services, geography, and major customers.</li> </ul>	<ul style="list-style-type: none"> <li>❖ In addition to providing guidance on operating and reportable segments, and determining such segments within an entity, certain entity-wide disclosures are also required for all issuers. Generally, these include disclosure of: <ul style="list-style-type: none"> <li>○ revenue derived from external customers for each individual type of product and service or each group of similar products and services;</li> </ul> </li> </ul>

	OBSERVATIONS	CONSIDERATIONS
		<ul style="list-style-type: none"> <li>○ revenues from external customers and certain non-current assets on a country by country basis, if material; and</li> <li>○ the extent of reliance on major customers, including amongst other things, the amount of revenue attributed to each major customer that contributes to 10% or more of an entity’s revenues.</li> </ul> <p><b>References: IFRS 8 Operating Segments, paragraphs 31-34.</b></p>
<p><b>Significant judgements and estimation uncertainties in the context of COVID-19</b></p>	<ul style="list-style-type: none"> <li>❖ In light of the COVID-19 pandemic, issuers are preparing financial statements in an evolving and uncertain environment, with potentially imperfect information that could change after certain CD filings are made publicly available. COVID-19 impacts issuers in different ways and, as a result, new judgements or estimates may be needed in several areas including:               <ul style="list-style-type: none"> <li>○ Going concern assessment;</li> <li>○ Impairment assessments;</li> <li>○ Fair value calculations;</li> <li>○ Government assistance;</li> <li>○ Revenue recognition; and</li> <li>○ Deferred tax recoverability.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>❖ Issuers’ management need to use the best available information in making well-reasoned judgements and estimates and provide the required disclosure of significant judgements and estimation uncertainties required by IAS 1, <i>Presentation of Financial Statements</i>.</li> <li>❖ Detailed entity specific disclosure in an issuer’s annual or interim financial statements is important because issuers with similar circumstances may have different judgements and estimates based on the information available. IAS 34 <i>Interim Financial Reporting</i> requires entities to include in their interim financial report an explanation of events and transactions that are significant to an understanding of the changes in financial position and performance of the entity since the end of the last annual reporting period. Given the rapidly changing environment, condensing or omitting certain disclosures in interim financial reports may no longer be appropriate because the information disclosed in the latest annual financial statements may be less relevant. Therefore, we remind issuers that they must consider, as new information becomes available, whether their judgements and estimates need to be updated and prospectively reflected in their interim financial reports.</li> <li>❖ Issuers are also reminded to consider events and information up to the date of authorisation of the financial statements in performing the going concern assessment.</li> </ul> <p><b>References: IAS 1 Presentation of Financial Statements; IAS 12 Income Taxes; IAS 20 Accounting for Government Grants and Disclosure of Government Assistance; IAS 36 Impairment of Assets; IFRS 13 Fair Value Measurement; IFRS 15 Revenue from Contracts with Customers.</b></p>

**2. MD&A DEFICIENCIES**

***HOT BUTTONS***

	<b>OBSERVATIONS</b>	<b>CONSIDERATIONS</b>
<b>MD&amp;A</b>		
<b>Forward-Looking Information (FLI)</b>	<ul style="list-style-type: none"> <li>❖ We continue to see issuers provide boilerplate disclosure of FLI, or disclosure that does not identify the FLI, the material risk factors that could cause actual results to differ materially from the FLI, or the material factors or assumptions used to develop the FLI.</li>   <li>❖ Some issuers do not disclose their policies for updating FLI, or state that they undertake no obligation to publicly release the results of any revisions to FLI.</li>   <li>❖ Some issuers do not present FLI in a manner that allows an investor to readily identify it. In various instances, issuers referred readers to</li> </ul>	<ul style="list-style-type: none"> <li>❖ An issuer must include specified disclosure when disclosing material FLI. Management should exercise judgement when determining whether information is material; however, we generally consider future-oriented financial information (<b>FOFI</b>) and financial outlooks to be material.</li> <li>❖ An issuer must specifically identify the FLI and avoid boilerplate disclosure. Also, an issuer must identify the material factors or assumptions and the material risk factors that are relevant to the FLI. For example, projections of revenue growth may be reasonable if based on new store openings or increased capacity. Specific disclosure with respect to these assumptions will enable investors to understand the FLI and to follow the progress in subsequent reporting periods.</li> <li>❖ Issuers must generally update previously disclosed material FLI in their MD&amp;A by including a discussion of: <ul style="list-style-type: none"> <li>○ the events and circumstances that occurred during the period that are reasonably likely to cause actual results to differ materially from those previously disclosed to the public and what the expected differences are.</li> <li>○ the material differences between the previously disclosed FLI and the actual outcome.</li> </ul> </li> <li>❖ Issuers must describe their policy for updating FLI if it includes any procedures in addition to updates in the MD&amp;A.</li> <li>❖ An issuer should present the FLI and the required accompanying disclosures in an easy to read manner, for example, by providing the required FLI</li> </ul>

	<b>OBSERVATIONS</b>	<b>CONSIDERATIONS</b>
	<p>a separate section of the disclosure document, such as the “Risk Factors” section, for a discussion of the material risk factors related to the FLI.</p>	<p>disclosure in close proximity to the FLI statement. Also, an issuer may consider using tables and other methods of presentation that clearly link specific material risk factors and material factors and assumptions to the particular FLI.</p> <p><i>Additional considerations in light of COVID-19</i></p> <ul style="list-style-type: none"> <li>❖ During the uncertainty of COVID-19, issuers should consider whether there remains a reasonable basis for previously announced FLI or FLI to be disclosed in prospective CD filings. In addition to updating previously disclosed FLI (as discussed above), issuers may have to consider withdrawing previously published guidance and financial outlooks in the event that these outlooks can no longer be supported by reasonable assumptions and there is no longer a reasonable basis for the achievement, or accurate updating, of conclusions, forecasts or projections in the FLI.</li> </ul> <p><b><i>References: Part 4A, 4B and section 5.8 of NI 51-102; and Part 4A of Companion Policy 51-102CP; CSA Staff Notice 51-330 Guidance Regarding the Application of Forward-looking Information Requirements under National Instrument 51-102 Continuous Disclosure Obligations.</i></b></p>
<p><b>Liquidity and Capital Resources</b></p>	<ul style="list-style-type: none"> <li>❖ We continue to see issuers that provide an incomplete, boilerplate discussion of their liquidity and capital resources or simply reproduce numbers from their financial statements without providing helpful contextual information.</li> </ul>	<ul style="list-style-type: none"> <li>❖ This section of the MD&amp;A provides critical information on what an issuer’s cash requirements are, how they intend to fund them and any associated trends, fluctuations and risks.</li> <li>❖ Cash requirements: Issuers are required to present an analysis of their cash requirements, in both the short and long term. This should include an analysis of their commitments, capital expenditures and working capital requirements. We remind issuers that their capital requirements should consider both growth and sustaining</li> </ul>

	OBSERVATIONS	CONSIDERATIONS
	<ul style="list-style-type: none"><li>❖ We observed a number of issuers that had negative cash flow from operations or a material risk related to their ability to continue as a going concern, but did not provide a sufficient analysis on what the impact of this was on their operations and how they intended to manage this risk.</li></ul>	<p>capital, those expenditures that are committed, and those that are uncommitted but planned.</p> <ul style="list-style-type: none"><li>❖ Funding: Issuers are required to discuss how they intend to fund their identified cash requirements. This includes disclosure of funding that the issuer has currently arranged but not yet used as well as other sources of funding available to the issuer such as private or public debt, equity, and/or cash from operations. We remind issuers that they must have a reasonable basis to assume the sources of funding are available to them and they must clearly disclose if the financing is not yet finalized (e.g. letter of intent) or has conditions attached to it.</li><li>❖ Trends, fluctuations and risks: Issuers are required to discuss any trends, fluctuations and risks associated with their cash requirements and funding and their plans to manage these. Examples of items requiring disclosure might include counterparty risk associated with working capital amounts, credit facilities being renewed on different terms (e.g. interest rate changes, principal reductions), default on credit facilities, the impact of acquisitions and dispositions on cash flows, etc.</li><li>❖ Issuers that have negative cash flow from operations or a material risk related to their ability to continue as a going concern might consider disclosing:<ul style="list-style-type: none"><li>○ Their most current working capital amount;</li><li>○ Significant obligations that are maturing in the short term;</li><li>○ Their cash burn rate on a monthly or quarterly basis;</li><li>○ The period of time that they expect to be able to fund operations;</li><li>○ How they intend to prioritize expenditures in the short term;</li></ul></li></ul>

	OBSERVATIONS	CONSIDERATIONS
		<ul style="list-style-type: none"> <li>○ Their ability to meet their asset retirement obligations, etc.</li> </ul> <p><b><i>Additional considerations in light of COVID-19</i></b></p> <ul style="list-style-type: none"> <li>❖ COVID-19 will have a significant impact on certain issuers’ liquidity and capital resources. It will be particularly important for those issuers to provide a comprehensive discussion on both the current and expected effects of the pandemic, including quantifying the impact where possible. Examples of items requiring disclosure might include: any subsidies and/or funding received from government programs, increased counterparty risk (A/R collection), reduced cash flow from operations as a result of decreased demand, delays in capital project plans, impact of any cost cutting initiatives (employee layoffs, reduced hours), changes in the issuer’s dividend policy, etc.</li> </ul> <p><b><i>References: Items 1.6 and 1.7 of Form 51-102F1.</i></b></p>
<p><b>Transactions between Related Parties</b></p>	<ul style="list-style-type: none"> <li>❖ We continue to see issuers that do not provide sufficient quantitative and qualitative information necessary for investors to understand the business purpose and economic substance of transactions between related parties.</li> <li>❖ Some issuers that enter into non-cash transactions between related parties do not provide sufficient and transaction-specific disclosure about the measurement basis used to determine the amount of the transaction.</li> </ul>	<ul style="list-style-type: none"> <li>❖ Identifying transactions between related parties provides useful information to investors as it draws attention to the possibility that the transaction amount or terms may have been affected by the existence of related parties. IFRS requires disclosure of both the nature of the related party relationship as well as information about the transactions and outstanding balances, including commitments, necessary for users to understand the potential effect of the relationship on the financial statements.</li> <li>❖ For non-cash transactions, where issuers determine the transaction price by measuring the consideration received at fair value, required disclosure about the measurement basis includes the valuation technique management used to determine the fair</li> </ul>

	OBSERVATIONS	CONSIDERATIONS
		<p>value, as well as the assumptions and judgements management made to determine the exchange amount.</p> <p>❖ In explaining the measurement basis of a non-cash related party transaction in the MD&amp;A, management should ensure it has evidence to support that the transaction was entered into at market terms, if disclosing this.</p> <p><b>References: Item 1.9 of Form 51-102F1; IAS 24 Related Party Disclosures; IFRS 13 Fair Value Measurement.</b></p>

**MD&A DISCLOSURE EXAMPLES**

**a. DISCUSSION OF OPERATIONS AND THE IMPACT OF COVID-19**

The MD&A is a narrative explanation, through the eyes of management, of how an issuer performed during the period covered by the financial statements, and of an issuer’s financial condition and future prospects. In discussing an issuer’s operations for the reporting period, an issuer should avoid boilerplate disclosure, such as simply repeating information that is readily available in the financial statements. COVID-19 is likely to have had a significant impact on an issuer’s operations and financial position. Disclosure of such should not only be entity-specific and transparent, providing a detailed explanation and breakdown of the impact of COVID-19, but also of any other factors contributing to period over period variances. For example, an issuer should not incorrectly attribute or generally list COVID-19 as the sole reason for any period over period variances or other negative news.

The impact of COVID-19 may vary significantly from industry to industry or issuer to issuer; therefore, an issuer should discuss the specific impact on their operations that COVID-19 has had, as well as provide detailed disclosures regarding the methodology used to determine the impact. For example, retailers that have been forced to shut their doors during emergency orders will have decreased sales from their brick and mortar locations, whereas a manufacturer may be impacted by issues in the supply chain or operating with reduced staffing in order to practice safe social distancing. Providing entity-specific disclosure will help investors understand the effect COVID-19 has had on operations and the mitigation measures that have been put in place.

**Example of Deficient Disclosure – Information on Impact of COVID-19 on Financial Performance**

- Results from the last quarter were impacted by COVID-19.
- Revenues of \$4.8 million, down by 20% and up by 5% when excluding the impact of COVID-19 pandemic.
- Net earnings of \$1.2 million, down by 25%.
- Impact of COVID-19 represents a decrease in net earnings per share of approximately \$0.05.

In the above example, the issuer discloses precise quantitative information on the impact of COVID-19 on its financial performance. However, the MD&A does not provide disclosure on the methodology used by

the issuer to determine the impact of COVID-19 on revenues, net earnings and earnings per share. Further, the issuer has not described the other factors that have contributed to the period over period variances.

It may be difficult for an issuer to determine with accuracy the quantitative impact of COVID-19 on its financial performance. Therefore, in order to avoid misleading investors, the issuer should explain the methodology used in its calculation and should provide information about the judgements and estimations made by management in determining those impacts.

**Example of Improved Disclosure – Information on Impact of COVID-19 on Financial Performance**

As described above, we shut down 25 locations country-wide in mid-March, and these locations remain closed as at the date of this MD&A. 14 locations remained open for take-out only. In order to mitigate the impacts of store closures and reduced revenues, we have temporarily laid off certain staff. Our mitigating efforts are described in further detail in the Recent Developments section.

- Results from the last quarter were impacted by COVID-19, specifically, as mentioned above, with the closure of 25 locations country-wide and 14 locations operating with limited capacity as take-out only.
- Revenue decreased by \$1.2 million, or 20% from the same period in the prior year. The closures noted above were in effect for 2 weeks during the reporting period. Based on our forecasts for each location, we estimate that the loss in revenues due to store closures was approximately \$1 million for the period ended March 31, 2020 (based on a 2-week average sales at those stores in prior periods). A further reduction of revenue of \$200 thousand is estimated from locations that remained open as take-out only due to a reduction in revenue/hour from the loss of customers dining in and shorter operating times.
- Cost of goods sold decreased by \$800 thousand, or 15% from the same period in the prior year. The decrease in cost of goods sold did not track the decrease in revenue exactly due to retaining staff members in open locations with reduced traffic due to operating as take-out only.
- Net earnings decreased by \$400 thousand, or 25% from the same period in the prior year. The decrease in net earnings is a result of the above decreases in revenue and cost of goods sold as certain fixed costs, such as leases, head office salaries and depreciation remained consistent from the prior period despite large decreases in revenue.

The above example provides a clear and detailed analysis of the impact of COVID-19, by providing entity-specific disclosure while also discussing other factors that may have contributed to period over period variances.

In uncertain times, clear and transparent disclosure is essential for investors to fully understand the impact of macro-economic factors, and also to ascertain information about the issuer's future prospects.

**b. NON-GAAP FINANCIAL MEASURES (NGMs) – PROMINENCE AND LABELLING  
(including appropriate use of adjustments as a result of COVID-19)**

For a number of years, we have noted the proliferation of NGMs. Many of these measures are derived from profit or loss determined under an issuer's GAAP and, by omission or inclusion of selected items, generally present a more positive picture of financial performance. While NGMs can supplement and explain financial performance, cash flows or financial conditions, we remind issuers to accompany them with appropriate explanatory disclosures, as contemplated in *CSA Staff Notice 52-306 (Revised) Non-GAAP Financial Measures (CSA SN 52-306)*.

We continue to see NGMs presented with greater prominence than the most directly comparable measure presented in an issuer’s financial statements, or NGMs not properly labeled. Consistent with CSA SN 52-306, in order to ensure that an NGM does not mislead investors, an issuer should present, with equal or greater prominence to that of the NGM, the most directly comparable measure specified, defined or determined under the issuer’s GAAP.

In addition, issuers are cautioned about adjustments or alternative profit measures defined as COVID-19 related. Not all COVID-19 effects are non-recurring and there may be a limited basis for management to conclude that a loss or expense is non-recurring, infrequent or unusual. This includes where the impact of COVID-19 crosses over multiple reporting periods. It could be misleading to describe an adjustment as COVID-19 related if management does not explain how the adjusted amount was specifically associated with COVID-19.

**Example of Deficient Disclosure – NGMs in a News Release**

**COMPANY ABC REPORTS FINANCIAL RESULTS FOR Q2 2020 OF \$10 MILLION**

***Highlights***

- Revenue decreased 2% from the same period in the prior year to \$52 million.
- Adjusted EBITDA\* increased by 1% from the same period in the prior year to \$10 million.
- Net Earnings decreased 25% from the same period in the prior year to \$4 million.

\*Adjusted EBITDA is adjusted earnings before interest, taxes, depreciation, amortization and COVID-19 effects, as reflected below:

Net earnings	\$4 million
Interest	\$1 million
Depreciation	<u>\$2 million</u>
EBITDA	\$7 million
Increased costs due to COVID-19 <sup>1</sup>	<u>\$3 million</u>
Adjusted EBITDA	\$10 million

1. The increased costs are non-recurring and are due to the COVID-19 pandemic.

In the above example, the issuer presented in the news release title “Financial Results of \$10 million”. In this title, Financial Results are neither identified as being Adjusted EBITDA, an NGM, nor accompanied by Net Earnings determined under the issuer’s GAAP. Investors may be confused and misinterpret the “Financial Results” as being a GAAP measure.

When presenting an NGM it may be misleading to present it without labeling the NGM properly and without identifying it as being an NGM. In this example, it is misleading to not present Net Earnings calculated in accordance with the issuer’s GAAP with equal or greater prominence than the NGM.

In addition, the NGM, Adjusted EBITDA, includes an adjustment which is described as being non-recurring as a result of COVID-19. However, the disclosure does not explain how management determined the increased costs are related to COVID-19, the nature of the increased costs, why the measure provides useful information for investors and the additional purposes, if any, for which management uses the NGM. Further, describing the adjustment as ‘non-recurring’ may be misleading if there is little basis for management to conclude that similar costs are unreasonably likely to occur within the next two years.

**Example of Improved Disclosure – NGMs in a News Release**

**COMPANY ABC REPORTS NET EARNINGS OF \$4 MILLION AND ADJUSTED EBITDA OF \$10 MILLION**

**Highlights**

- Revenue decreased 2% from the same period in the prior year to \$52 million.
- Net Earnings decreased 25% from the same period in the prior year to \$4 million.
- Adjusted EBITDA\* increased by 1% from the same period in the prior year to \$10 million.

\*Adjusted EBITDA is a Non-GAAP Financial Measure. For more information, refer to the section on Non-GAAP Financial Measures at the end of this news release, and below for a full reconciliation of adjusted EBITDA to the most comparable GAAP measure.

Net earnings	\$4 million
Interest	\$1 million
Depreciation	<u>\$2 million</u>
<b>EBITDA</b>	<b>\$7 million</b>
Restructuring costs <sup>1</sup>	\$2.5 million
Safety measures implemented at plant A <sup>2</sup>	<u>\$0.5 million</u>
<b>Adjusted EBITDA</b>	<b>\$10 million</b>

1. As a result of the COVID-19 pandemic, management expects decreased demand for our products for the remainder of 2020 and 2021. As a result, management has reorganized its operations to streamline production and reduce head office staff. These restructuring costs include the cost of laying off 10 employees and the cost of shifting the majority of the production to manufacturing plant A. Additional restructuring costs are expected in the subsequent interim period, although the majority of the restructuring costs have already been incurred. Please refer to the *COVID-19 impact* section of the company’s MD&A and the restructuring costs note in the financial statements, filed concurrently with this news release, for additional details on the impact of COVID-19 on the company’s operations.

2. As a result of public health directives, the company implemented safety measures at manufacturing plant A to ensure the safety of our employees. These costs include the cost of reconfiguring certain equipment to ensure physical distancing guidelines could be observed, the installation of physical barriers to production areas where safe physical distancing cannot be observed, and increased overhead costs of running three production shifts (previously two) to reduce the number of workers per shift. The costs relating to plant reconfiguration and installation of barriers are one-time costs, but the increased overhead costs (\$0.1M) are expected to recur until physical distancing measures are no longer recommended.

These two adjustments to EBITDA provide useful information to investors as the resulting “Adjusted EBITDA” measure is comparable to the prior year measure and provides investors with management’s calculation of earnings resulting from the company’s ongoing business operations.

The above discussion focused on a few aspects of NGMs’ disclosure expectations. Issuers should ensure that they refer to all of the guidance set forth in CSA SN 52-306 in preparing disclosure documents.

### 3. OTHER REGULATORY DISCLOSURE DEFICIENCIES

#### ***HOT BUTTONS***

	<b>OBSERVATIONS</b>	<b>CONSIDERATIONS</b>
<b>OTHER REGULATORY</b>		
<b>Overly Promotional Disclosure</b>	<ul style="list-style-type: none"> <li>❖ We noted disclosure by some issuers that is overly promotional and in certain circumstances, either untrue or unbalanced to such an extent that it may mislead investors.</li> </ul>	<ul style="list-style-type: none"> <li>❖ Issuers are prohibited from making false or misleading statements or omitting facts from a statement necessary to make that statement true or not misleading.</li> <li>❖ Disclosure by issuers should be balanced, for example, by providing the risks and contingencies associated with positive news or events, in order to avoid being misleading.</li> <li>❖ Disclosure of early-stage plans of a new business, objective, or strategy, or material claims about an issuer’s business and the corresponding opportunity should be substantiated or balanced with a discussion of the issuer’s business plans, milestones and expected timing of such, capital requirements, and associated risks.</li> <li>❖ Issuers announcing pending favourable transactions should disclose material conditions necessary to complete the transaction, file the related material contracts (if required by section 12.2 of NI 51-102), and update the market promptly if the conditions are not expected to be met or the transaction is not completed.</li> <li>❖ Issuers should refrain from publishing numerous news releases that disclose no new material facts.</li> </ul> <p style="margin-top: 10px;"><i><b>References: National Policy 51-201 Disclosure Standards; CSA Staff Notice 51-348 Staff’s Review of Social Media Used by Reporting Issuers; CSA Staff</b></i></p>

	OBSERVATIONS	CONSIDERATIONS
<p><b>Insider Reporting</b></p>	<ul style="list-style-type: none"> <li>❖ Reporting insiders: We continue to observe instances where insider reports are not being filed or not filed on a timely basis on the System for Electronic Disclosure by Insiders (SEDI). In particular, we frequently observe that SEDI reports related to securities issued under compensation arrangements established by issuers are filed late, incorrectly or not filed at all.</li> <li>❖ Reporting insiders: We have also observed a number of insider reports being filed with inaccurate information; in particular, we frequently observe reports with inaccurate transaction dates.</li> <li>❖ Issuers: We continue to observe discrepancies between the number of securities held by reporting insiders as disclosed in an issuer’s CD documents (e.g. information circulars) and the reporting insider’s SEDI filings. This often occurs when an issuer grants securities to reporting insiders under compensation arrangements and they do not communicate this issuance to the reporting insiders on a timely basis.</li> </ul>	<p><b><i>Notice 51-356 Problematic Promotional Activities by Issuers.</i></b></p> <ul style="list-style-type: none"> <li>❖ Initial report: Reporting insiders are required to file an initial insider report within 10 days of becoming a reporting insider if they own or control, directly or indirectly, securities or related financial instruments involving a security of the issuer.</li> <li>❖ Subsequent reports: Reporting insiders are required to file a report within five days after <i>any</i> change in their holdings occurs. For example, an acquisition or disposition of securities, a grant or expiration of options, warrants or other securities issued under compensation arrangements, share consolidations, stock splits, etc.</li> <li>❖ In instances of acquisitions or dispositions of securities, the transaction date to be reported is the trade date, not the settlement date.</li> <li>❖ Issuers are encouraged to implement internal processes to ensure that the number of security holdings communicated to them by their reporting insiders are accurate and also to ensure that securities granted under compensation arrangements to reporting insiders are communicated to the insider on a timely basis. These processes will help to ensure consistency between the issuer’s CD filings and SEDI, and will also allow reporting insiders to avoid late fees for filing insider reports after the prescribed deadline.</li> </ul> <p><b><i>References: National Instrument 55-104 Insider Reporting Requirements and Exemptions; CSA Staff Notice 55-315 Frequently Asked Questions about National Instrument 55-104 Insider Reporting Requirements and Exemptions; CSA Staff Notice 55-316 Questions and Answers on Insider Reporting and the System for Electronic Disclosure by Insiders (SEDI).</i></b></p>

	OBSERVATIONS	CONSIDERATIONS
<p><b>Early Warning Reporting<sup>3</sup></b></p>	<ul style="list-style-type: none"> <li>❖ We have observed a number of instances where security holders do not fulfill their early warning reporting requirements.</li> </ul>	<ul style="list-style-type: none"> <li>❖ The early warning reporting system is intended to provide transparency to the marketplace when a significant acquisition in the securities of an issuer occurs. The purpose of the requirement is to warn the marketplace that a take-over bid could be imminent. The acquiror must specifically disclose not only the details of the transaction and the percentage of securities held, but also its intention and the purpose in making the acquisition of securities.</li> <li>❖ The following events generally trigger the early warning requirements:               <ul style="list-style-type: none"> <li>○ <i>10% ownership</i>: beneficial ownership of, or control or direction over, voting or equity securities of any class of an issuer, or securities convertible into voting or equity securities of any class of an issuer, that, together with the acquiror's securities of that class, constitute 10% or more of the outstanding securities of that class;</li> <li>○ <i>2% increases or decreases</i> in the ownership percentage reported in the security holder's most recent report;</li> <li>○ <i>Decreases to less than 10% ownership<sup>4</sup></i>; and</li> <li>○ <i>A change in a material fact</i> reported in the security holder's most recent report.</li> </ul> </li> <li>❖ When a security holder triggers the early warning requirements, such security holder is required to inform the marketplace by:               <ul style="list-style-type: none"> <li>○ Issuing and filing a news release no later than the opening of trading on the business day following the event; and</li> </ul> </li> </ul>

<sup>3</sup> Note that the reporting requirements differ for eligible institutional investors that choose to report under the alternative monthly reporting system. Refer to Part 4 of National Instrument 62-103 *The Early Warning System and Related Take-Over Bid and Insider Reporting Issues* for additional information.

<sup>4</sup> Note that in the case of a decrease to less than 10% ownership, security holders are not required to report any further change in ownership unless they regain at least 10% ownership.

	OBSERVATIONS	CONSIDERATIONS
		<ul style="list-style-type: none"> <li>○ Filing Form 62-103F1 <i>Required Disclosure under the Early Warning Requirements</i>, no later than two business days following the event.</li> <li>❖ A security holder is exempt from the early warning requirements if a change in their ownership percentage arises solely by actions taken by the Issuer and without any action being taken by the security holder.</li> </ul> <p><b>References: National Instrument 62-103 Early Warning System and Related Take-Over Bid and Insider Reporting Issues; Part 5 of National Instrument 62-104 Take-Over Bids and Issuer Bids; Part 3 of National Policy 62-203 Take-Over Bids and Issuer Bids.</b></p>
<p><b>Material Change Reporting</b></p>	<ul style="list-style-type: none"> <li>❖ Some issuers do not issue material change reports in relation to material changes, or do not do so in a timely manner.</li> </ul>	<ul style="list-style-type: none"> <li>❖ The term ‘material change’ is generally defined in each jurisdiction’s securities legislation and is usually based on a market impact test.</li> <li>❖ Upon occurrence of a material change, issuers are required to:               <ul style="list-style-type: none"> <li>○ Immediately issue and file a news release authorized by an executive officer disclosing the nature and substance of the change; and</li> <li>○ As soon as practicable, and in any event within 10 days of the date on which the change occurs, file Form 51-102F3 <i>Material Change Report</i>.</li> </ul> </li> </ul> <p><b>Additional considerations in light of COVID-19</b></p> <ul style="list-style-type: none"> <li>❖ Issuers should be aware of the impact of COVID-19, or resulting governmental or regulatory policies, that may be unique or more significant to them than to others in their industry. Examples of potentially material information that may result in a material change due to COVID-19 are:               <ul style="list-style-type: none"> <li>○ Significant disruptions to an issuer’s workforce or operations,</li> </ul> </li> </ul>

	OBSERVATIONS	CONSIDERATIONS
		<ul style="list-style-type: none"> <li>○ Negative changes in markets, economy or laws,</li> <li>○ Supply chain delays or disruptions that are critical to an issuer’s business,</li> <li>○ Changes in credit arrangements</li> <li>○ Increased cost of goods or services,</li> <li>○ Suspension of exports, etc.</li> </ul> <p><b>References: Part 7 of NI 51-102, Form 51-102F3 Material Change Report.</b></p>

**4. MINERAL PROJECT DISCLOSURE**

National Instrument 43-101 *Standards of Disclosure for Mineral Projects (NI 43-101)* governs public disclosure of scientific and technical information about an issuer’s mining and mineral exploration projects including written documents, websites, and oral statements. Issuers must base their scientific and technical disclosure on information provided by a “qualified person” (QP), as defined in section 1.1 of NI 43-101. NI 43-101 also requires issuers to file a “technical report”, in a prescribed format, Form 43-101F1 *Technical Report (Technical Report)*, for significant corporate or mineral project milestones. The purpose of the Technical Report is to support disclosure of the issuer’s exploration, development, and production activities with additional information to assist current and prospective investors in making investment decisions. In some circumstances, QPs authoring the Technical Report must be independent of the issuer and the mineral property.

A major component of CSA mineral-industry reviews in 2018 and 2019 was a review of technical reports supporting the disclosure of mineral resource estimates. CSA Staff Notice 43-311 *Review of Mineral Resource Estimates in Technical Reports* provides detailed commentary on the results of the review and guidance on regulatory requirements and expectations. The main results of the review are included in the Hot Buttons below. Please note that this is not an exhaustive list.

*HOT BUTTONS*

	OBSERVATIONS	CONSIDERATIONS
<b>MINERAL PROJECTS</b>		
<b>Technical Report Content: Mineral Resource Estimates</b>	❖ Some Technical Reports do not include adequate disclosure of important criteria the QP used to determine that the mineral resource has demonstrated reasonable prospects for eventual economic extraction. Specific examples include omission of the proposed mining method(s), metallurgical recovery factors, selected metal price(s) including justification for the selection, and the cut-off grade and how it was determined.	❖ The Technical Report requires sufficient discussion of the key assumptions, parameters, and methods used to estimate the mineral resource for a reasonably informed reader to understand the basis for the mineral resource estimate and how it was generated. Absent these disclosures, it may be unclear if the mineral resource meets the threshold required by the Canadian Institute of Mining, Metallurgy and Petroleum (CIM)

	OBSERVATIONS	CONSIDERATIONS
	<ul style="list-style-type: none"> <li>❖ Some Technical Reports do not adequately describe the specific procedures the QP undertook in verifying the data or provide the QP’s opinion on the adequacy of the data used in the Technical Report. This deficiency was most pronounced where the QP was using data generated by earlier project operators.</li>   <li>❖ Some Technical Reports include tables showing the sensitivity of the mineral resource estimate to changes in cut-off grade without showing the base-case estimate clearly, or showing unreasonable cut-off grades.</li>   <li>❖ Risk disclosure, required in Item 25 of the Technical Report, sometimes has the character of "boilerplate" text, and is not specific to the subject mineral project.</li> </ul>	<p>Definition Standards for Mineral Resources and Mineral Reserves.</p> <ul style="list-style-type: none"> <li>❖ “Data verification” is a defined term and is not merely ensuring that assay results have been accurately transferred, for example, into a mineral resource estimation database. It encompasses all efforts by the QP to verify that the database is fit for purpose. A QP is required to disclose the steps they have taken to verify the data used in the Technical Report and the QP cannot rely on data verification completed by other QP’s in previous reports on behalf of other issuers.</li> <li>❖ Legacy data, collected before the activities of the current project operator, may have been generated using few quality assurance procedures, and the results of earlier verification may be unknown to the current operator or the QP. If so, efforts to verify the legacy data are essential to ensure the integrity of the mineral resource database.</li> <li>❖ Tables showing the estimate's sensitivity to cut-off grade are valuable, but the QP should ensure a table like that is not misleading. The actual mineral resource estimate being disclosed in the Technical Report should be clearly marked (for example, by bold type or shading). Tonnages and grades at other cut-offs should still have reasonable prospects for eventual economic extraction. Cut-off grades set lower than a plausible break-even level could be interpreted as potential mineral resources, and so are potentially misleading. Moreover, estimates with a zero cut-off grade have no way of meeting the definition of a mineral resource.</li> <li>❖ Risks set out should be those that are specific to the mineral project that is the subject of the Technical Report.</li> </ul> <p><b>References: Items 11, 12, 14(a), 14(b) and 25 of Form 43-101F1; section 1.1 of NI 43-101.</b></p>

	OBSERVATIONS	CONSIDERATIONS
<p><b>Disclosure of Estimates</b></p>	<ul style="list-style-type: none"> <li>❖ A common deficiency in routine disclosure of mineral project information is the failure to state both tonnage and grade of mineral resources or mineral reserves.</li>   <li>❖ Another deficiency is the failure to disclose whether mineral reserves are included in, or excluded from, the mineral resource estimate.</li> </ul>	<ul style="list-style-type: none"> <li>❖ Stand-alone disclosure of total contained metal or mineral (e.g., ounces of gold, pounds of uranium oxide, etc.) is contrary to NI 43-101. Tonnage and grade must be disclosed each time an estimate is cited. It is insufficient, for example, to point to earlier disclosure that complies with NI 43-101.</li> <li>❖ Conventions on the disclosure of mineral reserves are not uniform. Where an issuer discloses mineral reserves, the disclosure should avoid being misleading by showing, clearly and prominently, the convention the issuer is following: whether the mineral resource includes the mineral reserve, or is additional to the mineral reserve.</li> </ul> <p><i>References: Subsections 2.2(b), 2.2 (d) and 3.4(b) of NI 43-101.</i></p>
<p><b>Compliance with Part 3 of NI 43-101</b></p>	<ul style="list-style-type: none"> <li>❖ Some issuers rely on hyperlinks in news releases or other System for Electronic Document Analysis and Retrieval (SEDAR) filings to provide maps, sections, or tables, without filing the relevant information on SEDAR. Links provided on the issuer's website, or by dissemination services, may stop working and the required information will not be retrievable by users.</li> </ul>	<ul style="list-style-type: none"> <li>❖ Issuers providing graphical or tabular information in their filings should include this information in the document that is filed, as hyperlinks may be broken over time. If information is important enough to be linked, it is important enough to be included in the issuer's permanent disclosure record on SEDAR.</li> </ul> <p><i>References: Subsection 4.1(2) of NI 13-101 System for Electronic Document Analysis and Retrieval (SEDAR); subsection 7.2(e)(i)(B) of the SEDAR Filer Manual.</i></p>

## **APPENDIX B**

### **CATEGORIES OF OUTCOMES**

#### **1. Referred to Enforcement/Cease-Traded/Default List**

If the issuer has substantive CD deficiencies, we may add the issuer to our default list, issue a cease-trade order and/or refer the issuer to enforcement.

#### **2. Refiling**

The issuer must amend and refile certain CD documents or must file a previously unfiled document.

#### **3. Prospective Changes**

The issuer is informed that certain changes or enhancements are required in its next filing as a result of deficiencies identified.

#### **4. Education and Awareness**

The issuer receives a proactive letter alerting it to certain disclosure enhancements that should be considered in its next filing or when staff of local jurisdictions publish staff notices and reports on a variety of continuous disclosure subject matters reflecting best practices and expectations.

#### **5. No Action Required**

The issuer does not need to make any changes or additional filings. The issuer could have been selected in order to monitor overall quality disclosure of a specific topic, observe trends and conduct research.

**Questions** – Please refer your questions to any of the following:

<p>Raymond Ho Senior Accountant, Corporate Finance Ontario Securities Commission 416-593-8106 <a href="mailto:rho@osc.gov.on.ca">rho@osc.gov.on.ca</a></p>	<p>Rebecca Moen Securities Analyst Alberta Securities Commission 403-297-4846 <a href="mailto:rebecca.moen@asc.ca">rebecca.moen@asc.ca</a></p>
<p>Heather Kuchuran Director, Corporate Finance Financial and Consumer Affairs Authority of Saskatchewan 306-787-1009 <a href="mailto:heather.kuchuran@gov.sk.ca">heather.kuchuran@gov.sk.ca</a></p>	<p>Patrick Weeks Analyst, Corporate Finance Manitoba Securities Commission 204-945-3326 <a href="mailto:patrick.weeks@gov.mb.ca">patrick.weeks@gov.mb.ca</a></p>
<p>Nadine Gamelin Senior Analyst, Continuous Disclosure Autorité des marchés financiers 514-395-0337, ext. 4417 <a href="mailto:nadine.gamelin@lautorite.qc.ca">nadine.gamelin@lautorite.qc.ca</a></p>	<p>Joe Adair Senior Securities Analyst Financial and Consumer Services Commission (New Brunswick) 506-643-7435 <a href="mailto:joe.adair@fcnb.ca">joe.adair@fcnb.ca</a></p>
<p>Junjie (Jack) Jiang Securities Analyst, Corporate Finance Nova Scotia Securities Commission 902-424-7059 <a href="mailto:jack.jiang@novascotia.ca">jack.jiang@novascotia.ca</a></p>	