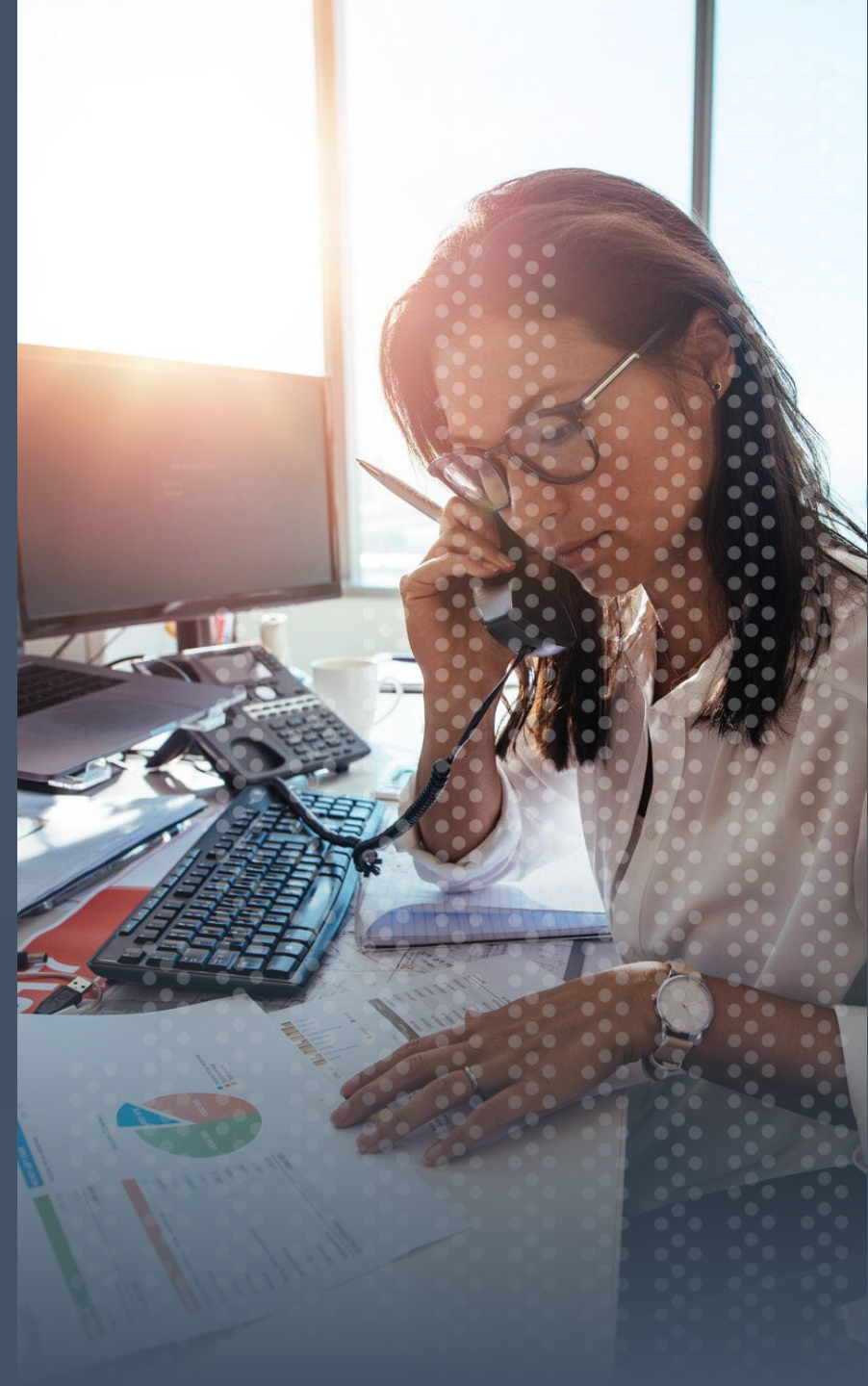


Corporate Disclosure Information Session

January 17, 2024



Today

- **Continuous disclosure obligations**
- **Management's discussion & analysis**
- **Other key disclosure documents**
- **Hot topics**
 - Forward-looking information and promotional disclosures
 - Prospectus – sufficiency of proceeds
 - Revocation of a cease trade order
- **Regulatory update**

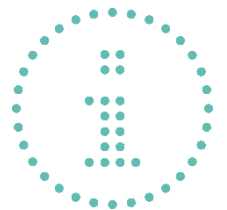
Disclaimer

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 learning certificate

If you wish to obtain a CPD certificate for this session, you must enter the 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 certificate can be emailed to you.

Continuous disclosure obligations

Nicole Law

Senior Securities Analyst, Corporate Finance

Continuous disclosure obligations

➔ Most of the continuous disclosure requirements are in the following rules or regulations:

- National Instrument 51-102 *Continuous Disclosure Obligations*
- National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*
- National Instrument 52-110 *Audit Committees*
- National Instrument 58-101 *Disclosure of Corporate Governance Practices*
- National Instrument 43-101 *Standards of Disclosure for Mineral Projects*
- National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*

Continuous disclosure documents

Types of filings

- Financial statements
- Management’s discussion & analysis
- Annual information form
- Information circular
- CEO and CFO certifications



Continuous disclosure documents



Other regulatory requirements

- Material change report
- Change in year-end
- Change in corporate structure
- Change in auditor
- Material contracts
- Corporate governance and audit committee disclosures
- Statement of executive compensation

Continuous disclosure documents

Industry-specific requirements

- Technical report for mineral projects in accordance with NI 43-101 and Form 43-101F1
- Disclosures for oil and gas activities in accordance with NI 51-101, including:
 - A statement of reserves data and other information specified in Form 51-101F1
 - Report of the Independent Qualified Reserves Evaluator or Auditor in Form 51-101F2
 - Report of management and directors in Form 51-101F3
 - A notice of filing as set out in Form 51-101F4
 - Notice of ceasing to engage in oil and gas activities disclosure in Form 51-101F5



Venture vs. non-venture issuer

There are two types of reporting issuers in Canada: venture and non-venture issuers. Reporting requirements are less prescriptive for venture issuers.

A **venture issuer**¹ is a reporting issuer that does not have any of its securities listed or quoted on any of the following:

- Toronto Stock Exchange
- Aequitas NEO Exchange Inc.
- U.S. marketplace
- A marketplace outside of Canada and the U.S., other than:
 - Alternative Investment Market of the London Stock Exchange; or
 - PLUS markets operated by PLUS Markets Group plc.



(1) Venture issuer, as defined in subsection 1.1(1) of National Instrument 51-102 *Continuous Disclosure Obligations*

Consequences of not filing

Default

Management cease
trade order

Failure-to-file cease
trade order

For more information, see:

- CSA Notice 51-322 *Reporting Issuer Defaults*, and
- National Policy 12-203 (Revised) *Management Cease Trade Orders*.

Management's discussion & analysis (MD&A)

Chelsey Holzwarth

Securities Analyst, Corporate Finance

Jennifer Pearson

Securities Analyst, Corporate Finance

Management's discussion & analysis

Form 51-102F1

Management's perspective

- Analyze performance
- Describe future plans, trends and risks
- Explain financial condition

Disclosure deficiencies

- Lacking depth of analysis



Analysis of performance



Improvements to consider

- Explain new products or services
 - Revenue streams and drivers
 - Costs and drivers
- Discuss reasons for variances
- Explain trends and seasonality

Future plans, trends and risks

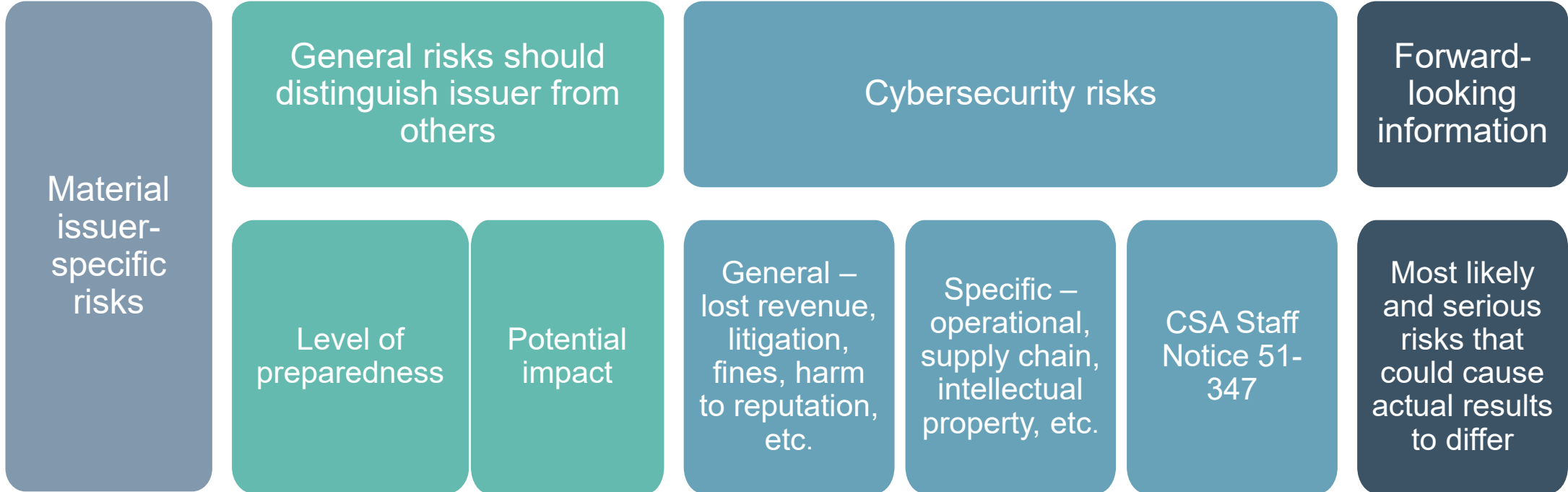
Future plans – Significant projects

- Project description
- Current status
- Expected costs
- Anticipated timelines
- Balanced disclosure



Future plans, trends and risks

Risk Factors



Financial condition

Liquidity and capital resources disclosure

Common issues

- Reproduce cash flow statement
- No discussion of cash requirements
- No remedy for working capital deficiencies
- Inadequate disclosure of breaches
- Unachievable sources of financing

Best practice

- Describe ability to:
 - Fund operations
 - Meet obligations
 - Finance planned growth/development
- Consider:
 - Expected changes in cash flow
 - Required/planned capital expenditures
 - Reasonable sources of financing

MD&A recommendations summary

Analysis of performance

Describe new projects

Explain variances

Future plans, trends, risks

Significant project timeline and costs

Entity-specific risk factors

Financial condition

Cash requirements

Sources of financing

CPD learning code 

Disclosure

Other key disclosure documents

Chelsey Holzwarth

Securities Analyst, Corporate Finance

Jennifer Pearson

Securities Analyst, Corporate Finance

Other key disclosure documents

Certificates – Forms in NI 52-109

Common issues

- Wrong form filed
 - Forms for venture vs. non-venture
 - Forms for interim and annual filings
 - Forms for certain circumstances (re-filings, IPO, voluntary AIF)
- Form wording has been modified
- Certificate date problems
- Conclusion on ICFR and DC&P effectiveness differs from MD&A



Other key disclosure documents

Material contracts

- Judgment is required to determine what is material.
- Required to be filed unless entered into in the ordinary course of business, with some exceptions.
- Cannot redact debt covenants and ratios, events of default, or other terms necessary for understanding the impact of the contract.

Practice Tip!

File material contracts as soon as possible.

File no later than the related material change report (if applicable) and no later than the annual information form, or within 120 days after the end of the issuers most recently completed financial year.

Other key disclosure documents

Material contracts

**Credit agreement
or other material
financing agreement**

Considered a material contract if the business is substantially dependent on the contract.

**Franchise, license,
or management
agreement**

Considered a material contract if the business is substantially dependent on the contract.

**Employment
contract with
directors, officers
or promoter**

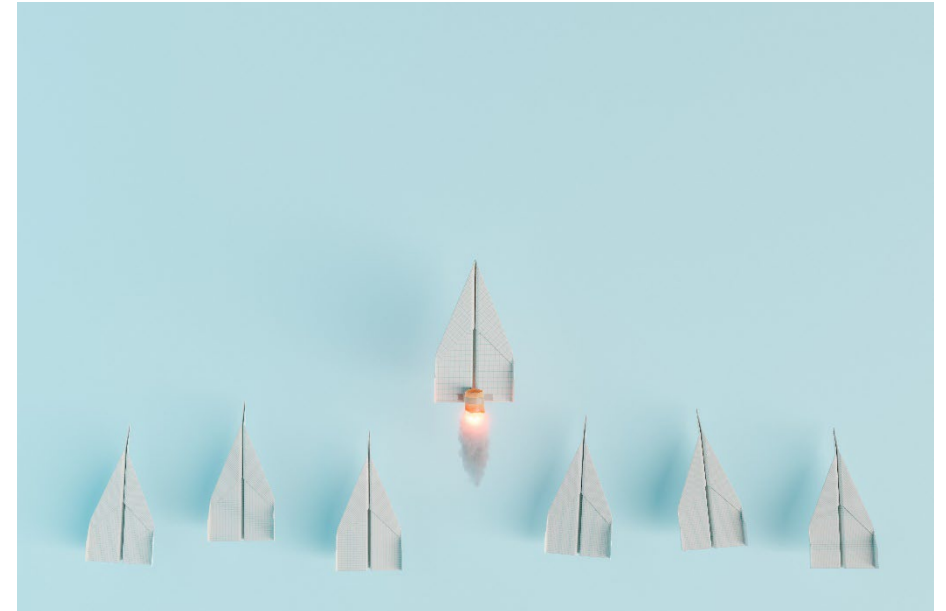
Not considered a material contract.

For more information, see subsection 12.2(2) of National Instrument 51-102 *Continuous Disclosure Obligations*

Other key disclosure documents

Material change reports – Form 51-102F3

- Change in the business
- Change in the operations
- Change in corporate or capital structure
- News release also required



File as soon as possible, and in any event, within 10 days of the date on which the change occurs.

Other key disclosure documents

Change in corporate structure

Notice required to be filed when:

- Filing statement to become a reporting issuer
- Reverse takeover to become a reporting issuer
- Cease to be a reporting issuer
- Changes to reporting issuer's name
- Changes to reporting issuer's year end



File as soon as possible, and no later than the deadline for the first filing required under National Instrument 51-102 following the transaction.

Other key disclosure documents

Change in year end

Notice to include:

- Reason for change in year end
- Old and new financial year end
- Length and ending dates (including comparative periods) for new interim and annual filings



Not required if: Transaction was a reverse takeover and the year-end remains the same or was changed to be the same as the reverse takeover acquirer.

Refer to Appendix A of the Companion Policy to National Instrument 51-102 *Continuous Disclosure Obligations* for examples of filing requirements for changes in the year end

Other key disclosure documents

Change of auditor

Notice to include:

- Date and details about the termination or resignation
- Successor auditor appointment, if applicable
- Disclosure of modified opinions, if any
- Information on reportable events

Other documents:

- Letter from predecessor auditor
- Letter from successor auditor

Filing deadlines:

- All documents to be filed within 14 days of resignation/termination and appointment

Other key disclosure documents

Corporate governance

When to file: Annually

What form:

Non-venture issuer

Form 58-101F1 *Corporate Governance Disclosure*

Venture issuer

Form 58-101F2 *Corporate Governance Disclosure (Venture Issuers)*

Where to file:

Information circular

or

Annual information form

Information circular

or

Annual information form

or

MD&A

Other key disclosure documents

Corporate governance

Purpose

Transparent information about management including independence

Common deficiencies

- Not filed
- Lack of disclosure assessing the effectiveness of the board
- Failure to indicate that an officer or director is not independent



Other key disclosure documents

Audit committee

Purpose

- Encourage strong and effective audit committees to enhance financial disclosure

Key responsibilities

- Recommend and oversee auditor
- Preapprove non-audit services
- Review FS, MD&A & NR

Where to file

- Venture – same as corporate governance disclosure
- Non-venture – annual information form and information circular

Common deficiencies

- Not filed
- Composition of audit committee

Other key disclosure documents

Statement of executive compensation

When to file: Generally filed no later than **140 days** after the end of the reporting issuer's most recently completed financial year if it is a non-venture issuer, or **180 days** if it is a venture issuer.

What form:

Non-venture issuer

Form 51-102F6 *Statement of Executive Compensation*

Venture issuer

Form 51-102F6V *Statement of Executive Compensation – Venture Issuers*

Where to file:

Information circular



Annual information form

Information circular



Annual information form



Stand-alone

Hot topics

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Securities Analyst, Corporate Finance

Roger Persaud

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Nicole Law

Senior Securities Analyst, Corporate Finance

Hot topic: Forward-looking information and promotional disclosures

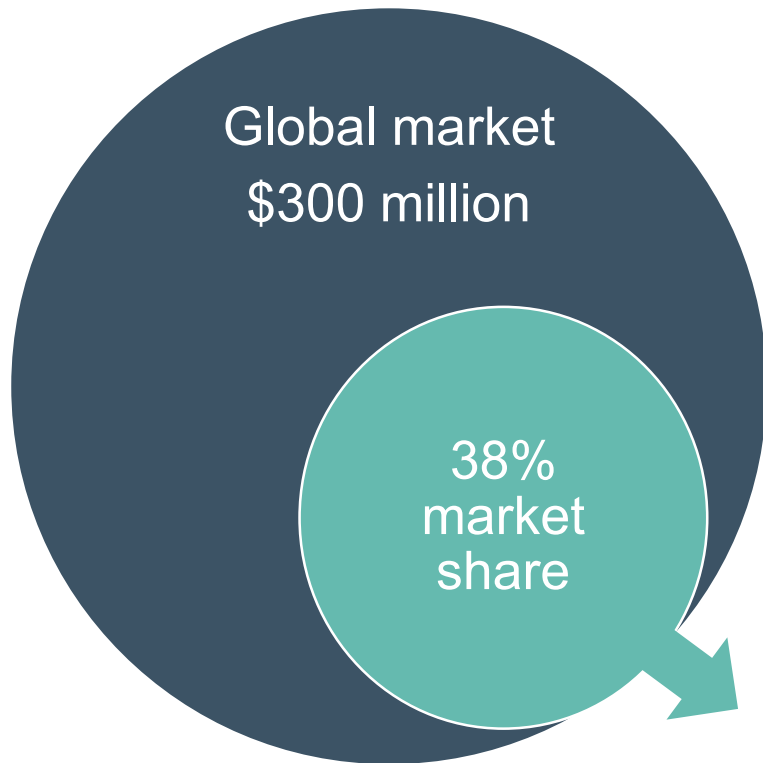
What is a forward-looking information?

Forward-looking information¹ (FLI) means disclosure regarding possible events, conditions or financial performance that is based on assumptions about future economic conditions and courses of action and includes future-oriented financial information with respect to prospective financial performance, financial position or cash flows that is presented as a forecast or a projection.



(1) Forward-looking information, as defined in subsection 1.1(1) of National Instrument 51-102 *Continuous Disclosure Obligations*

Example of overly promotional FLI

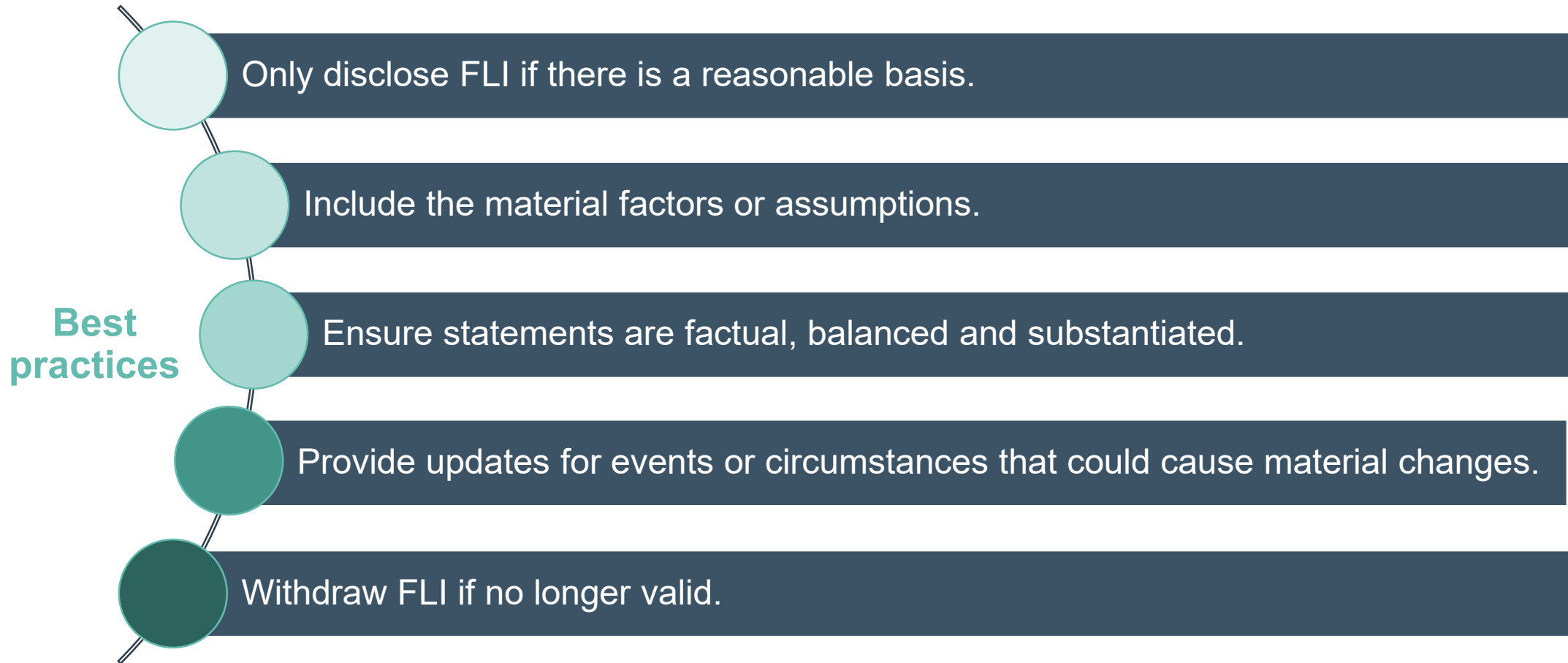


Growth in the global market from acquisition

- Leading innovator
- Increased market share

> \$114 million projected future sales milestone

Avoid overly promotional disclosure



For more information see Part 4A and section 5.8 of NI 51-102 for FLI disclosure requirements and Part 4B for FOFI and Financial Outlooks

Hot topic: Prospectus – sufficiency of proceeds

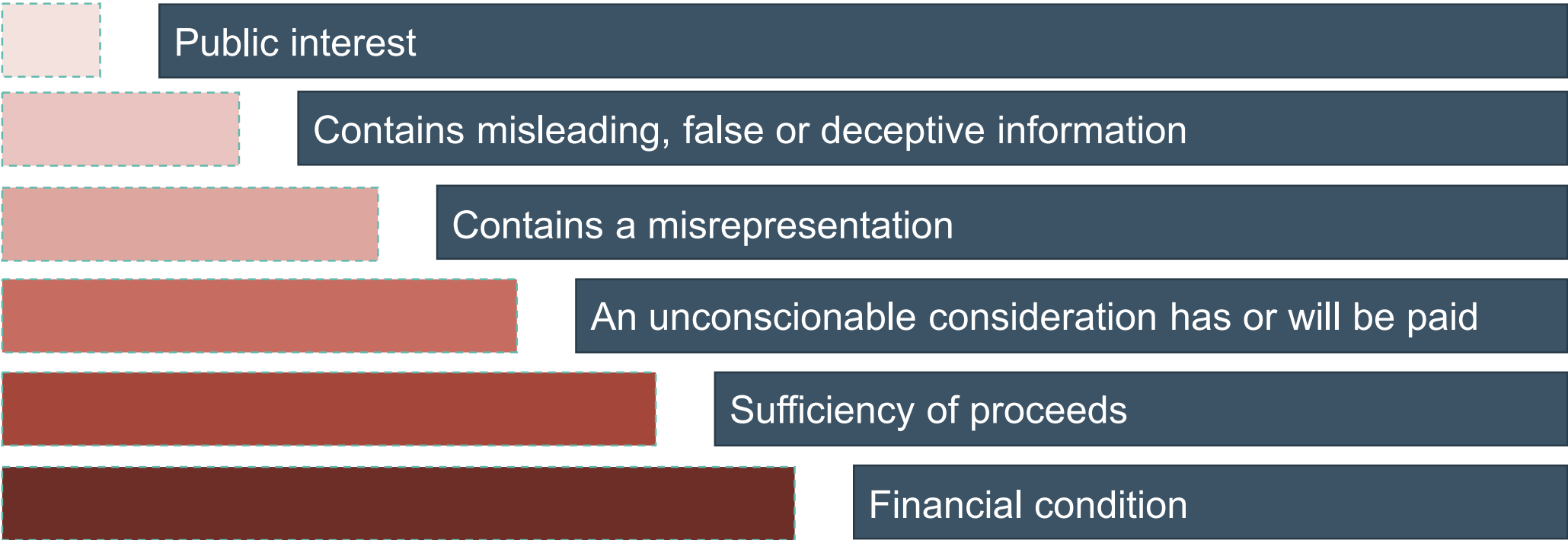
Prospectus – sufficiency of proceeds

Key discussion points

- Potential receipt refusal areas
- Sufficiency of proceeds receipt refusal examples
- Short-term liquidity requirements
- Considerations in the sufficiency of proceeds analysis
- Cash flow forecast
- How to address sufficiency of proceeds concerns

Potential receipt refusal areas

Section 120 of the *Securities Act* (Alberta)



For more information on the sufficiency of proceeds concerns and analysis, see CSA Staff Notice 41-307 (Revised) *Concerns regarding an Issuer’s Financial Condition and the Sufficiency of Proceeds from a Prospectus Offering*

Sufficiency of proceeds receipt refusal examples

Proceeds under a prospectus are raised for a specific purpose but are still not sufficient to address the issuer's **short-term liquidity requirements**

A best efforts¹ offering without a minimum subscription, or a minimum subscription that does not appear to be sufficient to satisfy the issuer's **short-term liquidity requirements**

A base shelf prospectus offering that can be drawn down in small increments that, when considered separately, may not be sufficient to satisfy the issuer's **short-term liquidity requirements**

(1) Issuers distributing securities on a best efforts basis that have not specified a minimum offering amount in their prospectus, should refer to section 2.2.1 of the Companion Policy to NI 41-101 for further guidance.

Short-term liquidity requirements

Type of issuer	Resources to meet short-term liquidity requirements
Exploration stage issuer	Sufficient to reach completion of the next phase of a project
Development stage issuer	Sufficient to achieve the issuer’s next significant milestone
Research and development issuer	Sufficient to achieve progress on the development of a key product
Issuer with active operations	Ability to continue operations for the short term (generally consider to be 12 months)

Note: for base shelf prospectuses, we generally consider short-term liquidity requirements to be 12 months.

Sufficiency of proceeds

Analysis considerations

- Going concern risks
- Working capital deficiencies
- Financial covenants close to or breaching covenant thresholds
- Negative cash flow from operating activities
- Net losses
- Insufficient cash and other resources to meet non-discretionary capital or project costs



Note: ASC staff only consider committed financing in the analysis (e.g., where the offering is a bought deal, or where there is a minimum offering amount or stand-by commitment. Similarly, proceeds from alternative financing arrangements should only be included in this analysis where there is certainty of proceeds).

Cash flow forecast

Details to include

- Assumptions and risks
- Working capital
- Revenue streams
- Capital expenditures or project costs (discretionary vs. non-discretionary)
- Other expenditures
- Additional sources of financing



How to address sufficiency of proceeds concerns

- ➔ Where no minimum offering was included, staff may require a sufficient minimum to be provided.
- ➔ Where there was a minimum offering amount included but it was determined to be insufficient, staff may require the minimum to be increased (excluding base shelf prospectuses).
- ➔ Staff may require additional sources of financing or a backstop (e.g., stand-by commitment).

CPD learning code 

SEDAR+

Hot topic: Revocation of a cease trade order

What is a cease trade order?

Cease trade order¹ means an order under a provision of Canadian securities legislation, set out in Annex A, that one or more persons or companies must not trade in securities of a reporting issuer, whether directly or indirectly.



(1) Cease trade order, as defined in National Policy 11-207 *Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions* (NP 11-207)

Initiating a full revocation of a cease trade order

How long has the cease trade order been in place?

90 days or less

No application is required.

More than 90 days

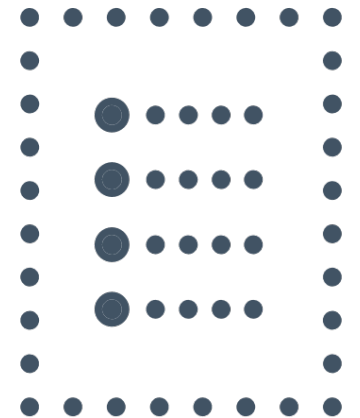
An application for a full revocation of a cease trade order is required to be submitted to the principal regulator.¹

(1) As the Ontario Securities Commission has not adopted the passport system, RIs who report in both Alberta and Ontario are reminded that they will need to submit a dual application to both regulators.

Application materials

1

Prepare all outstanding continuous disclosure documents.

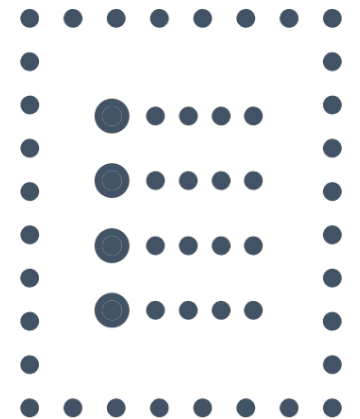


Application materials

2

Complete and file all outstanding continuous disclosure documents.

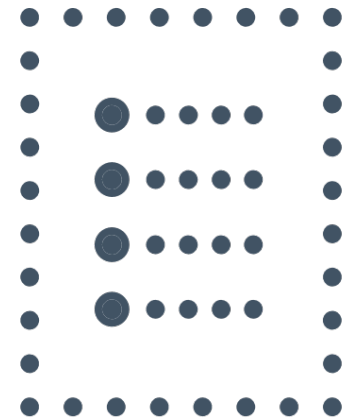
- Audited annual financial statements, annual MD&A and annual certificates
- AIF, information circulars and material change reports (as applicable)
- Corporate governance and audit committee disclosures
- Executive compensation disclosure
- Technical reports for mineral projects (if applicable)
- A statement of the reserves data and other information specified in Form 51-101F1 (if applicable)
- Interim financial statements, interim MD&A and interim certificates for all interim periods in the current fiscal year



Application materials

3

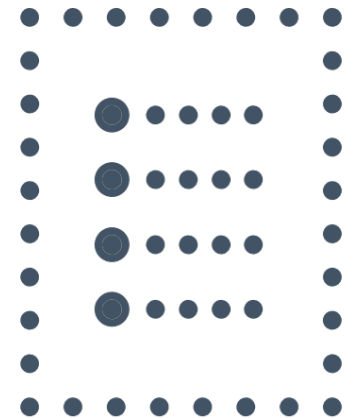
Complete a personal information form for each current and incoming director, executive officer and promoter of the issuer.



Application materials

4

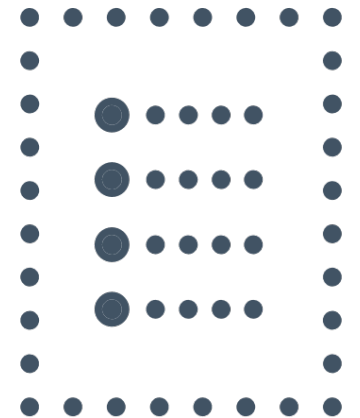
Confirm that the issuer's SEDAR+ and SEDI profiles are up to date.



Application materials

5

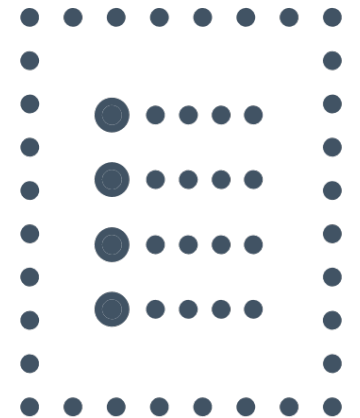
Prepare a draft news release and material change report to be filed when the full revocation order is issued.



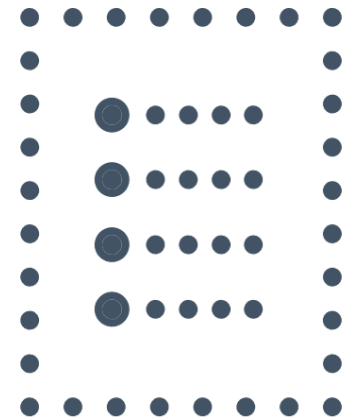
Application materials

6

Provide an undertaking, addressed to the “*Executive Director of the Alberta Securities Commission,*” to hold an annual meeting within three months after the date of the full revocation order (if necessary).



Application materials



7 Pay all outstanding fees to each jurisdiction in which the issuer reports.

Application for a revocation of a cease trade order

- 1 Prepare all outstanding continuous disclosure documents.
- 2 Complete and file all outstanding continuous disclosure documents.
- 3 Complete a personal information form for each current and incoming director, executive officer and promoter of the issuer.
- 4 Confirm that the issuer's SEDAR+ and SEDI profiles are up to date.
- 5 Prepare a draft news release and material change report to be filed when the full revocation order is issued.
- 6 Provide an undertaking, addressed to the "*Executive Director of the Alberta Securities Commission*," to hold an annual meeting within three months after the date of the full revocation order (if necessary).
- 7 Pay all outstanding fees to each jurisdiction in which the issuer reports.

For more information on the materials required to be filed with an application for a full revocation, see section 33 of NP 11-207.



Regulatory update

Tim Robson

Manager, Legal, Corporate Finance

Regulatory update

- **Climate-related disclosure**
- **Diversity disclosure**
- **Listed Issuer Financing Exemption**
- **Well-known Seasoned Issuer Regime**
- **Access equals delivery**
- **Streamlining of annual and interim continuous disclosure obligations**

Climate-related disclosure

- International Sustainability Standards Board
 - IFRS S1 *General Requirements for Disclosure of Sustainability-related Financial Information*
 - IFRS S2 *Climate-related Disclosures*
- Canadian Sustainability Standards Board
 - Local Canadian versions of IFRS S1 and S2 expected later this year
- 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*
 - CSA has published proposed amendments to corporate governance disclosure requirements pertaining to board nominations, board renewal and diversity.
 - CSA is aligned on the importance of this disclosure, but has proposed two alternative approaches to achieve it.
 - Comment period ended in September 2023.
 - CSA currently considering the 78 comment letters received.

Listed Issuer Financing Exemption

- Listed Issuer Financing Exemption adopted by all CSA members in November 2022.
- Allows listed Canadian issuers to raise the greater of \$5 million or 10 per cent of the issuer’s market capitalization to a maximum of \$10 million in a 12-month period through distributions to the public.
- Disclosure comprised of an issuer’s continuous disclosure record, supplemented by short offering document. News release is required.
- Offering document is not reviewed and securities are not subject to a hold period.
- CSA Staff Notice 45-330: Frequently Asked Questions about the Listed Issuer Financing Exemption
 - Provides guidance with respect to use of the exemption. Notably, the exemption is not available if an issuer lacks sufficient funds to continue operations and achieve its business objectives for a period of 12 months following the distribution.

Well-known Seasoned Issuer (WKSI) Regime

- CSA began work on the WKSI Regime as part of its reducing regulatory burden initiative.
- This regime permits large, well-known issuers with established continuous disclosure records to file shelf prospectuses qualifying an unlimited amount of securities, which are not subject to securities commission review.
- In early 2022, each CSA jurisdiction issued a blanket order creating a WKSI regime on an interim basis.
- This initiative has been very well received; almost all Alberta issuers eligible to use it are doing so.
- On September 21, 2023, the CSA published proposed amendments to implement a permanent WKSI regime.
 - Among other things, the amendments will provide for automatic receipting and permit a WKSI prospectus to be used for up to three years.
- Final amendments should be in place later this year.

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.
- The proposed access model for prospectuses was well received. Final amendments in this regard were published on January 11, 2024, and will come into effect in April.
- Comment suggested more work was required to develop a successful access model for continuous disclosure documents.
- This work continues; we hope to publish a modified proposal for comment later this year.

Streamlining of continuous disclosure obligations

- 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, were published in 2021.
- These amendments will also eliminate overlap and duplication in the disclosure contained in these documents.
- As proposed, these amendments are intended to be accompanied by an access model for continuous disclosure documents, including the annual and interim disclosure statement.
- These amendments are currently on hold and will be published in final form in conjunction with the modified electronic access model for continuous disclosure documents when ready.

Questions?

Contact us



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Thank you